



Determination

Application for authorisation AA1000598

lodged by

Brenntag Australia Pty Ltd

in respect of

collaboration on arrangements for the supply of Diesel Exhaust Fluid,
also known as AdBlue

Date: 28 April 2022

Commissioners: Rickard
Brakey
Ridgeway

Summary

The ACCC has decided to grant authorisation to enable diesel exhaust fluid (also known as AdBlue) manufacturers and other industry participants to collaborate to obtain supply of refined urea and prioritise distribution of refined urea and AdBlue should shortages emerge. Refined urea is a key ingredient in AdBlue. The authorised collaboration will occur in conjunction with the Australian Government.

On 22 December 2021, the ACCC granted an urgent interim authorisation to enable AdBlue industry participants to immediately commence the arrangements prior to the ACCC's final determination.

At that time, there was a global shortage of urea and Australian AdBlue manufacturers were facing difficulties securing supply. As AdBlue is critical to the operation of modern diesel engines, this shortage risked disrupting Australian supply chains and the economy more broadly due to disruptions it could have caused to sectors reliant on modern diesel engines (including road freight, mining, agriculture, energy and light vehicles).

The Australian Government and AdBlue industry participants have implemented a range of measures to address the shortage, including the coordination that occurred, and continues, under the interim authorisation. As a result, the concerns about AdBlue supply have abated.

The coordination that has occurred includes: discussions within the AdBlue supply chain to develop and implement strategies to assist the continued supply of AdBlue; providing more effective advice to governments and relevant agencies regarding the supply of AdBlue and identifying measures to address supply shortages and constraints that may arise; and maximising the efficient use of supply channels to reduce strain on the AdBlue supply chain.

The ACCC considers that enabling coordination by AdBlue industry participants, as necessary in the short term, will continue to assist in managing and mitigating any risks of an AdBlue supply shortage and is likely to result in significant public benefits.

The ACCC considers that this has, and will continue to, maximise the likelihood of businesses and consumers across Australia having reasonable access to AdBlue during any disruption in the supply of urea.

The ACCC recognises that the coordination is likely to result in some public detriment by reducing competition between AdBlue manufacturers while managing any supply constraints. However, the ACCC considers that the public detriment is likely to be limited because this coordination is a temporary measure; can only occur for the specific purpose of ensuring sufficient supply of AdBlue; and only enables AdBlue manufacturers to prioritise access to refined urea and AdBlue, should it be necessary to do so, as directed by the Australian Government. The coordination does not allow for any agreements about the price of AdBlue supplied to consumers.

Further, the conditions the ACCC has decided to impose, which are substantially the same as those that apply to the interim authorisation, will continue to provide the ACCC and the Australian Government with certainty, oversight and transparency regarding the coordination that occurs. These conditions require that meetings must be convened or attended by representatives of the Australian Government, have the objective of responding to refined urea and AdBlue shortages and that the ACCC be notified and invited to attend. The conditions also require that the ACCC is provided with minutes of meetings within 14 days and that any other information requested by

the ACCC about collaboration between industry participants under the authorisation is provided within a reasonable timeframe.

The ACCC has decided to grant authorisation until 1 December 2022.

1. The application for authorisation

1.1. On 21 December 2021, Brenntag Australia Pty Ltd (**Brenntag**) lodged application for authorisation AA1000598 with the Australian Competition and Consumer Commission (the **ACCC**) on behalf of itself and its related bodies corporate. A number of other diesel exhaust fluid (**DEF**, also known as **AdBlue**) manufacturers were listed in the application as parties proposing to engage in the conduct the subject of the application, namely the following entities and their related bodies corporate:

- DGL AUSBlue Pty Ltd
- Mammoth Pty Ltd (EcoBlue)
- Spectrum Analytical Pty Ltd (Spectrum Fluid Technologies)
- Green Emissions Australia Pty Ltd

(together with Brenntag, **the Participants**).

