SUBMISSION

ACCC REVIEW OF UPSTREAM COMPETITION AND TIMELINES OF SUPPLY ISSUES PAPER

15 OCTOBER 2021

EUAA
Energy Users Association of Australia

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Introduction

The Energy Users' Association of Australia (EUAA) is the peak body representing Australian commercial and industrial energy users. Our membership covers a broad cross section of the Australian economy including significant retail, manufacturing, building materials and food processing industries. Combined our members employ over 1 million Australians, pay billions in energy bills every year and in many cases are exposed to the fluctuations and challenges of international trade.

Critically, our members are highly exposed to movements in both gas and electricity prices and have been under increasing financial stress due to escalating energy costs. These increased costs are either absorbed by the business, making it more difficult to maintain existing levels of employment or passed through to consumers in the form of increases in the prices paid for many everyday items.

Given the heightened concerns over future gas supply and potential costs impacts on gas users, the EUAA welcomes this review. Successive ACCC reports have highlighted the lack of upstream competition that our members have faced for many years as they have sought bids to supply their gas needs. We are glad to see that the ACCC's information gathering powers have confirmed our members' experiences in the face of claims by the industry that the upstream industry is competitive.

As the Paper notes (p.4):

> *"…competition between producers is ineffective and has had an adverse effect on producers' selling practices and the ability of C&I users to procure gas on competitive terms between 2017 and 2020."*

We agree with the Paper when it says that a competitive market would produce domestic prices:

> *"…to sit somewhere between the costs of domestic production and the LNG netback price. Further, when LNG netback prices are substantially higher than the costs of domestic production, we would expect domestic prices to be substantially lower than the LNG netback price."*

rather than the current situation where producers (whether LNG exporters or not) see:

- LNG netback in Queensland, and
- LNG netback plus transport (the buyer's alternative) in Southern States

as representative of the respective price floors.

Recent press releases from the APPEA seek to perpetuate the myth of a competitive gas market for East Cost customers with the following standard sentences being used in multiple recent press releases relating to Senex GSAs with a variety of customers[1]:

[1] e.g. recent Senex GSAs for supply to various customers e.g. https://www.appea.com.au/all_news/media-release-gas-keeps-delivering-for-queenslands-economy/; https://www.appea.com.au/all_news/media-release-another-gas-sales-agreement-reached/; https://www.appea.com.au/all_news/media-release-another-gas-sales-agreement-with-an-australian-manufacturer/

"The market is clearly working with competitively priced gas continuing to deliver for Australia. Domestic users are paying less for Australian gas over the long term than overseas markets and have been doing so for some time."

Note that the price comparison is with 'long term' prices paid by consumers in 'overseas markets' without reference to calculation method or location. Obviously not in the US, Canada or the Middle East.

These deals that APPEA is now lauding are using gas from fields covered by the Queensland Government's Australian market supply condition which requires the gas be sold only to domestic consumers[2]. This policy was introduced by the Queensland Government in 2017 against strong opposition from APPEA which did not support any conditions being placed on where the gas could be sold.

The then APPEA Chief Executive is quoted at the time of the first allocation of acreage under the legislation as saying[3]:

"The best - indeed the only - way to put downward pressure on local [prices] is to expand supply…However, APPEA is disappointed that the government has, for the first time, attached 'Australian market conditions' to the release of new acreage. While the government is clear that this is only a trial, and it will only apply to 58 square kilometres, imposing restrictions is unnecessary and can only discourage development."

In its review of the LNG netback methodology, the ACCC concluded that the pries offered even by companies like Senex selling gas that cannot be exported, is driven by the LNG netback. This is clear evidence that while the Queensland policy has had a welcome impact in increasing supply, it has not had any downward impact on price. Price setting in this type of market cannot be considered 'competitive'.

