



SE EARLY GENERAL NEWS

HD Port **sale** a risk to competition says ACCC

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WC 971 words

PD 2 June 2016

SN Farm Weekly

SC FFARMW

PG 7

LA English

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LP THE potential for discouraging competition at Fremantle Port by bundling stevedoring and container **park** services was flagged as a competition watchdog concern last week.

The [Australian Competition and Consumer Commission \(ACCC\)](#) also warned a lease of the port to a private operator for up to 99 years "may impact" on existing regulatory restraint of anti-competitive behaviour.

TD The potential for anti-competitive behaviour at Fremantle was flagged by the ACCC in a statement of issues on a proposed \$9.05 **billion** buyout and breakup of rail haulage and ports operator Asciano.

The ACCC has previously written to Premier Colin Barnett and Treasurer Mike Nahan on its concerns plans to privatise the port to raise an estimated \$2b or more to pay down State debt, could ultimately cost port users.

But the statement on Thursday last week was the first time the ACCC linked its concerns about leasing out Fremantle Port with the buyout and three-way split of [Asciano's business](#).

Combined consortiums comprising [Qube Holdings](#), [Brookfield Infrastructure Partners](#) and six international investment funds are behind the buyout bid.

A scheme of arrangements proposes to split [Asciano's business](#) into a new ports **company**, bulk and automotive port services (BAPS) **company** and rail **company**, with cross ownership amongst consortiums members.

It was designed to allay earlier ACCC concerns about Brookfield acquiring [Asciano's extensive Pacific National rail business](#) while a subsidiary, [Brookfield Rail](#), operates WA's freight rail network with Pacific National as a customer.

The ACCC's preliminary view is vertical integration of Fremantle Port's major container stevedoring provider with its two major container **park** providers, under the proposed ports **company**, has potential to squeeze out competitors through a bundled services strategy.

Particularly without Fremantle Ports Authority oversight, this may **lead** to higher port costs for importers and exporters, the AAAC said.

Its preliminary view aligns with [WAFarmers'](#) position.

In April, when the ACCC first called for submissions on the proposed Qube and Brookfield consortiums' scheme of arrangements to split [Asciano](#), [WAFarmers](#) argued the proposed **commercial** relationships, coupled with port privatisation, was "not in the best long-term interest of a competitive market".

On Friday, after the ACCC called for submissions by June 10 on its issues statement, a WAFarmers' spokeswoman confirmed it would make another submission reinforcing its view.

The issues statement identified proposed vertical integration of the Asciano-owned Patrick container terminal with existing [Qube Logistics'](#) and future half-Patrick-owned ACFS Logistics' container **park operations** at Fremantle as a competition concern.

It acknowledged similar concerns at Sydney's Port Botany and Brisbane and Melbourne ports, but singled Fremantle out for special mention because of the dominant market share the three businesses have there.

Qube Logistics and ACFS Logistics are Australia's largest suppliers of on-port and off-port container transport, container **park** and wharf cartage services and are currently competitors at Fremantle.

While Qube "controls a significant majority" of empty container parks at Fremantle, a new **park** scheduled to open next year is owned by ACFS, the ACCC noted.

Because a majority of containers leaving Australia are empty, access to empty container parks was "essential" for shipping companies, it noted.

Patrick container terminal has a much larger market share of stevedoring services at Fremantle than its sole competitor DP World, the ACCC said.

It said "market participants" had expressed concern vertical integration could allow Qube and Brookfield to offer bundled stevedoring and container **park** services, either just at Fremantle or nationally.

Either way, this would be to the detriment of competitors and reduce choice for shipping lines and agents because of lack of alternatives at Fremantle, it said.

There were also concerns, the ACCC said, of potential discrimination via higher costs or reduced service for Patrick customers who did not use Qube or ACFS container parks or access refused to container parks for non-Patrick customers.

"Fremantle Ports (Authority) oversees the non-discriminatory provision of services at on-port facilities, including container terminals and empty container parks," the ACCC said.

"Such oversight may constrain discriminatory behaviour.

"The proposed privatisation of the Port of Fremantle may impact these regulatory restraints."

Chairman Rod Sims said the ACCC had received "a very large number of submissions from industry stakeholders expressing a broad range of concerns" regarding the proposed **acquisition** and break up of Asciano.

"Market participants have expressed concerns about the vertical integration of Patrick container terminals with the two largest landside import-export container logistics providers in Australia, Qube and ACFS," Mr Sims said.

"The ACCC considers this to be a significantly greater degree of vertical integration than the current situation where Patrick is vertically integrated with only ACFS."

The issues statement indicated splitting Asciano's business into three overcame the ACCC's resistance to Brookfield controlling Pacific National.

Under the scheme of arrangements due to be voted on by Asciano shareholders at a special meeting tomorrow Brookfield will have no direct interest in the rail **company**.

Pacific National will be owned by a North American majority interest consortium of Canada Pension Plan Investment **Board**, New York-based Global Investment Partners, **Chinese**-backed CIC Capital Corporation, Singapore Government-backed GIC Private and British Columbia Investment Management Corporation.

But the ACCC has flagged concerns with vertical integration of Qube's rail container transport business and Patrick container terminal at Port Botany.

It said it had no concerns with the proposed new BAPS **company**.

Its final decision on the Asciano **buy** out and scheme of arrangements will be announced on July 21.

The Foreign Investment Review **Board** is scheduled to announce its decision the following day.

ACFS Port Logistics, which owns the other half of ACFS Logistics, has launched legal action in the NSW Supreme Court to establish its rights under the proposed scheme of arrangements.

CO ascian : Asciano Ltd. | auccc : Australian Competition and Consumer Commission | brknfr : Brookfield Infrastructure Partners L.P.

IN i763 : Port/Harbor Operations | iship : Water Transport/Shipping | itsp : Transportation/Logistics

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