Australian Competition
&
Consumer Commission

PRE-DECISION CONFERENCE

Minutes

Authorisation A40051, lodged by
Exxon Mobil Group,
Oil Search Group
Mineral Resources Development Company Ltd Group
Merlin Petroleum Group

1 March 2006

Pre-Decision Conference: Authorisation A40081 lodged by participants in the PNG Gas Project

1 March 2006
Brisbane
Marriott Hotel, 515 Queen Street

A list of attendees is attached.

Conference commenced: 2.10 pm

Introduction

Commissioner Willett welcomed attendees and gave some introductory remarks outlining the purpose of the conference. He stated that a record of this conference would be made available to all attendees and placed on the ACCC's website. Draft extracts would be sent beforehand to the relevant parties for verification.

Commissioner Willett declared the pre-decision conference open and invited the party that called the conference, Roman Domanski on behalf of the Energy Users Association of Australia, to make an opening statement.

Roman Domanski, Energy Users Association of Australia

EUAA has been a strong supporter of bringing in new suppliers to open up Eastern Australian gas markets and improve the choices open to gas users. The PNG Gas Project (the Project) has enormous potential for bringing significant public benefits to the Australian community if the regulatory arrangements under which the gas is marketed provide a competitive framework. The Project is worth supporting but not at any price.

Joint marketing is only required to financial close (see EUAA Submission, 2005). This means bankers are happy with the debt exposure and happy that the JVs will stay in the Project for the debt term. Equity providers are happy with the equity exposure.

The applicants claim they need long term joint marketing to underpin their hurdle equity return – "unless we get our hurdle rate (ie private benefits) the community will not get the public benefits of the Project". Their hurdle rate of return must be based on achieving a certain volume and price, not on the term of the authorisation alone.

It is unclear if the ACCC's draft determination to allow joint marketing beyond financial close is driven by advice from the applicants on the Project financing term, or on a judgement that separate marketing is not feasible. What happens if the ACCC judges, in say year 8, that separate marketing is feasible? Does the ACCC want to lock itself into this 16 year timeline? There is the risk of joint marketing continuing when there is no net public benefit but only a private benefit.

The applicants suggested that without a 30 year joint marketing authorisation the Project would not proceed beyond FEED. This suggests the applicants will object to the term proposed in the draft determination. However, this is not referred to in their submission this week. What length would the applicants have objected to – 14, 12, 6 years, financial close? Has the ACCC hit the target (or missed it)?

The draft determination is unclear on a number of issues:

- Is it wet or dry gas? EUAA submits that is should be dry gas.
- Is the gas been delivered to the customer or delivered in the pipeline at the Australian border? EUAA submits that it should be delivered at the border for these reasons:
    - AGL/Petronas is not an applicant
    - there are no access principles available
    - it is consistent with other ACCC decisions.

The term of the authorisation is unclear. A 20 year contract executed in year 15 gives a 35 year authorisation. Yet the ACCC is clearly opposed to a 30 year term.

The proposed 16 year authorisation period appears to be based on advice from the applicants on the project financing term – one year to financial close, three years construction, 12 years project financing term gives a total 16 years. The EUAA notes that the ACCC is unable to release this advice.

Getting the required volume is the key.

EUAA research indicates that:

- The applicants are yet to formally seek project finance so it is not known accurately what the term will be.
- Finance term is likely to be limited by the term of political risk insurance (PRI) and export credit agency (ECA) finance
- PNG PRI longer than 5-7 years may be difficult. ECA financing will depend on the input sourcing strategy

The EUAA questions whether banks should have any concerns with separate marketing for the following reasons:

- The applicants keep making statements about the increase in Australian demand – it is now 300PJ/yr plus PNG and NZ. On 22 February 2006 Peter Botten, CEO of Oil Search stated “The market itself is largely underwritten”.
- The applicants have claimed that prices under separate marketing would be no lower than prices under joint marketing.
- The publicly announced off-takers are major Australian companies with strong credit ratings.
- EUAA does not see competition from coal seam methane (CSM) as a problem

Therefore it is not surprising EUAA found evidence in debt markets indicating that banks are confident about the Project meeting commercial hurdles.

The EUAA has some concern with the Project financing term. First, EUAA suggests the amount of project financing may be less than implied by the applicants, as only some participants will seek it. Second, project finance should only relate to the upstream facilities in PNG and not include the AGL/Petronas pipeline. Joint marketing should not underpin any pipeline financing risk.

