



# ACCC review of upstream competition and timeliness of supply: Issues Paper

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## EXECUTIVE SUMMARY

### Introduction

- APPEA welcomes the opportunity to provide comment on the *ACCC review of upstream competition and the timeliness of supply* (the Issues Paper). In addition to this APPEA submission, a number of APPEA members have made individual submissions on the Issues Paper. This response should be read in conjunction with submissions from individual APPEA members.

### Previous reviews that have covered the same or similar ground

- This review follows nearly a decade of ongoing reviews into the industry more broadly and the east coast gas market in particular, including the ACCC's own ongoing *Gas Inquiry 2017-2025*. Many of these reviews and inquiries have already considered most, if not all, of the issues considered in the Issues Paper.

### The Australian upstream oil and gas industry

- Reliable, secure, cleaner and competitively priced energy is crucial to our everyday lives in Australia and to the region in which Australia is importantly placed.
- Australia's oil and gas industry is a key and ongoing contributor to the Australian economy. Maintaining this ongoing and multi-billion dollar contribution will be vital as Australia looks to its ongoing recovery from the COVID-19 recession.
- The continued expansion of Australia's oil and gas industry offers opportunities to all Australians to provide cleaner and lower emissions energy to the region. The economic advancement in our region is overwhelmingly positive for the nation, playing to our comparative advantages as a secure and reliable energy exporter.
- This means that the stakes are high in realising the industry's potential benefits. The decisions the ACCC makes or recommends in its review of upstream competition and the timeliness of supply will, along with the other reform processes underway, play an important role in determining whether the industry can realise its potential and whether (or not) Australians, as the owners of Australia's oil and gas resources, benefit from new upstream oil and gas investment opportunities.

### **A broader context for the ACCC review: the development of the east coast gas market and the role industry has played in supporting economic growth during COVID-19 and can play in supporting economic recovery**

- Australia's oil and gas industry has helped shield the country from more damaging economic fallout from the COVID-19 global pandemic by supporting jobs, preserving energy security and delivering important export income. The Australian oil and gas industry, throughout the entirety of this ongoing global pandemic, has maintained vital energy supplies to domestic and industrial customers and met all of its export contract obligations.

### Economic dividends from securing a new wave of oil and gas development and the importance of Australia's investment environment

- The economic dividends from securing a new wave of upstream oil and gas developments are large. Economic analysis prepared by EY found that if we can secure the key projects which are



in the industry pipeline, then under their “high growth trajectory” scenario national economic output is estimated to increase by over \$350 billion with over 220,000 jobs created over the next two decades.

- These results are important reminders that the upstream oil and gas industry can be in and of itself a major source of economic growth and employment – its contribution to the Australian economy is far more widespread, and important, than a narrow view of the role it plays in supplying natural gas to a subset of Australian manufacturing.
- Australia’s reputation as a reliable supplier of LNG is a vital component of the industry’s competitiveness and has been a key factor in the industry’s ability, across Australia, to establish stable long-term relationships with customers and to attract investment into the industry in a fiercely competitive global environment.
- In addition, investment by the industry in domestically-focused exploration and production depends crucially on an investment environment that encourages such activity and does not place unnecessary policy and regulatory roadblocks that risk impeding those investments.
- Decisions flowing from the ACCC’s review of upstream competition and the timeliness of supply need to be considered within this context.
- The billions of dollars invested in Australia in developing these projects has also directly benefitted the domestic market. Often overlooked is that the LNG industry is and will remain a very large supplier of domestic gas to the east coast gas market.
- Without an export market to commercialise these resources, they would in many cases have remained in the ground because the Australian domestic market is simply not large enough to support the investment necessary for economically sustainable resource development. In that circumstance, the east coast market would today be facing a different and challenging situation, without this investment and the benefits that have flowed from it to the domestic market would not have been realised.

## **Comments on specific aspects of the ACCC’s Issues Paper**

### Chapter 1. Introduction

#### *Why is the review being undertaken?*

- That some of the concerns outlined to justify the review come from commercial and industrial (C&I) user surveys that the ACCC has undertaken, is not surprising and consistent with the strategic behaviour of C&I customers and their industry associations over the last decade or more. It is incumbent upon the ACCC to test the veracity of such claims.

#### *Scope of the review*

- The most effective contribution this review can make the effective operation of the east coast gas market is to focus on recommendations that lessen or remove the regulatory, legislative and administrative impediments (while ensuring a comprehensive regulatory regime remains in place) that have impeded the flow of more gas and gas suppliers into the east coast gas market.
- Regulating markets is not and has never been the best means of achieving sustainable competition in any market where there are active buyers and sellers. More gas and more gas suppliers is the sustainable way to ensure the more effective operation of the market and respond to any real or perceived shortcomings in the operation of the market.



## Chapter 2. Why is the Review being undertaken?

- It is unclear from the discussion in Chapter 2 of the Issues Paper how this specific review differs from the Terms of Reference for the *Gas Inquiry 2017-2025* itself.

### *Upstream competition is not effective*

- Australian gas companies operate in a competitive market. As such they have their own pricing strategies and do not cooperate with their competitors or coordinate pricing strategies. All companies operate in a manner that is consistent with the anticompetitive provisions of the *Competition and Consumer Act 2010*.
- Competition in the competition in the east coast during this period has been effective in ensuring gas offered in Queensland has in recent years been at or around the Wallumbilla hub price, with any disparities explained by price differences for delivery at locations other than Wallumbilla, which may involve additional transport costs for suppliers.
- In addition, in a period of significant instability in global gas markets, including in Asia where LNG spot prices have reached unprecedented high levels, competition in the east coast gas market and action by producers has ensured that, at the time this submission was finalised, domestic spot prices have not increased (and contract prices have remained largely unaffected).

### *The upstream market is concentrated*

- The upstream oil and gas industry is one of the most capital intensive industries in the Australian economy. To secure finance and to secure customers (both domestic and international), these projects need to be backed by significant gas reserves and resources, to provide markets with comfort that production can be maintained throughout the life of the project.
- The presence of a number of large players with the necessarily significant level of reserve and resource holdings does not mean, however, that competition in the market is necessarily inadequate. Concentration in reserve and resource holding does not automatically equate with a lower level of market competition (or higher levels of enduring market power).
- It is also the case that in recent years a number of smaller producers have entered into the market, adding to diversity in reserve and resource holdings and to the number of producers in the market.

### *Gas may not be brought to market in a timely or efficient manner*

- A range of factors, both technical and commercial, can influence whether, for example, 2C resources proceed to 2P reserves and into development. While there can be an assumed progression from 2C resources to 2P reserves over time, it is not automatic and a range of factors, particularly commercial factors (which is a key factor differentiating resources from reserves) can adversely affect that "progression".

## Chapter 3. Structural factors that may affect upstream competition and/or timely supply

- The Constitutional, policy, legislative and regulatory arrangements that underpin the management of Australia's oil and gas resources means there are limits to the role of an agency like the ACCC in the development of Australia's oil and gas resources and, for example, the acreage management processes that underpin those developments.



- This means many of the issues raised in this Chapter of the Issues Paper are the responsibility of the relevant government best considered through their own policy processes and not through this review.

#### *Bans, moratoriums and other regulatory restrictions*

- That the Issues Paper does not consider in detail the bans, moratoriums and other regulatory restrictions that have prevented new entrants into the east coast gas market, significantly limited competition and provided the most direct and significant impediments to the timely supply of gas to Australian consumers, is a major failure and one that should be addressed in detail in the ACCC's final report.
- **Recommending the removal of regulatory barriers to exploration and development would be the clearest and most positive recommendation the ACCC's review could make to increase the competitiveness of Australia's domestic gas market and the timeliness of supply.**

#### *Australia's acreage management framework, particularly retention lease arrangements*

- Australia's acreage management system provides for the appropriate management of Australia's discovered oil and gas resources, giving regulators sufficient powers to ensure that these resources are developed in a timely manner and to the economic benefit of all Australians.
- Australia's ability to continue to attract the large-scale investment required to support petroleum projects has been underpinned by sound petroleum development and production regimes both onshore and offshore.

#### *Retention leases*

- Retention leases are an integral part of Australia's longstanding and effective acreage management framework that bridges the gap between high-risk exploration and high-cost development. The retention lease framework recognises the need for security of title, respecting the risks associated with exploration investment, particularly in high-cost and frontier geology.
- The retention lease system continues to serve a critically important role in the exploration for and development of Australia's oil and particularly gas resources.
- While retention lease arrangements are not unique to the upstream oil and gas industry, they remain the only mechanism available for the exploration industry to maintain title over discovered resources until they become commercially viable. This remains the fundamental tenet of the retention lease legislation, first introduced at the Commonwealth level in 1985.
- The most recent review of petroleum licencing arrangements found no evidence that gas is being withheld (or warehoused) from development and production.

#### Barriers faced by producers

- Australia's upstream oil and gas industry faces a range of barriers when seeking to explore for and develop Australia's oil and gas resources. These barriers can arise from a range of geological, commercial and regulatory factors. The interaction between these factors can also be relevant.
- As the Australian economy looks to recovery from the COVID-19 global pandemic APPEA has engaged with governments to consider the real challenge – and the real opportunity – to return the industry to growth so that it can be an enabler for Australia's economic recovery.



- With that in mind, APPEA has presented to government an investment recovery blueprint that puts forward policy actions governments can take to restore industry confidence, encourage new investment and so increase the supply of gas.

#### *Third party access*

- Companies operating in the east coast market cover the whole spectrum of exploration and production activities, usually working in joint ventures to share the high costs and high capital risks associated with these activities. Given this range of activities, companies, whether large or small, can at times be operators of upstream facilities and at times be seekers of access to such facilities/infrastructure. There have been a number of third party access arrangements commercially negotiated and successfully concluded in recent years.
- APPEA has for many years encouraged commercial negotiation as the mechanism for establishing access to upstream services and has also noted that failure to agree on the terms and conditions, including price, does not in itself indicate the failure of commercial negotiations or of the market.

