



Australian
Competition &
Consumer
Commission

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NEWS RELEASE

ACCC TO CONSULT MARKET ON PROPOSED UNDERTAKINGS FROM BROOKFIELD

The Australian Competition and Consumer Commission has commenced market consultation on proposed revised undertakings offered by a consortium assembled by Brookfield Asset Management Inc. that includes Brookfield Infrastructure Partners LP (Brookfield) in relation to the proposed acquisition of Asciano Limited (ASX: AIO) (Asciano).

The revised undertakings have been proposed to address the preliminary competition concerns identified by the ACCC in the Statement of Issues released on 15 October 2015.

While the ACCC has decided to publicly consult on whether the undertakings will be satisfactory to address the ACCC's preliminary competition concerns, this should not be interpreted to mean that these or any other form of undertakings will ultimately be accepted.

"Indeed, the Commission has not yet had the opportunity to consider these undertakings fully but considers that its views on the undertakings will benefit significantly from market feedback," ACCC Chairman Rod Sims said.

"Past experience has shown that the Commission needs to emphasise that the release of these undertakings for public comment should not be interpreted as a signal that the ACCC will ultimately accept these undertakings."

This is the second undertaking remedy proposed by Brookfield following the release of the ACCC's Statement of Issues. The initial undertakings offered to the ACCC relied solely on behavioural commitments by Brookfield not to engage in certain behaviour to address the vertical competition concerns. These were rejected by the ACCC on 26 November 2015 after careful consideration of the likely effectiveness and enforceability of the proposed undertakings.

On 14 December 2015, the ACCC suspended its timeline at the request of Brookfield in order to allow a revised undertaking proposal to be considered. In the absence of this, the ACCC would have made a final decision on the transaction on 17 December 2015 as scheduled. Each new undertaking proposal put forward by merger parties requires the ACCC to examine and consider the proposal and will therefore inevitably delay the ACCC's final decision.

The revised proposal involves two undertakings:

- A commitment to divest to an independent party, Pacific National's intermodal business, which operates the interstate freight service around Australia, and Pacific National's limited bulk rail operations in Western Australia; and
- Commitments to ensure independent operation and decision making at Brookfield's Dalrymple Bay Coal Terminal.

The ACCC now seeks views from market participants to assist the ACCC to determine whether the revised undertakings would be likely to alleviate the ACCC's competition concerns.

Parties wishing to make submissions should do so by 22 January 2016.

Following market consultation, the ACCC will decide whether to accept or reject the proposed undertakings. The ACCC anticipates making its final decision on the revised undertakings by 18 February 2016 in conjunction with the ACCC's final decision in relation to Brookfield's proposed acquisition. However, the ACCC notes that the timing of its final decision on the proposed undertakings and the proposed acquisition may vary depending on the nature and extent of any concerns raised during the market consultation process and the ability of Brookfield to respond to these concerns in a timely manner.

The indicative decision date for the ACCC's review of the Brookfield proposed acquisition is currently the same as the current published decision date for the Qube Consortium review. It should be noted that both the Brookfield and Qube decision dates are only indicative and may change.

Media inquiries

ACCC Media 1300 138 917

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22 December 2015