

Annexure 1 – Further detail and supporting information

This Annexure provides further information in support of Pact's submission of 31 July 2019. It is structured in a way that responds to specific claims made in the "Application for the publication of dumping and/or countervailing duty notices" dated 14 May 2019 and submitted by Qenos Pty Ltd.

1. Likeness of Qenos goods to imported goods

Qenos claims that the imported goods are like to the goods produced by Qenos. In response to the question 4 of section A3, "Describe the ways in which the essential characteristics of the imported goods are like to the goods produced by the Australian industry", Qenos stated:

"The locally manufactured goods are considered alike to the imported goods and have characteristics closely resembling the imported goods on the basis of the following... (iii) Functional likeness – the domestically manufactured goods and the imported goods have the same end-uses and are used interchangeably in a range of applications..."

Pact submits that there can be significant differences between locally produced and imported HDPE such that they are not readily substitutable for one another. Locally produced and imported HDPE can react and perform in materially different ways. This is particularly so when the end product to be manufactured from the HDPE contains special characteristics, such as resistance to chemicals, light weight, and superior wall strength. For example, one of the HDPE grades supplied by [REDACTED]. [Comment on alternative supplier's product]

Sourcing HDPE of different grades from different suppliers to those supplied by the incumbent supplier is an extensive and costly process. It can involve lengthy trials and testing, as well as adjustments to moulding machinery (which is costly). Different sources and grades of HDPE are unlikely to be directly substitutable for each other, particularly where older machinery is used in the process of manufacturing end products from the HDPE.

2. The Australian market for Australian and imported goods

In response to question 2 of section A4, which asks for a description of Australian market conditions, including the presence of market segmentation, Qenos stated:

"There is no geographical market segmentation for HDPE. It is used by customers Australia wide. Product segmentation occurs as defined by the density and melt index of the HDPE for use in specific application."

Pact's view is that there is likely a good basis for geographical market segmentation for HDPE, [REDACTED]

[Comment on geographical price arrangements]

In response to the subsequent question regarding “the way in which the imported and Australian product compete”, Genos stated that “*The imported and locally produced HDPE compete head-to-head on price.*”

Pact considers that the imported and locally produced HDPE compete on many factors besides price. In addition, functional differences in the imported and local product mean that the products may not be “like for like” and therefore not price comparable.

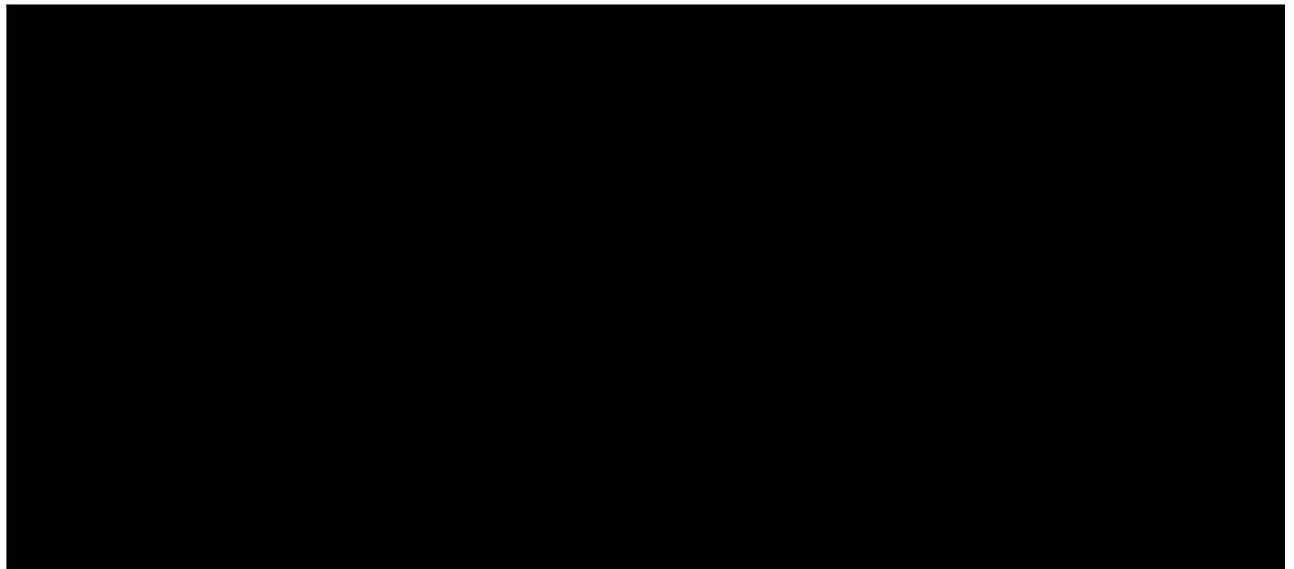
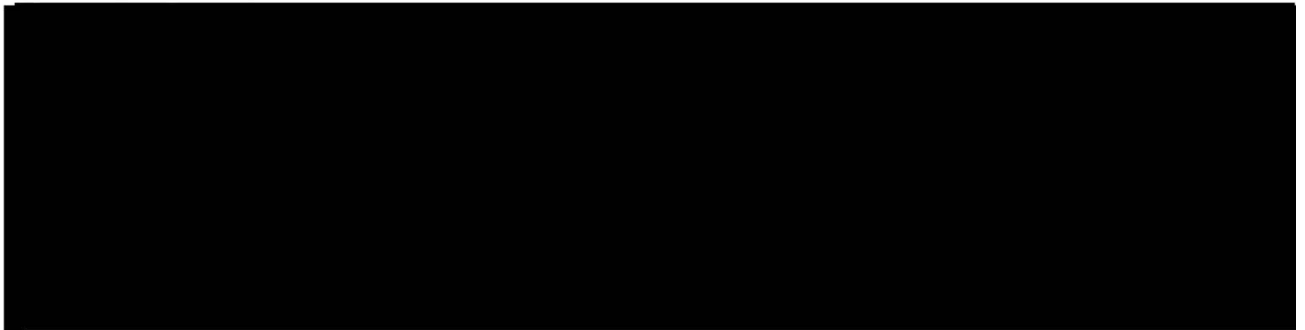
In a Request for Proposal conducted in late 2017/early 2018, non-price considerations were weighted by Pact as follows:

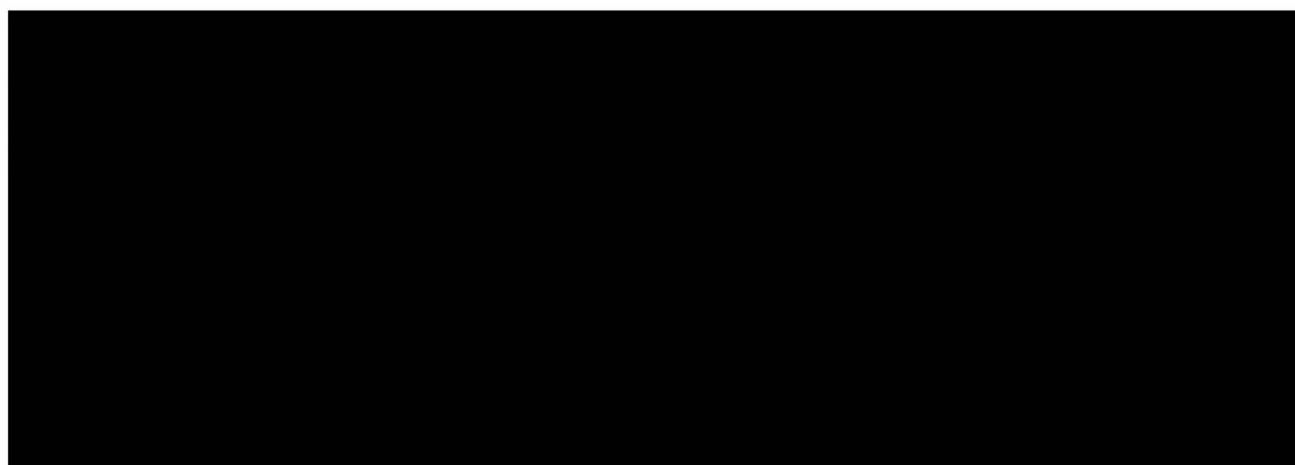
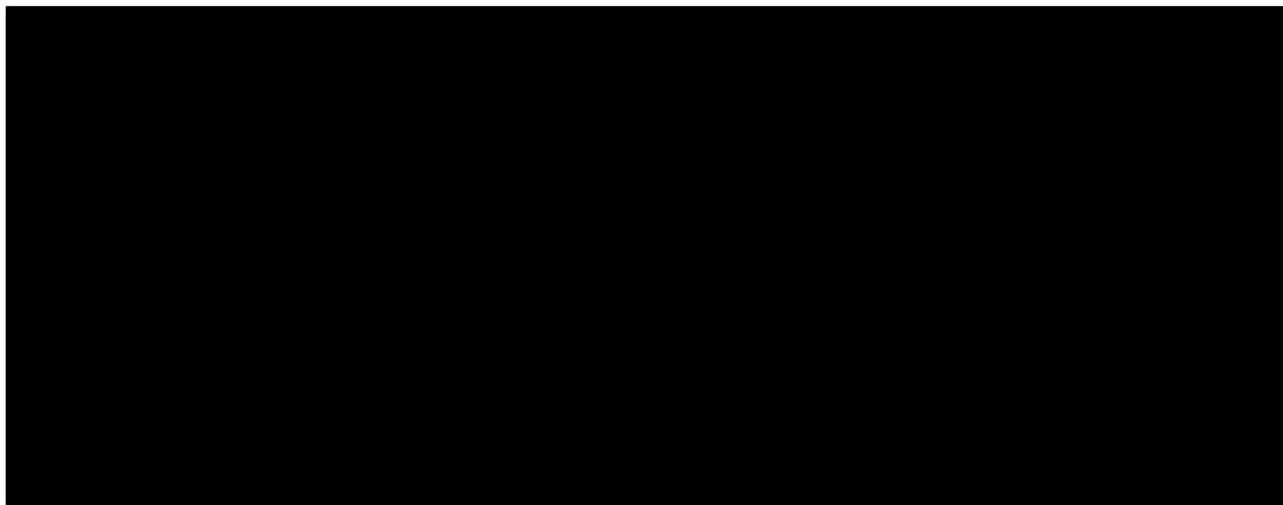
[RFQ extract redacted]

