



Public Competition Assessment

15 September 2009

POTA NSW Pty Ltd - proposed acquisition of Maritime Container Services Pty Ltd

Introduction

1. On 26 August 2009, the Australian Competition and Consumer Commission (ACCC) announced its decision to oppose the proposed acquisition of Maritime Container Services Pty Ltd by POTA NSW Pty Ltd (**proposed acquisition**). The ACCC was of the view that the proposed acquisition would be likely to have the effect of substantially lessening competition in the market for the supply of container storage services with rail transport facilities in Sydney in contravention of section 50 of the *Trade Practices Act 1974* (the **Act**).
2. The ACCC formed its view on the basis of the information provided by the merger parties and information arising from its market inquiries. This Public Competition Assessment outlines the basis on which the ACCC has reached its decision on the proposed acquisition, subject to confidentiality considerations.

Public Competition Assessment

3. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:
 - a merger is opposed;
 - a merger is subject to enforceable undertakings;
 - the merger parties seek such disclosure; or
 - a merger is not opposed but raises important issues that the ACCC considers should be made public.
4. This Public Competition Assessment has been issued because POTA NSW Pty Ltd's proposed acquisition of Maritime Container Services Pty Ltd was opposed by the ACCC.
5. By issuing Public Competition Assessments, the ACCC aims to provide the public with a better understanding of the ACCC's analysis of various markets and

the associated merger and competition issues. It also alerts the public to the circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change, because of developments.

6. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.
7. Many of the ACCC's decisions will involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources. While the ACCC aims to provide an appropriately detailed explanation of the basis for the ACCC decision, where this is not possible, maintaining confidentiality will be the ACCC's paramount concern, and accordingly a Public Competition Assessment may not definitively explain all issues and the ACCC's analysis of such issues.

The parties

The acquirer: POTA NSW Pty Ltd

8. POTA Holdings Pty Limited is a national provider of landside port logistics services, providing import and export marine container services in Brisbane, Sydney, Melbourne, Perth and Adelaide. These services include road and rail transportation of full and empty containers, and the operation of container parks, which are used to store, handle and conduct maintenance on empty containers.
9. POTA Holdings Pty Limited is controlled by KFM Logistics Investments 5 Pty Ltd, which owns 50% plus one of the shares in POTA and has management control of the company. KFM Logistics Investments 5 Pty Ltd is owned by KFM Diversified Infrastructure and Logistics Fund (50%), and Kaplan Equity Limited (50%). The remaining 50% less one share of POTA is owned by DP World.
10. DP World is one of only two stevedores currently operating a container terminal at Port Botany.
11. In New South Wales, POTA Holdings, through its subsidiary POTA NSW Pty Ltd (**POTA**), engages in the following activities:

- operates two container parks in the Sydney metropolitan region, the main site at Port Botany (**POTA Port Botany**) and a small inland facility at the Yennora Intermodal Terminal, located approximately 35 km inland from the port at Loftus Street, Yennora (**POTA Yennora**).¹ POTA provides services such as empty container storage and handling; container repairs; container cleaning; reefer pre-tripping (i.e., pre-chilling of refrigerated containers) at these container parks to shipping lines;
- provides road transport for containers, including full and empty containers. POTA NSW operates a fleet of approximately 30 trucks (a mix of semi-prime movers and B-Doubles); and
- runs a port shuttle rail service from the POTA Yennora site to Port Botany.

The target: Maritime Container Services Pty Ltd

12. Maritime Container Services Pty Ltd (**MCS**) is a privately owned company providing import and export marine container services in Sydney. In particular, MCS:
- operates two container parks in the Sydney metropolitan region. MCS’s main container park is situated at the Cooks River site in St. Peters (MCS Cooks River). MCS Cooks River is accessible by road and there is also a daily rail shuttle service to the port from this site operated by a third party. MCS’s other container park is situated at Banksmeadow (MCS Banksmeadow) and is only accessible by road;
 - provides associated services at these container parks, including container repair, cleaning and reefer pre-tripping. MCS Cooks River is also Customs and Quarantine approved;²
 - provides road transport for containers, including full and empty containers. MCS operates a fleet of around 30 trucks (a mix of semi-prime movers and B-Doubles);
 - sub-leases parts of the Cooks River site, one site is leased to BCQ Logistics Pty Limited and another site is leased to Visy Paper Pty Limited.