The situation in other States, particularly NSW and Victoria, suggests that there is little scope for any recommendations coming from this review to reduce the barriers to increased supply from onshore locations. The NSW Government has recently issued its Future of Gas Statement[4] that has removed the so-called 'zombie' licences and left the only area for potential development as the Santos Narrabri project that is tied up in a lengthy legal and approvals process. In Victoria, while the Government recently allowed the development of onshore conventional gas resources, we do not expect this to result in a significant increase in supply even in the medium term.

So this leaves the only real options to be offshore areas controlled by the Commonwealth and onshore in South Australia (where the State Government is awarding leases to juniors), Queensland and the Northern Territory with its potentially substantial reserves in the Beetaloo Basin. The Queensland experience shows that increasing supply does not mean competitive prices, as defined by the ACCC, if the producers from those restricted leases are only competing against producers who are LNG exporters or who can sell to LNG exporters. The fact that for Senex[5]:

"Unit operating costs <$3/GJ (all-inclusive cost, including field operating costs, tolls, tariffs and royalties)"

is irrelevant if it is only competing against these other producers that have an LNG option. Supply needs to expand enough so there is real competition between holders of the restricted Queensland licences to get offer prices near the ACCC competitive benchmark of somewhere between the costs of production and the LNG netback.

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[2] https://www.resources.qld.gov.au/?a=109113:policy_registry/operational-policy-australian-market-supply-condition.pdf&ver=2.01

[3] Mark Ludlow "Queensland earmarks gas for domestic use amid consumer worries about pricing" AFR 25th January 2017 https://www.afr.com/politics/queensland-earmarks-gas-for-domestic-use-amid-consumer-worries-about-pricing-20170125-gty9r2

[4] https://www.nsw.gov.au/regional-nsw/future-of-gas-statement

[5] "Senex delivers transformational growth though its Surat Basin Investments" March 2020 Slide 28 https://www.senexenergy.com.au/wp-content/uploads/2020/03/2040406.pdf

Even if this were to occur, it is of no assistance to consumers in Southern States if there are pipeline transport constraints or a shortage of locally produced gas in those States, which is what AEMO is forecasting[6].

Our feedback on the issues raised in the Issues Paper covers the following areas:

- The Queensland Government continuing to allocate acreage under the Australian market supply condition to a level that brings price competition in addition to increased supply
- Governments setting strict lease conditions and then rigorously enforcing ‘use it or lose it’ provisions
- Field developers not being able to ‘warehouse’ gas in anticipation of future demand; if developers do not wish to develop reserves in the lease conditions timetable, then they should lose the lease and it be offered to other parties that are prepared to meet that timetable
- The need for regulation to ensure third party access to processing and transport infrastructure that has spare capacity
- Support for separate marketing arrangements supported by our members positive experience of the separate marketing by the GBJV, and
- On issues around mergers and acquisitions, we consider that the ACCC is best placed to consider what changes are required.

While implementation of the above changes would help, it remains to be seen if implementation would result in a significant movement towards a competitive market. Developments in the east coast gas market since the announcement of the three LNG projects mean it is very difficult to unscramble the egg.

Kind regards,

Andrew Richards
Chief Executive Officer

[6] AEMO “Gas Statement of Opportunities” March 2021 https://aemo.com.au/en/energy-systems/gas/gas-forecasting-and-planning/gas-statement-of-opportunities-gsoo

