Rouw, John

From: Russell, Sarah [SRussell@claytonutz.com]

Sent: Wednesday, 20 May 2009 4:38 PM

To: Rouw, John

Cc: Fitzpatrick, Paul

Subject: Woodside and Benaris application for authorisation A91135

Attachments: Letter to J Rouw (ACCC).pdf;

John
I refer to our telephone conversations on 12 and 14 May 2009 and attach a letter setting out the further clarification and information requested.

<<Letter to J Rouw (ACCC).pdf>>
In addition to the information contained in the letter, you also sought clarification or information on the following matters:

- Whether the market information provided at pages 10 and 11 of the submission in support of application for authorisation (**Submission**) is the most up to date information available to Woodside and Benaris;

1. Market information
The market data on pages 10 and 11 of the Submission is the most recent public data available to Woodside. As Woodside and Benaris represent a relatively small portion of the Victorian LPG market supply, they do not have full transparency of trading volumes downstream from the plant gate. As far as Woodside and Benaris are aware, those market transactions are made on confidential terms.

The information Woodside and Benaris have, is provided in the Submission, and describes the overall supply and demand for LPG at a regional level, which is the primary concern of Woodside and Benaris as producers. Whilst Woodside and Benaris do not have access to the full downstream market picture, it is their understanding that the data as provided is still broadly representative of the structure and relative size of the Victorian LPG market.

Woodside understands that the ACCC is currently conducting separate inquiries into downstream LPG marketing and distribution (which is likely to be more up to date) and Woodside and Benaris invite the ACCC to utilise the available data from those inquiries, to the extent it is able to do so, in considering the application.

Regards

Sarah Russell | Senior Associate | Litigation and Dispute Resolution
Clayton Utz

QV.1, 250 St Georges Terrace, Perth WA 6000 Australia | D +61 8 9426 8473 | F+ 61 8 9481 3095 | M +61 434 607866 |
srussell@claytonutz.com

www.claytonutz.com

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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

20 May 2009

By Email - john.rouw@accc.gov.au

Mr John Rouw
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 520
Melbourne VIC 3001

Your reference: Trackit 37246
Our reference: 60005/15529/80086018

Dear Mr Rouw

Woodside Energy Ltd (Woodside) and Benaris International Pty Ltd (Benaris) application for authorisation A91135

We refer to your telephone conversations with Sarah Russell on 12 and 14 May 2009.

Unless otherwise defined in this letter, any defined terms have the meaning defined in the submission lodged in support of the application for authorisation (**Submission**). The ACCC has requested further clarification or information on the following matters relating to Woodside and Benaris' application for authorisation:

- Benaris' reasons for participating in the Project;
- The meaning of the expression "entitlements" as used in the Submission on pages 15 and 16 respectively: "If interim authorisation is not granted, it is quite possible that Benaris would sell their LPG **entitlements** to Woodside or Origin" and "Without Joint Marketing Benaris may sell their project LPG **entitlements** to Woodside or Origin" (emphasis added);
- The difference, if any, between the costs and benefits of joint marketing and the costs and benefits of Benaris selling its entitlement directly to the market or to one or other of the Participants; and
- In what way, if any CalEnergy is still involved in the Project.

We set out further clarification and information in relation to these matters below.

<u>Benaris' reasons for participating in the Project</u>

Benaris' participation in the Project provides it with the opportunity, as a commercial enterprise, to supply pipeline gas, condensate and LPG product to Australians in Victoria and South Australia.

<u>The meaning of "entitlements"</u>

The "entitlements" referred to on pages 15 and 16 of the Submission are the participating interests that Benaris hold under the Otway Development Joint Operating Agreement and the Lifting Agreement. These Agreements provide for equity based distribution of produced hydrocarbon products from the Otway

Development Joint Venture activities (the Project). The lifting "entitlements" are a project lifetime arrangement intended to continue for the duration of production from the Geograph-Thylacine gas fields.

