



Australian
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NEWS RELEASE

ACCC WILL NOT OPPOSE AAT'S PROPOSED ACQUISITION OF THE LEASE TO OPERATE THE AUTOMOTIVE TERMINAL AT PORT OF FREMANTLE

The Australian Competition and Consumer Commission has announced that it will not oppose the proposed acquisition by Australian Amalgamated Terminals Pty Ltd (**AAT**) of a long-term lease to develop and operate the automotive and RoRo Terminal at the Port of Fremantle, after accepting a court-enforceable undertaking.

AAT is one of two bidders shortlisted by Fremantle Ports to acquire a long-term lease for what will be the sole automotive and RoRo Terminal at the Port of Fremantle. The undertaking seeks to address the vertical competition concerns that arise should AAT be successful in its bid.

AAT is equally owned by P&O Wharf Management Pty Ltd, a wholly owned subsidiary of Qube Holdings Ltd (**Qube ASX:QUB**), and Plzen Pty Ltd, a wholly owned subsidiary of Asciano Ltd (**Asciano ASX:AIO**). Qube and Asciano have interests in the provision of automotive stevedoring and vehicle pre-delivery inspection (**PDI**) services at the Port of Fremantle. In particular:

- Qube and Patrick Stevedoring Pty Ltd (a wholly owned subsidiary of Asciano) have automotive stevedoring operations at the Port of Fremantle; and
- Prixcar Services Pty Limited (in which Qube has an indirect 25% shareholding) and Patrick Autocare Pty Limited (in which Asciano has an 80% interest) provide PDI services for motor vehicles at the Port of Fremantle.

"The ACCC was concerned that if the proposed acquisition proceeds, AAT would have the ability and incentive to discriminate against rival and potential new stevedores and PDI service providers through pricing or non-price terms of supply," ACCC Chairman Rod Sims said.

"This could potentially lead to a substantial lessening of competition in the markets for the supply of automotive stevedoring and vehicle PDI services at the Port of Fremantle."

The undertaking addresses these vertical competition concerns by:

- requiring AAT to comply with a number of non-discrimination, open access, ring-fencing of confidential information and self-reporting obligations;
- providing mechanisms for the independent resolution of price and non-price related disputes if parties consider that they have been discriminated against or have other concerns relating to the supply of terminal services by AAT;
- providing for independent auditing of AAT's compliance with its obligations in the undertaking; and
- providing the ACCC with the power to publicly review the undertaking two years after its commencement and every five years thereafter.

Limitation of merger remedies for privatisations involving monopoly infrastructure

The undertaking given by AAT comprehensively addresses the competition concerns arising from AAT's vertical integration. However, merger remedies, such as section 87B undertakings, are not a substitute for effective access regulation. This is because merger

remedies must be connected to the competition concerns arising from an acquisition and will not always address competition issues arising from the monopoly characteristics of the infrastructure that exist regardless of ownership.

“One important limitation of merger remedies in section 87B undertakings is that they do not adequately address underlying monopoly pricing concerns,” Mr Sims said

“The appropriate mechanism to deal with monopoly pricing concerns and prevent damage to the economy in the future is through undertakings under Part IIIA of the Act.”

This regime requires initial tariffs to be determined through an up-front price setting process or a negotiate arbitrate framework thus addressing concerns about monopoly pricing whilst ensuring the infrastructure provider is allowed an appropriate return reflecting the commercial and regulatory risks associated with its investment.

This concern about the limitation of merger remedies equally applies to the recent merger remedy accepted from the alternative bidder for the long term lease at Port of Fremantle, Victoria Quay International RoRo Terminal Pty Ltd (VQIRT) and, in a separate privatisation, the merger remedy accepted from Melbourne International RoRo & Auto Terminal Pty Ltd (MIRRAT) to address vertical competition concerns arising from its acquisition of a long-term lease to operate the Webb Dock West automotive terminal at the Port of Melbourne.

Access regulation using Part IIIA undertakings

Part IIIA of the Act is the primary legislation governing access to infrastructure services throughout Australia. It is designed to address concerns through a public assessment process in industries where an infrastructure asset with natural monopoly characteristics forms a bottleneck for firms operating in upstream or downstream markets.

In the ACCC's experience, the access undertaking provisions of Part IIIA are effective in facilitating the efficient use of, and investment in, infrastructure and competition in related markets.

However the ACCC is unable to compel parties to offer access undertakings pursuant to Part IIIA. Like section 87B undertakings, Part IIIA undertakings are voluntary. Nevertheless governments have the ability, when offering the right to operate monopoly infrastructure, to require that the successful bidder must offer a Part IIIA access undertaking which is acceptable to the ACCC.

“If governments continue to privatise monopoly assets without requiring appropriate regulatory regimes, such as Part IIIA undertakings or robust State or Territory access regimes, this concern will be perpetuated and may result in inflating costs in downstream markets and ultimately higher prices for end consumers.” Mr Sims said.

The ACCC strongly encourages governments and potential acquirers of monopoly infrastructure assets to engage with the ACCC in future to ensure that competition issues arising from privatisations are addressed and considered in a timely way by Part IIIA access undertakings.

The undertaking will be available on the ACCC's website.

Media inquiries

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