Draft Determination

Application for authorisation AA1000564
lodged by
Central Petroleum Limited,
Central Petroleum Mereenie Pty Limited
as trustee for the Central Petroleum
Mereenie Unit Trust, and
Macquarie Mereenie Pty Limited
in respect of
joint marketing and supply of
natural gas produced out of the
Mereenie gas field
Authorisation number: AA1000564

Date 19 November 2021

Commissioners: Sims
Keogh
Rickard
Brakey
Crone
Ridgeway

Summary

The ACCC proposes to grant conditional authorisation to enable current and future participants in the Mereenie gas field joint venture to:

- **for a period of 5 years, jointly market gas from the Mereenie gas field,**
- **for a period of 5 years, make gas supply agreements (GSAs) with customers for the supply of Mereenie gas that contain common terms and conditions (including as to price) and that expire on or before 31 December 2031, and**
- **give effect to any such GSAs (entered into during the 5-year period) until 31 December 2031.**

The ACCC previously authorised joint marketing of gas from the Mereenie field in the Northern Territory (NT) in 2018. Since the previous authorisation there has been an expansion of the Mereenie field and sale of gas from that field extends to customers in Mt Isa and beyond.

The ACCC considers that the Proposed Conduct is likely to result in public benefit by enabling earlier, further development of the Mereenie field to bring this additional gas supply to customers sooner than might otherwise occur. The ACCC also considers the Proposed Conduct is likely to result in some public benefit in the form of reduced transaction costs and/or increased operating efficiencies for participants in the Mereenie joint venture, major customers, gas processing operators and gas transmission pipeline operators.

The ACCC considers that the Proposed Conduct would not materially change market concentration or competitive dynamics because there are a range of other supply sources available to the NT-Mt Isa Region, where the Proposed Conduct is likely to have the greatest impact. Further, the lumpy and illiquid nature of NT gas demand combined with high transmission costs create greater risks and costs for the Joint Venture Participants marketing gas separately. As such, the ACCC recognises that there may be some detriment from the Proposed Conduct, but it is unlikely to be significant in the current circumstances.

The ACCC proposes to impose a condition so that it is informed about any increase in the number, or change in the identities, of the businesses participating in the Mereenie joint venture beyond the current Joint Venture Participants. The proposed condition would require the Joint Venture Participants to notify the ACCC at least 30 days before any business that is not a current Joint Venture Participant becomes a participant in the Mereenie joint venture and engages in joint marketing under the proposed authorisation. This will enable the ACCC to consider whether the addition of any new participant might constitute a material change of circumstances and warrant review of the authorisation.

On 7 October 2021 the ACCC granted interim authorisation to enable the Joint Venture Participants to engage in joint marketing of natural gas produced from the Mereenie field and enter into conditional gas supply agreements with customers. Any such agreements are conditional upon the ACCC granting final authorisation and are subject to the terms and/or conditions of any such authorisation, if granted. Interim authorisation remains in effect and is not altered by this draft determination.

The ACCC seeks submissions in response to this draft determination by 10 December 2021 before making its final decision.

1. The application for authorisation

1.1. On 29 July 2021, Macquarie Mereenie Pty Ltd (**Macquarie Mereenie**), Central Petroleum Mereenie Pty Ltd as trustee for the Central Petroleum Mereenie Unit Trust (**CPM**) and Central Petroleum Limited (**Central Petroleum**) (together the **Applicants**) lodged application for authorisation AA1000564 with the Australian Competition and Consumer Commission (the **ACCC**).

1.2. The Applicants seek authorisation to enable themselves and NZOG Mereenie Pty Limited (**NZOG**), Cue Mereenie Pty Ltd (**Cue**), their respective related bodies corporate, and other future successors and assignees of those parties (i.e. future participants in the Mereenie joint venture) to jointly market and sell natural gas produced from the Mereenie field located in the Amadeus basin in the NT (the **Mereenie field**). The proposed conduct for which authorisation is sought is set out in full at paragraph 1.14.

1.3. This application for authorisation was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

1.4. The ACCC may grant authorisation, which provides businesses with protection from legal action under the competition provisions in Part IV of the Act specified in the authorisation 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.

Participants in the Mereenie Joint Venture

1.5. The Mereenie joint venture's sole business is production of oil and gas from the Mereenie field in the Northern Territory, and the Applicants seek authorisation for joint marketing of gas produced from that field.

1.6. When the application for authorisation AA1000564 was lodged on 29 July 2021, the participants in the Mereenie joint venture were Central Petroleum (operator) and Macquarie Mereenie, with each holding a 50% interest.

1.7. On 1 October 2021, Central Petroleum sold part of its interest in the Mereenie joint venture to subsidiaries of New Zealand Oil and Gas Limited (NZOG) and Cue Energy Resources Limited (Cue). Interests in the Mereenie joint venture are now: Macquarie Mereenie (50%), Central Petroleum (25%), NZOG (17.5%) and Cue (7.5%).

1.8. Central Petroleum Limited is an oil and gas explorer and producer with a primary focus on onshore oil and gas production in the NT and supplying the Australian domestic gas market. In addition to its role in respect of the Mereenie joint venture, Central Petroleum holds a 50% interest in and is the operator of the Palm Valley and Dingo gas fields in the NT,[1] and has an interest in a number of oil and gas exploration tenures in the NT and Queensland.

1.9. Macquarie Mereenie is a 50% participant in the Mereenie joint venture. Macquarie Mereenie is a special purpose vehicle which does not have any other ownership interests in gas assets in the NT or elsewhere in Australia. Macquarie Mereenie's ultimate parent company is Macquarie Group Limited.

[1] The locations of the Mereenie, Palm Valley and Dingo fields are shown in Figure 1 on page 5.

1.10. NZOG is an oil and gas company listed on the NZX and ASX, with interests in gas production in New Zealand and Indonesia. In Australia, it has a 15% interest in a Western Australian offshore exploration permit in the Carnarvon Basin. NZOG holds a 50.04% interest in Cue. NZOG also holds a 35% interest in the Dingo and Palm Valley gas fields.

1.11. Cue is an oil and gas company listed on the ASX, with minority interests in gas production in New Zealand and Indonesia. In Australia, it has interests in 3 Western Australian offshore exploration permits in the Carnarvon Basin. Cue also holds a 15% interest in the Dingo and Palm Valley gas fields.

1.12. Neither NZOG or Cue have any other gas production interests in Australia or any Australian gas marketing function or expertise.

1.13. The Applicants, NZOG, Cue and their respective related bodies corporate are, collectively, the **Joint Venture Participants**.

The Proposed Conduct

1.14. The Applicants are seeking authorisation for the Joint Venture Participants and their future successors and assignees who become participants in the Mereenie joint venture (**Future Participants**) to:

- engage in the joint marketing of natural gas produced from the Mereenie gas field; and
- give effect to any contracts with customers that may arise out of the joint marketing of Mereenie gas. These contracts may involve common terms and conditions, including in relation to price

(the **Proposed Conduct**).

1.15. The Applicants are seeking authorisation for a period of 5 years (in relation to joint marketing) and 10 years (in relation to giving effect to any contracts that may arise out of the joint marketing).

