

**APPLICATION FOR INTERIM AND FINAL AUTHORISATION
SECTION 88(1) OF THE COMPETITION AND CONSUMER ACT 2010 (CTH)
PUBLIC VERSION**

Lodged by
Brenntag Australia Pty Ltd

20 December 2021

Contents

Part 1: Summary	3
a) Background	3
b) Urgent interim authorisation sought	3
Part 2: Parties to the proposed conduct	4
a) Applicant	4
b) Email address for service of documents in Australia	4
c) Other persons who propose to engage in the Proposed Conduct	4
d) Other Participants	5
Part 3: The Proposed Conduct	5
a) Description of the Proposed Conduct	5
b) Approved Meeting	6
c) Other parties wishing to engage in the Proposed Conduct	6
d) Application for interim authorisation	7
e) Rationale	7
f) Provisions of the CCA which might apply to the Proposed Conduct	7
g) Term of authorisation sought	7
Part 4: Persons who may be directly impacted by proposed conduct	8
Part 5: Market information and concentration	8
a) Description of products and/or services	8
b) Description of industries	8
c) Factors that would limit/prevent competitive conduct	8
Part 6: Counterfactual	9
Part 7: Public benefit	9
Part 8: Public detriment	9
Part 9: Contact details of relevant market participants	10
Part 10: Declaration by applicant	10

Part 1: Summary

a) Background

1. This application 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 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. Due to shortages in an essential input into the manufacture of DEF, the Participants seek urgent interim and final authorisation under s 88(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) to engage in the conduct described in Part 3 of this application (the **Proposed Conduct**).
3. Refined (technical grade) urea is an essential input in the manufacture of DEF. Australia currently manufactures almost all DEF for the Australian market and imports almost all of the required refined urea. DEF manufacturers are currently facing difficulties securing supply of refined urea. The global shortage of refined urea is the result of export restrictions imposed by China, which prompted both aggressive buy-up by some nations and limitations on exports by others.
4. If the DEF industry is unable to engage in the Proposed Conduct, there is a real risk that shortages of DEF may emerge across the Australian economy. This would have serious impacts 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. Light vehicles (modern diesel vehicles made since 2016)
 - d. Agriculture (modern tractors)
 - e. Energy (including back-up generators in South Australia).
5. The Proposed Conduct is intended to assist the Participants to work together to acquire adequate refined urea in an effort to ensure security of supply of refined urea and DEF for the Australian market. The Proposed Conduct is also directed at the prioritised distribution of refined urea and DEF if shortages emerge.

b) Urgent interim authorisation sought

6. The Applicant seeks urgent interim authorisation from the ACCC for the Proposed Conduct. This is to allow the Applicant to commence taking immediate action to address the potential DEF shortages.

Part 2: Parties to the proposed conduct

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 ACN 117 996 595 Level 5, 10 Nexus Court, Mulgrave, Vic. 3170 03 95598330	Alex Gitlits Commercial Manager, Australia & New Zealand Brenntag (Viva Energy) [REDACTED] [REDACTED]	Manufacturer of DEF

b) Email address for service of documents in Australia

Email: [REDACTED]

c) Other persons who propose to engage in the Proposed Conduct

Name, address (registered office), telephone number and ACN	Contact person(s) name, position, organisation, telephone number and email address	Description of business activities
DGL AUSBlue Pty Ltd ACN 652 795 189 ABN 27 652 795 189 20-40 Beirne Street, Wulkuraka QLD 4305 1300 287 258	Isaac Gatt Director AUS Blue DGL Group [REDACTED] [REDACTED]	Manufacturer of DEF
Mammoth Pty Ltd (EcoBlue) ACN: 119 724 337 Canning Accounting, 'Pinnacle House' Level 1, 16 Ogilvie Road, Mount Pleasant WA 6153	Keith Cronin Roy Draffin Head of Operations and Engineering EcoBlue (Mammoth) [REDACTED] [REDACTED]	Manufacturer of DEF
Spectrum Analytical Pty Ltd (Spectrum Fluid Technologies) ACN: 133 093 580 ABN: 67133093580 491 Smollett Street, ALBURY NSW 2640	Tom Rowe Managing Director Spectrum Fluid Technologies [REDACTED] [REDACTED]	Manufacturer of DEF

Name, address (registered office), telephone number and ACN	Contact person(s) name, position, organisation, telephone number and email address	Description of business activities
Green Emissions Australia Pty Ltd ACN: 614 189 347 ABN: 33614189347 Burton Partners, 'First Floor', 11-15 Marlo Place, Hallam VIC 3803 03 9768 3860	William Butcher CEO – Australian Operations Green Emissions Australia Pty Ltd [REDACTED] [REDACTED]	Manufacturer of DEF

7. The parties listed at Part 2(a) and (c) above, and their related bodies corporate, are together the **Participants**. For the avoidance of doubt, it is intended that the authorisation apply to the **Participants**.

d) Other Participants

8. The **Participants** propose that the authorisation also apply to any other parties that notify the ACCC in accordance with the procedure set out at Part 3(c) below (**Other Participants**).

