Draft Determination

Applications for authorisation

lodged by

Chevron Australia Pty Ltd
Inpex Operations Australia Pty Ltd
Shell Australia Pty Ltd
Woodside Energy Limited

in respect of

coordinating maintenance activities at specified LNG facilities in Western Australian and the Northern Territory

Date: 21 December 2017

Authorisation numbers: AA1000396-1
AA1000396-2

Commissioners: Sims
Rickard
Schaper
Court
Featherston

Summary

The ACCC proposes to grant authorisation to Chevron Australia Pty Ltd (Chevron), Inpex Operations Australia Pty Ltd (INPEX), Shell Australia Pty Ltd (Shell) and Woodside Energy Limited (Woodside) (together, the applicants) for five years to coordinate scheduling of planned maintenance for the following Western Australian and Northern Territory LNG facilities:

- **Gorgon, Western Australia**
- **Wheatstone, Western Australia**
- **North West Shelf, Western Australia**
- **Pluto, Western Australia**
- **Prelude offshore floating facility, Western Australia**
- **Ichthys, Northern Territory.**

The ACCC accepts that the proposed conduct is likely to result in the following public benefits:

- **improved efficiency in the maintenance of LNG facilities**
- **maximising LNG production and therefore LNG exports**
- **reducing safety risks.**

The ACCC considers that the proposed conduct is likely to result in some public detriment by reducing competition in the acquisition of maintenance services, however any such detriment is unlikely to be significant.

Overall, the ACCC considers the likely public benefit will outweigh the likely public detriment.

In authorising similar conduct in Queensland in 2016, the ACCC imposed a condition of authorisation requiring the public disclosure of certain maintenance scheduling information. That condition was intended to mitigate the detriment arising from LNG producers having an information advantage (about their maintenance schedules) in the context of the existing gas trading hub and the existing short-term trading market and potentially having surplus gas. In the current application for authorisation, there is no existing formal gas trading hub or short-term trading market in Western Australia or the Northern Territory and as the applicants' gas wells can be turned down, there is not likely to be excess gas to be disposed of locally. Accordingly, the ACCC considers there does not appear to be a need to impose a condition at this stage.

The ACCC invites interested parties to comment on this proposed approach.

Next steps

The ACCC seeks submissions in relation to this draft determination before making its final decision.

The applicants and interested parties may also request the ACCC to hold a conference to allow oral submissions on the draft determination.

The applications for authorisation

1. On 12 September 2017, Chevron Australia Pty Ltd (Chevron), Inpex Operations Australia Pty Ltd (INPEX), Shell Australia Pty Ltd (Shell) and Woodside Energy Limited (Woodside) (together, **the applicants**) lodged applications AA1000396-1 and AA1000396-2 with the ACCC under subsections 88 (1A) and 88(1) of the *Competition and Consumer Act 2010* (the Act).[1] The applicants seek authorisation[2] for 10 years to enable them to discuss, make and give effect to arrangements regarding sequencing and timing of scheduled maintenance works, and associated shutdowns and outages at the applicants' liquefied natural gas (LNG) facilities in Western Australia and the Northern Territory. The aim of the arrangements is to limit the extent to which scheduled maintenance work occurs concurrently at the applicants' LNG facilities. Concurrent maintenance is likely to result in facilities being unable to engage qualified and skilled contractors or source necessary equipment resulting in maintenance delays and extended LNG facility downtime.

2. The applicants are likely to be competitors for the acquisition of goods and services necessary to undertake LNG facility maintenance and for the supply of LNG to overseas customers. The applicants have applied for authorisation because the proposed conduct may result in cartel behaviour and/or exclusionary conduct and/or substantially lessen competition.[3]

The proposed conduct

3. The applicants seek authorisation to engage in the following conduct (**the proposed conduct**):

    a. to make and give effect to arrangements or understandings among the applicants regarding the sequencing and timing of the conduct of scheduled maintenance at the facilities which support LNG production, including the sequencing and timing of shutdowns and partial plant outages associated with such maintenance by:

        i. identifying the maintenance requirements for each of the facilities which support LNG production, including the scope and expected duration of maintenance campaigns and any shutdowns or partial plant outages associated with those maintenance campaigns;

        ii. classifying planned maintenance campaigns (e.g. major/minor shutdown maintenance or campaign maintenance);

---

1 On 6 November 2017, a number of amendments to the Act came into effect, including changes to the authorisation provisions in Division 1 of Part VII of the Act. Pursuant to section 182(3), these changes apply to applications for authorisation under consideration by the ACCC on or after 6 November 2017. Accordingly, the Act as amended will apply to this application, notwithstanding that it was lodged with the ACCC prior to the amendments coming into effect. Applications for authorisation under subsections 88(1A) and (1) are treated as applications for authorisation under subsection 88(1) of the Act as amended.

2 Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the Act. Applicants seek authorisation where they wish to engage in conduct which is at risk of breaching the Act but nonetheless consider there is an offsetting public benefit from the conduct (or, for certain conduct, that it would not be likely to substantially lessen competition). Detailed information about the authorisation process is contained in the ACCC's *Authorisation Guidelines*.

3 Applicants applications for authorisation, 12 September 2017, available: **https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/western-australian-and-northern-territory-lng-producers**

iii. working to identify optimal maintenance windows having regard to factors such as climate, safety considerations and resource constraints;

iv. scheduling maintenance in such a way as to minimise contractor mobilisation and demobilisation costs;

v. developing a process to:

A. nominate preferred dates for planned maintenance;

B. negotiate and agree the proposed dates for planned maintenance at each of the facilities supporting LNG production;

C. inform one another of ad hoc unplanned maintenance requirements;

D. consult about variations to any maintenance dates;

E. resolve conflicts where maintenance dates overlap; and

F. prepare and agree a schedule recording the planned maintenance dates for relevant facilities; and

b. to exchange information for the purpose of making and giving effect to the arrangements and understandings referred to in paragraph (a), including information about:

i. maintenance techniques, safety practices and operational processes, including personnel requirements, specialist equipment and the use, storage, transport and disposal of hazardous chemicals;

ii. potential resource constraints associated with particular maintenance windows (e.g. transport and accommodation) and discussing mitigation options; and

iii. disclosing the names of the maintenance contractors who have been appointed by each party to perform the relevant maintenance, subject to applicable third party confidentiality restrictions.

