ACCC review of upstream competition and the timeliness of supply

Issues paper

15 September 2021

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1. Introduction

As part of the 2017-2025 Gas Inquiry (**Inquiry**), the ACCC has decided to undertake a review of the factors that may be:

- limiting competition in the upstream segment of the east coast gas market, and/or
- affecting the timeliness with which gas is brought to market.

1.1. Why is the review being undertaken?

The review of upstream competition and the timeliness of supply (**review**) is being undertaken in response to concerns raised throughout the Inquiry about the degree of concentration in this part of the market and the potential for producers to engage in activities that could limit competition, or otherwise prevent gas from being supplied to market in a timely manner.[1]

The need for the review has been reinforced by other aspects of the Inquiry that point to the limited degree of competition in this part of the market, as highlighted by:

- the pricing behaviour that we have observed over the course of the Inquiry and our review of suppliers' pricing strategies, which indicates that competition is posing little constraint on producers' pricing decisions[2]
- 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).[3]

Further detail on why this review is being undertaken is provided in **Chapter 2.**

1.2. Scope of the review

The objectives of the review are to:

- identify those structural and behavioural factors that may be:
  - contributing to the lack of effective upstream competition, and/or
  - affecting the timeliness with which gas is brought to market
- where relevant, set out our recommendations on how competition could be improved and how more timely supply could be encouraged.

Importantly, the objective in undertaking this review is not to establish that competition is not effective, because there are already sufficient indicators of this. Rather, the objective is to identify those factors that may be impeding the development of effective upstream competition and/or the timeliness of supply and the actions that could be taken to address these impediments.

Based on our work to date, it would appear that from the time tenements are issued by governments to the time that gas is sold into the market, there are a number of structural

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1 See for example the discussion set out in ACCC, Gas inquiry 2017-2025 interim report, January 2020, pp. 39-43 and ACCC, Gas inquiry 2017-2025 interim report, January 2021, pp. 31-32 and Appendix A.

2 See ACCC, Gas inquiry 2017-2025 interim report, January 2021, p. 8 and ACCC, Gas inquiry 2017-2025 interim report, July 2021, p. 11.

3 See for example, ACCC, Gas inquiry 2017-2025 interim report, January 2020, Chapter 4 and ACCC, Gas inquiry 2017-2020 interim report, December 2018, pp. 89-92.

and behavioural factors that may affect the degree of upstream competition and/or the timing of supply. At a high level, these factors include:

1. The processes used by state, territory and Commonwealth governments/agencies when granting permits[4] to producers, approving producers' work programs and monitoring and enforcing compliance with approved work programs.
2. The geological, land access, environmental, regulatory, commercial and infrastructure related barriers that producers can face when undertaking exploration activities and when moving from the exploration stage to production.
3. The joint venture (JV) arrangements that producers may enter into to develop tenements.
4. Mergers and acquisitions involving producers and/or individual tenements.
5. The marketing arrangements employed by producers that are in a JV and, in particular, whether producers are jointly or separately marketing gas.
6. The exclusivity provisions that may be incorporated in GSAs between producers, which can limit the ability of the selling producer to sell gas to others, or otherwise limit their ability to compete in the market.
7. The decisions made by producers and, in particular, the larger producers, about when to develop new sources of supply.

Further detail on these factors and the effect they may have on competition and/or the timeliness of supply is provided in **Chapters 3-4.**

1.3. Next steps

To help inform the review, gas producers, gas users and other stakeholders are invited to provide feedback on the matters set out in this issues paper and any other matters they consider relevant to the review.

The feedback provided in response to this issues paper will inform the findings of the review, which we expect to publish in 2022.

The review will also be informed by bilateral discussions with market participants and state, territory and Commonwealth governments and information that we obtain using our information gathering powers under the *Competition and Consumer Act 2010* (CCA).

1.3.1. How to participate

A response template has been prepared to assist those stakeholders that wish to provide feedback on this issues paper. The template contains a list of specific questions that we seek feedback on (see **Attachment 1**). Stakeholders do not need to answer each question and can focus their comments on those questions of particular interest or concern.

Stakeholder submissions are due by close of business on **15 October 2021**. Submissions should be made in electronic, text-searchable format and emailed to: gas.inquiry@accc.gov.au.

General inquiries can also be directed to gas.inquiry@accc.gov.au or to Warren Vosper at warren.vosper@accc.gov.au or 03 9290 1851.

[4] The term 'permit' is used in this context to jointly refer to permits, authorities and licences and any other variants that governments use to enable producers to undertake exploration, appraisal and production activities.

1.3.2. Treatment of submissions and confidentiality claims

The review is a public process and written submissions will be made available on the ACCC website.

The CCA allows parties that provide written submissions to the Inquiry to make claims for confidentiality in limited circumstances. The ACCC has published a Confidentiality Guideline,[5] which sets out the process parties should follow when submitting confidential information. This guideline describes the ACCC's legal obligations with respect to confidential information, the process for submitting confidential information and how the ACCC will treat such information.

As noted in this guideline, where a party provides a confidential submission it must clearly identify the specific information over which it claims confidentiality and state the basis on which the claim is made. At the time of providing a confidential submission, a party must also provide a public version that redacts the confidential material so that it appears as blackened text that cannot be viewed by a reader. For example, the text should appear as:

> *Company A notes that it has been unable to progress the development of its project because* [redacted].

The ACCC will post redacted public submissions on its website.

1.4. Structure of the issues paper

The remainder of this issues paper is structured as follows:

- Chapter 2 provides further detail on why the review is being undertaken.
- Chapters 3-4 outline the structural and behavioural factors that may be affecting upstream competition and/or the timeliness of supply and set out a number of questions we are seeking feedback on.

Attachment 1 contains the response template that stakeholders should use when responding to this issues paper.

[5] https://www.accc.gov.au/publications/communications-inquiries-submitting-confidential-material

2. Why is the review being undertaken?

In our January 2020 and 2021 interim reports, we noted our intention to conduct a review of the factors that may be affecting competition in the upstream segment of the gas market and the timeliness with which gas is brought to market.[6] In doing so, we noted that we had concerns with the degree of concentration in this part of the market and the potential for producers to engage in activities that could limit competition, or otherwise prevent gas from being supplied in a timely or efficient manner.[7]

Further detail on the rationale for undertaking this review is provided below.

