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Australian Government  
Department of Climate Change, Energy,  
the Environment and Water

Ms Naomi Menon  
Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
Canberra ACT 2601  
exemptions@acc.gov.au

19 June 2023

Dear Ms Menon

**Brenntag Australia's application for revocation of authorisation AA1000598 and substitution of authorisation AA1000622**

I refer to the Australian Competition and Consumer Commission's 14 December 2022 email to Brenntag Australia, copying in this department. The email requests information to inform its assessment of Brenntag Australia's application for revocation of an authorisation and substitution of a replacement, made under section 91C of the *Competition and Consumer Act 2010*. The department is responding to this request for information, as agreed between yourself and members of my branch. Please find attached three documents.

Attachment A provides information on the diesel exhaust fluid (DEF) market from the department's experience over the past year and outlines how the department sees an authorisation supporting the market.

Attachment B outlines changes to Brenntag's application to address concerns the ACCC expressed to the department during its consultation process. The department has received Brenntag's agreement, as the applicant, to the changes (Attachment C).

Please advise if the ACCC is comfortable with the proposed variations. My team is available to engage as required. Please direct any correspondence to [urea@dcceew.gov.au](mailto:urea@dcceew.gov.au) in the first instance.

Yours sincerely



**Miranda Lello**

Branch Head, Liquid Fuels Branch

Department of Climate Change, Energy, the Environment and Water.

## **ATTACHMENT A**

### **The Australian DEF Market**

Australia's transport and logistic system is dependent on diesel exhaust fluid (DEF). Since the DEF supply crisis in late 2021 and early 2022, the Australian Government has worked with the DEF sector to increase resilience in the market and improve security of supply.

#### *Availability of substitutes in the market*

DEF is a non-substitutable product. Modern diesel vehicles are designed by the original equipment manufacturers to operate with DEF. DEF is required for the selective catalytic reduction systems to reduce nitrous oxide and other pollutants that are harmful to human health and the environment. The department understands it is not a viable option to bypass or "switch off" the systems installed in these vehicles, as switching off the DEF function may result in engine damage or failure and impact on vehicle warranties and insurance.

Remapping an engine to avoid the need for DEF is prohibited under the Heavy Vehicle National Law.

#### *Market Structure and Participants*

The Australian DEF market consists of approximately 20 companies engaged in the sector as DEF manufacturers (blenders) and importers, wholesalers, and retailers. Around eight per cent of Australia's DEF is imported as finished product and the rest is produced domestically by blending imported technical grade urea (TGU) with deionised water. During 2022 there were approximately 10-15 companies importing TGU and DEF into Australia. December 2022 data shows three companies imported approximately 70 per cent of the TGU required to produce DEF in Australia. More than 50 per cent of DEF in the domestic market is sold wholesale business to business (mainly heavy vehicle haulage, mining, and the agricultural industries), with the remainder making its way through the retail chain.

The department is not aware of any legal or regulatory barriers to entry for new market participants, although barriers may exist due to economies of scale, limited availability of contracts, sunk costs for blending and storage, and access to distribution channels.

There is little vertical integration in the market currently aside from importation and manufacturing operations. DEF manufacturers (50 to 70 per cent) sell direct to the transport sector or to distributors who on-sell to retailers, including the fuel majors. The fuel majors have encouraged maturity in the market and have supported market transparency measures to increase visibility of domestic supply conditions. Following the crisis, fuel majors encouraged their suppliers (DEF manufacturers and distributors) to shift from longstanding 'just in time' approaches to managing stock to a 'just in case' approach. Accordingly, DEF manufacturers began diversifying their TGU imports and increasing forward orders to six months in advance to boost redundancy in their supply chains.

#### *Current supply situation*

Australia's DEF industry is reporting the domestic DEF market is well supplied. Concerns over rising gas prices and the Northern Hemisphere winter impacting the supply of TGU

were not realised over the 2022/2023 Australian summer, with milder temperatures in Europe subduing price increases.

Australian TGU stocks now equate to around 14 weeks of supply (based on demand of 1500 tonnes/week). By way of comparison, it was estimated that in 2021 TGU blenders were holding around three weeks of TGU stock prior to the supply disruption. The department assesses that with the passage of time following the crisis in 2022, these relatively high stock levels will begin to return to a lower level, closer to 2021 levels. This is due to commercial pressure on the importing businesses to optimise their inventory levels to meet customer needs, while reducing their storage costs and overheads as much as possible. If businesses return to a just in time business model, industry feedback suggests it would take approximately six weeks from identifying a supply disruption event to implementing an effective response to replenish stocks.

