



Public Competition Assessment

21 January 2025

Viva Energy - proposed acquisition of LOC Global Pty Ltd

The ACCC's decision

1. On 12 December 2024, the Australian Competition and Consumer Commission announced its decision not to oppose the proposed acquisition by Viva Energy Australia Pty Ltd (**Viva Energy**) of the remaining 50% interest in LOC Global Pty Ltd (**LOC**) from New World Corporation Pty Limited (**NWC**) (the **proposed acquisition**) after accepting a court-enforceable undertaking from Viva Energy, NWC and LOC (the **Undertaking**).
2. The Undertaking requires Viva Energy to divest 14 retail fuel sites across South Australia, Victoria, Queensland, and the Northern Territory to Solo Oil Corporation (**Solo**), a wholly owned subsidiary of NWC. Viva Energy also proposes that Solo (or a related entity) independently operate and control at least 13 additional “waiver” sites currently located across New South Wales, the Northern Territory, Queensland, Victoria and Western Australia. These waiver sites were commercially negotiated and did not form a substantive part of the ACCC’s assessment of the proposed acquisition.
3. The ACCC considers that the proposed acquisition, in the absence of the Undertaking, is likely to substantially lessen competition in contravention of section 50 of the *Competition and Consumer Act 2010* (the **Act**). Section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market. The ACCC considers that the Undertaking sufficiently addresses the competition concerns such that the proposed acquisition is unlikely to contravene section 50 of the Act.
4. The ACCC considered the competitive effects of the proposed acquisition in the following areas:
 - local areas (typically up to a 3-5km radius in metropolitan areas and a 10km radius in regional areas) for the retail supply of fuel in areas of overlap
 - the wholesale supply of fuel in South Australia (focusing on Adelaide).
5. The ACCC also considered metropolitan-wide effects in the retail supply of fuel, particularly impacts on the petrol price cycle.

6. In the absence of the Undertaking, the ACCC considers that the proposed acquisition would raise competition concerns in certain local areas in Adelaide, Darwin, regional Queensland, and regional Victoria where LOC and Viva Energy compete closely and where there are few remaining competitors to constrain Viva Energy from profitably increasing prices or decreasing service quality.
7. This Public Competition Assessment outlines reasons for the decision by the ACCC. Please note that this and other public competition assessments are subject to the following qualifications:
 - The ACCC considers each transaction on a case-by-case basis and so the analysis and decision outlined in one assessment will not necessarily reflect the ACCC's view of another transaction.
 - As assessments are relatively brief and do not refer to confidential information, assessments do not necessarily set out all of the issues and information considered by the ACCC.

The parties and the transaction

The acquirer: Viva Energy

8. Viva Energy through its wholly owned subsidiaries, conducts downstream fuel refining, importing, wholesaling, distribution and marketing in Australia.
9. Viva Energy controls and operates:
 - a refinery in Geelong
 - a national import, storage and distribution network. Viva Energy is active in the resale and distribution of wholesale fuel in every Australian state and territory, and
 - approximately 920 service stations across Australia under the Coles Express/Reddy Express and On the Run (OTR) brands.
10. Viva Energy is also the exclusive supplier of Shell branded fuels and lubricants in Australia. Viva Energy wholly acquired Liberty's wholesale operation (Liberty Oil Holdings Pty Ltd) following a 50 per cent acquisition in 2014, and the remaining interest in 2019.

The target: LOC

11. LOC is a joint venture established in December 2019 utilising the retail assets of Liberty Oil Holdings Pty Ltd. LOC is currently owned 50% by Viva Energy and 50% by NWC. LOC and its subsidiaries currently operate (or grant rights to commission agents to operate) 105 Liberty sites across all states and territories in Australia (excluding Tasmania), with approximately 21 sites under development.

Purchaser of the Divestiture Business: Solo (NWC)

12. Solo Oil Corporation (Solo) is a wholly owned subsidiary of NWC. NWC is a joint venture between entities associated with two individuals, David Goldberger and David Wieland. Following the proposed divestiture, Solo (or a related entity) will own and control the fuel stock and retail pricing across the 14 divestiture sites

and approximately 13 waiver sites, with Commission Agents operating the individual locations.