1.16. Joint marketing, for the purposes of the Proposed Conduct, would involve:

- the Joint Venture Participants and Future Participants seeking to source gas sales opportunities for Mereenie gas production (including through knowledge and market intelligence existing within Central Petroleum and Macquarie Mereenie's existing operations)
- the Joint Venture Participants and Future Participants seeking to resolve threshold terms and conditions for joint marketing of Mereenie gas and jointly negotiating ultimate contract terms for sales (and jointly negotiating any required gas transportation contracts for such joint sales)
- gas sales opportunities being proposed to all Joint Venture Participants and Future Participants
- generally where they are agreed on, the sale will be participated in by all Joint Venture Participants and Future Participants in proportion to their joint venture interest
- where a participant wishes to proceed and any other participant does not, it is

possible (subject to the party wishing to proceed having available lifting balance to do so) for that party to proceed to make the sale on its own, and

- the Mereenie joint marketing arrangements remain on foot for up to 5 years (subject to rights for earlier withdrawal).

1.17. The Applicants have confirmed that authorisation is not sought for conduct relating to:

- the marketing arrangements of any Joint Venture Participant and Future Participants in respect to gas produced from other fields they may have an interest in now or in the future
- gas acquired from third parties
- gas produced from any exclusive (sole risk) operations in the Mereenie field
- existing gas supply agreements (**GSAs**) for gas sourced from the Mereenie field that have already been contracted
- GSAs entered into by a single Joint Venture Participant or Future Participant where the opportunity was brought to the joint venture, but only one party elected to proceed with the sale, or
- oil sales.

1.18. The Applicants have indicated to the ACCC that, to the extent the ACCC has concerns with authorisation extending to future participants in the Mereenie joint venture, they would accept a condition of authorisation that requires ACCC approval for the addition of future Mereenie participants (whose identity is currently unknown).

Interim authorisation

1.19. The Applicants requested interim authorisation to enable the Joint Venture Participants to engage in the Proposed Conduct while the ACCC is considering the substantive application. On 7 October 2021, the ACCC granted interim authorisation in accordance with subsection 91(2) of the Act.[2]

1.20. Interim authorisation was granted to enable the Joint Venture Participants to:

a) engage in joint marketing of natural gas produced from the Mereenie field, and

b) enter into GSAs with customers that may arise out of the joint marketing of natural gas from the Mereenie field. These contracts may involve common terms and conditions, including in relation to price.

1.21. Interim authorisation was granted with the condition that any GSAs entered into with customers on the basis of the interim authorisation be conditional upon the ACCC granting authorisation in its final determination, and be subject to any terms and/or conditions of any such authorisation, if granted.

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[2] See ACCC interim authorisation decision of 7 October 2021 available at https://www.accc.gov.au/system/files/public-registers/documents/Interim%20Authorisation%20-%2007.10.21%20-%20PR%20-%20AA1000564%20Macquarie%20Mereenie.pdf.

1.22. Interim authorisation was not granted with respect to giving effect to any agreements entered into by the Joint Venture Participants arising out of the joint marketing of natural gas from the Mereenie field.

1.23. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until interim authorisation is revoked.

2. Background

The 2018 Authorisation

2.1. On 29 March 2018 the ACCC granted authorisation AA1000389 (the **2018 Authorisation**) which permitted the Applicants to:

- jointly market gas from the Mereenie field for a period of 3 years until 20 April 2021
- make GSAs with customers for the supply of Mereenie gas that contain common terms and conditions (including as to price) and that expire on or before 31 December 2028, for a period of 3 years until 20 April 2021, and
- give effect to any such GSAs entered into during the 3-year period until 31 December 2028.

2.2. The ACCC considered the conduct was likely to result in some public benefit by enabling and supporting development of the Mereenie field to occur sooner than it would otherwise and thereby bringing forward the available supply of Mereenie gas to customers in the NT-Mount Isa Region.

2.3. Since the 2018 Authorisation, development of the Mereenie field has progressed and the Applicants supply jointly marketed gas to customers in Mt Isa.

The Mereenie Gas Field and Stairway

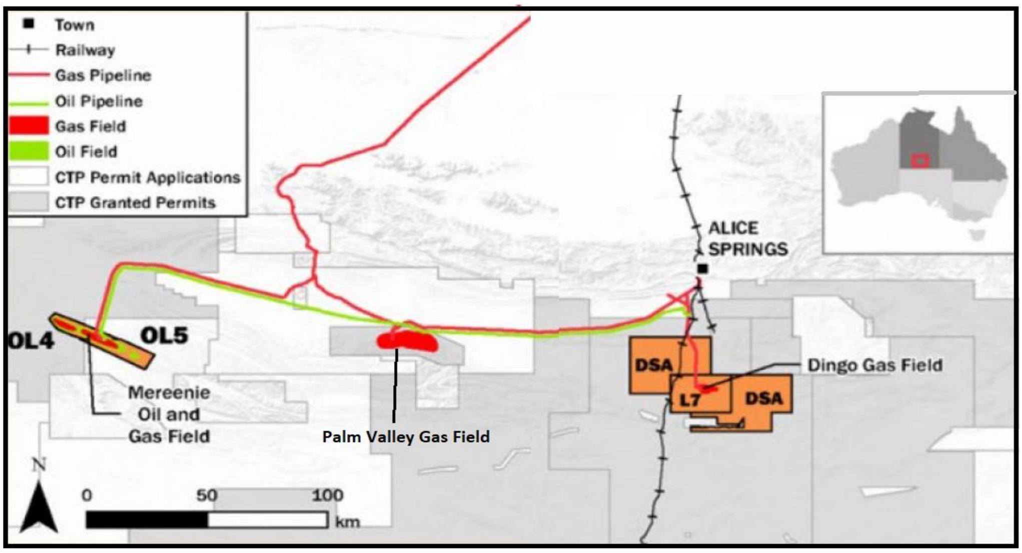

Figure 1 –The Mereenie oil and gas field, Palm Valley gas field and Dingo gas field.

2.4. The Mereenie field is a conventional oil and natural gas field located in the Amadeus Basin in the NT, approximately 250km west of Alice Springs.[3] The Mereenie field produces gas which is both sold domestically and reinjected into wells to assist with oil recovery. Gas production at the Mereenie field peaked at approximately 53 TJ per day in 2005 before declining.[4] Production from the Mereenie field in calendar year 2019 was approximately 16 PJ, and 10 PJ in the 2020 calendar year. As at the end of 2020, the field has delivered 17 MMbbls of oil and condensate and over 290 PJ of natural gas.[5]

2.5. The Joint Venture Participants seek to optimise existing gas production and plan development and appraisal activities to access additional resources. Two new production wells were drilled in mid-2021 with one well now producing. Appraisal of the ‘Stairway Formation’ is now underway, with WM28 successfully drilled and completed as a selective dual zone producer. The Stairway Formation holds 108 PJ of gross contingent 2C resources (54 PJ net to Central Petroleum). Following the completion of these development activities, the Mereenie field’s production capacity is expected to increase up to 45TJ a day with the 2P reserves estimate increased by approximately 40PJ of gas.[6] Based on test results to date, the recompletion and drilling program has increased Mereenie wellhead capacity to over 40 TJ/d (100% JV).[7]

Gas Pipelines

2.6. The following diagram, Figure 2, illustrates relevant significant gas transmission pipelines, the direction in which gas flows through them and the percentage of transmission capacity that had been contracted between 1 May 2021 and 30 April 2022 (as at July 2021).

