



Brenntag Australia Pty Ltd – Application for revocation of authorisation AA1000598 and the substitution of authorisation AA1000622

Interim Authorisation Decision

24 November 2022

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to grant interim authorisation with conditions, in respect of the application for revocation and substitution (**re-authorisation**) lodged by Brenntag Australia Pty Ltd (**Brenntag**) on 21 October 2022 (AA1000622).
2. Interim authorisation is granted to enable Brenntag, the other Diesel Exhaust Fluid (**DEF**) manufacturers and the industry participants listed in Table 1 of Appendix A, and their related bodies corporate (together, the **Participants**) to collaborate to obtain adequate supply of technical grade urea, which is a key ingredient in DEF (which is also known by the brand, **AdBlue**) in accordance with the **Proposed Conduct** (as defined in paragraph 21 below). The Proposed Conduct is designed to ensure there is sufficient supply of DEF for Australian consumption and the prioritised distribution of technical grade urea and DEF should shortages emerge. Interim authorisation does not extend to any agreement on the price of DEF supplied to DEF consumers.
3. Interim authorisation extends to any other party who notifies the ACCC in writing of their intention to participate in the Proposed Conduct, in accordance with the procedure set out in paragraph 31 of this Interim Authorisation Decision (**Other Participants**).
4. Interim authorisation is granted with the conditions set out in paragraphs 31 to 34 below. Broadly, these conditions set out the process for adding Other Participants, arrangements for meetings to engage in the Proposed Conduct and the provision of information to the ACCC.
5. Interim authorisation suspends the operation of the existing authorisation AA1000598 and grants interim authorisation in substitution for the suspended authorisation.
6. In this Interim Authorisation Decision, the Participants and the Other Participants are collectively referred to as the **Parties**.
7. The ACCC grants interim authorisation in relation to Division 1 of Part IV of the *Competition and Consumer Act 2010* (Cth) (the **Act**) and sections 45, 46 and 47 of the Act.
8. Interim authorisation commences immediately and remains in place until the date the ACCC's final determination comes into effect, the application for authorisation is withdrawn, or until interim authorisation is revoked.

Background

9. In late 2021 and early 2022, there was a global shortage of technical grade urea and Australian DEF manufacturers were facing difficulties securing supply. According to

the original application for authorisation, the global shortage of technical grade urea was the result of export restrictions imposed by China, which prompted an aggressive buy-up by some nations and limitations on exports by others.

10. DEF is an exhaust system additive used in some diesel engines to control noxious emissions and is critical to the operation of modern diesel engines.
11. Shortages of DEF 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:
 - road freight
 - mining (underground mining vehicles)
 - light vehicles (modern diesel vehicles made since 2016)
 - agriculture (modern tractors), and
 - energy (including back-up generators in South Australia).
12. On 28 April 2022, the ACCC granted authorisation AA1000598 with conditions to enable DEF manufacturers and other industry participants to collaborate to obtain supply of technical grade urea and prioritise distribution of technical grade urea and DEF should shortages emerge. This followed a grant of interim authorisation on 22 December 2021. Authorisation AA1000598 was granted until 1 December 2022. The ACCC's determination and interim authorisation decision are available on the [ACCC's Public Register](#).
13. In late 2021, Australia imported almost all of the required technical grade urea and manufactured almost all DEF for the Australian market.
14. In response to the shortages of technical grade urea, Incitec Pivot Limited increased production of urea and DEF at its Gibson Island facility in Queensland. By early 2022, Incitec Pivot was producing over 3 million litres of DEF a week. This was around 75 percent of Australia's DEF needs.
15. Brenntag submitted that in December 2022, Incitec Pivot is scheduled to cease production of urea at Gibson Island for commercial reasons. Incitec Pivot's Gibson Island facility is Australia's only DEF manufacturer capable of producing its own technical grade urea. In the absence of the Gibson Island facility, industry will be reliant on imports of technical grade urea to blend with deionised water for the purpose of making DEF.

