



## Statement of Issues

25 July 2019

### **ANZ Terminals Pty Ltd proposed acquisition of GrainCorp Liquid Terminals Australia Pty Ltd**

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#### **Purpose**

1. ANZ Terminals Pty Ltd (**ANZ Terminals**) proposes to acquire GrainCorp Liquid Terminals Australia Pty Ltd (**GLT**).
2. This Statement of Issues:
  - gives the preliminary views of the Australian Competition and Consumer Commission (**ACCC**) on competition issues arising from the proposed acquisition;
  - identifies areas of further inquiry;
  - invites interested parties to submit comments and information to assist our assessment of the issues.
3. Statements of Issues give preliminary views and do not refer to confidential information provided by the parties or other market participants, therefore they may not be a full articulation of the ACCC's preliminary position.

#### **Overview of ACCC's preliminary views**

4. The legal test which the ACCC applies in considering the proposed acquisition is in section 50 of the *Competition and Consumer Act 2010*. Section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
5. The ACCC divides its preliminary views into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'.

#### **Issues of concern**

6. The ACCC is concerned that the proposed acquisition will reduce the number of major port-side bulk liquid storage providers in various locations around

Australia. ANZ Terminals and GLT are two large suppliers of port-side bulk liquid storage in an already concentrated industry. They overlap in the supply of port-side bulk liquid storage for one or more of edible oils, tallow, non-flammable industrial chemicals, base oils and non-fuel petroleum products in each of New South Wales, Victoria and South Australia.

7. The ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition by increasing ANZ Terminal's ability to raise prices and or decrease service levels, due to the reduction in competitors in an already concentrated market.

## Making a submission

8. The ACCC is seeking submissions from interested parties, particularly on the following key issues:
  - The extent to which containerised storage and transport, or inland storage facilities could be used instead of port-side bulk liquid storage
  - The nature of any barriers to new entrants commencing supply of port-side bulk liquid storage services
  - The competitive options for customers in New South Wales, Victoria, South Australia and Queensland.
9. Detailed discussion of these and other issues, along with specific questions, is contained in this Statement of Issues.
10. Interested parties should provide submissions by no later than 5pm on 8 August 2019. Responses may be emailed to [mergers@acc.gov.au](mailto:mergers@acc.gov.au) with the title: Submission re: ANZ Terminals GLT - attention Yak Wang/Annelise Caplan. If you would like to discuss the matter with ACCC officers over the telephone or in person, or have any questions about this Statement of Issues, please contact Yak Wang on 03 9290 6978 or Annelise Caplan on 03 9910 9451.
11. The ACCC anticipates making a final decision on Thursday, 17 October 2019, however, this timeline can change. To keep abreast of possible changes in relation to timing and to find relevant documents, interested parties should visit the Mergers Register on the ACCC's website at [www.accc.gov.au/mergersregister](http://www.accc.gov.au/mergersregister).

## Confidentiality of submissions

12. The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

## About ACCC ‘Statements of Issues’

13. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC’s preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
14. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

## Timeline

Date	Event
9 May 2019	ACCC commenced review of the proposed acquisition
23 May 2019	Closing date for submissions from interested parties
25 July 2019	ACCC published a Statement of Issues outlining preliminary competition concerns
8 August 2019	Closing date for submissions from interested parties in response to the Statement of Issues
17 October 2019	Proposed date for announcement of ACCC’s decision

## The parties

### The acquirer: ANZ Terminals

15. ANZ Terminals is a wholly owned subsidiary of Helios Investments Australia Pty Ltd, which is a wholly owned subsidiary of Hyperion Investments Australia Pty Ltd (**Hyperion**).
16. 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.
17. ANZ Terminals operates five terminals across Australia at Port Botany in New South Wales, Geelong and Coode Island in Victoria, and Pelican Point and Osborne in South Australia.

### The target: GrainCorp Liquid Terminals

18. GrainCorp Liquid Terminals (**GLT**) 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.

19. 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.
20. GLT operates eight terminals across Australia, including Port Kembla in New South Wales, Coode Island and North Laverton (inland facility) in Victoria, Pinkenba in Queensland (two terminals at this location), Largs Bay in Adelaide, Devonport in Tasmania and Fremantle in Western Australia.

