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By email: gas.inquiry@accc.gov.au

Westside Submission - ACCC review of upstream competition and the timeliness of supply: Issues Paper

Westside Corporation (**Westside**) welcomes the opportunity to provide a submission on the *ACCC review of upstream competition and the timeliness of supply: Issues Paper* (the **Issues Paper**) released by the ACCC on 15 September 2021.

About Westside

Westside is an established oil and gas explorer and producer and has a range of exploration, development and producing projects in Queensland and New Zealand. In Queensland, Westside is the operator of its key production and development assets – the 'Greater Meridian' field – and its exploration and appraisal projects, ATP 769 and ATP 688. The Greater Meridian field is operated with our joint venture partner Mitsui E&P Australia Pty Ltd. Westside is also the operator of exploration project ATP 2047, targeting coal-seam and conventional gas which is held in a 50-50 joint venture with Australia Pacific LNG Pty Ltd. In New Zealand, Westside operates a conventional oil and gas exploration and production portfolio – the 'RKM Fields' – located south of Hawera, in the Taranaki Basin.

Executive Summary

Westside has been selling gas into the east coast domestic market for over ten years and continues to produce and sell gas into this market, therefore we are relatively well placed to comment on the competitive state and supply that exists in the east coast market.

Westside considers the east coast market to reflect key characteristics consistent across global oil and gas operations that should be considered first in any industry or market review, and these include:

1. Resource exploration and appraisal is high risk and expensive to undertake;
2. Significant up-front capital is required to develop fields and includes considerable construction risk, with coal seam gas also subject to continued investment in drilling to maintain production; and
3. Field development returns are assessed over a long term and require a deep and stable market to ensure product can find a relevant customer.

To address the inherent risk in exploring, developing and appraising a field it is common practice for joint venture arrangements to be entered into to share access to financial, technical and infrastructure resources whilst reducing an individual proponent's exposure to potential commercial downside over the life of a field. Westside considers it unsuitable for regulation to intervene in these arrangements in a latter phase of field development when these arrangements are designed to consider field development from inception to abandonment. Associated with joint venture arrangements, joint marketing arrangements can be necessary to meet the alignment of field development plans between joint venture parties and are therefore designed to bring gas supply to market efficiently.

Westside acknowledges that consistent, secure and competitively priced energy is central to supporting the Australian economy and the everyday lives of Australians. Overall, it is Westside's observation that the east coast gas supply and demand market works efficiently and effectively to meet these basic energy requirements. Westside's submission addresses specific aspects of the Issues Paper (with the aforementioned in mind), focusing on those areas that our business has experience in and can provide relevant insights for the ACCC's consideration.

Comments on the Issues Paper

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 mayhave 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. *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?*

There are a range of challenges that producers are required to overcome when seeking to explore for, appraise and develop a gas resource. In particular, the timeframes for granting permits can be lengthy, and the multiple (and sometimes duplicated) approvals processes contribute to these timeframes. Assisting speed of development through decreased approvals timelines and the number of approvals from different governing bodies (while ensuring a robust regulatory regime remains in place) would reduce impediments to the flow of more gas.

Westside considers that a way to assist with the regulatory process is through centralised case management of the tenure approvals process. A case manager should be the single point of contact for the company and all government departments. This cooperation and alignment between the various government deparments would assist with the approvals process and therefore timeliness of supply.

Westside has been involved in Queensland's tender process which has in some instances been subject to special criteria including domestic reservation. Westside supports the inclusion of these criteria in the area of new acreage releases, however it does not support retrospective application of regulation or criteria on acreage that has already been released as this can have a material change to the commercial landscape that projects and project capital has been historically allocated.

Barriers Faced by Producers

4. *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?*
5. *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?*

6. *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?*

There are a number of barriers gas companies must face in bringing gas to market, such as geological constraints, commercial factors associated with long term market pricing and customer creditworthiness demand size, access to infrastructure and upfront capital expenditure required as well as navigating and completing the regulatory approvals processes (as noted above).

In particular, considerable time and cost is required to effectively appraise areas especially given the issues with raising debt finance when a permit is not in production. This presents an opportunity for NAIF-type funding arrangements to provide debt capital with a greater risk appetite as it considers broader social and economic consequences in its lending criteria.

