



**Australian Institute of Petroleum –
Application for authorisation AA1000488
Interim authorisation decision
3 April 2020**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted conditional interim authorisation in respect of the application for authorisation AA1000488, lodged by the Australian Institute of Petroleum (**AIP**) on 2 April 2020.
2. The AIP has applied for authorisation on behalf of:
 - (a) the AIP
 - (b) its four major oil refiner and petroleum marketer members (and their related bodies corporate), being BP Australia Pty Ltd, Caltex Australia Limited, Mobil Oil Australia Pty Ltd and Viva Energy Australia Pty Ltd (**Current Members**)
 - (c) any other party proposed by the AIP who in future wishes to engage in the conduct the subject of the application (including importers of Fuel Products, suppliers of Fuel Product storage services and Fuel Product transport services), provided that the ACCC is notified and grants approval as required in Condition 3 below.
3. The ACCC has granted interim authorisation for the conduct described at paragraph 6 below, which is solely for the purpose of dealing with the effects of the COVID-19 pandemic on Australia's Fuel Products supply chain, and subject to the Applicants complying with the conditions described at paragraphs 16-18 requiring AIP to report to the ACCC on material arrangements, an ability for the ACCC to request information from the AIP and ACCC approval of future parties.
4. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

The application for authorisation

5. The AIP submits that:
 - Australia's economy is reliant on liquid fuel (such as petrol, diesel and jet fuel (**Fuel Products**)), which makes up 52% of Australia's final energy consumption. Fuel Products are sourced from both imported Fuel Products and locally refined Fuel Products
 - the COVID-19 pandemic has resulted in a significant decline in demand profile for jet fuel in Australia (around 90%) because international travel has been prohibited and there are growing community concerns over travel
 - the COVID-19 pandemic will likely result:
 - in the near term, in significant and sudden declines in the demand for Fuel Products as there is less travel and interactions within the community and industries are closed, and

- in significant instability in the demand for Fuel Products when the COVID-19 pandemic and related measures are lifted, including potential demand surges
 - these developments present oil refiners with considerable manufacturing, supply and storage challenges which may constrain the timely availability of Fuel Products to Australian businesses and consumers during the COVID-19 pandemic and immediately following its containment, namely:
 - Australian refineries process imported and domestic crude oil and provide around 40% of refined Fuel Products in Australia. However, oil refineries have a fixed configuration (typically 50% of total production capacity as petrol, 30% as diesel and 20% as jet fuel) and cannot sufficiently reconfigure production to meet sudden and significant changes in demand
 - oil refineries need to operate on a minimum throughput of volume to remain economically feasible (around 60% of overall capacity), below which there are incentives to source imported volumes of Fuel Products as opposed to locally refined volumes
 - the potential redistribution of supply sources to import sources and consequent accumulated storage of Fuel products (without equivalent offtake) will put pressure on storage terminals and over time, require industry to coordinate to efficiently manage the utilisation of storage capacity
 - oil refineries take significant time both to close and to recommence production and there is a 2-3 week lag in sourcing imported Fuel Products. If oil refineries shut down due to insufficient throughput volume, or there is a surge in demand following the easing of the COVID-19 pandemic, there will need to be prompt and efficient coordination of the Fuel Products supply chain to appropriately meet demand.
 - these challenges will likely also impact other aspects of the Fuel Products supply chain, including increased pressure on storage infrastructure; the capacity to truck and deliver Fuel Products to new storage sources; the commercial viability of transporting to rural and country towns if retail sites shut down due to lack of demand; and employment, as operations are ceased or repurposed.
6. In order to manage the significant impacts to the Fuel Products supply chain and significant reduction in demand profile, the Applicants seek authorisation:
- to discuss, enter into or give effect to, any contract, arrangement or understanding between them (including with customers for wholesale fuel, suppliers of crude oil and finished Fuel Products, suppliers of import and storage facilities, and suppliers of trucking and delivery services) that has the purpose of:
 - (a) ensuring the security of supply of Fuel Products to Australian businesses and consumers
 - (b) minimising the risk of Fuel Product shortages by coordinating scheduling and supply chain activities including import, storage, trucking and delivery of Fuel Products (for example, by coordinating the redirection of import vessels to where they are most needed across Australia as opposed to discharging products into pre-determined locations with more than adequate supply positions)
 - (c) maintaining or increasing the supplies of Fuel Products available to Australian businesses and consumers including in remote and regional areas
 - (d) facilitating the efficient use of refining capacity and capability in Australia (for example, by ensuring that any refinery shutdowns are efficiently coordinated to ensure an orderly transition to import-only supply while maintaining ongoing supply reliability to Australian businesses and consumers in relevant locations)

