



Australian  
Competition &  
Consumer  
Commission

13 February 2007

## Statement of Issues — Pacific Terminals (Australia) Pty Ltd - proposed acquisition of bulk liquid terminals from Craig Mostyn & Co Pty Ltd

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to the proposed acquisition of Craig Mostyn & Co Pty Ltd by Pacific Terminals (Australia) Pty Ltd (**the proposed acquisition**).
2. 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.
3. In line with the ACCC's *Merger Review Process Guidelines* (available on the ACCC's website at [www.accc.gov.au](http://www.accc.gov.au)) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates expediting further market inquiries with a view to completing them by 20 February 2007 and making a final decision by 7 March 2007. Key market participants will be contacted directly during this time. However, the anticipated timeline can change in line with the *Merger Review Process Guidelines*. To keep abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the Mergers Register on the ACCC's website at [www.accc.gov.au/mergersregister](http://www.accc.gov.au/mergersregister).
4. 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.

### Background

5. Pacific Terminals (Australia) Pty Ltd (**Pacific**) proposed to acquire the tallow and vegetable oil storage terminals owned by Craig Mostyn & Co Pty Ltd (**Craig Mostyn**) in the ports of Burnie and Brisbane. On 9 January 2007 Pacific Terminals (Australia) Pty Ltd provided a submission in response to an ACCC

request for further information regarding the proposed transaction. Craig Mostyn provided a submission on 22 January 2007.

## **The Parties**

### **Pacific Terminals (Australia) Pty Ltd**

6. Pacific owns and operates a number of bulk liquid storage sites, including sites at Pinkenba (Port of Brisbane) and in Devonport and Bell Bay (Tasmania). At these sites, Pacific provides storage for a variety of hazardous and non-hazardous liquids including tallow, vegetable oils, chemicals and fuels. Pacific also provides associated services at these terminals such as tanker washing, drumming, fats and oils bleaching, and a weighbridge. Pacific is a subsidiary of the Gardner Smith Group (**Gardner**), a major trader in tallows and vegetable oils. Pacific provides storage to Gardner as well as other traders in bulk liquids.

### **Craig Mostyn & Co Pty Ltd**

7. The Craig Mostyn Group (CMC) is a diversified food, agribusiness and logistics company servicing customers and suppliers in over 60 countries around the world. CMC owns and operates a number of bulk liquid storage sites, including at Burnie (Tasmania) and Hamilton (Port of Brisbane). At these sites CMC provides storage to outside parties for a variety of non-hazardous bulk liquids such as tallow, vegetable oils, fish oils and molasses.

## **Market Background**

8. This proposed acquisition takes place in the context of the tallow and vegetable oil storage industry. Tallow and vegetable oil traders store their products at terminals. These terminals normally consist of a number of large tanks located on the waterfront in a port to facilitate the rapid loading and unloading of ships.
9. There are 200 000 to 250 000 tonnes of tallow exported from Brisbane each year. The ACCC understand that in non-drought years large quantities of vegetable oils are also exported from Brisbane. Vegetable oils are imported where insufficient quantities of oil are produced in Queensland, due to either drought or lack of resources (i.e. palm and coconut oils). Tallow and each of the vegetable oils have several different grades and generally each type of oil is stored separately according to grade.
10. Tallow and many vegetable oils solidify if they fall below a certain temperature – typically this temperature is around 25°C, although this varies depending on the type of oil, with some oils needing to be heated to 60 °C to prevent solidification. Storage and transport tanks are heated to prevent solidification and increase stability of the product. However, excessive heating will also degrade the product. Therefore the temperature must be constantly and carefully regulated. Tallow and vegetable oils can be difficult to store and transport due to problems with solidification and stability.
11. The major edible oil and fat traders active in Australia are Kerry Australia, Colyer Fehr and Gardner. The ConAgra Trade Group and Nippon Meat Packers

also deal in tallow and Goodman Fielder in vegetable oils. Major producers of tallow include Teys Bros, AJ Bush & Sons, Nippon Meat Packers and Australian Meat Holdings.