Westside considers that there are a number of initiatives that could be introduced to bring gas to market earlier and increase supply, including:

Tax Opportunities	▪ Further government support for investment in both infrastructure and technology, including specific research and development incentives for technology and carbon reduction in the gas industry; ▪ Stable tax regimes including state royalties and federal tax policy; and ▪ Limits on government charge increases, for example council rates and tenure licenses.
Regulatory Opportunities	▪ Better data release provisions for geoscience data, for example, compulsory release of all seismic data across all tenures (both mining and gas) after a certain period of time to assist in appraisal and development and reduce costs for explorers/producers; ▪ Centralised project case management within government of the tenure approvals process (as noted above); and ▪ Permitting the importation of low-cost equipment, such as drilling rigs, built to internationally recognised standards into Australia without the requirement for expensive modifications.
Capital Opportunities	▪ NAIF-style funding for small cap producers that can accept a higher risk profile than other financial lenders and take into consideration broader social benefits when assessing the commerciality or return of a lending facility than a private enterprise may adopt.

With regard to third party access to transportation and processing infrastructure, Westside has in recent times utilised pipeline capacity through auction services provided by infrastructure owners to deliver gas to the domestic market. However, Westside does not see the benefit in a similar opening of access extending to other privately held assets of producers. Field infrastructure is developed with consideration for full field development and imposing third-party access on infrastructure designed for a certain field plan and specification may have significant long-term commercial implications that were not considered at the time an investment decision is made and impact production capability. Westside suggests that commercial negotiation should prevail which will give rise to third-party access whilst meeting field development and technical parameters that may exist.

Joint Venture Arrangements

7. *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.*
8. *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?*
9. *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?*
10. *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.*
11. *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.*
12. *Is any other form of oversight of JV arrangements required?*

Joint venture arrangements play a critical role in the oil and gas industry given the high risk nature that resides in exploring for and ideally developing a resource. Oustside of risk sharing, joint venture arrangements have multiple benefits, some of which include reducing overall costs and improving timeliness of supply through shared access to financial, technical, infrastructure and other resources which may bring gas to market faster. The ACCC notes in the Issues Paper that the “prevalence of JVs is not surprising given the significant costs and risks that producers can face in the exploration, appraisal and production stages”.

Given this, as well as the already lengthy process involved in developing gas and bringing gas to market, Westside does not consider that there are measures that should be put in place or the requirement for mandatory notifications regarding JV arrangements. Westside does not consider intervention appropriate in joint venture arrangements given these arrangements address the material risk involved indeveloping an oil and gas field through to providing legal and commercial considerations for bringing the saleable resource to market. In place of regulation, it is incumbent on respective venture parties to complete appropriate due dilligence on their counterparties to understand their capability and field development plans to determine if gas can be brought to market in a timely manner and deliver appropriate returns.

Marketing Arrangements

13. *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.*
14. *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.*
15. *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.*

Joint marketing can be necessary for joint venture alignment of field development and bringing reserves to market. Westside notes that the three separate marketing arrangements outlined by the ACCC in the Issues Paper are later life assets with a limited path for significant future development. In these circumstances, the risk and other associated aspects of separate marketing are reduced and arguments for separate marketing can be more appropriately managed, particularly given the removal of significant appraisal and development cost of a field.

Joint marketing arrangements allow participants to sell meaningful quantities of gas to market, where this may not otherwise be the case. This arrangement has allowed Westside on behalf of the joint venture participants to market meaningful volumes of gas available to the domestic market which would otherwise be too small to undertake regular marketing. Whilst Westside recognises that by jointly marketing there are less suppliers offering gas to the market, it should be recognised that this arrangement has brought more supply volume to market (in marketable sizes) which should be the first priority of any supply review as this will lead to greater competition.

The ACCC notes in the Issues Paper that "upstream competition is not effective", however this has not been Westside's experience. Over the course of the last five years, Westside has participated in a number of tenders to sell domestic gas; in some instances Westside has been successful and in others unsuccessful as would be expected in a competitive pricing and supply landscape.

Exclusivity provisions

16. *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?*
17. *If exclusivity provisions are restricting competition, how should this be addressed?*
18. *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*

Westside currently holds a GSA that includes exclusivity provisions over a section of the Greater Meridian field. This arrangement has allowed Westside to source senior secured debt finance, which would not have otherwise been available. The ability to source debt is due to the credit worthiness of the GSA counterparty, the tenor of the GSA arrangement, and the flexibility in the nomination process to manage the risk of field development. These contractual and commercial properties have not been encountered by Westside with potential domestic customers.

The expansion of the Greater Meridian field has been underpinned by the GSA in place, which has ultimately allowed the joint venture participants to bring additional gas to the domestic market and improve east coast gas competition.

It has not been Westside's experience that exclusivity provisions have limited competition in the east coast domestic market. As noted above, it is Westside's experience that such arrangements have ultimately brought more gas to market, including for the domestic market. Accordingly, Westside does not consider it necessary for the ACCC to introduce additional regulation in this area.

Thank you for the opportunity to provide these submissions.

Yours sincerely,

[redacted]

Matt Wallach
Chief Executive Officer
Westside Corporation