1.2. Brenntag proposes that the authorisation also apply to any other parties that are notified to the ACCC. Parties that have previously notified the ACCC in writing of their wish to engage in conduct the subject of the application under the protection of any authorisation (including interim authorisation) granted, and those that notify the ACCC of such a wish in the future in accordance with the procedure set out in the condition at paragraph 7.8 below, are referred to in this determination as **Other Participants**. The Participants and the Other Participants are collectively referred to in this determination as **the Parties**.¹

1.3. Brenntag is seeking authorisation until 1 December 2022 to enable the Parties to collaborate to assist in obtaining adequate supply of refined urea to ensure sufficient supply of AdBlue and to enable prioritised distribution of refined urea and AdBlue should shortages emerge.

1.4. Specifically, Brenntag is seeking authorisation for the Parties to propose, discuss, enter into or give effect to any contract, arrangement or understanding between them, or engage in any conduct, where the contract, arrangement, understanding or conduct:

- a. involves two or more of any Participants or Other Participants, and
- b. has the purpose of securing adequate supplies of refined urea; promoting adequate production of DEF for the Australian market; ensuring security of supply of refined urea and DEF for Australian businesses and consumers; or prioritising access to refined urea and DEF as necessary, including by:
 - sharing commercially sensitive information (for example, relating to stock levels, supply channels and manufacturing opportunities), but not relating to price
 - facilitating or ensuring the acquisition and/or supply of refined urea or DEF

¹ A list of parties who have notified the ACCC of their participation is available on the ACCC's [public register](#).

- prioritising access to refined urea and DEF according to need (for example, to particular geographical areas or consumers) as directed by the Australian Government
 - collaborating on the production of DEF or
 - implementing sales limits (to be applied uniformly across all purchasers), and
- c. either occurs at, in preparation for, or arises out of an Approved Meeting (as defined in the condition in paragraph 7.9 below) that occurs on or after the date that authorisation comes into effect.

(the Proposed Conduct).

- 1.5. The Proposed Conduct does not extend to any agreement on the price of AdBlue supplied to AdBlue consumers.
- 1.6. This application for authorisation AA1000598 was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). The ACCC may grant authorisation, which provides businesses with protection from legal action under the competition provisions in Part IV of the Act for arrangements that may otherwise risk breaching those provisions in the Act, but are not harmful to competition and/or are likely to result in overall public benefits.

2. Background

- 2.1. The information in paragraphs 2.2 to 2.4 below was provided in the application for authorisation.
- 2.2. AdBlue is an exhaust system additive used in diesel engines to control noxious emissions and is critical to the operation of modern diesel engines.
- 2.3. Refined (technical grade) urea is an essential input in the manufacture of AdBlue. Australia currently manufacturers almost all AdBlue for the Australian market and, until the global refined urea shortage in late 2021, used mostly imported refined urea. In December 2021 when the application was lodged, Australian AdBlue manufacturers were facing difficulties securing supply of refined urea. According to the application, the global shortage of refined urea was the result of export restrictions imposed by China, which prompted both aggressive buy-up by some nations and limitations on exports by others.
- 2.4. On 9 December 2021, the Australian Government announced the establishment of an AdBlue Taskforce that would work across government and with industry to develop solutions to any potential future supply constraints. The possible solutions being explored included alternative international supply options for refined urea, bolstering local manufacturing capabilities and technical options at the vehicle level. In the announcement, the Australian Government also stated that, at that time, Australia had normal stock levels of AdBlue on hand and more refined urea stocks were on their way to Australia.
- 2.5. On 20 December 2021, the Australian Government announced that it reached an agreement with Australian-based fertiliser manufacturer, Incitec Pivot Limited (**Incitec Pivot**), to secure local production of refined urea. Under this agreement, Incitec Pivot was to rapidly design, trial and, on completion of successful tests, scale-up manufacturing, enabling Incitec Pivot to 'supply quantities as needed by current

suppliers'. The Government also announced that it had accepted an offer from the Indonesian Government to provide 5,000 tonnes of refined urea in January 2022, which is enough to make around an additional month's worth of AdBlue.²

2.6. The Proposed Conduct is intended to assist in managing and addressing any AdBlue supply shortages. In the application lodged on 21 December 2021, Brenntag submitted that if the AdBlue industry was unable to engage in the Proposed Conduct, there was a real risk that shortages of AdBlue would emerge across the Australian economy. This would have serious impacts on Australian supply chains and the economy more broadly due to the disruptions it would cause to sectors reliant upon modern diesel engines, including:

- road freight
- mining (underground mining vehicles)
- light vehicles (modern diesel vehicles made since 2016)
- agriculture (modern tractors), and
- energy (including back-up generators in South Australia).