Background

Australia's LNG developments and export markets

4. Australia has eight operating LNG developments and two under construction.[4] The developments are located in, or off the coasts of, the following states and territories:

- Western Australia – four operating LNG projects and one under construction, these facilities are included in the application for authorisation

- Northern Territory – one operating development and one under construction

[4] Australian Petroleum Production and Exploration Association website, viewed 2 November 2017, available: **https://www.appea.com.au/oil-gas-explained/operation/australian-lng-projects/**

- Queensland – three operating developments.

5. During 2016-17, Australia exported 51 million tonnes of LNG, a 37 per cent increase over the 2015-16 export volume of 37 million tonnes.[5]

6. Australia's major LNG markets are Japan, China and South Korea. Taiwan is also a customer and India is an important emerging market.[6]

The Western Australian and Northern Territory LNG projects

7. With the exception of the Prelude floating LNG facility, all of the applicants' LNG facilities comprise both offshore and onshore infrastructure. An overview of each LNG facility is set out below.

Gorgon LNG Project, Western Australia – Operational (Chevron)

The Chevron operated Gorgon LNG project is situated on Barrow Island, 60 kilometres off the coast of Western Australia. The project's offshore facilities currently include 18 high rate, big bore development wells and a subsea gas gathering system.

The project's onshore facilities include an LNG processing plant comprising three processing trains (gas liquefaction units) with a combined production capacity of 15.6 million tonnes per annum (mtpa) of LNG and a loading jetty.

The first LNG cargo departed in March 2016 and the project has a production lifespan of 40 years, which includes environmental approval for a fourth LNG train.

Wheatstone LNG Project, Western Australia - Operational (Chevron)

The Wheatstone project, also operated by Chevron, is located 12 kilometres west of Onslow in Western Australia. The first shipment of LNG from the Wheatstone project departed on 31 October 2017.

The project's offshore facilities include well infrastructure, subsea installations and a platform. The project's onshore facilities will consist of two LNG trains with a combined capacity of 8.9 mtpa. The project has a projected lifespan of 30 years, which includes environmental approval to expand to 25 mtpa of LNG.

Pluto LNG Project, Western Australia - Operational (WBPL)

The Pluto LNG project commenced production in 2012. The onshore facilities comprise one LNG processing train, LNG storage tanks and an export jetty.

The Pluto A platform is located 180 kilometres north-west of Karratha Western Australia in 85 metres of water. Gas is piped to the onshore processing facility.

[5] Oil and Gas Journal, 2017, *EnergyQuest: Australia achieves record LNG exports in 2016-17*, 25 July 2017, available: **http://www.ogj.com/articles/2017/07/energyquest-australia-achieves-record-lng-exports-in-2016-17.html**

[6] The Australian Petroleum Production and Exploration Association, 2017, viewed 27 November 2017, Available: **https://www.appea.com.au/oil-gas-explained/benefits/benefits-of-lng/export-revenue/**

The Pluto Project has a production capacity of 4.7 mtpa of LNG, and usually operates unmanned (with operations controlled from the onshore Pluto Gas Plant).

North West Shelf LNG Project, Western Australia – Operational (Woodside)

The North West Shelf LNG Project has been exporting LNG since 1989. The onshore facilities include the Karratha gas plant, comprising five LNG processing trains with a combined production capacity 16.9 mtpa, as well as storage and loading facilities.

The offshore production facilities include the North Rankin Complex, Goodwyn A and Angel platforms. The Okha floating production storage and offloading vessel is an oil production facility, which also exports gas bound for the Karratha gas plant.

Prelude LNG Project, Western Australia – Under construction (Shell)

The Shell-operated Prelude Project, will comprise a floating LNG production facility in the Browse Basin, 475 kilometres north-north east of Broome, Western Australia. The project will be the largest floating LNG offshore facility in the world.

The project is expected to be producing material cash flow in 2018. Once operational, the project will have a production capacity of 3.6 mtpa of LNG with an expected operating life of 25 years.

Ichthys LNG Project, Northern Territory – Under construction (INPEX)

The INPEX-operated Ichthys project is currently under construction. It is expected to be producing material cash flow in 2018. The project includes onshore and offshore facilities.

The floating offshore facility in the Browse Basin will be used for extraction, preliminary processing, storage and export.

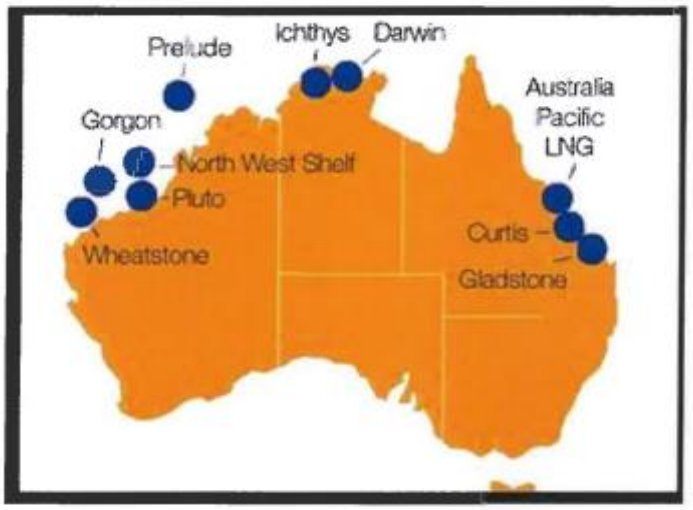
The onshore facilities at Bladin Point, Darwin will include two LNG processing trains, storage tanks, administration facilities, and a loading jetty. A 890 kilometre gas pipeline will link the onshore and offshore facilities.

Once operational, the project is expected to produce 8.9 mtpa of LNG and have an operating life of 40 years.

8. The Darwin LNG facility liquefies gas from the Timor Sea. Its operator, ConocoPhillips is not seeking authorisation and is aware of these applications.

9. Figure 1 sets out the location of the LNG facilities on mainland Australia.

Figure 1: LNG facilities in Australia



Source: Applicants supporting submission, p. 5.

LNG production process

10. LNG is natural gas, primarily methane, which has been extracted from gas fields and cooled to minus 161 degrees Celsius to create a liquid. Liquefying natural gas reduces its volume by more than 600 times, making it suitable for storage and transportation. LNG is not flammable or explosive.

