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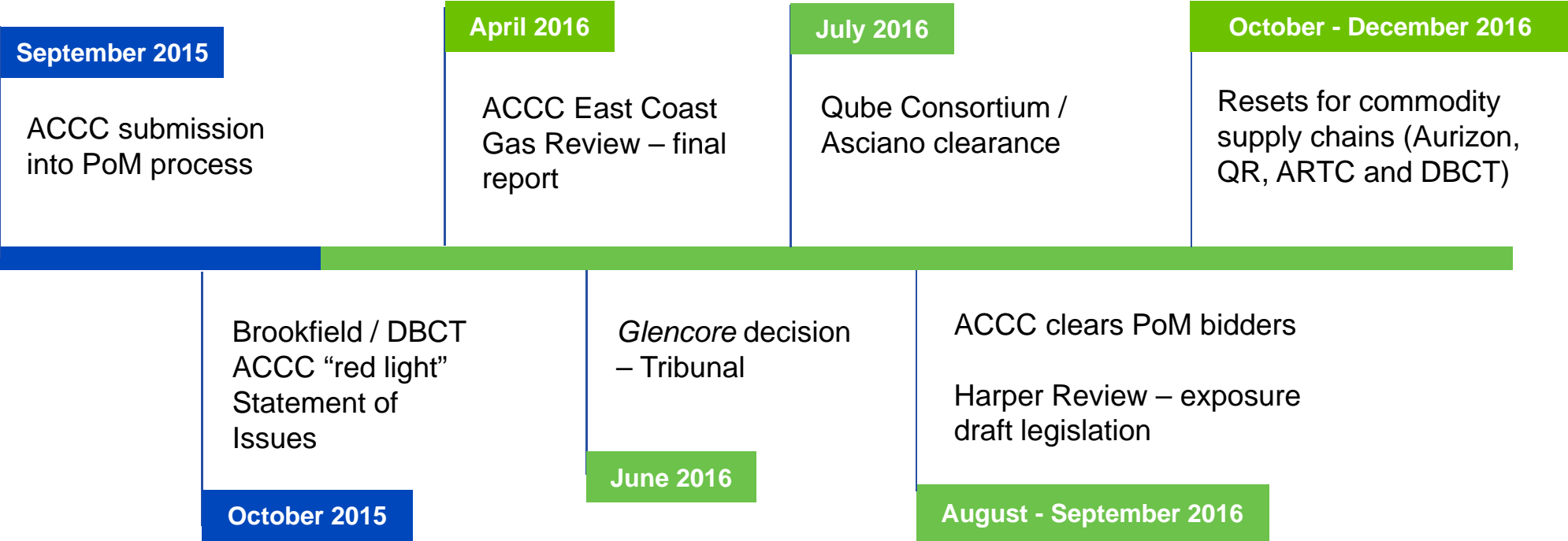
Observations for Ports Australia on recent ACCC and regulatory developments

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12 months is a long time in infrastructure

Glencore is just one of a number of significant ACCC and regulatory developments over the last year that have implications for port owners and operators.