3. Interim authorisation

3.1. When the application for authorisation was lodged on 21 December 2021, Brenntag also requested urgent interim authorisation to enable the Parties to engage in the Proposed Conduct while the ACCC is considering the substantive application.

3.2. Urgent interim authorisation was sought to allow industry, in conjunction with the Australian Government, to coordinate and respond more quickly and effectively to any supply constraints of urea. It was considered an important step in providing a regular supply of AdBlue.

3.3. On 22 December 2021, the ACCC granted interim authorisation, with conditions, in accordance with subsection 91(2) of the Act.³ In summary, the conditions:

- require that any party not named in the application must follow a procedure to notify the ACCC in writing if they wish to be covered by the interim authorisation
- define what constitutes an Approved Meeting for the purpose of paragraph 1.4(c) above. Specifically, an Approved Meeting must be convened or attended by Government representatives and the ACCC must also be invited to attend, and
- require that the ACCC be provided with the minutes of Approved Meetings.

3.4. These conditions are the same as those the ACCC has decided to impose in granting the substantive application as listed at paragraph 7.8 to 7.11 of this determination.

3.5. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect, the application for authorisation is withdrawn or until interim authorisation is revoked.

² See <https://www.minister.industry.gov.au/ministers/taylor/media-releases/increasing-adblue-supplies-and-protecting-australias-transport-industry>.

³ See ACCC decision of 22 December 2021 available at <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/adblue-manufacturers>.

4. Developments since interim authorisation was granted

- 4.1. Since late December 2021, the supply situation for AdBlue has stabilised and advice provided to the ACCC by industry and Government is that sites remain stocked and are no longer experiencing stockouts.
- 4.2. By 25 January 2022, Incitec Pivot was producing over 3 million litres of AdBlue a week. This represents around 75% of Australia's AdBlue needs. This temporary securement of local capabilities through Incitec Pivot complements the ongoing work to secure international supplies and coordination by the Government and industry to manage stock supplies nationally.⁴
- 4.3. Under the interim authorisation, regular meetings of the Australian Government Diesel Exhaust Fluid National Coordination Mechanism group were convened. This group included relevant Government agencies, AdBlue manufacturers fuel retailers and transport and logistics bodies. The ACCC also attended these meetings. A supplier working group consisting of a subset of the National Coordination Mechanism meeting attendees was also established. With the stabilisation of AdBlue supply, the National Coordination Mechanism group was disbanded in early February 2022. The supplier working group, convened by Department of Industry, Science, Energy and Resources, continues to meet as necessary.
- 4.4. During and subsequent to these meetings, the Parties have collaborated in a number of ways including:
 - sharing information about supply options
 - identifying and agreeing on priority sites to focus on so that stock was available on vital truck routes and in key geographic areas
 - manufacturers sharing some supplies of imported urea
 - manufacturers collaborating and sharing information to organise deliveries to support timely supply to critical/priority sites, and
 - fuel companies liaising with each other on deliveries to minimise stockouts at priority sites between geographic areas.

5. Consultation

- 5.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.
- 5.2. The ACCC invited submissions from a range of potentially interested parties including major competitors, suppliers, customers, relevant industry associations or peak bodies, and Australian government and relevant regulatory bodies. The ACCC received no submissions from interested parties prior to the draft determination.
- 5.3. On 10 March 2022, the ACCC issued a draft determination proposing to grant authorisation until 1 December 2022. A pre-decision conference was not requested following the draft determination.
- 5.4. The ACCC received 4 submissions in response to the draft determination.

