

**Application for revocation of an authorisation for proposed
conduct and substitution of a replacement**

Section 91C, *Competition and Consumer Act 2010* (Cth)

Lodged by Brenntag Australia Pty Ltd

17 October 2022

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Part 1: Summary

1. This application for revocation and substitution is made to the Australian Competition and Consumer Commission (**ACCC**) by Brenntag Australia Pty Ltd on behalf of itself and its related bodies corporate (the **Applicant**).
2. Diesel Exhaust Fluid (**DEF**) (also known by a commercial brand name as AdBlue) is an exhaust system additive used in diesel engines to control noxious emissions and is critical to the operation of modern diesel engines.
3. Technical grade urea (**TGU**) is an essential input in the manufacture of DEF. Australia currently manufactures almost all DEF for the Australian market. Incitec Pivot's Gibson Island facility is Australia's only DEF manufacturer able to produce urea to make DEF, while the majority of domestic manufacturers import the required TGU for blending into DEF.
4. In late 2021, DEF manufacturers faced difficulties securing supply of TGU. The global shortage of TGU resulted from export restrictions imposed by China, which prompted both aggressive buy-up by some nations and limitations on exports by others.
5. On 28 April 2022, the ACCC issued a Final Determination - *Application for authorisation AA1000598, Collaboration on arrangements for the supply of Diesel Exhaust Fluid, also known as AdBlue*, (the **Determination**), in response to an application made by the Applicant, granting authorisation to enable the Parties to the Proposed Conduct, to collaborate to assist in obtaining adequate supply of TGU to ensure sufficient supply of AdBlue, and to enable prioritised distribution of TGU should shortages emerge.
6. Due to ongoing fragility in the domestic DEF market, the Applicant is seeking final authorisation under s 91C of the *Competition and Consumer Act 2010* (Cth) (**CCA**) to extend the term for which the Participants are currently authorised to engage in the conduct described in Part 5 of this application (the **Proposed Conduct**).
7. For the purposes of this application, the **Participants** refers to the Applicant (listed at Part 2(a)) and other persons who are a party to the Determination which is to be revoked, and/or propose to engage in the Proposed Conduct, on whose behalf the new authorisation is sought (listed at Part 3(b) and Part 4(a)). The Applicant proposes that the authorisation also apply to **Other Participants**, which are defined as any other persons that notify the ACCC of their wish to engage in the Proposed Conduct under the protection of any authorisation (including interim authorisation) granted, in the future, in accordance with the process set out at Part 5(c) of this application. In this application, the *Participants* and *Other Participants* are collectively referred, to as the *Parties to the Proposed Conduct* (the **Parties**).

8. Since the Determination, the Australian market for DEF diversified its supply from a range of source countries and is currently well supplied. Industry and market information suggests a tightening of supply in the global urea market, likely to occur in late 2022, leading to renewed pressure on the Australian market. Factors contributing to this include, the Russian-Ukrainian war accelerating the rise of gas prices which has resulted in reduced European urea production, the introduction of export duties on Russian stock and below normal access to Chinese product. Consequently, competition is increasing for reduced supplies from other markets and this is redirecting TGU from the Middle East and Asia to Europe. This is in addition to the upcoming northern hemisphere winter and the closure of Incitec Pivot's Gibson Island facility in December 2022. If this renewed pressure leads to another shortage in late 2022, stocks held by industry may run down in early 2023 and create a second crisis in the domestic DEF market.
9. Should this occur and the Parties are unable to engage in the Proposed Conduct, this would have a serious impact on Australian supply chains and the economy more broadly due to the disruptions it would cause to sectors reliant upon modern diesel engines, including:
 - a. Road freight
 - b. Mining (underground mining vehicles)
 - c. Courier Services (modern diesel vehicles made since 2016)
 - d. Agriculture (modern tractors and harvesters)
 - e. Electricity (including back-up generators in South Australia).
10. The Applicant is requesting reauthorisation to allow the Parties to engage in the Proposed Conduct for a period of 48 months. The term of 48 months is considered justified due to the ongoing fragility of the market and the time it will take for the market to mature and for new sovereign capabilities, including manufacturing projects to be established – even with the recently announced Commonwealth support package.
11. The Proposed Conduct is intended to assist the Parties to work together to ensure security of supply of TGU and DEF for the Australian market and to prevent future supply crises. The Proposed Conduct is also directed at the prioritised distribution of TGU and DEF if shortages emerge.

