



## Statement of Issues

31 March 2022

### Spirit Super and Palisade Investment Partners Consortium – proposed acquisition of the Port of Geelong

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#### Purpose

1. A consortium of investors comprised of Spirit Superannuation, the Commonwealth Superannuation Corporation and the Diversified Infrastructure Fund managed by Palisade Investment Partners (**Palisade**) (together, the **Consortium**) proposes to acquire 100% of the Port of Geelong, a freehold diversified bulk commodity port in Victoria.
2. This Statement of Issues:
  - gives the preliminary views of the Australian Competition and Consumer Commission (**ACCC**) on competition issues arising from the proposed acquisition
  - identifies areas of further inquiry
  - invites interested parties to submit comments and information to assist our assessment of the issues.
3. Statements of Issues do not refer to confidential information provided by the parties or other market participants and therefore may not necessarily represent a full articulation of the ACCC's preliminary position.

#### Overview of ACCC's preliminary views

4. The legal test which the ACCC applies in considering the proposed acquisition is set out in section 50 of the *Competition and Consumer Act 2010*. In general terms, section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
5. The ACCC divides its preliminary views into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'.

**Issue that may raise concerns: Reduction in future competition for long-term bulk cargo port customers**

- The ACCC's preliminary view is that the proposed acquisition may substantially lessen competition in the future supply of port services to long-term bulk cargo port users in Victoria.
- Post-acquisition, Palisade would control on behalf of investors, 100% of the Port of Portland and a 49% interest in the Port of Geelong.
- The Port of Portland and the Port of Geelong are the two largest Victorian bulk cargo ports, between them accounting for more than half of bulk cargo in Victoria. There are few bulk ports in Victoria at which long term bulk cargo port users can situate their operations.
- The ACCC is concerned that the proposed acquisition may reduce competitive tension between the two ports in making future investments to secure such customers.

**Issue that may raise concerns: Reduction in competition for the supply of bulk cargo port services in Victoria**

- The ACCC's preliminary view is that the proposed acquisition may substantially lessen competition in the supply of port services for bulk cargo in Victoria.
- The extent of competitive tension between the two ports for bulk cargo varies across different commodities and customers. The ACCC is concerned that the ports may be able to raise prices for bulk cargo port services or decrease the quality of those services for a segment of customers.

**Making a submission**

6. The ACCC invites submissions from interested parties.
7. Detailed discussion of these and other issues, along with specific questions, is contained in this Statement of Issues.
8. Interested parties should provide submissions by no later than 5pm on 14 April 2022. Responses may be emailed to [mergers@acc.gov.au](mailto:mergers@acc.gov.au) with the title: Submission re: Spirit Palisade Consortium proposed acquisition of Port of Geelong - attention Emma Moulds/Sidd Sharma. If you would like to discuss the matter with ACCC officers over the telephone or in person, or have any questions about this Statement of Issues, please contact Emma Moulds on (08) 8456 3508 or Sidd Sharma on (02) 9102 4011.
9. The ACCC anticipates making a final decision on 9 June 2022, however, this timeline can change. To keep abreast of possible changes in relation to timing and to find relevant documents, interested parties should visit the Mergers Register on the ACCC's website at <https://www.acc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews>

## Confidentiality of submissions

10. The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

## About ACCC ‘Statements of Issues’

11. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC’s preliminary views, drawing attention to issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
12. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders, and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

## The parties

### The Port of Geelong

13. The Port of Geelong is currently owned 50% by a consortium comprised of Linx Cargo Care Pty Ltd and Infrastructure Investment Corporation (managed by Brookfield) and 50% by SAS Trustee Corporation. It is held on a freehold basis, which is different to many other ports which are privatised via a long-term lease.
14. The Port of Geelong is Victoria’s second largest port, located approximately 75 km south-west of Melbourne. It handles approximately 40% of Victoria’s bulk freight and is Victoria’s largest bulk commodity port. The Port covers an area of over 96 hectares with 15 berths and five sheds.
15. Customers at the Port of Geelong include importers and exporters of several different products, including grain, fertiliser, forestry products, equipment used on wind farms, liquid bulk commodities, cement and clinker, and trans-Tasman freight and passenger services (commencing 2022).