#### *Risk of supply shortage*

The DEF market experienced extreme supply chain volatility in 2022. In 2023, the global trade in TGU remains highly concentrated, with China and Russia collectively comprising 70 per cent of inter-regional exports. Australia comprises a significant (12 per cent and growing) proportion of inter-regional TGU trade.

With Australia currently wholly reliant on imports of TGU, the domestic market will continue to be exposed to international supply chain volatility. While 2022 trade data indicates import diversification following the supply crisis, more recent data points to a return to heavy reliance on traditional trading partners for TGU and finished DEF. In December 2022, 71 per cent of supply was sourced from China.<sup>1</sup>

A lack of source country diversification was a key reason for the supply disruption experienced in late 2021 and early 2022. More broadly Australian supply chains have continued to be impacted by Chinese export inspections in 2023, with export departures reportedly delayed by up to 30 days. While the government notes reports of China relaxing some of these regulations, a disproportionately high reliance on one country for TGU imports creates an underlying risk of a DEF shortage in the Australian market, notwithstanding the current availability of Chinese urea.

#### *Domestic manufacturing*

During the crisis, Australia was able to rely on sovereign manufacturing capability provided by Incitec Pivot Pty Ltd, Australia's (then) only DEF blender capable of producing its own urea. Urea production at Gibson Island has now ceased, following Incitec Pivot's announcement on 15 November 2022. Since the closure of Gibson Island, there are approximately five blenders that make up around 80 per cent of the market, with the other 20 per cent of the blending market servicing regional areas across different states.

Development of potential large-scale future urea manufacturing projects have been announced. These projects are at various stages of development and current planning indicates new manufacturing may come online from 2027. The length of the authorisation Brenntag has sought from the ACCC reflects the lack of sovereign manufacturing capability

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<sup>1</sup> ABS (December 2022), *International Trade in Goods and Services*, (ABS Cat. No. 5368.0)

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until 2027 (at earliest) and the need to continue to provide confidence within this market that industry can coordinate efforts to address any supply crisis that may occur.

### *Demand outlook*

DEF has only been a component of the diesel market for approximately 10 years and there has already been a supply crisis. Pressure on the market is only expected to increase as Australian DEF use is set to grow strongly in the future, with consumption more than doubling over the next decade. Reasons for this growth include: ongoing replacement of older, more polluting vehicles; growth in total vehicle numbers; and the tightening of noxious emissions standards (with introduction of Euro VI for heavy vehicles from 1 November 2024).

Other policy measures have the potential to further drive growth in the DEF market. The Australian Government is currently:

- evaluating tightening noxious emissions standards for light vehicles. Further information is at <https://www.infrastructure.gov.au/infrastructure-transport-vehicles/vehicles/vehicle-safety-environment/emission-standard>
- considering a national approach to manage noxious emissions from non-road diesel engines. Further information on this initiative is available at: <https://www.dccew.gov.au/environment/protection/air-quality/national-clean-air-agreement/evaluation-non-road-diesel-engine-emissions>.

### **Government measures**

In September 2022, the Australian Government announced a comprehensive package of measures to build DEF market resilience to a future supply shock. A four-year authorisation will give industry time to mature and will align with these measures.

### *Government TGU Stockpile*

The Government has established a 7500-tonne stockpile of TGU. The stockpile will only be used as a last resort in a severe disruption event, following an industry wide depletion of stocks.

The shortfall will be determined through the department's data collection framework and verified through consultation with the Supplier Working Group. Any stockpile release will be only considered as a last resort when no other avenues exist for industry to rectify shortages within the market.

The authorisation Brenntag has sought will enable critical coordination and consultation amongst the DEF Supplier Working Group, as part of a graduated response where industry will lead solving any future supply shortages. Effective authorised coordination will be key to providing a rapid response, reducing the chance of panic buying/hoarding, as occurred during the last crisis. In a high severity event, industry will need to share commercial information on supply, coordinate production and supply of DEF and prioritise access to stock, all conduct requiring protection under an authorisation. If industry stocks are depleted before the problem is resolved, the authorisation will also allow for industry-wide coordination with government to inform government's decision about stockpile release.

### *Competitive Grants Program*

On 6 December, the Minister for Climate Change and Energy announced the opening of the Maintaining Our Supply of Diesel Exhaust Fluid (MOSDEF) competitive grant program. The application process is now closed and is being considered prior to any announcements.

