

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by **Viva Energy Group Limited ACN 626 661 032**, **New World Corporation Pty Ltd ACN 628 228 455** and **LOC Global Pty Ltd ACN 637 527 541**

Contents

1. Persons giving the Undertaking.....	1
2. Background.....	1
3. Commencement of this Undertaking.....	3
4. Cessation of Ongoing Obligations.....	3
5. Divestiture of the Divestiture Business.....	4
6. Divestiture Business Protection.....	5
7. Notification of key dates and ACCC requests for information.....	5
8. Disclosure of this Undertaking.....	6
9. Obligation to procure.....	7
10. No Derogation.....	7
11. Change of Control.....	7
12. Costs.....	7
13. Resolving Inconsistencies.....	7
14. Notices.....	7
15. Defined terms and interpretation.....	9
Schedule 1 – Dictionary and interpretation.....	13
Schedule 2 – Divestiture Business.....	17

1. Persons giving the Undertaking

1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by:

- (a) Viva Energy Group Limited ACN 626 661 032 (**Viva Energy**) on behalf of itself and its subsidiaries;
- (b) New World Corporation Pty Ltd ACN 628 228 455 (**NWC**) on behalf of itself and its subsidiaries; and
- (c) LOC Global Pty Ltd ACN 637 527 541 (**LOC**) on behalf of itself and its subsidiaries.

(collectively referred to herein as the **Parties to the Undertaking**).

1.2. Despite any other provision of this Undertaking, this Undertaking imposes obligations on LOC on and before the Effective Date but does not impose any obligations on LOC after the Effective Date. For the avoidance of any doubt, a reference to LOC in this Undertaking is deemed to be a reference solely to Viva Energy to the extent that an obligation is imposed on LOC after the Effective Date.

2. Background

The parties to the Proposed Acquisition

2.1. Viva Energy is an energy company which, through its wholly owned subsidiaries, conducts downstream fuel refining, importing, distribution and marketing in Australia and operates a nationwide fuel supply chain consisting of the Geelong refinery and an import, storage and distribution network. Through its subsidiaries, Viva Energy is the exclusive supplier of Shell-branded fuels and lubricants in Australia. It is also active as a primary wholesale fuel supplier and commercial fuel supplier (i.e., to commercial customers) in every Australian state and territory. As of 7 August 2024, Viva Energy's retail fuel network from which it supplies fuel products consists of approximately 1498 sites across Australia, including 921 retail sites at which Viva Energy controls the retail price of fuel.

2.2. LOC is a joint venture between Viva Energy and NWC. LOC was created in 2019 following Viva Energy's acquisition of the remaining 50% interest in Liberty Oil Holdings Pty Ltd (**Liberty Transaction**), which followed an initial acquisition by Viva Energy of a 50% interest in Liberty Oil Holdings Pty in 2014. As part of the Liberty Transaction, the Liberty retail fuel and convenience business was transferred to a new joint venture company, LOC, in which Viva Energy holds a 50% shareholding, whilst the remaining 50% shareholding and day-to-day operational control in LOC is held by NWC.

2.3. The LOC business consists of approximately 105 retail fuel sites which are operated by commission agents but at which LOC sets the retail price of fuel under Liberty and Shell brands, including: 15 sites in South Australia, 31 sites in Victoria, 6 sites in NSW, 3 sites in the Northern Territory, 19 sites in Western Australia, and 31 sites in Queensland (**LOC Network**). LOC currently has a fuel supply contract with Viva Energy for its retail fuel requirements across Australia.

2.4. NWC is a joint venture between David Goldberger and David Wieland. The business carried on by NWC is through its 50% controlling shareholding interest and day-to-day operational control in the LOC joint venture.