If the project finance term was the driver behind the proposed term of 16 years, the EUAA questions how the ACCC can come to a view on this before it knows the actual term. EUAA asked whether the ACCC considered other approaches to the term of the authorisation, such as achievement of a certain gas volume.

The market is undergoing considerable change in recent years and this is expected to continue. Small CSM producers are starting up but being acquired by larger companies, eg acquisition of Tipperary by Santos, Origin's acquisition of Fairview & Durham and BHPB selling its CSM interests. A deeper pool of buyers and sellers and the imminent gas reforms through MCE process are factors which will contribute to further changes in the market. The table below demonstrates the dynamic nature of the market.

	Number of primary gas contracts		Number of primary gas buyers	
	Eastern Australia	Queensland	Eastern Australia	Queensland
2000	26	14	19	11
2005	66	37	35	22
Growth 00 to 05	40	23	16	11

The gas industry is dynamic and it is difficult to forecast the market for even a few years into the future, let alone for 16 years or more. The ACCC stated:

> given the uncertainty surrounding future market conditions the ACCC cannot be confident that the public benefits will outweigh the detriments for an indeterminate time or even for a period as long as 30 years.

The EUAA questions how the ACCC can claim that separate marketing conditions would not occur in the next 16 years.

At the end of the term of the authorisation the ACCC states that the applicants can reapply for joint marketing. The ACCC should give itself the flexibility to review the authorisation at its own or other parties' suggestion to ensure the net benefits test is still met. The 'material change test' is problematic and likely to draw strong opposition.

The EUAA appreciates the effort put into drafting the proposed ring-fencing and confidentiality arrangements. However, these arrangements are never failsafe and cannot be fully relied upon. The EUAA is aware of an incident in the Project's history where there was doubt about the ability of the joint venture partners to protect confidentiality.

What happens if one participant is concurrently considering gas contracts from different fields, including PNG? EUAA would be concerned if future participants with high shares in the joint venture were allowed to be a party to the joint marketing arrangements.

EUAA believes that the mix of participants in the Project in part determines the ability for participants to separately market their share of the gas. A significant entrant or change in the mix of participants should be examined by the ACCC for any impact on the authorisation.

Both the US and UK markets required regulatory intervention before they could mature and develop spot markets. This implies the ACCC will have some role in promotion of a gas market mature enough to support separate marketing, The 16-year long authorisation proposed would narrow the opportunity to do this. The EUAA asks what the ACCC is doing to encourage the development of the conditions to enable separate marketing.

Mr Domanski asked the applicants to respond to a number of issues, including those relating to project risk and the banks concerns, particularly in relation to market size, securing contracts, no difference in prices between separate marketing and joint marketing and credit quality. Mr Domanski also asked whether the applicants agreed to the 16-year term proposed by the ACCC since they had requested a minimum of 30 years.

Mr Domanski noted Mr Reed's comment that the joint venture would consider separate marketing of gas at some stage. Mr Domanski questioned whether this was satisfactory to the ACCC and stated that this would constitute a private benefit, not a public one.

Summary of EUAA's submission

EUAA strongly supports the Project proceeding, but not at any cost. The reasons for joint marketing beyond financial close are unconvincing.

Authorisation should only apply to dry gas delivered into the pipeline at the Australian border.

The authorisation term should not be driven by a guess about the project finance term. The ACCC should consider volume targets and dynamic market conditions.

ACCC and interested parties should be allowed to seek a review of the authorisation just as the participants are allowed to request extension.

Confidentiality and ring fencing arrangements must be watertight and cater for the inclusion of future participants.

The ACCC should not discourage the development of a competitive gas market in its rulings.

Applicants' response

Commissioner Willett asked Mr Bob Reed of ExxonMobil, on behalf of the applicants, if he wished to address the conference.

Bob Reed, ExxonMobil

Bob Reed, of ExxonMobil, is the Commercial Project Manager for the PNG Gas Project. Esso Highlands is the Operator of the Project. He was at the conference representing the Project Participants; the ExxonMobil Group, Oil Search Group, the Mineral Resources Development Company Limited Group and the Merlin Petroleum Company.

Mr Reed stated that representatives from all of the Project Participants were present at the conference thanked in particular, Mr Arun Basu from MRDC, who made the effort to travel from PNG to attend.