## **The proposed transaction**

21. On 4 March 2019, the parties signed a Share Purchase Agreement in which ANZ Terminals agreed to purchase GLT (the bulk liquid storage business of GNC) for approximately \$350 million.<sup>1</sup> GLT will retain ownership of its New Zealand bulk liquid terminals.
22. As part of the transaction, GNC will enter into a Long-Term Storage Agreement (**L TSA**) with ANZ Terminals under which GNC will be able to obtain liquid storage and ancillary services from ANZ Terminals.
23. ANZ Terminals have offered an undertaking pursuant to section 87B of the Act to divest its Osborne terminal at the Port of Adelaide aimed at addressing potential competition concerns in South Australia. The proposed undertaking is discussed further at paragraph 93.

## **Industry background**

### **Bulk liquid supply chain**

24. Storage providers offer intermediate storage and handling services for bulk liquid storage and then facilitate the redistribution of these products to smaller storage terminals at a customer's own facilities.
25. In addition to storing and handling bulk liquids, storage providers may provide ancillary services. This includes product blending, product bleaching, heating, drumming, nitrogen sparging and blanketing, and waste disposal.
26. Storage tanks are generally dedicated to a single customer, who will have exclusive use of that storage tank. Bulk liquid is transported by road tanker between the storage facility and the customer's premises, whereas smaller volumes are stored in the customer's own on-site storage tanks.
27. The bulk liquid storage and handling industry is in effect a warehousing business with operations in ports where import, export and the distribution of product takes place.
28. The diagram below illustrates the key stages of the bulk liquid storage supply chain.

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<sup>1</sup> [http://www.graincorp.com.au/\\_literature\\_247987/GrainCorp\\_-\\_Sale\\_of\\_Australian\\_Liquid\\_Terminals](http://www.graincorp.com.au/_literature_247987/GrainCorp_-_Sale_of_Australian_Liquid_Terminals)

**Figure 1: Bulk liquids supply chain**

**BULK LIQUIDS LOGISTICS AND STORAGE PROCESS**



**Types of bulk liquid**

29. The types of liquids stored in bulk liquid storage terminals include:
- a) Edible oils: derived from nuts, seeds and other vegetable materials and produced for products such as sunflower oil and canola oil;
  - b) Tallow: produced by rendering animal by-products and predominantly used for soaps, cosmetics and pharmaceutical ingredients;
  - c) Flammable industrial chemicals: such as ethanol, used in the pharmaceuticals, food, petroleum and beverage industries;
  - d) Non-flammable industrial chemicals: such as solvent 150 and solvent 200, used in the cosmetics, cleaning products and pharmaceutical industries;
  - e) Petroleum products: such as bitumen and paraffin;
  - f) Base oils: which is a type of petroleum product derived from refining crude oil or through chemical synthesis and used to manufacture products such as explosives, lubricating greases and motor oils;
  - g) Fuel products: such as diesel, biodiesel and gasoline; and
  - h) Molasses: refined from sugarcane and generally used in the industrial and agricultural industries.

**Areas of overlap**

30. Currently, ANZ Terminals and GLT are two of the largest port-side bulk liquid storage providers in Australia, each operating in a number of states.
31. As set out in the table below, market feedback show that ANZ Terminals and GLT overlap in the storage of edible oils, tallow, non-flammable industrial chemicals, base oils and non-fuel petroleum products (**Overlap Products**), at various locations. ACCC notes that Table 1 is not an exhaustive list of products stored by each storage provider at each location.

