Review of upstream competition and timelines of supply: Issues Paper

Attachment 1: Response template due 15 October 2021

Stakeholder name: GLNG Operations Pty Ltd (GOPL)

	Questions	Feedback
Box 3.1: Questions on 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.	Over regulation is hindering investment in the gas industry. It hinders new gas developments and new suppliers entering the market and ultimately increases the time to get supply to market. Increasing gas supply requires removing impediments to upstream infrastructure development. State, territory and Commonwealth governments can address this by: • streamlining regulation (especially environmental regulation which has duplication between state and commonwealth processes) and removing the regulatory hurdles that are often time intensive and costly, • lifting moratoriums that hinder future gas development and production. Between 2001 and 2012, 35 separate exploration licences were granted in Victoria - all of which are now cancelled, expired, surrendered or dormant (16 current) ('Inquiry into onshore unconventional gas in Victoria, Final Report', 2015). For almost 10 years since August 2012, the Victorian Government has had effective holds on approvals to undertake onshore gas exploration and the issuing of gas exploration licences. The ensuing moratorium was only partially lifted this year in July 2021. Similarly, gas developments in NSW have been impeded by moratoria and regulatory reviews and legislative changes since around 2012. NSW went from one of the least regulated systems to one of the most convoluted regimes. NSW has ready to develop reserves, but its recently released Future of Gas Statement means that only the Narrabri Gas Project can ever be developed. It was only in October this year that the NSW Land and Environment Court dismissed an appeal against the September 2020 approval of the Narrabri Gas Project by the NSW Independent Planning Commission. [redacted]

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		[redacted] GOPL understands the development of Santos' onshore Narrabri project alone could produce up to 70 PJ a year in a relatively short timeframe. Government policies can impact how gas can be brought to market in a timely and efficient manner. However well intended policies do not always deliver the required market behaviours. The Queensland Government has implemented a policy (and process) that releases some new tenements with a condition that the gas production be reserved for domestic consumption only. GOPL supports this policy given that it is prospective and not retrospective. The Queensland Government has tended to prefer bids from smaller participants. However, a recent case example suggests that even a positive policy such as this can be undermined. Central Petroleum was awarded ATP2031 in August 2018 by the Queensland Government for the acreage dedicated to the domestic market. Incitec Pivot Limited acquired a 50% JV interest in the tenement around the same time. It was anticipated to yield gas in 2022 (Incitec Press Release 1 March 2018 'Queensland Government Gas Tender Update'). Recently, Incitec ran an 'EOI' seeking complying and alternative responses. [redacted]. Production was initially planned to begin well ahead of the December 2022 end date to Incitec's supply agreement with APLNG. However, production has been delayed a number of times and the most recent update forecasts 2025 for first gas. [redacted] Thus we urge the ACCC to continue to target the biggest contributing factor effecting gas supply in the east coast gas market being the regulatory and political restrictions placed on onshore development, not the prudent utilisation of joint venture structures by market participants to efficiently fund expensive and time-consuming developments. Without these joint ventures which often provide much-needed foreign investment, many gas developments would never occur. The current regulatory environment also impedes the ability of smaller players to enter the market, as often they are less able to carry the large capital costs of development over the long periods of time required to obtain the necessary regulatory approvals. Therefore, streamlining regulatory process is essential to shortening time frames being one impediment to entering the market. Increasing market participants will ultimately increase competition.

	Questions	Feedback
2.	Should governments explicitly consider diversity and efficiency, or the potential impacts on competition, when awarding acreage? If not, please explain why not.	While Diversity of investors in the market may improve competition there is no point in diversity if the new market entrants do not have the risk appetite and financial capacity to undertake gas developments. GOPL makes additional comments in relation to Table 2.1 in the Issues Paper and its application to identify the degree of concentration present in the market. (See page 5 of the Issues Paper). **Correction requested to Table 2.1** Table 2.1 is misleading as it mistakenly combines the reserves held individually by Santos and the GLNG JV when, in fact, the two are separate and distinct entities. Santos is only a 30% owner in the GLNG JV, and it does not control the GLNG JV as it does not have the capacity to practically influence or determine the outcome of decisions about the GLNG JV's financial and operating policies as defined in Section 50AA of *Corporations Act* 2001. We also note that Santos and the GLNG JV were reported differently to Origin and APLNG (in which Origin holds a higher share than Santos does in GLNG), and QGC and Arrow (in both of which Shell has a much higher interest than Santos does in GLNG). Further, Table 2.1 is also inconsistent as: 1. APLNG and Origin Energy are recognised as distinct entities and the reserves of the two are separately reported; and 2. QCLNG and Arrow are recognised as distinct entities and the reserves of the two are separately reported even though Shell is the substantial majority owner of QCLNG and the 50% owner of Arrow. To achieve accuracy and to ensure consistency of approach, GOPL requests that the ACCC correct Table 2.1 (and Chart 2.2) and, in the interim, not use Table 2.1 (and Chart 2.2) in the current form as it misleads the reader in relation to the reserves and resources held by the upstream affiliates of the GLNG JV.