12. The following table lists the major edible oil and fat storage providers in Australia and their locations:

<b>Storage Providers</b>	<b>Locations</b>
Pacific Terminals	Pinkenba, Qld Coode Island, Vic North Laverton, Vic Bell Bay, Tas Devenport, Tas Largs Bay, SA North Fremantle, WA
Craig Mostyn	Hamilton, Qld Burnie, Tas
Terminals Pty Ltd	Sydney, NSW Geelong, NSW Melbourne, VIC Adelaide, SA
Marstel Terminals	Coode Island, Vic
Vopak Terminals	Sydney, NSW
Cargill Australia	Newcastle, NSW

### **Market inquiries**

13. On 18 January 2007 the ACCC commenced market inquiries regarding the proposed acquisition. A market inquiries letter was also posted on the ACCC website seeking comments. Market inquiries have been conducted amongst a range of interested parties including current and potential competitors of the merger parties, current and potential customers of the merger parties, major terminal storage suppliers and the port authorities in Tasmania and Queensland.

## Statement of issues

14. Statements of Issues are commonly divided into three categories: 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'. In this matter, the ACCC has not formed a preliminary view that any of the following fall into the second category, 'issues that may raise concerns', so in this case the issues are divided into 'issues of concern' and 'issues unlikely to raise concerns'.
15. The ACCC would welcome further information about the "issues of concern". Comments are sought on the "issues unlikely to pose concerns" only if you believe the information on which the ACCC has based its view is inaccurate. The ACCC is interested in information about the feasibility of various alternatives to using the tallow and vegetable oil storage provided by the merger parties and the extent to which these alternatives will prevent the merged firm from being able to profitably increase prices or decrease services to storage users. The ACCC is also interested in any impact on competition from the transaction due to vertical integration, given that Pacific's parent company, Gardner Smith (Holdings) Pty Limited (**Gardner**), is also active at the wholesale trading level.

### Issues of concern

#### A. Availability of substitutes in Brisbane for bulk tallow and vegetable oil storage services

16. It has been suggested that there are a variety of substitutes available in Brisbane for customers of bulk tallow and vegetable oil storage. These substitutes include:
  - the use of empty hazardous liquid storage terminals such as Mobil's terminal in Brisbane;
  - the use of storage facilities on customers' own premises; or
  - storage in drums, ISO tanks and flexi-packs loaded into containers.
17. Some customers have indicated that none of the above are viable alternatives and that customers have no viable storage options for tallow and vegetable oils other than Pacific and CMC.

#### **Ability to substitute other types of bulk liquid storage facilities for bulk tallow and vegetable oil storage facilities**

18. It has been put to the ACCC that the differences between tanks designed for tallow and edible oil storage versus tanks designed for storage of various hazardous liquids mean that the hazardous liquid tanks are unsuitable as long-term storage of tallow and vegetable oils for reasons relating to physical design and cost efficiencies.

19. These differences include requirements for different infrastructure in areas such as: fire fighting equipment, spill containment systems, bunding<sup>1</sup>, heating systems, venting systems, tank sizes and numbers, operating processes and levels of automation.

**The ACCC is seeking the following information:**

- **the availability in Brisbane of tanks designed to store bulk hazardous liquids which could be converted to tallow and vegetable oil storage, including comparisons between the costs to customers of using these facilities versus the costs of using CMC's or Pacific's facilities;**
- details of the differences between tanks designed to store hazardous liquids and tanks designed to store tallow and vegetable oils;**
- **information on whether it is possible to store tallow and vegetable oils in unconverted hazardous liquid tanks in the short-term, including details of any costs involved; and**
- **details of the cost, time required and feasibility of converting hazardous liquid tanks to tallow and vegetable oil storage in the long term and vice versa.**

**Ability to substitute non-waterfront storage terminals (including storage facilities on customers' premises) for waterfront storage terminals**

