Public Competition Assessment

07 May 2024

Viva Energy - proposed acquisition of OTR Group

The ACCC's decision

1. On 14 December 2023, the Australian Competition and Consumer Commission announced its decision not to oppose the proposed acquisition by Viva Energy Retail Pty Ltd (**Viva Energy**) of OTR 330 Pty Ltd, OTR 328 Pty Ltd, Reliable Petroleum Pty Ltd, Peregrine Energy Pty Ltd and DF Wholesalers Pty Ltd (**OTR Group**) (the **proposed acquisition**) after accepting a court-enforceable undertaking from Viva Energy (the **Viva Energy Undertaking**). The vendors of the OTR Group include SEPL Pty Ltd, Peregrine (KS) Holdings Pty Ltd, Peregrine (SS) Holdings Pty Ltd Peregrine (YS) Holdings Pty Ltd and their related bodies corporate and their controlled entities (**Peregrine).**

2. The Viva Energy Undertaking requires Viva Energy to divest 25 retail fuel and convenience sites in South Australia (24 in Adelaide and one in Ceduna) to an ACCC approved purchaser. Viva Energy proposed Chevron Australia Downstream Fuels Pty Limited and Chevron Australia Downstream Stores Pty Ltd (**Chevron**) as the up-front purchaser of these divestiture assets and the ACCC approved Chevron at the same time as making a decision on the proposed acquisition.

3. The ACCC considers that the proposed acquisition, in the absence of the Viva Energy Undertaking, would be 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 Viva Energy Undertaking sufficiently addresses the competition concerns such that the proposed acquisition is unlikely to contravene section 50 of the Act.

4. The ACCC's review focused on both local and regional areas in South Australia and the Northern Territory, which is where Viva Energy and OTR Group overlap most significantly. In these areas, the ACCC considered the competitive effects of the proposed acquisition in the following markets:

   - local markets (typically up to a 5km radius in metropolitan areas and 10km in radius regional areas) for the retail supply of fuel in areas of overlap
   - state-wide market for the wholesale supply of fuel
   - local markets for the retail supply of convenience goods.

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 Viva Energy Undertaking, the ACCC considers that the proposed acquisition would raise competition concerns in 25 local areas in South Australia where the parties compete closely and where there are few remaining competitors to constrain Viva Energy from profitably increasing prices or decreasing service quality.
7. However, the ACCC considers that the divestiture as contemplated by the Viva Energy Undertaking will address its competition concerns by maintaining competition in the relevant local markets, and facilitating the entry of a viable, effective, standalone, independent, and long-term competitor in South Australia via the divestiture to Chevron.
8. Subsequent to the ACCC's decision, on 6 February the ACCC was advised that an additional four retail fuel and convenience sites had been purchased by the OTR Group in Newcastle, and that Viva Energy proposed to acquire these four sites as part of the proposed acquisition. However, Viva Energy did not initially seek informal clearance for its acquisition of these additional sites and, consequently, they were not included in the ACCC's assessment of the proposed acquisition or its decision of 14 December 2023.
9. Peregrine completed its acquisition of three of these sites: OTR Newcastle West, OTR Hamilton South and OTR Hamilton Tudor Street (together the **Central Newcastle Sites**) on 17 December 2023. An additional acquisition of a site in Boolaroo was completed on 16 October 2023.
10. On 27 March 2024, the ACCC accepted a court-enforceable undertaking from Peregrine to exclude from the proposed acquisition and divest two fuel sites in Newcastle West and Hamilton South to a purchaser approved by the ACCC (the **Peregrine Undertaking**).
11. The ACCC was concerned that, in the absence of the Peregrine Undertaking, the proposed acquisition would have the effect, or would be likely to have the effect, of substantially lessening competition in the supply of retail fuel in relevant areas in Newcastle. However, the ACCC considers that the divestiture as contemplated by the Peregrine Undertaking will address its competition concerns by maintaining competition in the relevant local markets and facilitating the entry of a viable, effective, standalone, independent, and long-term competitor in the relevant areas in Newcastle.
12. This Public Competition Assessment outlines reasons for the decision by the ACCC not to oppose the proposed acquisition, taking into account Viva Energy Undertaking and the Peregrine Undertaking. 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.
    - The ACCC made its decision on the basis of information provided by the merger parties and from market inquiries, including confidential information.

The parties

The acquirer: Viva Energy

13. Viva Energy's ultimate holding company is Viva Energy Group Limited. Viva Energy Group Limited, through its wholly owned subsidiaries, is a fuel refiner, importer, wholesaler, distributor, and retailer with:

- a refinery at 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
- 1,307 retail service stations nationally including Coles Express convenience sites.

