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Dear Interested Party

Request for submissions: Viva Energy's proposed acquisition of OTR Group

The Australian Competition and Consumer Commission (**ACCC**) is seeking your views on the proposed acquisition of 'On The Run' Group (**OTR Group**) by Viva Energy Retail Pty Ltd (**Viva Energy**) (the **proposed acquisition**).

Viva Energy (with its related bodies corporate) is a fuel refiner, importer, wholesaler, distributor and retailer, operating a nationwide fuel supply chain with retail sites in each Australian state and territory, including Coles Express branded convenience sites. Viva Energy is the exclusive supplier of Shell-branded fuels and lubricants in Australia.

OTR Group is a fuel and convenience retailer operating predominantly in South Australia with some locations in other states and territories across Australia, including the Northern Territory under the Puma brand. OTR Group also supplies wholesale fuels and distribution services to small commercial customers and independent retail fuel sites through its Reliable Petroleum, Mogas Regional and Ausfuel businesses.

As part of the proposed acquisition, Viva Energy has offered to divest 23 of its 32 retail fuel and convenience sites in Adelaide (**proposed divestiture**).

Further details are provided at **Attachment A**.

The ACCC's investigation is focused on the impact on competition. In particular, we are seeking your views on:

- whether the proposed acquisition will lead to higher retail fuel prices
- whether the proposed acquisition will lead to higher retail convenience/grocery prices
- how closely Viva Energy and OTR Group compete, both locally and across their chains, at both the retail and wholesale level
- how strongly other fuel retailers and wholesalers will compete with Viva Energy after the acquisition

- whether the proposed acquisition is likely to impact Viva Energy's incentives to supply its wholesale customers who are rivals of OTR Group at the retail level
- Viva Energy's proposed divestiture.

Further issues you may wish to address are set out in **Attachment B**.

This matter is public and you can forward this letter to anybody who may be interested.

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 are likely to have the effect of substantially lessening competition in a market.

Please note the ACCC has not yet formed a view as to the nature and extent of any competition concerns with respect to the proposed acquisition, or whether they are capable of being addressed by Viva Energy's divestiture proposal. The market consultation process should not be taken as an indication that the ACCC will accept the divestiture proposal or any remedy from Viva Energy. Please provide your response by **20 July 2023**. Responses can be emailed to mergers@acc.gov.au with the title: *Submission re: Viva Energy OTR Group - attention Lynette Lyubers*. If you require more time to respond, please let us know.

If you would like to arrange a time to discuss the matter with ACCC officers, or have any questions about this letter, please contact Lynette Lyubers on (02) 9230 9132.

Updates regarding the ACCC's investigation will be available on the ACCC's Public Mergers Register at ([ACCC mergers register](#)).

Confidentiality of submissions

The ACCC treats sensitive information it receives during a merger review as confidential, and will not publish your submission. 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, we will notify you in advance where possible so that you have an opportunity to be heard. Therefore please clearly indicate if any information you provide is confidential. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Yours sincerely



Daniel McCracken-Hewson
General Manager
Merger Investigations

Attachment A

Viva Energy

Viva Energy Group Limited is a fuel refiner, importer, wholesaler, distributor, and marketer. Its operations include:

- a refinery in Geelong;
- a national import, storage and distribution network. It is active as a primary wholesale fuel supplier and commercial fuel supplier in every Australian state and territory; and
- 1,306 service stations across Australia under the Shell / Coles Express (Viva Energy completed the acquisition of Coles Express on 1 May 2023), Liberty and Westside brands.

Viva Energy holds a 50% interest in the Liberty retail business and has the option to acquire the remaining 50% interest in 2025, subject to ACCC approval.

OTR Group

OTR Group comprises entities that operate fuel, convenience and tobacco retail businesses, and fuel and tobacco wholesale businesses.

Viva Energy proposes to acquire:

- the retail fuel and convenience business operated by OTR Group, which includes 115 service stations sites in Adelaide, 13 sites in Darwin, and 6 sites in Perth. OTR Group sets the retail price of fuel at all its sites (except one site where it sets the retail price of petrol but not diesel);
- Smokemart and Giftbox, tobacco and gift retailers which operate nationally, and duty free tobacco supplier DF Wholesalers; and
- the wholesale fuel distribution business operated by Reliable Petroleum and Mogas Regional, which supply small commercial customers and independent retail sites from depots in South Australia and Victoria.
- The Ausfuel Group business, which OTR Group acquired from Chevron in March 2023. The Ausfuel Group operates a wholesale and retail fuel business in the Northern Territory and north-east Western Australia, including 15 Puma-branded sites in the Northern Territory, and 2 Puma-branded sites in Western Australia.

Proposed Divestiture

To pre-emptively address potential competition concerns that the ACCC may raise with the proposed acquisition, Viva Energy is proposing to **divest** 23 of its 32 retail fuel and convenience sites in Adelaide, as listed in Table 1.

Table 1: List of retail sites Viva Energy proposes to divest

Location	Address
Coles Express Blackwood	371 Shepherds Hill Rd, Blackwood SA 5051
Coles Express Darlington	1477-1479 Main South Rd, Darlington SA 5047
Coles Express Edwardstown	1112 South Rd, Edwardstown SA 5039
Coles Express Findon	245 Findon Rd & Grange Rd, Findon SA 5023

