origin

15 October 2021

Rod Sims
Chair
Australian Competition and Consumer Commission

Submitted online: gas.inquiry@accc.gov.au

Dear Mr Sims

Review of upstream competition and the timeliness of supply – Issues Paper

Origin Energy Limited (Origin) welcomes the opportunity to provide comments on the Australian Competition and Consumer Commission's (ACCC) Review of upstream competition and the timeliness of supply Issues Paper.

Origin is supportive of efforts to improve the efficiency of the east coast gas market and notes many reviews have been undertaken, and reforms implemented (or in the process of being implemented) in recent years to assist in this regard. The current review is predicated on the ACCC's view that upstream competition is ineffective, principally due to the level of market concentration and prevalence of joint venture (JV) arrangements. However, market concentration does not necessarily equate to a lack of competition, with resource industries generally exhibiting a degree of market concentration due to the capital-intensive nature and risks associated with exploration and development activities. The east coast gas market has also demonstrated outcomes consistent with those of a workably competitive market. E.g., the ACCC's January 2021 Interim Report highlighted improved market conditions for commercial and industrial (C&I) customers, with customers noting there were more sellers in the market; lower prices for short term gas supply agreements (1-2 years); better take or pay flexibility; and more willingness for suppliers to discuss contract terms and conditions and participate in direct negotiations.[1]

Noting the above, Origin considers the focus on JV arrangements and the adequacy of existing competition laws has not been substantiated. In our view, the key objective of the ACCC's review should therefore be to address the range of barriers related to tenure release and other regulatory processes that can adversely impact timely supply and project costs for all producers.

A summary of Origin's key views is outlined below, and our response to specific questions raised by the ACCC can be found in Attachment 1.

1. JV arrangements have facilitated timely resource development and competition

JV arrangements (incorporated and unincorporated) are a common feature of resource development industries globally. Such arrangements allow for risk and cost sharing between parties and facilitate increased access to financial and technical resources, which is critical in the context of funding capital-intensive, high-risk activities. They can also assist with reducing overall project costs (by allowing economies of scale to be realised) and improving access to markets, as evidenced by the evolution of the east coast LNG export market. In this context, it is common for gas producers to invest progressively

[1] ACCC, 'Gas inquiry 2017-2025 – Interim Report', January 2021, pg. 69-71.

Origin Energy Limited ABN 30 000 051 696 • Level 32, Tower 1, 100 Barangaroo Avenue, Barangaroo NSW 2000
GPO Box 5376, Barangaroo NSW 2000 • Telephone [redacted] • Facsimile (02) 9252 9244 • www.originenergy.com.au

in exploration activities with a view to reducing potential risks and developing a forward portfolio of gas reserves that can be used to support longer term supply commitments.

It is also not clear a counterfactual scenario would deliver better outcomes for consumers. Given the demonstrated efficiency benefits of JV arrangements described above, it follows that further restricting or prohibiting the ability of parties to enter into such arrangements would impede the ability for capital constrained producers to invest in resource development. This could ultimately undermine timeliness of supply and lead to a higher degree of market concentration.

2. Existing competition laws are sufficient to deal with any behavioural concerns

Origin does not consider there is a need to adopt any industry-specific reforms that extend beyond existing competition laws (e.g. mandatory notification requirements). The *Competition and Consumer Act (*CCA) already prohibits parties from entering into arrangements or acquiring shares/assets if such actions are likely to substantially lessen competition; and any parties that may have market power from engaging in conduct that has the purpose or effect of substantially lessening competition. The ACCC also has the authority to investigate any transaction or arrangements on the basis of competition concerns, even if they were not initially notified of the activity. To the extent the ACCC has broader concerns around the adequacy of the CCA, these issues should be considered and addressed on an economy-wide basis.

3. The efficiency of government tenure release processes should be improved

Origin agrees government processes related to petroleum/gas tenure release and management have direct implications for the timeliness of supply. We therefore recommend the following reforms to the Queensland framework (which may be applicable to other regions) with a view to facilitating more timely development of resources.

- Tender release process: A transparent framework should be established that governs the administration of the tender process and decision making around tenure release more broadly. This includes the criteria used to determine which tenures identified through expression of interest (EOI) processes are to be released for tender and the associated timing of release. Consideration should also be given to allowing direct applications to be made to access new acreage to facilitate exploration activity in new basins.

