Determination

Application for authorisation AA1000398

lodged by

Central Petroleum Limited and Central Petroleum Mereenie Pty Limited as trustee for the Central Petroleum Mereenie Unit Trust
and
Macquarie Mereenie Pty Limited

in respect of

joint marketing and supply of natural gas produced out of the Mereenie gas field

Date: 29 March 2018

Authorisation number: AA1000398

Commissioners: Sims
Rickard
Court
Featherston

Summary

The ACCC has decided to grant authorisation to Central Petroleum Limited and Central Petroleum Mereenie Pty Ltd as trustee for the Central Petroleum Mereenie Unit Trust (together, Central) and Macquarie Mereenie Pty Ltd (Macquarie) (together, the Applicants) to:

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

Beyond the three year period, the ACCC expects the Applicants will engage in separate marketing of gas from the Mereenie field.

The Mereenie field, along with a number of other Northern Territory gas fields, will be connected to customers on the east coast of Australia for the first time in late 2018 when the Northern Gas Pipeline opens between Tennant Creek and Mount Isa. This means that gas produced from the Mereenie field will potentially be made available to customers at or beyond Mount Isa.

The ACCC's view is that, on balance, joint marketing of gas from the Mereenie field is likely to result in a net public benefit.

The ACCC considers that the proposed conduct is likely to result in some public benefit by enabling development of the Mereenie field to occur sooner than it would otherwise and thereby bringing forward the available supply of Mereenie field gas to customers in the Northern Territory-Mount Isa Region.

The ACCC has considered whether the proposed joint marketing is likely to result in public detriment by enabling Central and Macquarie to supply at higher prices or on less flexible terms then they would otherwise offer. The ACCC's view is that the proposed conduct does not materially enhance the Applicants' ability to supply gas on less favourable terms as they are likely to face significant competition from actual and potential rival suppliers of natural gas to commercial and industrial customers in the Northern Territory-Mount Isa Region.

The ACCC previously granted interim authorisation for the Applicants to commence joint marketing activities immediately. Interim authorisation will remain in place until this determination comes into effect.

The application for authorisation

1. On 4 October 2017, Central Petroleum Limited and Central Petroleum Mereenie Pty Ltd as trustee for the Central Petroleum Mereenie Unit Trust (together, **Central**) and Macquarie Mereenie Pty Ltd (**Macquarie**) (together, **the Applicants**) lodged application for authorisation AA1000398 to engage in joint marketing and selling of gas produced from the Mereenie field.

2. The Applicants seek authorisation under subsections 88(1A) and (1) of the *Competition and Consumer Act 2010* (CCA) since these arrangements may contain a cartel provision or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the CCA.[1]

3. On 2 March 2018 the ACCC issued a draft determination proposing to grant authorisation for a period of three years, with any gas supply agreements entered into during this period to expire on or before 31 December 2028. The ACCC also decided to grant interim authorisation at this time to enable the proposed joint marketing to commence immediately.

4. Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the Competition and Consumer Act 2010 (the CCA). Detailed information about the authorisation process is available on the ACCC's website in the 'Guidelines for Authorisation of Conduct (non-merger)'.

The proposed conduct

5. The Applicants seek authorisation to jointly market and give effect to provisions of gas supply agreements (**GSAs**) with customers with common terms and conditions (including price) relating to the supply of gas from the Mereenie field.

6. The Applicants seek authorisation for joint marketing for a period of five years and to give effect to agreements entered into during the period of authorisation, which may have gas supply terms up to and including 2035.

Rationale for the proposed conduct

7. The Applicants are 50/50 joint venture partners in the Mereenie field in the Amadeus Basin in the Northern Territory.

8. Under the existing joint venture arrangements, the marketing of gas is carried out separately by the joint venture partners. The amount of gas each is able to sell is governed by an Interim Gas Balancing Agreement.

9. This Interim Gas Balancing Agreement was negotiated between Central and Santos upon Central's acquisition of its participating interest in the field in 2015.

[1] On 6 November 2017, a number of amendments to the CCA came into effect, including changes to the authorisation provisions in Division 1 of Part VII of the CCA. 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 CCA 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 CCA as amended.

Macquarie subsequently became party to the agreement when it acquired Santos' remaining interest in the field in 2017. The agreement deals with existing installed production capacity and allows each joint venture participant to market and sell its share of gas subject to a specific maximum daily production limit (**the Production Limit**).

10. Absent joint marketing, the Applicants submit that neither joint venture party has the ability and incentive to invest in further development of the Mereenie field. The Applicants submit that without the proposed conduct, development of the Mereenie field will be prevented and/or delayed. More specifically:

    a. the current joint venture agreement effectively requires both Central and Macquarie's support for all joint venture budgets, other than those expenditures required by law.

    b. Central does not have the incentive to undertake sole risk development as it has fully contracted its share of the Production Limit. As a junior company with significant debt and financial commitments, Central requires Macquarie's support for any future development.

    c. Macquarie, like Santos before it, has not used a material portion of its entitlement. It does not have the incentive to approve further development without joint marketing, as doing so would re-introduce Central as a competing seller of gas from the Mereenie field. The Applicants submit that Macquarie is unwilling to undertake a sole risk development without certainty that it will be able to sell its share of additional gas production from the development.

