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Dear Gennady

We refer to your correspondence dated 18 August 2020 seeking further information from AIP to assist the ACCC in making a final determination in relation to the application for authorisation (AA1000488).

AIP's responses to the ACCC's questions are outlined below.

**1. Have the Participating Entities engaged in any conduct in reliance on the interim authorisation? If not, explain why, and state whether you expect to do so in the future.**

AIP and its member companies (the participating entities to the Authorisation) confirm they have not, to date, engaged in any conduct in reliance on the interim authorisation.

AIP's previous correspondence and discussions with the ACCC noted that the participating entities would consider engaging in conduct in reliance on the interim Authorisation only after the terms and conditions of the interim Authorisation were settled in consultation with the ACCC. This occurred on 20 May 2020 when the ACCC revoked the initial authorisation of 3 April and issued a replacement interim authorisation.

The industry has been highly successful to date in managing supply and demand challenges from the COVID-19 pandemic via normal commercial activities, without reliance on the interim authorisation. During the pandemic, individual fuel suppliers have reorganised supply, shipping logistics and refinery production rates to address quarantine restrictions, very major falls in fuel demand, inventory management difficulties, and to protect workforces under pandemic plans.

However, as outlined in AIP's response to Question 2, there remain significant uncertainties related to the pandemic's ongoing impacts on international and domestic fuels markets and on industry operations. For example, the pandemic continues to have a significant impact on the Australian refineries, including their manufacturing operations, major maintenance activity and ongoing economic viability, and the Australian Government is currently working with the refining sector in recognition of these impacts.

Also, as we have seen with the current situation in Victoria, and with the uncertainty in NSW, the progress of the pandemic can force rapid changes and reversals to the market and community situation, leading to very significant pressures on industry operations and supply positions across the fuels supply chain. This includes during major falls in demand with tightening restrictions and with demand spikes when restrictions are eased. Supply operations are also being challenged by different (in some instances contrasting) market dynamics across jurisdictions, and not just as a function of variances in government restrictions and border controls.

## 2.

These ongoing pressures, and the uncertainty surrounding the further impacts and recovery path of the pandemic, suggest a high potential for supply issues to emerge at short notice, which the Authorisation and the SRC are directly designed to address.

In this environment, AIP has no ability to forecast whether the participating entities will rely on the interim authorisation in the future, but it will certainly be utilised if the circumstances dictate and in order to deliver the ongoing reliable supply and availability of fuel to the economy and community. As a result, we consider that there remain significant public benefits from maintaining the Authorisation to provide the scope, if required, for timely industry collaboration and response to any major emerging threats to supply performance.

### **2. Are the particular circumstances which led to the application for authorisation being made (i.e. the circumstances related to COVID-19) ongoing, or have they subsided or changed in some other way?**

The easing of COVID-19 movement and community restrictions across many states has led to a recovery in petrol demand at a national level, but it remains around 10-20% below normal levels and volatile.

However, the Victoria lockdown restrictions have seen their petrol demand quickly return to the previous lowest levels which were experienced in April during the peak of the pandemic nationally. The Victorian experience highlights the industry's difficulties in seeking to deliver reliable fuel supply into a constantly changing market. This can also create supply pressures in other jurisdictions where their imported supply is utilised to manage market imbalances elsewhere.

National jet fuel demand remains around 60% below normal levels, and current demand is largely being driven by increased air freight, supported by some regional travel within jurisdictions. A major recovery in jet fuel demand is directly linked to government decisions on reopening borders and to how consumers respond. The pace and profile of the recovery in jet fuel demand remains a major industry uncertainty.

Overall diesel demand has been unexpectedly less impacted by COVID-19, due to strong commercial support from the agriculture, resources and transport sectors. For example, there was unexpectedly high agricultural demand associated with widespread seeding activity, which supported national diesel demand over April and May, but has since eased. However, diesel demand remains patchy across States and between metro and regional areas, and retail diesel demand remains volatile and heavily influenced by changes to movement restrictions imposed by governments, all of which continue to create ongoing challenges to reliable diesel supply.

In this light, the prevailing fuel demand circumstances at the time which led to the application have changed, but not significantly, and unprecedented market uncertainties remain. Different operational complexities and risks have now been introduced by jurisdictions following different recovery paths and approaches to restrictions - all of which are subject to change at any time. In addition, the industry has now incurred (rather than anticipated) the major financial and operational impacts on their businesses from the pandemic. These impacts are threatening the ongoing viability of facilities and operations throughout the supply chain, which naturally can have implications for supply management and reliability.

3.

3. In light of your answers to questions 1 and 2, do AIP and its members remain of the view that there is a need for the Proposed Conduct (as defined in the Draft Determination) to be authorised?

*{If your answer is “yes”, please explain: (a) the basis for this view, including the potential COVID-19 related problems or issues that may arise within the Authorisation Period that could undermine security of supply of fuel products in Australia, and why the Proposed Conduct by the Participating Entities (beyond ordinary commercial activities) is required to address them; (b) whether it is necessary for the authorisation to extend to all fuel products rather than a subset of them (e.g. aviation fuel vs petrol), and if so, explain the basis for including each of the fuel products in respect of which authorisation is sought; (c) the length of time for which the authorisation is likely to be necessary.}*

In the context of these major ongoing uncertainties and challenges relating to COVID-19 impacts and the recovery profile, as well as future refinery operations in Australia, the participating entities remain of the view that there is a need for the Proposed Conduct to be authorised and as defined in the Draft Determination. This includes at least for the specified period of 6 months proposed in the Draft Determination and for the identified ‘fuel products’. Ideally, as set out in AIP’s Application, Authorisation would be granted for a temporary 12 month period from the date of the ACCC’s Final Determination with a view that the Proposed Conduct can be discontinued in the event the effects of the pandemic subside at an earlier date. The longer period would better reflect the uncertainties of COVID-19 duration and impacts.

As noted above, significant uncertainties still apply to the demand and supply fundamentals for each fuel product over the coming months, and the risk of emerging supply issues exists for all these fuels. Also, in practice, supply logistics and shipping cargoes are organised on a ‘multi-product’ basis for certain markets and some changes to refinery operations can impact on the full range of products manufactured by refineries. We note that demand for each fuel product reaching a certain level nationally does not materially change many of the uncertainties and risks we have identified related to COVID-19 impacts.

As already experienced by industry and reported to governments on a routine basis, the industry continues to expect unpredictable demand spikes and week-to-week volatility in petrol, diesel and jet fuel demand in the coming months with changes to restrictions. This creates major refinery, supply, storage and distribution challenges for industry during the recovery and the potential for supply issues to emerge at short notice. Challenges to future refinery operations, including in the short term, also adds to the supply risks over the next 6 months. If these challenges are beyond the capability of individual operators to manage, then the Authorisation can be relied upon to address any issues, as it was designed to do.

We confirm this correspondence is non-confidential and can be included on the ACCC’s public register and we also request that AIP’s correspondence to you dated 21 May 2020 also be placed on the public register.

Yours faithfully



Paul Barrett  
CEO

**21 August 2020**