#### Chapter 4. Behavioural factors that may affect upstream competition and/or timely supply

##### *Joint venture arrangements*

- Joint venture arrangements are a common feature of resource developments (in the minerals industry as well as the oil and gas industry) across the world (and not just on the east coast of Australia). Noting oil and gas is a global industry, almost every oil and gas producing jurisdiction features joint venture arrangements of one form or another.
- There are a range of factors that lead to the prevalence of joint ventures (JVs) in oil and gas developments and also a range potential benefits that arise from joint ventures. Taken together, these benefits mean that JVs are the means by which the industry has secured the timely and efficient development of oil and gas resources globally, including in Australia.
- This also means there is no reason for a mandatory notification requirement or other form or oversight of JV arrangements beyond those already available to the ACCC.
- Without JVs, many of these benefits would not be realised, with the challenges of cost, scale of development and market access remaining. These would present significant impediments to develop that may in some cases be insurmountable. The net result would be less gas brought to market and significantly more impediments adversely affecting the timeliness of supply.

##### *Mergers between producers and acquisitions of tenements*

- While it is the case that mergers between east coast producers, or acquisitions by producers of individual tenements, can affect the degree of upstream competition and/or the timeliness with which gas is brought to market, the history of the industry of the east coast industry shows, particularly during the industry inception, that such mergers have allowed the industry access to resources and markets that allowed the industry to develop.
- Indeed, without some key mergers and acquisitions that took place in the 2000s and early 2010s, it is not clear the east coast industry would be at the stage of development and maturity it currently enjoys.
- It also remains the case that the ACCC through the *Competition and Consumer Act 2010* has the necessary legislative and regulatory provisions to examine and assess mergers and acquisitions across the Australian economy, including in the east coast oil and gas industry. Further regulation or intervention is not required.



### *Marketing arrangements*

- In some circumstances, joint marketing can reduce the high costs and risks associated with oil and gas production investments. In this case, joint marketing can benefit consumers by providing greater availability of gas supply. It can enable joint venturers to make development decisions and to then make further investments as fields mature and new facilities are required.
- It should be noted that joint marketing is not unique to the east coast upstream oil and gas industry. Indeed, authorisations are available across the economy and are used in other industries. Joint marketing, for example, is used in the wine industry, timber industry and in the airline industry.

### Conclusions/next steps

- APPEA and its members would welcome the opportunity to meet to further discuss these and any other relevant issues. APPEA looks forward to the findings of the review in 2022 and to further constructive engagement with the ACCC as the review proceeds.



## INTRODUCTION

The Australian Petroleum Production & Exploration Association (APPEA) is the peak national body representing Australia's oil and gas exploration and production industry. It has more than 60 full member companies. These are oil and gas explorers and producers active in Australia. APPEA members account for around 95 per cent of the nation's petroleum production. APPEA also represents more than 140 associate member companies that provide a wide range of goods and services to the upstream oil and gas industry.

APPEA works with Australian governments to help promote the development of the nation's oil and gas resources in a manner that maximises the return to the Australian community and industry. APPEA aims to secure regulatory and commercial conditions that enable member companies to operate safely, sustainably, and profitably. Further information about APPEA can be found on our website, at [www.appea.com.au](http://www.appea.com.au).

APPEA welcomes the opportunity to provide comment on the *ACCC review of upstream competition and the timeliness of supply* (the Issues Paper) released by the ACCC on 15 September 2021. In addition to this APPEA submission, a number of APPEA members have made individual submissions on the Issues Paper. This response should be read in conjunction with submissions from individual APPEA members.

APPEA's submission addresses specific aspects of the Issues Paper, focussing on those areas that are particularly important for the upstream oil and gas industry.

## PREVIOUS REVIEWS THAT HAVE COVERED THE SAME OR SIMILAR GROUND

This review follows nearly a decade of ongoing reviews into the industry more broadly and the east coast gas market in particular, including the ACCC's own ongoing *Gas Inquiry 2017-2025*. Many of these reviews and inquiries have already considered most, if not all, of the issues considered in the Issues Paper.

Box 1 provides a list (not necessarily exhaustive) of relevant inquiries in which APPEA and the industry participated since 2014:

### Box 1. Reviews and inquiries into the east coast gas market, 2014-

1. The 2014 *Eastern Australian Domestic Gas Market Study*, a joint project between the Department of Industry and the Bureau of Resources and Energy Economics<sup>1</sup>.
2. The Productivity Commission's March 2015 research paper *Examining Barriers to More Efficient Gas Markets*<sup>2</sup>.
3. The Australian Government's April 2015 *Energy White Paper*<sup>3</sup>.

<sup>1</sup> See [EasternAustralianDomesticGasMarketStudy.pdf \(archive.org.au\)](#) for more information.

<sup>2</sup> See [Examining Barriers to More Efficient Gas Markets - Productivity Commission \(pc.gov.au\)](#) for more information.

<sup>3</sup> See [apo-nid54017.pdf](#) for more information.





4. The Australian Energy Market Commission's (AEMC) 2015-16 *East Coast Wholesale Gas Market and Pipeline Frameworks Review*<sup>4</sup>.
5. The ACCC's 2015-16 *East Coast Gas Inquiry*<sup>5</sup>.
6. The 2016-2018 work of the Gas Market Reform Group, which included inquiries and reviews into the development of the terms of reference for the AEMC's biennial review on the growth in liquidity in wholesale gas and pipeline capacity trading markets<sup>6</sup> and recommendations on gas market transparency<sup>7</sup>, which led to consultation in 2020 through Energy Senior Offices on a package of draft regulatory amendments required to give effect to the gas market transparency reforms<sup>8</sup>.
7. The Department of the Environment and Energy's 2018 *East Coast Gas Market Supply Constraints* study.
8. The COAG Energy Council's 2018 *Review of Petroleum Licensing Regulations*<sup>9</sup>.
9. The Department of Industry, Science, Energy and Resources 2019 *Review of the Australian Domestic Gas Market Security Mechanism*<sup>10</sup>.
10. The Productivity Commission's 2019-2020 *Resources Sector Regulation*<sup>11</sup> study report.
11. The Department of Industry, Science, Energy and Resources 2020 *Options for a prospective national gas reservation scheme: issues paper*<sup>12</sup>.
12. The Department of Industry, Science, Energy and Resources 2020-21 *Gas Fired Recovery Plan* consultation<sup>13</sup>.
13. The Department of Industry, Science, Energy and Resources 2021 *Gas Fired Recovery: Infrastructure and Investment* consultation<sup>14</sup>.
14. The AEMC's 2021 *Review of the Gas Supply Guarantee*<sup>15</sup>.
15. The ACCC's *Gas Inquiry 2017-2025*<sup>16</sup> which, when it finishes in 2025, will have run continuously for over eight years. In addition to this review itself, the Inquiry has conducted a review of gas market transparency measures<sup>17</sup>, a reserves & resources reporting framework<sup>18</sup>, a report from Platts S&P Global, *Study on global natural gas prices to end-users report for ACCC*<sup>19</sup>, a new ACCC LNG netback prices series introduced in October 2018<sup>20</sup>, and a review of that series in 2021<sup>21</sup>.

This list does not include broader inquiries (at both the Federal and State/Territory level) into the industry that have also occurred during this period. Taken together, this means each of the issues considered in the Issues Paper has already been considered in recent years, by multiple agencies (including the ACCC) in a multitude of ways.

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<sup>4</sup> See [East Coast Wholesale Gas Market and Pipeline Frameworks Review | AEMC](#) for more information.

<sup>5</sup> See [Inquiry into the east coast gas market | ACCC](#) for more information.

<sup>6</sup> See [Biennial review into liquidity in wholesale gas and pipeline trading markets | AEMC](#) for more information.

<sup>7</sup> See [Gas Market Reform Group | \(coagenergycouncil.gov.au\)](#) for more information.

<sup>8</sup> See [Regulatory amendments to increase transparency in the gas market | Energy Council \(energyministers.gov.au\)](#) for more information.

<sup>9</sup> See [COAG Energy Council Review of Petroleum Licensing Regulations | Energy Council \(energyministers.gov.au\)](#) for more information.

<sup>10</sup> See [Australian Domestic Gas Security Mechanism Review 2019 | Department of Industry, Science, Energy and Resources](#) for more information.

<sup>11</sup> See [Resources Sector Regulation - Productivity Commission \(pc.gov.au\)](#) for more information.

<sup>12</sup> See [Consultation hub | Options for a prospective national gas reservation scheme: issues paper - Department of Industry, Science, Energy and Resources](#) for more information.

<sup>13</sup> See [Consultation hub | Gas Fired Recovery Plan - Department of Industry, Science, Energy and Resources](#) for further information.

<sup>14</sup> See [Consultation hub | Gas-Fired Recovery: Infrastructure and Investment - Department of Industry, Science, Energy and Resources](#) for further information.

<sup>15</sup> See [Review of the Gas Supply Guarantee | AEMC](#) for more information.

<sup>16</sup> See [Gas inquiry 2017-2025 | ACCC](#) for more information.

<sup>17</sup> See [Transparency recommendations | ACCC](#) and [Transparency recommendations | ACCC](#) for more information.

<sup>18</sup> See [Reserves & resources reporting framework | ACCC](#) for more information.

<sup>19</sup> See [International prices | ACCC](#) for more information.

<sup>20</sup> See [LNG netback price series | ACCC](#) for more information.

<sup>21</sup> See [LNG netback price series review | ACCC](#) for more information.



APPEA and its members have participated in each of these inquiries and APPEA comments on various aspects of the Issues Paper have drawn on our engagement in each of these previous reviews.

## THE AUSTRALIAN UPSTREAM OIL AND GAS INDUSTRY

It is important to place our views on the issues raised by the Issues Paper within the context of the current state and potential future contribution of the upstream oil and gas industry to the Australian economy and to the welfare of all Australians.

Reliable, secure, cleaner and competitively priced energy is crucial to our everyday lives in Australia and to the region in which Australia is importantly placed. Within this framework, oil and gas plays a key role in meeting many of our energy needs. In 2019-20 oil and gas accounted for 67.4 per cent of all energy consumed in Australia<sup>22</sup>.

Our abundant natural gas resources in particular, place Australia in an enviable position to maintain long-term, cleaner and lower greenhouse gas emissions energy security domestically and internationally. Natural gas makes it possible for Australia to meet the world's growing energy needs over the coming decades while incorporating a strategy to curb emissions and address the risks posed by climate change.

