



ACCC REVIEW – PROPOSED ACQUISITION OF WESTCONNEX

AUSTRALIAN TRUCKING ASSOCIATION SUBMISSION

31 MAY 2018

Introduction

1. The Australian Trucking Association would like to raise competition concerns about the proposed acquisition of WestConnex by the Sydney Transport Partners Consortium (STP), including Transurban.
2. The ATA is the peak body representing the trucking industry. Its members include state and sector trucking associations, major logistics companies and businesses with leading expertise in truck technology. The ATA represents many thousands of trucking businesses, ranging from owner-drivers to large fleets.
3. The proposed acquisition of WestConnex by STP would substantially lessen competition for concessions to construct, own and operate toll roads in New South Wales. As a result:
 - a. Transurban would be substantially advantaged in seeking future toll road concessions in NSW, with more options for funding proposals by proposing an increase in the heavy vehicle multiplier.
 - b. Heavy vehicle operators generally do not have the ability to take alternate routes and as a result would have no option but to pay the increased multiplier.
 - c. Increases in the heavy vehicle multiplier in Sydney would ultimately flow through to other states.
 - d. Increases in heavy vehicle tolls have a significant impact on trucking businesses.
 - e. Despite assertions by Transurban, its heavy vehicle tolls do not merely cover the cost of road wear by heavy vehicles.
 - f. Government incentives to constrain Transurban's heavy vehicle charges would continue to erode.

Leveraging existing assets and the truck toll multiplier to finance new toll road projects

4. Transurban have shown that their preferred approach to unsolicited proposals for new toll road concessions is to partly fund them by an increase in the heavy vehicle multiplier elsewhere on the local Transurban network.
5. The proposed acquisition of WestConnex by STP would increase Transurban's ability to do this for future unsolicited proposals in Sydney.
6. The ACCC Statement of Issues raises important concerns on the impact that the acquisition may have on competition for toll road concessions. The Statement identifies (paragraph 33 and 76) that Transurban is the only entity since 1987 that has been awarded a toll road concession following an unsolicited proposal in NSW and elsewhere in Australia.

7. Of the five toll road concessions, three have involved an increase in the heavy vehicle multiplier:
 - a. NorthConnex (NSW, March 2014): awarded to Transurban in exchange for an increase in the heavy vehicle multiplier and an extension of the concessions for the M7 and Lane Cove Tunnel.
 - b. Logan Enhancement Project (Qld, November 2016): awarded to Transurban in exchange for an increase in the heavy vehicle multiplier on the Logan and Gateway Motorways.
 - c. Inner City Bypass Upgrade (Qld, March 2017): awarded to Transurban in exchange for an increase in the heavy vehicle multiplier on the Go Between Bridge, the Clem Jones Tunnel and Legacy Way.
8. In Sydney, the truck toll multiplier on the M2, Lane Cove Tunnel, M5 and M7 has increased to 3 times the car toll. The NorthConnex project, a Transurban led project arising from an unsolicited bid to the NSW Government, is partly financed by a variation of the existing Transurban led concession for the M7 and the Transurban owned concession for the Lane Cove Tunnel. This included extending the length of the concessions and increasing the truck toll multiplier.
9. In April 2017, the toll for heavy vehicles using CityLink in Melbourne increased by up to 125 per cent to fund the CityLink-Tullamarine widening project.¹
10. Meanwhile in Brisbane, the truck toll multiplier on the Logan and Gateway motorways will progressively increase to 3.46 times the car toll once the Logan Enhancement Project is completed in mid-2019.²
11. Increasing the truck toll multiplier has proved to be highly advantageous for Transurban:
 - a. Toll revenue has increased faster than traffic flows, and at the same time as increasing toll road operator profits.
 - b. Earlier this year it was reported that on Melbourne's CityLink toll revenue is up 14.2 per cent, whilst average daily traffic actually declined by 1 per cent.
 - c. On Sydney's network toll revenue is up 9.8 per cent, whilst average daily traffic is only up 2.9 per cent.
 - d. For the M7 which was varied as part of the agreement to fund NorthConnex, revenue is up by 13.8 per cent whilst traffic is only up 3 per cent.
 - e. Transurban profits from continuing operations were up by 280.2 per cent.³
12. The proposed acquisition of WestConnex by STP would provide Transurban with an increased ability to use its dominant market position to secure new toll road concessions, based on increasing the heavy vehicle multiplier on its existing toll road assets.
13. In addition, it would make it more difficult for any other operator to secure a new toll road concession (either as an unsolicited bid or even through a competitive process) from the NSW Government by leveraging revenue from an existing NSW toll road asset.
14. This would disadvantage the members of the ATA's member associations.