- Access to existing tenures: The only mechanism to access tenures outside of the tender process is through commercial transactions with existing tenure holders that must be assessed/approved by the Queensland Government. Provisions governing the assessment process require consideration to be given to compliance matters (e.g. whether the applicant has not met particular obligations associated with its work program). However, additional transparency is required to clarify how any non-compliance issues ultimately factor into the Government's overall decision. Such a framework should also ensure regard is given to the capacity of the acquiring party to address any non-compliance issues associated with the tenure and progress resource development.

- Timeframes for approvals: Statutory requirements governing the timing of all tenure related decisions should be established to provide certainty to prospective resource developers and facilitate timely approvals.

- Work programs: When granting petroleum leases, proponents must submit an initial development plan that outlines the expected annual rate and amount of production expected over the life of the tenure (often 30 years). There are also provisions within the legislative framework to enforce these commitments and address any non-compliance, informed by six monthly reporting of actual production by proponents. The requirement to seek ongoing approval of five-yearly work programs should therefore be removed to require less frequent approvals.

- Application of diversity and efficiency criteria: The ACCC has noted the inclusion of diversity/efficiency criteria in tender evaluation processes has coincided with a material increase in the amount of acreage awarded to junior producers in Queensland in the last three years. However, additional transparency around how these criteria have been applied/assessed is required to understand the effectiveness of the mechanism in enhancing timeliness of supply and delivering more efficient market outcomes for the benefit of consumers.

4. Unnecessary regulatory barriers should be removed to support investment

Capital constraints will always be a factor that can limit the ability of any entity (large or small) to ultimately progress inherently risky exploration and development activities. Ensuring regulatory frameworks are fit for purpose is therefore critical to creating a positive economic investment environment that supports the development of new reserves/resources. Key issues to address in this respect include:

- simplification/harmonisation of regulatory bodies – regulation of the gas industry is spread across numerous state and federal departments and there is no overarching framework or specialised assistance available to help individual proponents navigate the full set of requirements;

- removal of duplicative regulatory requirements - environmental and health/safety regulatory processes should be independently reviewed to address duplicative requirements and better streamline project regulation, noting there is considerable scope to improve the application of the *Environment Protection and Biodiversity Conservation Act* (EPBC Act) in this respect; and

- actioning outstanding regulatory reforms – implementation of outstanding recommendations from the Northern Territory fracking inquiry in 2018 should be prioritised.

If you wish to discuss any aspect of this submission further, please contact Shaun Cole at [redacted] or on [redacted].

Yours Sincerely,

[redacted]

Steve Reid
Group Manager, Regulatory Policy

Questions		Feedback
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.	Origin agrees government processes related to petroleum/gas tenure release and management have direct implications for the timeliness of supply. We consider the following aspects of the Queensland framework can impact the timeliness of supply. ▪ **Reliance on scheduled tender releases**: Requiring proponents to bid for access to new tenures through scheduled tender programs is intended to facilitate more competitive market outcomes. Expression of interest (EOI) processes are also notionally undertaken with a view to capturing prospective areas identified by industry for inclusion in the tender release program. However, there is little transparency around the decision-making process or criteria applied by the government when determining which areas will ultimately be released for tender and the associated timing of the release. This can result in the exploration and development of prospective areas identified by proponents being unnecessarily delayed. ▪ **Transferring tenures**: The only mechanism to access tenures outside of the tender process is through commercial transactions with existing tenure holders that must be assessed/approved by the Queensland Government. Provisions governing the assessment process require consideration to be given to compliance matters (e.g. whether the applicant has not met particular obligations associated with its work program). However, there is limited transparency around how any non-compliance issues ultimately factor into the Government's overall decision. To the extent the assessment process does not consider the capacity of the acquiring party to address any non-compliance issues associated with the tenure, there is also a risk of impeding transactions that would support resource development. ▪ **Timeframes for approvals**: The current framework does not provide any timeframes for decision making, creating uncertainty for proponents seeking approvals related to exploration, appraisal and/or production, as identified by the ACCC. ▪ **Monitoring/enforcing compliance with work programs**: When granting petroleum leases, proponents must submit an initial development plan that outlines the expected annual rate and amount of production expected over the life of the tenure (often 30 years). There are also provisions within the legislative framework to enforce these commitments and address any non-compliance, informed by six monthly reporting of actual production by proponents. Requiring proponents to subsequently submit five yearly work programs (for each tenure) for approval on an ongoing basis therefore creates an unnecessary regulatory burden that can give rise to additional costs.