11. LNG is transported to dedicated overseas LNG terminals by ship where it is stored and distributed for final use.

The Queensland LNG facilities' authorisation

12. On 14 April 2016, the ACCC granted conditional authorisation for five years to three Queensland LNG facilities situated on Curtis Island near Gladstone, to coordinate maintenance activities and share information about scheduled maintenance (the Queensland LNG authorisation).[7]

13. The Queensland LNG facility operators supply gas to the domestic gas market (in addition to LNG exports) and they participate in the established Wallumbilla gas trading hub and the Brisbane Short Term Trading Market (STTM). In these circumstances, the ACCC was concerned that the conduct would allow each of the Queensland operators to gain knowledge of the other LNG operators' coordinated maintenance schedules and then trade using this knowledge to the detriment of non-LNG market participants. The ACCC considered that this was likely to generate anti-competitive detriments which would offset the public benefits arising from the conduct.

14. For this reason, the ACCC imposed a condition of authorisation requiring that the Queensland LNG facilities publicly disclose current maintenance schedule information that they have shared with one another. The condition is intended to

[7] Australia Pacific LNG Pty Ltd & Ors Application for Authorisation, Determination, 14 April 2016, available: **https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/australia-pacific-lng-pty-ltd-ors-authorisations-a91516-a91517**

give all market participants' access to information regarding scheduled maintenance at the Queensland LNG facilities and therefore address the potential anti-competitive detriment arising from information asymmetry.

Submissions received by the ACCC

15. The ACCC tests the claims made by applicants in support of applications for authorisation through an open and transparent public consultation process.

16. The ACCC sought submissions from a range of interested parties including LNG facility maintenance providers, domestic gas users (generators and retailers) and relevant state/territory and Australian government and regulatory bodies.

17. The ACCC received four submissions from interested parties, three of which broadly supported the application for authorisation and one neither supported nor opposed authorisation. The applicants provided a written response to submissions.

18. All public submissions from interested parties and the applicants are available on the **ACCC public register.**

The applicants

19. The applicants submit that the proposed conduct will result in a number of public benefits including reducing safety risks, maximising LNG production, improving the availability of contractors and reducing costs.[8]

20. LNG facilities are designed to operate continually; however each facility requires a range of regular maintenance to ensure safe, efficient operation over the 25 to 40 year lifespan of the facility. Much of the regular maintenance will be performed while the facility is online. However some maintenance activities require the whole or partial shutdown of a LNG train:

    - Major shutdowns involve the planned outage of a LNG train to perform intrusive inspections, corrective maintenance, critical function testing (such as testing plant emergency shut down systems and routine maintenance).

    - Minor shutdowns involve the planned partial shutdown of a LNG train to perform equipment services, and corrective and routine maintenance.

21. Campaign maintenance is maintenance that can be grouped together and which does not require a production outage. Similar to major and minor shutdowns, planning commences well before maintenance commences and materials, equipment and maintenance personnel are sourced well in advance.

22. LNG facilities use the same or similar equipment and in many cases equipment manufacturers perform maintenance on that equipment once installed. Skilled maintenance contractors are also engaged to complete LNG facility maintenance.

[8] Applicants submission in support of the applications for authorisation, 12 September 2017, available: **https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/western-australian-and-northern-territory-lng-producers**

23. There is a limited supply of specialist maintenance contractors and equipment vendors. Many of these personnel also support maintenance campaigns of other oil and gas facilities in Australia and overseas.

24. Technical personnel are supported by businesses supplying accommodation, catering, workforce transportation and equipment transport.

25. Favourable weather conditions, meeting LNG demand and LNG train efficiency are key factors in scheduling LNG facility maintenance. As a result, the optimal maintenance windows for shutdowns are April to May and September to October.

26. Chevron and Woodside supply gas produced by the facilities they operate in Western Australia to the Western Australian gas supply market (referred to as domestic gas or 'domgas'). The infrastructure and facilities operated to produce gas for supply as domgas can be operated independently of the LNG facilities. Therefore the shutdown of the part or whole of a LNG train will not have any impact on the supply of domgas.

27. Further, unlike coal seam gas wells, the operator can turn off a conventional gas well. During scheduled maintenance the applicants can control the levels of feedstock gas so it is not required to flare (burn) the gas, store or sell it to a third party.

Interested parties

IMI Critical Engineering

28. IMI Critical Engineering designs, manufactures, installs and maintains flow control systems for the oil and gas industry.[9]

29. IMI Critical Engineering supports authorisation. The maintenance personnel that work on LNG trains requires specialised training and experience and if three or more maintenance shutdowns occur at the same time, there may be insufficient qualified staff to complete the work.[10]

Monadelphous Engineering Associates Pty Ltd

30. Monadelphous Engineering provides engineering services including maintenance and shutdown services to the Australian LNG industry.

31. Monadelphous Engineering supports the proposed conduct: it will result in more efficient utilisation of labour and equipment, attract new employees (providing the opportunity to up-skill local labour) and provide an opportunity for local businesses to meet demand for accommodation, transport and logistics. [11]

Australian Energy Market Operator

32. The Australian Energy Market Operator (AEMO) submits that the proposed conduct is generally beneficial; the expected cost savings and efficiencies from

[9] IMI Critical Engineering website: **http://www.imi-critical.com/about-us/Pages/default.aspx**
[10] IMI Critical Engineering, Submission on the applications for authorisation, 31 October 2017, available: **http://registers.accc.gov.au/content/index.phtml/itemId/1203752/fromItemId/278039**
[11] Monadelphous Engineering submission on the applications for authorisation, 27 October 2017, available: **https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/western-australian-and-northern-territory-lng-producers**

coordination of maintenance schedules are consistent with the objectives of the Western Australian *Gas Services Information Act 2012*. [12] [13]

33. AEMO submits:

- A five year authorisation period, consistent with the ACCC's Queensland LNG authorisation is appropriate, rather than the 10 years sought. The Western Australian gas market is evolving, with new production facilities and gas suppliers and greater pipeline and gas storage capacity. The landscape of the market could change considerably over the next 10 years.
- If authorisation is granted, a condition should be included requiring the applicants to make available, relevant details of the planned maintenance for publication on the Western Australian Gas Bulletin Board (WA GBB), if either a gas trading hub or Short-Term Trading Market (STTM) begin operating in Western Australia.

