



## Public Competition Assessment

23 December 2019

### ANZ Terminals Pty Ltd - proposed acquisition of GrainCorp Liquid Terminals

---

#### The ACCC's decision

1. On 15 November 2019 the ACCC announced its decision not to oppose the proposed acquisition by ANZ Terminals Pty Ltd (**ANZ Terminals**) of GrainCorp Liquid Terminals (**GLT**) (the **proposed acquisition**) after accepting a section 87B undertaking from ANZ Terminals and Hyperion Investments Australia Pty Ltd (**Hyperion**).
2. The ACCC considered that the proposed acquisition, taking into account the undertaking, would be unlikely to contravene section 50 of the *Competition and Consumer Act 2010* (the **Act**). Section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
3. The ACCC identified preliminary competition concerns in relation to South Australia, New South Wales and Victoria, due to the limited alternative options for bulk liquid storage. The ACCC concluded that these competition concerns were addressed by:
  - ANZ Terminals/Hyperion undertaking to divest the Osborne terminal at the Port of Adelaide to an ACCC-approved purchaser
  - ANZ Terminals/Hyperion undertaking not to acquire any interest in additional land at the Port of Melbourne's Coode Island for a period of 10 years without first obtaining clearance from either the ACCC or the relevant Court/Tribunal
  - ANZ Terminals and GLT changing the structure of the proposed acquisition to exclude GLT's bulk liquid terminal assets at Port Kembla in New South Wales.
4. This Public Competition Assessment outlines the reasons for the decision by the ACCC not to oppose the proposed acquisition, subject to the undertakings.

5. Please note that this and other public competition assessments are subject to the following qualifications:
  - The ACCC considers each transaction on a case-by-case basis and so the analysis and decision outlined in one assessment will not necessarily reflect the ACCC's view of another transaction, even where that other transaction may involve the same or a related market.
  - As assessments are brief and do not refer to confidential information provided by the parties or other market participants, assessments do not necessarily set out all of the issues and information considered by the ACCC, nor all of the analysis and reasons of the ACCC.

## The parties and the transaction

### The acquirer: ANZ Terminals Pty Ltd

6. ANZ Terminals is a wholly owned subsidiary of Helios Investments Australia Pty Ltd, which is a wholly owned subsidiary of Hyperion.
7. ANZ Terminals provides bulk liquid storage services specialising in the storage and handling of bulk liquid edible oils and fats, petroleum products and industrial chemicals for third party customers.
8. ANZ Terminals operates five terminals across Australia at Port Botany in New South Wales, Geelong and Port of Melbourne in Victoria, and Pelican Point and Osborne in South Australia.

### The target: GrainCorp Liquid Terminals

9. GrainCorp Liquid Terminals is a wholly owned subsidiary of GrainCorp Commodity Management (Holdings) Pty Ltd, a wholly owned subsidiary of GrainCorp Limited (**GNC**). The business of GLT includes activities across the edible oils and fats supply chain. GLT stores and handles the bulk liquid requirements for GNC, as well as providing these services to third party customers for edible oils and fats, petroleum products and industrial chemicals.
10. GLT operates eight terminals across Australia, including Port Kembla in New South Wales, Port of Melbourne and North Laverton in Victoria, two terminals at Pinkenba in Queensland, Largs Bay in Adelaide, Devonport in Tasmania and Fremantle in Western Australia. The North Laverton terminal is GLT's only facility located inland.

### The transaction

11. Pursuant to an agreement entered into on 4 March 2019, ANZ Terminals agreed to purchase GLT's business in Australia. This initially included all eight of GLT's terminals at Port Kembla, Port of Melbourne, North Laverton, Pinkenba, Largs Bay, Devonport and Fremantle.
12. However, during the ACCC's review, ANZ Terminals and GLT revised the transaction to exclude GLT's terminal at Port Kembla, which would instead

transfer to GNC's business. The Port Kembla terminal is not therefore part of the proposed acquisition the subject of the ACCC's review.