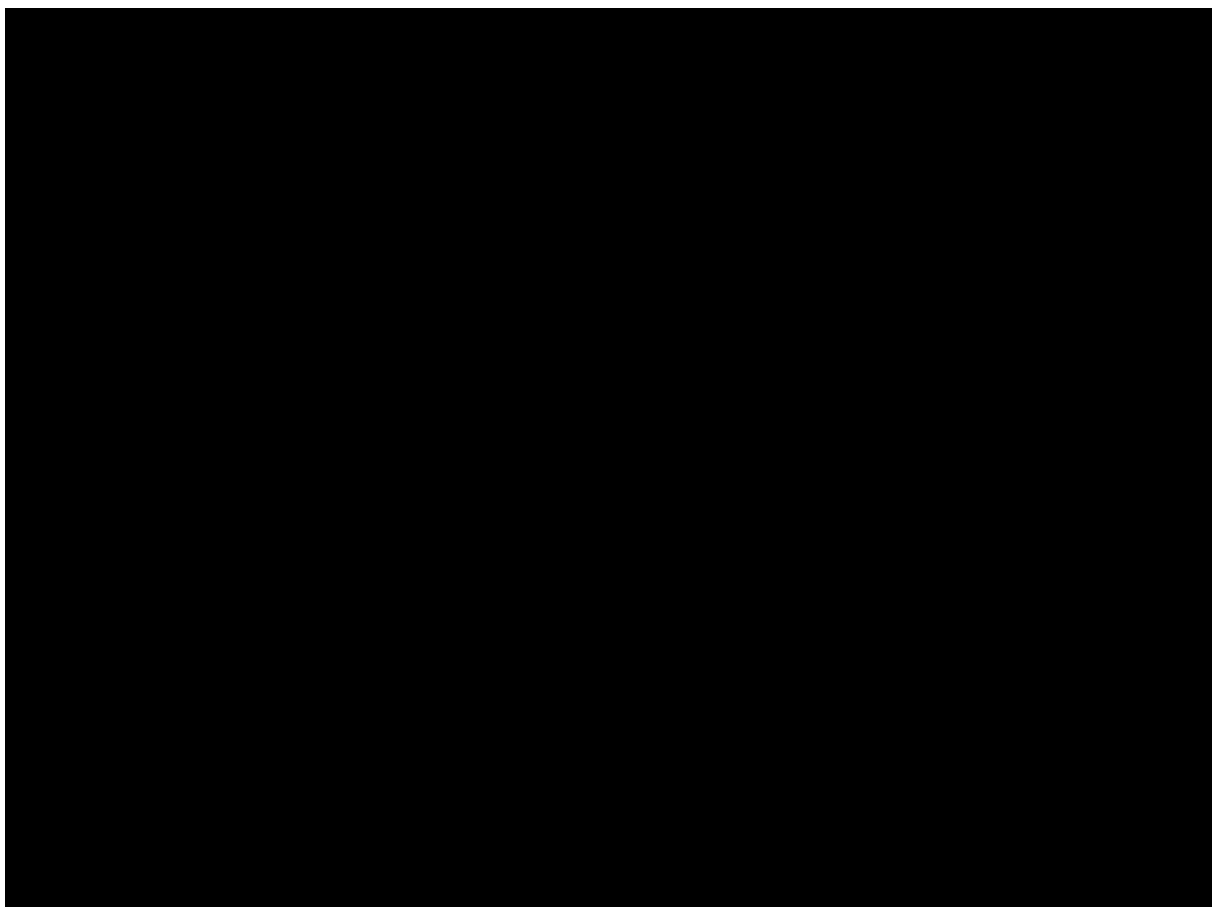
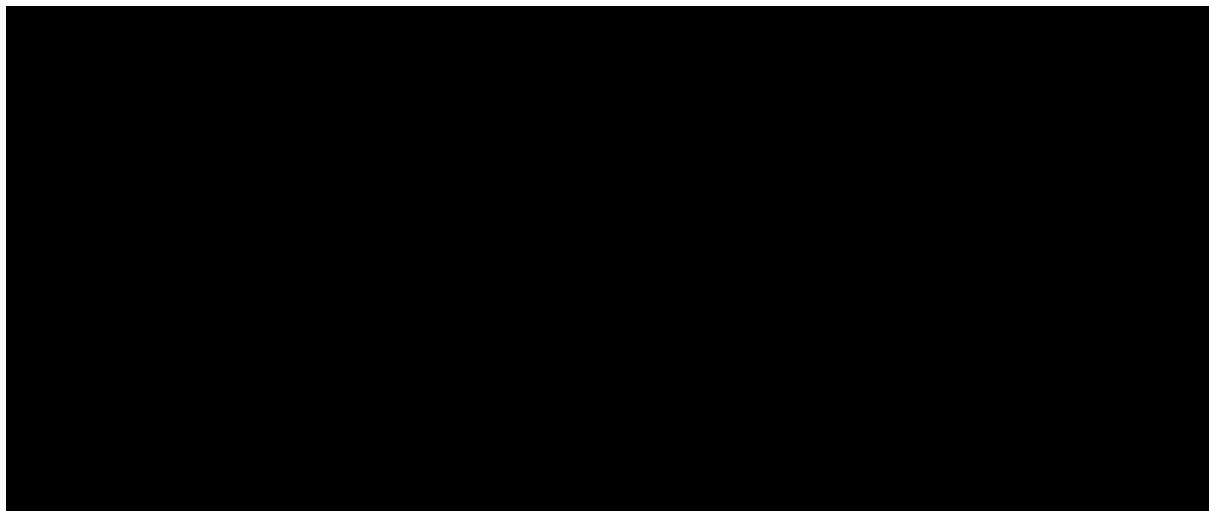
