

# Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Transurban Limited (ABN 96 098 143 410); The Hills Motorway Limited (ACN 062 329 828); LCT-MRE Pty Limited (ACN 143 401 870); Transurban CCT Pty Ltd (ACN 166 658 448); Sydney Roads Limited (ACN 119 323 901); Transurban NCX M7 Hold Co Pty Ltd (ACN 168 889 245); M5 Holdings Pty Ltd (ACN 073 922 620); Transurban STP AT Pty Ltd (ACN 627 241 678) as Trustee of the Transurban STP Asset Trust; and Transurban STP Project Co Pty Ltd (ACN 627 241 696)

**Undertaking to the Australian Competition and Consumer Commission**  
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## **1 Person giving the Undertaking**

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by each of the following entities:

Transurban Limited (ABN 96 098 143 410);

The Hills Motorway Limited (ACN 062 329 828);

LCT-MRE Pty Limited (ACN 143 401 870);

Transurban CCT Pty Ltd (ACN 166 658 448);

Sydney Roads Limited (ACN 119 323 901);

Transurban NCX M7 Hold Co Pty Ltd (ACN 168 889 245);

M5 Holdings Pty Ltd (ACN 073 922 620);

Transurban STP AT Pty Ltd (ACN 627 241 678) as Trustee of the Transurban STP Asset Trust; and

Transurban STP Project Co Pty Ltd (ACN 627 241 696),

(together the "**Undertaking Signatories**").

- 1.2 A reference in this Undertaking to the "Undertaking Signatories" refers to each of them both jointly and severally.

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## **2 Background**

### **Parties to the Proposed Acquisition**

- 2.1 Sydney Transport Partners consortium (STP Consortium) is a consortium comprising Transurban Group, AustralianSuper Pty Ltd (AustralianSuper), Canada Pension Plan Investment Board (CPPIB) and Tawreed Investments Limited (Tawreed).
- 2.2 Transurban Group is listed on the Australian Securities Exchange (ASX), and is Australia's largest toll road operator. Transurban Group's operations include the development, ownership, management and operation of toll roads in Australia and North America. Transurban holds at least a 50 per cent interest in 15 of 19 toll road concessions in Australia and seven of nine concessions in NSW.
- 2.3 AustralianSuper acts solely as the corporate trustee for AustralianSuper industry superannuation fund. The trustee company is owned equally by ACTU Super Shareholding Pty Ltd and Australian Industry Group.
- 2.4 CPPIB is a Canadian federal crown corporation established pursuant to the Canada Pension Plan Investment Board Act.

- 2.5 Tawreed is a wholly owned subsidiary of the Abu Dhabi Investment Authority.
- 2.6 Sydney Motorway Corporation Pty Ltd (SMC), through its Related Bodies Corporate, operates and is developing a network of toll roads in Sydney comprising the WestConnex Stages. SMC's shares are held by the NSW Government.

#### **The Proposed Acquisition**

- 2.7 WestConnex is a partially completed motorway development in Sydney, NSW. WestConnex comprises approximately 33 kilometres of interconnected motorways and road upgrades, which will improve and extend the M4 motorway from Parramatta to Sydney Airport and duplicate the M5 East corridor.
- 2.8 SMC currently holds, through a trust structure, the three concessions to build, operate and toll the WestConnex motorways.
- 2.9 The NSW Government is conducting a competitive tender process for WestConnex. The winning bidder will acquire a 51 per cent interest in the three WestConnex concessions.
- 2.10 The STP Consortium is participating in the tender process for WestConnex and is therefore proposing to acquire a 51 per cent interest in the three WestConnex concessions (the Proposed Acquisition).

#### **The ACCC's review**

- 2.11 On 26 February 2018, the ACCC commenced its public review of the Proposed Acquisition.
- 2.12 On 17 May 2018, the ACCC published a Statement of Issues that raised preliminary concerns that the Proposed Acquisition may substantially lessen competition for future toll road concessions in NSW.
- 2.13 The ACCC undertook further market inquiries and considered information provided by the STP Consortium, the NSW Government and a range of industry participants and others. The purpose of the ACCC's inquiries was to assess whether the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market in Australia in contravention of section 50 of the Act.

#### **The ACCC's competition concerns**

- 2.14 The ACCC concluded that, in the absence of the Undertaking, the Proposed Acquisition raises competition concerns that may have the effect, or be likely to have the effect, of substantially lessening competition in the market for acquiring future new toll road concessions in NSW.
- 2.15 The ACCC's concerns are that:
  - (a) Transurban Group, through its interests across an extensive network of toll road concessions in NSW, has competitive advantages compared with firms without an established network who face barriers to competing successfully for future NSW toll road concessions. These competitive advantages would be enhanced through the Proposed Acquisition;
  - (b) those competitive advantages include:

- (i) access to traffic data not generally available;
  - (ii) significant traffic modelling and forecasting capability; and
  - (iii) an enhanced ability to satisfy the NSW Government's uniqueness criterion for assessing unsolicited proposals that, provides Transurban with an enhanced ability to be successful with unsolicited proposals for new toll road concessions; and
- (c) in the absence of the Proposed Acquisition, an alternative acquirer of WestConnex would establish a significant presence in NSW for the operation of toll roads, with comparable competitive advantages to Transurban Group, and would have the ability to compete aggressively against Transurban for Future NSW Toll Road Concessions.

#### The Undertaking remedy

- 2.16 The Transurban Group does not consider that the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition for future toll road concessions. However, to address the concern that has been expressed to the ACCC, the Transurban Group has offered this Undertaking pursuant to section 87B of the Act.
- 2.17 The objective of this Undertaking is to address the ACCC's competition concerns as set out above that would otherwise arise as a consequence of the Proposed Acquisition. In particular, the objective of this Undertaking is to provide other bidders who compete for future toll road concessions in NSW with access to traffic count data that Transurban Group has as a result of its extensive interests in toll road concessions by ensuring that any entity which is a potential bidder or bidder for a Future NSW Toll Road Concession (including its advisors and consultants) has free and timely access to, and a right to use, Specified Traffic Data collected by Transurban Group from the Transurban NSW Toll Roads sufficient to support the development and operation of a model for forecasting future traffic and revenue in respect of that Future NSW Toll Road Concession.
- 2.18 The Undertaking aims to achieve this objective by placing obligations on Transurban to:
- (a) publish Specified Traffic Data on a quarterly basis pursuant to clause 5;
  - (b) update the Specified Traffic Data, in the event the NSW Government announces a Future NSW Toll Road Concession Sale Process six or more weeks before Specified Traffic Data is due to be published under the quarterly process, pursuant to clause 6;
  - (c) correct any identified errors in the published Specified Traffic Data, pursuant to the process in clause 7;
  - (d) provide for the effective oversight of Transurban's compliance with this Undertaking; and
  - (e) provide for regular reviews of this Undertaking to ensure that the Undertaking continues to meet the Undertaking Objectives as described in this clause 2.

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### **3 Commencement of this Undertaking**

3.1 This Undertaking comes into effect when:

- (a) this Undertaking is executed by each Undertaking Signatory; and
  - (b) this Undertaking so executed is accepted by the ACCC,
- (the "Commencement Date").

**Note:** The timing of operative provisions are linked to the **Control Date**. **Control Date** is defined in the Dictionary in Part 1 of Schedule 1.

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### **4 Cessation of Ongoing Obligations**

#### **Withdrawal**

4.1 This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to the withdrawal of this Undertaking in accordance with section 87B of the Act.

#### **Revocation**

4.2 The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

#### **Waiver**

4.3 The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or amend the date by which any such obligation is to be satisfied.

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### **5 Publication of Specified Traffic Data**

5.1 No later than two months after the Control Date, Transurban must publish Specified Traffic Data for each Transurban NSW Toll Road other than for WestConnex on the Platform for the period commencing on the date that is 10 years prior to the Control Date and ending on the Control Date, to the extent that:

- (a) Specified Traffic Data was collected at any time during that period by electronic data collection systems installed on such Transurban NSW Toll Roads; and
- (b) that Specified Traffic Data has been stored, recorded and retained and is in the possession or under the control of Transurban Group as at the Control Date.

