# 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

21 April 2009

## By Email

Gavin Jones and John Rouw
Adjudication
Australian Competition and Consumer Commission
470 Northbourne Ave
Dickson ACT 2602

Our reference: 60005/60076/80086018

Dear Gavin and John

**Otway Gas Project - Application for Authorisation**

We refer to our letter and Application for Authorisation dated 16 April 2006 and to our subsequent telephone conversations. As discussed earlier today, we confirm the following in relation to the application for interim and final authorisation.

**Application for interim authorisation**

The applicants seek interim authorisation in relation to giving effect to an existing agreement between them to jointly market LPG to their existing customer, Elgas (**LPG Marketing Agreement**). The supply arrangements between the applicants and Elgas were marketed in October-December 2008 under the authority of Authorisation A90990, which expired on 20 April 2009. The applicants seek interim authorisation to give effect to that agreement to allow continuity of LPG deliveries to Elgas pending investigation of the application for final authorisation.

As outlined in the submission lodged with the application for authorisation, the sales process for the sale of LPG in Victoria is:

- Contracts for the sale of LPG are negotiated each year from October to December;
- Contracts are typically for a 12 month term from 1 January to 31 December; and
- Contracts negotiated during October to December of one year commence on 1 January the following year.

If the application for final authorisation has not been determined by October 2009, the applicants also seek interim authorisation in relation to an agreement between them, and to give effect to such agreement, to jointly negotiate terms and conditions (including price) and market the sale of LPG to existing and potential customers during the period October to December 2009 for 12 month contracts commencing on 1 January 2010.

**Application for final authorisation**

The applicants seek final authorisation for 3 years to any agreement between them (including the existing agreement relating to Elgas), and to give effect to any such agreement, to:

- Negotiate and establish common terms and conditions (including price) upon which LPG produced by the Project for and on behalf of each of the applicants will be offered for sale;
- Jointly market and sell that LPG to a common customer or customers in Victoria.

If you have any further questions in relation to the Application or other documents lodged with the Application, please contact Paul Fitzpatrick or Sarah Russell on the telephone numbers or email addresses listed below.

Yours faithfully

Clayton Utz

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

**Contact: Sarah Russell, Senior Associate**
+61 8 9426 8473
srussell@claytonutz.com

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

ACCC
09 APR 2009
PERTH

16 April 2009

**By Email**

Susan Philp
Australian Competition and Consumer Commission
470 Northbourne Ave
Dickson ACT 2602

ACCC
16 APR 2009
PERTH

Our reference: 60005/60076/80086018

Dear Susan

**Otway Gas Project - Application for Authorisation**

We refer to our telephone conversation of 9 April 2009.

As discussed, we attach an Application for Authorisation on behalf of Woodside Energy Ltd and Benaris International Pty Ltd (**Applicants**). Enclosed with the Application are:

- a Submission in support of the Application;
- the LPG Marketing Agreement between the Applicants (**LPG Marketing Agreement**) furnished in accordance with Form B, direction 4;
- a cheque in the amount of $7,500.00 for the lodgement fee.

The Applicants seek confidentiality in respect of the LPG Marketing Agreement.

We are arranging for the original Application, Submission, LPG Marketing Agreement and the cheque to be lodged with the Commission's office in Perth today.

If you have any questions in relation to the Application or other documents lodged with the Application, please contact Paul Fitzpatrick or Sarah Russell on the telephone numbers or email addresses listed below.

Yours faithfully

DOC

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

**Contact: Sarah Russell, Senior Associate**
+61 8 9426 8473
srussell@claytonutz.com

Enclosures

- Form B Agreements affecting competition: application for authorisation (regulation 70)

# Form B

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 88 (1)*

## AGREEMENTS AFFECTING COMPETITION: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (1) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to make a contact or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

  *(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1. Applicant**

(a) Name of Applicants:

A91135 Woodside Energy Ltd and Benaris International Pty Ltd.

(b) Short description of business carried on by applicant:
Development, production, marketing and sale of LPG.

(c) Address in Australia for service of documents on the applicant:

C/- Paul Fitzpatrick, Clayton Utz, Level 27, QV1 Building, 250 St Georges Terrace
Perth WA 6000

**2. Contract, arrangement or understanding**

(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

All contracts, arrangements or understandings relating to the common terms and conditions (including price) upon which LPG produced by the Otway Gas Project for and on behalf of each of Woodside Energy Ltd and Benaris International Pty Ltd will be offered for sale and to jointly market and sell that LPG to a common customer or customers.

(b) Description of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition:

See "LPG Marketing Agreement between Woodside Energy Ltd (Representative) and Benaris International Pty Ltd (Seller)"

(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Liquefied Petroleum Gas or LPG, which is the generic name used to describe liquefied propane or butane gases or a mixture of both.

(d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Interim authorisation from 20 April 2009 until mid-October 2009 and authorisation for a period of 3 years from mid-October 2009.

## 3. Parties to the proposed arrangement

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Woodside Energy Ltd , 240 St Georges Terrace, Perth WA 6000

Benaris International Pty Ltd, Unit 23, 25 Claremont Street, South Yarra VIC 3141

## 4. Public benefit claims

(a) Arguments in support of authorisation:

See "Submission to the Australian Competition and Consumer Commission in Support of an Application for Authorisation - Otway Project"

(b) Facts and evidence relied upon in support of these claims:

See "Submission to the Australian Competition and Consumer Commission in Support of an Application for Authorisation - Otway Project"

## 5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

LPG supplied mainly to Victorian and South Australian markets. For further detail see "Submission to the Australian Competition and Consumer Commission in Support of an Application for Authorisation - Otway Project"

## 6. Public detriments

(a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

See "Submission to the Australian Competition and Consumer Commission in Support of an Application for Authorisation - Otway Project"

(b) Facts and evidence relevant to these detriments:

See "Submission to the Australian Competition and Consumer Commission in Support of an Application for Authorisation - Otway Project"

**7. Contract, arrangements or understandings in similar terms**

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

(a) Is this application to be so expressed?