The Proposed Acquisition

- 2.5. As part of the Liberty Transaction in 2019, Viva Energy and NWC entered into a put and call option deed with respect to the LOC business giving Viva Energy a call option to acquire NWC's 50% interest in LOC (**Viva Energy Call Option**), and NWC a put option to require Viva Energy to purchase NWC's 50% interest in LOC (**NWC Put Option**).
- 2.6. On 27 June 2024, NWC irrevocably exercised the NWC Put Option to require Viva Energy to acquire NWC's 50% shareholding in LOC and acquire control over the LOC network (**Proposed Acquisition**).

The ACCC's review

- 2.7. On 3 September 2024, the ACCC commenced its public review of the Proposed Acquisition.
- 2.8. At the time it sought informal merger clearance from the ACCC, Viva Energy offered to divest a total of 12 LOC retail fuel sites to NWC, to pre-emptively address potential competition concerns that the ACCC may raise with the Proposed Acquisition, being: 9 sites in Adelaide (SA), 1 site in Darwin (NT), 1 site in Kilmore (VIC) and 1 site in Moe (VIC) (each referred to as a "**Divestiture Site**" and referred to as the "**Initial Divestiture Offer**").
- 2.9. The ACCC undertook market inquiries and considered information provided by Viva Energy, NWC, LOC, industry participants and others. The purpose of the ACCC's inquiries was to assess:
- (a) whether the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market in Australia in contravention of section 50 of the Act; and
 - (b) whether the Initial Divestiture Offer would address the ACCC's potential competition concerns.
- 2.10. Following feedback from market participants and in response to further concerns from the ACCC, Viva Energy added 1 further Divestiture Site at Smithfield Plains in Adelaide (SA) and 1 Divestiture Site in Goondiwindi (QLD) to the Initial Divestiture Offer (with the resulting combination of Divestiture Sites collectively referred to herein as the "**Divestiture Business**").

The ACCC's competition concerns

- 2.11. The ACCC was concerned that, in the absence of the Undertaking, the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in the supply of retail fuel in Adelaide and in certain local areas in Darwin, regional Queensland, and regional Victoria.
- 2.12. The ACCC found that Viva Energy and LOC are competitors for the supply of retail fuel in Adelaide. Viva Energy holds a significant number of retail fuel sites as part of its existing network in Adelaide, including from its prior acquisition of the OTR Group. The ACCC considered that the Proposed Acquisition would remove LOC as a competitor to Viva Energy for the supply of retail fuel in Adelaide and entrench Viva Energy's significant market position in Adelaide retail fuel supply.
- 2.13. The ACCC was also concerned that the Proposed Acquisition would remove LOC as a competitor in certain local areas in Darwin, regional Queensland, and regional

Victoria, such that there would be few remaining competitors to effectively constrain Viva Energy from increasing prices (or deteriorating non-price aspects of its retail offerings) in those local areas.

The Undertaking remedy

- 2.14. The Parties to the Undertaking do not consider that the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any relevant market (however so defined). However, to address the ACCC's competition concerns, the Parties to the Undertaking have offered this Undertaking pursuant to section 87B of the Act. The objective of this Undertaking is to address the ACCC's competition concerns which would otherwise arise as a consequence of the Proposed Acquisition. This Undertaking aims to achieve this objective by placing obligations on the Parties to the Undertaking to:
- (a) Ensure that the Divestiture Business is sold to Solo Oil Corporation Pty Ltd ACN 654 529 754 or one of its wholly owned subsidiaries (**Solo**) that will result in the creation or strengthening of a viable, effective, stand-alone, independent and long-term competitor for the supply of retail fuel in a number of local areas across Australia. Solo is a wholly owned subsidiary of NWC;
 - (b) Ensure that Solo has all the necessary associated assets and rights to compete effectively with Viva Energy in the supply of retail fuel in a number of local areas across Australia;
 - (c) Maintain the economic viability, marketability, competitiveness and goodwill of the Divestiture Business prior to divestiture; and
 - (d) Provide for the effective oversight of the compliance of the Parties to the Undertaking with this Undertaking.

