



Statement of Issues

29 June 2023

Transurban – proposed acquisition of Horizon Roads

Purpose

1. Transurban Group (**Transurban**) is seeking to acquire a majority interest in Horizon Roads Pty Ltd (**Horizon Roads**) through a competitive sale process (**the proposed acquisition**).
2. This Statement of Issues:
 - gives the Australian Competition and Consumer Commission's (ACCC) preliminary views 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 fully articulate 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'. For this matter, there is one issue that may raise concerns and three issues unlikely to raise concerns.

Issue that may raise concerns

Competition for future toll road concessions

6. The ACCC is concerned that the proposed acquisition may substantially lessen competition for concessions to construct, own and/or operate toll roads in Victoria.
7. The ACCC is considering whether Transurban has incumbency advantages from holding toll road concessions, and the extent to which the proposed acquisition could increase those incumbency advantages. Incumbency advantages can impact competition by acting as barriers to entry for rival bidders for toll road concessions, and could prevent rivals from bidding for concessions at all. Potential incumbency advantages include having significant traffic modelling capability and expertise, the ability to access lower cost finance due to perceptions about traffic data and modelling expertise, having access to exclusive traffic data from existing Victorian toll roads, and a greater ability to submit successful unsolicited proposals for new toll roads with the Victorian Government. These incumbency advantages are likely greater for greenfield (unbuilt) than brownfield (existing) toll road opportunities.
8. The ACCC is also concerned that the proposed acquisition may prevent the emergence of a key rival to Transurban for future toll road concessions. A majority interest in Horizon Roads, as an operational enterprise in Victoria, could provide a non-Transurban entity with the opportunity to gain some of the capabilities and incumbency advantages held by Transurban, including its traffic modelling capabilities, and leverage them to bid competitively for future toll road concessions in Victoria.
9. The ACCC is also considering the extent to which the Victorian Government can constrain Transurban in future toll road concession sale processes.

Issues unlikely to raise concerns

10. The ACCC's preliminary view is that the proposed acquisition is unlikely to substantially lessen competition in the supply of electronic tolling services (**ETS**) for motorists in Victoria because ETS fees and service levels are heavily regulated by toll road concession deeds and because ETS is not a primary source of revenue for toll road operators.
11. Additionally, the ACCC's preliminary view is that the proposed acquisition is unlikely to substantially lessen competition for the supply of tolling systems/services to toll road operators as there appears to be numerous suppliers from which toll road operators could procure such systems/services.
12. It is also the ACCC's preliminary view that the proposed acquisition is unlikely to substantially lessen competition in relation to competition between toll roads in the Melbourne region because toll caps are set by the relevant concession deeds and it is unlikely that pricing below the toll caps for all motorists would be profit-enhancing for a toll road operator. Further, the CityLink and EastLink toll roads are only substitutes for a small subset of motorists and it appears unlikely that Transurban would have the ability to discriminate effectively on price or service standards for motorists for which CityLink and EastLink are substitutes.

Making a submission

13. The ACCC invites submissions from interested parties, particularly on the following key issues:
 - whether Transurban has incumbency advantages from holding toll road concessions in Victoria and the extent to which these advantages impact competition for future toll road concessions in Victoria
 - whether the proposed acquisition would strengthen Transurban's incumbency advantages in competing for future toll road concessions in Victoria
 - the extent to which a non-Transurban entity acquiring Horizon Roads would impact competition to construct, own and/or operate toll roads in Victoria, and whether this would be different from the status quo
 - the extent to which the Victorian Government would have the ability to constrain Transurban post-acquisition.
14. Detailed discussion of these and other issues, along with specific questions, is contained in this Statement of Issues.
15. Interested parties should provide submissions by 5pm on 14 July 2023. Responses may be emailed to mergers@acc.gov.au with the title: "*Submission re: Transurban/Horizon Roads - attention Ninad Kulkarni/Albert Lee*". If you would like to discuss the matter with ACCC staff or have any questions about this Statement of Issues, please contact Ninad Kulkarni on (03) 9910 9531 or Albert Lee on (07) 3811 9266.
16. The ACCC anticipates making a final decision on 7 September 2023, however, this timeline can change. To keep up with possible timing changes 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

17. 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 that is provided to the ACCC. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

About ACCC 'Statements of Issues'

18. 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.

19. 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

Transurban

20. Transurban is listed on the Australian Securities Exchange (**ASX**) and is Australia's largest toll road operator. Transurban's operations include the development, ownership, management and operation of toll roads in Australia and North America. In Victoria, Transurban has interests in the following toll roads:

- CityLink
- West Gate Tunnel (under construction).

21. In addition to its toll road assets, Transurban provides electronic tolling and tag issuing services under the Linkt brand.