Australia's oil and gas industry is a key and ongoing contributor to the Australian economy. The industry:

- Invested an estimated \$473 billion in the Australian economy, including around \$305 billion invested in Australian LNG projects, since 2010<sup>23</sup>.
  - This investment will deliver returns for Australia for decades to come, through increased gas supply for Australian customers, export revenue, jobs, royalties and taxes.
- Supports 80,000 jobs directly and indirectly in Australia and hundreds of thousands more in the manufacturing sector rely upon natural gas.
- Paid more than \$5.3 billion in wages to direct employees in 2016-17. The industry's average wages are more than double the national average.
- Supports a vast supply chain of businesses in manufacturing, services and construction.
  - This is in addition to the hundreds of thousands of jobs in electricity generation, manufacturing, transport and other industries which rely on our outputs.
  - Businesses ranging from national firms to local cafés all share in the economic benefits generated by the oil and gas industry<sup>24</sup>.
- Contributed over 3 per cent Gross Domestic Production (GDP) in 2020-21.

Maintaining this ongoing and multi-billion dollar contribution will be vital as Australia looks to its ongoing recovery from the COVID-19 recession.

<sup>22</sup> See [Energy consumption | energy.gov.au](https://www.energy.gov.au) for more information.

<sup>23</sup> See Wood Mackenzie (2020), *Australian Oil and Gas Industry Outlook Report*, page 4 (available at [Australia-Oil-and-Gas-Industry-Outlook-Report.pdf \(appea.com.au\)](https://www.appea.com.au/Australia-Oil-and-Gas-Industry-Outlook-Report.pdf)).

<sup>24</sup> As an example, work for APPEA by Lawrence Consulting, released in 2019 found the natural gas industry contributed around \$55 billion to Queensland's economy over a seven year period. Almost \$5 billion was spent on wages state-wide during the period with the industry employing around 4,600 full-time employees, according to the *Economic Impact of Queensland's Petroleum and Gas Sector 2011-18* report. The industry spent around \$50 billion on goods and services from local community contributions and payments to local government as well as royalties, stamp duty and tax, the report found. See [Natural gas powering Queensland's economy | APPEA](https://www.appea.com.au/Natural-gas-powering-Queensland-s-economy) for more information.

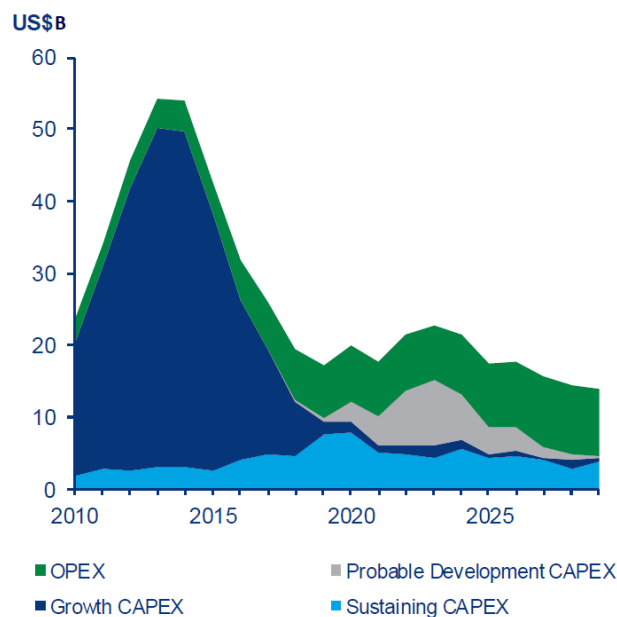


In addition, LNG is now one of Australia's largest commodity exports, with export revenue of around \$51 billion in 2018-19 and \$48 billion in 2019-20. While export revenue declined to \$30 billion on the back of falls in the price of LNG in 2020-21, volumes were maintained and continued to supply export revenue for Australia during the COVID-19 global pandemic. The Department of Industry, Science, Energy and Resources expects LNG export earnings to increase to \$56 billion in 2021-22<sup>25</sup>. The growth outlook and key competitive pressures facing the Australian LNG industry, one of Australia's economic success stories, are considered later in this submission.

The contribution of Australia's oil and gas industry to the Australian economy, and to the economic welfare of all Australians is illustrated in a variety of ways, including by the investment made into the Australian economy by the industry since 2010. This is shown in Figure 1. The industry has invested \$US20 billion-\$US55 billion (around \$A26 billion-\$A72 billion at current exchange rates) every year since 2010, and at times during this period, was directly responsible for nearly half of Australia's economic growth<sup>26</sup>.

No other single industry has made this contribution to Australia's growth and investment during the last decade.

**Figure 1. Oil and gas investment in the Australian economy since 2010**



Source: Wood Mackenzie (2020).

In 2020-21, Australian LNG was exported to ten destinations (Japan, China, South Korea, Malaysia, Singapore, Taiwan, Thailand, United Arab Emirates and Other Asia-Pacific). Many of these nations are also significant investors in Australian LNG projects and in contrast to domestic manufacturers

<sup>25</sup> See [Office of the Chief Economist - Resources and Energy Quarterly - September 2021 \(industry.gov.au\)](#) (page 70) for more information.

<sup>26</sup> For example, in its August 2017 *Statement on Monetary Policy*, the RBA found: "LNG exports are expected to contribute almost ½ a percentage point directly to annual GDP growth", confirming how significant LNG exports are to sustaining economic growth in Australia. See [Statement on Monetary Policy – August 2017 | RBA](#), page 33 for more.



carry significant project risk. Each of these trading partners are also closely observing policy and regulatory developments in Australia.

The continued expansion of Australia's oil and gas industry offers incredible opportunities to all Australians to provide cleaner and lower emissions energy to the region. The economic advancement in our region is overwhelmingly positive for the nation, playing to our comparative advantages as a secure and reliable energy exporter.

This means that the stakes are high in realising the industry's potential benefits. The decisions the ACCC makes or recommends in its review of upstream competition and the timeliness of supply will, along with the other reform processes underway, play an important role in determining whether the industry can realise its potential and whether (or not) Australians, as the owners of Australia's oil and gas resources, benefit from new upstream oil and gas investment opportunities.

#### A BROADER CONTEXT FOR THE ACCC REVIEW: THE DEVELOPMENT OF THE EAST COAST GAS MARKET AND THE ROLE INDUSTRY HAS PLAYED IN SUPPORTING ECONOMIC GROWTH DURING COVID-19 AND CAN PLAY IN SUPPORTING ECONOMIC RECOVERY

Australia's oil and gas industry has helped shield the country from more damaging economic fallout from the COVID-19 global pandemic by supporting jobs, preserving energy security and delivering important export income.

The Australian oil and gas industry, throughout the entirety of this ongoing global pandemic, has maintained vital energy supplies to domestic and industrial customers and met all of its export contract obligations.

Our ability to secure the next wave of investment in oil and gas exploration and production has strong foundations but faces intense challenges. The investment landscape is riskier, with higher hurdle rates, and global competition for mobile capital is fierce. Many producers are now focusing on smaller, incremental projects. This means there is an urgency to address Australia's competitive position through effective and nationally cohesive policy settings that reduce rather than increase barriers to investment or, worse still, impose new ones. There is heightened risk that undue regulatory and tax imposts will deter long-term investment.

#### ECONOMIC DIVIDENDS FROM SECURING A NEW WAVE OF OIL AND GAS DEVELOPMENT AND THE IMPORTANCE OF AUSTRALIA'S INVESTMENT ENVIRONMENT

The economic dividends from securing a new wave of upstream oil and gas developments are large. Economic analysis prepared by EY as part of their report, *Australia's oil and gas industry: kickstarting recovery from COVID-19*<sup>27</sup>, found that if we can secure the key projects which are in the industry

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<sup>27</sup> See EY (2020), *Australia's oil and gas industry: kickstarting recovery from COVID-19*, page 7 (available at [Oil and gas industry continuing to support Australia's economic recovery from COVID-19 | APPEA](#) and [EY-Report-Australias-oil-and-gas-industry-Kickstarting-recovery-from-COVID-19.pdf \(appea.com.au\)](#)). The report's "high growth trajectory" scenario encompasses investment and production for oil and gas projects that are under development or have a high level of investor commitment and capital expenditure to sustain existing facilities and fields. In addition, the scenario includes oil and gas investments and associated production yields for projects that are considered prospective, but which have higher development uncertainty and have not yet secured firm commercial commitments. It highlights a visible frontier of resource development and industry expansion that could be realised.



pipeline, then under their “high growth trajectory” scenario national economic output is estimated to increase by over \$350 billion with over 220,000 jobs created over the next two decades.

These results are important reminders that the upstream oil and gas industry can be in and of itself a major source of economic growth and employment – its contribution to the Australian economy is far more widespread, and important, than a narrow view of the role it plays in supplying natural gas to a subset of Australian manufacturing.

This means that as the industry grapples with turbulent market conditions and fierce competition for scarce investment capital, regulations which suppress the industry’s potential to develop Australia’s resources can impose heavy economic costs. The economic efficiency losses of regulations which prevent the industry’s investment pipeline from being realised could far exceed those from Australia’s worst performing taxes.

In contrast, the gains from reinvigorated activity in the oil and gas industry have the potential to spread throughout the economy, providing a kickstart for Australia’s industrial base, boosting demand for services, and generating wealth for all Australians.

Australia’s reputation as a reliable supplier of LNG is a vital component of the industry’s competitiveness and has been a key factor in the industry’s ability, across Australia, to establish stable long-term relationships with customers and to attract investment into the industry in a fiercely competitive global environment.

In addition, investment by the industry in domestically-focussed exploration and production depends crucially on an investment environment that encourages such activity and does not place unnecessary policy and regulatory roadblocks that risk impeding those investments.

Decisions flowing from the ACCC’s review of upstream competition and the timeliness of supply need to be considered within this context.

These benefits will be felt across Australia, including in the regional areas in which the industry operates. In Queensland, for example, EY found<sup>28</sup> in their September 2021 report, *The economic contribution of Queensland’s oil and gas industry*, that the industry has already added \$106 billion or 3 per cent each year to the Queensland economy over the last decade, employing more than 36,000 workers and paying \$13 billion in taxes and charges.