2.1. Upstream competition is not effective

In 2020 we expressed concerns about the prices that were being offered by a number of producers in the east coast gas market [8] and decided to undertake a review of producers' pricing strategies. The findings of this review were published in our January 2021 and July 2021 interim reports.[9]

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.[10] In particular, we found that in 2019-20:

- A 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.[11]
- A number of producers in the southern states were seeking to charge more than the buyer's alternative of procuring gas in Queensland and transporting it south, with one major southern producer seeking to charge up to buyers' estimated willingness to pay.

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 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.

Our review of producers' internal documents also revealed limited references to their competitors' pricing behaviour, at least in ways that demonstrated effective competition. [12]

The findings of the pricing strategies review are consistent with the observations that C&I users have made throughout the Inquiry. That is, that competition between producers is ineffective and has had an adverse effect on producers' selling practices and the ability of C&I users to procure gas on competitive terms between 2017 and 2020.

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6 ACCC, Gas inquiry 2017-2025 interim report, January 2020 and ACCC, Gas inquiry 2017-2025 interim report, January 2021.

7 ACCC, Gas inquiry 2017-2025 interim report, January 2020, pp. 39-43 and ACCC, Gas inquiry 2017-2025 interim report, January 2021, pp. 31-32 and Appendix A.

8 ACCC, Gas Inquiry 2017–2025 interim report, July 2020, section 2.5 and ACCC, Gas Inquiry 2017–2025 interim report, January 2020, section 2.4.

9 ACCC, Gas Inquiry 2017–2025 interim report, July 2021, chapter 3 and ACCC, Gas Inquiry 2017–2025 interim report, chapter 6.

10 ACCC, Gas Inquiry 2017–2025 interim report, July 2021, section 3.2 and ACCC, Gas Inquiry 2017–2025 interim report, January 2021, section 6.3.

11 ACCC, Gas Inquiry 2017–2025 interim report, July 2021, p. 11.

12 ibid.

C&I users have, for example, expressed concerns about the 'take it or leave it' approach[13] employed by a large number of producers when making offers and the blind auction-style expression of interest processes conducted by some producers.[14] C&I users have also claimed that:

- the prices offered by producers are well in excess of what would prevail in a competitive market[15]
- there has been a significant deterioration in the service flexibility and other non-price terms and conditions offered by producers.[16,17]

2.2. The upstream market is concentrated

The limited competition observed amongst producers is not surprising given the degree of concentration present in this part of the market, as highlighted in Table 2.1.

Before examining Table 2.1, it is worth noting that the metrics presented in this table understate the true degree of concentration in this part of the market because they do **not** account for the control that some producers have over the supply of gas through:

- JV arrangements (see **section 4.1** for more detail)
- joint marketing arrangements (see **section 4.3** for more detail)
- exclusivity provisions in GSAs between producers (see **section 4.4** for more detail).

Setting aside these limitations, Table 2.1 reveals the upstream segment of the market is relatively concentrated at present. This is particularly the case when measured on the basis of proved and probable (2P) reserves and production, with the top five producers accounting for 86% of 2P reserves and 89% of production in 2020. The LNG producers (APLNG, GLNG and QCLNG), in particular, are quite dominant, jointly controlling 83% of 2P reserves and 79% of production, either through direct ownership or purchases from associated entities.[18]

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13 Some C&I users have, for example, stated that they have been provided very little time to accept offers and, in some cases, had offers withdrawn from producers. Others have noted that there was no effective negotiation around prices or non-price terms and conditions, with C&I users effectively being 'price takers'.

14 See for example, ACCC, Gas inquiry 2017-2020 interim report, July 2019, Chapter 3, ACCC, Gas inquiry 2017-2020 interim report, December 2018, Chapter 3, ACCC, Gas inquiry 2017-2020 interim report, July 2018, Chapter 3, and ACCC, Gas inquiry 2017-2020 interim report, September 2017, Chapter 3,

15 See for example, ACCC, Gas inquiry 2017-2025 interim report, July 2020, Chapter 3, ACCC, Gas inquiry 2017-2020 interim report, January 2020, Chapter 3, ACCC, Gas inquiry 2017-2020 interim report, July 2019, Chapter 3, ACCC, Gas inquiry 2017-2020 interim report, December 2018, Chapter 3, ACCC, Gas inquiry 2017-2020 interim report, July 2018, Chapter 3, and ACCC, Gas inquiry 2017-2020 interim report, September 2017, Chapter 3,

16 ibid.

17 Some of the more notable changes in gas supply agreements that C&I users have identified, which we have also observed, include:

(a) lower load factors, which has reduced the ability of C&I users to manage daily variations in their demand

(b) higher take-or-pay percentages and the removal of banking rights (i.e. the right to 'bank' gas they have paid for but not taken and to use it at a later point in time), which has reduced the ability of C&I users to manage annual variations in demand and imposed greater financial obligations on these users

(c) the reduction or removal of supplier liabilities (with some agreements reportedly providing for limited or no compensation if the supplier is unable to deliver the contracted volumes), which means C&I users are more exposed to the risk that gas will not be supplied on a day and the operational risks that flow from this.

See for example, ACCC, Gas Inquiry 2017-2020 Interim Report, September 2017, Chapter 3, ACCC, Gas Inquiry 2017-2025 Interim Report, January 2020, pp. 68-69 and 77 and ACCC, Gas Inquiry 2017-2025 Interim Report, July 2020, pp. 67-68.