3 Conventional gas is contained in sedimentary rocks such as sandstone and limestone (referred to as reservoir rock). The gas is trapped by an impermeable cap rock and may be associated with liquid hydrocarbons. The reservoir rock has a relatively high porosity (percentage of space between rock grains) and permeability (the rock’s pores are well connected and the gas may be able to flow to the gas well without additional interventions). Gas is extracted by drilling a well through the cap rock allowing gas to flow to the surface. Depending on the structure of the rock containing the gas (amount of faulting or compartmentalisation), only a few wells may be required to produce gas over the life of the gas field.

4 Central Petroleum Media Release, 6 August 2015: https://www.asx.com.au/asxpdf/20150806/pdf/430bvylz0ps5pk.pdf

5 Central Petroleum Limited, ‘Mereenie Oil and Gas Field’, accessed on 2 November 2021, https://centralpetroleum.com.au/our-business/our-licence-areas/amadeus/mereenie-oil-and-gas-field-ol4-ol5/

6 Central Petroleum Limited, ‘Mereenie Oil and Gas Field’, accessed on 2 November 2021, https://centralpetroleum.com.au/our-business/our-licence-areas/amadeus/mereenie-oil-and-gas-field-ol4-ol5/

7 Central Petroleum Limited and New Zealand Oil & Gas, ASX Announcement, Mereenie development well WM28 successfully completed , 6 September 2021. Source: https://www.nzog.com/dmsdocument/574-combined-mereenie-media-release-pdf

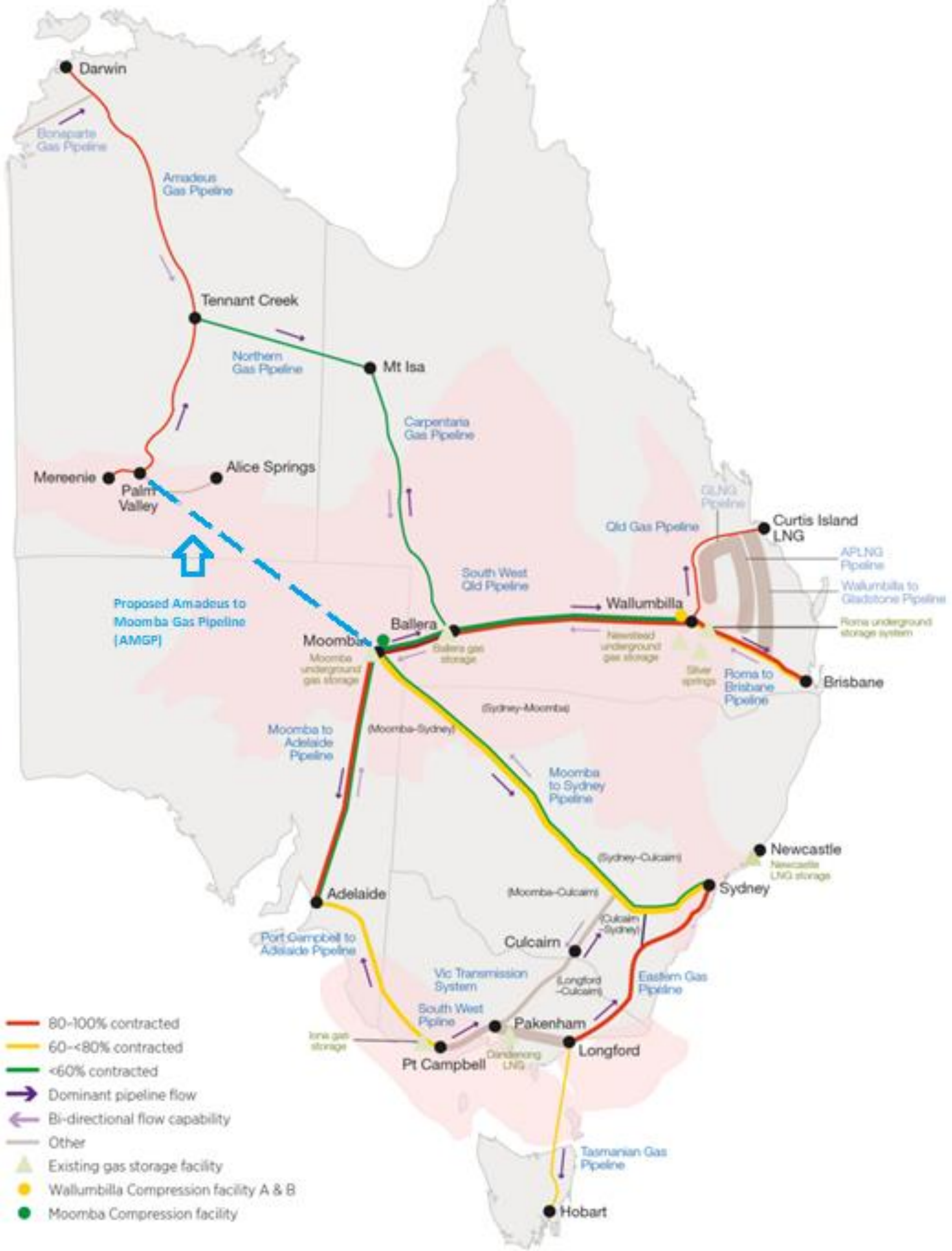

Figure 2: Significant Northern Territory Pipelines and proposed AMGP[8]

2.7. The Northern Gas Pipeline is a 622-kilometre pipeline constructed in 2017 on behalf of the NT Government by Jemena Limited (**Jemena**). It connects the Amadeus Pipeline (Alice Springs – Darwin pipeline) at Tennant Creek to Mount Isa in Queensland. Prior to the development of the Northern Gas Pipeline, all NT gas production (including all production from the Mereenie field) was consumed solely in the NT.

2.8. As stated in the ACCC Gas Inquiry July 2021 Interim report, the firm forward haul service price as of January 2021 is $2.06-$2.331/GJ, making the Northern Gas

[8] ACCC, Gas Inquiry, July 2021 interim report, p 100 (edited), available at https://www.accc.gov.au/system/files/Gas%20Inquiry%20-%20July%202021%20interim%20report_0.pdf

Pipeline one of the more expensive pipelines in Australia.[9] Less than 60% of the Northern Gas Pipeline capacity has been contracted for 2021 and 2022, with the majority of capacity owned by Power and Water Corporation (**PWC**) which acquires all of the supply from the Blacktip offshore gas field under a 25-year contract and substantial volumes from Central Petroleum's non-Mereenie fields.[10]

2.9. Commissioned in 1998 and owned by APA Group, the Carpentaria Gas Pipeline is a pipeline system that extends from Ballera in SW Queensland to Mt Isa. It transports natural gas from the Ballera gas processing facility to customers in Mt Isa – including the Mica Creek and Diamantina power stations and the surrounding Carpentaria mineral province.[11]

2.10. The firm forward haul service price of the Carpentaria Gas Pipeline as of January 2021 is \$1.231-\$1.244/GJ.[12] Less than 60% of the Carpentaria Gas Pipeline capacity has been contracted for 2021 and 2022. A key feature of the Carpentaria Gas Pipeline is the transportation of gas to the Ballera processing facility. From Ballera, gas can flow on to the Moomba Compression facility (utilising the South West Queensland Pipeline), which is a key hub to supply gas to the broader east coast gas market (via the Moomba to Sydney Pipeline and the South West Queensland Pipeline) and southern states.