Synergy

34. Synergy generates electricity and retails electricity and gas in Western Australia. It receives gas from one of the applicants.

35. Synergy submits that:

- The applicants' assertion that the shutdown of the whole or part of an LNG train or carrying out maintenance on the infrastructure will not have any impact on the supply of domgas is not supported by evidence.
- The proposed conduct has the potential to lead to facilities supplying domgas not being returned to full service as soon as possible in favour of completion of maintenance at LNG facilities.
- The applicants may use information gained engaging in the proposed conduct to give them an advantage in any domestic trades or domestic demand or supply strategies.
- LNG facility operators are required to provide planned maintenance information to AEMO. To the extent that the proposed conduct results in the applicants disclosing more detailed information than currently required or they are not fully complying with existing requirements, the information exchanged should be provided publically to address information asymmetry.
- Significant changes to the Western Australian gas industry dynamics are expected over the next five years. A ten-year authorisation period is too long.

The applicants' response to interested party submissions

36. The applicants noted that all interested party submissions support the proposed conduct.[14]

[12] AEMO submission on the applications for authorisation, 27 October 2017, available: **https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/western-australian-and-northern-territory-lng-producers**

[13] The objectives of the *Gas Services Information Act 2012* are to promote the long term interests of consumers of natural gas in relation to security, reliability and viability of the supply of natural gas in WA; efficient operation and use of the natural gas services; efficient investment in natural gas services; and facilitation of competition in the use of natural gas services.

37. In relation to the length of authorisation, the applicants submit:

- The concerns of AEMO and Synergy regarding a 10 year authorisation period are unfounded and do not justify a shorter period. AEMO and Synergy did not provide material to support their view about future changes to the gas markets and given the stage of development of the relevant assets and the timelines necessary for the development of relevant infrastructure, the scenario suggested by AEMO and Synergy seems highly unlikely.

- During the first two to three years of the new LNG facilities, there may be some uncertainty around plant performance and reliability. An authorisation period of five years would realistically only involve each facility conducting one planned shutdown of each LNG train before a new authorisation would be required.

38. The applicants submit that the imposition of any condition such as that proposed by AEMO is unnecessary for the following reasons:

- No gas trading hub or STTM exists.

- The proposed conduct does not impact on domestic supply; Chevron and Woodside supply gas into the domestic market and these facilities are operated independently from their LNG facilities.

- It would be erroneous to compare the applicants' application to the Queensland LNG authorisation. When a Queensland LNG producer shuts down its LNG facilities, it is unable to shut down its coal seam gas wells, so it must either flare the gas or supply it into the market. The applicants' conventional gas wells can be turned down during LNG facility maintenance.

- The Queensland LNG producers are all located next door to one another and they all participate in the Wallumbilla gas supply hub. This is not the case for the applicants, where there are significant distances between the LNG facilities.

- Synergy acknowledges that LNG facility operators are required to provide information regarding planned work to AEMO.

ACCC assessment

39. On 6 November 2017, a number of amendments to the Act came into effect, including changes to the authorisation provisions in Division 1 of Part VII of the Act. Pursuant to section 183(2) of the Act, these changes apply to applications for authorisation under consideration by the ACCC on or after 6 November 2017. Accordingly, the Act as amended will apply to these applications, notwithstanding that they were lodged with the ACCC prior to the amendments coming into effect. Applications for authorisation under subsections 88(1A) and (1) are treated as applications for authorisation under subsection 88(1) of the Act as amended.

[14] Applicants response to interested party submissions, 1 December 2017, available: **https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/western-australian-and-northern-territory-lng-producers**

40. Pursuant to subsections 90(7) and 90(8) of the Act,[15] the ACCC must not make a determination granting authorisation in relation to conduct 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 that benefit would outweigh the detriment to the public that would result or be likely to result from the conduct.

The relevant areas of competition

41. The ACCC considers that a precise definition of the relevant areas of competition is not required for assessing the applicants' proposed conduct. The ACCC can consider the areas of competition in a broad sense when assessing any public benefits or detriments likely to arise from the proposed conduct.

42. The ACCC has assessed the proposed conduct in the context of the following areas of competition:

- LNG facility maintenance services in Australia. These services are supplied by a range of Australian and international specialists, and utilised by LNG producers in Western Australia, the Northern Territory, and Queensland and may be utilised by future LNG production projects during the period of authorisation.
- Various markets for inputs to the supply of maintenance services in Australia, including transport and accommodation services.
- The wholesale supply of natural gas (domestic and export) in Western Australia and the Northern Territory.
- Industries in Western Australia and the Northern Territory for which wholesale gas is an input to production, including gas-fired electricity generation and retail gas supply.

The future with and without

43. To assist in its assessment of the proposed conduct against the authorisation test, the ACCC compares the likely future with the proposed conduct that is the subject of the authorisation, to the likely future without the proposed conduct.

44. Under the proposed conduct the applicants will plan and coordinate maintenance scheduling and share information with each other to avoid maintenance being scheduled concurrently at the applicants' LNG facilities. Information shared will include maintenance techniques, safety processes, personnel requirements, potential resource constraints and the names of contractors who have been appointed to perform maintenance (subject to confidentiality agreements).

45. In the future without the proposed conduct, each applicant would independently plan and schedule maintenance at its LNG facility. Each applicant would not share information with other applicants, but they may become aware of various aspects of their competitors' maintenance plans and processes from other industry participants.

46. The LNG facilities are at various stages of development: four facilities are operational and the remaining two facilities are expected to begin operation in

[15] As the proposed conduct may involve a cartel provision, the alternative test under sub-section 90(7)(a) does not apply.

2018. The applicants that have been exporting LNG for some time already have processes for individually planning and scheduling facility maintenance including sourcing suitably qualified and skilled personnel.

47. The development of new LNG facilities will increase maintenance activities in the North Western region of Australia and create increased demand for maintenance services.

48. Given the optimal window for LNG facility maintenance is narrow, the ACCC considers that the future without the proposed conduct is likely to result in concurrent maintenance scheduling and therefore the possibility that suitably qualified and skilled personnel and equipment are unavailable for some planned maintenance activities.

Public benefits

49. Public benefit is not defined in the Act. However, the Australian Competition Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:[16]

> …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.