Origin Energy Limited ABN 30 000 051 696 • Level 32, Tower 1, 100 Barangaroo Avenue, Barangaroo NSW 2000
GPO Box 5376, Barangaroo NSW 2000 • Telephone [redacted] • Facsimile (02) 9252 9244 • www.originenergy.com.au

2.	Should governments explicitly consider diversity and efficiency, or the potential impacts on competition, when awarding acreage? If not, please explain why not.	Queensland legislation requires the Minister to consider the impact of tenure decisions on competition in the market, with recent tenders being subject to diversity and efficiency criteria. The ACCC has noted the inclusion of these criteria has coincided with a material increase in the amount of acreage awarded to junior producers in Queensland in the last three years, which could lead to greater competition between producers over the medium to longer term. However, there is limited transparency around how diversity and efficiency criteria have been applied/assessed. Consequently, the effectiveness of the mechanism in enhancing timeliness of supply is unclear. To the extent these criteria limit the ability for larger participants to compete for access to new tenures (despite their technical and financial capabilities), this could have implications for the cost and timeliness of resource developments.
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.	Based on the issues identified in response to Question 1 above, Origin recommends the following reforms to the Queensland framework (which may be applicable to other regions) with a view to facilitating more timely development of resources. ▪ **Tender release process**: A transparent framework should be established that governs the administration of the tender process and decision making around tenure release more broadly. This includes the criteria used to determine which tenures identified through EOI processes are to be released for tender and the associated timing of release. Consideration should also be given to allowing direct applications to be made to access new acreage to facilitate exploration activity in new basins. ▪ **Access to existing tenures**: Provisions governing the transfer of tenures from an existing rights holder should be transparently applied and have regard to the capacity of the acquiring party to address any non-compliance issues associated with the tenure. ▪ **Timeframes for approvals**: Statutory requirements governing the timing of all tenure related decisions should be established to provide certainty to prospective resource developers and facilitate timely approvals. ▪ **Work programs**: The requirement to seek ongoing approval of five-yearly work programs should be removed, or at the very least relaxed, to require less frequent approvals.
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?	
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	In developing new gas resources and any associated infrastructure, investors are required to undertake several inherently risky and costly activities throughout a project's lifecycle, including in relation to the below. ▪ Exploration and appraisal: During this stage, resources are assessed for their technical chance of success, whether extraction can happen at sufficient rates, and if any expected

	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?	output is likely to be across a large enough area to support a development. Such activities generally require significant capital expenditure, particularly in the context of greenfield basins where sufficient data must be collected to underpin new infrastructure. As such, it is not uncommon for smaller producers to progress resource development in areas proximal to existing developments where there is existing infrastructure in place (e.g. coal seam gas fields in Queensland). ▪ Managing emissions: This involves evaluation of the environmental impact of a project, which can extend to capability modelling for carbon capture and storage (CCS). ▪ Egress planning: This involves examination of options to transport a resource once it has been extracted, which can include underwriting significant investment in new capacity. Capital constraints will always be a factor that can limit the ability of any entity (large or small) to ultimately undertake these inherently risky activities. Ensuring regulatory frameworks are fit for purpose is therefore critical to creating a positive economic investment environment that supports the development of new reserves/resources.
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?	**1. Regulatory barriers** In general, a simpler, less duplicative regulatory regime that is proportionate to the risks policy makers are looking to manage would assist with facilitating more timely development of resources, while also ensuring safety and environmental objectives are satisfied. Key issues to address in this respect are noted below. ▪ **Simplification/harmonisation of regulatory bodies**: Regulation of the gas industry is spread across numerous state and federal departments. There is also no overarching framework or specialised assistance available to help individual proponents navigate the full set of applicable government requirements. Better collaboration between departments (including the sharing of data) would significantly reduce administrative burden and regulatory costs for both industry and government. - Where possible, processes should be simplified and harmonised across Commonwealth and State / Territory governments. - A ‘one-stop-shop’ for all government dealings and single data system could be established for each jurisdiction. Alternatively, the case management approach for smaller projects could be enhanced to help individual proponents navigate state and federal government approval processes. ▪ **Remove duplicative regulatory requirements**: Environmental and health and safety regulatory processes should be independently reviewed to address duplicative requirements and better streamline project regulation. There is considerable scope to improve the application of the EPBC Act in this respect. - Strategic Assessments: Origin notes the work that has been done to undertake Geological and Bioregional Assessments (GBA) of shale and tight gas in the Cooper/Eromanga.