The proposed transaction

13. POTA NSW entered into an agreement to acquire 100% of the issued share capital in MCS.

¹ The Port Botany and Yennora sites are accessible by both road and rail. POTA owns the land on which the Port Botany container park is located. The Yennora site is owned by Stocklands and the rail sidings at Yennora are managed by Queensland Rail on behalf of Stocklands. POTA NSW has a siding at this site at which it unloads its port shuttle.

² Container park operators that obtain approval from AQIS to perform quarantine services must comply with the following requirements:

- o The inspection of the internal surfaces of international re-positioned empty containers to verify whether these contain quarantine risk material.
- o The cleaning and disposal of Quarantine Level 2 materials.
- o Referral to AQIS of containers with Quarantine Level 3 materials.

Areas of overlap

14. POTA and MCS each operate road transport, container parks and associated services in the Sydney metropolitan area.
15. The ACCC's assessment focused on the merger parties' container park operations, as this was considered to be the key area of competitive overlap.

Timing

16. The following table outlines the timeline of key events in this matter.

Date	Event
03-Aug-2009	ACCC commenced review under the Merger Review Process Guidelines.
14-Aug-2009	Closing date for submissions from interested parties.
26-Aug-2009	ACCC announced that it opposed the proposed transaction.

Market inquiries

17. On 3 August the ACCC commenced market inquiries regarding the proposed acquisition. A range of interested parties provided responses, including other suppliers of container park services, shipping lines, rail operators, rail infrastructure operators, intermodal terminal operators, and freight forwarders.

Statement of Issues

18. As a result of the parties' commercial timeframes, the ACCC proceeded directly to a final decision, and did not release a statement of issues. In the course of its investigation, the ACCC maintained ongoing dialogue with the merger parties, and third parties, and is confident that, in reaching its conclusion, all parties were provided sufficient opportunity to express their views to the ACCC in relation to the merger, and any concerns the ACCC had in relation to the proposed acquisition.

With/without test

19. In assessing a merger pursuant to section 50 of the Act, the ACCC must consider the effects of the transaction by comparing the likely future state of competition if the transaction proceeds (the 'with' position) to the likely future state of competition if the transaction does not proceed (the 'without' position or counterfactual).
20. The ACCC conducted extensive inquiries and carefully considered the information available to determine the likely outcome 'without' the proposed acquisition. On the basis of inquiries with a range of parties, the ACCC found that a number of parties were potential alternative acquirers of MCS in the event that POTA did not acquire MCS. Therefore, the ACCC concluded that in the reasonably foreseeable future, the assets currently operated by MCS would continue to be operated to provide container park services, in competition with POTA and others. It is on this basis that the merger was assessed.

Industry Background

Port Botany

21. Port Botany is the largest container port in New South Wales, and handles 95 per cent of the state's container trade.
22. Port Botany handles container freight valued at over \$49 billion per year and generates \$1.5 billion in economic activity every year. The number of containers processed through Port Botany has risen significantly since 2001–02 (by around 13 per cent per annum when expressed in terms of 20-ft equivalent units (TEU). Growth in container trade was previously forecast at 5 to 7 per cent per annum over the next 20 years.³ During 2008-2009, 1.8 million 20ft-equivalent (TEU) containers were handled at Port Botany which represented an increase of 1.1 per cent over the previous year. Lower recorded growth in TEU volumes in 2008–09 compared to previous years is likely to largely reflect the impact of the global economic downturn on trade volumes.
23. Approximately 34 per cent of the loaded export containers that are traded through Port Botany originate in regional New South Wales. Of these, approximately 82 per cent are moved by rail.⁴

Storage and transport of empty containers

24. Shipping containers are the property of shipping lines. The number and types of empty containers are ultimately determined by the demand of importers and exporters. Shipping lines do not swap containers with other shipping lines.
25. Due to trade imbalance, there are substantially more empty containers held within Sydney at any one time than there are full containers being shipped out. Market inquiries indicated that nearly 50 per cent of the containers shipped through Port Botany are empty (this process is termed 'repositioning').
26. Container parks are used to store empty containers on behalf of shipping lines, who then either send the containers straight back overseas, or send them to inland locations either within Sydney or regional New South Wales. Shipping lines also use container parks for storage upon the return of containers by importers after they have been unpacked, and before release to exporters to be packed again.
27. Other users of container parks are road and rail transport operators, who enter the container parks to collect or drop-off empty containers on behalf of shipping lines. In many circumstances, the costs of container park storage services are typically passed onto importers and exporters whose cargo is being transported.
28. In addition to storage, a full service container park also cleans and prepares empty containers before release to exporters, particularly those which require food grade levels of cleanliness.

