



31 July 2019

Mr Roman Maevsky
Assistant Director
Anti-dumping Commission
Level 35, 55 Collins Street
Melbourne VIC 3000

Sent via email: Roman.Maevsky@adcommission.gov.au

Dear Mr Maevsky

Subject: Investigation 515, Pact Submission

Pact Group Holdings Ltd (**Pact**) welcomes the opportunity to provide the Anti-dumping Commission (**Commission**) with further evidence in relation to Investigation 515, being Qenos' allegations of dumping of HDPE into the Australian market (**Case 515**).

Executive summary

Qenos is the only manufacturer of HDPE in Australia. Until recently, [REDACTED] [Comment about Pact's size as a customer]. Pact purchased more than [REDACTED] of its HDPE from Qenos (Pact bought [REDACTED] and Qenos capacity was estimated to be 185 kt per annum when its plant was operating properly). Beginning in late 2017, Pact began to reduce amounts of HDPE it purchased from Qenos. In July 2018 the amount Pact purchased from Qenos was less than [REDACTED] of Pact's demand. This was because Qenos could not provide the reliability of supply required by Pact to enable Pact to compete in the Australian market and a result of Qenos seeking to impose untenable contractual and commercial terms upon Pact.

Qenos would not enter into supply contracts with Pact unless Pact agreed to buy more than [REDACTED] of Pact's requirements from Qenos ([REDACTED] tonnes per annum). This was unacceptable to Pact, particularly in circumstances where Qenos was unable to also guarantee reliable supply to Pact. Qenos was not able to guarantee supply to Pact because Qenos consistently has plant outages and unreliable production, [REDACTED] [REDACTED] [Comment about efficiency of Qenos plant]. Under Qenos' contract with Pact, [REDACTED]

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[*Comment about contractual terms*] In this context, it should be of no surprise to the Commission that Pact had to find alternative sources of HDPE supply to remain viable as a business.

Historically Pact suffered damaging consequences of Qenos' inability to supply product when required by Pact. When Qenos' represented over [REDACTED] of Pact's supply, any outage has a major impact on Pact. Pact relies upon regular and reliable supply of product in order for Pact to meet Pact's customers' demands.

In addition to the reliability issues, Qenos' poor customer management and refusal to negotiate with Pact on key terms, meant Pact could not agree to continue to source product from Qenos on a guaranteed volume basis without significantly risking Pact's business.

Pact considers that Qenos' initiation of Case 515 is an attempt to:

1. force Pact to source increased volumes from Qenos;
2. force Pact to accept the consequences of Qenos' inefficient plant and inability to supply product when its plant is unable to produce; and
3. inflate Australian domestic market prices commensurate with any duties

Qenos is essentially improperly seeking to use trade law to claw back volumes it used to sell to Pact but lost because it was inefficient and sought monopoly like commercial terms.

Imposing any material duty will make Pact's own business uncompetitive. Pact will have to decide between sourcing reliable product at inflated import prices or seek to accept and entrench Qenos' monopoly position, protected from valid competitive signals and the otherwise commercially competitive consequences of having an inefficient and unreliable plant. If there were proper competition, Qenos would have to spend money upgrading its plant to ensure it was reliable and deal with its customers on a competitive basis. [REDACTED]

[REDACTED] [Comment about legal options]

Lastly, Qenos product and imported product are not necessarily like product due to different grades, end uses and ability to use product in existing plant. Since moving volumes away from Qenos, Pact has gone to considerable expense to modify its plant to process imported product.



Key issues addressed in this submission

This submission:

1. Explains why Qenos is uncompetitive within the market it operates.
2. Gives strong evidence that the injury alleged by Qenos is not "caused" by any alleged dumping, rather any such injury has been caused by:
 - a. Qenos plant inefficiency and high energy prices meaning Qenos is (or is becoming) uncompetitive relative to overseas suppliers.
 - b. Qenos' substandard HDPE offering, including untenable guaranteed volumes demanded by Qenos, plant outages and unreliable production, [REDACTED] [REDACTED] [Comment about contractual terms] and poor customer management.
3. Highlights the various grades and end uses for HDPE, and key differences, meaning HDPE imported product is not necessarily "like product" to the one produced by Qenos in Australia. Qenos' application does not properly address whether the alleged dumped product is actually "like product" to various product Qenos produces domestically.
4. Highlights the severe repercussions to Pact and the Australian industry if the result of Case 515 is effectively to force Pact to purchase from Qenos.