20. Some market participants have indicated that building bulk liquid storage facilities for tallow and vegetable oils on customers' premises or away from the waterfront are not acceptable substitutes for waterfront terminals. It has been suggested that storage at a distance from the waterfront would significantly increase the costs to storage customers by raising both transportation and ship loading costs.
21. The merger parties have suggested that customers could load ships using trucks to transport product from non-waterfront facilities to ships. Market inquiries confirmed that this practice is sometimes used in the tallow and vegetable oil industry, although generally only for relatively small loads. It appears that the practice may raise costs significantly for bulk loads.
22. In Brisbane, traders in exported fats and oils normally consolidate product in waterfront terminals over a period of time using a slow but steady flow of trucks. As the terminals are on the waterfront, it is relatively easy to load the product into the tanks of bulk ships using pipelines from the terminals. It has been suggested

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<sup>1</sup> Bunding is a barrier impermeable to liquid, normally a sealed earth bank, designed to contain liquid spills.

that this is significantly more efficient than using relatively larger fleets of trucks over shorter periods to load ships from non-waterfront storage facilities. Pipelines also load ships significantly faster than is possible from trucks, reducing the length of time a ship must spend berthed, which is important given that mooring costs are high.

Similarly, it has been suggested that it is more efficient and faster to offload imported oils and fats from ships into waterfront terminals via pipelines, and then use trucks to transport the oils and fats as needed.

**The ACCC is seeking the following information:**

- **the difference in costs between using trucks to load ships directly versus transporting the product to storage terminals and then loading ships via pipelines (and vice versa for imports). If relevant, include the costs of buying and maintaining an ISO tanker or, alternatively, hiring costs.**
- **whether the practice of loading tallow and vegetable oils into ships directly from trucks is common in Brisbane;**
- **the size of a typical shipment of tallow or vegetable oil to or from Brisbane;**
- **how much vegetable oil or tallow a ship can load to/from ISO tankers per hour compared to the amount that can be loaded to/from Craig Mostyn's terminal; and**
- **details of the costs associated with loading a ship, including hourly or daily costs.**

**Ability to substitute storage in drums, ISO tanks and flexi-packs loaded into containers for storage in terminal tanks**

24. It has been suggested that drums, ISO tanks and flexi packs are viable alternatives to using the merger parties' storage tanks. Many traders export tallows and vegetable oils in drums or ISO tanks at the customer's request. Packing tallow and vegetable oils in drums is a service offered by the storage terminals and is generally carried out there prior to shipping. It appears that most drummed tallow and vegetable oil is sent to China.
25. However, it has been suggested that this alternative is generally only used in situations in which the overseas customer faces a lack of port infrastructure or inadequate handling facilities at their own premises. Market inquiries indicated that the majority of export customers demand that tallow and vegetable oil arrive

in bulk as this is easier and more efficient for them to unload using pipelines from ships. Therefore, tallow and vegetable oils must be consolidated prior to export.

26. It appears that there may be a minimum efficient size for receptacles intended to provide long-term storage and consolidation of tallows and oils. It has been suggested that there are significant difficulties and costs in maintaining drums, ISO tanks or flexi-packs in the large quantities necessary to function as a storage facility. These difficulties include the correct venting of gases that may be produced, fulfilling heating requirements, and handling problems.

**The ACCC is seeking the following information:**

- **details of disadvantages and advantages associated with storing substantial amounts of tallow or vegetable oils in drums, ISO tanks or flexi-packs compared to terminals, including estimated cost differences; and**
- **the proportion of tallow and vegetable oils shipped in bulk compared to in drums or ISO tanks.**

**B. The feasibility of transporting tallow and/or vegetable oils to and from other ports**

27. It has been suggested that tallow and vegetable oil storage facilities in Brisbane compete with storage facilities along the east coast, from Rockhampton (Port Alma) to Sydney, including facilities in the ports of Gladstone, Bundaberg and Newcastle. The merger parties have suggested that it is relatively easy to store imported liquids in these ports and then transport the liquids to Brisbane using trucks, or vice versa for exports.