3. Commencement of this Undertaking

- 3.1. This Undertaking comes into effect when:
- (a) this Undertaking is executed by each of the Parties to the Undertaking; and
 - (b) this Undertaking so executed is accepted by the ACCC
- (the **Commencement Date**).

4. Cessation of Ongoing Obligations

Revocation

- 4.1. The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading. Such a revocation must be express and in writing.

Waiver

- 4.2. The ACCC may, at any time, waive any of the obligations contained in this Undertaking. Such a waiver must be express and in writing.

Extension

- 4.3. The ACCC may, at any time, extend the date by which any of the obligations in this Undertaking is to be satisfied. Such an extension must be express and in writing.

Survival

- 4.4. Unless and until this Undertaking is withdrawn in accordance with section 87B(2) of the Act, clauses 1, 2, 3, 4, 7, 8, 9, 10, 12, 13 and 14 survive completion of the obligations in clauses 5 and 6, and Schedule 2.

5. Divestiture of the Divestiture Business

Divestiture

- 5.1. The Parties to the Undertaking must divest, or cause the divestiture of, the Divestiture Business only to Solo prior to the completion of the Proposed Acquisition on or before the Effective Date.
- 5.2. The Parties to the Undertaking must take all steps capable of effecting and achieving the divestiture of the Divestiture Business prior to the completion of the Proposed Acquisition on or before the Effective Date.
- 5.3. To the extent applicable, each Party to the Undertaking must, either through the exercise of their right as a shareholder in LOC or as a purchaser of the Divestiture Business (as applicable), ensure the effective implementation of the divestiture of the Divestiture Business by:
- (a) the sale, assignment, transfer and/or licence of all of the assets in Schedule 2 to Solo; and
 - (b) the transfer or grant to Solo of all Consents pursuant to clauses 5.6 to 5.7.
- 5.4. The Parties to the Undertaking must not complete the Proposed Acquisition before the divestiture of the Divestiture Business to Solo is given effect.
- 5.5. For the avoidance of any doubt, Solo must acquire the Divestiture Business or procure that a relevant subsidiary acquires the Divestiture Business, prior to or on the Effective Date.

Consents

- 5.6. To the extent applicable, each of the Parties to the Undertaking must:
- (a) obtain or assist Solo to obtain as expeditiously as possible, all Consents as required before completion of the divestiture of each Divestiture Site;
 - (b) comply with all requirements necessary to obtain any Consents, including by promptly providing all information necessary for the Consents to be given;
 - (c) act in good faith in negotiations with Solo in relation to obtaining any Consents; and
 - (d) promptly pay the costs and expenses of any third party reasonably incurred in providing the Consents.

- 5.7. If, seven Business Days before completion of the divestiture of the Divestiture Business, Solo does not or is otherwise unable to obtain one or more Consents relevant to a Divestiture Site, then to the extent applicable, each of the Parties to the Undertaking must:
- (a) immediately provide to the ACCC and Solo in writing details of the:
 - (i) Consents that have not been obtained;
 - (ii) reasons why the Consents have not been obtained; and
 - (iii) information or material required to obtain the Consents.
 - (b) continue to do everything in its power to satisfy clause 5.6 as soon as possible after the completion of the divestiture of each Divestiture Site (and until such time as clause 5.6 is satisfied).
- 5.8. Even if each of the Parties to the Undertaking has complied with clause 5.6 and 5.7, the Parties to the Undertaking will individually and separately be in breach of this Undertaking to the extent that their respective failure to obtain one or more Consents relevant to a Divestiture Site results in an inability to effect the divestiture of the Divestiture Business.