Coles Express Gawler	12 Murray St, Gawler SA 5118
Coles Express Hallett Cove	2 Ramrod Ave, Hallett Cove SA 5158
Coles Express Hawthorn	150 Belair Rd, Hawthorn SA 5062
Coles Express Hectorville	150 Montacute Rd, Hectorville SA 5073
Coles Express Islington	392 Churchill Rd, Kilburn SA 5084
Coles Express Klemzig	44 O.G. Rd, Klemzig SA 5087
Coles Express Modbury North	432 Montague Rd (Cnr Deborah Rd), Modbury North SA 5092
Coles Express Noarlunga	Beach Rd (Cnr Hannah Rd), Noarlunga Centre SA 5168
Coles Express Parafield Gardens	443 Salisbury Highway, Parafield Gardens SA 5107
Coles Express Park Holme	606-610 Marion Rd, Park Holme SA 5043
Coles Express Queenstown	77 Port Rd, Queenstown SA 5014
Coles Express Reynella	89 Main South Rd, Reynella SA 5161
Coles Express Rose Park	150 Fullarton Rd (Cnr Alexandra Ave), Rose Park SA 5067
Coles Express Salisbury East	1461 Main North Rd, Salisbury East SA 5109
Coles Express Smithfield East	Lot 182 Main North Rd, Blakeview SA 5114
Coles Express Thebarton	53-57 Port Rd, Thebarton SA 5031
Coles Express West Terrace	111 West Tce, Adelaide SA 5000
Coles Express Windsor Gardens	526 North East Rd (Cnr Sudholz Crt), Windsor Gardens SA 5087
Coles Express Woodville	827-837 Port Rd, Woodville SA 5011

Viva Energy intends to **retain** 9 Shell / Coles Express sites in Adelaide, listed in Table 2.

Table 2: List of retail sites Viva Energy proposes to retain

Location	Site address
Coles Express Elizabeth Park	110 Yorktown Rd, Elizabeth Park SA 5113
Coles Express Fairview Park	323 Hancock Road, Fairview Park SA 5126
Coles Express Mansfield Park	452 Grand Junction Rd, Mansfield Park SA 5012
Coles Express West Lakes	113 West Lakes Boulevard, West Lakes SA 5021
Coles Express Hope Valley	1230 Grand Junction Rd & Valley Rd, Hope Valley SA 5090
Coles Express Valley View Wright Road	267 Wright Rd, Valley View SA 5093
Coles Express Golden Grove	Lot 203 The Grove Way & Atlantis Dr, Golden Grove SA 5125
Coles Express McLaren Vale	207 Main Rd, McLaren Vale SA 5171
Shell Regency Park (unmanned)	64 Pedders Crescent, Regency Park SA 5010

Attachment B

1. If you are involved in the fuel industry, please describe your business or organisation and explain your interest in the proposed acquisition, including any commercial relationship(s) with Viva Energy and/or OTR Group.
2. If you are not involved in the fuel industry, please explain your interest in the proposed acquisition. If you are writing as an individual, please indicate the suburb or region in which you reside and/or generally purchase fuel.

Competition between fuel retailers

3. Please address the closeness of competition between Viva Energy (including Coles Express sites) and OTR Group sites (including Puma in the Northern Territory) for the retail supply of fuel. Relevant factors may include geographic areas of supply, product ranges, non-fuel offerings, and their response to each other's pricing. Please provide specific examples where possible.
4. Fuel prices in large Australian cities tend to be cyclical. A typical price cycle involves a sharp increase in retail petrol prices over a relatively small number of days (the price increase phase), followed by a gradual decline in price over a longer period, up to a few weeks or more (the price decrease phase). Please comment on how competition between metropolitan fuel retailers in the price increase and decrease phases might change as a result of the proposed acquisition. For example, do you expect any changes in fuel retailers' pricing behaviour over a price cycle in Adelaide or Darwin as a result of the proposed acquisition?
5. Please provide any comments regarding the likely effect of the proposed acquisition on competition in particular local geographic areas. In doing so, please make reference to the extent of competition Viva Energy (including Coles Express sites) is likely to face from other retail service station sites post-acquisition within each local geographical area in which you consider there may be an issue. For example, do you expect Viva Energy to be able to increase fuel prices in a local geographical area as a result of the proposed acquisition? Please provide specific examples where possible.

Competition between fuel wholesalers

6. Please identify and describe the types of wholesale fuel you procure and/or supply in Australia and identify your current suppliers and /or types of wholesale customers.
7. Please describe the competitiveness of the wholesale supply of fuel in South Australia. Relevant factors may include the number of wholesalers, the ease of switching between wholesalers, and the ease of changing retail branding.
8. Please discuss whether the proposed acquisition would have any impact on competition in the wholesale supply of fuel in Australia. In your answer you may wish to address:
 - a. whether the proposed acquisition is likely to enable Viva Energy to increase its wholesale prices or offer less favourable wholesale supply terms to customers.
 - b. the extent to which there is competition between Viva Energy and OTR Group (including Reliable Petroleum, Mogas Regional and Ausfuel) for the wholesale supply of fuel in any geographic areas.

- c. the likelihood of new entry or expansion into wholesale fuel distribution in response to a combined Viva Energy/OTR Group attempting to increase wholesale prices. In your response, please consider the likely costs and timeframe for market entry or expansion.

Competition for convenience groceries and quick service restaurants

9. Please describe the extent of competition between Viva Energy and OTR Group for the retail supply of convenience grocery offerings.
10. Please provide any comments regarding the likely effect of the proposed acquisition on competition for the retail supply of convenience grocery offerings in particular local geographic areas. In doing so, please make reference to the extent of competition Viva Energy (including Coles Express sites) is likely to face from other retail service station sites and convenience and grocery providers within each local geographic area in which you consider there may be an issue.

Questions about the proposed divestiture

11. Please explain why Viva Energy's proposed divestiture would or would not fully address any concerns you have in relation to the proposed acquisition.
12. Please provide any comments on whether the sites that Viva Energy is proposing to divest are likely to attract a suitable purchaser.

Other questions

13. Please provide any additional information or comments, or identify other competition issues, that you consider relevant to the ACCC's consideration of the proposed acquisition under section 50 of the Act.