50. The ACCC's assessment of the likely public benefits from the proposed conduct is set out below.

Improved efficiency in the maintenance of LNG facilities

51. The applicants submit:[17]

- The proposed conduct is likely to result in the applicants sourcing suitably qualified and skilled contractors and specialist and general support equipment to undertake planned maintenance work.
- The planned maintenance work requires between 10 and 2000 specialist workers depending on whether the work is major or minor shutdown maintenance or campaign maintenance and while the applicants try to attract local skilled labour, they each need to draw upon the same pool of specialist workers.
- Coordinating maintenance between themselves will reduce mobilisation and demobilisation costs if specialist contractors, including those based interstate and overseas, can move from one LNG facility to another in a planned and coordinated manner.
- Some LNG facility component parts are serviced by equipment manufacturers that supply multiple facilities. Coordinating scheduled maintenance will assist these equipment manufacturers manage the provision of maintenance services at multiple sites.

[16] *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677. See also *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242.

[17] Applicants submission in support of the applications for authorisation, 12 September 2017, available: **https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/western-australian-and-northern-territory-lng-producers**

- Specialised and general support equipment and services include heavy lift cranes, scaffolding, equipment and personnel transportation services accommodation and catering services. Many of the equipment and service suppliers operate nationally and internationally. Concurrent maintenance shutdowns are likely to constrain supply, and increase the cost of equipment and services.
- The proposed conduct will not reduce demand for technical maintenance or associated services by any applicant. It will mitigate some of the constraints the applicants face in attempting to obtain skilled contractors and equipment to undertake maintenance during optimal conditions.

52. IMI Critical Engineering submits that all oil and gas companies operating LNG facilities should optimise shutdown timing. Personnel working on LNG facility maintenance require specialised training and experience and IMI Critical Engineering is unable to maintain staffing levels to support the maintenance programs if three or more planned shutdowns occur simultaneously.[18]

53. Monadelphous Engineering submits:

- The proposed conduct will result in the efficient utilisation of labour and equipment. The optimal window for planned maintenance is narrow and coordinating the timing of maintenance within these windows should improve efficiency. It should also reduce mobilisation and demobilisation costs for personnel and equipment.
- The applicants are competing for a national pool of qualified workers. Coordinating maintenance will make the industry more attractive to potential employees and provide an opportunity to upskill the local labour force to increase the pool of suitable workers providing benefits to local communities.
- The proposed conduct will level demand for support infrastructure and services, such as accommodation, transport and logistics and specialist engineering services. It may also provide local businesses and service providers with the opportunity to meet LNG facility requirements during maintenance periods.

ACCC view

54. The ACCC notes the applicants' submission that maintenance programs can require a large number of skilled workers for periods of up to 30 days, depending on the complexity and extent of the work. Further, planning for a major shutdown can take between 18 and 24 months.

55. LNG facilities are likely to schedule maintenance during optimal windows, avoiding adverse weather conditions and avoiding periods of high demand and maximum equipment efficiency.

56. The ACCC accepts that the proposed conduct is likely to ensure that maintenance of LNG facilities can be planned with confidence that suitably qualified and skilled workers and the necessary equipment will be available to complete the work. Compared to the future without the proposed conduct, where maintenance must

[18] IMI Critical Engineering, Submission on the applications for authorisation, 31 October 2017, available: **https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/western-australian-and-northern-territory-lng-producers**

be scheduled on an individual basis and may therefore be concurrent rather than consecutive (resulting in skilled worker and equipment shortages), the ACCC considers that the proposed conduct is likely to result in public benefits in the form of more efficient maintenance of LNG facilities.

Maximising LNG production

57. The applicants submit: [19]

- Coordinating maintenance will maximise production, ensuring the LNG facilities remain internationally competitive.
- Between 2018 and 2020, Australia is expected to become the world's largest exporter of LNG.
- Overseas LNG producers are also increasing supply: Australia will face increased competition from the Middle East and North America.
- In order to remain internationally competitive, Australian LNG producers need to be able to guarantee LNG supply to customers. Failure by any of the applicants to maintain LNG supply may damage Australia's reputation as a reliable and competitive source of LNG.

58. The applicants also submit that weather is a factor in maximising LNG production:[20]

- Overseas demand for LNG is higher in the northern hemisphere winter months of December to February and it is undesirable to take LNG facilities offline for maintenance during these periods of high demand.
- The efficiency of LNG trains is higher at lower ambient temperatures; the lower ambient temperatures from June to August enable LNG facilities to marginally increase production.

ACCC view

59. The ACCC notes the applicants' submission that Australian LNG producers face increasing competition from producers in other countries to supply LNG to overseas markets. Maximising LNG production by reducing maintenance downtime is one way to respond to the increase in international competition.

60. Routine maintenance and inspections are important to ensure continued safe operation over the life of the LNG facilities. Coordinating maintenance scheduling should reduce the likelihood that multiple LNG trains are offline simultaneously. This reduces the potential for both key maintenance service providers to be waylaid on other maintenance work and for equipment shortages because equipment is being used at another facility.

61. The ACCC considers the proposed conduct is likely to result in public benefits by reducing LNG facility downtime, maximising LNG production and therefore LNG exports. The ACCC notes there is some overlap between the claimed benefits of improved efficiency and increased output, and the same public benefit should not

[19] Applicants submission in support of the applications for authorisation, 12 September 2017, available: **https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/western-australian-and-northern-territory-lng-producers**

[20] Applicants submission in support of the applications for authorisation, 12 September 2017, available: **https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/western-australian-and-northern-territory-lng-producers**

be counted twice, but in any event the ACCC considers that both are beneficial outcomes of the proposed conduct.

Reducing safety risks

62. The applicants submit:

- LNG train shutdowns involve more high risk activities such as working at heights, confined space entry and lifting heavy equipment, compared to normal operations.
- The risk of safety incidents will inevitably be higher if two or more shutdowns occur at the same time, particularly if the facilities are in close proximity, placing strain on emergency services.
- The proposed conduct will assist in the management of safety issues by reducing activity levels at multiple LNG facilities and reduce the strain on emergence response resources if there is a safety incident.

ACCC view

63. The ACCC accepts that conducting LNG facility maintenance involves workers working on higher risk activities and therefore an increased focus on safety, to reduce risk, is appropriate.

64. In the event a significant safety incident occurs at two or more facilities, particularly at the Gorgon, Wheatstone, North West Shelf and Pluto facilities, which are closely located, emergency services may be placed under additional pressure to respond.