No

(b) If so, the following information is to be furnished:

(i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

(iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

**8. Joint Ventures**

(a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

Yes

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

No

(c) If so, by whom or on whose behalf are those other applications being made?

**9. Further information**

(a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Paul Fitzpatrick, Clayton Utz, Level 27, QV1 Building, 250 St Georges Terrace Perth WA 6000

Dated: 16 April 2009

Signed on behalf of the applicant

Clayton Utz

..................................................................................

Paul Fitzpatrick

Partner, Clayton Utz

# SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

## IN SUPPORT OF

## AN APPLICATION FOR AUTHORISATION

## OTWAY PROJECT

## Table of contents

# 1. Executive Summary

The Otway Gas Project ("**Project**") is an unincorporated joint venture between Woodside Energy Ltd ("**Woodside**"), Origin Energy Resources Ltd ("**Origin**"), Benaris International Pty Ltd ("**Benaris**") and CalEnergy Gas (Australia) Ltd ("**CalEnergy**") (collectively, the "**Participants**"). The Project is operated by Woodside.

The Project involves the development of the Thylacine and Geographe gas fields located offshore south of Victoria. Thylacine and Geographe are expected to supply 18.7Gm3 of dry gas and 1.4 GL of Condensate (equivalent to 638 PJ of sales gas and 1,200 kt of LPG) to the South East Australian market. The Project is based on a remotely operated platform, offshore and onshore pipelines and an onshore gas plant about 6km north of Port Campbell, approximately 200 km south-west of Melbourne.

The Applicants (Woodside and Benaris) who are each a participant in the Project, seek authorisation for 3 years to:

- negotiate and establish the common terms and conditions (including price) upon which LPG produced by the Project for and on behalf of each of Woodside and Benaris will be offered for sale;
- jointly market and sell that LPG to a common customer or customers in Victoria,

("**Joint Marketing**").

The Applicants make application for final authorisation under section 88(1) of the *Trade Practices Act 1974* ("**Act**") and interim authorisation under section 91(2) of the Act. This submission should be treated as an initial submission in relation to the application for final authorisation and a complete submission in relation to the application for interim authorisation.

By way of background information, the applicants wish to draw to the attention of the ACCC the existing authorisation for Otway LPG Joint Marketing issued on 29 March 2006 and valid through to 20 April 2009.

The Project commenced commissioning and pre-start-up trials during 2007-through to Q2-2008 and first commercial production and delivery of hydrocarbons by the Project commenced during early 2008 with the first LPG supply occurring in May 2008. The Applicants are suppliers to the LPG market in Victoria and South Australia. Their understanding of the sales process for that market is that:

- contracts for the sale of LPG in Victoria are negotiated each year in October-December;
- contracts are typically for a 12 month term from 1 January to 31 December; and
- contracts negotiated in October-December of a given year will commence in 1 January the following year.

In the circumstances, it will be necessary to commence in about mid-October 2009 the negotiating of common terms and conditions (including price) and the marketing and sale of LPG to be produced and delivered by the Project in January 2010 up to December 2010. Fresh negotiations will occur in October-December 2010 in respect of the sale of the Applicants' shares of the LPG to be produced and delivered by the Project during the calendar year 2011.

Because of the small volumes of LPG which Benaris has available to sell, the Applicants do not believe that the proposed Joint Marketing would have any effect on competition. There are a number of public benefits and operational efficiencies which will accrue if authorisation is granted.

Interim authorisation from 20 April 2009 would only impact upon existing supply arrangements to Elgas which were marketed in October-December 2008 under the authority of the existing ACCC approval. Although the Applicants do not consider that Joint Marketing would have any effect on competition and is arguably within the joint venture exception in section 76D(1) of the Act, they do not wish to be exposed to the risk of contravention of section 45 or other provisions of the Act (given the deeming provisions in section 45A) and so seek interim authorisation to allow continuity of LPG deliveries to the existing customer (Elgas) pending investigation of the application for final authorisation.

## 2. The Project

### 2.1 The Participants' interests in the Project

The Participants' respective interests in the Project are:

- Woodside (51.55%);
- Origin (30.75%);
- Benaris (12.7%); and
- CalEnergy (5%).

Woodside is the operator of the Project for the joint venture. It is based in Perth, Western Australia and has interests in Australia (North West Shelf, Timor Sea and the Otway Basin), Korea, North Africa, the Gulf of Mexico and Brazil. Woodside operates the North West Shelf Venture at Karratha in Western Australia, supplying most of Western Australia's domestic gas requirements and exporting liquefied natural gas. Participation in the Otway Project in Victoria provides Woodside with the opportunity also to supply gas to Australians in Victoria and South Australia.

Origin has its headquarters in Sydney, New South Wales. It operates across the energy supply chain, supplying gas and electricity to over 2 million customers. Origin has large interests in natural gas and oil exploration and production, power generation, energy retailing and trading and asset management services.