¹ Carey, A. "Big rise in CityLink truck tolls tipped to push heavy vehicles onto local roads," *The Age*, 29 January 2017. [Link](#).

² Transurban, [Results for six months to 31 December 2016](#). ASX release, 7 February 2017, 8.

³ Transurban, ASX Release, 13 February 2018, Appendix 1, 6 & 7.

Using increases in the truck toll multiplier as a precedent

15. Transurban have demonstrated a willingness to use interstate truck toll multipliers as part of the justification for increasing local multipliers.
16. In Sydney, the NSW Government's tolling principles require truck tolls to be at least three times higher than car tolls. It is stated that this approach is nationally consistent.⁴ Transurban have used this approach in winning recent toll road concessions in Sydney, such as the variation to the M7 to fund NorthConnex.
17. In March 2017, the Brisbane City Council announced that Transurban would fund the Inner City Bypass upgrade and take over maintenance and operation, in return for increased heavy vehicle tolls on the Clem7, Legacy Way and Go Between Bridge. The increase in the truck toll multiplier from 2.65 times to 3 times the light vehicle toll was justified by Transurban as being in line with the market and consistent with toll roads in Sydney and Melbourne.⁵
18. Also in March 2017, the Transurban announcement of increases to CityLink heavy vehicle tolls in Melbourne was stated to bring the rate into line with rates on other toll roads and roads in other states.⁶
19. Within the same month, Transurban announced increases in the heavy vehicle multiplier in separate cities, effectively using the other increase on its own roads as justification.
20. The Transurban purchase of WestConnex would further entrench their dominant market position for new toll road concessions and their ability to use the highest heavy vehicle multiplier on their owned assets as a justification for increases elsewhere.

Heavy vehicles are often constrained from using alternative routes

21. The NSW Government and Transurban have previously argued that toll roads are not a monopoly asset because there is always a free alternative.⁷
22. This situation is different for heavy vehicles. Alternate modes such as public transport or cycling are not, of course, options for freight.
23. The ACCC Statement of Issues also recognises that a significant share of heavy freight is prevented from using parts of the public road network by regulation (paragraph 65). For example:
 - a. The development of NorthConnex will restrict heavy vehicles that are not involved in local deliveries from using local roads. Instead, they will be required to use NorthConnex.
 - b. Likewise, when the West Gate Tunnel project opens in Victoria in 2022 trucks without local origins and destinations will be restricted under 24 hour truck bans.⁸

⁴ NSW Legislative Council, [Road tolling in New South Wales](#), October 2017, 79.

⁵ Sydney Morning Herald, 21 March 2017, [Transurban to take over operating Inner City Bypass](#)

⁶ Transurban, 3 March 2017, [Toll price changes for CityLink](#)

⁷ NSW Legislative Council, [Road tolling in New South Wales](#), October 2017, 70.

⁸ West Gate Tunnel Project, [Trucks off local roads](#)

Impact of heavy vehicle tolls on trucking operators

24. Heavy vehicle tolls have a significant impact on trucking operators. Independent evidence to the Australian Senate reported that smaller trucking operators are less able to use their fleets (or single vehicle) to convert travel time savings to direct benefits for their companies. Smaller operators are also very sensitive to costs and road pricing.⁹
25. The NSW Parliamentary Inquiry into road tolling also reported on the impact on smaller trucking operators, and in particular owner drivers. Within the context of a highly competitive, price taking industry, it is not a simple case of being able to pass on the increased heavy vehicle toll charges.¹⁰
26. The trucking industry consists almost entirely of small businesses. Based on Australian Bureau of Statistics data on road freight transport businesses by employment size, 97.9 per cent of trucking businesses have 19 employees or fewer.¹¹
27. The trucking industry is characterised by tight margins. Research by the ANZ shows that the median EBIT margin for trucking businesses was 4.2 per cent in 2015. The bottom quartile of trucking businesses recorded negative, unsustainable EBIT margins.¹²

Road wear cost of heavy vehicles

28. Both the NSW Government and Transurban have stated that the heavy vehicle toll multiplier reflects the increased maintenance costs for roads as a result of heavy vehicle use.¹³
29. Research into the marginal cost of road wear as a result of the impact of an additional trip made by a heavy vehicle indicates that in terms of recovering the cost of truck use to road wear and repair costs, the Transurban heavy vehicle multiplier vastly exceeds the marginal cost.
30. For a fully laden 6 axle articulated heavy vehicle, the estimated maximum marginal cost would be \$0.16 per kilometre for an urban toll road.¹⁴
31. Using the M7 as an example, the truck toll of \$1.19 per kilometre is more than seven times the actual cost of road wear for a fully laden 6 axle articulated heavy vehicle, and more than double the \$0.56 per kilometre payable if the heavy vehicle was to pay the light vehicle toll (\$0.40) plus the actual cost of its road wear.