Qenos not competitive

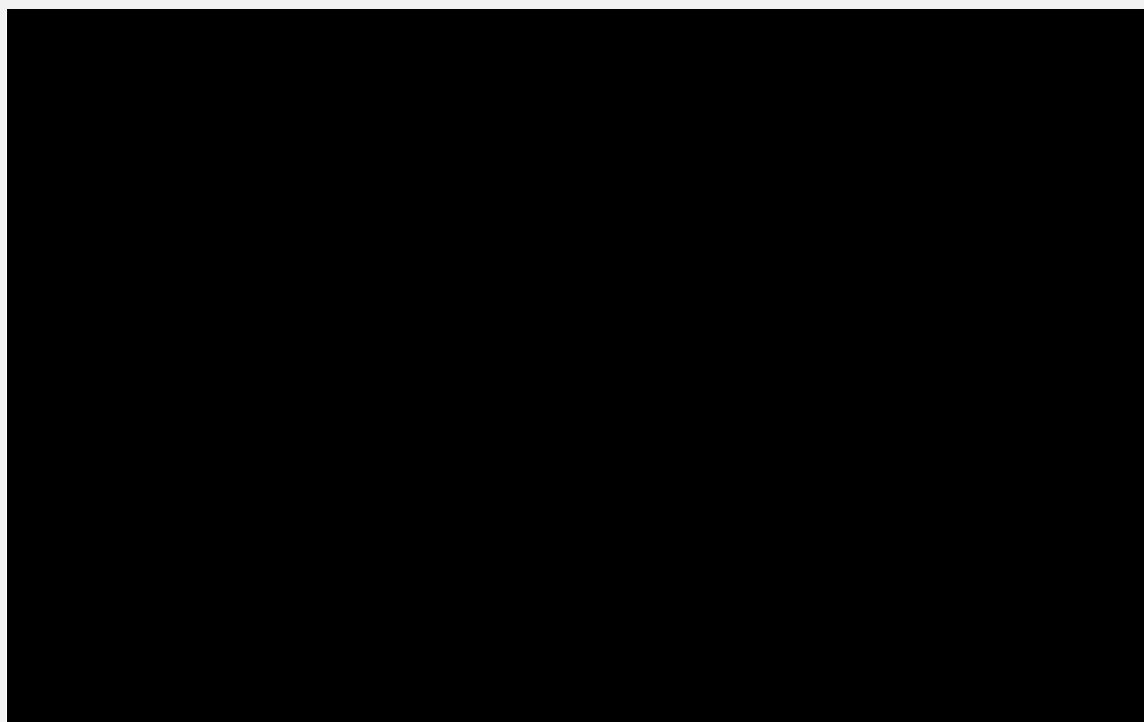
Pact's experience with Qenos is that it is not a competitive player in the HDPE market. This is for numerous reasons:

1. As Qenos' reliability as a supplier become less and less consistent and significant supply disruptions occurred in February to August 2017 and May 2018, Pact liaised with [REDACTED] [REDACTED] [consultants] to better understand [REDACTED] [REDACTED]. The feedback that [REDACTED] [REDACTED] [REDACTED] [comment about plant efficiency and cost], was alarming to Pact and was one of the key factors that prompted a reconsideration of Pact's supply sources and diversification of supplier risk.



[Confidential diagram redacted]