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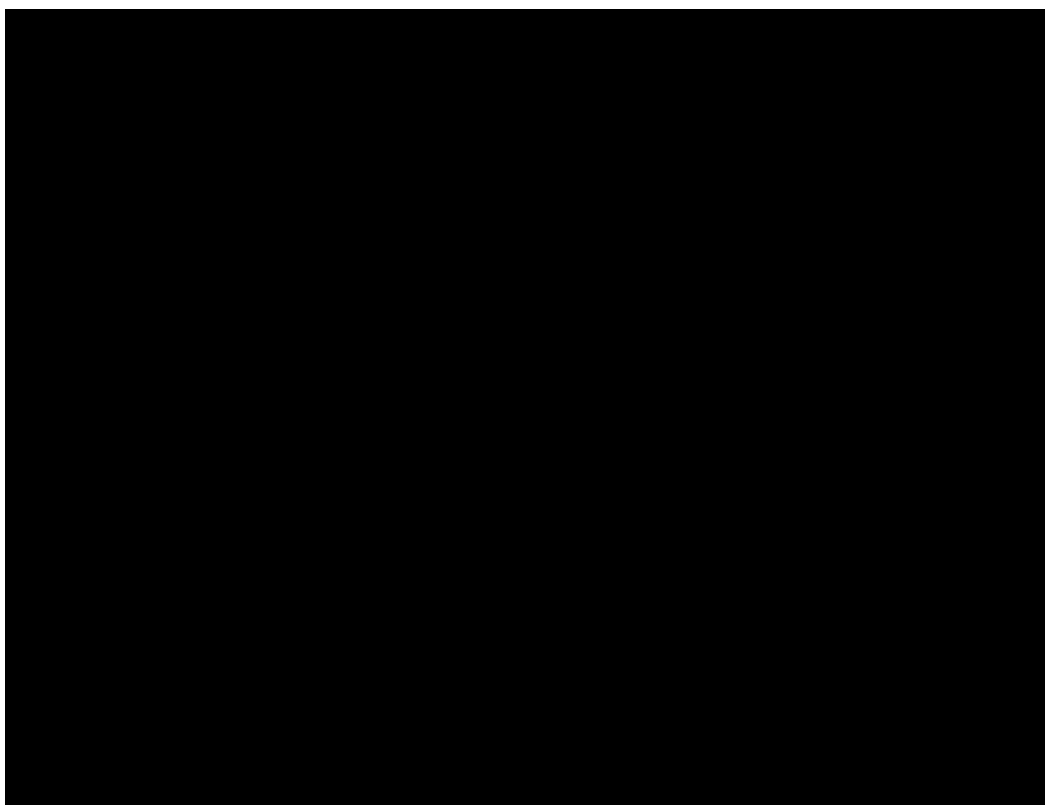
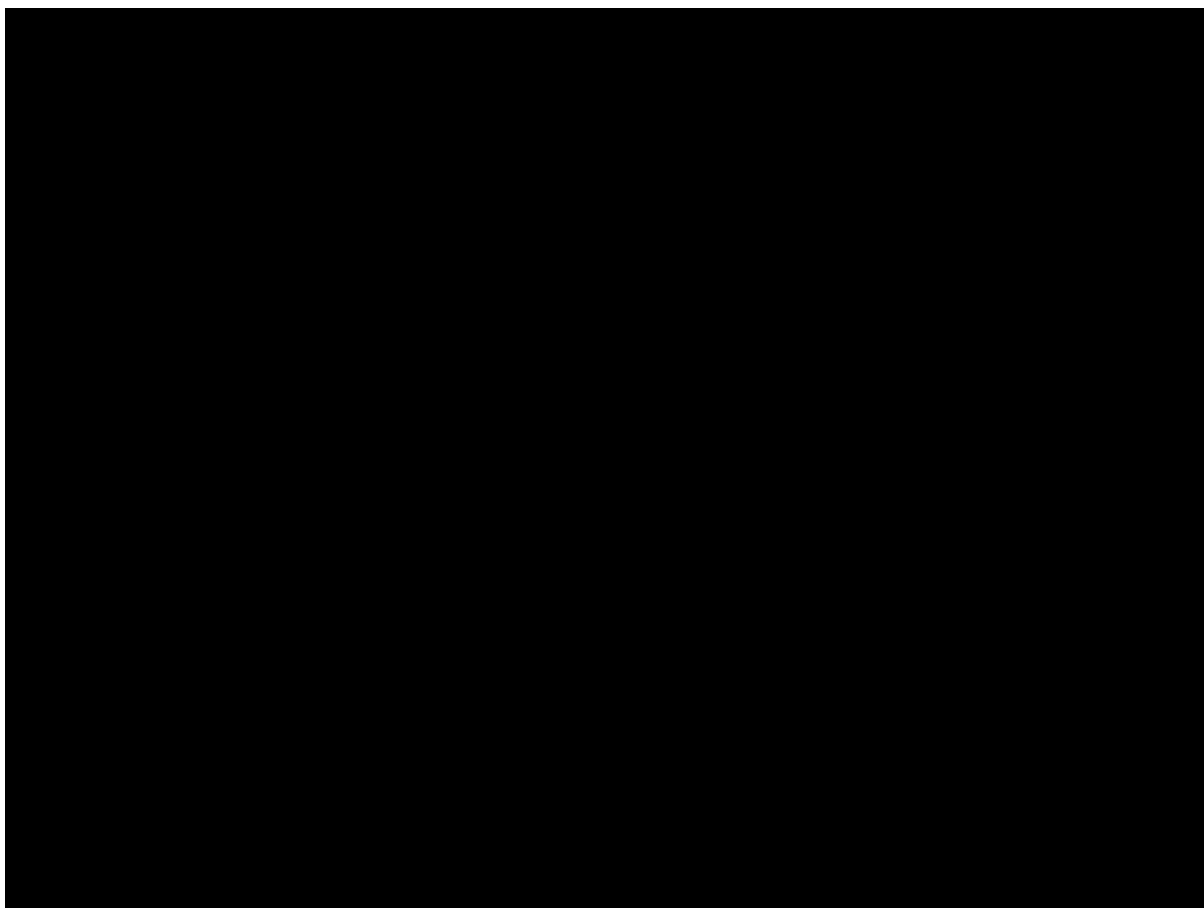