5.2 During the first 12 months from the Control Date, Transurban must publish Specified Traffic Data on the Platform no later than:

- (a) 30 June, covering the immediately prior three month period from 1 January to 31 March;

- (b) 2 Business Days after Transurban makes its Annual Disclosure, covering the immediately prior three month period from 1 April to 30 June;
    - (c) 31 December, covering the immediately prior three month period from 1 July to 30 September; and
    - (d) 2 Business Days after Transurban makes its Half-Year Disclosure, covering the immediately prior three month period from 1 October to 31 December.
- 5.3 After 12 months from the Control Date, Transurban must publish Specified Traffic Data on the Platform no later than:
- (a) 30 June, covering the immediately prior three month period from 1 January to 31 March;
    - (b) 2 Business Days after Transurban makes its Annual Disclosure, covering the immediately prior three month period from 1 April to 30 June;
    - (c) 31 December, covering the immediately prior three month period from 1 July to 30 September; and
    - (d) 2 Business Days after Transurban makes its Half-Year Disclosure, covering the immediately prior three month period from 1 October to 31 December.
- 5.4 The Specified Traffic Data that Transurban must publish in accordance with clause 5.2 or clause 5.3 shall be:
- (a) for each Transurban NSW Toll Road (which includes, for the avoidance of any doubt, WestConnex and each new toll road in NSW in which Transurban Group has any ownership interest (whether directly or indirectly) at any time after the Control Date), other than the Non-Controlled Transurban NSW Toll Road, the Specified Traffic Data as described in paragraph (a) of that definition in the Dictionary; and
    - (b) for the Non-Controlled Transurban NSW Toll Road, the Specified Traffic Data as described in paragraph (b) of that definition in the Dictionary.
- 5.5 As from the Control Date, Transurban must not:
- (a) acquire any ownership interest (whether directly or indirectly) in a Future NSW Toll Road Concession, unless Transurban has the right to access and publish Specified Traffic Data as described in paragraph (a) of the definition of that expression in the Dictionary for that relevant Future NSW Toll Road Concession;
    - (b) agree to any amendment to an agreement relating to a Future NSW Toll Road Concession or Transurban NSW Toll Road that would or would be likely to limit Transurban's right to access and publish Specified Traffic Data as described in paragraph (a) of the definition of that expression in the Dictionary for that relevant Future NSW Toll Road Concession or Transurban NSW Toll Road; or
    - (c) change any existing ownership interest (whether directly or indirectly) in any Transurban NSW Toll Road where that change would limit

Transurban's right to access and publish Specified Traffic Data as described in paragraph (a) of the definition of that expression in the Dictionary for that relevant Future NSW Toll Road Concession.

- 5.6 Transurban must notify the Approved Independent Auditor at least 10 Business Days before the execution by any entity in Transurban Group of the transaction and project documents for a Future NSW Toll Road Concession.
- 5.7 As from the Control Date, the Undertaking Signatories must take necessary steps to:
- (a) gain access to Specified Traffic Data as defined in paragraph (a) of the definition of that expression;
  - (b) obtain the right to publish Specified Traffic Data as defined in paragraph (a) of the definition of that expression; and
  - (c) publish Specified Traffic Data as defined in paragraph (a) of the definition of that expression in accordance with this Undertaking,

for the Non-Controlled Transurban NSW Toll Road.

In the event that Transurban publishes Specified Traffic Data as defined in paragraph (a) of the definition of that expression for the Non-Controlled Transurban NSW Toll Road for a period of 3 months pursuant to clause 5.2 or clause 5.3, Transurban shall not be required to publish Specified Traffic Data as defined in paragraph (b) of the definition of that expression in the Dictionary for the Non-Controlled Transurban NSW Toll Road for that period of 3 months..

- 5.8 As from the Control Date, Transurban must publish Specified Traffic Data in accordance with this clause 5 in an electronically downloadable format including in each of .csv format, SQLite forma and Excel.
- 5.9 When publishing Specified Traffic Data as described in paragraph (b) of the definition of that expression in the Dictionary in accordance with this clause 5, Transurban must publish the calculation method used to generate that Specified Traffic Data, including a description of each data term for that Specified Traffic Data, specification of the relevant date range period, and any assumptions used to arrive at that Specified Traffic Data by the application of that calculation method.
- 5.10. Transurban must not publish Specified Traffic Data where it is aware that some or all of the Specified Traffic Data is or is likely to be inaccurate or misleading.
- 5.11 Nothing in this clause 5 shall require Transurban to publish Specified Traffic Data if the publishing of the Specified Traffic Data would cause a member of the Transurban Group to be in breach of:
- (a) Privacy Obligations; or
  - (b) continuous disclosure obligations under the Corporations Act or the ASX Listing Rules, where the member of the Transurban Group is a disclosing entity (as that expression is defined in the Corporations Act).

If these circumstances arise, Transurban must notify the Approved Independent Auditor within 2 Business Days.



- 5.12 As from the Control Date, subject to clause 7, if Transurban becomes aware that Specified Traffic Data is incomplete, Transurban must publish on the Platform a notice identifying the extent to which the Specified Data is incomplete within 10 Business Days of becoming aware of the issue.

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## **6 Interim publication of Specified Traffic Data**

- 6.1 In the event that at any time after the Control Date:

- (a) the NSW Government formally announces a Future NSW Toll Road Concession Sale Process in relation to a Future NSW Toll Road Concession; and
- (b) the announcement occurs six or more weeks before Transurban is due to publish Specified Traffic Data in accordance with clause 5;

Transurban must:

- (c) notify the ACCC and the Approved Independent Auditor of the announcement within 5 Business Days of the announcement;
- (d) compile and prepare the Specified Traffic Data for the period between the date of the last Specified Traffic Data published pursuant to clause 5 and the date of the announcement; and
- (e) publish that Specified Traffic Data on the Platform within 10 Business Days of the announcement.

- 6.2 Transurban must not publish Specified Traffic Data where it is aware that some or all of the Specified Traffic Data is or is likely to be inaccurate or misleading.

- 6.3 Nothing in this clause 6 shall require Transurban to publish Specified Traffic Data if the publishing of the Specified Traffic Data would cause a member of the Transurban Group to be in breach of:

- (a) Privacy Obligations; or
- (b) continuous disclosure obligations under the Corporations Act or the ASX Listing Rules, where the member of the Transurban Group is a disclosing entity (as that expression is defined in the Corporations Act).

If this circumstance arises, Transurban must notify the Approved Independent Auditor within 2 Business Days.

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## **7 Specified Traffic Data Error**

- 7.1 In the event that a person identifies an error (which includes identification of an omission), or forms the view that there is an error, in any Specified Traffic Data published by Transurban on the Platform after the Control Date, that person may give written notice to the Approved Independent Auditor setting out particulars of that error (or the reasons for the view that there is an error) (**Error Notice**).

- 7.2 If the Error Notice identifies a potential error that has not already been notified in a separate Error Notice, the Approved Independent Auditor, no later than 5

Business Days after receiving that Error Notice, shall give written notice to Transurban of the particulars set out in that Error Notice ensuring that the identity of the person who gave the Error Notice to the Approved Independent Auditor is not disclosed to Transurban.

- 7.3 No later than 15 Business Days after receiving the notice from the Approved Independent Auditor pursuant to clause 7.2, Transurban must:
- (a) in the event that Transurban rejects the existence of an error as set out in that notice from the Approved Independent Auditor, provide to the Approved Independent Auditor reasons in writing for that rejection that are sufficiently detailed in the view of the Approved Independent Auditor; or
  - (b) in the event that Transurban confirms the existence of an error as set out in that notice from the Approved Independent Auditor:
    - (i) re-publish on the Platform the relevant Specified Traffic Data corrected to eliminate that error; and
    - (ii) publish a notice on the Platform that identifies the error and explains how the error was corrected.
- 7.4 In the event that Transurban identifies an error in any Specified Traffic Data published pursuant to clause 5, other than pursuant to an Error Notice, Transurban must:
- (a) re-publish that Specified Traffic Data on the Platform corrected to eliminate that error;
  - (b) provide that Specified Traffic Data with that error eliminated to the ACCC for the ACCC to provide to that Registered Bidder (if relevant); and
  - (c) publish a notice on the Platform that identifies the error and explains the methodology used to correct the error.

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## **8 ACCC Review**

### **Review process**

- 8.1 The ACCC may:
- (a) after the second anniversary of the Control Date and thereafter not more than once in any five year period; or
  - (b) upon any significant change to:
    - (i) the method of collection; or
    - (ii) if applicable at the relevant time, the content or analysis, of Specified Traffic Data by Transurban Group where that change impacts, or is likely to impact, upon the Undertaking Objectives;

- review the terms of this Undertaking to consider whether any more changes to the terms of this Undertaking are necessary given the Undertaking Objectives.
- 8.2 On deciding to conduct a review pursuant to clause 8.1, the ACCC may invite submissions from Transurban and other parties with an interest in the operation of the Undertaking on whether any changes to the terms of this Undertaking are necessary in order to ensure that this Undertaking continues to achieve the Undertaking Objectives.
- 8.3 The factors to which the ACCC may have regard in making a decision whether to review pursuant to clause 8.1 or in conducting the review, include but are not limited to:
- (a) the Audit Reports prepared by the Approved Independent Auditor in accordance with clause 9.11;
  - (b) Error Notices lodged pursuant to clause 7 and the manner in which the error issues were resolved under clause 7;
  - (c) any change in circumstances since the Commencement Date or the last review conducted pursuant to clause 8.1;
  - (d) any complaints made to the ACCC or Approved Independent Auditor regarding Transurban's compliance with this Undertaking, and the outcomes of any subsequent investigations; and
  - (e) any submissions from parties with an interest in the operation of the Undertaking.

