Draft Determination and interim authorisation

Application for authorisation lodged by
Vintage Energy Ltd on behalf of itself, Metgasco Ltd and Bridgeport (Cooper Basin) Pty Ltd
in respect of joint marketing and supply of natural gas produced from the Odin field
Authorisation number: AA1000632

16 February 2023

Commissioners: Keogh
Brakey
Carver
Lowe

Summary

The ACCC proposes to grant authorisation to Vintage Energy Ltd, Metgasco Ltd and Bridgeport (Cooper Basin) Pty Ltd (together, the Odin Gas Producers) to:

- **jointly market natural gas from the PRL 211 and ATP 2021 Odin field (Odin field), a prospective gas field, for a period of five years, and**
- **give effect to gas supply agreements (GSAs) with customers for the supply of gas from the Odin field that contain common terms and conditions (including price) and a maximum gas supply term of 15 years.**

The ACCC considers that the proposed joint marketing is likely to enable the earlier development of the Odin field to bring this new source of gas supply to customers sooner than otherwise. The ACCC considers that this is likely to be a public benefit given the forecast gas supply shortage on the east coast of Australia in 2023. However, the amount of gas resources at the Odin field is relatively small. The ACCC also considers the proposed joint marketing is likely to result in a small public benefit in the form of reduced transaction costs in commercial negotiations for the Odin Gas Producers, commercial and industrial customers, and gas processing/transmission pipeline operators.

The ACCC has considered whether the proposed joint marketing is likely to result in public detriment by enabling the Odin Gas Producers to supply gas at higher prices or on less flexible terms than they would otherwise offer. The ACCC's preliminary view is that the joint marketing would not materially enhance the Odin Gas Producers' ability to supply gas on less favourable terms because the annual quantity of gas estimated to be jointly marketed from the Odin field represents a very small proportion of the total annual east coast market gas demand. Given the small volume of gas to be jointly marketed from the Odin field, the ACCC considers the Proposed Conduct is unlikely to have any significant impact on the market dynamics of the east coast gas market, including gas prices.

Overall, the ACCC considers that the proposed joint marketing is likely to result in a net public benefit and proposes to grant authorisation as outlined above.

The ACCC will seek submissions in relation to this draft determination by 3 March 2023 before making its final decision.

1. The application for authorisation

1.1. On 22 December 2022, Vintage Energy Ltd (**Vintage**), on behalf of itself, Metgasco Ltd (**Metgasco**) and Bridgeport (Cooper Basin) Pty Ltd (**Bridgeport**) (together, the **Odin Gas Producers**), lodged application for authorisation AA1000632 with the ACCC to engage in joint marketing and sale of natural gas produced from the Odin gas field (**Odin field**).[1]

1.2. The application was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). The ACCC may grant authorisation which provides businesses with protection from legal action under the competition provisions in Part IV of the Act for arrangements that may otherwise risk breaching those provisions but are not harmful to competition and/or are likely to result in overall public benefits.

[1] The Odin field lies within the PRL 211 and ATP 2021 licence areas, as mentioned in paragraph 2.1 below.

1.3. Vintage also requested interim authorisation to enable the Odin Gas Producers to begin jointly marketing and entering into conditional gas supply agreements (**GSAs**) with customers for the sale of gas from the Odin field and supplying minor quantities of gas to customers on a fully interruptible basis. The request for interim authorisation is discussed in more detail in Chapter 6.

The Proposed Conduct

1.4. Vintage is seeking authorisation to enable the Odin Gas Producers to jointly market and give effect to GSAs with common terms and conditions (including price) relating to the supply of gas from the Odin field to customers (the **Proposed Conduct**). The Odin field is a prospective gas field in the early stage of development and owned by the Odin Gas Producers in accordance with the Petroleum Retention Licence 211 (**PRL 211**) Joint Venture and the Authority to Prospect 2021 (**ATP 2021**) Joint Venture.

