



**Brenntag Australia Pty Ltd –
Application for authorisation AA1000598
Interim authorisation decision
22 December 2021**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of the application for authorisation AA1000598 lodged on 21 December 2021 by Brenntag Australia Pty Ltd (**Brenntag**).
2. Interim authorisation is granted to enable Brenntag and other AdBlue manufacturers listed in the application¹ (**the Participants**) to collaborate to obtain adequate supply of refined urea in an effort to ensure sufficient supply of Diesel Exhaust Fuel (also known as AdBlue) for Australian consumption and the prioritised distribution of refined urea should shortages emerge, as described at paragraph 16 of this Interim Authorisation Decision and defined as the **Proposed Conduct**.
3. Interim authorisation does not extend to any agreement on the price of AdBlue supplied to AdBlue consumers.
4. Interim authorisation is also granted for any other relevant party who may wish to participate in the arrangements in the future and has notified the ACCC in writing of their intention to do so (**Other Participants**). Interim authorisation is granted with the conditions set out in paragraphs 26 to 30.
5. The ACCC grants interim authorisation in relation to Division 1 of Part IV of the *Competition and Consumer Act 2010* (Cth) (the **Act**) and sections 45(1), 46(1) and 47(1) of the Act.
6. Interim authorisation commences immediately and remains in place until the date the ACCC's final determination comes into effect, the application for authorisation is withdrawn, or until interim authorisation is revoked.

Background

7. The information in paragraphs 8 to 10 below was provided in the application.
8. AdBlue is an exhaust system additive used in diesel engines to control noxious emissions and is critical to the operation of modern diesel engines.
9. Refined (technical grade) urea is an essential input in the manufacture of AdBlue. Australia currently manufacturers almost all AdBlue for the Australian market and imports almost all of the required refined urea. AdBlue manufacturers are currently facing difficulties securing supply of refined urea. The global shortage of refined urea is the result of export restrictions imposed by China, which prompted both aggressive buy-up by some nations and limitations on exports by others.
10. If the AdBlue industry is unable to engage in the Proposed Conduct, there is a real risk that shortages of AdBlue may emerge across the Australian economy. This would

¹ DGL AUSBlue Pty Ltd, Mammoth Pty Ltd (EcoBlue), Spectrum Analytical Pty Ltd (Spectrum Fluid Technologies) and Green Emissions Australia Pty Ltd.

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).
11. On 9 December 2021, the Federal Government announced the establishment of an AdBlue Taskforce that will work across government and with industry to develop solutions to any potential future supply constraints. The announcement explained that options being explored include alternative international supply options for refined urea, bolstering local manufacturing capabilities and technical options at the vehicle level. The announcement also explained that at that time Australia had normal levels of stocks on hand of AdBlue, with more refined urea stocks on their way to Australia. As of 9 December 2021, Australia had over 15 million litres of AdBlue on hand (which is the equivalent of close to 5 weeks' of business-as-usual demand) and an additional over 2 weeks' supply from shipments on their way to Australia.²
 12. On 20 December 2021, the Federal Government announced that it reached an agreement with fertiliser manufacturer, Incitec Pivot, to secure local production of refined urea. Under this agreement, Incitec Pivot will rapidly design, trial and, on completion of successful tests, scale-up manufacturing and 'will 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, which is enough to make around an additional month's worth of AdBlue.³
 13. The Participants submit that the Proposed Conduct is intended to assist the Participants to work together to acquire adequate refined urea in an effort to ensure security of supply of refined urea and AdBlue in Australia. The Proposed Conduct is also directed at the prioritised distribution of refined urea and AdBlue if shortages emerge.

The application for authorisation

14. On 21 December 2021, Brenntag lodged an application for authorisation on behalf of itself and its related bodies corporate. A number of other AdBlue manufacturers were listed in the application as parties proposing to engage in the conduct the subject of the application (together with Brenntag, **the Participants**).
15. The Participants propose that the authorisation also apply to any other parties that are notified to the ACCC in accordance with the procedure set out at paragraph 26 below (**Other Participants**). This may include, for example, importers of refined urea, manufacturers of AdBlue in Australia, distributors, wholesalers or retailers of AdBlue in Australia and consumers of AdBlue.

The Proposed Conduct

16. The Participants seek authorisation 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:

² The Hon Angus Taylor MP, '[AdBlue supplies in Australia](#)', 9 December 2021, accessed 10 December 2021.

³ The Hon Angus Taylor MP, '[Increasing AdBlue supplies and protecting Australia's transport industry](#)', 20 December 2021, accessed 20 December 2021.

- 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;
 - prioritising access to refined urea and DEF according to need (for example, to particular geographical areas or consumers) as directed by the Commonwealth 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 (defined in paragraph 27 below) that occurs on or after the date that authorisation is granted.

(the **Proposed Conduct**).

17. Final authorisation is sought until 1 December 2022. The Participants submit that while it remains unclear precisely when the global shortage of refined urea will ease, the ACCC could revoke any final authorisation should circumstances change (such as the removal of export restrictions by China).

The authorisation process

18. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of 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 a proposed arrangement results in a net public benefit.
19. The power conferred upon the ACCC to authorise conduct is discretionary. In exercising that discretion, the ACCC may have regard to considerations relevant to the objectives of the Act.
20. The ACCC may specify conditions in an authorisation. The legal protection provided by an authorisation does not apply if any conditions are not complied with.