6. Divestiture Business Protection

Confidential Information

- 6.1. Subject to clause 6.2, Viva Energy must not, at any time from the Commencement Date, use or disclose any confidential information about the Divestiture Business gained through:
- (a) ownership and/or management of the Divestiture Business; or
 - (b) fulfilling any obligations pursuant to this Undertaking.
- 6.2. Clause 6.1 does not apply to information that Viva Energy requires to:
- (a) comply with legal and regulatory obligations including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements; or
 - (b) carry out its obligations pursuant to this Undertaking;

provided such information is only used for that purpose and is only disclosed to those officers, employees, contractors and advisers of Viva Energy who need to know the information to carry out the permitted purpose.

7. Notification of key dates and ACCC requests for information

- 7.1. Viva Energy must notify the ACCC in writing of:
- (a) the anticipated date of the completion of the divestiture of the Divestiture Business at least five Business Days before that date; and
 - (b) the occurrence of the completion of the divestiture of the Divestiture Business within one Business Day of that date.

- 7.2. The ACCC will confirm in writing to the Parties to the Undertaking (as applicable) that it is satisfied that the divestiture of the Divestiture Business pursuant to clause 5 of this Undertaking has been completed and that the notification requirements pursuant to clause 7.1 of this Undertaking have been satisfied.
- 7.3. The ACCC may direct each of the Parties to the Undertaking in respect of compliance with this Undertaking to, and each of the Parties to the Undertaking must:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within the custody, power or control of the Parties to the Undertaking in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 7.4. Any direction made by the ACCC under clause 7.3 will be notified to each of the Parties to the Undertaking, in accordance with clause 14.2.
- 7.5. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 7 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 7.6. Nothing in this clause 7 requires the provision of information or documents in respect of which either of the Parties to the Undertaking have a claim of legal professional or other privilege.

8. Disclosure of this Undertaking

- 8.1. The Parties to the Undertaking acknowledge that the ACCC may, subject to clause 8.1:
- (a) make this Undertaking publicly available;
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (c) from time to time publicly refer to this Undertaking.
- 8.2. Nothing in clause 8.1 prevents the ACCC from disclosing such information as is:
- (a) required by law;
 - (b) permitted by section 155AAA of the Act;
 - (c) necessary for the purpose of enforcement action under section 87B of the Act; or
 - (d) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.

- 8.3. Nothing in clause 8.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

9. Obligation to procure

- 9.1. Where the performance of an obligation under this Undertaking requires a Related Body Corporate of any of the Parties to the Undertaking to take or refrain from taking some action, to the extent applicable, each Party to the Undertaking will procure that Related Body Corporate to take or refrain from taking that action.

10. No Derogation

- 10.1. This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by any Party to the Undertaking of any term of this Undertaking.
- 10.2. Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that a Party to the Undertaking does not fully implement and/or perform their respective obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

11. Change of Control

- 11.1. In the event that a Change of Control is reasonably expected to occur, to the extent applicable, Viva Energy or NWC must:
- (a) notify the ACCC of this expectation as soon as practicable; and
 - (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on Viva Energy and NWC (as relevant) pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified Viva Energy or NWC (as relevant) in writing that a section 87B undertaking under this clause is not required.

12. Costs

- 12.1. The Parties to the Undertaking must pay all of their own costs incurred in relation to this Undertaking.

13. Resolving Inconsistencies

- 13.1. To the extent there are inconsistencies between this Undertaking and the Business Sale Agreement with respect to the obligations of the Parties to the Undertaking pursuant to this Undertaking, this Undertaking prevails.

14. Notices

Giving Notices

- 14.1. Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: mergers@accc.gov.au
Attention: Executive General Manager
Merger, Exemptions & Digital Division

With a copy sent to: mergersru@accc.gov.au
Attention: Director, Remedies Unit
Policy, Coordination & Remedies Branch
Merger, Exemptions & Digital Division

- 14.2. Any notice or communication to Viva Energy pursuant to this Undertaking must be sent to:

Name: Legal Department, Viva Energy

Address: Level 16/720 Bourke Street, Docklands VIC 3008

Email Address: stuart.nicol@vivaenergy.com.au

Attention: Stuart Nicol, Head of Legal and Internal Audit

With a copy sent to:

