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# **Undertaking to the Australian Competition and Consumer Commission**

**Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Wesfarmers Kleenheat Gas Pty Ltd (ACN 008 679 543) and Wesfarmers Chemicals Energy and Fertilisers Ltd (ACN 008 797 402)**

**15 December 2014**

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## 1 Person giving Undertaking

- 1.1 This Undertaking is given to the ACCC under section 87B of the Act by Wesfarmers Kleenheat Gas Pty Ltd ACN 008 679 543 (**Kleenheat Gas**) and Wesfarmers Chemicals Energy and Fertilisers Limited ACN 008 797 402 (**WesCEF**) (together referred to as **Kleenheat** in this Undertaking).

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## 2 Background

### The parties to the proposed acquisition

- 2.1 Kleenheat Gas is a major wholesaler and distributor of bulk and cylinder Liquefied Petroleum Gas (**LPG**) for a variety of end uses in Australia. It owns a production facility in Perth and operates an extensive network of LPG depots throughout Australia. Kleenheat Gas is a wholly-owned subsidiary of Wesfarmers Limited, ACN 008 984 049 (**Wesfarmers**), a public company listed on the Australian Securities Exchange. Kleenheat Gas is part of WesCEF, a division of Wesfarmers.
- 2.2 Elgas Limited (**Elgas**) is a major wholesaler and distributor of LPG. It uses a range of transport options and storage facilities to supply LPG in both cylinders and bulk to a variety of different customers throughout Australia. It owns and operates the Elgas Cavern, which is a major LPG import and storage facility in Sydney. Elgas also owns an extensive network of LPG depots throughout Australia.
- 2.3 Elgas is a member of the BOC Group of companies (**BOC**), which is owned by the Linde Group, an international gases and engineering company, with operations in over 100 countries worldwide.

### The Proposed Acquisition

- 2.4 On 14 March 2014, Elgas, BOC, Kleenheat Gas and WesCEF signed an Asset Sale and Purchase Agreement pursuant to which Elgas will acquire 100% of Kleenheat Gas' east coast LPG assets (**Proposed Acquisition**).

### The ACCC's review

- 2.5 On 10 April 2014, the ACCC commenced its public review of the Proposed Acquisition.
- 2.6 The ACCC undertook market inquiries and considered information provided by the parties to the Proposed Acquisition, industry participants and others. The purpose of the ACCC's inquiries was to assess whether the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market in Australia in contravention of section 50 of the Act.

### The ACCC's competition concerns

- 2.7 The ACCC has concluded that, in the absence of the Undertaking, the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in certain markets for the distribution of non-automotive LPG in cylinder and in bulk.
- 2.8 The three major distributors of non-automotive LPG on the east coast of Australia are Elgas, Kleenheat Gas and Origin Energy LPG Ltd (**Origin**). Kleenheat Gas and Elgas are particularly close competitors in certain geographic areas. The ACCC was concerned that

the horizontal aggregation of two of the three largest distributors of non-automotive LPG would enhance the ability and incentive of the merged entity to raise prices and/or reduce the levels of service for the distribution of nonautomotive LPG in cylinder and bulk markets.

- 2.9 The three major distributors currently each have extensive state-wide distribution networks, including through agent and/or dealer networks in metropolitan and regional areas. The aggregation of market shares between Elgas and Kleenheat Gas would be particularly concentrated in New South Wales, the Australian Capital Territory and Victoria, resulting in the merged entity being the largest distributor by a significant margin in those states.
- 2.10 The Proposed Acquisition would also result in particularly high levels of concentration in parts of regional Victoria, regional New South Wales and the Australian Capital Territory.
- 2.11 The ACCC considered that smaller distributors would be unlikely to pose a sufficient constraint on the merged entity. The ACCC also considered that there are high barriers to entry and expansion, including:
- (a) high capital costs required to establish a distribution network, including sunk costs, relative to the potential returns and long recoupment period;
  - (b) a critical mass of customers required to support investment in a distribution network and to achieve economies of scale;
  - (c) access to a competitive source of wholesale LPG which would allow new entrants to compete effectively with incumbent distributors; and
  - (d) high strategic barriers (whether real or perceived) for potential new entrants, or incumbents considering expansion.