### Palisade and the Port of Portland

16. Palisade is an independent Australian infrastructure fund manager with over \$3.2 billion in funds under management and commitments. It provides investment opportunities in Australian infrastructure to Australian superannuation funds and wholesale investors through tailored portfolios, pooled funds, and direct investment mandates.

17. Investors managed by Palisade have a 100% interest in the Port of Portland. The Port of Portland is a diversified bulk commodity, deep water seaport located in Portland in south-west Victoria. It handles approximately 20% of Victoria's bulk freight. The port provides services to importers / exporters of grain, mineral sands, fertiliser, smelter cargoes and forestry products (among others). By road, the Port of Portland is 290 km west of the Port of Geelong and 356 km from the Port of Melbourne.
18. Investment funds managed by Palisade also hold a minority interest in Quantem, a tenant at the Port of Geelong that provides bulk liquid storage services.

### **Spirit Superannuation and Commonwealth Superannuation Corporation**

19. Spirit Super is an Australian industry super fund established by trust deed following the merger of MTAA and Tasplan in April 2021. Spirit Super has investments in infrastructure assets, including a 20% interest in Flinders Ports, which owns and operates seven ports across South Australia, including container and bulk ports.
20. The Commonwealth Superannuation Corporation (**CSC**) is a not-for-profit, corporate Commonwealth entity. CSC is the trustee for government superannuation schemes which provide retirement, insurance and superannuation services to current and former Australian Government employees and members of the Australian Defence Force.

### **The proposed transaction**

21. The Consortium, via a newly established company, will implement the proposed acquisition by acquiring 100% of the shares in GeelongPort Pty Ltd, the Port of Geelong Unit Trust and Ports Pty Ltd (collectively, the **Target**). The Target operates the Port of Geelong.
22. Post-acquisition, funds managed by Palisade would hold 24.5% of the Port of Geelong, and Palisade would also be responsible for managing a 24.5% interest held by CSC (meaning Palisade would effectively control a 49% interest in the Port of Geelong). The remaining 51% would be held and managed by Spirit Super.

### **Other industry participants**

23. There are two other commercial ports in Victoria: the Port of Melbourne and the Port of Hastings.
24. The Port of Melbourne is Australia's largest container and general cargo port, handling all of Victoria's containerised freight and approximately 35% of its bulk cargo. Located in the heart of Melbourne, the Port of Melbourne has two international container terminals and over 30 commercial berths.
25. It handles a range of bulk cargoes including dry bulk (cement, sugar, grain, and gypsum), bulk liquids (such as petrochemicals and crude oil) and break-bulk cargo (such as motor vehicles, timber, iron, and steel).

26. Port of Melbourne is owned by a consortium of QIC, Future Fund, Global Infrastructure Partners and OMERS.
27. The Port of Hastings is located approximately 72 km south-east of Melbourne on Western Point Bay. It has two State-owned berths used for bulk liquids, a jetty and depot to support a range of industries and vessels, one berth available for common use and a decommissioned berth available for development. The port supports the import and export of crude oil, liquid petroleum gas, steel, and unleaded petrol.

## Industry background

### Bulk Cargo

28. There are three main categories of bulk cargo:
  - **Dry bulk cargo** includes commodities such as grain, woodchips, fertiliser, mineral sands and cement clinker. Dry bulk cargo is generally transferred directly into or out of a bulk carrier. Some dry bulk cargo, such as grain and mineral sands, can also be transported in shipping containers as containerised freight.
  - **Liquid bulk cargo** refers to products that are required to be transported in a tanker such as crude oil, liquefied natural gas and liquified petroleum gas.
  - **Break-bulk cargo** refers to larger products such as timber, steel and windfarm equipment. Due to their size, these products are unable to be containerised.

### Port services

29. In essence, ports provide facilities and associated services for the loading and unloading of goods between land and sea. Commercial ports provide their customers with a range of different port services for bulk cargo, including:
  - access to a berth to moor the vessel
  - access to landside infrastructure to facilitate the loading or unloading of cargo from the vessel
  - access to specialised equipment such as cranes, hoppers and grabs to facilitate the loading or unloading of cargo
  - ancillary services such as access to electricity or water for the vessel while it is moored
  - access to land and/or infrastructure for landside terminals or storage.
30. There is variation between ports as to which services are offered and how each port charges for these services.

