



## Statement of Issues

15 March 2018

### Pacific National / Linfox – Proposed acquisitions of intermodal assets from Aurizon

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#### Purpose

1. Pacific National Pty Ltd (**Pacific National**) proposes to acquire:
  - the Acacia Ridge Intermodal Terminal (**Acacia Ridge Terminal**) from Aurizon Holdings Limited (**Aurizon**) (the **Acacia Ridge Acquisition**); and
  - Aurizon's Queensland intermodal business (the **Queensland Intermodal Acquisition**), following which the pick-up and delivery side of that business will be transferred to Linfox,together, the Proposed Acquisitions.
2. At the same time it announced the Proposed Acquisitions, Aurizon also announced that it was closing its interstate intermodal business. The ACCC is considering the closure as part of its assessment of the Proposed Acquisitions.
3. This Statement of Issues:
  - gives the Australian Competition and Consumer Commission's (**ACCC's**) preliminary views on competition issues arising from the Proposed Acquisitions
  - identifies areas of further inquiry
  - invites interested parties to submit comments and information to assist our assessment of the issues.

#### Overview of ACCC's preliminary views

4. The legal test which the ACCC applies in considering the Proposed Acquisitions is in section 50 of the *Competition and Consumer Act 2010* (the **CCA**). Section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.

5. The ACCC divides its preliminary views into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'.

### **Issues of concern**

6. The ACCC considers that Aurizon’s decision to exit its intermodal business, through a combination of sale to its closest competitor and closure of the remainder of that business, raises significant competition concerns
7. The ACCC’s preliminary view is that:
  - The Queensland Intermodal Acquisition is likely to substantially lessen competition for the supply of intermodal rail linehaul services on Queensland’s North Coast Line. This may result in increased prices or a decrease in service levels.
  - The Proposed Acquisitions are likely to increase barriers to entry for the supply of intermodal rail linehaul services (both interstate and within Queensland), leading to a substantial lessening of competition in the markets for intermodal rail linehaul interstate and within Queensland. The ACCC is concerned that if Pacific National owns the Acacia Ridge Terminal, it will have the ability and incentive to increase barriers to new intermodal rail entrants who would compete with Pacific National.

The ACCC’s preliminary view is that an undertaking by Pacific National to provide third parties with access to the Acacia Ridge Terminal will not adequately resolve the competition concerns arising from the Proposed Acquisitions.

### **Issues that may raise concerns**

8. The ACCC’s preliminary view is that the Queensland Intermodal Acquisition may raise concerns in the market for bulk freight (distinct from intermodal) rail linehaul services in Queensland. If an entity other than Pacific National acquired Aurizon’s Queensland intermodal business, that entity may face lower barriers to expanding into the provision of bulk freight rail services in Queensland.
9. The ACCC is concerned about the effect on competition for the supply of interstate intermodal services as a result of Aurizon’s decision to close its interstate intermodal operations. The ACCC is considering whether Aurizon’s decision to close these operations may be linked to the Proposed Acquisitions for the purposes of section 50 of the CCA, and therefore may raise concerns in the market for interstate intermodal rail services.

### **Making a submission**

10. The ACCC is seeking submissions from interested parties, particularly on the following key issues:
  - whether road and / or sea freight operators are likely to effectively constrain Pacific National from raising prices or decreasing services for intermodal rail services on the Queensland North Coast Line

- whether the undertaking proposed by Pacific National for third party rail operators to access the Acacia Ridge Terminal resolves competition concerns arising from the Proposed Acquisitions
  - the likely state of the relevant markets if the Proposed Acquisitions do not proceed, including the likelihood of an alternative purchaser acquiring Aurizon’s Queensland intermodal business and/or the Acacia Ridge Terminal and the effect this may have on barriers to entry for the supply of intermodal rail services.
11. Detailed discussion of these and other issues, along with specific questions, is contained in this Statement of Issues.
  12. Interested parties should provide submissions by no later than 5pm on 3 April 2018. Responses may be emailed to [mergers@acc.gov.au](mailto:mergers@acc.gov.au) with the title: Submission re: Pacific National Aurizon - attention Bruce Mikkelsen/Joe Saunders. If you would like to discuss the matter with ACCC officers over the telephone or in person, or have any questions about this Statement of Issues, please contact Bruce Mikkelsen on 03 9658 6501 or Joe Saunders on 02 6243 1334.
  13. The ACCC anticipates making a final decision on 24 May 2018, however, this timeline can change. To keep abreast of possible changes in relation to timing and to find relevant documents, interested parties should visit the Mergers Register on the ACCC's website at [www.accc.gov.au/mergersregister](http://www.accc.gov.au/mergersregister).

#### **Confidentiality of submissions**

14. The ACCC will not publish submissions regarding the Proposed Acquisitions. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

#### **About ACCC ‘Statements of Issues’**

15. A Statement of Issues published by the ACCC is not a final decision about the Proposed Acquisitions, but provides the ACCC’s preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
16. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide interested parties with the basis for making further submissions should they consider it necessary.

## Timeline

Date	Event
27 October 2017	ACCC commenced review of the Proposed Acquisitions
29 November 2017	ACCC requested further information from Pacific National
6 December 2017	ACCC request further information Aurizon
18 January 2018	Former proposed decision date of 1 February 2018 delayed to allow provision of requested information.
15 March 2018	ACCC publishes Statement of Issues
3 April 2018	Closing date for submissions relating to Statement of Issues.
24 May 2018	Proposed date for announcement of ACCC’s decision.

## The parties

### Pacific National

17. Pacific National is a national rail freight operator with bulk and intermodal haulage operations. It owns narrow, standard and broad gauge rolling stock, and related rail facilities.
18. Pacific National is the largest provider of intermodal rail freight services in Australia and within Queensland. It provides containerised freight services, steel distribution services, and hook and pull services for passenger trains. Pacific National also provides bulk haulage of coal, grain, minerals, concentrate and construction materials by rail in Queensland, New South Wales, Western Australia, Victoria and South Australia. It does not generally own or operate below rail services, but makes use of such services provided by rail network operators.

### Aurizon

19. Aurizon is a national freight haulage company, established in 2010 through the privatisation of the former Queensland Government-owned QR National freight business. Aurizon has an “above rail” business and a “below rail” business, and provides a range of related services in rail design, engineering, construction, management and maintenance.

20. Aurizon’s above rail business comprises bulk haulage operations for commodities, including base metals, minerals, grains and livestock in Queensland, New South Wales and Western Australia, and, currently, the provision of intermodal freight services in Queensland.
21. Aurizon’s intermodal operations in Queensland comprise a rail linehaul service operating from Brisbane (at both the Acacia Ridge Terminal and the Port of Brisbane) through far north Queensland, and a road based pick-up and delivery service to move freight between its rail terminals and customers’ premises.
22. Prior to the closure of its interstate intermodal business, Aurizon operated intermodal rail freight services across Australia, with a fleet of locomotives, wagons, and containers and modified containers, as well as the operation of 40 depots across Queensland, New South Wales, Victoria, South Australia and Western Australia, and freehold and leasehold interests in intermodal terminals in New South Wales, Victoria, and South Australia.
23. Aurizon’s below rail business comprises the operation and management of 2,670km narrow gauge rail infrastructure, known as the Central Queensland Coal Network, which connects coal mines to ports by rail in Queensland and includes sections of track used by Pacific National and Aurizon in intermodal rail linehaul.