Name: Clifford Chance

Address: Level 24, Brookfield Place, 10 Carrington Street, NSW 2000

Email Address: Mark.Grime@cliffordchance.com;
Elizabeth.Richmond@cliffordchance.com

Attention: Mark Grime / Elizabeth Richmond

- 14.3. Any notice or communication to NWC pursuant to this Undertaking must be sent to:

Name: Company Secretary, Solo Oil Corporation Pty Ltd

Address: Greenberg & Co, Level 2, 1250 Malvern Road, Malvern, Victoria 3144

Email Address: Jay@greenberg.com.au

Attention: Jay Greenberg

With a copy sent to:

Name: Hall & Wilcox

Address: GPO Box 4190, Melbourne VIC 3001

Email Address:

- james.morvell@hallandwilcox.com.au
- james.bull@hallandwilcox.com.au

Attention: James Morvell / James Bull

- 14.4. Any notice or communication to LOC pursuant to this Undertaking must be sent to:

Name: Paul Edmends

Address: 381 Tooronga Road, Hawthorn East, VIC 3123

Email Address: pedmends@libertyretail.com.au

Attention: Paul Edmends, Chief Executive Officer

- 14.5. If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).
- 14.6. If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

- 14.7. The Parties to the Undertaking must notify the ACCC of a change to respective contact details within three Business Days.
- 14.8. Any notice or communication will be sent to the most recently advised contact details and subject to clauses 14.5 and 14.6, will be taken to be received.

15. Defined terms and interpretation

Definitions in the Dictionary



- 15.1. A term or expression starting with a capital letter:
- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (*Dictionary*), has the meaning given to it in the Dictionary; or
 - (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

Interpretation

- 15.2. Part 2 of Schedule 1 (*Interpretation*) sets out rules of interpretation for this Undertaking.



Executed as an Undertaking

Executed by **Viva Energy Group Limited ACN 626 661 032** pursuant to section 127(1) of the *Corporations Act 2001* (Cth) by:



	
Signature of director	Signature of a director /company secretary (delete as appropriate, or entire column if sole director company)
Scott Andrew Wyatt	Julia Naumovna Kagan
Name of director (print)	Name of director /company secretary (print)
Date: 6 December 2024	Date: 6 December 2024

Doc No.
124/24

Executed by **New World Corporation Pty Ltd ACN 628 228 455** pursuant to section 127(1) of the *Corporations Act 2001* (Cth) by:

	
Signature of director	Signature of a director/ company secretary (delete as appropriate, or entire column if sole director company)
<p style="text-align: center;">DAVID GOLDBERGER</p>	<p style="text-align: center;">DAVID WIELAND</p>
Name of director (print)	Name of director/ company secretary (print)
<p style="text-align: center;">6/12/2024</p>	<p style="text-align: center;">6/12/2024</p>
Date	Date

Executed by **LOC Global Pty Ltd ACN 637 527 541** pursuant to section 127(1) of the *Corporations Act 2001* (Cth) by:

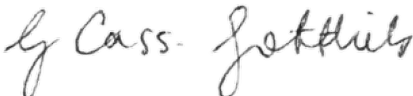
	
Signature of director	Signature of a director/ company secretary (delete as appropriate, or entire column if sole director company)
DAVID GOLDBERGER	DAVID WIELAND
Name of director (print)	Name of director/ company secretary (print)
6/12/2024	6/12/2024
Date	Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

10 December 2024

Date

and signed on behalf of the Commission:



Chair

10 December 2024

Date

Schedule 1 – Dictionary and interpretation

1. Dictionary

ACCC means the Australian Competition and Consumer Commission.

Act means the *Competition and Consumer Act 2010* (Cth).

Agreements means any contract, arrangement or understanding, including any contract, arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

Business Sale Agreement (BSA) means the agreement entered into between Viva Energy, LOC and Solo in relation to the sale of the Divestiture Business.