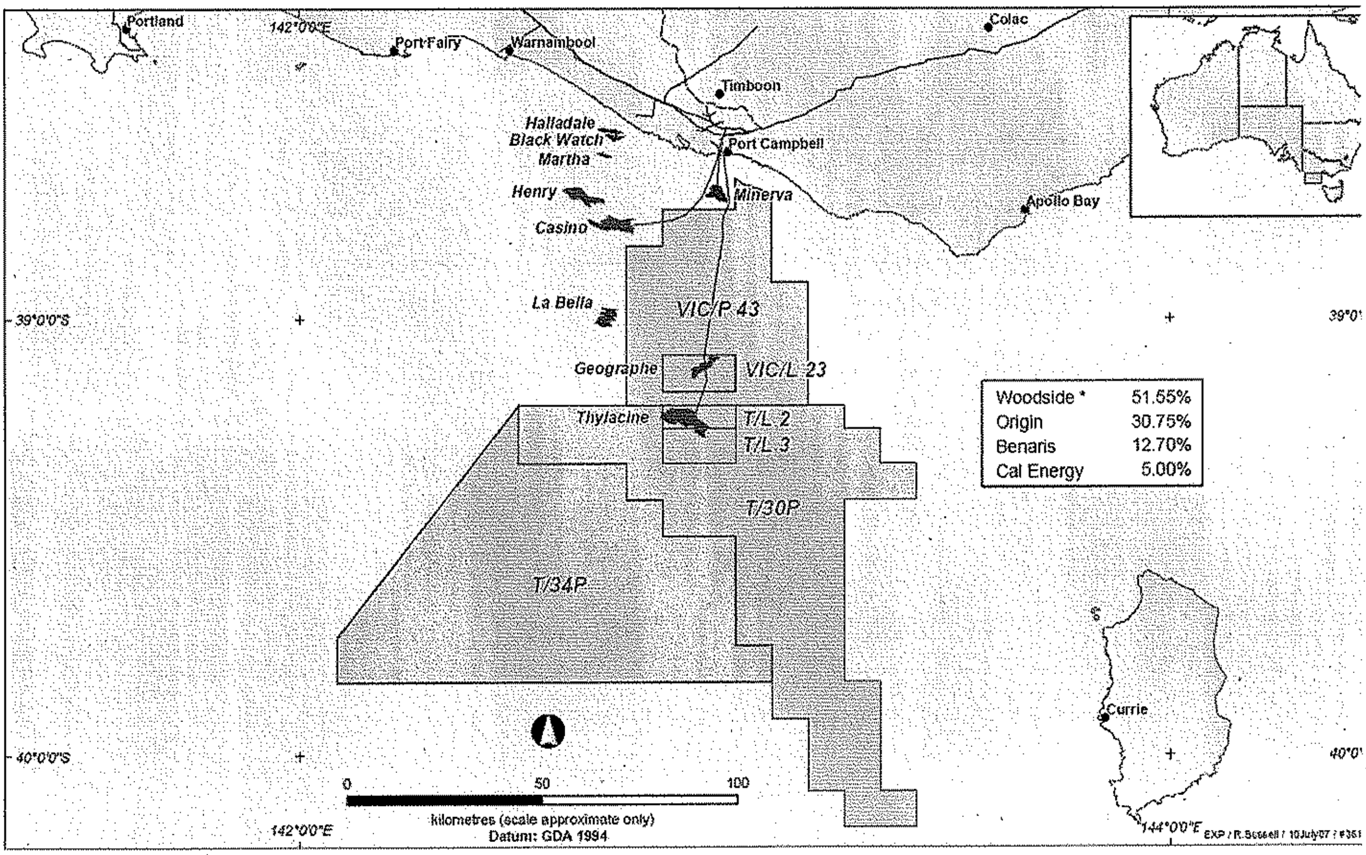
Benaris is an affiliate of Pexco NV, which was incorporated in the Netherlands Antilles. Its principal activity is oil and gas exploration. In addition to the production licences containing the Geographe and Thylacine fields, the group holds exploration interests in 4 permits in Australia, 5 PSCs in Indonesia, 1 PSC (covering 3 blocks) in Ethiopia and 1 PSC in Malaysia.

CalEnergy is a wholly owned subsidiary of MidAmerican Energy Holdings Co, a United States of America based company with global interests in energy services and infrastructure. CalEnergy was established to provide a growth platform for interests in Australia. The current asset base includes interest in the Otway Project, Bass Basin, Yolla project and the Perth Basin.