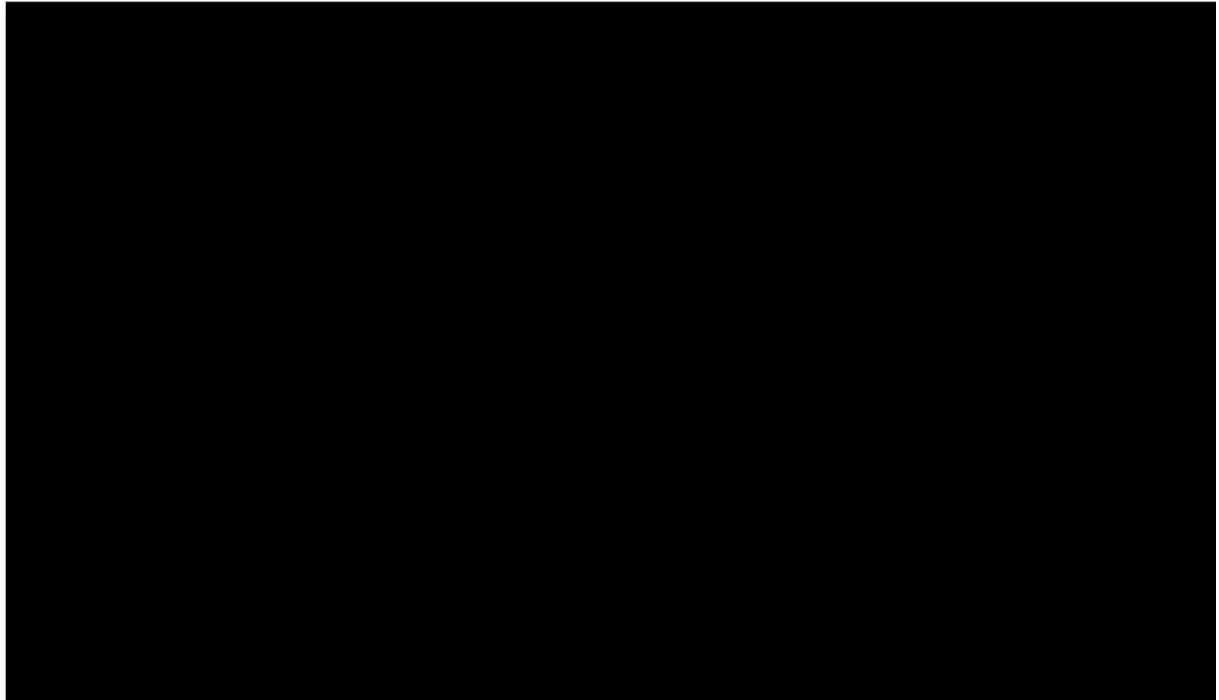
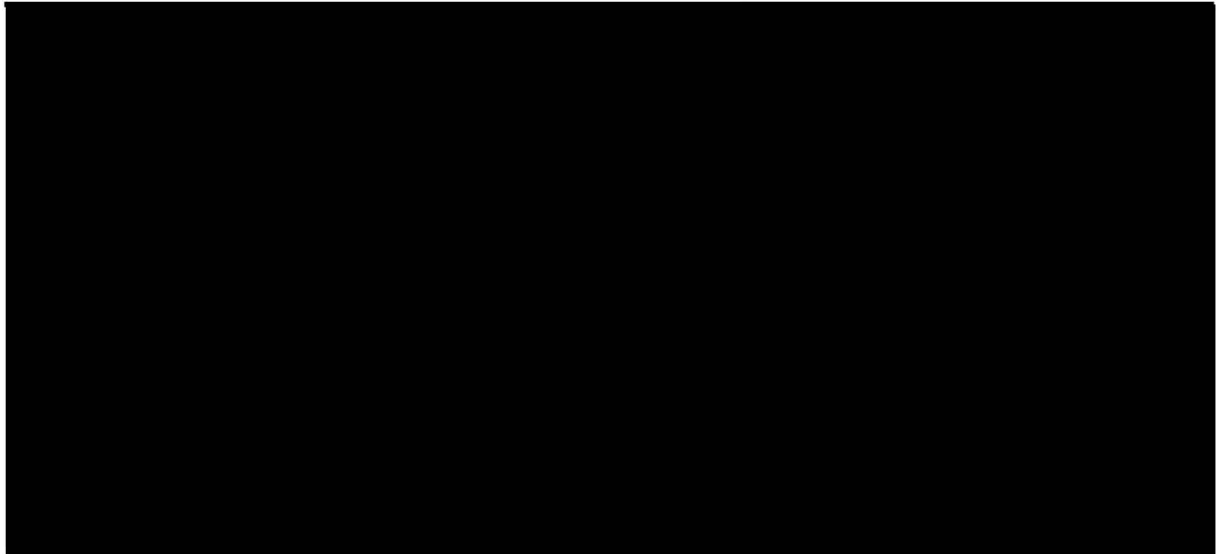
Currency AUD