Gas supply in the NT

2.11. The NT has significant natural gas resources with production from fields located on-shore (such as the Amadeus basin in Central Australia) and off-shore (through the Bayu-Undan, Ichthys and Blacktip fields) which support domestic consumption and LNG exports. The gas market has historically been dominated by gas fired generation, without the large residential and industrial demand for gas seen in the east coast.[13] Darwin is a globally significant LNG hub and home to the Darwin LNG and Ichthys LNG projects. These facilities operate three LNG trains with a combined production capacity of 12.6 million tonnes per annum.[14]

2.12. The relatively small size of the NT market has meant most gas is supplied through a limited number of long-term agreements, generally entered into by NT government owned entities. The NT market uses approximately 25 PJ per year, or about 68 TJ/day on average, approximately 3 per cent of Australian domestic gas consumption.[15]

2.13. Historically, the NT market has not seen the level of price volatility or scarcity of long term contracts seen in recent years in the east coast market.[16]

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9 Table 0.1: ACCC Gas Inquiry 2017-2025 July 2021 Interim report pg 12, available at: https://www.accc.gov.au/system/files/Gas%20Inquiry%20-%20July%202021%20interim%20report_0.pdf

The ACCC notes this observation only relates to the \$/GJ charge and does not take into account the length of pipelines, their age (which can be a factor in cost recovery) or whether the cost includes a nitrogen removal service (which the NGP does).

10 Applicants, application for authorisation at 9.2(a).

11 Source: https://www.apga.org.au/carpentaria-gas-pipeline

12 Table 0.1: ACCC Gas Inquiry 2017-2025 July 2021 Interim report pg 12. Source: https://www.accc.gov.au/system/files/Gas%20Inquiry%20-%20July%202021%20interim%20report_0.pdf

13 AEMC, *Biennial gas liquidity review – Final Report, 17 July 2020,* p 125.

14 The Territory, Óil and Gas', accessed 10 November 2021, https://theterritory.com.au/invest/investment-opportunites/oil-and-gas.

15 Ibid.

16 Ibid, p 126.

2.14. The Australian Energy Market Commissions' *Biennial Gas Liquidity Review Final Report* makes the following observations:

- Liquidity in the NT is generally low, especially short and medium term liquidity.[17]
- Pipeline access was considered a barrier and there is an apparent lack of tradable capacity on the AGP.[18]
- Stakeholders did not think the Northern Gas Pipeline would have a significant impact on east coast market liquidity.[19]

East Coast Gas Shortage

2.15. The ACCC's Gas Inquiry July 2021 interim report notes that sufficient supply is forecast to be available to meet east coast demand in 2022. However, the supply demand outlook is the most finely balanced the ACCC has reported. Conditions have deteriorated compared to the 2021 forecast made last year.[20]

2.16. The forecast for 2021 was for an overall surplus of 177 PJ, falling to a surplus of 76 PJ if LNG producers exported all of their excess gas. The forecast for 2022 is for an overall surplus of 99 PJ, which will fall to a 2 PJ shortfall if LNG producers export all of their excess gas.

2.17. Both supply and demand factors have contributed to this decline in conditions. Supply is now expected to be 40 PJ lower and expected demand has increased by 38 PJ. The lower supply forecast partly reflects decisions by several producers to defer the development of new supply sources in response to low oil and gas prices in 2020. The higher demand forecast can largely be attributed to a 37 PJ increase in LNG exports under long-term Sale and Purchase Agreements**.**

2.18. The east coast market is characterised by a number of other factors that exacerbate the risk of a future gas shortfall:

- declining gas production from conventional gas fields in the Bass Strait and Cooper Basin and significant write downs of reserves in Queensland
- higher uncertainty in relation to future production levels of some of the existing and proposed unconventional gas projects, and
- relatively high gas pipeline transportation costs, which may limit how much surplus gas can be supplied from Queensland and the North Territory into the southern states.

2.19. Additional gas could potentially be supplied into the east coast gas market from storage or from the NT. The Roma, Moomba, Silver Springs and Newcastle storage facilities, for example, are expected to supply 12 PJ of gas to the market in 2022, but based on forecast storage levels they could supply up to 53 PJ of additional gas, if required. Expected supply from the Northern Territory (15 PJ) is less than half the capacity of the Northern Gas Pipeline. Therefore, it is possible an additional 18 PJ of gas could be supplied from the Northern Territory if there is

[17] AEMC, *Biennial gas liquidity review – Final Report, 17 July 2020,* p 14.

[18] Ibid, p 14.

[19] Ibid, p 14.

[20] All comparisons to 2021 in the chapter are based on the forecasts that appeared in the ACCC's July 2020 interim report, as corrected in the ACCC's January 2021 interim report.

available gas. We note that in 2020, actual supply from the Northern Territory was 21 PJ.[21]

2.20. AEMO's latest Gas Statement of Opportunities estimates suggests that the upper bound of possible annual production in the east coast in 2022 is 2,060 PJ. This is 15 PJ higher than suppliers' expected production from all resources and net storage withdrawals.[22]

Existing gas lifting imbalances

2.21. A gas lifting imbalance can occur when one party in a joint venture supplies more gas than their production entitlement under the joint venture arrangements.

2.22. The risk of one party over lifting is more prevalent in a lumpy gas market – where there is a small number of customers with large, infrequent increments of demand. This can also affect the economics of upstream production and exploration. This is visible in the NT where smaller explorers/producers attempting to develop new gas resources (e.g. the Mereenie Stairway development) with acreage distant from demand centres may have difficulty proving enough reserves to justify the processing and pipeline investment required to produce and get gas to market (e.g. the proposed Amadeus to Moomba Gas Pipeline).[23]

2.23. The Applicants submit they have a gas lifting imbalance which arose from separate marketing prior to the 2018 Authorisation and resulted from Central Petroleum having over lifted material volumes at the Mereenie field. This has hindered Macquarie Mereenie in marketing its share of gas production.

2.24. On 11 December 2019, the Joint Venture participants entered a GSA with AGL Energy (**AGL**) to supply 21.9 PJ of gas effective from 1 January 2020 and expiring on 31 December 2022.[24] The GSA will result in Central Petroleum retaining the existing over lift and extend its existing 3-year GSA with Macquarie Mereenie through a 2.4 PJ gas purchase agreement to be effective on 1 January 2023. Central Petroleum issued an ASX announcement that states Central Petroleum's gas over lift balance at Mereenie will be gradually reduced to nil by mid-2026 at a rate consistent with the current arrangement of 2 TJ/d.[25]

2.25. In response to concerns raised by PWC in a submission opposing authorisation, the Applicants state a lifting imbalance began to develop shortly after Central Petroleum's entry into the Mereenie joint venture, but Santos and Central Petroleum and then, from January 2017, Macquarie Mereenie and Central Petroleum, were, despite various attempts, never able to agree an improved gas balancing arrangement.