#### **Amendment Notice**

- 8.4 Following a review in accordance with clauses 8.1, 8.2 and 8.3, if the ACCC is satisfied that a variation is necessary to ensure that the Undertaking continues to achieve the Undertaking Objectives, the ACCC may give the Undertaking Signatories an amendment notice (**Amendment Notice**) which sets out any changes that the ACCC considers should be made to the Undertaking and an explanation for those changes. The ACCC will, subject to removing any confidential information of Transurban or any other person;
- (a) publish the Amendment Notice on the ACCC's website; and
  - (b) publicly consult on the Amendment Notice.

#### **Proposed Variations to this Undertaking following ACCC review**

- 8.5 Following any consultation on the Amendment Notice, if the ACCC decides that changes to this Undertaking are necessary in order to ensure that the Undertaking continues to achieve the Undertaking Objectives, the ACCC will provide the Undertaking Signatories with a notice setting out the terms of a proposed variation to the Undertaking which is acceptable to the ACCC (**Variation Notice**).
- 8.6 The Undertaking Signatories must:
- (a) consult in good faith with the ACCC with a view to proposing variations to this Undertaking necessary in order to ensure that the Undertaking

continues to achieve the Undertaking Objectives and which will have regard to the matters stated in the Variation Notice; and

- (b) notify the ACCC within 90 days of receiving a Variation Notice if they agree to seek a variation to the Undertaking:
  - (i) in the form set out in the Variation Notice; or
  - (ii) in a form agreed between the ACCC and the Undertaking Signatories following the consultations undertaken in accordance with clause 8.6(a); or
  - (iii) otherwise, in a form that the Undertaking Signatories consider will be sufficient in order to ensure that the Undertaking continues to achieve the Undertaking Objectives.

8.7 If the Undertaking Signatories notify the ACCC that they agree to seek a variation to the Undertaking in accordance with clause 8.6(b)(i) or clause 8.6(b)(ii), at that same time, the Undertaking Signatories must provide a proposed variation to the Undertaking to the ACCC for the purpose of seeking ACCC consent in accordance with section 87B(2) of the Act.

#### **Referral to expert determination**

8.8 If the Undertaking Signatories:

- (a) do not agree to seek a variation to this Undertaking in accordance with clause 8.6(b)(i) or clause 8.6(b)(ii); or
- (b) intend to seek a variation to this Undertaking in accordance with clause 8.6(b)(iii) ,

(Variation Dispute), they must provide written notice to the ACCC of the Variation Dispute, including:

- (c) written reasons explaining why:
  - (i) the Undertaking Signatories do not propose to seek a variation to the Undertaking; or
  - (ii) the Undertaking Signatories intend to seek a variation to this Undertaking in accordance with clause 8.6(b)(iii);
- (d) the identity of a proposed independent expert who will be appointed to conduct the expert determination (**Proposed Independent Expert**); and
- (e) details of the Proposed Independent Expert's relevant qualifications and experience necessary to carry out the expert determination independently of the Undertaking Signatories.

(Variation Dispute Notice).

8.9 The Proposed Independent Expert must not be:

- (a) an employee or officer of any of the Undertaking Signatories or any other entity that holds an interest in any toll road in which an Undertaking Signatory also has an interest, whether current or in the past 3 years;

- (b) a professional adviser of any of the Undertaking Signatories or any other entity that holds an interest in any toll road in which an Undertaking Signatory also has an interest, whether current or in the past 3 years;
  - (c) a person who has a contractual relationship with any of the Undertaking Signatories or any other entity that holds an interest in any toll road in which an Undertaking Signatory also has an interest; or
  - (d) an employee or contractor of a firm or company referred to in clause 8.9(c).
- 8.10 Within 10 Business Days of the Undertaking Signatories providing a Variation Dispute Notice to the ACCC, the ACCC will provide written notice to the Undertaking Signatories informing them of its decision to agree or not agree to the Proposed Independent Expert identified pursuant to clause 8.8(d).
- 8.11 If the Undertaking Signatories and the ACCC cannot agree on an independent expert to be appointed to determine the Variation Dispute within 20 Business Days of the Undertaking Signatories providing a Variation Dispute Notice to the ACCC, then the President of the NSW Bar Council will determine the identity of the independent expert and the Variation Dispute will be referred to that independent expert for determination.
- 8.12 The cost of the independent expert will be borne by the Undertaking Signatories.
- 8.13 The Undertaking Signatories will use best endeavours to ensure that the independent expert is provided with:
- (a) all relevant information available to Transurban in relation to the Variation Dispute; and
  - (b) all reasonable assistance, in a timely manner, to enable the expert to make a determination in relation to the Variation Dispute Notice within 60 Business Days of referral to that expert.
- 8.14 The independent expert will decide whether the ACCC's proposed variation to the Undertaking as set out in the Variation Notice is necessary to ensure that the Undertaking continues to meet the Undertaking Objectives.
- 8.15 If the independent expert decides that the ACCC's proposed variation to the Undertaking as set out in the Variation Notice (with such minor modifications as the expert considers necessary) is necessary to ensure that the Undertaking continues to meet the Undertaking Objectives, the Undertaking Signatories must proffer a proposed variation in accordance with the ACCC's proposed variation to the ACCC for the purpose of seeking ACCC consent in accordance with section 87B(2) of the Act within 5 Business Days of the independent expert's decision.
- 8.16 If the independent expert decides that a variation is necessary to ensure that the Undertaking continues to meet the Undertaking Objectives, but this variation differs materially from the ACCC's proposed variation (including, but not limited to, a variation consistent with a variation to which clause 8.6(b)(iii) applies), the Undertaking Signatories must proffer a proposed variation in accordance with the expert's proposed variation to the ACCC for the purpose of seeking ACCC consent in accordance with section 87B(2) of the Act within 5 Business Days of the independent expert's decision. The ACCC may in its complete discretion decide whether or not to consent to the variation proffered by the Undertaking Signatories.

- 8.17 If the independent expert decides that a variation is not necessary to ensure that the Undertaking continues to meet the Undertaking Objectives, the ACCC's Variation Notice lapses.
- 8.18 The independent expert's decision will be final and binding on the Undertaking Signatories and they must take all steps to ensure that the independent expert's decision is fulfilled or otherwise given effect to.
- 8.19 Nothing in this clause 8 prevents the ACCC from investigating a potential breach of this Undertaking or from applying to the Court for orders pursuant to section 87B of the Act in respect of a breach of this Undertaking at any time.

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## **9 Independent Audit**

### **Obligation to appoint an Approved Independent Auditor**

- 9.1 Transurban must appoint and maintain, as from the Control Date, an Approved Independent Auditor to audit and report upon:
- (a) the Undertaking Signatories' compliance with this Undertaking; and
  - (b) compliance by other STP Consortium members with undertakings accepted by the ACCC under section 87B of the Act from STP Consortium members in relation to the Proposed Acquisition.

### **Process for approving a Proposed Independent Auditor**

- 9.2 At least 15 Business Days before the Control Date, Transurban must provide the ACCC with a notice for a Proposed Independent Auditor in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Auditor Notice**), including draft terms of appointment and a draft audit plan.
- 9.3 If clauses 9.17, 9.18 or 9.19 apply, Transurban must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs, otherwise clause 9.8 applies.
- 9.4 The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- 9.5 Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Auditor, the factors to which the ACCC may have regard include whether the:
- (a) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor;
  - (b) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of the Undertaking Signatories;
  - (c) draft terms of appointment and the draft audit plan are consistent with this Undertaking; and
  - (d) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

#### **Appointment of the Approved Independent Auditor**

- 9.6 After receiving a written notice from the ACCC of its approval of a Proposed Independent Auditor, the draft terms of appointment and draft audit plan, Transurban must by the Control Date:
- (a) appoint the person approved by the ACCC as the Approved Independent Auditor on the Approved Terms of Appointment; and
  - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

#### **Failure to appoint**

- 9.7 If the Approved Independent Auditor has not been appointed:
- (a) by the Control Date;
  - (b) within 15 Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clause 9.17, 9.18, or 9.19; or
  - (c) if the ACCC has not received a Proposed Independent Auditor Notice pursuant to clause 9.2;
- then clause 9.8 applies.
- 9.8 The ACCC at its absolute discretion may:
- (a) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan; and/or
  - (b) direct Transurban to appoint a person who the ACCC has deemed is an Approved Independent Auditor.

