



Our ref: IM-72671

3 September 2024

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Dear Interested Party

Re: ACCC seeking your views: Viva Energy's proposed acquisition of LOC

The Australian Competition and Consumer Commission (**ACCC**) is seeking your views on the proposed acquisition of the remaining 50 percent interest from New World Corporation (**NWC**) in LOC Global Pty Ltd (**LOC**) by Viva Energy Australia Pty Ltd (**Viva Energy**) (the **Proposed Acquisition**).

LOC is a joint venture established in December 2019 utilising the retail assets of Liberty Oil Holdings Pty Ltd. LOC and its subsidiaries currently operate (or grant rights to commission agents to operate) 105 Liberty retail fuel and convenience sites across all states and territories in Australia (excluding Tasmania), with plans for approximately an additional 21 pipeline sites. Viva Energy and LOC overlap in the supply of fuel and convenience retail across all states and territories in Australia (excluding Tasmania).

In connection with the Proposed Acquisition, Viva Energy has:

- a) offered to divest 12 LOC retail fuel and convenience sites across South Australia, Victoria and Northern Territory (**proposed divestiture**) to NWC (or a related entity),
- b) proposed NWC (or a related entity) independently operate and control at least 14 additional LOC sites in New South Wales, the Northern Territory, Queensland, Victoria and Western Australia.

Following the Proposed Acquisition, it is proposed that NWC (or a related entity) will independently operate and control at least 26 sites (**Proposed NWC Sites**).

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

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

- Viva Energy and LOC's roles in retail fuel price competition in local areas where they compete, and in metropolitan operating price cycles
- the extent to which LOC is a vigorous and effective competitor
- whether the Proposed Acquisition would be likely to reduce price competition in local, regional and/or metropolitan areas
- Viva Energy's proposed divestiture, and
- the extent to which NWC's ownership and control of the Proposed NWC Sites would enable it to act as a competitive constraint.

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 provide your response by **5pm AEST on 17 September 2024** via email to mergers@acc.gov.au with the title: *Submission re: Viva Energy / LOC*. 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 mergers@acc.gov.au. 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



Morag Bond
General Manager
Merger Investigations

Attachment A – Overview of the merger parties and the Proposed Acquisition

Viva Energy

Viva Energy, through its wholly owned subsidiaries, conducts downstream fuel refining, importing, distribution and marketing in Australia. It is the exclusive supplier of Shell-branded fuels and lubricants in Australia, controls and operates:

- 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
- approximately 920 service stations across Australia under the Coles Express/Reddy Express and On the Run (Viva Energy completed the acquisition of On the Run on 28 March 2024).

Viva Energy wholly acquired Liberty's wholesale operation (Liberty Oil Holdings Pty Ltd) following a 50 percent acquisition in 2014, and the remaining interest in 2019.

LOC

LOC Global Pty Ltd (LOC) is currently owned 50% by Viva Energy and 50% by New World Corporation Pty Limited (**NWC**). It is a joint venture established in December 2019 utilising the retail assets of Liberty Oil Holdings Pty Ltd.

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), and approximately 21 pipeline sites. LOC considers itself to be 'the original fuel discounter' with 'premium quality fuels and competitive pricing'.

NWC

NWC is a joint venture between entities associated with two individuals, David Goldberger and David Wieland. Following the proposed acquisition, NWC (or a related entity) will own and control the fuel stock across at least 26 proposed divestiture and waiver sites, with Commission Agents¹ operating the individual locations.

Areas of overlap

Viva Energy and LOC overlap in the supply of retail fuel across metropolitan and/or regional locations in local markets across South Australia, Victoria, Western Australia, New South Wales, Queensland and Northern Territory.

The Proposed Acquisition

Viva Energy proposes to acquire NWC's 50% shareholding in LOC, following which Viva Energy will take full control of the LOC retail fuel and convenience business. The proposed acquisition includes 90 active retail fuel sites and 10 pipeline sites, for a total of 100 sites.

¹ Commission Agents are given a licence to occupy and operate a location under a particular brand, but the fuel provider will retain ownership and control of the fuel stock and pricing to retail customers.

Proposed NWC Sites

Viva Energy proposes to divest 12 LOC sites to NWC (or a related entity), as listed in Table 1.

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

| | Location | Site Address |
|----|----------------------------|---|
| 1 | LOC Stuart Park | 34-36 Stuart Hwy, Stuart Park NT 0820 |
| 2 | LOC Windsor Gardens | 386 North East Rd, Windsor Gardens SA |
| 3 | LOC Marion | 734 Marion Rd, Marion SA 5043 |
| 4 | LOC Blair Athol | 382 Main North Rd, Blair Athol SA 5084 |
| 5 | LOC Pooraka | 226 Bridge Rd, Pooraka SA 5095 |
| 6 | LOC Edinburgh North | 225 Womma Rd, Edinburgh North SA 5113 |
| 7 | LOC Taperoo | 457-459 Victoria Rd, Taperoo SA 5017 |
| 8 | LOC Port Adelaide Clare St | 11-19 Clare St, Port Adelaide SA 5015 |
| 9 | LOC Nailsworth | 129 Main North Rd, Nailsworth SA 5083 |
| 10 | LOC Clearview | 232-236 Hampstead Rd, Clearview SA 5085 |
| 11 | LOC Kilmore | 1-3 Sydney St, Kilmore VIC 3764 |
| 12 | LOC Moe | 96 Moore St, Moe VIC 3825 |

Viva Energy also proposes that NWC (or a related entity) independently operate and control at least 14 waiver sites currently located across New South Wales, the Northern Territory, Queensland, Victoria and Western Australia. The ACCC understands that the details of these sites have not yet been settled and may seek further feedback from market participants regarding any competition concerns at a later stage.

If the ACCC approves NWC (or a related entity) as the approved purchaser for the divestiture sites, NWC (or the related entity) would, post-acquisition, operate all sites in Table 1 in addition to waiver sites, as Proposed NWC Sites.

Attachment B – List of questions

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, LOC and/or NWC.
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/Reddy Express and OTR sites) and LOC 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, Brisbane, Perth or Melbourne as a result of the proposed acquisition?
5. How important is price compared to other features offered by petrol retailers (e.g., brand, location, range of fuels, convenience offering, on-site facilities) in driving customer choice of petrol retailers?
6. 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 sites (including Coles Express/Reddy Express and OTR sites) are likely to face from other retail service station sites post-acquisition in 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.

Barriers to entry and expansion

7. Please identify potential entrants to the retail supply of fuel in local markets and/or across larger metropolitan or regional areas. Please address the likelihood of such entry, including consideration of factors such as:
 - a) economies of scale and the minimum efficient scale of market entry for a retail fuel chain
 - b) cost of market entry
 - c) timeframe for market entry
 - d) any regulatory requirements, such as environmental or planning regulations
 - e) access to key inputs or distribution channels.

Questions about the proposed divestiture

8. Please explain why Viva Energy's proposed divestiture would or would not fully address any competition concerns you have in relation to the Proposed Acquisition, including in relation to individual local areas and Adelaide.

Questions about the Proposed NWC Sites

9. Please explain whether NWC's (or a related entity's) ownership and control of the Proposed NWC Sites would enable it to competitively constrain Viva Energy sites.

Other questions

10. 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.