2.26. The lifting imbalance and how to resolve it, continues to be a major point of contention between the Joint Venture Participants. Even with the impetus of the AGL contract, there was a prolonged negotiation period of over 6 months to

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21 ACCC Gas Inquiry 2017-2025 July 2021 Interim report pg 19. Source: https://www.accc.gov.au/system/files/Gas%20Inquiry%20-%20July%202021%20interim%20report_0.pdf

22 AEMO (2021) GSOO, Table 7, Forecast of available annual production as provided by gas producers.

23 Department of Industry and the Bureau of Resources and Energy Economics - Eastern Australian Domestic Gas Market Study (4.1). https://www.aph.gov.au/~/media/Committees/economics_ctte/estimates/add_1617/Industry/answers/AI-87_Whish-Wilson_Attachment3.pdf

24 ASX Announcement and Media Release, Central Signs New Gas Supply Agreement and Supporting Mereenie JV Commercial Arrangements, 11 December 2019. https://media.abnnewswire.net/media/en/docs/ASX-CTP-6A959328.pdf

25 ASX Announcement and Media Release, Central Sale underwrites significant investment in th Amadeus basin, 25 May 2021, p4. https://cdn-api.markitdigital.com/apiman-gateway/ASX/asx-research/1.0/file/2924-02377741_PS-6A1034138?access_token=83ff96335c2d45a094df02a206a39ff4 ,.

achieve the current 3 year balancing arrangement reflected in an Equalisation Deed which continues for the term of the AGL contract.

2.27. The sale of part of Central Petroleum's interest in the Mereenie joint venture does not result in any of that existing lifting imbalance being transferred to the NZOG or Cue purchasers – instead it is wholly retained by Central Petroleum.

Proposed Amadeus to Moomba Gas Pipeline

2.28. The Amadeus to Moomba Gas Pipeline (the **AMGP**) is a proposed pipeline connecting the Amadeus Basin in the NT to the Moomba Gas Supply Hub in South Australia (see Figure 2). Central Petroleum, Macquarie Group and the Australian Gas Infrastructure Group (**AGIG**) signed a Memorandum of Understanding in August 2020 to progress and underwrite the development of the AMGP.

2.29. The AMGP is estimated to cost A$1.2 billion with the possibility for construction to commence in 2022, with first gas transportation occurring in 2024. It is planned to be a 950km pipeline, up to 16-inch in diameter with free-flow capacity of 124TJ per day (45 PJ per year).

2.30. The AMGP would provide a more direct connection between the Amadeus Basin and Moomba, which services the broader east coast and would be likely to facilitate transportation of gas to that hub at a lower cost than the AGP, Northern Gas Pipeline and Carpentaria Gas Pipeline combination that Mereenie gas would currently have to use.

3. Consultation

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

3.2. The ACCC invited submissions from a range of potentially interested parties including major competitors, customers, relevant industry associations or peak bodies, consumer groups, state and federal government and relevant regulatory bodies.[26]

3.3. In addition, on 30 August 2021 the ACCC sent a request for information to the Applicants to better understand how gas from the Mereenie field has previously been marketed, previous attempts at gas balancing between the Applicants, why they consider joint marketing necessary and arrangements concerning other nearby gas fields operated by the Joint Venture Participants. The ACCC was provided with a detailed response on a confidential basis.

3.4. PWC provided a submission stating that authorisation should not be granted because:

- separate marketing of gas by the Applicants is viable and was undertaken while the ACCC's prior authorisation (AA1000398) permitted joint marketing
- the public benefits claimed by the Applicants are not dependant on joint marketing

[26] A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

- continued joint marketing of gas produced from the Mereenie field is likely to prolong the relative illiquidity of gas supply to the in the NT and confer power upon the Applicants in the supply of gas in the NT, and

- insufficient evidence is provided as to the certainty of the proposed AMGP proceeding and of the additional quantities of gas likely to be available to the east coast gas market.

3.5. Parts of the Applicants response to PWC's submission (which are not confidential) are reproduced in subsequent sections of this draft determination.

3.6. The ACCC also received oral submissions from AGIG and AGL. Both AGIG and AGL support the application for authorisation.

3.7. AGIG provided information about what would be required for the AMGP to proceed, the timeframe in which it would likely be completed (if it proceeds) and the level of sustained gas supply that would be required for the pipeline to be economic. AGIG also stated that:

- government support would be required for the AMGP to proceed

- the memorandum of understanding between AGIG and the Applicants does not prevent AGIG from speaking to other parties about the construction of the AMGP or seeking to contract for gas to be supplied through it, and

- it would be simpler for AGIG to secure the gas required to underwrite the AMGP from the Applicants if they are permitted to market together and it might be difficult for the Applicants to justify investment decisions to expand their drilling in the Mereenie field if they are not marketing together.

3.8. AGL provided information about its past business dealings with the Applicants, where it is commercially viable for gas from the Mereenie field to be sold and why AGL supports joint marketing in the circumstances. In particular:

- AGL is generally supportive of separate/equity marketing, but in this instance, dealing with small producers in relation to small quantities of gas it is difficult to engage with the Mereenie joint venture participants separately

- AGL has a longstanding relationship with the Applicants and has sought to purchase gas from these parties separately and jointly. There have been instances where AGL has found it difficult to contract with these parties separately, resulting in a high likelihood of missed opportunities for supply and lower quantities of gas being purchased

- Separate marketing results in a large administrative burden with the negotiations imposing twice the workload, legal fees, resource use and time spent engaging with each business separately, rather than having a single negotiation with them jointly

- it is uneconomic for gas from the Mereenie field to travel from the NT to Moomba, beyond Mt Isa or to the broader east coast due to the high costs of transmission and current market prices

- due to the small quantities of gas sold from the Mereenie field and alternate gas supply sources, which constrain pricing, joint marketing is unlikely to increase the Joint Venture Participants' market power and may help them to better compete with larger producers, and

- if there are significantly greater volumes of gas sold from the Mereenie field in the future, AGL would have different views about whether it is appropriate to permit joint marketing.

3.9. Public submissions by the Applicants and interested parties and the request for information issued by the ACCC are on the Public Register for this matter.

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. The Applicants have 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 may substantially lessen competition within the meaning of section 45 of the Act. Consistent with subsection 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the 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 (authorisation test).

Relevant areas of Competition

4.3. To assess the likely effect of the Proposed Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.

4.4. The ACCC considers that the Proposed Conduct may have some impact on the supply of gas to the east coast. However, the area of competition that is likely to be most impacted by the Proposed Conduct is the supply of natural gas to commercial and industrial customers in the NT and the greater Mount Isa region (the **NT-Mt Isa Region**).

4.5. The Applicants consider the market is more appropriately considered as the broader east coast gas market, encompassing customers in Queensland, New South Wales, South Australia, Victoria, Tasmania and the NT who are connected in those jurisdictions via a gas pipeline network.