### Port regulation

31. At present, neither port is subject to any price regulation. There is the possibility of regulation by the Victorian Essential Services Commission (**ESC**) or declaration under Part IIIA of the *Competition and Consumer Act 2010*. The

ACCC's view is that these possibilities are unlikely to constrain the day-to-day conduct of the parties at either port.

32. As this threat of port regulation exists with or without the proposed acquisition and is unlikely to constrain the day-to-day operations of the Port of Geelong and Port of Portland, the ACCC does not consider this topic in the competition assessment below.

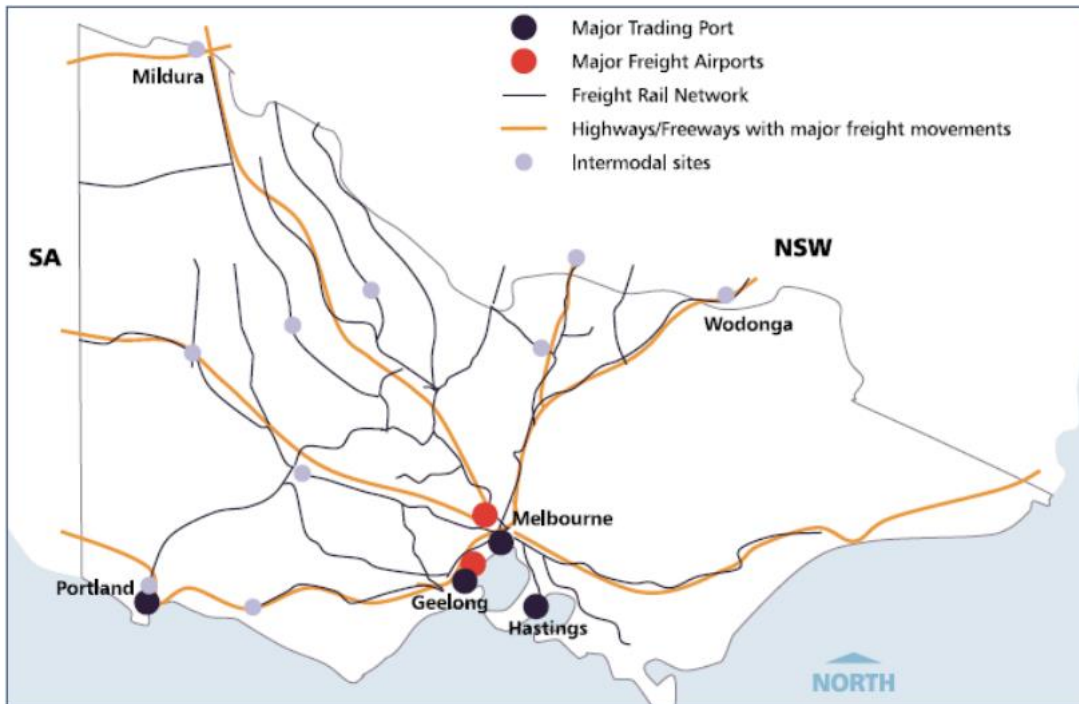
### Integration with transport networks and costs

33. Transport networks and transport costs are important factors, and for some customers the determining factor, of which port a customer will use. There can be a range of factors which contribute to transport costs, including:

- road and rail network availability and congestion
- distance
- intermodal facilities
- location and quality of inland warehousing or storage.

34. Figure 1 below shows the four commercial ports in Victoria and key road and rail freight lines.

Figure 1: Commercial ports in Victoria



Source: Australian Competition and Consumer Commission, *Notice in respect of a notification lodged by GeelongPort Pty Limited*, 4 February 2008

## **Previous ACCC decisions**

### **Port of Geelong privatisation**

35. The ACCC considered the sale of the Port of Geelong in 1996 and decided it would not oppose the transaction subject to a section 87B undertaking which is still in effect.

### **Port of Portland Wheat Code Exemption Assessment**

36. On 3 September 2021, Port of Portland Limited provided a written application to the ACCC seeking to be determined an exempt service provider of port terminal services provided by means of its port terminal facility at Portland, Victoria, under the Port Terminal Access (Bulk Wheat) Code of Conduct. On 9 February 2022, the ACCC released a draft determination proposing to grant Port of Portland Limited exempt service provider status.