He stated that the participants welcomed the opportunity to answer any questions and respond to any concerns that the ACCC and anyone else may have regarding the PNG Gas Project.

Mr Reed stated that the purpose of his statement was:

- to provide a summary of the reasons why the ACCC should grant a long term authorisation of the joint marketing conduct of the Participants; and
- briefly address the following key issues raised in third party submissions:
  - the duration of the authorisation;
  - the feasibility of joint marketing; and
  - the entry of future participants.

The first issue Mr Reed raised was that the ability to jointly market Project gas is critical to the PNG Gas Project.

With a total investment value of over US$4 billion, the Project will be one of Australia's largest infrastructure developments and the most significant resource development ever undertaken in PNG.

Given the significance of the investment contemplated and the fact that this is a greenfield project, the Project Participants need to have as much regulatory certainty as possible. Accordingly, the participants are seeking authorisation for the life of the Project to:

- negotiate the common terms and conditions (including price) under which gas produced by the Project will be offered for sale;
- jointly market that gas to a common buyer or common buyers; and
- enter into and give effect to contracts, arrangements and understandings between the Participants relating to common terms and conditions (including price and price arbitrations/determinations) upon which gas will be offered for sale and sold by the Participants to buyers.

The Project Participants believe that separate marketing is not currently feasible and will remain so for the foreseeable future. For as long as this is the case, the public benefits arising from the Project should be characterised as public benefits arising from the joint marketing conduct, because without joint marketing the benefits cannot materialise. This was recognised by the ACCC in its Draft Determination. There is no doubt that this decision is correct.

What the ACCC must decide on is whether the public benefits arising from the Project will outweigh any possible detriment, constituted by any lessening of competition resulting from the joint marketing conduct.

It is clear that this test is satisfied. The Project will increase competition, keep prices low and give rise to numerous other public benefits such as:

- the provision of a new and essential supply of gas to the eastern Australian energy market;
- economic benefits to regional communities, including employment benefits; and
- a fostering of the Australia – Papua New Guinea bi-lateral relationship.

ACIL Tasman modelling suggests that the PNG Gas Project would add around A$5.8 billion in aggregate to Australian GDP over the period 2005-2020, and increase Queensland's GSP by about A$675 million annually by 2020. In addition, more than 1,500 jobs in regional Queensland would be created during the construction phase, and by 2020 there would be more than 800 people employed, mostly in Queensland, on an ongoing basis as a result of the Project.

In PNG, over its lifetime, the PNG Gas Project is expected to provide up to 9 per cent of GDP. The Project's capital investment in PNG will be in the order of K8.3 billion (US$2.5 billion in 2005 dollars), with approximately the same again estimated for recurrent operating expenditures over the life of the Project. In a typical operating year the Project could be expected to provide between US$200-300 million to PNG stakeholders in the form of taxes, royalties and equity participation in profits and it is estimated that up to 2,500 jobs will be generated during construction and around 400 full-time equivalent positions would be maintained during the operational phase.

It is the Participants' view that there will be no anti-competitive detriment arising from the joint marketing. However, if the ACCC concludes that joint marketing may result in some anti-competitive detriment, the Participants strongly believe that the numerous public benefits, in both Australia and PNG, would clearly outweigh any detriment to the public.

Accordingly, the Participants consider that the ACCC's 'future with and without test' is clearly satisfied because:

- in the future 'with' a long term authorisation in place, there will be significant public benefits and no anti-competitive detriments; and

- in the future 'without' a long term authorisation in place, the public benefits will be foregone and a critically important opportunity to facilitate a major infrastructure development and investment in Papua New Guinea and rural and regional Australia will have been denied.

The fundamental point which the applicants wish to make is that without the long term ability to jointly market Project gas, it would be impossible for the Participants to both initially achieve the volume and quality of sales required to underwrite the multi-billion dollar investment and to see the growth opportunities needed for the Project to proceed.

The ability to have growth opportunities is essential not only to the PNG Project Participants, but also for the APC consortium who are investing in the Australian pipeline.

What the participants have always been clear on is that they and their financiers will only proceed with this Project if all parties believe that the projected financial returns over the life of the Project will outweigh the costs and risks associated with the Project. The same is true for APC.

The ability to jointly market Project Gas over an extended time period is critical. A short term authorisation would not provide the Participants with the opportunity to secure sufficient customer commitments over the life of the Project, nor would it provide the security of anticipated revenue to the Project and to APC.

