



Statement of Issues

9 June 2022

Aurizon – proposed acquisition of One Rail

Purpose

1. Aurizon Holdings Limited (**Aurizon**) proposes to acquire One Rail Australia Holdings LP (**One Rail**) (the **Proposed Acquisition**).
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, and
 - 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 fully articulate the ACCC's preliminary position.

Overview of ACCC's preliminary views

4. In considering the Proposed Acquisition, the ACCC applies the legal test set out in section 50 of the *Competition and Consumer Act 2010* (the **CCA**). 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'.
6. In this Statement of Issues there is one 'issue of concern', one 'issue that may raise concerns' and one 'issue unlikely to raise concerns'.

Issue of concern

7. The ACCC's preliminary view is that the Proposed Acquisition would be likely to substantially lessen competition in the supply of rail haulage services for coal (**coal haulage**) in New South Wales and, separately, Queensland.
8. One Rail is a well-established third supplier in NSW and a recent third competitor in Queensland that has had a significant impact. The Proposed Acquisition would remove this important option for supply beyond Pacific National (**PN**) and Aurizon.

Issue that may raise concerns

9. The ACCC's preliminary view is that the loss of potential future rivalry between Aurizon and One Rail in the supply of rail haulage services for non-coal bulk commodities/products (**bulk rail haulage services**) may substantially lessen competition in one or more state or regional markets for the supply of bulk rail haulage services.

Issue unlikely to raise concerns

10. The ACCC's preliminary view is that the Proposed Acquisition would not lead to a substantial lessening of competition in the supply of bulk rail haulage or intermodal services on or along the Adelaide-Darwin corridor through an increased risk of vertical foreclosure by the operator of below-rail services in South Australia and the Northern Territory.

Proposed divestment undertaking

11. To address the ACCC's concerns, Aurizon has offered a court enforceable s.87B undertaking (**Proposed Undertaking**) to divest the coal haulage operations of One Rail in NSW and Queensland (**One Rail East Coast**), by trade sale or via a demerger that would establish a new ASX listed entity.
12. The ACCC has not formed a view about whether the Proposed Undertaking is capable of resolving the ACCC's preliminary competition concerns. As part of the consultation on this Statement of Issues, views are also sought from stakeholders on the effectiveness of both the trade sale and demerger divestiture options and the particular risks that may be raised by each.
13. Remedies involving demergers are rarely proposed and can present certain risks that are not present in a standard divestiture remedy and therefore require careful scrutiny. In particular, the ACCC will consider the proposed commercial and financial arrangements that Aurizon has proposed for the new entity and whether this would affect the proposed demerged business' ability to become an effective, stand-alone and long-term competitor. This will include taking into account the proposed debt that One Rail East Coast will hold and its expected future cash flows.
14. Feedback is also sought on other risks associated with the demerger divestiture option including potential execution risks which could impact on the demerger proceeding, including the time it would take for the divested business to be demerged.

15. The divestiture via trade sale option is more common but does require careful consideration of a number of factors, in particular, whether the ACCC can be satisfied that there is a suitable buyer for the divested business which is capable of replacing the competition lost as a result of the Proposed Acquisition.
16. The ACCC seeks market feedback on the efficacy of the Proposed Undertaking, and whether a divestment of One Rail East Coast, either by trade sale or demerger, would resolve the ACCC's preliminary competition concerns.
17. The Proposed Undertaking is available on the ACCC's [mergers public register](#).

Making a submission

18. The ACCC invites submissions, including on the following issues:
 - the likelihood that other rail haulage operators could pose an effective competitive constraint on a combined Aurizon-One Rail in the supply of coal haulage in NSW and Queensland – for example, whether the presence, conduct and performance of alternative suppliers is likely to be effective in adequately limiting a combined Aurizon-One Rail's ability to increase price and / or decrease service levels
 - the likelihood that other rail haulage operators could similarly constrain a combined Aurizon-One Rail in the supply of bulk rail haulage services, including in Queensland, NSW, SA / the NT and/or Western Australia, and/or
 - whether the Proposed Undertaking by Aurizon for the divestiture of One Rail East Coast is likely to remedy the competition concerns arising from the Proposed Acquisition.
19. Please note the ACCC has not yet formed a concluded view as to the nature and extent of the preliminary competition concerns with respect to the Proposed Acquisition, or whether they are capable of being addressed by the Proposed Undertaking or any other possible remedy. The market consultation process should not be taken as an indication that the ACCC will accept the Proposed Undertaking or that any remedy will be capable of satisfying its competition concerns.
20. The ACCC may decide to not accept or require changes to the Proposed Undertaking depending on the nature and extent of any concerns raised during the market consultation process. The ACCC will only accept the Proposed Undertaking if it is satisfied that it will sufficiently address its competition concerns, and after consideration of the monitoring and compliance costs and any risk to competition associated with the implementation of the Proposed Undertaking (or failure to do so).
21. A detailed discussion of these and other issues, along with specific questions, is contained in this Statement of Issues.
22. Interested parties should provide submissions by 23 June 2022. Responses may be emailed to mergers@acc.gov.au with the title: Submission re: Aurizon One Rail – attention Peter Cromwell / Natalie Ngo. If you would like to discuss the matter with ACCC staff or have any questions about this Statement of Issues,