**Table 1: Port-side storage product and geographic overlap based on market feedback (Overlap Products highlighted)**

	<b>ANZ Terminals</b>	<b>GrainCorp Liquid Terminals</b>	<b>Stolt Nielsen</b>	<b>Anchor Tank</b>	<b>Gordon Brandon T/A Brandon Molasses</b>
<b>New South Wales</b>	Port Botany - Base oils - Industrial chemicals - Petroleum-derived products	Port Kembla - Base oils	Newcastle - Fuel products	N/A	Erskinville - Molasses
<b>Victoria</b>	Port of Melbourne - Flammable industrial chemicals - Non-flammable industrial chemicals - Edible oils - Tallow - Base oils  Geelong - Petroleum-derived products - Flammable Industrial chemicals - Non-flammable industrial chemicals - Fuel products	Port of Melbourne - Non-flammable industrial chemicals - Edible oils - Tallow - Base oils	Port of Melbourne - Flammable industrial chemicals - Non-flammable industrial chemicals - Base oil and or Petroleum-derived products	Port of Melbourne - Tallow - Edible oils	Port of Melbourne - Molasses - Non-flammable industrial chemicals (limited)

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	<b>ANZ Terminals</b>	<b>Graincorp Liquid Terminals</b>	<b>Stolt Nielsen</b>	<b>Anchor Tank</b>	<b>Gordon Brandon T/A Brandon Molasses</b>
<b>South Australia</b>	Osborne, Adelaide <sup>2</sup> - Non-flammable industrial chemicals - Flammable industrial chemicals - Tallow - Petroleum-derived products Pelican Point - Fuel products	Largs Bay, Adelaide - Non-flammable industrial chemicals - Tallow - Petroleum-derived products	N/A	N/A	N/A
<b>Tasmania</b>	N/A	Devonport	N/A	N/A	N/A
<b>Queensland<sup>3</sup></b>	-	Pinkenba - Fuel products - Edible oils - Tallow - Non-flammable industrial chemicals	Port Alma - Fuel products - Flammable and or non-flammable industrial chemicals	N/A	N/A

<sup>2</sup> Possible subject of divestment.

<sup>3</sup> Although ANZ Terminals does not currently supply bulk liquid storage services in Queensland, some customers may be able to switch between other east coast locations and Brisbane

32. GLT also operates bulk liquid storage facilities in Tasmania and Western Australia. ANZ Terminals does not currently operate in these locations (or Queensland – further discussion on competition between east coast states is below).
33. The ACCC notes that:
  - a) ANZ Terminals supplies storage services for flammable products and GLT is currently not able to store flammable products at most facilities and is unlikely to be able to do so in the future; and
  - b) GLT stores and handles the bulk liquid requirements for GNC, using a portion of its storage capacity for its own needs.

Therefore, ANZ Terminals and GLT do not compete for some of the bulk liquids stored at their facilities. However, they currently overlap in the supply of bulk liquid storage of a range of liquids to third parties in New South Wales, Victoria and South Australia.

34. In New South Wales and Victoria, both ANZ Terminals and GLT provide storage for base oils. Market feedback indicates that no other storage provider in these locations provides storage for base oils.
35. Both GLT and ANZ Terminals store non-flammable industrial chemicals, edible oils, tallow and base oils at the Port of Melbourne in Victoria. The ACCC understands that at the Port of Melbourne, Anchor Tank stores edible oils and tallow, and Stolt Nielsen (**Stolt**) predominantly stores industrial chemicals.
36. In South Australia, both ANZ Terminals and GLT provide storage for some of the Overlap Products. There are no other storage providers operating in this state that the ACCC is aware of.
37. After the acquisition, the merged entity will be the largest storage provider for non-flammable industrial chemicals, edible oils, tallow and base oils in each of New South Wales, Victoria and South Australia.

## **Other industry participants**

38. The ACCC understands there are some additional suppliers of bulk liquid storage in some locations that provide storage for products other than the Overlap Products, for example, fuels and molasses. Market feedback show that customers do not consider these bulk liquid storage providers (such as Vopak and Brandon Molasses) to be close competitors to the merger parties.
39. There are also a number of inland facilities providing bulk liquid storage in each state not shown in the table. As discussed at paragraph 51 below, market feedback indicates that inland facilities are generally not a close substitute for port-side bulk liquid storage.

## **Market definition**

40. 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 merger parties. The ACCC then considers what other products constitute sufficiently close substitutes to provide a significant source of constraint on the merged entity.

41. Market feedback show that the needs of each individual customer can differ significantly depending on the product stored, volume, end use, location of customer, the infrastructure at the customer's facilities, and other factors. This means that the transport and storage options available may differ on a customer by customer basis.

