Australian
Competition &
Consumer
Commission

PO Box 1199
Dickson ACT 2602

470 Northbourne Ave
Dickson ACT 2602

ph (02) 6243 1111
fax (02) 6243 1199

www.accc.gov.au

Our Ref: C2005/1802
Contact Officer: Nadia Cooke
Contact Phone: (03) 9290 1478

5 January 2006

Ian Maloney
General Manager Commercial
Level 1, 10-18 Cliff Street
Milsons Point NSW 2601

By email: ian.maloney@elgas.com.au

Dear Mr Maloney

Application for authorisation (A90990) lodged by Woodside Energy Ltd, Benaris International Pty Ltd and CalEnergy Gas (Australia) Ltd

Thank you for your letter dated 22 December 2005 and the submission Elgas Ltd (Elgas) provided regarding the above application for authorisation, received by the Australian Competition and Consumer Commission (ACCC) on 10 November 2005.

As you are aware, the ACCC granted interim authorisation to the above applicants to commence contract negotiations and the marketing and sale of LPG to be produced and delivered by the Otway Gas Project in May/June 2006 up until December 2006.

In deciding to grant interim authorisation, the ACCC took account of all of the information provided by the applicants and the submissions received from interested parties, including the submission from Elgas. Similarly, in making a determination in relation to the substantive application for authorisation, the ACCC will take into account all submissions made in relation to the application.

I note Elgas' view that Otway LPG influences both Victorian and South Australian wholesale LPG pricing and therefore your view that the relevant market is broader than a state based market. For the purposes of its consideration of the request for interim authorisation the ACCC did not form a conclusion in relation to the appropriate market definition.

The ACCC will consider the issue of market definition more fully in the draft determination taking into account all information provided including your submission on the issue. Depending on the circumstances, the ACCC may not need to comprehensively define the relevant market(s) as it may be apparent that the conduct satisfies or fails the test for authorisation regardless of the scope of the defined market(s).

I have also attached for your information a supplementary submission from Clayton Utz on behalf of the applicants dated 30 November 2005 responding to your earlier submission. The submission acknowledges the possibility of a broader market and is available (along with all other public submissions) on the ACCC website, <www.accc.gov.au>.

As previously indicated, the ACCC will release a draft determination which will take into account any submissions from the applicants and interested parties and will indicate the ACCC's views on the merits of the application. The ACCC will provide both the applicants and interested parties with the opportunity to provide further submissions following the draft determination before issuing a final decision.

I look forward to receiving any comments you may have regarding the draft determination on this matter once released. 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 Nadia Cooke on (03) 9290 1478 or by email at nadia.cooke@accc.gov.au.

Yours sincerely

Scott Gregson
General Manager
Adjudication Branch

CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin

Clayton Utz
Lawyers
QV.1
250 St George's Terrace
Perth WA 6000
Australia

GPO Box P1214
Perth WA 6844

T +61 8 9426 8000
F +61 8 9481 3095
www.claytonutz.com

30 November 2005

Mr Scott Gregson and Mr David Hatfield
Australian Competition and Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602

Our reference: 60005/80024394

Dear Sirs

Otway Gas Project - Application for Authorisation

Thank you for your email dated 15 November 2005 and your invitation to comment in relation to the submission you have received from Elgas. Our comments are as follows:

1. **Market Definition**

Elgas suggests that there is strong evidence that the market into which the Otway LPG will be sold is a market that includes at least all LPG (propane and butane for traditional and autogas applications) covering Victoria, South Australia, New South Wales, the ACT and much/all of Queensland.

Our clients do not take issue with this contention.

Our clients are aware that some LPG sold by Victorian based producers is sold into South Australia, New South Wales, the ACT and parts of Queensland. It is certainly possible that some of the Otway LPG could be sold into South Australia.

Our clients are also aware that prior to the Moomba accident some 2 years ago, Santos (the major producer of LPG in South Australia) sold LPG into Victoria. It is quite possible that in the near future Santos could again compete to supply LPG into Victoria.

Our clients understand that Santos produces approximately 330,000 tonnes per annum of LPG at its Port Bonython Plant in South Australia. Some of that LPG is exported, some is sold into South Australia and some may, in the future, be sold into Victoria.

Should the Commission accept this wider view of the LPG market, the quantity of LPG represented by CalEnergy and Benaris' share of the Otway LPG becomes an even smaller percentage of the LPG available to be sold into this market. For the purposes of the authorisation application, it should be accepted that the joint marketing arrangement will account for a miniscule section of the market, having no effect on competition.