14. Viva Energy Australia Pty Ltd (Viva Energy's holding company) also:
    - holds a 50% interest in LOC Global Pty Ltd, the Liberty retail fuel business, with an option to acquire the remaining 50% interest at the end of 2024, subject to ACCC approval
    - owns Liberty Oil Holdings Pty Ltd, the Liberty wholesale fuel business (which mainly supplies fuel to distributors, independent service stations, commercial customers and rural customers)
    - owns Westside Petroleum Pty Ltd, which operates a retail network of fuel station sites.

The target: OTR Group

15. OTR Group comprises entities that operate the following businesses:
    - retail fuel/convenience business which includes 115 service station sites in Adelaide, 38 sites in regional South Australia, 15 sites in the Northern Territory, 8 sites in Western Australia, 11 sites in Victoria and 2 sites in New South Wales. With one exception, OTR Group sets the retail price of fuel at all of its sites
    - Reliable Petroleum and Mogas Regional (secondary fuel wholesalers) which supply small commercial customers and independent retail sites in South Australia and Victoria
    - AusFuel Group (secondary fuel wholesaler and retailer) 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, and includes the Directhaul business
    - Smokemart and Giftbox (national tobacco and gift retailers) and DF Wholesalers (duty free tobacco supplier).

The proposed acquisition

16. Viva Energy is proposing to acquire OTR Group by way of share acquisition (for OTR Group's fuel businesses) and asset acquisition (for OTR Group's tobacco and gift businesses).
17. The proposed acquisition is subject to the receipt of regulatory approvals from the ACCC, as well as Foreign Investment Review Board approval.

Market inquiries

18. The ACCC conducted market inquiries with a range of industry participants, including competitors, potential competitors, customers, input suppliers, industry bodies and other interested parties. Submissions were sought in relation to the potential competition issues arising from the proposed acquisition. The ACCC also conducted market consultation on the Viva Energy Undertaking. The ACCC also obtained confidential information and documents from the merger parties and interested parties.

Industry background

19. Australia’s fuel industry consists of three broad levels – refining and importing of wholesale fuel (primary wholesale), resale and distribution of wholesale fuel (secondary wholesale) and retail supply.

20. Fuel sold in Australia is either refined from crude oil at refineries based in Australia or imported as a finished product from overseas refineries.

21. There are currently two refineries operating in Australia:

    - Viva Energy’s Geelong refinery (Victoria)
    - Ampol’s Lytton refinery (Queensland).

22. Remaining refined fuel is imported by wholesalers including Viva Energy, Ampol, BP, Chevron, Mobil, Glencore, United, IOR and Park Petroleum.

Primary wholesalers

23. The refiners and many of the 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, for diesel only).

24. In Darwin, primary wholesalers store fuel at the Vopak Darwin Industry Fuel Terminal. Currently Viva Energy, Chevron, BP, Ampol and United store product at this terminal on a commingled basis. Capacity entitlement is allocated based on throughput on a rolling basis. Other primary wholesalers are able to store product at the Vopak Terminal by entering into storage arrangements with Vopak.

Secondary wholesalers

25. Secondary wholesalers are wholesalers who source fuel from primary wholesalers for resupply/distribution to customers.

26. Secondary wholesalers who operate in South Australia and/or the Northern Territory include OTR Group’s Reliable Petroleum, Mogas Regional and Ausfuel Group, Viva Energy’s Liberty Oil Holdings Pty Ltd, Perrys, Hunts Fuel, Adelaide Fuel, K & S Fuels, Eyre Fuels, Tasco Petroleum, North Coast Petrolum, Metro Petroleum, Premiair Fuels and Recharge.

Retailers

27. At the retail level, service stations supply fuel to retail customers. Service stations 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 which range from large independent chains to single-site operations.

28. At the retail level, there are a number of retailers in South Australia and/or the Northern Territory in addition to Viva and OTR Group (some of which are vertically integrated with wholesale businesses), including Ampol, EG Group, BP, United, X Convenience, Perrys, AM/PM, Costco, FuelXpress and Liberty.

