



## ***Public Competition Assessment***

*18 October 2010*

### ***7-Eleven Stores Pty Ltd – proposed acquisition of retail assets of Mobil Oil Australia Pty Ltd***

### ***Peregrine Corporation – proposed acquisition of the South Australian retail assets of Mobil Oil Australia Pty Ltd***

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#### **A Introduction**

1. On 22 July 2010, the Australian Competition and Consumer Commission (ACCC) announced its decision not to oppose the proposed acquisition of the retail assets of Mobil Oil Australia Pty Ltd by 7-Eleven Stores Pty Ltd (**the 7-Eleven acquisition**), on the basis that it would be receiving section 87B undertakings to divest certain assets. On the same date, the ACCC announced its decision not to oppose the proposed acquisition by Peregrine Corporation of the South Australian retail assets of Mobil Oil Australia Pty Ltd from 7-Eleven Stores Pty Ltd (**the Peregrine acquisition**), on the basis that it would be receiving section 87B undertakings to divest one retail site.
2. The ACCC decided that the 7-Eleven acquisition and the Peregrine acquisition, in conjunction with the undertakings proposed by each party, would be unlikely to have the effect of substantially lessening competition in the various relevant local markets for the retail supply of petrol, diesel and LPG in contravention of section 50 of the *Trade Practices Act 1974* (the **Act**).
3. On 1 October 2010, the ACCC accepted undertakings from each of 7-Eleven Stores Pty Ltd and Peregrine Corporation.
4. The ACCC made its decision on the basis of the information provided by the merger parties and information arising from its market inquiries. This Public Competition Assessment outlines the basis on which the ACCC has reached its decision on the proposed acquisition, subject to confidentiality considerations.

#### **B Public Competition Assessment**

5. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:
  - a merger is opposed;

- a merger is subject to enforceable undertakings;
  - the merger parties seek such disclosure; or
  - a merger is not opposed but raises important issues that the ACCC considers should be made public.
6. This Public Competition Assessment has been issued because the 7-Eleven acquisition and the Peregrine acquisition are subject to court enforceable undertakings.
  7. By issuing Public Competition Assessments, the ACCC aims to provide the public with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues. It also alerts the public to the circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change.
  8. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.
  9. Many of the ACCC's decisions will involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources. While the ACCC aims to provide an appropriately detailed explanation of the basis for the ACCC decision, where this is not possible, maintaining confidentiality will be the ACCC's paramount concern, and accordingly a Public Competition Assessment may not definitively explain all issues and the ACCC's analysis of such issues.

## **C The parties**

### **7-Eleven Stores Pty Ltd**

10. 7-Eleven Stores Pty Ltd (**7-Eleven**) is a privately owned franchisor of over 400 retail convenience stores, 195 of which also operate as retail service stations. The majority of 7-Eleven's retail sites are operated under franchise arrangements. However, 7-Eleven sets the price of fuel at all sites that sell fuel. 7-Eleven sources fuel from Shell nationally and is a subscriber to the Informed Sources Oil Pricewatch service.

### **Peregrine Corporation**

11. Peregrine Corporation (**Peregrine**) is a privately owned operator of 44 retail service stations in Adelaide. Two of Peregrine's sites are operated under its company brand 'On the Run'. The remaining sites are operated under the BP brand, with 'On the Run' branded convenience stores on site. Peregrine currently

has a supply contract for fuel with BP and is a subscriber to the Informed Sources Oil Pricewatch service.

### **The target assets – retail fuel sites of Mobil Oil Australia Pty Ltd**

12. Mobil Oil Australia Pty Ltd (Mobil) and its parent company ExxonMobil Australia Pty Ltd is one of the four refiner-marketers of petrol, diesel and LPG in Australia. The ultimate holding company of Mobil is Exxon Mobil Corporation (Exxon Mobil), a US based corporation. Mobil owns a refinery in Altona, Melbourne, and the 'mothballed' Port Stanvac refinery in SA. Mobil has recently announced the Port Stanvac refinery will be demolished and the site rehabilitated. Mobil also owns or operates five fuel terminals located across Australia.
13. Mobil sells petrol, diesel and LPG on a wholesale basis to its own retail sites as well as independent fuel retailers (including United and Mobil branded independent retailers in regional areas).