65. The ACCC considers that the proposed conduct is likely to result in public benefits by reducing the likelihood that safety incidents will occur simultaneously at two or more LNG facilities.

Public detriments

66. Public detriment is not defined in the Act but the Australian Competition Tribunal has given the concept a wide ambit, including:

> …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.[21]

67. The ACCC's assessment of the likely public detriments from the proposed conduct is set out below.

Information asymmetry between the applicants and participants in the domestic gas markets

68. AEMO submits:[22]

[21] See *7-Eleven Stores* (1994) ATPR 41-357 at 42,683.
[22] AEMO, Submission on the applications for authorisation 27 October 2017, available: **https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/western-australian-and-northern-territory-lng-producers**

- Currently there is no gas trading hub or STTM operating in Western Australia.[23] However, it is possible that such markets will be developed and commence operating in Western Australia in the next few years. Under present conditions it is unlikely that the applicants that also service the domgas market can materially affect the gas supply balance and domgas prices in Western Australia as the vast majority of gas is contracted via long-term bilateral agreements.

- If a gas trading hub or STTM are developed in Western Australia, there would be significantly greater potential for the applicants to impact available supply and prices in the Western Australian gas market. The market would have no visibility of information that would allow it to respond to planned maintenance when the LNG facilities supplying gas may need to divert gas, purchase gas or withdraw gas from storage.

- The applicants could take advantage of their knowledge of the scheduled planned maintenance to alter their behaviour in the domestic market for their own gain, to the detriment of other market participants. This may impact competition, gas prices and gas system reliability, decreasing the efficiency of the gas market.

- The risk to competition could be mitigated by including a condition of authorisation (similar to that imposed for the Queensland authorisation) that, should a Western Australian gas trading hub or STTM commence during the authorisation period, the applicants be required to report the scheduled maintenance on the Western Australian Gas Bulletin Board.

69. Synergy is concerned that the applicants may use information gained from the proposed conduct to give them an advantage in any domestic gas trades or domestic demand or supply strategies. Synergy therefore considers that there may be benefit in making information exchanged under the proposed conduct publically available to address information asymmetries.[24]

70. The applicants submit that, if authorisation is granted, there is no reason to impose a condition as described by AEMO and Synergy:[25]

    - There is no gas trading hub or STTM currently operating, and the applicants are unaware of plans for these trading facilities to commence in the next few years.

    - The shutdown of the part or whole of a LNG train or the carrying out of any maintenance on the infrastructure supporting LNG production by Chevron and Woodside will not have any impact on the supply of domgas by these producers. It is erroneous to compare the proposed conduct by the applicants with the Queensland LNG facilities, where the vast majority of gas is extracted from coal seam gas wells and then converted to LNG for export. These facilities are unable to control the flow of coal seam gas and may redirect it to the domgas market creating potentially significant fluctuations to gas supply. This situation does not apply to the applicants' facilities, which

[23] AEMO has no role in the gas market in the Northern Territory. There is no formal gas market in the Northern Territory.

[24] Synergy submission on the applications for authorisation, 16 November 2017 available: **https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/western-australian-and-northern-territory-lng-producers**

[25] Applicants supporting submission on the applications for authorisation, 12 September 2017 and the applicants response to submissions, 1 December 2017, available: **https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/western-australian-and-northern-territory-lng-producers**

draw gas from conventional gas wells that can be turned down during maintenance. Further, the gas supply arrangements in Western Australia primarily involve the supply of gas under long-term bilateral contracts.

- The Queensland LNG facilities are all located on Curtis Island and each facility participates in the Wallumbilla gas supply hub. The applicants' LNG facilities are not located in such close proximity. If trading hubs are established in Western Australia, it is unlikely every Western Australian LNG facility would be connected to the one hub.

- Synergy's submission states that Western Australian LNG facility operators are required to disclose information regarding planned work to AEMO and this information is not dissimilar to the information to be disclosed under the Queensland LNG authorisation.

ACCC view

71. The ACCC notes that there is no existing formal gas trading hub or STTM in Western Australia or the Northern Territory. This means that the key concern about an information asymmetry which led to the imposition of a reporting condition in the Queensland LNG facilities' authorisation does not currently arise in this matter.

72. The ACCC has considered AEMO's concerns about potential information asymmetry in circumstances where the applicants are authorised to coordinate scheduled maintenance; the applicants are also domgas market participants (or may become participants in the future); and a gas trading hub or STTM commences in Western Australia.

73. The ACCC notes AEMO's submission that it is possible that a gas trading hub or STTM will be developed and begin operating in Western Australia in the next few years.

74. Neither of these developments appears to be imminent, and AEMO considers that under present conditions it is unlikely that the applicants that also service the domgas market can materially affect the gas supply balance and domgas prices in Western Australia. The ACCC's preliminary view is that following stakeholder engagement to date, there does not appear to be a need to impose a condition of authorisation requiring the applicants to publicly disclose current maintenance schedule information that they have shared with one another.

75. The ACCC invites interested parties to comment on this proposed approach.

76. The ACCC notes that the commencement of a gas trading hub or a STTM during the course of the proposed authorisation may constitute a material change of circumstances such that the ACCC may want to revoke or revoke and substitute the authorisation with another authorisation that is subject to a condition of the kind proposed by AEMO.

77. The ACCC also notes that the Western Australian *Gas Services Information Rules* require domgas market participants (production facility operators, pipeline operators and storage facility operators) to provide AEMO, amongst other things, with information about planned maintenance. Facilities at Gorgon, Wheatstone

and North West Shelf all supply domgas and Pluto may supply domgas in the future.[26]

78. Currently, LNG facility operators do not have similar obligations to provide planned maintenance information to AEMO.

79. The ACCC considers that if a gas trading hub or STTM is introduced in Western Australia, it may be appropriate for the *Gas Services Information Rules* to be amended to require the relevant applicants to report planned maintenance, including any coordination of planned maintenance by the relevant applicants.

80. Further, absent the proposed conduct, each of the applicants knows (or will know when the facilities are completed) its own maintenance schedule for their LNG facilities. If a gas trading hub or STTM commence in Western Australia, each of the applicants trading in these markets would, to some extent, possess information that is unavailable to other market participants. This too may result in some detriment, which could be mitigated by amending the *Gas Services Information Rules* and requiring LNG facilities to report planned maintenance.