Areas of overlap

29. Viva Energy and OTR Group both operate nationally, however primarily overlap in South Australia and the Northern Territory in:
    - Wholesale fuel supply: As described above, Viva Energy is both a primary and secondary wholesaler nationally, and OTR Group is a secondary wholesaler, predominantly in South Australia and the Northern Territory.
    - Retail fuel supply: As describe above, both Viva Energy and OTR Group have retail networks across Australia, with the most significant overlap being in South Australia and the Northern Territory.
    - Retail supply of convenience groceries.
30. The acquisition of the Central Newcastle Sites by Peregrine on 17 December 2023 resulted in an overlap in the retail fuel supply networks of Viva Energy and OTR Group in certain Newcastle areas.
31. 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 the relevant markets.

Competition analysis

32. The proposed acquisition combines the largest retail fuel network in South Australia with a national, vertically integrated primary wholesaler and retailer of fuel.
33. The ACCC considered competition effects in the:
    - retail supply of fuel in South Australia, the Northern Territory and Newcastle, including:
        - horizontal coordinated effects in fuel retailing in metropolitan Adelaide
        - horizontal unilateral effects in local areas where Viva Energy and OTR Group overlap
        - whether the proposed acquisition would enhance Viva Energy's ability and incentive to vertically foreclose rival retailers to whom Viva Energy supplies fuel.
    - retail supply of convenience groceries and tobacco.
    - wholesale supply of fuel in South Australia, specifically:
        - whether upstream primary wholesalers may be unable to find sufficient alternative downstream buyers because Viva Energy will be the wholesale supplier of fuel to OTR Group's retail network
        - whether the proposed acquisition would enhance Viva Energy's ability and incentive to vertically foreclose rival secondary wholesalers
        - horizontal unilateral effects in the wholesale supply of fuel to independent retailers and commercial customers particularly in regional areas of South Australia.

Competition analysis - retail fuel supply

Horizontal coordinated effects

34. The ACCC considered whether the proposed acquisition may have the effect of resulting in or increasing coordination among fuel retailers in metropolitan Adelaide, manifesting as changes in price cycles that on balance harmed consumers. The ACCC analysed fuel pricing data from the South Australia Fuel Pricing Scheme to determine average fuel prices of major retailers in Adelaide. This analysis showed that both Viva Energy and OTR Group generally price above the average in Adelaide.

35. The ACCC considered whether the proposed acquisition would increase the ability of Viva Energy to increase prices in the price increase phase, leading to shorter price cycles and limiting the duration of the price decrease phase. However, the ACCC considered that the proposed upfront divestiture of 23[1] Viva sites in Adelaide would address any likely lessening of competition as a result of coordination. As such, the ACCC's focussed on possible unilateral effects in local areas.

Local areas of overlap

36. Viva Energy and OTR Group overlap in the supply of retail fuel across Australia. However, the most significant areas of local overlap are in South Australia and the Northern Territory, and as such, the ACCC's review focused on those areas. Following the acquisition of the Central Newcastle Sites by Peregrine on 17 December 2023, the ACCC also reviewed the local overlap in this area.

37. Market participants expressed concern that the proposed acquisition would remove OTR Group as a source of competitive constraint on Viva Energy, increase concentration and give Viva Energy the ability to profitably increase retail prices and/or reduce service levels in local areas of overlap, including in areas where OTR Group have sites under development.

South Australia

38. The ACCC considers that Viva Energy and OTR Group are close competitors for the supply of retail fuel in several local areas in South Australia. In some local areas, the proposed acquisition would have removed competition between the parties' sites and left few remaining competitors to effectively constrain Viva Energy from increasing prices (or implementing equivalent reductions in non-price aspects of its retail offerings).

39. The starting point for the ACCC's local area analysis of metropolitan sites was considering:
    - the concentration of sites up to 5km radius around each Viva Energy site
    - volumes of fuel sold (by the merger parties and by competitors)
    - local features such as traffic flows, geography, site accessibility, site offerings, characteristics of remaining competitive sites, and other indicators.

40. Accordingly, the boundaries of each relevant local area varied in each case.

41. The ACCC applied a similar methodology to OTR Group sites under development.

[1] Viva Energy initially offered to divest 23 of its 32 retail sites in Adelaide. However, the number of sites to be divested increased to 25 in response to concerns raised by the ACCC following consultation with market participants.

42. For each site, the ACCC considered the number of remaining competitors and the combined market share by sites and by volumes of fuel sold, and a range of other factors affecting competition. For most of the divestiture sites, there would be less than 3 remaining local retailers and the combined market share of Viva Energy and OTR Group would be high, typically above 50%.

43. With the Viva Energy Undertaking, the proposed acquisition results in an increase to the existing OTR Group network in Adelaide of 8 sites (representing approximately 3% by share of OTR Group's pre-merger site number). In those 8 overlapping locations, there will remain several competitors, including United, X Convenience, AM/PM, EG, Costco and Ampol.