Part 2: Applicants

a) Applicant

Name, address (registered office), telephone number and ACN	Contact person(s) name, position, organisation, telephone number and email address	Description of business activities
Brenntag Australia Pty Ltd ACN 117 996 595 Level 5, 10 Nexus Court, Mulgrave, Vic. 3710 03 9559 8330	Cher Dickson Managing Director, Brenntag Australia Pty Ltd. [REDACTED]	DEF Manufacturer

b) Email address for service of documents in Australia

Email

[REDACTED]

[REDACTED]

Part 3: Authorisation to be revoked (the existing authorisation)

a) Existing Authorisation

12. The Determination (AA1000598-1), *Collaboration on arrangements for the supply of Diesel Exhaust Fluid, also known as AdBlue*, was authorised on 28 April 2022 and terminates on 1 December 2022.

b) Other persons who are a party to the authorisation which is to be revoked and on whose behalf the new authorisation is sought¹

Persons listed in the original application	Date interim was granted	Description of business activities
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
Green Emissions Australia Pty Ltd	22-Dec-21	DEF Manufacturer
Other persons who have notified the ACCC of their participation	Date ACCC was notified	Description of business activities
Bluenox Pty Ltd	22-Dec-21	DEF Manufacturer
Greyhound Australia Pty Ltd	22-Dec-21	Bus Operations
Ron Finemore Transport Pty Ltd and its controlled entities	22-Dec-21	Line-haul road transport services
IPEC Pty Ltd and TasLink Logistics Pty Ltd and its related bodies corporate ('Toll Global Express')	22-Dec-21	Freight transport services
BP Australia Pty Ltd and its related bodies corporate	22-Dec-21	Fuel Major
Toll Holdings Limited and its wholly owned subsidiaries	22-Dec-21	Logistics and Freight Transport services
Transit Systems Ltd	22-Dec-21	Bus Operations
Ampol Limited	23-Dec-21	Fuel Major
Viva Energy Australia Pty Ltd	24-Dec-21	Fuel Major
Kinetic Holding Company Pty Ltd and its related entities, including:	30-Dec-21	Bus Operations

¹ Not all entities listed on the ACCC's public register were able to be contacted or responded to the request for participation, for the purpose of drafting this application.

<ul style="list-style-type: none"> • BTI Pty Ltd; • Kinetic Group Services Pty Ltd; • Transit Australia Group Pty Ltd; • Surfside Buslines Pty Ltd; • Greyhound Resources Pty Ltd; • Kinetic (Tasmania) Pty Ltd; • Marrickville Bus Lines Pty Ltd; • Kinetic (Melbourne) Pty Ltd; • Kinetic Fleet Services Pty Ltd; and • Australian Bus and Truck Pty Ltd. 		
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
Airbridge Pty Ltd	06-Oct-22	CO ₂ capture and conversion into commodities
BGI DEF Pty Ltd t/a Blue Gold Industries	06-Oct-22	DEF Manufacturer

c) Basis for seeking revocation

13. Revocation is being sought so that the Determination can be substituted with the new authorisation sought.

Part 4: Authorisation to be substituted (the new authorisation)

- a) Other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought.

Name, address (registered office), telephone number and ACN	Contact person(s) details	Description of business activities
Global Chemical (ANZ) Pty Ltd, t/a GC Green 157C Leacocks Lane Casula NSW 2170 M: [REDACTED] ACN : 613 037 988	John Lee Managing Director [REDACTED] [REDACTED]	DEF Manufacturer

14. The persons listed at Part 2(a), Part 3(b) and Part 4(a) above, and their related bodies corporate, are together *the Participants* for the purposes of this application.
15. The Applicant proposes that the authorisation also apply to any other persons that wish to become an *Other Participant* and notify the ACCC in accordance with the process set out at Part 5(c) below.
16. Together *the Participants* and *Other Participants* make up the Parties. For the avoidance of doubt, it is intended that the authorisation apply to the Parties.