#### **Obligations and powers of the Approved Independent Auditor**

- 9.9 Transurban must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:
- (a) maintain his or her independence from the Undertaking Signatories, apart from appointment to the role of Approved Independent Auditor, including not form any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with an Undertaking Signatory for the period of his or her appointment;
  - (b) conduct compliance auditing according to the Approved Audit Plan;
  - (c) provide the following reports directly to the ACCC:
    - (i) a scheduled written Audit Report as described in clause 9.11; and
    - (ii) an immediate report of any issues that arise in relation to the performance of his or her functions as Approved Independent

Auditor or in relation to compliance with this Undertaking by any person named in this Undertaking; and

- (d) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Auditor under this Undertaking.

9.10 Transurban must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:

- (a) access the facilities, sites or operations of Transurban as required by the Approved Independent Auditor;
- (b) access any information or documents that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC;
- (c) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor;
- (d) discuss any enquiries with any Transurban personnel whom the Approved Independent Auditor determines is capable of assisting the Approved Independent Auditor to obtain information that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor;
- (e) observe the process of Transurban preparing the Specified Traffic Data; and
- (f) conduct a re-performance of producing Specified Traffic Data on a test basis with a sample set of:
  - (i) Transurban's corresponding traffic data set; or
  - (ii) in the event that Transurban possesses at any time in the future another form of traffic data set for the Transurban NSW Toll Roads that would allow a comparison to be made, that traffic data set.

#### **Compliance Audit**

9.11 The Approved Independent Auditor must conduct an audit and prepare a detailed report (**Audit Report**) that includes:

- (a) the Approved Independent Auditor's procedures in conducting the audit, or any change to audit procedures and processes since the previous Audit Report;
- (b) a reasonable assurance audit (or equivalent Australian audit standard) of the Undertaking Signatories' compliance with this Undertaking;
- (c) an audit of other STP Consortium members' compliance with undertakings accepted by the ACCC under section 87B of the Act from STP Consortium members in relation to the Proposed Acquisition;



- (d) the results of a comprehensive check undertaken by the Approved Independent Auditor of the accuracy of the Specified Traffic Data published by Transurban pursuant to clause 5.2 or clause 5.3 during the period to which that Audit Report relates, including by cross-referencing with other datasets for any discrepancies;
- (e) the results of an audit conducted by the Approved Independent Auditor of the processes used by Transurban for collecting and publishing Specified Traffic Data pursuant to clause 5.2 or clause 5.3 during the period to which that Audit Report relates;
- (f) any changes to:
  - (i) the:
    - (A) method of collection; or
    - (B) if applicable at the relevant time, the content or analysis,
 of Specified Traffic Data by Transurban Group; or
  - (ii) the calculation method used by Transurban to generate Specified Traffic Data as described in paragraph (b) of the definition of that expression in the Dictionary and published in accordance with clause 5.9;
- (g) identification of any areas of uncertainty or ambiguity in the Approved Independent Auditor's interpretation of any obligations contained in this Undertaking;
- (h) identification of:
  - (i) any Extraordinary Event of which the Approved Independent Auditor has been informed by Transurban and which affects the period to which that Audit Report relates;
  - (ii) the reasons given by Transurban for the occurrence or happening of that Extraordinary Event; and
  - (iii) the effect (if any) of that Extraordinary Event upon:
    - (A) any Undertaking Signatory; and
    - (B) compliance with this Undertaking by any Undertaking Signatory,
 at any time during the period to which that Audit Report relates;
- (i) all of the reasons for the conclusions reached in the Audit Report;
- (j) any qualifications made by the Approved Independent Auditor in forming his or her views;
- (k) any recommendations by the Approved Independent Auditor to improve:
  - (i) the Approved Audit Plan;

- (ii) the integrity of the auditing process;
    - (iii) the Undertaking Signatories' processes in relation to compliance with this Undertaking; and
    - (iv) the Undertaking Signatories' compliance with this Undertaking;
  - (l) the implementation and outcome of any prior recommendations by the Approved Independent Auditor; and
  - (m) identification of any other matters that in the opinion of the Independent Auditor may affect the achievement of the Undertaking Objectives.
- 9.12 In preparation of an Audit Report, and making any recommendations in an Audit Report, the Approved Independent Auditor must consider:
- (a) any Extraordinary Event of which the Approved Independent Auditor has been informed by Transurban and which affects the period to which that Audit Report relates;
  - (b) the reasons given by Transurban for the occurrence or happening of that Extraordinary Event; and
  - (c) the effect (if any) of that Extraordinary Event upon:
    - (i) any Undertaking Signatory; and
    - (ii) compliance with this Undertaking by any Undertaking Signatory, at any time during the period to which that Audit Report relates.
- 9.13 The Approved Independent Auditor is to provide an Audit Report to the ACCC and Transurban at the following times:
- (a) within 1 month after the first required date for publication of Specified Traffic Data pursuant to clause 5, at which time the Audit Report is to include the results of the initial audit and any recommended changes to the Approved Audit Plan, including the Approved Independent Auditor's proposed procedures and processes for conducting the audit (**Establishment Audit**);
  - (b) every 12 months after the date of provision of the Establishment Audit or last Audit Report pursuant to this clause 9.13 (as the case may be), until this Undertaking is revoked, withdrawn or terminated in accordance with this Undertaking;
  - (c) a final report due three months after the last report provided pursuant to clause 9.13(b).
- 9.14 Transurban must implement any recommendations made by the Approved Independent Auditor in Audit Reports, and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report or such other period as agreed in writing with the ACCC.
- 9.15 Transurban must comply with any direction of the ACCC in relation to matters arising from the Audit Report within 10 Business Days after being so directed (or such other period as agreed in writing with the ACCC).

#### **Transurban's obligations in relation to the Approved Independent Auditor**

9.16 Without limiting its obligations in this Undertaking, Transurban must:

- (a) comply with and enforce the Approved Terms of Appointment for the Approved Independent Auditor;
- (b) maintain and fund the Approved Independent Auditor to carry out his or her functions including:
  - (i) indemnifying the Approved Independent Auditor for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Auditor of his or her functions as the Approved Independent Auditor except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Auditor; and
  - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor; and
- (c) not interfere with, or otherwise hinder, the Approved Independent Auditor's ability to carry out his or her functions as the Approved Independent Auditor, including:
  - (i) directing Transurban personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 9;
  - (ii) providing access to the facilities, sites or operations of Transurban as required by the Approved Independent Auditor;
  - (iii) providing to the Approved Independent Auditor any information or documents he or she considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC; and
  - (iv) not requesting any information relating to the compliance audit from the Approved Independent Auditor without such a request having been approved by the ACCC; and
- (d) not appointing the Approved Independent Auditor, or have any Agreements with the Approved Independent Auditor, to utilise the Approved Independent Auditor's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Auditor ceases to act in the role of the Approved Independent Auditor.

#### **Resignation, revocation or termination of the Approved Independent Auditor**

9.17 Transurban must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor.

- 9.18 The ACCC may revoke an Approved Independent Auditor's status as the Approved Independent Auditor if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 9.19 The ACCC may approve any proposal by, or alternatively may direct, Transurban to terminate the appointment of the Approved Independent Auditor if in the ACCC's view the Approved Independent Auditor acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

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## **10 Notification of key dates and ACCC requests for information**

- 10.1 Transurban must notify the ACCC and the Approved Independent Auditor in writing of:
- (a) the anticipated date of the Control Date, at least five Business Days before that date; and
  - (b) the occurrence of the Control Date, within one Business Day of that date.
- 10.2 As from the Control Date, the ACCC may direct the Undertaking Signatories in respect of their compliance with this Undertaking to, and the Undertaking Signatories must:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
  - (b) produce documents and materials to the ACCC within the Undertaking Signatories' custody, power or control in the time and in the form requested by the ACCC; and/or
  - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 10.3 Any direction made by the ACCC under clause 10.2 will be notified to the Undertaking Signatories in accordance with clause 16.2.
- 10.4 In respect of the Undertaking Signatories' compliance with this Undertaking or the Approved Independent Auditor's compliance with its Approved Terms of Appointment, the ACCC may request the Approved Independent Auditor to:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
  - (b) produce documents and materials to the ACCC within the Approved Independent Auditor's custody, power or control in the time and in the form requested by the ACCC; and/or
  - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.