The program aims to support domestic manufacturing of DEF in the immediate to short term and will be considering projects looking to produce DEF from means other than relying on imported technical grade urea. The program will provide up to \$16.15 million over 2023 to mid-2026.

An authorisation will provide a safety-net for approved conduct to occur if there is a supply emergency in the period before domestic manufacturing capability can be restored. Even once some domestic manufacturing comes online the authorisation will allow for critical coordination of DEF supply in a crisis. This was demonstrated during the first DEF shortage where members of the Supplier Working Group were able to discuss distribution logistics and share demand forecasts with Incitec Pivot, then the only domestic manufacturer.

### *Market Transparency*

The government is also improving market transparency through voluntary reporting in the DEF market. To support this, the department is building an online data collection and reporting mechanism for the DEF market, aiming to go live in mid-2023. Accurate and consistent reporting is progressing and will take time to mature, however this information will support decision making by industry and government.

Data on TGU stocks and DEF production will be de-identified and publicly reported by the department as aggregated statistics. Providing businesses with accurate data on the composition of the market, including trends on growth, will assist them to plan and develop their business offerings accordingly and support better business practices.

### **Industry coordination required to address market failure**

In the liquid fuels market, monitoring the supply chain has proven to be best practice to ensure ongoing market supply and confidence. The department's data reporting framework will allow the government to identify a potential supply shortage over the next four years, while an authorisation will enable the effective management of any disruption.

The department currently engages bilaterally with DEF manufacturers and fuel retailers to collect monthly data on DEF and TGU stock levels. The data will provide an evidence base on the health of the DEF market and help to identify and mitigate potential supply shortages. The need for government intervention should be reduced if the data demonstrates the market is functioning properly.

However, an ongoing authorisation will facilitate necessary engagement if a supply disruption occurs while the market matures over the next four years. During the first DEF crisis in late 2021 and early 2022, authorisation AA1000598, granted by the ACCC in its Final Determination on 28 April 2022, enabled effective crisis management by allowing the department to convene the Supplier Working Group in a matter of hours. Industry was then able to coordinate to confirm stock levels in real-time and arrange for distribution of DEF supply to priority sites. As noted in the Final Determination, in the absence of industry

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coordination, aspects of the Proposed Conduct, like imposing sales limits or prioritising access to product in a crisis, would have less impact.

An authorisation will allow an effective and timely coordinated response by industry and government to prevent a supply issue from becoming a crisis. In a rapidly evolving crisis, bilateral engagement between the department and industry will be less effective and unlikely to produce the coordination of stocks needed to prevent filling locations and fuel retailers' forecourts from running out of DEF. This rapid and effective response ability is a key factor in providing confidence to the market. Panic buying and hoarding is a key risk to security of supply in liquid fuel markets and was a key contributor to the 2021/2022 DEF crisis. The ability to rapidly respond will reduce the chances of panic buying and hoarding which otherwise might cause a relatively small disruption to spiral into a crisis.

The department could address emerging supply issues bilaterally with industry, but this would be much slower than if industry was permitted to engage in the Proposed Conduct. The department collects industry data one month in arrears and supplements it with official trade data collected two months in arrears. This time lag leaves little opportunity for proactive management through bilateral engagement. The department would be required to schedule meetings with the relevant industry participants, meet with each of them to assess the problem, test the outcomes, consult across government and then more broadly, before finally advising industry on a course of action. Noting the size of the market, this would easily delay government's response time from days to weeks. As an example, recent bilateral discussions related to the market transparency initiative took three weeks to complete to accommodate the relevant participants. Healthy stock levels will provide some buffer, however hoarding and panic buying will contribute to the rapid shortfall in the availability of domestic stocks. Given the criticality of DEF, which has no substitute, indicative estimates suggest even short duration stock-outs may result in a loss to the economy of over one hundred million dollars per day.

A more practical approach would see the department convene the Supplier Working Group if the department's data framework forecast a significant shortfall in DEF and TGU stocks. During this alert phase, the Supplier Working Group would be asked to confirm the shortfall in real-time, before engaging in an industry-led discussion on how to remedy the supply problem. If the situation deteriorated, the Supplier Working Group would meet weekly at a minimum, to engage in acute crisis management. This approach proved to be successful during the 2021/2022 DEF supply crisis and industry would expect to have the same mechanism available to them in any future supply crisis.

These measures would only be taken in a genuine emergency, with decisions and agreements endorsed by government. This would occur before any consideration regarding release of the TGU stockpile which would only be used in the event industry-wide stocks are depleted. If the decision was made to release the stockpile, it is crucial the release process minimises market distortion. Convening the Supplier Working Group will ensure transparency throughout this process.