CA Deed (Commission Agency Deed) means the agreement which governs the relationship between LOC and its commission agents.

Change of Control means:

- (a) the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of Viva Energy to any other person or entity that may impact compliance with this Undertaking in its entirety; or
- (b) the sale or transfer of any assets necessary, or which may be necessary, to enable Viva Energy to continue to comply with this Undertaking in its entirety.

Commencement Date means the date described in clause 3.1 of this Undertaking.

Consents means any Government Consents or Third Party Consents.

Corporations Act means the *Corporations Act 2001* (Cth).

Deliverable Records has the meaning given to it in the BSA.

Divestiture Business has the meaning given to it in clause 2.10 and means the items described in Schedule 2 to this Undertaking.

Divestiture Site means each individual site listed in Schedule 2 to this Undertaking.

Effective Date means the date on which the Proposed Acquisition is completed.

Fuel Stock has the meaning given to it in the BSA.

Government Consents means any consents from any government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the operation of the Divestiture Business.

Parties to the Undertaking is defined in clause 1.1 of this Undertaking.

Plant and Equipment has the meaning given to it in the BSA.

Property Interests has the meaning given to it in the BSA.

Proposed Acquisition is defined in clause 2.6 of this Undertaking.

Public Mergers Register means the ACCC's public register of merger clearances, available at www.accc.gov.au.

Public Section 87B Undertakings Register means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

Related Bodies Corporate has the meaning given to it by section 50 of the Corporations Act.

Solo means Solo Oil Corporation Pty Ltd ACN 654 529 754 or one of its wholly owned subsidiaries.

Subsidiary has the meaning given by section 9 of the Corporations Act.

Third Party Consents means any Consent from any entity that is not a government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, leases, licences, permits, approval or contracts required for the operation of the Divestiture Business.

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

2. Interpretation

2.1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:

- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
- (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
- (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;

- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular.
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
 - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing their obligations under this Undertaking, the Parties to the Undertaking will do everything reasonably within their power to ensure that their performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (q) a reference to:
 - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (ii) a party includes its successors and permitted assigns; and
 - (iii) a monetary amount is in Australian dollars.

Schedule 2 – Divestiture Business

Viva Energy:

Viva Energy will assign its interests to Solo in respect of relevant leases, subleases, and any underlying property interests, and obtain all relevant Consents regarding the same for each of the Divestiture Sites identified below.

No	Property Name	Lessor	Lessee	Premises Address	Title details
1	Liberty Windsor Gardens	Perbane Pty Ltd ACN 008 050 628 of Level 2, 148 Greenhill Rd, Parkside, SA 5063	Viva Energy Australia Pty Ltd ACN 004 610 459	386 North East Rd, Windsor Gardens SA 5087	The whole of the land comprised in Certificate of Title Volume 6144 Folio 271
2	Liberty Marion	Retirement Provision Pty Ltd	Viva Energy Australia Pty Ltd ACN 004 610 459	724-734 Marion Rd, Marion SA 5043	The whole of the land in Certificate of Title Volume 5283 Folio 853
3	Liberty Blair Athol	The K&T Investments Company Pty Ltd No 3	Viva Energy Australia Pty Ltd ACN 004 610 459	382 Main North Rd, Blair Athol SA 5084	The land described in Certificates of Title Volume 5400 Folio 720, Volume 5463 Folios 850 and 851
4	Liberty Pooraka	APN FUNDS MANAGEMENT LIMITED ACN 080 674 479 IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE CONVENIENCE RETAIL REIT NO.1 ARSN 101 227 614	Viva Energy Australia Pty Ltd ACN 004 610 459	226 Bridge Rd, Pooraka SA 5095	The whole of the land in Certificate of Title Volume 6232 Folio 174
5	Liberty Edinburgh North	APN FUNDS MANAGEMENT LIMITED ACN 080 674 479 IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE CONVENIENCE RETAIL REIT NO.1 ARSN 101 227 614	Viva Energy Australia Pty Ltd ACN 004 610 459	225 Womma Rd (107 Womma Rd), Edinburgh North SA 5113	The land described as Allotment 1 Deposited Plan 82066 in the area named Edinburgh North Hundred of Munno Para being the whole of the land in Certificate of Title Volume 6063 Folio 878
6	Liberty Taperoo	457-459 VICTORIA ROAD TAPEROO PTY LTD	Viva Energy Australia Pty Ltd ACN 004 610 459	457-459 Victoria Rd, Taperoo SA 5017	The whole of the land comprised in Certificate of Title Volume 6241 Folio 789
7	Liberty Clare St	5-19 CLARE STREET PORT ADELAIDE PTY LTD	Viva Energy Australia Pty Ltd ACN 004 610 459	11-19 Clare St, Port Adelaide SA 5015	The whole of the land comprised in Certificates of Title Register Book Volume 6236 Folios 46, 47, 48, 49, 50 and 53, and Volume 6243 Folios 600 and 601