1.5. The Proposed Conduct does not impact on the marketing arrangements of the Odin Gas Producers (or any of their related parties) in respect of gas produced from other fields (including the Vali gas field, referred to in paragraphs 2.3-2.5 below), or gas produced from exclusive (sole risk) operations in the Odin field (if any).

1.6. The Odin Gas Producers seek to engage in joint marketing for five years, and to give effect to GSAs entered into during this five-year period which may have supply terms up to and including until 2043 (i.e. maximum gas supply term of 15 years, inclusive of renewals).[2]

1.7. Under the Proposed Conduct, Vintage would, in its role as the marketing and sales agent, identify and negotiate with prospective customers for the Odin gas, draft and prepare contracts for the sale of the gas and report to the other Odin Gas Producers monthly in connection with these services and the quantity of gas sold.[3]

The Odin Gas Producers

1.8. Each of the Odin Gas Producers is an oil and gas exploration and production company in Australia.[4] Vintage and Metgasco are ASX listed companies, and Bridgeport is a wholly owned subsidiary of an ASX listed company.[5]

1.9. The Odin Gas Producers do not currently produce or sell natural gas in Australia. Although, they expect to be able to supply first gas from the Vali field (jointly owned by them under the ATP 2021 Joint Venture) in early 2023 (see paragraphs 2.3-2.5).

Rationale

1.10. Vintage submits that the Proposed Conduct would:

- expedite the investment decision to develop the new Odin field, and enable the first supply/flow of gas from the Odin field to occur sooner than otherwise
- increase gas supply from the Odin field (as the Odin Gas Producers would have aligned intentions in developing and maximising gas extraction from the field)

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2 Vintage submits that these GSAs may be entered into in a staggered manner within the 5-year period (see paragraph 4.33 below).

3 Vintage's submission in support of application for interim and final authorisation, p.11.

4 A list of all oil and gas tenements held by each of the Odin Gas Producers (or their parent company) is available on pp.4-5 of Vintage's submission in support of application for interim and final authorisation.

5 New Hope Corporation Limited.

- enable greater competition with existing major gas suppliers which would contribute to downward pressure on pricing
- enable aggregation of a larger volume of gas for sale to major customers than each of the Odin Gas Producers can sell alone, and provide customers with long-term supply certainty, and
- achieve cost savings and efficiencies for prospective customers and for relevant pipeline transmission operators, as they would not have to negotiate and manage separate GSAs with each of the Odin Gas Producers.

2. Background

The Odin field

2.1. The Odin field straddles PRL 211 (a 98.49 km^2 retention licence which lies in the South Australian Cooper Basin) and ATP 2021 (a 370km^2 exploration licence located in the Queensland Cooper/Eromanga Basins). Both PRL 211 and ATP 2021 are jointly owned between the Odin Gas Producers in the following proportions: Vintage 50%; Metgasco 25%; Bridgeport 25%.[6]

2.2. In announcements to the ASX, Vintage indicated that the Odin field has been independently certified to hold gross 40 petajoules (PJ) of 2C Contingent Resources (i.e. quantity of gas estimated to be potentially recoverable from known accumulations but which are not currently considered to be commercially recoverable due to one or more contingencies).[7] Vintage submits that it anticipates the full development of the Odin field will yield a small quantity of gas to be jointly marketed and supplied, and such quantity is a very small percentage of the annual gas demand in the east coast gas market.

Related authorisation – Vali gas field

2.3. In May 2021, the ACCC granted authorisation AA1000538 for the Odin Gas Producers to engage in joint marketing and supply of natural gas from the Vali gas field on common terms and conditions (including price). The Vali field is a new gas field located to the east of the Odin field and is wholly within the licence area of ATP 2021.

2.4. According to Vintage's ASX announcements, the Vali field has been independently certified as having proved and probable gas reserves of 101 PJ.[8]

2.5. As at the date of this draft determination, a pipeline is being constructed to connect the Vali field to the Moomba gas gather network at Beckler, South Australia (the **Vali-Beckler pipeline**) and first gas is expected to flow from the Vali field in early 2023.