4.6. The Applicants submit:

- the NT is well connected to the east coast, with the Northern Gas Pipeline facilitating NT gas to be supplied to the east coast, and gas swap and back-haul opportunities allowing for east coast gas to be sold into the NT. The Applicants have provided the ACCC with details of GSAs entered into in the last 3 financial years on a confidential basis

- a substantial proportion of NT produced gas has been supplied to the east coast by the Applicants and PWC, including to customers outside the Mt Isa region, and this is likely to continue in the future, and

- there is less of a divergence in gas prices in the NT compared to the east coast than would be expected if these were separate economic markets.

4.7. AGL submits that it does not consider it economically viable for gas sourced from the Mereenie field to be sold to destinations in the east coast beyond the Mt Isa region due to the transmission costs involved and relatively small volume of gas supplied by the field, compared to other supply sources that service the east coast.

4.8. The ACCC is mindful that any gas produced in the Mereenie field that is destined for consumption in the east coast would have to be transported via the Amadeus Gas Pipeline, the Northern Gas Pipeline, the Carpentaria Gas Pipeline, and the South West Queensland Pipeline to the major hubs of Moomba ($4.06-$4.56) or Wallumbilla ($4.81-$5.61) for onward supply into the remainder of the east coast. It would also have to have nitrogen extracted through the nitrogen extraction facility that is attached to the Northern Gas Pipeline (the costs of which are included in the above charges).[27]

4.9. The ACCC considers that the figures provided by the Applicants regarding the quantities of NT produced gas transmitted using the Northern Gas Pipeline establish significant gas sales to Mt Isa, and only limited instances where gas has been sold beyond Mt Isa to the broader east coast.

4.10. The ACCC recognises that the possible construction of the AMGP could significantly improve the viability of gas sales from the Mereenie field to the broader east coast market. However, as discussed in the next section, the ACCC does not consider it likely that the AMGP will be built and operational in the next 5 years (the timeframe for which authorisation to jointly market has been sought).

Future with and without the Conduct

4.11. 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.

4.12. The ACCC considers that the Proposed Conduct is likely to assist the Joint Venture Participants in securing GSAs by being able to offer larger parcels of gas and reducing the gas lifting imbalance between the parties. It is also likely to result in better alignment of incentives for the parties to undertake investments in the Mereenie field, which is likely to bring larger volumes of gas to the market sooner and enable the Joint Venture Participants to make a larger contribution to underwriting future investments, such as the AMGP.

4.13. The Applicants submit that in circumstances where Central Petroleum has over lifted gas from the Mereenie field and it is difficult to secure firm GSAs for substantial quantities of gas, there is limited incentive for the Joint Venture Participants to invest in further expanding the production of the Mereenie field. The Applicants submit that the Proposed Conduct is likely to deliver a reduction of the gas lifting imbalance between the Joint Venture Participants and greater alignment of investment incentives for these parties, which will facilitate expansion of Mereenie production, an increase in east coast gas supply, and the development of the AMGP.

4.14. The Applicants submit that increased gas production and sales from the Mereenie field would help to underwrite the AMGP and that authorisation is a pre-condition for construction and operation of the pipeline (i.e. construction commencing in 2022, completion by 2024).

4.15. The Applicants submit that joint marketing has allowed the Mereenie field's full daily capacity to be sold, largely on a firm basis,[28] and this would be far less likely

[27] ACCC Gas Inquiry, July 2021 Interim Report, p 12, available at: https://www.accc.gov.au/system/files/Gas%20Inquiry%20-%20July%202021%20interim%20report_0.pdf.

[28] This has been achieved by combining the total equity shares of gas available for sale, with transparency of the lifting that is occurring at the field and accepting the maximum possible gas nominations from customers.

to occur if each party was limited to only being able to sell their daily equity share of gas. The Applicants submit that without the Proposed Conduct, they will engage in separate marketing, with the likely outcome of selling lower volumes of Mereenie gas than would occur through joint marketing.

4.16. PWC submits that the Proposed Conduct is likely to prolong the relative illiquidity of gas supply in the NT and confer market power upon the Applicants in the supply of gas in the NT.

Public benefits

4.17. 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:

> *…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.* [29]

4.18. The ACCC has considered the following public benefits:

- increased supply/earlier availability of gas
- cost savings and synergies, and
- aggregation of gas volumes.

Increased supply/earlier availability of gas

4.19. As explained at paragraphs 4.12 to 4.13, the Applicants submit the Proposed Conduct would support the development of the AMGP and expansion of the Mereenie field. This is likely to increase the supply of gas and access to the east coast gas market, reduce gas transmission costs and bring gas to market earlier, which in turn will help to alleviate the anticipated east coast gas supply shortfall.

4.20. The Applicants submit an expansion of the Mereenie field requires approval of the Joint Venture Participants under the Mereenie Joint Operating Agreement, and without joint marketing, there will be a material misalignment for incentives in relation to such investment and expansion, such that future development will not occur.

4.21. PWC agrees that the AMGP will require considerable, firm and long-term volumes of gas so that firm pipeline capacity can be booked. However, gas from the Amadeus fields alone may not be sufficient to underwrite investment decision-making, and more evidence is required to support the claim that joint marketing is a decisive factor. Additionally, PWC submits that the Applicant's claims of increases in supply over the relevant joint marketing periods may include additional events not discussed in the application. For example, the demand conditions for spot and as-available gas in eastern Australia, and the operating capacity of the fields.

4.22. AGIG submits that it is simpler and more cost effective for the Applicants to market jointly, rather than selling separately or to an aggregator in order to underwrite the AMGP. It is also easier for their capital decision making and any future interactions with retailers.

29 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.

4.23. The ACCC acknowledges that joint marketing is likely to assist the Joint Venture Participants to better align their interests in the field and support investments aimed at increasing gas production. Based on information provided confidentially by the Applicants, the ACCC understands that more gas has been marketed and sold by the parties when marketing jointly compared to separately. The ACCC considers the Proposed Conduct is likely to result in public benefit by leading to further development of the Mereenie field occurring sooner than it otherwise would.

4.24. The ACCC recognises that there are adverse environmental impacts from the mining operations required to access natural gas, construction of the pipelines through which it is transferred and the burning of the gas itself. These environmental impacts can be taken into account by the ACCC as a reduction in the public benefit that arises from increasing the supply of energy, or a public detriment in and of itself.

4.25. The ACCC considers that joint marketing may have the effect of impacting the time at which expansion of gas fields and construction of pipelines occurs, but is unlikely to be determinative in whether these investments are undertaken. As such the ACCC considers that these investments, and the magnitude of any resulting environmental consequences, would be the same in the future with and without the Proposed Conduct. As such, the ACCC does not consider joint marketing will cause significant adverse environmental impacts in these circumstances.

Cost savings and synergies

4.26. The Applicants submit that the Proposed Conduct will result in reduced transaction costs for:

- major commercial and industrial customers seeking to purchase gas produced from the Mereenie field; and
- pipeline operators, and particularly AGIG as the pipeline developer for the AMGP, due to the ability to arrange purchase and gas transportation terms through a single negotiation, rather than multiple negotiations.

