

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission
given for the purposes of section 87B

by

Esso Australia Resources Pty Ltd (ACN 091 829 819)

1 Person giving this Undertaking

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Esso Australia Resources Pty Ltd (ACN 091 829 819) of 12 Riverside Quay, Southbank Victoria 3006 (Esso) for the purposes of s 87B of the *Competition and Consumer Act 2010 (Cth)* (CCA).

2 Background

- 2.1 Esso and its related bodies corporate carry on business in Australia including (among other things) the production and supply of wholesale natural gas in Eastern Australia.
- 2.2 Esso and BHP Billiton Petroleum (Bass Strait) Pty Ltd (BHP) each hold a 50 per cent interest in the Gippsland Basin Joint Venture (GBJV). The joint venture began in 1964 and the GBJV started producing gas in 1969. Gas produced by the GBJV has always been marketed jointly by BHP and Esso into the domestic market.
- 2.3 Esso and BHP formally documented their joint marketing arrangement by entering into a Memorandum of Understanding (MOU) on 11 August 2009. Clause 2 of the MOU provides that the parties will jointly market gas produced by the GBJV.
- 2.4 The ACCC conducted a preliminary review of the GBJV joint marketing arrangement in 2010, primarily to determine whether it had, or was likely to have, the effect of substantially lessening competition in any market. The ACCC decided, following careful assessment of the matter, to take no further action at that time.
- 2.5 In April 2015, the Minister for Small Business directed the ACCC to hold an inquiry into the competitiveness of the wholesale gas industry. This inquiry concluded in April 2016 and the ACCC published a Final Report, which observed there had been substantial changes in the Eastern Australian natural gas industry, including the development of large liquid natural gas export facilities in Queensland and natural gas development regulatory restrictions and moratoria introduced by the New South Wales and Victorian State Governments. In light of the changed market dynamics, the Final Report noted an area for future work would be for the ACCC to reconsider the competitive effect of the GBJV joint marketing arrangement.
- 2.6 Following the publication of the Final Report, the ACCC commenced a review of the joint marketing provision in the MOU when given effect to by BHP and Esso between late 2013 and 2015 (*Relevant Period*). In the course of the review, the ACCC expressed concern that, as a result of substantial changes in the wholesale gas market during the Relevant Period, the joint marketing arrangement was likely to have resulted in a substantial lessening of competition.
- 2.7 While Esso does not accept that joint marketing by the GBJV resulted in a substantial lessening of competition, Esso acknowledges, without admission, the ACCC's concern and has voluntarily offered to provide this Undertaking.
- 2.8 Esso understands that BHP has voluntarily provided an equivalent undertaking to the ACCC.

3 Commencement of this Undertaking

- 3.1 This Undertaking comes into effect when:
- (a) the Undertaking is executed by Esso; and

(b) the ACCC accepts the Undertaking so executed.

(Commencement Date).

3.2 Upon the Commencement Date, Esso undertakes to assume the obligations set out in Part 4 below.

4 Undertakings

4.1 Esso undertakes to cease to jointly negotiate and enter into gas sales agreements for the supply of GBJV gas on and from 1 January 2019. The period from the Commencement Date until 1 January 2019 is referred to as the *Transition Period*. Esso undertakes not to discuss with BHP the terms and conditions, including the price, on which it proposes to offer gas for supply after 1 January 2019.

4.2 During the Transition Period, Esso and BHP will continue to market GBJV gas jointly, provided that, in respect of gas sales agreements negotiated and entered into during the Transition Period, Esso and BHP will not contract for the supply of GBJV gas beyond 31 December 2020 (that is, Esso and BHP will only enter into new gas sales agreements for supply of gas up to the end of 31 December 2020), except where a longer term gas sales agreement is requested by a third party, and provided Esso notifies the ACCC of the request which is agreed to by the ACCC.

4.3 Esso and BHP will continue to be bound by and give effect to gas sales agreements entered into before and during the Transition Period as a result of their joint marketing efforts.

5 Review of Undertaking

5.1 If Esso notifies the ACCC that it believes that it is necessary to vary this Undertaking due to changed circumstances, then Esso and the ACCC agree that they will review the Undertaking and negotiate in good faith as to whether a variation or withdrawal of all or any of the terms of the Undertaking is appropriate in light of such circumstances. For the avoidance of doubt, this clause does not restrict the ACCC exercising its discretion in determining whether or not to consent to any such variation or withdrawal.

6 Obligation to procure

6.1 Where the performance of an obligation under this Undertaking requires a related body corporate of Esso to take or refrain from taking some action, Esso will procure that related body corporate to take or refrain from taking that action as the case may be.


7 Acknowledgments

7.1 Esso acknowledges that:

- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website; and
- (b) the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications.

Executed by

ESSO AUSTRALIA RESOURCES PTY LTD (ACN 091 829 819) through its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*.


Signature of director

STUART JEFFRIES
Name


Signature of director/secretary

HELEN ELIZABETH STODALE
Name

This 13th day of December 2017

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE *COMPETITION AND CONSUMER ACT 2010*.



Rod Sims
Chairman

This.....^{18th}.....day of December 2017