18 Arrow in the case of QCLNG and Santos in the case of GLNG.

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^

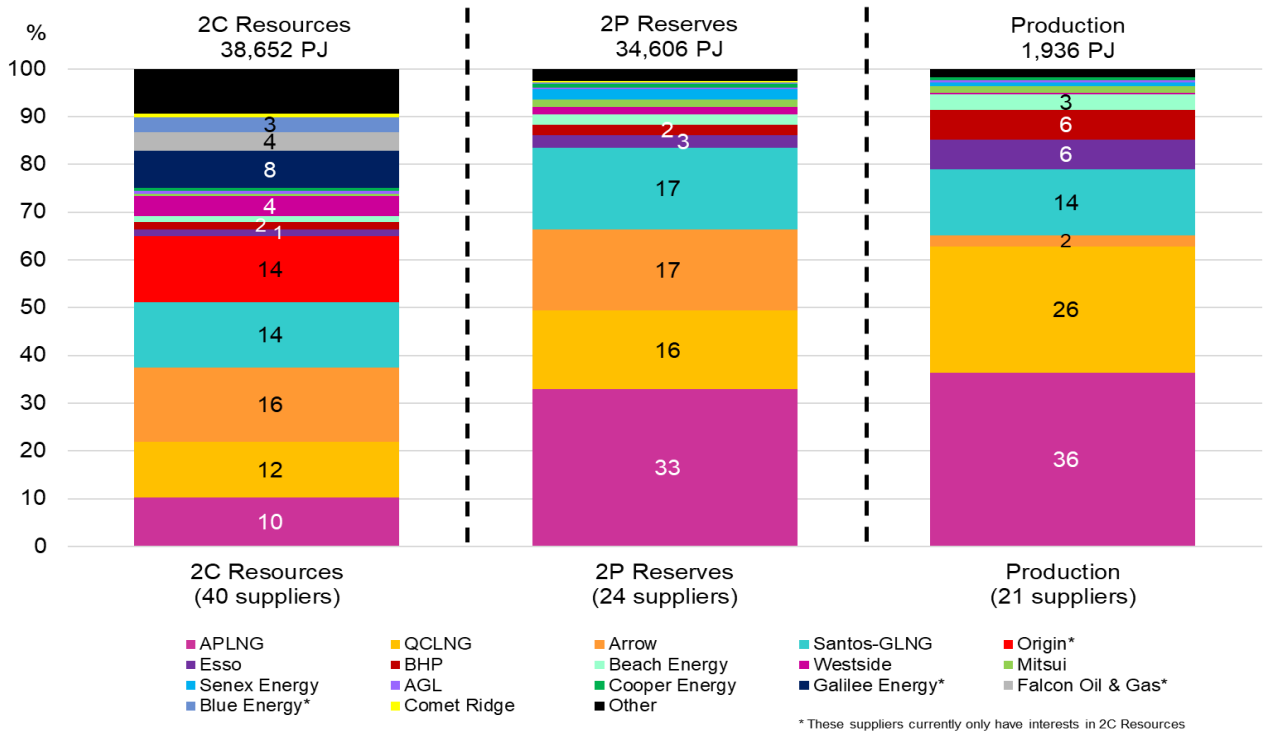
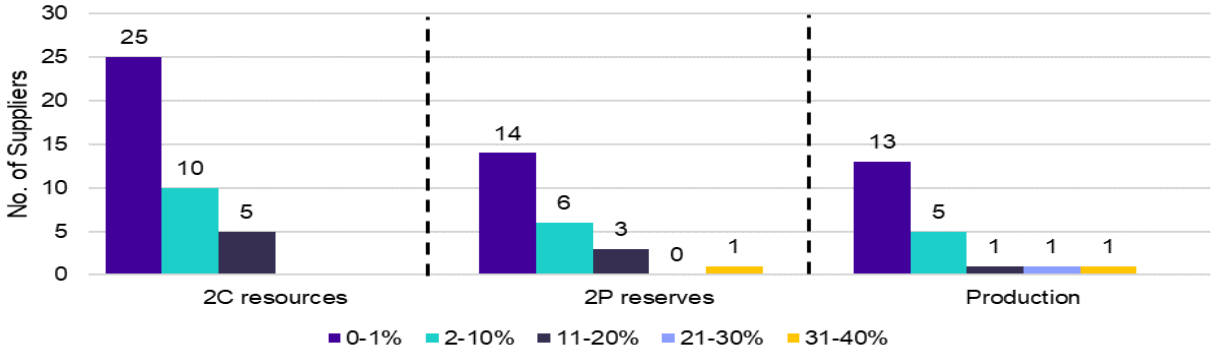


Chart 2.2: Distribution of producers by shares of 2C, 2P and production



Summary	2C resources	2P reserves	Production
Total no. of suppliers	**40** (25 hold less than a 1% interest in 2C resources)	**24** (14 account for less than 1% of 2P reserves)	**21** (13 account for less than 1% of gas produced)
Share held by top 5 suppliers**	**65%** Arrow (16%), Origin (14%), Santos-GLNG (14%), QCLNG (12%), APLNG (10%)	**86%** APLNG (33%), Santos-GLNG (17%), Arrow (17%), QCLNG (16%), Esso (3%)	**89%** APLNG (36%), QCLNG (26%), Santos-GLNG (14%), Esso (6%), BHP (6%)
Share held by LNG producers & associates	**51%**	**83%**	**79%**

* 2P and 2C resource shares based on ACCC analysis of information provided by producers measured as at 30 June 2020.

^ Production shares based on ACCC analysis of EnergyQuest, EnergyQuarterly, 'Australian conventional gas and CSG production' for the 12 months to 31 December 2020, March 2021.

** Numbers may not add up due to rounding.

While not shown in Table 2.1, the degree of concentration in this part of the market is also high when measured on the basis of uncontracted gas, with just 13 producers with uncontracted gas available for sale in 2020, the top five of whom accounted for 83%. The number of producers with uncontracted gas is much lower than the number producing gas because a large number of producers have already sold their current production under medium to longer-term GSAs and so are not in a position to compete to sell gas.

In contrast to 2P reserves, production and uncontracted gas, there is a reasonable degree of diversity in holdings of 2C resources, with 40 producers having an interest in 2C resources as at 30 June 2019-20. This diversity can, in part, be attributed to the actions taken by the Queensland and South Australian governments,[19] which have resulted in a greater number of junior producers being awarded tenements in the last 2-3 years (see **section 3.1** for more detail).

However, as Table 2.1 highlights, the degree of concentration increases significantly as producers transition from holding 2C resources to producing and selling gas. This is not surprising given the significant barriers that producers can face when making the transition (see **section 3.2** for more detail); this can encourage junior producers to enter into JV arrangements or sell their interests to larger producers. That said, a number of junior producers have been able to overcome the barriers in their own right over the last five years. This has tended to occur in cases where:

- the producer acquired tenements that were either already in production, or had previously produced gas and therefore had access to existing upstream infrastructure,[20] or
- the producer was located in close proximity to existing transmission pipelines and entered into arrangements with pipeline operators to develop and operate the upstream and connecting infrastructure on their behalf.[21]

It is possible therefore that some junior producers will be able make the transition from holding 2C resources to producing and selling gas in the future. This is, however, unlikely to be the case for all the producers that hold 2C resources, given a large proportion account for less than 1% of 2C resources, or are located in basins that are not currently connected to the east coast market (e.g. the Galilee, north Bowen and McArthur (Beetaloo sub-basin) basins). Consistent with past trends, the degree of diversity observed in 2C resources holdings is unlikely therefore to be replicated in holdings of 2P reserves, production or uncontracted gas.