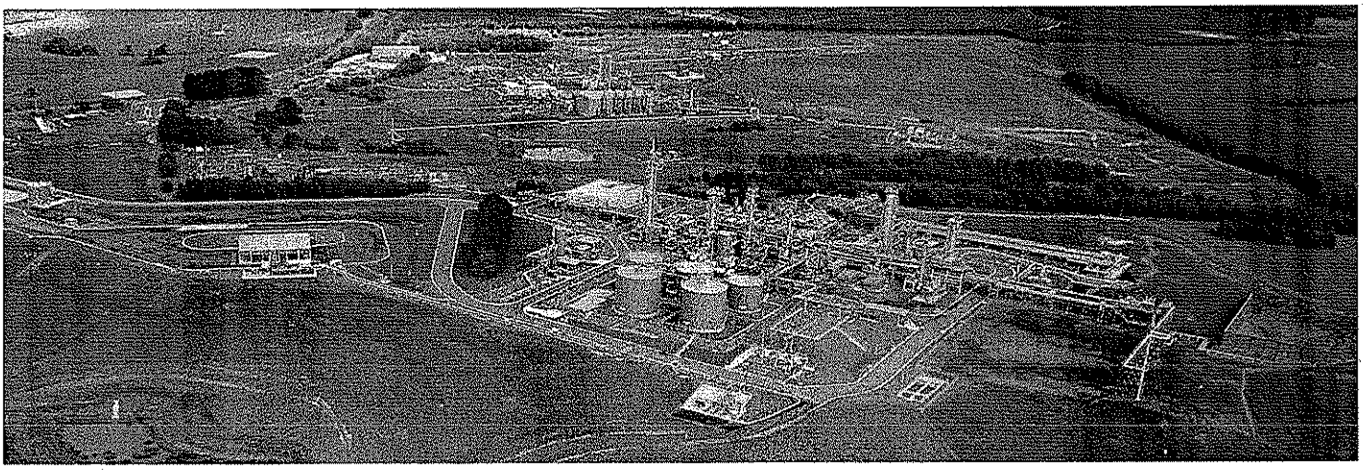
## 2.2 Description of the Project

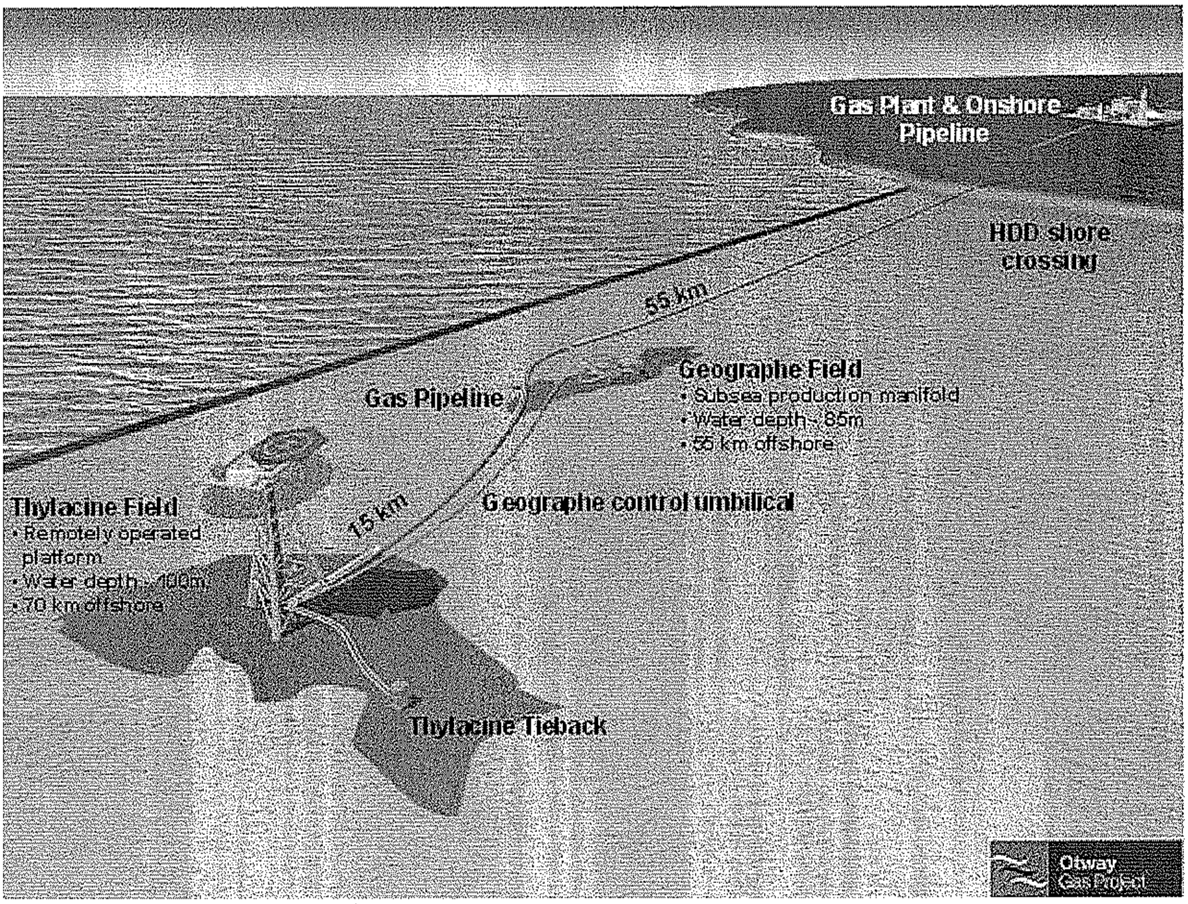
The Project is based on the development of the Thylacine and Geographe gas fields off Victoria. Thylacine is about 70 km south of Port Campbell. Geographe is about 55 km south of Port Campbell. Thylacine and Geographe fields were discovered in 2001.