### **Linfox**

24. Linfox is Australia’s largest privately owned logistics company, providing freight forwarding and storage services operating across the Fast Moving Consumer Goods, retail, resources & industrial, intermodal and Government & Defence industry sectors.
25. Linfox’s intermodal business includes a fleet of 5,000 trucks through which it provides ambient, cubic and refrigerated road transport services. It has 3,000 specialised rail containers to suit cubic, refrigerated and flat rack equipment. Linfox operates out of 14 rail depots across Australia.

## **Other industry participants**

### **SCT Logistics**

26. SCT Logistics (**SCT**) is one of Australia’s largest private rail freight operators. It is a vertically integrated freight forwarder with its own rail operation, and provides some limited rail linehaul services to other freight forwarders.
27. SCT has developed rail terminals in Victoria, Western Australia, South Australia and New South Wales, and recently opened an intermodal terminal at Bromelton in south east Queensland.

### **Qube**

28. Qube is Australia’s largest integrated provider of import and export logistics services, with operations in its Port & Bulk and Logistics divisions across New South Wales, Victoria, South Australia, Western Australia and Queensland.

29. Qube is currently engaged in an agreement with Aurizon under which it provides terminal services at the Acacia Ridge Terminal. Qube is also a freight forwarder and a customer using intermodal rail services.

### **Genesee & Wyoming Australia**

30. Genesee & Wyoming Australia operates above rail services in New South Wales, the Northern Territory and South Australia. Genesee & Wyoming provides intermodal services and intrastate haulage of bulk commodities on the Adelaide to Darwin corridor and provides a coal haulage service in New South Wales. Genesee & Wyoming does not offer intermodal services in competition with Pacific National or Aurizon on interstate routes or within Queensland.

### **Other freight forwarders**

31. Freight forwarders acquire intermodal rail linehaul services ‘wholesale’ from Pacific National and Aurizon, and then provide freight owners with an end-to-end freight solution incorporating the rail linehaul. Currently, Toll is the largest freight forwarder in Queensland. Other freight forwarders in Queensland include Lindsay Transport, Blenner’s Transport, Hellmann Worldwide Logistics, and Applied Logistics.
32. Linfox does not currently have a significant freight forwarding presence in Queensland.

## **Industry background**

### **Intermodal rail freight haulage**

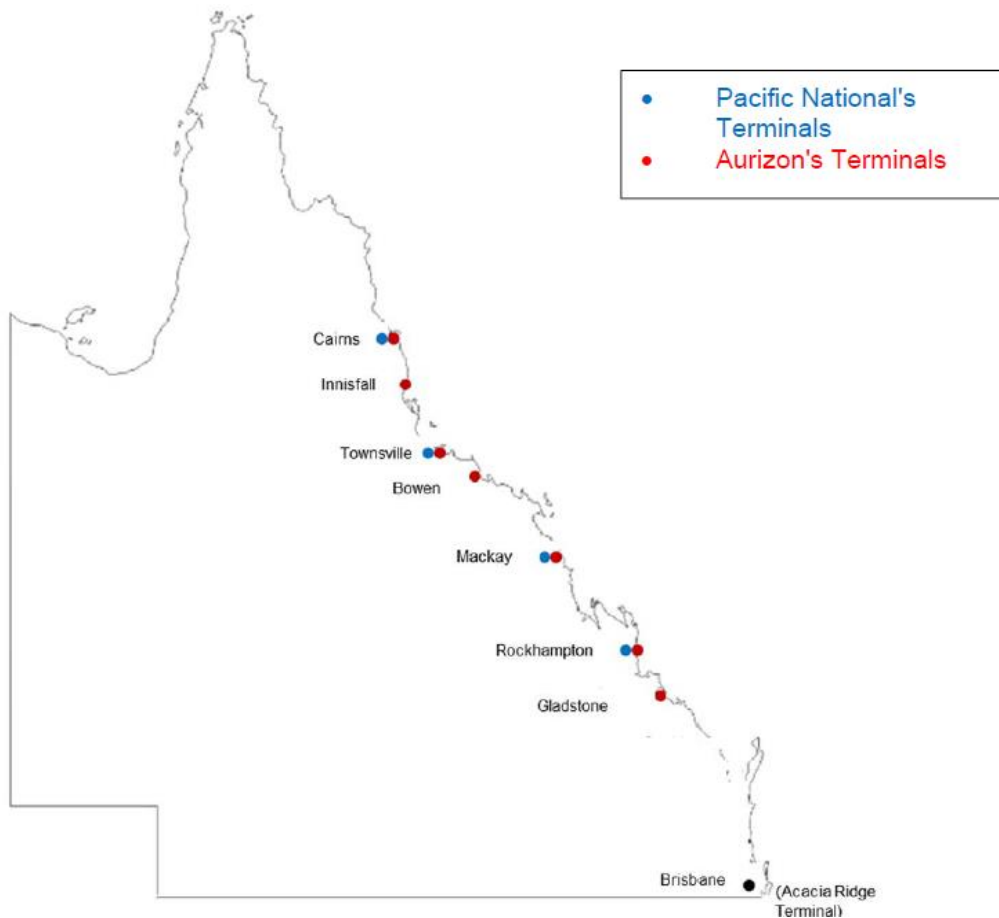
33. In this Statement of Issues, the term ‘intermodal’ is used to describe the carriage of typically non-bulk or general freight in containerised, palletised and/or parcel configurations on behalf of customers, although it includes some ‘bulk’ freight hauled in containers. It is distinguished from bulk freight haulage, in which operators carry loose bulk commodities such as coal, minerals, and agricultural products. Pacific National and Aurizon have historically been the two largest providers of intermodal rail freight services in Australia.
34. To provide these services, operators generally own flat wagons on which whole containers (including modified containers for special loads) are loaded and transported by rail to a terminal near the destination. On arriving at the terminal, the freight is unloaded and generally trucked to the end customer’s destination.
35. Customers of intermodal rail linehaul services are either freight forwarders or beneficial freight owners (**BFO**). Freight forwarders arrange for the transportation of a BFO’s freight from origin to destination by rail or road or a combination of both. Where a rail linehaul service is involved in a freight movement, a freight forwarder will perform the pick-up and delivery function to and from the rail terminal and the rail linehaul operator (for example, Pacific National or Aurizon) will provide the rail service itself. In this respect, freight forwarders acquire rail linehaul services on a ‘wholesale’ level from rail linehaul operators and then package it, with the pick-up and delivery service, for BFOs. Both Pacific National and Aurizon offer ‘wholesale’ rail linehaul services to freight forwarders.

36. While SCT provides rail freight services, some market participants view SCT’s offering as differentiated from Pacific National or Aurizon’s rail linehaul services. SCT offers limited wholesale linehaul services for containerised freight to freight forwarders. Instead, SCT contracts directly with BFOs and generally packs freight itself into its specialised louvre vans (rather than containers on wagons).
37. As well as acquiring services from freight forwarders, BFOs may enter an arrangement directly with the rail linehaul service provider. As Aurizon’s intermodal operations in Queensland includes pick-up and delivery services and road linehaul, its customers are often BFOs.

### **Rail networks in Australia**

38. In general terms, intermodal rail linehaul services are provided as follows:
  - On the Queensland narrow gauge network by Aurizon and Pacific National
  - On the east–west (i.e. Melbourne/Sydney/Adelaide to/from Perth) and north–south (i.e. Melbourne/Sydney to/from Brisbane) interstate corridors by Pacific National and SCT. Prior to the closure of Aurizon’s interstate intermodal business, Aurizon competed with Pacific National and SCT on the east–west and north–south corridors
  - From Adelaide to Darwin by Genesee & Wyoming.
39. The principal regional freight and passenger line in Queensland is known as the North Coast Line, which runs along coastal Queensland between Brisbane (in the south) and Cairns (in the north). The North Coast Line is a narrow gauge rail track and can only be utilised by locomotives and rollingstock calibrated for the narrow gauge. Figure 1 below shows the locations of Pacific National and Aurizon’s intermodal rail terminals on the North Coast Line.

