



Australian
Competition &
Consumer
Commission

13 December 2007

Statement of Issues — P&O Automotive and General Stevedoring Pty Ltd - proposed joint venture with Tasports

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to a proposed joint venture between P&O Automotive and General Stevedoring Pty Ltd (POAGS) and Tasports (the **proposed joint venture**).
2. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, 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.
3. In line with the ACCC's *Merger Review Process Guidelines* (available on the ACCC's website at www.accc.gov.au) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by 18 January 2008 and anticipates making a final decision on 6 February 2008. However, the anticipated timeline can change in line with the *Merger Review Process Guidelines*. This particular timeline has been set to take into account the December/January holiday period, and the difficulties it poses for market participants responding to the ACCC. To keep abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the Mergers Register on the ACCC's website at www.accc.gov.au/mergersregister.
4. 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 the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

Background

5. On 25 October 2007 the parties provided a submission concerning the proposed joint venture to ACCC.

The parties

Tasports (and Capital Stevedoring)

6. Tasports is a government-owned corporation set up and regulated by the *Tasmanian Ports Corporation Act 2005* (Tas) (**the Tasports Act**). It is responsible for the operation and management of all ports in Tasmania, and was established in 2006 as part of the amalgamation of the port corporations that previously ran the ports at Hobart, Bell Bay, Burnie and Devonport.
7. In addition to these main ports, Tasports also manages and operates a number of regional Tasmanian ports.
8. As port operator and manager, Tasports provides a range of services to downstream port users. These services are carried out by three business units within Tasports – Port Services, Infrastructure and Property Services, and Logistics Services, and are summarised as follows:

Port Services	Infrastructure & Property Services	Logistics Services
Harbour control	Port infrastructure	Intermodal logistics
Pilotage	Planning & development	Cargo services
Security	Maintenance	Cold stores
Emergency Response	Property management	Stevedoring
Cruise, navy & ferry services		

Capital Stevedoring

9. Tasports also carries on a business known as Capital Stevedoring (**Capital**), which was initially a business of the Port of Hobart Corporation and was assumed by Tasports as part of the amalgamation of the Tasmanian port corporations. Capital currently only has operations at the port of Hobart in southern Tasmania (including the berth at Risdon), and at Port Pirie in South Australia.

POAGS

10. POAGS operates at a number of ports throughout Australia providing automotive stevedoring and general stevedoring for bulk cargo. POAGS does not provide container stevedoring services.
11. Relevant to the present matter, POAGS operates at the ports of Burnie, Devonport, Bell Bay and Hobart in Tasmania.

12. In South Australia POAGS operates predominantly at Port Adelaide, although it does have small seasonal operations for fertiliser and grain in Port Lincoln, Wallaroo, Giles and Tevenard. POAGS does not have operations in Port Pirie.
13. POAGS is owned 25% by DP World Australia Ltd (formerly P&O Ports Limited) and 75% by a consortium led by Kaplan Funds Management. Other consortium members are the global shipping and logistics companies Wilh. Wilhelmsen ASA and Kawasaki Kisen Kaisha, as well as Kaplan Equity Limited (a private equity fund managed by Kaplan Funds Management), and senior management from Kaplan.
14. Kaplan has invested in POAGS via the Kaplan Diversified Infrastructure and Logistics Fund, other investments of which include:
 - a. P&O Trans Australia, a national provider of land logistics services focused on transport and storage of containers to and from ports;
 - b. Australian Amalgamated Terminals, a national infrastructure owner that develops and manages the infrastructure at which general stevedores operate; and
 - c. Northern Shipping and Stevedoring, a major stevedore in North Queensland with a focus on minerals.

The transaction

15. POAGS and Tasports are proposing to enter into a joint venture pursuant to which each of them will transfer their Tasmanian stevedoring businesses (as well as the Port Pirie operations of Capital) to a newly established company, Capital P&O Logistics Pty Limited (**CPLS**).
16. CPLS will be equally owned by Tasports and POAGS.
17. The joint venture will involve the transfer of all stevedoring contracts, plant and equipment, employees and all other assets to CPLS, and will be subject to a shareholders agreement between POAGS, Tasports and CPLS. Additionally, Tasports will provide certain administration services to CPLS.
18. The 2006/07 Tasports Annual Report notes the signing of a memorandum of understanding between Tasports and POAGS in May 2007 for the purpose of entering the proposed joint venture. Page 17 of the Annual Report states that:

‘The joint venture [is] seen as a “win-win” – the strong synergies both companies have in respect to stevedoring and transport logistics will improve the quality and scope of service to the respective clients of each business.’