please contact Peter Cromwell on (08) 9325 0632 or Natalie Ngo on (03) 9910 9418.

23. To stay up-to-date with the ACCC's decision timeline and any changes to the proposed documents, interested parties should visit the Mergers Register on the ACCC's website at www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews

Confidentiality of submissions

24. 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 CCA. 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, please identify any confidential information provided to the ACCC. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

About ACCC 'Statements of Issues'

25. A Statement of Issues is not a final decision about a proposed acquisition. A Statement of Issues outlines the ACCC's preliminary views and identifies further lines of inquiry that the ACCC wishes to undertake.
26. 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

27. Aurizon has entered into a sale agreement with various entities of Macquarie Asset Management (**MAM**), on behalf of MAM's funds, and PGGM Infrastructure Fund (**PGGM**), to acquire One Rail.

Aurizon

28. Aurizon is a provider of rail haulage services ('above-rail' services) and rail network services ('below-rail' services). Aurizon states that it is Australia's largest rail freight operator for coal haulage and bulk rail haulage services. It is listed on the ASX.

Rail haulage services

29. Aurizon provides rail haulage services for coal and other bulk commodities/products in Queensland, NSW and WA. Bulk freight generally refers to large quantities of homogenous, loose commodities/products, carried in freight wagons.

30. Aurizon hauls around half of Australia's export coal volume. It transported 202 million tonnes of coal in the 2020/21 financial year. It hauls coal on:
- the Central Queensland Coal Network, serving Queensland's Bowen Basin coal region,
 - the Hunter Valley and Illawarra coal systems in NSW, and
 - the Collie coal system in WA.
31. In addition to hauling coal, Aurizon currently also transports, and/or is capable of transporting, other bulk commodities/products such as iron ore, cement, bauxite, alumina, base metals, refined metals, grain, livestock, fertiliser and dangerous goods.

Rail network services

32. Aurizon also operates the Central Queensland Coal Network. As the operator, its responsibilities include managing access to the network by coal haulage operators, safety, signalling and communication systems, train control, rail construction, and maintenance. Aurizon's actions as operator of the network are subject to an access undertaking approved by the Queensland Competition Authority. The current access undertaking under which Aurizon operates was approved by the Queensland Competition Authority in 2019.

One Rail

33. One Rail is a provider of rail haulage and rail network services. It is presently owned by various entities of MAM, on behalf of MAM's funds, and PGGM.
34. MAM states that it is the globe's No.1 infrastructure manager, managing more than \$735 billion in assets. PGGM, based in the Netherlands, is a pension fund service provider. It manages the pensions of various pension funds, the affiliated employers and their employees. As at 31 December 2021, it managed pension assets worth 291 billion euros (approximately A\$440 billion).
35. One Rail provides rail haulage services on the Adelaide to Darwin corridor, as well as in NSW, Queensland and SA.

Rail haulage services in NSW and Queensland

36. One Rail provides coal haulage in the Hunter Valley from numerous mine sites to the Port of Newcastle in NSW. These coal haulage services are predominately from Glencore mines, but also includes coal haulage for other miners in the Hunter Valley as well as coal haulage for domestic end users. It also provides coal haulage in the Mackay region of Queensland.

Rail haulage services in SA and the NT

37. One Rail provides intermodal transport services on the Adelaide to Darwin corridor, transporting consumer goods, general cargo, bulk liquids and project cargo. In contrast to bulk freight, intermodal freight is typically packed in shipping containers, which allows the freight to be more easily transferred between modes of transport such as road, rail and / or sea. A wide variety of products can

be transported as intermodal freight, including food, beverages, and household and personal effects.

