13th December 2024

Government Business Governance Reform - Draft Plan

Submission by Strait Link

Concerns about the proposed merger of TasPorts, TT-Line and TasRail

Executive Summary

- More than 99 per cent of goods leaving and arriving in Tasmania move through the ports. Ports and shipping services are critical infrastructure for Tasmania, carrying everything from food through to the exports that sustain Tasmanian jobs and the economy.

We are encouraged by the Premier's release of the '*Government Business Governance Reform Draft Plan*'.

- The trust of Tasmanian taxpayers and businesses needs to be restored by managing essential infrastructure and services more strategically and with greater transparency, governance, efficiency and accountability.

However, we have deep concerns over the announced plan to merge TasPorts, TT-Line, and TasRail into a single government-owned entity

- A vertically integrated, government-owned monopoly would inevitably reduce competition, increase cost of living pressures on Tasmanians and hurt the Tasmanian economy.
- The merger would further entrench current monopoly market power, conflicts of interest, and market behaviour of several Government-owned businesses that have been failing to meet the expectations of Tasmanian taxpayers along with the exporters, importers and shipping services that provide their jobs. A merger of this kind poses substantial harm to investor confidence. We do not believe it would receive competition approvals.
- The Government's aims in reforming the governance and accountability of its State Owned Corporations (SOCs) are the right ones, however they are less likely, rather than more likely, to be realised should the merger plan proceed.
- Instead, the Tasmanian Government should commission an independent review and undertake proper public consultation to determine the best mechanism and governance arrangements to address the current challenges. Doing so will allow the Government to consider input from a broad group of stakeholders, properly informing its decision making and allowing it to deliver the overall best net outcomes for the Tasmanian economy.

Concerns about the proposed merger of TasPorts, TT-Line and TasRail

The Tasmanian government has issued a consultation paper ('*Government Business Governance Reform Draft Plan*'). The objectives articulated in the paper are appropriate in focusing on how the government can improve the focus of GBE's on the needs of Tasmanians while improving accountability, governance and performance management. These are appropriate issues to on which to consult, reflect, and address.

However, despite launching the draft plan and announcing a consultation process, the Government simultaneously announced its plan to undertake a merger to address the issues raised, pre-empting the consultation along with any insights gained from the broad range of stakeholders impacted by the plan. This is particularly concerning given the many issues with the current entities are more effectively addressed *without* a merger.

While the intention is to improve governance, accountability, performance, and efficiency, the merger plan will have unintended consequences that will negatively impact competition, the shipping industry, and the broader Tasmanian economy. These include:

1. **Reduction in Competition**
    - **Monopoly Power**: The merger would create a vertically integrated monopoly, controlling critical logistics infrastructure across shipping, ports, and rail. This type of concentration of power would stifle competition, leading to higher costs and reduced service quality for businesses and consumers.
    - **Market Dominance**: With TT-Line already a player in Bass Strait shipping, merging with TasPorts and TasRail would give the new entity undue influence over market conditions, disadvantaging other shipping companies and limiting choices for their customers. It would be entirely rational for the merged commercial entity to make decisions in its own combined commercial interest. For example:
        - TasPorts would be incentivised to give preferential terms and rates to TT-Line.
        - TasPorts would be incentivised to drive up the cost of port leases and fees for TT-Line's competitors.
        - The combined entity would be incentivised to provide itself preferential access to TasRail's rail infrastructure and services to TT-Line.
    - **Shipping customers are already concerned about a lack of competition:** Through the TFES senate inquiry, several major shipping customers have already expressed concerns about there already being a lack of competition across the Bass Strait. A vertically integrated TT-Line / TasPorts / TasRail entity would only further reduce competition.
    - **Government-owned, vertically integrated commercial entities have a very poor track record in Australia:** For example, telcos, broadband, postal services and other utilities. Structural separation is usually necessary to address the subsequent market and performance failures. The proposed plan is the exact opposite of the structural separation that is necessary to drive competition and better outcomes for customers and consumers. In fact it is

likely that the government would find itself needing to undertake complex and expensive structural separation in the future as benefits are not realised.

- **Likely ACCC concerns:** We anticipate that the ACCC will have significant concerns about the proposed merger and the market power the merged entity will wield. In our view it is likely that such a merger should be blocked on competition grounds, if not forced to effectively operate the sub-entities as separate businesses to gain approval. This would negate the stated hypothetical benefits of a merger.

In stark contrast to the merger proposal, we believe that competition and performance would be better achieved by **breaking up TasPorts into individual commercial entities**, not merging it into a larger, even more monopolistic entity. Each port having separate management and commercial accountability would drive competition, efficiency, performance, transparency, innovation and investment.