13. As part of the proposed acquisition, GNC will enter into a Long-Term Storage Agreement (**LTSA**) with ANZ Terminals under which GNC will be able to obtain liquid storage and ancillary services from ANZ Terminals.

## Review timeline

14. The following table outlines the timeline of key events for the ACCC in this matter.

Date	Event
9 May 2019	ACCC commenced review under the Merger Process Guidelines.
25 July 2019	ACCC published a Statement of Issues outlining preliminary competition concerns
24 October 2019	Former proposed date for announcement of ACCC's decision of 31/10/2019 delayed to allow the ACCC further time to consider information received.
15 November 2019	ACCC decision not to oppose the proposed acquisition, subject to a section 87B undertaking.

15. The total elapsed time from start to finish was 6 months. The total period net of time taken by the parties to submit information or documents was 107 business days.

## Market inquiries

16. The ACCC conducted market inquiries with a range of industry participants, including competitors, customers and other interested parties. Submissions were sought in relation to the substantive competition issues and proposed undertaking.

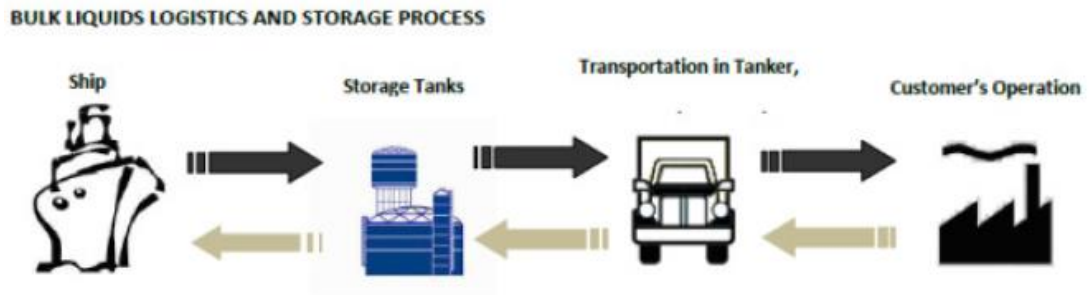
## Statement of Issues

17. On 25 July 2019 the ACCC published a Statement of Issues (**SOI**) on the proposed acquisition identifying a number of competition issues. In the SOI the ACCC stated its preliminary view that the proposed acquisition would be likely to substantially reduce competition by increasing ANZ Terminals' ability to raise prices and or decrease service levels, due to the reduction in competitors in an already concentrated market.

## Industry background

18. Port-side bulk liquid storage providers offer intermediate storage and handling services for bulk liquid storage and then facilitate the export of bulk liquids or the redistribution of the imported bulk liquids for end use (See Figure 1).

19. Figure 1: Port-side bulk liquids supply chain



20. ANZ Terminals and GLT are major port-side bulk liquid storage providers with a presence at ports across Australia. They predominantly overlap in the provision of storage of the following bulk liquids:
- Edible oils
  - Tallow and fats
  - Non-flammable industrial chemicals
  - Base oils.
21. In addition to storing and handling bulk liquids, storage providers may provide ancillary services. Such services include product blending, product bleaching, heating, drumming, nitrogen sparging and blanketing, and waste disposal.
22. Bulk liquid storage fees are negotiated confidentially between the customer and the storage provider and depend on a range of factors including the location, the type and volume of liquid(s) being stored, as well as the alternative storage options available to each customer.

#### Other industry participants

23. Stolt Nielsen, through its Stolthaven (**Stolt**) unit, provides storage and distribution solutions mainly for chemicals and petroleum products. Stolt has port-side bulk liquid storage facilities located at the Port of Melbourne in Victoria, Port Alma and Bundaberg in Queensland and Newcastle in New South Wales. Stolt's terminal in Bundaberg is not operational.
24. Stolt overlaps with ANZ Terminals and GLT in the provision of various types of bulk liquids at the Port of Melbourne.
25. Anchor Tank has a port-side bulk liquid storage terminal at the Port of Melbourne and an inland bulk liquid storage facility in Braybrook, in Victoria. Anchor Tank predominantly stores tallow and fats.