11. The Applicants submit that joint marketing provides both parties with the certainty to make binding offers for the sale of the gas from an expanded Mereenie field. According to the Applicants, joint marketing is critical to provide this certainty because:

    a. it will allow for aggregation of a larger volume of gas for sale to major customers on the east coast than either joint venture participant could sell alone,

    b. it will provide counterparties such as pipeline owners and customers with greater certainty of long term supply and performance than a situation where gas supply was reliant on an individual joint venture participant, and

    c. it will assist the Applicants in finding gas sales opportunities by providing access to Central's knowledge of Northern Territory customers and both parties' knowledge of east coast customers.

Background

The Mereenie Joint Venture

12. The Mereenie Joint Venture is a 50/50 joint venture between Central and Macquarie. Before 2015, the Mereenie field was 100% owned by Santos. The joint venture was established between Central Petroleum and Santos in 2015, when Central acquired its 50% interest and right to operate the field from

Santos. In 2017, Macquarie became Central's joint venture party when it acquired Santos' remaining 50% interest.

13. Central Petroleum Limited is an ASX listed oil and gas company. Central Petroleum Mereenie Limited (as trustee for the Central Petroleum Mereenie Unit Trust) is a wholly owned subsidiary of Central Petroleum Limited and a 50% participant in the Mereenie Joint Venture. Outside of the Amadeus Basin, Central's main oil and gas assets include the Palm Valley and Dingo onshore conventional gas fields in the Northern Territory. In 2016-17, Central reported total gas sales of 3.32 PJ and 111,380 barrels of crude oil.[2]

14. Macquarie Mereenie Pty Ltd is a special purpose vehicle ultimately owned by Macquarie Group Limited, an ASX listed financial group. Macquarie Mereenie is also a 50% participant in the Mereenie Joint Venture having acquired its 50% interest in 2017.

The Mereenie Gas Field

15. The Mereenie field is a conventional oil and natural gas field located in the Amadeus Basin in the Northern Territory, approximately 250km west of Alice Springs.[3]

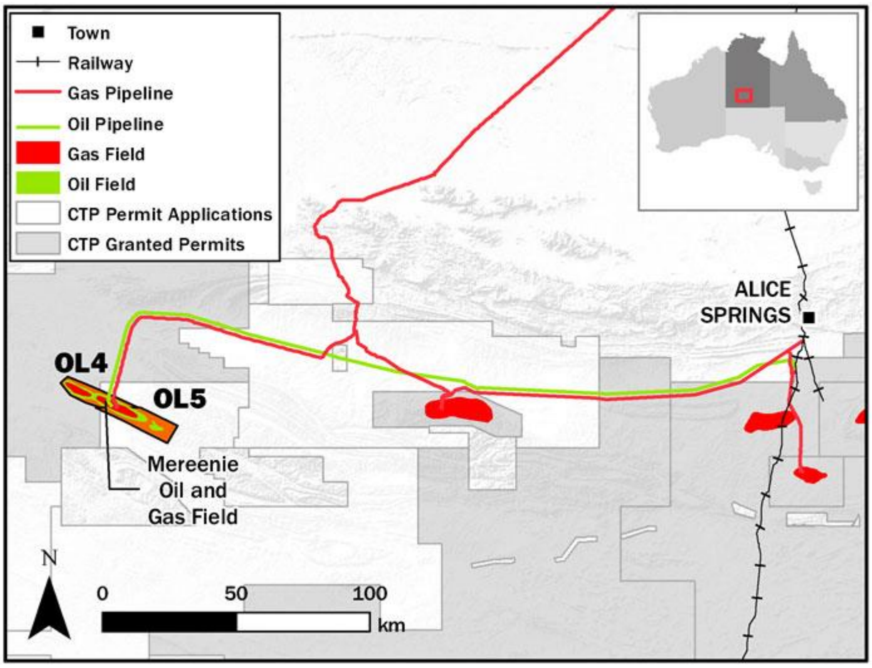

Figure 1 - Location of the Mereenie Oil and Gas Field

2 Central Petroleum 2017 Annual Report **https://www.asx.com.au/asxpdf/20170925/pdf/43mm5ky79m38jj.pdf** p7

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

16. Initially developed between 1984 and 1986 primarily as an oil production facility, it also produces gas which is both sold domestically and reinjected into wells to assist with oil recovery.

17. Gas production at the Mereenie field commenced in 1984 and peaked at approximately 53 TJ per day in 2005 before declining. Central estimated that in 2014 the field was able to produce around 15 TJ per day (5 PJ per annum) with limited impact on oil production rates.[4]

18. The Applicants submit that significant investment in the Mereenie field is required to develop its gas potential (both in terms of drilling and upgrading processing infrastructure). Specifically, Central, as operator of the field, intends to embark on an appraisal drilling program to increase the amount of accessible gas resources by 110-185 PJ in total.[5] The Applicants submit that the quantity of gas targeted to be jointly marketed is 15 PJ per annum over and above current production.