### **D The proposed transactions**

14. On 27 May 2010, 7-Eleven announced that it would acquire the retail fuel business of Mobil which comprises 295 Mobil retail fuel sites throughout Victoria, New South Wales, Queensland and South Australia. 7-Eleven does not currently operate in South Australia. 7-Eleven therefore proposed to on-sell all of the Mobil retail fuel sites (i.e. 29 sites) and associated assets in South Australia to Peregrine.

### **E Industry background**

15. The ACCC's views on the fuel industry in Australia are set out in the Public Competition Assessment published in February 2010 in relation to Caltex's proposed acquisition of Mobil (**the Caltex-Mobil PCA**).

### **F Timing**

16. The following table outlines the timeline of key events in the reviews of the 7-Eleven and Peregrine acquisitions.

Date	Event
27-May-2010	ACCC commenced review under the Merger Review Process Guidelines.
17-Jun-2010	Closing date for submissions from interested parties.
07-Jul-2010	ACCC requested further information from 7-Eleven and Peregrine. Former proposed date for announcement of ACCC's findings of 8 July 2010 amended to allow for 7-Eleven and Peregrine to provide this information and for further analysis to be undertaken.
22-Jul-2010	ACCC announced it would not oppose the proposed 7-Eleven acquisition and proposed Peregrine acquisition, subject to the receipt of divestiture undertakings from the parties.
01-Oct-2010	Section 87B undertakings accepted by ACCC.

## **G Market inquiries**

17. The ACCC conducted market inquiries with a range of industry participants, including competitors, industry associations, consumer motoring groups and consumers. Submissions were sought in relation to the substantive competition issues.

## **H With/without test**

18. In assessing a merger pursuant to section 50 of the Act, the ACCC must consider the effects of the transaction by comparing the likely competitive environment post-merger if the transaction proceeds (the “with” position) to the likely competitive environment post-merger if the transaction does not proceed (the “without” position).
19. In assessing the proposed acquisitions, the ACCC considered a range of potential counterfactuals including the potential for the sites to be sold to another purchaser as one transaction, that the sites be sold in groups to a number of different buyers or that the sites be sold off individually. The ACCC did not consider it necessary to form a concluded view in relation to the counterfactual as it was not determinative of the outcome of the analysis.

## **I Market definition**

20. The ACCC examined the issue of market definition extensively during the Caltex-Mobil review and its views are explained in detail in the Caltex-Mobil PCA.

### *Product dimension*

21. Both acquirers operate only as retailers and have no upstream interests in refining or wholesaling. The target assets operate only at the retail level of the market.
22. The ACCC therefore concluded that the acquisitions were unlikely to have any material impact on the refining and wholesale levels of the market and any impact on competition was likely to be confined to the retail level of the market.
23. For the same reasons as identified in the Caltex-Mobil PCA, the ACCC considered the relevant product dimensions of the relevant markets to be:
  - retail petrol and diesel markets; and
  - retail LPG markets.

### *Geographic dimension*

24. Consistent with the approach set out in the Caltex-Mobil PCA, the ACCC’s analysis for defining the geographic scope of retail markets for the retail supply of petrol, diesel and LPG used a 3-5km radius from each site as the starting point.

The ACCC recognises that certain features of retail fuel markets, such as the layout of roads in the area, are potentially important when defining the geographic scope of a local market. This approach is confirmed by the information provided by retailers, including the merger parties, which explained how they set prices in local regions, and, in particular, the competitors to which they respond.

25. Consequently, although a 3-5km radius was used as the starting point, the ACCC took a case-by-case approach to examining competition in each local area, taking account of the features of each local market. In some cases, the ACCC took the view that the geographic scope of the local retail market was a narrower geographic area and in others the relevant market was found to be broader than 3-5km.