For these reasons, the Participants submit to the ACCC that it ought to grant long term authorisation to the joint marketing conduct of the Participants.

Mr Reed then indicated his intention to address some of the key issues raised in third party submissions.

In relation to the duration of the authorisation the Participants note the submissions of parties such as the EUAA, Comalco and Energex which suggest that authorisation should not be granted beyond financial close.

There is no evidence in any of these submissions which rebuts the repeated statements and supporting arguments made by the Participants that at a minimum a long term authorisation is essential for a project of this value and significance. The Project has provided the ACCC with confidential support from the Project's financiers that they require a long term authorisation. Financiers are committed for a period many years past Financial Close, and need certainty as to the Project risks and returns over that period.

In addition, greenfield projects like the PNG Project have low initial rates of return and very high upfront costs. These projects rely on growth to achieve a required rate of return, and this means that authorisation is needed past Financial Close. This is particularly the case when they are marketing gas into a very shallow, illiquid market.

In the applicants’ opinion, the parties who oppose long term authorisation are pitching opportunistic arguments which are without foundation and represent an attempt to use the ACCC to exert commercial leverage on their behalf. The Project's customers are large, sophisticated buyers of gas. Many of them will compete against the Project in downstream sales. This leverage would seem at best unnecessary, because ACIL Tasman modelling shows the PNG Gas Project will result in lower gas prices. At worst, these companies are putting the entire Project at risk to the detriment of all of the other potential gas buyers.

Overseas decisions demonstrate that international regulators and courts have recognised the need to provide companies making very significant, long term investments with long term protection from regulatory or legal uncertainty and risk. These decisions demonstrate the recognition by regulators and courts of the risks of short term exemptions and the benefits of long term exemptions which facilitate investment.

Regarding the feasibility of joint marketing, the Participants' submission that separate marketing is not feasible has been supported by indisputable evidence such as the Parer Committee Report, which expressly recognised that separate marketing of Project Gas is not feasible.

While some parties have made submissions citing examples of separate marketing, the Participants reject any comparison between these small and isolated instances and the PNG Project, which requires a significant market for the Project to proceed and produce the returns required for a US$4 billion greenfield project.

In relation to the issue of entry of future participants, it is important to emphasise that the Project is still in its infancy and it is essential for the authorisation to be flexible enough to accommodate changes to the Project that will inevitably occur. For example, the State of PNG may take up an equity interest in the Project.

The Project is of the firm view that the following safeguards more than adequately address any concerns about the entry of Future Participants:

- the confidentiality and ring-fencing requirements proposed by the ACCC;
- the ability of the ACCC to revoke the authorisation if there has been a material change in circumstances; and
- the operation of the merger provisions in section 50 of the Trade Practices Act.

In particular, the ring fencing and reporting requirements proposed by the ACCC are extremely rigorous.

Further, the applicants strongly believe that the identity and ownership interest of any future participant is irrelevant. The above protections apply with equal force to all future participants, regardless of their identities or their ownership interests. To suggest otherwise is to question the integrity of these protections.

Two weeks ago it was announced that AGL had acquired an upstream interest in the Project. It is possible that Santos will also rejoin the Project given that it has an interest in certain Project reserves. The entry of these parties into the Project has been publicly considered in the media for well over a year now. Additionally, the ACCC in its Issues Paper dated December 2004 directly referred to Santos's possible role in the Project. The recent developments are welcomed by the Project, and in no way alter the significant benefits that the Project will deliver. In particular, those parties would be bound by the confidentiality and ring fencing requirements that are proposed by the ACCC.

In response to issues raised by other conference participants, Mr Reed made the following comments.

If the participants are not able to jointly market the gas beyond financial close the Project will not proceed and hence the public benefits of the Project will not be realised.

The applicants have sought authorisation for the life of the Project because it is uncertain how the market will evolve. The joint venture partners will consider separate marketing when the market has developed and conditions are right.

Separate marketing is the preferred manner of selling gas because gas suppliers do not want others to control decisions over their gas.