## Location Map



## Otway Gas Plant and Offshore Facility Design



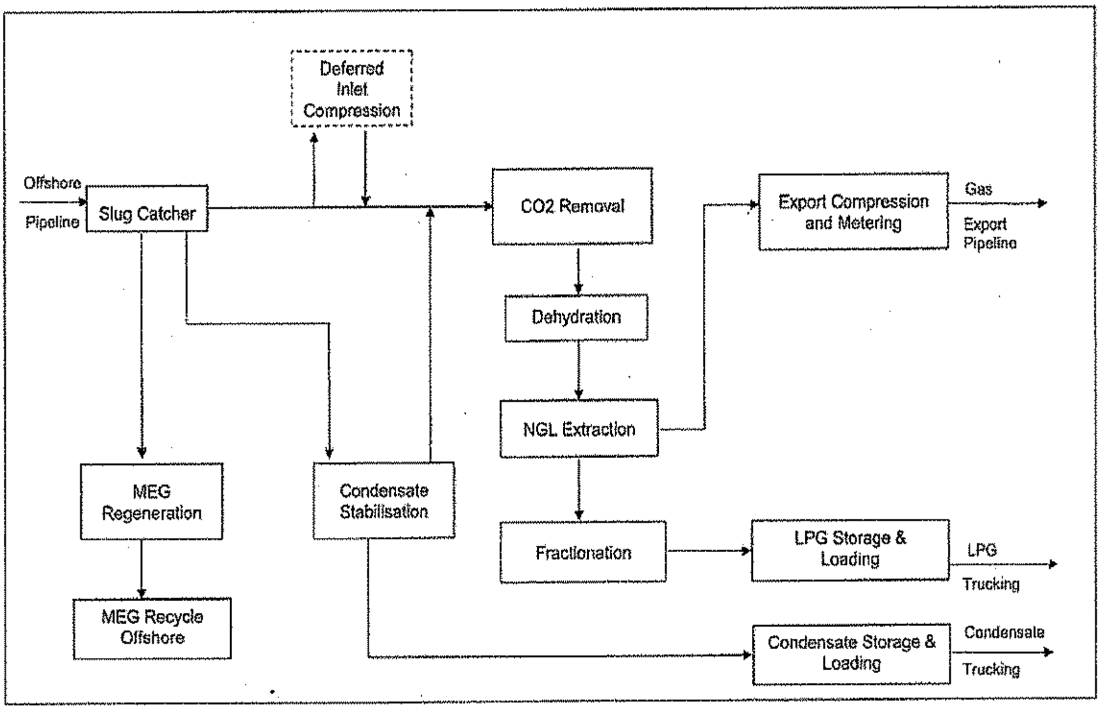


The Participants hold production licence VIC/L23 for the Geographe gas field and production licences TL2 and TL3 for the Thylacine gas field. These are located in Commonwealth waters and are administered by the respective State Authorities (Victoria and Tasmania) as the Designated Authorities under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth).

Thylacine and Geographe reserves are estimated (proved plus probable) at 681 bcf of dry gas and 8.8 MMbbls of Condensate. The Geographe field will be connected to the main offshore pipeline when sufficient ullage is forecast to be available in the offshore pipeline and Otway gas plant, current expectation is that this will be sometime after completion of a compression upgrade.

The production process is continuous. It involves the reservoir stream (a mixture of gas, LPG and condensate plus inert waste gasses) entering the onshore plant through an offshore pipeline. At the onshore plant the condensate is extracted and the remaining gas stream is processed through a dehydrator and then a turbo expander and fractionation unit. The turbo expander and fractionation unit separates propane, butane and inerts from the gas stream.

**Onshore Plant Simplified Process Block Diagram**




It is expected that the Project will produce approximately 70 to 75 kt of LPG in 2009 but is capable of producing up to 95 kt annually depending on natural gas rates. The Project plans to produce 59% of its LPG as Autogas (propane/butane mix) and 41% as Propane in 2009.

# 3. LPG Market in Victoria and South Australia

## 3.1 Overview

Liquefied Petroleum Gas or LPG is the generic name used to describe liquefied propane or butane gases or a mixture of both (LPG Australia 2008, Office of Energy 2007). It is produced either from natural gas fields or from refining of crude oil. Most LPG production facilities separate propane and butane and then offer them for sale as separate propane, separate butane or a mixture of propane and butane. This gives the producer flexibility in the production process and also in the marketing of the products.

LPG is used for three purposes in Australia:

- In a mixture of propane and butane as a transport fuel – automotive LPG or autogas
- As a fuel for industrial, commercial and household use (propane) – traditional market
- As a feedstock for the petrochemical industry (estimated 270 kt consumed Australia wide in 2007 (LPG Australia 2008))

Victoria has the largest LPG market in Australia. It is expected that in 2009 there will be approximately 1200 kt (kilo tonnes) of LPG produced by suppliers to the LPG market in Victoria. The Applicants understand that approximately 570 kt will be required for the autogas market and 170 kt for the traditional market. This leaves some 460 kt of surplus production available for export to destinations such as China, Japan, some Pacific Island nations, New South Wales and South Australia.

The South Australian market also has a surplus of LPG but this is forecast to diminish until the state becomes a net importer in 2011 (LPG Australia 2008). In 2009 the South Australian market is anticipated to be 214 kt production, 119 kt of autogas demand, 74 kt of traditional demand and a net surplus of 21 kt.

From commencement of initial LPG production in 2008 the LPG production of the Applicants was sold into the Victorian market but, due in part to the plant's location and upsets in the South Australian market, the 2008 customer (Elgas) at times transported LPG into the South Australian market.

The LPG price in Victoria is based on the Saudi Contract Price ("**CP**") plus a premium, representing a notional Import Parity Price.

## 3.2 Traditional market sector

The Traditional market sector is mainly propane and can be sub-divided into residential, commercial and industrial applications. Residential applications include cooking and heating (including water heating). Propane supplied for residential application is typically supplied in 45 kg cylinders. Commercial applications include cooking and heating in small restaurants, bakeries and motels and also farm applications such as dairies, crop drying and weed eradication. Propane supplied for commercial application is typically supplied by 45 kg or 190 kg cylinders. In industrial applications propane is used in large quantities such as for power generation, aerosols, drying and heating.