#### **The Undertaking remedies – the Elgas Divestiture Undertaking and this Undertaking**

- 2.12 In order to address the ACCC's competition concerns, Elgas offered and the ACCC accepted an undertaking pursuant to section 87B of the Act in order to address the ACCC's competition concerns in relation to the Proposed Acquisition (**Elgas Divestiture Undertaking**). At the time the ACCC accepted the Elgas Divestiture Undertaking the ACCC approved Renegade Gas Pty Ltd as the Approved Purchaser of the Kleenheat/Renegade Assets, and Origin as the Approved Purchaser of the Kleenheat/Origin Assets, pursuant to the Elgas Divestiture Undertaking.
- 2.13 Kleenheat does not consider that the Proposed Acquisition would be likely to substantially lessen competition in relation to the relevant markets for the distribution of non-automotive LPG in cylinders and bulk. Without admission, Kleenheat has offered this Undertaking to the ACCC pursuant to section 87B of the Act to support the Elgas Divestiture Undertaking.
- 2.14 After the Proposed Acquisition is completed, Elgas will be in a position to effect the divestiture under the Elgas Divestiture Undertaking of the majority of the Divestiture Assets. However, pursuant to a side deed to the Asset Sale and Purchase Agreement between Elgas and Kleenheat, Kleenheat has certain obligations in relation to the Divestiture Assets post acquisition. These obligations relate to obtaining third party consents, the provision of transitional services and technical assistance, and the transfer of personnel.

- 2.15 If the Proposed Acquisition does not proceed, this Undertaking will not be required. In such circumstances, Kleenheat will provide written notice to the ACCC to that effect and request the withdrawal of this Undertaking.
- 2.16 The objectives of this Undertaking are:
- (a) to ensure Kleenheat obtains or assists the Approved Purchasers to obtain the necessary third party consents, and provides transitional services, technical assistance and the offer to transfer personnel to the Approved Purchasers;
  - (b) to ensure that Kleenheat maintains the economic viability, marketability, competitiveness and goodwill of the Divestiture Assets prior to completion of the Proposed Acquisition; and
  - (c) to ensure the effective oversight of Kleenheat's compliance with this Undertaking.
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### **3 Commencement of this Undertaking**

- 3.1 This Undertaking comes into effect when:
- (a) the Undertaking is executed by Kleenheat; and
  - (b) the Undertaking so executed is accepted by the ACCC
- (the **Commencement Date**).
- 

### **4 Cessation**

#### **Withdrawal**

- 4.1 Kleenheat may request withdrawal of this Undertaking pursuant to section 87B of the Act at any time. This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to that withdrawal.

#### **Revocation**

- 4.2 The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

#### **Waiver**

- 4.3 The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or extend the date by which any such obligation is to be satisfied.

#### **Survival**

- 4.4 Unless and until this Undertaking is withdrawn in accordance with clause 4.1, clauses 1, 2, 3, 4, 7, 8, 9, 11, 13 and 14 survive completion of the obligations in clauses 5 and 6 and Confidential Schedule 2 as applicable.

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## 5 Support of the divestiture of the Divestiture Assets

### Consents

5.1 Kleenheat must:

- (a) obtain or assist the Approved Purchasers to obtain as expeditiously as possible, all Consents as required before completion of the divestiture of the Divestiture Assets;
- (b) comply with all requirements necessary to obtain any Consents, including by promptly providing all information necessary for the Consents to be given;
- (c) act in good faith in its negotiations with the Approved Purchasers in relation to obtaining any Consents; and
- (d) except as otherwise agreed with Elgas in the transaction documentation provided to the ACCC prior to the ACCC acceptance of the Elgas Divestiture Undertaking and the ACCC acceptance of this Undertaking, promptly pay the costs and expenses of any third party reasonably incurred in providing the Consents.