## **Areas of overlap**

37. Port of Portland and the Port of Geelong overlap in the supply of port services for bulk cargo in Victoria. Both ports serve customers in the grain, timber, fertiliser and wind farm industries.
38. There are some industries for which one or other of the ports does not have customers at present. Port of Geelong currently serves customers in the cement/clinker, bulk liquids and petroleum industries, which Port of Portland does not.
39. Port of Portland serves customers in the aluminium industry, whereas Port of Geelong currently does not.

### **Relevant markets**

40. The ACCC's preliminary view on the relevant market is the supply of port services for bulk cargo in Victoria.
41. The extent of substitutability between Port of Geelong, the Port of Portland, the Port of Melbourne and the Port of Hastings varies significantly by industry and by customer (in particular according to where the customer's operations are located). On this basis it may also be appropriate to consider the likely competitive impact of the proposed acquisition in the context of different customer industries. The degree of competitive tension between ports may also change over time as capacity varies, long-term customers become contestable and the infrastructure at each port evolves.
42. The ACCC will continue to consider the product and geographic dimensions of the market/s.

### *Product market definition*

43. While different industries have different characteristics and port use requirements, the ACCC has focused on areas of likely competitive overlap between the parties now and in the future. Port of Geelong and Port of Portland

supply similar port services with similar bulk cargo offerings, albeit to a range of different industries.

44. There are complexities and variations in port use by various customers moving different types of bulk cargo via different types of equipment. For example, bulk fuels customers at Port of Geelong use fixed loading equipment and specialised berths, whereas for other products, such as grain or fertiliser, mobile and fixed loading equipment can be used. Each also have different requirements in terms of port-side storage.

*Geographic overlap varies between product categories*

45. The ACCC's preliminary view is that the geographic scope of the market is likely to be Victoria, however the extent to which different ports are substitutable will vary significantly for each customer.
46. For some current customers of the Port of Portland and Port of Geelong, the Port of Melbourne and Port of Hastings may not be considered viable alternatives. Other customers seeking long-term agreements which involves the underwriting of significant port infrastructure may consider all Victorian ports as potential substitutes.
47. While the Port of Geelong and Port of Portland are approximately 290 km from one another by road, there are customers who can use either port. These customers are contestable between the ports.
48. The extent to which customers might substitute between the two ports can depend on a range of factors. These include transport costs, driven by the available transport networks and distance to the port, and the impact of seasonal conditions on crop yield.
49. In addition to transport costs and seasonal factors, customers may have also entered into take or pay contractual arrangements with a port, and/or have made sunk investments in facilities at the port or further up the supply chain, which means substitution between the ports is only possible over a longer time frame.
50. For certain port users, one or more of a combination of the above factors may mean there is only ever one "natural" port for their operations. However, for other customers, there is an ability to choose between the two ports, either in the short term or in the longer term.
51. At this stage, the ACCC considers the product categories for which at least some volumes are contestable between the two ports in the short term are:
- grain
  - fertiliser
  - timber
  - break bulk cargo, including wind farm cargo.
52. For grain and fertiliser customers, there is likely to be greater substitutability between ports as freight costs are lower than other products so they can be economically transported over larger distances.



53. For timber customers, transport costs are a relatively large portion of export costs, and significantly higher than port charges, so substitutability between ports is strongly influenced by transport costs. Plantations in the Otway region are highly contestable as the region sits between the two ports. There may be some contestability for plantations located elsewhere in the Central Victoria timber growing region and closer to Portland.
54. Customer choice of port for timber may be influenced somewhat by the existence of take or pay contracts for some port users which may promote timber export from a port with higher freight costs than other alternatives. For example, the ACCC understands some woodchips are transported from the Green Triangle across to Port of Geelong, despite freight costs being significantly lower for transport to Port of Portland.
55. Wind farm cargo can use either port and the choice of port will depend significantly on the location of the wind farm project. Demand from wind farm projects fluctuates depending on when wind farm developments are occurring.
56. The ACCC is exploring whether other product categories may currently be contestable between the ports, including mineral sands export and soybean import.
57. The ACCC also considers that over the longer term there is likely to be greater contestability across a larger group of customers and products, which the ACCC is continuing to explore.