2. **Negative economic impacts on Tasmania**

- **Higher Costs**: A monopoly this type would almost certainly lead to higher prices, particularly where the new entity enjoys vertically integration where no other competitor does, resulting in higher costs of all goods transported to and from Tasmania, impacting local businesses and consumers. This is made all the more likely by the financial pressures the combined entity will be under to leverage all of the advantages of its monopoly in order to recover from several of its current financial problems.
- **Discourage investment in capacity and services**: Competitive markets drive investment, efficiency and innovation. A monopolistic entity lacks the incentive to innovate, potentially leading to stagnation in service improvements and technological advancements. Competitors will already be under pressure to compete with the unfair advantages of the combined entity, and in turn will struggle to justify and prioritise investments towards growing capacity

3. **Compounds existing operational and regulatory issues**

- **TasPorts is already highly conflicted and, as a result, ineffective in balancing its responsibilities:** TasPorts is its own regulator while also being land-owner, asset owner, price-setter, operator of attached services (eg pilot services). It does so without effective oversight. This is a ports model unique to Tasmania, and one that goes a long way towards explaining the current issues relating to the lack of accountability, governance and performance. A merger will make the situation substantially worse, not better.
- **Broader Conflict of Interest**: A new merged entity would have significant conflicting interests as both a service provider, regulator of port access, port operator and rail operator, incentivising biased decision-making favouring its own operations over those of competitors.

We believe safeguards must be urgently implemented, whether the merger proceeds or not.

It is crucial to implement safeguards to protect competition and ensure fair market conditions, whilst improving transparency, accountability and financial outcomes for the Tasmanian taxpayer. These safeguards should include:

1. **Independent regulatory oversight of TasPorts**
   - Whether a merger proceeds or not, TasPorts is already highly conflicted and opaque in its conflicted roles as regulator, owner and operator of Tasmania's ports monopoly. Reform and oversight of TasPorts as a standalone entity is urgently required. The government should establish an independent regulatory body to oversee TasPorts.
   - Should the merger proceed, the government should broaden the powers of the independent regulatory body to oversee all activities of the merged entity, ensuring fair access to port facilities and rail services for all competitors, preventing discriminatory practices.

2. **Transparent Pricing Mechanisms**
   - Implement transparent and regulated pricing mechanisms for port and rail services to prevent the current, and any future entity, from leveraging monopoly power to impose unfair charges on competitors.
   - All pricing and pricing frameworks should be published, independently audited, and regulated to ensure that it provides appropriate returns for Tasmanian taxpayers, whilst maintaining competitive neutrality.
   - As with proper independent regulation and oversight, this can be implemented without a merger.

3. **Periodic Market Reviews**
   - Conduct regular market reviews to assess the impact of the merger on competition and service quality. These reviews should be independent, involve stakeholder consultations and be made publicly available to ensure transparency.

4. **Commitment to Service Standards**
   - The merged entity should be required to commit to maintaining high service standards and investing in infrastructure improvements. This commitment should be legally binding and subject to regular audits. It is difficult to envisage the merged entity behaving appropriately when confronted with choices involving trade-offs or prioritisation between competitors and its own subsidiary businesses.

5. **Stakeholder Engagement**
   - Establish a formal process for ongoing stakeholder engagement, including representatives from competing shipping companies, local businesses, and

consumer groups. This will ensure that the interests of all parties are considered in decision-making processes.

While the proposed merger aims to enhance accountability, governance, performance and operational efficiency, we believe it is likely to achieve the opposite, posing significant risks to competition and the Tasmanian economy.

Conducting an independent review and proper public consultation would allow the Government to consider input from a broad group of stakeholders, properly informing its decision making and allowing it to deliver the overall best net outcomes for the Tasmanian economy.

We believe the proposed merger would not achieve the stated aims of the Government. The Tasmanian Government should pause implementation of its proposal and instead commission an independent review, undertake more thorough consultation, and take advice from a broad group of impacted stakeholders to ensure that the Tasmanian economy is net better off.

Sincerely,

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About Strait Link:

Strait Link has a proud history of being a vital link between Tasmania and the world, providing sea freight services between Mainland and Tasmania six nights a week.

We contribute to the Australian economy by being a key part of the supply chain, connecting Australian trading across the Bass Strait.

Tasmania is a resourceful, innovative and abundant exporter inspired by its home-grown ingenuity. Strait Link shares the same mindset providing an agile, reliable and dedicated service to help our customers thrive and grow their businesses.

Tasmanian goods and services exports growth reached over $5 billion in 2020-2021 financial year, with an ambition to reach $15 billion by 2050. A small island with an abundance of natural resources, it's major industries include agriculture, forestry, mining, fishing and aquaculture.

Our cargo ships *Tasmanian Achiever II* and *Victorian Reliance II* operate across the Bass Strait. When introduced in 2019, the *Tasmanian Achiever II* was the largest cargo ship registered in Australia.

We employ over 400 people at our Burnie and Melbourne port terminals, making us a leading local employer in the northwest region of Tasmania.

The Bass Strait cargo shipping trade began in the 1950's under the Australian Government owned Australian National Lines (ANL). Brambles entered the market in 1983, and was subsequently sold to Toll Holdings in 2002. In 2015, the business was acquired by Japan Post as part of their global expansion plan, and during Japan Post's ownership the original Tasmanian Achiever and Victorian Reliance were replaced with larger and more modern ships in 2017.

In 2021, Allegro Funds acquired the Global Express division from Toll. Toll Shipping returned to Australian ownership as an independent and stand-alone shipping business and was renamed Strait Link Shipping to mark a new and exciting chapter in the long and proud history of the business.

Our dedication to being the supplier of choice for Bass Strait port to port services is demonstrated in our investment in people, local port infrastructure, and vessel upgrades over the years.

We are committed to finding solutions and supporting the local communities where we operate to contribute to a sustainable future for future generations.