2.6. Given the proximity of the Odin field to the Vali field, the Odin Gas Producers have designed the Vali-Beckler pipeline to pass by the Odin field[9] and wish to use that pipeline to transport gas from the Odin field in the future once they have completed

[6] The historical ownership of PRL 211 and ATP 2021 is outlined on p.6 of Vintage's submission in support of application for interim and final authorisation.

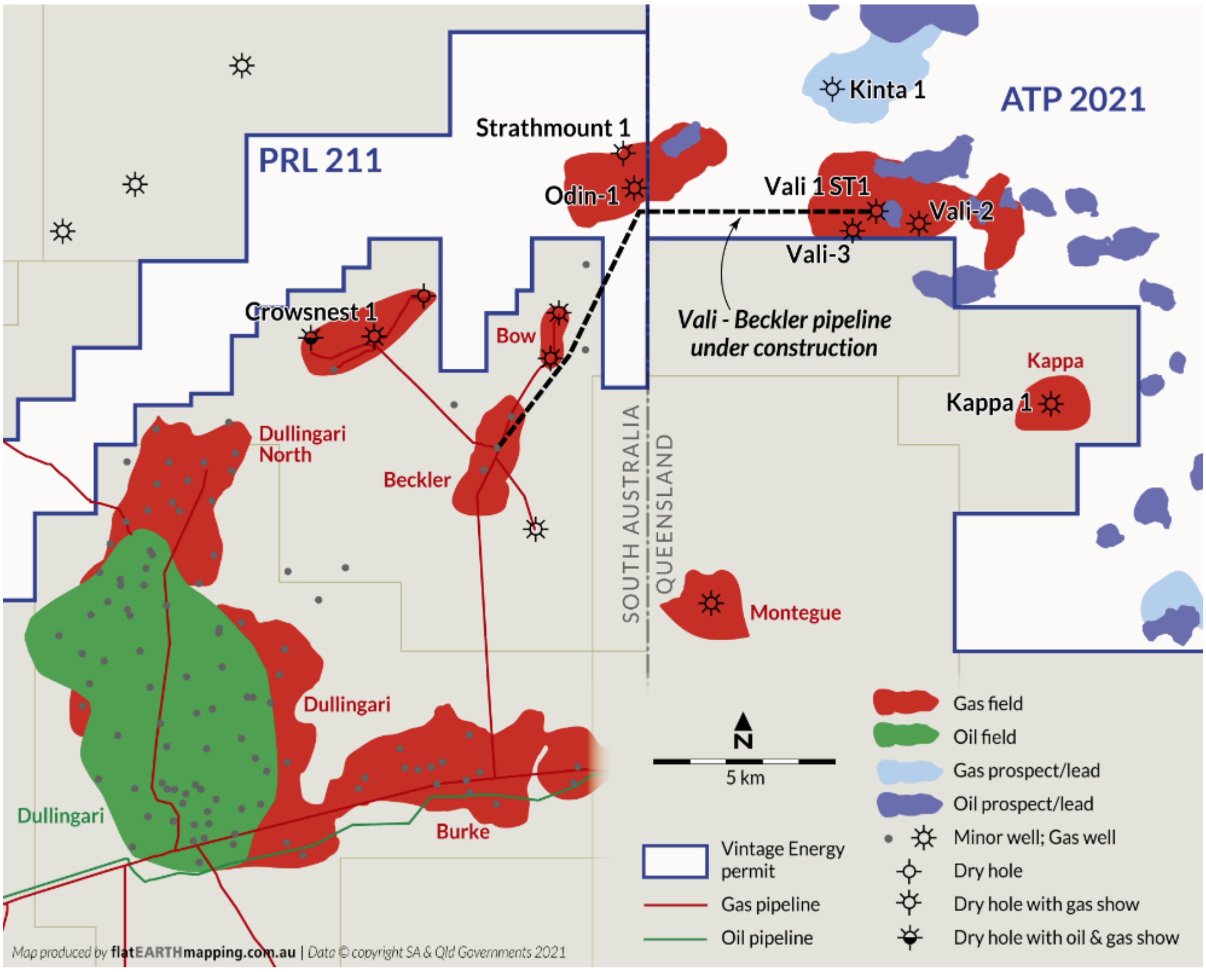
[7] See Vintage's announcement to the ASX dated 21 December 2022, available here.