Generally, Traditional propane consumption tends to be seasonal, with consumption higher in winter. Consumption is mainly located in regional or country areas that do not have access to natural gas. The domestic customer base in Victoria is approximately 250,000 customers, with the average consumption being approximately five to six 45 kg cylinders per customer per year. There are approximately 13,000 commercial and industrial customers who consume approximately 207 kta or an average of 15 t per customer per year. This data is based on information in the 2000 ALPGA Supply Demand study (LPG Australia 2000) and the Victorian Essential Services Commission on The Supply of Bottled LPG in Victoria June 2002 (Victoria 2002).

LPGs in this market compete against alternatives such as wood, solar, reticulated natural gas and electricity (LPG Australia 2008) and, as such, is influenced heavily by government policy and regulation. This market is forecast to grow at approximately 1% per year.

## 3.3 Autogas market sector

The Autogas market sector in Victoria is mainly a 50/50 propane and butane mix and in 2007 autogas represented two thirds of LPG consumption in Australia. Autogas is used mainly in high consumption vehicles such as taxis, small delivery vehicles and private cars because it is generally less expensive than petrol. The majority of Autogas users in the market sector are in Melbourne and some of the larger regional centres.

One of the main historical cost benefits for Autogas is that LPG currently does not have any Commonwealth excise imposed on it. Excise on Autogas is proposed by the Commonwealth to commence in July 2011 and be phased in over 5 years. Demand in this segment is sensitive to the price differential between autogas and unleaded petrol (LPG Australia 2008), the market is forecast to grow at approximately 2% annually.

## 3.4 Market participants

The LPG market in Victoria is made up of supply from Bass Strait, Yolla, Otway and refineries as follows (the data is based on the ESC Report and the ALPGA Study):

| Supplier | Gas Supplied | Percentage of total market (avail for sale) |
|---|---|---|
| Bass Strait | 1115 kt produced<br><br>(approx 415 kt exported)<br><br>Approx 700 kt avail for sale by BHP and Exxon | (75% of total production)<br><br><br><br>75% |
| - BHP | - approx 350 kt avail for sale | (approx 37.5% of Bass Strait supply) |
| - Exxon | - approx 350 kt avail for sale | (approx 37.5% of Bass Strait supply) |
| Refineries:<br><br>Altona (ExxonMobil): 160 kt<br><br>Lara (Shell): 115 kt | 275 kt<br><br>- ExxonMobil plans to take 145 kt in to their affiliate petrochemical plant Qenos from 2006. Therefore, 130 kt available for sale. | 14% |
| Otway JV | 75 kt in 2009 | 5% |

| | | |
|---|---|---|
| Yolla JV | 80 kt annually | 5% |
| **Totals** | **1495 kt produced**<br>**935 kt avail for sale** | **100%** |

## 3.5 Customers of the market

The main customers of the LPG producers who supply Victoria are either retail distributors or large scale customers that distribute the LPG themselves.

Customers in the Traditional market sector are (LPG Australia 2000, Victoria 2002):

| Traditional market sector customer | Tonnes | % |
|---|---|---|
| Elgas | 105,000 | 50% |
| Wesfarmers Kleenheat | 30,000 | 15% |
| Origin | 16,000 | 8% |
| Others (Supagas, Treston Gas, and Power Gas) | 20,000 | 10% |
| To South Australia and New South Wales | 35,000 | 17% |
| **Totals** | **206,000** | **100%** |

The Traditional market sector is dominated by three customers: Elgas, Wesfarmers Kleenheat and Origin who account as purchasers for approximately 73% of the Traditional market.

Customers in the Autogas market sector are (LPG Australia 2000, Victoria 2002):

| Autogas market sector customer | Tonnes | % |
|---|---|---|
| ExxonMobil | 176,000 | 24% |
| Shell | 126,000 | 17% |
| Unigas (Elgas / Wesfarmers Kleenheat) | 116,000 | 16% |
| Vitalgas (Origin/Caltex) | 77,000 | 11% |
| BP | 48,000 | 7% |
| Woolworths | 90,000 | 12% |
| Others (including Independent Fuels, 7 Eleven and Milemaker) | 52,000 | 7% |
| To South Australia | 44,000 | 6% |
| **Totals** | **729,000** | **100%** |

## 3.6 LPG pricing

LPG is an internationally traded commodity. In Australia virtually all LPG sold at the wholesale level is priced on the basis of the monthly Saudi CP for propane or butane plus a premium.

The CP is the price for LPG delivered FOB at Ras Tanura, Saudi Arabia. Producers in Australia add to the CP a premium to reflect the notional cost of transporting LPG from Saudi Arabia to Australia and the cost of an import terminal. The premium is known as the "Import Parity Price" ("**IPP**").

The buyer is generally responsible for transporting LPG and most wholesale LPG is sold on a "Free Carriage" ("**FCA**") or "Free on Board" ("**FOB**") basis at the terminal. The CP and the premium are in US dollars. For domestic LPG, the CP and premium are usually converted to Australian dollars by using the average US dollar / Australian dollar exchange rate ("**ER**") over the previous month. In addition, a terminal fee is usually charged. The pricing formula is:

**Domestic LPG Price = (CP + premium) / ER + terminal fee**

All domestic LPG is currently sold on this basis, the only difference between producers is the premium price and terminal fee.

