

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - subsection 93(1)

EXCLUSIVE DEALING: NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in subsection 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or 9(a), (b), (c) or (d), of that Act in which the person giving notice engages or proposed to engage.

1. (a) Name of person giving notice:

Power and Water Corporation ABN 15 947 352 360 of Level 7, Mitchell Centre, 59 Mitchell Street Darwin NT 0800 ("PWC") being a government owned corporation established pursuant to section 4 of the Power and Water Corporation Act (NT) ("Act").

(b) Short description of business carried on by that person:

PWC is a statutory corporation established pursuant to section 4 of the Power and Water Corporation Act (NT) ("Act") with its major functions including the business of electricity, water, sewerage and related purposes. Its functions relating to electricity are set out in s.14 of the Act and include:

(a) *to generate, acquire, exchange, transport, distribute, market and otherwise supply electricity;*

(b) *to undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any purpose referred to in paragraph (a);*

(c) *to use its expertise and resources to provide consultative, advisory or other services for profit;*

(d) *to develop and turn to account any technology, software or other intellectual property that relates to a function referred to in paragraph (a) or (b); and*

(e) *to manufacture and market any product that relates to a function referred to in paragraph (a), (b) or (d).*

PWC's functions in relation to gas are set out in section 14B of the Act and include buying, selling, processing, storing or transporting:

(a) *gas or products derived from gas; or*

(b) *products associated with gas or the products derived from it.*

In addition to the above functions, it is also a function of PWC to do anything that it determines conducive or incidental to the performance of a function referred to above or anything else that it is authorised to do by any other written law.

- (c) Address in Australia for service of documents on that person:

C/-Jo Daniels, Partner, Clayton Utz, 333 Collins St, Melbourne, 3000

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

The acquisition of natural gas primarily for the generation and supply of electricity and also the sale of natural gas.

- (b) Description of the conduct or proposed conduct:

PWC and Eni Australia B.V. ("Eni") intend to enter into a Gas Sale Agreement ("GSA"). The supply (or offer to supply) and acquisition (or offer of acquisition) of gas pursuant to the GSA, further or alternatively the entry into the GSA, involves conduct of the nature described in sections 47(2) and/or section 47(4) of the *Trade Practices Act 1974* (Cth) ("TPA"), in that:

- (i) The supply of gas under the GSA will represent all of PWC's current forecast demand for gas from 2012 until 2032, and may thus have the effect of precluding other producers from supplying any of PWC's requirements for gas during that period;
- (ii) The Annual Contract Quantity under the GSA (ACQ) and additional gas entitlements (together the Total Contract Quantity (TCQ) exceed Eni's current P1 proved gas reserves, and may thus have the effect of precluding Eni from supplying gas to third parties for the duration of the Agreement if further gas reserves are not proved; and
- (iii) The gas to be delivered and sold to PWC under the GSA will rank in priority to Eni's other customers (if any). Accordingly, if capacity is restricted on any given day, Eni must allocate all available gas to PWC.

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3. (a) Class or classes of persons to which the conduct relates:

Potential wholesale suppliers of gas and potential purchasers of gas for industrial and generation uses in the Northern Territory.

- (b) Number of those persons:

- (i) At present time:

Not ascertainable.

- (ii) Estimated within the next year:

Not ascertainable.

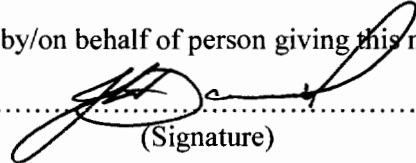
- (c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:

Not applicable.

