



Our ref: AA1000488
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18 August 2020

Paul Barrett
Chief Executive Officer
Australian Institute of Petroleum

By email: [REDACTED], [REDACTED]

Dear Mr Barrett,

Australian Institute of Petroleum application for authorisation AA1000488 — seeking further information

In September 2020, the Australian Competition and Consumer Commission (**ACCC**) intends to make a final determination in relation to application for authorisation AA1000488. The purpose of this letter is to request further information from you to assist with the ACCC's decision.

As you recall, AIP submitted the application to the ACCC on 2 April 2020, requesting urgent authorisation to enable the Applicants to discuss and implement measures to address the risk to the availability of fuel products across Australia arising from the significant adverse impacts of the COVID-19 pandemic on the fuel products supply chain. The ACCC granted a conditional interim authorisation on 3 April 2020. Following receipt of further information from AIP, on 20 May 2020 the ACCC revoked this initial interim authorisation and replaced it with an interim authorisation that more closely reflects how the Participating Entities (as defined in the 20 May 2020 interim authorisation) propose to co-operate.

On 23 July 2020, the ACCC issued a draft determination proposing to grant a conditional authorisation for 6 months, starting from the date on which the final authorisation is granted (the **Authorisation Period**). This draft determination was based on the ACCC's assessment, relying on information available at the time, that there was likely to be public benefits from the conduct that would outweigh any likely public detriments. In particular, the ACCC noted that the COVID-19 pandemic had caused a significant decline in the demand for fuel products in Australia and there was significant uncertainty as to when and how quickly this demand will rebound.

The ACCC sought submissions from interested parties on the draft determination. As at the date of this letter, the ACCC has received one submission from RACQ, which can be found on the ACCC's [public register](#) for this matter.

On 11 August 2020, it was announced that Ampol (formerly Caltex Australia) plans to restart production from its Lytton oil refinery in Brisbane in September. While Ampol is quoted as stating that "market conditions for refining continue to be highly uncertain", it was also

reported that “national petrol sales were down only 11 percent in July compared with a year earlier”.¹ Further, despite an interim authorisation now being in place for about four and a half months, the ACCC is unaware of any instances where AIP or its members have engaged in any conduct in reliance on the interim authorisation.

Further information requested

In light of the above, the ACCC requests that AIP answer the following questions, including providing supporting materials and details where relevant:

1. Have the Participating Entities engaged in any conduct in reliance on the interim authorisation? If not, explain why, and state whether you expect to do so in the future.
2. Are the particular circumstances which led to the application for authorisation being made (i.e. the circumstances related to COVID-19) ongoing, or have they subsided or changed in some other way?
3. In light of your answers to questions 1 and 2, do AIP and its members remain of the view that there is a need for the Proposed Conduct (as defined in the Draft Determination) to be authorised? If your answer is “yes”, please explain:
 - a. the basis for this view, including the potential COVID-19 related problems or issues that may arise within the Authorisation Period that could undermine security of supply of fuel products in Australia, and why the Proposed Conduct by the Participating Entities (beyond ordinary commercial activities) is required to address them
 - b. whether it is necessary for the authorisation to extend to all fuel products rather than a subset of them (e.g. aviation fuel vs petrol), and if so, explain the basis for including each of the fuel products in respect of which authorisation is sought
 - c. the length of time for which the authorisation is likely to be necessary.

We also invite you to make comments in relation to any of the matters raised in the RACQ submission, to the extent this is not already covered in your response. Please provide the information sought above to adjudication@accc.gov.au by 2pm on Friday, **28 August 2020**.

If AIP and its members believe there is no longer any need for the Proposed Conduct to be authorised, you are invited to contact the ACCC to discuss a potential withdrawal of the application for authorisation.

This letter has been placed on the ACCC’s public register. Any written response you make to this letter will also be placed on the ACCC’s public register unless an application for exclusion is made, and the ACCC decides that your response should be excluded from the public register.

I appreciate your engagement with the ACCC on this issue. If you wish to discuss any aspect of this matter, please do not hesitate to contact me.

Yours sincerely



Gennady Kleiner
Director, Adjudication

¹ *Ampol to restart Brisbane refinery despite dire margins*, Australian Financial Review, 11 August 2020.