[Comment on RFQ weighting]

Extensive questions were asked in the RFP regarding these non-price capabilities and Qenos scored relatively low compared to other HDPE producers as they refused to answer the following questions: *[List of questions from the RFQ]*

Pact considers many of the questions above are standard tender questions. This is especially so where a supplier seeks to be a key supplier to Pact demanding over a share of Pact's business (ie insisting on a minimum volume requirement [REDACTED]). Qenos' lack of response showed no signs that reliability, efficiency of plant or investment in capital and R&D were actively managed by Qenos.

3. Reasons for decline in Qenos' sales volumes

As part of its response to question 6 of section A4 regarding sales volumes, Qenos stated:

"The Australian market for HDPE has experienced growth over the years 2015/16 to 2018/19... Although there was significant market growth in 2017/18, Qenos' sales volumes (and hence market share) declined. Imports of dumped HDPE have increased since 2015/16 and, in 2017/18 and 2018/19 are at least 70 per cent higher than in the earlier two years 2015/16 and 2016/17 (with export data for USA not available for the complete March 2019 quarter as at the date of application submission). Whilst the Australian market for HDPE has experienced strong growth since 2016/17, the Australian industry's sales volume and market share has declined in successive years 2017/18 and further again in 2018/19."

Pact's view is that Qenos' declining sales volume can be explained by reasons other than the alleged dumping. The data submitted in response to the importer questionnaire issued to VIP Plastic Packaging Pty Ltd shows that in the majority of cases, the final costs of imported product were higher than the costs of Qenos' product.

One of the key considerations in Pact's decision to shift some of its HDPE purchases away from Qenos was the perilous nature of its reliance on Qenos as its primary source of HDPE. From approximately 2017, Pact became increasingly concerned about Qenos' reliability. The following significant disruptions to Qenos' supply occurred: [List of disruptions from 2016 to 2018]

[REDACTED]

- July 2018 – Disruption at Qenos’ Olefins and Plastics plants, Altona. Plant flare was smoking requiring shutdown and re-start process which interrupted production for several days. <https://acncg.info/notifications/show/qenos-plant-shutdowns-3718>

In early 2017, Qenos was supplying over [REDACTED] of Pact’s total HDPE requirements with lead times of less than [REDACTED] weeks in many cases. Such short lead times were problematic because in the absence of any other local source of supply, Pact was entirely at the mercy of Qenos’ plant and equipment conditions. Whenever Qenos’ plants experienced an outage, Pact would not receive raw material in time to meet its customer requirements for manufactured end products, and would not have sufficient time to secure alternative sources of supply, which typically required an 8-12 week lead time. Qenos provided no contingency plan and showed no willingness to assist in the event of supply disruptions. [REDACTED]

[REDACTED]

[Comments on contractual terms]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In the case of imported product, the supply chain is longer, and any disruptions cause less immediate impact, because adequate notice is provided, enabling Pact to source from another supplier if required. In addition, the overseas suppliers have other plants throughout the world, or hold more stock, so supply disruptions are rare in any event.

4. Qenos' price lists

In response to question 7 of section A-5, Qenos stated: *"Qenos does not use price lists. Qenos reviews prices monthly, and distributes a pricing letter to each customer."*

Pact wishes to draw the Commission's attention to the following price formula that is applied to Pact's HDPE purchases from Qenos:

[REDACTED]

This formula enables a price list to be established each month. Additional charges are applied according to the relevant grade, pack type and delivery location.

5. Reduction in Qenos' production volumes

In response to Question 2 of Section A-8, Qenos stated:

"Qenos' production of HDPE was reduced in 2018/19 due to a range of factors including... a shortfall of raw material ethane in 2018 first half and operational consequential disruptions (that did not impact supply to customers)..."

Pact disputes Qenos' claims that disruptions did not impact supply to customers. Pact's Australian manufacturing operations were significantly disrupted: *[List of disruptions]*

[REDACTED]

[REDACTED]

Qenos further stated:

“Global prices for HDPE increased in 2018/19 reflecting increased oil and gas prices. Qenos, however, lost sales to dumped imports as exporters did not pass on the full effects of the raw material price increases. Additionally, new capacity in US Gulf production for HDPE impacted the Asia supply/demand balance. Qenos could not pass on increased energy-gas costs that grew by \$xxx M between 2016 and 2018 due to the increased supply from new facilities.”

Pact’s view is that HDPE is a globally traded product that is generally priced based on an index produced by ICIS. The cost of production is lower in newer, more efficient plants.

Concerns about Qenos’ lack of reliability led Pact to seek views from consultants [REDACTED] in order to better understand the global HDPE market, and alternative sources of supply should Qenos cease to be able to supply. [REDACTED]

[REDACTED] [Comment on plant efficiency]

6. Causal connection between injury and dumped imports

Qenos submitted the following example as demonstrating the injury it suffered as a result of dumped imports:

“From around mid-2017 Qenos was notified by the [Customer] (“[Customer]” - a large HDPE customer) that Qenos was uncompetitive and that [Customer] was looking for a \$xxx/t reduction from Qenos. The amount of the price reduction and the alleged source of material changed throughout the negotiation, but the message from [Customer] was that it could purchase its HDPE requirements at a better, lower price than from Qenos. The outcome of the loss of business was materially damaging to Qenos.”

It is likely that the “Customer” in the above statement is Pact. The statement is extremely misleading in suggesting that Pact shifted to imported products solely or primarily due to lower prices for imported product than the prices being offered by Qenos.

