



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



Kiwi Forwarders Given Formal Warning

New Zealand's Commerce Commission recently issued warnings to eight international freight-forwarding companies that in its view "likely" entered into cartel agreements.

The companies to receive warnings were 360 Logistics Group, Aqua Air Freight Services, CH Robinson Worldwide (NZ), Go Logistics, Kerry Logistics (Oceania), Mainstream Global, Ryders Customs and Forwarding, and Stellar International.

The Commission found those companies likely entered into agreements to not compete for customers with either or both of Mondiale Freight Services and Oceanbridge Shipping – those two businesses being suppliers to and competitors of the eight.

Earlier this year the Commission agreed settlements to resolve related proceedings with those two companies, which saw the High Court impose the following penalties totalling over NZ\$9.7 million:

- Mondiale – NZ\$4.9 million
- Oceanbridge – NZ\$4.6 million
- four individuals associated with those companies – ranging from NZ\$65,000 to NZ\$100,000

The warning letters – copies of which can be found on the Commission's case register – concluded an investigation which began back in 2018.

"The Commission considers that the cartel agreements had the effect of removing competition, making it possible that customers were charged more for retail freight-forwarding services than they would have if these companies had actively competed for those customers' business," stated the Commission.

"The warnings are not legal findings that a breach of the Commerce Act has occurred, but reflect the Commission's view of the conduct.

"The warnings make it clear to the businesses that their directors and staff should be aware that entering into these kinds of anti-competitive agreements is likely to be cartel conduct, which may breach the Commerce Act. They also suggest changes in each recipient's behaviour to comply with the law.

"The international freight-forwarding industry is an important sector of the New Zealand economy. We will continue to focus on identifying potential cartel conduct in global supply chains."

Cartel Conduct

According to the Commission, a cartel is where two or more businesses agree not to compete with each other – including by price fixing, allocating markets or customers, rigging bids, or restricting the output or acquisition of goods and services.

"Cartel conduct is prohibited under section 30 of the Commerce Act. Before section 30 of the Act was amended in 2017, it prohibited price fixing. The Commission alleges that the conduct in this case breached both the former price fixing prohibition and the prohibition against cartel conduct."

As of April 8, 2021, cartel conduct is now punishable in New Zealand with a term of imprisonment of up to seven years.

CBAFF Notes Anti-Cartel Warnings

Warnings issued by the New Zealand Commerce Commission to eight international freight-forwarding companies have been acknowledged by the Customs Brokers and Freight Forwarders Federation of New Zealand (CBAFF).

CBAFF executive director Rosemarie Dawson commented: “We support the Commerce Commission in any investigations they undertake focused on the supply chain sector to ensure cartel behaviour does not occur and our stand on this is well documented.”

Ms Dawson added that the CBAFF Code of Ethics has clear expectations that its members must discharge their duties with honesty and integrity, and to observe all relevant laws of New Zealand and international agreements.

In the November 6 media statement, CBAFF also underlined that the warnings were “not legal findings that a breach of the Commerce Act has occurred”.

“Instead, they reflect the Commission’s view that there has likely been a breach of the law, to suggest a change in the recipient’s behaviour and to encourage future compliance with the law,” read the statement.

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