Figure 1: The North Coast Line and location of terminals



Source: Pacific National

40. The east–west corridor runs between each of Sydney, Melbourne, Adelaide and Perth and is a standard gauge track. Pacific National’s rail linehaul and SCT’s integrated service are provided between Melbourne and Adelaide and Perth. Pacific National provides a service between Sydney and Perth, and SCT, which does not run trains to Sydney, provides a service from Parkes (west of Sydney) to Perth.
41. The north–south corridor extends from Melbourne to Brisbane, and includes terminals in Sydney, regional Victoria and regional New South Wales. Pacific National operates intermodal rail linehaul services between each of Melbourne, Sydney and Brisbane. SCT operates its trains between Melbourne and Brisbane, and has a terminal at Wodonga, but does not service Melbourne to Sydney directly or Sydney to Brisbane directly by rail.
42. Due to the break of gauge from standard gauge to narrow gauge in Brisbane, freight travelling north of Brisbane from other parts of Australia must be transferred from the standard gauge network, at one of the standard gauge terminals in south east Queensland, to the narrow gauge network (or vice-versa for freight travelling south through Brisbane).



## The Proposed Acquisitions

43. Aurizon is exiting its intermodal freight haulage business through a combination of sale and closure.
44. Pacific National proposes to acquire Aurizon’s Acacia Ridge Terminal and Aurizon’s Queensland intermodal business.
45. Aurizon has closed the remainder of its intermodal business, being the interstate intermodal business, and has sold or is intending to sell some of the assets to various parties.

### Acacia Ridge Acquisition

46. In addition to owning the land and assets of the Acacia Ridge Terminal, Aurizon provides yard operations, fleet maintenance operations, engineering and technology, and safety, health and environment services at the terminal, and leases several areas of the terminal to third parties for specific uses, including warehouse storage, maintenance services and office areas.
47. Under the Acacia Ridge Acquisition, Pacific National would acquire Aurizon’s freehold title to the Acacia Ridge Terminal site as well as the assets and fixtures on the terminal site and the leases and contracts for third party services at the terminal.
48. Pacific National has provided the ACCC with a proposed undertaking pursuant to section 87B of the CCA (the **Proposed Undertaking**) relating to access at the Acacia Ridge Terminal. The Proposed Undertaking is available on the ACCC’s mergers public register ([www.accc.gov.au/mergersregister](http://www.accc.gov.au/mergersregister)) and is discussed further below.

### Queensland Intermodal Acquisition

49. Aurizon’s Queensland intermodal business comprises two aspects – a rail linehaul service and an integrated freight forwarding service using trucks to take freight to and from the railhead.
50. The rail linehaul business provides terminal-to-terminal rail haulage services from the Acacia Ridge Terminal to destinations along the North Coast Line to Cairns (and return), and from the Port of Brisbane to Gladstone, Rockhampton, Mackay and Townsville (and return).
51. The freight forwarding side of the business supplies a pick-up and delivery service of containerised and less than container load freight undertaken by road. A freight owner may therefore engage Aurizon for a ‘door to door’ freight solution comprising a central rail component bookended by short road trips to pick up and deliver the freight to and from the rail terminal.
52. To give effect to the Queensland Intermodal Acquisition, Pacific National and Aurizon have entered into a Business Sale Agreement under which Aurizon would sell its whole Queensland intermodal business to Pacific National (including rail and trucking components). A second agreement has been entered into by Pacific National and Linfox, under which Pacific National would sell the pick-up and delivery business and assets to Linfox.

53. Pacific National would ultimately acquire and retain the following assets:
- leases or licences over terminal sites on the North Coast Line (located in Cairns, Gladstone, Townsville, Rockhampton, Mackay, Merinda, Maryborough and Innisfail)
  - narrow gauge rollingstock
  - plant and equipment (including heavy lift forklifts, rubber tyre gantry cranes and small forklifts)
  - access agreements with below rail operators Queensland Rail and Aurizon to operate the above rail linehaul services
  - rail linehaul contracts with Aurizon’s Queensland customers who do not have a pick-up and delivery component.
54. Aurizon would also assign contracts necessary for its linehaul business, including terminal services agreements for the Acacia Ridge Terminal, rail network access and connection agreements, and supplier agreements between road transport operators and Aurizon and other ancillary agreements.
55. Linfox would then ultimately acquire the following assets:
- employees of Aurizon’s pick-up and delivery service
  - sub-contracts with third party carriers (for example, trucking providers) for pick-up and delivery services
  - trucks (including prime movers and triaxle trailers)
  - containers
  - leased trailers and leased containers
  - light lift equipment (3 tonne forklifts)
  - contracts with Aurizon’s Queensland customers who have a pick-up and delivery component.
56. The ACCC understands that, following the Queensland Intermodal Acquisition, Linfox’s operation of the pick-up and delivery business would be separate from Pacific National’s operation of the rail linehaul component and that Linfox would compete with Toll and other freight forwarders in acquiring wholesale intermodal rail linehaul services from Pacific National on the North Coast Line.

#### **Closure of Aurizon’s interstate intermodal business**

57. As outlined above, the Proposed Acquisitions were announced by Aurizon as part of its overall exit from intermodal operations, which included the closure of the remainder of Aurizon’s intermodal business, being its interstate business. The closure commenced in September 2017. The ACCC understands that it was completed by 31 December 2017.

58. Following Aurizon’s exit from the interstate intermodal market, SCT and Pacific National are the only remaining suppliers of intermodal rail services on the north–south and east–west corridors, on which Aurizon previously operated.
59. The ACCC is considering the Proposed Acquisitions in the context of Aurizon’s closure of its interstate intermodal business and is considering whether Aurizon’s decision to close these operations may be linked to the Proposed Acquisitions, and therefore may raise concerns in the market for interstate intermodal rail services.

## **Future with and without the Proposed Acquisitions**

60. Section 50 of the Act prohibits mergers or acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in a market. In assessing a proposed acquisition pursuant to section 50 of the Act, the ACCC considers the effects of the acquisition by comparing the likely future competitive environment post-acquisition if the acquisition proceeds (the “with” position) to the likely future competitive environment if the acquisition does not proceed (the “without” position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.

### **Future without – Queensland Intermodal**

61. The ACCC is continuing to consider the likely future of the relevant market in the absence of the Queensland Intermodal Acquisition. The ACCC notes that on 12 February 2018, Aurizon made an announcement to the ASX that included a statement that, “if the ACCC does not ultimately approve the sale of Queensland Intermodal, it will be closed”.<sup>1</sup>
62. The ACCC is considering Aurizon’s position, alongside submissions received during market inquiries that Aurizon’s Queensland intermodal business remains an attractive prospect for an alternative purchaser, particularly if the Acacia Ridge Terminal was also acquired by that purchaser, or acquired by an independent third party which was not vertically integrated with above rail operations.
63. The ACCC’s preliminary assessment outlined in this Statement of Issues is based on the assumption that Aurizon’s Queensland intermodal business would be sold to a third party and continue to operate in the absence of the Proposed Acquisitions.
64. The ACCC will consider the likely future without the Queensland Intermodal Acquisition closely as part of its ongoing investigation.

