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**29 November 2011**

Mr John Feil  
Executive Director  
National Competition Council

By Email: [jetfuel@ncc.gov.au](mailto:jetfuel@ncc.gov.au)

Dear Mr Feil

**Applications under Part IIIA of the Competition and Consumer Act 2010 for the declaration of jet fuel supply infrastructure services at Sydney Airport**

We refer to our previous correspondence in relation to this matter. As foreshadowed, a report from Greg Houston of NERA Economic Consulting, submitted on behalf of Caltex Australia, is enclosed (**Report**). Please note that the Report contains information that is commercial-in-confidence (reflecting the confidential material in Caltex Australia's own submission) and Caltex Australia requests that the confidential material not be published or otherwise made available to third parties. Caltex Australia also encloses a public version of the Report that can be published on the NCC's website.

In addition, Caltex Australia has had an opportunity to review the submissions published on the NCC website on 22 and 23 November 2011. While Caltex Australia does not consider it necessary to respond in detail to each of the submissions, particular matters are addressed in Attachment A.

Finally, as discussed with Natalie Naylor yesterday, Attachment B is a revised diagram that replaces the diagram shown as Figure 5 on page 60 of Caltex Australia's submission dated 21 November 2011.

Please contact Luke Woodward if you would like to discuss this matter further.

Regards

A handwritten signature in blue ink, appearing to read 'L Woodward'.

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## ATTACHMENT A

### Response to submissions published on 22 November 2011<sup>1</sup>

The submission made by the International Air Transport Association (**IATA Submission**) largely repeats the assertions in the BARA Application addressed in Caltex's submission dated 21 November 2011 (**Caltex Submission**). Many of the defects in the IATA Submission reflect those in the BARA Application and are discussed in the Caltex Submission; they are not repeated in this document. However, the IATA Submission is factually misleading in a number of regards and particular points require response.

The IATA Submission asserts that Caltex's "[m]onopoly infrastructure, power to restrict access and dominance can compromise the effectiveness of competition among jet fuel suppliers at Sydney Airport and contribute to the problems of inadequate supply reliability and lack of price efficiency". The Caltex Jet Fuel Pipeline is simply not a monopoly. As discussed in the Caltex Submission, access to the Caltex Jet Fuel Pipeline is not essential to compete for the supply of jet fuel at Sydney Airport, and Caltex has no incentive to refuse access where there is excess capacity. For that reason, IATA's argument cannot stand. Additionally, it is necessary to address the way in which IATA has characterised "supply reliability" issues.

IATA cites the SJFIWG Report, as well as continued "red lights" since that report, as the basis for identifying poor reliability of jet fuel supply at Sydney Airport. However, the IATA Submission overstates reliability issues, and even where they arise it is incorrect to characterise any issues as the result of inadequate access to the Caltex Jet Fuel Pipeline, because:

- (a) as discussed in section 4.5 of the Caltex Submission, only two black lights (and equivalent) have been related to pipeline issues;
- (b) even while those black lights were in place, the demand management allocations were 100% and no flights were cancelled;
- (c) the most recent black light at Sydney Airport was in 2009. IATA identifies "continued incidence of red lights" as an indication of inadequate reliability, but red lights only indicate a potential for shortages if an incident occurs, such as a problem with planned production or ship arrival. Red lights do not require capacity management and do not impact airline customers. In any case, there have only been three red lights in 2011, none of which has been related to pipeline issues;
- (d) in any case, the Caltex Jet Fuel Pipeline is at capacity, so even if a lack of access to it were causing reliability problems (which is not the case), it would be as a result of capacity constraints, not refusal of access. Caltex is currently undertaking a capacity upgrade, which is expected to increase the capacity available to third parties.

IATA also raises as a problem "[l]ack of price efficiency". It is not clear what this means, but it seems to be based on the price differential data presented by BARA, which does not support a finding that there is a lack of competition at Sydney Airport for the reasons set out in section 4.6 of the Caltex Submission.

Finally, IATA states that "access restrictions imposed by Caltex [footnote: Limiting access to the Caltex pipeline from Port Botany to 60 days per year] have resulted in a maximum potential utilization rate [of the Vopak Terminal] of only about 16%". This statement ignores that the principal purpose of the Caltex Jet Fuel Pipeline is to meet Caltex's requirements to transport jet fuel from its Kurnell refinery

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<sup>1</sup> Terms used in this document have the meaning identified in the Caltex Submission.

and, while Caltex makes additional capacity available to third parties, in any event is currently at capacity; Caltex has not refused access to the pipeline where there has been available capacity. IATA's argument is misconceived, and it is inappropriate for IATA to make unfounded statements, not based on any commercial interactions and without any factual basis, that have the potential to damage Caltex's reputation.

The IATA Submission provides no more probative value to support a case for declaration of services provided by means of the Caltex Jet Fuel Pipeline than the BARA Application.

