



MEDIA RELEASE

30 August 2018

ACCC will not oppose Transurban consortium WestConnex bid following undertaking

Sydney Transport Partners' proposed acquisition of the majority interest in the WestConnex project won't be opposed by the ACCC following the acceptance of court-enforceable undertakings. The undertakings require Transurban to publish important traffic data that will assist all bidders to compete for future toll road concessions.

Sydney Transport Partners is a consortium led by Transurban Limited (ASX: TCL).

The ACCC's investigation focussed on competition for future toll road concessions in NSW. A key issue was whether Transurban's proposed acquisition of WestConnex, in the context of its existing interests in toll roads, would significantly reduce competition for future toll road concessions.

"Like most observers, we were concerned by Transurban already having a majority interest in 7 out of 9 toll roads in Sydney. Adding WestConnex, which is a major multi-part toll road project, would further entrench its position," ACCC Chair Rod Sims said.

"This was a major exercise for the ACCC. We undertook extensive investigations, examining documents of numerous parties, interviewing parties, and examining executives under oath," Mr Sims said.

"Bidders with existing toll road concessions have an advantage in acquiring further ones, in particular due to the reality or a perception that they have better data and experience, and better models and better forecasts. These incumbency advantages were the main focus of our investigation. If a rival consortium were to acquire the WestConnex toll road concessions, there would likely be two players with these incumbency advantages in Sydney," Mr Sims said.

"However, taking into account the data publication undertaking, which will come into effect if Sydney Transport Partners is the successful bidder for WestConnex, the ACCC found that the lessening of competition for future toll roads would not be a substantial lessening of competition in breach of section 50 of the Competition and Consumer Act. We are satisfied that with this undertaking others will be able to compete for new toll road concessions in New South Wales if Transurban succeeds in its bid for WestConnex."

"The undertaking addresses a key aspect of the incumbency advantages currently enjoyed by Transurban, which is access to data. This means that all bidders for future toll road concessions in NSW will benefit from access to detailed toll road traffic data, not just Transurban. This will enable all potential bidders to calibrate and validate their traffic models to the same level of confidence as Transurban, which will likely lead to lower costs of finance," Mr Sims said.

The ACCC found that:

- The vast majority of traffic data that Transurban currently uses for traffic modelling is available publicly or is not exclusive to Transurban. However, Transurban had an

advantage in bidding for WestConnex, due to its exclusive access to some detailed toll road traffic data from its interests in existing toll roads.

- Rival bidders for WestConnex were able to build traffic models of comparable sophistication to Transurban using available expertise and technology. However their confidence in the forecasts was impaired by their inability to access the same quality of toll road data as Transurban, which is particularly useful in validating traffic models, and having limited time during the bid process to run and test their models.
- These factors can lead to financiers having less confidence in rival bidders' traffic forecasts, which can affect the cost of finance for these capital intensive bids.
- Rival bidders obtained access to road toll traffic data held by Transurban for their WestConnex bids, however there was significant delay in it being made available and they were not provided with the data included in the undertaking.

The undertaking will require Transurban to publish 15 minute interval toll gantry data for each quarter for each toll road in which it has an interest in Sydney. This data includes vehicle count, vehicle classification (e.g. light vehicle, heavy vehicle) and direction of traffic flow. Transurban uses this data to maximise the reliability of its traffic forecasts.

Market participants argued that an even more detailed set of data should be made available. The ACCC did not agree, noting that Transurban itself does not utilise the more detailed data for its traffic modelling and forecasts.

The ACCC also scrutinised the WestConnex sale process in order to assess the extent to which the NSW Government can and does ensure there is effective competition for toll road concessions.

The NSW Government can contribute to levelling the playing field for future toll road concessions by ensuring there is sufficient time during the bid process for bidders to build traffic models and undertake the necessary testing to increase their confidence in the forecasts. This also requires the NSW Government to settle the scope and details of toll road projects in sufficient time.

“As the sole granter of toll road concessions in NSW, in many respects the degree of competition for concessions depends on the Government. Our investigation indicates that state governments do have tools at their disposal to promote competition for toll road concessions,” Mr Sims said.

The ACCC scrutinised the history of unsolicited proposals for toll road concessions in NSW and found that competitive bid processes for new toll roads are more likely to provide positive outcomes for taxpayers and drivers. The ACCC noted that state governments are able to promote competitive outcomes by rejecting unsolicited proposals.

“The ACCC considers that state governments should only award new toll road concessions through a competitive bid process, and not following an unsolicited proposal, unless there is a truly compelling reason. Accepting unsolicited proposals for new toll road concessions generally leads to higher costs to taxpayers, drivers, or both,” Mr Sims said.

Importantly for drivers, the statement of issues also raised the issue of whether there is potential road-on-road competition that would be diminished if Transurban obtains WestConnex. To investigate this issue, the ACCC considered a range of traffic models and took into account the NSW Government's price caps for tolls.

“We've concluded that an alternative bidder for WestConnex would be unlikely to set tolls below the price caps, as only a small number of road users in Sydney would be likely to switch between current Transurban toll roads and the WestConnex toll roads,” Mr Sims said.

“This was one of the more difficult decisions we’ve made, but we are confident of where we have landed.”

Further information is available at accc.gov.au

Notes to editors:

Transurban is Australia’s largest toll road operator. Transurban (or a Transurban-controlled entity) currently holds seven of nine toll road concessions in NSW, including the M1, M2, M5 and M7 motorways.

WestConnex is a partially completed motorway development in Sydney. It comprises 33kms of interconnected motorways and road upgrades, which will extend the M4 motorway from Parramatta to Sydney Airport and duplicate the M5 East corridor.

Data undertaking

The undertaking accepted by the ACCC requires Transurban (if the STP Consortium is the successful bidder for WestConnex) to:

- publish 15-minute-interval traffic count gantry data for all NSW toll roads in which Transurban has an interest, except the M5 toll road
- publish a more aggregated traffic dataset for the M5 West Motorway, if Transurban is unable to publish the more detailed gantry data for that toll road
- publish historical traffic data dating back 10 years (from the Control Date as defined in the undertaking) for each Transurban NSW toll road, other than for WestConnex
- publish an interim update to data in the event the NSW Government announces a future NSW toll road concession sale process and the data is not due to be updated within six weeks
- correct any identified errors in the published data
- appoint an auditor, who would be required to conduct comprehensive audits of Transurban’s compliance with the undertaking.

The undertaking does not require Transurban to publish data that it obtains through its toll road concessions but does not use in its traffic modelling and forecasts, such as individual trip data that shows the duration and length of trips on toll roads. Reliable individual trip data is available from other sources, such as TomTom and Google. However there are review mechanisms in the undertaking to ensure that the undertaking remains effective in achieving its objectives.

The ACCC also accepted undertakings from the other STP consortium members to support Transurban’s undertaking. The undertakings from the other consortium members require those consortium members to give their consent to allow Transurban to publish WestConnex and other relevant traffic data pursuant to Transurban’s undertaking.