### **Future without – Acacia Ridge Terminal**

65. The ACCC considers that the Acacia Ridge Terminal is an attractive and high quality infrastructure asset. The ACCC considers that, in the future without the sale of the terminal to Pacific National, an alternative third party would acquire the terminal.

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<sup>1</sup> Aurizon Holdings Limited, ASX Announcement 12 February 2018 “Half Year Results Analyst Presentation”: <https://www.asx.com.au/asxpdf/20180212/pdf/43rhhbgr683751b.pdf>.

### **Future without – interstate intermodal**

66. The ACCC is also assessing whether Aurizon’s decision to close its interstate business may be linked to the Proposed Acquisitions and, consequently, relevant to the ACCC’s assessment of the Proposed Acquisitions under section 50 of the CCA.
67. The ACCC has not formed a preliminary view on this issue, and will continue to consider it as part of its investigation.

### **Market definition**

68. The ACCC’s starting point for delineating relevant markets to assess the competitive effects of the Proposed Acquisitions involves identifying the products actually or potentially supplied by the merger parties. The ACCC then considers what other products constitute sufficiently close substitutes to provide a significant source of competitive constraint on the merged entity.
69. The ACCC’s preliminary view is that the key relevant markets in which to consider the Proposed Acquisitions are markets for the supply of:
  - intermodal rail linehaul services on the North Coast Line
  - intermodal rail linehaul services interstate
  - narrow gauge rail terminal services for intermodal freight in south east Queensland
  - standard gauge rail terminal services for intermodal freight in south east Queensland.
70. The Proposed Acquisitions may also have impacts in markets for the supply of:
  - freight forwarding services in Queensland
  - rail linehaul services for bulk freight in Queensland.
71. The above markets are discussed in detail throughout the competition analysis below.

### **Issue of concern: reduction of competition in the supply of intermodal rail linehaul services on the North Coast Line**

72. The ACCC’s preliminary view is that the Queensland Intermodal Acquisition is likely to substantially lessen competition in the market for the supply of intermodal rail linehaul services on the North Coast Line.
73. Currently, Pacific National and Aurizon are the only providers of intermodal rail linehaul services on the North Coast Line. The Queensland Intermodal Acquisition would remove Pacific National’s only intermodal rail linehaul competitor in Queensland.

74. The ACCC considers that alternative freight haulage services in Queensland, such as by road or sea, will not provide an effective competitive constraint post-acquisition, allowing Pacific National to increase prices and/or decrease service (such as the frequency and/or quality of services, including reliability of services) for the supply of intermodal rail linehaul services in Queensland.

#### **Whether road and sea freight in the same market as rail**

75. The ACCC is considering whether intermodal freight services provided by road and by rail operators (and potentially shipping operators) are sufficiently close substitutes to be considered in the same market as rail linehaul on the North Coast Line.
76. On the basis of market inquiries, the ACCC’s preliminary view is that road freight providers do not effectively constrain rail freight providers sufficiently to be considered part of a combined broader market for intermodal freight haulage for destinations between Brisbane and Cairns.
77. Market inquiries have indicated that the substitutability of road and rail for different types and volumes of freight is determined by both price and non-price factors.
78. The ACCC understands that road freight is generally faster, as there are no strict cut off times, and in some cases more reliable as it is less prone to delay due to weather or maintenance events. For these reasons, road freight is considered better for goods with a short shelf life or otherwise with highly time sensitive delivery. Transport by road is also considered to be gentler on freight than transport by rail, making it more suitable for moving easily damaged goods. The flexibility of transport by a truck can make road freight more appropriate for products which need to be collected from a farm gate or a destination sufficiently far from the nearest rail terminal, such that the pick-up and delivery component would extend the total price and journey time.
79. In contrast, the ACCC understands that certain heavy construction materials and other goods requiring specialised or modified containers are more appropriately carried by rail. Market feedback has indicated that freight owners moving large volumes of non-perishable or long-shelf life perishable goods view rail as the more appropriate mode over longer distances due to its tonnage and volume capacity, lack of time sensitivity and lower price. Furthermore, many freight owners have indicated a preference for rail due to some non-price benefits, such as environmental benefits and a reduction in trucks on roads.
80. Outside these specific instances in which road or rail have inherent advantages, the ACCC understands that price is the key determinant of modal choice. Market participants have referred to a ‘tipping point’ (varying between 600-1000km, or roughly the distance between Brisbane to Rockhampton or Mackay) at which rail is significantly cheaper than road. The ACCC has received information from individual market participants about rates for rail and road haulage quoted during competitive tender processes. Examples provided to the ACCC indicate that for freight carried beyond this tipping point, from Brisbane to Townsville / Cairns, road has been quoted as significantly more expensive than rail, with examples ranging from 15% more expensive to 300% more expensive.
81. Further, market inquiries have indicated that where goods can appropriately be hauled by rail, then, at least for routes beyond the ‘tipping point’, they tend to

almost always be hauled by rail. The ACCC has received tender information from a variety of market participants which shows that requests for tender for freight tasks from Brisbane to Cairns or Townsville are often only offered to or received by rail-based solutions. Market participants have provided the ACCC with a consistent message that unless their freight particularly requires road transport (for example, because it has a short shelf life and is easily damaged), they generally do not consider road as an option past this tipping point.

82. In response to market inquiries on switching behaviour, freight owners and freight forwarders have indicated to the ACCC that switching is, in most circumstances, confined to switching between Aurizon and Pacific National’s rail linehaul services (contracted through freight forwarders or directly with Aurizon), with the competitive tension between the two rail companies leading to benefits for freight owners.
83. Market participants did not report switching between road and rail linehaul except in limited circumstances such as where the rail line is closed due to flooding. The ACCC does not consider this to indicate close substitution.
84. On the basis of market inquiries, the ACCC’s preliminary view is that the demand for road and rail intermodal freight on the North Coast Line is segmented. Some customers have specific freight that is most appropriately carried by road, which will remain the case. For freight that is technically able to be carried by either road or rail, there is a cost differential that becomes significant at around the Brisbane to Rockhampton or Brisbane to Mackay distance. The fact that many tenders for these freight tasks are only offered to, or received by, rail linehaul services, and the fact that participants report very little switching between modes, indicates that customers do not significantly rely on competitive tension or constraint between rail and road to drive better prices or services.
85. The ACCC notes that, should new evidence demonstrate a degree of switching, it is likely that the ACCC’s competition concerns would remain because the degree of constraint exerted by road freight would be unlikely to sufficiently discipline Pacific National.
86. The ACCC has also considered whether sea freight is a substitutable service to Pacific National and Aurizon’s intermodal rail linehaul service. Market inquiries indicated that sea freight is in most cases not a viable alternative to rail freight for intra-Queensland movements, including because of minimum tonnage requirements and longer transit times which makes sea unsuitable for many types of freight and also increases cost of capital to hold goods during transit.

#### **Closeness of competition between Pacific National and Aurizon on the North Coast Line**

87. Pacific National entered the Queensland market in 2005 and began competing with Aurizon for the provision of intermodal rail linehaul services. Pacific National was, at the time, a joint venture between Toll and Patrick Corporation. The ACCC understands that Toll’s volume and requirements were significant to the viability of Pacific National’s entry.
88. Market participants have indicated to the ACCC that following Pacific National’s entry to the market, price and non-price aspects of intermodal rail linehaul services improved, and customers benefited from competitive tension when tendering for services.

89. The ACCC’s preliminary view is that, by removing the only significant competitive constraint on Pacific National, the Queensland Intermodal Proposed Acquisition will substantially lessen competition in the supply of intermodal rail services on the North Coast Line.