38. One Rail also provides bulk rail haulage services for bulk commodities including iron ore, manganese, gypsum, copper and grain, for customers in SA and the NT.

Rail network services

39. One Rail also operates two regulated rail networks, together spanning Tarcoola in SA to Darwin in the NT.
40. Access to One Rail’s SA rail lines is managed under the *Railways (Operations & Access) Act 1997 (SA)*, while access to One Rail’s NT rail lines is managed under the *AustralAsia Railway (Third Party Access) Act 1999 (SA)*. The Essential Services Commission of South Australia regulates both Acts and the access regime for One Rail Network’s rail lines.

Other coal and bulk rail haulage services providers

41. Depending on the geographic region in which a contract is being performed, and the particular commodity/product being hauled, Aurizon and/or One Rail may face competition from one or more of the following rail operators:

Operator	Description
PN	Large provider of coal haulage, and bulk rail haulage services for grain, ores and minerals, cement, refined metals, other bulk freight, concentrate and construction materials by rail in Queensland, NSW, WA, Victoria, SA and the NT. PN is the largest provider of intermodal / containerised rail freight services in Australia. It also owns narrow, standard and broad gauge rolling stock, and related rail facilities.
Qube	Integrated provider of rail and non-rail import and export logistics services across NSW, Victoria, SA, WA and Queensland. Provides bulk rail haulage services of freight including grain, concrete, ores and other minerals and refined metals.
Watco	Subsidiary of one of the largest short line railroad companies in the United States of America. Entered the Australian market in 2010 providing grain haulage services to CBH in WA. Now hauls grain, livestock and steel in Queensland and NSW.
Southern Shorthaul Railroad (SSR)	Provides bulk rail haulage and coal haulage services. Primarily operates in NSW and Victoria, hauling grain and to a lesser extent coal.

Relevant markets

42. As indicated above, Aurizon and One Rail presently overlap in the supply of coal haulage in each of NSW and Queensland. The parties do not presently overlap in the supply of non-coal bulk rail haulage services in any States or Territories. However, as explained below, the ACCC considers that there may be incentives

for each party to enter states in which they do not presently supply bulk rail haulage services.

43. Customers of coal haulage and bulk rail haulage services cannot realistically substitute between those services. On the supply side, the ACCC has considered the extent to which suppliers of bulk rail haulage services could expand into or switch to supplying coal haulage in the event of a sufficient price incentive. For example, locomotives and wagons used for other bulk rail haulage tasks may in some circumstances also be capable to being repurposed to haul coal. However, for reasons outlined later in this document, the ACCC considers that there are weak prospects of significant entry from bulk rail haulage into coal haulage. Accordingly, the ACCC's preliminary view is that for the purposes of this review, it is appropriate to consider a separate market for coal haulage, rather than considering both coal haulage and non-coal bulk rail haulage services as part of a single market.
44. The ACCC has also considered the relevant geographic scope of markets for the supply of coal haulage and bulk rail haulage services. In each case, the ACCC considers that three key factors limit the extent to which suppliers can easily switch between supplying a specific type of rail haulage service in one jurisdiction to supplying the same type of rail haulage service in another:
 - The first is the time and cost involved in both (a) moving existing rail haulage assets between States or Territories to operate along different rail corridors and (b) obtaining regulatory approvals in each jurisdiction for the use of rail assets from other jurisdictions.
 - The second is either having access to existing maintenance/provisioning facilities, and if access is unavailable, the time and cost involved building new maintenance/provisioning facilities.
 - The third is differences in rail gauge between States and Territories and corridors. In particular, many rail networks in Australia are standard gauge, including in the Hunter Valley in NSW. However, rail haulage in Queensland is on narrow gauge. Market feedback has indicated that standard gauge assets cannot easily be repurposed to operate on narrow gauge networks.¹
45. Therefore, the ACCC's preliminary view is that aside from the Adelaide-Darwin corridor, the relevant geographic markets for coal haulage and bulk rail haulage services are state-based.

¹ While rail wagons used for bulk rail haulage services on standard gauge networks in Victoria and SA could be used on NSW's standard gauge networks, the ACCC considers that the first factor is sufficient to treat suppliers of these services in Victoria and SA as presently operating outside NSW.