⁴ See <https://www.minister.industry.gov.au/ministers/taylor/media-releases/ramp-local-adblue-production-keeps-australia-moving>.

- 5.5. The National Heavy Vehicle Regulatory (the **NHVR**) and GC Green Pty Ltd supported the authorisation, each submitting that allowing the cooperation to continue while the industry adapts is beneficial.
- 5.6. In relation to the application, the Australian Trucking Association (the **ATA**) submitted that it was concerned about a lack of transparency about supply responses in the first few weeks of the AdBlue shortage. The ATA submitted that there should be transparency and regular flow of information to operators, including the trucking industry, about steps being taken to secure medium- and long-term supply.
- 5.7. GTGF Australia Limited (Australia Wide Urea Supplies) submitted that Incitec Pivot and DGL are being provided the opportunity of being handed a monopoly on the production and distribution of AdBlue, the fallout of which will adversely impact the long-term viability of the transport industry in Australia.
- 5.8. Public submissions by interested parties are available on the Public Register.⁵

6. ACCC assessment

- 6.1. The ACCC's assessment of the Proposed Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
- 6.2. Brenntag has sought authorisation for Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act, may substantially lessen competition within the meaning of sections 45 and 46 of the Act, and may constitute exclusive dealing within the meaning of section 47 of the Act. Consistent with subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (authorisation test).

Relevant areas of Competition

- 6.3. To assess the likely effect of the Proposed Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 6.4. Having regard to the nature of the Proposed Conduct and the range of buyers and sellers that could be affected by it, the ACCC considers that the relevant areas of competition likely to be affected by the Proposed Conduct is the manufacture and supply of AdBlue in Australia, through distributors, wholesalers or retailers, to commercial, industrial and retail customers.

Future with and without the Proposed Conduct

- 6.5. In applying the authorisation test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.
- 6.6. The ACCC considers that in the future with the Proposed Conduct, the Parties will continue to share information and coordinate as necessary in the short term to effectively manage any supply shortages of urea and AdBlue that may occur, with the oversight and assistance of the Australian Government, as has occurred under the interim authorisation.

⁵ Available at <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/adblue-manufacturers>.

6.7. The ACCC considers that in the future without the Proposed Conduct, the Parties may not be able to share information nor work collectively as effectively to respond to any AdBlue shortages and logistical challenges that may occur. In this case, AdBlue manufacturers and other industry participants would need to work individually with the Australian Government and/or local and overseas suppliers of refined urea and AdBlue in a series of bilateral discussions in respect of at least some of the arrangements that may be necessary to manage any future supply shortages or issues arising out of the previous shortages.

Public benefits

6.8. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

...we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.⁶

6.9. At the time of lodging the application, Brenntag submitted that the Proposed Conduct would assist the Parties to maintain supply of AdBlue which would benefit industries reliant upon modern diesel engines and their consumers, and, if shortages of AdBlue emerge, it would also allow these shortages to be managed, including by directing supply to geographical areas or consumers most in need.

6.10. The ACCC's assessment of the public benefits likely to arise from the Proposed Conduct follows.

Mitigating risk of supply shortages of AdBlue

6.11. The ACCC considers that conduct engaged in under the interim authorisation has resulted in significant public benefits by assisting to mitigate the risk of an AdBlue supply shortage and manage the supply constraints over recent months, including by enabling the Parties to:

- coordinate discussions within the AdBlue supply chain and develop and implement strategies to assist to maintain the continued supply of AdBlue
- provide more effective advice to government and relevant agencies regarding the supply of AdBlue, including by identifying and assisting to address supply shortages and constraints that have arisen, and
- maximise the efficient use of supply channels and reduce strain on the AdBlue supply chain – including by implementing measures to ensure the prioritised distribution of refined urea and AdBlue in response to supply constraints.

6.12. The ACCC considers that the Proposed Conduct is likely to continue to result in a public benefit through assisting to mitigate the risk of further supply shortages and the risks associated with any ongoing supply constraints. The ACCC considers that this will maximise the likelihood of Australian businesses and consumers continuing to have access to AdBlue during any further disruptions to the supply of urea that may occur.