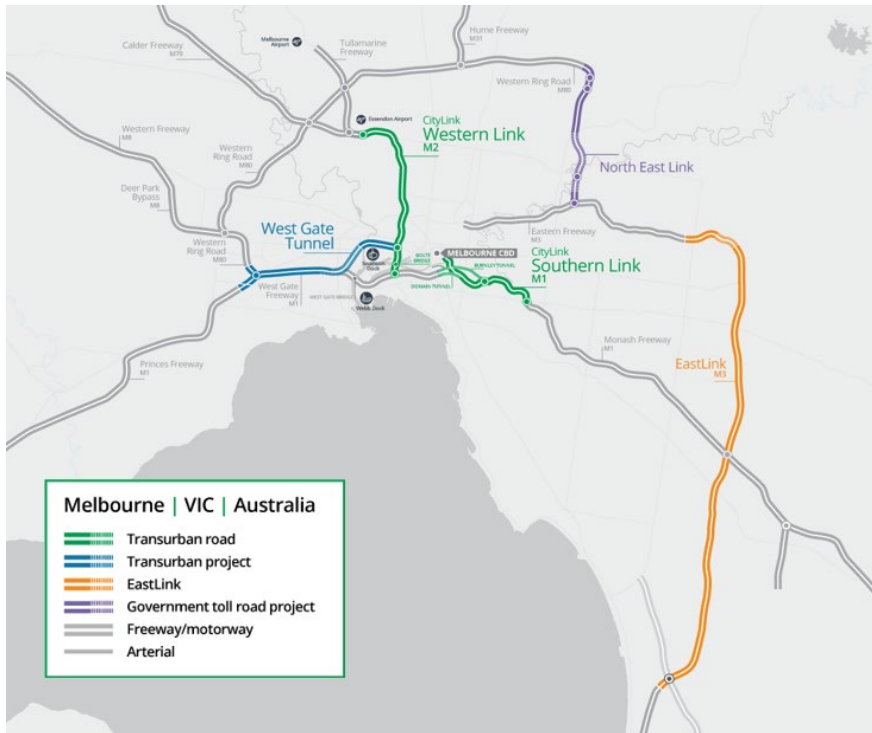
Horizon Roads

22. Horizon Roads is a private Australian resident company. In addition to being the ultimate concession holder of the EastLink toll road, Horizon Roads also provides electronic tolling and tag issuing services under the EastLink brand.

The proposed transaction

23. Transurban is seeking to acquire a majority interest in Horizon Roads through a competitive sale process. Horizon Roads has multiple shareholders and some are seeking to sell their interests through this sale process. Horizon Roads, through ConnectEast, holds a concession from the State of Victoria to operate the EastLink toll road until November 2043. ConnectEast was awarded the concession to fund, design, build, own and operate EastLink in 2004, and EastLink opened to traffic in 2008.
24. EastLink is a 39-kilometre freeway in south-east Melbourne that runs from Mitcham to Frankston. It connects to the Monash, Eastern, Frankston and Peninsula Link freeways. Map 1 shows EastLink in relation to other Melbourne toll roads and freeways, including Transurban's CityLink.

Map 1 – Melbourne toll roads and freeways



Industry background

Toll roads in Australia

25. Toll road concessions are typically long-term contractual arrangements between a toll road operator and the relevant state government under which the operator constructs, operates and/or maintains a toll road in return for the right to collect toll revenue from motorists using the toll road to which the concession relates. The concession deeds differ from road to road. For example, there might be a different pricing structure depending on the size and nature of the toll road or different prescriptions as to the level of administrative fees that can be levied on motorists. Generally, toll road concessions set the maximum price that the toll road operator can charge motorists for using the toll road.
26. Toll road concessions are generally awarded following a competitive bid process. However, toll road concessions can also be awarded in response to an unsolicited proposal. An unsolicited proposal is a proposal from a private entity to a state government in relation to an infrastructure project for which the government has not requested proposals. In relation to toll roads, an unsolicited proposal can be for either a toll road that has been identified as a potential project by the relevant state government, or a proposal for a toll road that has not previously been identified by the government.
27. Australia-wide, Transurban has been awarded five toll road concessions or toll road upgrade projects after submitting unsolicited proposals to the relevant state

governments.¹ These were awarded in exchange for extending concessions on existing toll roads or for increases to tolls for heavy vehicles.

Toll roads in Victoria

28. There are four toll roads in operation or under construction in Victoria:

- The CityLink concession was awarded to Transurban following a competitive sale process run by the Victorian government. The concession is due to expire in 2045.
- The EastLink concession was awarded to ConnectEast following a competitive sale process run by the Victorian government. The concession is due to expire in 2043.
- The West Gate Tunnel toll road concession was awarded to Transurban after it submitted an unsolicited proposal to the Victorian Government. The concession was awarded in exchange for an extension of the CityLink concession. The concession is due to expire in 2045.
- The North East Link toll road is being built, and will be operated, maintained and tolled by entities owned by the Victorian government.

Traffic modelling²

29. Traffic modelling and forecasting are key inputs into bids for toll road concessions as they enable estimates of toll revenue over the concession period to be made. The level of confidence in traffic forecasts is critical and has tangible impacts, most importantly on the required rate of return for equity contributors.

30. There is an inherent degree of uncertainty when forecasting traffic flows and revenues for toll road concessions. Forecasts rely on demand assumptions about growth to accurately predict traffic flows and revenues. Traffic models are calibrated and validated using existing road-use data, including traffic count data and trip/travel pattern data.