Review of upstream competition and timelines of supply: Issues Paper

Attachment 1: Response template due 15 October 2021

Stakeholder name: Energy Users Association of Australia

	Questions	Feedback
Box 3.1: Questions on government processes		
1.	Are there any other government processes that may affect the degree of upstream competition and/or the timeliness of supply? If so, please set out what they are and the effect that they may have on competition or supply.	We are strong supporters of the Queensland approach – allocation under the Australian market supply condition and diversity criteria for tenderers.
2.	Should governments explicitly consider diversity and efficiency, or the potential impacts on competition, when awarding acreage? If not, please explain why not.	Yes. Competition is a key factor to encourage additional players apart from the large established producers to develop and sell reserves.
3.	Should governments employ a more proactive approach when: (a) specifying the timeframes for exploration, appraisal and/or production and/or approving exploration or retention permit renewals where they have the discretion to do so? • If so, what is this likely to entail? • If not, please explain why not. (b) approving, monitoring and enforcing compliance with work programs? • If so, what is this likely to entail? • If not, please explain why not.	Yes – there should be much stricter 'use it or lose it' provisions supported by stronger Government oversight of proposed work programmes. We think there should be a lot more transparency around the reasons for any reserves write down eg the assumptions used by the lease holder. This should be considered a factor in the Government considering compliance with agreed lease conditions. State Governments can influence the development timeline by allocating more prospective acreage and impose a shorter development timeline as we have seen with the Senex Atlas field in Queensland.

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	Questions	Feedback
4.	What other ways could state, territory or Commonwealth governments encourage: • greater diversity in the upstream segment of the market? • more timely supply of gas to market?	State or Commonwealth based incentive schemes should be explored to encourage juniors.
Box 3.2: Questions on barriers faced by producers		
5.	Are there any other barriers that producers face when developing tenements that have not been identified in section 3.2 (for example, access to drilling or other appraisal related services) that may affect upstream competition and/or the timeliness of supply? If so, please explain what these barriers are and the effect that they can have on upstream competition and/or the timeliness of supply?	Increasing ESG concerns may limit the availability of debt and equity funding.
6.	Are there any effective ways to reduce the following barriers: • land access, environmental and other regulatory approvals? • access to capital and other commercial barriers? • access to infrastructure?	There is scope for greater consistency and harmonisation of Commonwealth and State approvals and permitting. Look at international best practice as a guide. Consider a role for Governments supporting juniors increasing their ability to participate in tenders and meet lease requirements.
7.	Should the owners of upstream infrastructure (e.g. gathering pipelines, gas processing facilities and/or water processing facilities) that have spare capacity be required to provide third party access on reasonable terms?	Yes – they should not be able to prevent access to a monopoly asset and effectively control entry of new producers. Access should be on fair and reasonable terms with preference for Part 23 type approach than AER full regulation unless required.
8.	Are there other ways to improve third party access to upstream infrastructure on reasonable terms?	
9.	Would third party access to any other infrastructure (e.g. LNG processing facilities, storage facilities etc.) facilitate more upstream competition and/or the more timely development of supply into the domestic market? If so, please identify the infrastructure and the benefits that third party access would provide.	

	Questions	Feedback
Box 4.1: Questions on JV arrangements		
10.	Are there any aspects of JV arrangements not identified in section 4.1 that may adversely affect upstream competition and/or the timeliness of supply? If so, please explain what they are and how they may affect upstream competition and/or the timeliness of supply.	We agree there are often good reason for a JV structure for field development and production given the risks and capital required. However, this should not allow any one JV partner to prevent development of a project because it may adversely impact on the interests of that JV partner in another development.
11.	Are there any measures that could be put in place to address the potentially negative aspects of JVs identified in section 4.1 or in your response to question 10?	Strictly enforce the lease conditions. If a JV is unable to fulfill their lease conditions because one or more of the JV participants do not wish to proceed with field development in the agreed timeline then the JV could lose its lease if it fails to meet the lease conditions.
12.	Are there provisions in the contractual arrangements that underpin JVs that can adversely affect competition and/or the timeliness of supply? If so, how could this be addressed? Is there, for example, a best practice JV arrangement that would prevent this occurring?	
13.	Are there any approaches (either in place, or that could be put in place) designed to help level the playing field between larger and smaller producers in the same JV? Please explain how these approaches work.	
14.	Do you consider that proposals by larger producers to enter into JV arrangements (or farm into existing JV arrangements) should be subject to mandatory notification requirements and ACCC consideration? Please explain your response to this question.	Yes – consideration of whether it might substantially reduce competition and commitment of all participants post the farm-in to meeting Government lease conditions.
15.	Is any other form of oversight of JV arrangements required?	