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[19] As noted in our January 2021 interim report, the Queensland and South Australian governments have taken a number of steps to encourage more supply, including through the release of more acreage, much of which has been awarded to junior producers.
See for example, Queensland Department of Resources, 'Queensland gas exploration ramping up', 22 September 2020, https://www.dnrme.qld.gov.au/home/news-publications/news/2020/september/qld-gas-exploration-ramping-up and

Dan van Holst Pellekaan MP, 'Successful applicants for Petroleum Exploration Acreage in Cooper and Otway Basins announced', 30 June 2020, https://www.premier.sa.gov.au/news/media-releases/news/successful-applicants-for-petroleum-exploration-acreage-in-cooper-and-otway-basins-announced

[20] For example, Denison Gas acquired Santos and APLNG's Denison Trough assets in 2018, which had existing gas plants and pipelines and was already connected to the Queensland Gas Pipeline. Similarly, Armour Energy acquired Origin's Kincora gas project in 2015, which had an existing gas plant and pipeline connected to Wallumbilla. Central Petroleum and Macquarie Mereenie similarly acquired Santos' interests in the Mereenie gas field in the Amadeus Basin between 2015 and 2017, which had an existing gas plant and was connected to the Amadeus Gas Pipeline.

See https://denisongas.com.au/company-overview-and-strategy/, https://www.armourenergy.com.au/surat-basin and https://centralpetroleum.com.au/our-business/our-licence-areas/amadeus/mereenie-oil-and-gas-field-ol4-ol5/mereenie-joint-venture/,

[21] For example, Senex entered into a contract with Jemena who was responsible for developing and operating the Atlas gas processing plant and a pipeline connecting this plant to the Darling Downs Pipeline. Cooper Energy, on the other hand, entered into a contract with APA to upgrade and operate the Orbost gas processing plant.

See https://jemena.com.au/about/newsroom/media-release/2018/jemena-and-senex-partner-to-fast-track-new-gas-sup and https://openbriefing.com.au/AsxDownload.aspx?pdfUrl=Report%2FComNews%2F20170601%2F01862139.pdf

2.3. Gas may not be brought to market in a timely or efficient manner

Another concern that has been identified through the Inquiry is that some producers may not be bringing gas to market in a timely or efficient manner.

For example, in the three years to 30 June 2020 2P reserves had been written down[22] by approximately 7,800 PJ (~18%), with the majority of the write down occurring in fields controlled directly or indirectly by Arrow, QCLNG and APLNG.[23,24] The extent of the write-down that has occurred is significant and highlights some of the technical challenges producers can face, particularly when developing unconventional sources of gas. As a number of smaller producers have suggested, it may also reflect strategic decisions on the part of some producers to 'bank' or 'warehouse' gas, or to try and maintain or raise prices by withholding supply (see **section 4.5** for more detail).

Another concern that has been raised by smaller producers is that some gas fields may not be large enough to warrant the development of their own upstream infrastructure and may not therefore be developed unless they can access existing infrastructure in the area (see **section 3.2** for more detail). The experience of these smaller producers suggests that it can be very difficult to negotiate access to other producers' infrastructure even where there is spare capacity. The only notable exception is the Moomba production facility, which some smaller producers have reportedly gained access to.[25] There is a risk, therefore, that some gas will not be brought to market even where it would be efficient to do so.

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22 The term 'write-down' is used to jointly refer to reserves downgrades and other downward revisions to reserves.

23 ACCC, Gas Inquiry 2017-2025, January 2021, pp. 17 and 124.

24 This write-down is, as EnergyQuest has previously observed, at odds with the assumed progression of resources, which is that under the right market conditions, contingent resources (or a portion thereof) become commercially viable to develop and are reclassified as reserves. The opposite, however, has occurred in Queensland, with reserves that were previously found to be commercially viable to develop no longer being found to be so.

EnergyQuest, Energy Quarterly, March 2019, p. 14.

25 Senex and Real Energy, for example, have entered into agreements to utilise the Moomba gas processing facility. See Real Energy, Gas Processing and Tie-in Agreements signed with Santos Limited and Beach Energy Limited, 15 October 2018 (https://www.realenergy.com.au/images/2018/v5/2018-10-15_Gas_Processing_and_Tie-in_Agreements_signed_with_SantosBeach_Energy.pdf) and Santos, Santos extends gas processing agreements with Beach and Senex, 10 January 2019 (https://www.santos.com/wp-content/uploads/2020/02/190110-santos-extends-gas-processing-agreements-with-beach-and-senex.pdf).

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

There are a number of structural factors that may impede the development of effective upstream competition and/or the timeliness of supply, including:

- the processes used and timeframes allowed by governments when granting permits[26] to explore for, appraise and produce gas and the processes used to approve, monitor and enforce compliance with work programs
- the geological, land access, environmental, regulatory, commercial and infrastructure related barriers that producers can face when undertaking exploration activities and when moving from exploration into production.

Further detail on these structural factors is provided below, along with a number of specific questions that we are seeking feedback on.

3.1. Government processes

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[27] located onshore and within three nautical miles of the coast. For offshore areas beyond three nautical miles,[28] Joint Authorities (consisting of the responsible Commonwealth minister and relevant state or territory minister) are responsible for these activities.[29] In addition to these activities, state, territory and Commonwealth governments are responsible for approving, monitoring and enforcing compliance with work programs.

As discussed in further detail below, the processes used by governments when releasing acreage for exploration can directly affect the degree of diversity in this part of the market. The timeframes allowed for exploration, appraisal and production and the processes used to approve, monitor and enforce compliance with work programs can also affect the timeliness with which gas is brought to market. It is relevant, therefore, to consider whether any changes could be made to these processes to improve competition and/or encourage more timely supply.

Processes used to release acreage for exploration

The processes used by governments when releasing acreage for exploration will determine which producers initially hold tenements. While the holdings of tenements can change over time through JV arrangements, mergers and/or acquisitions (see **sections 4.1** and **4.2**), the initial grant of exploration permits still has an important influence on the degree of diversity in this part of the market and competition over the medium to longer term.

The processes used and the matters considered by state, territory and Commonwealth governments when granting exploration permits currently differ in each jurisdiction. There are, however, some common features across the jurisdictions, with all jurisdictions conducting competitive processes and evaluating tenderers on the basis of their proposed

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[26] The term 'permit' is used to jointly refer to a permit, authority, license or lease.