³ New South Wales Government, *NSW Government response to the Independent Pricing and Regulatory Tribunal of New South Wales' report "Reforming Port Botany's links with inland transport"*, September 2008

⁴ Australian Rail Track Corporation Ltd, *Submission to the Independent Pricing and Regulatory Tribunal, Review of the Interface between the Land Transport Industries and the Stevedores at Port Botany*, June 2007.

29. Container parks are typically located at or very near to the point of loading or unloading a container onto a train or truck.
30. The movement of empty containers through Port Botany is a key freight task in New South Wales.
31. Containerised freight is transported around Sydney and rural New South Wales by road and rail. Transport operators generally travel a circuit between the port, importers' and exporters' premises, and empty container parks. To illustrate – a transport operator will generally pick up empty containers from a container park, deliver them to the exporter, and then freight the packed container back to Port Botany to be shipped overseas. For imports, a transport operator will collect full containers at Port Botany, deliver them to the importer, return the containers once unpacked to an empty container park, and return to Port Botany to recommence the process.
32. A large number of containerised exports in New South Wales originate from rural locations. When a consignment is ready for export, empty containers must be moved inland by road or rail for packing. This involves locating an empty container belonging to the shipping line that is handling the consignment and transporting the empty container to the exporter. Once a container is packed, it is returned to Sydney to arrive in time to be loaded onto a ship at the Port Botany wharves.

Industry participants

33. The following provides a brief description of the key industry participants who play a role in the port logistics chain:

Snapshot of industry participants and their role in the port logistics chain

Container Parks

Store, inspect, clean, repair and fumigate empty containers ready for hire.

Stevedores Operate the shipping terminal; loading and unloading the ships.

Shipping Lines

Operate transport vessels and hire out the containers to companies wanting to import and export freight.

Road transport providers Operate fleets of trucks that carry containers between the shipping terminal, distribution centres, rail terminals and container parks. They may operate local, regional and interstate road freight services to exporters and importers. They may run depots where freight is assembled into orders and dispatched in smaller vehicles to the customer.

Rail transport providers Operate rail services under contract either directly with importers and exporters, or via freight forwarders.

Rail infrastructure providers Own the rail tracks and manage their operation. Rail tracks in New South Wales are owned and managed by Railcorp and the Australian Rail Track Corporation.

Intermodal Transport Centres

Combine road and rail transport services and distribution operations.

Freight Forwarders

Supervise the arrangements for freight being imported or exported and manage the passing of information and documentation process.

34. The following table illustrates the operators of container parks and intermodal terminals in Sydney:

Operator	Location	Primary function	TEU capacity	Road Access	Rail Access
POTA	Port Botany	CP	9000	Yes	Yes
	Yennora	CP	500	Yes	No
MCS	Cooks River	CP	10,000	Yes	Yes
	Banksmeadow	CP	3000	Yes	No
Patrick	Camellia	CP	6800	Yes	Yes
	Port Botany	CP	4000	Yes	No
	Cargo Link (Port Botany)	CP	2400	Yes	No
Tyne	Port Botany	CP	3500	Yes	No
	Port Botany	CP	2000	Yes	No
	St Peters	CP	10,000	Yes	No
	Punchbowl	CP	2500	Yes	No
Western Container Services	Strathfield	CP	2000	Yes	No
	Chullora	Intermodal terminal	1200	Yes	Yes
MIST*	Macarthur	Intermodal terminal	1000	Yes	Yes
Mannway*	Villawood	Intermodal terminal	1000	Yes	Yes

Source: Market shares are derived from a number of sources. The ACCC considers these figures to be the best estimates available for the purposes of this assessment.

* The Chullora, MIST, and Mannway facilities are not currently operated as container parks. The TEU capacity is an estimate of potential container park storage capacity.

Market Definition

35. The ACCC considered that the relevant markets in this matter were:

- i. the market for the supply of container storage services with rail transport facilities in Sydney (market 1);
- ii. the market for the supply of empty container storage in the Port Botany precinct (market 2);
- iii. the market for the supply of container transportation by rail in New South Wales (market 3).

