AUSTRALIAN COMPETITION & CONSUMER COMMISSION

Review of upstream competition and timelines of supply: Issues Paper

Attachment 1: Response template due 15 October 2021

Stakeholder name: Vintage Energy Ltd

	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.	The gazettal process is too slow in some jurisdictions, delaying exploration and potential discoveries
2.	Should governments explicitly consider diversity and efficiency, or the potential impacts on competition, when awarding acreage? If not, please explain why not.	It is good for governments to explicitly consider diversity and efficiency when awarding acreage but care must be taken not to overdo this at the expense of companies with a good track record, which already have acreage and are actively and efficiently exploring and can expand their operations. There are usually operational efficiencies available when operating more than one Permit.
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.	(a) As a rule, frontier acreage takes much longer to explore than acreage close to existing infrastructure. This is because, by definition, there has been very little exploration of the frontier acreage and building an understanding of the acreage requires many exploration activities and extensive analysis and interpretation of the data obtained from those activities. Usually, acreage that is considered high quality has already had considerable money spent on it because it is close to existing discoveries and existing infrastructure but was previously relinquished due to running into time/money constraints or because it was perceived at the time as not quite as promising as the surrounding acreage. Similarly, new play concepts take time to develop. Time has been allowed and should continue to be allowed for the concepts to be developed, as long as exploration is being progressed. (b) Work programs should be monitored and complied with, but exploration involves

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		a large number of unknowns so it is very likely that the work program submitted for a gazettal round will require adjustment as exploration activities are conducted and data analysed. There should be flexibility in the government laws/regulations to recognise and adjust the work programs to suit the results of the data collected.
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?	Given the current backlash against fossil fuel companies and the difficulties in gaining social licence for exploration activities in many jurisdictions, any assistance that governments could give to encourage small/new exploration companies to take up acreage would be beneficial to finding more gas. Offering an efficient 'one-stop-shop' for all regulatory approvals is one good example of easing the exploration pathway. Governments could consider "over the counter applications" for frontier acreage. Allowing this may speed up assessment of these areas
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?	Dot point 1 – speed up the gazettal process for relinquished acreage and streamline the environmental and regulatory approvals. This does not mean that the standards should be dropped, rather that the approval process should be

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	• access to capital and other commercial barriers? • access to infrastructure?	handled as a unit, with one regulator responsible for seeing the process through to an efficient, satisfactory conclusion. The process in some states is much better than others. Dot point 2 – The average exploration company that takes on debt to finance the exploration stage is not going to be in business very long. Due to the risks and uncertainties in oil and gas exploration, it is never considered sensible to raise exploration funds via debt. This should only be considered when a discovery has been made. Dot point 3 – In other parts of the world, once infrastructure has been fully depreciated or cost recovered then excess capacity is made available to third parties at a reasonable cost. This should be considered in Australia, as access to infrastructure and negotiating that access can be very difficult and drawn out.
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?	Yes
8.	Are there other ways to improve third party access to upstream infrastructure on reasonable terms?	The model of allowing access to infrastructure at a cost just below other alternatives should be discouraged – rather it should be fair and reasonable for both parties
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.	
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?	Onshore Australia it is often the smaller exploration companies which discover new gas provinces, for the simple reason that they cannot compete with the bigger companies when bidding on acreage in the more established gas provinces, so

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	If so, please explain what they are and how they may affect upstream competition and/or the timeliness of supply.	they need to think outside of the box, on the fringes. However, the costs and risks involved in exploration usually require small exploration companies to explore in a group as an unincorporated Joint Venture. This allows each company to spread their money and their risks over more than one Permit. Thus Joint Ventures are essential to exploration and exploration discoveries. Once a JV of small companies has made a discovery it can be beneficial to the JV to have a larger company join the JV. The larger company will often carry much of the costs to get the JV to production, to earn their interest in the JV. In these cases the smaller companies are rightly wary of being voted into additional costs to which they are required to contribute. Such costs might be beyond their financial capacity, causing financial hardship. For this reason, small companies often make it a JOA requirement that large capital cost development projects require unanimous JV agreement. Unfortunately, the unanimous requirement outlined above means that any company in the JV is able hold up a development decision if they find they lack the financial resources or have other priorities.
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.	

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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?	
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): • what they are • how they may effect upstream competition and/or the timeliness of supply	

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	• 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.	The Vali field example cited in the Issues Paper is a good example where the JV partners are all new producers and there are definite benefits to aggregating gas volumes into a marketable amount. This will add competition to the East Coast gas market and achieve efficiencies in negotiations with infrastructure operators and prospective customers.
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.	
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	Normally a producer will only agree to exclusivity provisions in a GSA if it assists the sale process or secures a surety of price for excess gas or builds a long-term

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	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?	relationship with a customer or any combination of these factors.
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.	Our current experience is that there are a number of potential customers if a producer can get their gas to a distribution hub, so the healthy competition should lead to a good GSA. This suggests that ACCC intervention is unnecessary.
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?	
30.	If gas is being 'banked' or 'warehoused' how do you think this should be addressed?	