The effect of the Lifting Agreement is that each joint venture party is obliged to use its best endeavours to lift its participating interest share of liquids at times, and in quantities, as to ensure that there are no undesirable queuing delays at the transport terminal and to ensure that parties do not breach laws in regard to number and timing of the LPG trucking movements. There are also agreements in place with the local community on designated routes for LPG tankers and trucking limitations to avoid tankers being on the road at the same time as school buses.

The parties are required to transport in quantities of a minimum capacity of $30m^3$ and to minimise the total number of trucking movements on the roads to and from the Otway Gas Plant. Terminal fees for each trucking movement are charged to the lifting party. As such, if less liftings are required, the transaction costs passed onto Benaris' customers are lower. It is more efficient for Benaris and its customers for Benaris to sell its entitlement jointly with Woodside as this minimises the number of liftings and associated costs.

If the ACCC requires further detail on the Otway Development Joint Operating Agreement and the Lifting Agreement, Woodside and Benaris can make them available to the ACCC upon request, on a confidential basis.

<u>Costs and Benefits of joint marketing compared to Benaris selling its entitlement directly to the market or to one or other of the Participants</u>

As stated in the Submission (at 3.8 and 4.4), Benaris has:

- a very small amount of LPG to market and sell in the Victorian and South Australian LPG markets (approx 1.2% in 2009, based on 2009 production and LPG Australia 2008 Victorian demand, and less than 1% of combined Victorian and South Australian demand); and
- no existing local marketing, administration, operations and logistics capacity.

If Benaris is unable to jointly market with Woodside, and is obliged to market and sell its LPG entitlement from the Project itself, it would incur operational and marketing inefficiencies in the form of more complex lifting, trucking and distribution activities, including partly loaded cargoes and increased truck activity at the Otway Gas Plant. This inefficiency of scale and management activity would increase transaction costs for both Benaris and Woodside (as the operator of the Otway plant). Benaris would also need to separately cover costs relating to:

- Marketing agents;
- Transport agents;
- Legal, commercial and finance support for marketing, sale and transport.

Benaris presently shares these costs with Woodside through the Joint Marketing Agreement avoiding costs and inefficiency in duplication of these costs by separate marketing and sale of the relatively small percentage volume of LPG by Benaris to the Victorian and South Australian markets.

In addition to the inefficiencies noted above, the Project operations would incur additional cost and production inefficiencies resulting from transport fatigue management compliance issues arising from:

- additional and more frequent liftings and associated extra plant operation activities;
- increased planning and scheduling problems being incurred by all Participants due to storage limitations and truck queuing during peak lifting periods.

Truck queuing is unavoidable due to local road curfew restrictions on heavy traffic movements on designated trucking routes adjacent to the plant. These additional operator costs would be recovered from all Participants based on their equity interest in the Project, thereby increasing cost and transaction inefficiencies to all Participants, not just Woodside and Benaris.

If Benaris were to sell its entitlements to either Woodside or Origin, rather than jointly market its LPG with Woodside, prior to selling its LPG to either Woodside or Origin, Benaris would have to undertake market testing reviews prior to any negotiation to determine fair market price. It is likely that this would need to be done on an annual basis. Benaris would incur fees for those market testing reviews and for legal and commercial advice in relation to the sale. This would add delay and additional costs.

Woodside and Benaris consider there is no benefit in increasing inefficiency, delays and associated costs, for Benaris, Woodside (including as operator of the Otway Gas Plant) and the other Participants. Also, it is likely any increased costs associated with the production and transport of LPG will ultimately flow through to consumers.

CalEnergy's involvement in the Project

CalEnergy continues to hold its participating interest in the Project of 5% in the and lifts and sells its share of LPG separately. It is Woodside and Benaris' understanding that CalEnergy has a Victorian office, has marketing capacity from that office and its internal marketing costs are shared between its Otway and Bass Strait Gas activities. Woodside and Benaris understand that CalEnergy has some operational synergies due to its market placement and two loading terminals that Benaris does not have.

Neither Woodside nor Benaris are privy to CalEnergy's sales arrangements and as such are unable to provide further information to the ACCC.

Please contact Sarah Russell if you wish to discuss or require any further information.

Yours faithfully

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

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