



23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

tel: (02) 6243 1368

mergers@acc.gov.au

www.acc.gov.au

Our ref: 72013
Contact officer: Annelise Caplan / Andy Gallagher
Contact phone: (03) 9910 9451 / (02) 9230 9129

25 October 2022

Dear Interested Party

Re: Request for submissions: Viva Energy's proposed acquisition of Coles Express convenience business

The Australian Competition and Consumer Commission (**ACCC**) is seeking your views on the proposed acquisition of Coles Express convenience business by Viva Energy Group Limited (**Viva Energy**) (the **proposed acquisition**).

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

Coles Express, operated by Eureka Operations Pty Ltd (a wholly owned subsidiary of Coles Group Limited), is an Australian chain of convenience stores at Shell Coles Express branded petrol stations.

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 would impact retail fuel prices, noting that Viva Energy already supplies and prices the fuel at Shell Coles Express branded sites, and
- whether the proposed acquisition is likely to impact Viva Energy's incentives to supply downstream rivals

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 **8 November 2022** via email with the title: *Submission re: Viva Energy / Coles Express convenience business - attention Annelise Caplan/Andy Gallagher*. 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 Annelise Caplan on (03) 9910 9451 or Andy Gallagher on (02) 9230 9129.

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



Nick Cooke
Executive Director
Merger Investigations

Attachment A

Viva Energy

Viva Energy Group Limited (**Viva Energy**), through its wholly owned subsidiaries, conducts fuel refining and importing, distribution and marketing in Australia. It operates an extensive network, including the Geelong Refinery and has a presence at over 50 airports and airfields.

Viva Energy is the exclusive supplier of Shell fuels and lubricants in Australia. In 2021, it supplied approximately one quarter of Australia's liquid fuel requirements to fuel retailers, as well as directly to commercial customers.

The Coles Express convenience business

The Coles Express convenience business, operated by Eureka Operations Pty Ltd (**Eureka**), is one of Australia's leading fuel and convenience retailers. Eureka operates 710 Coles Express sites across the country.

Viva Energy and Eureka currently have a formal alliance arrangement (**Alliance**) in place with respect to the Coles Express convenience business. Pursuant to the Alliance, Viva Energy has full responsibility for the provision of the fuel offering (including retail pricing and marketing across the network) and Eureka operates the Coles Express convenience stores. The Alliance, which was otherwise due to end in 2029, will terminate on completion of the proposed acquisition.

The proposed acquisition

Viva Energy, through a subsidiary, is proposing to acquire Coles Express convenience business from Eureka, a wholly owned subsidiary of Coles Group Limited (**Coles Group**) (the **proposed acquisition**).

Following the proposed acquisition, Viva Energy and Coles Group will enter into a product supply agreement pursuant to which Coles Group will supply grocery products to Viva Energy for a set period. Further, Viva Energy and Coles Group propose to maintain Coles' shopper docket scheme.

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 Coles 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.

Questions for wholesale and commercial fuel customers

3. Please identify and describe the types of fuel you procure in Australia and identify your current suppliers.
4. Please identify and describe the alternative suppliers capable of servicing your wholesale fuel requirements.
5. Please discuss whether you expect your procurement of fuel products, including in the long term, would be affected by the proposed acquisition. In your answer you may wish to address whether Viva Energy's incentive to supply downstream rivals of Shell Coles Express branded service stations is impacted by the proposed acquisition (noting that Viva Energy already supplies and prices the fuel at Shell Coles Express branded sites).

Questions for Viva Energy's wholesale competitors

6. Please identify and describe the types of fuel and customers that you supply in Australia.
7. Please discuss whether the proposed acquisition would have any impact on competition for wholesale fuel supply in Australia.

Other questions

8. Noting that Viva Energy already controls the price of fuel at Shell Coles Express branded service stations, in your view would the proposed acquisition affect Viva Energy's incentives in relation to how it sets retail fuel prices at these sites?
9. Please provide any additional information or comments that you consider relevant to the ACCC's consideration of the proposed acquisition under section 50 of the Act.