## Market definition

26. The ACCC's starting point for defining relevant markets to assess the competitive effects of the proposed acquisition involves identifying the products actually or potentially supplied by the parties to the acquisition. The ACCC then considers what other products constitute sufficiently close substitutes to provide a significant source of competitive constraint.

## Geographic market

27. The locations in which the parties' operations overlapped in the supply of port-side bulk liquid storage were:
- the Port of Melbourne, where the relevant competitors are ANZ Terminals, GLT, Stolt and Anchor Tank
  - the Port of Adelaide, where the relevant competitors are ANZ Terminals and GLT, and
  - Port Kembla / Port Botany, where the relevant competitors are GLT and ANZ Terminals.
28. The ACCC considered that the strength of competition between port-side bulk liquid storage providers is influenced by the distance it is financially viable for end users to transport the relevant liquid over land. Although the degree of substitutability will vary depending on the specific customer, the ACCC noted that the additional cost of transporting liquids longer distances over land is high relative to port-side bulk liquid storage costs. The ACCC therefore considered that many customers, if faced with a 5-10 per cent price increase in storage costs, would be unlikely to switch their storage requirements to a different state, for example. Therefore, the ACCC considered that competition is closest between providers of storage at the same port, or, in the case of New South Wales, between providers at ports that are close to each other.

## Product market

29. The ACCC considered that bulk liquid storage tanks were typically built for the purpose of storing a particular type of liquid and that the closeness of competition between storage providers may be influenced by the specifications of the tanks they have and the types of liquids they store. Tanks have particular characteristics and requirements for storing particular types of liquids. For instance, fuel tends to be stored in very large tanks due to its high throughput, hazardous chemicals require particular tank linings and fire suppression systems for safety, and some edible oils and fats require heating to keep them liquid. Despite these differences, the ACCC considered that there is some supply-side substitutability between tanks designed for different types of liquids, albeit with some asymmetries. Whilst tanks are designed to store particular liquids, storage providers can and do store some other types of liquids in these purpose built tanks if there is spare capacity. The ACCC took these asymmetries into consideration during its review, particularly because some customers identified concerns that certain competitors may not be able or willing to store a particular type of liquid.

30. The ACCC also considered the extent to which alternative forms of storage such as ISO-tanks, flexi-bags or other containerised forms are substitutable for bulk liquid storage tanks.
31. The ACCC considered that these alternative forms of storage are generally significantly more expensive per tonne of liquid stored for large volumes. In addition to increased storage cost, alternative storage in this manner may also require significant changes to a customer's logistics supply chain, which may involve further costs depending on the products being transported and the customers' volume requirements. For these reasons, the ACCC considered that these alternative forms of storage were unlikely to closely constrain the pricing of bulk liquid storage for products imported in large volumes.
32. The ACCC also considered whether inland bulk liquid storage was a close substitute for port-side bulk liquid storage. The ACCC considered that inland storage required the customer to either bypass port-side storage by using ISO-tanks or other containers, or to use port-side bulk liquid storage before or after transporting to the inland facility. As noted above, customers typically face challenges switching to containerised storage. Using both the inland facility and port-side facility requires double handling of the liquid, increasing costs. Therefore, it is unlikely that inland storage could closely constrain a price increase from port-side providers.
33. Accordingly, the ACCC considered that the market was for port-side bulk liquid storage. However, as noted above, within this market the closeness of competition between storage providers may be influenced by the specifications of the tanks they have and the types of liquids they store.

## **Competition analysis**

### **Competition issues at Port of Melbourne**

34. At the Port of Melbourne, ANZ Terminals and GLT are the two largest providers of port-side bulk liquid storage in terms of capacity. ANZ Terminals and GLT are both located on Coode Island at the Port of Melbourne and overlap in the provision of storage for base oils and edible oils and fats. The other two key competitors are Stolt and Anchor Tank, also located on Coode Island.
35. To consider the impact of the proposed acquisition on competition at the Port of Melbourne the ACCC closely considered a range of information, including: information from market participants; the internal documents from the parties; and records of customer switching. The ACCC considered that even with four port-side bulk liquid storage providers located next to each other on Coode Island, there appears to have been very limited switching between providers. Typically, customers appear to enter long-term contracts for the supply of storage, and in some cases these contracts underwrite the building of tanks. This creates a dynamic by which:
  - most storage capacity is built for a particular purpose and most facilities operate at almost full capacity
  - both customers and providers of storage appear to preference renewing their existing storage agreements, over changing storage providers.