EY also found that under a high growth scenario, Queensland’s gas industry potential could result in:

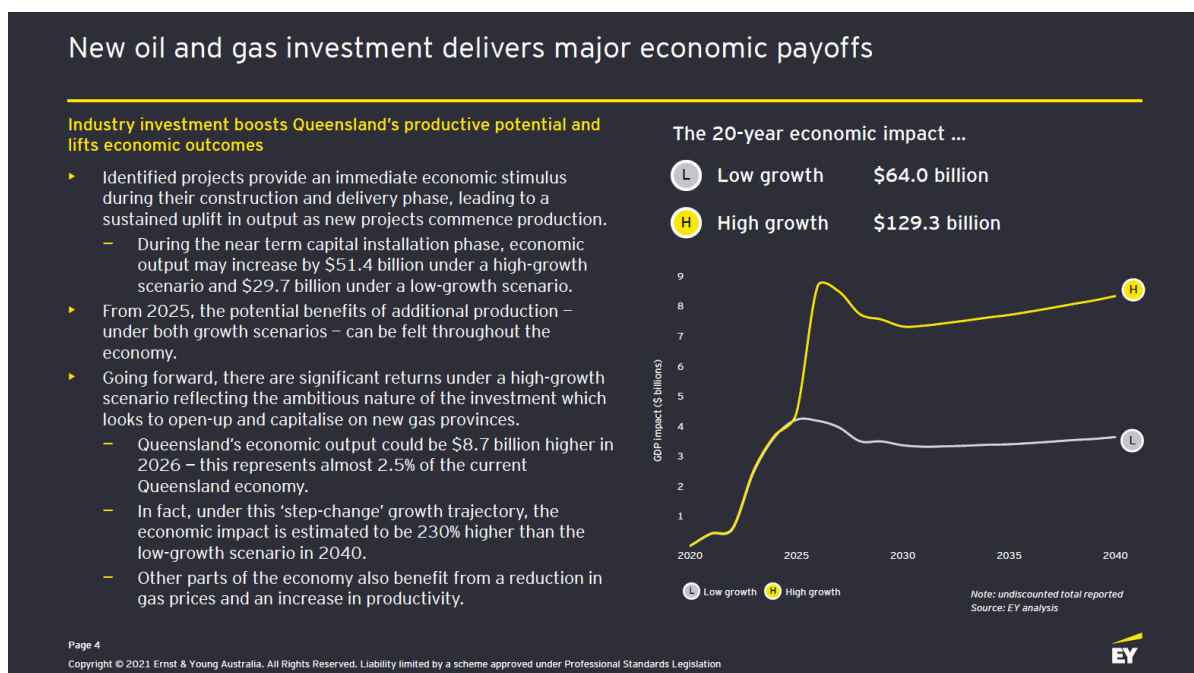
- A further \$30 billion in investment producing 7,000 PJ of production capacity in the Queensland oil and gas industry over the next 20 years.
- A further \$129.3 billion could be added to Queensland’s Gross State Product in the next twenty years under a high growth scenario, with Queensland’s economic output due to gas being \$8.7 billion higher in 2026 – this represents almost 2.5 per cent of the Queensland economy.
- Almost 2,200 extra full-time jobs created in 2026 under a high growth scenario.

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<sup>28</sup> EY (2021), *The economic contribution of Queensland’s oil and gas industry*, 8 September (see [Media release: Queensland gas could be bigger than Olympics | APPEA](#) and [Use Panels to hold statements \(appea.com.au\)](#) for more information).

This importance of the industry to Queensland is highlighted in Figure 2.

**Figure 2. The existing and future importance of the upstream oil and gas industry to Queensland**



Source: EY (2021).

The billions of dollars invested in Australia in developing these projects has also directly benefitted the domestic market. Often overlooked is that the LNG industry is and will remain a very large supplier of domestic gas to the east coast gas market.



The scale of investment required to commercialise onshore gas developments on the east coast, particularly onshore developments which do not have the liquids to support the production of gas and which have for example helped underpin the economics of shale gas development in the US, and the relatively small size of the domestic market, has meant – as is the case for so many Australian industries – an export path to market was always required to develop these resources. Put another way, the Australian domestic market is simply not large enough to support the scale of investment required to develop Australia's substantial oil and gas reserves.

Implicit in much of the criticism of LNG exports is a presumption that if this gas was not developed for export, the same gas would have been developed for the domestic market. This is the wrong counterfactual.

Without an export market to commercialise these resources, they would in many cases have remained in the ground because the Australian domestic market is simply not large enough to support the investment necessary for economically sustainable resource development. In that circumstance, the east coast market would today be facing a different and challenging situation, without this investment and the benefits that have flowed from it to the domestic market would not have been realised.

One of the major challenges to the industry's continued growth and contribution to Australia is maintaining Australia's international competitiveness in the face of growing global competition. This is true for both domestic and export-focussed investments. In the case of LNG, a relatively high-cost local environment and the emergence of new LNG competitors in North America, East Africa and Russia and increasing competition from existing competitors such as Qatar and elsewhere will make it much harder to win market share and attract future investment.

Under all scenarios recently modelled by the International Energy Agency<sup>29</sup>, demand for natural gas increases over both the short and medium term. If this demand is not met by Australia, it will be met by our competitors and the economic benefits that can accrue to Australia in terms of exports, jobs, regional development and taxation revenue will be lost.

The industry and governments, including through the outcomes of this ACCC review, must do everything possible to ensure new projects continue to be developed.

Some impacts on current and future investment, such as exchange rates or global oil prices, are largely beyond the ability of industry to influence. However, other key challenges must be addressed. Australia's perception as a welcoming destination for investment has declined, including for petroleum investment. It is vitally important the outcomes from the ACCC's review do not add to these challenges.

## COMMENTS ON SPECIFIC ASPECTS OF THE ACCC'S ISSUES PAPER

The following sections consider each of the four chapters of the Issues Paper and provide comments on various parts of those chapters. As noted above, in addition to this APPEA submission, a number

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<sup>29</sup> See [World Energy Outlook 2021 – Analysis - IEA](#) and [Media release: Gas demand in Asia will continue to deliver opportunities for Australia | APPEA](#) for more information.



of APPEA members have made individual submissions on the Issues Paper. This response should be read in conjunction with submissions from individual APPEA members.

With that in mind, APPEA offers the following comments on those aspects of the Issues Paper of most interest/relevance to the Australian upstream oil and gas industry. In most sections, APPEA has provided answers to each of the relevant questions posed in the relevant section of the Issues Paper. In other sections, we have offered general comments on the matters relevant to the Inquiry.

## CHAPTER 1. INTRODUCTION

The introduction to the review on pages 1-2 of the Issues Paper raises a number of issues that require some further consideration as the review progresses.

### **Why is the review being undertaken?**

The Issues Paper asserts on page 1:

- *the commercial and industrial (C&I) user surveys that we have undertaken, which have consistently raised concerns about the lack of effective upstream competition and the adverse effect this has had on selling practices, gas prices and the non-price terms and conditions in gas supply agreements (GSAs).*

That such concerns have been raised in response to surveys from the competition regulator is not surprising and consistent with the strategic behaviour of C&I customers and their industry associations over the last decade or more. It is incumbent upon the ACCC to test the veracity of such claims. The incentive for strategic behaviour in a situation where such behaviour has led to a range of regulatory responses (including the *Gas Inquiry 2017-2025* and this review) is clear and the ACCC should ensure the tests it applies to information provided by producers, or producer behaviour, are applied in similar ways to information from C&I customers or C&I customer behaviour.

The industry has entered into at least 111 publicly announced<sup>30</sup> gas supply agreements or other commercial arrangements with customers, including C&I customers, since December 2012. These agreements provide direct evidence of the ability of gas producers and their customers to come together to find ways to bring gas supply to market.

### **Scope of the review**

The Issues Paper on page 1 highlights two objectives to the review, namely identifying those structural and behavioural factors that may be contributing to (i.) the lack of effective upstream competition, and/or (ii.) affecting the timeliness with which gas is brought to market. Whether there is a lack (or not) of effective upstream competition in the east coast gas market is considered further parts of this submission, but the most effective contribution this review can make the effective operation of the east coast gas market is to focus on recommendations that lessen or remove the regulatory, legislative and administrative impediments (while ensuring a comprehensive regulatory

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<sup>30</sup> This estimate does not include agreements where a public announcement has not been made (for example, because one or both of the parties to the agreement is not a public listed company or companies and has not made a public announcement) and so can be considered a "minimum" estimate of the arrangements agreed during that period.





regime remains in place) that have in many cases impeded the flow of more gas and gas suppliers into the east coast gas market.

Regulating markets is not and has never been the best means of achieving sustainable competition in any market where there are active buyers and sellers. More gas and more gas suppliers is the sustainable way to ensure the more effective operation of the market and respond to any real or perceived shortcomings in the operation of the market.

These issues have not received the focus they deserve during the ACCC's *Gas Inquiry 2017-2025* interim reports, which have had an overwhelming focus on the ACCC's observations of the current operation of the market, significant and ongoing information collection from gas producers and the provision of a platform for concerns to be raised with the ACCC.

**This review provides an important opportunity to redress this imbalance and to focus on the most effective and sustainable solution for ensuring adequate gas supply at sustainable prices – to maintain an open and competitive market that attracts investment in new projects in order to increase supply. Increasing supply is the best and most sustainable means of placing downward pressure on prices.**

## CHAPTER 2. WHY IS THE REVIEW BEING UNDERTAKEN?

As a general observation, it is unclear from the discussion in Chapter 2 of the Issues Paper how this specific review differs from the Terms of Reference for the *Gas Inquiry 2017-2025* itself. This is particularly the case given the Terms of Reference for the *Gas Inquiry 2017-2025*<sup>31</sup>.

### Upstream competition is not effective

APPEA notes one of the ACCC's reasons for making the statement that "*upstream competition is not effective*" is noted in the Issues Paper on page 4 as:

*Our review of producers' internal documents also revealed limited references to their competitors' pricing behaviour, at least in ways that demonstrated effective competition.*

Australian gas companies operate in a competitive market. As such they have their own pricing strategies and do not cooperate with their competitors or coordinate pricing strategies. All companies operate in a manner that is consistent with the anticompetitive provisions of the *Competition and Consumer Act 2010*.