Issue of concern: Substantial lessening of competition in the supply of coal haulage in NSW and, separately, in Queensland through the removal of One Rail

- 46. The ACCC’s preliminary view is that the Proposed Acquisition is likely to substantially lessen competition in the supply of coal haulage in NSW and, separately, in Queensland.
- 47. One Rail is a well-established third supplier in NSW and a recent entrant (and third supplier) in Queensland that has had a notable impact. The Proposed Acquisition would remove this important supply alternative to PN and Aurizon.

Market concentration

- 48. The supply of coal haulage in NSW is highly concentrated, with three main suppliers: PN, Aurizon and One Rail. Aurizon is the second-largest supplier and proposes to acquire the third.
- 49. The supply of coal haulage in Queensland is also highly concentrated. Aurizon is the largest supplier, followed by PN. One Rail entered Queensland in 2020 and has been successful in supplying a small share of coal haulage. Separately, Queensland coal miner BHP-Mitsubishi Alliance (**BMA**) owns and operates its own coal-haulage trains. BMA’s operation is the third largest in Queensland but does not provide coal haulage for other miners.
- 50. The ACCC has received various estimates of the volume of coal moved by each of the market participants, based on broadly-available information about export volumes and train network usage. Table 1 provides approximate market share figures in NSW and Queensland in the financial year 2020-21, based on these estimates.

Table 1: Market share estimates for coal haulage in NSW and Queensland

Operator	NSW	Queensland
PN	40-50%	25-30%
<i>Aurizon</i>	30-35%	60-70%
<i>One Rail</i>	20-30%	0-5%
BMA	Does not haul coal in NSW	5-10%
SSR	0-5%	Does not haul coal in Queensland

Closeness of competition

51. The ACCC's preliminary view is that Aurizon and One Rail exert a strong and effective competitive constraint on each other and on PN in both states.
52. One Rail's coal haulage operations have their origins in the XRail / GRail operation that coal miner Xstrata / Glencore established in 2010 to service its mines, and sold in 2016. While most of One Rail's coal volumes continue to come from Glencore, One Rail has also been successful in obtaining coal haulage contracts with other miners.
53. Market participants have submitted to the ACCC that One Rail is currently a strong competitor in NSW based on its proven record of performance in that state, and that they would likely consider One Rail for their future needs or expect that it will participate in upcoming tender processes.
54. In Queensland, One Rail entered in 2020 with one coal haulage train set to provide services to Glencore. One Rail has since won a small amount of work with other miners in Queensland. It is in the process of expanding its capacity in Queensland through the acquisition of a second train set. Market feedback suggests that in Queensland One Rail has been aggressive on price, flexible on other contractual terms, and performed more favourably than Aurizon or PN on key operational metrics. Its entry is said to have created new competitive tension in the supply of coal haulage in Queensland.

Barriers to entry and expansion

Barriers to new entry

55. The ACCC's preliminary view is that barriers to new rail haulage suppliers entering coal haulage in NSW or Queensland are high.
56. Some market participants have referred to and reiterated the observations in the ACCC's Statement of Issues in a previous matter when commenting on the likelihood of new entry or expansion by existing suppliers.² As previously identified by the ACCC, the main barriers faced by a new entrant include:
 - An entrant must outlay significant capital on rolling stock, with a lead-in time for delivery often measured in years. A substantial proportion of this investment may be 'sunk' – irrecoverable on exit – discouraging entry.
 - Recruiting and training train drivers can be difficult, due to a lack of supply.
 - Gaining access to provisioning facilities can be challenging, or building your own can be costly.
 - A rail operator must meet regulatory requirements, such as operator accreditations and licences, before it can bid for tasks.

² Statement of Issues (Aurizon and PN acquisitions of GRail)
(<https://www.accc.gov.au/system/files/public-registers/documents/MER16%2B9857.pdf>)

- Coal producers place a high value on the hauler’s demonstrated reliability, which favours incumbents. Haulage is a critical input, with any delays or problems in delivering coal to port significantly impacting producers.
 - There are significant competitive advantages for incumbents, based on scale and scope (breadth-of-service), from having larger train fleets and range of customers.
57. The ACCC has received submissions that there is increased uncertainty about the long-term future of coal. Similarly, there had been an increase in ‘societal risk’ associated with coal projects, including an increased reluctance of banks to finance coal-exposed businesses and increased shareholder activism on the issue. This would impact on investment decision-making for potential new entrants into coal haulage and might make it challenging for a firm to obtain finance to enter these markets. The ACCC understands that this uncertainty is greater for projects in NSW, where the majority of coal produced is thermal coal (for use in power stations), than in Queensland, where the majority of coal produced is metallurgical coal (for use in smelters).
58. In this context, the ACCC considers One Rail’s entry into Queensland, expanding its coal operations from its NSW base, to be a unique occurrence that is not indicative of low barriers to entry.