The application for revocation and substitution

16. On 21 October 2022, Brenntag lodged an application for revocation of authorisation AA1000598 and the substitution of authorisation AA1000622 on behalf of the Participants and the Other Participants.
17. Brenntag seeks re-authorisation for four years for substantially the same conduct that was authorised in AA1000598.
18. Brenntag proposed that the conditions of authorisation imposed in AA1000598 be imposed in any re-authorisation.
19. The ACCC will carefully consider the public benefits and public detriments of re-authorisation over the coming months.
20. Brenntag has also requested urgent interim authorisation.

The Proposed Conduct

21. Brenntag is seeking interim authorisation to enable the Parties 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 technical grade urea; promoting adequate production of DEF for the Australian market; ensuring security of supply of technical grade urea and DEF for Australian businesses and consumers; or prioritising access to technical grade 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 technical grade urea or DEF;
 - prioritising access to technical grade 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 at Condition 2 in paragraph 31 below) that occurs on or after the date that interim authorisation is granted; or
 - arises out of an Approved Meeting (defined in paragraph 7.9 of authorisation AA1000598) that occurred while authorisation AA1000598 was in force.

(the **Proposed Conduct**).

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

The authorisation process

23. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the Act. Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.
24. The ACCC may specify conditions in an authorisation. The legal protection provided by an authorisation does not apply if any conditions are not complied with.

Request for interim authorisation

25. Under section 91 of the Act the ACCC may, where it considers it appropriate to do so for the purpose of enabling due consideration to be given to an application for re-authorisation or for any other reason, suspend the operation of the authorisation sought to be revoked and grant interim authorisation in substitution. This allows the parties to engage in conduct while the ACCC is considering the application for re-authorisation.

26. Brenntag submitted that it needs urgent interim authorisation because:¹
- Authorisation AA1000598 is due to end on 1 December 2022 and it submits that it is essential that authorisation does not lapse during this time, when there is a possibility of a second technical grade urea 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.
 - Granting an interim authorisation will ensure the Parties can continue to engage in the 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 re-authorisation.

Consultation

27. The ACCC conducted a short one-week public consultation process in respect of the request for urgent interim authorisation.
28. The National Heavy Vehicle Regulator (the **NHVR**) submitted that it does not object to re-authorisation provided the Participants and Other Participants are subject to similar supervisory conditions that mitigate against anti-competitive behaviour. The NHVR submitted that authorisation is likely to be beneficial to the industry.²
29. The Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (**DITRDCA**) submitted that ensuring DEF supply is critical to the operation of Australia's diesel dependant road transport and logistics system, including food delivery and other essential goods and services. DCCEEW and DITRDCA submitted that the Government has worked closely with Australia's DEF sector through the Supplier Working Group and industry collaboration through this group was only possible due to the existing determination. This collaboration allowed industry coordination, which was critical in managing and reducing shortages at locations across Australia.³

Interim authorisation decision

30. The ACCC grants interim authorisation to enable the Parties to engage in the Proposed Conduct (as defined above) with the following conditions. The conditions are substantially the same as the conditions imposed in authorisation AA1000598.
31. **Condition 1 – Notification of future parties:** Parties that wish to engage in the Proposed Conduct, and be treated as Other Participants, must notify the ACCC in writing by sending an email to exemptions@accc.gov.au conveying information to the following effect: a subject line or other reference identifying this authorisation and the reason for their email (such as 'Authorisation AA1000622 – Diesel Exhaust Fluid – notification to be covered by authorisation'), the identities of the new entity(ies) that wish to be covered by this authorisation, the type(s) of conduct covered by the authorisation that those entities propose to engage in and the reasons they wish to do so. Once an entity notifies the ACCC, that entity will have the protection of the authorisation to engage in the Proposed Conduct.