**Viability of transporting tallows and vegetable oils to and from alternative ports**

28. Some discrepancies have arisen between different market participants regarding the cost of transporting tallows and vegetable oils. Market inquiries indicated that tallows and vegetable oils were sometimes transported between port cities using ISO tanks on trucks or even drums. However, market inquiries have also suggested that this is done to serve small customers such as takeaway shops and it is an irregular event.
29. Some market participants suggested that transporting tallow and vegetable oil to or from another city would be prohibitively expensive due to transport costs, which are high for these products due to the need to heat the product during transportation in order to ensure that it does not solidify

**The ACCC is seeking the following information:**

- **the cost of transporting tallow and vegetable oils from Brisbane to Sydney, Newcastle, Gladstone and Bundaberg or Port Alma by road;**
- **the typical cost (per tonne) of purchasing (i) tallow and (ii) vegetable oil for export from manufacturers in Queensland, for the most common grades;**
- **details of the typical landed cost (per tonne) of vegetable oil imported through the Port of Brisbane, for the most common grades;**
- **details of the typical sales prices to wholesale customers for tallow and vegetable oils, for the most common grades; and**
- **an estimate of the relative proportion of the major grades/types of oils and tallow sold.**

**Substitutability of alternative ports**

30. Market inquiries indicated that the ports of Gladstone and Bundaberg do not appear to have tallow storage facilities. The Port of Bundaberg does have molasses storage facilities. However, it has been suggested that the port, with a maximum draft of 10m, is unsuitable for large ships of the type used to service the tallow and vegetable oil traders in the Port of Brisbane.
31. It has also been suggested that the tallow and vegetable oil storage tanks at Port Alma (Rockhampton) may not currently be suitable for tallow and vegetable oil storage. In any case, it does not appear that these tanks provide hosting services.
32. It has also been suggested that the ports with suitable facilities (Sydney and Newcastle) do not have the storage capacity to handle significant increases in the quantities of vegetable oils and tallows dealt with.



**The ACCC is seeking the following information:**

- **details of any storage capacity constraints in Sydney, Newcastle, Gladstone and Bundaberg and Port Alma that may affect the storage of tallow and vegetable oils, and how readily these could be overcome (e.g. by adding additional storage tanks);**
- **the suitability of storage facilities in the ports of Gladstone and Bundaberg and Port Alma for the storage of tallow and vegetable oils; and**
- **whether the owners of storage facilities in the ports of Gladstone and Bundaberg and Port Alma would be willing to provide hosting services to other users.**

**C. Barriers to entry into the market for the supply of bulk tallow and vegetable oil storage in Brisbane**

**Land**

33. The difficulty of acquiring suitable land for building appears to be a major impediment to new entry into bulk tallow and vegetable oil storage in the Port of Brisbane. According to some market participants there appears to be a shortage of land in the Port of Brisbane and a complete lack of waterfront land available.
34. Other participants have suggested that waterfront land on Fisherman's Island is available and suitable for establishing a bulk liquid storage facility including tallow and vegetable oil storage.
35. It has also been suggested that land may become available that is not on the waterfront but is close enough that a pipeline could be used to load and unload ships. The pipeline would need to run over land whose leases are owned by others.

**The ACCC is seeking the following information:**

- **whether there is, or will be in the immediate future, land available in the Port of Brisbane which could be used to build vegetable oil and tallow storage;**
- **whether this land is sufficiently close to the water that a pipeline can be used to load and unload ships or whether it would be necessary to use another method; and**
- **the ease or difficulty of constructing and maintaining a pipeline from non-waterfront land to the waterfront.**

## Costs

36. Market participants have suggested that a general purpose 1 000m<sup>3</sup> tank and associated infrastructure would cost between \$1.4 million and \$2 million, while a terminal is likely to cost between \$15 million and \$20 million. The cost of a terminal is dependent upon the number and size of tanks as well as the product to be stored.