31. Traffic modelling and forecasting for a new toll road generally takes a significant period of time and involves considerable costs. Existing toll road operators may have in-house modelling teams that can undertake the necessary modelling. Alternatively this task may need to be outsourced to specialised traffic modelling consultants.

Traffic data³

32. As mentioned above, there are two key types of traffic data used in forecasting traffic on future toll roads: traffic count data and trip/travel pattern data.

¹ NorthConnex (NSW) in March 2014, CityLink upgrades (Vic) in August 2015, Logan Enhancement Project (Qld) in November 2016, Inner City Bypass Upgrade (Qld) in March 2017, West Gate Tunnel (Vic) in December 2017.

² These modelling issues were explored in the WestConnex [Public Competition Assessment](#).

³ These data issues were explored in the WestConnex [Public Competition Assessment](#).

Traffic count data

33. Traffic count data is data that measures the number and type of vehicles that pass by a certain point. It is used for the following purposes in traffic modelling:
- Calculation of annualisation factors – strategic models (i.e. models designed to forecast traffic demand on future toll roads) generally model an average work day. Annualisation factors are used to convert the average workday forecast into an annual traffic forecast.
 - Validation – comparing actual traffic counts at points across the road network with model forecasts of traffic counts at the same locations.
34. Traffic count data can be obtained from the following sources:
- Gantry data collected by toll road operators
 - Induction loop and traffic survey data collected by governments on public roads
 - Induction loop data collected by toll road owners (located on the toll roads and on some entry/exit ramps)
 - Non-government traffic surveys conducted on public roads using various forms of technology (e.g. cameras, counting tubes across roads).
35. Gantry data is collected by equipment mounted on gantries located on toll roads. This equipment detects electronic tags (**e-tags**), classifies vehicles and photographs vehicles. The photographs are used to match vehicles to an account or licence plate number where no e-tag is detected. Relevant for modelling, the equipment collects information on passages (the number of vehicles that pass under the gantry), vehicle class (i.e. light or heavy vehicle) and passage date and time.
36. Gantry data is collected for the primary purpose of billing customers for their use of toll roads. As such, the data is very accurate.

Trip/travel pattern data

37. Trip or travel pattern data is data that describes trips taken by vehicles through a network.
38. In traffic modelling, trip data could be used for calculating travel times/speeds, identifying travel patterns of vehicles on toll roads, and understanding user behaviour, including willingness-to-pay, value-of-time, toll elasticity parameters, and frequency of toll road usage.
39. Understanding travel times and user behaviour, in particular willingness-to-pay and value-of-time, is vital for traffic modelling as it allows modellers to create accurate origin/destination matrices which are used to determine which vehicles will travel on which roads, including the new road being modelled.
40. Trip/travel pattern data for Victoria can be obtained from public sources or can be readily acquired, including from the following sources:

- TomTom/Google/mobile phone travel time data
- Victorian Integrated Survey of Travel and Activity
- ABS Journey to Work data
- Revealed and stated preference surveys.

Electronic tolling

41. Australian toll roads employ Electronic Tolling Collection (**ETC**) technology to capture information of vehicles that travel on the roads. Motorists must use an e-tag, or a non-tag account or pass when driving on toll roads. These e-tags, non-tag accounts and passes allow a toll road's ETC infrastructure to capture motorists' travel on toll roads. A vehicle's trip data is captured by tolling gantries on the toll roads and processed by "back-end" systems which validate trips and convert this to a toll charge.

Previous ACCC decisions

Sydney Transport Partners (including Transurban) proposed acquisition of WestConnex

42. On 30 August 2018, the ACCC decided not to oppose the proposed acquisition of a majority interest in the WestConnex toll road project by Sydney Transport Partners (STP) (a consortium led by Transurban) subject to section 87B undertakings to publish gantry count traffic data for Transurban's NSW toll roads (referred to as the WestConnex review for the remainder of this SOI).
43. The WestConnex review focussed on the impact the proposed acquisition would have on the level of competition for future toll road concessions in New South Wales (NSW). In particular, the ACCC considered whether the proposed acquisition would lessen competition by strengthening Transurban's incumbency advantages and preventing an alternative acquirer from establishing a significant toll road presence and therefore competing more vigorously for future toll road concessions. The ACCC also assessed road-on-road competition issues, and whether Transurban's existing toll road interests might compete with the WestConnex roads.
44. Further details of the ACCC's assessment can be found in the [Public Competition Assessment](#).

Transurban's proposed acquisition of BrisConnections

45. On 26 November 2015, the ACCC decided not to oppose Transurban's proposed acquisition of BrisConnections. The ACCC considered the acquisition in the markets for the supply of electronic tolling services to motorists, the supply of tolling services to holders of toll road concessions, and the bidding market for the award of concessions for toll road construction and operation. The ACCC concluded that the proposed acquisition was unlikely to substantially lessen competition in any relevant market.

Transurban’s proposed acquisition of the Queensland Motorway Group

46. On 4 April 2014, the ACCC decided not to oppose Transurban’s proposed acquisition of the Queensland Motorway Group. The ACCC considered the acquisition in the market for the supply of tolling services to holders of toll road concessions and in the national bidding market for the award of concessions for toll road construction, ownership and/or operation. The ACCC found that the proposed acquisition was unlikely to substantially lessen competition in either of these markets.