In addition, one of the other statements on page 4 is that:

*If the east coast gas market had sufficient supply and effective competition, we would expect domestic gas prices to sit somewhere between the costs of domestic production and the LNG*

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<sup>31</sup> The Terms of Reference for the ACCC *Gas Inquiry 2017-2025* are available at [Gas inquiry 2017-2025 | ACCC](https://www.accc.gov.au/publications/gas-inquiry-2017-2025). When first established in April 2017, the Inquiry was to conclude in 2020. It was, in 2019, extended to December 2025. The Terms of Reference require the ACCC to monitor and consider the pricing and availability of offers to supply gas, the volumes of gas supplied or available for current or future supply, including natural gas extracted or produced in Australia, or imported into Australia, the pricing, volume and availability of gas for domestic supply compared to the pricing, volume and availability of gas for export and the pricing, volume and availability of other goods or services, such as goods or services for drilling, storing or processing gas, that enable, assist or facilitate the supply of gas or gas transportation services in Australia.



*netback price. Further, when LNG netback prices are substantially higher than the costs of domestic production, we would expect domestic prices to be substantially lower than the LNG netback price.*

APPEA notes that on 8 October 2021, the LNG netback price at Wallumbilla was \$73.93/GJ, while the Wallumbilla gas supply hub (GSH) daily price was \$7.60/GJ or \$66.33/GJ lower<sup>32</sup>.

These developments stand in contrast the ACCC's statement on page 4 that in 2019-20 "... number of major producers in Queensland, including the LNG producers, viewed the LNG netback price as a price floor and had sought to charge prices well in excess of this level".

While, as noted in the following section, it is not clear this summary assertion is supported by the more detailed analysis in the relevant interim report, it has in any event been overtaken by these more recent developments.

In addition, some of the analysis used by the ACCC in the Issues Paper to support these statements (drawing, for example, from its January 2021 interim report) bears closer analysis.

The Issues Paper on page 4 asserts:

*In short, we found that competition was not effective and had placed limited constraint on the prices offered by producers in the east coast market in 2019-20 ...*

The quote above does not appear to align with the analysis contained in the ACCC's January 2021 *Gas Inquiry 2017-2025* interim report, particularly the analysis on pages 59-61 of that report, which finds that the difference between domestic prices offered by July and August 2020 and netback price was \$1/GJ but, as noted on page 59 of the Interim Report:

*... the \$1/GJ disparity observed in mid-2020 is largely attributable to a number of higher-priced offers made for delivery at locations other than Wallumbilla, which may involve additional transport costs for suppliers. The pricing of offers made at Wallumbilla, or at locations close to Wallumbilla, were on average closer to LNG netback price expectations.*

On this basis, there seems to be some difference between the comments provided by the ACCC in this Issues Paper and the content of the January 2021 *Gas Inquiry 2017-2025* interim report itself.

In addition, and relation to the Southern states, the Interim Report found:

*... prices offered by both producers and retailers in the southern states have fallen from being clustered around the buyer alternative level in late 2019 and early 2020, to being between expected 2021 LNG netback prices and the buyer alternative in mid-2020.*

*... by late 2019 and early 2020, falling expected 2021 LNG netback price expectations resulted in most producer price offers being close to or above the buyer alternative. Prices offered by producers subsequently fell significantly, which resulted in producer offers being well below the buyer alternative by August 2020.*

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<sup>32</sup> Macquarie Bank (2021), *Hydrocarbon Herald*, 8 October.



With this in mind, the ACCC noted in the January 2021 interim report that it considers that an improvement in the competitive dynamic, over 2020, has contributed to the fall in prices offered to the domestic market, which in turn reflects additional supply of gas into the domestic market. Prices in southern markets during the same period were generally below netback plus transport costs, clear evidence of competition at work.

This analysis would appear to indicate, somewhat in contrast to the discussion in the Issues Paper, that competition in the east coast during this period was effective in ensuring gas offered in Queensland was at or around the Wallumbilla hub price, with any disparities explained by price differences for delivery at locations other than Wallumbilla, which may involve additional transport costs for suppliers.

While prices will vary from time-to-time, and as the ACCC has itself noted<sup>33</sup>, its LNG netback price series does not represent the ACCC setting a level of gas prices in the east coast gas market or any other market in Australia or forecasting international or domestic gas prices. The events of early October 2021 provide a clear case study of a situation where LNG netback prices are substantially higher than the costs of domestic production and domestic prices are substantially<sup>34</sup> lower than the LNG netback price<sup>35</sup>.

In a period of significant instability in global gas markets, including in Asia where LNG spot prices have reached unprecedented high levels, competition in the east coast gas market and action by producers has ensured that domestic spot prices have not increased (and contract prices have remained largely unaffected).

It also stands in contrast to some of the assertions from C&I customers, summarised on page 4-5 of the Issues Paper. These assertions, as noted above, require critical examination, particularly given the incentives for strategic behaviour provided by the existence of the ACCC's Gas Inquiry. It is also important to recall that in a number of circumstances, including where smaller producers are negotiating gas supply agreements (particularly agreements that will underpin the development of a project) with C&I customers that are in many cases significantly larger than that smaller producer, the balance of power may rest with the C&I customer and not with the producer. It is notable that recognition and analysis of these situations does not feature in the ACCC review.

### **The upstream market is concentrated**

The upstream oil and gas industry is one of the most capital intensive industries in the Australian economy, with significant capital (for example, in the case of the three east coast LNG projects, over \$70 billion) required to bring these projects into production. To secure finance and to secure customers (both domestic and international), these projects need to be backed by significant gas reserves and resources, to provide markets with comfort that production can be maintained throughout the life of the project (which can be 40 years or more).

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<sup>33</sup> See [LNG netback price series | ACCC](#) for more information.

<sup>34</sup> The \$66.33/GJ difference (with the Wallumbilla LNG netback price above the Wallumbilla daily price) recorded on 8 October 2021 marks the largest difference between the Wallumbilla daily price and the Wallumbilla LNG netback price ever recorded.

<sup>35</sup> Macquarie Bank (2021), *Hydrocarbon Herald*, 6 and 7 October. On 6 and 7 October 2021, the Wallumbilla GSH daily price was lower than the US Henry Hub daily price (on 6 October 2021, the Wallumbilla GSH daily price was A\$7.28/GJ compared to the Henry Hub daily price of A\$8.21/GJ, while of 7 October 2021, it was A\$7.28/GJ compared to the Henry Hub price of A\$7.48/GJ).



This generally means there are significant economies of both scale and scope associated with upstream oil and gas projects. It also results, in many jurisdictions (not just the east coast of Australia) with a requirement for relatively large holdings of reserves and resources. It is therefore not surprising that as resources move from 2C resources<sup>36</sup> towards 2P reserves<sup>37</sup> and production, that larger holdings of reserves and resources are required.

It is the case, of course, as the ACCC notes on page 7, that a number of smaller producers have entered into the market, adding to diversity in reserve and resource holdings and to the number of producers in the market.

The presence of a number of large players with the necessarily significant level of reserve and resource holdings does not mean, however, that competition in the market is necessarily inadequate. Concentration in reserve and resource holding does not automatically equate with a lower level of market competition (or higher levels of enduring market power).

As the Department of Industry, Science, Energy and Resources found, on pages 25-26<sup>38</sup> of the January 2020 final report of its *Review of the Australian Domestic Gas Security Mechanism*:

*The Herfindahl-Hirschman Index (HHI) is a standard measure of market concentration that is based on the market share of each participant. The HHI can range in value from 0 to 10,000. A lower value represents a less concentrated market. Typically, competition regulators consider that a HHI value below 1,500 is indicative of an unconcentrated market ... for the June 2019 quarter, the eastern gas production HHI was 1,105.*

The review found the HHI ranged between 1,000 and 1,200 during the five years between June 2014 and June 2019<sup>39</sup>.

In addition, the Productivity Commission noted<sup>40</sup> in its *Examining Barriers to More Efficient Gas Markets* research paper:

*While market structure is one relevant consideration, it is not of itself sufficient evidence of the existence or exercise of enduring market power. Other factors, such as the threat of entry by new suppliers, the availability and cost of switching to substitute energy sources and any countervailing power of buyers are also important. Such countervailing factors are likely to have a greater effect in the long term than the short term.*

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<sup>36</sup> Defined by the Petroleum Resources Management System as the best estimate of contingent resources. Contingent resources are those quantities of petroleum which are estimated, on a given date, to be potentially recoverable from known accumulations, but which are not currently considered to be commercially recoverable (see [Microsoft Word - SPE PRMS Final 2\\_28\\_07.doc](#) for more information).

<sup>37</sup> Defined as 1P (proved reserves) plus 2P (probable reserves). Reserves are those quantities of petroleum which are anticipated to be commercially recovered from known accumulations from a given date forward (see [Microsoft Word - SPE PRMS Final 2\\_28\\_07.doc](#) for more information).

<sup>38</sup> See [Australian Domestic Gas Security Mechanism Review 2019 | Department of Industry, Science, Energy and Resources](#) for more information.

<sup>39</sup> See [Australian Domestic Gas Security Mechanism Review 2019 | Department of Industry, Science, Energy and Resources](#), Figure 14 on page 26, for more information

<sup>40</sup> See [Examining Barriers to More Efficient Gas Markets - Research paper \(pc.gov.au\)](#), pages 21-22, for more information.



*More fundamentally, even if some gas producers have market power at any given point in time, the associated profits and prices can act as a signal to rivals, with the entry of competitors into the market constraining, and over time eroding, this power.*

*The integration of the eastern Australian gas market with the Asia-Pacific market should facilitate conditions for greater competition in upstream markets. The expectations of higher prices and increased size of the market may be leading to new entry into upstream gas markets, and an increased threat of future entry. The growth of the CSG industry in particular appears to have led to considerable new entry in Queensland's Surat-Bowen basins.*

### **Gas may not be brought to market in a timely or efficient manner**

The range of factors that may impede (or facilitate) the bringing of gas to east coast market is considered in more detail in following sections, but APPEA notes the evidence presented on page 8 of the Issues Paper to support this contention is not compelling.