In forming its views on the relevant markets, the ACCC had regard to the following factors:

Market 1

- For many exporters and importers, particularly those in regional New South Wales who require the regular transport of multiple empty containers (which return to Sydney carrying heavy loads), the most efficient means of transporting empty containers to these parties and full containers from these parties is by rail. Road transport has limitations both in terms of the weight a truck can carry, and also the number of containers it can carry. Therefore, many customers would not be likely to switch to using road transport in response to a small but significant increase in the price of rail transportation.
- The ACCC’s inquiries suggested that although most container parks offer services to customers who transport empty containers by either road or rail, it was possible to establish different price structures for different customers, depending on the mode of transport used. The ACCC’s inquiries suggested that container park operators do not set different prices for *storing* containers to be transported by either road or rail. Therefore, most container parks are likely to be substitutable on the basis of storage alone. However, the ACCC’s inquiries also indicated that it is possible for container park operators to impose different charges on customers who wish to move containers by rail, for instance by charging service fees to rail operators for the use of the container park’s rail sidings.
- Market inquiries suggested that the location of a container park with rail facilities is critical if a transport provider is to meet the various timing requirements and regular volume requirements (in terms of empty containers) of a rural exporter. On the basis of market inquiries, the ACCC considered it was appropriate to define the relevant geographic market as being Sydney-wide, noting that the degree of substitutability between container parks located within Sydney varied, depending on its relative proximity to a freight line and the extent to which a freight train must traverse the metropolitan passenger networks in order to travel between a container park, Port Botany, and an exporter’s location.
- Market inquiries indicated that storing containers at container parks within Sydney allows shipping lines to efficiently manage the costs of transporting containers by rail. By collecting empty containers from locations relatively close to Port Botany, shipping lines, via their rail transport operators, can minimise any ‘dead-leg’ transportation (movement of trains without containers) between the port and the destination of the containers. On this basis, the ACCC found that the geographic scope of this market should be limited to the Sydney area, as container parks located beyond this area would be unlikely to be sufficiently price competitive with container parks located in the Sydney area due to the higher costs associated with ‘dead-leg’ transportation.

Market 2

- Market inquiries indicated that due to a substantial imbalance of imports and exports through Port Botany, it is necessary to store large numbers of empty containers close to the port in order to enable the empty containers to be repositioned overseas at minimal cost. The ACCC’s investigation also indicated that in most cases, containers to be repositioned overseas are mostly moved by road, reflecting the shipping lines’ common practice of storing such containers close to the port.
- Market inquiries suggested that transport charges for the movement of containers within Sydney, particularly for stack runs,⁵ are charged on a per-container basis, but vary according to the distance from the port.
 - Market inquiries indicated that there are significant differences in the prices for transporting containers, based on the distance between the container parks and Port Botany.
 - The ACCC’s inquiries suggested that the container parks located outside the immediate Port Botany area were not considered by market participants as close substitutes for container parks located at Port Botany for repositioning containers overseas. However, the ACCC did not reach a concluded view on this market as it was not determinative in the ACCC’s decision to oppose the proposed transaction.

Market 3

36. POTA is vertically integrated in that it operates container parks with rail access facilities and a rail transport business which transports containers between Port Botany and the premises of exporters and importers. In light of this vertical integration, and the ACCC’s findings regarding the substitutability of road and rail container transport, the ACCC considered the impact of the proposed acquisition in a market for the transportation of containers by rail. As the end users of rail container transport are predominantly located throughout New South Wales, the ACCC considered the relevant geographic scope to be New South Wales.

⁵ A stack run essentially involves large numbers of empty containers being trucked to the container stevedore’s terminal ‘just in time’ for loading onto a ship.

Competition analysis

Market 1: Supply of container storage services with rail transport facilities in Sydney

Market concentration

37. The ACCC found that the proposed acquisition would lead to a very significant increase in concentration in this market. The ACCC notes that the proposed acquisition would result in a reduction in the number of competitors in this market from three to two.
38. The following table shows the available empty container storage with rail facilities in Sydney.

TEU capacity in storage parks with rail facilities

Operator	TEU capacity	% capacity
POTA (Port Botany)	9,000	35
MCS (Cooks River)	10,000	39
Patrick (Camellia)	6,800	26
<i>Total</i>	25,800	100%
Merged Entity %	19,000	74
Pre-merger HHI	3422	
Post-merger HHI	6152	
Δ HHI	2730	

39. As demonstrated in the table above, the proposed acquisition would result in increased concentration in an already highly concentrated market.