[27] The term 'tenement' is used to refer to an area that is subject to a permit, authority, licence, lease, or any other instrument granted by a government that allows the holder to explore for, appraise or produce gas in that area.

[28] In the east coast the only exception to this is Tasmania, which is the sole responsibility of the Commonwealth Minister.

[29] The Joint Authorities are supported by the National Offshore Petroleum Titles Administrator (NOPTA), which is the technical advisor to the Joint Authority and responsible for providing information, assessments, analysis, reports, advice and recommendations to the Joint Authority. They are also supported by the National Offshore Petroleum Safety and Environment Management Authority (NOPSEMA), which is responsible for the regulation of occupational health and safety, structural integrity and environmental management.

work program, financial capacity and technical expertise. A number of jurisdictions also consider the tenderer's past compliance record.

In Queensland, tenderers can also be subject to special criteria. In recent tenders, these special criteria have included the ability of the tenderer to contribute to both a diverse and efficient petroleum and gas industry in Queensland.[30,31] The inclusion of these criteria in the evaluation process and, in particular, the diversity criterion, has coincided with a material increase in the amount of acreage being awarded to junior producers in Queensland in the last three years, including Senex, Central Petroleum, Comet Ridge and Denison Gas.[32]

This is a positive development and highlights the potential for the processes used by governments when releasing acreage to encourage more diversity in this part of the market and a greater degree of competition between producers over the medium to longer term. The inclusion of a diversity criterion in the evaluation process could also address the concern raised in prior reports about the potential for larger producers that already control significant volumes of undeveloped reserves and resources to be granted more acreage and to then 'bank' or 'warehouse' the gas.[33]

Timeframes and processes used to approve, monitor and enforce compliance

Beyond the initial release of acreage, there are a number of actions that governments can take in relation to exploration, appraisal and production permits that can affect the timeliness with which gas is brought to market.

One of the more obvious actions relates to the timeframes allowed for exploration and appraisal activities and for production to commence. In some jurisdictions, the time allowed for these activities is fixed by legislation. In others, the legislation sets out the maximum term allowed for such activities. In those jurisdictions where the legislation specifies a maximum term, governments have a greater degree of flexibility to issue permits for shorter periods of time if they think that gas could be brought to market more rapidly.

We understand that this approach has been used to varying extents in Queensland, with permits issued for shorter terms than those specified in legislation where the acreage was of a high quality. This has resulted in production from a number of projects commencing in a much shorter period of time than would otherwise have been the case. Senex's Atlas project, for example, commenced production just over two years after being awarded the acreage in 2017.[34]

Another option to encourage more timely supply that is available in some jurisdictions is to exercise the discretion governments have to refuse to renew exploration and/or retention permits for a second term.

In addition to specifying timeframes, governments also have a role to play in approving producers' work programs and monitoring and enforcing compliance with these work programs and permits, all of which can affect the timeliness with which gas is brought to market. For example, if a producer is trying to 'bank' or 'warehouse' gas, then it may propose a slower work program than would otherwise be the case. It may also fail to comply with its

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30 See for example, Queensland Government, Petroleum and Gas Bowen-Surat basins Tender: PLR2020-2, 2020.

31 In the last tender conducted in 2020, these two criteria were separately accorded a 15% weighting in the evaluation criteria. Queensland Government, Petroleum and Gas Bowen-Surat basins Tender: PLR2020-2, 2020.

32 Queensland Department of Resources, 'Queensland gas exploration ramping up', 22 September 2020, https://www.resources.qld.gov.au/home/news-publications/news/2020/september/qld-gas-exploration-ramping-up, Ho. Scott Steward, 'First time gas explorer gets green light in world class Bowen and Surat Basins', 3 February 2021, https://statements.qld.gov.au/statements/91399

33 ACCC, Gas Inquiry 2017-2025 Interim report, January 2020, p. 43.

34 The Senex Atlas acreage was awarded in September 2017 and supply commenced in late 2019. See https://www.senexenergy.com.au/wp-content/uploads/2019/10/First-gas-production-at-Project-Atlas.pdf

approved work program if it believes the relevant government is not closely monitoring its activities and/or won't take action for non-compliance.

It is for these reasons that we have previously recommended that governments carefully consider proposed work programs and more actively monitor producers' compliance with these programs and be prepared to take action for non-compliance (including by requiring permits to be relinquished) where appropriate.[35]

Questions for stakeholders

The box below sets out a number of specific questions that we are interested in seeking feedback on in relation to the potential impact of government processes on competition and/or the timeliness of supply.

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.
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?

3.2. Barriers faced by producers

Gas producers can face significant barriers when developing their tenements, which can affect both:

- the number of producers competing to supply gas in the east coast gas market (i.e. because these barriers can result in some producers entering into JV arrangements with other producers, or selling their interests or raw gas to other producers),[36] and
- the timeliness with which gas is brought to market.

Some of the more significant barriers that producers have informed us they can face stem from:[37]

[35] ACCC, Gas Inquiry Interim Report, January 2020, p. 40.

[36] 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.

[37] See for example, ACCC, Gas Inquiry 2017-2025 Interim Report, January 2020, pp. 41-42.

- geological factors, such as the permeability, depth, and tightness of the reservoir and the level of impurities in the reservoir, all of which can affect the commercial recovery of gas
- land access, environmental and other regulatory approval requirements
- commercial factors, such as restrictions on access to capital and the relatively high costs associated with developing tenements
- the infrastructure required to bring the gas to market (e.g. gathering pipelines, gas processing facilities, water treatment facilities for coal seam gas, and pipelines to connect the gas processing facility to market).

Of the barriers listed above, access to capital and infrastructure were the most commonly cited barriers by smaller producers. Further detail on these barriers is provided below.

Access to capital

A number of smaller producers have informed us that it can be difficult to secure debt finance during the exploration stage because there is no guarantee that the project will proceed to production. They also noted that it can take a considerable amount of time to move from exploration to production, during which time smaller producers are generally heavily reliant on equity finance and can be subject to significant financial strain. A number of smaller producers also informed us that it is becoming increasingly difficult to obtain finance for fossil fuel related projects.

While some smaller producers have been able to overcome this barrier and move into the production stage in their own right, others have had to either enter into JV arrangements with other producers, or sell their interests prior to production.