Reducing competition in the acquisition of maintenance services

81. The proposed conduct foreshadows the applicants sequencing their maintenance events one after the other and involves the applicants sharing information about service providers. This could reduce competition between the applicants when attempting to secure maintenance service providers during their preferred maintenance windows.

82. The consequence may be that maintenance service providers find their negotiating position weakened as the timing for when their services are required will already have been allocated between the applicants.

83. Further, there may be fewer opportunities for maintenance service providers to win contracts with the applicants. For example, if coordination results in a sequence of maintenance events at the LNG facilities, the contractor selected to carry out the first maintenance event is likely to have an advantage when bidding for the subsequent maintenance events.

ACCC view

84. The ACCC notes that maintenance service providers will still have the ability to bid for all maintenance events at the applicants' facilities.

85. The ACCC also notes that the applicants have an incentive to promote competition among maintenance service providers. Creating a dominant maintenance service provider for LNG facilities with a long life would limit the applicants' choice and likely increase their costs over the long term.

86. The ACCC contacted numerous maintenance service providers as part of the consultation process and none has raised concerns about coordination between the applicants reducing their ability to compete for contracts. In fact, two service providers (IMI Critical Engineering and Monadelphous Engineering) made

[26] In 2006, the Western Australian Government formalised a policy to reserve gas for domestic use. Under the policy, the government negotiates for 15 per cent of output from new LNG projects to be reserved for sale in the domestic market. It has not been a requirement for gas to be sold on the domestic market, rather developers have been required to demonstrate their willingness and ability to meet the domestic gas reservation policy and ensure gas is available from the date that exports commence.

submissions in support of the application for authorisation, with the latter noting that the proposed conduct will result in more efficient utilisation of labour and equipment.

87. Accordingly, the ACCC considers that the proposed conduct has the potential to result in some public detriment but this is unlikely to be significant. If the applicants seek re-authorisation for the proposed conduct in the future, the ACCC would consider evidence about any effect on competition that had resulted from authorised coordination.

Potential to facilitate unauthorised coordination

88. The applicants submit that the proposed conduct will not involve them discussing or coordinating LNG sales or any exchange of information between the applicants regarding LNG production or sales volumes, prices or customers.[27]

ACCC view

89. As with any application for coordinated conduct, authorisation raises the potential for anticompetitive coordination beyond the scope of the applications. While the proposed conduct is narrowly defined to discussing information such as maintenance timing and information about contractors each applicant has engaged, these discussions may give rise to opportunities to inquire about the details of bids received from maintenance service providers and prices paid for services or the applicants' supply of domgas in Western Australia. This could lead, either explicitly or tacitly, to collusion on prices or the joint acquisition of maintenance services. Such conduct would significantly reduce the ability of service providers to compete for contracts at the LNG facilities and secure business on fair and reasonable terms.

90. This conduct would not be protected under the proposed authorisation, and would likely breach the Act. The ACCC notes that the applicants' submission in support of their applications for authorisation indicates that they are aware of their responsibilities under the Act. The applicants will be aware that there is a risk of detection if they engage in unauthorised coordination. On this basis, the ACCC considers that this detriment is unlikely to arise.

Proposed conduct may delay maintenance on domestic gas facilities

91. Synergy submits that the proposed conduct has the potential to lead to facilities from which Synergy is supplied gas not returning to full service as soon as possible in preference to the completion of maintenance at another LNG facility.

92. The applicants dismiss Synergy's concerns as unfounded and contrary to the applicants' commercial imperatives, including maximising LNG production. [28]

ACCC view

93. The ACCC notes Synergy's concerns about possible delays in returning domgas assets to service in favour of completing LNG facility maintenance. Delays may

[27] Applicants submission in support of the applications for authorisation, 12 September 2017, p. 16, available: **https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/western-australian-and-northern-territory-lng-producers**

[28] Applicants response to submissions, 1 December 2017, available: **https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/western-australian-and-northern-territory-lng-producers**

have an impact on Synergy's customers, including consumers whose electricity is generated by Synergy's gas fired generators.

94. The ACCC accepts that it is in the interests of the applicants that produce gas both for LNG export and for supply domestically to maximise production and minimise facility downtime, which may reduce the risk of the scenario outlined by Synergy occurring. Despite this incentive, to the extent that LNG customers and contracts are more profitable or otherwise more critical to producers, they may tend to prioritise maintenance work that is needed for LNG production over maintenance for domgas production.

95. However, to the extent that producers have the incentive to favour LNG maintenance work over domgas-related work, the scenario described by Synergy may occur with or without the proposed conduct. That is, even if the applicants do not coordinate planned maintenance, each applicant will still need to conduct facility maintenance and those applicants with both domgas facilities and LNG facilities may seek to maximise LNG production at the expense of domgas gas production.

96. Accordingly, the ACCC considers that the proposed conduct is unlikely to result in significant, if any, detriment from the applicants delaying domgas facility maintenance in favour of completing LNG facility maintenance.

97. If re-authorisation is sought in future, the ACCC would have regard to evidence about whether coordination has in fact led to detriment due to the applicants favouring LNG over domgas maintenance work. The proposal to authorise for five years rather than the 10 years sought by the applicants would provide an earlier opportunity to assess whether this detriment has arisen when deciding whether to reauthorise.

Balance of public benefit and detriment

98. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the proposed conduct is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment, including any lessening of competition.

99. The ACCC accepts that the proposed conduct is likely to result in the following public benefits:

- improved efficiency in the maintenance of LNG facilities
- maximising LNG production and therefore LNG exports
- reducing safety risks.

100. The ACCC considers that the proposed conduct is likely to result in some public detriment by reducing competition in the acquisition of maintenance services, however any such detriment is unlikely to be substantial.

101. For the reasons outlined in this draft determination the ACCC is satisfied, that the proposed conduct is likely to result in a public benefit that would outweigh the likely detriment, including any detriment constituted by any lessening of competition that would be likely to result.

102. Accordingly, the ACCC is satisfied that the relevant net public benefit test is met and proposes to grant authorisation.

Length of authorisation

103. The Act allows the ACCC to grant authorisation for a limited period of time.[29] This allows the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the likely public 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.