**ATTACHMENT B**

The department recognises the potential for public detriment from allowing competitors to share information and coordinate on the supply of DEF, which may reduce competition. Accordingly, the department suggests restricting the Proposed Conduct to members of the Supplier Working Group. Cooperation between TGU importers, DEF manufacturers, wholesalers, and retailers, is key to reasonably addressing any market failure affecting supply of DEF and/or TGU. The department also suggests scaling back the Proposed Conduct to further mitigate any potential public detriment. The department has set out below the required changes to Brenntag's application to facilitate this. (Brenntag has agreed to these changes (see Attachment C).

**Proposed variation to Brenntag's application to revoke authorisation AA1000598 and substitute authorisation AA1000622**

- a) **The text of Paragraph 7 should be deleted in its entirety and replaced by the following text:**

7. The Applicant requests that any authorisation granted apply to members of the DEF Supplier Working Group, made up of the Applicant, listed at Part 2(a) and members listed at Part 3(b) and Part 4(a) of the application. The Applicant proposes the authorisation also apply to future members of the DEF Supplier Working Group that notify the ACCC in accordance with the process set out at Part 5(c) below. In this application, these entities are collectively referred to as the *Parties to the Proposed Conduct* (the **Parties**).

- b) **The text and table at Part 3(b) should be deleted in its entirety and replaced by the following:**

**b) Other persons who are a party to the authorisation which is to be revoked**

13. The below table lists members of the DEF Supplier Working Group who were covered by authorisation AA1000598 (Final Determination issued on 28 April 2022) which is to be revoked, and on whose behalf new authorisation is sought. Authorisation is not being sought for other persons covered by authorisation AA1000598 that are not currently members of the DEF Supplier Working Group.

<b>Persons listed in the original application</b>	<b>Date interim was granted</b>	<b>Description of business activities</b>
DGL AusBlue Pty Ltd	22-Dec-21	DEF Manufacturer
Mammoth Pty Ltd (EcoBlue)	22-Dec-21	DEF Manufacturer
Spectrum Analytical Pty Ltd (Spectrum Fluid Technologies)	22-Dec-21	DEF Manufacturer

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Green Emissions Australia Pty Ltd	22-Dec-21	DEF Manufacturer
<b>Other persons who have notified the ACCC of their participation</b>	<b>Date ACCC was notified</b>	<b>Description of business activities</b>
Bluenox Pty Ltd	22-Dec-21	DEF Manufacturer
BP Australia and its related bodies corporate	22-Dec-21	Fuel Major
Ampol Limited	22-Dec-21	Fuel Major
Viva Energy Australia Pty Ltd	22-Dec-21	Fuel Major
Australasian Convenience and Petroleum Marketers Association (ACAPMA)	12-Jan-22	Industry Association
Suhara Logistics Australia Pty Ltd	8-Aug-22	Retailer and Distributor of DEF
IOR Pty Ltd	17-Aug-22	Retailer and Distributor of DEF
BGI DEF Pty Ltd t/a Blue Gold Industries	06-Oct-22	DEF Manufacturer

**c) The table at Part 4(a) should remain, however Paragraphs 14, 15 and 16 should be deleted in their entirety and replaced by the following text:**

15. The Applicant, listed at Part 2(a) and members listed at Part 3(b) and Part 4(a) of the application, and their related bodies corporate, are together the Parties for the purpose of this application.

16. The Applicant proposes the authorisation also apply to future members of the DEF Supplier Working Group that notify the ACCC in accordance with the process set out at Part 5(c) below.

**d) The text at Paragraph 18(c) should be deleted in its entirety and replaced by the following text:**

c. arises at an Approved Meeting (defined at part 5(b) below) that occurs on or after the date that authorisation is granted.

**e) The definition of an Approved Meeting at Paragraph 20 should be deleted in its entirety and replaced by the following text:**

20. For the purposes of paragraph 18(c) above, an Approved Meeting is a meeting of the DEF Supplier Working Group, convened and chaired by the Department of Climate



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Change, Energy, the Environment and Water, with the objective of responding to TGU and DEF shortages, where:

- a. a party notifies the ACCC in writing, at least two business days before the date of any meeting (or such shorter time as the ACCC agrees to in writing), that the Party intends for the meeting to be an Approved Meeting under the authorisation, invites the ACCC to attend the meeting, sets out the time and date of the meeting, proposed attendees, the purpose of the meeting, and the matters to be discussed at the meeting; and
- b. more than one Party has been invited to the DEF Supplier Working Group; and
- c. the ACCC does not notify the Party in writing at least one business day in advance of the meeting that it is not satisfied that the meeting is covered by this authorisation.