19. In an ASX announcement on 12 March 2018, Central stated that development at the site was moving ahead with an aim to develop the Mereenie field's capacity from its present 25TJ/day (9PJ per annum), of which 15TJ/day is sold as gas into the NT market with the balance reinjected, to a new capacity of 63TJ/day of which 58TJ/day will be sold as gas.[6]

The Northern Gas Pipeline (NGP)

20. The NGP is a 622 kilometre pipeline being constructed on behalf of the Northern Territory Government by Jemena Limited (Jemena). It will connect the Amadeus Pipeline (Alice Springs – Darwin pipeline) at Tennant Creek to Mount Isa in Queensland.

21. Construction of the NGP began in July 2017 and first gas is scheduled to flow in late 2018. The NGP will initially be capable of transporting 90 TJ per day with the potential to increase the capacity to 160 TJ per day with compression:

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

5 Central Petroleum's Best Technical Estimate (Applicants' submission of 4 October 2017, p10).

6 ASX Announcement and Media Release: Go-ahead for development of Mereenie Gas Project. 12 March 2018. https://www.asx.com.au/asxpdf/20180312/pdf/43sc191hbcx81g.pdf .

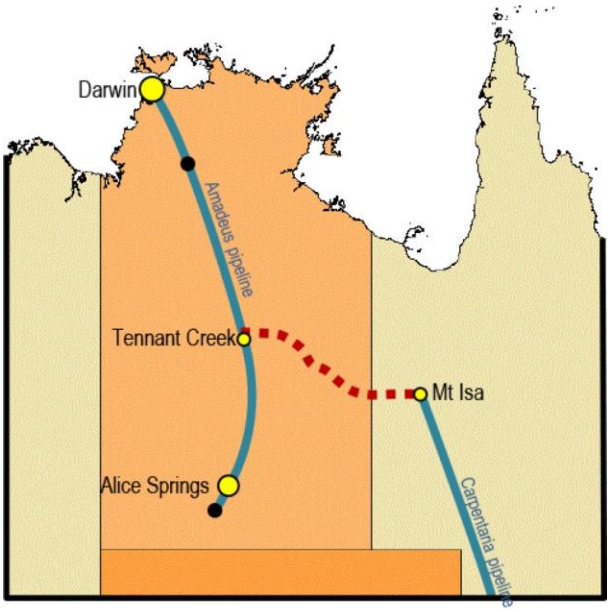

Figure 2 - Northern Gas Pipeline route between Tennant Creek and Mt Isa

22. Power and Water Corporation (**PWC**) is the foundation customer of the NGP having contracted to supply 30 TJ/day (or 11.4 PJ per annum) to Incitec Pivot's Phosphate Hill site in North West Queensland for approximately 10 years to 2028. The ACCC understands that this gas is sourced from the Blacktip field off the coast of the Northern Territory. Around 60 TJ/day of pipeline capacity remains for new sales and Jemena expects this capacity to be fully booked by the time the pipeline is completed.[7]

Consultation

23. The ACCC tests the claims made by an applicant in support of its application for authorisation through an open and transparent public consultation process. The submissions by the Applicants and interested parties are considered as part of the ACCC's assessment of the application for authorisation.

24. The ACCC invited submissions from a range of potentially interested parties including gas suppliers, customers, government and regulators.

Prior to the draft determination

25. The ACCC received a submission from PWC opposing the application. PWC is a Northern Territory based supplier of gas and electricity owned by the Northern Territory government. Its submission raises a number of concerns regarding the need for joint marketing, market definition, the impact of joint marketing on competition (and therefore pricing) of gas, and the likelihood (and quantum) of any benefits that would accrue as a result of joint marketing.

26. PWC also provided a submission opposing the application for interim authorisation. That submission was summarised at paragraphs 86-101 of the draft determination and interim authorisation issued by the ACCC on 2 March

[7] *ACCC Gas Inquiry 2017-2020 Interim Report* December 2017 p88

2018, but is not summarised in this document since it relates to the decision for interim authorisation, which has already been made.

27. In their responses to PWC's submissions, the Applicants state that PWC should not be considered a purchaser of gas but rather a competing seller and that it is seeking to prevent the Mereenie joint venture (a competitor) from investing in new gas supply.

28. PWC states that it plays a multifaceted role in gas markets, including that it is a Northern Territory government owned business (with responsibilities including electricity and sewerage services in the NT), is a major buyer and supplier of natural gas in the NT and gas supplier into parts of Queensland.

29. These submissions, and the ACCC's views on those submissions, are outlined further below as part of the ACCC's assessment.

Following the draft determination

30. The Applicants provided a submission which supports the draft determination but submit that it:

    a. underplays the public benefits arising from the conduct sought to be authorised,

    b. fails to fully recognise the commercial challenges which prevent the Mereenie field being developed without joint marketing, and

    c. defines the relevant market too narrowly.

31. PWC provided a further submission opposing authorisation which:

    a. questions the likely benefits identified by the ACCC in its draft determination,

    b. states that it would not have been necessary for the Applicants to seek authorisation if they had pursued a life-of-field balancing agreement, rather than a joint marketing agreement,

    c. questions the ACCC's conclusion on public detriments, in particular, the extent of competitive constraint offered by Cooper Basin and Galilee Basin producers in the NT since the NGP is not bi-directional,

    d. raises concerns about the impact that the proposed conduct may have in the market for the trading of secondary transmission pipeline capacity, and

    e. notes that PWC is a major shipper of gas in the NT, having underwritten the Amadeus and Bonaparte gas pipelines, and is currently the only user of the NGP.