⁹ Thompson, Associate Professor Russell, Australian Senate, Operations of existing and proposed toll roads in Australia 3 August 2017 transcript, 11.

¹⁰ NSW Legislative Council, [Road tolling in New South Wales](#), October 2017, 81.

¹¹ Australian Bureau of Statistics, [8165.0 Counts of Australian Businesses, including entries and exits, Jun 2013 to Jun 2017](#), 20 February 2018.

¹² Suffield T. "Road transport performance from a bank's perspective." Presentation at Trucking Australia 2016, 24 June 2016.

¹³ NSW Legislative Council, [Road tolling in New South Wales](#), October 2017, 79 and Transurban, [Submission to the NSW Legislative Council Inquiry into Road Tolling](#), 28 February 2017, 30.

¹⁴ Cost calculation is based on work by the Australian Road Research Board and West Australian Local Government Association (2015, Calculating the cost of road wear on local roads) and Austroads (March 2012, Preliminary methodology for estimating cost implications of incremental loads on road pavements).

32. For heavy vehicles which are not carrying their maximum allowable weight, and other types of heavy vehicles, the actual cost would be lower. The National Transport Commission has reported that a significant proportion of heavy vehicles operate at below their mass limits,¹⁵ and there are several heavy vehicle operational uses which result in vehicles carrying weight lower than the maximum allowable, including:
- a. Palletised mixed freight.
 - b. White goods.
 - c. Groceries.
 - d. Cars.¹⁶
33. Additionally, independent evidence to an Australian Senate inquiry has suggested that there is little basis for determining toll levels of freight vehicles apart from maximising revenue.¹⁷

Erosion of the incentives for governments to constrain Transurban

34. In addition to the lack of a competitive constraint, the ATA considers that governments are not incentivised to constrain Transurban and that the acquisition of WestConnex would further weaken this incentive.
35. Governments justify their policies on the truck toll multiplier, and the lack of independent regulation, on the need to be nationally consistent. However, Transurban and Transurban controlled entities hold 15 of the 19 toll road concessions in Australia. To be nationally consistent is, in effect, to implement the latest increase in the heavy vehicle multiplier achieved by Transurban in any state.
36. The increasing use of existing toll road assets, and increasing the truck toll multiplier, to finance new projects significantly reduces the incentive for governments to constrain Transurban. From the policy debate on independent regulation, it would appear that the incentive is actually to reduce the upfront cost of new toll road projects for governments, not to constrain Transurban.
37. The ACCC has previously reflected on the strong financial motives for governments to structure their privatisation process in order to maximise the sale price that they receive, and that as a result governments have little incentive to closely examine whether the market structure and regulatory arrangements that will apply post-privatisation are conducive to competition and appropriate outcomes.¹⁸

¹⁵ National Transport Commission, [Increasing heavy vehicle volumetric load capacity without increasing mass limits discussion paper](#), February 2017, 7

¹⁶ National Transport Commission, [Increasing heavy vehicle volumetric load capacity without increasing mass limits issues paper](#), September 2016, 11.

¹⁷ Thompson, Associate Professor Russell, Australian Senate, Operations of existing and proposed toll roads in Australia 3 August 2017 transcript, 10.

¹⁸ Sims, Rod, [How did the light handed regulation of monopolies become no regulation?](#) Speech to the Gilbert + Tobin Regulated Infrastructure Policy Workshop, 29 October 2015.

38. The Victorian Auditor-General's report on the CityLink Tulla widening project in Melbourne found that:
- a. The audited agencies were unable to justify the substance of the arguments for the tolling of goods vehicles as the preferred funding approach, and that they did not provide a full and objective assessment of a range of alternative funding options.
 - b. The private sector proponent (Transurban) will contribute \$850 million and is expected to recover an equivalent toll revenue stream worth approximately \$3.2 billion up to 2035.
 - c. For unsolicited proposals, the private sector is likely to be focused on its own commercial interests in generating a proposal.
 - d. The April 2015 business case did not describe the potential disadvantages of making commercial vehicles bear the majority of the project cost through increased tolls and how this affects commercial vehicle productivity.¹⁹

¹⁹ Victorian Auditor-General's Report, [Applying the High Value High Risk Process to Unsolicited Proposals](#), August 2015, xii, xiii, 15, 38.