Potential entry into coal by an existing supplier of bulk rail haulage services

59. The ACCC considers that barriers to entry into coal haulage in NSW or Queensland are likely to be lowest for an existing supplier of bulk rail haulage services operating in the same geographic area.
60. In such circumstances the existing supplier would have the advantage of already having in place existing accreditation to operate on the rail networks, access to drivers, facilities and provisioning services. Locomotives and wagons used for other bulk rail haulage tasks may in some circumstances also be capable to being repurposed to haul coal.
61. In NSW, rail operators offering bulk rail haulage services for non-coal bulk commodities/products include Qube and SSR. In Queensland, rail operators offering bulk rail haulage services for non-coal bulk commodities/products include Qube and Watco.
62. However, there are various factors that may still limit the extent to which these rail operators could, or are likely to, begin supplying coal haulage and exert significant competitive constraint in markets in NSW or Queensland in the future:
- As outlined above at paragraph 57, increased uncertainty about the long-term future of coal makes new entry into coal haulage less attractive, especially in NSW.
 - The scale of the operations undertaken by existing coal haulage operators in NSW and Queensland is significantly larger than the bulk rail haulage operations in those states. This may mean that bulk rail haulage operators may find it hard to demonstrate their reliability at scale to large coal customers.

63. For these reasons, the ACCC’s preliminary view is that there are weak prospects of significant entry into the supply of coal haulage in either NSW or Queensland by current suppliers of bulk rail haulage services in each of those States.

Countervailing power

64. The ACCC continues to consider the extent to which customers in NSW and Queensland may have some countervailing power to constrain an attempt by a supplier to exercise market power.
65. In NSW, Glencore has previously demonstrated an ability to self-supply. Glencore’s predecessor established the X-Rail / GRail coal-haulage business, which became the core of One Rail’s coal haulage business.
66. In Queensland, BMA has demonstrated an ability to supply its coal haulage needs itself.
67. Despite these examples of self-supply and / or customer supported expansion, the ACCC does not consider countervailing power of customers would provide a sufficient competitive constraint post-acquisition. While the threat of self-supply of coal haulage may address the impacts of an exercise of market power for some customers, it is unlikely to do so for a significant portion of the relevant market, and many of the benefits that customers have obtained as a result of competition from One Rail would likely be lost.

Proposed Undertaking

68. Aurizon proposes to divest One Rail East Coast to seek to resolve any competition concerns about the impact of the Proposed Acquisition on the supply of coal haulage in NSW and Queensland. Further details and questions about the Proposed Undertaking are provided at the end of this document and a copy of the Proposed Undertaking is available on the ACCC’s [mergers public register](#).

Questions for market participants

69. The ACCC invites comments from market participants on its concerns. In particular, market participants may wish to comment on the following:

- To what extent and in what way, if any, has One Rail’s presence or performance in NSW or Queensland elicited a competitive response from PN and / or Aurizon?
- What is the likelihood of a new supplier of coal haulage establishing itself in NSW or Queensland?
 - Which rail operator or rail operators, when and with what effect?
 - What are the most significant challenges they would face in doing so? How do these circumstances compare with what earlier operators faced?
 - To what extent would investments to enter the market be viewed as ‘sunk’? For example, how readily available is leased rolling stock and how liquid is the market for second-hand stock, before and after entry?

- To what extent could an existing bulk rail haulage services provider use its existing rolling stock to provide coal haulage services?
- To what extent can coal customers in NSW or Queensland exert a credible threat to self-supply their own coal haulage services? Please identify the customers most likely to have the ability and incentive to exert such a threat; and the circumstances under which they would be likely to act on these.