- 10.5 The Undertaking Signatories will use their best endeavours to ensure that the Approved Independent Auditor complies with any request from the ACCC in accordance with clause 10.4.
- 10.6 Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 10 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 10.7 The ACCC may in its discretion to be exercised in good faith:
- (a) advise the Approved Independent Auditor of any request made by it under this clause 10; and/or
  - (b) provide copies to the Approved Independent Auditor of any information furnished, documents and material produced or information given to it under this clause 10.
- 10.8 Nothing in this clause 10 requires the provision of information or documents in respect of which an Undertaking Signatory has a claim of legal professional or other privilege.

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## **11 Disclosure of this Undertaking**

- 11.1 The Undertaking Signatories and the ACCC agree that Schedule 2 will remain confidential.
- 11.2 The Undertaking Signatories acknowledge that the ACCC may provide the Approved Independent Auditor with a copy of this Undertaking which includes unredacted versions of Schedule 2.
- 11.3 The Undertaking Signatories acknowledge that the ACCC may, subject to clause 11.1:
- (a) make this Undertaking publicly available;
  - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
  - (c) from time to time publicly refer to this Undertaking.
- 11.4 Nothing in clause 11.1 or the confidential parts of this Undertaking referred to in clause 11.1 prevents the ACCC from disclosing such information as is:
- (a) required by law;
  - (b) permitted by section 155AAA of the Act; or
  - (c) necessary for the purpose of enforcement action under section 87B of the Act.
- 11.5 Nothing in clause 11.1 or the confidential parts of this Undertaking referred to in clause 11.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

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## **12 Obligation to procure**

- 12.1 Where the performance of an obligation under this Undertaking requires a Related Body Corporate of an Undertaking Signatory to take or refrain from taking some action, that Undertaking Signatory will procure that Related Body Corporate to take or refrain from taking that action.

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## **13 No Derogation**

- 13.1 This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by an Undertaking Signatory of any term of this Undertaking.
- 13.2 Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that an Undertaking Signatory does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

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## **14 Change of Control**

- 14.1 In the event that a Change of Control is reasonably expected to occur, Transurban must:
- (a) notify the ACCC of this expectation as soon as practicable; and
  - (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on Transurban pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified Transurban in writing that a section 87B undertaking under this clause is not required.

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## **15 Costs**

- 15.1 The Undertaking Signatories must pay all of their own costs incurred in relation to this Undertaking.

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## **16 Notices**

### **Giving Notices**

- 16.1 Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: [mergers@accc.gov.au](mailto:mergers@accc.gov.au)  
Attention: Executive General Manager  
Merger and Authorisation Review Division

With a copy sent to: [mergersru@accc.gov.au](mailto:mergersru@accc.gov.au)

Attention: Director, Remedies Unit  
Coordination and Strategy Branch  
Merger and Authorisation Review Division

- 16.2 Any notice or communication to an Undertaking Signatory pursuant to this Undertaking must be sent to:

Name: Group General Counsel

Address: Tower 1, Level 23, 727 Collins Street, Docklands VIC 3008 (and from November 2018, Tower 5, Level 29, 727 Collins Street, Docklands, VIC 3008)

Email Address: [legal@transurban.com](mailto:legal@transurban.com)

Fax number: Not applicable

Attention: Not applicable

With a copy sent to (if applicable):

Name: Company Secretary

Address: Tower 1, Level 23, 727 Collins Street, Docklands VIC 3008 (and from November 2018, Tower 5, Level 29, 727 Collins Street, Docklands, VIC 3008)

Email Address: [companysecretary@transurban.com](mailto:companysecretary@transurban.com)

Fax number: Not applicable

Attention: Not applicable

- 16.3 If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).

- 16.4 If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

#### Change of contact details

- 16.5 An Undertaking Signatory must notify the ACCC of a change to its contact details within three Business Days.

- 16.6 Any notice or communication will be sent to the most recently advised contact details and subject to clauses 16.3 and 16.4, will be taken to be received.

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## 17 Defined terms and interpretation

### Definitions in the Dictionary

- 17.1 A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or

- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

#### **Interpretation**

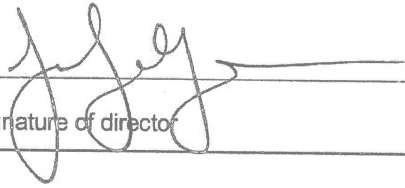
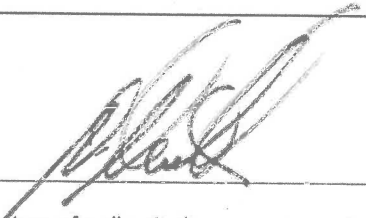
17.2 Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.



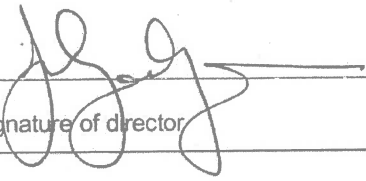
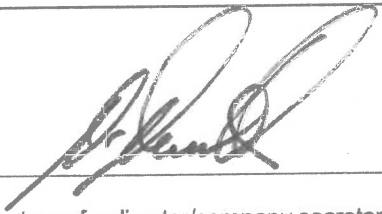
Executed by Transurban Limited (ABN 96 098 143 410) pursuant to section 127(1) of the Corporations Act 2001 by:

24

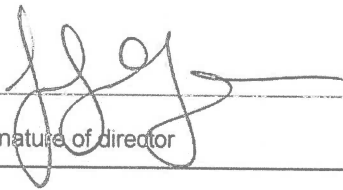

Executed by The Hills Motorway Limited (ACN 062 329 828) pursuant to section 127(1) of the Corporations Act 2001 by:

	
Signature of director	Signature of a director/company secretary
JULIE GALLIGAN	J. VARSANO.
Name of director (print)	Name of director/company secretary (print)
28 August 2018	28 August 2018
Date	Date

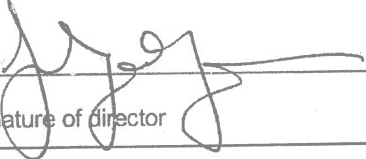
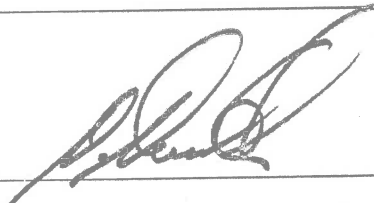
Executed by LCT-MRE Pty Limited (ACN 143 401 870) pursuant to section 127(1) of the Corporations Act 2001 by:

	
Signature of director	Signature of a director/company secretary
JULIE GALLIGAN	V. VASSALLO
Name of director (print)	Name of director/company secretary (print)
28 August 2018	28 August 2018
Date	Date

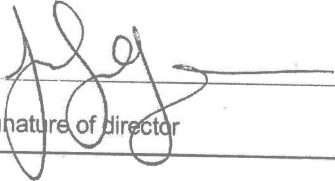

Executed by Transurban CCT Pty Ltd (ACN 166 658 448) pursuant to section 127(1) of the Corporations Act 2001 by:

	
Signature of director	Signature of a director/company secretary
JULIE GALLIGAN	J. VASSALLO
Name of director (print)	Name of director/company secretary (print)
28 August 2018	28 August 2018
Date	Date

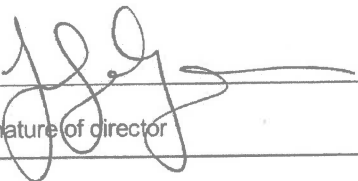
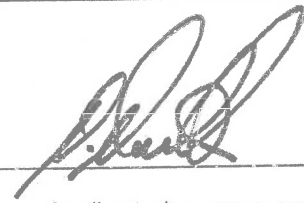
Executed by Sydney Roads Limited (ACN 119 323 901) pursuant to section 127(1) of the Corporations Act 2001 by:

	
Signature of director	Signature of a director/company secretary
JULIE GALLIGAN	V. VASSALLO.
Name of director (print)	Name of director/company secretary (print)
28 August 2018	28 August 2018
Date	Date

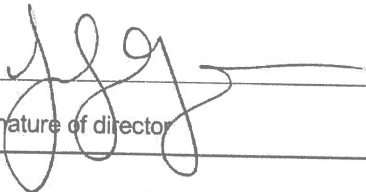
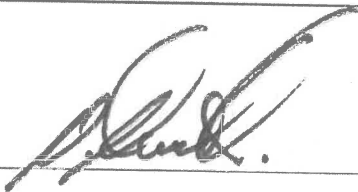

Executed by Transurban NCX M7 Hold Co Pty Ltd (ACN 168 889 245) pursuant to section 127(1) of the *Corporations Act 2001* by:

	
Signature of director	Signature of a director/company secretary
JULIE GALLIGAN	V. VASSALLO
Name of director (print)	Name of director/company secretary (print)
28 August 2018	28 August 2018
Date	Date