36. The ACCC considered that the potential for expansion of competitors and the threat that a customer would leave its existing provider and have new tanks built by an alternative provider is a key driver to competition. Consequently, the ACCC concluded that vacant land and the ability by an existing storage provider to expand was a significant competitive constraint on ANZ Terminals and GLT.
37. Anchor Tank and Stolt Nielsen currently hold the most significant parcels of vacant land remaining on Coode Island. The ACCC also noted that Anchor Tank is currently undertaking an expansion project on some of its land.
38. In addition, even though ANZ Terminals would significantly increase the number of its tanks on Coode Island by acquiring GLT, a large number of these tanks are, and have historically been, contracted to GNC's edible oil business. The ACCC considered that these tanks are likely to remain occupied by GNC's edible oil business for a significant amount of time and are unlikely to be available to third party customers in the foreseeable future.
39. ANZ terminals/Hyperion has given a court enforceable undertaking pursuant to section 87B of the Act, that they will not acquire any interest in additional parcels of land on Coode Island in the next 10 years, without first obtaining relevant clearance (competition clearance by the ACCC, Australian Competition Tribunal or Federal Court). Given the ACCC considered that the remaining vacant areas of land are important to the competitive dynamic of this market, the ACCC reached the conclusion that, taking into account the undertaking, there was unlikely to be a substantial lessening of competition in the market for the supply of port-side bulk liquid storage at the Port of Melbourne.

### Competition issues at the Port of Adelaide in South Australia

40. In South Australia ANZ Terminals and GLT are the only independent providers of port-side bulk liquid storage and overlap in the provision of storage for non-flammable chemicals and tallow. ANZ Terminals currently operates a bulk fuel terminal at Pelican Point and a separate bulk liquid storage terminal at Osborne. GLT currently operates a bulk liquid storage terminal at Largs Bay. There are no other non-vertically integrated providers of bulk liquid storage in South Australia.
41. At the commencement of the ACCC's public review, ANZ Terminals and Hyperion proffered a proposed undertaking pursuant to section 87B of the Act to divest the Osborne terminal.
42. During its review, the ACCC considered both the need for any undertaking and the potential for the undertaking to remedy any potential competition concerns.
43. In relation to the Port of Adelaide, the ACCC noted that, despite the presence of available land, it was unlikely there would be a significant threat of new entry to constrain a combined ANZ Terminals/GLT post-acquisition. Unlike at the Port of Melbourne, there is no alternative provider such as Stolt or Anchor Tank present in South Australia. Any potential expansion of capacity would require a new entrant to develop all of the base infrastructure required to supply bulk liquid storage, rather than just the incremental cost of new tanks.
44. Accordingly, the ACCC determined that an undertaking to divest assets was required. Despite the Osborne terminal being small, the ACCC considered the divestment was sufficient to remedy the competition concerns. The ACCC also

tested with market participants whether or not the Osborne terminal would be viable as a stand-alone business. On the basis of information from market participants the ACCC was satisfied that the Osborne terminal would be viable as a stand-alone business.