#### **Product dimension**

42. Each type of bulk liquid, including non-flammable industrial chemicals, edible oils, tallow and base oils requires a different type of storage tank and infrastructure. For example, tallow is low volume, and is therefore stored in small tanks with some form of heating to ensure that the liquids do not solidify. Therefore, a tank storing tallow may not be suitable for edible oils or other types of liquids.
43. In addition, the storage requirements for industrial chemicals differ depending on whether the chemical is flammable or not. Flammable chemicals require stainless steel or carbon tanks with an internal tank lining, fire suppression systems, separation distances to adjacent tanks, and electrical flame proofing under strict Australian standards. Conversely, non-flammable chemicals have less strict statutory regulations, and can be stored in tanks which are located at short distances from each other.
44. Substitutability of storage tanks may be asymmetric. In some circumstances, it may be possible to store a liquid in a tank that was designed to store a different category of liquid. For example, it is possible to store non-flammable chemicals in tanks designed for flammable chemicals. However, significant investment in infrastructure to upgrade facilities would be required in some circumstances, for example, to store flammable liquids in tanks currently used for non-flammable liquids.
45. The ACCC's preliminary view is that tanks used to store:
  - a) fuel products are not close substitutes for the storage of the Overlap Products
  - b) Overlap Products are not close substitutes for the storage of flammable products
  - c) flammable chemicals may be substitutable for the storage of Overlap Products in some circumstances.
46. The ACCC's review is focused on the overlap between ANZ Terminals and GLT in the supply of bulk liquid storage of edible oils, tallow, non-flammable industrial chemicals, base oils and non-fuel petroleum products. It may be appropriate to define separate markets for each category of liquid. However, this will not affect the competition analysis and has not been considered further in this Statement of Issues.

## **Containerised storage / inland facilities are separate markets**

### *Containerised storage*

47. There are a number of containerised options for the transport and storage of liquids including:
- a) ISO-tanks, which are large stainless steel pressure vessels held within 20-foot rectangular frames that are transported like a shipping container. ISO-tanks range in capacity between 20m<sup>3</sup> and 26m<sup>3</sup> depending on the cargo.
  - b) Flexi-bags, which are multi-ply liquid bladders made from various plastics (generally poly-ethylene). Flexi-bags generally range in capacity from 10m<sup>3</sup> to 24m<sup>3</sup>, and are designed to transport and hold non-hazardous materials.
  - c) Intermediate Bulk Containers (**IBCs**), which typically have capacity to store 450 litres up to 3,000 litres (or 3m<sup>3</sup> in volume).
  - d) Drums, are either metal or plastic, which provides storage for products such as low grade tallow or edible oils. Drums range in size from 30 litres to 220 litres in capacity.
48. Market participants generally suggested that these containerised storage options are only used for the storage of smaller volumes of liquid, as they are more economical than leasing a larger bulk liquid storage tank. As such, the ACCC understands that for customers importing large volumes of specific bulk liquid products, larger tanks are the most viable option.
49. Additionally, feedback from the market indicated that customers would need to change their shipping infrastructure and supply chains in order to accommodate alternative storage methods such as containerised storage. This includes changing the importing and exporting facilities in other countries, which are currently set up to receive or load liquids into ships in bulk. Therefore, customers can face additional costs and barriers to switching from bulk liquid storage to containerised liquid storage.
50. While there may be some customers who can switch to alternative storage methods, including containerised storage, the ACCC understands that there are customers that require port-side bulk liquid storage that do not view containerised storage as a viable alternative.

### *Inland storage facilities*

51. There are bulk liquid storage facilities that are located inland (**inland storage facility**). The ACCC understands that for some storage customers, inland storage facilities may be an alternative to port-side bulk liquid storage. However, whether to store products at an inland storage facility or port-side ultimately depends on the individual customer's needs, such as the product, volume, customer location, and the customer's on-site storage capacity.
52. Market feedback has indicated that inland storage facilities generally hold smaller volumes than port-side bulk liquid storage terminals, and tend to be used for slower moving products. Therefore, customers importing larger volumes do not view them as close substitutes to port-side bulk liquid storage facilities.