Request for interim authorisation

21. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation prior to the ACCC's final determination. This allows the parties to engage in the proposed conduct while the ACCC is considering the substantive application.
22. The Participants request urgent interim authorisation because, they submit, it is essential that they can commence engaging in the Proposed Conduct as soon as possible, to attempt to maintain adequate supply of AdBlue in Australia and otherwise to manage its distribution in accordance with greatest need.

Consultation

23. The ACCC has not conducted a public consultation process in respect of the request for interim authorisation. This is due to the urgent need to ensure the continued supply of AdBlue and the compelling nature of the public benefits likely to result from the conduct the subject of the request for interim authorisation.
24. The ACCC will conduct a public consultation process on the substantive application for authorisation in the coming days and will further examine the public benefits and detriments likely to result from the Proposed Conduct during that process. Details regarding how to make a submission will be available on the [ACCC's authorisations public register](#).

Granting of conditional interim authorisation

25. Interim authorisation is granted for the Participants and Other Participants to engage in the Proposed Conduct with the following conditions:
26. **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 with the subject 'Authorisation AA10000598 – request to be covered by authorisation', identifying the new entity(ies) that wish to be covered by any interim authorisation granted pursuant to this application, detailing the type(s) of conduct covered by this application 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 interim authorisation to engage in the conduct notified.
27. **Condition 2 – Approved Meetings:** For the purposes of paragraph 16(c) above, any of the following types of meetings will be Approved Meetings:
 - a. a meeting of the National Coordination Mechanism, convened by the Commonwealth Government, and to which the ACCC is invited to attend; or
 - b. meetings of a taskforce, working group or forum convened or attended by a representative of a Commonwealth 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.
28. For the avoidance of doubt, a forum includes a coordination mechanism convened by a Commonwealth 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 Commonwealth Government department or agency specifies to each relevant Participant or Other Participant that it is a forum for the purposes of this authorisation.
29. **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.
30. 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.

Reasons for decision

31. In granting interim authorisation, the ACCC recognises the urgency of the request for interim authorisation to assist to maintain supply of AdBlue in Australia and, if it were to become necessary, to manage its distribution in accordance with greatest need.
32. The ACCC considers that there are likely to be significant public benefits that result from the Proposed Conduct in the current circumstances, including enabling the Participants and Other Participants to:
- coordinate discussions within the AdBlue supply chain to develop and implement strategies to assist to maintain the continued supply of AdBlue
 - provide more effective advice to governments and relevant agencies regarding the supply of AdBlue, including by identifying and assisting to address any supply shortages and constraints that may arise, 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 if shortages do emerge.
33. The ACCC considers the Proposed Conduct is likely to assist to mitigate the risks of a supply shortage and the risk associated with any supply shortages that may emerge by enabling urgent coordinated whole of industry action if the need arises. The ACCC considers that this will maximise the likelihood of businesses and consumers across Australia continuing to have reasonable access to during any disruption in the supply of urea.
34. The ACCC considers that the Proposed Conduct may result in some public detriment. For competitors, including AdBlue manufacturers or other parties protected by the interim authorisation, sharing information and coordinating 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 present unusual circumstances created by urea supply disruption are no longer present, that cooperation between them in relation to these matters should cease.
35. Arrangements that involve prioritising access according to need (such as to particular geographical areas or classes of customers), even though at the direction of the Commonwealth Government, may mean that other classes of customers may be disadvantaged. Similarly, agreements between the Participants and Other Participants 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 would only be taken if there was a shortage of AdBlue. In such circumstances it is likely that regardless of whether the Participants 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 will be made by the Federal Government.

36. There is also a risk that coordination in respect of the Proposed Conduct could lead to additional anticompetitive coordination between the Participants or Other Participants.
37. However, the ACCC considers that it is unlikely that the parties engaging in the Proposed Conduct under interim authorisation would have an ongoing anti-competitive impact. In particular:
- There will 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, the Proposed Conduct is restricted to conduct that occurs at, in preparation for, or arises out of an Approved Meeting, each of which must be either convened or attended by Commonwealth Government representatives. The ACCC also has advance notice of any Approved Meeting being held, is able to attend meetings and, under the condition imposed at paragraph 29 above, has oversight over the outcomes of meetings.
 - The Proposed Conduct is a temporary measure to ensure sufficient supply of AdBlue.
 - The Proposed Conduct only enables the Participants and Other Participants to prioritise access to refined urea and AdBlue according to need as directed by the Commonwealth Government.
 - The Proposed Conduct, and interim authorisation, only apply to arrangements and conduct engaged in for specified 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 Proposed Conduct is not compulsory and any participant can opt out of any 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 ACCC may review its decision to grant interim authorisation at any time, including in response to feedback as the Proposed Conduct is rolled out. If any persons, including relevant Government and regulatory bodies, have concerns with the way the Participants or Other Participants are dealing with them during the period of interim authorisation, they are encouraged to advise the ACCC.

Reconsideration of interim authorisation

38. The ACCC may review a decision on interim authorisation at any time, including in response to feedback providing during the public consultation process about the substantive application for authorisation.
39. The ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not authorisation will ultimately be granted.