The risks – both regulatory and transactional

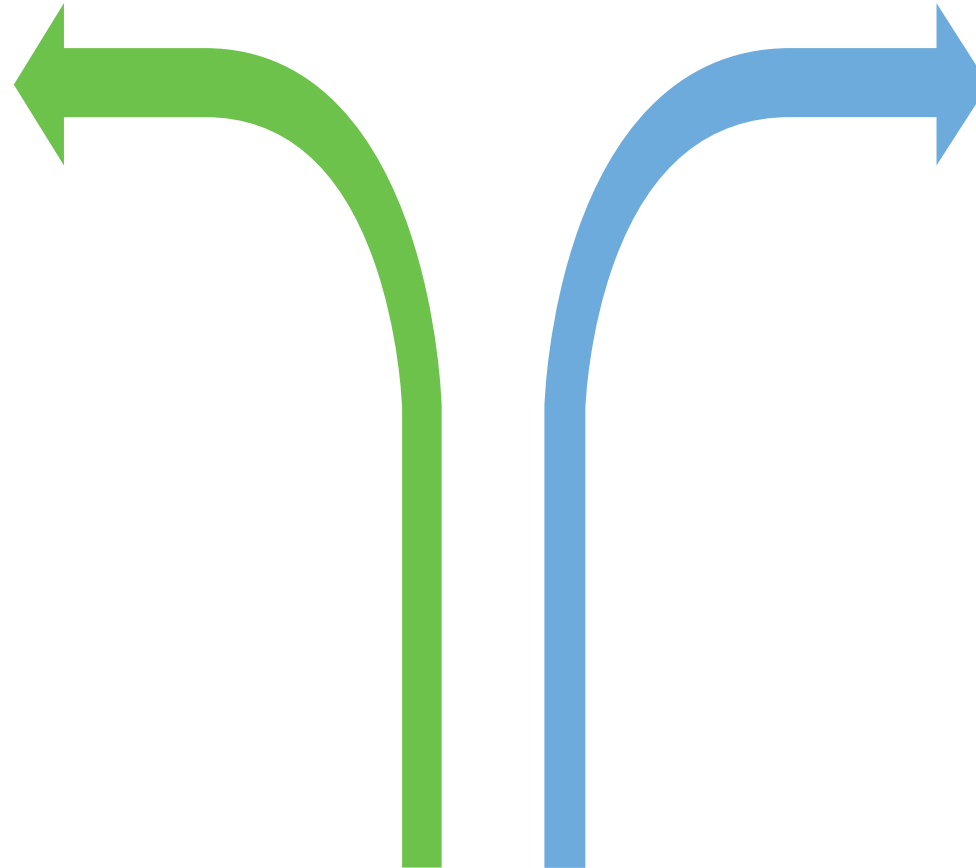
Regulatory risks

Who bears the risk of 'capitalised' pricing power?

What is the target of regulation and how is the test for regulation applied?

What degree of price oversight in any new privatisation (monitoring vs building blocks)?

Regulatory cost of capital outcomes



Transaction and ownership issues

How is vertical integration approached by the ACCC?

ACCC attitude to minority interests and "passive" investment in multiple logistics assets

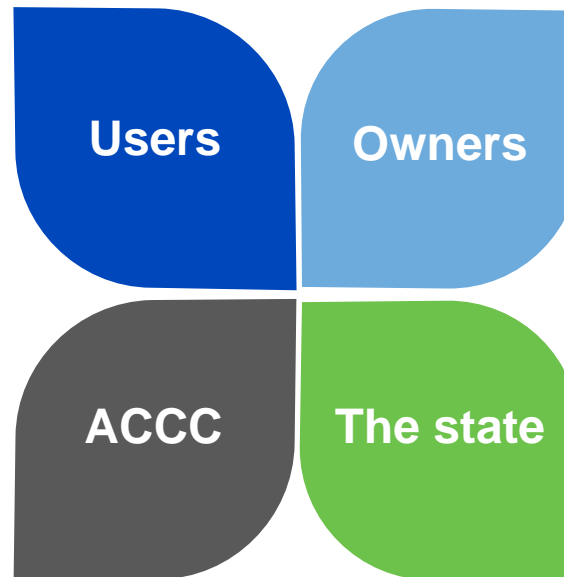
Regulatory risk – attitudes to pricing power

Part IIIA and the Tribunal in *Glencore*

A very low threshold for pricing oversight by the ACCC
Shifts regulatory risk on to owner (and government)
Subject to appeal.

ACCC approach in Gas Review

Derives “monopoly” pricing power from asset values and then proposes regulation based on “sustained” market power



Harper exposure draft legislation

Effectively reverses *Glencore*, lowering risk of declaration for owners, where subject to reasonable existing terms.
Likely mid 2017.

Port of Melbourne

Significant tightening of state regime – responding to ACCC concerns.
A shift away from price monitoring.

Transactional risk – ownership and value

Brookfield / DBCT



- Strong “red light”
Statement of Issues – vertical integration
- Focus was risk of operational discrimination at the port/rail interface
- Little regard for State regime and behavioural undertakings seen as inadequate, despite strong ring fencing

Port of Melbourne



- Both IFM and QIC bids for PoM were ultimately cleared without Sols
- Found low degree of inter-port substitutability
- Consideration of the stakes held across ports and scope for some bargaining/informational advantages in relation to terminal renegotiations

GRail – Hunter Valley



- “Amber light” Sol published on bid by Aurizon and PN for GRail
- Long term ‘take or pay’ contracts used to underwrite entry/scale
- Would transaction foreclose the last realistic prospect of new entry (GWA)?

The key take outs from 2016



Glencore significantly increases the risk of price regulation – but is likely to be overturned, either by the Courts or legislation (mid 2017)



Future state privatisation processes are likely to involve substantially greater price oversight, despite the impact on value (the price monitoring model is under serious threat)



The ACCC is increasingly focusing on ‘market power’ in assessing the basis for price regulation (rather than infra cost characteristics) – and is prepared to impute this pricing power from asset and sale values



The ACCC remains highly concerned about vertical integration in logistics chains (and ports, in particular) and existing state regimes / undertakings will often not suffice



There may be increasing ACCC attention given to minority stakes and effects where funds/SoEs hold interests across ports or multiple parts of supply chains



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