

Record of oral submission to the Australian Competition and Consumer Commission (ACCC)

Australia New Zealand Industrial Gas Association application for authorisation AA1000516

Submission: GFG Alliance

Date of submission: 24 July 2020

Oral submission

Background

- GFG Alliance operates steel manufacturing facilities in Sydney and Newcastle in NSW, in Whyalla in South Australia and in Laverton in Victoria.

Details about GFG Alliance's relevant operations

- [REDACTED]
- [REDACTED]
- [REDACTED]

Views on the Proposed Conduct

- In the interim authorisation decision, the ACCC notes that bilateral negotiations between hospitals and suppliers of medical oxygen would be the first response to any supply issue, and that the conduct proposed by ANZIGA is only to deal with situations where these negotiations are insufficient to secure supply. In GFG Alliance's view, it seems extremely unlikely that supply issues would not be able to be resolved through bilateral negotiations for new supply agreements, and it is therefore unlikely that the circumstances in which the Proposed Conduct may be required will actually arise.
- GFG Alliance understands that the scope of the Proposed Conduct is limited to sharing of information regarding medical oxygen, and that it is important in current circumstances

to ensure the supply of medical oxygen. However, while GFG Alliance does not acquire medical oxygen, it has an interest in ensuring there is no impact on the competitive market for industrial gases generally as it is a large consumer of industrial gases in NSW, Victoria and South Australia.

- GFG Alliance is concerned that information sharing regarding the supply of medical oxygen could extend to providing information that is relevant to the supply of non-medical oxygen (and potentially other industrial gas products), and such discussions could impact GFG Alliance's business, for example, when it comes to re-negotiating supply contracts. As a significant consumer of industrial gases, GFG Alliance is concerned about the sharing of any information that could result in changes to the competitive market for industrial gases, including non-medical oxygen.
- The opportunities for sharing of information between the parties to the Proposed Conduct (the Parties) should be limited as much as possible. To address this issue, there could be another step in the process before the Parties can engage in the Proposed Conduct, which is additional to the notification requirements set out in the conditions of the ACCC's interim authorisation decision. Namely, the ACCC or another independent third party could have a role in determining whether bilateral discussions and supply arrangements are insufficient and the Proposed Conduct is therefore necessary. GFG Alliance notes that, currently, the Parties can make this judgement call jointly and at their discretion, with no third party verification or transparency. This may result in the Proposed Conduct being engaged in where it is not strictly necessary, which could unduly impact the competitive environment.
- Alternatively, the Parties could be required to provide justification for their view that bilateral negotiations are insufficient as well as the information that is shared between the Parties, which could be reviewed by a third party such as the ACCC to determine whether the justification is reasonable. This would create an onus on the Parties to be transparent around any decision to engage in the Proposed Conduct.