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Our ref: IM-70013
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18 April 2019

Dear Interested Party

Request for submissions: Viva Energy Australia Pty Ltd's proposed acquisition of Liberty Oil Holdings Pty Ltd

The Australian Competition and Consumer Commission (**ACCC**) is seeking your views on Viva Energy Australia Pty Ltd's (**Viva**) proposed acquisition of the remaining interest in Liberty Oil Holdings Pty Ltd (**Liberty**) and the proposed transaction relating to Liberty's retail business (together, the **proposed acquisition**).

Viva's operations in Australia include refining, importing, wholesale and retail supply of fuel products. Liberty is a wholesaler and retailer of fuel products.

Viva currently holds a 50 per cent interest in Liberty. Under the proposed acquisition, Viva will acquire the remaining 50 per cent interest in Liberty, and the assets of Liberty's retail business will be transferred to a new company in which Viva will have a 50 per cent interest.

Further details regarding the acquisition can be found 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;
- how closely Liberty competes with Viva (including Coles Express or Westside sites) in retail supply of fuel, both in local areas and across metropolitan areas, and whether other fuel retailers will competitively constrain Viva after the proposed acquisition;
- whether the proposed acquisition is likely to enable Viva to increase the prices it charges to wholesale customers or offer less favourable terms of supply.

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 no later than **5pm on 9 May 2019**. Responses may be emailed to mergers@acc.gov.au with the title: *Submission re: Viva / Liberty - attention Andrew Mahony and Stella Leung*. If you would like to arrange a time to discuss the matter with ACCC officers, or have any questions about this letter, please contact Andrew Mahony on 03 9290 1983 or Stella Leung on 03 9658 6444.

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 will not publish submissions regarding the proposed acquisition. 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, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Yours sincerely



Tom Leuner
General Manager
Merger Investigations

Attachment A

Viva

In 2014, Viva Energy B.V. acquired Shell's Australian downstream business and renamed the business Viva Energy. Viva is now one of the four refiner-wholesalers in Australia, refining, importing and wholesaling fuel in Australia. Viva also has retail operations, including retail supply of fuel through its commission agents and supply of fuel to sites operated by dealers.

Viva and Coles Group Limited announced on 6 February 2019 that they had restructured their alliance arrangement and extended the arrangement to 2029. Under the new arrangement, from 1 March 2019, Viva sets retail prices at Coles Express/Shell co-branded sites and receives the full fuel retail margin, and Coles Express operates those sites as Viva's commission agent and receives a commission per litre fuel sold. There are approximately 712 of these sites in total across Australia.

Viva also holds a 50 per cent interest in Westside Petroleum Consolidated Holdings Pty Ltd (**Westside**), which has a network of approximately 59 service stations in Victoria and NSW, including sites operated by Westside directly or through a commission agent and sites operated by dealers.

Viva acquired a 50 per cent interest in Liberty in 2014. The acquisition was cleared by the ACCC.

Liberty

At the time of Viva's acquisition of a 50 per cent interest in Liberty, Liberty had only wholesale operations. It has since developed retail operations.

Liberty does not have refining capacity and does not own import terminals. Its wholesale operations mainly comprise supply of fuel to distributors, independent service stations, commercial customers and rural customers.

Liberty's retail operations include around 50 retail fuel outlets that Liberty operates directly or through a commission agent. These service stations are in the metropolitan areas of Adelaide and Melbourne and regional areas of all states and territories, except the ACT and Tasmania.

In addition, Liberty supplies to a network of around 250 Liberty or Shell branded service stations operated by dealers.

The proposed transaction

Viva currently holds a 50 per cent interest in Liberty. On 27 February 2019, Viva announced its proposal to acquire the remaining 50 per cent interest in Liberty. As part of the proposed acquisition, the assets of Liberty's retail business will be transferred to a new company. Viva will hold a 50 per cent interest in the new retail company. A company related to the current owners of the remaining interest in Liberty will hold the other 50 per cent interest in the retail company. Viva also has a call option to acquire the remaining interest in the retail company in 2024, and the other owner of the retail company has a put option to sell its interest to Viva in that year.

The consideration payable for the proposed acquisition is \$42 million.

Attachment B

Background

1. If you are involved in the fuel industry, please provide a description of your business and your involvement in the industry, including any commercial relationship/s with either of Viva or Liberty.
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 Liberty and Viva (including Coles Express or Westside sites) 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.

Local competition

4. Please provide any comments regarding the likely effect of the proposed acquisition on competition in particular local retail markets. In doing so, please make reference to the extent of competition Viva (including Coles Express or Westside sites) is likely to face from other retail service station sites within each local market in which you consider there may be an issue.

Regular retail price cycles

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 discounting phase).

5. Please comment on how competition between metropolitan fuel retailers in the price increase and discounting phases might change as a result of the proposed acquisition.

Wholesale supply of fuel

6. Please address the competitiveness of the market for the wholesale supply of fuel. Relevant factors may include the number of wholesalers and ease of switching between wholesalers and changing retail branding.
7. Please address the extent to which there is competition between Liberty and Viva for wholesale supply of fuel, nationally or in any geographical areas.
8. Please comment on whether the proposed acquisition is likely to enable Viva to increase the prices it charges to wholesale customers or offer less favourable terms of supply. Please explain why/why not.
9. Please address the likelihood of new entry or expansion in response to the combined Viva/Liberty attempting to increase wholesale prices. In your response, please consider the likely costs and timeframe for market entry or expansion.

Other information or competition issues

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 under section 50 of the Act.