6 Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

Reducing community concerns that could lead to stockpiling behaviour

- 6.13. The ATA submitted that in the first few weeks of the AdBlue shortage, the lack of transparency about supply responses led to more trucking company operators doing everything they could to secure supply, placing greater pressure on the supply chain. The ATA also submitted the ACCC should require, where possible, that information on the steps being taken to secure medium- and long-term supply of AdBlue flows through to trucking operators.⁷
- 6.14. The ACCC considers that by enabling improved information sharing, discussions and coordination between the Parties, the Proposed Conduct under the interim authorisation granted on 22 December 2022 has been effective in assisting to not only manage any supply issues but also in reducing concerns that could lead to stockpiling of AdBlue. While such concerns have now largely abated, the ACCC considers that to the extent that such concerns may re-emerge in the short term, the Proposed Conduct is likely to assist in mitigating these concerns.
- 6.15. With respect to medium- and longer-term supply arrangements, the ACCC considers the meetings convened by the Australian Government discussed above in paragraph 4.3, which have been occurring under the interim authorisation and which will continue as necessary while the authorisation is in place, provide transparency for industry participants. Coordination occurring at these meetings has included discussions to develop and implement strategies to assist in continued supply of AdBlue and identifying measures to address supply shortages. Industry associations participating in these meetings are encouraged to pass on relevant information to their members. This includes the ATA, which is invited to these meetings.

Public detriments

- 6.16. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:
- ...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.*⁸
- 6.17. The ACCC considers there is likely to be some public detriment in the form of reduced competition between manufacturers and suppliers of AdBlue. Allowing competitors, including AdBlue manufacturers and other parties, to share information and coordinate the supply of AdBlue may reduce competition relative to a situation where each business makes its own decisions. The AdBlue manufacturers are, in most cases, each other's closest competitors and the ACCC considers it vital that once the unusual circumstances created by urea supply disruption are no longer present, cooperation between AdBlue manufacturers in relation to these matters should cease.
- 6.18. Arrangements that involve prioritising access to AdBlue according to need (such as to geographical areas or classes of customers), even though at the direction of the Australian Government, may disadvantage other classes of customers who are not prioritised. Similarly, agreements between the Parties to implement sales limits on AdBlue may result in some harm to customers if they are unable to access the supply they require to operate their business at normal capacity. However, the ACCC notes that such measures have, and will in the future, only be taken if there is a shortage of

⁷ See Submission by Australian Trucking Association (11 March 2022) at <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/adblue-manufacturers>.

⁸ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

AdBlue. In such circumstances it is likely that regardless of whether the Parties were able to jointly make decisions about prioritising supply, some customers would face reduced, or possibly no, availability of AdBlue. Under the Proposed Conduct any decisions to prioritise certain industries would be made by the Australian Government rather than the AdBlue manufacturers. Such prioritisation has not been considered necessary to date.

6.19. There is also potential for additional anti-competitive coordination between the Parties. However, the ACCC considers that any ongoing anti-competitive impact is unlikely because:

- There has been, and will continue to be, transparency around the Proposed Conduct as a result of the involvement of government agencies and the reporting and information provision conditions that the ACCC has decided to impose. In particular, these conditions provide that the Proposed Conduct is restricted to conduct that occurs at, in preparation for, or arises out of an Approved Meeting, each of which must either be convened or attended by Australian Government representatives. The ACCC also has advance notice of any Approved Meeting being held, is able to attend the meetings and, under the conditions, has oversight over the outcomes of meetings.
- The Proposed Conduct only enables the Parties to prioritise access to refined urea and AdBlue according to need as directed by the Australian Government.
- The Proposed Conduct only applies to arrangements and conduct engaged in for specific purposes, namely securing adequate supplies of refined urea; promoting adequate production of AdBlue for the Australian market; ensuring security of supply of refined urea and AdBlue for Australian businesses and consumers; or prioritising access to refined urea and AdBlue. The ACCC is satisfied that information exchanged and arrangements made at Approved Meetings to date, pursuant to the interim authorisation, have focused on short term responses to the AdBlue shortage and are unlikely to have longer-term impacts on competition.
- Participation in the Proposed Conduct is not compulsory and any participant can opt out of the information sharing arrangements or other authorised conduct.
- The Proposed Conduct does not extend to sharing commercially sensitive price information or any coordination in relation to price.
- The Proposed Conduct is a temporary measure to ensure sufficient supply of AdBlue.

