

# Form A

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsections 88 (1A) and (1)*

## **EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision 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 Applicant:**  
*(Refer to direction 2)*

A91594

The Eastern Energy Buyers Group (the **Buyers Group**) on behalf of its current and future members (the **Applicants**).

- (b) Description of business carried on by applicant:**  
*(Refer to direction 3)*

The current members of the Buyers Group are industrial users of energy, operating in energy intensive industries and with significant operations in Victoria who require stable, long-term energy supply and whose operations are highly sensitive to energy price increases. The members purchase electricity and natural gas for

operations primarily in Victoria, with smaller operations located in New South Wales, Queensland and South Australia. Their operations outside Victoria account for less than 10% of the combined total load.

The Buyers Group also wishes to allow additional entities to join the Buyers Group (and have the benefit of the authorisation) provided that the total gas and electricity consumption of the Buyers Group does not exceed 16 PJ (10% of Victorian gas market) and 4.5TWh (10% of the Victorian electricity market). Future members must also be industrial users of energy, who operate in energy intensive industries and have significant operations in Victoria.

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

Richard Doyle, Managing Director  
Langu Resources  
146 Pittwater Road  
Manly NSW 2095  
0447 333 402

Justin Jones, Counsel  
Ashurst  
Level 26, 181 William Street  
Melbourne VIC 3000  
(03) 9679 3640

**2. Contract, arrangement or understanding**

**(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:  
(Refer to direction 4)**

The Applicants propose to establish joint electricity and gas purchasing groups to implement the Buyers Group, whereby the Applicants would pool their electricity and gas demands and place a single tender into the markets calling for proposals for electricity and gas supply arrangements under which a supplier would enter into an agreement with each Applicant.

Each agreement between the Applicant and successful supplier would be on the same (or substantially similar) terms and conditions.

See section 3 of Annexure A for further details.

**(b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:  
(Refer to direction 4)**

The proposed conduct concerns an arrangement to jointly negotiate the terms and conditions of the agreement and collectively conduct a tender process for the Buyers Group.

See section 3.1 of Annexure A for details of the arrangements between the Applicants and the proposed tender process.

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

The Applicants wish to source cost-competitive and reliable electricity and gas supplies.

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

The Applicants seek both interim and final authorisation for the Buyers Group. Final authorisation is requested for a period of 11 years. This is based on the length of time the tender process is anticipated to take, plus the term of the supply agreements.

See section 3.2 of Annexure A for further details.

### **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:**

Following the completion of the tender process, the successful tenderers will be the other party to the relevant contracts with the Applicants (which includes both current and future members of the Buyers Group). This may include one supplier of electricity, gas and gas transport, or separate suppliers for each good and service. Each Applicant will enter into an agreement with the supplier.

- (b) **Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:**  
*(Refer to direction 5)*

Details of the Applicants are set out at section 2.6 of Annexure A.

### **4. Public benefit claims**

- (a) **Arguments in support of application for authorisation:**  
*(Refer to direction 6)*

See section 6 of Annexure A for details.

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

See section 6 of Annexure A.

### **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):**  
*(Refer to direction 7)*

The relevant markets are:

(a) a market for the generation and wholesale supply of electricity in the National Electricity Market or, in the alternative, in one or more regions of the National Electricity Market, including Victoria;

(b) a market for the retail supply of electricity to commercial and industrial customers in Victoria;

(c) the East Coast Gas Market, a market including Victoria for the retail supply of gas to commercial and industrial end customers and, to the extent that it is a separate market, the gas transport market.

See section 4 of Annexure A for further details.

## **6. Public detriments**

- (a) **Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, 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:**  
*(Refer to direction 8)*

The Applicants do not believe there are any potential detriments to the public likely to result from the authorisation.

See section 7 of Annexure A for further details.

- (b) **Facts and evidence relevant to these detriments:**

See section 7 of Annexure A.

## **7. Contracts, arrangements or understandings in similar terms**

- (a) **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:**

- (b) **Is this application to be so expressed?**

No.

**(c) 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:  
(Refer to direction 9)**

Not applicable.

**(ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:  
(Refer to direction 10)**

Not applicable.

**(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:**

Not applicable.

## **8. Joint Ventures**

**(a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?**

No.

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

Not applicable.

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

Not applicable.

**9. Further information**

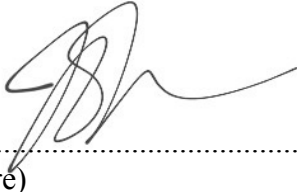
- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:**

Richard Doyle, Managing Director  
Langu Resources  
146 Pittwater Road  
Manly NSW 2095  
0447 333 402

Justin Jones, Counsel  
Ashurst  
Level 26, 181 William Street  
Melbourne VIC 3000  
(03) 9679 3640

Dated 4 August 2017

Signed ~~by~~ on behalf of the applicant



.....  
(Signature)

Justin Duncan Jones  
(Full Name)

Ashurst Australia  
(Organisation)

Counsel  
(Position in organisation)

## **DIRECTIONS**

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
  7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.

8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.
10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.