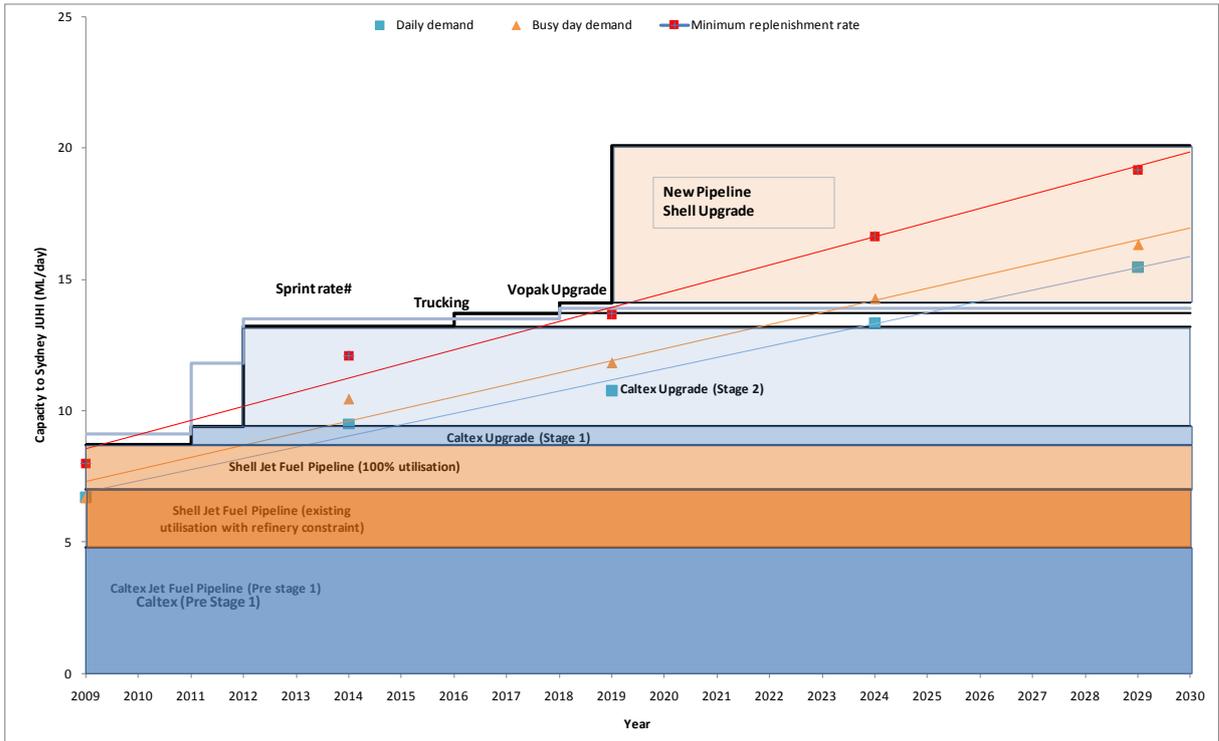
It is worth noting that of the other submissions in relation to the Caltex Jet Fuel Pipeline:

- (a) Q8 Aviation, an international supplier of jet fuel, does not consider access to the Caltex Jet Fuel Pipeline an impediment to competing for the supply of jet fuel to airlines at Sydney Airport and identifies alternatives to the Caltex Jet Fuel Pipeline for transport jet fuel to Sydney Airport;
- (b) Qantas, a large acquirer of jet fuel at Sydney Airport, accepts the Caltex Jet Fuel Pipeline is not uneconomic to duplicate and does not consider access would promote an increase in competition;
- (c) the only other airlines to put in submissions, Korean Air and Emirates (and, in a somewhat related capacity, UPS), while supporting declaration provide no substantive basis on which to conclude that the criteria for declaration are fulfilled; and
- (d) there are no further submissions on the public record from potential new entrants, either as identified by BARA or otherwise.

In short, the submissions are notable for the complete absence of any substantive case as to a refusal of access to excess capacity on the Caltex Jet Fuel Pipeline or that the refusal of access to the pipeline has precluded some party from supplying jet fuel to airlines operating out of Sydney Airport.

**ATTACHMENT B**

**Figure 5 – Demand and infrastructure capacity<sup>143</sup>**



# The “Sprint rate” is the theoretical maximum capability of the available infrastructure.<sup>144</sup> This capability may be used to ensure daily and busy day demands are met.

<sup>143</sup> For the sake of simplicity, the Caltex Stage 2 Upgrade is indicated to come on at the beginning of 2012, although it will likely be available later that year. In addition, while 100% utilisation of the Shell Jet Fuel Pipeline is available now (as shown in the diagram), that capacity is likely to be there on an ongoing basis following the closure of the Clyde refinery in mid-2013.

<sup>144</sup> For example, prior to the Caltex Stage 2 Upgrade, the sprint rate would be the sum of 7.9 ML per day (using Vopak’s pumps) and 3.9 ML per day (being the maximum capacity of the Shell Jet Fuel Pipeline).