Executed by M5 Holdings Pty Ltd (ACN 073 922 620) pursuant to section 127(1) of the Corporations Act 2001 by:

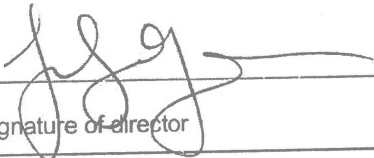
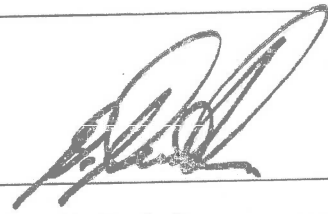
	
Signature of director	Signature of a director/company secretary
JULIE GALLIGAN	V. VASSANO.
Name of director (print)	Name of director/company secretary (print)
28 August 2018	28 August 2018
Date	Date

Executed by Transurban STP AT Pty Ltd (ACN 627 241 678) as Trustee of the  
Transurban STP Asset Trust pursuant to section 127(1) of the *Corporations Act 2001* by:

	
Signature of director	Signature of a director/company secretary
JULIE GALLIGAN	
Name of director (print)	Name of director/company secretary (print)
28 August 2018	28 August 2018
Date	Date



Executed by Transurban STP Project Co Pty Ltd (ACN 627 241 696) pursuant to section 127(1) of the Corporations Act 2001 by:

	
Signature of director	Signature of a director/company secretary
JULIE GALLIGAN	V. Vasiliou.
Name of director (print)	Name of director/company secretary (print)
28/8/18	28/8/18
Date	Date

Accepted by the Australian Competition and Consumer Commission pursuant  
to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

29/8/18

Date

and signed on behalf of the Commission:

O'Sing

Chairman

29/8/18

Date

# Undertaking to the Australian Competition and Consumer Commission

## Schedule 1                      Dictionary and interpretation

### 1.        Dictionary

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**ACCC** means the Australian Competition and Consumer Commission.

**Act** means the *Competition and Consumer Act 2010* (Cth).

**Agreement** means any contract, arrangement or understanding, including any contract, arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding.

**Annual Average Daily Traffic Data** means an aggregate measure of the average traffic on a road per day over a full year, consistent with the description, components and measures commonly accepted and applied by the industry in Australia from time to time.

**Annual Average Workday Traffic Data** means an aggregate measure of the average traffic on a road per workday over a full year, consistent with the description, components and measures commonly accepted and applied by the industry in Australia from time to time.

**Annual Disclosure** means a mandatory lodgement of financial reports for a financial year of a disclosing entity (as that expression is defined in the Corporations Act) as prescribed under the Corporations Act from time to time:

- (a)        to ASIC in accordance with the Corporations Act from time to time; and
- (b)        to ASX in accordance with the ASX Listing Rules from time to time.

**Approved Audit Plan** means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Auditor will audit and report upon compliance with this Undertaking.

**Approved Independent Auditor** means the person approved by the ACCC and appointed under clause 9 of this Undertaking.

**Approved Terms of Appointment** means the terms of appointment for the Approved Independent Auditor, as approved by the ACCC in accordance with the provisions of this Undertaking.

**Associated Entity** has the meaning given by section 50AAA of the Corporations Act.

**Amendment Notice** has the meaning given in clause 8.4 of this Undertaking.

**Audit Report** has the meaning given to it in clause 9.11 of this Undertaking.

**ASX** means ASX Limited.

**ASX Listing Rules** means the official list of the market for trading in securities in Australia operated by ASX and known as the Australian Securities Exchange.

**AustralianSuper** means AustralianSuper Pty Ltd (ACN 006 457 987) acting solely as the corporate trustee for AustralianSuper industry superannuation fund.

**Business Day** means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

**Change of Control** means:

- (a) the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of any Undertaking Signatory to any other person or entity that may impact compliance with this Undertaking in its entirety; or
- (b) the sale or transfer of any assets necessary, or which may be necessary, to enable the Undertaking Signatories to continue to comply with this Undertaking in its entirety.

**Commencement Date** has the meaning given in clause 3.1 of this Undertaking.

**Control Date** means the date of Completion of the sale and purchase agreement pursuant to which the WestConnex Sale Interest is transferred to the STP Consortium, should STP be the successful bidder. For the purposes of this definition, "Completion" has the meaning given to it in that sale and purchase agreement.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**CPIB** means Canada Pension Plan Investment Board a Canadian federal crown corporation established pursuant to the Canada Pension Plan Investment Board Act.

**Detection Device** means:

- (a) devices at the Control Date used by:
  - (i) Transurban Group to collect Specified Traffic Data on Transurban NSW Toll Roads (excluding induction loop devices and electronic tag devices or telecommunications devices installed or held within motor vehicles); and
  - (ii) in the event that Transurban Group is not the tolling services provider for a Transurban NSW Toll Road at a particular time, the tolling services provider for that Transurban NSW Toll Road at that time, to collect Specified Traffic Data on that Transurban NSW Toll Road (excluding induction loop devices and electronic tag devices or telecommunications devices installed or held within motor vehicles); and
- (b) any future device(s) used by:
  - (i) Transurban Group to collect Specified Traffic Data on Transurban NSW Toll Roads (excluding induction loop devices); and
  - (ii) in the event that Transurban Group is not the tolling services provider for a Transurban NSW Toll Road at a particular time, the tolling services provider for that Transurban NSW Toll Road at that time, to collect Specified Traffic Data on that Transurban NSW Toll Road (excluding induction loop devices).

For the avoidance of doubt, if Transurban Group or any such other tolling services provider use a new Detection Device in the future to collect Specified Traffic Data on Transurban NSW Toll Roads that is not fixed to a Gantry or a toll road structure, that device would be included.

**Entity** has the meaning given by section 64A of the Corporations Act.

**Entities Connected** has the meaning given by section 64B of the *Corporations Act*.

**Error Notice** has the meaning given in clause 7.1 of this Undertaking.

**Extraordinary Event** includes:

- (a) any malfunction or cessation of operation of, or damage to, any equipment, installation or system used by an Undertaking Signatory or any Related Body Corporate of an Undertaking Signatory to detect, collect, assemble, compile, disseminate or publish Specified Traffic Data;
- (b) the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law); or
- (c) any order, judgment or direction of any court, tribunal or other forum of competent jurisdiction.

**Future NSW Toll Road Concession Sale Process** means a public bidding, tender or sale process commenced and conducted by the NSW Government any time after the Control Date for the potential sale of a Future NSW Toll Road Concession by whatever means and by whatever structure as may be determined by the NSW Government.

**Future NSW Toll Road Concession** means a right to be granted by the NSW Government to develop, construct, own and operate a new toll road in NSW from a point of origin to a point of destination as designated by the NSW Government.

**Half-Year Disclosure** means a mandatory lodgement of financial reports for a half year of a disclosing entity (as that expression is defined in the Corporations Act) as prescribed under the Corporations Act from time to time:

- (a) to ASIC in accordance with the Corporations Act from time to time; and
- (b) to ASX in accordance with the ASX Listing Rules from time to time.

**Gantry** includes a mainline gantry, ramp gantry, multi-lane gantry and single-lane gantry.

**Non-Controlled Transurban NSW Toll Road** means until 11 December 2026, the M5 West Motorway, in the event that Transurban is not able to gain access to, and publish, Specified Traffic Data as defined in paragraph (a) of the definition of that expression in this Dictionary for the M5 West Motorway.

**NSW** means New South Wales.

**NSW Government** means the NSW State Government and its agencies and state-owned corporations, including SMC to the extent it is a state-owned corporation.

**Platform** means an internet-accessible platform hosted by an entity unrelated to Transurban on an arm's length commercial basis that has been approved in writing by the ACCC.

**Privacy Obligations** means the obligations which arise under the Privacy Act 1988 (Cth) (and any consideration, amendment, re-enactment or replacement of the Privacy Act 1988 (Cth)) and all other applicable privacy and data protection laws as may be in force from time to time which regulate the collection, use, disclosure, storage of and granting of access rights to personal information.

**Proposed Acquisition** means the proposed acquisition by the STP Consortium of the WestConnex Sale Interest.

**Proposed Independent Auditor** means a person named in Proposed Independent Auditor Notice.

**Proposed Independent Auditor Notice** has the meaning given in clause 9.2 of this Undertaking.

**Proposed Independent Expert** has the meaning given in clause 8.8(d) of this Undertaking.

**Public Mergers Register** means the ACCC's public register of merger clearances, available at [www.accc.gov.au](http://www.accc.gov.au).

**Public Section 87B Undertakings Register** means the ACCC's public register of section 87B undertakings, available at [www.accc.gov.au](http://www.accc.gov.au).