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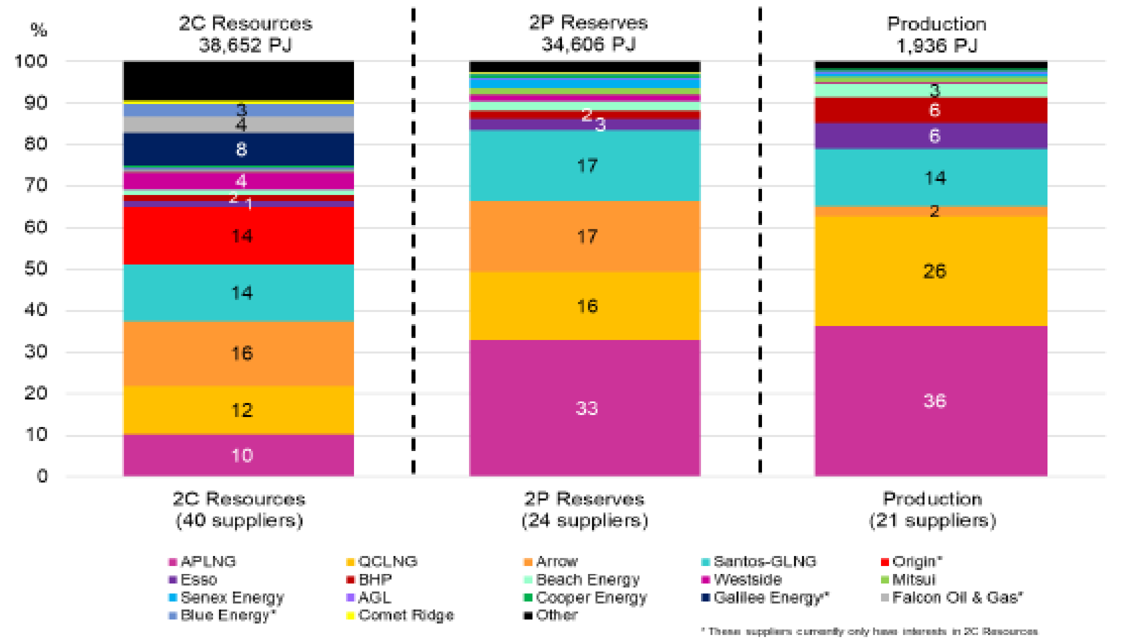
Table 2.1: Concentration in upstream segment of the east coast gas market 2020*

Chart 2.1: Producers' shares of 2C resources,* 2P reserves* and production^



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	Questions	Feedback
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?	Commonwealth, State and Territory governments could encourage diversity in the upstream market and assist in bringing more gas to market in a timely manner by directly investing in or underwriting the infrastructure capital needed to bring that gas to market. This is likely to open up development in gas reservoirs located in the Bowen and Galilee Basins for example.
Box 3.2: Questions on 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?	

	Questions	Feedback
	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?	Recent regulatory reform consultation has already considered whether or not to provide third party access to gathering pipelines and processing facilities – see the COAG Energy Council – *Gas Pipeline Regulation Reforms – Proposed legal package to give effect to the Decision Regulation Impact Statement.* Submissions have closed and the final rule changes are anticipated this year. Therefore, GLNG advocates that further regulatory review impacting upstream infrastructure assets under this Issues Paper should not be considered further. Once the COAG consultation reforms are finalised later this year, these regulations should be left to operate for a reasonable period of time. Regulatory stability is required to ensure sufficient time for full utilisation and implications of reforms to be realised, so a full evaluation can be undertaken before further modifications or reforms are considered. This supports a primary national gas objective to ensure reduced cost burden due to limited regulatory churn. In the event that the consultation on this issue proceeds, GOPL provides the following response: • Upstream infrastructure (e.g. gathering pipelines, gas processing facilities and/or water processing facilities) are generally part of a fully integrated coal seam gas production facility, pipeline system and LNG facility. The assets forming the fully integrated systems have been specifically designed and correctly sized to meet the specific needs of the relevant system. They are designed to operate with precision to optimise the system and respond to gas supply and demand changes and planned and unplanned events in the

	Questions	Feedback

		upstream and downstream operations. This optimisation is essential to maintaining reliability across all assets.
		• Further, the specific design of the assets within the integrated system and optimisation and reliability they deliver, are essential for ensuring that GLNG can operate safely and within design specifications to produce the required volume of LNG cargoes needed to meet its SPA commitments and provide volumes of gas to support the domestic market and consequently significantly support the Australian economy. This cannot be achieved if LNG facilities become open to third party access.
		• Imposing third party access on these facilities are likely to:
		  ○ erode the substantial existing investment in Australia's gas industry,
		  ○ make ongoing and future investment in Australia's gas industry unattractive at a time when there is a highly competitive global market,
		  ○ is contrary to the Federal Governments strategy to develop a gas fired COVID economic recovery and
		
		consequently, significantly impact the many Australians who benefit from the current significant investment in the Australian gas industry.