Transurban’s proposed acquisition of Connector Motorways Group

47. On 20 April 2010, the ACCC decided not to oppose Transurban’s proposed acquisition of Connector Motorways Group. The ACCC considered the proposed acquisition in the context of the markets for the provision of electronic tolling services to motorists in New South Wales, the provision of tolling services to toll roads in New South Wales, and toll road construction and ownership in Australia. The ACCC found that the proposed acquisition was unlikely to substantially lessen competition in any of these markets.

Transurban’s proposed acquisition of Sydney Roads Group

48. On 8 March 2007, the ACCC decided not to oppose Transurban’s proposed acquisition of Sydney Roads Group. The ACCC considered the potential impact of the proposed acquisition on the market for toll road construction and ownership, and the market for provision of tolling services to motorists. The ACCC found that the proposed acquisition was unlikely to substantially lessen competition in either of these markets.

Future with and without the acquisition

49. In assessing a proposed acquisition under section 50 of the CCA, the ACCC considers the effects of the acquisition by comparing the likely future state of competition if the acquisition proceeds (the ‘with’ position) to the likely future state of competition if the acquisition does not proceed (the ‘without’ position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.
50. If the proposed acquisition by Transurban does not proceed, the ACCC considers it likely that Horizon Roads would be acquired by an alternative bidder in the sale process. This would result in a non-Transurban entity continuing to hold the EastLink concession deed. Without the acquisition, an alternative toll road owner/operator could leverage the existing management capabilities and expertise held by Horizon Roads to contest the incumbency advantages which would otherwise be solely held by Transurban, including by further developing traffic modelling capabilities and expertise and the ability to access lower cost finance. An alternative toll road owner/operator with its own incumbency advantages is likely to increase competition for future toll road concessions in Victoria.

Invitation for comments

The ACCC invites comments from market participants on its preliminary views about the future without the proposed acquisition. In particular, market participants may wish

to comment on the impact a non-Transurban entity acquiring Horizon Roads would have on competition for future toll road concessions in Victoria, including the extent to which this would provide a non-Transurban entity with incumbency advantages similar to those of Transurban, or to build over time such incumbency advantages, and the extent to which these advantages could be leveraged to bid for future toll road concessions.

Market definition

51. The ACCC's starting point for delineating relevant markets, to assess the competitive effects of the proposed acquisition, involves identifying the products and geographic regions actually or potentially supplied by the parties to the transaction. The ACCC then focuses on areas of activity where competitive harm could occur as a result of the proposed acquisition.
52. The ACCC is considering the impact of the proposed acquisition on competition:
 - for concessions to construct, own and/or operate toll roads in Victoria
 - for the supply of electronic tolling services for motorists in Victoria
 - for the supply of tolling systems/services to toll road operators
 - between toll roads in the Melbourne region.
53. The relevant markets for analysing these issues are discussed below.

Market for toll road concessions

54. In the WestConnex review, the ACCC considered that the market for toll road concessions includes concessions that are acquired following a competitive bidding process and concessions obtained through unsolicited proposals. The ACCC also considered that the geographic dimension of the market was likely to be state-based.
55. The ACCC considers that the same approach is appropriate for this review. The reasons for this are discussed in detail below.

Unsolicited proposals are part of the market for toll road concessions

56. Prior to the WestConnex review, the ACCC had considered toll road acquisitions in the context of a bidding market for toll road concessions, as unsolicited proposals for toll roads had not been raised as a significant issue. However, on the WestConnex review, market participants raised concerns that the proposed acquisition of WestConnex would give Transurban an increased ability to offer successful unsolicited proposals to the NSW Government. Similar concerns have been raised in this review regarding Transurban's ability to offer unsolicited proposals for new toll roads to the Victorian Government.
57. Unsolicited proposals and bidding processes are both ways of obtaining toll road concessions. When assessing an unsolicited proposal, a state government can decide whether to accept the unsolicited proposal or conduct a competitive bidding process instead. The ACCC therefore considers that both competitive sales processes and unsolicited proposals form part of the relevant market.

Geographic dimension

58. Prior to the WestConnex review, the ACCC had considered both national and state-based markets in respect of toll road concessions. The ACCC understands that generally, toll road developers and operators are able to compete for toll road concessions from any location, which points towards there being a national market for toll road concessions.
59. However, potential incumbency advantages arising from a toll road operator having traffic data and models, and the ability to offer successful unsolicited proposals, are state-based incumbency advantages. Further, the ability of state governments to impact concession sale processes are likewise state-based.
60. As such, the ACCC considers that the most relevant geographic dimension to be state-based, meaning Victoria for this proposed acquisition, while noting the possibility for the market to have a national dimension.

Market for the supply of electronic tolling services for motorists in Victoria

61. Electronic tolling services for motorists include e-tag and non-tag accounts that allow motorists to travel on tollways. The ACCC considers that the product dimension of the market includes e-tags and non-tag accounts issued to motorists and the management of these accounts. The ACCC considers that the geographic dimension of the market is state-based, so Victorian in this instance, as the ACCC understands motorists rarely purchase an e-tag or non-tag account from another state.