6.20. With respect to the concerns raised by the GTGF about arrangements entered into with Incitec Pivot to secure local production of refined urea, the ACCC considers that these arrangements are unlikely to cause long-term distortions to arrangements for manufacture and supply of technical grade urea and/or AdBlue. These arrangements were entered into as a temporary measure to assist in addressing immediate supply issues. Further, the ACCC is granting authorisation for coordination between industry participants, in conjunction with the Australian Government, only for the specific purpose of ensuring sufficient supply of AdBlue and only until 1 December 2022. The ACCC also notes Incitec Pivot's intention to close its Gibson Island facility at the end of December 2022.⁹

⁹ See <https://www.incitecpivot.com.au/about-us/about-incitec-pivot-limited/media/gibson-island-manufacturing-operations-to-cess-at-end-of-2022>.

Balance of public benefit and detriment

- 6.21. The ACCC's assessment of the public benefits and public detriments likely to result from the Proposed Conduct has been informed by observations about the discussions and information sharing that has occurred and the arrangements entered into under the interim authorisation.
- 6.22. The ACCC considers that the Proposed Conduct is likely to result in significant public benefits by assisting to mitigate the risk of an AdBlue supply shortage and reducing community concerns that could lead to stockpiling behaviour.
- 6.23. The ACCC also considers that the Proposed Conduct is likely to result in some public detriment by reducing competition between AdBlue manufacturers while managing any AdBlue supply constraints. However, the ACCC considers that the public detriment is likely to be limited for the reasons detailed above at paragraph 6.1919, including the conditions of authorisation the ACCC has decided to impose.
- 6.24. These conditions are intended to provide the ACCC and the Australian Government with sufficient certainty, oversight and transparency regarding any coordination agreed between the Parties engaging in the Proposed Conduct. This gives the ACCC the opportunity to be satisfied that any coordination does not result in unintended public detriments or extend beyond the terms of the authorisation.
- 6.25. Therefore, for the reasons outlined in this determination, the ACCC is satisfied that the Proposed Conduct, with the conditions, is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Proposed Conduct.

Length of authorisation

- 6.26. The Act allows the ACCC to grant authorisation for a limited period.¹⁰ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
- 6.27. In this instance, Brenntag seeks authorisation until 1 December 2022.
- 6.28. While it is difficult to predict how long the Proposed Conduct will be necessary, the ACCC notes that the supply situation has improved significantly since interim authorisation was granted in late December 2021. Accordingly, the extent to which there is a need for the Parties to continue to engage in the Proposed Conduct is unclear.
- 6.29. However, the ACCC notes that the Proposed Conduct will only be engaged in for the specific purpose of managing any AdBlue shortages and only under the oversight and direction of the Australian Government.
- 6.30. Having regard to these constraints on the Parties' ability to engage in the Proposed Conduct, the ACCC has decided to grant authorisation until 1 December 2022.

¹⁰ Subsection 91(1) of the Act.

7. Determination

The application

- 7.1. On 21 December 2021, Brenntag lodged application AA1000598 with the ACCC, seeking authorisation under subsection 88(1) of the Act.
- 7.2. Brenntag seeks authorisation for itself, the other AdBlue manufacturers listed in the application, and Other Participants, to share information and collaborate to obtain adequate supply of refined urea to ensure sufficient supply of AdBlue for Australian consumption and to enable prioritised distribution of refined urea and AdBlue should shortages emerge.