[8] See Vintage's announcements to the ASX dated 5 November 2021 and 21 December 2022, available here.

[9] Vintage's submission in support of application for interim and final authorisation, p.13.

additional necessary infrastructure.[10] However, gas produced from the two fields will be marketed separately.[11]

2.7. Figure 1 below shows the location of the Odin field and the Vali field and nearby infrastructure, including the proposed Vali-Beckler pipeline.



Gas price cap

2.8. In December 2022, the Minister for Finance made an order under section 53M of the Act.[12] The order introduced a temporary, one-year price cap of $12 per gigajoule that principally applies to gas sold by east coast and Northern Territory gas producers and their affiliates to wholesale customers in Australia. The ACCC is responsible for enforcing the price cap and making decisions on applications for exemption from the price cap. This exemption regime is wholly separate to the authorisation process administered by the ACCC under subsection 88(1) of the Act.

3. Consultation

3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.

[10] The Odin Gas Producers propose to undertake a two-stage infrastructure development in respect of the Odin field (see Vintage's submission in support of application for interim and final authorisation, pp.7-8).

[11] Vintage's submission in support of application for interim and final authorisation, pp 11 and 19.

[12] *Competition and Consumer (Gas Market Emergency Price) Order 2022*.

3.2. The ACCC invited submissions from a range of potentially interested parties including gas customers, gas processing and pipeline operators, industry associations, government agencies and relevant regulatory bodies.[13]

3.3. No submissions were received in relation to the application for authorisation or the request for interim authorisation.

4. ACCC assessment

4.1. The ACCC's assessment of the Proposed Conduct is carried out in accordance with the relevant authorisation test contained in the Act.

4.2. Vintage has sought authorisation for Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and/or may have the purpose, effect or likely effect of substantially lessening competition within the meaning of subsections 45(1)(a), (b) and (c) of the Act. Consistent with subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the Proposed Conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result from the Proposed Conduct (**authorisation test**).

Relevant areas of competition

4.3. Vintage submits that the relevant market is the 'east Australia gas market', which includes customers in Queensland, New South Wales, South Australia, Australian Capital Territory, Victoria, Northern Territory and Tasmania who are connected to sources of gas in those jurisdictions (and nearby offshore resources) via a gas pipeline network.[14]

4.4. The ACCC considers that the relevant area of competition is the supply of natural gas to commercial and industrial customers in the east coast of Australia, which would include at least customers served by transmission pipelines from Moomba to Queensland, New South Wales and South Australia (i.e. customers that the Odin Gas Producers are targeting in the first instance). The ACCC does not consider it necessary to precisely define the geographical scope of this relevant area of competition.

Future with and without the Proposed Conduct

4.5. In applying the authorisation test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.

4.6. Vintage submits that without the Proposed Conduct, development of and gas supply from the Odin Field will be significantly delayed, because:

- the investment decision to commit further capital required to develop the Odin field in order to supply gas relies on each of Odin Gas Producers being able to secure a GSA. Joint marketing would provide increased certainty for the Odin Gas Producers to expedite this investment decision, and

[13] A list of the parties consulted is available from the ACCC's public register.

[14] Vintage's submission in support of application for interim and final authorisation, p.13.

- absent the Proposed Conduct, the Odin Gas Producers would need to negotiate a gas balancing agreement, put in place separate marketing strategies, have separate discussions with gas processing and pipeline operators, and develop a more complex development plan (to accommodate disparate gas sales conditions).[15]

4.7. The ACCC considers that in the likely future without the Proposed Conduct, the Odin Gas Producers would still be able to develop the Odin field to bring this new source of gas supply to the market. However, this development is likely to occur later due to the need to secure separate GSAs, and the negotiations required to put in place a gas balancing agreement and separate marketing arrangements.