53. Therefore, the ACCC's preliminary view is that containerised transport and inland facilities are not close substitutes to port-side bulk liquid storage for most port-side bulk liquid storage customers.

#### **Geographic dimension of market**

54. Feedback from the market generally indicated that customers rely on storage providers with terminal access, and are limited to terminals at one port, or ports located in a single state. The ACCC understands that the requirement to have access to a particular port or ports depends on the customer and the relative transportation costs to their warehouse or manufacturing sites.
55. Market feedback shows that for most customers they would incur substantially greater costs importing a product to a port in an interstate location, as the costs of using land transport are typically quite high and it is more complex logistically. Furthermore, there may be a greater chance of delay and increased handling risks during road transportation.
56. However, market feedback also suggested that some customers view terminals along the east coast as viable locations for bulk liquid storage. These customers generally have smaller volumes and have multiple customers or manufacturing locations in the eastern states. The ACCC understands that these customers may use the competitive tension between the merger parties' terminals in the different east coast states during contract negotiations.
57. The ACCC has not yet reached a final view on the geographic dimension of the bulk liquid storage market and is still considering whether switching between storage providers along the eastern seaboard is viable for some customers.

The ACCC invites comments from market participants on its preliminary views about the definition of the relevant market(s). In particular market participants may wish to comment on the following:

#### *Using different storage modes*

1. Please outline the reasons why you use a port-side bulk liquid storage facility. In responding to this question, please identify the type and volume (cubic metres or tonnes per year) of the products that you store at the port-side bulk liquid storage facility. For each product, please identify the size of the tank(s) used.
2. Have you explored options other than port-side bulk liquid storage? If so, please identify them and outline whether you can/cannot use them to store your product(s) and explain the main reasons why. If possible, please provide the estimated total cost difference between the other storage options and port-side bulk liquid storage. Total cost should include any associated transportation costs, additional handling costs and storage costs, etc.
3. If you use inland storage facilities, please outline the main reasons why you choose to use inland storage facilities over port-side bulk liquid storage. In responding to this question, please identify the type and volume (tonnes per year) of the products that you are storing at the inland storage facility; how often you need to move the product; the type, the size and number of the tanks and or containers used to store each product.

4. If you use ISO-tanks, flexi-bags, IBCs or drums (**containerised storage**) please outline the main reasons why you choose to use containerised storage over port-side bulk liquid storage. In responding to this question, please identify the type and volume (cubic metres or tonnes per year) of the products that you are storing using containerised storage; how often do you need to move the product; the type, size and number of containerised storage used to store each product.

*Location of port-side bulk liquid storage*

5. Please outline whether you are able to move your port-side bulk liquid storage from one state to another. Please identify the interstate location and bulk liquid storage provider. Please also provide the estimated costs of doing so (including changes in transportation costs and storage costs).

## **Issue of concern: Reduced competition in the supply of port-side bulk liquid storage**

58. Market feedback suggests that the port-side bulk liquid storage industry in Australia is highly concentrated. There are only three major storage providers supplying storage for the Overlap Products, with ANZ Terminals and GLT both storing Overlap Products in Victoria, New South Wales and South Australia, with large market shares. The proposed acquisition will reduce the number of major port-side bulk liquid storage providers for the Overlap Products, with ANZ Terminals becoming the largest player in Australia. It will also become the only port-side bulk liquid storage provider for some products in New South Wales and South Australia.
59. Based upon its inquiries to date, the ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition by increasing ANZ Terminals' ability to raise prices and or decrease service levels, due to the reduction in competitors in a highly concentrated market(s).
60. While the proposed acquisition will lead to a reduction in competitors in a number of geographic locations, the competitive conditions differ in different locations around Australia. Each geographic area where ANZ Terminals and GLT currently overlap is discussed in more detail from paragraph 71 below.