The ACCC invites comments from market participants on the level of competition from road and sea for intermodal freight haulage on the North Coast Line. In particular, market participants may wish to comment on the following:

- The price differential between rail and road (as an end-to-end cost including pick-up and delivery costs) for different types of freight tasks. Explain the factors that contribute to any cost differential.
- If you are a freight owner or freight forwarder and have switched between rail and road for a given route, why?
- If you are a freight owner or freight forwarder and have switched between Aurizon and Pacific National’s rail linehaul service for a given route, why?
- If you are a freight owner or freight forwarder and have switched between rail and sea for a given route, why?

#### **Barriers to entry**

90. In considering whether an acquisition may substantially lessen competition, the ACCC takes into account the likelihood of a new entrant coming into the market and imposing competitive constraint on the existing participants.
91. Market inquiries indicate that barriers to entry into intermodal rail linehaul in Queensland are high. The ACCC understands that, in particular, a new entrant would require:
- narrow gauge rollingstock and locomotives
  - access to intermodal terminal capacity in Brisbane and along the North Coast Line, and access to below rail train paths that allow for delivery times and frequency of service to meet customer needs
  - sufficient customer contracts (or sufficient volume) to sustain entry.
92. The ACCC considers that each of these requirements presents a significant barrier to an entrant, and notes that, generally, market participants consider it highly unlikely that a new entrant would commence intermodal rail operations on the North Coast Line in the short to medium term.
93. Pacific National and Linfox submit that, should Pacific National attempt to increase prices for its rail linehaul service on the North Coast Line, customers (for example, Linfox or Toll) could sponsor the entry of a new intermodal rail operator to compete with Pacific National.
94. The ACCC considers that it is unlikely that a customer or small group of customers could enable an entrant to overcome the barriers to entry outlined above. In particular, other than Toll, no single customer (or small group of

customers) carriers sufficient volume in Queensland to make entry into Queensland viable for an entrant.

The ACCC invites comments from market participants on the potential for a new intermodal rail operator to enter the North Coast Line. In particular, market participants may wish to comment on the following:

- If you are a customer of intermodal rail services on the North Coast Line, would it be feasible for you, either alone or with other customers, to sponsor a new operator to begin intermodal rail services to compete with Pacific National? What steps would need to be taken for this to be successful?

### **Countervailing power**

95. The ACCC is also considering the extent to which customers of Pacific National in Queensland, who also acquire services from Pacific National outside of Queensland, could switch or threaten to switch away from services they acquire from Pacific National outside Queensland to competitively constrain its rail service in Queensland.
96. The ACCC’s preliminary view is that customers are unlikely to be able to credibly threaten to move away from Pacific National in other states to constrain Pacific National’s pricing in Queensland, and have not been successful in the past when they have attempted to constrain prices for intermodal rail haulage in this way. Customers select the best service available to them outside of Queensland, and would need to punish themselves if they switched to an alternative provider in an attempt to discipline Pacific National’s prices in Queensland. The ACCC is not convinced that freight owners or freight forwarders would switch, or credibly threaten to switch, to an inferior service in an attempt to constrain pricing in Queensland, particularly in circumstances where there is not a viable alternative in Queensland.
97. Further, in the event that this form of constraint does exist, the ACCC considers that it would not materially lessen the competition concerns arising from the removal of Aurizon, primarily because:
  - Some customers are based only in Queensland, or use rail only in Queensland, and have no ability to attempt to discipline Pacific National through actions outside Queensland
  - Aurizon has exited the interstate market, leaving SCT as the only other intermodal rail freight operator in competition with Pacific National. Although SCT provides services in the movement of freight by rail, market inquiries indicated that it is generally not a substitutable service to that provided by Pacific National (as discussed above). Further, freight forwarders are unlikely to engage with SCT as SCT is a direct competitor to freight forwarders.
98. Further, the ACCC is aware of the reverse situation occurring, in which a customer with viable alternatives to rail for part of their freight spend intended to move that part of their freight to road from rail, and was thwarted by a retaliatory threat by the rail provider signalling a significant cost increase to that part of the customer’s freight which could only economically be carried by rail.



The ACCC invites comments from market participants on its concerns in relation to whether customers would be able to constrain Pacific National’s supply of intermodal rail haulage services on the North Coast Line by exercising countervailing power. In particular, market participants may wish to comment or provide information on:

- any examples of customers being able to exert countervailing power through threatening to move away some of their volume from intermodal rail haulage suppliers to other options to constrain the pricing charged by intermodal rail haulage suppliers
- the ability of customers to constrain the pricing of Pacific National on the North Coast Line post acquisition by threatening to move volumes to road, or SCT in other states.

### **Impact on freight forwarding market in Queensland**

99. The ACCC considers that the removal of Aurizon as an intermodal rail operator in Queensland may also raise concerns in the market for the supply of freight forwarding services in Queensland.
100. While Linfox will replace Aurizon as a large freight forwarder in Queensland, it and other freight forwarders will only have the choice of one rail linehaul provider in Queensland if the Queensland Intermodal Acquisition proceeds. Currently, freight forwarders are able to approach either Pacific National or Aurizon for wholesale intermodal rail linehaul services. The competition between Pacific National and Aurizon may provide opportunities for smaller freight forwarders to compete in the freight forwarding market.
101. Market inquiries have indicated that, with the removal of competition from Aurizon, Pacific National may have more control over the train capacity made available to freight forwarders (for example, by being more able to run services only once a train is fully utilised) and over the terms on which it services freight forwarders generally.
102. Market participants have raised concerns that only the largest freight forwarders, such as Toll and Linfox (in the future with the acquisition) would have the ability to effectively compete in these circumstances and that smaller freight forwarders may not be able to effectively obtain capacity on Pacific National’s rail linehaul service.

The ACCC is considering this issue and invites comments from market participants on whether the Queensland Intermodal Acquisition may impact the freight forwarding market in Queensland. In particular, market participants may wish to comment on the following:

- whether the removal of Aurizon’s intermodal rail operations in Queensland will result in an ability for Pacific National to alter the provision of wholesale services to freight forwarders
- whether that alteration may reduce the ability for smaller freight forwarders to compete in Queensland.

## **Issue of concern: increased barriers to entry into the supply of intermodal rail services**

103. Based upon its inquiries to date, the ACCC’s preliminary view is that the Proposed Acquisitions are likely to substantially lessen competition for the supply of intermodal rail services on both the North Coast Line and interstate by increasing barriers to entry into those markets.
104. The ACCC is concerned the Proposed Acquisitions increase barriers to entry for intermodal rail services for the following reasons:
- Pacific National’s ownership of the Acacia Ridge Terminal would give Pacific National the ability and incentive to deny, restrict, limit or otherwise provide disadvantageous terminal access and terminal capacity to a potential entrant
  - conversely, a third party owner of the Acacia Ridge Terminal may either encourage entry into intermodal rail linehaul services by another operator, or commence providing intermodal rail linehaul services themselves in competition with Pacific National
  - a third party acquirer of Aurizon’s Queensland intermodal business may face lower barriers to then also enter into interstate intermodal rail operations than would be the case if Pacific National acquired that business.
105. The ACCC notes that Pacific National has offered a court-enforceable undertaking aimed at providing access to third parties to the Acacia Ridge Terminal. The proposed undertaking is discussed further below.

