



Australian  
Competition &  
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# NEWS RELEASE

## **ACCC NOT TO OPPOSE GLENCORE INTERNATIONAL PLC'S PROPOSED ACQUISITION OF VITERRA INC.**

The Australian Competition and Consumer Commission has announced that it does not intend to oppose Glencore Incorporated plc's proposed acquisition of Viterria Inc.

"The ACCC has concluded that the proposed acquisition would be unlikely to substantially lessen competition as post merger Glencore would continue to face competition from a number of significant competitors in the market for grain trading in South Australia," ACCC Chairman Rod Sims said.

In forming its view the ACCC conducted an extensive public review process which included consultation with South Australian grain growers, competitors, and growers' representative organisations. The ACCC also received and considered a submission from the South Australian Parliament's Select Committee on the Grain Handling Industry.

The ACCC recognised a number of concerns raised during its public review process. In particular, Viterria is in a strong position in South Australia with a monopoly position in bulk grain port terminal services and significant market share in up-country grain storage and handling.

However, the legal test under section 50 of the Competition and Consumer Act, applied by the ACCC, focuses on the likely effect of the proposed acquisition on competition.

Section 50 cannot address issues arising from existing market power, only competition concerns that are likely to result from the proposed acquisition which is being assessed.

As part of its competition assessment of any proposed acquisition, the ACCC compares the likely state of competition if the proposed acquisition proceeds with the likely state of competition if the proposed acquisition does not proceed.

The existing competition between Glencore and Viterria in South Australia is essentially in grain trading, where both parties have significant trading businesses.

"The ACCC considered that the proposed acquisition would be unlikely to enable Glencore post acquisition to depress prices paid to growers for grain or raise prices of grain to domestic customers due to the presence of a number of viable alternative grain traders," Mr Sims said.

The ACCC also considered whether the proposed acquisition would provide the merged firm with the increased incentive or ability to foreclose rival grain traders' access to its up-country grain storage and handling services and bulk grain port terminal services or provide access on discriminatory terms, thereby having the effect or likely effect of substantially lessening competition in grain trading.

The ACCC considered that the merger did not materially change this incentive or ability as Viterra's strong position was simply being acquired by Glencore. That is, the merger did not substantially change the existing position.

In respect of access to the port services, the merged firm will also be required to comply with the ACCC approved **Port Terminal Services Access Undertaking** until September 2014, after which time either a voluntary code of conduct will be introduced (to be drafted with input from port users as well as port operators and producer groups), or the arrangements requiring an ACCC approved Access Undertaking will continue to operate in their current form.

The concerns raised by some parties during the ACCC's consultation process mainly related to access to Viterra's existing vertically integrated grain supply chain services in South Australia and the operation of those services by Viterra – particularly up-country grain storage and handling services and bulk grain port terminal services.

"The ACCC looked closely at the issues raised by market participants. However, the investigation revealed that these issues related to Viterra's existing market position in South Australia and that the proposed acquisition was unlikely to have a material impact on those issues," Mr Sims said.

A number of interested parties suggested that the ACCC should impose conditions on its approval of the proposed acquisition including, for example, commitments on Glencore to divest some of the merged firm's up-country storage sites and grain port terminals in South Australia.

In appropriate cases, the ACCC may consider and accept undertakings from merger parties to remedy competition concerns which arise from a proposed transaction.

"In this case, the transaction itself was not the cause of the concerns raised with the ACCC. The main concerns were issues with the existing market structure, and accordingly it was not appropriate for the ACCC to require undertakings which imposed conditions in this case," Mr Sims said.

**Media inquiries**

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**General inquiries**

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