Public benefits

4.8. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that the term should be given its widest possible meaning, and includes:

> *…we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements … the achievement of the economic goals of efficiency and progress.*[16]

4.9. Vintage submits that the Proposed Conduct is likely to result in the following public benefits:

- expedited and/or increased gas supply and greater competition in the east Australia gas market
- increased incentive for investment in infrastructure
- aggregation of gas volumes, and
- cost savings and efficiencies.[17]

4.10. The ACCC's assessment of the likely public benefits from the Proposed Conduct follows.

Facilitation of new source of gas supply to customers sooner

4.11. Vintage submits that while the Odin field gas resources are not significant in the context of the east Australian gas market, the Proposed Conduct would enable these resources to be developed sooner, which would assist to minimise the risk of gas shortages. Vintage considers this to be a public benefit, given the east coast gas market is forecast to have a gas supply shortfall in the future.[18]

4.12. Vintage considers that the Proposed Conduct would result in a greater supply and more efficient production of gas from the Odin field, due to the alignment of the Odin

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15 Vintage's submission in support of application for interim and final authorisation, p.12.

16 *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cited with approval in *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677.

17 Vintage's submission in support of application for interim and final authorisation, pp.17-19.

18 Vintage's submission in support of application for interim and final authorisation, p.8.

Gas Producers' incentives on development and gas sales.[19] It also considers that joint marketing will enable the Odin Gas Producers to better compete with existing gas 'majors' than each of them could alone, which will increase competition between gas suppliers and contribute to downward pressure on gas prices.[20]

4.13. As stated in paragraph 4.7 above, the ACCC considers that the Proposed Conduct is likely to enable earlier development of the Odin field to bring this new gas supply to customers sooner. The ACCC considers that this is a public benefit, particularly given the forecast gas supply shortage of 30 PJ on the east coast of Australia in 2023.[21] To the extent the proposed joint marketing arrangements from the Odin field results in gas being supplied to consumers sooner, and taking into account the relative size of the Odin Gas Producers, the ACCC considers this will improve the efficiency of the gas market's response to any future gas supply shortages. The ACCC considers this improved efficiency would represent a public benefit.

4.14. The ACCC notes that, over the long term, the Proposed Conduct is not likely to result in a greater total supply of gas from the Odin field than would otherwise be supplied. Supply of new gas from the Odin field is likely to occur both with and without the Proposed Conduct, and the amount of gas which can be extracted is limited by the available resources which the Odin Gas Producers intend to develop.

4.15. The ACCC also notes that Vintage considers the Proposed Conduct will enable the Odin Gas Producers to better compete with incumbent gas producers in the east coast gas market. However, on the basis of the small volumes of gas that are proposed to be jointly marketed, the ACCC considers the Proposed Conduct is unlikely to have any significant impact on the market dynamics or gas prices.

Incentives for investment infrastructure

4.16. Vintage submits that the Proposed Conduct will provides incentives for the Odin Gas Producers to invest in the development of infrastructure to supply gas from the Odin field to customers, including investments in relation to the Vali-Beckler pipeline and drilling of additional wells at the Odin field.[22]

4.17. The ACCC considers that the Proposed Conduct is likely to provide the Odin Gas Producers with increased certainty and incentives to expedite a decision to commit to the capital investment required to develop and supply gas from the Odin field to customers sooner. In that regard, the ACCC considers this is consistent with the public benefit of bringing gas to market sooner.

Aggregation of gas volumes

4.18. Vintage submits that the Proposed Conduct will enable aggregation of more gas for sale to major commercial and industrial customers in the east Australia gas market than the small volumes each of the Odin Gas Producers could sell individually. It considers this will enable the Odin Gas Producers to bid for larger-volume contracts, which would make their bids more attractive to major customers. [23]

4.19. Vintage also considers that, absent the Proposed Conduct, the Odin Gas Producers' ability to negotiate transportation rights downstream of Moomba or enter into gas swap

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19 Vintage's submission in support of application for interim and final authorisation, p.18.

