



**Australian
Competition &
Consumer
Commission**

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Our Ref: N70460; C2006/1063
Contact Officer: David Hatfield
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23 June 2006

Attn: Mr Steve Standing
Special Counsel
Freehills
QV 1 Building
250 St George Tce,
Perth WA 6000

Dear Mr Standing,

Re: Blacktip Gas Sales Agreement – Notification

The ACCC is currently finalising a detailed assessment of the Notification lodged by your client, Eni Australia BV (Eni), in relation to the proposed Gas Sales Agreement (GSA) with the Power and Water Corporation (PWC).

In the Form G application, Eni and PWC describe the conduct to be notified in three elements:

- 1) 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;
- 2) 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
- 3) 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.

As you are aware, under s. 93(1) of the Act a party may notify conduct provided it is of a kind described in s. 47 – exclusive dealing.



The ACCC can understand how the third element of the notified conduct can be constructed to fit within conduct of a kind described in s. 47(4). However, the first two elements of the notified conduct, as they are currently described, do not appear to fit within s. 47. There does not appear to be any conditions attached to the supply/acquisition of gas under the GSA.

Could you please articulate how the first two elements of the notified conduct can be considered of a kind described in s. 47 of the Act. The ACCC would appreciate this information by Wednesday 28 June.

We would anticipate being able to provide a formal response to the notifications shortly after receiving your advice in relation to this matter.

A copy of this letter has been placed on the public register.

If you wish to discuss this matter, please contact David Hatfield on (02) 6243 1266.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Scott Gregson', with a large, sweeping flourish extending to the right.

Scott Gregson
General Manager
Adjudication Branch