There is evidence that the Project is competitive and will remain competitive – some potential customers have left and others have remained. Going forward the Project will face competitive pressures for these reasons:

- the existence of other energy sources
- countervailing power of buyers
- capability of fuel switching, for example Alcan, Comalco and QAL
- coal is a substitute in electricity generation and provides a cap on gas prices
- coal seam methane (CSM) has grown as a competitor

Regarding the term of the authorisation, while the applicants have sought life of the Project, 16 years would likely be the minimum term acceptable to the applicants given what is known about the financing of the Project. The applicants cannot foresee separate marketing becoming feasible before then.

While 16 years was not asked for, as equity investors the applicants have to be realistic. At the very least the 16 years will cover the financing period and any period less will be cost-prohibitive.

The entry of PNG gas will mean another source of gas supply into Australia. Joint marketing will ensure that the benefits of the Project will continue. At the end of the day the important issue is what is the best way to bring PNG gas into Australia.

In response to Mr Domanski's queries about what concerns banks have, Mr Reed made the following points:

- Banks can see that the market is growing and they need to be confident that the Project will be in a position to capture some of this market growth

- Banks would be financing inexperienced players and would be concerned about the cashflows and solvency of the Project

- Balancing agreements do not work in an illiquid market of this size. Banks would want to see the participants behave in a common manner.

In conclusion, the substantial public benefits in both Australia and PNG that would arise from the long term authorisation of the joint marketing conduct cannot be denied and should not be jeopardised.

Comments from interested parties

Commissioner Willett then invited those parties who had nominated a chief spokesperson to address the conference.

Mark Grenning, Comalco

Comalco has had a long association with, and been a strong supporter of, the PNG Gas Project. The Project will bring substantial benefits to gas users, the State of Queensland and the national economy through increased competition and a new source of gas for local industry.

Comalco's association with the Project began in 1997 when discussions began on the supply of gas to Comalco’s then planned greenfield alumina refinery in Gladstone, Queensland. Comalco holds a conditional Term Sheet with the PNG Gas Project for the supply of gas to the Comalco Alumina Refinery and the Boyne Island Smelter (both in Gladstone) and the Weipa bauxite mine in far north Queensland. The Term Sheet is for gas supply over a 20 year term.

Comalco is currently in negotiations with the PNG JV to turn the Term Sheet into a legally binding gas supply agreement.

Comalco’s involvement with the PNG Gas Project also extends though its 38.6% shareholding in Queensland Alumina Limited, which signed a conditional 20 year term sheet for the supply of gas in October 2004. These comments represent the views of Comalco.

In Comalco’s submission to the Commission on 15 February 2005, Comalco concluded that it:

- Supports the application for authorisation for the existing Applicants in relation to gas supply contracts entered into up to the time of Financial Close. Comalco believes that the Applicants have not established the case that there are net public benefits from joint marketing for the subsequent 30 year period.

- Submits that the authorisation should be conditional on the Commission requiring appropriate ring-fencing confidentiality arrangements being put in place for ExxonMobil along the lines of the 2000 interim authorisation.

- Supports the authorisation applying to any future Participants in the Project which do not, at the time of joining the Project, market gas to customers from the interconnected pipeline system of which the PNG gas pipeline is part. If the new Participant does market separate gas through these pipelines then a new authorisation should be sought and, if granted, should be subject to the same confidentially arrangements described above.

In summary, Comalco believes the Applicants have not provided sufficient evidence that the structural impediments to separate marketing will be sustained for the next 30 years. Unless the Commission is satisfied that separate marketing will not be possible for the next 30 years, then the suggested course is to grant a relatively short term authorisation to enable the parties (and if necessary, the Commission) to review the development of the market.

Comalco believes that the issues raised by the EUAA in its submission today warrant close consideration by the Commission and they reflect many of the comments made by Comalco in its original submission.

Given the importance of this project to all gas users, Comalco would encourage the Commission to make a thorough but timely analysis of the matters raised by the EUAA so that all stakeholders can go forward with increased certainty around the regulatory arrangements the Project will face.

Rebecca Pickering, Energex

Energex is a large retailer of gas in Queensland to both large and small customers. Energex supports the comments of the EUAA.

John Rich, Queensland Major Gas Users Group

The Queensland Major Gas Users Group (QMGUG) represents greater than 90 per cent of gas buyers and consumers in Queensland. QMGUG welcomes the Project under conditions that provide competitive outcomes.

It is interesting that AGL does not include separate marketing as a risk in their recently publicly released demerger documents. The QMGUG questions whether there is any risk involved in separate marketing.