32. The Applicants responded with a submission which:

    a. sets out their view as to why bringing forward the development of the Mereenie field is a public benefit,

b. explains the difficulties they faced in achieving a life-of-field balancing agreement and why it was not possible for such an agreement to be quickly put in place,

c. clarifies and reiterates the public benefits that they claim will result from their proposed conduct, and

d. responds to the concerns raised by PWC by:

   i. noting that Central's access to Mereenie field gas is limited by current production limits,

   ii. stating that competition in the market for trading of secondary transmission pipeline capacity will be the same with or without the proposed conduct, and

   iii. submitting that east coast gas prices act as a constraint to gas pricing in the NT.

33. All submissions are considered in more detail below as part of the ACCC's assessment and are available on the ACCC's public register at: **https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register**

ACCC assessment

34. The ACCC's assessment of the proposed conduct is carried out in accordance with the relevant net public benefit test[8] contained in the *Competition and Consumer Act 2010* (Cth) (the **CCA**). In this case, the ACCC may not grant authorisation unless it is satisfied that the proposed conduct would be likely to result in a benefit to the public and that benefit would outweigh the detriment to the public that would be likely to result from the proposed conduct.

Relevant areas of competition

35. The Applicants submit that the appropriate market within which to assess the competition impacts of the proposed conduct should be the 'east coast gas market', encompassing customers in Queensland, New South Wales, South Australia, Victoria, Tasmania and the Northern Territory who are connected to sources of gas in those jurisdictions (and nearby offshore resources) via a gas pipeline network.

36. The Applicants reiterate this view in their response to the draft determination, noting that they have already been contacted and engaged by customers located in New South Wales and that upcoming pipeline developments are likely to further improve their capability to supply gas interstate.

37. PWC submits that the Applicants' proposed market definition (an "east coast gas market") is too broad and it would be more appropriate to assess the effect on competition on the Northern Territory and the area around Mt Isa in

[8] Subsections 90(7) and 90(8).

Queensland. PWC submits that sales to customers beyond Mount Isa do not appear to be a viable or economical option due to transport costs.

38. In response to the ACCC's draft determination, PWC suggests that, on the basis of the possible introduction of a pipeline capacity trading scheme in the Northern Territory, regard should also be given to the effect that the Applicants' conduct would have in markets for the trading of secondary pipeline transmission capacity.

The ACCC's view

39. The ACCC notes the Applicants' further submission that they have engaged with customers in NSW and are likely to do so more often in the future.

40. The ACCC considers that the relevant areas of competition for the purposes of this assessment include the supply of natural gas to commercial and industrial customers in the Northern Territory and the greater Mount Isa region (**the NT-Mt Isa Region**), which is likely to extend south into northern New South Wales. The ACCC does not consider it necessary to precisely define the geographic scope of this relevant area of competition

41. The ACCC does not accept that the relevant market is the 'east coast gas market', given the cost to transport gas. As noted in the ACCC's east coast gas inquiry report:

> "The introduction of gas from the Northern Territory to Mt Isa would enable gas, which would otherwise have been needed to supply users in Mt Isa to be supplied to other locations. Over time, if the volumes supplied via the NGP increase, additional gas could be made available to users across the east coast gas market. However, the further those users are located from the Northern Territory, the more expensive it would be to transport the gas from the Northern Territory to those users."[9]

42. The ACCC has also considered the likely effect of the proposed conduct on secondary trading of NGP, Amadeus and Bonaparte pipeline transmission capacity. These pipelines link the Mereenie gas field to Alice Springs, Tennant Creek, Wadeye, Mt Isa and Darwin. The trading occurs between parties who have contracted pipeline capacity (e.g. PWC) and parties seeking to transmit gas through those pipelines (e.g. Central and Macquarie).

Future with and without

43. To assist in its assessment of the proposed conduct against the authorisation test, the ACCC compares the benefits and detriments likely to arise in the future with the conduct for which authorisation is sought against those in the future without the conduct the subject of the authorisation.

44. The Applicants submit that in the future without the proposed conduct, development of the Mereenie field will be prevented and/or delayed. As discussed at paragraphs 7-11 , the Applicants also submit they consider that neither Mereenie joint venture party has the ability and incentive to invest in further development of the Mereenie field in the absence of joint marketing. This view was reiterated in the Applicants' response to the draft determination.

[9] ACCC East Coast Gas Inquiry Report April 2016 p59

45. The Applicants submit that while independent gas marketing may be possible in many circumstances, the market is not sufficiently mature in terms of sales of Northern Territory produced gas into the east coast market to be successful.

46. In their response to the draft determination, the Applicants submit that the time required to put in place a life-of-field gas balancing arrangement has been significantly underestimated by the ACCC and that establishing such an agreement is likely to be a number of years, rather than months.

47. PWC submits that a number of public statements by the Applicants indicate that joint marketing is not necessary to facilitate the further development of the Mereenie field. PWC further submits that the scale of the market opportunity and the availability of spare capacity on the NGP mean that the Applicants would proceed to develop the field and market the gas separately.