#### **Alternative ports are not an option for some customers**

58. Port of Melbourne is geographically the closest substitute to the Port of Geelong for bulk cargo from the Melbourne region. It has access and storage limitations which may preclude it as a viable option for some customers.
59. The Port of Melbourne's 2050 Development Strategy anticipates growth in containerised trade. While the strategy also indicates the Port of Melbourne will increase its overall land use, it is unclear to what extent bulk cargo capacity at the port will be affected. However, market participants have expressed concerns that the Port of Melbourne will ultimately reduce its bulk and break-bulk cargo capacity in favour of containerised cargo.
60. The Port of Hastings is unlikely to be a substitute for existing customers of Port of Geelong in the short term, due to its distance from these customers and limited bulk cargo offering. It may offer an alternative for long term customers investing in a new import or export operations in Victoria (such as proposed bulk fuels terminals). Market participants have suggested recent community concerns with respect to AGL's proposed LNG import terminal may indicate Port of Hastings will not be a viable substitute for future long-term customers.

#### *Grain*

61. Grain export likely has the most alternatives to exporting via Port of Geelong or Port of Portland relative to other product categories.
62. Graincorp Geelong is a substitute to the extent grain exporters can access its facility. While located within the boundaries of the Port of Geelong, the Graincorp Geelong facility is separate to the Port of Geelong and not part of the proposed

acquisition. The ACCC understands third party access to this facility can be dependent on a range of factors, including the time of year and the extent to which capacity is booked under long-term agreements.

63. In good seasons, and particularly when grain prices are high, export demand motivates customers to seek all available options and transport grain large distances. However, interstate ports such as Port Adelaide are unlikely to be material substitutes except in specific areas around certain rail lines.

### **Issue that may raise concerns: Reduction in competition for long-term bulk cargo port customers**

64. The ACCC's preliminary view is that the proposed acquisition may substantially lessen competition for the supply of port services for long term bulk cargo customers in Victoria. The ACCC has concerns that post-acquisition the overlapping ownership between Port of Geelong and Port of Portland may give rise to competition concerns for these customers because:

- the common ownership could lessen incentives for competition between Port of Portland and Port of Geelong for customers both through existing facilities and future investments in infrastructure
- existing long-term customers may be contestable at the end of contract terms and/or asset lives
- potential new long-term customers are likely to consider Port of Geelong and Port of Portland to be viable alternatives
- there are very few alternative options for bulk cargo port services in Victoria
- there are high barriers to new port entry.

### **Existing and potential new long-term customers**

65. Existing long-term customers of the two ports may not be contestable in the short term, due to take or pay contracts or sunk investments, but are much more likely to be so in the longer term, for example at the end of an asset life, lease or contract.
66. Some customers may not be contestable between the ports at any time. Many port users have a 'natural' port for their operations. In particular, some port users serve customers in Melbourne and freight costs or customer accessibility prohibit Port of Portland as a viable option. This is the case for bulk liquids and trans-Tasman passenger and vehicle transport for example.
67. In its competition assessment for this matter, the ACCC is focussing on these long-term customers to the extent some are foreseeably contestable, for example in the next 10-20 years.
68. There is also the potential for new long-term customers to require bulk port access in the future. These are customers with large sunk investments in infrastructure which are likely to be contestable one time at project commencement. New long-term bulk port customers might include projects for

developing LNG import and/or hydrogen export facilities, or new fertiliser or cement/clinker import facilities.

### **Competition for long term customers likely involves competitive bidding or negotiations**

69. Competition for long-term customers is likely to occur through competitive bidding or negotiations with prospective customers. Long term contracts and large investments are negotiated between the port and the prospective customer. Some customers may also be able to negotiate discounted general port charges.
70. While not bulk cargo, a recent example of such competition is Port of Geelong securing a long-term contract with Spirit of Tasmania. In 2020, Spirit of Tasmania announced it would move its Victorian port operations from Station Pier at the Port of Melbourne to Corio Quay, at the Port of Geelong. The parties entered into a long-term partnership and Port of Geelong developed a dedicated 12-hectare terminal and freight facility for Spirit of Tasmania's operations.
71. At this stage, the ACCC has not identified similar examples of Port of Geelong and Port of Portland competing with one another to secure long term customers in the past 5 years.
72. Nevertheless, there is the potential for future competition in this respect should existing long term customers have contracts ending or should a prospective customer require a large bulk cargo facility for which the two ports are suitable.