**The ACCC is seeking the following information:**

- **details of the costs associated with building a tallow and vegetable oil storage terminal, including costs associated with complying with government regulations.**

## Other Impediments

37. Other impediments to entry include the time it takes to comply with various government approvals processes required in order to build a bulk liquid storage terminal. It has been suggested that the minimum time required to gain the necessary approvals and finish building is around two years.

**The ACCC is seeking the following information:**

- **details of impediments to building a tallow and vegetable oil storage terminal in Brisbane, other than lack of land and the cost. Please estimate the minimum time needed to fulfil all requirements.**

## D. Vertical Integration Issues

38. Pacific is a subsidiary of Gardner Smith, a major tallow and vegetable oils trader. Market inquiries have raised concerns regarding the fact that the merger may give Gardner a dominant position in tallow trading in Queensland.
39. It has been suggested that vegetable oil and tallow traders are dependent upon storage in Brisbane for their viability, and if Pacific becomes the sole source of suitable vegetable oil and tallow storage in Brisbane, then incentives may exist for it to increase its prices and/or decrease its service levels to the disadvantage of competitors of Gardner.
40. It has been suggested that this may render other traders uncompetitive with Gardner in the short term and drive them out of the market in the longer term, lessening competition amongst tallow and vegetable oil traders. If Gardner has control of storage, any new entrant at the trading level would have to enter both the trading and storage functional levels at once.

41. Alternatively, it has been suggested that the substitutes that customers have available (discussed above under headings A – C) instead of storage provided by Pacific or CMC in the Port of Brisbane will ensure that Pacific will not have the market power necessary to act in this way.

**The ACCC is seeking the following information:**

- **details of use of Pacific’s hosting services by competitors of Gardner;**
- **whether manufacturers of tallow could supply the biodiesel industry directly, without using traders or storage in Brisbane;**
- **whether Queensland manufacturers of tallow and vegetable oils normally sell only to Queensland-based buyers;**
- **whether Queensland users of tallow and vegetable oils normally purchase product in Queensland or import it; and**
- **whether there is interstate competition in the wholesale market for tallow and vegetable oils.**

## **Conclusion**

42. The ACCC is concerned that in the event that there are no substitutes for similar storage facilities in Brisbane, costs and logistical issues exist which make it unviable for tallow and vegetable oils to be transported from other ports, significant barriers to entry exist such that there are no likely new entrants to the relevant markets, incentives may exist for Pacific Terminals to raise its prices or decrease its service levels to the disadvantage of Gardner’s competitors.
43. The ACCC seeks further information and evidence from interested parties on the likelihood of this situation occurring post-acquisition. The ACCC notes that the resolution of each of the above issues is not independent of each of the others, and the satisfactory resolution of some of the above issues may lead to a conclusion that the proposed acquisition is unlikely to result in a substantial lessening of competition in any relevant market.

## **Issues unlikely to pose concerns**

### **E. Pacific Terminals’ proposed acquisition of Craig Mostyn’s facility in Burnie, Tasmania**

44. This part of the transaction is unlikely to raise concerns given that, regardless of the proposed transaction, CMC’s lease from the Tasmanian Port Authority has

ended; that is, even without the transaction, CMC would have ceased to be a competitor in Burnie. Market inquiries confirmed that the Port Authority intends to begin redeveloping the land shortly. As CMC could no longer compete with Pacific regardless of the transaction, the acquisition is unlikely to lead to a substantial lessening of competition.

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

45. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
46. 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.
47. Submissions are to be received by the ACCC no later than 20 February 2007. The ACCC will consider the submissions received from the market and the merger parties in light of the issues identified above and will, in conjunction with information and submissions already provided by the parties, come to a final view as to the appropriate course of action to take to resolve any competition concerns that remain.
48. The ACCC intends to publicly announce its final view by 7 March 2007. However, the anticipated timeline may change in line with the *Merger Review Process Guidelines*. A public Competition Assessment for the purpose of explaining the ACCC's final view will be published following the ACCC's public announcement.