20 Vintage's submission in support of application for interim and final authorisation, p.18.

21 See the ACCC's Gas inquiry interim report dated January 2023, pp 8, 10-11 and 21.

22 Vintage's submission in support of application for interim and final authorisation, p.18.

23 Vintage's submission in support of application for interim and final authorisation, p.18.

arrangements with other gas producers would be limited, due to the small size of each Odin Gas Producers' volumes.

4.20. Based on current information, the ACCC's view is that aggregation of gas volumes for sale to major customers is not likely to result in additional public benefit over and above the benefit identified from bringing gas to market earlier. The ACCC notes that the Proposed Conduct does not enable the Odin Gas Producers to aggregate gas volumes from other fields, including the Vali field (see paragraph 1.5 above).

4.21. The ACCC accepts that it would be easier to facilitate gas swap arrangements with larger volumes of gas. However, it is unclear the likelihood and extent to which gas swaps would be required in the future. The ACCC also notes that the Odin Gas Producers' combined gas volumes from the Odin field are still relatively small compared to the rest of the market.

Cost savings and efficiencies

4.22. Vintage submits that the Proposed Conduct will result in reduced transaction costs for major commercial and industrial customers, as they would be able to secure gas through a single contract negotiation with the Odin Gas Producers (instead of negotiating with multiple gas suppliers to cover their gas needs).[24] Similarly, Vintage submits that the Proposed Conduct would result in reduced transaction costs and increased operational efficiencies for gas processing and gas transmission pipeline operators through aligned negotiation with the Odin Gas Producers (e.g. on matters such as pipeline capacity and daily administration of gas nominations).[25]

4.23. Vintage also submits that joint marketing would enable the Odin Gas Producers to have a more efficient 'go-to-marketing' strategy (executed by Vintage as the marketing and sales agent for all producers)[26], and enable them to pool their knowledge of east coast gas customers, eliminating the need to have duplicated marketing resources.[27]

4.24. The ACCC considers that the Proposed Conduct is likely to result in some small public benefit through reduced transaction costs in commercial negotiations for the Odin Gas Producers, as well as major commercial and industrial customers, and gas processing/transmission pipeline operators. However, the ACCC does not consider that the Proposed Conduct is likely to achieve any material cost savings and efficiencies through aggregation of marketing resources and intelligence. The ACCC notes that authorisation is only sought in relation to joint marketing of gas produced from the Odin field; therefore, the Odin Gas Producers are likely to continue to make investments in gathering and analysing customer and market information in relation to other fields.

Conclusion on public benefits

4.25. The ACCC considers that the Proposed Conduct is likely to result in:

- some public benefit by enabling earlier development of the Odin field to bring this new source of gas supply to customers sooner than otherwise, and

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24 Vintage's submission in support of application for interim and final authorisation, p.19.

25 Vintage's submission in support of application for interim and final authorisation, p.19.

26 Vintage will identify and negotiate with prospective customers for the Odin gas, draft and prepare contracts for the sale of Odin gas and report to the other joint venture participants monthly on its progress in connection with these services and the quantity of gas sold (see Vintage's submission in support of application for interim and final authorisation, p.11).

27 Vintage's submission in support of application for interim and final authorisation, p.19.

- a small public benefit in the form of reduced transaction costs in commercial negotiations for the Odin Gas Producers, major customers, gas processing/transmission pipeline operators.

Public detriments

4.26. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal, which has defined it as:

> *…any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.*[28]

4.27. Vintage acknowledges that allowing competitors to engage in marketing together rather than independently reduces the number of independent market participants. However, it submits the Proposed Conduct will not have an effect of substantially lessening competition nor give rise to any other public detriment, because:

- The annual quantity of gas estimated to be jointly marketed is a small percentage of the total annual east coast market gas demand, and as such will not have any impact on the competitive dynamics.
- The Odin field is a new gas field, and the Odin Gas Producers are new gas producers in the east Australian gas market with low or negligible market share.
- The Odin Gas Producers are not in a position to set the gas price or impose less favourable terms on customers. Rather, potential customers will have multiple sources of supply to compare offers from the Odin Gas Producers.
- The Odin Gas Producers will face significant competition from numerous gas producers (including those with LNG facilities).
- Joint marketing is limited in time.
- The Odin Gas Producers will use the same pipeline to supply gas from the Vali field and the Odin field, which limits the maximum volume of gas that can be supplied by the Odin Gas Producers at any one time.[29]

4.28. The ACCC considers that, where commercially feasible, separate marketing is likely to result in a more competitive outcome than would be the case under joint marketing. Joint marketing has the potential to result in public detriment if it allows the joint marketers to supply gas at higher prices and/or on less favourable terms and conditions.

4.29. In this case, the ACCC considers that the Proposed Conduct is not likely to result in public detriment by materially enhancing the Odin Gas Producers' ability to supply gas at higher prices and/or on less favourable terms and conditions than they would likely achieve with separate marketing. A key factor in reaching this view is that the annual quantity of gas estimated to be jointly marketed from the Odin field (including in combination with the gas estimated to be available for sale from the Vali field) represents a very small proportion of the total annual east coast market gas demand.

4.30. The ACCC notes that as the Odin Gas Producers continue to explore the gas resources within the Odin field, they may discover more gas which may be commercially viable in the future. The ACCC notes that if there is any major discovery

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[28] *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

[29] Vintage's submission in support of application for interim and final authorisation, pp.19-20.

of gas such that there is a material change in circumstances, the ACCC can review the authorisation, including seeking submissions from interested parties.[30]

Balance of public benefit and detriment

4.31. For the reasons outlined in this draft determination, the ACCC considers that the Proposed Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Proposed Conduct.

Length of authorisation

4.32. The Act allows the ACCC to grant authorisation for a limited period of time.[31] This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

4.33. In this instance, Vintage seeks authorisation to enable the Odin Gas Producers to engage in joint marketing of gas from the Odin field for five years and to give effect to GSAs with customers for the sale of the gas that may have supply terms up to and including until 2043 (i.e. maximum gas supply term of 15 years, inclusive of renewals), for the following reasons:

a) The Odin field is still in its early stage of exploration and appraisal. As such, marketing of gas will need to be done in a staggered manner as better knowledge of the field's attributes become known over the next 5 years.

b) A staggered approach is also necessary, given the uncertainties and that some customers may have reservations (about the Odin Gas Producers' small size and limited experience) or may not be ready to engage with the Odin Gas Producers about their long-term gas needs.

c) The main exploration, appraisal and development drilling program to develop the Contingent Resources at the Odin field is scheduled to occur from 2023 to 2028. The Odin Gas Producers need sufficient certainty to invest in this program.

d) Long-term contracts will provide greater bankability of the Odin field (for the purpose of capital raising), and underwrite the investment required by the Odin Gas Producers to further develop the Odin field and related infrastructure in order to supply gas and continue exploration in other fields in the area covered by PRL 211 and ATP 2011. Long-term supply will also provide greater certainty for customers.[32]

e) The Odin Gas Producers would be able to include gas price review provisions in the long-term GSAs.

4.34. Based on the information available before it, the ACCC considers that the period of authorisation sought is appropriate. The ACCC proposes to grant authorisation to enable the Odin Gas Producers to engage in joint marketing of gas from the Odin field

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30 If following a review the ACCC is satisfied that the likely public benefit from the proposed arrangements no longer outweighs the likely detriment to the public, including any detriment constituted by a lessening of competition, the ACCC may revoke the authorisation.

31 Subsection 91(1).

32 Vintage states that there will be opportunities to market the Odin gas ex-Moomba to major gas utility customers or industrial/power generation consumers.

for five years, and to give effect to any GSAs entered into during this 5-year period that may have a maximum gas supply term of 15 years. All GSAs must expire in or before 2043. The ACCC considers that this period of authorisation is appropriate, as it is likely to meet customer requirements and provide the Odin Gas Producers with sufficient certainty to expedite the Odin field development and future gas supply.