A range of factors, both technical and commercial, can influence whether, for example, 2C resources proceed to 2P reserves and into development. While there can be an assumed progression from 2C resources to 2P reserves over time, it is not automatic and a range of factors, particularly commercial factors (which is a key factor differentiating resources from reserves) can adversely affect that "progression".

As an example, a significant fall in the oil price (and its influence on LNG prices), such as that which occurred in 2014-16 (when the Brent crude oil price fell from US\$100 to around US\$30) and again in 2020 (when the falls in demand following the onset of the COVID-19 global pandemic saw the price of Brent crude oil fall by over 75 per cent during April 2020), can mean that gas reserves that were considered commercial at those higher prices and more favourable market conditions, may not be suitable for development under the more challenging market conditions associated with the lower prices, and may be reclassified as resources.

Whether there is (or is not) some kind of 'strategic' behaviour involved in these market developments is considered in more detail below. Third party access to infrastructure issues, raised in the Issues Paper on page 8, are also considered in more detail below.

## **CHAPTER 3. STRUCTURAL FACTORS THAT MAY AFFECT UPSTREAM COMPETITION AND/OR TIMELY SUPPLY**

### **Government processes**

1. *Are there any other government processes that may affect the degree of upstream competition and/or the timeliness of supply? If so, please set out what they are and the effect that they may have on competition or supply.*
2. *Should governments explicitly consider diversity and efficiency, or the potential impacts on competition, when awarding acreage? If not, please explain why not.*
3. *Should governments employ a more proactive approach when:*
  - (a) *specifying the timeframes for exploration, appraisal and/or production and/or approving exploration or retention permit renewals where they have the discretion to do so?*
    - *If so, what is this likely to entail?*



- *If not, please explain why not.*
- (b) *approving, monitoring and enforcing compliance with work programs?*
  - *If so, what is this likely to entail?*
  - *If not, please explain why not.*
- 4. *What other ways could state, territory or Commonwealth governments encourage:*
  - *greater diversity in the upstream segment of the market?*
  - *more timely supply of gas to market?*

As the Issues Paper notes on page 9

*Governments play an important role in the east coast gas market, with states and territories responsible for releasing acreage, granting permits to explore for, appraise and produce gas in tenements located onshore and within three nautical miles of the coast. For offshore areas beyond three nautical miles, Joint Authorities (consisting of the responsible Commonwealth minister and relevant state or territory minister) are responsible for these activities. In addition to these activities, state, territory and Commonwealth governments are responsible for approving, monitoring and enforcing compliance with work programs.*

The Constitutional, policy, legislative and regulatory arrangements that underpin the management of Australia's oil and gas resources means there are limits to the role of an agency like the ACCC in the development of Australia's oil and gas resources and, for example, the acreage management processes that underpin those developments. This means APPEA's responses are focussed on aspects of the questions asked in this section of the paper. Many of the issues raised in this Chapter of the Issues Paper are the responsibility of the relevant government best considered through their own policy processes and not through this review.

#### Bans, moratoriums and other regulatory restrictions

**That the Issues Paper does not consider in detail the bans, moratoriums and other regulatory restrictions that have prevented new entrants into the east coast gas market, significantly limited competition and provided the most direct and significant impediments to the timely supply of gas to Australian consumers, is a major failure and one that should be addressed in detail in the ACCC's final report.**

It is notable that after briefly raising the adverse impact of bans and moratoriums on supply, particularly Southern States in earlier *Gas Inquiry 2017-2025* interim reports and recommending that they be replaced by project-by-project assessments<sup>41</sup>, the ACCC has in recent reports, failed to mention at all these adverse impacts. This is notwithstanding the fact that many of these impediments remain in place and in some cases have increased since the *Gas Inquiry* commenced in 2017.

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<sup>41</sup> In the ACCC's January 2020 interim report, the ACCC noted on page 43 "We also continue to encourage state and territory governments to adopt policies that consider and manage the risks of individual gas development projects, rather than implementing blanket moratoria and regulatory restrictions" (see [Gas inquiry January 2020 interim report | ACCC](#) for more information). The ACCC made similar statements in previous interim reports, back to the first report in September 2017. However, the January 2020 remains the final time the ACCC has raised this key issue.



For almost a decade, it has not been a lack of natural gas but onerous regulatory restrictions in some jurisdictions (notably New South Wales and Victoria) that have impeded gas development and supply and continue to adversely affect both upstream competition and timeliness of supply.

Removing these unnecessary constraints would be the single most important step governments can take to stimulate supply, put downward pressure on prices and enhance competition.

Any outcomes from this review must support and reinforce the removal of regulatory restrictions impeding the efficient functioning of the east coast gas market.

In the case of Victoria, moratoriums on exploration and hydraulic fracturing that commenced in 2012 and in some cases will remain in place, mean that no exploration and no production for gas has occurred in onshore Victoria for at least a decade<sup>42</sup>. A moratorium on the use of hydraulic fracturing has been placed in Tasmania since 2014<sup>43</sup>.

In New South Wales, the New South Wales Gas Plan<sup>44</sup> places regulatory limits on potential production areas and the NSW Government has 'bought back' licences to remove areas (comprising more than 75 per cent of the State) as potential sources of future production.

These regulatory barriers both directly, through their application, and indirectly, through the signal they send to potential investors, place very clear restrictions on the ability and incentive for gas producers to explore for, or develop, new gas reserves and resources.

**Recommending the removal of regulatory barriers to exploration and development would be the clearest and most positive recommendation the ACCC's review could make to increase the competitiveness of Australia's domestic gas market.**

#### Australia's acreage management framework, particularly retention lease arrangements

Australia's acreage management system provides for the appropriate management of Australia's discovered oil and gas resources, giving regulators sufficient powers to ensure that these resources are developed in a timely manner and to the economic benefit of all Australians.

Processes for the release and management of petroleum exploration acreage with Australian jurisdictions are, particularly across key resource development jurisdictions and at the Commonwealth level, mature, transparent, regularly reviewed and assessed and are relatively well understood by market participants and potential market entrants. Governments assess the financial and technical competency of bidders before awarding acreage and APPEA is not aware of any barriers that exist with the titling regime that would restrict new entrants.

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<sup>42</sup> See [Restart of onshore conventional gas - Earth Resources](#) for more information. In 2012, an administrative moratorium was placed on all onshore gas exploration and development in Victoria. In 2017, the Victorian Government passed the *Resources Legislation Amendment (Fracking Ban) Act 2017*. Under this legislation, hydraulic fracture stimulation and coal seam gas extraction were permanently banned, and the existing administrative moratorium on onshore conventional gas was replaced with a legislative moratorium that halted all exploration and development activities in Victoria until 30 June 2020. In June 2020, the *Petroleum Legislation Amendment Act 2020* was passed by the Victorian Parliament, which allowed for the restart of onshore conventional gas exploration and production from 1 July 2021.

<sup>43</sup> See [Government Policy on Hydraulic Fracturing \(Fracking\) in Tasmania | Department of Primary Industries, Parks, Water and Environment, Tasmania \(dpipwe.tas.gov.au\)](#) for further information. The Tasmanian Government has put in place a moratorium on the use of hydraulic fracturing for the purposes of hydrocarbon resource extraction in 2014 and has recently extended the moratorium until 2025.

<sup>44</sup> See [Future of Gas Statement | NSW Government](#) for more information. The Statement notes "... the government has significantly reduced the land available for gas exploration. The NSW Government will only renew a limited number of Petroleum Exploration Licences in the Narrabri region ...". The Future of Gas in NSW Report notes this will result in a 77 per cent reduction in the total area currently covered by Petroleum Exploration Licences. See [Future of Gas in NSW Report](#) for more information.



As Energy Ministers have noted, and as this review should reinforce:

*Australia's ability to continue to attract the large-scale investment required to support petroleum projects has been underpinned by sound petroleum development and production regimes both onshore and offshore<sup>45</sup>.*

Moratoriums or restrictions on the granting of new exploration licences deny all possible entrants the opportunity to access exploration acreage and to bring new gas to market.

### *Retention leases*

The retention lease arrangements of Australia's overall acreage management regime is an area that has received significant focus over at least a decade and has been raised again on page 10 and question 3(a) on page 11 of the Issues Paper.

Retention leases are an integral part of Australia's longstanding and effective acreage management framework that bridges the gap between high-risk exploration and high-cost development. The retention lease framework recognises the need for security of title, respecting the risks associated with exploration investment, particularly in high-cost and frontier geology as seen in Australia.

As noted by National Offshore Petroleum Titles Administrator (NOPTA)<sup>46</sup>, the Commonwealth regulatory agency that is responsible for the day-to-day administration of petroleum and greenhouse gas titles in Commonwealth waters in Australia:

*A retention lease encourages the timely development of petroleum resources and provides security of title for those resources that are not currently commercially viable but are likely to become so within 15 years.*

The retention lease system in Australia continues to serve a critically important role in the exploration for and development of Australia's oil and particularly gas resources. While retention lease arrangements are not unique to the upstream oil and gas industry, they remain the only mechanism available for the exploration industry to maintain title over discovered resources until they become commercially viable. This remains the fundamental tenet of the retention lease legislation, first introduced at the Commonwealth level in 1985.

Amongst other things, the regulatory framework underpinning retention lease arrangements provide the means by which governments can test the commerciality of a resource and if it is found to be commercial, require its development.

Retention leases are not granted or renewed automatically, and governments have an interest (in the form, amongst other things, of royalty (taxation) revenue and job creation) in accelerating the development of Australia's gas resources.

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<sup>45</sup> See [COAG Energy Council Review of Petroleum Licensing Regulations | Energy Council \(energyministers.gov.au\)](#).

<sup>46</sup> NOPTA is responsible for the day-to-day administration of petroleum and greenhouse gas titles in Commonwealth waters in Australia. See [Legislation & compliance \(nopta.gov.au\)](#) for more information.





The arrangements require titleholders to maintain an active commitment in this area, undertaking a work program, field work, evaluation and marketing, or commercial studies which would address the barriers to commercialisation for the duration of the title.

The test of commerciality is rigorously applied, and governments have the ability to be quite prescriptive in the terms and conditions they attach to lease renewals.

