



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? <ul style="list-style-type: none"> • If so, what is this likely to entail? • If not, please explain why not. (b) approving, monitoring and enforcing compliance with work programs? <ul style="list-style-type: none"> • 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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4.	<p>What other ways could state, territory or Commonwealth governments encourage:</p> <ul style="list-style-type: none"> greater diversity in the upstream segment of the market? more timely supply of gas to market? 	<p>State or Commonwealth based incentive schemes should be explored to encourage juniors.</p>
Box 3.2: Questions on barriers faced by producers		
5.	<p>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?</p> <p>If so, please explain what these barriers are and the effect that they can have on upstream competition and/or the timeliness of supply?</p>	<p>Increasing ESG concerns may limit the availability of debt and equity funding.</p>
6.	<p>Are there any effective ways to reduce the following barriers:</p> <ul style="list-style-type: none"> land access, environmental and other regulatory approvals? access to capital and other commercial barriers? access to infrastructure? 	<p>There is scope for greater consistency and harmonisation of Commonwealth and State approvals and permitting. Look at international best practice as a guide.</p> <p>Consider a role for Governments supporting juniors increasing their ability to participate in tenders and meet lease requirements.</p>
7.	<p>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?</p>	<p>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.</p>
8.	<p>Are there other ways to improve third party access to upstream infrastructure on reasonable terms?</p>	
9.	<p>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?</p> <p>If so, please identify the infrastructure and the benefits that third party access would provide.</p>	



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Box 4.1: Questions on JV arrangements		
10.	<p>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?</p> <p>If so, please explain what they are and how they may affect upstream competition and/or the timeliness of supply.</p>	<p>We agree there are often good reason for a JV structure for field development and production given the risks and capital required.</p> <p>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.</p>
11.	<p>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?</p>	<p>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.</p>
12.	<p>Are there provisions in the contractual arrangements that underpin JVs that can adversely affect competition and/or the timeliness of supply?</p> <p>If so, how could this be addressed? Is there, for example, a best practice JV arrangement that would prevent this occurring?</p>	
13.	<p>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?</p> <p>Please explain how these approaches work.</p>	
14.	<p>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?</p> <p>Please explain your response to this question.</p>	<p>Yes – consideration of whether it might substantially reduce competition and commitment of all participants post the farm-in to meeting Government lease conditions.</p>
15.	<p>Is any other form of oversight of JV arrangements required?</p>	



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Box 4.2: Questions on mergers and acquisitions		
16.	<p>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?</p> <p>If so, please explain what they are and the effect that they can have on upstream competition and/or the timeliness of supply?</p>	<p>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.</p>
17.	<p>Do you think the current merger regime has been working effectively to date?</p> <p>If not, please explain why not.</p>	
18.	<p>Do you think the current merger regime can work effectively in the highly concentrated upstream market?</p> <p>If not, please explain what changes you think are required?</p>	
Box 4.3: Questions on joint and separate marketing		
19.	<p>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):</p> <ul style="list-style-type: none"> • 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.	<p>What are the factors that may make establishing balancing arrangements difficult in one case, and easier in another? How has this changed over time?</p> <p>Please provide examples if possible.</p>	



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21.	<p>In what circumstances do you consider allowing producers to jointly market gas would be beneficial?</p> <p>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.</p>	<p>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.</p> <p>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.</p>
22.	<p>Do you consider the current competition laws are sufficient to respond to the issues around joint marketing by unincorporated JVs?</p> <p>Please explain your answer including, if relevant, any changes you think may be required.</p>	
23.	<p>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):</p> <ul style="list-style-type: none"> • 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.	<p>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?</p> <p>Please explain your answer including, if relevant, any changes you think may be required.</p>	
Box 4.4: Questions on exclusivity provisions		
25.	<p>Section 4.4 describes how exclusivity provisions in GSAs between producers may restrict upstream competition.</p> <ul style="list-style-type: none"> • Are there any other ways that these provisions might restrict competition? If so, please explain what they are. 	<p>We think that the ACCC, with its access to confidential information, is best placed to decide on the appropriate response in this area.</p>



	Questions	Feedback
	<ul style="list-style-type: none"> 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