## 3.7 Marketing of LPG for sale in the market in Victoria

The Applicants understanding of the sales process for the LPG market in Victoria, consistent with their own (brief) experience, is that:

- contracts for the sale of LPG are negotiated each year in November/December;
- contracts are typically 12 month contracts; and
- the contracts negotiated in October-December of a given year will commence in 1 January of the following year.

In the circumstances, it will be necessary to commence in about mid-October 2009 the negotiating of common terms and conditions (including price) and the marketing and sale of LPG to be produced and delivered by the Project in 1 January 2010 up to 31 December 2010. Fresh negotiations will occur in October-December 2010 in respect of the sale of the Applicants' shares of the LPG to be produced and delivered by the Project during the calendar year 2011.

## 3.8 Benaris market share

Benaris has a 12.7% interest in the 75 kt of LPG expected to be produced by the Project in 2009. This amounts to 9.5 kt, which is about 1.2% of the 736 kt of LPG expected to be available for sale in the LPG market in Victoria in 2009 (or 1.0% of the combined Victorian & South Australian volumes of 929 kt).

## 3.9 Woodside market share

Woodside has a 51.55% interest in the 75 kt of LPG expected to be produced by the Project in 2009. This amounts to 38.7 kt, which is about 5.25% of the 736 kt of LPG expected to be available for sale in the LPG market in Victoria in 2009 (or 4.2% of the combined Victorian & South Australian volumes of 929 kt).

# 4. Analysis of competition issues

## 4.1 No barrier to other potential producers

Given the relatively small combined selling power of the Applicants, it is unlikely that the proposed Joint Marketing will act as a barrier to other potential producers entering the LPG market in Victoria.

A decision by producers to enter the LPG market normally will be determined by the availability of markets for natural gas and other substitute fuels.

## 4.2 Buyer's freedom of choice

Whilst to some extent a buyer's freedom of choice will be restrained by the proposed Joint Marketing, the lessening of choice is small considering the small volume of LPG that Benaris (12.7% - 9.5 kt/a in the period January to December 2009) will produce from the Project. In the LPG market in Victoria, this translates to about 1.2%. This percentage is even smaller if regard is had to LPG production Australia-wide.

## 4.3 Oversupply

Within Australian markets where reticulated gas has become available, the price for reticulated gas has been less expensive than bottled LPG. Accordingly, the majority of the market for LPG is concentrated in areas without a mature gas reticulation network. Once natural gas reticulation becomes available to an area, it is expected that the demand for LPG in that area will decrease.

The applicants propose that it is unlikely that there would be any effect on the price of LPG should Benaris sell their share of LPG from the Project jointly with Woodside.

## 4.4 Difficult for Benaris to market separately

The Applicants submit that it would be difficult for Benaris to market separately in that:

- Benaris does not have marketing personnel in Australia;
- Benaris does not have contract administration personnel in Australia;
- Benaris does not have operations or logistics personnel in Australia;

- given their small interests in the Joint Venture, logistical difficulties arise for Benaris in arranging trucking of the LPG;
- Benaris may not be able to sell their share of LPG from the Project to major customers who require larger quantities of LPG per cargo.

If interim authorisation is not granted, it is quite possible that Benaris would sell their LPG entitlements to Woodside or Origin.

## 5. Interim Authorisation

Section 91(2) of the Act empowers the ACCC to grant an interim authorisation, without making a decision on the merits of the application for final authorisation.

Interim authorisation would allow the Applicants to engage in the Joint Marketing pending consideration by the ACCC of the substance of the merits of the application for final authorisation.

The Applicants seek interim authorisation for Joint Marketing proposed to commence on or about October 2009 for the Applicant's share of the LPG to be produced and delivered by the Project, pending review by the ACCC of the application for final authorisation. The Applicants expect that the application for final authorisation will be determined prior to the fresh round of marketing that will occur in October-December 2009 in respect of the sale of the Applicants' shares of the LPG to be produced and delivered by the Project during the calendar year 2010.

### 5.1 Necessity for interim authorisation

The proposed Joint Marketing has the potential to contravene section 45 of the Act, particularly through the application of section 45A. The Applicants consider that the proposed Joint Marketing would not substantially lessen competition. However, as not all of the Project joint venturers would be parties to the proposed Joint Marketing arrangement, the Applicants seek authorisation to address any risk that the joint venture exception contained in section 76(D) does not apply.

It is anticipated that production and delivery of LPG by the Project will continue throughout 2009. The Applicants supply LPG into the Victoria market to their existing customer Elgas, with potential for additional adhoc spot sales. Their understanding and recent experience of the sales process for that market is as outlined in paragraph 3.7 above.

Interim authorisation from 20 April 2009 would only impact upon existing supply arrangements to Elgas which were marketed in October-December 2008 under the authority of the existing ACCC approval. Although the Applicants do not consider that Joint Marketing would have any effect on competition and is arguably within the joint venture exception in section 76D(1) of the Act, they do not wish to be exposed to the risk of contravention of section 45 or other provisions of the Act so they seek interim authorisation to allow continuity of LPG deliveries to the existing customer (Elgas) pending application for final authorisation.

## 5.2 Effect of interim authorisation on market structure

The effect of an interim authorisation allowing Joint Marketing would not prevent the market being able to return to substantially its pre-interim authorisation state if the ACCC later denied authorisation. This is because the quantity of LPG represented by Benaris is so small as not to have any effect on the premium paid for LPG. The interim authorisation is being sought only in respect of existing contract arrangements and would not prejudice the ACCC's consideration of the authorisation for negotiations and contracting to occur in October-December 2009 and applicable LPG sales thereafter. Accordingly the proposed Joint Marketing will not prevent the market being able to return to substantially its pre-interim authorisation state if the ACCC later denied authorisation.