Pricing discussions are part of any normal commercial negotiation, particularly between Australia's largest HDPE supplier and one of its largest customers. However, in the negotiation to which Qenos refers, pricing played a part but was not the key consideration. In the course of its RFP process, Pact identified that it could source its HDPE requirements from suppliers that could provide greater security of supply and superior customer service, at similar (although not lower) prices than were offered by Qenos,

Further, Pact's intention in including imported HDPE into its supply chain provided the opportunity for Pact to test and understand the various materials that were available on the global market. Many of these materials are not offered by Qenos on a like-for-like basis and their introduction into Pact's production has brought about non-price related improvements to Pact's offering to its customers (for example HDPE blow moulding grades that can more readily be "thin walled" than Qenos' product, offering a superior product to Pact's customers).

Pact strongly disputes Qenos' claim that "unfair pricing of dumped imports" led to Qenos' declining market share. It was clearly Qenos' unreliability (leading to a threat to Pact's ability to meet its obligations to customers), Qenos' poor service, and failure to value Pact as its largest customer that resulted in Pact's decision to consider other suppliers.

7. Trends in volume and prices of dumped imports

On page 30 of its application, Qenos claims that *"In mid 2018, Qenos lost significant volumes of HDPE at a large customer, the [Customer], to dumped imports including from Singapore, Thailand and USA."*

Pact's view is that Qenos lost significant volumes from Pact not due to pricing, but rather due to poor service, insistence on uncommercial supply terms and lack of reliability. .

8. Cost to Pact of Qenos' unreliability

Pact notes that the decision to switch to higher priced or similarly priced imported product did not come without cost to Pact. As Qenos experienced plant or equipment outages, Pact incurred considerable expense in order to qualify other HDPE grades which could act as a contingency in the event of future disruptions to Qenos' supply. Pact was only able to use other sources of HDPE after completing the exercise of testing new product and adjusting moulding machinery was complete. As Qenos were unwilling to negotiate commercial terms that took into account the quality of its offering and Pact's supply requirements, Pact ultimately chose to import from more reliable suppliers.

Further, introducing imported HDPE from overseas producers allowed Pact to access a more diversified supply base which offered more contingency in the event of any one supplier failure, and also access to a range of globally available materials. For Pact to compete with the threat of its customers importing their packaging from overseas vs. buying locally from Pact, Pact needs to have access to the same materials that these overseas producers use – or face being left behind in a highly competitive global market.

As an Australian owned and Australian based manufacturer that employs over 4,000 people, Pact operates in a highly competitive environment in the market for the supply of plastic packaging and related products. Pact's end products are sold to fast-moving consumer goods companies, including large supermarkets and other retailers. If Pact's products, services, reliability and pricing to its customers are not competitive, these FMCG companies

and large retailers may import their packaging or to import complete products that include packaging, which would cut packaging manufacturers like Pact out of the supply chain.

9. Qenos' suppression of its export data

At page 27 of its submission, Qenos refers to "price transparency that is evident in the polymer market in Australia (visibility through published import and export data)."

Pact notes that there is no transparency in Qenos' export data, apparently because Qenos has had the publication of such information suppressed. Pact considers that the removal of restrictions on access to Qenos' export data is relevant to a full understanding of the Australian market for the supply of HDPE.

10. Qenos' failure to treat Pact like a valued customer in commercial negotiations

While concerns about reliability of supply was a key reason for Pact's decision to source HDPE from other suppliers, it should also be noted that following one of its acquisitions, Pact became aware that Qenos offered its other Australian customers [REDACTED], even though Pact was one of Qenos' largest customers. *[Comment on pricing]*

Related to the suppression of export data point above, [REDACTED] *[Comment on pricing]*

While these pricing considerations were not the main reason for seeking alternative supply, they did mean that Pact formed the view that it was not a valued customer of Qenos and that Qenos was taking advantage of Pact's dependency on Qenos as its main supplier of HDPE.

During negotiations, Qenos insisted on an annual HDPE target volume of [REDACTED], despite Pact's requests for this to be lowered due to surety of supply risks. And, despite its poor performance relative to the service quality and reliability of other suppliers, Qenos was still demanding a price premium. Pact sought a more flexible volume and price incentive arrangement that would ensure greater supply certainty for Pact, but Qenos was unwilling to reach a compromise that could meet both parties' commercial objectives, taking an "all or nothing" approach to volume requirements. This led to Pact making the difficult decision to consider other alternative suppliers.

The following table sets out Qenos' annual volumes and % of Pact's HDPE:

[Table redacted]

[REDACTED]

The decline in Qenos' volumes and market share can be directly attributed to its supply and reliability issues, poor service and uncommercial supply terms and conduct of negotiations. Pact was open to being Qenos' base load customer with sizeable (but not over-reliant) volume and commensurate competitive pricing reflective of the risks in receiving supply from Qenos. However, Qenos demanded inflexible volume commitments in the context of lack of security in Qenos supply, inferior service without contingency or a willingness to supply in

the event of outages, and in a situation where in commercial negotiations it did not treat Pact like a valued customer.