#### *Conclusion – market definition*

26. The ACCC therefore considered the proposed acquisitions in the context of local markets for the retail supply of:
  - petrol and diesel; and
  - automotive LPG.

## **J Competition analysis**

#### *Price cycles*

27. As explained in the Caltex-Mobil PCA, regular weekly cycles are a feature of retail petrol prices in Adelaide, Brisbane, Melbourne and Sydney (as well as some other regions). In each of these cities retail petrol prices typically follow a sawtooth pattern with prices increasing sharply (the restoration phase) followed by a gradual decline in prices over the remainder of the week (the discounting phase).
28. The ACCC previously found that pricing in the restoration phase of the cycle occurs on a metropolitan-wide basis while pricing in the discounting phase is influenced by more localised factors.

#### *Impact of the acquisitions on local retail markets*

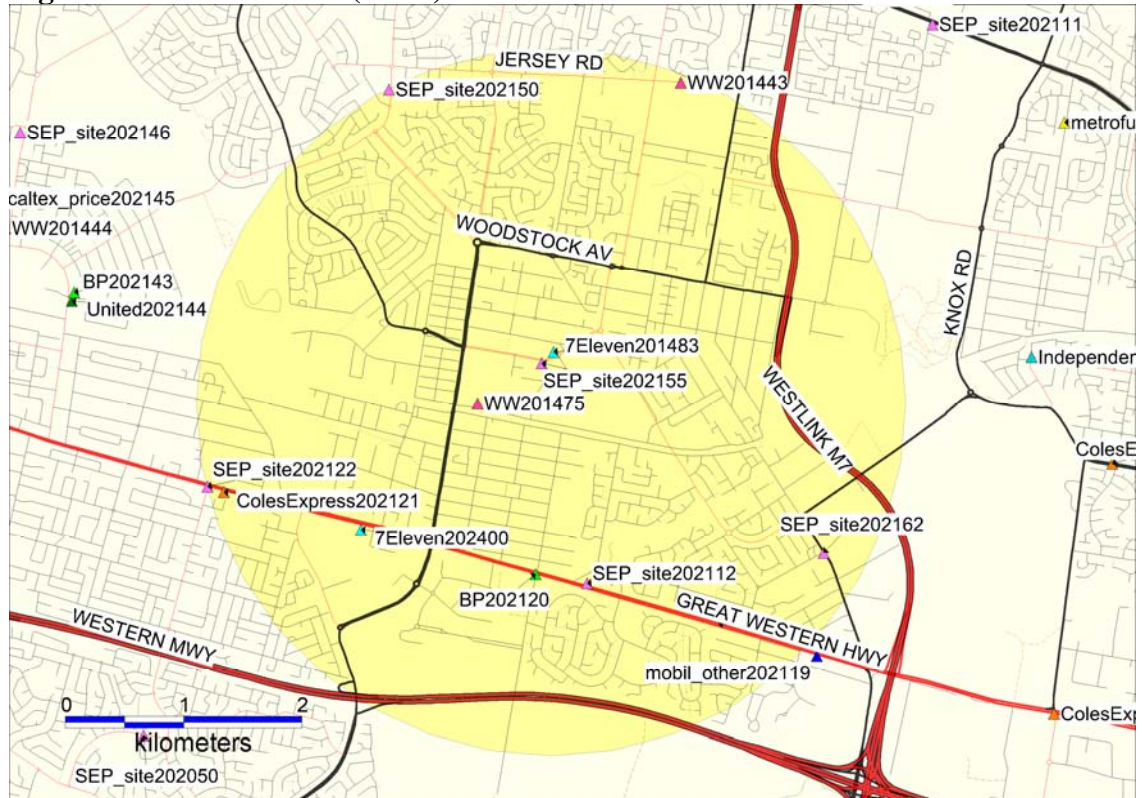
29. The ACCC considered whether the proposed acquisitions would impact the way prices were set over the cycle and particularly during the restoration phase in:
  - Adelaide (in the case of the Peregrine acquisition); and
  - Brisbane, Sydney and Melbourne (in the case of the 7-Eleven acquisition).
30. Each proposed acquisition would increase the number of sites held by the acquirer in the relevant cities. Both acquirers are currently subscribers to the Informed Sources PriceWatch service.