4.27. The Applicants state as part of the Central Petroleum Sell-Down, Central Petroleum will be seeking to assign 50% of its interest in the AMGP memorandum of understanding with AGIG and Macquarie Mereenie[30] to NZOG and Cue given the importance that their contribution to gas volumes will have to support an AMGP development. Additionally, the depth of potential customers in the east coast seeking gas supplies will involve duplication of cost and effort in relation to both business development and negotiation where the Joint Venture Participants were required to individually find gas sales opportunities for Mereenie gas.

4.28. The ACCC considers that the Proposed Conduct is likely to result in some public benefit through reduction of transaction costs for the Joint Venture Participants, major commercial and industrial customers, as well as gas processing and gas transmission pipeline operators.

Other claimed benefits

4.29. The Applicants submit the Joint Venture Participants face ‘lumpy’ sales opportunities, often requiring volume commitments beyond what individual Mereenie participants can provide separately, and as a result:

[30] Central Petroleum, ASX Announcement, *Amadeus to Moomba Gas Pipeline: Proposed Boost to East Coast Gas Supplies*, 18 August 2020.

a) aggregation of gas volumes would assist the Joint Venture Participants to bid for larger-volume GSAs that would operate on a ‘firm’ basis

b) it will be difficult for the AMGP to be underwritten with separate marketing due to challenges the Applicants have previously encountered with limiting their marketing activities to their equity share in the joint venture, and

c) separate marketing of gas from the Mereenie field has led to (and may in the future continue to contribute to) a significant gas lifting imbalance. The Applicants consider this exacerbates the difficulties the Joint Venture Participants face in aligning future investment incentives in relation to investment in, and expansion of, the Mereenie field.

4.30. The Applicants submit the Proposed Conduct is required to enable coordination in relation to the timing and volumes of sales to east coast gas market customers where deliveries will occur via the AMGP/Moomba. Further, without joint marketing, the Applicants state there are risks that individually marketed supplies by one participant of smaller volumes will effectively deprive both participants of the opportunity to enter into large volume GSAs, as will be required to underwrite the AMGP.

4.31. The ACCC notes that the Proposed Conduct would only permit the aggregation of each of the Joint Venture Participants’ equity share of gas from the Mereenie field, it does not enable the Applicants to aggregate volumes from other sources.

4.32. AGL’s submission to the ACCC suggests that some customers do view it as desirable to engage with the Joint Venture Participants collectively to acquire an aggregated bundle of gas, particularly where such customers see the volume of gas being sold as a relatively small volume. It is not clear to the ACCC that all large commercial and industrial customers will value the aggregation of gas volumes under a joint marketing arrangement. However, without joint marketing, aggregation is likely to be uneconomic due to the administrative burden it imposes (i.e. double dealings consume time and resources) and the potential for inefficient volumes (i.e. small parties with small volumes frequently altering contracts). These issues are likely to result in a lower margin for gas distributors and deter future business opportunities.

4.33. The ACCC considers that any benefit from aggregation of gas volumes making it easier for the Joint Venture Participants to sell gas from the Mereenie field will primarily constitute a commercial benefit for the parties (and not a public benefit), except to the extent that it may contribute to transaction cost savings or bringing gas to market more quickly than might otherwise have occurred.

4.34. On current information and consistent with the 2018 Authorisation, the ACCC’s view is that aggregation of gas volumes under the Proposed Conduct is not likely to result in additional public benefits over and above the benefits identified above from bringing gas to market earlier and the cost savings and synergies that joint marketing enables.

ACCC conclusion on public benefit

4.35. The ACCC considers that the Proposed Conduct is likely to result in public benefits by:

- enabling earlier further development of the Mereenie field to bring additional gas supply to customers sooner than might otherwise occur, and

- reducing transaction costs and/or increasing operating efficiencies for the Joint Venture Participants, major customers, gas processing operators and gas transmission pipeline operators.

Public detriments

4.36. 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.*[31]

4.37. The Applicants submit that there is very limited, if any, potential public detriment caused by the Proposed Conduct. In particular the Joint Venture Participants will not be able to obtain more favourable pricing (or other gas supply terms) by jointly marketing because:

- the volume of gas that would be jointly marketed is very small in the context of gas supply and demand, such that joint marketing will not materially change the concentration in the market or competitive dynamics
- the Applicants will not be 'price setters' because customers will only purchase Mereenie gas it if it is competitively priced relative to the numerous alternative sources of supply. These include the incumbent producers in the east coast gas market, gas resources owned by companies associated with LNG facilities, PWC (which has contracted significant NT produced gas surplus to its needs), offshore oil and gas resources (including Blacktip, which has greater production capacity and a pipeline connection to Darwin), and upcoming gas and LNG developments
- the Proposed Conduct is only intended for the period estimated as needed to enter into the GSAs necessary to substantially underwrite the further development of the Mereenie field and support the foundation contracts for the AMGP, and
- the joint marketing arrangements will not extend to joint marketing of any other production by Central Petroleum or trading of gas from other sources by Macquarie Mereenie, including the Palm Valley and Dingo fields.

4.38. PWC submits that continued joint marketing of Mereenie gas is likely to prolong the relative illiquidity of gas supply in the NT and confer market power upon the Applicants in the supply of gas in the NT. PWC also suggests that that the application for authorisation does not address competition concerns within the NT – PWC considers that the most substantial constraint on the price of Mereenie gas is gas from the Blacktip field, which sets a 'generous' ceiling on supply prices in the NT because of its higher costs and export parity effects. Blacktip therefore offers only a weak constraint on the price of gas from the Mereenie field sold in the NT.

4.39. In response to PWC's submission, the Applicants argue that PWC will face more effective competition from the Joint Venture Participants for future gas marketing opportunities if authorisation is granted, and any asserted disadvantage to a dominant incumbent supplier, such as PWC, from increased competition is not a detriment to competition itself. The Applicants also state that the competition they face from PWC and east coast producers has resulted in numerous jointly marketed supply proposals and offers not progressing to signed agreements, which demonstrates the

31 Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

competitiveness of the market and that joint marketing has not allowed them to dictate or increase prices.

4.40. AGL submits that it considers the Applicants to be price-takers, with gas pricing in the NT-Mt Isa Region primarily determined by the cost of gas that can be provided from alternative suppliers, including from the east coast market.

4.41. The ACCC's assessment of the likely public detriments follows.

Competition impacts

4.42. The ACCC takes the view that, where commercially feasible, separate marketing is likely to result in a more competitive outcome than would be the case under joint marketing. In this case, due to market conditions in the NT-Mt Isa Region and constraints from other supply sources, the ACCC considers that the Proposed Conduct is not likely to result in significant public detriment from increasing market concentration or leading to a reduction in competition.

4.43. The ACCC accepts that the Applicants have experienced challenges in separately marketing gas from the Mereenie field and the other Joint Venture Participants do not have any Australian gas marketing function or expertise. The ACCC considers that joint marketing is likely to reduce the competitive tension between the Joint Venture Participants in the sale of gas and prevent the development of individual marketing capabilities. However, given the experience of the Applicants marketing separately, the ACCC does not consider this to be a significant detriment. Indeed, by aggregating gas volumes and streamlining negotiations between customers and the Joint Venture Participants, the Proposed Conduct may improve the capacity for the Mereenie field to compete with gas offerings from larger competitors that service the NT-Mt Isa Region, such as PWC.