48. In its submission following the draft determination, PWC suggests that if the Applicants had focused on negotiating a life-of-field separate balancing agreement rather than a joint marketing agreement, they would already have been in a position to proceed to marketing without requiring authorisation.

The ACCC's view

49. The ACCC considers that in the likely future without the proposed conduct, the Applicants would still be likely to develop the Mereenie gas field, but this development would be delayed until after they completed negotiations for gas balancing arrangements for the life of the field. In the meantime they would continue to separately market the gas entitlements under the existing interim gas lifting arrangement.

50. A life-of-field gas balancing arrangement between the Applicants would provide each of them with sufficient certainty about their relative entitlements to production volumes and obligations to invest in infrastructure. Negotiations are likely to take several months and may exceed one year. During this time there would be no additional gas sales made by Central until its existing GSAs begin to expire.

51. The ACCC notes PWC's submission that the Applicants could have entered into arrangements that did not require authorisation. The ACCC's focus in assessing the application for authorisation is to assess the conduct for which authorisation is sought in all the circumstances. At present, the Applicants have not entered into a life-of-field gas balancing arrangement and, as noted above, negotiations are likely to take several months and may exceed one year. The ACCC must assess whether in these circumstances, the proposed joint marketing arrangements are likely to result in a net public benefit.

52. The ACCC would be concerned if parties were deliberately to engineer a situation where they need authorisation because they have chosen not to pursue an alternative that could have resulted in the same public benefit. The material available to the ACCC does not suggest that this has occurred in this matter.

Public benefit

53. The CCA does not define what constitutes a public benefit and the ACCC adopts a broad approach. This is consistent with the Tribunal which has stated that the term should be given its widest possible meaning, and includes:

> …anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements … the achievement of the economic goals of efficiency and progress.[10]

54. Having regard to the submissions of the Applicants and interested parties, the ACCC has considered the claimed public benefits of the proposed conduct.

55. The ACCC's assessment of the likely benefits of the proposed conduct follows.

Increased supply/availability of gas

The Applicants' submission

56. The Applicants submit that joint marketing is a requirement for the introduction of new supply from the Mereenie field. Gas produced from the Mereenie field will provide customers located in or near Mount Isa with an alternative source of supply once the NGP opens.

57. While the Applicants state that the bulk of their joint marketing efforts will be directed towards east coast customers, they consider that Northern Territory customers will also benefit from the proposed conduct. Once the NGP opens, the Applicants expect that prices paid by Northern Territory customers for new gas supply contracts are likely to move towards parity with east coast prices. The Applicants submit that increasing supply at the Mereenie field will partially mitigate the increase in pricing Northern Territory gas customers may experience.

58. The Applicants submit that increased gas supply is a significant public benefit. The Applicants note that an east coast gas supply shortfall has been forecast, and some downstream industries are receiving supply offers at prices which make the use of gas uneconomic. The Applicants submit that this will have significant consequences in downstream industries. The Applicants consider that customers and projects located in or near Mount Isa would clearly and directly benefit from the proposed conduct.

PWC's submission

59. PWC submits that the development of the Mereenie field will result in only a small volume of additional gas being brought to market. As a result, any benefits accruing from the conduct will be insignificant and not "substantial", and therefore not outweigh the anti-competitive detriment that may arise.

60. PWC suggests that the east coast gas shortage has been averted, and this reduces the extent of the public benefit arising if the proposed conduct made additional gas available.

[10] *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cited with approval in *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677.

The Applicants' further submissions

61. The Applicants submit that the east coast gas shortage has not been resolved. It notes that the federal government has taken steps towards ensuring that domestic gas demand is supplied at the expense of LNG spot sales. However, this intervention has not brought any new supply into the market. It has only re-allocated the market segment where the shortage exists and does not address the price of gas nor the requirement for long term contracts. The Applicants assert that there is still an existing shortfall between supply and demand.

62. Once Northern Territory gas becomes available, there is likely to be a "flurry of contracting" which the Applicants need to be a part of. The Applicants submit that they require joint marketing to be in a position to supply Mereenie gas to the east coast market as soon as the NGP is operational. That date is an externally imposed deadline.

63. The Applicants submit that, even if new gas production resulting from the development of the Mereenie field is not available in time for first supply into the NGP, joint marketing would provide sufficient certainty for the Applicants to lift the current Production Limits at the Mereenie field. The Applicants submit that there is an additional 150 PJ of existing 2P (proved and probable) gas reserves that they could supply to the market, once the production limits are raised.[11]

64. In the Applicants' post draft submission, they consider the ACCC to have undervalued this benefit as a result of having underestimated the amount of time that would be required for the Applicants to negotiate a life-of-field gas balancing arrangement. This view was reiterated in the Applicants' response to PWC's post draft submission.

The ACCC's view

65. The ACCC considers that, over the long term, the proposed conduct is not likely to result in a greater total supply of gas from the Mereenie field than would otherwise be supplied. Supply of new gas from the Mereenie field is likely to occur both with and without the proposed conduct, and the amount of gas which can be extracted from the field is limited by the available reserves which the Applicants intend to develop. The ACCC considers that an 'increased supply of gas' is not a public benefit which results from the proposed conduct, as the total volume of gas which will be produced from the field will not change.