31. The ACCC noted that neither 7-Eleven nor Peregrine was a ‘leader’ in the restoration of prices in any of the relevant cities. That is, 7-Eleven and Peregrine both waited for other parties – usually the refiner marketers – to increase prices before they would do so themselves. The ACCC did not identify any evidence to suggest that the acquisitions would cause them to change this behaviour post-acquisition.
32. The ACCC also considered whether the proposed acquisitions would be likely to change the number of failed restorations when compared with the likely counterfactuals. The ACCC did not consider that the proposed acquisitions would result in the leaders of the restoration phase of the price cycle having additional certainty that restorations would be successful.

*Local market analysis – 7-Eleven acquisition*

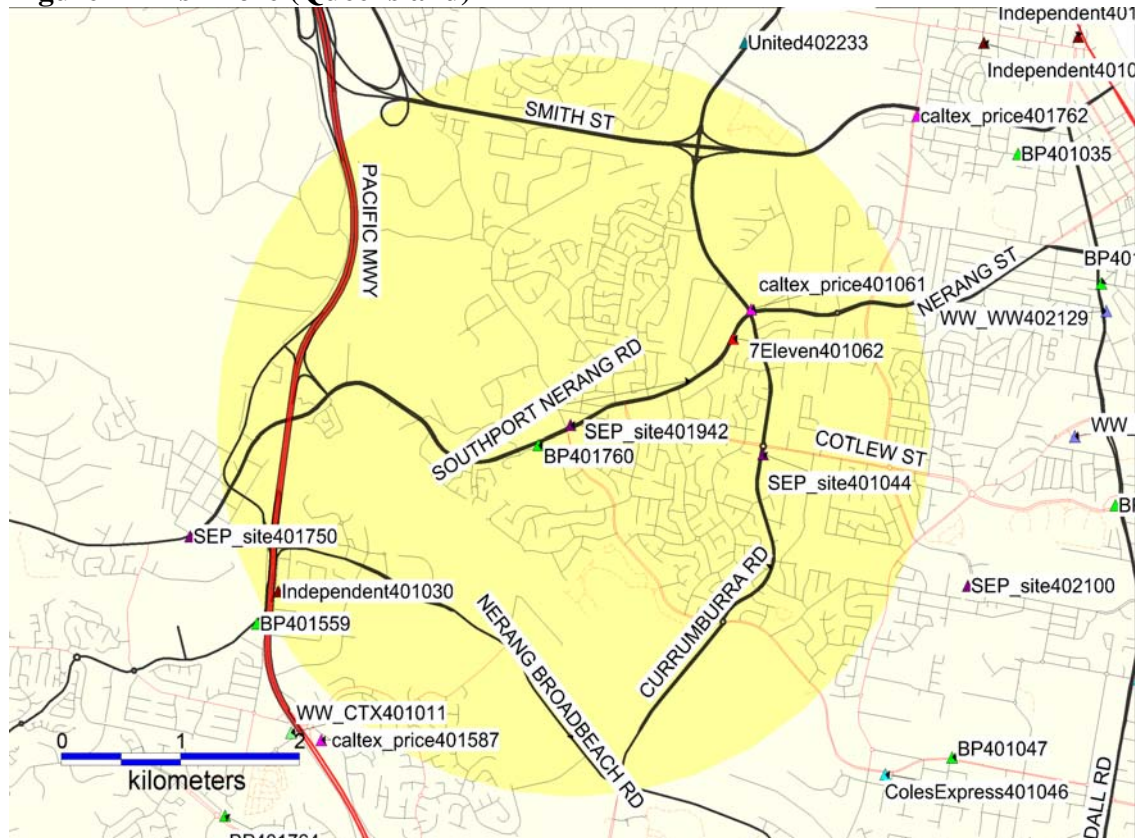
33. The ACCC focussed its local retail market analysis on those areas where there is competitive overlap between a 7-Eleven controlled site and a Mobil site. Usually, but not always, these were found to be in close proximity to each other and were sites in which the pricing approach of the merging retailers indicated that they were in close competition with each other.
34. In the case of 62 Mobil sites, pre-acquisition 7-Eleven had no existing presence within 5km. Accordingly, the ACCC decided that the acquisition of these sites was unlikely to raise competition concerns.
35. The remaining Mobil sites proposed to be acquired (and retained) by 7-Eleven were subjected to further quantitative and qualitative analysis. In the vast majority of these cases, the ACCC formed the view that there would remain sufficient competition in the local market post-acquisition to constrain the pricing behaviour of 7-Eleven.
36. However, in three local markets – Mount Druitt (NSW), Ashmore (Queensland) and Riverhills (Queensland) – the ACCC formed the view that there would be a lack of effective competition to 7-Eleven post-acquisition. The ACCC determined that a substantial lessening of competition was likely to arise in these areas as a result of the acquisition by 7-Eleven of Mobil’s retail assets, given the high barriers to entry to local retail petrol, diesel and automotive LPG markets (as set out in the Caltex/Mobil PCA). Maps of these three areas are set out below.
37. 7-Eleven offered undertakings to the ACCC for the purpose of remedying these concerns—the undertakings and the ACCC’s consideration of these are discussed below in the section on Undertakings.