		While GBAs are not statutory instruments, they can be leveraged to facilitate the development of resources and can be used to establish a strategic assessment under the EPBC that would help pave the way for future development and investment. Strategic Assessments over GBA basins will deliver development ready areas with defined outcomes (and conditions) and allow for a streamlining of approvals by reducing duplication under the EPBC process. Strategic Approvals in these areas will make them attractive for investment, increase the prospects of new basins being explored and increase the development of new supply into the market. - *Water Trigger*: The EPBC Act Review identified that "*the operation of the 'water trigger' suffers from insufficient definition of the water resources covered and the scale of the impact on the resources it is seeking to regulate*"[2] and that it "*is inconsistent with Commonwealths agreed role in environmental and water resources management*"[3]. The review also considered that "*it is not the role of the EPBC Act to regulate impacts of development on water users such as towns or agricultural users. This is the responsibility of the State and Territories*"[4]. The Significant Impact Guidelines used to define matters captured by the water trigger should be updated to address these issues and ensure that only matters of national significant are captured. - *Offset administration*: The EPBC should be amended to provide a specific process to approve advanced offset areas separate to a project specific referral. This approach could enhance environmental outcomes by allowing proponents to proactively develop offset areas. - *Statutory timeframes*: The EPBC Act establishes statutory timeframes that regulators often find challenging to meet. Consideration should be given to implementing recommendation 27 of the EPBC Act Review, which sought to improve the efficiency of the environmental impact assessment (EIA) regime and clarify decision making processes.[5] - *Liability*: As previously proposed by *the Environment Protection and Biodiversity Conservation Amendment (Standing) Bill 2015*, the government could reduce the scope of the extended standing to reduce the legal costs faced by projects who can currently experience lawfare from parties with no direct interest. ▪ **Actioning outstanding regulatory reforms**: Of the 138 recommendations outlined in the NT fracking inquiry in 2018, a significant proportion are yet to be implemented. These should be prioritised, and where possible the federal government should examine options to support the

[2] Prof. Graeme Samuel AC, 'Independent Review of the EPBC Act', 2020, pg., 46.
[3] Ibid.
[4] Ibid.
[5] Ibid, pg. 34.

<table>
<tr><td></td><td></td><td>Northern Territory with additional resources to increase the pace of implementing the recommendations.</td></tr>
<tr><td>7.</td><td>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?</td><td rowspan="3">Origin is not supportive of mandating the provision of third-party access to upstream infrastructure. Owners of processing facilities have a strong commercial incentive to offer third party access where there is any underutilised plant capacity. As noted in the Issues Paper, there is evidence of processing facilities providing such access, including the Moomba gas processing facility, which is a key processing hub in the east coast gas market.

As identified by the Productivity Commission, there are valid commercial reasons as to why third-party access to processing infrastructure may not be available. Outside of circumstances where capacity is being fully utilised for a producers own use, there are coordination issues and costs from sharing a gas processing facility with other parties.[6] 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 the operation of, and investment in, the facility.[7]

Even where there is seemingly a low level of utilisation, this is not necessarily a sign of inefficiency or an indication that capacity is available at a particular point in time. This is because contractual arrangements often provide customers with flexibility to change the rate of nominated quantities on a daily or even hourly basis, meaning required/utilised capacity can be significantly higher than average production volumes at any point in time.

The Productivity Commission further highlighted that mandating third party access could impose substantial costs on industry by:[8]

▪ reducing incentives for new investment by gas processing facility owners – this can be the result of uncertainty around future access obligations;

▪ reduced incentives for investment by third parties – while this could potentially assist with avoiding duplication of gas processing facilities, it could also reduce scope for the threat of duplication to improve performance in incumbent facilities;

▪ introducing regulatory error in the setting of access terms and conditions, and potentially the level of capacity to be made available; and

▪ Introducing additional administrative compliance costs related to managing declaration applications, arbitration proceedings and reviews of regulatory decisions. Regulatory error in the setting of access terms and conditions.</td></tr>
<tr><td>8.</td><td>Are there other ways to improve third party access to upstream infrastructure on reasonable terms?</td></tr>
<tr><td>9.</td><td>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.</td></tr>
<tr><td colspan="3">JV arrangements</td></tr>
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[6] Productivity Commission, ‘Examining Barriers to More Efficient Gas Markets’, March 2015, pg. 132.
[7] Ibid.
[8] Ibid, pg. 133.

