



**Australian
Competition &
Consumer
Commission**

Our Ref: N40987; C2006/1063
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6 July 2006

Attn: Ms Jo Daniels
Partner
Clayton Utz Lawyers
Level 18
333 Collins Street
Melbourne VIC 3000

Dear Ms Daniels,

Blacktip Gas Sales Agreement – Notification of proposed exclusive dealing conduct by the Power and Water Corporation (N40987), with Eni Australia B.V.

I refer to the above notification lodged by your client, the Power and Water Corporation (PWC) on 31 May 2006, in relation to the proposed Gas Sales Agreement (GSA) with Eni Australia B.V. (Eni). This notification has been placed on the public register. I note that a related notification (N70460) was lodged by Eni on 30 May 2006.

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.

Legal immunity conferred by the notification came into force on 31 May 2006.



On the basis of the information provided, it is not intended that further action be taken in this matter at this stage. Any potential competition concerns arising from the GSA appear to be mitigated by the following factors:

- there are no apparent limitations on third-party gas suppliers or PWC with respect to additional PWC demand (if any), and
- there are no apparent limitations on third-party gas customers (if any) or Eni with respect to gas sourced from Blacktip which exceeds the GSA quantities.

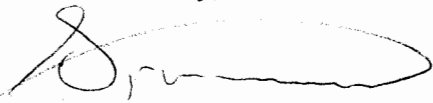
As previously discussed, under s. 93(1) of the *Trade Practices Act 1974* ('the Act'), a party may notify conduct provided it is of a kind described in s. 47 – exclusive dealing. The ACCC can understand how the third element of the notified conduct can be constructed to fit within conduct of a kind described in s. 47(4). While appreciative of your response to our earlier letter on this issue, we remain of the view that it is unlikely that the first two elements of the notified conduct fit within s. 47 as exclusive dealing.

The ACCC considers that the third element of the conduct – the priority clause – is validly notified. To the extent that the first two elements of the notified conduct are not of a kind referred to in s. 47, the current notification will not provide exemption for those elements of the conduct.

As with any notification, please note that the ACCC may act to remove the immunity afforded by the notification at a later stage if it is satisfied that the conduct results, or is likely to result in a net detriment to the public.

A copy of this letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact David Hatfield on (02) 6243 1266.

Yours sincerely,



Scott Gregson
General Manager
Adjudication Branch