**Figure 1 – Mount Druitt (NSW)**



Note: the Mobil sites on this map are denoted as 'SEP'.

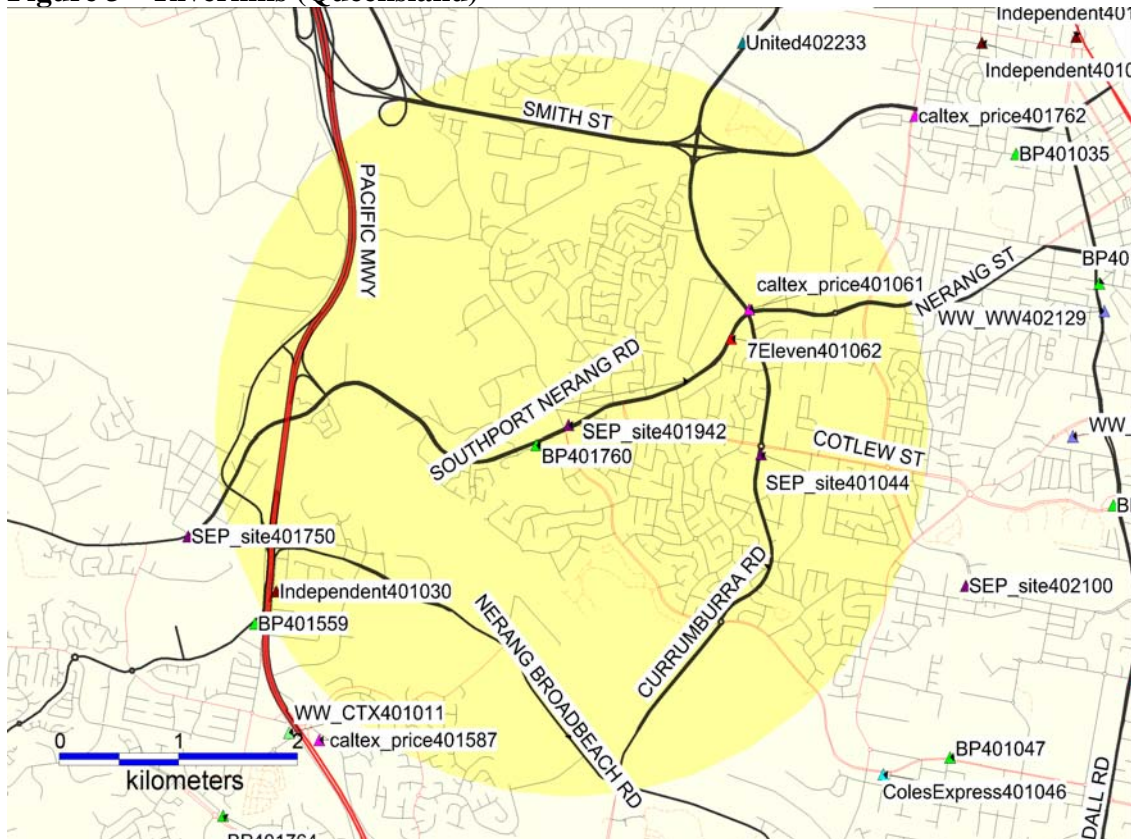
**Figure 2 – Ashmore (Queensland)**



Note: the Mobil sites on this map are denoted as 'SEP'.