Box 2 provides an overview of the approach applied at the Commonwealth level through the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

**Box 2. A brief overview of retention arrangements in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*<sup>47</sup>**

- In the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, the application has to satisfy NOPTA two criteria:
  1. the discovery is not commercially viable at the time of application, and
  2. is likely to be commercially viable within 15 years from when the application is submitted.
- The term of retention leases is 5 years and there is no limit on the number of renewals that can be applied for, as long as these two criteria continue to be met.
- The legislation allows NOPTA to grant a petroleum retention lease subject to essentially whatever conditions it thinks appropriate.
- If an application for the grant of a retention lease is refused because the recovery of the petroleum is found to be commercially viable, the titleholder has until the exploration permit expires to apply for a production licence.
- If an application for the renewal of a retention lease is refused because the recovery of the petroleum is found to be commercially viable, the titleholder has 12 months to apply for a production licence. A production licence is issued for the life of the field, but the Joint Authority may terminate the licence if no petroleum recovery operations have been carried out (or commenced) for a continuous period of at least five years. The titleholder can apply for a retention lease within five years of the grant of a production licence or within five years of the cessation of petroleum recovery operations.

A detailed review of Australian acreage management arrangements was undertaken in 2018 through the COAG Energy Council's *Review of Petroleum Licensing Regulations*<sup>48</sup>. This comprehensive review examined and assessed regulations across every Australian jurisdiction and the Commonwealth.

The Council in July 2018 released a report commissioned from the Noetic Group<sup>49</sup> that provided a review of the petroleum licencing regulations across Australian jurisdictions.

The intent of the review was to understand the effectiveness of retention lease regimes in driving the earliest commercial development of discovered gas resources as well as supporting exploration activity and expenditure.

<sup>47</sup> See [Petroleum Retention Lease \(nopta.gov.au\)](http://nopta.gov.au) for an overview of petroleum retention leases arrangements for Commonwealth waters in Australia and NOPTA's administration of those arrangements. While each jurisdiction has its own legislative, regulatory and administrative framework, broadly similar approaches apply across the east coast.

<sup>48</sup> See [COAG Energy Council Review of Petroleum Licensing Regulations | Energy Council \(energyministers.gov.au\)](https://www.energyministers.gov.au) for more information.

<sup>49</sup> Noetic Group (2018), *Review of Petroleum Retention Lease Arrangements in Australian Jurisdictions*, July (available at [Microsoft Word - 180713 DoI Retention Lease Review Final Report Public.docx \(energyministers.gov.au\)](#)).



The review found:

*... there appears to be no evidence that gas is being withheld (or warehoused) from development and production.*

And, specifically in relation to use it or lose provisions, the review concluded on page 30:

*To apply a use-it-or-lose-it policy to deliver downstream objectives risks longer term investment distortions and higher prices. Australian gas consumers and the Australian community are best served by the efficient commercial development of Australia's resources and a transparent market in which prices support the long term sustainability of producers and consumers.*

Australia's acreage management system provides for the appropriate management of Australia's discovered oil and gas resources, giving regulators sufficient powers to ensure that these resources are developed in a timely manner and to the economic benefit of all Australians.

#### **Barriers faced by producers**

5. *Are there any other barriers that producers face when developing tenements that have not been identified in section 3.2 (for example, access to drilling or other appraisal related services) that may affect upstream competition and/or the timeliness of supply? If so, please explain what these barriers are and the effect that they can have on upstream competition and/or the timeliness of supply?*
6. *Are there any effective ways to reduce the following barriers:*
  - *land access, environmental and other regulatory approvals?*
  - *access to capital and other commercial barriers?*
  - *access to infrastructure?*
7. *Should the owners of upstream infrastructure (e.g. gathering pipelines, gas processing facilities and/or water processing facilities) that have spare capacity be required to provide third party access on reasonable terms?*
8. *Are there other ways to improve third party access to upstream infrastructure on reasonable terms?*
9. *Would third party access to any other infrastructure (e.g. LNG processing facilities, storage facilities etc.) facilitate more upstream competition and/or the more timely development of supply into the domestic market? If so, please identify the infrastructure and the benefits that third party access would provide.*

This section briefly considers a range of important challenges that producers can face when seeking to explore for and develop Australia's oil and gas resources, including on the east coast, before focussing on third party access issues. As the Issues Paper notes on pages 11-12, these barriers can arise from a range of geological, commercial and regulatory factors.

The interaction between these various factors can also be relevant. For example, the Issues Paper notes, in footnote 36 on page 11:

*Producers may, for example, either sell their interest in a tenement, or sell raw gas to a producer with processing facilities. In both cases, the sale effectively results in the producer not competing to supply gas to the east coast gas market.*



While that may be the case, such a sale – to a producer with processing facilities – may result in the gas in question being brought to market in a timelier fashion.

As with the discussion above, particularly on acreage management regimes, most of these issues sit outside the purview of the ACCC and its regulatory remit and are best considered through the relevant Commonwealth and State and Territory government processes.

Nevertheless, as the Australian economy looks to recovery from the COVID-19 global pandemic APPEA has engaged with governments to consider the real challenge – and the real opportunity – to return the industry to growth so that it can be an enabler for Australia's broader economic recovery.

With that in mind, APPEA has presented to government an investment recovery blueprint – *Powering Australia's Recovery*<sup>50</sup>. The blueprint puts forward the policy actions governments can take to restore industry confidence, encourage new investment and so increase the supply of gas.

- Improve fiscal settings, including investment allowances: some of the actions are relatively simple changes, such as reducing depreciation periods and making employee wages on large projects deductible. These are relatively simple and effective measures to boost long-term investment.
- Streamline regulation: streamlining environmental regulation is one of the most important actions government can take to encourage investment. The overlap of environmental requirements between states and the Commonwealth and duplication of processes increases costs and delays while doing little to help protect the environment.
  - The Productivity Commission has estimated that a one-year delay to a major offshore LNG project can cost in the order of \$500 million to \$2 billion in net revenues lost. For a smaller project, the same delay would cost around \$26 million to \$59 million<sup>51</sup>.
  - The Productivity Commission's *Resource Sector Regulation* inquiry<sup>52</sup> provides an important opportunity to improve the regulatory arrangements facing the industry without lowering standards.
- Support exploration and development: improving the investment landscape by extending the Junior Minerals Exploration Incentive to allow junior oil and gas explorers to attract scarce and mobile capital.
- Promote open and competitive markets (not intervention): consistent with a central theme of this submission, sensible reforms that help the market to operate efficiently encourage investment. On the flipside, when governments intervene in ways that impede market efficiency, they impact investor confidence and discourage new projects and entrants. As part of these actions, one action APPEA has recommended (and highlighted above) is that the Australian Government works with jurisdictions to encourage the lifting of bans and moratoriums and the approval of gas projects.

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<sup>50</sup> See [Powering Australia's Recovery \(appea.com.au\)](https://www.appea.com.au) for more information.

<sup>51</sup> Productivity Commission (2013), *Major Project Development Assessment Processes*, Research report (available at [Major Project Development Assessment Processes - Major Project Development Assessment Processes Productivity Commission \(pc.gov.au\)](https://www.pc.gov.au/research/other/major-projects/major-project-development-assessment-processes)).

<sup>52</sup> See [Resources Sector Regulation - Productivity Commission \(pc.gov.au\)](https://www.pc.gov.au/research/other/resources-sector-regulation) for more information. See also [Submission 44 - Australian Petroleum Production and Exploration Association \(APPEA\) - Resources Sector Regulation - Commissioned study \(pc.gov.au\)](https://www.appea.com.au/submissions/44) and [Submission DR91 - Australian Petroleum Production and Exploration Association \(APPEA\) - Resources Sector Regulation - Commissioned study \(pc.gov.au\)](https://www.appea.com.au/submissions/dr91) for copies of the APPEA submissions to the inquiry.



### Third party access

APPEA notes the Issues Paper considers a range of third party access issues in pages 12-13 and in questions 6-9 on page 11.

As noted in the Issues Paper, companies operating in the east coast market cover the whole spectrum of exploration and production activities, usually working in joint ventures to share the high costs and high capital risks associated with these activities. Given this range of activities, companies, whether large or small, can at times be operators of upstream facilities and at times be seekers of access to such facilities/infrastructure. As the Issues Paper also notes, there have been a number of third party access arrangements commercially negotiated and successfully concluded in recent years.

Upstream facilities are designed for specific purposes, which may differ markedly from facility to facility, particularly with respect to the processing of liquids and the removal of contaminants. Considerable redundancy can be built into these facilities to provide for continuity of supply of gas while some processing units are shut-in for maintenance.

The existence of one facility does not prevent the establishment of another such facility, although the economics of developing a second facility may differ significantly. A new plant may be able to process gas more efficiently and cost-effectively than an existing plant. On the other hand, there may be spare capacity in an existing plant that creates the conditions for a mutually beneficial arrangement to be reached between a potential service provider and an access seeker.

Processing requirements can be complex and vary over time, even from one field, and very significant assets may be involved. Therefore, the processing of third party gas and its implications need to be carefully evaluated by both the proponent, the operator, and the joint venture participants who own the facility.

Security of supply considerations often require a substantial investment in additional capacity to ensure that downtime in part of a processing operation, for example for maintenance, does not jeopardise the reliability of supply.

APPEA has for many years encouraged commercial negotiation as the mechanism for establishing access to upstream services and has also noted that failure to agree on the terms and conditions, including price, does not in itself indicate the failure of commercial negotiations<sup>53</sup> or of the market.

## CHAPTER 4. BEHAVIOURAL FACTORS THAT MAY AFFECT UPSTREAM COMPETITION AND/OR TIMELY SUPPLY

Drawing on the comments above, APPEA is pleased to provide information in response to some the issues raised in Chapter 4 of the Issues Paper, as follows.

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<sup>53</sup> As the Productivity Commission noted on page 24 of its research paper *Examining Barriers to More Efficient Gas Markets* "... denial of access to a gas processing facility is not necessarily evidence of the exercise of market power – there can be valid commercial reasons for the owners of gas processing facilities to deny third party access. There are coordination issues and costs from sharing a gas processing facility with other parties. These can include the need for plant modifications to ensure that the facility is compatible with the particular chemical composition of a third party's gas, and loss of flexibility in operations and investments."



