



**Australian Institute of Petroleum –
Application for authorisation AA1000488
Interim authorisation decision
20 May 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. In order to clarify the scope of the conduct that is authorised, the ACCC has revoked the interim authorisation granted on 3 April 2020, and replaced it with this interim authorisation.
3. AIP has applied for authorisation on behalf of:
 - (a) 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 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 (collectively, the **Participating Entities**).
4. The ACCC has granted conditional interim authorisation to the Participating Entities for the Proposed Conduct defined below where that conduct 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 Participating Entities complying with the conditions described at paragraphs 17-19 requiring AIP to report to the ACCC, an ability for the ACCC to request information from AIP and the Participating Entities, and ACCC approval of future parties.
5. Interim authorisation commences immediately and remains in place until it is revoked, the application for authorisation is withdrawn, or the date the ACCC's final determination comes into effect.

The application for authorisation

6. 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.
7. In order to manage the significant impacts to the Fuel Products supply chain and significant reduction in demand profile the Proposed Conduct for which the Participating Entities seek interim authorisation is 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**).
8. The Proposed Conduct for which authorisation is sought expressly excludes the following:
- (a) price agreements in relation to Fuel Products;
 - (b) any exchange of commercially or competitively sensitive information relating to marketing or sales activities, which includes (without limitation) information about prices, costs or customers;
 - (c) any discussions that occur outside of meetings of the AIP Board or a committee convened by the AIP Board (**Permitted Forum**); and
 - (d) any contract, arrangement or understanding that is entered into outside of a meeting of a Permitted Forum (**Excluded Agreement**); and
 - (e) giving effect to any Excluded Agreement.
9. AIP submits 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 Current Members to participate.
10. AIP requests 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.
11. AIP submits that the Proposed Conduct will enable Participating Entities 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

12. 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

13. 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.
14. AIP requests 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

15. The ACCC has not conducted a public consultation process in respect of the request for interim authorisation due to the urgent need for Participating Entities 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

16. The ACCC grants interim authorisation for the Proposed Conduct (as defined in paragraphs 7 and 8), subject to the following conditions that seek to ensure there is sufficient transparency over the various agreements reached, and strategies implemented.

Condition 1 – reporting of relevant meetings

17. Within 6 business days after each meeting of a Permitted Forum at which this interim authorisation or a matter related to it is discussed (**Relevant Meeting**), AIP must provide to the ACCC:
 - (a) detailed minutes of that Relevant Meeting, including:
 - i. copies of documents tabled at the meeting, and
 - ii. a summary of any implementation or operational activities in relation to the conduct authorised by this interim authorisation which have been engaged in by a Participating Entity and not previously reported to the ACCC, and
 - (b) if not already included in those minutes, details of each contract or arrangement made and each understanding arrived at by Participating Entities at the Relevant Meeting as part of the conduct authorised by this interim authorisation, including:
 - i. an explanation of the nature and purpose of the contract, arrangement or understanding
 - ii. the protocols and guidelines for the steps to be taken pursuant to the contract, arrangement or understanding
 - iii. the Participating Entities which have agreed to the contract, arrangement or understanding, and
 - iv. the timing of the proposed implementation of the provisions in the contract, arrangement or understanding.

Condition 2 – provision of information to ACCC on request

18. The ACCC may request any information or clarification from AIP or a Participating Entity in relation to the conduct authorised by this interim authorisation and any implementation or operational activities engaged in by a Participating Entity in relation to the conduct authorised by this interim authorisation, and AIP or the Participating Entity must provide such information in a timely manner (including by making available appropriate representatives to discuss questions, if requested by the ACCC).

Condition 3 – approval of future parties

19. The following process applies to any party (other than AIP or Current Members) that wishes to obtain the protection of this interim authorisation:
- (a) 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 this conditional 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 in relation to the proposed party, and
 - (d) unless the ACCC approves the party, it will not have any protection under this conditional interim authorisation.

Reasons for decision

20. In granting interim authorisation, the ACCC recognises the urgency of the request for interim authorisation in light of the difficulties that the Participating Entities are facing due to the unprecedented reduction in demand for some Fuel Products resulting from the COVID-19 pandemic (as outlined in paragraph 6 above).
21. 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 this 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 this interim authorisation, only apply to arrangements for the purposes set out in paragraph 7 above, 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 this interim authorisation and if major concerns are identified, the ACCC is able to revoke this interim authorisation, and/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 any Participating Entity to engage in the Proposed Conduct.
- The ACCC may review its decision to grant conditional interim authorisation at any time, including in response to feedback as the Proposed Conduct occurs.
- There are likely to be significant public benefits in the current unprecedented emergency circumstances, including:
 - Assisting Participating Entities 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 Participating Entities to ensure the security of supply of Fuel Products to Australian businesses and consumers, including the mining, agriculture and transport sectors.
 - Enabling Current Members to facilitate the efficient use of refining capacity and capability, and of fuel storage capacity, in Australia
 - Enabling Current 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

22. 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.