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.	JV arrangements have been critical to facilitating the timely development of new higher cost reserves/resources on the east coast of Australia and by extension, competition between producers. JV arrangements (incorporated and unincorporated) are a common feature of resource development industries globally. Such arrangements allow for risk and cost sharing between parties and facilitate increased access to financial and technical resources, which is critical in the context of funding capital-intensive, high-risk activities. They can also assist with reducing overall project costs (by allowing economies of scale to be realised) and improving access to markets, as evidenced by the evolution of the east coast LNG export market. Noting the above, a likely counterfactual scenario if JV arrangements were unable to be reached between parties (or limited in some way through the introduction of more restrictive competition laws) is that the scale of resource development would be reduced (e.g. it is unlikely the substantial gas reserves/resources currently underpinning LNG exports and domestic supply on the east coast could have been achieved in the absence of JV arrangements). There would seemingly also be a commensurate reduction in the number of producers and therefore competition, given capital constrained parties (large or small) would be unable to individually fund exploration development and production activities.
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?	We do not consider any additional measures or restrictions are required to govern the design of JV arrangements. As discussed in response to Question 10, such an approach could distort commercial incentives for parties to enter into a JV arrangement, which may ultimately impact timeliness of supply and the level of competition between producers. In Origin's view, greater market benefits would be derived from addressing the regulatory barriers identified in Sections 1-2 above.
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	Origin does not support the introduction of mandatory notification requirements on larger producers in circumstances where they may seek to enter into JV arrangements (or farm into

	into existing JV arrangements) should be subject to mandatory notification requirements and ACCC consideration? Please explain your response to this question.	existing JV arrangements). As discussed below in response to Questions 16-18, section 50 of the CCA can adequately deal with any acquisition of shares or assets that is likely to substantially lessen competition. Introducing a mandatory notification requirement would therefore result in unnecessary regulatory burden for industry.
15.	Is any other form of oversight of JV arrangements required?	Consistent with Origin's response to Questions 10-14 above, we do not consider any additional oversight of JV arrangements is required. The CCA adequately governs the circumstances under which JV arrangements can be entered into and provides the ACCC with the authority to investigate and act where entry into such arrangements would substantially lessen competition.
Mergers and acquisitions		
16.	Section 4.2 sets out how mergers and acquisitions of individual tenements can affect competition and/or the timeliness of supply. Are there any other ways in which mergers and acquisitions could affect competition and/or the timeliness of supply that have not been identified? If so, please explain what they are and the effect that they can have on upstream competition and/or the timeliness of supply?	Origin considers the merger regime governed by Section 50 of the CCA functions effectively in the upstream gas market. As acknowledged in the Issues Paper, the ACCC is generally notified of mergers and acquisitions involving larger producers, consistent with requirements set out in the Merger Guidelines. While some transactions have reportedly proceeded to completion without clearance being sought, this is not indicative of an underlying shortcoming of the regime. The parties involved in those transactions may have independently formed the view that the merger/acquisition would not result in a substantial reduction in competition, and therefore determined that informal review or merger authorisation from the ACCC was unnecessary. The ACCC has the ability to investigate any transaction on the basis of competition concerns, even if it was not initially notified. As discussed above, capital constraints (and other barriers) may sometimes limit the ability of some smaller producers to progress from exploration to production. The acquisition of smaller tenements by larger producers can therefore be important in the context of facilitating the efficient development of resources and ensuring timeliness of supply. To the extent the ACCC has broader concerns around the adequacy of Australia's merger regime, these issues should be considered and addressed on an economy-wide basis rather than through the imposition of industry-specific reforms.
17.	Do you think the current merger regime has been working effectively to date? If not, please explain why not.	
18.	Do you think the current merger regime can work effectively in the highly concentrated upstream market? If not, please explain what changes you think are required?	
Joint and separate marketing		
19.	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):	As identified in the Issues Paper, joint marketing by unincorporated JVs is becoming less prevalent in the east coast gas market. However, it is clear there may be circumstances in which such arrangements may still be appropriate in the context of facilitating timely resource development. This was evidenced by the ACCC's decision to authorise joint marketing by the

	▪ what they are ▪ how they may effect upstream competition and/or the timeliness of supply ▪ any measures that may be able to address them.	Vali JV for a five-year period, largely because it would enable earlier development of the Vali field than would otherwise be achievable. Origin considers the existing competition laws are adequate in the context of ensuring joint marketing by unincorporated JVs is only permitted in circumstances where it does not substantially lessen competition or the ACCC has authorised such activity on the basis of their being a net public benefit.
20.	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.	
21.	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.	
22.	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.	
23.	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.	The premise of this question is unclear insofar as it refers to the "arrangement relating to the sale of gas by incorporated JVs". An incorporated JV necessarily sells gas on its own behalf in the same way any other company would sell its goods or services. Existing competition laws are also sufficient to address any issues around the marketing of gas by incorporated JVs, consistent with the treatment of incorporated JVs in any other market: ▪ section 50 would prevent the acquisition of an interest in an incorporated joint venture if such an acquisition was likely to substantially lessen competition; and ▪ were an incorporated JV to have market power, section 46 would prevent the JV from engaging in conduct that has the purpose or effect of substantially lessening competition.