5. Draft Determination

The application

5.1. On 22 December 2022, Vintage lodged an application for authorisation AA1000632 with the ACCC under subsection 88(1) of the Act. Vintage sought authorisation to enable the Odin Gas Producers to engage in the Proposed Conduct outlined at paragraph 1.4.

5.2. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

The authorisation test

5.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Proposed Conduct.

5.4. For the reasons outlined in this draft determination, the ACCC considers that the Proposed Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.

5.5. Accordingly, the ACCC proposes to grant authorisation.

Conduct which the ACCC proposes to authorise

5.6. The ACCC proposes to grant authorisation AA1000632 to enable the Odin Gas Producers to jointly market natural gas from the PRL 211 and ATP 2021 Odin field for a period of five years and to give effect to GSAs entered into during this five-year period that contain common terms and conditions (including price) and a maximum supply term of 15 years (all GSAs must expire in or before 2043).

5.7. Authorisation will not extend to any marketing arrangements of the Odin Gas Producers or any of their related parties in respect of gas produced from other gas fields, or gas produced from exclusive (sole risk) operations in the Odin field (if any) (as stated in paragraph 1.5).

5.8. The ACCC proposes to grant authorisation AA1000632 with respect of Division 1 of Part IV of the Act and section 45 of the Act.

5.9. This draft determination is made on 16 February 2023.

6. Interim authorisation

6.1. Section 91(2) of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the proposed conduct while the ACCC is considering the substantive application for authorisation.

6.2. Vintage has requested interim authorisation for the Odin Gas Producers to jointly market and give effect to GSAs with customers with common terms and conditions (including price), relating to the supply of gas from the Odin gas field. Vintage has stated that any GSAs negotiated would either be long-term GSAs that are fully conditional upon authorisation being granted by the ACCC, or GSAs that comprise fully interruptible supply of very minor quantities of gas and are binding for a short period of time.

6.3. Vintage has requested interim authorisation on the basis that:[33]

a) Interim authorisation will enable early engagement with customers, to ensure customers are able to understand the availability of the new supply of gas intended to be made available to market in mid-2023.

b) Interim authorisation would result in immediate public benefits in the form of increased competition and supply in domestic gas markets.

c) There will be no long term anti-competitive detriment from the arrangements because agreements are conditional upon ACCC final authorisation.

d) The Odin Gas Producers are new entrants.

e) The quantity of gas to be produced from the Odin field is negligible in the east Australia gas market.

f) The terms of the agreements are anticipated to be relatively standard for the industry.

g) Interim authorisation increases the prospect of readiness for first gas flow through joint marketing (when compared to separate marketing strategies).

h) Increased certainty for investment decisions.

6.4. The ACCC considers it is appropriate to grant interim authorisation, because:

a) The volume of gas to be jointly marketed is a relatively small proportion of total east coast gas demand and therefore granting interim authorisation is unlikely to significantly change the state of the market.

b) Any long-term agreements negotiated and entered into during the period of interim authorisation will be conditional upon the ACCC granting authorisation, and therefore cannot be given effect to. The market would be able to return to its previous state if the ACCC does not ultimately grant authorisation.

c) The supply of gas to customers under any short-term agreements is intended to be fully interruptible and for a short period of time, while the Odin Gas Producers establish the flow characteristics of the new Odin gas field. The amount of gas to be supplied under these agreements is expected to be minimal.

d) Granting interim authorisation would enable the Odin Gas Producers to have early engagement with customers, and expedite the development of the Odin field to bring this new gas supply to the market sooner.

6.5. The ACCC's interim authorisation is granted in relation to Division 1 of Part IV of the Act, and section 45 of the Act.

[33] Vintage's submission in support of application for interim and final authorisation, pp.15-16.

6.6. Interim authorisation commences immediately and remains in place until the date the ACCC's final determination comes into effect, the application for authorisation is withdrawn, or until it is revoked.

7. Next steps

7.1. The ACCC now invites submissions in response to this draft determination by 3 March 2023. In addition, consistent with section 90A of the Act, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.