It is a concern that there are no access principles in place for the proposed PNG Gas pipeline. The competitive effects of access to the pipeline need to be examined. Is the pipeline in or out of the joint or separate marketing decision process? This is not clear.

Similar to comments made by EUAA it is unclear where proposed joint marketing starts and finishes. The questions raised by EUAA are important and the ACCC should address them. It is unclear why joint marketing is necessary beyond financial close.

There is a lack of transparency in the ACCC’s decision. For example it is unclear whether the proposed term of the authorisation is 16 or 30 years.

There is a history of a lack of competition in the upstream gas market in Qld. PNG gas could end up as a monopoly and the ACCC has a role to ensure that PNG gas does not swamp the market resulting in uncompetitive outcomes.

The Queensland gas market has undergone significant change over the last 12 months and it is difficult to predict the state of the market over the next 16 years. It is a concern that the proposed authorisation does not provide any review mechanism within this timeframe. Further rationalisation is likely in the Qld and Australian gas industry. Hence there is a need for the ACCC to review the authorisation before the proposed 16 year term of the authorisation.

The QMGUG supports the Project but only if there is appropriate transparency for competitive outcomes. QMGUG is not dismissing the potential public benefits, but if there are no customers there will be no public benefits.

Ring fencing is difficult to put into practice and impossible for the parties to comply with. During a Productivity Commission hearing, the CEO of one company involved in ring fencing requirements stated that he could not justify how it could work in practise.

The ACCC should examine comments by the applicants that the Project won't proceed if authorisation is granted to financial close only, particularly in light of previous comments by the applicants that the Project will not proceed which have not proven to be the case (albeit these were different circumstances). Any final decision needs support of more transparent data. A review by a third party would be appropriate. Decisions cannot be made on the basis of generalisations.

Additional comments

Commissioner Willett opened the conference for general discussion and invited additional comments in relation to the issues raised.

Rick Wilkinson, Santos

Santos is a party interested in the ACCC final determination because:

- Santos is a 25 per cent equity holder in the Hides gas field in PNG – the major gas resource for the PNG Gas Project.
- Santos is considering re-entering the Project formally and is conducting due diligence to this end.
- Santos is a party to the interim authorisation to market gas from PNG granted in October 2000 (at which time Santos was a participant in the Project).

Santos supports the application by the Project proponents to the ACCC concerning joint marketing for the Project and makes the following points.

Ring fencing is an effective mechanism for safeguarding competition. It is an appropriate and effective mechanism under which to market Project gas. Joint marketing under the interim authorisation has enabled the Project to advance toward final sanction. Santos is a party to the Marketing Information Confidentiality Deed developed by the ACCC in connection with the interim authorisation granted to the Project participants in October 2000 and has complied with the requirements of that Deed.

During the period of ring-fenced joint marketing the Queensland market, according to the Energy Users Association of Australia submission tabled at the conference, has achieved a ‘deeper pool of buyers and sellers’ and a significant growth in primary gas supply and purchase agreements.

The term of the authorisation is not an issue as the ACCC has rights under sections 50 and 91B of the Trade Practices Act to revisit the determination should there be a material change in circumstances.

Separate marketing is not feasible for the Project. Santos has first hand experience in separate marketing in both eastern and Western Australia. It is Santos’ preferred mode of operation under certain circumstances. In response to a question from Mr Maguire of Southern Cross Fertilisers, Mr Wilkinson stated that separate marketing is not appropriate for the Project due to the Project’s scale and the marketing challenge of placing the large volume of gas in the Eastern Australia market.

Mark Williamson – NRG Flinders

NRG Flinders has entered into a contract with AGL to purchase PNG gas for its Osborne power station.

The important issue for gas users is that the Project gets up and running for the benefits to be realised, less so the manner by which the gas is marketed.

The PNG Project has been a difficult project to get up. It has taken many years for the Project to get to the stage that it is currently at. For the Project to proceed the owners and financiers would have regard not only to existing sales at the time of financial close but also future sales. There would be more confidence of future sales under joint marketing than separate marketing. Therefore NRG Flinders supports joint marketing beyond financial close as it would increase the prospects of the Project proceeding.

Stephen Brophy, Oil Search

The applicants provided in confidence to the ACCC advice from an investment bank, which advised that the Project was complex and difficult to finance. Some participants have no marketing experience and the banks would want joint marketing to continue beyond financial close so that the Project sponsors can continue to sell gas after financial close. Joint marketing would provide a buffer for the smaller players. Banks would want to see a healthy project to support the finance term of 16 years.

