

Submission of the Applicants to the ACCC

Background

1. Inpex Operations Australia Pty Ltd, Chevron Australia Pty Ltd, Shell Australia Pty Ltd and Woodside Energy Limited (the **Applicants**) submitted joint applications for authorisation on 12 September 2017 (**Application**).
2. The Applicants have been provided with copies of four submissions which the ACCC received from interested parties in relation to the Applicants' Application. The ACCC has invited the Applicants to provide a submission to the ACCC in response to those submissions.

Submission in response to Submissions

3. The submissions were received by the ACCC from IMI Critical Engineering, Monadelphous Engineering Associates Pty Ltd (**Monadelphous**), the Australian Energy Market Operator (**AEMO**) and Synergy.
4. All of the submissions are supportive of the Application. The Applicants agree with the comments made in each of the submissions made by IMI Critical Engineering and Monadelphous.
5. The Applicants note that the AEMO and Synergy submissions raise two further issues. The Applicants propose to respond to the two issues raised in these two submissions.

Length of authorisation

6. AEMO and Synergy submit that the proposed conduct should be authorised for a period of five years.¹
7. AEMO submits that it will be important to review the authorisation after five years because of the evolving nature of the Western Australian gas market due to new production facilities and gas suppliers as well as greater pipeline and gas storage capacity. It is suggested that the landscape of that market could alter considerably over the next 10 years. Similarly Synergy notes the significant changes in the Western Australian gas industry dynamics expected over the next five years.
8. There is no material provided to support that view 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.
9. Even if that is the case, that is not a basis for authorisation to be less than 10 years. As outlined in sections 3.5 and 5 of the Applicants' submission which accompanied the Application, the proposed conduct will not have any impact on the production of gas for supply by any of the Applicants into the Western Australian and Northern Territory gas supply markets. That is, the shutdown of the part or whole of any of the Applicants' LNG trains or the carrying out of any maintenance on the infrastructure supporting LNG production by the Applicants will not have any impact on the supply of domestic gas to the Western Australia or Northern Territory gas supply markets.
10. It is also the case that for the new LNG facilities there may be some uncertainty during the first 2 - 3 years of operations in terms of 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. Further uncertainty would be avoided if the proposed conduct is authorised for 10 years.

¹ AEMO Submission dated 27 October 2017, p 1 and Synergy Submission dated 16 November 2017, p 2.

11. Neither AEMO nor Synergy have suggested that the proposed conduct will have any impact on competition in markets directly impacted upon by the proposed conduct, i.e. the market for the supply of maintenance services to LNG facilities.
12. Synergy does appear to suggest that the proposed conduct might lead to certain LNG facilities not coming back on-line as soon as possible following a shutdown. The Applicants dismiss this concern as being unfounded and contrary to their commercial imperatives, including to maximise LNG production. One of the key reasons for the Applicants seeking to engage in the proposed conduct is to minimise the time which individual LNG trains and supporting infrastructure are not operational.
13. Consequently, the concerns of AEMO and Synergy are unfounded and do not justify the proposed conduct being authorised for a period shorter than 10 years.