### **There are few bulk ports suitable for large investments in Victoria**

73. As the ACCC is considering a broader geographic market for this issue, the four commercial ports in Victoria (Port of Geelong, Port of Portland, Port of Melbourne and Port of Hastings) are competitors. Each will be of varying suitability depending on the demands of the specific long-term customer.
74. Due to their geographic locations and similar service offerings, Port of Geelong is likely to be the Port of Portland's closest competitor. The same is unlikely to be the case for Port of Geelong, which competes most closely with Port of Melbourne due to their geographic proximity.
75. In the long time frames the ACCC is considering for this issue, bulk cargo capacity at the Port of Melbourne may become constrained. As discussed above, market participants have submitted this is likely as container cargo expands at the port under the Port of Melbourne 2050 Port Development Strategy.
76. For new long-term customers, Port of Hastings may be a competitive alternative. The Port of Hastings 2018 Port Development Strategy identified the possibility of establishing in the long-term a flexible and multi-purpose facility with 2-3 berths supporting break-bulk, dry bulk and liquid bulk cargo. However, the recent community concerns with respect to AGL's proposed LNG import facility suggest the area may not be viable for all potential customers and market feedback has indicated that this port is not viable for some customers.

### **There are very high barriers to new port entry or expansion**

77. Port of Geelong and Port of Portland are unlikely to be competitively constrained by the threat of new port entry in the foreseeable future. It is unlikely that a new

port will be developed, or an existing port will expand or redevelop its existing infrastructure for dry bulk or break-bulk cargo, in the next few decades.

78. In recent years, containerised freight has been a focus for further infrastructure development. In 2017, Infrastructure Victoria recommended that the Port of Melbourne expand its capacity for containerised freight and also made recommendations regarding a second container port at Bay West to commence from 2055. The Victorian Government has committed to providing direction on a second container port as part of its Victorian Commercial Ports Strategy. To the ACCC's knowledge, no similar commitment has been made with respect to creating additional bulk cargo port capacity in Victoria.

### **Minority interest may not prevent anti-competitive effects**

79. Post-acquisition, Palisade would control 100% of the Port of Portland and 49% of the Port of Geelong. This would include overlapping interests in both ports and other interests Palisade manages on behalf of other investors.
80. The ACCC is concerned that this has the potential to lead to reduced competition or increased coordination between the two ports, which could take the form of increased prices, reduced future investment or the ports specialising only in serving certain industries.
81. Palisade will control a substantial shareholding of the Port of Geelong, and will be in a position to exert influence over decision making. The ACCC is continuing to explore the extent of Palisade's control of Port of Geelong post-acquisition.
82. Further to the control and influence that Palisade would have over the Port of Geelong, the Palisade controlled minority shareholding in Port of Geelong may also reduce the incentive for Port of Portland to win customers from Port of Geelong. Knowing this (and in combination with Palisade's degree of influence over the Port of Geelong), the Port of Portland may not seek to win customers from Port of Geelong as aggressively as it otherwise would, to the mutual benefit of both ports.
83. The minority shareholding may also increase the ability and incentive for Port of Geelong and Port of Portland to tacitly coordinate. The common shareholding and potential for information sharing may facilitate tacit coordination.

### **ACCC's preliminary views**

84. The ACCC is concerned that the common ownership between Port of Portland and Port of Geelong post-acquisition, albeit involving minority interests, may substantially reduce the level of competition for long-term bulk port customers.
85. Port infrastructure is critical to the economy and there are limited options available for long term bulk cargo port customers in Victoria. Market participants have submitted Port of Melbourne will become increasingly capacity constrained for bulk cargo over the 10-20 year period the ACCC is considering.
86. Competitive tension between Port of Geelong and Port of Portland could mean the difference between a significant project proceeding or not. Any potential substantial lessening of competition in this industry has the potential for significant impacts on a range of industries.