- (e) facilitating the efficient use of fuel storage capacity in Australia (for example, by coordinating the movement and storage of bulk products based on the knowledge of the availability of under- and over-utilised storage capacity across Australia)

(the **Proposed Conduct**).

7. The Proposed Conduct explicitly excludes price agreements in relation to Fuel Products.
8. The Applicants submit that the Proposed Conduct is a temporary measure to deal with risks in the Fuel Products supply chain arising from the COVID-19 pandemic, and that it is not compulsory for AIP members to participate.
9. The Applicants request authorisation for 12 months from the date of the ACCC's final determination, and will withdraw the application in the event that the effects of the pandemic subside at an earlier date.
10. The Applicants submit that the Proposed Conduct will enable participants to work together during the period of COVID-19 impacts where relevant to discuss and take steps to manage Fuel Products supply chain risks and challenges, including by:
 - sharing information regarding intention around refining capacity and supply chain utilisation
 - sharing information regarding estimates of demand for each Fuel Product across the country in order to determine adequacy of supply and requirements for any industry co-ordination
 - scheduling and coordinating the supply chain including import, storage, trucking and delivery of product, and
 - potential cooperation measures to keep oil refinery facilities operating in cases where, for example, there is a shortage of equipment (such as maintenance equipment) or a facilities' workforce is materially impacted by a COVID-19 outbreak.

The authorisation process

11. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether proposed conduct results in a net public benefit.

Interim authorisation

12. The ACCC may, where it considers it appropriate, grant interim authorisation, which allows parties to engage in proposed conduct while the ACCC is considering the substantive application.
13. The Applicants request urgent interim authorisation in light of the rapidly deteriorating global and economic context caused by the COVID-19 crisis, declared by the World Health Organisation to be a global pandemic and which has resulted in a risk to supply security of Fuel Products in Australia.

Consultation

14. The ACCC has not conducted a public consultation process in respect of the request for interim authorisation due to the urgent need for the Applicants to quickly take steps to ensure supply fuel products to the Australian public and the compelling nature of the public benefits likely to result from the request for interim authorisation.

Conditional interim authorisation decision

15. The ACCC grants interim authorisation for the Proposed Conduct (described at paragraph 6 in this Interim Authorisation Decision document and does not include price agreements in relation to the supply of Fuel Products) subject to the following conditions that seek to ensure there is sufficient transparency over the various agreements reached, strategies implemented and information shared under the Proposed Conduct.¹

Condition 1 – reporting of material arrangements

16. The AIP must notify the ACCC of material arrangements entered into by the Applicants pursuant to the Proposed Conduct not less than 24 hours before the material arrangement is implemented. Material arrangements are arrangements entered into by the Applicants pursuant to the Proposed Conduct at the AIP Board level that are:

- likely to be of commercial or economic significance, or
- may have a material impact on the Fuel Products supply chain,

and such notification must include:

- the protocols and guidelines for the steps to be taken pursuant to the material arrangement
- a description of the nature of the steps to be taken pursuant to the material arrangement
- the Applicants who have agreed to the material arrangement, and
- when the steps pursuant to the material arrangement are intended to be taken.