Part 5: The proposed conduct

a) Description of the Proposed Conduct

17. The Proposed Conduct relates to collaboration among the Parties to obtain adequate supply of TGU in an effort to ensure sufficient supply of DEF is available for Australian consumption. The proposed collaborative efforts will also be directed at the prioritised distribution of TGU and DEF should shortages emerge.
18. Specifically, the Parties 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:
- a. involves two or more of any Parties; and
 - b. has the purpose of securing adequate supplies of TGU; promoting adequate production of DEF for the Australian market; ensuring security of supply of TGU and DEF for Australian businesses and consumers; or prioritising access to TGU 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 TGU or DEF;
 - prioritising access to TGU 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 at Part 5(b) below) that occurs on or after the date that authorisation is granted; or
 - arises out of an Approved Meeting (defined in paragraph 7.9 of authorisation AA1000598-1) that occurred while authorisation AA1000598-1 was in force.
19. The Proposed conduct does not extend to any agreement on the price of DEF supplied to DEF consumers.

b) Approved Meeting

20. For the purposes of paragraph 18(c) above, an Approved Meeting is:
- 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 TGU and DEF shortages, where:
 - the ACCC is notified by a Party 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 meetings of the relevant group to be an Approved Meeting under this authorisation, and invites the ACCC to attend the meeting of the relevant group, sets out the time and date of the first meeting, proposed attendees, the purpose of the meeting and the group, and the matters to be discussed at the meeting; and
 - more than one Party has been invited to the relevant group; and
 - the ACCC does not notify the Party in writing at least one business day in advance of the meeting that is not satisfied that the meeting is covered by this authorisation.

21. For the avoidance of doubt, a forum includes a coordination mechanism convened by a Commonwealth Government department or agency where the department or agency liaises and/or coordinates with more than one Party, even if the relevant Parties do not meet or speak directly, provided that the department or agency specifies to each relevant Party that it is a forum for the purposes of this authorisation.

c) Other Parties wishing to engage in the Proposed Conduct

22. The Applicant proposes that a person may become an Other Participant as set out below:
- a. Persons 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.

d) Changes to the conduct

23. The Applicant, on behalf of the Parties, is seeking an additional 48 month term to engage in the Proposed Conduct. The Applicant proposes a change to the Proposed Conduct authorised under the Determination, set out at paragraph 18(c) of this application, to enable protection for ongoing coordination that commenced under the existing authorisation. No other changes are sought to the Proposed Conduct.

e) Rationale

24. The Proposed Conduct seeks to address the ongoing fragility of the Australian DEF market. It would ensure the continued supply and appropriate distribution of DEF among industries reliant on modern diesel engines, such as road freight, courier services, mining, agriculture and energy.

25. Diesel engines cannot operate without DEF which acts as a coolant and ensures catalytic conversion systems can operate to reduce nitrous oxide and other pollutants that are harmful to human health and the environment. Switching off the catalytic conversion system in a diesel engine may result in engine damage or failure and is not a feasible option to address DEF shortages.

26. A DEF supply crisis has the potential to cripple sectors relying on diesel engines. DEF dependence is highest in long haul articulated road trucks, with smaller trucks and light vehicles using different emission control technology. These vehicles carry a significant portion of Australia's freight, so a disruption resulting from a DEF supply crisis would have harmful economic impacts across the economy.

27. Factors contributing to a further potential DEF supply crisis include high international gas prices affecting the international supply of urea to the market, export restrictions from countries including China, the imminent closure of Incitec Pivot's manufacturing facility and pressure from the imminent northern hemisphere winter.

28. The Proposed Conduct seeks to avoid potentially wide-ranging impacts on critical sectors, and consequently Australian supply chains and the economy more broadly, if DEF supply is significantly constrained or disrupted.

f) Provisions of the CCA which might apply to the Proposed Conduct

29. The Parties compete in relation to the acquisition of TGU and DEF, the manufacture of DEF and the supply of DEF to distributors, wholesalers, retailers and/or consumers. Accordingly, absent authorisation, the Proposed Conduct may risk giving rise to contraventions of the CCA, including provisions of the CCA relating to:

- a. making or giving effect to a contract, arrangement or understanding that may include a cartel provision (Division 1 of Part IV of the CCA); or

- b. contracts, arrangements or understandings, concerted practices, exclusive dealing and other conduct that have the purpose, effect or likely effect of substantially lessening competition (ss 45(1), 46(1) and 47(1) of the CCA).

g) Term of authorisation sought

30. Authorisation is sought until 1 December 2026.

31. The Determination was made on 28 April 2022 and is due to expire on

1 December 2022, meaning the Parties have had relatively little time to act under the Determination. An additional 48 month term would ensure the Parties can continue to work together to secure DEF supply chains and build resilience in the market. A further 48 month term to engage in the Proposed Conduct will:

- a. cater for the closure of Incitec Pivot's Gibson Island facility in December 2022. Although the market has been notified of this closure well in advance, road freight associations and some DEF manufacturers have expressed reservations about the loss of Australia's only domestic production capability.
- b. cater for potential tightness in international urea supply resulting from high gas prices, the upcoming northern hemisphere winter and ongoing reduced access to Chinese stock.
- c. provide protection to the market as it matures in response to the growing demand for DEF until new sovereign capabilities, including large-scale urea manufacturing projects, are established in late 2025 or early 2026.
- d. complement various initiatives announced by the Government on 15 September 2022, aimed at improving the security of DEF supply in Australia. The Government has committed \$49.5 million in funding over four years to advance three measures, including:
 - A government controlled strategic stockpile of 7,500 tonnes of TGU providing an additional five weeks of supply beyond industry stock levels in case of a supply shortage.
 - A competitive grants program to support sovereign capability and manufacturing projects that will look to produce TGU domestically.
 - Embedding the collection of voluntary data provided by industry to provide market awareness of TGU and DEF domestic stocks;
- e. enable the sector to continue working with the Government to increase market awareness of industry held stocks. This will inform the Government's decision making on access to the national stockpile in an emergency and enable quick action if prioritised distribution is required during a supply emergency.

32. If the Proposed Conduct is not reauthorised the Parties will not be able to collaborate in a time of market volatility and the potential for a second supply crisis. If the Parties are unable to collaborate to ensure domestic DEF supply during a crisis, the Australian economy may experience losses of up to hundreds of millions of dollars per day, as a disruption would impact critical sectors reliant on modern diesel engines.

Part 6: Persons who may be directly impacted by Proposed Conduct

33. The persons who are likely to be directly impacted by the Proposed Conduct include TGU importers, DEF manufacturers, suppliers and consumers.
34. For TGU importers, DEF manufacturers and suppliers, the Proposed Conduct including sharing information on sources of supply will assist them to continue operating their business in a volatile market.
35. Retailers and wholesalers will likewise be positively impacted as shared information on supply enables the flow of goods to continue into distribution hubs for further distribution into the broader economy.
36. The Proposed Conduct's contribution to ensuring DEF supplies will directly impact customers at the end of the supply chain. A secure DEF supply means agricultural production will continue and supply is less likely to break down. Similarly, continued road freight services means products will not spoil and that products are able to be offered for sale through retail outlets. In mining, the extraction of core minerals will enable businesses to continue to meet their domestic and international contractual obligations and prevent obstructions to the flow of investment into the country.
37. If the conduct is not reauthorised and Parties are unable to share information on supply it is unclear they will be able to withstand another supply crisis. This would have negative flow on effects for the broader economy and the aforementioned persons, whose operations are dependent on a secure supply of DEF.

Part 7: Market information and concentration

a) Description of products and/or services

38. The Parties are:

- a. Importers into Australia of TGU and DEF
- b. Manufacturers of DEF in Australia
- c. Distributors, wholesalers or retailers of DEF in Australia
- d. Consumers of DEF.

b) Description of industries

39. The relevant markets for the purposes of this authorisation are the Australian markets for the manufacture and supply of DEF, through distributors, wholesalers or retailers, to commercial, industrial and retail customers.

40. DEF Manufacturers import TGU and use it to manufacture DEF by blending it with deionised water.

41. DEF Manufacturers supply DEF to distributors, wholesalers and retailers as well as directly to customers. Key DEF customers include the following:

- a. Road freight, eg Toll Group, Linfox, Ron Finemore Transport
- b. Mining, eg underground mining vehicles
- c. Courier services, eg diesel vehicles post-2016
- d. Agriculture, eg modern tractors and harvesters
- e. Power Utilities, eg backup generators.

c) Factors that would limit/prevent competitive conduct

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 become Other Participants.