The transaction

13. Viva Energy is proposing to acquire the remaining 50% shareholder interest in LOC pursuant to a put and call option deed executed by the parties on 1 December 2019, with NWC exercising its put option.
14. The proposed acquisition is subject to approval under the *Foreign Acquisitions and Takeovers Act 1975*.

Market inquiries

15. The ACCC conducted market inquiries with a range of industry participants, including competitors, customers, industry bodies and other interested parties.
16. The ACCC consulted on the potential competition issues associated with the proposed acquisition and obtained confidential information and documents from the merger parties.
17. The ACCC also conducted targeted market consultation on the proposed divestiture.

Industry background

18. Australia's fuel industry consists of three broad levels – the import of refined fuel and the domestic refining of crude oil (primary wholesale), resale and distribution of wholesale fuel (secondary wholesale), and retail supply.
19. Fuel sold in Australia is either refined from crude oil at refiners based in Australia or imported as a finished product from overseas refineries.
20. There are currently two refineries operating in Australia producing fuel:
 - Viva Energy's Geelong refinery (Victoria)
 - Ampol's Lytton refinery (Queensland).
21. Refined fuel is also imported by wholesalers including Viva Energy, Ampol, BP, Chevron, Mobil, Glencore, United, IOR and Park Petroleum.

Primary wholesalers

22. Refiners and many importers of fuel are primary wholesalers. In South Australia there are 5 primary wholesalers with import terminal facilities: Ampol (in Adelaide), BP (in Adelaide), ExxonMobil (in Adelaide), Viva Energy (in Adelaide and Port Lincoln) and IOR (at Port Bonython, diesel only).
23. Viva Energy uses Liberty's wholesale operation (Liberty Oil Holdings Pty Ltd, which is 100% owned by Viva Energy) to undertake secondary wholesale resupply/distribution to customers.
24. In reaching this conclusion, the ACCC noted various recent changes in Adelaide, including:

- (a) BP's acquisition of X-Convenience in 2024
 - (b) the divestiture of 24 Coles Express Adelaide sites to Chevron in 2024, and
 - (c) expiry of existing fuel supply agreements.
25. The ACCC did not consider that there would be substantial changes to Viva Energy's wholesale arrangements post-acquisition. The ACCC did consider that there would continue to be contestable wholesale volumes in Adelaide.

Retailers

26. Service stations supply fuel to retail customers. They can be:
- Sites owned and operated by primary wholesalers, where the primary wholesalers set the retail prices
 - Primary wholesaler branded but independently owned and operated sites, where typically the independent operator sets the retail prices
 - Independently owned and/or operated sites, with independent branding, which range from large independent chains to single-site operations.
27. In addition to Viva Energy and LOC, retailers include Ampol, EG Group, BP, United, Perrys, AM/PM, Costco and a range of other retailers. Some of these are vertically integrated with wholesale fuel businesses.

Areas of overlap

28. Viva Energy and LOC overlap in the retail supply of fuel across South Australia, Victoria, Western Australia, New South Wales, Queensland and the Northern Territory.
29. The ACCC assessed the likely competitive effects of the proposed acquisition on these markets from a number of perspectives but considered that it was not necessary to precisely define the scope of relevant markets.

Competition analysis

30. The ACCC considered competition effects in the:
- retail supply of fuel in Adelaide, Darwin, regional Queensland, and regional Victoria, including
 - horizontal co-ordinated effects in fuel retailing in Adelaide
 - horizontal unilateral effects in local areas where Viva Energy and LOC overlap
 - wholesale supply of fuel in South Australia (focussing on Adelaide).

Competition analysis - retail fuel supply

Horizontal co-ordinated effects

31. The ACCC considered whether the proposed acquisition may have the effect of resulting in or increasing coordination among fuel retailers in Adelaide, manifesting as changes in price cycles that on balance harmed consumers. The

ACCC and the merger parties identified Viva Energy as generally pricing above market average retail prices, and LOC as generally pricing below average.

32. The ACCC considered that with the proposed upfront divestiture of 10¹ sites in Adelaide, Viva Energy would only be adding a de minimus number of sites to its existing Adelaide network, which would be unlikely to substantially lessen competition as a result of coordination. As such, the ACCC's review focussed on possible unilateral effects in local areas.

