

MEDIA RELEASE



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ACCC appeal in PN Aurizon case

The ACCC has lodged an appeal against the Federal Court's decision to dismiss the ACCC's proceedings in relation to Pacific National's acquisition of Aurizon's (ASX: AZJ) Acacia Ridge Terminal.

In July 2018, [the ACCC brought proceedings](#) alleging that Pacific National's acquisition of the Acacia Ridge Terminal in Brisbane would substantially lessen competition by raising the barriers to entry for potential new rail operators.

[In May this year](#), the Federal Court indicated that, if an undertaking had not been offered, it would have found that the acquisition was likely to substantially lessen competition.

However, the Court concluded the competition issues would be resolved by an access undertaking offered unconditionally by Pacific National on the final afternoon of the hearing.

"Our appeal will focus on the ability of courts to accept undertakings in these circumstances," ACCC Chair Rod Sims said.

"Among other things, we will argue that the Court made an error by accepting the undertaking, and then using it as a relevant fact when determining whether there was likely to be a substantial lessening of competition."

"This appeal is crucial to Australia's merger regime because acceptance of undertakings of this kind by the Court means that anti-competitive mergers could be approved, and this has the potential to damage the Australian economy," Mr Sims said.

"The ACCC, along with competition regulators around the world, has concerns about the ability of access undertakings to resolve competition issues arising from a merger."

"In this case, the ACCC remains concerned that if Pacific National is allowed to acquire the Acacia Ridge Terminal, it will have the ability and incentive to discriminate against competitors. There are many subtle ways in which it could disadvantage a competitor in their day-to-day operations, regardless of any commitments it makes in an undertaking," Mr Sims said.

"Potential new entrants will be well aware of this risk, and, in our opinion, this may mean companies are less likely to enter what is already a highly concentrated market. This is the primary reason we rejected a similar undertaking offered by Pacific National during our merger review."

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