Part 8: Public benefit

43. DEF is critical to the Australian economy and is required for the effective operation of sectors reliant upon modern diesel engines. Around 25% of the Australian diesel fleet is DEF dependant and this proportion is set to rise significantly to 2030. As such, a supply crisis of DEF will have harmful economic and social impacts from curtailment of the domestic trucking, logistics and agriculture industries, with flow on effects to the broader Australian economy. Reauthorisation of the Proposed Conduct would assist to mitigate the effects of a disruption to diesel which would likely result in a loss to the Australian economy in hundreds of millions of dollars per day.
44. In late 2021 and early 2022, the Australian DEF market faced shortages stemming from a combination of factors in the global urea market. To manage the shortages, the Government intervened in the DEF market by coordinating information sharing meetings with industry to share information on supply, within the boundaries of the Determination. In the Determination, the ACCC assessed the Proposed Conduct would be likely to result in a public benefit through assisting to mitigate the risk of supply shortages of AdBlue and reducing community concerns that could lead to stockpiling behaviour.
45. The Proposed Conduct has instilled confidence across the supply chain that the DEF market is working together towards the common goal of ensuring DEF supplies into the future.
46. During the crisis, the Proposed Conduct enabled several of the Participants, through a DEF Supplier Working Group, to work with the Government to prioritise the distribution of AdBlue along priority transport routes to where it is was most needed across Australia. Industry largely took the lead, with manufacturers and retailers speaking under the ACCC authorisation to direct supply to priority locations. Where an AdBlue outage was identified, companies with supplies ensured that they were moved to outlets on these routes, so that where one outlet did not have supplies that the route was restocked as a matter of urgency. For example, early in the crisis in December 2021 Supplier Working Group used a meeting to raise concerns about key areas, from Mt Isa to the Pilbara, experiencing shortages of AdBlue. The Supplier Working Group then discussed strategies and worked together to ensure these locations were replenished in a timely manner.
47. Reauthorisation would allow for the prioritised distribution of AdBlue to occur again in an emergency situation. Manufacturers would continue to be connected with distributors and retailers to enable industry participants to develop and implement strategies to address future supply shortages.

48. The Proposed Conduct has also facilitated the exchange of information amongst the Supplier Working Group to enable more informed decisions on diversification of supply sources. During meetings, members of the Supplier Working Group build confidence by providing reassurance that they are confident in their lines of supply and continue to build on their forward orders. Continued engagement along these lines will be critical over the next few years as international markets remain volatile, demand for DEF grows and until domestic manufacturing projects come online.
49. Since the Determination, Australia's commercial DEF sector has diversified its supply from a range of source countries. ABS International Merchandise Trade data identifies that imports of TGU and DEF are now being imported from a number of countries (including China, Indonesia, Japan, Saudi Arabia, and USA), compared to earlier in the crisis (ABS data not available) where market estimates suggest around 80% of imports were sourced from China.
50. However, the DEF sector in Australia remains a maturing sector currently comprising smaller-scale DEF manufacturers who are blenders and a combination of smaller organisations who sell direct to the consumer and those who are larger who are wholesalers and retailers of the product to the end-user. The most common business model of the smaller organisations relies on importing TGU to produce DEF for resale or direct sales to consumers. These organisations are generally unable to carry large stocks and operate as just-in-time businesses.
51. In December 2022, Gibson Island is scheduled to cease production due to commercial reasons. Incitec Pivot's Gibson Island is Australia's only DEF manufacturer capable of producing its own urea. Although the market has been notified of this closure well in advance, road freight associations and some DEF manufacturers have expressed reservations about the loss of Australia's only domestic production capability.
52. In the absence of Gibson Island, industry will be reliant on imports of TGU to blend with deionised water for the purpose of making DEF. While Australia has the raw materials to produce agricultural grade urea, the remaining industry participants lack the capability to produce TGU. Production of urea is primarily limited by the availability and cost of sufficient natural gas for urea synthesis (the key ingredient in DEF).
53. The Government has just announced a competitive grant program to support sovereign capability and manufacturing projects to produce TGU domestically. Still, a domestic capability to produce TGU at scale will take time to mature and DEF manufacturers will remain dependent on importing TGU until such projects come online. In the absence of a further authorisation, these organisations would face a fragmented market and no approved means of collaboration to share information to secure supply.

54. Reauthorisation would help smaller players in the domestic DEF market overcome difficulties accessing DEF through already unstable international supply chains for TGU. European supply options are already limited due to rising gas prices and sole-sourcing from China carries a level of risk. In 2021, China restricted urea exports and has continued to implement lengthy inspections on exports which has significantly delayed Australian orders. In September 2022, Argus media reports that the Russian government has confirmed that it will introduce a levy on urea exports if prices remain high, in a bid to bolster tax revenue.
55. TGU must be stored under low humidity and low temperature conditions. Shipping delays and exposure to the elements risk endangering the final quality of the product, meaning less is available for blending into DEF. Without regular meetings of the Supplier Working Group, DEF manufacturers and retailers would not have been able to share information on long lead times for Chinese exports, which have informed others' decisions on the need to further diversify their sources of supply and increase their forward orders.
56. Reauthorisation is needed to ensure that the Parties can collaborate and exchange information on supply over the coming months of possible market instability and until further domestic capability comes online. It is unclear whether the sector could withstand another supply emergency without reauthorisation of Proposed Conduct.