4. Name and addresses of person authorized by the person giving this notice to provide additional information in relation to this notice:

*Jo Daniels
Partner
Clayton Utz
333 Collins Street
MELBOURNE VIC 3000*

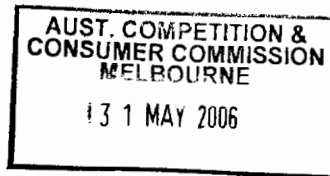
Signed by/on behalf of person giving this notice:


.....
(Signature)

Date *31 May*2006

JOANNE LOUISE DANIELS
(Full name)

.....PARTNER.....
(Description)



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DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), the not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in subsection 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in subsection 47(6) or (7), or paragraph 47(8)(c) or (9)(d), of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93&7A) of the Act ("the prescribed period") unless the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

The Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A or the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

Restriction of Publication of Part Claimed

POWER AND WATER CORPORATION ABN 15 947 352 360

SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION SUPPORTING NOTIFICATION LODGED IN ACCORDANCE WITH S.93(1) OF THE *TRADE PRACTICES ACT 1974*

1. Introduction

This submission supports a notification lodged by Power and Water Corporation ABN 15 947 352 360 ("PWC") with the Australian Competition and Consumer Commission ("Commission") in accordance with section 93 of the *Trade Practices Act 1974* (Cth) ("TPA").

PWC is a statutory corporation established pursuant to section 4 of the *Power and Water Corporation Act* (NT) ("Act") with its major functions including the business of electricity, water, sewerage and related purposes. Its functions relating to electricity are set out in section 14 of the Act and include:

- a) to generate, acquire, exchange, transport, distribute, market and other otherwise supply electricity;
- b) to undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any purpose referred to in paragraph (a);
- c) to use its expertise and resources to provide consultative, advisory or other services for profit;
- d) to develop and turn to account any technology, software or other intellectual property that relates to a function referred to in paragraph (a) or (b); and
- e) to manufacture and market any product that relates to a function referred to in paragraph (a), (b) or (d).

PWC's functions in relation to gas are set out in section 14B of the Act and include buying, selling, processing, storing or transporting:

- a) gas or products derived from gas; or
- b) products associated with gas or the products derived from it.

In addition to the above functions, it is also a function of PWC to do anything that it determines conducive or incidental to the performance of a function referred to above or anything else that it is authorised to do by any other written law.

This submission addresses the issue of the likely effect of the Notified Conduct upon competition, and whether any public benefit or detriment is likely to result from the Notified Conduct. It also provides information on relevant products and markets.

2. The Notified Conduct

PWC and Eni Australia B.V. ("Eni") intend to enter into a Gas Sale Agreement ("GSA"). The supply (or offer to supply) and acquisition (or offer of acquisition) of gas pursuant to the GSA, further or alternatively the entry into the GSA, may comprise conduct of the nature described in sections 47(2) and/or section 47(4) of the *Trade Practices Act 1974* (Cth) ("TPA"), in that:

- a) The supply of gas under the GSA will represent all of PWC's current forecast demand for gas from 2012 until 2032, and may thus have the effect of precluding other producers from supplying any of PWC's requirements for gas during that period;
- b) The Annual Contract Quantity under the GSA (ACQ) and additional gas entitlements (together the Total Contract Quantity (TCQ) exceed Eni's current P1 proved gas reserves, and may thus have the effect of precluding Eni from supplying gas to third parties for the duration of the Agreement if further gas reserves are not proved; and
- c) The gas to be delivered and sold to PWC under the GSA will rank in priority to Eni's other customers (if any). Accordingly, if capacity is restricted on any given day, Eni must allocate all available gas to PWC.

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The above conduct is referred to throughout this submission as the "Notified Conduct". Eni will lodge its own notification, in substantially similar terms to this notification, in respect of the Notified Conduct.

It is, on one view, unnecessary to lodge notifications in respect of the Notified Conduct. That is, whilst the Notified Conduct may fall within the definition of exclusive dealing under sections 47(2) and /or (4) of the TPA, it is not conduct that would contravene the TPA because it would not, in the parties' submission, have the effect or likely effect of substantially lessening competition in any relevant market within the meaning of section 47(10) of the TPA. Further, the Notified Conduct will give rise to substantial benefits to the public and will not give rise to any detriment to the public; alternatively, the public benefits of the Notified Conduct will greatly outweigh any detriment to the public arising from the conduct.

Nonetheless, the parties have elected to lodge notifications as a matter of prudence and to provide further certainty.

In the circumstances, it is submitted that there would be no basis for the Commission to issue a notice pursuant to section 93(3) of the TPA.

Submissions regarding the likely effect of the Notified Conduct, both as regards competition and public benefit/detriment, are set out below.

