Review of upstream competition and timelines of supply: Issues Paper

Attachment 1: Response template due 15 October 2021

Stakeholder name: CNOOC Gas and Power (Aus) Investment Pty 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.	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on government processes in relation to timeliness of supply. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly.
2.	Should governments explicitly consider diversity and efficiency, or the potential impacts on competition, when awarding acreage? If not, please explain why not.	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on government processes in relation to this question. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly
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.	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on government processes in relation to this question. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly

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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?	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on government processes in relation to this question. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly
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?	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on barriers that producers may face which may affect the timeliness of supply. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly.
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?	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on barriers that producers may face which may affect the timeliness of supply. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly.
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?	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on barriers that producers may face which may affect the timeliness of supply. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly. From CNOOCs understanding from discussions with the operator requiring the QCLNG project to offer spare capacity would have adverse impacts to meeting our long-term supply commitments.
8.	Are there other ways to improve third party access to upstream infrastructure on reasonable terms?	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on barriers that producers may face which may affect the timeliness of

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		supply. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly.
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.	Allowing for 3rd access to spare capacity at the LNG processing facility would have the opposite impact to this ACCC inquiry hopes to achieve. It would mean that decrease competition in the upstream and cause supply constraints in the domestic market. The domestic market participant may choose to remove their excess gas available for domestic sale and choose to export LNG overseas. In addition to the above; as our (Train 1) facility is operating at almost full capacity, it would be impossible to offer any spare capacity to upstream market participants, however as the non-operator of the QCLNG project, CNOOC is unable to fully confirm these points.
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.	CNOOC would like to address some of the concerns laid out in this section. QGC began producing and selling unconventional gas from 2006; and, there were existing agreements in place with a relevant commercial structure that were agreed to even after CNOOC bought into the project in 2010 (when we bought into the project with a 5% interest and then in 2013 where we increased our interest to 25% of the QCLNG JV and 50% equity interest in Train 1) CNOOC & QGC are bound by the current agreements in place, and as the non-operator; CNOOC has no intention to equity lift and markets its own gas. CNOOC bought into the project with an interest to produce & sell LNG, however we committed via our aggregator (WCSG) to sell gas to the domestic market in line the HoA. We support (as a 25% owner of) WCSGs endeavour to supply the domestic on competitive market terms

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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?	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on any measures noted in this question. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly.
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?	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on mergers JV contractual arrangements. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly.
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.	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on ways to level the playing field between large & small producers as we do not have a competition business in the domestic market to sell gas; nor do we have any interest in doing-so.
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.	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on any notification requirement. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly.
15.	Is any other form of oversight of JV arrangements required?	CNOOC do not feel any further oversight from the ACCC is required. JV arrangements are complex agreements negotiated between the parties involved. They are and have been a normal way to operate oil & gas agreements worldwide; that being said CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment further on this topic. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly.
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?	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on mergers and acquisitions of individual tenements. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly.

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17.	Do you think the current merger regime has been working effectively to date? If not, please explain why not.	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on mergers and acquisitions of individual tenements. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly.
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?	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on mergers and acquisitions of individual tenements. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly.
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 • any measures that may be able to address them.	CNOOC would like to address concerns in the case study the ACCC provided in the Issues paper. The GBJV between BHP & ESSO was formed in 1964 and production began in 1969. It allowed for over 44 years of information sharing, knowledge transfer, and market acumen to be shared between the two parties. CNOOC does not have its own domestic gas marketing capability on East Coast Australia as it invested on the basis that this was an obligation of the operator. To request CNOOC do such a task would be very difficult as it would contradict the original agreement we signed with our JV party. It would also be a very difficult and costly task that would lead to higher domestic prices due to the costs involved setting up a domestic gas marketing capability function. JV Agreements and Joint Marketing Agreements greatly reduce capital requirements for the individual participants allowing for the resources to be developed into sources of supply in the gas market. Without the individual participants entering into these JVs & Joint Marketing Agreements these resources may never have been able to be access and supplied into the market.
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.	Attempting to implement a gas balancing arrangement at an upstream level for an already complex JV on top of the LNG balancing arrangement at our Train facility would be almost impossible task to implement and manage for our small team. It

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		would require significant manpower and resources to our team which would only have adverse impacts to the domestic gas prices. The various delivery points available to the QCLNG project add significant complex to commercial sensitivity as all the QCLNG JV participants would know (at any given point) what volume is being sold from each individual delivery/receipt point. This commercially sensitive information can't be kept confidential as the operator has full oversight of the jointly owned facility, and would end up diluting true competition.
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.	Without speaking for other JVs - in our case, QGC was the original and sole participant of the QCLNG project. We (CNOOC) elected to buy into the project that had an existing commercial agreement in place (from Upstream GSAs to aggregators to the domestic market and/or LNG train facilities. Our circumstance is an excellent example or needing a joint marketing arrangement (as is our case with WCSG) where CNOOC is unable to procure the manpower to take on operational responsibility of our share of the QCLNG project, nor is it willing to do so as it is not in our business plan. It would be near impossible to keep commercially confidentially information from our joint venture participant which would dilute competition in the upstream market and add unnecessary costs where they aren't needed.
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.	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on competition laws surrounding unincorporated JVs. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly

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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.	No
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.	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on competition laws surrounding this topic. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly
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?	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on exclusivity provisions and claims that they restrict upstream competition. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly.
26.	If exclusivity provisions are restricting competition, how should this be addressed?	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on exclusivity provisions and claims that they restrict upstream competition. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly.
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.	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on exclusivity provisions and claims that they restrict upstream competition. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly.

	Questions	Feedback
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?	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on decisions to develop new sources. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly.
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?	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on decisions to develop new sources. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly.
30.	If gas is being 'banked' or 'warehoused' how do you think this should be addressed?	CNOOC (as the non-operator of the QCLNG project) is not in a position to be able comment on decisions to develop new sources. QGC/Shell is the Operator of the QCLNG project and may be able to answer this much more directly.