



23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

tel: (02) 6243 1111
adjudication@acc.gov.au

www.accc.gov.au

Our ref: AA1000488
Contact officer: Georgia Zele
Contact phone: (02) 9230 9103

9 April 2020

Dear Sir/Madam

Australian Institute of Petroleum application for authorisation – AA1000488 – interested party consultation

On 3 April 2020, the Australian Competition and Consumer Commission (the **ACCC**) granted an interim authorisation for the Applicants to discuss and enter into arrangements to deal with risks in the Fuel Products supply chain arising from the COVID-19 pandemic, subject to the Applicants complying with the conditions specified in the ACCC's interim decision. The Applicants include:

- the Australian Institute of Petroleum (the **AIP**)
- the AIP's four major oil refiner and petroleum marketer members (and their related bodies corporate), being BP Australia Pty Ltd, Caltex Australia Limited, Mobil Oil Australia Pty Ltd and Viva Energy Australia Pty Ltd, and
- any other party proposed by the AIP who in future wishes to engage in the conduct the subject of the application (including importers of Fuel Products, suppliers of Fuel Product storage services and Fuel Product transport services), provided that the ACCC is notified and grants approval.

This letter invites your views on two main issues:

1. Firstly, if you have been directly impacted by the conduct under the interim authorisation granted by the ACCC on 3 April 2020, what is your experience to date?
2. Secondly, do you have any comments on the likely public benefits and detriments, whether the ACCC should authorise the conduct for a further 12 months, and whether any additional conditions should be placed on the authorisation?

We are interested in hearing from you at any time during the ACCC's assessment process in relation to point 1. We request submissions in relation to point 2 by **Friday, 1 May 2020**.

You are welcome to pass this letter on to others who may wish to make submissions.

The application for authorisation

Broadly, the Applicants seek an authorisation for a period of 12 months from the date of the ACCC's final determination, as a temporary measure to deal with risks in the Fuel Products supply chain arising from the COVID-19 pandemic. The Applicants will withdraw the application in the event that the effects of the pandemic subside at an earlier date (refer to **Attachment A** for further details).

On 3 April 2020, the ACCC granted an interim authorisation subject to the AIP complying with three conditions: the AIP to report to the ACCC on material arrangements, the AIP to provide any information requested by the ACCC and the AIP to apply to the ACCC for

approval to add any other parties to the authorisation (refer to **Attachment A** for further details).

The ACCC did not conduct a public consultation process in respect of the request for interim authorisation in light of the unprecedented circumstances impacting the economy and the compelling nature of the public benefits likely to result from the request for interim authorisation. A copy of the ACCC's interim authorisation decision is available on the [authorisations public register](#).

Request for submissions

You are invited to make a submission to the ACCC if you have views on the matters set out above. If you intend to provide a submission please do so by **Friday, 1 May 2020**.

Please email your submission to adjudication@acc.gov.au, with the subject 'AA1000488 – Australian Institute of Petroleum – submission'. We recognise that the COVID-19 situation may be causing disruptions to your normal operations. For this reason, we are taking a flexible approach to receiving feedback on the conduct. Please contact Georgia Zele on the number below if you wish to provide comments by phone.

Please follow the same process if you wish to make a submission beyond 1 May 2020 in relation to your experience with the impact of the conduct.

Your submission will be placed on the ACCC's [authorisations public register](#) unless you make a request (with reasons) for us to exclude part or all of the submission from the public register (refer to [Guidelines for Excluding Information from the Public Register](#) for more information).

Timetable

Below is an indicative timetable, which is subject to change. The most up to date indicative timetable is available on the ACCC's [authorisations public register](#).

2 April 2020	Lodgement of application, including request for interim authorisation
3 April 2020	Interim decision
14 April 2020	Public consultation process begins
1 May 2020	Closing date for submissions on the substantive application for authorisation from interested parties
June 2020	Applicant responds to issues raised in the public consultation process
July 2020	Draft determination
July 2020	Public consultation on draft determination
September 2020	Final determination

This letter has been placed on the ACCC's public register. If you have any questions or wish to discuss any aspect of this matter, please do not hesitate to contact Georgia Zele on (02) 9230 9103.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G Kleiner', with a horizontal line extending to the right.

Gennady Kleiner
Director
Adjudication

ATTACHMENT A

The application for authorisation

The Applicants are seeking an authorisation under the *Competition and Consumer Act 2010* (Cth) for a period of 12 months from the date of the ACCC's final determination. The authorisation would give the Applicants legal protection to continue to discuss, enter into or give effect to, any contract, arrangement or understanding between them (including with customers for wholesale fuel, suppliers of crude oil and finished Fuel Products, suppliers of import and storage facilities, and suppliers of trucking and delivery services) that has the purpose of:

- a) ensuring the security of supply of Fuel Products to Australian businesses and consumers
- b) minimising the risk of Fuel Product shortages by coordinating scheduling and supply chain activities including import, storage, trucking and delivery of Fuel Products (for example, by coordinating the redirection of import vessels to where they are most needed across Australia as opposed to discharging products into pre-determined locations with more than adequate supply positions)
- c) maintaining or increasing the supplies of Fuel Products available to Australian businesses and consumers including in remote and regional areas
- d) facilitating the efficient use of refining capacity and capability in Australia (for example, by ensuring that any refinery shutdowns are efficiently coordinated to ensure an orderly transition to import-only supply while maintaining ongoing supply reliability to Australian businesses and consumers in relevant locations)
- e) facilitating the efficient use of fuel storage capacity in Australia (for example, by coordinating the movement and storage of bulk products based on the knowledge of the availability of under- and over-utilised storage capacity across Australia)

(the **Proposed Conduct**).

The Proposed Conduct explicitly excludes price agreements in relation to Fuel Products. The Proposed Conduct is a temporary measure and it is not compulsory for AIP members to participate.

A full copy of the application for authorisation is available on the ACCC's [authorisations public register](#).

Conditions on interim authorisation

The ACCC granted an interim authorisation subject to the following conditions that seek to ensure there is sufficient transparency over the various agreements reached, strategies implemented and information shared:

- The AIP must notify the ACCC of material arrangements entered into by the Applicants pursuant to the Proposed Conduct not less than 24 hours before the material arrangement is implemented.
- The ACCC may request information or clarification from the AIP in relation to the Proposed Conduct and the AIP will provide such information in a manner that is timely and efficient for AIP and the ACCC.
- The AIP must seek the approval of the ACCC for any party other than AIP's current members to obtain the protection of the interim authorisation.