**Related Bodies Corporate** has the meaning given by section 50 of the *Corporations Act 2001* (Cth).

**Related Entities** has the meaning given by section 9 of the *Corporations Act 2001* (Cth).

**Related Parties** has the meaning given to it by section 228 of the *Corporations Act 2001* (Cth).

**SMC** means Sydney Motorway Corporation Pty Limited (ACN 47 601 507 591).

**Specified Traffic Data** means:

- (a) for the Transurban NSW Toll Roads other than the Non-Controlled Transurban NSW Toll Road, all traffic count data aggregated to 15 minute intervals:
  - (i) obtained or collected by:
    - (A) Transurban Group from Detection Devices including those installed on all toll Gantries or similarly purposed toll structures located on Transurban NSW Toll Roads to which this paragraph (a) applies from time to time; and
    - (B) in the event that Transurban Group is not the tolling services provider for a Transurban NSW Toll Road to which this paragraph (a) applies at a particular time, the tolling services provider for that Transurban NSW Toll Road at that time, from Detection Devices including those installed on all toll Gantries or similarly purposed toll structures located on that Transurban NSW Toll Road from time to time;

(ii) separated so as to identify that traffic data for:

- (A) each vehicle class detected and tolled (e.g. light vehicle and heavy vehicle), with an explanation of each tolled vehicle class including how each tolled vehicle class corresponds to toll road tolled vehicle classes used by the NSW Government in the concession documents for each Transurban NSW Toll Road to which this paragraph (a) applies;
  - (B) each direction of traffic flow on each Transurban NSW Toll Road to which this paragraph (a) applies or, in the event that tolling occurs in one direction only, that direction;
  - (C) the location of each Detection Device or toll Gantry (and where applicable, the lane or lanes covered by it), specifying, in the case of a toll Gantry, the type of Gantry (that is, mainline gantry, ramp gantry, multi-lane gantry or single-lane gantry) from which the traffic data has been collected; and
  - (D) each Transurban NSW Toll Road to which this paragraph (a) applies; and
- (iii) that specifies, to the extent that Detection Devices or toll Gantries are capable, the geographic coordinates (i.e. latitude and longitude in degrees to one decimal place) of each toll Gantry,

for the immediately preceding period of three months as specified in clause 5.2 or clause 5.3 (as the case may be); or

(b) for the Non-Controlled Transurban NSW Toll Road:

- (i) Annual Average Daily Traffic Data for the Non-Controlled Transurban NSW Toll Road by tolled vehicle class;
- (ii) Annual Average Workday Traffic Data for the Non-Controlled Transurban NSW Toll Road by tolled vehicle class;
- (iii) Annual Average Traffic Data and Annual Average Workday Traffic Data for locations on the Non-Controlled Transurban Toll Road where toll Gantry data is available by tolled vehicle class; and
- (iv) data showing:
  - (A) the average hourly proportion of traffic (for example, 8am-9am: 5%, 9am-10am: 6% etc) by direction and tolled vehicle class; and
  - (B) the average monthly proportion of traffic (for example, January 6%, February 6.5%, etc),

on the Non-Controlled Transurban NSW Toll Road,

for the immediately preceding period of three months as specified in clause 5.2 or clause 5.3 (as the case may be).

**STP Consortium** means the Sydney Transport Partners Consortium comprising of Transurban Group, AustralianSuper, CPPIB and Tawreed.

**Subsidiary** has the meaning given by section 9 of the Corporations Act.

**Tawreed** means Tawreed Investments Limited a wholly owned subsidiary of the Abu Dhabi Investment Authority.

**Transurban** means Transurban Limited (ABN 96 098 143 410).

**Transurban Group** means Transurban, Transurban Holdings, Transurban International and Transurban Infrastructure, and any Related Body Corporate.

**Transurban Holdings** means Transurban Holdings Limited (ABN 86 098 143 429).

**Transurban Infrastructure** means Transurban Infrastructure Management Limited (ABN 27 098 147 678) as responsible entity of the Transurban Holding Trust, and its controlled entities.

**Transurban International** means Transurban International Limited (ABN 90 121 746 825).

**Transurban NSW Toll Road** means, at a particular time, a toll road in NSW in which Transurban Group has any ownership interest (whether directly or indirectly) at that time.

**Undertaking** is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

**Undertaking Objective** has the meaning given in clause 2.

**Undertaking Signatories** has the meaning given to it in clause 1.1 of this Undertaking.

**Variation Dispute** has the meaning given in clause 8.8 of this Undertaking.

**Variation Dispute Notice** has the meaning given in clause 8.8 of this Undertaking.

**Variation Notice** has the meaning given in clause 8.5 of this Undertaking.

**WestConnex** means the WestConnex concessions and toll roads for all the WestConnex Stages.

**WestConnex Sale Interest** means 51 per cent of the ultimate holding entities of the WestConnex group, being WCX Asset Hold Trust and WCX Project Hold Trust (and shares in their trustees), as well as all associated entities.

**WestConnex Stage** means any of:

- (a) the concession rights in respect of WestConnex M4, comprising the M4 West/Widening and M4 East;
- (b) the concession rights in respect of WestConnex M5, including the New M5 motorway, the M5 East and the M5 West from 11 December 2026 along with any other motorways specified in the WestConnex M5 Project Deed from time to time; and
- (c) the concession rights in respect of WestConnex M4 – M5 Link, involving the construction of tunnels connecting the M4 East and the M5, and the



Iron Cove Link and Rozelle Interchange including provision for a future connection to the Western Harbour Tunnel,

and WestConnex Stages means all of them.

## **2. Interpretation**

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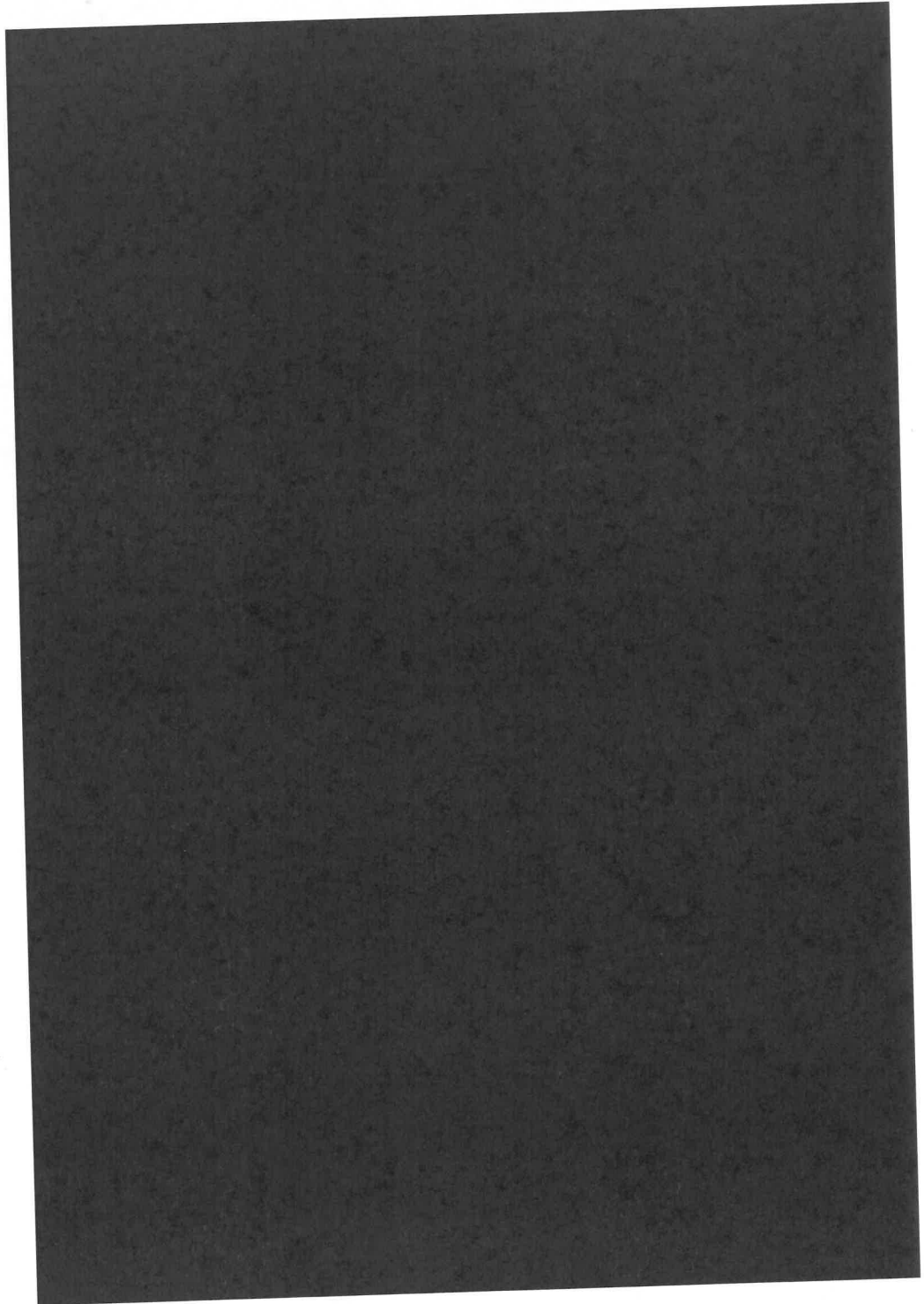
- 2.1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:
- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
  - (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
  - (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
  - (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
  - (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
  - (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
  - (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
  - (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
  - (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
  - (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
  - (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
  - (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
  - (m) material not forming part of this Undertaking may be considered to:
    - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns

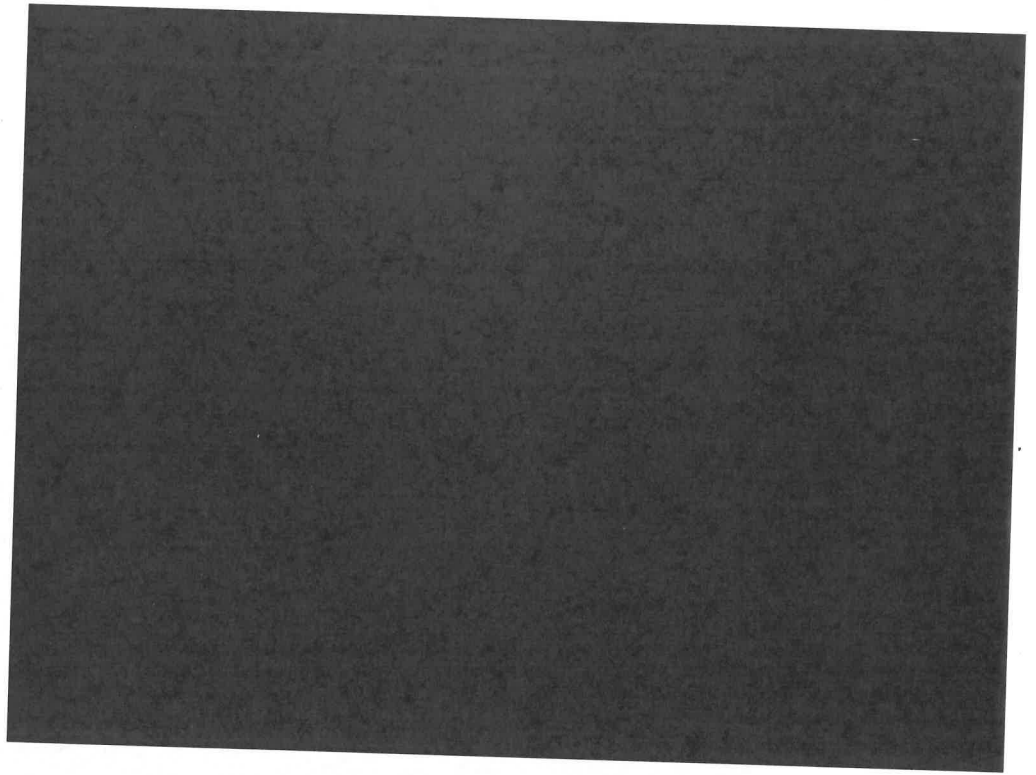
intended to be addressed by the Undertaking and the clause in question; or

- (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
  - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
  - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, each Undertaking Signatory will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (q) a reference to:
  - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
  - (ii) a party includes its successors and permitted assigns; and
  - (iii) a monetary amount is in Australian dollars.

**Undertaking to the Australian Competition  
and Consumer Commission**

**Schedule 2 (Confidential)**





# Undertaking to the Australian Competition and Consumer Commission

## Schedule 3 Undertaking Appointment

This form sets out the information required by the ACCC in relation to proposed appointment of the Independent Auditor under the Undertaking (the **Undertaking Appointment**).

This form is to be used for the above appointment.

Please note in relation to information given pursuant to this form, giving false or misleading information is a serious offence.

### Method of Delivery to the ACCC

The completed Undertaking Appointment form, along with the additional requested information is to be provided to the ACCC with the subject line (*proposed Independent Auditor Form – Transurban Undertaking*) to the below email addresses:

- 1) [mergers@accc.gov.au](mailto:mergers@accc.gov.au)

Attention: Executive General Manager  
Merger and Authorisation Review Division

- 2) With a copy sent to:

[mergersru@accc.gov.au](mailto:mergersru@accc.gov.au)

Attention: Director  
Remedies Unit  
Coordination and Strategy Branch  
Merger and Authorisation Review Division

### Information Required

The ACCC requires the following information in order to assess a Proposed Independent Auditor (i.e. the Undertaking Appointment).

- 1) Proposed Undertaking Appointment Details:

- (a) the name of the proposed Undertaking Appointment; and
- (b) the name of the proposed Undertaking Appointment's employer and contact details including:
  - Address;
  - Contact name;
  - Telephone number;
  - Other contact details.

2) A submission containing the following information:

- (a) details of the [Undertaking Appointment]'s qualifications and experience relevant to his or her proposed role pursuant to the Undertaking.
- (b) the names of the [owner/s and the directors (delete any that do not apply)] of [the Undertaking Appointment's employer].
- (c) details of any relationships (including but not limited to shareholding interest, other proprietary interests, contracts, arrangements or understandings) between the Undertaking Appointment or the Undertaking Appointment's employer and other entities in the market for acquiring future new toll road concessions in NSW.
- (d) details of any existing or past contractual relationships between the Undertaking Appointment or the Undertaking Appointment's employer and the ACCC.
- (e) details of any of the following types of relationships between any of the Undertaking Signatories or any other entity that holds an interest in any toll road in which an Undertaking Signatory also has an interest, and [the Undertaking Appointment] or [the Undertaking Appointment's employer] or confirmation that no such relationship exists whether within Australia or outside of Australia:
  - (i) any of the Undertaking Signatories or any other entity that holds an interest in any toll road in which an Undertaking Signatory also has an interest and [the Undertaking Appointment's employer] are Associated Entities.
  - (ii) any of the Undertaking Signatories or any other entity that holds an interest in any toll road in which an Undertaking Signatory also has an interest is an Entity Connected with [the Undertaking Appointment's employer].
  - (iii) [The Undertaking Appointment's employer] is an Entity Connected with any of the Undertaking Signatories or any other entity that holds an interest in any toll road in which an Undertaking Signatory also has an interest.
  - (iv) any of the Undertaking Signatories or any other entity that holds an interest in any toll road in which an Undertaking Signatory also has an interest and [the Undertaking Appointment's employer] are Related Entities.
  - (v) any of the Undertaking Signatories or any other entity that holds an interest in any toll road in which an Undertaking Signatory also has an interest and [the Undertaking Appointment's employer] are Related Parties
  - (vi) any Related Party, Related Entity or Entity Connected with any of the Undertaking Signatories or any other entity that holds an interest in any toll road in which an Undertaking Signatory also has an interest is a Related Party, Related Entity or Entity Connected with [the Undertaking Appointment].
  - (vii) any of the Undertaking Signatories or any other entity that holds an interest in any toll road in which an Undertaking Signatory also has an interest and [the Undertaking Appointment] or [the Undertaking Appointment's employer] have a contractual

relationship or had one within the past three years, other than those attached to this form.

- (viii) [the Undertaking Appointment's employer] is a supplier of any of the Undertaking Signatories or any other entity that holds an interest in any toll road in which an Undertaking Signatory also has an interest or has been in the past three years.
- (ix) any of the Undertaking Signatories or any other entity that holds an interest in any toll road in which an Undertaking Signatory also has an interest is a supplier of the [the Undertaking Appointment's employer] or has been in the past three years.
- (x) any other relationship between any of the Undertaking Signatories or any other entity that holds an interest in any toll road in which an Undertaking Signatory also has an interest and [the Undertaking Appointment] or [the Undertaking Appointment's employer] that allows one to affect the business decisions of the other.

- 3) A document outlining the terms of appointment for the proposed Undertaking Appointment.

**Specific Information required for Undertaking Appointment**

The ACCC requires the below information in relation to the Undertaking Appointment.

***Proposed Independent Auditor***

- 1) A finalised draft audit plan, drafted by the Proposed Independent Auditor and outlining (to the extent possible) the Proposed Independent Auditor's plans in regard to the establishment audit and the Audit Report.