### **Competitive dynamics**

61. Market feedback shows that customers usually have lengthy contract terms (three to five years), and they develop long-term relationships with storage providers. Customers generally do not switch storage providers unless they have to – due to increased prices, decreased service levels, or a change in storage requirements.
62. Even though customers appear to be 'sticky' to a particular storage provider, market feedback shows that the competition between storage providers generally plays out through:
- a) responding to customers' tender processes when contracts are up for renewal or when new storage requirements arise, or
  - b) actively seeking customer volumes to fill spare capacity.

63. When customers switch storage providers, they will either move to a provider that has spare tanks that are equipped to handle their product and are suitable in size. Alternatively they may underwrite the construction of new tanks by existing storage providers, but only if the storage provider has access to appropriate vacant port land for expansion. Market feedback indicated that storage tanks and surrounding infrastructure are expensive to build, and storage providers have a strong economic incentive to keep tank utilisation high. Therefore, a storage provider will only build new tanks if they have vacant land and a long-term take-or-pay contract with the customer to underpin the investment. Similarly, if a storage provider loses a customer, they will have a strong incentive to compete to attract a new customer to maintain existing tank utilisation.

**GrainCorp will not be vertically integrated post-acquisition**

64. GLT currently supplies port-side bulk liquid storage to GNC and other customers that compete with GNC. Post-acquisition, GLT will no longer be vertically integrated with GNC.
65. The ACCC considers that the removal of the vertical integration between GLT and GNC will not necessarily be a more competitive outcome for customers that compete with GNC. While the proposed acquisition will remove some vertical integration from the market, it will also lead to a reduction in the number of port-side bulk liquid storage providers for customers, including those that do not compete with GNC.
66. Furthermore, market feedback indicates that GLT's vertical integration has not prevented customers obtaining benefits from competition between ANZ Terminals and GLT, including customers that compete with GNC.

**Barriers to entry / barriers to expansion**

67. Market feedback shows that the key requirement for entry by new storage providers, or expansion by existing storage providers, is to have access to suitable vacant land at the ports to build new tanks. Land suitable for bulk liquid tanks requires access to a berth where liquids can be pumped to or from bulk liquid ships. Therefore, not all available land at a port will be suitable for bulk liquid storage.
68. Some existing suppliers (including ANZ Terminals and GLT) have access to vacant port land in some locations, meaning they may have an opportunity to expand.
69. However, the ACCC understands that there is limited, or no vacant land available at most Australian ports for lease by new storage providers. Furthermore, market feedback suggests that for port-side bulk liquid storage providers that currently do not store the Overlap Products, most of them appear to have plans to build fuel storage tanks on their vacant land. Therefore, it appears unlikely that they would build new tanks to store the Overlap Products.
70. Consequently, potential competition from the build of new tanks is only likely to come from existing bulk liquid storage providers. The potential expansion of existing providers may be an important dynamic of competition. The proposed acquisition will reduce the number of bulk liquid storage providers that could compete using either existing capacity or new tanks on existing land.

The ACCC invites comments from market participants on its concerns in relation to the issues outlined above. In particular market participants may wish to comment on the following:

6. Is GLT, which is vertically integrated with GNC currently, a close competitor to ANZ Terminals in the bulk storage of edible oils? Do you see GLT as a viable option to store edible oils? Have you used the competitive tension between ANZ Terminals and GLT in contract negotiations?
7. As a customer, how difficult is it to underwrite the building of new tanks? What is the timeframe? Have you used the threat of underwriting the building of new tanks in contract negotiations? Are you aware of any potential new entrants considering supplying bulk liquid storage in New South Wales, Victoria, South Australia or Queensland?
8. Is it possible to gain access to port land for the purposes of building bulk liquid storage facilities in any of New South Wales, Victoria, South Australia or Queensland? If so, what additional steps would be required to commence supply in these locations? Would entry be possible if existing storage providers increased their prices by 5-10%? Why/why not?

#### **Competition in the supply of port-side bulk liquid storage**

71. This section examines the state of competition in each geographic area of overlap for the supply of port-side bulk liquid storage.