3. Key terms of GSA

The following will be key terms of the supply and acquisition of gas under the GSA –

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4. Relevant Products and Markets

There are two markets which are relevant to the Notified Conduct:

- a) the supply of natural gas in the Northern Territory ("Territory"); and
- b) the generation and supply of electricity in the Territory.

5. No Likely Substantial Lessening of Competition

It is submitted that the GSA is not likely to have the effect of substantially lessening competition in any relevant market. This proposition may be tested by asking whether or not the nature and structure of competition in any market is likely to be materially less in the future with the GSA than would be the case in the future without the GSA. Of particular importance is the fact that the GSA will not involve any joint marketing, sales or purchasing arrangements.

A number of matters indicate that the GSA will in fact be pro-competitive. In particular:

- a) the GSA will support the introduction of Eni as a major new producer of gas for domestic use in the Territory;
- b) Eni is likely to produce substantially more gas than will be contracted under the GSA, and there is no provision in the GSA that would prevent or discourage Eni from supplying such gas to third parties;
- c) Eni estimates that there is potential for a further [redacted] of recoverable gas to be found in prospects in Eni owned tenements in and around Blacktip, and the GSA will facilitate the further exploration and development of these prospects.
- d) Eni is constructing facilities that will either be readily expandable, or would already accommodate, very substantial supplies of gas to third parties (further details are given below). The development of this infrastructure will provide an incentive for further exploration and development not only by Eni, but also, by third parties. Eni's facilities will be capable of transporting gas from third party producers, and Eni has indicated that it is prepared to accommodate the use of its facilities for that purpose, on reasonable commercial terms;
- e) In respect of the on-shore pipeline connecting Eni's gas processing plant to the Amadeus – Darwin Gas Pipeline, it is likely that there will be some spare capacity in the first 22 years of the GSA. In any event, the capacity of the pipeline could readily be expanded by adding compression or looping the pipeline. While the question of third party access is a matter for the pipeline owner (APT) discussions between PWC and APT have been on the basis that APT may transport third party gas subject to certain priority rights of PWC.
- f) The term of the GSA will be no more than that which is necessary to justify Eni's capital investment in the project (which will be in the order of \$500 million) at prices which are reasonable for PWC. This will in turn allow PWC to provide electricity to the public at reasonable prices. Given that the market for gas in the Territory is a project market (where development of new supply needs to be supported by a major "project" customer), there are no practical alternative less restrictive arrangements that would achieve these objectives;
- g) There is considerable exploration for gas, and prospective gas fields, in and around the Territory. Whilst major new gas production for domestic use is likely to be dependent upon, and require the support of, a major new "project" customer, possible sources of gas to cater for major new demand include (in addition to Blacktip)-
 - (i) the Petrel and Tern fields (estimated reserves of 1000 PJs) and the Rubicon/Prometheus field (estimated reserves of [redacted]). These fields are all possible tie-back candidates for the Blacktip infrastructure).
 - (ii) the Greater Sunrise field (estimated reserves of 8,000 PJs).

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- (iii) the Bayu Undan field (estimated reserves 3,500 PJs).
 - (iv) the proposed PNG Gas Project (at least insofar as it has been announced that Alcan Gove has reached a conditional supply agreement with the PNG Project).
 - (v) the Dingo Gas field (estimated supply of 1.5 PJ's per year).
 - (vi) the Evans Shoal field (estimated reserves of 6,800 PJs).
 - (vii) the Caldita field (estimated reserves 2,000 – 3,000 PJs), and the Abadi field (estimated reserves 5,500 PJs).
 - (viii) the Mereenie and Palm Valley fields of the Amadeus Basin (which, although declining, will continue to have reserves after 2009).
- h) There are also possible future consumers of significant quantities of gas in the Territory in the short to medium term, including the potential Darwin LNG Train 2, and Alcan's alumina refinery operation at Gove. Further, the Territory government has announced that it is developing a strategy to attract downstream gas industries to the Territory, including, potentially, ammonia, methanol and petrochemical (including olefin) production, and gas to liquid fuel plants. The GSA will not impact on the likelihood of any of these projects proceeding.