**f) Paragraph 21 should be deleted in its entirety.**

**g) The text at Paragraph 22 should be deleted in its entirety and replaced with the following text:**

21. The Applicant proposes that new members of the DEF Supplier Working Group become a Party to the Proposed Conduct as set out below:

- a. New members of the DEF Supplier Working Group that wish to engage in the Proposed Conduct must notify the ACCC in writing, identifying the entity(ies) that intend to be covered by any 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.
- b. If the person has notified the ACCC of its intention to engage in some or all of the authorised conduct, that person will have the protection of authorisation, from the time of notification.
- c. The ACCC may impose conditions which restrict the type or extent of the Proposed Conduct which the person may engage in.

22. When assessing membership suitability, the department considers whether organisations can demonstrate proven capability in the supply of TGU/DEF in the Australian market and their ability to reasonably assist in a supply shortage situation.

**h) The text at Paragraph 23 should be deleted in its entirety and replaced with the following text:**

23. The Applicant, on behalf of the Parties, is seeking an additional 48-month term to engage in the Proposed Conduct. The Applicant proposes amending the Proposed Conduct so that any contract, arrangement, understanding or conduct only arises out of an Approved Meeting (Paragraph 18(c)). The Applicant also proposes a change to the definition of an Approved Meeting to only include meetings of the DEF Supplier Working Group convened by the Department of Climate Change, Energy, the Environment and Water (Paragraph 20).

**i) Paragraph 38(d) 'Consumers of DEF' should be deleted.**

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- j) The text at Paragraph 42 should be deleted in its entirety and replaced with the following text:**

42. The Proposed Conduct does not extend to any agreement on the price of DEF supplied to DEF consumers. It will also be carried out to facilitate the supply of DEF, rather than restrict it. Further, the Proposed Conduct is not aimed at limiting growth in industry size or the entry of new competitors, who would be free to apply to the department to become members of the DEF Supplier Working Group.

- k) The word 'Participants' should be replaced with the word 'Parties' in the first sentence of Paragraph 46.**

- l) The text at Paragraph 58 should be deleted in its entirety and replaced with the following text:**

58. The Parties acknowledge the potential for some public detriment and take steps to mitigate it by ensuring adherence to the ACCC's conditions, including but not limited to:

- a. Input and oversight by the Government at Approved Meetings
- b. Notifying the ACCC of the meeting in advance and inviting the ACCC to attend
- c. Each meeting is chaired by a senior official according to a pre-determined agenda to ensure the conversation remains within the bounds of the authorisation. The first agenda item for each meeting is the authorisation to ensure attendees are authorised to participate and that the conversation at the meeting is limited to the scope of the Proposed Conduct; and
- d. Providing the meeting outcomes to the ACCC within 14 days of the meeting.

**ATTACHMENT C**

**Victory, Claire**

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**From:** Huggins, Daniel <[REDACTED]>  
**Sent:** Wednesday, 14 June 2023 4:21 PM  
**To:** Victory, Claire  
**Cc:** Major, Russell; de Ferranti, Richard; Sturgeon, Sharyn; Ong, Zhong Kai  
**Subject:** RE: ACCC s91C application - RFI submission [SEC=OFFICIAL]

Afternoon Claire,

Post management and legal review: I am emailing to confirm agreement to the Proposed Changes being submitted to the ACCC on behalf of Brenntag. Thank you for the departments support.

Noted that moving forward if the application is approved, any discussion between Brenntag and any party of the DEF Supplier Working group would need **prior** notification to the ACCC in writing at least 2 business days before the proposed meeting, setting out the date, time of meeting, attendees, purpose of meeting and matters to be discussed at the meeting and such meeting if not opposed by the ACCC, needs to be chaired by the Department.

Kind regards,

**Daniel Huggins**  
Commercial Manager BES ANZ  
Brenntag Essentials Asia Pacific



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**From:** Victory, Claire <[REDACTED]>  
**Sent:** Thursday, 25 May 2023 11:14 AM  
**To:** Huggins, Daniel <daniel.huggins@brenntag.com>  
**Cc:** Major, Russell <russell.major@brenntag.com>; de Ferranti, Richard <Richard.DeFerranti@dcceew.gov.au>; Sturgeon, Sharyn <Sharyn.Sturgeon@dcceew.gov.au>  
**Subject:** ACCC s91C application - RFI submission [SEC=OFFICIAL]

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