66. However, the ACCC accepts that the proposed conduct is likely to result in some public benefit by enabling development of the Mereenie field to occur sooner than it would otherwise and thereby bring forward the available supply of Mereenie field gas to customers in the Northern Territory-Mount Isa Region. Gaining access to this gas sooner rather than later, particularly in times of shortage of gas supply, is a public benefit.

67. The ACCC notes that the size of this public benefit is likely to be small in line with the relatively modest quantity of gas which the Applicants have targeted for joint marketing (15 PJ per annum).

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[11] Reserves are the quantities of gas expected to be commercially recoverable from a given date under defined conditions. 2P (proved and probably) gas reserves are commercially recoverable reserves with at least 50 per cent probability that the quantities recovered will equal or exceed the estimated quantity.

Aggregation of gas volumes

68. The Applicants submit that joint marketing facilitates aggregation of more natural gas for sale to major commercial and industrial customers on the east coast than either Macquarie or Central could sell alone. In turn, this may underwrite any required pipeline transportation arrangements and enable the Applicants to bid for contracts for major industrial customers for which neither Central nor Macquarie has sufficient reserves to supply alone.

69. In the Applicants' post draft submission, they clarify that they were not seeking to claim that the proposed conduct would allow them to aggregate gas from multiple fields or sources. Instead, the Applicants say that customers prefer to acquire a larger volume of gas, at a larger flow rate, for a longer period.

70. PWC, in its post draft submission, submits that it does not consider large commercial and industrial customers place any meaningful value on aggregation of gas volumes. Instead, these customers usually focus on key supply terms (such as price, firmness of supply and quantity).

The ACCC's view

71. On current information, the ACCC's view is that aggregation of gas volumes under the proposed conduct is not likely to result in additional public benefit over and above the benefit identified above from bringing gas to market earlier.

72. The ACCC notes that the proposed conduct does not enable the Applicants to aggregate volumes from other sources. It is not clear that large commercial and industrial customers value the aggregation of gas volumes under a joint marketing arrangement.

Cost savings and synergies

The Applicants' submission

73. The Applicants submit that the aggregation of Northern Territory market intelligence (held by Central) and east coast market intelligence (held by Macquarie) will allow the Applicants to achieve cost savings and efficiencies. This will result in the reserves from the Mereenie field being utilised in a more targeted and efficient way than if the Applicants were to individually market their production. Cost savings will be achieved by eliminating the need for each of the Applicants to invest time and capital into developing the capabilities that each other already holds. These views were maintained in the Applicants' post draft submission.

The ACCC's view

74. The ACCC notes that authorisation is only sought in relation to joint marketing of gas produced at the Mereenie field. Both of the Applicants are likely to continue to make investments in gathering and analysing market intelligence to support their separate marketing of gas from other fields. It is therefore not clear that the parties would achieve any cost savings and efficiencies through aggregation of market intelligence under the proposed conduct. Accordingly, the ACCC considers that the proposed conduct is not likely to result in public benefits in the form of cost savings and efficiencies.

Other claimed benefits

The Applicants' submission

75. The Applicants submit that a number of other public benefits associated with development at the Mereenie field will result. They submit that:

    a. Increased production at the Mereenie field will result in greater revenue for government and traditional land owners as the Applicants will pay corporate taxes, royalties to the Northern Territory government and production royalty payments to traditional land owners such as the Central Land Council.

    b. By facilitating an increase in production at the Mereenie field with a view to utilising the NGP as soon as it is completed and available to transport gas, the proposed conduct will send a clear, positive market signal to infrastructure owners that investment in gas infrastructure is worthwhile. Ensuring volumes are available to be transported by the NGP will also increase the likelihood of Jemena investing in expanding the NGP or continuing its present proposal to connect Mount Isa to Wallumbilla which would enable Northern Territory gas to reach a major gas hub.

    c. Development of the Mereenie field will create additional job opportunities for local indigenous and local non-indigenous people. Employment will be available in development and long term operation of the field. The Applicants submit that Central, as operator of the field, currently employs local and indigenous staff to the maximum extent possible. Around one third of Central's staff are local indigenous employees, one third of Central's staff are local non-indigenous employees and one third FIFO employees.

    d. The greater availability of gas, and the potential downward impact on prices has the potential to assist in Australia's transition to a lower carbon economy. The Applicants submit that in eastern Australia, there is an increasing risk that gas power generation is becoming uneconomic compared to other energy sources such as coal fired power generation with higher greenhouse gas emissions and greater environmental impact.

The ACCC's view

76. The ACCC considers that, to the extent these outcomes arise, they result from increased production due to development of the Mereenie field. Given that the ACCC is of the view that such development would likely occur with or without the proposed conduct, the ACCC considers that these outcomes are not public benefits which are likely to result from the proposed joint marketing.

ACCC conclusion on public benefits

77. The ACCC considers that the proposed conduct is likely to result in some public benefit in the form of encouraging development of the Mereenie field to occur sooner than it would otherwise and bringing forward supply of volumes of gas to customers in the NT-Mount Isa Region.

