



**Australian
Competition &
Consumer
Commission**

Level 20
175 Pitt Street
Sydney NSW 2000

GPO Box 3648
Sydney NSW 2001

tel: (02) 9230 9133
fax: (02) 9223 1092

9 January 2014

Public Infrastructure Inquiry
Productivity Commission Locked Bag
2 Collins Street East
MELBOURNE VIC 8003

By Email: infrastructure@pc.gov.au

Dear Sir/Madam

Submission - Productivity Commission inquiry into infrastructure costs

The ACCC welcomes the opportunity to provide a submission to the Productivity Commission's inquiry into infrastructure costs. In this submission, the ACCC outlines the information that it received regarding the non-residential building construction market in the course of its public review of Lend Lease Corporation Ltd's (**Lend Lease**) acquisition of Valemus Australia Pty Ltd (**Valemus**) in 2011. In addition, this submission describes the ACCC's education and information gathering activities in relation to potential cartel activity and anti-competitive conduct in the construction sector more broadly.

Lend Lease Corporation Ltd acquisition of Valemus Australia Pty Ltd

In the past decade, the ACCC has conducted only one significant public review of a merger in the construction sector. This was the review of the proposed acquisition of Valemus by Lend Lease. This review commenced on 17 January 2011. Details of the merger parties, at the time of the ACCC's review, can be found at **Attachment A**. Further information regarding the ACCC's review can be found on its public mergers register.¹

The ACCC considered that the following markets were relevant to its assessment of the proposed acquisition:

- The national market for the supply of non-residential building construction services (including offices, shops, hotels, factories, educational facilities, health facilities) involving large projects (tier 1).
- The national market for the supply of non-residential building construction services involving small projects (tier 2).
- The national market for the supply of engineering construction services (including roads, bridges, railways, harbours and water storage and treatment facilities) involving large projects (tier 1).
- The national market for the supply of engineering construction services involving small projects (tier 2).

The ACCC considered that it was appropriate to define separate markets for large and small projects, and considered at the time that large projects would generally include projects of \$100-150m or greater in value. Market participants spoken to by the ACCC during the review supported the notion that there were separate markets for large and small projects. Market

¹ <http://registers.accc.gov.au/content/index.phtml/itemId/975584/fromItemId/751043>

participants provided a number of reasons for drawing a distinction between firms capable of tendering for large projects and those that could not, including financial resources, reputation coming from a demonstrated capacity to deliver large projects and specialised engineering skills.

The ACCC found that the primary area of overlap between Lend Lease and Valemus was in relation to the supply of non-residential building construction services involving tier 1 projects. Those organisations, or their subsidiaries, were both active participants in this market. The ACCC also considered the supply of non-residential building construction services involving tier 2 projects. The ACCC noted that there was minimal overlap between the parties in the provision of engineering construction services (both tier 1 and tier 2), and this market was not a focus of the ACCC's review.

The ACCC concluded that the proposed acquisition was unlikely to result in a substantial lessening of competition in the tier 1 or tier 2 non-residential building construction services markets. In forming this view the ACCC had regard to the following factors:

- There would remain a number of other suppliers of tier 1 and tier 2 non-residential building construction services post acquisition, constraining the merged entity's ability to increase prices or reduce service quality in these markets. Market participants spoken to by the ACCC indicated at the time that there were at least four other Australian construction companies active in the tier 1 non-residential building construction market.
- Market participants referred to recent experience indicating that it was possible for international firms to enter into the Australian tier 1 non-residential building construction services market. The ACCC noted the participation of international firms in tenders for a number of major construction projects at the time, including the Victorian Comprehensive Cancer Centre and the South Australian desalination plant. The ACCC's market inquiries did not reveal any regulatory or technical barriers to entry for international construction firms to participate in non-residential building construction projects in Australia.

As noted above the ACCC had concluded that the proposed acquisition was unlikely to result in a substantial lessening of competition in the provision of engineering construction service projects as Lend Lease was not an active participant in this market at the time of the acquisition.

ACCC construction sector cartel and education

The ACCC has long recognised the risk of cartel behaviour in public sector procurement due to the large budgets involved and unique nature of public sector business activities. In light of this risk, the ACCC has conducted a number of education and information gathering campaigns designed to alert government agencies to the risks and negative effects of cartel behaviour and to attempt to uncover any such behaviour. The ACCC has also conducted education and information gathering campaigns regarding cartel activity and other anti-competitive conduct in the private sector.

In 2009, the ACCC published a handbook 'Cartels: deterrence and detection—a guide for government procurement officers'. Since that time the ACCC has contacted agencies responsible for procurement at all levels of government to offer training seminars to relevant personnel.