#### **New South Wales**

72. Market feedback suggests that ANZ Terminals (at Port Botany) and GLT (at Port Kembla) are the only two bulk liquid storage providers of base oil currently operating in New South Wales.
73. The ACCC is concerned that the proposed acquisition will reduce the number of base oil storage providers to only ANZ Terminals.
74. The ACCC understands that Vopak (at Port Botany) decommissioned its base oil and chemical storage tanks in 2015.
75. Market feedback shows that Vopak's focus is providing fuel storage, which requires much larger tanks than base oil. Given Vopak's focus on fuel storage and its exit from supplying storage to base oil customers in Sydney, it appears unlikely that Vopak will provide a significant competitive alternative for base oil customers in the future.
76. In terms of other potential new base oil storage providers, the ACCC understands that Stolt appears to be the most likely candidate, with vacant land at the Port of Newcastle.
77. The ACCC is concerned that even with the prospect of Stolt entering into base oil storage, the number of potential storage providers will be reduced from three to two.

The ACCC invites comments from market participants on its concerns in relation to the issues outlined above for New South Wales. In particular market participants may wish to comment on the following:

9. How closely do ANZ Terminals and GLT compete? Can they both store your product(s)? Have they actively tried to win your business? Have they responded to requests for tender or other competitive processes?
10. Apart from ANZ Terminals and GLT, are there any other port-side storage providers in New South Wales that can meet your storage requirements?
11. How suitable is Port Kembla and the Port of Newcastle as locations for bulk liquid storage compared to Port Botany? Would the additional transportation cost to Sydney and/or time differences prevent either or both of these locations being an alternative to Port Botany?
12. Have you explored the option of underwriting new tanks with GLT and Stolt? What were the challenges?

### **Victoria**

78. Market feedback shows that ANZ Terminals, GLT, Stolt and Anchor Tank are the four main storage providers of bulk liquid storage at the Port of Melbourne. In addition, ANZ Terminals stores some non-flammable industrial chemicals in Geelong.
79. According to feedback from the market, Brandon Molasses predominantly stores molasses and provides a limited competitive constraint to the merger parties.
80. The ACCC understands that Stolt, Anchor Tank and GLT have vacant land at the Port of Melbourne.

#### *Edible oils and tallow*

81. Market feedback shows that there is currently only three storage providers of edible oils and tallow at the Port of Melbourne: ANZ Terminals, GLT and Anchor Tank. Furthermore, customers consider the merger parties to be the main storage providers, with a combined market share significantly larger than Anchor Tank. The ACCC is concerned that the proposed acquisition will remove ANZ Terminals' closest competitor.
82. In terms of new edible oils and tallow storage providers, the ACCC understands that Stolt is the only potential candidate with vacant land next to its current facility.
83. The ACCC is concerned that even with the potential prospect of Stolt entering into edible oils and tallow storage, the proposed acquisition will reduce the number of potential storage providers from four to three.

#### *Base oils*

84. There are currently only three storage providers of base oils at the Port of Melbourne: ANZ Terminals, GLT and Stolt. Market feedback shows that GLT is the closest competitor to ANZ Terminals in base oil storage with its facility and tanks more suitable for base oil than other storage providers. The ACCC is concerned that the proposed acquisition will increase ANZ Terminals' market position and reduce the number of base oils storage providers from three to two.

*Non-flammable industrial chemicals*

85. Market feedback suggests that there are currently only three storage providers of non-flammable chemicals at the Port of Melbourne: ANZ Terminals, GLT and Stolt.
86. The ACCC understands that GLT and Stolt are both close competitors of ANZ Terminals in the storage of non-flammable industrial chemicals.
87. The ACCC is concerned that the proposed acquisition will reduce the number of storage providers for non-flammable chemicals from three to two.

The ACCC invites comments from market participants on its concerns in relation to the issues outlined above for Victoria. In particular market participants may wish to comment on the following:

13. How closely do ANZ Terminals, GLT, Stolt and Anchor Tank compete? Can they store your product(s)? Have they actively tried to win your business? Have they responded to your requests for tender or other competitive processes?
14. Apart from ANZ Terminals and GLT, are there any other port-side storage providers in Victoria that can meet your storage requirements?
15. Have you explored the option of underwriting new tanks with the port-side bulk liquid providers? What were the challenges?

