



# MEDIA RELEASE

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## ACCC applies to the High Court for special leave to appeal Pacific National merger decision

The ACCC is seeking special leave to appeal to the High Court from the Full Federal Court's decision that Pacific National's acquisition of the Acacia Ridge terminal from Aurizon (ASX: AZJ) would not be likely to substantially lessen competition.

"We believe that the Full Federal Court's decision does not recognise the full impact of the proposed acquisition on competition in this vitally important industry," ACCC Chair Rod Sims said.

"Competition depends on rivals having the chance to compete. While no one can predict the future, we do know that, with this acquisition, the barriers to entry would become effectively insurmountable and Pacific National's near monopoly as the dominant rail freight carrier on the east coast would be entrenched."

"A lack of competition in rail freight would likely lead to increased prices, for businesses and consumers around the country," Mr Sims said.

If the ACCC is granted special leave to appeal, this would be the first time the High Court has considered Australia's merger laws.

The case centres on the interpretation of section 50 of the Competition and Consumer Act (CCA), which prohibits any acquisition that would be likely to have the effect of substantially lessening competition. The ACCC will also seek the High Court's ruling on the scope of a court's power to accept an undertaking as a remedy after finding that a proposed acquisition is anti-competitive.

"We are seeking special leave to appeal to the High Court because it is vital for Australian businesses and consumers that competition laws are effective in protecting the competitive process," Mr Sims said.

### Notes to editors

Pacific National is the largest provider of intermodal rail freight services in Australia.

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.

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.

### Background

The ACCC [commenced proceedings](#) on 18 July 2018 alleging that Pacific National's acquisition of the Acacia Ridge Terminal from Aurizon would have the likely effect of substantially lessening competition in contravention of section 50 of the CCA.

The ACCC was concerned that the proposed acquisition of the Acacia Ridge Terminal would deter a new entrant from providing interstate rail linehaul services in competition with Pacific National.

The ACCC had 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.

The Federal Court [dismissed the ACCC's proceedings](#) on 15 May 2019, finding that, given Pacific National's undertaking offered to the Court, the acquisition of the Acacia Ridge Terminal would not be likely to substantially lessen competition.

The ACCC [lodged an appeal](#) on 27 June 2019. On 6 May 2020, the [Full Court dismissed the ACCC's appeal](#).

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