Access to infrastructure

Access to processing and other infrastructure is another significant barrier that smaller producers have informed us they can face when developing their tenements. In some cases, smaller producers have been able to overcome this barrier by contracting directly with infrastructure service providers to develop and operate dedicated infrastructure on their behalf.[38] A variant on this option that is also reportedly being considered by some producers and infrastructure service providers is to develop common user processing and other upstream facilities in areas where there are a number of potential producers.

While these options may reduce the barriers faced by smaller producers, they may not be the most economically efficient outcome and could adversely affect competition where there is existing underutilised upstream infrastructure in relatively close proximity to the tenement. Although access to existing infrastructure may be more efficient in these circumstances, third party access to upstream infrastructure is quite limited at present, with only a small number of facilities currently offering such access.[39]

In the discussions we have had with a number of producers, we have been informed that the inability to access existing infrastructure (or the inability to access such infrastructure on reasonable terms) has resulted in the unnecessary duplication of some processing facilities and other infrastructure. One of the examples cited in this context was the infrastructure that

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[38] For example, Senex entered into a contract with Jemena who was responsible for developing and operating the Atlas gas processing plant and a pipeline connecting this plant to the Darling Downs Pipeline. Cooper Energy, on the other hand, entered into a contract with APA to upgrade and operate the Orbost gas processing plant. See https://jemena.com.au/about/newsroom/media-release/2018/jemena-and-senex-partner-to-fast-track-new-gas-sup and https://openbriefing.com.au/AsxDownload.aspx?pdfUrl=Report%2FComNews%2F20170601%2F01862139.pdf

[39] Some of the facilities that are providing third party access include the South Australian Cooper Basin JV's Moomba gas processing facility, APA's Orbost gas processing facility, Energy Infrastructure Investments' Tipton West and Kogan North gas processing facilities and Jemena's Atlas gas processing facility.

was developed for the Senex Atlas project, with a number of producers stating it would have been more efficient to use QGC's gas processing and water treatment infrastructure around Woleebee Creek than to develop new infrastructure.

In those cases where the tenements were too small to underwrite the development of dedicated infrastructure, the inability to obtain access to existing infrastructure has also reportedly resulted in:

- the failure to develop some tenements
- some producers having to sell either their interests in the tenement, or the raw gas produced from the tenement to the producer that owns the upstream infrastructure.

While in the latter of these cases, gas may still be brought to market, competition will be more limited because the smaller producer will not compete to supply gas to the broader market.

Although access to infrastructure is not a new barrier, a number of producers have informed us that it could pose more of a constraint on the development of gas in the future, given the increasing reliance of the market on more marginal tenements.

Questions for stakeholders

The box below sets out a number of specific questions that we are interested in seeking feedback on in relation to the barriers faced by producers when developing tenements on competition and/or the timeliness of supply.

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? 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.

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

In addition to the structural factors outlined in Chapter 3, there are a number of behavioural factors that may be impeding the development of effective upstream competition and/or the timeliness of supply including:

- JV arrangements
- mergers and acquisitions involving producers and/or individual tenements
- joint marketing arrangements
- exclusivity provisions in GSAs between producers
- decisions by producers about when to develop new sources of supply and to bring gas to market.

Further detail on these behavioural factors and the effect they may have is provided below, along with a number of questions that we are seeking feedback on.

4.1. Joint venture arrangements

JV arrangements[40] are a common feature of the east coast gas market, with over 95% of 2P reserves and 80% of 2C resources held through a JV as at 30 June 2020.[41]

The prevalence of JVs is not surprising given the significant costs and risks that producers can face in the exploration, appraisal and production stages. While we recognise the important role that JV arrangements can play in terms of minimising costs and risks, they may also, in some cases, affect the degree of upstream competition and/or the timeliness of gas being brought to market.

For example, we understand that when JV participants are making decisions on particular projects, these decisions may not just be made by reference to the commercial interests in that particular project, but may also be affected by the relationships the JV participants have in other JVs. We have, for example, been told that when one JV that was considering moving into the production stage, a number of the JV parties wanted to proceed, but one JV party did not. There was reluctance to push the slower JV party because of concern that relationships may be impacted in other JVs with the same parties. This reluctance has reportedly slowed the progress of this project.

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[40] There are generally two forms that JV can take: an incorporated JV or an unincorporated JV. An incorporated JV involves the establishment of a special purpose corporate entity to undertake the JV activity, with each JV party being a shareholder in the company. The terms of an incorporated JV are usually set out in a Shareholders' Agreement and the JV must also comply with the *Corporations Act 2001* (Cth). An unincorporated JV, on the other hand, involves the JV parties coming together contractually through a JV Agreement, with each party owning a percentage interest in the assets of the JV and being responsible for its share of the expenses and product or service generated through the JV.

[41] Some of the more notable JVs in the east coast include:

(a) APLNG, which is an incorporated JV between Origin (37.5%), ConocoPhillips (37.5%) and Sinopec (25%)

(b) QCLNG, which is a JV between Shell (73.75%), CNOOC (25%) and Tokyo Gas (1.25%) comprising both incorporated and unincorporated elements

(c) GLNG, which is a JV between Santos (30%), Petronas (27.5%), Total (27.5%) and KOGAS (15%) comprising both incorporated and unincorporated elements

(d) Arrow, which is an incorporated JV between PetroChina (50%) and Shell (50%)

(e) the South Australian Cooper Basin JV, which is an unincorporated JV between Santos (66.6%) and Beach Energy (33.4%)

(f) the Gippsland Basin JV, which is an unincorporated JV between Esso (~50%) and BHP (~50%).

At a tenement level, a number of these JVs are in JV arrangements with each other or with other producers. For example, APLNG and GLNG are JV partners in a number of tenements, and APLNG and QCLNG are JV partners in a number of other tenements.

This example highlights another difficulty JVs can face in bringing gas to market in a timely manner, which is that development decisions usually require the agreement of all parties. The decision of each party will, however, depend on their individual circumstances. Some JV parties may, for example, be reluctant to invest in the development because they are facing capital or other resource constraints, or in the case of larger producers with interests in a number of other projects, because they are able to earn a higher return on other investments, or because it would improve their competitive position.

Another complexity posed by JV arrangements is that while the contractual arrangements that underpin the JVs will set out the JV parties' agreements, the progress and decisions of the JV will be heavily influenced by who the operator is. We understand that in one JV the operator had interests in a number of other projects that were expected to yield it a higher return, and that in its capacity as operator, it was able to slow the progress of the project to suit its own preferred schedule.