### **Rail terminal services in south east Queensland**

106. Rail freight terminals provide rail operators, freight forwarders and freight owners with facilities and services to enable the efficient movement, consolidation and distribution of freight. Rail operators require facilities to load and unload trains, maintenance facilities, areas to marshal trains, and yard areas, while freight owners and freight forwarders require access to terminal sidings and warehousing to pick-up, deliver, and consolidate freight for further distribution.
107. Pacific National, through its ownership of the narrow gauge terminal at Tennyson, and Aurizon, through its ownership of the Acacia Ridge Terminal, overlap in the supply of intermodal terminal services in south east Queensland.
108. There are four intermodal terminals located in south east Queensland:
- the Acacia Ridge Terminal, owned and operated by Aurizon (with some services provided by Qube)
  - the Tennyson (Moolabbin), owned and operated by Pacific National
  - the Port of Brisbane Multimodal Terminal (**BMT**) operated by the Port of Brisbane
  - SCT’s terminal at Bromelton.

109. The Acacia Ridge Terminal is a dual gauge terminal located approximately 12 kilometres south of the Brisbane CBD. It comprises two distinct areas known as the Brisbane Multi-User Terminal (**BMUT**) and the Queensland Terminal. The BMUT is a standard gauge terminal and supports the interstate transport of freight to and from in Queensland on the standard gauge network. The Queensland Terminal is used to send and receive intermodal freight to and from destinations throughout Queensland on the narrow gauge track, including the North Coast Line.
110. Pacific National and Aurizon are the only rail freight operators that use the Acacia Ridge Terminal. Currently, Qube provides terminal services at the BMUT to Aurizon and Pacific National (under a subcontract entered into with Aurizon). These services include preparing for train arrivals, allocating trains to relevant tracks for loading/unloading, lifting containers and coordinating the provisioning of locomotives. As discussed at 140 below, Pacific National and Aurizon have entered into an agreement for Pacific National to effectively replace Qube as the provider of these services from 1 December 2018, regardless of whether the Acacia Ridge Acquisition proceeds. Aurizon provides equivalent services to itself at the Queensland Terminal.
111. Pacific National’s Tennyson Terminal is a narrow gauge terminal and is used by Pacific National for its operations on the North Coast Line. The Tennyson Terminal is located approximately 10 kilometres from the Acacia Ridge Terminal and approximately 12 kilometres from the Brisbane CBD. Pursuant to a Terminal Services Agreement entered into with Aurizon, Pacific National currently hauls freight into the BMUT at the Acacia Ridge Terminal on the interstate standard gauge track, transports it by truck to the Tennyson Terminal, and then transports it on the narrow gauge network to destinations on the North Coast Line. Freight from far north Queensland to be moved interstate by rail is also transported between the Tennyson Terminal and the Acacia Ridge Terminal.
112. The BMT is a dual gauge terminal operated by, and located at, the Port of Brisbane under a long term lease entered into with the Queensland Government in 2010. The BMT is currently used for importing and exporting freight. Aurizon runs direct narrow gauge services between the BMT and north Queensland, known as the Seafreighter service.
113. The ACCC understands that the Bromelton Terminal commenced operations on 21 January 2017 and was purpose-built by SCT to service its unique louvre vans. The terminal construction was partially funded by a \$9.6 million Federal Government grant from the National Stronger Regions Fund. The Bromelton Terminal does not have narrow gauge access, meaning that freight cannot be moved to north Queensland by rail without first being transferred by road to a narrow gauge terminal in Brisbane.
114. As rail freight operators wishing to service the Brisbane area must make use of a terminal in that area, the ACCC considers the relevant geographic market to be south east Queensland. As described above, the other rail freight terminals in south east Queensland are the Bromelton Terminal and the BMT.
115. The ACCC considers use of the Acacia Ridge terminal provides a significant competitive advantage to a rail freight operator wishing to haul freight across both narrow and standard gauges. This is because it allows a rail haulage provider to transfer freight at the one terminal without having to take an

additional step of transporting freight by road between a narrow gauge and standard gauge terminal. The ACCC considers that this particular advantage of the Acacia Ridge Terminal limits the extent to which other rail terminals in south east Queensland are able to offer an effective alternative.

### **The significance of the Acacia Ridge Terminal and the Queensland intermodal business**

116. The ACCC considers the Acacia Ridge Terminal to be key infrastructure and, on the basis of market inquiries, considers that access to the standard gauge and narrow gauge terminal services provided at the Acacia Ridge Terminal is a significant factor for any possible new entrant to intermodal rail freight operations both within Queensland on the North Coast Line and interstate.
117. Further, the Acacia Ridge Terminal’s position as the only terminal in south east Queensland capable of efficiently dealing with the transfer of freight between the narrow and standard gauges increases its strategic importance. For entry to occur in intermodal rail haulage, the entrant will potentially need to offer a service on both the North Coast Line and interstate. Otherwise the entrant, or its customers, will be beholden to Pacific National for rail haulage of those routes it does not cover, placing it at a competitive disadvantage and at the risk of foreclosure.
118. Additionally, market participants have indicated that there are synergies and efficiencies in operating an integrated national rail linehaul service. In particular, the ACCC understands that:
  - the ability for an operator to offer an integrated national rail freight service that includes services on the North Coast Line is advantageous to some customers (for example, customers sending produce from far north Queensland to destinations outside Queensland)
  - operating an intermodal rail linehaul service in Queensland provides an operator with scale for key business requirements such as train drivers, back-office operations, relationships with freight owners and freight forwarders, and warehousing and logistics support, which together may lessen the barriers for the operator to also enter interstate intermodal rail operations
  - a market presence and demonstration of successful operations in rail linehaul in Queensland is likely to increase the ability for an operator to obtain customer contracts (including for customers who are not present in Queensland) that are required for sustainable entry into interstate intermodal rail operations.

### **Competition from other terminals in south east Queensland**

119. The Acacia Ridge Acquisition would result in Pacific National owning and operating two of the three narrow gauge rail freight terminals in south east Queensland (the Acacia Ridge Terminal and Tennyson, with the remaining terminal being the BMT). It would also result in both of the standard gauge rail freight terminals currently in use in south east Queensland (the Acacia Ridge Terminal and the Bromelton Terminal) being owned and operated by vertically integrated interstate rail freight service providers.

120. On the basis of market inquiries, the ACCC considers that the standard gauge terminal services at the Bromelton Terminal and at the BMT are not likely to be suitable for entry into interstate intermodal rail linehaul.
121. With respect to the Bromelton Terminal, market feedback has indicated that:
- there would be a significant additional cost incurred by the requirement to take freight on road from Bromelton to major distribution centres which are approximately 60 kilometres north
  - the Bromelton Terminal’s current standard gauge-only capability inhibits the ability for a rail operator to use it for operations on the North Coast Line
  - the facilities at the Bromelton Terminal are purpose built for SCT’s louvre vans and are not suitable for a high volume of standard containerised freight on flat wagons.
122. Further, the ACCC notes that as a vertically integrated owner, SCT may be unlikely to have an incentive to provide access to the Bromelton Terminal to a competitor.
123. With respect to the BMT at the Port of Brisbane, market feedback has indicated that:
- the BMT is an import / export terminal and is unsuited to be a terminal capable of supporting domestic rail freight, including because land surrounding the terminal is likely to be prioritised for port operations rather than domestic intermodal operations
  - there would be a significant additional cost incurred by the requirement to take freight either on road, or on rail sharing the passenger line, to distribution centres around the Acacia Ridge Terminal and Tennyson Terminal
  - while the BMT has standard gauge capability, it is not utilised. Market participants view the BMT as an import / export terminal that connects to the narrow gauge line Queensland. Freight taken in and out of Queensland by rail is moved via the Acacia Ridge Terminal (or, in the case of SCT, the Bromelton Terminal).

