



Submission to:

Australian Competition and Consumer Commission

**Brookfield consortium – propose acquisition of
Asciano Limited**

Statement of Issues

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Prepared by:

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Background:

The Western Australian Farmers Federation (Inc.) (WAFarmers) welcomes the opportunity to comment on the Statement of Issues on the proposed acquisition of Asciano Limited by Brookfield consortium.

As background, WAFarmers is the state's largest and most influential rural advocacy and service organisation. WAFarmers represents around 3,000 Western Australian farmers from primary industries, with the majority being grain growers. As the largest WA rural advocacy group, our members are responsible for approximately 35 per cent of the overall grain production in WA.

Following the release of the Statement of Issues on the Brookfield consortium proposed acquisition of Asciano Limited, WAFarmers would like to reiterate comments regarding the likely implication for competition in Western Australian rail haulage.

Introduction:

WAFarmers would like to thank the Australian Competition and Consumer Commission (ACCC) for their comprehensive insights into the competitive implications of the acquisition.

The Statement of Issues includes significant concerns that WAFarmers has highlighted to the ACCC in the initial comment, and further conversations.

WAFarmers welcomes recognition by the ACCC of the significant impacts that vertical integration could have on the Western Australian economy.

WAFarmers maintains the stance that the Brookfield consortium bid for Asciano Limited should be blocked, with specific references to the current turbulence and uncertainty in the future of rail and port infrastructure in Western Australia. The acquisition being allowed has large consequences, especially as the current regulatory framework for railways in WA was highlighted as a major concern in the Statement of Issues.

The current regulatory environment for access:

WAFarmers thanks the ACCC for questioning the shortcomings and inadequacies of the WA Railway (Access) Regime.

In recent comments, WAFarmers has been highly critical of a light handed regulator for key logistic infrastructure, and specifically the role of Economic Regulation Authority (ERA) in the regulation of access to WA railway network.

WAFarmers welcomes the announcement that the WA Railway (Access) Code 2000 will lapse in certification on 11 February 2016. Once the certification lapses, the National Competition Council can be asked to have the lines declared under part IIIA of the Competition and Consumer Act 2010. Once the lines are declared, the ACCC can intervene to facilitate access for the lines, either through setting up terms and conditions, or approving an agreement similar to the Australian Rail Track Corporation (ARTC).

The lapse in certification may allow the current below-rail lease holder to become more accountable for the access provision process, as well as provide the Western Australian community with greater transparency as to the operations of a key infrastructure monopoly.

WAFarmers encourages the transition of the Western Australian rail network and infrastructure to become managed under a nationally regulated regime. Key logistic and supply chain infrastructure in the Australian economy, such as railways and ports, should have federally regulated access schemes. The importance of the infrastructure to the economy cannot be overstated and it cannot be left to self-regulate. Federal regulation will provide a greater transparency and reduce the undue influence of monopolistic behaviour on industry, particularly agriculture.

The ACCC should maintain their interest in regulation and competition of monopolistic infrastructure, as there is significant change at both a WA and Australia wide level, with privatisation of state assets.

Concerns raised in the Statement of Issues:

WAFarmers' initial comments regarding the proposed acquisition and the concerns raised to the ACCC were well received, and represented in the Statement of Issues.

The ACCC analysis of alternative markets, and specifically the capacity for road and sea transport to provide alternatives (comment 75 – 86) was an important aspect in determining the competitive consequences of potential disruption to the rail network. The comments reflect the long running stance from WAFarmers that rail is cheaper and more effective for longer distances and bulk commodities, especially when compared to road.

The ACCC also discussed the multitude of options for the monopolistic nature of railway in Western Australia to be mismanaged to benefit Brookfield/Asciano, as well as to drive out competition. The concerns with vertical integration of Brookfield and Pacific National in the Statement of Issues were categorised into the following sections:

- Ability and incentive to foreclose rivals of Pacific National (comments 93 - 103)
- Access to commercially sensitive information (comments 104 - 109)
- Barriers to entry and expansion and the effect on competition (110 - 111)

- The WA Access Regime, including:
 - Current access agreements, both within and outside the Code (114 - 115);
 - Protections against discriminatory conduct (116 – 120);
 - Segregation arrangements (121 – 122);
 - Adequacy of the access regime (123 – 127);
 - Limited use of the Code (128 – 129); and,
 - Potential changes to the WA Access Regime (130 – 138).

WAFarmers welcomes the specific comment regarding the effectiveness of the Code, including comment 128, “The ACCC also considers it significant that no access agreements have been entered into under the Code. This may mean that access seekers consider the Code’s mechanisms do not offer sufficient benefits to merit their use”. The comment has identified the potential inadequacy of key legislation that is to govern access to logistical infrastructure. The failings of the Code are hindering Western Australia’s economic future.

Summary:

The ACCC, in comment 7b, and also reiterated in comment 127, 140, that the best way to avoid market issues of vertical integration is to not allow the vertical integration to happen, was a key message that ACCC has significant reservations regarding the proposed acquisition. WAFarmers encourages the ACCC to block the acquisition, as Brookfield has significant market power to misuse the Asciano assets to disrupt competitive forces in an already monopolistic infrastructure network. WAFarmers encourages the ACCC to further explore their concerns raised with the railway network in Western Australia, and used this opportunity to further investigate the concerns.