## Joint venture arrangements

10. *Are there any aspects of JV arrangements not identified in section 4.1 that may adversely affect upstream competition and/or the timeliness of supply? If so, please explain what they are and how they may affect upstream competition and/or the timeliness of supply.*
11. *Are there any measures that could be put in place to address the potentially negative aspects of JVs identified in section 4.1 or in your response to question 10?*
12. *Are there provisions in the contractual arrangements that underpin JVs that can adversely affect competition and/or the timeliness of supply? If so, how could this be addressed? Is there, for example, a best practice JV arrangement that would prevent this occurring?*
13. *Are there any approaches (either in place, or that could be put in place) designed to help level the playing field between larger and smaller producers in the same JV? Please explain how these approaches work.*
14. *Do you consider that proposals by larger producers to enter into JV arrangements (or farm into existing JV arrangements) should be subject to mandatory notification requirements and ACCC consideration? Please explain your response to this question.*
15. *Is any other form of oversight of JV arrangements required?*

Joint venture arrangements are a common feature of resource developments (in the minerals industry as well as the oil and gas industry) across the world (and not just on the east coast of Australia). Noting oil and gas is a global industry, almost every oil and gas producing jurisdiction features joint venture arrangements of one form or another.

As the Issues Paper notes on page 14:

*The prevalence of JVs is not surprising given the significant costs and risks that producers can face in the exploration, appraisal and production stages.*

There are a range of other factors that lead to the prevalence of joint ventures in oil and gas developments and also a range potential benefits that arise from JVs. These can include:

- Reducing overall costs (particularly important given the scale of capital required for oil and gas developments, JVs can allow participants to share costs reducing the financial burden on each participant).
- Increasing access to financial resources.
- Allowing for access to technology and the sharing of innovative and in some cases propriety technology.
- Improving access to markets by combining resources.
- Achieving economies of scale.
- Very importantly for this review, improving the timeliness of supply (with shared access to financial, technological, and other resources, gas may be brought to market faster and more efficiently. This can be particularly important for a smaller producer who may otherwise face a variety of challenges in, for example, moving from exploration to production).

Taken together, these benefits mean that JVs are commercial arrangements that have been a feature of the Australian industry since it commenced, are a feature of the global oil and gas industry, are utilised in various ways across the economy (in the minerals industry, for example) and are the means by which the industry has secured the timely and efficient development of oil and gas resources globally, including in Australia. This also means there is no reason for a mandatory



notification requirement or other form or oversight of JV arrangements beyond those already available to the ACCC through the provisions of the *Competition and Consumer Act 2010*.

Without JVs, many of the benefits highlighted above would not be realised, with the challenges of cost, scale of development and market access remaining. These would present significant impediments to develop that may in some cases be insurmountable. The net result would be less gas brought to market and significantly more impediments adversely affecting the timeliness of supply.

### **Mergers between producers and acquisitions of tenements**

While it is the case that mergers between east coast producers, or acquisitions by producers of individual tenements, can affect the degree of upstream competition and/or the timeliness with which gas is brought to market, the history of the industry of the east coast industry shows, particularly during the industry inception, that such mergers have allowed the industry access to resources and markets that allowed the industry to develop.

Indeed, without some key mergers and acquisitions that took place in the 2000s and early 2010s, it is not clear the east coast industry would be at the stage of development and maturity it currently enjoys.

In contrast to the hypothetical outlined on page 15 and some of the assertions by C&I customers summarised on page 16, consider a situation where a smaller producer has a tenement on which it has discovered a commercial quantity of gas but lacks the resources to bring that gas to market. The acquisition of that tenement by a larger producer with the requisite resources may see that gas come to market in a timelier manner than would otherwise be the case.

It also remains the case that the ACCC through the *Competition and Consumer Act 2010* has the necessary legislative and regulatory provisions to examine and assess mergers and acquisitions across the Australian economy, including in the east coast oil and gas industry. Further regulation or intervention is not required.

It is also the case that this specific and relatively narrow (in an economy-wide context) review is not the appropriate forum for a broader discussion about the appropriateness of the merger regime, noting this regime was part of an extensive review of competition policy as part of the 2015 Competition Policy Review<sup>54</sup> and Australian Government response. Any issues relating to mergers and acquisitions should be considered equally across industries and within existing regulatory frameworks. There is simply no rational justification for singling out M&A activity in the oil and gas industry.

### **Marketing arrangements**

16. Are there any aspects of joint marketing by unincorporated JVs not identified in section 4.3 that may adversely affect upstream competition and/or the timeliness of supply? If so, please explain (with examples if possible):

- what they are

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<sup>54</sup> See [Competition Policy Review – Final Report | Treasury.gov.au](#) and [Government response to the Competition Policy Review | Treasury.gov.au](#) for more information.



- *how they may effect upstream competition and/or the timeliness of supply*
  - *any measures that may be able to address them.*
17. *What are the factors that may make establishing balancing arrangements difficult in one case, and easier in another? How has this changed over time? Please provide examples if possible.*
18. *In what circumstances do you consider allowing producers to jointly market gas would be beneficial? Please provide examples of current producers that are jointly marketing their gas and what you consider the likely impact would be on competition or the timeliness of supply if they were to separately market.*
19. *Do you consider the current competition laws are sufficient to respond to the issues around joint marketing by unincorporated JVs? Please explain your answer including, if relevant, any changes you think may be required.*
20. *Are there any aspects of the arrangements relating to the sale of gas by incorporated JVs that may affect upstream competition and/or the timeliness of supply? If so, please explain (with examples if possible):*
- *what they are*
  - *how they may effect upstream competition and/or the timeliness of supply*
  - *any measures that may be able to address them.*
21. *Do you consider the current competition laws are sufficient to respond to the issues around the arrangements relating to the sale of gas by incorporated JVs? Please explain your answer including, if relevant, any changes you think may be required.*

In some circumstances, joint marketing can reduce the high costs and risks associated with oil and gas production investments. In this case, joint marketing can benefit consumers by providing greater availability of gas supply. It can enable joint venturers to make development decisions and to then make further investments as fields mature and new facilities are required.

Authorisation for joint marketing can be granted by the ACCC under the provisions of the *Competition and Consumer Act 2010* where it is satisfied that the joint marketing arrangements will result in a benefit to the public and that benefit will outweigh any detriment resulting from any lessening of competition. Many of the comments that surround joint marketing appear to reflect a lack of understanding of its application across the economy, its relative lack of use in the oil and gas industry on the east coast and the process required to have an authorisation application approved.

As the Issues Paper briefly notes on pages 17-18, there has in recent years being a growing trend for JV parties to separately market gas.

The only joint marketing applications considered in recent years for authorisation by the ACCC are for important, but relatively small projects, where the where the quantity of gas to be jointly marketed is also relatively small. Very importantly, in authorising joint marketing for these projects, the ACCC concluded<sup>55</sup> that joint marketing was likely to result in a net public benefit by enabling earlier development of the field (that is, the use of joint marketing in the circumstances considered by the

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<sup>55</sup> See ACCC (2021), *Vintage Energy Ltd – Vali Gas Joint Venture – Authorisation AA1000538* (available at [Vintage Energy Ltd – Vali Gas Joint Venture | ACCC](#)), where the ACCC found “... joint marketing is likely to result in public benefits by enabling earlier development of the Vali field to bring this new gas supply to the market sooner” (see also the ACCC media release at [Vali gas joint venture participants granted authorisation for joint marketing | ACCC](#) and the detailed explanation of the ACCC’s determination at [Final Determination - 13.05.21 - PR - AA1000538 Vali Gas.pdf \(acc.gov.au\)](#)). See also ACCC (2021), *Central Petroleum Limited, Central Petroleum Mereenie Pty Ltd as trustee for the Central Petroleum Mereenie Unit Trust and Macquarie Mereenie Pty Ltd – Authorisation AA1000564-1* (available at [Macquarie Mereenie & Ors | ACCC](#)) where the authorisation assessment process remains underway (but for which the ACCC granted an interim authorisation on 7 October 2021).



ACCC was found to improve the timeliness of supply without reducing upstream competition in the east coast gas market).

It should be noted that joint marketing is not unique to the east coast upstream oil and gas industry. Indeed, authorisations are available across the economy and are used in other industries. Joint marketing, for example, is used in the wine industry, timber industry and in the airline industry<sup>56</sup>.

## CONCLUSIONS/NEXT STEPS

APPEA and its members would welcome the opportunity to meet to further discuss these and any other relevant issues. APPEA looks forward to the findings of the review in 2022 and to further constructive engagement with the ACCC as the review proceeds.

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<sup>56</sup> See, for example *Taylors Wines Pty Ltd – Authorisation AA1000401-1* at [Taylors Wines Pty Ltd | ACCC](#), *Qatar Airways Q.C.S.C and British Airways PLC – Authorisation AA1000463-1* at [British Airways & Qatar | ACCC](#), *Virgin Australia Cargo Pty Ltd, Virgin Atlantic International Limited, Virgin Australia International Airlines Pty Ltd, Virgin Australia Airlines (SE Asia) Pty Ltd, Virgin Australia Regional Airlines Pty Ltd, Virgin Australia Airlines Pty Ltd, Virgin Atlantic Airways Ltd – Authorisation AA1000443-1* at [Virgin Australia & Virgin Atlantic | ACCC](#), *Qantas Airways Limited and Emirates – Authorisation AA1000400-1* at [Qantas Airways Limited & Emirates | ACCC](#), *Softwood Tasmania Joint Venture – Authorisations – A91120 – A91122* at [Softwood Tasmania Joint Venture - Authorisations - A91120 - A91122 | ACCC](#), *Etihad Airways & Air Berlin – Authorisations – A91307 and A91308* at [Etihad Airways & Air Berlin - Authorisations - A91307 & A91308 | ACCC](#), *Qantas Airways Limited and American Airlines Group Inc. – Revocation and Substitution – A91502 and A91503* at [Qantas Airways Limited and American Airlines Group Inc. - Revocation and Substitution - A91502 & A91503 | ACCC](#) and *Qantas Airways Limited & Emirates – Authorisations – A91332 and A91333* at [Qantas Airways Limited & Emirates - Authorisations - A91332 & A91333 | ACCC](#).