5.2 If, seven Business Days before completion of the divestiture of the Divestiture Assets, an Approved Purchaser fails to obtain or is unable to obtain one or more Consents, then Kleenheat must:

- (a) immediately provide to the ACCC in writing details of the:
  - (i) Consents that have not been obtained;
  - (ii) reasons why the Consents have not been obtained; and
  - (iii) information or material required to obtain the Consents.
- (b) continue to do everything in its power to satisfy clause 5.1 as soon as possible after the completion of the divestiture of the Divestiture Assets (and until such time as clause 5.1 is satisfied).

5.3 Even if Kleenheat has complied with clause 5.1 to 5.2, it remains a breach of this Undertaking if the divestiture by Elgas of the Divestiture Assets to the Approved Purchasers pursuant to the Elgas Divestiture Undertaking cannot be effected by reason of a failure by Kleenheat to obtain Consents.

### Transferred Personnel

5.4 At the option of the Approved Purchasers, Kleenheat must transfer to the Approved Purchasers:

- (a) all employees; and
- (b) all service providers under a contract for service;

who are, prior to the divestiture, directly employed in the business directly related to the relevant Divestiture Assets and who are, in the view of the Approved Purchasers, required for the Approved Purchasers to maintain, operate or conduct effectively the Divestiture Assets and who consent to the transfer of their employment or contract for service to the Approved Purchasers (**Transferred Personnel**).

- 5.5 When fulfilling its obligations under clause 5.4, Kleenheat must:
- (a) not directly or indirectly discourage any Transferred Personnel from any obligations to provide services to the relevant Approved Purchaser;
  - (b) effective on the date of the divestiture of the Divestiture Assets, release the Transferred Personnel from any obligations to provide services to Kleenheat;
  - (c) effective on the date of the divestiture of the Divestiture Assets, release the Transferred Personnel from any non-compete or similar restraint of trade obligation, to the extent that such an obligation would otherwise prevent the person from performing his or her contemplated role in relation to the Divestiture Assets; and
  - (d) not procure, promote or encourage the transfer of any of the Transferred Personnel from the Approved Purchasers to Kleenheat for a period of six months after the completion of the divestiture of the Divestiture Assets.

#### **Technical Assistance and Transitional Services**

- 5.6 At the option of the relevant Approved Purchaser, Kleenheat must provide, at no cost to the Approved Purchasers:
- (a) to Renegade and Origin, all of the technical and transitional services set out in Confidential Schedule 2 within the time frames provided for in Confidential Schedule 2; and
  - (b) to any other Approved Purchaser, technical and transitional services of the kind set out in Confidential Schedule 2 to the extent that Kleenheat is still able to do so at the time at which that Approved Purchaser acquires the relevant Divestiture Assets.

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## **6 Divestiture Assets Protection**

### **Protection of the Divestiture Business**

- 6.1 From the Commencement Date until the Control Date, Kleenheat must not sell or transfer its interest, or any assets comprising part of, or used in, the Divestiture Assets (other than the sale of goods and services in the ordinary course of business) or make any Material Change, except in accordance with this Undertaking or (subject to the other terms of this Undertaking) as required to allow completion of the Proposed Acquisition.