Imposition of a condition

14. AEMO submits that a condition should be imposed on the authorisation (if granted) requiring the Applicants to make available details of the shared information regarding planned maintenance for publication on the Western Australian Gas Bulletin Board (**WA GBB**) should either a gas trading hub or Short-Term Trading Market (**STTM**) begin operating in Western Australia.² Synergy similarly submits that there would be benefit in making the information exchanged by the Applicants publicly available, to the extent the Applicants disclose information that is more detailed than what is made public via the WA GBB or they are not fully complying with existing disclosure requirements.³
15. The need for an information disclosure condition is based on AEMO's concern that the proposed conduct will allow the Applicants to engage in cartel-like conduct.⁴ Synergy's concern is that the Applicants might gain some advantage in any domestic gas trades or domestic demand or supply strategies.⁵
16. The Applicants submit that the imposition of any condition such as that proposed by AEMO is unnecessary for the following reasons:
 - (a) **No gas trading hub or STTM exists:** As acknowledged by AEMO, presently there is no gas trading hub or any STTM.⁶ Nor are the Applicants aware of any plans for a gas trading hub or STTM to be established in Western Australia in the next few years. The Applicants submit that it would be extraordinary for the ACCC to impose a condition on them that is entirely dependent on the occurrence of a future event not yet contemplated.
 - (b) **Proposed conduct does not impact on domestic gas supply:** As discussed above in relation to the first issue, the proposed conduct will not have any impact on existing domestic gas supply arrangements. This would not change, even if a gas trading hub or STTM were established. To the extent that two of the Applicants (Chevron and Woodside) currently supply gas they produce in Western Australia into the domestic gas supply market (and are likely to continue to do so), their gas production facilities are operated independently from their LNG facilities.

² AEMO Submission dated 27 October 2017, pp 2, 3-4.

³ Synergy Submission dated 16 November 2017, p 2.

⁴ AEMO Submission dated 27 October 2017, pp 2-3.

⁵ Synergy Submission dated 16 November 2017, p 1.

⁶ AEMO Submission dated 27 October 2017, p 2.

The Applicants fail to see how their engaging in the proposed conduct could give rise to them engaging in anticompetitive conduct that will negatively impact on the efficiency of the domestic gas market as suggested by AEMO.

- (c) ***Not analogous to the East Coast Authorisation:*** AEMO attempts to draw parallels between the Applicants' Application and the authorisation granted by the ACCC to the Queensland LNG producers in 2016.⁷ The Applicants submit that it would be erroneous to compare their Application to the East Coast Authorisation. This is because the circumstances which gave rise to the imposition of an information disclosure condition by the ACCC in the East Coast Authorisation were unique to that matter and do not arise in this case.

In Queensland the vast majority of the gas extracted by the LNG producers from coal seam gas wells is converted into LNG for export. When an LNG producer shuts down one of its LNG trains, it faces the situation of having excess gas due to the fact that it is unable to turn down its coal seam gas wells. Therefore, LNG producers must either flare or seek to supply the gas into the market. As a result, these potentially significant fluctuations in the supply of gas into the market (i.e. before, during and after a shutdown) were considered by the ACCC as warranting the need for the LNG producers to publicly disclose the proposed dates for planned shutdowns of their LNG trains.

These circumstances are unique to the Queensland LNG producers and do not arise in the case of the Applicants. This is because, firstly, the Applicants' gas is extracted from conventional gas wells which may be turned down during the shutdown of an LNG train. Secondly, as acknowledged by AEMO, the gas supply arrangements in Western Australia primarily involve the supply of gas under long-term bilateral contracts.⁸

- (d) ***LNG Facilities not located in close proximity:*** Another significant difference between the Applicants and the LNG producers on the East Coast is that the facilities on the East Coast are all located on Curtis Island near Gladstone (next door to one another). Hence those producers each participate in the Wallumbilla Gas Supply Hub. That is not the case here, nor would it be likely to be the case due to the significant distances between each of the Applicants' facilities.
- (e) ***Disclosure of shutdowns already required:*** Synergy acknowledges that rule 71 of the Gas Services Information Rules (**GSIR**) requires LNG facility operators to provide information regarding planned work to AEMO. When regard is had to the type of information that is required to be disclosed (rule 71(3)), such information is not materially different to the information required to be disclosed by the East Coast LNG producers under the Condition of Authorisation that applies to them.

17. The Applicants submit that if the authorisation is granted, there is no reason for imposing on them any condition of the kind suggested by AEMO and Synergy.

⁷ ACCC, *Determination: Applications for authorisation A91516 & A91517*, 14 April 2016.

⁸ AEMO Submission dated 27 October 2017, p 2.