Market for the supply of tolling systems/services to toll road operators

62. Electronic tolling systems/services allow a toll road operator to track motorists' passages on toll roads and charge motorists for use. The ACCC's preliminary view is that these systems/services can be procured from suppliers Australia-wide and internationally. There does not appear to be anything unique about Victoria that would require such systems/services to be provided by suppliers located in Victoria.

Competition between toll roads in the Melbourne region

63. The ACCC is considering whether there are certain origin/destination combinations in Melbourne for which EastLink and CityLink are likely to be substitutes for motorists. We consider these origin/destination combinations are likely to be certain geographic areas (e.g. Melbourne CBD, Dandenong) rather than exact entry and exit points of toll roads.
64. The ACCC is also considering whether un-tolled alternate routes provide logistical choices and impose constraints on toll roads.

Invitation for comments

The ACCC invites comments from market participants on its preliminary views about the definitions of the relevant markets.

Issue that may raise concerns: impact on competition for toll road concessions

65. The ACCC is concerned that the proposed acquisition may substantially lessen competition for concessions to construct, own and/or operate toll roads in Victoria.
66. Market participants have raised concerns that Transurban has significant incumbency advantages from holding toll road concessions, and are concerned that the proposed acquisition would further strengthen Transurban's incumbency advantages to such an extent that its competitors would be reluctant to compete for future toll road concessions in Victoria (i.e. the proposed acquisition would raise barriers to entry to such an extent that rival bidders may not compete).
67. Market participants have also suggested that the proposed acquisition would prevent a non-Transurban entity gaining control of Horizon Roads and attaining some incumbency advantages of the kind currently held by Transurban, and therefore prevent the potential for an alternative bidder to compete strongly for future toll road concessions.
68. The ACCC is continuing to assess the extent to which the proposed acquisition would increase Transurban's incumbency advantages. In particular, the ACCC is considering four sources of such incumbency advantages that have been raised as particularly concerning by market participants:
 - traffic modelling capability and expertise, due to ownership of existing Victorian and other toll roads
 - lower costs of finance based on the perception of financiers (debt providers and equity partners) that Transurban has significant exclusive data and superior traffic modelling capability
 - exclusive access to data from existing Victorian toll roads
 - strong position to negotiate unsolicited proposals with the Victorian Government.
69. The ACCC is also considering the extent to which the Victorian Government would be able to constrain Transurban and foster competition for future toll road concessions.
70. These issues are discussed in turn below.

Traffic modelling capabilities

71. Market participants have raised concerns that Transurban's modelling capabilities provide it with significant incumbency advantages, principally arising from employing more knowledgeable and skilled traffic modellers and having an existing traffic model of Melbourne that is continually updated.
72. As Transurban operates toll roads in Melbourne, it has an in-house traffic modelling team that is likely to have gained, over Transurban's time holding concessions, extensive knowledge of the Melbourne traffic network. This may provide Transurban with an advantage in bidding for new toll roads in the Melbourne region.

73. Further, Transurban has an operational traffic model of its toll roads in Melbourne. Transurban may be able to use this model as a base or starting point for forecasting traffic flows on new toll roads. Over Transurban's time holding concessions and operating toll roads in Melbourne, it would likely have had the opportunity to develop and refine this model to an extent that its rivals without toll roads in Melbourne would not have. This may provide Transurban with a significant advantage when bidding for new toll roads in Victoria.
74. These advantages are likely more pronounced in relation to greenfield toll road opportunities as less sophisticated modelling is required to forecast traffic on existing roads with historic traffic data.
75. In addition, as Horizon Roads operates a toll road in Melbourne, if a non-Transurban entity acquired Horizon Roads, it may be able to further develop its own modelling capabilities and expertise to compete more effectively for future toll road concessions in Victoria. Conversely, the proposed acquisition would prevent a non-Transurban entity from gaining and building on these capabilities and expertise, and would mean Transurban is the only entity operating in Melbourne with significant capabilities and expertise in relation to toll roads.
76. The ACCC is continuing to consider this issue. However, the ACCC's preliminary view is that Transurban's modelling capabilities and expertise are likely to provide it with a competitive advantage when bidding for future toll road concessions in Victoria.

Financiers' perceptions

77. Market participants have raised concerns that the level of confidence in traffic forecasts is a key input of debt and equity financiers when considering whether to invest in toll roads, and that greater confidence in Transurban's traffic forecasts and traffic modelling results in lower costs of finance for Transurban than for its competitors. This advantage is again most relevant for greenfield concessions as these involve the highest degree of risk relating to traffic forecasts.
78. The ACCC understands that the cost of debt finance is predominantly influenced by the nature of the asset being financed, and that on this basis, Transurban is unlikely to receive materially different debt financing terms for toll roads than rival bidders. However, the ACCC is still considering the impact of perceptions about Transurban's data and modelling capabilities on equity financing, including Transurban's ability to find equity financing partners, and the costs of such finance compared to its rivals.
79. The ACCC is also considering whether a non-Transurban entity that acquired Horizon Roads (and therefore established a history of operating a successful toll road in Victoria and developed its own modelling capabilities) would be able to find equity partners and access equity finance on similarly favourable terms to Transurban, which may reduce its costs of finance and allow it to bid more competitively for future toll road concession in Victoria.