### **Kleenheat's obligations in relation to the Divestiture Assets prior to the Control Date**

- 6.2 Without limiting this clause 6, Kleenheat must, from the Commencement Date until the Control Date, take all steps available to it to:
- (a) ensure that the Divestiture Assets are managed and operated in the ordinary course of business as fully operational, competitive going concerns and in such a

way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Assets at the Commencement Date;

- (b) continue to provide access to working capital and sources of credit for the Divestiture Assets in a manner which is consistent with the financing of the Divestiture Assets before the Commencement Date;
- (c) continue to provide administrative and technical support for the Divestiture Assets in a manner which is consistent with the operation of the Divestiture Assets before the Commencement Date and in accordance with any plans established before the Commencement Date;
- (d) continue existing Agreements relating to the Divestiture Assets with customers, suppliers and/or other third parties that are in place at the Commencement Date;
- (e) renew or replace upon expiry Material Contracts for the provision of goods or services to the Divestiture Assets on commercial terms favourable to the Divestiture Assets;
- (f) maintain the supply of those goods and services that are part of the Divestiture Assets to existing customers in a manner consistent with the supply of those goods and services as at the Commencement Date;
- (g) maintain the standard of manufacture, distribution, promotion and sale of those products which form part of the Divestiture Assets as at the Commencement Date; and
- (h) carry out promotion and marketing of the products which form part of the Divestiture Assets in accordance with any plans established before the Commencement Date.

#### **Personnel of Kleenheat**

6.3 From the Commencement Date until the Control Date, Kleenheat will not:

- (a) terminate or vary the terms of employment or engagement of any of the Transferred Personnel, or agree to do any of those things; and
- (b) directly or indirectly procure, promote or encourage the redeployment of personnel who are, prior to the divestiture, directly employed in the business directly related to the relevant Divestiture Assets and, in the view of the Approved Purchasers, necessary for the operation of the relevant Divestiture Assets as at the Commencement Date to any other business operated by Kleenheat.

6.4 As soon as practicable after the Commencement Date, Kleenheat must direct its personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with Kleenheat's obligations under this Undertaking.

#### **Kleenheat's ongoing obligations in relation to the Divestiture Assets**

6.5 To the extent Kleenheat has obligations in relation to the provision of technical assistance and transitional services pursuant to clause 5.6 and Confidential Schedule 2 of this Undertaking in relation to the Divestiture Assets, Kleenheat must not sell, assign, transfer, and/or licence directly or indirectly any of the assets required by Kleenheat to fulfil such obligations without the prior written consent of the ACCC.



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## 7 Agreements and this Undertaking

- 7.1 Where there is an inconsistency between this Undertaking and any agreement between Kleenheat and any of Elgas, Origin, Renegade or any of their Related Bodies Corporate relating in any way to the Divestiture Assets, this Undertaking shall prevail.

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## 8 Compliance and information

- 8.1 Kleenheat will respond in a timely manner to all requests for information or documents made by the ACCC about this Undertaking.
- 8.2 The ACCC may direct Kleenheat in respect of its compliance with this Undertaking to, and Kleenheat must:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
  - (b) produce documents and materials to the ACCC within Kleenheat's custody, power or control in the time and in the form requested by the ACCC; and/or
  - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 8.3 Any direction made by the ACCC under clause 8.2 will be notified to Kleenheat, in accordance with clause 14.2.
- 8.4 Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 8 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 8.5 Nothing in this clause 8 requires the provision of information or documents in respect of which Kleenheat has a claim of legal professional or other privilege.

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## 9 Confidentiality and disclosure

- 9.1 Kleenheat and the ACCC agree that Confidential Schedule 2 will remain confidential, except with regards to the Approved Purchasers, at all times.
- 9.2 Kleenheat acknowledges that the ACCC may, subject to clause 9.1:
- (a) make this Undertaking publicly available;
  - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
  - (c) from time to time publicly refer to this Undertaking.
- 9.3 Nothing in clause 9.1 or the confidential parts of this Undertaking referred to in clause 9.1 prevents the ACCC from disclosing such information as is:
- (a) required by law;
  - (b) permitted by section 155AAA of the Act;

- (c) necessary for the purpose of enforcement action under section 87B of the Act; or
  - (d) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.
- 9.4 Nothing in clause 9.1 or the confidential parts of this Undertaking referred to in clause 9.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

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## 10 Obligation to procure

- 10.1 Where the performance of an obligation under this Undertaking requires a Related Body Corporate of Kleenheat to take or refrain from taking some action, Kleenheat will procure that Related Body Corporate to take or refrain from taking that action.