	Questions	Feedback
Box 4.2: Questions on mergers and acquisitions		
16.	Section 4.2 sets out how mergers and acquisitions of individual tenements can affect competition and/or the timeliness of supply. Are there any other ways in which mergers and acquisitions could affect competition and/or the timeliness of supply that have not been identified? If so, please explain what they are and the effect that they can have on upstream competition and/or the timeliness of supply?	We think that the ACCC, with its access to confidential information is best placed to decide on the level of compliance with Section 50 and what changes might need to be made on mergers and acquisitions in the upstream gas industry eg compliance with undertakings.
17.	Do you think the current merger regime has been working effectively to date? If not, please explain why not.	
18.	Do you think the current merger regime can work effectively in the highly concentrated upstream market? If not, please explain what changes you think are required?	
Box 4.3: Questions on joint and separate marketing		
19.	Are there any aspects of joint marketing by unincorporated JVs not identified in section 4.3 that may adversely affect upstream competition and/or the timeliness of supply? If so, please explain (with examples if possible): • what they are • how they may effect upstream competition and/or the timeliness of supply • any measures that may be able to address them.	
20.	What are the factors that may make establishing balancing arrangements difficult in one case, and easier in another? How has this changed over time? Please provide examples if possible.	

	Questions	Feedback
21.	In what circumstances do you consider allowing producers to jointly market gas would be beneficial? Please provide examples of current producers that are jointly marketing their gas and what you consider the likely impact would be on competition or the timeliness of supply if they were to separately market.	We consider that the ACCC authorising joint marketing should be the exception rather than the rule. The Paper points to the benefits since the Gippsland Basin JVs started joint marketing. Our members' experience supports this conclusion. We support the ACCC reviewing as a matter of course, current joint marketing arrangements (for both incorporated and unincorporated JVs) that are not authorised. We are surprised that this has not already occurred.
22.	Do you consider the current competition laws are sufficient to respond to the issues around joint marketing by unincorporated JVs? Please explain your answer including, if relevant, any changes you think may be required.	
23.	Are there any aspects of the arrangements relating to the sale of gas by incorporated JVs that may affect upstream competition and/or the timeliness of supply? If so, please explain (with examples if possible): • what they are • how they may effect upstream competition and/or the timeliness of supply • any measures that may be able to address them.	
24.	Do you consider the current competition laws are sufficient to respond to the issues around the arrangements relating to the sale of gas by incorporated JVs? Please explain your answer including, if relevant, any changes you think may be required.	
Box 4.4: Questions on exclusivity provisions		
25.	Section 4.4 describes how exclusivity provisions in GSAs between producers may restrict upstream competition. • Are there any other ways that these provisions might restrict competition? If so, please explain what they are.	We think that the ACCC, with its access to confidential information, is best placed to decide on the appropriate response in this area.

	Questions	Feedback
	• Are there any competition or efficiency benefits associated with these types of provisions?	
26.	If exclusivity provisions are restricting competition, how should this be addressed?	
27.	Should producers only be allowed to enter into exclusivity arrangements if they have sought and obtained authorisation from the ACCC before doing so? Please explain your reasons.	Yes – to give gas consumers confidence that the arrangements are not anti-competitive
Box 4.5: Questions on decisions on when to develop new sources		
28.	Section 4.5 sets out some of the technical, commercial and strategic factors that may affect producers' decisions about when to develop new sources of supply and the timeliness with which gas is brought to market. Are there any other factors that may influence these decisions?	
29.	Section 4.5 also outlines some of the reasons why larger producers may want to 'bank' or 'warehouse' gas. Are there any other reasons why they may want to withhold supply in this manner?	
30.	If gas is being 'banked' or 'warehoused' how do you think this should be addressed?	See comments above around Governments using lease provisions, including compliance with the agreed work programme, to implement 'use it or lose it' provisions; also the use of diversity criteria in lease allocation to prevent producers who already control significant undeveloped reserves from bidding