



**Australian
Competition &
Consumer
Commission**

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3 November 2005

Dear Sir or Madam

Application for Authorisation lodged by Woodside Energy Ltd, Benaris International Pty Ltd and CalEnergy Gas (Australia) – joint marketing of LPG

On 28 October 2005 the Australian Competition and Consumer Commission (the ACCC) received an application for authorisation (A90990) from Woodside Energy Ltd ('Woodside'), Benaris International Pty Ltd ('Benaris') and CalEnergy Gas (Australia) Ltd ('CalEnergy') (hereafter referred to as the 'applicants') in relation to a proposed LPG joint marketing arrangement.

In particular, the applicants seek authorisation for three years to:

- negotiate and establish the common terms and conditions (including price) upon which LPG produced in the Otway Gas Project in Victoria will be offered for sale
- jointly market and sell that LPG to a common customer or customers in Victoria.

The applicants have lodged this application because they are concerned that the proposal might breach the provisions of the *Trade Practices Act 1974* (the Act) which prohibit anti-competitive conduct.

The applicants have also requested interim authorisation to enable contract negotiations to commence in mid November for the sale and delivery of LPG in May/June 2006 to December 2006. The ACCC seeks your comments on the request for interim authorisation by **Thursday, 10 November 2005** – comments can be provided by email or fax to the contacts shown at the end of this letter. The request for interim authorisation is discussed further on page 3 of this letter.

Authorisations

The ACCC is the Australian Government agency responsible for administering the Act, a key objective of which is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.

The Act, however, recognises that the public interest may not always be met by the operation of competitive markets. The authorisation process in the Act addresses this eventuality by allowing the ACCC to grant immunity from the application of many of the restrictive trade practices provisions of the Act in certain circumstances. In order to grant authorisation the ACCC must generally be satisfied that the public benefit arising from the particular conduct outweighs any detriment, particularly anticompetitive detriment, arising from the conduct.

In assessing the public benefits and detriments of an authorisation application, the ACCC undertakes a public consultation process seeking comments on the application from interested parties such as yourself. Following an initial consultation process, the ACCC will issue a draft decision for comment. Further information regarding the authorisation process is available from the ACCC's website (www.accc.gov.au).

The application

As noted previously, the applicants have applied for authorisation to negotiate the common terms and conditions (including price) upon which LPG produced in the Otway Gas Project will be offered for sale and to jointly market that LPG to customers in Victoria. The parties seek authorisation for this arrangement for three years.

A copy of the application for authorisation and initial supporting submission are enclosed with this letter.

Request for submissions on the application for authorisation

As a potentially interested party you are invited to make a written submission to the ACCC regarding the likely public benefits and effects on competition of the arrangements for which authorisation is sought.

In support of the application, the applicants claim the proposed joint marketing arrangement will result in a range of public benefits, including:

- allowing Benaris and CalEnergy to enter the Victorian market on a more competitive basis
- the efficient distribution of LPG and lowering of unit costs as a result of Woodside personnel attending to marketing, contract administration and scheduling and logistics for the sale of LPG
- managing the trucking logistics for LPG produced by the Otway LPG Project, to minimise community impacts
- managing compliance with restrictions on the trucking of LPG
- managing compliance with the mitigation measures in the Otway LPG Project Environmental Impact Study
- better management of community issues through, for example, Woodside's proposed quarterly community meetings.

The applicants submit that while the proposed joint marketing arrangement may result in a reduction in the total number of effective competitors and therefore limit the choice of suppliers in the LPG market in Victoria, they consider the real effect on competition will be minimal given the small market shares of Benaris and CalEnergy and the uncompetitive cost structures of these companies if they were forced to market separately.

To assist the ACCC in its consideration of the application it would be helpful to obtain your comments on the applicants' claims. Please note, the ACCC recommends that you consider the copy of the applicants' supporting submission before making a submission.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the ACCC may request that information included in the submission be treated as confidential and not placed on the public register. If confidentiality is granted in respect of information the ACCC may take it into account, even though not publicly available. Guidelines for seeking confidentiality are attached ([Attachment A](#)).

If you wish to lodge a submission, please address your submission to:

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

Submissions can also be lodged by email to: adjudication@acc.gov.au.

Please ensure that your submission reaches the ACCC by **cob Monday, 5 December 2005**.

Call for submissions on request for interim authorisation

Interim authorisation would allow this arrangement to operate as if it had full authorisation while the substantive application is being considered by the ACCC.

The ACCC endeavours to deal with requests for interim authorisation quickly. In making an assessment as to whether it is appropriate to grant interim authorisation, the ACCC is not required to undertake a full assessment of the benefit and anti-competitive detriment likely to arise as a result of the proposed conduct.

The ACCC decides whether to grant interim authorisation on a case by case basis. Should an applicant request interim authorisation, the ACCC will usually consider a range of factors including harm to the applicant and other parties if interim is or is not granted, possible benefit and anti-competitive detriment to the public, the urgency of the matter and whether the market would be able to return to substantially to its pre-interim state if the ACCC should later deny authorisation.

In this instance, the applicants consider that an interim authorisation is necessary to enable them to commence contract negotiations in mid November 2005 for the first sale and delivery of LPG from the Otway LPG Project in May/June 2006 to December 2006. Fresh negotiations will occur in November/December 2006 in respect of the sale of LPG produced and delivered during 2007.

Further details of the applicants' request for interim authorisation are in section 5 of the enclosed supporting submission.

The ACCC would also appreciate your views in relation to the request for interim authorisation. To facilitate this, you may wish to provide your views in writing to the above email address; by faxing your comments to the General Manager, Adjudication, (02) 6243 1211; or by calling the officers responsible for this matter, Jaime Norton or David Hatfield (contact details provided below), by **Thursday, 10 November 2005**.

Should you have any queries or if you wish to discuss any aspect of the application for authorisation please contact Ms Jaime Norton on (03) 9290 1885 or David Hatfield on (02) 6243 1266.

A copy of this letter will be placed on the public register.

Yours sincerely

Scott Gregson
General Manager
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the ACCC assesses applications for authorisation or notification is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the ACCC to maintain a public register in respect of authorisation and notification applications.

Applicants and interested parties can request that a submission, or part of a submission, be excluded from the public register.

The ACCC is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or process;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

However, even if a document does not meet these technical requirements, the ACCC may still grant confidentiality where, in the ACCC's view, it is desirable to do so.

The ACCC also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The ACCC expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the ACCC:

- (a) where the request is that a whole document be excluded, the words "**Restriction of Publication Claimed**" should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words "**Restriction of Publication of Part Claimed**" should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

Applicants, as a matter of course, should remove headers claiming "confidential communication" from all Emails and otherwise, unless they have a particular piece of information that they justify to the ACCC deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

If the ACCC denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the ACCC will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the ACCC will return the original material and destroy all associated copies. The ACCC will not consider this material when reaching its decision.

If the ACCC does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the ACCC pursuant to its powers generally under the *Trade Practices Act*.

List of interested parties

Department of Primary Industry Victoria

BP

Elgas

Origin Energy

Shell

Caltex Australia

VitalGas

Unigas

Woolworths Petrol

Wesfarmers Kleenheat

United Petroleum