No	Property Name	Lessor	Lessee	Premises Address	Title details
8	Liberty Nailsworth	Mobide Pty Ltd	Viva Energy Australia Pty Ltd ACN 004 610 459	129-133 Main North Rd, Nailsworth SA 5083	The whole of the land comprised in Certificate of Title Volume 6069 Folios 654, 717, 718 and 719
9	Liberty Clearview	TONIC P/L ATF HAMSTEAD PROPERTY TRUST	Viva Energy Australia Pty Ltd ACN 004 610 459	232-236 Hampstead Rd, Clearview SA 5085	The whole of the land comprised in Certificate of Title Register Book Volume 6261 Folio 967
10	Liberty Moe	IMAT PTY LTD as trustee for 96 MOORE STREET TRUST	Viva Energy Australia Pty Ltd ACN 004 610 459	94-96 Moore St, Moe VIC 3825	The land known as 94-96 Moore Street, Moe, Victoria (more particularly described in Certificate of Title Volume 11624 Folio 101)
11	Liberty Kilmore	THE TRUSTEE FOR BUICK PROPERTY TRUST	Viva Energy Australia Pty Ltd ACN 004 610 459	1-3 Sydney St, Kilmore VIC 3764	The land at 1 Sydney Street, Kilmore, Victoria described in Certificates of Title Volume 2272 Folio 319 and Volume 8782 Folio 569
12	Liberty Stuart Park	Fawkner Property Ltd the Trustee for Private Property Trust – PPT 20	Viva Energy Australia Pty Ltd ACN 004 610 459	34-36 Stuart Hwy, Stuart Park NT 0820	Register: CUFT Volume: 873 Folio: 191 Location: Town of Darwin Lot description: 8013 Plan: LTO2009/086
13	Liberty Smithfield Plains	VER Custodian Pty Ltd as Trustee of VER Trust (REIT)	Viva Energy Australia Pty Ltd ACN 004 610 459	237 Curtis Rd, Smithfield Plains SA 5114	The whole of the land comprised in Certificate of Title Volume 6191 Folio 136
14	Liberty Goondiwindi	VER Custodian Pty Ltd ACN 612 669 520	Liberty Oil Australia Pty Ltd ACN 114 544 437	2-4 Racecourse Rd, Goondiwindi QLD 4390	Lot on Plan Description: Lot 2 on RP 57469 Title Reference: 1213324

LOC:

In respect of each of the sites referred to above, LOC will assign to Solo:

- Fuel Stock that is located at each Divestiture Site as at completion;
- Plant and Equipment at each Divestiture Site, as agreed between Solo and LOC;
- CA Deeds with respect to each Divestiture Site;
- Deliverable Records with respect to each Divestiture Site, as agreed between Solo and LOC; and
- Any property interests, including any leases, subleases, licences, sub-licences held by LOC in connection with each Divestiture Site.