24.	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.	
Exclusivity provisions		
25.	Section 4.4 describes how exclusivity provisions in GSAs between producers may restrict upstream competition. ▪ Are there any other ways that these provisions might restrict competition? If so, please explain what they are. ▪ Are there any competition or efficiency benefits associated with these types of provisions?	In certain circumstances exclusivity provisions may be appropriate. To the extent an exclusivity provisions would raise competition concerns, because it would substantially lessen competition, it would be prohibited under the CCA. On that basis, and in view of the fact that exclusivity provisions between producers are not particularly prevalent, we do not consider there is justification for introducing an industry specific requirement to obtain authorisation prior to entering into any exclusivity arrangement.
26.	If exclusivity provisions are restricting competition, how should this be addressed?	
27.	Should producers only be allowed to enter into exclusivity arrangements if they have sought and obtained authorisation from the ACCC before doing so? Please explain your reasons.	
Decisions on when to develop new sources		
28.	Section 4.5 sets out some of the technical, commercial and strategic factors that may affect producers' decisions about when to develop new sources of supply and the timeliness with which gas is brought to market. Are there any other factors that may influence these decisions?	Origin does not consider gas is being ‘warehoused’ by producers in the east coast market. Given the capital-intensive nature of resource exploration/development and associated risks, there is a range of factors that can impact resource development decisions. These include producer’s risk preferences, productions costs (which are dependent on the nature of the gas resource and generally vary from field to field) and current and expected future gas prices. It is also common for gas producers to invest progressively in exploration activities with a view to reducing potential risks and developing a forward portfolio of gas reserves that can be used to support longer term supply commitments.
29.	Section 4.5 also outlines some of the reasons why larger producers may want to 'bank' or 'warehouse' gas. Are there any other reasons	

	why they may want to withhold supply in this manner?	As noted by the ACCC, there is also no evidence of producers seeking to withhold supply through warehousing. The COAG Energy Council Upstream Petroleum Resources Working Group (UPR) commissioned an independent review of retention lease regimes in July 2018 to understand their effectiveness in driving the earliest commercial development of discovered gas resources as well as supporting exploration activity and expenditure. The review ultimately concluded that there is no evidence that gas is being withheld (or warehoused) from development and production.[9] It further suggested that public commentary, which has claimed warehousing and abuse of the retention lease system, is either misunderstanding the commercial and economic considerations underpinning a petroleum resource development project or seemingly motivated to drive supply into a market within which they are customers.[10] These findings are consistent with views outlined by the Productivity Commission in its 2015 examination of barriers to more efficient gas market, namely that: [11] ▪ what may appear as unjustified warehousing of gas reserves may simply reflect commercial behaviour that is consistent with outcomes you would expect from effectively competitive market; and ▪ the rationale for larger companies to have a greater propensity to warehouse than smaller companies is also unclear — if there were some market advantage to be gained by warehousing, this would be independent of company size, as it would be motivated by the desire to maximise profits. Noting the above, Origin does not consider there is any justification for prohibiting holders of existing undeveloped resource/reserves from accessing new tenures or forcing the development of discovered reserves through the application of us-it-or-lose-it type provisions. Where reforms are to be considered, the focus should be on removing any impediments to transferring tenures between title holders to ensure rights can be transferred to those that value them most highly (facilitating allocative efficiency), and those most adept at developing resources (promoting productive efficiency).[12] As discussed above, we consider there are aspects of the Queensland framework that should be addressed in this respect.
30.	If gas is being 'banked' or 'warehoused' how do you think this should be addressed?	

[9] Noetic Group, ‘Review of Petroleum Retention Lease Arrangements in Australian Jurisdictions’, report for the Commonwealth Department of Industry, Innovation and Science, July 2018, pg. 5.
[10] Ibid, pg. 29.
[11] Productivity Commission, ‘Examining Barriers to More Efficient Gas Markets’, March 2015, pg. 75.
[12] Ibid, pg. 57.