As the preceding discussion highlights, while JVs can play an important role in the market, they may also affect the degree of competition in the market and/or the timeliness with which gas is brought to market. We are therefore interested in obtaining stakeholders' views on possible ways to address these issues. We are also interested in whether greater scrutiny of JV arrangements, particularly by larger producers, may be required under the CCA.

The box below sets out the specific questions that we are seeking feedback on in relation to JV arrangements.

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 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?

4.2. Mergers between producers and acquisitions of tenements

Like JV arrangements, 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.

For example, if a larger producer was to merge with a smaller producer that has just commenced supplying gas to market or acquires the tenement from which gas is to be supplied, it would result in a reduction in suppliers or potential suppliers. It may also result in less timely development of either producers' reserves and resources if the larger producer already has substantial undeveloped reserves and resources (e.g. if the larger producer faces any form of capital or other resource constraint).

While mergers and acquisitions involving larger producers are generally notified to the ACCC through the voluntary informal review process,[42] we understand that a number of other transactions have proceeded to completion in the last five years without ACCC clearance being sought. These transactions involved the acquisition of relatively small producers, small subsidiaries of larger producers and individual tenements.

Questions have nevertheless been raised about the effectiveness of the current merger regime in the upstream segment of the gas market given how concentrated it is, with some C&I users suggesting that changes to section 50 of the CCA may be required, or an industry-specific approach implemented. Some C&I users, for example, have claimed that the substantial lessening of competition test in section 50 may not be appropriate test to use when considering mergers in a highly concentrated market such as the upstream east coast gas market. Others have expressed concerns about the creeping nature of acquisitions of individual tenements by some larger producers.

In contrast to these C&I users, the smaller producers that we have spoken to were unable to identify any specific problems with the current merger and acquisition regime. Some did, however, state that the ACCC should, as a condition of a merger or acquisition, be able to impose supply conditions to ensure that an acquisition did not affect the timing of developments. It is worth noting in this context that there are limits to the ACCC's powers with respect to merger remedies, which may prevent it from using remedies of this type unless they are clearly linked to competition concerns. Merger parties can, however, provide the ACCC with court enforceable undertakings to implement structural, behavioural or other measures that assuage competition concerns the ACCC has identified.[43]

Given the mixed views that have been expressed by C&I users and smaller producers on this issue, we are interested in stakeholders' views on the effectiveness of the current merger and acquisition regime in the upstream segment of the gas market. The box below sets out a number of specific questions we are seeking feedback on. ACCC Chairman Rod Sims recently started a public debate about whether Australia's merger regime remains fit for purpose.[44] Responses to the questions below will be relevant to this debate.

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?

[42] For example, in the last five years the ACCC has considered Beach Energy's proposed acquisition of Origin's Lattice Energy business, Shell's proposed acquisition of BG and APLNG's proposed acquisition of Origin's Ironbark tenement.

[43] ACCC, Merger Guidelines, November 2008 (updated in November 2017), p. 58.

[44] Rod Sims, Protecting and promoting competition in Australia, speech, 27 August 2021. https://www.accc.gov.au/speech/protecting-and-promoting-competition-in-australia

4.3. Marketing arrangements

The marketing arrangements of gas producers can have a significant impact on the level of upstream competition. The discussion that follows separately discusses joint marketing by unincorporated JVs and marketing by incorporated JVs. [45]

Joint marketing by unincorporated JVs

Joint marketing occurs when multiple producers that are in a JV together jointly market their gas rather than separately marketing gas. Joint marketing will often be formalised through contractual arrangements, which restrict parties to the JV from providing separate and competing price offers to customers.

Historically, joint marketing of gas was more common than it is today. More recently, there has been a growing trend for JV parties to separately market gas. For example, the Gippsland Basin JV (see the 'Case Study' in the box below) and Cooper Basin JV have moved to separately marketing their gas in the east coast, as has the North West Shelf JV in Western Australia. The parties to these JVs operate jointly for the purposes of exploration and production, while separately marketing their share of the gas produced.

Case Study: Movement to separate marketing by the Gippsland Basin JV

The Gippsland Basin JV is a JV between BHP and Esso for the production of crude oil and natural gas at the offshore fields in the Gippsland Basin in Victoria. The GBJV was established by BHP and Esso in 1964 and began jointly marketing its gas to customers when it commenced production in 1969.

Concerns about the GBJV's joint marketing arrangements were raised during the ACCC's 2015 East Coast Gas Inquiry. In response, the ACCC investigated the effect of the joint marketing arrangements during the period from 2013 to 2015. The ACCC was concerned the joint marketing arrangements were likely to have resulted in a substantial lessening of competition in the market for the supply of gas to buyers in the southern states. This was because these customers had limited realistic alternatives to source gas and many found they had no other option but to deal with the GBJV and that competition was negatively affected by the elimination of independent rivalry between BHP and Esso.

Following the ACCC's investigation, in 2017 BHP and Esso provided court enforceable undertakings to separately market their share of gas produced under the GBJV from 1 January 2019.

The commencement of separate marketing in 2019 has seen increased competition between the two parties. AEMO has observed BHP and Esso have each increased the volumes of gas offered to the Victorian and Sydney short term spot markets with offers at different prices, and that with prices were coming down over time.[46]

One reason often cited by producers for joint marketing is that separate marketing would require gas balancing arrangements to be established between the parties, which can be difficult, time consuming, and costly.[47] The growing trend towards separate marketing, however, suggests producers (including the GBJV and Cooper Basin JV) have found ways

[45] Because an incorporated JV involves the establishment of a special purpose corporate entity to undertake the JV activity, the marketing of gas is not generally considered to be jointly marketed. Rather, the marketing occurs by the special purpose corporate entity and therefore has characteristics more in line with separate marketing. Although incorporated JVs may not be engaging in joint marketing, their arrangements could still risk breaching competition laws. Unless specified otherwise, references to JVs throughout section 4.3 are not references to incorporated JVs.

[46] https://www.accc.gov.au/speech/overcoming-gas-affordability-issues - Rod's speech of 24 March 2021

[47] While balancing arrangements will vary depending on the requirements of the parties involved, they tend to set out how the parties will respond to particular situations such as one or more parties lifting more than its equity share of gas.

to overcome the issues around balancing arrangements in many cases. This has been aided by the development of a more mature and liquid market in some parts of the east coast than has prevailed historically.