**Figure 3 – Riverhills (Queensland)**



Note: the Mobil sites on this map are denoted as 'SEP'.

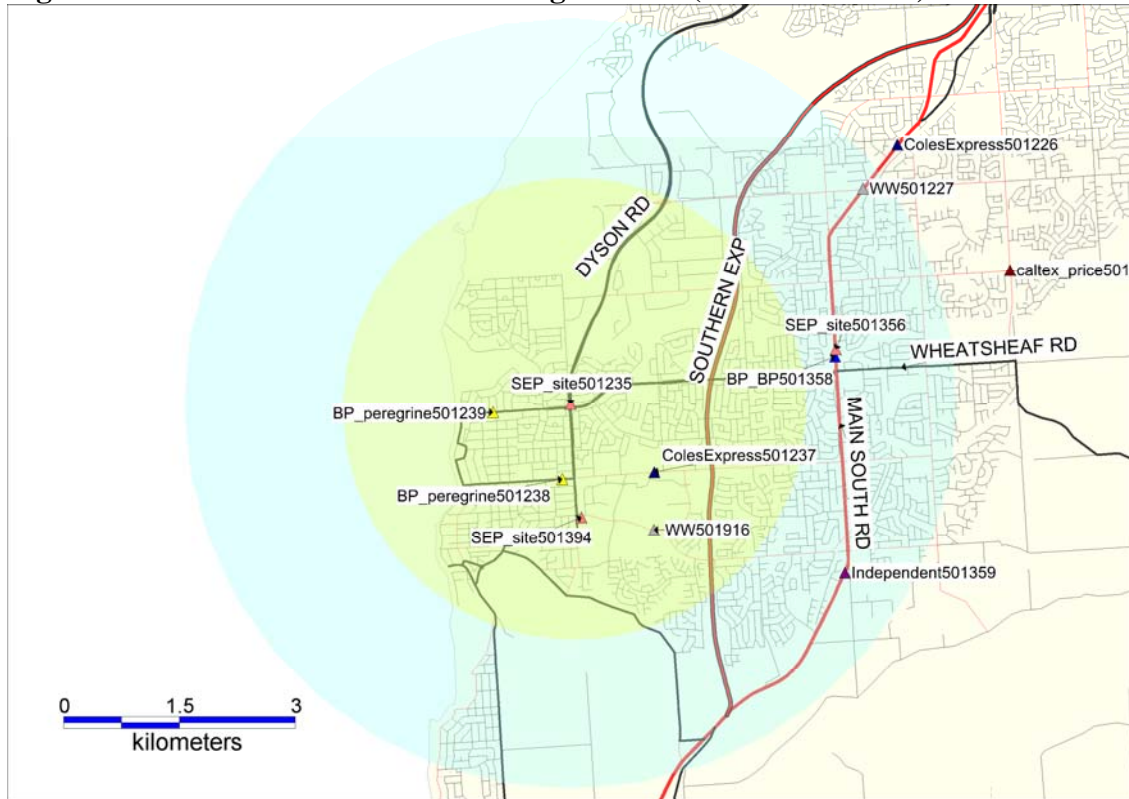
*Local market analysis – Peregrine acquisition*