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## 11 No derogation

- 11.1 The Undertaking does not prevent the ACCC from taking enforcement action at any time, whether during or after the period of this Undertaking, in respect of any breach by Kleenheat of any term of the Undertaking.
- 11.2 Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that Kleenheat does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

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## 12 Change of Control

- 12.1 In the event that a Change of Control is reasonably expected to occur, Kleenheat must:
- (a) notify the ACCC of this expectation as soon as practicable; and
  - (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on Kleenheat pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified Kleenheat in writing that a section 87B undertaking under this clause is not required.

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## 13 Costs

- 13.1 Kleenheat must pay all of its own costs incurred in relation to the Undertaking.

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## 14 Notices

- 14.1 Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address:                      mergers@acc.gov.au  
   Attention: Executive General Manager  
   Merger and Authorisation Review Division

With a copy sent to:                mergersucu@acc.gov.au

Attention: Director, Undertakings Compliance Unit  
Coordination and Strategy Branch  
Merger and Authorisation Review Division

- 14.2 Any notice or communication to the Kleenheat Gas or WesCEF pursuant to this Undertaking must be sent to:

Name: Wesfarmers Kleenheat Gas Pty Ltd  
C/O: Gilbert + Tobin Lawyers  
Address: 2 Park Street, Sydney NSW 2000  
Email address: gcass-gottlieb@gtlaw.com.au  
Fax Number: 02 9263 4111  
Attention: Gina Cass-Gottlieb, Partner

- 14.3 If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).
- 14.4 If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.
- 14.5 Kleenheat Gas and WesCEF must notify the ACCC of a change to their contact details within three Business Days.
- 14.6 Any notice or communication will be sent to the most recently advised contact details and subject to clauses 14.3 and 14.4, will be taken to be received.

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## 15 Defined terms and interpretation

### Definitions in the Dictionary

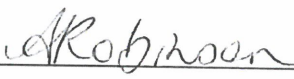
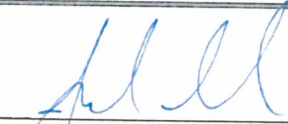
- 15.1 A term or expression starting with a capital letter:
- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
  - (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

### Interpretation

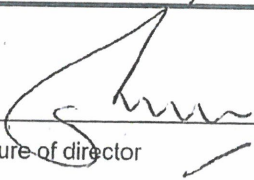
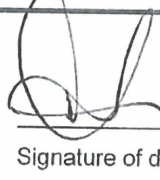
- 15.2 Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

Executed as an Undertaking

Executed by Wesfarmers Chemicals Energy and Fertilisers Limited ACN 008 797 402 pursuant to section 127(1) of the *Corporations Act 2001* by:

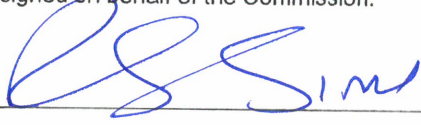
	
Signature of director	Signature of director/secretary
<u>ANN ROBINSON</u>	<u>JULIAN ANDREWS</u>
Name of director (print)	Name of director/secretary (print)
Date: 15/12/14	Date: 15 DECEMBER 2014

Executed by Wesfarmers Kleenheat Gas Pty Ltd, ACN 008 679 543 pursuant to section 127(1) of the *Corporations Act 2001* by:

	
Signature of director	Signature of director/secretary
<u>GRAHAM SMITH</u>	<u>MARK BRENDON GADSBY</u>
Name of director (print)	Name of director/secretary (print)
Date: 15th December 2014	Date: 15/12/14

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the Competition and Consumer Act 2010 (Cth) on: 17 December 2014

And signed on behalf of the Commission:

  
Chairman

Date: 17/12/14

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## Schedule 1 Dictionary

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### 1 Dictionary

**ACCC** means the Australian Competition and Consumer Commission.

**Act** means the *Competition and Consumer Act 2010* (Cth).

**Agreements** means any contract, arrangement or understanding, including any contract, arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding.