While from a competition perspective, separate marketing will often be preferred, we have, in some instances, authorised arrangements providing for the joint marketing of gas for a specified period of time. More recently, authorisation has been granted to smaller producers (including new entrants) where the quantity of gas to be jointly marketed is relatively small. [48] In the most recent case, which involved the authorisation of joint marketing by the Vali JV for a five year period, we found that joint marketing was likely to result in a net public benefit by enabling earlier development of the Vali field. We also noted that none of the Vali JV parties are currently competing in the east coast gas market.

Although we have recently authorised joint marketing by some smaller producers, the case for doing so for larger producers may be less compelling given the effect such arrangements are likely to have on competition and the improved ability producers have to put balancing arrangements in place.

In this regard, it is worth noting that we are aware that there are some larger JVs in the east coast that are engaged in joint marketing and have not sought authorisation from the ACCC. Without authorisation, parties to these arrangements risk breaching competition laws. Given the potential for these arrangements to restrict competition we intend, as part of this review, to examine these arrangements in more detail.

Marketing by incorporated JVs

Like joint marketing by unincorporated JVs, the arrangements surrounding incorporated JVs may operate to restrict competition in the east coast market.

There are a number of incorporated JVs that supply gas into the domestic east coast gas market, some of which are quite large (see chart 2.1).[49] While these JV arrangements may not involve traditional forms of joint marketing (i.e. because the supply of gas to the market is undertaken through a single entity), they may have similar impacts upon competition as joint marketing by large unincorporated JVs, given the significant share of reserves, resources and production held by these JVs (see chart 2.1).

Given the potential for these arrangements to also risk breaching competition laws, we intend to conduct a closer examination of the arrangements of incorporated JVs as part of this review.

Questions for stakeholders

The box below sets out some specific questions we are seeking feedback on in relation to marketing arrangements.

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[48] For example, the Vali JV (between Vintage Energy, Metgasco and Bridgeport) https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/vintage-energy-ltd-%E2%80%93-vali-gas-joint-venture, and Mereenie JV (between Central Petroleum Mereenie and Macquarie Mereenie) https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/central-and-macquarie-mereenie

[49] Also see footnote 41.

Box 4.3: Questions on marketing arrangements

Unincorporated JVs questions

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):
    - 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.

Incorporated JVs questions

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.
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.

4.4. Exclusivity provisions in GSAs between producers

Exclusivity provisions in GSAs entered into between producers (or between parties in which producers have an interest) can operate in a number of ways to reduce the degree of upstream competition.

These provisions may, for example, have the effect of preventing the selling producer from selling gas from a particular area to anyone other than the buying producer. They may also afford the buying producer with a first or last right of refusal to procure any additional gas produced by the selling producer from that area.[50] These types of provisions can therefore, intentionally or unintentionally, result in the removal of the selling producer as a competitor from the market, or otherwise limit their ability to compete to supply gas in the market. Depending on the nature of the exclusivity provision and its effect on competition, it may be contrary to a number of provisions in the CCA.[51]

[50] Typically if the buyer has such a right, the GSA will also include a 'most favoured customer' clause where the seller guarantees the buyer will be offered a price for additional gas that is capped at the price offered to other potential buyers.

[51] It may, for example, be contrary to section 45 of the CCA, which prohibits contracts, arrangements or understandings that have the purpose, effect or likely effect of substantially lessening competition. It may also be contrary to the exclusive dealing provisions in section 47 of the CCA.

Information available to the ACCC indicates that these types of exclusivity provisions are not particularly prevalent in the east coast gas market, and appear to be an exception to general marketing practices. That said, we have identified a small number of GSAs that contain these provisions. The GSAs we have identified provide for the supply of material volumes of gas, with the selling producer in each of these arrangements restricted, to varying extents, from selling the gas produced in the area to anyone other than the buyer.

Given the potential for these arrangements to restrict competition, we will be closely reviewing these GSAs and considering, more generally, the impact that exclusivity provisions can have on upstream competition.

The box below sets out a number of specific questions on exclusivity provisions that we are seeking feedback on.

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?
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.

4.5. Decisions about when to develop new sources of supply

As noted in section 2.2, concerns have been raised throughout the Inquiry that some producers may not be bringing gas to market in a timely or efficient manner. While there are a number of technical and commercial factors that can affect when a field comes online, strategic considerations may also be a factor. It may, for example, reflect decisions on the part of some producers to 'bank' or 'warehouse' gas, as a number of smaller producers have suggested.

One small producer in Queensland, for example, has previously told us that it is "being prevented from developing its current modest reserves and resources due to the adjacent permit holder…not progressing their existing government approved…projects, for apparently global strategic reasons". [52] Another small producer noted that one of the main barriers to the commercial recovery of its 2C resources is that its JV partner, which is a larger producer, is "not motivated to pursue a larger development".[53]

There are, as these statements suggest, a number of reasons why larger producers may want to 'bank' or 'warehouse' gas. A larger producer may, for example:

- have access to sufficient reserves to meet its existing supply obligations but want to keep some as 'insurance' in case other fields fail to perform in the manner expected
- be able to access cheaper gas to meet its supply obligations
- be subject to some form of internal resourcing or capital constraint, which means it has to prioritise the development of other projects (including international projects).

[52] ACCC, Gas Inquiry 2017-2025 Interim Report, January 2020, p. 40.

[53] ibid.

Larger producers may also have an incentive to 'bank' or 'warehouse' gas to maintain or raise prices.

While there is no evidence at this stage that producers are trying to withhold supply to maintain or raise prices, we will examine this further as part of the review. In so doing, it will be important to distinguish between whether a producer is intentionally withholding supply to maintain or raise prices, or if the development of new sources of supply is being constrained by technical or other commercial factors.

As to the potential ways in which this type of behaviour could be addressed, we have previously suggested that, where it is feasible to do so, governments should consider discouraging larger producers from 'banking' or 'warehousing' gas by, for example: [54]

- requiring permits to be relinquished if they do not comply with approved work programs
- not granting new acreage to producers that already control significant quantities of undeveloped reserves and resources.

The box below sets out a number of specific questions on supply related decisions that we are seeking feedback on.

Box 4.5: Questions on decisions on when to develop new sources of supply

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?
30. If gas is being 'banked' or 'warehoused' how do you think this should be addressed?

[54] Ibid, p. 43.