### **Potential for new terminal development**

124. The ACCC’s preliminary view is that building a new terminal to support entry into intermodal rail markets is unlikely in the short to medium term. New terminal investment may be more likely in the longer term to support increased rail volumes, particularly following completion of the Inland Rail Project, however, the nature, location and timing of any future intermodal terminal investment is uncertain.

### **Increasing barriers to entry**

125. In the event of the Proposed Acquisitions, Pacific National would be the only user of the Acacia Ridge Terminal. The issue of access to the terminal is therefore centred on the potential for a new rail operator to access the terminal.

As discussed above, the ACCC considers that access to the Acacia Ridge Terminal is a key component of any new entry for intermodal rail operations in Queensland and interstate.

126. The ACCC considers that ownership of the Acacia Ridge Terminal may allow Pacific National to deny, restrict, limit or otherwise provide disadvantageous terminal access and terminal capacity to a potential entrant who would require that access for effective entry and who would then compete with Pacific National.
127. Market inquiries have indicated that the potential ways in which Pacific National could use ownership of the Acacia Ridge Terminal to deter entry include:
  - increasing rates for access to and usage of the Acacia Ridge Terminal, or structuring rates in a way that disadvantages new entrants operating on a smaller scale than Pacific National
  - denying or delaying requests for access to the Acacia Ridge Terminal
  - denying requests for access to terminal capacity, including warehousing capacity, at the Acacia Ridge Terminal, or allocating capacity at unsuitable times
  - using the fact of a potential entrant requesting access to engage in tactics to frustrate that entry more generally.
128. Market participants have raised concerns that in addition to operational actions, Pacific National’s ownership of the Acacia Ridge Terminal is likely to affect future capacity upgrades at the Acacia Ridge Terminal. In particular, the ACCC is concerned that Pacific National would have a strong incentive to avoid investment in capacity upgrades at the terminal to support new entry, and only invest in upgrades to support Pacific National’s own expansion. As a result, the likelihood of increased competition through new entry in intermodal rail is diminished.
129. Conversely, the ACCC considers that an alternative third party owner of the terminal would have the incentive to:
  - encourage access for a new intermodal rail operator who would then compete with Pacific National, or
  - utilise the terminal to enter intermodal rail operations itself in competition with Pacific National.

Either of these alternatives would have the effect of lowering barriers to entry for a new entrant for the supply of intermodal rail haulage services.

130. An issue the ACCC has considered is whether an increase in barriers to entry resulting from Pacific National’s acquisition of the Acacia Ridge Terminal would have a significant effect on competition for the supply of intermodal rail haulage services (on the NCL and interstate), given the other barriers to entry that would exist for a new intermodal rail operator (such as access to terminals and premium train paths and the need to secure customer contracts). In this context, the ACCC considers that the Inland Rail Project, which will create a new and faster rail route on the north–south corridor with improvements such as the ability

for trains to be longer and double stacked, will foster the potential for a new entrant in interstate haulage, which could be linked to a North Coast Line operation. As discussed above, adequate access to the Acacia Ridge Terminal would be a critical factor for any potential new entrant, and the ACCC considers that Pacific National’s ownership of the terminal would lessen the likelihood of this entry and of greater competition in intermodal rail haulage.

***Impact on Queensland Intermodal Acquisition on barriers to entry***

131. In addition to the issues above, market inquiries have indicated that the ability to offer customers a national presence; a level of minimum scale; and general market presence are factors which would assist a new entrant in interstate intermodal operations.
132. The ACCC considers that an alternative purchaser who acquires Aurizon’s Queensland intermodal business may, through those factors, be able to use that business to more easily expand into interstate intermodal than would otherwise be the case.
133. For this reason, the ACCC considers that barriers to entry in interstate intermodal rail may be higher in a future with the Queensland Intermodal Proposed Acquisition compared to a future with an alternative purchaser of Aurizon’s Queensland business

The ACCC invites comments from market participants on its concerns in relation to the potential for the Proposed Acquisitions to increase barriers to new entry in intermodal rail services both interstate and on the North Coast Line. In particular, market participants may wish to comment on:

- the degree to which access to the Acacia Ridge Terminal, including adequate access to timeslots and capacity, would be required for a new operator to enter intermodal rail linehaul services on the North Coast Line and / or interstate
- whether the potential development of intermodal terminal facilities (for example, in the Bromelton precinct) is likely to encourage a new entrant in intermodal rail operations
- actions which Pacific National, as the owner of the Acacia Ridge Terminal, may engage in that have the effect of lessening the likelihood of a new operator to enter intermodal rail linehaul services on the North Coast Line and / or interstate
- the degree to which a third party (instead of Pacific National) acquiring Aurizon’s Queensland intermodal business may be able to use that business to leverage into interstate intermodal rail services.

**Proposed undertaking to provide access to the Acacia Ridge Terminal**

134. Pacific National has offered the Proposed Undertaking pursuant to section 87B of the CCA for the purpose of resolving any competition concerns with the Acacia Ridge Acquisition. The Proposed Undertaking contains a regime for third parties to obtain access to the Acacia Ridge Terminal.
135. The ACCC is releasing a copy of the Proposed Undertaking with this Statement of Issues, available at [www.accc.gov.au/mergersregister](http://www.accc.gov.au/mergersregister).

136. The ACCC has not reached a concluded view as to the efficacy or acceptability of the Proposed Undertaking. However, based on initial market inquiries and the competition concerns arising from its inquiries to date, the ACCC’s preliminary view is that a behavioural undertaking is unlikely to resolve the competition concerns arising from the Proposed Acquisitions, which stem from the structural changes in which Pacific National is the owner, operator and only user of the Acacia Ridge Terminal, the only intermodal rail operator in Queensland, and (due to Aurizon’s interstate closure) one of two intermodal rail operators on the interstate network.
137. Market participants have strongly indicated that it would not be possible for a behavioural undertaking for access to adequately address the various ways Pacific National could discriminate against or otherwise frustrate access at the Acacia Ridge Terminal for a potential entrant in intermodal rail.
138. As discussed above, the ACCC is concerned that Pacific National’s ownership of the Acacia Ridge Terminal would give Pacific National the ability and incentive to increase barriers to entry into intermodal rail linehaul markets in Queensland and interstate in the future, and that in contrast, an alternative purchaser would have the incentive to encourage usage and invest in capacity upgrades. The ACCC’s preliminary view is that a behavioural undertaking for access is unlikely to be able to resolve these competition concerns, but seeks market feedback on this issue.
139. You should not interpret consultation on the Proposed Undertaking as an indication the ACCC is likely to accept it, or any other form of undertaking.

Based on market feedback to date, the ACCC has concerns that the Proposed Undertaking, or any access undertaking, is unlikely to resolve competition concerns arising from the Proposed Acquisitions. The ACCC is nevertheless seeking comments from market participants on Proposed Undertaking. In providing a response, you may wish to consider:

- whether an access undertaking is capable of addressing the competition concerns relating to the proposed acquisition of the Acacia Ridge Terminal by Pacific National
- whether Pacific National would be able to frustrate access seekers from accessing the Acacia Ridge Terminal and whether the Proposed Undertaking adequately addresses any concerns relating to new entrants’ ability to access the Acacia Ridge Terminal
- whether Pacific National would be able to refuse to upgrade the Acacia Ridge Terminal, or only invest in upgrades that support Pacific National’s own expansion, and whether the Proposed Undertaking adequately addresses any concerns relating to Pacific National’s incentive and ability to invest in upgrades at the Acacia Ridge Terminal
- any specific improvements to the Proposed Undertaking to address competition concerns
- any other potential concerns or risks associated with the Proposed Undertaking.



