

MEDIA RELEASE



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ACCC takes action against Pacific National and Aurizon

The ACCC has instituted proceedings in the Federal Court against Pacific National and Aurizon (ASX: AZJ), and their related entities, for allegedly reaching an understanding in relation to Aurizon's intermodal business that had the purpose and/or would be likely to have the effect of substantially lessening competition in the supply of intermodal and steel rail linehaul services.

"The ACCC alleges that in July 2017 Pacific National and Aurizon reached an understanding that would lead to Aurizon exiting its intermodal business through a combination of closure and transactions with Pacific National. The effect of the understanding was that Aurizon would stop competing with Pacific National to supply intermodal and steel rail linehaul services throughout Australia," ACCC Chairman Rod Sims said.

The ACCC also alleges that Pacific National's proposed acquisition of Aurizon's Queensland intermodal business and the Acacia Ridge Terminal, as well as an agreement for Pacific National to operate the interstate side of the Acacia Ridge Terminal, would separately each have the likely effect of substantially lessening competition.

The ACCC is seeking declarations, pecuniary penalties, orders restraining Pacific National from acquiring the Acacia Ridge Terminal and Aurizon's Queensland intermodal business, and costs. The ACCC has also applied for an injunction to prevent Aurizon from closing its Queensland intermodal business while the case is being determined.

Aurizon intermodal sale process

During the first half of 2017, Aurizon engaged in a sales process for its intermodal business. That business consisted of several interconnected components, including the Acacia Ridge Terminal, and its interstate intermodal and Queensland intermodal businesses (which both depend on access to the Acacia Ridge Terminal).

The ACCC alleges that, in late July 2017, Pacific National and Aurizon reached an understanding and Aurizon terminated its sales process with other bidders.

The ACCC alleges that the understanding involved Pacific National obtaining control of Acacia Ridge Terminal, either by PN acquiring the terminal or, if that was prevented by the ACCC, by a long term contract appointing it as operator of the interstate side of the terminal, commencing 1 December 2018.

The ACCC also alleges that the understanding involved Pacific National becoming the exclusive bidder for Aurizon's Queensland intermodal business, but that if Pacific National did not acquire that business, Aurizon would close it.

The ACCC alleges that Pacific National and Aurizon gave effect to this understanding by executing formal contracts including contracts for the sale of the Acacia Ridge Terminal and the operation of the Acacia Ridge Terminal (the Terminal Services Subcontract), and to negotiate exclusively for the sale/purchase of the Queensland intermodal business.

Subsequently, Pacific National and Aurizon entered into an agreement for Pacific National to acquire the Queensland intermodal business.

In addition, Aurizon announced the closure of its interstate intermodal business on 14 August 2017. The business was closed by December 2017.

Earlier this year, Aurizon announced that it would close its Queensland intermodal business if the ACCC opposed the proposed acquisition by Pacific National.

The ACCC alleges that the closure of Aurizon's interstate intermodal business and the planned closure of the Queensland intermodal business is a direct and expected consequence of the understanding reached with Pacific National.

The ACCC's competition concerns

"Pacific National and Aurizon are the only providers of intermodal rail linehaul on the North Coast Line servicing northern Queensland. The ACCC alleges that the understanding, the proposed acquisitions by Pacific National and the agreement appointing Pacific National as operator of the Acacia Ridge Terminal would have the effect of creating a monopoly on that route," Mr Sims said.

"Further, Pacific National and Aurizon were, at the time of the understanding, two of only three competitors on interstate routes. We consider that Aurizon's closure of its interstate intermodal business substantially lessened competition on those interstate routes."

"At all times, Aurizon had alternatives to selling to Pacific National that would have been more competitive. The ACCC is aware of at least one alternative purchaser that is willing and able to acquire Aurizon's entire remaining intermodal business," Mr Sims said.

"However, the evidence makes it clear that it was more lucrative for Aurizon to agree to sell parts of its intermodal business to its closest competitor, and close other parts of that business, than it was to sell the whole intermodal business to a potential new entrant."

"Given Aurizon's announcement that it will close its Queensland intermodal business if the Pacific National acquisition is opposed by the ACCC, in circumstances where there is at least one alternative purchaser, the ACCC is seeking an interlocutory injunction to prevent Aurizon from closing this business until the matter is determined by the Court," Mr Sims said.

Proposed Undertaking

During the ACCC's review, Pacific National sought to address the ACCC's concerns relating to its proposed acquisition of the Acacia Ridge Terminal by offering a court enforceable undertaking that it would not discriminate in providing access to the Acacia Ridge Terminal.

"The ACCC is of the view that the long term behavioural undertaking offered by Pacific National is not capable of addressing the ACCC's concerns about the loss of competition resulting from the alleged understanding or Pacific National's proposed acquisitions of Aurizon's Queensland intermodal business and the Acacia Ridge Terminal."

Background

The term 'intermodal' freight is used to describe the carriage of general freight usually in a container using two or more modes of transportation, such as truck and rail. 'Intermodal rail linehaul' refers to the rail leg of the movement of intermodal freight. 'Steel rail linehaul' refers to similar services that are provided in respect of steel products. An intermodal terminal,

such as the Acacia Ridge Terminal, is a piece of infrastructure with a connection to a rail line where containers can be transferred between transportation modes.

The ACCC commenced a public investigation of Aurizon's proposed exit plans, including the proposed acquisitions by Pacific National of the Acacia Ridge Terminal and Queensland intermodal business, on 27 October 2017.

The ACCC issued a [Statement of Issues](#) on 15 March 2018.

Pacific National is the largest provider of intermodal rail freight services in Australia. Currently, Pacific National and Aurizon are the only providers of intermodal rail freight services within Queensland. Aurizon previously also competed with Pacific National and SCT on interstate routes.

The full list of respondents to the ACCC's proceedings is:

- Pacific National Pty Limited
- HV Rail Pty Ltd (a Pacific National subsidiary)
- Queensland LH Co Pty Ltd (a Pacific National subsidiary)
- Queensland PUD Co Pty Ltd (a Pacific National subsidiary)
- Aurizon Holdings Limited
- Aurizon Operations Ltd (an Aurizon subsidiary)
- Aurizon Terminal Pty Ltd (an Aurizon subsidiary)
- Aurizon Property Pty Ltd (an Aurizon subsidiary)

Further information is available at www.accc.gov.au

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