Market inquiries

19. On 30 October 2007 the ACCC commenced market inquiries regarding the proposed acquisition and a range of interested parties provided responses.

Market definition

20. The ACCC notes that both POAGS and Tasports (via Capital) have operations in South Australia, however the ACCC is of the preliminary view that the proposed transaction does not raise concerns in any markets in that state. The focus of the ACCC's investigation is therefore on the likely competitive effects of the transaction in Tasmania.
21. The ACCC's inquiries have led it to examine the transaction in the context of geographically separate markets for the provision of general and bulk stevedoring services at the ports of Burnie, Devonport, Bell Bay and Hobart.
22. The ACCC would, however, welcome the views of market participants on alternative market definitions.

Statement of issues

23. For the purposes of this Statement of Issues, the issues in this matter are divided into two categories, 'issues of concern' and 'issues unlikely to pose concerns'.

Issues of concern

Vertical integration

24. The proposed joint venture will involve the vertical integration of Tasports, an upstream port operator and manager, with POAGS, a downstream provider of stevedoring services.
25. The ACCC is of the preliminary view that this vertical integration may substantially lessen competition in breach of section 50 of the *Trade Practices Act 1974* by providing Tasports with the ability and incentive to discriminate in favour of the downstream stevedoring operations, foreclosing existing competition and raising barriers to entry in the identified markets for stevedoring services.
26. While this would lead to a lessening of competition in the Tasmanian markets for stevedoring services, it could also have downstream effects for consumers of those services, including companies exporting and importing to and from Tasmania, shipping lines and freight forwarders utilising stevedoring services, and customers using those shipping lines and freight forwarders.
27. The ACCC notes that Tasports is currently vertically integrated with Capital Stevedoring, however is of the preliminary view that the limited scope of Capital's operations does not presently provide Tasports with the ability or incentive to favour that downstream business.
28. The ACCC therefore invites comments on:
 - a. the present level of competition in the markets for general and bulk stevedoring services at the ports of Tasmania, including the likelihood of competition from potential new entrants: -

- information in this regard from customers of stevedores could include (but is not limited to) details of quotes obtained from competing stevedores, instances of switching between stevedores, or discussion of under what circumstances a customer would consider changing from one stevedore to another; and
 - information in this regard from competing stevedores could include (but is not limited to) details of contracts lost to competitors, details of the availability of stevedoring contracts, and details of the pricing of stevedoring services;
- b. the height of barriers to entry into the identified markets, and whether the proposed joint venture is likely to raise those barriers;
 - c. whether the proposed joint venture will give Tasports the ability and incentive to discriminate in favour of CPLS;
 - d. practical examples of conduct Tasports could engage in to favour CPLS;
 - e. whether there are any constraints on either Tasports' ability or incentive to favour CPLS;
 - f. whether the proposed joint venture is likely to lead to an increase in prices for stevedoring services in Tasmania; and
 - g. any other relevant competition issues you believe ought to be brought to the attention of the ACCC.

Issues unlikely to pose concerns

Horizontal concentration

- 29. The ACCC is of the preliminary view that the amalgamation of the Capital Stevedoring business with the POAGS business is unlikely to lead to a substantial lessening of competition.
- 30. In reaching this view the ACCC has taken into account market inquiries which suggested that:
 - a. Capital is currently a niche service provider that offers only limited competition to POAGS; and
 - b. there is very limited overlap between the operations of POAGS and Capital at present.
- 31. Nonetheless, the ACCC will accept further submissions from industry participants on this issue and further consider this preliminary view if warranted.

ACCC's future steps

32. The ACCC now seeks submissions from market participants on 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
33. Submissions should be sent to mergers@accc.gov.au (with the subject title 'Submission re proposed joint venture between POAGS and Tasports'), or faxed to (03) 9663 3699, or sent by mail to Mergers Branch, ACCC, GPO Box 520, Melbourne VIC 3001.
34. Submissions are to be received by the ACCC no later than close of business on **Friday, 18 January 2008**.
35. If the information you wish to provide is of a confidential nature, you can be assured that it will be treated confidentially. That is, the ACCC will not disclose the confidential information to the merger parties or other third parties, other than the ACCC's legal and economic advisors, without first obtaining your written consent or unless compelled to do so by law. Please note that any information you provide which you believe to be of a confidential nature should be clearly marked as confidential.
36. The ACCC will consider the submissions received from the market and the merger parties in light of the issues identified above and will, in conjunction with information and submissions already provided by the parties, come to a final view as to the appropriate course of action to take to resolve any competition concerns that remain.
37. The ACCC intends to publicly announce its final view by 6 February 2008, however the anticipated timeline may change in line with the *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.