### **Terminal Services Subcontract**

140. A number of activities at the Acacia Ridge Terminal are currently carried out by a third party, Qube, under a contract which is due to expire on 30 November 2018. As part of the negotiations concerning the Acacia Ridge Acquisition, Pacific National and Aurizon separately entered into an agreement by which Pacific National would, from December 2018, commence providing the services at the terminal currently provided by Qube, even if the Acacia Ridge Acquisition does not proceed.
141. The services that would be provided by Pacific National under this agreement (the **Terminal Services Subcontract**) include:
- allocating trains to tracks for loading and unloading and checking arrivals
  - unloading trains and loading containers onto road vehicles
  - lifting containers off road vehicles for loading onto trains
  - oversight and coordination of provisioning for locomotives (fuel, water, sand)
142. Pacific National and Aurizon have requested that the following points be made on the Terminal Services Subcontract:
- Pacific National has offered a s 87B Undertaking for access to the Acacia Ridge Terminal, and the Terminal Services Subcontract would not be relevant if the Acacia Ridge Acquisition Proceeds (being a contract between Pacific National and itself, as the owner and service provider)
  - the Terminal Services Subcontract is relevant to the consideration of the future without the Acacia Ridge Acquisition
  - the Terminal Services Subcontract applies to services at the standard gauge side of the Acacia Ridge Terminal only
  - the services to be provided under the Terminal Services Subcontract, and the discussion / consultation processes (outlined below, in the third and fourth bullet points of paragraph 144) are substantially the same as those in the current agreement between Aurizon and Qube for the provision of terminal services.
  - the Terminal Services Subcontract does not require a new interstate terminal user to use Pacific National’s terminal services.
143. The ACCC is considering the above points.
144. The ACCC notes the following aspects of the Terminal Services Subcontract:
- as the current owner of the Acacia Ridge Terminal, Aurizon’s rights and obligations under the agreement will novate to any new owner of the Acacia Ridge Terminal

- the agreement is for a term of 5 years (i.e. to December 2023) with options to extend to December 2033
  - should a new potential terminal user seek terminal services, Aurizon (or the new owner with novated rights and obligations) must first discuss with Pacific National the Terminal’s capacity and the terms of that user’s access to the terminal’s services.
  - Pacific National is given consultation rights in respect of any material amendment to a terminal services agreement between Aurizon (or the new owner with novated rights and obligations) and a terminal user.
145. As discussed above, during market inquiries participants raised concerns about the inability of an access undertaking to adequately address the competition concerns arising from the Proposed Acquisitions. In particular, there were concerns that an undertaking could not protect against the ways in which Pacific National, as the owner and operator of the Acacia Ridge Terminal, could discriminate against or otherwise frustrate access at the Acacia Ridge Terminal for a potential entrant in intermodal rail.
146. The ACCC is concerned that the Terminal Services Subcontract may provide Pacific National with the ability to engage in conduct that would discriminate against or frustrate access for an access seeker at the Acacia Ridge Terminal. Based on the concerns raised during market inquiries in relation to Pacific National’s proposed ownership of the terminal, the ACCC considers that the agreement to provide services may itself – for similar reasons – discourage entry into intermodal rail linehaul services.

The ACCC will consider the effect of the Terminal Services Subcontract on competition for the supply of intermodal rail services. The ACCC invites comment from market participants on the degree to which the services outlined above, which Pacific National would carry out under the Terminal Services Subcontract (regardless of who owned the Acacia Ridge Terminal) may affect a potential new rail operator wishing to access the terminal

## **Issues that may raise concerns: impact on market for rail linehaul services for bulk freight**

147. In addition to intermodal freight hauled by rail, the ACCC considers there is a market for haulage of bulk commodities by rail in Queensland (primarily coal, as well as bulk minerals, mining inputs, grain, and sugar). This freight is carried on narrow gauge rail networks throughout Queensland, including on sections of the North Coast Line.
148. Both Pacific National and Aurizon operate bulk freight rail linehaul services in Queensland.
149. While the Queensland Intermodal Acquisition does not involve the acquisition of any of Aurizon’s bulk freight rail assets, the ACCC considers that the acquisition may raise concerns in this market because:

- currently, an entrant in this market would require locomotives equipped for Queensland’s narrow gauge network, access to terminals (including terminals on the North Coast Line), and staff and general rail capabilities
- an acquisition of Aurizon’s Queensland intermodal business by a third party (i.e., a party other than Pacific National) may, in giving that party an above rail presence in Queensland, reduce barriers to entry for that party to begin bulk freight rail linehaul operations in Queensland in competition with Pacific National and Aurizon.

150. Market participants have indicated that it may be possible for a third party, in acquiring Aurizon’s Queensland intermodal business, to then ‘springboard’ into the bulk freight rail linehaul market in Queensland. The ACCC considers that the Queensland Intermodal Acquisition may raise concerns because barriers to entry or expansion into bulk freight rail linehaul services may be greater than they otherwise would be absent the Queensland Intermodal Acquisition.

The ACCC is considering this issue and invites comments from market participants on whether the Queensland Intermodal Acquisition may impact the bulk freight rail linehaul market. In particular, market participants may wish to comment on the following:

- the requirements for an entrant to bulk freight rail linehaul in Queensland, or for a bulk freight rail operator outside Queensland to expand into Queensland
- whether a third party acquiring Aurizon’s Queensland intermodal business may then face lower barriers to entry or expansion to bulk freight rail operations in Queensland.

### **Issue that may raise concerns: reduction of competition in interstate intermodal rail freight markets**

151. As described above, on 14 August 2017 Aurizon announced that in addition to the Proposed Acquisitions, it would complete its exit from intermodal operations by closing down its interstate business. Aurizon has since announced that the closure was completed on 23 December 2017.
152. The ACCC is concerned that Aurizon’s decision to close its interstate business will result in a substantial lessening of competition in interstate intermodal markets.
153. The closure leaves SCT and Pacific National as the only rail freight providers on the east–west and north–south corridors. The ACCC notes that, currently, only Pacific National provides direct rail services between Sydney and Melbourne and Sydney and Brisbane. Further, as noted above, market participants generally view SCT as a freight forwarder vertically integrated into rail and not necessarily capable of providing a rail linehaul service substitutable with Pacific National’s service on their common routes.
154. For the reasons described in relation to the North Coast Line, the ACCC does not consider road freight to be a viable alternative to rail freight on the east-west corridor or from Melbourne to Brisbane. Road freight operators may more closely compete with rail freight from Melbourne to Sydney and Sydney to Brisbane.

155. Market participants have expressed concern that Pacific National, which prior to Aurizon’s shutdown was the largest of the three operators, will further entrench its position on interstate routes and that entry will be unlikely, particularly if the Proposed Acquisitions proceed.
156. The ACCC understands that some previous customers of Aurizon on the north-south corridor have, since the announcement of Aurizon’s closure, been quoted significantly increased prices by freight forwarders.
157. The ACCC is considering whether the closure of Aurizon’s interstate intermodal business is linked to the Proposed Acquisitions for the purpose of section 50 of the CCA. The ACCC notes that an alternative purchaser of the Acacia Ridge Terminal and / or Aurizon’s Queensland intermodal business may have also purchased Aurizon’s interstate intermodal business.

### **ACCC's future steps**

158. As noted above, the ACCC now seeks submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter. Submissions are to be received by the ACCC no later than 3 April 2018 and should be emailed to [mergers@acc.gov.au](mailto:mergers@acc.gov.au).
159. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.
160. The ACCC intends to publicly announce its final view by 24 May 2018. However the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement to explain its final view.