Access to traffic data

80. As set out in the background section above, traffic models for new toll roads are calibrated and validated using existing road-use data, including traffic count data and trip/travel pattern data.

Trip/travel pattern data

81. Market participants have raised concerns that Transurban's existing toll road concessions and customer accounts provide it with access to real-time, high quality and exclusive data that allows it to track individual trips through its road network, which is valuable for modelling. They contend that the proposed acquisition will provide Transurban with even greater data for modelling future toll roads and will provide Transurban with an insurmountable advantage when forecasting traffic flows. This advantage is particularly relevant for greenfield toll roads where, unlike for existing toll roads, there is no historic data for traffic on the road.
82. On the WestConnex review, the ACCC found that exclusive data that Transurban has access to (other than gantry traffic count data), such as individual trip data, is not valuable for strategic modelling and is not used by Transurban for traffic modelling. As such, while Transurban may have access to such data, it does not provide Transurban with any incumbency advantage as it does not use this data for modelling new toll roads.
83. Further, as set out in the Background section, the ACCC understands that there are numerous publicly available sources of trip/travel pattern data available to rival bidders, including TomTom/Google/mobile phone data.
84. The ACCC is continuing to consider this issue, in particular the availability and significance of alternative sources of trip/travel pattern data for Transurban's rivals.

Traffic count data

85. On the WestConnex review, the ACCC found that the only exclusive data from its toll roads that Transurban uses in modelling future toll roads is gantry traffic count data. This data is used by Transurban to calibrate and validate areas of its traffic models.
86. The ACCC is continuing to consider the importance of gantry traffic count data for strategic modelling. However, market feedback on this review has indicated that traffic count data may not be particularly useful for modelling new roads as motorists' trips do not begin and end on toll roads, and so this data only provides partial information about motorists' trips.
87. The ACCC also understands that there are numerous other sources of traffic count data that rival bidders for future toll roads can access (see Background section above).

Leveraging existing toll roads to make successful unsolicited proposals

88. Market participants have noted that only incumbent toll road operators can offer successful unsolicited proposals for new toll roads. These market participants have raised concerns that post-acquisition, Transurban would be the only entity able to make successful unsolicited proposals for new toll road concessions in Victoria, and that if an alternative entity acquired Horizon Roads, there would continue be two major toll road operators in Victoria who could potentially make successful unsolicited proposals.

89. The ACCC understands that the outcome of unsolicited proposals is at the discretion of the Victorian Government. However, the ACCC is continuing to consider the impact that having only one incumbent toll road operator in Victoria would have on unsolicited proposals, as compared to a scenario where there are two active toll road operators in Victoria.

Position of the Victorian Government

90. The ACCC is continuing to assess the extent to which the Victorian Government has the ability to constrain Transurban and foster competition for future toll road concessions. The ACCC is particularly considering the extent to which having more than one incumbent toll road operator in Victoria enhances the Victorian Government's ability to facilitate such competition.

Ability to control sale processes to encourage competition

91. As the sole vendor of new toll road concessions in Victoria, the Victorian Government has the ability to set and control sale processes for toll road concessions, and therefore to design sale processes to facilitate competitive sale processes for future toll road concessions. However, there are likely to be regulatory and practical limits on this ability.
92. The Victorian Government may be able to provide non-Transurban bidders with traffic data from Victorian toll roads that is approximately equivalent to Transurban's exclusive traffic count data. It may also be able to implement sales processes intended to facilitate rival bidders having sufficient time to develop strategic traffic models and may be able to reimburse some associated bid costs for rival bidders. However, these measures come at a cost to the Victorian Government, may only partly alleviate the information asymmetry between Transurban and rival bidders in relation to data, and may not allow rival bidders to develop sufficiently confident models to compete effectively with Transurban. As such, there may be limits to the extent to which the Victorian Government is able to enhance competition for toll road concessions through these measures.
93. Further, the Victorian Government may be able to promote competition and constrain Transurban by not accepting unsolicited proposals from Transurban. The ACCC is also considering whether the Victorian Government could indicate in competitive sale processes that it will favour bids that would establish a new toll road operator in Victoria. However, these measures have the potential to lead to reduced value for money or economically inefficient outcomes for the State, and as such, may not be viable options for the Victorian Government in all circumstances.
94. The ACCC's preliminary view is that while the State Government may have the ability to increase competition for future toll road concessions through various measures, such measures may not in fact increase competition significantly, or may not be practical options for the Victorian Government. In light of this, the ACCC considers that this increases the importance of having a second incumbent toll road operator in Victoria as it would significantly enhance the Victorian Government's ability to facilitate more competitive sale processes, as against Transurban being the only incumbent toll road operator.