104. The applicants sought authorisation for 10 years.

105. AEMO submits :[30]

- A five year authorisation is appropriate.
- The Western Australian gas market is evolving with new production facilities and gas suppliers and greater pipeline and gas storage capacity. The landscape may change considerably over the next 10 years.
- Increased gas supply requirements or changes in global LNG demand and domgas demand and prices could alter the interaction between the LNG projects, their associated domestic gas suppliers and gas consumers, presenting opportunities to impact competition in the Western Australian gas market.
- The ACCC granted conditional authorisation to Queensland LNG producers for five years.

106. Synergy submits that a 10 year authorisation period is too long. A five year period will provide the opportunity to assess the proposed conduct against market changes.

107. The applicants submit:

- AEMO and Synergy have not provided information to support their concerns.
- There is uncertainty regarding the performance and reliability of new LNG facilities during the first two to three years of production. A five year authorisation period would result in each facility conducting only one shutdown of each LNG train during the authorisation period. Further uncertainty would be avoided if the proposed conduct is authorised for 10 years.
- The proposed conduct will not have any impact on the production of gas for supply to the Western Australian and Northern Territory domgas markets.

[29] Subsection 91(1) of the Act.
[30] AEMO submission on the applications for authorisation, 27 October 2017, available: **https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/western-australian-and-northern-territory-lng-producers**

ACCC view

108. The ACCC is more likely to grant longer periods of authorisation where it is being asked to re-authorise previously authorised conduct; there is evidence that anticipated net benefits have occurred; relevant parties continue to support the arrangements; and market conditions are stable.

109. The ACCC notes AEMO's submission that the applications for authorisation are being considered during a period of unprecedented growth in the Western Australian and Northern Territory LNG industry.[31]

110. Two of the LNG facilities are still under construction. The impact of this growth on the industry generally is, to some extent, unknown.

111. The ACCC also notes the applicants' opposition to a shorter authorisation period, however the ACCC may grant authorisation for shorter periods for a variety of reasons.

112. The ACCC authorised similar conduct for Queensland LNG producers for five years and the Queensland facilities will be competing for the same limited pool of suitably qualified and skilled contractors and specialised equipment as the LNG facilities in the North Western region of Australia. It may be necessary to reconsider the proposed conduct and its impact on the entire Australian LNG industry sooner than in 10 years' time.

113. There is also the possibility that a gas trading hub or STTM will commence in Western Australia within 10 years. A shorter authorisation period will provide an opportunity to reassess possible information asymmetry and revisit the case for imposition of a condition if plans for gas trading hub or STTM have developed.

114. For these reasons, the ACCC proposes to grant authorisation for the proposed conduct for five years rather than the 10 years sought by the applicants.

Draft determination

The application

115. On 12 September 2017, the applicants lodged applications AA1000396-1 and AA1000396-2 with the ACCC under subsections 88 (1A) and 88(1) of the Act.[32] The applicants seek authorisation for 10 years to discuss, make and give effect to arrangements regarding sequencing and timing of scheduled maintenance works, and associated shutdowns and outages at the applicants' liquefied natural gas (LNG) facilities. The aim of these arrangements is to limit the extent to which scheduled maintenance work occurs concurrently at the applicants' LNG facilities.

[31] AEMO submission on the applications for authorisation, 27 October 2017, available: **https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/western-australian-and-northern-territory-lng-producers**

[32] As noted in paragraph **39**, changes to the authorisation provisions of the Act came into effect on 6 November 2017 that apply to applications for authorisation under consideration at or after that date. Pursuant to section 183(2), these changes apply to applications for authorisation under consideration by the ACCC on or after 6 November 2017. Accordingly, the Act as amended will apply to this application, notwithstanding that it was lodged with the ACCC prior to the amendments coming into effect. Applications for authorisation under subsections 88(1A) and 88(1) are treated as an applications for authorisation under subsection 88(1) of the Act as amended.

The net public benefit test

116. For the reasons outlined in this draft determination, the ACCC is satisfied, pursuant to sections 90(7) and 90(8) of the Act, that in all the circumstances the proposed conduct for which authorisation is sought is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the conduct.

Conduct for which the ACCC proposes to grant authorisation

117. The ACCC proposes to grant authorisation to the applicants for five years:

    a. to make and give effect to arrangements or understandings among the applicants regarding the sequencing and timing of the conduct of scheduled maintenance at the facilities which support LNG production, including the sequencing and timing of shutdowns and partial plant outages associated with such maintenance by:

        i. identifying the maintenance requirements for each of the facilities which support LNG production, including the scope and expected duration of maintenance campaigns and any shutdowns or partial plant outages associated with those maintenance campaigns;

        ii. classifying planned maintenance campaigns (e.g. major/minor shutdown maintenance or campaign maintenance);

        iii. working to identify optimal maintenance windows having regard to factors such as climate, safety considerations and resource constraints;

        iv. scheduling maintenance in such a way as to minimise contractor mobilisation and demobilisation costs;

        v. developing a process to:

            A. nominate preferred dates for planned maintenance;

            B. negotiate and agree the proposed dates for planned maintenance at each of the facilities supporting LNG production;

            C. inform one another of ad hoc unplanned maintenance requirements;

            D. consult about variations to any maintenance dates;

            E. resolve conflicts where maintenance dates overlap; and

            F. prepare and agree a schedule recording the planned maintenance dates for relevant facilities; and

    b. to exchange information for the purpose of making and giving effect to the arrangements and understandings referred to in paragraph (a), including information about:

i. maintenance techniques safety practices and operational processes, including personnel requirements, specialist equipment and the use, storage, transport and disposal of hazardous chemicals;

ii. potential resource constraints associated with particular maintenance windows (e.g. transport and accommodation) and discussing mitigation options; and

iii. disclosing the names of the maintenance contractors who have been appointed by each party to perform the relevant maintenance, subject to applicable third party confidentiality restrictions.

118. The ACCC proposes to grant authorisation because the proposed conduct may contain a cartel provision or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.[33]

119. This draft determination is made on 21 December 2017.

Further submissions

The ACCC will now seek further submissions from the applicant and interested parties. In addition, the applicant or interested parties may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the Act.

[33] As section 4D of the Act has been repealed pursuant to the amendments referenced above it has been excluded from the description of the proposed conduct. The reference to "within the meaning of section 45 of the Act" includes the making and/or giving effect to a contract, arrangement or understanding or to engage in a concerted practice, any or all of which may have the purpose or effect of substantially lessening competition.