

Our Ref: RHW.979501

Your Ref: AA1000516

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Joanne Palisi  
Director, Adjudication  
Australian Competition and Consumer Commission

**Email:** [joanne.palisi@acc.gov.au](mailto:joanne.palisi@acc.gov.au)

**cc:** [steven.lee@acc.gov.au](mailto:steven.lee@acc.gov.au)  
[adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

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Dear Joanne

**Australia New Zealand Industrial Gas Association (ANZIGA)  
Application for authorisation AA1000516**

1. We refer to the above authorisation application and to the oral submission made by GFG Alliance (**GFG**) on 24 July 2020 (**GFG Submission**).
2. In its submission, GFG raises the concern that exchanges of information in the course of the conduct to be authorised could have the effect of lessening competition in an overall market for industrial gases, including non-medical oxygen. GFG therefore proposes that, before ANZIGA members can exchange information as proposed, they should be required to obtain a determination from the ACCC or another independent third party as to whether any supply shortfalls might be able to be resolved through bilateral negotiations. Alternatively, GFG suggests the Parties be required to prepare a justification for their view that bilateral negotiation are insufficient and provide this and the information to be shared for review by a third party such as the ACCC.
3. ANZIGA notes that the purpose of the proposed authorisation is to provide a means for the Parties to resolve any short term inability to supply medical oxygen in the event of a spike in demand driven by COVID 19. To facilitate this they may, in certain circumstances, need to exchange information in relation to each Party's available stocks of, anticipated demand for and ability to supply medical oxygen. For the following reasons, this could not have the anti-competitive effect suggested by GFG:
  - (a) Exchanging information in relation to the Parties' then current stocks of oxygen in a particular region will tell the Parties little or nothing about each other's longer term ability to supply industrial oxygen to a large industrial

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customer such as GFG. It would tell the Parties nothing in relation to other Parties ability to supply other industrial gases.

- (b) In the case of GFG, the significance of information about the Parties' stocks of oxygen in a region at any given point of time is further diminished by the fact that ANZIGA understands that [REDACTED]
  - (c) As described in paragraph 3.6 of ANZIGA's submissions, a key reason the Parties may wish to exchange information is to ensure that, in the event of a large increase in demand by hospitals, the Parties can manage the logistics of getting trucks to all necessary locations in the time available. The information relevant to this is unlikely to be relevant to the process of competition for a client like GFG. This is because the supply of medical oxygen to hospitals and similar medical facilities typically involves trucks delivering to multiple sites across a broad geographic area in any given journey. By contrast, the volumes of oxygen used by an industrial client like GFG mean oxygen will more frequently be supplied by dedicated 'point to point' deliveries by a tanker or, [REDACTED] by way of a dedicated pipeline. As a result, any exchange of information that may occur between the Parties pursuant to the proposed authorisation in relation to their short term ability to manage the logistics of supplying medical oxygen to hospitals and similar facilities would disclose little or nothing about the very different logistics involved in supplying large scale industrial oxygen to a customer such as GFG.
  - (d) As noted in paragraph 2.2 of ANZIGA's submissions, demand for medical oxygen accounts for less than 15% of total demand for oxygen. Further, the proposed authorisation would only be invoked in circumstances where demand for medical oxygen does not reflect 'normal' levels. An exchange of information between the Parties in relation to their short term demands for medical oxygen during a COVID-19 related crisis will therefore tell those Parties nothing about their overall longer term demand for industrial oxygen or industrial gases more generally.
4. It follows from the above that any exchange of information permitted by the propose authorisation could not have the effect on competition posited by GFG. As a result, there is no justification to impose the additional conditions proposed by GFG.
5. Moreover, the conditions proposed by GFG could seriously compromise the Parties' ability to respond to a COVID-19 related crisis. The conditions proposed by GFG would require the Parties to prepare submissions for a third party in relation to the need for multilateral negotiation, the available options for bilateral negotiation, the likely outcomes of any bilateral negotiations, and the constraints on those negotiations. Those submissions would, in turn, need to be assessed in detail by a body such as the ACCC. To properly assess these submissions would require a detailed understanding of the Parties' supply chains and dynamics of competition and may take many weeks or months. To suggest that such a process be imposed as a condition before the Parties could respond to a crisis in which there may be a concern that hospitals could run short of oxygen is inappropriate.

6. To the extent that GFG proposes that there be some ability for the actions taken by the Parties to be reviewed after the event, ANZIGA notes that this is already provided for by the conditions set out in paragraph 22 of the ACCC's interim authorisation decision. To the extent that the ACCC might hold any concern that the Parties had engaged in conduct beyond what it had authorised, the ACCC would always have its normal powers to investigate those concerns pursuant to section 155 of the *Competition and Consumer Act*.

We trust that this information is of assistance. If the ACCC would be assisted by any further information, please do not hesitate to contact me.

Yours sincerely



**Richard Westmoreland**  
Partner  
HWL Ebsworth Lawyers

