



**Australia New Zealand Industrial Gas Association –  
Application for revocation of authorisation AA1000516 and the  
substitution of authorisation AA1000576  
Interim authorisation decision  
29 September 2021**

**Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to suspend the operation of authorisation AA1000516 and grant interim authorisation with conditions in substitution for the suspended authorisation. The interim authorisation is in respect of application AA1000576. The Australia New Zealand Industrial Gas Association (**ANZIGA**) lodged this application on 13 September 2021.
2. ANZIGA has applied for authorisation on behalf of itself, its current and future members and their related bodies corporate and other suppliers of medical oxygen to hospitals and similar medical facilities notified to the ACCC from time to time (together, the **Parties**).
3. The ACCC has granted interim authorisation to the conduct described at paragraphs 18 and 19 of this interim authorisation decision. The conduct allows the Parties to exchange information and to make and give effect to contracts, arrangements and understandings to ensure security of supply of medical oxygen to hospitals and similar medical facilities in the event of significant demand increases or supply constraints during the COVID-19 pandemic.
4. Interim authorisation is granted subject to conditions set out at paragraph 21 of this interim authorisation decision.
5. The conduct and the conditions that are the subject of this interim authorisation decision are the same as those under suspended authorisation AA1000516.
6. 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remains in place until the date the ACCC's final determination comes into effect, the application for authorisation is withdrawn, or until the ACCC decides to revoke interim authorisation.

**The application for re-authorisation**

7. ANZIGA has lodged an application for revocation of authorisation AA1000516 (the **Existing Authorisation**) and the substitution of authorisation AA1000576 in its place (re-authorisation) on behalf of the Parties.
8. ANZIGA is the peak industry body representing companies that produce and distribute industrial gases, including bulk and compressed gas, to industrial, medical, food, scientific and hospitality users in Australia and New Zealand. ANZIGA's current full members are Air Liquide Australia Limited, BOC Limited and Coregas Pty Ltd. Together, ANZIGA estimates that its members supply more than 90% of oxygen to end users in Australia and would account for the supply of nearly all medical oxygen in Australia. ANZIGA estimates that medical oxygen generally accounts for around 10 to 15% of total oxygen demand.
9. The ACCC granted the Existing Authorisation on 1 October 2020, after granting interim authorisation on 9 June 2020. ANZIGA advises that the Parties have not needed to engage in the conduct authorised by the Existing Authorisation to date. The Existing Authorisation expires on 30 September 2021.

10. ANZIGA seeks re-authorisation for the same conduct as under the Existing Authorisation and proposes that re-authorisation be subject to the same conditions as the Existing Authorisation. These conditions include notifying the ACCC prior to engaging in authorised conduct.
11. ANZIGA seeks re-authorisation of the conduct for a further 12 months from the date of the ACCC's final determination.

### **The authorisation process**

12. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (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.

### **Interim authorisation**

13. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the proposed conduct while the ACCC is considering the substantive application.
14. ANZIGA requested that the ACCC grant interim authorisation as soon as practicable because the Existing Authorisation is due to expire on 30 September 2021, there is a need for the Parties to be able to respond quickly should the COVID-19 pandemic escalate and there is potential for demand to increase and for potential threats to supply to eventuate before such time as the ACCC has the opportunity to complete its usual authorisation process.
15. Interim authorisation will enable the Parties to engage in the conduct under the Existing Authorisation while the ACCC is considering the substantive application for re-authorisation.

### **Consultation**

16. The ACCC invited submissions about the request for interim authorisation from a range of potentially interested parties including relevant industry associations or peak bodies, government departments and private businesses. The ACCC did not receive any submissions regarding ANZIGA's request for interim authorisation.
17. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, is accessible on the ACCC's [Authorisations public register](#).