The ACCC also conducted further training seminars with agencies that have involvement and oversight of public procurement in light of the introduction of the criminal cartel provisions in 2010. This included a particular focus on agencies involved in building construction.

In 2010 the ACCC conducted an information gathering campaign in relation to education construction, in light of allegations regarding cartel behaviour in relation to tendering for the government's 'Building the Education Revolution' program. The ACCC wrote to local agencies requesting details of managing contractors and construction firms involved, distributed copies of ACCC publications about cartel conduct, met with auditing task forces and local authorities and obtained complaint data on the BER projects. Additionally, the ACCC provided information about immunity programs and contact information to 330 managing contractors across Australia.

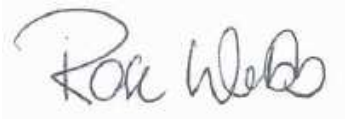
In 2012 the ACCC released 'The Marker', a short film that shows the devastating effects involvement in a cartel can have on individuals and businesses. The film is an effective aid for compliance training by the ACCC, businesses and their advisors. Its purpose is to deter cartel conduct by showing how cartel activity can ruin relationships, careers, reputations and long term financial security, and may ultimately land guilty parties in jail.

In the context of major infrastructure development occurring in the Northern Territory, in 2014 the ACCC will engage with key sectors of the NT economy to encourage procurers to prevent, detect and report anti-competitive conduct. The ACCC will work with companies, organisations, and departments within major infrastructure projects, mining and resources, government, and construction. The engagement will focus on providing practical information and industry relevant examples of what anti-competitive behaviour looks like, how to guard against anti-competitive behaviour, and how to report suspected anti-competitive behaviour. The project will aim to destabilise any cartel conduct that may be occurring and empower business to avoid the economic losses attributable to cartel conduct.

Conclusion

The ACCC thanks the Productivity Commission for this opportunity to make a submission and looks forward to future consultation.

Yours sincerely

A handwritten signature in black ink that reads "Rose Webb". The signature is written in a cursive, flowing style.

Rose Webb
Executive General Manager
Mergers and Adjudication Group

Lend Lease and its subsidiaries

Lend Lease

At the time of the ACCC's review, Lend Lease was an integrated property solutions provider, listed on both the ASX and NZX. It had approximately \$10.1 billion in funds under management and a market capitalisation of \$3.8 billion. Operating profit after tax for FY2010 was \$323.6 million

Lend Lease's commercial activities covered a spectrum of property sectors including the commercial, residential, retirement, retail, healthcare, education, mixed-use, government, industrial and pharmaceutical sectors.

Bovis

Bovis, a wholly owned subsidiary of Lend Lease, operated Lend Lease's Project Management, Design and Construction business in Australia. Lend Lease acquired Bovis in 1998.

In Australia, Bovis offered project management, design and construction services with particular emphasis on commercial and industrial buildings. In addition to providing construction and related services to third parties, Bovis also provided construction services to entities within the Lend Lease Group.

Valemus and its subsidiaries

Valemus

At the time of the ACCC's review, Valemus' overseas parent company was Bilfinger Berger. Bilfinger Berger was a German-based international services group for industry, real estate and infrastructure. Bilfinger Berger had approximately 67,000 employees worldwide.

Bilfinger Berger's Australian activities were conducted by its subsidiary Valemus (formerly Bilfinger Berger Australia Pty Ltd). Valemus was the immediate parent company of Abigroup Limited (**Abigroup**), Boulderstone Pty Ltd (**Boulderstone**) and Conneq Pty Ltd (**Conneq**).

Abigroup

Established in 1957, Abigroup was an Australian construction company with project capabilities in roads, rail, water, mining services, tunnels, bridges, transport, energy and industrial, and telecommunications. It employed approximately 2,100 people. Its turnover for calendar year 2009 was approximately \$1.98 billion. While Abigroup was a multi-sector engineering construction and building contractor, it had a focus on Engineering Construction projects.

Abigroup was acquired by Bilfinger Berger in 2004.

Boulderstone

Established in 1926, Boulderstone was an Australian construction company with project capabilities in both the Engineering Construction and Building Construction markets. Boulderstone was acquired by Bilfinger Berger in 1993.

Boulderstone had approximately 1,400 employees in Australia. Its turnover for calendar year 2009 was approximately \$2 billion.

Conneq

Conneq (formerly Bilfinger Berger Services) provided engineering and specialist asset management services for the delivery, operation and maintenance, and commissioning of civil and industrial infrastructure for public sector customers, mining companies, oil and gas companies, utilities, and industrial manufacturers.

Conneq employed approximately 3,100 people and provides design, installation, and operation and maintenance services at approximately 60 sites across Australia and New Zealand. Conneq's turnover for FY2010 was \$743 million.