44. 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. As many of the sites in regional South Australia were situated on truck routes from Melbourne to Perth and Sydney to Perth, in some instances the ACCC considered the supply of ULP91 and diesel separately.

45. The ACCC identified Ceduna as an area of concern in which, without the Viva Energy Undertaking, the proposed acquisition would have resulted in Viva Energy operating 3 of only 5 sites that supply ULP91 and which account for over 70% of ULP91 volumes sold. In addition, Ceduna is particularly remote and services surrounding towns including Streaky Bay (which is a 1 hour 10-minute drive away).

46. The ACCC also identified concerns that Viva Energy gaining a significant market presence in both the retail and primary wholesale supply of fuel in South Australia could result in other upstream primary wholesalers being unable to find sufficient alternative downstream buyers, reducing competition in wholesale supply, which would in turn affect rival retailers. However, the ACCC considers there are a number of factors that would likely mitigate any foreclosing effect on upstream primary wholesaling rivals. These factors are outlined further in paragraph 57.

47. The ACCC has concluded that, in the absence of the Viva Energy 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 25 local areas in South Australia.

Northern Territory

48. The ACCC considered the proposed acquisition's potential competition effects on the retail supply of fuel in local areas in the Northern Territory where Viva Energy and OTR Group both have a retail presence. The ACCC applied a similar methodology to its analysis of local areas in Darwin as it did in its analysis of local areas in South Australia, including considering fuel volumes supplied by the parties and by competitors. However, the ACCC did have regard to the differences in pricing patterns in each state in undertaking its analysis.

49. Overall, the ACCC considers the proposed acquisition is not likely to substantially lessen competition for the supply of retail fuel in local areas in the Northern Territory nor in Darwin more generally as:

- the Darwin CBD and Palmerston regions experience strong price competition from discounters such as FuelXpress and United
- in local areas in Darwin, there will remain several competitors to constrain Viva Energy's ability to profitably raise prices or lower service levels, including FuelXpress, IOR, United, EG, BP and Ampol
- in regional local areas of overlap, there are also a sufficient number of remaining competitors.

Central Newcastle

50. With respect to the Central Newcastle Sites, the ACCC applied a similar methodology to its analysis as in the sections above. In the absence of the Peregrine Undertaking the proposed acquisition would have resulted in Viva Energy obtaining 3 additional sites (in addition to its existing sites) within a 5km radius, providing it with an overall market share (by sites) of 30% per cent within a 3km radius, and 42% within a 5km radius. With the Peregrine Undertaking, the proposed acquisition only results in Viva Energy obtaining 1 additional site within this area.

Foreclosure of rival retailers in South Australia

51. The ACCC considered whether the proposed acquisition would enhance Viva Energy's ability and incentive to foreclose downstream independently owned retailers in South Australia that compete with Viva Energy in the retail supply of fuel, but who also source or might source fuel from Viva Energy.

52. The ACCC considers there are several constraints which limit Viva Energy's ability to engage in foreclosure strategies against independent retailers:

    - wholesale supply agreements with independent retailers usually have terms of 5 years, and customers are able to, and do regularly, switch suppliers at the end of their terms
    - in South Australia, there are a range of competing primary wholesalers (such as Ampol, BP, Mobil and IOR) and secondary wholesalers (such as Hunts Fuels and Perrys) who will continue to compete to supply fuel to independent retailers, so independent retailers will have available switching options.

Competition Analysis – convenience retailing

53. The ACCC considered whether the proposed acquisition would be likely to substantially lessen competition in the retail supply of convenience grocery offerings (including tobacco) through the loss of rivalry between Viva Energy's and OTR Group's forecourt convenience and quick service restaurant offerings.

54. The ACCC notes that convenience offerings may to varying degrees include supermarkets, independent grocers, fast food and takeaway food outlets, cafes, bakeries, tobacconists, and other fuel retailing operations.

55. Accordingly, the ACCC does not consider that the proposed acquisition is likely to substantially lessen competition in convenience retailing.

Competition analysis – wholesale fuel supply

Vertical effects through the foreclosure of primary wholesalers in South Australia

56. The ACCC considered whether Viva Energy, as a primarily wholesaler and after becoming the wholesale supplier of fuel to OTR Group's retail network, this would result in the foreclosure of upstream primary wholesalers on the basis that such wholesalers may be unable to find sufficient alternative downstream buyers.