### **Interim authorisation with conditions**

18. The ACCC grants interim authorisation solely for the purpose of ensuring the supply of medical oxygen to hospitals and similar medical facilities that might otherwise be at risk of disruption as a result of the impacts of COVID-19.
19. Interim authorisation is granted for the Parties to, in the event of a threat to the supply of medical oxygen:
  - (a) exchange information in relation to each Party's:
    - (i) available stocks of
    - (ii) anticipated demand for, and ability to supplymedical oxygen in either bulk liquid or gas cylinder form. This may include, for example, disclosing the identity, location and immediate requirements for medical oxygen of particular customers, and

- (b) Make and give effect to contracts, arrangements or understandings as the Parties reasonably consider necessary to ensure the continuity and security of supply of medical oxygen to hospitals and similar medical facilities during the COVID-19 pandemic (other than contracts, arrangements or understandings in relation to the price of the supply of medical oxygen) including:
  - (i) restricting the supply of oxygen to customers other than hospitals and similar medical facilities
  - (ii) determining who should supply particular hospitals or similar medical facilities
  - (iii) coordinating the delivery of medical oxygen to particular areas or to particular hospitals or medical facilities, and
  - (iv) otherwise coordinating between the Parties to ensure that medical oxygen can be supplied in the most efficient manner possible so as to reduce the risk of an inability to supply any hospital or similar medical facility.

20. Together, paragraphs 18 and 19 constitute the **Conduct**.

21. The ACCC imposes the following conditions, which are the same conditions as the Existing Authorisation:

- (a) After identifying a particular threat to the supply of medical oxygen and prior to engaging in the Proposed Conduct in relation to that threat, the Parties must give the ACCC written notice that:
  - (i) states they have identified a threat to the supply of medical oxygen
  - (ii) describes, in general terms, the nature of that threat and the geographic area affected
  - (iii) states whether:
    - (1) where the threat affects the public health system – the relevant State or Territory health authority has been informed of the threat
    - (2) the Parties consider that the identified threat is unable to be managed by way of bilateral supply arrangements for the supply of medical oxygen to either the relevant State or Territory health authority or one or more of the Parties and, if so, a brief submission outlining the basis for this view including substantiating information, and
    - (3) the Parties consider it reasonably necessary to engage in the Proposed Conduct for the purpose of addressing the threat identified.
- (b) The Parties must:
  - (i) provide regular updates to the ACCC in a form and at a frequency agreed between the Parties and the ACCC, and
  - (ii) provide to the ACCC, within a reasonable time period, all information and documents requested by the ACCC.
- (c) All confidential or competitively sensitive information exchanged pursuant to the authorisation shall be used by the Party to whom it was provided solely for the purposes of ensuring the supply of medical oxygen to hospitals and similar medical facilities that might otherwise be at risk of disruption as a result of the impacts of COVID-19.

### **Reasons for decision**

22. The ACCC notes there is an urgency about the request for interim authorisation given the Existing Authorisation is due to expire on 30 September 2021, the ongoing COVID-19 pandemic, and the need for the Parties to be able to respond quickly to a threat to the supply of medical oxygen.

23. In granting interim authorisation, the ACCC considers that:

- (a) it has authorised the same Conduct since 9 June 2020 when the ACCC first granted interim authorisation, that:
  - (i) is solely for the purposes of ensuring supply of medical oxygen to hospitals and medical facilities that are impacted by the COVID-19 pandemic,
  - (ii) is for temporary arrangements that will only be engaged in where considered reasonably necessary,
  - (iii) does not apply to long-term contracts,
  - (iv) will be confined to particular regions or geographic areas, and
  - (v) does not extend to setting or agreeing prices.
- (b) the Conduct is likely to result in significant public benefits should its use become necessary in the current unprecedented circumstances, and the conditions imposed are likely to limit any public detriment.
- (c) it is unlikely that interim authorisation will materially alter the competitive dynamics in any market, and likely that markets will be able to return to substantially their current state once the emergency circumstances subside.
- (d) The Parties must provide regular reports and notify the ACCC prior to engaging in the Conduct, and the ACCC may revoke interim authorisation at any time should it have concerns.

**Reconsideration of interim authorisation**

24. The ACCC may review the interim authorisation at any time.

25. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.