38. The ACCC focussed its local retail market analysis on those areas where there is competitive overlap between a Peregrine controlled site and a Mobil site. Usually, but not always, these were found to be in close proximity to each other and were sites in which the pricing approach of the merging retailers indicated that they were in close competition with each other.
39. In the case of 5 Mobil sites, pre-acquisition Peregrine had no existing presence within 5km. Accordingly, the ACCC decided that the acquisition of these sites was unlikely to raise competition concerns.
40. The remaining Mobil sites proposed to be acquired by Peregrine were subjected to further quantitative and qualitative analysis. In the vast majority of these cases, the ACCC formed the view that there would remain sufficient competition in the local market post-acquisition to constrain the pricing behaviour of Peregrine.
41. However, in one local market – the area including Christies Beach and Noarlunga Downs – the ACCC formed the view that there would be a lack of effective competition to Peregrine post-acquisition. The ACCC determined that a substantial lessening of competition was likely to arise in this area as a result of the acquisition by Peregrine of the Mobil retail assets, given high barriers to entry to local retail petrol, diesel and automotive LPG markets (as set out in the Caltex/Mobil PCA). A map of this area is below at Figure 4.



42. Peregrine offered undertakings to the ACCC for the purpose of remedying these concerns—the undertakings and the ACCC’s consideration of these are discussed below in the section on Undertakings.

**Figure 4 – Christies Beach and Noarlunga Downs (South Australia)**



Note: the Mobil sites on this map are denoted as ‘SEP’.

## K Undertakings

43. On 1 October 2010 the ACCC accepted separate court enforceable undertakings offered by 7-Eleven and Peregrine pursuant to section 87B of the Act. The undertakings were offered by 7-Eleven and Peregrine to address the ACCC’s respective competition concerns in the relevant local markets for the retail supply of petrol and diesel; and automotive LPG.
44. 7-Eleven’s undertaking required 7-Eleven to divest three retail fuel businesses (in Mount Druitt, New South Wales; Ashmore, Queensland; and Riverhills, Queensland) to an ACCC approved purchaser. The ACCC approved Caltex Australia Petroleum Limited (**Caltex**) as the purchaser of the Mt Druitt, New South Wales site. Caltex has retail sites in Sydney but does not have a presence in the local retail markets surrounding the Mt Druitt site.
45. The ACCC approved Mr Ian McPhee (**Mr McPhee**) as the approved purchaser of the Ashmore and Riverhills sites in Queensland. Mr McPhee currently owns and operates six independent (BP branded sites) in the Brisbane area which are not located in the local retail markets surrounding the Ashmore and Riverhills sites.

46. Peregrine's undertaking required Peregrine to divest one retail fuel business in the Noarlunga Downs/Christies Beach area, South Australia. The ACCC approved Caltex as the purchaser of the relevant Peregrine divestiture business. Caltex has retail sites in South Australia but does not have a presence in the local retail markets surrounding the Noarlunga Downs/Christies Beach area.
47. The ACCC concluded that the divestment of the relevant retail fuel businesses by 7-Eleven and Peregrine to the ACCC approved purchasers would maintain competition through:
  - the creation of viable, effective, stand-alone independent and long term competitors for the retail supply of petrol, diesel and automotive LPG in each of the relevant retail fuel markets; and
  - ensuring that the approved purchasers of the divestiture businesses have the necessary assets, rights and obligations to compete effectively in the relevant retail fuel markets.

#### *Conclusion on undertakings*

48. The ACCC considered that the undertakings offered by 7-Eleven and Peregrine satisfactorily addressed the competition concerns identified in relevant local markets for the retail supply of petrol and diesel; and automotive LPG.
49. Accordingly, the ACCC considered that, in light of the undertakings offered by 7-Eleven and Peregrine, a substantial lessening of competition in the relevant local markets for the retail supply of petrol and diesel; and automotive LPG was unlikely.
50. Copies of the undertakings are available on the Undertakings Register (s.87B) at <http://www.accc.gov.au>.

#### **Conclusion**

51. On the basis of the above, the ACCC decided that the 7-Eleven acquisition and the Peregrine acquisition, in conjunction with the undertakings proposed by each party, would be unlikely to have the effect of substantially lessening competition in the various relevant local markets for the retail supply of petrol, diesel and LPG in contravention of section 50.