Part 9: Public detriment including any competition effects

57. In the Determination, the ACCC assessed the Proposed Conduct would result in some public detriment in the form of reduced competition between manufacturers and suppliers of AdBlue, as well as potential for anti-competitive coordination between the Parties.
58. Several of the Participants have engaged in the Proposed Conduct through a Supplier Working Group, a forum convened under the National Coordination Mechanism of Government and bound by the conditions imposed by the ACCC in the Determination. The Participants 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 Determination. The first agenda item for each meeting is the Determination to ensure attendees are authorised under the Determination to participate and that the conversation at the meeting is limited to the scope of the Determination; and
 - d. Providing the meeting outcomes to the ACCC within 14 days of the meeting.
59. The detriment to the economy if the Proposed Conduct is not reauthorised may be significant if a DEF supply crisis emerges. Prior to the Determination the Parties engaged with each other minimally, if at all. There is a lack of transparency across the sector on sources of supply, production capacity and stocks held. Accordingly, when a supply disruption occurred in late 2021 the Government was forced to intervene to support Australia's domestic producer through a five week crisis.
60. If the Proposed Conduct is not reauthorised, the Parties will no longer be able to convene in a forum with Government to distribute supply to priority locations. This would have a negative impact on market confidence and could lead to a situation where hoarding and panic buying occurs, putting additional pressure on a fragile market. Further, the Supplier Working Group would be unable to meet as a cohort to share information on supply and provide advice to Government on factors contributing to the possible release of its stockpile. It is important the process for this be transparent so as not to distort or create uncertainty in the market.
61. From December 2022, Australia's Gibson Island will close. This is Australia's only facility currently capable of producing its own urea to make DEF. Industry will need to compete with the international market to import TGU. Parties manufacturing DEF may experience challenges entering or increasing their reliance on the import market. Australia

consumes approximately 16 million litres of DEF per month (or 6,000 tonnes of TGU), a relatively small percentage of the international market. Further, European prices for natural gas, the key feedstock for urea, rose 29 per cent alone in one week in August 2022. Prices are expected to increase further as the northern hemisphere winter approaches.

62. The issue is compounded with DEF use in Australia expected to grow. Australian DEF use is set to grow strongly in the future due to on-going replacement of older, more polluting vehicles with new DEF-compliant vehicles, growth in total vehicle numbers, as well as proposed tightening of emissions standards for on-road vehicles and non-road engines. While growth may be mitigated long-term by a changeover to other fuel types such as hydrogen or electric vehicles, these alternatives will not address short to medium term disruptions.
63. If the Proposed Conduct is not reauthorised, Australia faces greater risk of harmful impacts a DEF supply disruption would cause to our economy and society. While it is difficult to quantify the detriment caused by the Proposed Conduct, a supply disruption is likely to result in a loss to the Australian economy in hundreds of millions of dollars per day.

Part 10: Contact details of relevant market participants

64. See Part 3 and Part 4 above.

Part 11: Additional information

65. The Applicant seeks interim authorisation on an urgent basis. The Determination is due to expire on 1 December 2022, only eight months after it was made. It is essential that authorisation does not lapse during this time when there is a possibility of a second supply crisis. A supply crisis is possible considering rising international gas prices resulting in reduced European urea production, the introduction of export duties on Russian stock, below normal access to Chinese product and the closure of Incitec Pivot's Gibson Island facility.
66. Granting an interim authorisation will ensure the Parties can continue to engage in the Proposed Conduct to manage the supply of DEF to ensure access for critical sectors in the Australian economy, while the ACCC considers the substantive application for revocation and substitution.

Part 12: Declaration by Applicant(s)

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere. The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application. The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



Signature of authorised person

MANAGING DIRECTOR AUSTRALIA

Office held

Ms Cher Dickson Managing Director, Brenntag Australia Pty Ltd.

This 17th day of October 2022.