4.44. The ACCC notes that AGL's submission illustrates the challenges of separately marketing a small volume of gas in lumpy and illiquid market conditions, such as those in the NT – Mt Isa Region (discussed at 2.11 to 2.14). In particular, the ACCC notes AGL's recent experience attempting to negotiate with the Applicants was that conducting separate negotiations with Macquarie Mereenie and Central Petroleum was extremely difficult because of the different risk profiles of the parties and increased administrative burden.

4.45. The ACCC notes that authorisation is not sought for any cooperation between the Joint Venture Participants in relation to existing or future oil or gas projects outside the Mereenie joint venture.

4.46. The volume of gas to be jointly marketed is a very small proportion of total east coast gas demand, accounting for less than one per cent of annual east coast supply and demand, but gas from the Mereenie field accounts for around 20% of natural gas supplied in the NT. The ACCC considers that commercial and industrial customers in the NT-Mt Isa Region are likely to have a number of alternative sources of supply and will assess the Applicants' offer against those of rival suppliers, including the Bayu-Undan, Ichthys and Blacktip fields for the NT, while Mt Isa can also access gas from Cooper Basin gas suppliers and elsewhere in the east coast. These competing gas sources include gas fields that produce substantially more gas than the Mereenie field and are located where transmission fees to major customers will be lower. The ACCC considers that these fields are likely to constrain the Applicants' price and service offers to prospective customers.

4.47. The ACCC considers that the Proposed Conduct is unlikely to lead to a significant increase in market concentration or reduction in competition because:

- the Joint Venture Participants serve a limited customer base in the NT-Mt Isa region and the illiquid nature of that market presents difficult conditions for the Joint Venture Participants to separately market gas from the Mereenie field, and
- there are a range of competing supply sources that can service the NT – Mt Isa Region and would constrain pricing.

4.48. The ACCC notes that the Proposed Conduct could apply to future participants in the Mereenie joint venture whose identities are not yet known. If key competitors who also supply gas to the NT – Mt Isa Region were to acquire an interest in the Mereenie joint venture and engage in the Proposed Conduct, then the competitive constraint that the Joint Venture Participants currently face could be significantly reduced, which may result in greater public detriments from the Proposed Conduct. The ACCC is proposing to address this risk with a condition requiring the Joint Venture Participants to notify the ACCC of any future parties joining the Mereenie joint venture, as set out at paragraph 5.7.

ACCC conclusion on public detriment

4.49. The ACCC recognises that there may be some public detriment from the Proposed Conduct, but it is unlikely to be significant. In particular the risk that the Proposed conduct will lead to a significant increase in market concentration or a reduction in competition is substantially mitigated because of the market conditions that the Joint Venture Participants face in the NT-Mt Isa Region, and the presence of a range of other supply sources. The extent of public detriment likely to arise from the Proposed Conduct would be larger if key competitors were to participate in the Mereenie joint venture in the future.

4.50. The ACCC notes that if market circumstances were to change in the future with the effect of the Mereenie field supplying more substantial volumes of gas and/or transmission costs to the broader east coast falling to the point where NT gas can more easily be sold to customers in the broader east coast, then there would be a higher risk of detriment from the Proposed Conduct.

Balance of public benefit and detriment

4.51. The ACCC considers that the Proposed Conduct is likely to result in public benefits by enabling earlier, further development of the Mereenie field to bring additional gas supply to customers sooner than might otherwise occur. Further benefits are likely from reduced transaction costs and/or increased operating efficiencies for participants in the Mereenie joint venture, major customers, gas processing operators and gas transmission pipeline operators.

4.52. The ACCC considers that the Proposed Conduct is unlikely to result in significant public detriments by increasing market concentration or reducing competition.

4.53. Therefore, for the reasons outlined in this draft determination, the ACCC is satisfied 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

4.54. The Act allows the ACCC to grant authorisation for a limited period of time.[32] 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.

4.55. In this instance, the Applicants seek authorisation for 5 years from the date of a final determination, and protection for joint marketing contracts entered during that period for a term of up to 10 years. This will provide the Joint Venture Participants ongoing certainty and stability for appraisal, development and expansion of the Mereenie field, additionally, it provides an appropriate duration to resolve the lifting imbalance.

4.56. Noting that joint marketing was previously authorised for 3 years, the public benefits that have resulted and are likely to continue, and the low risk of public detriment, the ACCC proposes to grant authorisation to enable current and future participants in the Mereenie gas field joint venture to:

- for a period of 5 years, jointly market gas from the Mereenie gas field
- for a period of 5 years, make GSAs with customers for the supply of Mereenie gas that contain common terms and conditions (including as to price) and that expire on or before 31 December 2031, and
- give effect to any such GSAs (entered into during the five5-year period) until 31 December 2031.

5. Draft determination

The application

5.1. On 29 July 2021, the Applicants lodged application AA1000564 with the ACCC, seeking authorisation under subsection 88(1) of the Act.

5.2. The Proposed Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.

5.3. The Applicants seek authorisation for the Proposed Conduct, as described at paragraph 1.14 above. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

The authorisation test

5.4. 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.

5.5. For the reasons outlined in this draft determination and with the condition below, the ACCC is satisfied, in all the circumstances, that the Proposed Conduct would be likely

[32] Subsection 91(1).

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.

5.6. Accordingly, with the proposed condition, the ACCC proposes to grant authorisation.

Conduct which the ACCC proposes to authorise with condition

5.7. The ACCC proposes to grant authorisation AA1000564 with a condition to the Joint Venture Participants (as defined in paragraph 1.11) and Future Participants (as defined in 1.14) to enable them to:

- for a period of 5 years from the date of the determination, jointly market gas from the Mereenie field,
- for a period of 5 years from the date of the determination, enter into GSAs with customers for the supply of gas from Mereenie field that contain common terms and conditions (including as to price) and that expire on or before 31 December 2031, and
- give effect to any such GSAs entered into during the 5 year period until 31 December 2031.

5.8. For the purpose of this draft determination, joint marketing includes the activities outlined at paragraph 1.16.

5.9. The ACCC proposes that authorisation be granted with the following condition:

- The Joint Venture Participants must, at least 30 days prior to any Future Participants (as defined in paragraph 1.14) engaging in the conduct the subject of the authorisation, notify the ACCC of the following details:
  - The identity and contact details of each Future Participant, and
  - a summary of the Future Participant's gas operations, including: the name and location of all gas fields in Australia in which they have an interest, how much gas they have sold in the NT and/or Mt Isa region in the prior 12 months, and whether they have previously acquired gas from the Mereenie field in the past 5 years.

    The notification shall be in a form that can be placed on the public register and should clearly identify any confidential information and be accompanied by reasons why any such information should be excluded from the ACCC's public register (if applicable).

5.10. The ACCC notes that any GSA entered into by the Joint Venture Participants with customers under the interim authorisation granted on 7 October 2021 is conditional upon the ACCC granting authorisation in its final determination and is subject to any terms and/or conditions of any such authorisation.

5.11. This draft determination is made on 19 November 2021.

6. Next steps

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