



Australian
Competition &
Consumer
Commission

GPO Box 3131 Canberra ACT 2601
23 Marcus Clarke Street Canberra ACT
tel: (02) 6243 1111 fax: (02) 6243 1199
www.accc.gov.au

NEWS RELEASE

ACCC DECIDES NOT TO ACCEPT BROOKFIELD'S PROPOSED UNDERTAKINGS

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The Australian Competition and Consumer Commission has decided not to accept undertakings offered by Brookfield Infrastructure Partners LP (Brookfield) in relation to its proposed acquisition of Asciano Limited (ASX: AIO) (Asciano). While the ACCC has not yet formed a final view as to whether or not it will oppose the proposed acquisition, after careful consideration of the issues and the nature of the behavioural undertakings proposed, the ACCC has concluded it would be inappropriate to conduct industry consultation on the undertakings.

"While the ACCC does not generally make public its decision whether or not to consult on proposed undertakings, we considered it important to do so in light of the recent media reports that Brookfield has proposed long-term behavioural undertakings to the ACCC," ACCC Chairman Rod Sims said.

"The undertakings seek to address potential issues arising from the vertical integration of above and below rail assets in West Australia and the integration of port and rail assets in Queensland."

"After detailed consideration, the ACCC has concluded that the undertakings are not acceptable, and accordingly we will not be conducting third party consultation on the undertakings," Mr Sims said.

In deciding that the undertakings are not acceptable, the ACCC had regard to a number of factors including:

- Whether long term behavioural section 87B undertakings are capable of addressing the scale and complexity of vertical integration of Brookfield's monopoly infrastructure assets with Asciano's above rail operations.
- The difficulty and risks of behavioural undertaking obligations that are clear, comprehensive and rigorous enough to address the competition issues arising from this scale of vertical integration, but that are flexible enough to allow Brookfield to engage in legitimate operational activities.
- Whether it is appropriate for the proposed undertakings to rely, in part, on Western Australian and Queensland based access regimes, which are subject to change and, in some cases, have been criticised for their lack of effectiveness in dealing with key issues such as vertical integration.
- Feedback from market participants about the inability of behavioural undertakings to address the competition issues that have been identified.

"The ACCC's review of the proposed acquisition continues and we are assessing the large volume of submissions from industry participants and the parties," Mr Sims said.

The ACCC expects to announce its final decision on Thursday 17 December 2015.

The ACCC will only consult on proposed undertakings if the ACCC considers that the undertakings are capable of being enforced and have the potential to adequately address competition concerns arising from the acquisition. The ACCC considers that the proposed undertakings offered by Brookfield do not meet these criteria.

Background

When an acquisition raises potential competition issues the parties may decide to offer remedies to the ACCC in the form of court enforceable undertakings under s. 87B of the *Competition and Consumer Act 2010* in order to address the concerns identified by the ACCC.

The ACCC commenced a review of the proposed acquisition on 6 August 2015 and released a Statement of Issues on 15 October 2015. The ACCC expressed a preliminary view that the vertical integration resulting from the proposed acquisition is likely to lead to a substantial lessening of competition in markets for the supply of above rail haulage services in Western Australia and Queensland.

Following the proposed acquisition, Brookfield would own Asciano's Pacific National above rail business. Pacific National operates on Brookfield's rail network in Western Australia and transports coal to Brookfield's Dalrymple Bay Coal Terminal in central Queensland.

Further information on the ACCC's review is available at the ACCC's [public register](#).