Issue that may raise concerns: loss of potential future competition in supply of bulk rail haulage services

70. As noted above, the ACCC understands that Aurizon and One Rail do not presently compete in the supply of bulk rail haulage services for non-coal bulk commodities/products. This is because they currently supply these services in different regions: Aurizon provides these services in Queensland, NSW and WA, while One Rail provides them in SA and the NT.
71. Some market participants have submitted that, if Aurizon does not acquire One Rail, Aurizon and / or One Rail might expand or enter into the supply of bulk rail haulage services for various non-coal bulk commodities/products in jurisdictions in which they do not presently operate. That is:
- Aurizon might commence supplying bulk rail haulage services in competition with One Rail's existing bulk rail haulage services in SA and/or the NT, if it does not acquire One Rail, and / or
 - One Rail might commence supplying bulk rail haulage services in competition with Aurizon's existing services in Queensland, NSW and/or WA, if it is not acquired by Aurizon.
72. In this regard, Aurizon has publicly stated its intention to continue to grow its bulk rail haulage business. For example, an investor day presentation of 8 June 2021, included a statement that Aurizon intends to double the size of its integrated supply chain business for bulk commodities/products (which includes its bulk rail haulage operations) by 2030.³ This includes an intention to build on its existing bulk presence in WA and Queensland, as well as to 'establish offerings in new basins...'.⁴
73. If such expansions were to occur in the future in the absence of the Proposed Acquisition, they could strengthen competition in or the supply of bulk rail haulage services to haulage customers of various commodities/products in a number of jurisdictions, such as:
- agricultural commodities/products and inputs, such as grain, cotton or sugar, in NSW, Queensland, SA and WA

³ <https://www.aurizon.com.au/-/media/project/aurizon/files/investors/documents-and-webcasts/2021/investor-day/2021-investor-day-presentation.pdf> at slide 37

⁴ Ibid, slide 43

- ores, minerals and similar commodities (such as alumina or mineral sands), in NSW, Queensland, SA and WA, and
 - cement in Queensland, SA and WA.
74. The ACCC sees this as a potentially important issue because there only exists a limited number of large suppliers of bulk rail haulage services in Australia (primarily Aurizon, One Rail, PN, Qube, Watco and SSR) and the Proposed Acquisition would reduce that number by one.⁵
75. Since Aurizon and One Rail have each demonstrated their ability to run large, proficient, bulk rail haulage services in their current respective geographic regions, they each have the potential to materially enhance competition if they were to enter a new area.
76. In this regard, the ACCC is carefully considering the impact of One Rail's recent entry into the supply of coal haulage services in Queensland, and whether this provides it with the platform to begin supplying bulk rail haulage services in Queensland. There are a limited number of rail haulage providers in Queensland: Aurizon, PN, Watco and Qube. The ACCC understands Aurizon is the largest provider of bulk rail haulage services in Queensland. Therefore, any increase in the competitive threat posed to Aurizon by One Rail in the supply of bulk rail haulage services in Queensland has the potential to provide significant competitive benefits.
77. The ACCC is continuing to consider:
- the likelihood of this potential future competition manifesting in the absence of the Proposed Acquisition
 - the commodities/products and geographic regions in which Aurizon and One Rail might compete, and
 - the strength of competition from other suppliers already competing in the relevant regions, including where relevant, from road alternatives.
78. However, based on information currently available, the ACCC's degree of concern in relation to bulk rail haulage services is less than it is for the supply of coal haulage. The ACCC's preliminary view is that the loss of potential future rivalry between Aurizon and One Rail in the supply of bulk rail haulage services may substantially lessen competition in one or more state or regional markets for the supply of those services.
79. Aurizon proposes to divest One Rail East Coast to seek to resolve potential competition concerns about the impact of the Proposed Acquisition on the supply of non-coal bulk rail haulage services in NSW and Queensland. Further details and questions about the Proposed Undertaking are provided at the end of this document and a copy of the Proposed Undertaking is available on the ACCC's [mergers public register](#).

⁵ There also exists a small number of rail operators which only operate in a single state and/or only haul specific bulk commodities/products.

80. The ACCC invites comments from market participants on its concerns. In particular, market participants may wish to comment on the following:

- Whether there are any non-coal bulk markets in which Aurizon and One Rail currently compete.
- Whether, without the Proposed Acquisition, there are any bulk markets in which Aurizon and One Rail would be likely to compete in the future.
- What abilities and incentives do Aurizon and One Rail have to commence supplying bulk rail haulage services in jurisdictions in which they do not presently supply these services? What actions, plans or statements indicate or evidence their abilities and incentives?
- Whether One Rail's entry into coal haulage Queensland has increased the competitive threat to Aurizon or other bulk rail operators, including whether customers have obtained improved price or non-price benefits following One Rail's entry.