Local areas of overlap

33. While Viva Energy and LOC overlap in the supply of retail fuel across Australia, the ACCC was concerned regarding the supply of retail fuel in certain local areas in Adelaide, Darwin, regional Queensland, and regional Victoria. The ACCC's review focused on these local areas.
34. Market participants expressed concern that the proposed acquisition would remove LOC as a low-cost fuel service provider and source of competitive constraint on Viva Energy which may give Viva Energy the ability to profitably increase retail fuel prices and/or reduce service offering in local areas of overlap.
35. In each of the local areas of concern, the starting point for the ACCC's local area analysis of metropolitan sites included consideration of:
- The concentration of sites up to a 3-5km radius around each Viva Energy site
 - The volumes of fuel sold at each site (by the merger parties)
 - Local features such as traffic flows, geography, site accessibility, site offerings, characteristics of remaining competing sites, and other indicators.
36. Accordingly, the boundaries of each relevant local area varied in each case.
37. For regional areas, the ACCC considered a 10km radius around each Viva Energy owned and operated site as a starting point and considered similar features to those identified above for metropolitan sites.
38. For each site, the ACCC considered the number of remaining competitors and the combined market share by site numbers, and a range of other factors affecting competition. The ACCC also considered the pricing roles of competing retailers, and whether, post-acquisition, there would remain low-cost fuel providers in local areas of overlap. In areas where most divestiture sites were proposed, there would be less than 3 remaining competing retailers, and the market share of Viva Energy would be high, typically above 50%.

Adelaide

¹ Viva Energy initially offered to divest 9 of its 14 retail sites in Adelaide. However, the number of sites to be divested increased to 10 in response to concerns raised by the ACCC following consultation with market participants.

39. The ACCC concluded that, 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 the following 10 local areas in Adelaide:
- a. Windsor Gardens
 - b. Marion
 - c. Blair Athol
 - d. Pooraka
 - e. Edinburgh North
 - f. Taperoo
 - g. Port Adelaide
 - h. Nailsworth
 - i. Clearview
 - j. Smithfield Plains
40. In respect of the local areas of Beverley, Camden Park and Seaford, the ACCC also considered a range of factors, including the pricing roles of remaining competitors in the local area, characteristics of local sites, local traffic flow and mobility data, to identify relevant geographic boundaries and ultimately considered that sufficient constraints were available post-acquisition.

Darwin (Stuart Park), Regional Victoria (Kilmore and Moe) and Regional Queensland (Goondiwindi)

41. The ACCC also found that, the proposed acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in the retail supply of fuel in Stuart Park in the Northern Territory, Kilmore and Moe in regional Victoria, and Goondiwindi in regional Queensland. In each of these local areas, the ACCC considered that the parties compete closely and that there may be few remaining competitors to constrain Viva Energy from profitably increasing prices or decreasing service quality.

Undertakings

42. In order to address the ACCC's competition concerns outlined above, Viva Energy, NWC, and LOC (the **signatories**) offered the Undertaking pursuant to section 87B of the Act.
43. Pursuant to the Undertaking, the signatories commit to divest 14 retail fuel sites (located in Adelaide, Darwin, regional Victoria and regional Queensland) (**the Divestiture Business**) to Solo (a wholly owned subsidiary of NWC) prior to or at the same time as completion of Viva Energy's proposed acquisition of LOC.
44. Viva Energy initially offered to divest 12 retail sites. However, the number of sites to be divested increased to 14 (an increase of 1 in Adelaide and 1 in regional Queensland) in response to concerns raised by the ACCC following consultation with market participants.
45. The ACCC considers that the sale of the Divestiture Business to Solo prior to or at the same time as completion of the proposed acquisition will likely result in the

establishment of Solo as a viable, effective, stand-alone, independent and long-term competitor for the supply of retail fuel in a number of local areas across Australia.

46. A copy of the Undertaking is available on the ACCC public informal merger reviews register and section 87B undertakings register.

Conclusion

47. Based on the above analysis, the ACCC concluded that the proposed acquisition of LOC by Viva Energy, in the absence of the Undertaking, would have the effect or likely effect of substantially lessening competition in the supply of fuel in local markets in Adelaide and in certain local areas in Darwin, regional Queensland and regional Victoria.
48. However, the ACCC considers that the Undertaking addresses these competition concerns, such that, with the Undertaking, the Proposed Acquisition would not have the effect, nor be likely to have the effect of substantially lessening competition in any market.