**South Australia**

88. ANZ Terminals and GLT are the only bulk liquid storage providers in Adelaide. ANZ Terminals currently operates the Pelican Point terminal (storing fuel) and the Largs Bay terminal. GLT currently operates the Osborne terminal.
89. The ACCC understands that the Largs Bay terminal and Osborne terminal overlap in the storage of bulk liquids and is concerned that the proposed acquisition will reduce the number of storage providers in Adelaide from two to one.
90. The ACCC is still considering whether ANZ Terminals' proposed Undertaking to divest the Osborne Terminal will be sufficient to resolve any competition concerns. The proposed Undertaking is discussed below from paragraph 93.

The ACCC invites comments from market participants on its concerns in relation to the issues outlined above for South Australia. In particular market participants may wish to comment on the following:

16. How closely do ANZ Terminals and GLT? Can they both store your product? Have they actively tried to win your business? Have they responded to your requests for tender or other competitive processes?
17. Apart from ANZ Terminals and GLT, are there any other port-side storage providers in South Australia that can meet your storage requirements?

**Competition between terminals in the east coast states**

91. As described in paragraph 56, there are some customers that are able to switch between ANZ Terminals, GLT and possibly other terminals in the east coast states. However, these customers are still limited in the number of port-side bulk



liquid storage providers they can use and therefore face the same state-based competition issues outline above.

92. The ACCC is still considering whether the proposed acquisition may result in the reduction of the number of port-side bulk liquid storage providers for these customers and the loss of GLT as a competitive constraint in contract negotiations.

The ACCC invites comments from market participants on its concerns in relation to the issues outlined above for the east coast states. In particular market participants may wish to comment on the following:

18. How closely do ANZ Terminals and GLT and other port-side bulk liquid providers in the east coast state compete? Can they store your product? Why/why not? Have they actively tried to win your business? Have they responded to your requests for tender or other competitive processes?
19. Apart from ANZ Terminals and GLT, who are the other port-side storage providers in the east coast states that can meet your storage requirements?
20. Are there other port-side bulk storage providers with terminals outside of the east coast states that can meet your storage requirements?

#### **Proposed undertaking**

93. As part of the proposed acquisition, ANZ Terminals has offered an Undertaking under section 87B of the Act to divest the Osborne Terminal in Adelaide, including 26 bulk storage tanks and all associated equipment used to carry on the business.
94. The ACCC is still considering whether the proposed undertaking will enable the new owner of the Osborne Terminal to be an effective and long-term bulk liquid storage provider to compete with ANZ Terminals in Adelaide, or more broadly.
95. However, the ACCC's preliminary view is that the divestment of the Osborne Terminal is unlikely to address the competition concerns in the supply of bulk liquid storage outside of South Australia. The ACCC notes in particular the close competition between the parties in respect of customers in the eastern states as outlined above in the Statement of Issues.

The ACCC invites comments from market participants on its concerns in relation to the proposed undertaking to divest the Osborne Terminal. In particular market participants may wish to comment on the following:

21. How does the Osborne terminal compare with the Largs Bay terminal? Such as berth draft, infrastructure, land available for expansion, road access to the terminal?
22. Would divestment of the Osborne terminal resolve any competition concerns in South Australia?
23. Would divestment of the Osborne terminal resolve competition concerns outside of South Australia?

### **ACCC's preliminary views**

96. The ACCC is concerned that the proposed acquisition will reduce the number of major bulk liquid storage providers in various locations around Australia. ANZ Terminals and GLT are two large suppliers of bulk liquid storage in an already concentrated industry. They overlap in the supply of bulk liquid storage for one or more of edible oils, tallow, non-flammable industrial chemicals, base oils and non-fuel petroleum products in each of New South Wales, Victoria and South Australia.
97. Based upon its inquiries to date, the ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen 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.

### **ACCC's future steps**

98. As noted above, the ACCC now seeks submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter. Submissions are to be received by the ACCC no later than 5pm on 8 August 2019 and should be emailed to [mergers@acc.gov.au](mailto:mergers@acc.gov.au).
99. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.
100. The ACCC intends to publicly announce its final view by Thursday, 17 October 2019. However the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement to explain its final view.