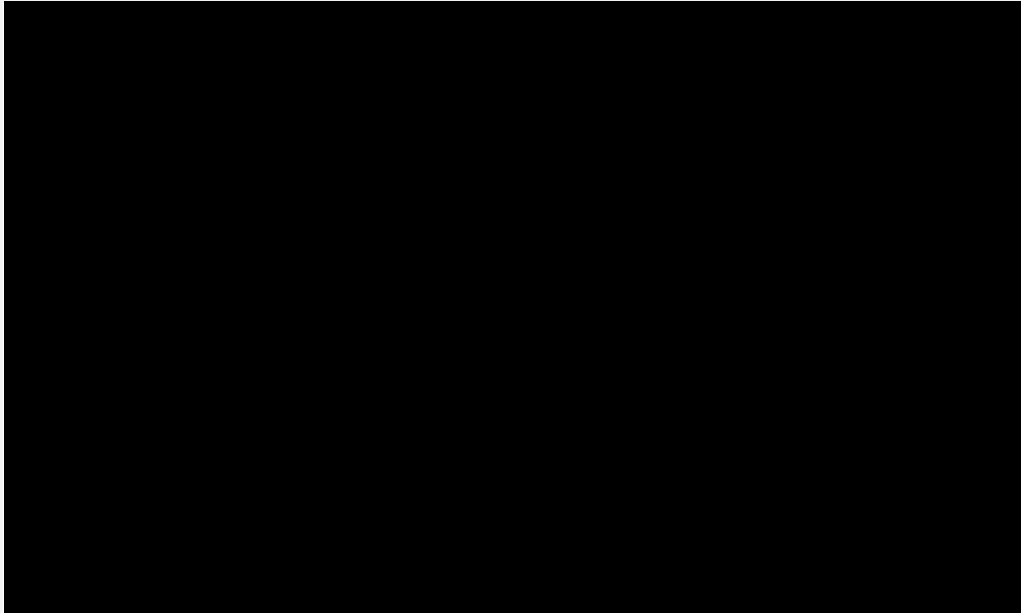
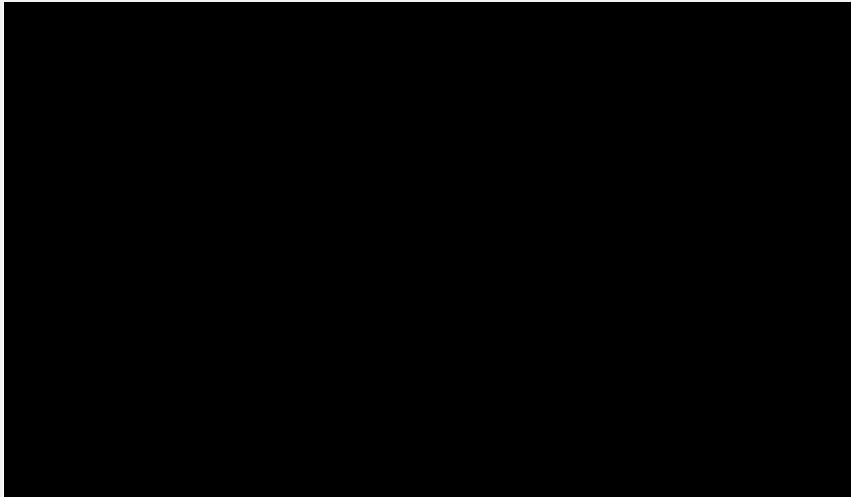
When [redacted] of product is sourced from Qenos, even a short HDPE supply interruption can have significant flow on impacts for Pact. Over reliance on one source of supply means that the disruption cannot be easily overcome as the alternative HDPE supply choice will have an 8-12 week lead-time. On investigation, overseas suppliers were seen to have more reliable supply than Qenos, both because the plant was generally newer and more efficient, overseas suppliers held more inventory and overseas suppliers had access to multiple plants across the world which meant that these suppliers could source from alternative plant should issues arise.



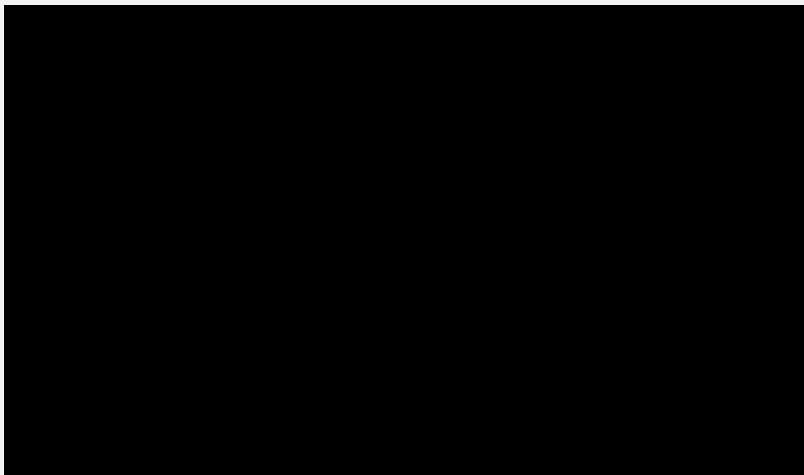
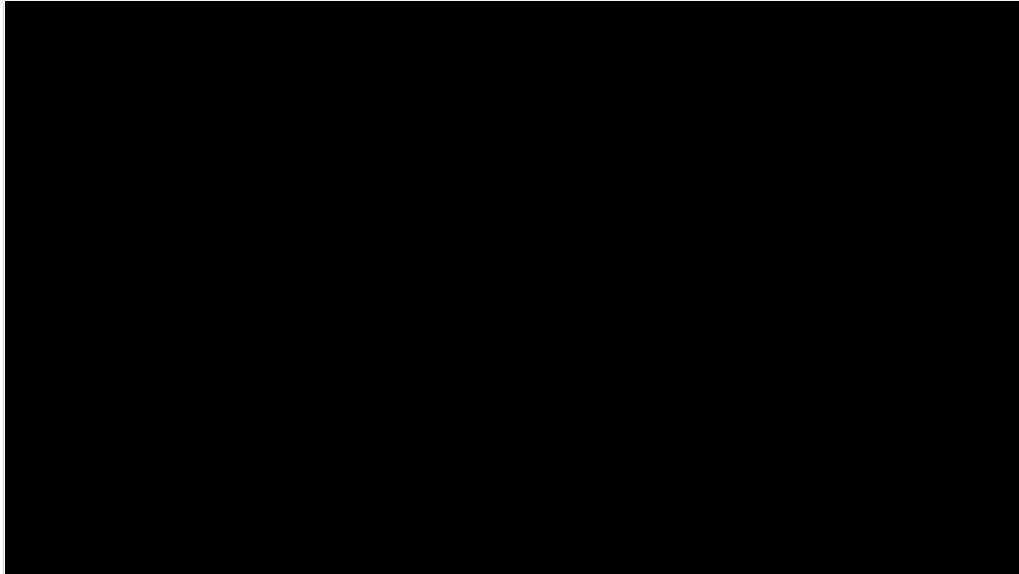
[Confidential diagram redacted]