Ability to construct and operate toll roads

95. The ACCC is also considering the extent to which the Victorian Government can construct and operate toll roads itself rather than outsourcing to private operators, and the competitive constraint this may have on Transurban. The Victorian Government has adopted this approach for the North East Link. However, the ACCC considers there are likely to be potential challenges for the Victorian Government in implementing this approach in all circumstances and that the State's ability to construct or operate any toll road would vary depending on the State's budgetary position. As such, it is not clear that the Victorian Government's potential ability to construct and operate toll roads itself would provide a meaningful competitive constraint on Transurban.

Invitation for comments

The ACCC invites comments from market participants on the above issues relating to competition for future toll road concessions in Victoria. In particular, market participants may comment on:

- a. the extent to which the proposed acquisition would increase Transurban's ability to obtain toll road concessions in Victoria in competitive tender processes, and how it would do so.
- b. the impact of a non-Transurban entity acquiring Horizon Roads on competition to construct, own and/or operate toll roads in Victoria, and whether this would be different from the status quo.
- c. whether Transurban has an advantage from its modelling capabilities and expertise, and the extent to which the proposed acquisition would increase such an advantage.
- d. whether a non-Transurban entity acquiring Horizon Roads would enable that entity to develop modelling capabilities and expertise to compete more effectively for toll road concessions in Victoria.
- e. whether financiers' perceptions about Transurban allow Transurban to access finance at lower costs than competitors, and the source of these perceptions.
- f. whether a non-Transurban entity acquiring Horizon Roads would provide that entity with the opportunity to obtain finance on similar terms to Transurban when bidding for future toll road concessions.
- g. the importance of various types of traffic data in evaluating toll road concession opportunities, including which types of data are most valuable for modelling.
- h. whether Transurban's exclusive traffic data provides it with an advantage in competing for toll road concessions, the extent to which the proposed acquisition would increase such an advantage.
- i. the extent to which the proposed acquisition would increase Transurban's ability to submit successful unsolicited proposals to the Victorian Government, and how it would do so.

- j. the extent to which a non-Transurban entity could use Horizon Roads to offer unsolicited proposals to the Victorian Government and the impact this would have on competition for future toll road concessions in Victoria.
- k. the extent to which the Victorian Government can constrain Transurban and facilitate competition for future toll road concessions through sale process design, and the extent to which having a second incumbent toll road operator in Victoria would enhance the Victorian Government's ability to run competitive sale processes.
- l. the extent to which the Victorian Government can facilitate the sharing of traffic data (including what data it could share) with rival bidders and provide sufficient time for rival bidders to develop traffic models, including whether there are limitations to when this approach can be used, and the extent to which these measures would increase competition.
- m. whether the Victorian Government could favour bidders for toll road concessions that would establish a new toll road operator in Victoria, and the impact this would have on concession sale processes.
- n. the extent to which the Victorian Government can construct and operate toll roads itself, including whether there are limitations to its ability to do this in all circumstances, and the impact this has on competition for future toll road concessions.

Issue unlikely to raise concerns: impact on the supply of electronic tolling services for motorists in Victoria

- 96. ETS for motorists include electronic tag and non-tag accounts that allow motorists to travel, and pay for travel, on tollways. Market feedback has raised concerns that the proposed acquisition will lead to a substantial lessening of competition in the supply of ETS for motorists in Victoria.
- 97. Market feedback has noted that Victorian motorists have the option to sign up to an ETS account with either Horizon Roads or Transurban (through its Linkt brand). Concerns have been raised that the proposed acquisition will remove competition in Victoria for the supply of ETS, removing Transurban's incentives to lower prices or increase the service standards of its ETS offering.
- 98. However, the ACCC considers that the proposed acquisition is unlikely to substantially lessen competition in the supply of ETS for motorists in Victoria for the following reasons.
- 99. ETS fees are highly regulated. All account fees are prescribed by concession deeds, and Transurban does not (and would not post-acquisition) have the ability to unilaterally increase account fees. Any increases would need the approval of the Victorian Government. As such, the proposed acquisition would not alter Transurban's ability to increase any fees associated with ETS.
- 100. ETS customer service standards are also highly regulated. Customer service standards are prescribed by the relevant concession deeds, and Transurban does not (and would not post-acquisition) have the ability to unilaterally decrease customer services levels below that prescribed in each concession deed. As such, the proposed acquisition would not alter Transurban's ability to decrease

customer service levels below those prescribed in the relevant concession deeds. The loss of a rival ETS provider may allow Transurban to reduce service levels to the extent service levels are currently above those prescribed by the relevant concession deeds, or not covered by the relevant concession deeds. However, this ACCC's preliminary view is that this is unlikely to have a significant impact on competition.

101. Further, the vast majority of a toll road operator's revenue is from tolls, and the ultimate purpose of ETS is to facilitate greater and cost-effective collection of toll revenue. ETS itself does not appear likely to be a significant source of revenue for toll road operators. As such, the ACCC's preliminary view is that there is unlikely to be strong competition between toll road operators in relation to ETS.

Invitation for comments

The ACCC invites comments from market participants on the above issues relating to the supply of electronic tolling services for motorists in Victoria.