**Approved Purchaser** means Renegade with respect to the Kleenheat/Renegade Assets, Origin with respect to the Kleenheat/Origin Assets, or any other person(s) approved by the ACCC as a purchaser or some of all of the Divestiture Assets in accordance with the Elgas Divestiture Undertaking.

**Business Day** means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

**Change of Control** means the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of Kleenheat Gas or WesCEF to any other person or entity, or the sale or transfer of any assets necessary, or which may be necessary, to enable compliance with this Undertaking in its entirety.

**Commencement Date** means the date described in clause 3 of this Undertaking.

**Consents** means any Government Consents or Third Party Consents.

**Control Date** means the date on which the Proposed Acquisition is completed.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Divestiture Assets** means the Kleenheat/Origin Assets and the Kleenheat /Renegade Assets.

**Elgas** means the entity referred to in clause 2 of this Undertaking.

**Elgas Divestiture Undertaking** means the undertaking offered by Elgas and accepted by the ACCC pursuant to section 87B of the Act relating to the Proposed Acquisition.

**Government Consents** means any consents from any government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the operation of the Divestiture Business.

**Kleenheat** is defined in clause 1.1 of this Undertaking.

**Kleenheat Gas** means the entity referred to as such in clause 1.1.

**Kleenheat/Origin Assets** means the assets described in clause 3 of Confidential Schedule 4 to the Elgas Divestiture Undertaking and include land, contracts (including customer contracts) and associated goodwill, plant and equipment, motor vehicles, LPG cylinders, relevant records and inventory associated with the Kleenheat non-automotive LPG businesses in and around Swan Hill, Maryborough and Warrnambool (Victoria).

**Kleenheat/Renegade Assets** means the assets described in clause 4 of Confidential Schedule 4 to Elgas Divestiture Undertaking and include land, contracts (including leases and customer contracts) and associated goodwill, plant and equipment, motor vehicles, LPG cylinders, relevant records and inventory associated with the Kleenheat non-automotive LPG businesses in the areas in and around Dubbo, Griffith, Kempsey, Nowra, Stroud, Tamworth and Moama (New South Wales) and Canberra.

**LPG** means liquefied petroleum gas.

**Material Change** means any change to the structure, attributes or extent of the Divestiture Assets that may affect, or impact on, the competitiveness of the Divestiture Assets.

**Material Contract** means any Agreement that is necessary for the operation of the Divestiture Assets.

**Origin** means Origin Energy LPG Ltd, ACN 000 508 369.

**Proposed Acquisition** is defined in clause 2 of this Undertaking.

**Public Mergers Register** means the ACCC's public register of merger clearances, available at [www.accc.gov.au](http://www.accc.gov.au).

**Public Section 87B Undertakings Register** means the ACCC's public register of section 87B undertakings, available at [www.accc.gov.au](http://www.accc.gov.au).

**Related Body Corporate** has the meaning given to it by section 50 of the *Corporations Act 2001* (Cth).

**Renegade** means Renegade Gas Pty Ltd, ACN 074 008 496.

**Third Party Consents** means a consent from any entity that is not a government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the operation of the Divestiture Assets.

**Transferred Personnel** has the meaning given to it in clause 5.4 of this Undertaking.

**Undertaking** is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

**WesCEF** means the entity referred to as such in clause 1.1.

**Wesfarmers** means Wesfarmers Limited ACN 008 984 049.

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## 2 Interpretation

In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:

- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
- (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;

- (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
  - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
  - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
  - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and

- (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, Kleenheat will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking; and
- (q) a reference to:
  - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
  - (ii) a party includes its successors and permitted assigns; and
  - (iii) a monetary amount is in Australian dollars.



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**Confidential Schedule 2**