Availability of substitutes

40. It was put to the ACCC that the following sites in Sydney were potential alternatives to POTA or MCS for the supply of container storage services with rail transport facilities:
- Pacific National at Chullora;
 - Mannway at Villawood;
 - Macarthur Intermodal Shipping Terminal at Minto; and
 - Patrick at Camellia.

The ACCC's findings with regard to these facilities are given below.

Patrick at Camellia

41. Patrick operates two container parks at Camellia located approximately 20km north west of the Sydney CBD. The facilities offer storage and handling, repairs and maintenance, pre-trip and steam cleaning as well as tank container services.

42. At present, rail access capacity constraints at this site mean that Patrick is the only rail operator that has access to the site. Market inquiries also indicated that due to the location of this facility, it is not a workable substitute for operating rail transport services to large numbers of exporters in regional New South Wales, for similar reasons as outlined below regarding the Minto and Villawood rail terminals.

Pacific National at Chullora

43. The Chullora facility is an intermodal terminal located approximately 18 kilometres west of the Sydney CBD and is owned and operated by Pacific National.⁶ In terms of rail services, the facility is currently used only for domestic freight movements and only by Pacific National. It does not currently offer container storage services. Market inquiries suggested that Chullora is relatively well-positioned in relation to freight rail lines running through Sydney and particularly to the north of Sydney. However, the ACCC's inquiries revealed that to the extent the site could be converted for the provision of container storage and associated services, the potential capacity of container storage was likely to be considerably less than that of the merged entity and unlikely to provide an effective competitive constraint to the merged entity post-acquisition.

Mannway at Villawood

44. The Mannway intermodal terminal, which does not currently offer empty container storage services, is located approximately 21 km west of the Sydney CBD and has two rail connections.
45. The ACCC's investigation revealed that compared to MCS's container park at Cooks River and POTA's container park at Port Botany, the extra time taken travelling to and from the Villawood site would jeopardise the ability of rail transport operators to continue to provide daily services to their customers.⁷ In contrast to MCS Cooks River and POTA Port Botany, it is necessary to divert at greater distances from the rail freight components and traverse more of the passenger component of the Sydney rail network to reach the Villawood site, which adds substantially to the time taken to complete the container park-Exporter-Port circuit. As noted earlier, serious concerns were raised by customers of the merger parties that they would not be in a position to service their export customers in regional New South Wales due to the complicated nature of matching rail paths and stevedore windows. For these reasons, the ACCC considered that customers would not be likely to shift substantial amounts of business to Villawood in response to a price increase by the merged entity.
46. The ACCC also considered it unlikely that a full service container park would be established at Villawood within a two-year timeframe, even in the event that the merged entity attempted to increase prices for accessing their container parks. In forming this view the ACCC had regard to the low margins made by container

⁶ Patrick and Pacific National are both subsidiaries of the Asciano Group.

⁷ Market inquiries indicated that the economics of running a train between, for instance Newcastle and Port Botany, are such that a daily cycle is most cost-effective. Furthermore, daily transportation of export goods to and from Port Botany accommodates producers' production, storage, stevedoring, and shipping schedules.

parks, and the New South Wales government's commitment to establishing a significant intermodal and container park facility at Enfield in the future.

Macarthur Intermodal Shipping Terminal at Minto

47. The Macarthur Intermodal Shipping Terminal Pty Ltd (MIST) facility is located approximately 35 kilometres south west of the Sydney CBD and is adjacent to the main Sydney to Melbourne rail line.
48. The MIST facility was not considered to be in a position to provide an effective competitive constraint on the merged entity for similar reasons to Villawood. The facility is principally involved in the import/export full container haulage business. While it has arrangements in place with some of its customers to move empty containers back to the port by rail, the ACCC's inquiries revealed that the MIST facility is only likely to accommodate these in small numbers currently and in the future.
49. The ACCC's inquiries also revealed that completing a Container park-Exporter-Port circuit on a timely basis from Minto would be particularly difficult for rail operators serving regional exporters located north of Sydney as it is located a significant distance south of the main freight routes heading to the north of Sydney, and competes with the passenger rail network.
50. In addition, the ACCC's inquiries indicated that although the South Sydney Freight Line would be nearby and would reduce the time of travelling through the Sydney rail network, this would only be a single line and freight services would still be competing with interstate freight services to get onto the line.
51. In forming its views on Villawood and MIST, the ACCC noted that it is necessary to align the rail paths which permit trains to travel through the Sydney rail network, with the windows provided by stevedores for rail operators to load and unload containers. Given the congestion both at the stevedoring terminals and on the Sydney rail network, the ACCC concluded that it was unlikely that rail operators could readily obtain these inputs, and that this would limit their ability to provide the same levels of service as is currently possible from the container parks at Cooks River and Port Botany. Customers of the merger parties indicated that a reduction in levels of service would not be acceptable to exporters throughout New South Wales as it is necessary for them to align with shipping timetables for the export of their cargo.