Issue unlikely to raise concerns: impact on the supply of electronic tolling systems/services for toll road operators

102. Electronic tolling systems/services allow a toll road operator to track motorists' passages on toll roads and charge motorists for use. Market feedback has indicated that Transurban and Horizon Roads are the only two suppliers of tolling systems/services in Victoria, and that the proposed acquisition will result in Transurban being the only operator of these systems in Victoria. There is concern this will reduce competition for the procurement of tolling systems/services for future toll roads in Victoria.
103. The ACCC considers that Transurban and Horizon Roads are the only two operators of tolling systems/services in Victoria. However, the ACCC considers that any new toll road operator would have a number of viable suppliers of tolling systems/services for the following reasons.
104. There are numerous large international suppliers from which a toll road operator could procure tolling systems/services, including Sociedad Ibérica de Construcciones Eléctricas, S.A. (SICE) and Q-Free, both of which already provide tolling systems/services in Australia.
105. Further, Horizon Roads procured its tolling system from third parties, including Kapsch TrafficCom for its image processing system⁴ and SICE for its tolling back-office system.⁵ This demonstrates that Victorian-based toll road operators can procure tolling systems/services from third parties, including international suppliers.
106. Given this, the ACCC's preliminary view is that the loss of Horizon Roads as a potential supplier of tolling systems/services would not have a significant impact on competition.

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https://www.kapsch.net/Resources/Persistent/290d5cbbdbbee87935d2385c083f365653a6582a3/KTC7352_IPS_AIME_S.pdf

5 <https://www.eastlink.com.au/news-media/229-eastlink-switches-over-to-sice-system>

Invitation for comments

The ACCC invites comments from market participants on the above issues relating to the supply of electronic tolling systems/services for toll road operators. Market participants may wish to comment on the ability of international suppliers of these systems/services to supply into Victoria and any barriers that such suppliers may face.

Issue unlikely to raise concerns: impact on competition between toll roads in the Melbourne region

107. Market feedback has indicated that Transurban's CityLink toll road and Horizon Roads' EastLink toll road are substitutable for some motorists (i.e. for some origin/destination combinations), and therefore may compete on price (tolls) and service quality.
108. The ACCC considers that there could be substitutability between the CityLink/Monash freeway and the Eastern freeway/EastLink for motorists travelling between Melbourne's west or CBD and the outer south-east suburbs. The ACCC further considers that substitutability between the CityLink and EastLink could be greater when the North East Link is complete.
109. However, the ACCC's preliminary view is that the proposed acquisition is unlikely to substantially lessen competition between toll roads in the Melbourne region for the following reasons.

Price competition between toll roads

110. The CityLink and EastLink concession deeds each set the maximum tolls that can be charged to road users on these toll roads. As such, post-acquisition, Transurban would not have the unilateral ability to increase tolls on either toll road.
111. Further, the ACCC understands that toll prices in Australia are typically set significantly below the profit maximising level. The ACCC understands that setting tolls below the cap is unlikely to result in a sufficiently greater number of road users on the toll road to offset the loss of revenue per road user from the lower toll price. As such, the ACCC considers it unlikely that competing operators of CityLink and EastLink would reduce tolls below the cap for all road users. This is supported by there not having been discounting of tolls on CityLink or EastLink despite these toll roads having different owners since EastLink opened to traffic in June 2008.
112. The ACCC has also considered whether it is likely that operators of CityLink or EastLink would seek to target motorists for whom the roads are substitutes and price discriminate on this basis (e.g. based on their entry/exit location on a toll road). However, it appears that Transurban is unlikely to have the ability to effectively target those road users for whom CityLink and EastLink are substitutes, and therefore is unlikely to be able to price discriminate to a significant extent. This is consistent with neither operator having price discriminated between motorists based on entry/exit locations, despite these toll roads always having different operators since EastLink opened.
113. As such, the ACCC's preliminary view is that the proposed acquisition is unlikely to impact price competition between CityLink and EastLink.

Non-price competition between toll roads

114. Non-price competition between toll road operators could occur in relation to maintenance standards of the roads, incident response times and customer service.
115. The CityLink and EastLink concession deeds both include operation, maintenance and customer service standards that must be complied with and reported on to the Victorian Government. Failure to meet the specified standards results in penalties. The ACCC considers that these standards likely cover the most significant aspects of non-price competition between toll roads, and ensure that standards cannot fall below those specified as appropriate by the Victorian Government.
116. Further, toll road operators could seek to outperform the specified standards in the concession deeds in order to compete strongly for motorists for which CityLink and EastLink are substitutes. However, the ACCC's preliminary view is that the operators are unlikely to have the ability to target those road users for whom CityLink and EastLink are substitutes, especially through non-price measures.
117. As such, the ACCC's preliminary view is that the proposed acquisition is unlikely to impact non-price competition between CityLink and EastLink.

Invitation for comments

The ACCC invites comments from market participants on the above issues. In particular, market participants may wish to comment on the following:

- a. the extent to which the CityLink and EastLink toll roads are substitutes for motorists on some origin/destinations, including identification of those origin/destinations.
- b. the extent to which Transurban and Horizon Roads compete for motorists, or subsets of motorists, through price or service standards.

ACCC's future steps

118. 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 14 July 2023.
119. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.
120. The ACCC intends to publicly announce its final view by 7 September 2023. 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.