Issue unlikely to raise concerns: vertical foreclosure by the operator of above and below rail services in SA/NT

81. The ACCC's preliminary view is that the Proposed Acquisition would not be likely to lead to a substantial lessening of competition in the supply of bulk rail haulage or intermodal services on or along the Adelaide-Darwin corridor through an increased risk of vertical foreclosure by the operator of below-rail services in SA and the NT.

82. A number of market participants raised concerns regarding the present operation of One Rail's vertically integrated above-rail (bulk rail haulage services) and below-rail (network) services in SA and the NT. The concerns they expressed included that:

- for the One Rail networks it operates, access charges to these networks are not transparent
- it had been difficult to get timely quotes for rail-access charges, and
- One Rail required commercially sensitive information from rail operators seeking access to use the networks that was unnecessary to meet the access request.

83. The ACCC acknowledges that these behaviours, if true, could impede effective competition between One Rail (or Aurizon post-acquisition) and other potential above-rail providers in SA and the NT. However, the ACCC's focus in this review is on changes to competition that are the result of the Proposed Acquisition.

84. The ACCC's preliminary view is that a combined Aurizon-One Rail is not likely to have a greater ability and incentive to foreclose (prevent or impede a rival rail operator from competing) other users and potential users of One Rail's networks than One Rail does now. Since Aurizon does not presently provide above-rail services on any track operated by One Rail in those regions, the Proposed Acquisition would not lead to any structural change to the supply of above or

below rail services in SA or the NT – it would simply transfer One Rail’s existing business in those regions to Aurizon.

85. The ACCC has considered whether the combination of Aurizon’s operations in other parts of the country with One Rail’s current SA and NT operations might provide the merged business with a greater incentive than One Rail currently has to foreclose potential competing above-rail providers in SA and the NT. For example, a combined Aurizon-One Rail could seek to frustrate a rival operator that wants to offer a customer a multi-region solution that includes SA and/or the NT, by discriminating against it in the provision of access in SA and/or the NT. If this occurred, it could worsen prices and conditions to customers of bulk rail haulage services on the Adelaide-Darwin corridor.
86. However, the ACCC understands that:
- customers do not typically procure on such a multi-region basis, and
 - the relatively small amount of revenue involved in access and bulk rail haulage services in SA and the NT is not likely to be a material lever in larger potential arrangements.
87. As a result, the ACCC’s preliminary view is that this issue is unlikely to raise concerns.
88. The ACCC invites comments from market participants on its preliminary view. In particular market participants may wish to comment on the following:

- Whether the Proposed Acquisition would increase the ability or incentive for the owner of One Rail to discriminate against competing rail haulers in SA and/or the NT, and if so, the driver(s) for this increase and how One Rail’s conduct could transpire.

Proposed Undertaking

89. Aurizon has offered a court enforceable s.87B undertaking to divest One Rail East Coast. Aurizon submits that the divestiture of One Rail East Coast will establish an effective, stand-alone, long-term competitor and resolve the ACCC’s competition concerns in the supply of coal haulage and non-coal bulk rail haulage services in NSW and Queensland.

Summary of the Proposed Undertaking provisions

90. The Proposed Undertaking provides for either a divestment of One Rail East Coast to an ACCC-approved purchaser by a trade sale, or via demerger that would establish a new ASX listed entity. If a trade sale or demerger is not completed within the divestiture period, One Rail East Coast will be divested at no minimum price to an ACCC-approved purchaser via an approved divestiture agent.
91. The Proposed Undertaking includes:
- at the option of the approved purchaser, a transitional supply agreement for any goods and services required by the purchaser to operate the divestiture business

- at the option of the approved purchaser, a transitional technical assistance agreement required by the purchaser to effectively operate the divestiture business, and
 - an ACCC-approved independent auditor to monitor Aurizon's compliance with the Proposed Undertaking.
92. A draft of the Proposed Undertaking is provided is available on the ACCC's [mergers public register](#).
93. Schedule 4 of the Proposed Undertaking lists all the entities, assets, licenses and contracts to be divested as part of the One Rail East Coast business.
94. The Proposed Undertaking requires the appointment of an ACCC-approved Independent Manager for the divestiture business during the divestiture period. In addition to the Independent Manager, One Rail East Coast would have its own management team which would operate the business on a day-to-day basis. It is proposed that the standard functions of an approved independent manager would be split between the ACCC-approved Independent Manager for One Rail East Coast and One Rail East Coast's management team which varies from the ACCC's standard approach for divestiture undertakings.
95. The Proposed Undertaking and the draft Separation and Management Plan (which are available on the ACCC's [mergers public register](#)) outline the interaction between the Independent Manager and the One Rail East Coast management team.
96. A summary of the draft Ring Fencing Protocols that outline how One Rail East Coast's confidential information will be kept separate from Aurizon in the period between Aurizon acquiring One Rail and divesting One Rail East Coast is available on the ACCC's [mergers public register](#).

