

**Submission
No 232**

INQUIRY INTO ROAD TOLLING REGIMES

Organisation: Australian Competition & Consumer Commission

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Ms Abigail Boyd MLC
Committee Chair
Portfolio Committee No. 6
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Dear Ms Boyd

ACCC submission to the inquiry into road tolling regimes in New South Wales

Thank you for the invitation to provide a submission to the Portfolio Committee No. 6 Inquiry into Road Tolling Regimes in New South Wales.

The Australian Competition and Consumer Commission (ACCC) is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer protection, fair trading and product safety provisions of the Competition and Consumer Act 2010 (CCA), regulate national infrastructure and undertake market studies.

While the ACCC does not have any direct regulatory function in relation to toll roads or the setting of tolls, it has considered toll road matters under s 50 of CCA. Section 50 prohibits mergers and acquisitions that are likely to have the effect of substantially lessening competition in a market. In this submission we explain some of the findings we have made as part of our investigation of the acquisition of WestConnex by the Transurban-led consortium.

The ACCC also has some more general observations on road user charges that it makes given its broader infrastructure regulatory functions.

Review of Sydney Transport Partners Consortium's proposed acquisition of WestConnex

In 2018 the ACCC assessed the Sydney Transport Partners Consortium's (including Transurban) proposed acquisition of a majority interest in the WestConnex project under s 50 of the CCA. The ACCC decided not to oppose the proposed acquisition, subject to

court-enforceable undertakings relating to the publication of traffic data for NSW toll roads partially or wholly owned by Transurban.

Our substantive findings about the competition issues are set out in our [Public Competition Assessment](#).

In March 2021 the ACCC decided that the Transurban-led consortium's acquisition of the remaining 49% interest in WestConnex was unlikely to substantially lessen competition, taking into account Transurban and the consortium members' existing majority ownership of WestConnex.

Our reviews of these acquisitions were not directly concerned with the nature of the tolling regime or the level of toll caps. The ACCC understands that the toll caps are set by the government when toll road projects are put to tender or otherwise approved. We did observe and as one would expect, the toll caps have a direct bearing on the amount that bidders are willing to pay (or receive) for a toll road concession. In this way, the toll caps effectively determine the component of the cost of a toll road that is borne by road users, with the remainder borne (or received) by the government.

In considering the sale of WestConnex, we were primarily focused on competition in the awarding of future toll road concessions. In investigating this issue, we obtained the internal documents of many relevant stakeholders, spoke to many interested parties, and conducted formal examinations under oath. Some of the relevant findings we made are set out below.

Traffic data

The ACCC found that detailed traffic data is critical for potential bidders for future toll road concessions, particularly data relating to existing toll roads. The degree of confidence a bidder has in its traffic forecasts is a key component for how much it can bid for a road, and the degree of confidence in traffic forecasts is materially affected by the extent of its knowledge of traffic flows on pre-existing toll roads.

The ACCC considers that state governments should ensure that all traffic data held by toll road operators is available to all potential bidders for future toll road concessions. This is to support effective traffic modelling and forecasting by bidders for future toll road concessions. Effective competition for future toll road concessions is important in ensuring the state achieves the best outcomes for the public, and ensuring that incumbents do not have an advantage when bidding for future toll roads due to superior traffic data and the ability to better calibrate and validate traffic models.

The court-enforceable undertakings the ACCC accepted from Transurban and its consortium partners require the publication of data that is not otherwise publicly available for toll roads in Sydney in which Transurban has an interest (see <https://nswtollroaddata.com/>). The ACCC considers that state governments should implement broader measures to ensure exclusive traffic data held by toll road operators is shared with rival bidders for future toll road concessions.

Time required for traffic modelling

The ACCC also found that bidders for toll roads have not always had sufficient time to build sophisticated traffic models to give them increased confidence in their traffic forecasts. To ensure competitive bids for toll road concessions, the ACCC therefore considers that state governments should build sufficient time into their tender processes so that rival bidders to Transurban have the ability to build traffic models and obtain modelling expertise that is comparable to Transurban.

Unsolicited proposals

The ACCC also found that unsolicited proposals for new toll road concessions generally result in higher costs to taxpayers, drivers, or both. We consider that state governments should run competitive tender processes for new toll road concessions and not accept unsolicited proposals for them.

Guidelines published by the NSW Government containing rules and principles for the State's assessment of unsolicited proposals place significant weight on the "uniqueness" of an unsolicited proposal (see <https://www.nsw.gov.au/unsolicited-proposals/key-criteria-and-assessment-process>), which leaves wide discretion in its interpretation. Assuming that the guidelines remain as they are, and that the NSW Government continues to consider unsolicited proposals for new toll road concessions under the guidelines, our view is that such proposals should only be accepted if there is a clear case that it benefits the public, and that the uniqueness criterion should not be interpreted in a way that advantages incumbent toll road operators.

More general observations on toll-road charging

We also wish to make the following observations about toll-road pricing more generally based on knowledge developed through our broader infrastructure regulatory roles:

- All vehicles that rely on fuel currently pay a per litre fuel excise. Revenue collected from the excise goes into the government's consolidated revenue, and therefore contributes to funding roads. The excise effectively acts as a de-facto "road user charge", given that the more road users drive, the more fuel they consume and excise they pay that can go towards road funding.
- Fuel excise does not send effective price signals to road users about the cost they impose on the road network and other users. Road users pay the same amount when driving on a congested road during peak hour as driving on a quiet country road on the weekend.
- The de-facto road user charge should be lower, or not applicable, for toll roads due to the lower public expenditure (if any) that the government needs to recover from road users for building and maintaining the toll road. However, the de-facto road user charge cannot differentiate where vehicles drive.
- Toll roads provide direct price signals to drivers, as the cost of using the road is highly visible. That heavy vehicles pay higher tolls than light vehicles reflects their greater cost imposed on the toll road network, due to their greater axle load and resulting damage they cause to the road.^[1] Adjusting tolls based on the time of day drivers use the road to encourage use during quieter periods (for example, tolls could be lower during off-peak periods than during peak periods) also improves price signals.
- A more efficient road pricing framework would involve direct road user charges that provide meaningful pricing signals for all roads in Australia. This would involve moving away from a fuel-excise based de-facto road user charge and moving towards more visible and direct road user charges that differ based on the size of the vehicle, distance travelled, time of day travelled and the location of the road.
- Given the tolls on privately built roads are generally above the cost of provision of the roads, there is a concern that pricing frameworks for toll road operations could be

^[1] Note that the ACCC does not have sufficient information to determine whether the truck toll being set at three times the toll for car traffic is the appropriate differential between light and heavy vehicle charges.

used as a source of government revenue (via higher up-front sale prices or bids to construct the toll road) rather than priced for the efficient use of the road network.

- Road user charges, across public and toll roads, should reflect the true costs imposed by freight vehicles on the road network. This would then drive efficient decisions as to whether freight is moved by road (whether private or publicly provided) or via other means, such as rail.

Conclusion

The ACCC thanks the Committee for the opportunity to make a submission and would be happy to respond to any areas of interest for the Committee.

Yours sincerely

Rod Sims
Chair