Bob Marcellus, Oil Search

Mr Marcellus responded to EUAA’s reference to statements made by the CEO of Oil Search, Mr Peter Botten. Mr Marcellus sees the statements made by Mr Botten as positive and should not be taken out of context. The Project has reached the stage that it has through joint marketing and introducing further complexity would be a bad idea.

Adam Howard, Merlin Petroleum

Without joint marketing the Project won't reach financial close. Regarding authorisation beyond financial close, there are issues for equity holders as well as banks.

Arun Basu, Mineral Resources Development Company

Mineral Resources Development Company does not have the capability of individually marketing its gas.

Jerry Maguire, Southern Cross Fertilisers

Mr Maguire asked Rick Wilkinson of Santos to elaborate on why Santos considers that separate marketing is not appropriate.

Adam Howard, Merlin Petroleum

Without joint marketing the Project won't reach financial close. Regarding authorisation beyond financial close, there are issues for equity holders as well as banks.

Arun Basu, Mineral Resources Development Company

Mineral Resources Development Company does not have the capability of individually marketing its gas. Further, financial close will not occur without the joint marketing arrangement.

Gordon Buck, Enertrade

Mr Buck noted that Mr Wilkinson (Santos) had mentioned in his address to the conference that the ACCC had powers under sections 91B and 50 of the Trade Practices Act to review and potentially withdraw a joint marketing authorisation. Mr Buck asked for a summary of the circumstances in which those powers might arise.

Mr Willett gave a brief outline of the ACCC's power to review an authorisation in the event of a material change in circumstances. In answer to a follow-up question, Mr Willett said that the criteria for determining whether particular changed circumstances are material can be adequately apprehended by reference to precedent cases of the Australian Competition Tribunal.

Close of conference

Before closing the conference Commissioner Willett stated that interested parties have until 15 March to lodge any further submissions. The conference was closed at 4 pm.

Appendix: List of parties attending

Organisation	Name	Title
Australian Competition and Consumer Commission	Ed Willett Mike Buckley John Bastick Kaye Johnston	Commissioner General Manager – Access Assistant Director – Access Assistant Director – Transition
Energy Users Association of Australia	Roman Domanski Josh Hankey Dena Harris	Executive Director Development Manager – Qld Analyst
<u>Applicants</u>		
Oil Search	Bob Marcellus Stephen Brophy	General Manager, Gas Commercialisation Senior Lawyer
ExxonMobil	Bob Reed Nigel Collins Piers Williams Anna Schulze	Project Manager, Commercial Commercial Manager Legal Advisor Public Affairs Advisor
Merlin Petroleum	Adam Howard	
Mineral Resources Development Co	Arun Basu	General Manager, Corporate Services
Allens Arthur Robinson	David Brewster Charles Coorey	Partner Lawyer
Comalco	Mark Grenning	General Manager – Energy
Energex	Catherine Maloney Patrick Whish-Wilson Trevor Johnston Madonna Parker Rebecca Pickering	Gas Commercial Manager Regulatory Affairs Manager – Retail Gas Commercial Manager
Queensland Major Gas Users Group	John Rich	Chairman
Santos	Rick Wilkinson John Anderson Peter Rose Jodie Hatherly	Vice-President Gas Marketing & Commercialisation Legal Adviser Legal Adviser
ACIL Tasman	Paul Balfe	Executive Director
AGL	Mike Moraza	
AGL – Petronas Consortium	David Pringle	Project Manager, Regulation
Alcan	Ken Spicer	Project Director, Gas to Gove
Enertrade	Gordon Buck	Commercial Managar – Gas
McLennan Magasanik Associates	Daniel Magasanik Bob Graham	Director Director
Mount Isa Mines Ltd	Ross Thompson	Principal Advisor, Energy and Utilities
NRG Flinders	Mark Williamson	
Origin Energy	Ben Barrett Rebecca Carroll	Senior Commercial Analyst
Southern Cross Fertilisers	Gerry Maguire	Commercial Manager
Qld Dept of Energy	Gayle Leaver	
Co-ordinator-General of Qld	Bob Gannon	Manager, Specialist Services
Stanwell Corporation	Peter Crittall	Commercial Advisor
PNG Consulate	Pave Nerau	
Qld Gas Co	Larry Kramer	