Public detriment

78. The CCA does not define what constitutes a public detriment and the ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

> …any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.[12]

79. The Applicants acknowledge that allowing competitors to engage in joint marketing has the potential to result in public detriment by lessening competition. However, they submit that the likely public detriment will be minimal because:

    a. The quantity of gas targeted to be jointly marketed (15 PJ per annum) represents less than 1% of the total annual east coast market demand and will not materially change the competitive dynamics. The Applicants will also not be 'price setters'.

    b. Absent the conduct, Central is not a potential independent supplier of gas from the Mereenie field through new sales.

    c. The joint marketing arrangements will be limited in time and only long enough for the Applicants to substantially underwrite the further development of the Mereenie field.

    d. There are numerous competing sources of supply.

80. PWC submits that the proposed joint marketing arrangement may lessen competition and result in gas prices that are higher (with less favourable terms and conditions) than without the conduct. It submits that previous joint marketing arrangements in Western Australia led to rising gas prices that only began to stabilise once the joint marketing arrangements were unwound and gas was separately marketed.

81. In response to this point, the Applicants state that, without joint marketing, Central is unable to sell further gas from the Mereenie field as it has hit its production limit and is not able to enter into any new supply agreements. This means that both with and without the conduct, there will only be one seller of gas from the Mereenie field. As a consequence there will be no increase in concentration with the joint marketing arrangement – even if a narrower NT and Mt Isa geographic viewpoint is adopted.

82. In its post draft submission, PWC submits that:

    a. the NGP is not a bi-directional pipeline and therefore, Cooper Basin and Galilee Basin producers are unlikely to act as an effective constraint to the Applicant's price and service offers to customers in the NT,

    b. regard should be given to markets for the trading of secondary transmission pipeline capacity. PWC notes the possibility of trading reforms proposed by the COAG Energy Council for the eastern states of

[12] *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

Australia being applied to gas provided in the NT, where the Mereenie field is the only gas project. If this is the case, then a day-ahead auction might apply to contracted but un-nominated capacity on pipelines used by the Applicants, and

c. in this scenario, on particular pipelines in the NT (namely, the Amadeus pipeline, Bonaparte pipeline and NGP), competition between the Applicants, who are likely purchasers of unused transmission capacity, may cease as a result of allowing the conduct. PWC submits that without the conduct, Macquarie and Central would compete for unused pipeline capacity and bid against each other in day-ahead auctions. Whereas, if the conduct is allowed, the Applicants might coordinate their capacity acquisitions and act as a single buyer of capacity in markets for the trading of secondary transmission pipeline capacity.

83. The Applicants provided the following responses to these points:

a. Even if the NGP remains a single direction pipeline, NT gas prices will continue to be influenced by those on the east coast (with regard to the seller’s effective price, taking into account transmission costs), even if it is not possible for east coast gas suppliers to sell into the NT. As such, east coast gas competition will constrain NT gas prices.

b. In relation to secondary trading of pipeline transmission capacity, the Applicants note that Central will likely be a participant in any day-ahead auction, competing against PWC and either Macquarie Mereenie or the Applicants jointly (depending on whether authorisation is granted) as Central will have an interest in obtaining transmission capacity for its gas supplied from the Dingo and Palm Valley gas fields. The Applicants note that Central is production constrained in the Mereenie field and will be unable to bid against Macquarie Mereenie and PWC with respect to Mereenie field gas unless authorisation is granted or a gas-balancing agreement is resolved (which is not anticipated to occur in the near term). As such, both with and without authorisation, any day-ahead auction is likely to only have three gas suppliers: Central-PWC-Macquarie Mereenie or Central-PWC-the Applicants.

The ACCC’s view

84. The ACCC takes the view that, where commercially feasible, separate marketing is likely to result in a more competitive outcome than would be the case under joint marketing. Joint marketing has the potential to result in public detriment if it allows the joint marketers to supply gas at higher prices and/or on less favourable terms and conditions.

85. In this case, the ACCC considers that the proposed conduct is not likely to result in public detriment because it does not materially enhance the Applicants’ ability to supply gas at higher prices and/or on less favourable terms and conditions than they would likely achieve with separate marketing.

86. The ACCC notes that commercial and industrial customers in the NT-Mt Isa Region are likely to have a number of alternative sources of supply and will assess the Applicants’ offer against those of rival suppliers, including PWC from the Blacktip Field in the NT, Cooper Basin gas suppliers and, in the future, potentially Galilee Basin gas suppliers.

87. The ACCC remains of the view that these alternative sources of supply are likely to constrain the Applicants' price and service offers to NT-Mt Isa customers. The ACCC accepts that the NGP is not currently bi-directional. However, the ACCC considers that opportunities remain for gas swaps and backhaul contracting along the pipeline.

88. With respect to secondary trading of gas pipeline transmission capacity, the ACCC does not consider the proposed conduct is likely to result in public detriment. The ACCC notes that:

    a. the scope of authorisation confines the Applicants' coordination to acquire gas transmission capacity to their jointly marketed Mereenie gas volume,

    b. Macquarie is likely to continue to independently acquire gas pipeline transmission capacity to supply Mereenie gas volumes under contracts entered into before the commencement of Interim Authorisation,

    c. Central is likely to continue to independently acquire gas pipeline transmission capacity for its other gas production, including its production from the Dingo and Palm Valley gas fields as well as the Mereenie gas volumes it supplies under contracts entered into before the commencement of Interim Authorisation, and

    d. Central has already reached its Production Limit under the Applicants' current production arrangement. In the future without the proposed conduct, it is unlikely that Central and Macquarie would compete to acquire transmission capacity for additional Mereenie gas volumes until after the Applicants complete their negotiation of a life-of-field gas balancing arrangement. As noted previously, the ACCC considers that negotiation of this arrangement will take many months and may exceed one year.