Our clients take issue with Elgas' statement that the LPG market is dominated by LPG producers. It could hardly be said that Woodside, CalEnergy or Benaris dominate the LPG market.

On the other hand, producers such as our clients not only compete to sell to large customers such as Elgas, they will also compete with Elgas to sell LPG to other large wholesalers. Competition for these sales will be best enhanced by allowing small producers such as CalEnergy and Benaris to aggregate their volumes into larger, more marketable parcels.

2. **Barriers to Entry**

Our clients agree that the barriers to entry to LPG production on a stand alone basis are high. However, there is no suggestion in the Elgas submission, nor could there be, that the joint marketing arrangement will increase those barriers.

3. **LPG Pricing and Over Supply**

Our clients do not necessarily agree that the export parity price from Esso/BHP adjusted for transportation costs is the predominant determinant of prices in the Otway Region. This statement from Elgas assumes that there is a domestic price for LPG at which Esso/BHP would switch from exporting to selling domestically. However, this ignores other reasons why Esso/BHP would wish to export rather than selling domestically, such as a desire on their part to remain connected to growing LPG markets overseas and the reducing demand for LPG in the eastern states.

In recent years there has been a considerable increase in the Saudi CP. LPG prices in Australia are determined by the Saudi CP plus a premium. As the Saudi CP has increased in the past 2 years, there has been downward pressure on the premium. The premium accounts for a small percentage of the overall price of the LPG and the negotiations surrounding the price of LPG centre upon the amount of the premium.

Given the small quantity of LPG available for sale from Benaris or CalEnergy, and the small effect the premium has on the overall price of LPG, our clients consider it unlikely that refusal of the authorisation application would "create the potential for the south eastern Australian wholesale price to experience downward competitive pressure below the current floor" as suggested by Elgas. With respect, the suggestion that separate marketing would potentially create downward pressure on price is more of a hope than based on sound evidence.

Further, even if a large wholesaler of LPG such as Elgas was able to negotiate a better deal from CalEnergy or Benaris marketing separately, there is no evidence that this better deal would result in cheaper LPG being supplied to retail customers. It is quite possible that all that would be achieved is an improvement in Elgas' margins.

We note Elgas' agreement that the Victorian market is "over supplied" in terms of the total LPG production, with the balance being exported.

4. **Difficulty for Benaris and CalEnergy to market separately**

In or about 2003 Cal Energy signed a Supply Contract with Elgas. However, CalEnergy considers the market for LPG has changed considerably since that time.

In 2003, Yolla was the first Victorian based LPG producer to enter the market for a considerable period of time. Buyers were anxious to present themselves to the Yolla Joint Venturers and negotiating a supply contract was relatively straight forward. Since that time, CalEnergy considers the over supply situation has worsened to such a degree that the effective marketing of its Otway Gas will be of considerable importance. CalEnergy sees today's market as being one in which it is necessary for the vendor to present itself to the purchasers, and quite different to the situation which existed in 2003.

Benaris has only one producing development in Australia and staffs its organisation accordingly with minimum numbers. If Benaris were to separately market its LPG it would need to employ a marketing and logistics team similar in size and cost to Woodside. Benaris has no other work for these individuals and would have to amortise the marketing and logistics cost over a volume very much smaller than Woodside. By jointly marketing LPG with Woodside and CalEnergy, the group will achieve low unit marketing and logistics costs that increase the ability to offer attractive pricing to buyers.

Benaris plans to invest income from the Otway Joint Venture into new exploration activities to grow their activities within Australia. In the event Benaris' LPG volumes increase through new developments in the future there may come a time when it is more attractive for Benaris to separately market LPG.

5. **Public Benefits**

The Elgas submission does not take issue with the benefits of joint marketing identified at para 5.4 of the submission in support of the application. Whilst the LPG producers are highly experienced in logistics, there is no dispute that the joint marketing arrangement will result in the savings and administrative and logistical costs to Benaris and CalEnergy identified in the submission. Elgas has also not disputed that the joint marketing arrangement will assist the project in terms of minimising the community impacts caused by trucking, managing compliance with the restrictions on the trucking of LPG, and managing parts of the mitigation measures in the Project Environmental Impact Study as identified in sec. 5.4 of the submission.

Finally, we have sought to comment on only what we saw as the more important aspects of the Elgas submission. Our failure to deal with each and every contention in that submission should not be interpreted as our clients agreeing to such contentions.

We look forward to the Commission's decision in respect of the authorisation application.

Yours faithfully

Paul Fitzpatrick, Partner
+61 8 9426 8416
pfitzpatrick@claytonutz.com