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.	Recent regulatory reform consultation has already considered whether or not to provide third party access to compression and storage facilities – see the COAG Energy Council – *Gas Pipeline Regulation Reforms – Proposed legal package to give effect to the Decision Regulation Impact Statement.* Submissions have closed and the final rule changes are anticipated this year. Therefore, GLNG advocates that further regulatory review impacting processing facilities, compression and storage facilities under this Issues Paper should not be considered further. Once the COAG consultation reforms are finalised later this year, these regulations should be left to operate for a reasonable period of time. Regulatory stability is required to ensure sufficient time for full utilisation and implications of reforms to be realised, so a full evaluation can be undertaken before further modifications or reforms are considered. This supports a primary national gas objective to ensure reduced cost burden due to limited regulatory churn.

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		In the event that the consultation on this issue proceeds, GOPL provides the following response:
		
		• LNG facilities are generally part of a fully integrated coal seam gas production facility and pipeline. These fully integrated systems have assets that have been specifically designed and correctly sized to meet the specific needs of the relevant system. They are designed to operate with precision to optimise the system and respond to gas supply and demand changes and planned and unplanned events in the upstream and downstream operations. This optimisation is essential to maintaining reliability across all assets.
		• Further, reliability of gas production and having interruptible gas transportation systems are essential for ensuring that GLNG can operate safely and within design specifications to produce the required volume of LNG cargoes needed to meet its SPA commitments and provide volumes of gas to support the domestic market and consequently significantly support the Australian economy. This cannot be achieved if LNG processing facilities and storage facilities become open to third party access.
		• Imposing third party access on these facilities are likely to:
		  ○ erode the substantial existing investment in Australia's gas industry,
		  ○ make ongoing and future investment in Australia's gas industry unattractive at a time when there is a highly competitive global market,
		  ○ is contrary to the Federal Governments strategy to develop a gas fired COVID economic recovery and
		  ○ consequently, significantly impact the many Australians who benefit from the current significant investment in the Australian gas industry.

Box 4.1: Questions on JV 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	

	Questions	Feedback
	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?	JV arrangements are a common feature of resource development and are generally utilised to defray upfront capital expenditure associated with risked development and timely production. JV arrangements support gas development and production through sharing of expertise, skills, technology and innovation, achieving economies of scale and are resourced sufficiently to carry risks for the period of time required to develop gas and bring it to market. Hence, JV structures play an important role in developing and delivering gas to market quickly. Impeding the use of JV arrangements or imposing unnecessary regulation on those arrangements would deter the foreign investment the industry relies upon and likely adversely affect future investment and timelines of gas exploration and bringing that gas to market, especially for small producers. Further, the contracts managing the interactions and relationships between JV parties underpin significant investment in the resources industry in Australia and must be left to operate as agreed between the parties and not be eroded by changes in regulation. Imposing regulatory controls on contractual rights can only hinder future investment and the ability to bring gas to market in a timely manner. Australian, State and territory governments must provide a stable and equitable policy that safeguards those contracts, the investments they support and not provide a means to interfere with and erode investment decisions made. Australia would be the outlier jurisdiction if it imposed further regulatory restrictions on foreign and domestic entities entering into JV arrangements in order to invest in Australian based projects. There is no reason to impose regulation on JV arrangements.
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.	

	Questions	Feedback
15.	Is any other form of oversight of JV arrangements required?	GOPL reiterates that no form of oversight of JV Arrangements is required.
Box 4.2: Questions on 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?	
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?	
Box 4.3: Questions on 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):	

	Questions	Feedback
	• what they are • how they may effect upstream competition and/or the timeliness of supply • any measures that may be able to address them.	
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	

	Questions	Feedback
	• how they may effect upstream competition and/or the timeliness of supply • any measures that may be able to address them.	
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.	
Box 4.4: Questions on 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?	[redacted] In general, some smaller Upstream gas developers may seek financial assistance to support for their gas exploration and development and will enter into contractual arrangements that provide them with the security of a steady revenue stream to support their development of other fields – when ultimately developed. Without these arrangements diversity of investment cannot be encouraged and therefore potentially hinder future development and competition in the market. Removing barriers to diversifying investment in gas development is essential to increasing gas supply and suppliers in the market and improving competition.
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	

	Questions	Feedback
	and obtained authorisation from the ACCC before doing so? Please explain your reasons.	
Box 4.5: Questions on 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?	
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?	GOPL does not accept the argument that larger producers may have an incentive to 'bank' or 'warehouse' gas. Producers have no incentive to delay production. Deferral of gas production has a negative impact to project economics. There do not seem to be any compelling grounds that sustain the 'warehousing' argument. Since 2017, the ACCC and AEMO have established that the east coast gas market has been sufficiently supplied year-on-year, despite the regulatory impediments to gas development in Victoria, NSW and Tasmania.
30.	If gas is being 'banked' or 'warehoused' how do you think this should be addressed?	