Balance of public benefit and detriment

89. Broadly, 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.

90. For the reasons outlined in this determination the ACCC is satisfied that the proposed conduct is likely to result in a public benefit that would outweigh the likely public detriment from the proposed conduct.

91. Accordingly, the ACCC has decided to grant authorisation.

Length of authorisation

92. The CCA allows the ACCC to grant authorisation for a limited period of time.[13] This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also

[13] Subsection 91(1).

enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

93. In this instance, the Applicants seek authorisation to jointly market for five years and to give effect to agreements entered into during this period which may have gas supply terms up to and including 2035. The Applicants believe that these proposed supply terms are consistent with east coast gas customer requirements.

94. The ACCC has decided to grant authorisation to the Applicants to engage in joint marketing of gas from the Mereenie field for three years until 20 April 2021. Any GSAs entered into during this three year period may have supply terms extending for a period up until 31 December 2028.

95. Based on the information available to it, the ACCC considers that this period of authorisation is likely to meet customer requirements and provide the Applicants with sufficient certainty to bring forward investment in the Mereenie field. Beyond this three year period, the ACCC expects the Applicants to engage in separate marketing in order to limit the likelihood of anti-competitive detriment arising in the future.

96. In its draft determination, the ACCC invited submissions from the Applicants and interested parties about the appropriate period of authorisation for the joint marketing of gas from the Mereenie field, and the appropriate duration of supply terms in GSAs made and entered into during the proposed three year period.

97. The Applicants remain of the view that the longer period of authorisation sought reflects customers' expressed needs but they accept that the reduced time periods proposed by the ACCC will be sufficient to give rise to the public benefits of sooner development of the Mereenie field.

98. PWC supports reducing the period for joint marketing conduct from five to three years and suggests further reducing it to the period required for the Applicants to put in place a life-of-field balancing arrangement. PWC does not suggest what length of time this might be.

99. PWC also supports bringing forward the latest expiry date for GSAs from 2035 to 2028, and suggests making the expiry date even earlier to protect against unanticipated public detriment.

100. Overall, the ACCC remains of the view that the period of authorisation and length of GSAs set out in the draft determination are appropriate.

Determination

The application

101. Application AA1000398 was lodged on 4 October 2017 by Central Petroleum Limited and Central Petroleum Mereenie Pty Ltd as trustee for the Central Petroleum Mereenie Unit Trust (together, Central) and Macquarie Mereenie Pty Ltd (Macquarie) using Form B under subsection 88(1) and (1A) of the CCA.[14]

102. Authorisation is sought to jointly market Mereenie gas and to give effect to provisions of gas supply agreements (GSAs) with customers with common terms and conditions including price relating to the supply of gas from the Mereenie field.

The net public benefit test

103. For the reasons outlined in this determination, the ACCC is satisfied, pursuant to sections 90(7) and 90(8) of the CCA, that in all the circumstances the proposed conduct for which authorisation is sought is likely to result in a public benefit that would outweigh any likely detriment to the public.[15]

Conduct authorised by the ACCC

104. The ACCC has decided to grant authorisation AA1000398 to Central Petroleum Limited, Central Petroleum Mereenie Pty Ltd as trustee for the Central Petroleum Mereenie Unit Trust and Macquarie Mereenie Pty Ltd to:

a) jointly market gas from the Mereenie gas field for a period of three years until 20 April 2021;

b) make gas supply agreements (GSAs) with customers for the supply of Mereenie gas that contain common terms and conditions (including as to price) and that expire on or before 31 December 2028, for a period of three years until 20 April 2021; and

c) give effect to any such GSAs entered into during the three year period until 31 December 2028.

105. The ACCC has decided to grant authorisation for the proposed conduct insofar as it contains a cartel provision or may have the purpose or effect of

[14] On 6 November 2017, a number of amendments to the CCA came into effect, including changes to the authorisation provisions in Division 1 of Part VII of the CCA. 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 CCA 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 CCA as amended.

[15] As a cartel provision applies to the proposed conduct, subsection 90(7)(a) does not apply: section 90(8).

substantially lessening competition within the meaning of section 45 of the CCA.[16]

106. The proposed authorisation will not allow the Applicants, after the three year period, to jointly market gas from the Meerenie gas field or enter into new GSAs with customers for the supply of Mereenie gas that contain common terms. However, the Applicants will be able to give effect to any GSAs entered into in the initial three year period but only until 31 December 2028.

107. The authorisation does not apply to the joint marketing of any gas other than that from the Mereenie gas field.

Date authorisation comes into effect

108. This determination is made on 29 March 2018. If no application for review of the determination is made to the Australian Competition Tribunal it will come into force on 20 April 2018.

[16] As s 4D 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 CCA" 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.