The authorisation test

- 7.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Proposed Conduct.
- 7.4. For the reasons outlined in this determination and with the conditions below, the ACCC is satisfied, in all the circumstances, that the Proposed Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.
- 7.5. Accordingly, the ACCC has decided to grant authorisation, with conditions.

Conditions of authorisation

- 7.6. The ACCC may specify conditions in an authorisation. The legal protection provided by the authorisation does not apply if any of the conditions are not complied with.¹¹
- 7.7. The ACCC has decided to grant authorisation with the following conditions (which are substantially the same as those imposed in the interim authorisation granted on 22 December 2021):
- 7.8. **Condition 1 – Notification of future parties:** In addition to the Participants, parties that wish to engage in the Proposed Conduct must notify the ACCC in writing by sending an email to exemptions@acc.gov.au conveying information to the following effect: a subject line or other reference to 'Authorisation AA1000598 – request to be covered by authorisation', the identities of the new entity(ies) that wish to be covered by this authorisation, the type(s) of conduct covered by the authorisation that those entities propose to engage in and the reasons they wish to do so. Once an entity notifies the ACCC, that entity will have the protection of the authorisation to engage in the conduct notified.
- 7.9. **Condition 2 – Approved Meetings:** For the purposes of paragraph 1.4(c) above, any of the following types of meetings will be Approved Meetings:
 - a. a meeting of the National Coordination Mechanism, convened by the Australian Government, and to which the ACCC is invited to attend; or

¹¹ Subsection 88(3) of the Act.

- b. meetings of a taskforce, working group or forum convened or attended by a representative of a Australian Government department or agency, with the objective of responding to the refined urea and AdBlue shortages, where:
 - the ACCC is notified by a Participant in writing that the Participant intends meetings of the relevant group to be covered by this authorisation, and invites the ACCC to attend the meetings of the relevant group, setting out in each invitation the time and date of the meeting, proposed attendees, the purpose of the meeting and the matters to be discussed at the meeting; and
 - more than one Participant, or one or more Participant and one or more Other Participant, has been invited to the relevant group; and
 - the ACCC does not notify the Participant in writing in advance of the meeting that it is not satisfied that the meeting is covered by the authorisation.

7.10. For the avoidance of doubt, a forum includes a coordination mechanism convened by a Australian Government department or agency where Government liaises and/or coordinates with more than one Participant or Other Participant, even though the relevant Participants/Other Participants may not meet or speak directly, provided that the relevant Australian Government department or agency specifies to each relevant Participant or Other Participant that it is a forum for the purposes of this authorisation.

7.11. **Condition 3 – Reporting:** The Participants and Other Participants must (either directly or via another nominated party), provide the ACCC with:

- a. the minutes of any Approved Meeting that is convened under the Proposed Conduct, within 14 days after the meeting (or such other time as the ACCC agrees to in writing); and
- b. all information requested by the ACCC in relation to the Proposed Conduct, within a reasonable timeframe.

7.12. The ACCC may authorise a Committee or Division of the ACCC, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under the conditions of authorisation on its behalf.

Conduct which the ACCC has decided to authorise

7.13. The ACCC has decided to grant authorisation AA1000598 to enable the Participants and Other Participants to collaborate to assist in obtaining adequate supply of refined urea to ensure sufficient supply of AdBlue, and to enable prioritised distribution of refined urea should shortages emerge, in the manner described in paragraph 1.4 and defined as the Proposed Conduct.

7.14. The ACCC has decided to grant authorisation AA1000598 with the conditions detailed in paragraphs 7.8 to 7.12.

7.15. The ACCC has decided to grant authorisation in relation to Division 1 of Part IV of the Act, and sections 45, 46 and 47 of the Act.

7.16. Authorisation has not been sought for, and the authorisation does not extend to permit, the Participants and Other Participants sharing commercially sensitive price information, or making or giving effect to any agreement on the price of AdBlue supplied to AdBlue consumers.

7.17. The ACCC has decided to grant authorisation AA1000598 until 1 December 2022.

8. Date authorisation comes into effect

- 8.1. This determination is made on 28 April 2022. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into force on 20 May 2022.