The ACCC invites comments from market participants on its concerns in relation to the supply of port services for bulk cargo to long-term customers. In particular, market participants may wish to comment on the following:

- whether there are past examples of Victorian ports competing to attract long term customers
- whether there are identifiable opportunities in the next 10-20 years on which Port of Geelong and Port of Portland are likely to compete, and whether Port of Melbourne or Port of Hastings will be viable alternatives for these opportunities
- the nature and process of competition between ports for long-term customers (for example, what ports will offer to prospective customers to attract them to a port)
- whether the minority overlapping interests are likely to mitigate competition concerns.

### **Issue that may raise concerns: Reduction in competition for the supply of port services for bulk cargo in Victoria**

87. The ACCC's preliminary view is that the proposed acquisition may substantially lessen competition for the supply of port services for bulk cargo in Victoria. The ACCC is concerned that post-acquisition the overlapping ownership between Port of Geelong and Port of Portland may give rise to competition concerns because:

- Port of Geelong and Port of Portland are competitors for certain dry bulk and break-bulk customers
- for some customers, the only viable options for bulk cargo port services are Port of Geelong and Port of Portland.

### **The extent of head-to-head competitive tension is unclear**

88. While there are product categories with volumes substitutable between Port of Geelong and Port of Portland, the ACCC is considering the materiality of the overlap and consequently the degree of head-to-head competition between the ports for these volumes.

89. For volumes contestable in the short term, the Port of Geelong and Port of Portland have incentives to maximise volume through their ports. Some port charges are volume based and both ports have common user berths.

90. Market participants have submitted they use competitive tension between the ports to obtain better price or service outcomes. However, the ACCC is considering the extent to which competitive tension has influenced port decision making, both on price and non-price terms. Non-price aspects to competition between ports occurs through, for example, berth access and congestion.

91. There may be a range of factors for this lack of clear competitive tension despite product categories being contestable between the ports. The contestable overlap may be too small to influence the parties' conduct. Market participants may not be sensitive to increases in port charges, for example if port charges are a relatively small portion of total costs. Take-or-pay contracts may diminish short

term incentives for the ports to limit price increases as substantial revenues are locked in regardless of volume.

92. This is an issue the ACCC will explore further, including to examine the materiality of the competitive tension between the parties, the impact of take-or-pay contracts and product or port specific bases on which competition occurs.

### **There are very high barriers to entry for new ports**

93. Please refer to discussion on this topic above.

### **Minority interest may not prevent anti-competitive effects**

94. Please refer to discussion on this topic above.

### **ACCC's preliminary views**

95. In summary, the ACCC is concerned that the common ownership, albeit minority interest in one port, between Victoria's two main bulk freight ports may reduce incentives to compete for contestable volumes of certain products. For at least some customers, the Port of Geelong and Port of Portland are the only viable options.
96. However, the ACCC is also considering the extent to which the ports compete with one another for commodity throughput at present and, therefore, whether any lessening of competition is likely to be *substantial* as required by section 50 of the Act.

The ACCC invites comments from market participants on its concerns in relation to the supply of port services for bulk cargo. In particular, market participants may wish to comment on the following:

- the extent to which Port of Geelong and Port of Portland compete (now or in the future) for specific product categories (grain, timber etc.)
- the extent to which the following influence a port user's decision with respect to which port they use: transport networks and costs, port fees, ease of access, congestion storage facilities
- volumes of grain, timber, fertiliser and wind farm which are contestable between the two ports, and other Victorian or interstate ports
- whether and to what extent competitive tension between the ports has impacted their price or service offering, with specific examples to the extent possible
- how customers engage with the ports to resist increases in price or reductions in service.

### **ACCC's future steps**

97. As noted above, the ACCC now seeks submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter. Submissions are to be received by the ACCC no later than 5.00pm on 14 April 2022 and should be

emailed to [mergers@acc.gov.au](mailto:mergers@acc.gov.au) with the title: Submission re: Spirit Palisade Consortium proposed acquisition of Port of Geelong - attention Emma Moulds/Sidd Sharma.

98. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.
99. The ACCC intends to publicly announce its final view by 9 June 2022. However, the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement to explain its final view.