## 5.3 Authorisation test

The applicable test to be applied by the ACCC in assessing the application for final authorisation is that the ACCC be satisfied that in all the circumstances that the Joint Marketing would, or would be likely to, result in a benefit to the public and that the benefit would outweigh the detriment to the public constituted by any lessening of competition resulting from the conduct. The Applicants submit that because of section 91(2A) of the Act, it is not necessary for the ACCC to make this assessment in the application for interim authorisation. Nevertheless, the Applicants set out, on a preliminary basis, the following concerning the issues of public benefit and detriment.

## 5.4 Benefits of Joint Marketing

Due to the small volumes of the share of Benaris in LPG produced by the Project, it would be commercially impracticable for Benaris to separately market and sell their share at competitive rates in both the Traditional market sector and the Autogas sector. Joint Marketing would allow Benaris to enter the market on a competitive and more efficient basis. Without Joint Marketing Benaris may sell their Project LPG entitlements to Woodside or Origin.

Principal public benefits flowing from the proposed Joint Marketing will be more efficient allocation of resources, more efficient distribution of LPG and lowering of unit costs in that Woodside personnel situated in Perth and on-site at the Project will attend to marketing, contract administration and scheduling and logistics in respect of the combined shares of Woodside and Benaris in Project LPG. This will result in a significant savings in administrative and logistical costs to Benaris as there would be no need for each of them to engage their own separate marketing personnel, contract administration personnel, scheduling and logistics personnel in Australia in respect of the marketing and selling of their shares of LPG produced by the Project.

Practical experience from the plant during operations in 2008 have shown that the Port Campbell plant is geographically distant from key LPG markets, 3 hours from Melbourne and 4 ½ hours from the LPG hub in Dandenong, it is also 10 hours from Adelaide. The distance from markets coupled with limited onsite storage for LPGs (approx 2 ½ days storage at maximum rates) and recent changes to fatigue management legislation (NTC 2008, VicRoads 2008) have meant that truck scheduling for LPGs has become critical to the facility.

Joint marketing in 2008 has permitted a certain level of truck optimisation that under the current sales agreements will continue in 2009. As there will be one set of personnel from Woodside responsible for scheduling and logistics (as opposed to 2 sets if Joint Marketing is not authorised), Joint Marketing assists the plant in:

- managing the trucking logistics for LPG produced, to minimise community and driver impacts;
- managing the compliance with restrictions on the trucking of LPG; and
- managing compliance with the mitigation measures in the Project Environmental Impact Study such as:
    - ⇒ safety for school buses by excluding trucks transporting LPG from portions of the road network south of, but not including Princes Highway during periods when school buses are operating;
    - ⇒ minimising convoy events by scheduling trucking activities such that transports are, if possible, evenly spread throughout the day; and
    - ⇒ managing the gas plant monitoring program and transport management arrangements.

Further, because Woodside is the operator of the Project, it has a presence in the local community. Consequently, it is better placed to manage community issues through, for example, its open community meetings scheduled to occur quarterly once operations have commenced. Woodside also has:

- a "free call telephone line" which it has published regarding the Project and which is for use by the community to express concerns about issues such as trucking; and
- dedicated staff who attend to the telephone line, community meetings and other events relating to the Project.

### 5.5 Public detriment

Although Joint Marketing may result in a reduction in the total number of effective competitors and thereby limit the choice of suppliers in the LPG market in Victoria, the Applicants submit that the real effect on competition would be minimal given the small market shares of Benaris and the uncompetitive cost structure if it were forced to market separately. The Applicants submit that the public benefits of the Joint Marketing would outweigh any detriment that could be caused by Benaris not entering separately the market for LPG in Victoria.

## 6. Conclusion

For the reasons set out above, the proposed Joint Marketing would, or is likely to, result in a benefit to the public; and that benefit would outweigh any detriment to the public constituted by any lessening of competition resulting from the Joint Marketing.

# 7. References

LPG Australia (2008) *Liquefied Petroleum Gas Supply and Demand Study*, Australian Liquefied Petroleum Gas Association (ALPGA), Sydney

LPG Australia (2000), *Australian Liquefied Petroleum Gas Supply Research Study 2000 to 2020, ABARE report for the Autogas Taskforce of the Australian Liquefied Petroleum Gas Association,* Australian Liquefied Petroleum Gas Association (ALPGA), Sydney

NTC (2008), Heavy Vehicle Driver Fatigue, National Transport Commission, Available: http://www.ntc.gov.au/viewpage.aspx?AreaId=35&DocumentId=1409 [2009, Mar 18]

Office of Energy (2007), *Summary of Public Hearings Inquiry into LPG Affordability for Households in Western Australia,* Available: http://www.energy.wa.gov.au/2/3225/64/lpg_inquiry.pm [2009, Mar 17]

Victoria (2002), *The supply of bottled LPG in Victoria : final report* Essential Services Commission, [Melbourne] : Available: http://www.esc.vic.gov.au

VicRoads (2008), *Heavy Vehicle Driver Fatigue Laws: Overview*, Vic Roads, Available: http://www.vicroads.vic.gov.au/NR/rdonlyres/36F99837-F324-4358-9514-D712DB677483/0/VRPIN020521FS1.pdf