## The Competition issues in Port Kembla / Port Botany

45. In New South Wales ANZ Terminals and GLT overlap in the supply of port-side bulk liquid storage of base oils and are the only two providers with bulk liquid tanks set up for this purpose. ANZ Terminals operates a terminal at Port Botany, while GLT operates out of Port Kembla. There are two other bulk liquid storage providers in New South Wales, Vopak in Port Botany and Stolt at Port of Newcastle. However, neither of these providers currently store base oils, nor do they have tanks suitable for storing base oils.
46. The ACCC noted that base oil customers viewed ANZ Terminals and GLT as the only two storage options in New South Wales. Customers have used the competitive tension between ANZ Terminals and GLT in contract negotiations.
47. The ACCC took into account spare land available at GLT's Port Kembla facility and considered the likelihood that the combined ANZ Terminals and GLT could be constrained by other bulk liquid storage providers in NSW, in particular Stolt and Vopak.
48. The ACCC noted that although Vopak has provided storage for base oils in the past, it no longer does so. The ACCC took into account that Vopak's current storage facilities in Port Botany are purpose built for fuels, and that the tanks are too large to economically store base oils. The ACCC concluded that Vopak was unlikely to provide an effective constraint on the combined ANZ Terminals and GLT post-acquisition.
49. The ACCC noted that Stolt is currently storing fuel products at the Port of Newcastle, but that its tanks are generally too large to store base oils. Furthermore, the ACCC considered that the distance and location of Stolt at the Port of Newcastle relative to Sydney made it a less attractive terminal to many customers in Sydney and Port Kembla. Therefore, bulk liquid storage at the Port of Newcastle was unlikely to place a strong constraint on the combined ANZ Terminals / GLT for many customers post-acquisition.
50. The ACCC raised concerns in the SOI that ANZ Terminals and GLT were most likely the closest competitors for the provision of bulk liquid storage for base oils in New South Wales, and that other alternatives were unlikely to provide a strong constraint.
51. During the ACCC's review, ANZ Terminals and GLT revised the proposed acquisition to remove GLT's Port Kembla terminal from the acquisition, instead transferring the Port Kembla asset to GNC.
52. The ACCC accordingly considered whether the exclusion of Port Kembla addressed its concerns in respect of competition in NSW. The ACCC concluded that Port Kembla would continue to be operated by experienced staff with the support from GNC's broader overseas bulk liquid storage business. It would continue to have access to the capital and financial assistance required from GNC and the incentives to compete vigorously in New South Wales.



## Undertaking

53. In order to address the ACCC's competition concerns in relation to South Australia and at the Port of Melbourne, Hyperion and ANZ Terminals offered a court enforceable undertaking pursuant to section 87B of the Act (**Undertaking**).
54. The ACCC spoke to a range of market participants in relation to the undertaking and the ACCC concluded that the undertaking addressed its competition concerns in these areas.
55. A brief summary of the Undertaking is set out below:
  - Coode Island, Port of Melbourne - Hyperion, ANZ Terminals and any related bodies corporate of ANZ Terminals or Hyperion will not, for a period of 10 years, acquire any direct or indirect interest (including but not limited to a lease or licence) in any land on Coode Island, at the Port of Melbourne, in which ANZ Terminals or GLT does not have an interest, unless relevant clearance (competition clearance by the ACCC, Australian Competition Tribunal or Federal Court) has been obtained.
  - Divestiture package – the ACCC must approve a purchaser for the terminal operated at Osborne, South Australia, which provides bulk liquid import and export services. The divestiture will include all fixed assets, equipment and facilities, books and records, inventory, customers, employees and applicable licences, the transfer or assignment of leased property and the transfer of personnel.
  - Independent Auditor and Manager – ANZ Terminals must appoint an ACCC approved Independent Auditor and Independent Manager to monitor ANZ Terminals' overall compliance with the undertaking and to manage the Osborne terminal from completion of the proposed acquisition until it is sold to an approved purchaser.
  - Transitional technical assistance and supply agreements - ANZ Terminals must supply any technical assistance and any goods or services required by the approved purchaser of the Osborne terminal to become established as a viable, effective, stand-alone, independent and long-term competitor.
56. A copy of the Undertaking is available on the ACCC merger register and undertakings register.

## Conclusion

57. Based on the above analysis, the ACCC concluded that the proposed acquisition of GLT by ANZ Terminals, taking into account the undertaking and the exclusion of Port Kembla from the transaction, would not be likely to have the effect of substantially lessening competition in any market.