Part 3: The Proposed Conduct

a) Description of the Proposed Conduct

9. The Proposed Conduct relates to collaboration among the **Participants** to obtain adequate supply of refined urea 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 refined urea and DEF should shortages emerge.
10. Specifically, the **Participants** 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 **Participants** or **Other Participants**; and
 - b. has the purpose of securing adequate supplies of refined urea; promoting adequate production of DEF for the Australian market; ensuring security of supply of refined urea and DEF for Australian businesses and consumers; or prioritising access to refined urea 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 refined urea or DEF;
 - prioritising access to refined urea 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 in paragraph 12 below) that occurs on or after the date that authorisation is granted.
 - 11. The Proposed conduct does not extend to any agreement on the price of DEF supplied to DEF consumers.
- b) Approved Meeting**
12. For the purposes of paragraph 10(iii) 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 refined urea and DEF shortages, where:
 - the ACCC is notified by a Participant 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 Participant intends meetings of the relevant group to be covered by 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 Participant or one or more Participant and one or more Other Participant has been invited to the relevant group; and
 - the ACCC does not notify the Participant in writing at least one business day in advance of the meeting that it is not satisfied that the meeting is covered by the authorisation.
13. For the avoidance of doubt, a forum includes a coordination mechanism convened by a Commonwealth Government department or agency where Government liaises and/or coordinates with more than one Participant or Other Participant, even though the relevant Participants/Other Participants may not meet or speak directly, provided that the relevant Commonwealth Government department or agency specifies to each relevant Participant or Other Participant that it is a forum for the purposes of this authorisation.

c) Other parties wishing to engage in the Proposed Conduct

14. The Participants propose that a party may become an Other Participant as set out below:
 - a. Parties 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 party has notified the ACCC of its intention to engage in some or all of the conduct for which authorisation is granted, that party 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 in which the party may engage.

d) Application for interim authorisation

- 15. The Participants seek interim authorisation on an urgent basis.
- 16. There is currently a reduced global supply of refined urea.
- 17. Consequently, it is essential that the Participants can commence engaging in the Proposed Conduct as soon as possible, to attempt to maintain adequate supply of DEF in the Australian market and otherwise to manage its distribution in accordance with greatest need.

e) Rationale

- 18. The Proposed Conduct seeks to address the difficulties currently faced by Australian DEF manufacturers, suppliers, distributors and consumers due to a global shortage of refined urea. The Proposed Conduct aims to ensure the continued supply and appropriate distribution of DEF among industries reliant on modern diesel engines, such as road freight, light vehicles, mining, agriculture and energy.
- 19. 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

- 20. The Participants compete in relation to the acquisition of urea and DEF, the manufacture of DEF and the supply of DEF to distributors, wholesalers, retailers 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 and 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

- 21. Authorisation is sought until 1 December 2022. While it remains unclear precisely when the global shortage of refined urea will ease, the Participants note that the ACCC could revoke the authorisation should circumstances change (such as the removal of export restrictions by China).

Part 4: Persons who may be directly impacted by proposed conduct

22. The persons who are likely to be directly impacted by the Proposed Conduct include DEF manufacturers, suppliers and consumers.

Part 5: Market information and concentration

a) Description of products and/or services

23. The Participants are importers into Australia of refined urea and manufacturers in Australia of DEF.
24. The Other Participants may be:
- a. Importers into Australia of refined urea
 - b. Manufacturers of DEF in Australia
 - c. Distributors, wholesalers or retailers of DEF in Australia
 - d. Consumers of DEF

b) Description of industries

25. 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.
26. The Participants import refined urea and use it to manufacture DEF.
27. The Participants 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
 - b. Mining, eg underground mining vehicles
 - c. Light vehicles, eg diesel vehicles post-2016
 - d. Agriculture, eg modern tractors
 - e. Power Utilities, eg backup generators

c) Factors that would limit/prevent competitive conduct

28. The Proposed Conduct does not extend to any agreement on the price of DEF supplied to DEF consumers. It will also facilitate 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 6: Counterfactual

29. Participants are seeking new sources of supply for refined urea. However, it is currently difficult to secure supply.
30. Accordingly, in the absence of the Proposed Conduct, there is a real risk that shortages in DEF could emerge in the Australian market.
31. This would result in significant disruptions to industries reliant on modern diesel engines, such as road freight, light vehicles, mining, agriculture and energy. This in turn has the potential to impact Australian supply chains and the economy more broadly.
32. The Participants could seek to address these issues unilaterally, but this would likely be slower and less effective than if they are permitted to engage in the Proposed Conduct. For example, some aspects of the Proposed Conduct, such as imposing sales limits, would have very limited impact or benefit in the absence of coordination across the industry. Other aspects of the Proposed Conduct, such as prioritising access according to need, can only effectively be achieved through organisation and collaboration between multiple Participants. Further, the ability to source large quantities of refined urea will be enhanced through joint negotiation.

Part 7: Public benefit

33. The Proposed Conduct will assist Participants to maintain supply of DEF, with obvious benefits to industries reliant upon modern diesel engines and their consumers. If shortages of DEF emerge, the Proposed Conduct will also allow these shortages to be managed, including by directing supply to particular geographical areas or consumers most in need.

Part 8: Public detriment

34. The Proposed Conduct will result in limited detriment and a significant net public benefit because:
 - a. Without the Proposed Conduct, there is a risk of shortages in the supply of DEF, and consequently the supply of other goods and services by industries reliant on modern diesel engines. The Proposed Conduct will promote rather than limit supply.
 - b. The period of authorisation sought is confined to a period of less than 1 year. Further, the authorisation can be discontinued if the shortages in refined urea being experienced by the Australian DEF manufacturing industry ease while the authorisation is in place.
 - c. The Proposed Conduct incorporates safeguards, namely input and oversight by the Commonwealth Government at Approved Meetings.
 - d. The Proposed Conduct is not compulsory and any Participant can opt out at any time.

- e. The Proposed Conduct does not extend to any agreement on the price of DEF supplied to DEF consumers.

Part 9: Contact details of relevant market participants

- 35. See Part 2 above.

Part 10: Declaration by Applicant

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).



.....

Dr. Alex Gitlits

Commercial Manager, Brenntag Essentials (ANZ), Brenntag Australia Pty Ltd

Date: 20th day of December of 2021