¹ Brenntag Australia Pty Ltd, 2022, *Application for revocation of an authorisation for proposed conduct and substitution of a replacement*, p.22, available: [ACCC Public Register for AdBlue manufacturers and distributors](#)

² National Heavy Vehicle Regulator, Submission, available: [ACCC Public Register for AdBlue manufacturers and distributors](#)

³ DCCEEW and DITRDCA, Submission, available: [ACCC Public Register for AdBlue manufacturers and distributors](#)

32. **Condition 2 – Approved Meetings:** For the purposes of the Proposed Conduct set out in paragraph 21 above, any of the following types of meetings will be Approved Meetings:
- a. meetings of the National Coordination Mechanism, convened by the Australian 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 an Australian Government department or agency, with the objective of responding to the technical grade urea and DEF shortages, where:
 - the ACCC is notified by a Participant in writing that the Participant intends meetings of the relevant group to be covered by this authorisation, and invites the ACCC to attend the meetings of the relevant group, setting out in each invitation the time and date of the meeting, proposed attendees, the purpose of the meeting 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 in advance of the meeting that it is not satisfied that the meeting is covered by the authorisation.
33. For the avoidance of doubt, a forum includes a coordination mechanism convened by an Australian 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 Australian Government department or agency specifies to each relevant Participant or Other Participant that it is a forum for the purposes of this authorisation.
34. **Condition 3 – Reporting:** The Participants and Other Participants must (either directly or via another nominated party), provide the ACCC with:
- a. the minutes of any Approved Meeting that is convened under the Proposed Conduct, within 14 days after the meeting (or such other time as the ACCC agrees to in writing); and
 - b. all information requested by the ACCC in relation to the Proposed Conduct, within a reasonable timeframe.
35. The ACCC may authorise a Committee or Division of the ACCC, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under the conditions of authorisation on its behalf.

Reasons for decision

36. The ACCC considers it appropriate to grant interim authorisation, noting:
- interim authorisation will maintain the status quo while the re-authorisation assessment process continues, and due consideration is given to the application for re-authorisation;
 - the urgency of the request for interim authorisation with the approaching expiry of the current authorisation;
 - when Incitec Pivot stops manufacturing technical grade urea and DEF at Gibson Island, the market will need to rely on imports of technical grade urea while long term local manufacturing projects are developed;
 - the conduct is substantially the same as the conduct previously authorised in April 2022, when the ACCC concluded that the likely public benefits outweighed any likely public detriments; and
 - interim authorisation is granted with conditions that are likely to mitigate the risk of public detriments arising.

Reconsideration of interim authorisation

37. The ACCC may review a decision on interim authorisation at any time.
38. The ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not re-authorisation will ultimately be granted.

Appendix A

Table 1: The Participants

Brenntag Australia Pty Ltd	DEF manufacturer
DGL AUSBlue Pty Ltd	DEF manufacturer
Mammoth Pty Ltd (EcoBlue)	DEF manufacturer
Spectrum Analytical Pty Ltd (Spectrum Fluid Technologies)	DEF manufacturer
Green Emissions Australia Pty Ltd	DEF manufacturer
Bluenox Pty Ltd	DEF manufacturer
BGI DEF Pty Ltd t/a Blue Gold Industries	DEF Manufacturer
Greyhound Australia Pty Ltd	Bus Operations
Ron Finemore Transport Pty Ltd and its controlled entities	Line-haul road transport services
IPEC Pty Ltd and TasLink Logistics Pty Ltd and its related bodies corporate ('Toll Global Express')	Freight transport services
BP Australia Pty Ltd and its related bodies corporate	Fuel Major
Toll Holdings Limited and its wholly owned subsidiaries	Logistics and Freight Transport services
Transit Systems Ltd	Bus Operations
Ampol Limited	Fuel Major
Viva Energy Australia Pty Ltd	Fuel Major
Kinetic Holding Company Pty Ltd and its related entities	Bus Operations
Australasian Convenience and Petroleum Marketers Association (ACAPMA)	Industry Association
Suhara Logistics Australia Pty Ltd	Retailer and Distributor of DEF
IOR Pty Ltd	Retailer and Distributor of DEF
Airbridge Pty Ltd	CO ₂ capture and conversion into commodities
Global Chemical (ANZ) Pty Ltd, t/a GC Green	DEF Manufacturer

Source: Brenntag, Application for revocation and substitution, pp., 5-8.