Issues for consideration

97. The ACCC has not decided whether such a remedy is capable of addressing the ACCC's preliminary competition concerns.
98. Remedies involving demergers are rarely proposed and can present certain risks that are not present in a standard divestiture remedy and therefore require careful scrutiny. In particular, the ACCC will consider the proposed commercial and financial arrangements that Aurizon has proposed for the new entity and whether this would affect the proposed demerged business' ability to become an effective, stand-alone and long-term competitor. This would include taking into account the proposed debt that One Rail East Coast will hold and its expected future cash flows.
99. Feedback is also sought on other risks associated with the demerger including potential execution risks which could impact on the demerger proceeding, including the time it would take for the divested business to be demerged.
100. The divestiture via trade sale option is more common but does require careful consideration of a number of factors, in particular, whether the ACCC can be satisfied that there is a suitable buyer for the divested business which is capable of replacing the competition lost as a result of the Proposed Acquisition.

101. The ACCC invites comments from market participants on whether the Proposed Undertaking adequately addresses the competition concerns arising from the Proposed Acquisition. In particular, market participants may wish to comment on the following:

Would a divestment of One Rail East Coast address the ACCC’s competition concerns?

- Whether the divestment of One Rail East Coast addresses the ACCC’s concerns about the impact of the Proposed Acquisition on the supply of coal haulage in NSW and Queensland.
- Whether the divestment of One Rail East Coast addresses the ACCC’s concerns about the impact of the Proposed Acquisition on the supply of non-coal bulk rail haulage services in NSW and Queensland.
- Whether the divestment of One Rail East Coast addresses any other concerns in relation to the Proposed Acquisition.

Are there other issues that could prevent One Rail East Coast from being an effective independent competitor?

- Whether the divestiture package is likely to attract a suitable trade sale purchaser. Who may be suitable, and unsuitable potential purchasers, including the reasons why?
- To what extent would a purchaser of the One Rail East Coast business need existing operations and/or experience in Australia in order to be an effective and long-term competitor?
- Aurizon intends to fund part of the One Rail purchase price by obtaining and fully-drawing a \$500m loan facility, which would be repayable by One Rail East Coast following the proposed divestment.⁶ What impact would this \$500 million debt facility have on One Rail East Coast’s viability and ability to compete in the short to mid-term?
- Whether there are any risks associated with divestment of the One Rail East Coast business via demerger.

Are there potential issues with the timing of the divestiture?

- Whether and how One Rail East Coast’s assets could degrade during a divestiture period and how quickly this may occur.
- How long a trade sale or demerger process for a business like One Rail East Coast would usually take.

Does the drafting of the Proposed Undertaking achieve its intended purpose?

- Whether the divestiture package includes all the necessary assets, contracts and personnel, required to ensure the One Rail East Coast business can operate as an effective and long-term competitor, either under the ownership of a new trade

⁶ Outlined in an Aurizon investor presentation at slide 25- <https://mc-71bd5e2a-aade-4067-a0ad-8402-cdn-endpoint.azureedge.net/-/media/project/aurizon/files/investors/documents-and-webcasts/2021/other-presentations/investor-presentation---acquisition-of-one-rail-australia.pdf?rev=88917dd103944642b71c3541417afc35&hash=83A5F070FC485715BE5A8A4D48C7BD33>

purchaser or on the ASX as a demerged business. If not, please explain what else would be required.

- Whether the draft Separation and Management Plan (as described in the summary which is available on the ACCC's [mergers public register](#)) enables the One Rail East Coast business to be effectively managed by the management team independently of Aurizon and provides for sufficient independent oversight by the Independent Manager
- Whether the draft Ring Fencing Protocols (as described in the summary which is available on the ACCC's [mergers public register](#)) effectively keep One Rail East Coast's confidential information separate from Aurizon?

ACCC's future steps

102. As noted above, the ACCC invites 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 should be emailed to mergers@acc.gov.au by no later than 23 June 2022.
103. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.
104. The ACCC intends to publicly announce its final view by 14 July 2022. However the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment explaining the ACCC's final view may be published following the ACCC's public announcement.