57. The ACCC concluded that post-acquisition, the following factors would likely mitigate any foreclosing effect on upstream primary wholesaling rivals:

    - a range of wholesale customers would remain. This includes retailers, commercial customers, government customers, secondary wholesalers and other primary wholesalers whose volumes will be contestable as their existing supply arrangements are either non-exclusive or come up for renewal periodically, and for whom primary wholesalers in Adelaide will be able to compete to supply

- moreover, Viva Energy would itself likely need to negotiate with other primary wholesalers to arrange wholesale supply on behalf of OTR Group post-2025
- primary wholesalers have an incentive to compete for volumes to maintain both brand presence and the viability of their import and distribution infrastructure, and this will continue post-acquisition
- wholesale customers including secondary wholesalers, commercial customers, and retailers often have the ability to switch suppliers with minimal switching costs as:
    - secondary wholesale customers acquire some of their fuel from primary wholesalers ex-gate at the terminal on a non-exclusive basis
    - commercial customers often acquire fuel from multiple sources
    - retailers seeking to switch at the end of a contract (typically 5 years in duration) can receive assistance from the incoming wholesale supplier in the form of payments to cover rebranding/onboarding expenses or financing (with repayments over time) to cover costs associated with returning/refinancing equipment.

58. As such, the ACCC's view is that the proposed acquisition is not likely to substantially lessen competition for the primary wholesale supply of fuel in South Australia.

Foreclosure of secondary wholesalers in South Australia

59. The ACCC considered whether combining Viva Energy's wholesale fuel business and OTR Group's secondary wholesale fuel business could enhance Viva Energy's ability and incentive to vertically foreclose competing secondary wholesalers in South Australia. To the extent this occurred, it would lessen competition in markets for the retail supply of fuel to secondary wholesale customers in South Australia.

60. The ACCC considers there are several constraints that limit Viva Energy's ability and incentive to engage in foreclosure strategies against secondary wholesalers in South Australia as:

- there are a number of wholesale fuel sources in South Australia which provide switching options to secondary wholesalers including:
    - primary wholesalers such as Ampol, BP and Mobil, which operate import terminals at Port Adelaide. These primary wholesalers supply to customers in metropolitan and regional locations (via overland freight)[2]
    - IOR, which owns and operates a diesel terminal at Port Bonython
- commercial customers can switch with minimal costs.

[2] The ACCC understands that transporting fuel via overland freight can incur additional freight costs which may make this a less viable option for some regional locations.

61. Consequently, the ACCC does not consider that the proposed acquisition is likely to substantially lessen competition in the markets for the retail supply of fuel to secondary wholesale customers in South Australia.

Horizontal effects in the wholesale supply of fuel to independent retailers and commercial customers particularly in regional areas of South Australia and the Northern Territory

62. Viva Energy and OTR Group are rivals in the wholesale supply of fuel to independent retailers and commercial customers in South Australia and the Northern Territory. The ACCC considered whether, by acquiring OTR Group's secondary wholesale businesses, the proposed acquisition would remove the competitive constraint that Viva Energy and OTR Group currently exert on one another and whether this would have the effect, or be likely to have the effect, of substantially lessening competition in the wholesale supply of fuel to independent retailers and commercial customers in these areas.

Independent retailers

63. The ACCC's market inquiries indicated that, post-acquisition, there will remain a number of rival primary and secondary wholesalers who will have the ability and incentive to compete to supply to independent retailers, so independent retailers will have switching options available to them.

Commercial customers

64. The ACCC did not receive feedback from commercial customers of fuel on this issue. However, the ACCC understands that:

    - post-acquisition, there will remain a number of competitively effective primary and secondary wholesale alternatives for commercial customers.
    - commercial customers tend to source fuel on a non-exclusive basis, meaning that supply contracts are frequently contestable. Switching costs appear to be minimal for these customers and are generally limited to the return of any fuelling equipment.
    - there are limited overlaps between the parties in the supply of wholesale fuel to commercial customers.
    - the increment to Viva Energy's share of wholesale supplies to commercial customers by volume (relative to state-wide wholesale fuel supply volumes) post-acquisition is minimal.

65. Overall, the ACCC's view is that the proposed acquisition is not likely to substantially lessen competition for the supply of wholesale fuel to independent retailers or commercial customers.

Viva Energy Undertaking

66. In order to address the ACCC's competition concerns outlined above, Viva Energy offered the Viva Energy Undertaking pursuant to section 87B of the Act.