Barriers to entry and expansion – empty container parks with rail facilities

52. The ACCC found that for a new entrant to establish a container park with sufficient services to provide an effective competitive constraint on the merged entity, it would require substantial blocks of land to compete effectively, and in order to constrain the merged entity, this land would need to be located close to rail sidings in a suitable position along the Sydney rail network.
53. While the ACCC found that there was one potential site for a facility that could possibly meet these requirements, in particular, the proposed new facility at Enfield, it found that entry of this facility would not be sufficiently timely to provide an effective competitive constraint on the merged entity. The ACCC

understands that in 2012 a new facility at Enfield will be available for empty container storage. Market inquiries indicated that this facility will offer a potentially viable alternative container park with rail access. Market inquiries indicated that Enfield is another well-positioned rail terminal facility with regard to its proximity to dedicated freight rail lines, which facilitate rail transport in and out of Sydney without large diversions onto the busy passenger network.⁸

54. However, the ACCC noted that the timing of such entry was uncertain and that it would be more than two years before such entry was likely to occur. The ACCC considered the likely impact of the proposed acquisition in this context. As such, the ACCC considered the barriers to entry for establishing a new container park with rail transport facilities in Sydney within a one to two year timeframe.
55. The ACCC's inquiries indicated that further potential new entry on a sufficient scale was unlikely due to insufficient land available in Sydney to construct new sites for use as container parks with rail facilities. This factor, combined with the required interaction between freight trains and passenger services, were found to be major impediments to meeting demand for transporting cargo by rail.
56. As such, the ACCC considered that there are high barriers to entry for establishing a container park with rail facilities in Sydney and that entry was not timely, sufficient or likely to impose an effective competitive constraint on the merged entity post-merger.

Summary

57. As outlined above, the ACCC found that the proposed acquisition would significantly increase the level of concentration in the market for the supply of container storage services with rail transport facilities in Sydney. It was found that post-acquisition, there would be no comparable substitutes readily available for the storage of empty containers to be transported by rail. Further the ACCC found that it was unlikely that there would be sufficient entry or expansion of existing facilities to provide an effective competitive constraint on the merged entity post-merger. The ACCC was therefore concerned that post-acquisition POTA would have the ability to significantly and sustainably increase prices or exercise market power in other ways, such as non-price terms and conditions for the use of the MSC Cooks River and POTA Port Botany container parks.

Market 2: Supply of empty container storage in the Port Botany precinct

58. Given the finding in market 1, the ACCC did not need to reach a concluded view as to whether the proposed acquisition would be likely to result in a substantial lessening of competition in market 2.

Market 3: Supply of container transportation by rail in New South Wales

59. The ACCC considered that the proposed acquisition was likely to raise serious competition issues in relation to the market for the transportation of containers by rail in New South Wales.

⁸ It is not known who will be the operator of the proposed container parks at Enfield.

60. The ACCC was concerned that as a result of the acquisition, POTA would have an increased ability and incentive to discriminate against rail operators who compete with it to deliver cargo by rail. The ACCC considered that POTA could discriminate against its competitors in this market on the basis of price – as well as non-price mechanisms such as self-preferential dealings – for the use of its rail facilities at Port Botany.
61. The ACCC was concerned that in the absence of alternatives, competing rail operators may be placed at a significant disadvantage in competing against POTA for the rail transportation of containers in New South Wales.
62. However, the ACCC did not need to reach a concluded view on this issue. The ACCC decided that the concerns raised in the market for the supply of container storage services with rail transport facilities were sufficient to conclude that the proposed acquisition was likely to contravene section 50 of the Act.

Conclusion

63. On the basis of the above the ACCC formed the view that the proposed acquisition of Maritime Container Services Pty Ltd by POTA NSW Pty Ltd would be likely to result in a substantial lessening of competition in the market for the supply of container storage services with rail transport facilities in Sydney, in contravention of section 50 of the Act.