



Mr David Jones
A/G General Manager (Merger Investigations)
Australian Consumer and Competition Commission
GPO Box 520
MELBOURNE VIC 3001

13 January 2016

Via email: mergers@accc.gov.au
Attn: Stewart McKechnie and Daniel McCracken-Hewson

RE: PROPOSED BROOKFIELD UNDERTAKINGS

Thank you for the opportunity to comment on the proposed undertakings made by Brookfield Asset Management (Brookfield) in regard to the proposed takeover of Asciano Pty Ltd (Asciano). In particular, the Rail, Tram and Bus Union (RTBU) wishes to address Brookfield's undertaking 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.

The RTBU's previous submission to the ACCC raised concerns that rail access regimes across state and territory jurisdictions were inconsistent and complicated. Our submission stated that:

The differing regulatory models, and the lack of transparency in the application of these models, has created a regulatory "dog's breakfast" in the freight rail sector.

As a result, freight operators, customers and workers are at risk from anti-competitive behaviour from large-scale vertically operated companies that provide above-rail freight services *and* own below-rail infrastructure. The RTBU believes that the solution to this situation should be to transfer regulatory control over all access to monopoly rail networks to the Commonwealth Government, under the auspices of the ACCC, with a single national access regime put in the place across the country.

The RTBU commends the ACCC for recognising the risks to competition from the Brookfield proposal. The proposed remedy to these risks – as represented by the proposed Brookfield undertakings – will not, however address the core problem.

In fact, we believe the undertakings will create more problems than they will solve. By breaking Asciano into its constituent parts – and removing Pacific National from the parent entity – the ability of Pacific National to compete against the other major national player in the rail freight industry will be reduced. Aurizon - which is already a vertically integrated company with both above-rail operations and below-rail infrastructure - will emerge as the dominant player in the industry.

The RTBU contends that the presence of Asciano in the rail freight industry benefits competition by providing a counterweight to the dominance of Aurizon. Paradoxically, by breaking Asciano up into smaller pieces, the level of competition in the rail freight could actually be diminished.

Rail, Tram & Bus Union Australia *The Power of Union*

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RTBU

The RTBU understands that the development of single national regulator for all rail access is a policy decision that lies within the remit of the Federal Government, however we also urge the ACCC to advocate for such a national system.

Such an arrangement will be the only sensible long-term solution to viable competition in the national rail transportation market.

The RTBU has also written to Federal Minister for Transport and Infrastructure the Hon Warren Truss MP. I have attached a copy of that correspondence for your information.

Yours sincerely,

Bob Nanva
NATIONAL SECRETARY

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