67. Pursuant to the Viva Energy Undertaking, Viva Energy is required to divest 25 retail fuel and convenience sites in South Australia (24 in Adelaide and one in Ceduna).

68. Viva Energy initially offered to divest 23 of its 32 retail sites in Adelaide. However, the number of sites to be divested increased to 25 in response to concerns raised by the ACCC following consultation with market participants.

69. Viva Energy proposed Chevron as the up-front purchaser of the 25 retail fuel and convenience sites in South Australia. The ACCC approved Chevron as the purchaser after giving consideration to a number of factors, including Chevron's previous and current experience in the Australian fuel industry (and its global presence as a fuel producer, importer, wholesaler and retailer), its financial capability, and its plans to maintain and operate the 25 retail fuel and convenience sites.

70. The ACCC considers that a divestiture as contemplated by the Viva Energy Undertaking will sufficiently address its competition concerns with the proposed acquisition. This is due to the ACCC's view that the acquisition of 25 retail sites in South Australia by an ACCC approved purchaser will:

- replace the competition in the retail supply of fuel that would have been lost as a result of the proposed acquisition and ensure choice for consumers,
- enable Chevron to expand its retail presence in South Australia at a scale sufficient to act as a constraint on Viva Energy in the retail supply of fuel in South Australia, creating a viable, effective, independent retail competitor, and
- create a new potential wholesale customer as wholesalers will be able to compete to supply Chevron's future retail fuel requirements in South Australia.

71. A copy of the Viva Energy Undertaking is available on the ACCC mergers register and undertakings register.

72. In exchange for the 25 retail fuel and convenience sites, Viva Energy is acquiring 13 Caltex / Puma branded sites from Chevron in Western Australia, Queensland and New South Wales (the **swap sites**).

73. The swap sites are located in the following areas:

- Western Australia: Caltex Yanchep, Caltex Harvey, Puma Sawyers Valley, Caltex Balcatta, Caltex Guildford
- Queensland: Caltex Monto, Puma Zilzie, Caltex Maryborough, Caltex Banana, Caltex Calliope, Caltex Mt Larcom, Caltex The Gap
- New South Wales: Caltex Marsden Park

74. As part of its assessment, for each site the ACCC considered the number of remaining competitors, combined market shares and a range of other factors affecting local market competition.

75. The ACCC is satisfied that Viva Energy's acquisition of the swap sites from Chevron is not likely to substantially lessen competition in the retail supply of fuel in the swap site locations because:

- There was no overlap or the swap sites resulted in only an incremental increase in Viva Energy's existing market shares
- in the three local areas where the swap sites overlap with Viva Energy/OTR Group owned and operated sites (Marsden Park (NSW), Guildford (WA) and Balcatta (WA)), the ACCC considers there are several effective competitors to constrain Viva Energy in each of these areas.

Peregrine Undertaking

76. In order to address the ACCC's competition concerns outlined above with respect to the Central Newcastle Sites, Peregrine offered the Peregrine Undertaking pursuant to s 87B of

the Act, under which Peregrine will exclude from the Proposed Acquisition and divest fuel sites in Newcastle West and Hamilton South to a purchaser approved by the ACCC.

77. The ACCC considers that a divestiture as contemplated by the Peregrine Undertaking will sufficiently address its competition concerns with the proposed acquisition, as it will ensure that the Newcastle West and Hamilton South fuel sites are sold to an Approved Purchaser 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 the relevant local areas in Newcastle.

78. In addition, the Peregrine Undertaking also places obligations on Peregrine to:

- ensure the purchaser of the Newcastle West and Hamilton South fuel sites has all the necessary associated assets and rights to compete effectively with Peregrine – and following the Control Date, Viva Energy – in the relevant local areas in Newcastle;
- maintain the economic viability, marketability, competitiveness and goodwill of the Divestiture Business prior to divestiture; and
- provide for the effective oversight of Peregrine's compliance with this undertaking.

79. A copy of the Peregrine Undertaking is available on the ACCC mergers register and undertakings register.

Conclusion

80. Based on the above analysis, the ACCC considers that the proposed acquisition of OTR Group by Viva Energy, in the absence of the Viva Energy Undertaking and the Peregrine Undertaking, was likely to have the effect of substantially lessening competition in the supply of retail fuel in 25 local areas in South Australia and in relevant areas in Newcastle.

81. However, the ACCC considers that the Viva Energy Undertaking and the Peregrine Undertaking address the competition concerns raised such that the proposed acquisition would not be likely to have the effect of substantially lessening competition in any market.