6. Public Benefits

There are a number of substantial public benefits arising from the Notified Conduct, including the following:

a) Economic Development and Investment in Infrastructure

The Notified Conduct underwrites the field development costs including the cost of locating, drilling, completing and connecting production wells. The GSA requires Eni to construct the off-shore infrastructure which includes a well head platform, a sub-sea dry gas pipeline and an onshore gas processing facility. Eni's capital investment in the project will be in the order of \$500 million.

The GSA requires PWC to procure the construction of the on-shore infrastructure which is to include the construction and operation of the Wadeye to Amadeus Pipeline ("WAP"). The capital investment in this infrastructure will be in the order of \$130 million.

Both the off-shore and the on-shore infrastructure will be designed keeping in mind the possibility of third party gas being transported through the infrastructure.

In respect of the off-shore infrastructure:

- Eni will initially construct facilities consisting of a number of gas wells, a well head platform, a subsea dry gas pipeline and an onshore gas processing facility. The capacity of this system will meet the maximum expected demand under the GSA of 37 PJ per annum with some spare uncontracted capacity (up to an additional 8 PJ/A).
- The capacity of the system will be readily expandable up to around 80 PJ per annum. In particular, Eni's subsea pipeline will have a diameter of 16 to 18 inches (which will allow the transportation of more than twice the volume of gas to be sold under the GSA), and there will be sufficient land at Eni's onshore facility at Yelcheer Beach near Wadeye to allow for expansion of facilities as and when required.

In respect of the on-shore infrastructure:

- The Australian Pipeline Trust ("APT") will build, own and operate the WAP. There is no agreement in place between PWC and APT in respect of the size of the WAP, except to the extent that PWC's tariff must be based upon an efficient size to deliver PWC's demand. However, the pipeline diameter is not expected to be smaller than 12 inches.
- It is likely that there will be some spare capacity in the WAP in the first 22 years of the GSA. In any event, the capacity of the pipeline could readily be expanded by adding compression or looping the pipeline.

b) Security of Public Supply of Electricity

Natural gas is used to generate 98% of electricity in the Territory. As the electricity supplier of last resort in the Territory, it is essential (particularly in light of the very strong demand for LNG in the world energy market) that PWC is able to secure long term supplies of gas to provide it with the capacity to meet the public's demand for electricity. As noted above, the 25 year of the term of the proposed GSA is needed to justify Eni's capital investment in the project, and equally, is for a period which allows PWC to provide electricity to the public at reasonable prices.

c) Ongoing Natural Gas Exploration

The GSA will support further exploration and development by Eni. Additionally, third party access to Eni facilities will be particularly significant given the proximity of the proposed off-shore pipeline to the Tern and Petrel gas fields (also located in the Bonaparte Basin). Such access is likely to encourage exploration and development in the area by producers other than Eni.

d) Downstream Gas Industries

The discovery and development of major new gas supplies is a necessary corollary to the development of downstream gas industries in the Territory. The GSA will, by encouraging such exploration and development, be of substantial assistance in the process of development of such industries.

e) Investment in Remote Communities and Territory

The supply and acquisition of gas under the proposed GSA will involve very significant investment, including in and around Wadeye. This is likely to result in significant economic benefits and employment opportunities, both for the Wadeye community, and the Territory generally.

It is submitted that the above demonstrates very substantial public benefits arising from the Notified Conduct.

7. Public Detriment

It is submitted that there is little or no detriment to the public in respect of supply and acquisition of gas pursuant to the proposed GSA.

8. Balance of Public Benefits and Detriments

It is submitted that any possible detriment arising from the Notified Conduct is comprehensively outweighed by the public benefits identified above. The Notified Conduct will support a major new investment in the Territory, ensure that the Territory's electricity requirements can be met, at reasonable

prices, for an extended period, whilst at the same time encouraging further exploration and development of gas supplies in the Territory (including by third parties) and, potentially, the development of downstream gas industries.

For these reasons and based on the information provided in this submission and the Form G Notification which it supports, it is submitted that there is no basis for the Commission to issue a notice pursuant to section 93(3) of the TPA.