

Our Ref: C2000/1420  
Your Ref: M Wilton:1935548  
Contact Officer: David Hatfield  
Contact Phone: 02 6243 1266

13 October 2000

Mr Michael Wilton  
Deacons  
Level 2, 575 Bourke St  
MELBOURNE VIC 3000

by facsimile: 03 9629 1429

Dear Mr Wilton

**PNG Gas – Application for Authorisation  
Authorisation No. A40081  
Interim Authorisation**

I refer to the application dated 6 September 2000 for authorisation of particular contracts, arrangements or understandings in relation to the proposed PNG Gas Project.

You have requested authorisation under s.88(1) of the Trade Practices Act 1974 ('the Act') with respect to contracts, arrangements or understandings relating to the joint marketing of project gas which will occur prior to Financial Close<sup>1</sup> and which may contravene s.45 of the Act. You have also requested interim authorisation of these arrangements under s.91(2) of the Act.

The Australian Competition and Consumer Commission has decided to grant interim authorisation to the Applicants under s.91(2) of the Act in relation to the application A40081 of the following:

All contracts, arrangements or understandings in relation to common terms and conditions (including price) upon which gas to be produced by the Project will be marketed and offered for sale to customers prior to the Financial Close of the Project.

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<sup>1</sup> Financial Close is defined by the Applicants as the time at which key approvals and agreements required for the Project to proceed are obtained and reached. They include conditional gas sale agreements having been entered into, firm financing having been obtained and regulatory approvals necessary for the Project to proceed having been obtained.

This interim authorisation is conditional upon the following persons:

- Chevron Australia Pty Ltd;
- Oil Search Limited, Oil Search (Kutubu) Limited, Oil Search (Gobe) Limited, Oil Search (Tumbudu) Limited;
- Orogen Minerals (Kutubu) Limited, Orogen Minerals (Gobe) Limited, Orogen (Exploration), Inc.;
- Esso Highlands Limited, Ampolex (Png Petroleum), Inc., Ampolex (Highlands) Limited, Merlin Pacific Oil Company Limited;
- Merlin Petroleum Company;
- Petroleum Resources Kutubu Limited, Petroleum Resources Gobe Limited; and
- Lavana Limited and Zan Star Limited,

(‘the Parties’)

signing a confidentiality deed substantially in the form disclosed to the ACCC and containing terms to the effect of those set out below:

- each of the Parties must keep confidential marketing information strictly confidential and will not disclose it to any person other than for the purpose of pursuing the development of the PNG Gas Project and to undertake joint marketing;
- where a Party has an interest in natural gas production or sales in Queensland, other than as a result of its participation in the PNG Gas Project, that Party must take steps to implement and maintain internal procedures as are reasonably practicable to ensure that confidential marketing information does not pass to employees and contractors of the Party engaged in carrying out negotiations in respect of those other Queensland interests. This would not prevent marketing information being shared with directors, officers and affiliates where that is necessary and appropriate for the management of each Party’s business;
- in any event, confidential marketing information relating to the PNG Gas Project may be used only for the purpose of pursuing the development of the PNG Gas Project or undertaking joint marketing; and
- where it is necessary and permitted for marketing information to be disclosed to a third party by a Party, the Party shall:
  - be responsible for that third party’s compliance with the terms of the confidentiality deed;
  - be liable for a breach of the confidentiality deed by the third party; and
  - enforce the confidentiality deed against the third party.

(For these purposes, ‘third party’ includes any director, officer, employee or contractor of a Party or an affiliate.)

This interim authorisation is granted on the basis of a commitment by the Applicants to notify the Commission of any change to or termination of the confidentiality deed and of any breach.

This interim authorisation is also granted on the basis of an assurance by the Applicants that they will not enter into discussions with potential customers without first offering to enter into a confidentiality agreement which will contain terms that are substantially the same as those in the Confidentiality Deed between the Parties described above.

Should the Applicants fail to comply with any of these assurances, the Commission would consider revoking this interim authorisation.

The Commission is granting this Interim Authorisation to enable the Applicants to progress the Project while the Commission assesses whether the benefits of joint marketing of PNG Project gas in the pre-Financial Close period outweigh the anti-competitive detriments. This decision should not be taken as an indication that the Commission will grant final authorisation.

In considering the application for final authorisation, the Commission will focus on whether separate marketing of the gas is feasible, since separate marketing is clearly more competitive than joint marketing. This is likely to involve an examination of both the upstream arrangements in PNG and the nature of the market into which the Project gas is to be sold.

As the Applicants point out in the supporting submission, the standard of proof for final authorisation is higher than for interim. For this reason the Commission is likely to seek additional information in support of the statement that it is not commercially practicable for the Project to proceed without the involvement of Santos and ExxonMobil as full Project Sponsors. The Commission is also likely to focus on the implications of their involvement – for example the voting rights in agreements supporting the Joint Venture.

A copy of this letter will be placed on the Public Register.

Yours sincerely

R F Shogren  
Commissioner