Condition 2 – provision of information to ACCC on request

17. The ACCC may request information or clarification from the AIP in relation to the Proposed Conduct, and the AIP will provide such information in a manner that is timely and efficient for AIP and the ACCC (including by making available appropriate AIP representatives to discuss questions).

Condition 3 – approval of future parties

18. The following process applies to any party (other than AIP's Current Members) that wish to obtain the protection of this interim authorisation:

- a) the AIP must seek the approval of the ACCC by sending an email to adjudication@acc.gov.au, identifying the proposed party, including a description as to the conduct of that party and the reasons why such participation is desirable to achieve the purposes of the Proposed Conduct (set out in 3.1 of the application for authorisation)
- b) if the ACCC approves the party to engage in some or all of the conduct the subject of the notification, that party will receive the protection of the interim authorisation, subject to any conditions imposed by the ACCC, from the time that the AIP is notified of the ACCC's decision
- c) when considering the inclusion of a proposed party, the ACCC may in its absolute discretion, refuse to approve the inclusion of the proposed party or impose conditions which restrict the type or extent of the Proposed Conduct, and
- d) unless the ACCC approves the party, it will not have any protection under this interim authorisation.

¹ The Applicants included the requirements contained in Conditions 1 and 2 as part of the description of the Proposed Conduct. The ACCC has decided to make them conditions of interim authorisation

Reasons for decision

19. In granting interim authorisation, the ACCC recognises the urgency of the request for interim authorisation in light of the difficulties that the Applicants are facing due to the unprecedented reduction in demand for some Fuel Products resulting from the COVID-19 pandemic (as outlined in paragraph 5 above).

20. In addition, the ACCC considers that:

- While conduct of the type the Applicants have sought interim authorisation for might normally give rise to concerns regarding the extent to which it might substantially lessen competition in a market, the extent of potential detriments is mitigated by the following factors:
 - The Proposed Conduct, and interim authorisation, is a temporary measure to deal with risks in the Fuel Products supply chain arising from the COVID-19 pandemic. Authorisation is only sought for 12 months from the date of the ACCC's final determination and the Proposed Conduct can be discontinued if the effects of the pandemic subside at an earlier date.
 - The Proposed Conduct, and interim authorisation, only apply to arrangements for the purposes set out in 3.1 of the application for authorisation, which are broadly to ensure the security of supply of Fuel Products and facilitate the efficient use of refining capacity and fuel storage capacity in Australia resulting from the COVID-19 pandemic.
 - The Proposed Conduct does not enable oil refiners to jointly determine prices of Fuel Products supplied by them in competition with each other.
 - The reporting condition provides transparency in relation to the conduct covered by the interim authorisation and if major concerns are identified, the ACCC is able to revoke the authorisation, or request amendments to the conduct.
 - The condition requiring AIP to notify the ACCC of any future parties seeking to participate in the Proposed Conduct and for those parties to obtain ACCC approval provides additional transparency. If the ACCC has concerns about the number or nature of proposed participants, it can reject an application for approval.
 - It is not compulsory for AIP's Current Members to participate in the Proposed Conduct.
 - The ACCC may review its decision to grant interim authorisation at any time, including in response to feedback as the Proposed Conduct is rolled out.
- There are likely to be significant public benefits in the current unprecedented emergency circumstances, including:
 - Assisting AIP, Current Members and future parties to quickly understand supply and demand issues for Fuel Products and agree on solutions to address those issues. Such coordination is likely to more efficiently address and implement responses compared to, for example, Members separately developing solutions with importers or storage or transport providers.
 - Enabling the Applicants to ensure the security of supply of Fuel Products to Australian businesses and consumers, including the mining, agriculture and transport sectors.
 - Enabling the Applicants to facilitate the efficient use of refining capacity and capability, and of fuel storage capacity, in Australia
 - Enabling Members and transport and delivery providers to make arrangements to facilitate greater access to Fuel Products, including for consumers in rural and country areas.

Reconsideration of interim authorisation

21. The ACCC may review a decision on interim authorisation at any time, including in response to feedback raised following interim authorisation. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.