

**Interim authorisation decision 20 May 2020
(in response to Application for authorisation AA1000488)**

CHARTER - COVID-19 SUPPLY RESPONSE COMMITTEE

27 May 2020

Establishment of COVID-19 Supply Response Committee: The Australian Institute of Petroleum (“AIP”) Board (comprising of the AIP and representatives of its four major oil refiner and petroleum marketer members, being BP Australia Pty Ltd, Caltex Australia Limited, Mobil Oil Australia Pty Ltd and Viva Energy Australia Pty Ltd) hereby establish the COVID-19 Supply Response Committee (“the SRC”). All actions of the SRC are subject to this Charter and the purpose and conditions set out in the interim authorisation decision 20 May 2020 (in response to application for authorisation AA1000488) (the “Authorisation”) granted by the Australian Competition and Consumer Commission (“ACCC”).

Purpose of Committee: The purpose of SRC is to identify possible collaborative actions within the scope of the Authorisation (the “Purpose”).

The Authorisation permits the Participating Entities 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).

However, the Authorisation expressly excludes:

- (f) price agreements in relation to Fuel Products;
- (g) any exchange of commercially or competitively sensitive information relating to marketing or sales activities, which includes (without limitation) information about prices, costs or customers;
- (h) any discussions that occur outside a meeting of the AIP Board or a committee convened by the AIP Board (such as the SRC) (**Permitted Forum**); and
- (i) any contract, arrangement or understanding that is entered into and given effect to outside of a Permitted Forum.

The matters in (f) to (i) above remain subject to the *Competition and Consumer Act 2010 (Act)*.

2.

Collaborative Action: The SRC is to:

- (i) identify any collaborative action to be taken by the Participating Entities; and
- (ii) only identify collaborative actions which are for the Purpose and subject to compliance with the conditions set out in the Authorisation.

The collaborative actions identified by the SRC may proceed to be made operative by the appropriate Participating Entities in order to give effect to the collaborative action. Those Participating Entities are to take the necessary steps to agree the operational terms including through commercial agreements made in the ordinary course of business (including procuring or supplying goods or services on arms-length commercial terms), separate to any meeting of the SRC. For the avoidance of doubt, such operational commercial agreements remain subject to the Act and are not within the scope of the Authorisation. No Participating Entity will be obliged to implement any such collaborative action prior to reaching such agreement on the operational terms.

External Counsel: Any questions regarding the scope of the Authorisation shall be promptly reviewed with external competition law specialists and, if necessary, the ACCC. The AIP may consult with external competition law specialists from time to time to ensure that the SRC is acting at all times within the scope of the Authorisation. In addition, external legal counsel will participate in the first two meetings of the SRC at least, including to review meeting Agendas and Minutes, and then participation will be reviewed as to whether this is needed on an ongoing basis.

Participating Entities: Pursuant to the Authorisation, the Participating Entities are, from time to time:

- (i) the AIP;
- (ii) its 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;
- (iii) 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 as required in Condition 3 of the Authorisation.

Representatives: Each Participating Entity shall appoint one (1) primary representative and (1) alternate representative to serve on the SRC. Each Participating Entity shall promptly give notice in writing to the other Participating Entities of the name and contact details of its representative and alternate to serve on the SRC. Each Participating Entity shall have the right to change its representative at any time by giving notice of such change to the other Participating Entities. Each Participating Entity shall bear its costs associated with its participation on the SRC.

Frequency of meetings: Meetings are to occur on an as-needed basis. The AIP may call a meeting of the SRC, with the support of a second Participating Entity, by giving notice to the Participating Entities at least twenty-four (24) hours in advance of such meeting.

Any Participating Entity may request a meeting of the SRC, with the support of a second participating entity (not including AIP), by giving notice to all the other Participating Entities. Upon receiving such request, AIP shall call such meeting of the SRC for a time not less than twenty-four (24) hours and not more than forty-eight (48) hours after receipt of the request.

The notice periods in this section may be waived by unanimous agreement of the Participating Entities.

3.

The SRC may meet by telephone, audio visual link or by using any other technology consented to by all Participating Entities and provided that all Participating Entities participating in the meeting are able to hear and speak to each other throughout the meeting.

Meeting Chair: AIP shall have the right to appoint the chair of the SRC. The chair's duties concerning meetings of the SRC shall include:

- (i) timely preparation and distribution of the agenda;
- (ii) organisation and conduct of the meeting in a timely manner;
- (iii) maintaining order and focus on meeting priorities;
- (iv) leadership and encouragement of relevant discussion on items;
- (v) ensuring all representative's voices are included and actively supported;
- (vi) ensuring discussions remain within the scope of the Authorisation; and
- (vii) preparation of a written record or minutes of each meeting.

Contents of Meeting Notice: Each notice of a meeting of the SRC as provided by AIP shall contain:

- (i) the time, date and dial-in details for the meeting;
- (ii) an agenda of the matters and proposals to be considered at such meeting; and
- (iii) information about each matter and proposal to be considered at such meeting (including all appropriate supporting information not previously distributed to the Participating Entities) sufficient to enable the Participating Entities to be well informed about such matters and proposals before such meeting.

Standing Agenda: In addition to matters and proposals brought forward at each meeting, each meeting shall include the following standing agenda:

1. *Competition Law Reminder:* The chair (or external legal counsel) shall remind the Participating Entities of the scope of the Authorisation, including its conditions. Each Participating Entity is to acknowledge their understanding of the scope and conditions.
2. *Review of Prior Actions:* The chair will review the actions agreed in the previous meeting, against any timelines for resolution.
3. *Supply and demand review:*
 - a. In the first instance, each Participating Entity may identify if there are current or expected pressure points impacting on the Australian market that are related to the Purpose of the SRC and within the scope of the Authorisation.
 - b. Participating Entities will discuss these pressure points for demand and supply identified by each Participating Entity, including identifying lengths and shorts where required to address the pressure points identified under clause 3a, and then discuss options for resolution.
 - c. The purpose of the discussion will be to identify possible collaborative actions within the scope of the Authorisation. Collaborative actions could include actions with regards to shipping, storage, trucking and delivery of liquid fuel, and at all times remain subject to agreement commercial arrangement between the affected Participating Entities (to be worked separately to the meeting).

4.

4. *Documentation of Agreed Actions*: The chair will document any agreed possible collaborative actions with timelines for resolution of the commercial arrangements, if possible. For avoidance of doubt, any agreed possible collaborative actions do not result in any binding commitment from any Participating Entity.

Meeting Minutes: AIP shall provide each Participating Entity with a copy of the minutes of the SRC meeting within two (2) business days after the end of the meeting. Each Participating Entity shall notify AIP within two (2) business days after receipt of such minutes specifying any objections and corrections to the minutes and identifying any information that is confidential to its business and operations.

Within two (2) business days of receiving any objections, corrections and/or confidentiality claims from each Participating Entity, AIP is to finalise the minutes and prepare and provide a confidential and non-confidential version of the minutes (together with any documents tabled at the meeting) to the ACCC in accordance with Condition 1 of the Authorisation. The non-confidential version of the minutes may be used for the purposes of the ACCC's public consultation or reporting.

The contents of meeting minutes are to comply with Condition 1 of the Authorisation.

Competitively Sensitive Information of a Participating Entity means any information that relates to that Participating Entity's (or its related bodies corporate) marketing and sales activities concerning the following information - prices, customers and target customers, and costs including sales costs with respect to liquid fuel (such as petrol, diesel and jet fuel ("**Fuel Products**")). A member of the SRC **must not** disclose Competitively Sensitive information to another member of the SRC.