New capacity entering the US market alone (according to ICIS) is 10,800,000 tonnes per year. In addition, there is 1,910,000 tonnes of upgrades to existing US facilities. This needs to be compared to Qenos Altona's nameplate capacity of 180,000 tonnes of HDPE per year. So Qenos' current HDPE capacity represents <1% of the expansions taking place in the US alone.

As more efficient and large-scale plants are built on the back of US shale gas and Middle East gas prices, inefficient plants that have high cash costs of production inevitably close.



[Confidential diagrams redacted]



2. Pact was the [redacted] [comment on customer size] customer of Qenos until [redacted]. As a matter of prudent business, large and valued customers are usually treated in a similarly valued manner. Pact has not had this experience with Qenos and this is the other key factor that prompted Pact to move volumes away from Qenos. Supply-side issues experienced with Qenos include:
 - a. Qenos insisted on only providing HDPE to Pact if Pact commit to purchasing very large and inflexible quantities being [redacted]. Given Pact's need to diversify suppliers due to the supply and reliability risk associated with Qenos [redacted] [comment on contractual terms], this position was untenable for Pact.

b. [REDACTED]
[REDACTED]
[REDACTED] [Comment on pricing and relationship].

c. Qenos was demanding premium, above market prices (particularly given the issues with supply reliability and volume guarantees demanded) and was unwilling to consider more competitive pricing reflective of Pact being its largest customer. For example, under internationally competitive standards, the largest customers in the market are usually offered the ICIS published low price. Qenos offered to sell to Pact at [REDACTED].

3. Qenos has itself acknowledged that high gas and energy prices it has faced in Australia (in contrast with comparatively lower gas and energy prices overseas) has resulted in it becoming uncompetitive internationally and having to lay off staff. For example see "*Qenos lay-offs start as energy costs hit*", *The Australian*, 29 December 2017.

Given the unreliability and uncompetitiveness of Qenos (both given inefficient plant and comparatively higher Australian energy costs) and uncommercial supply terms, Pact took a commercially prudent path and diversified its supply.

Injury and Counterfactual Analysis

Pact notes that the "Economic Framework for injury and causation analysis"¹ (**Causation and Injury Framework**) that the Commission states its determination of anti-dumping duties² outlines a number of relevant factors in determining whether any alleged dumping has "caused" "injury" to Australian producers. These factors include:

1. Assessment of the relevant injury, being general factors that relate to whether the alleged dumping caused a "*loss of profits to the Australian industry*"
2. Performance of counterfactual analysis to determine whether the alleged dumping can be described as the "cause" of the injury, ie "*what would happen in the absence of dumping*". The

¹ https://www.industry.gov.au/sites/default/files/acd_injury_and_causation_framework_overview.pdf

² <https://www.industry.gov.au/regulations-and-standards/anti-dumping-and-countervailing-system>



Causation and Injury Framework states that the counterfactual analysis is the "*central feature of the framework*".

As a preliminary point, Pact reiterates that it primarily ceased to do business with Qenos because of Qenos' unreliability and substandard HDPE offering, including the unacceptable and untenable supply-side terms associated with that offering. In other words, any injury to Qenos has not been caused by any allegedly dumped HDPE, but is rather due to these issues.

To the extent the Commission finds that dumping has occurred, Pact considers that the application of the "counterfactual" analysis as set out in the Causation and Injury Framework will confirm that any injury Qenos has suffered was not "caused by" any such dumping.

Pact notes that the relevant counter-factual analysis requires the determination of a hypothetical scenario, recreating what "would have happened" in that hypothetical world. Based on its review of Qenos' submissions, Pact considers Qenos has vastly overestimated the injury "caused" by, what Qenos alleges to be, the dumping of HDPE.

Pact considers that any counterfactual scenario must include the following:

1. Pact has legitimate issues with Qenos' HDPE offering and these issues would exist in any counterfactual scenario.
2. Pact purchased its imported HDPE from the international market and at the international market price. [REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED] *[Comment on alternative supplier pricing and terms]*

In Pact's view, any counterfactual scenario analysis performed cognisant of the above factors will demonstrate that Qenos' injury was caused by Qenos itself (or factors making Qenos uncompetitive), and not by any alleged dumping of HDPE.

Further, the price (adjusted) that Pact pays for internationally supplied HDPE is, based on calculations for specific transactions provided in Pact's response to the Importer Questionnaire dated 19 July 2019 are the same or slightly more than it expects it would have paid Qenos. This reinforces that any injury to Qenos is not related to the price of imported product (or at least the price of Pact's imported product).

Imported HDPE and Qenos HDPE are not all "like products"

As the Commission is aware, there are various grades and uses for HDPE. Imported HDPE is not necessarily "like product" to the HDPE produced by Qenos in Australia. Qenos' application does not properly address whether the alleged dumped product is actually "like product" to various product Qenos produces domestically (or at least aggregates data to the point that it is meaningless from a dumping inquiry perspective).

Article 2.6 of the WTO's "Agreement On Implementation Of Article Vi Of The General Agreement On Tariffs And Trade 1994" requires dumping to be assessed based on analysis of "like products", where like products are "identical", which means "alike in all respects" or "in the absence of such a product, another product which... has characteristics closely resembling those of the product under consideration".

Much of the HDPE Pact imports is not identical to HDPE Qenos manufactures domestically. Key differences include:

1. The grade of HDPE, with some grades from different manufactures being interchangeable but many are not. It is worth noting that the grade on the specification sheet is not conclusive as to its performance. Even HDPE of the same grade, but from different suppliers, may not be readily substitutable.
2. How the HDPE fits the requirements of the end use product. For example, generic plastic tubs as an end use product are generally alike but the HDPE in the end use product of lightweight superior strength bottles is not (or at least was not when this was assessed by Pact). [REDACTED]
[REDACTED]
[REDACTED] [Comment on alternative supplier products]
3. The pack type (for example 25 kg bags, bulk containers, and 1 tonne bulk bags).
4. The ability to use the HDPE in existing machinery. As manufacturing plant such as Pact's gets older and more fickle, Pact needs to set up its plant to only one HDPE grade and ability to switch out product diminishes. Re-setting plant to a different HDPE grade is an expensive and time-consuming exercise. As noted above, Pact plant was modified to better process HDPE purchased internationally.



Further, some of Pact's shift away from Qenos as a supplier to importers was driven by these different product characteristics, for example the [REDACTED]

Impact on Pact

If anti-dumping duties were applied to imported HDPE, the increased costs to Pact (an Australian company), will:

1. Likely result in Pact's Australian manufactured product being unable to compete with finished product being imported and resulting in Australian plant closures. Pact has already been forced to close [REDACTED]

[Comment on existing closures and impact of dumping duty]

2. Enable Qenos to continue to abuse its monopoly position over Australian downstream users of HDPE, insisting on inflexible significant minimum volumes in circumstances where supply is not guaranteed.
3. Inefficiently protect Qenos (a Chinese owned company) from legitimate competitive signals from customers and international competition at the expense of Australian industry.

Conclusion

To the extent the Commission determines that the imported HDPE was "dumped", Pact considers it is impossible to say the allegedly dumped HDPE "caused" injury to Qenos or the Australian HDPE industry. Any injury to Qenos was caused by its own uncompetitiveness, unreliability and the manner in which it chooses to deal with its customers.

Pact considers the Commission should terminate the investigation due to lack of causation or recommend that the Minister not impose duties.

Further details supporting statements made in this document are included at Annexure 1.

Yours sincerely

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A handwritten signature in blue ink, appearing to read "Craig Clark", written on a white rectangular background.

Craig Clark
General Manager Procurement
Pact Group



ANNEXURE 1

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