



Australian
Competition &
Consumer
Commission

Determination

Revocation of Authorisation A18492

North West Shelf Gas Pty Ltd

**In respect of joint marketing arrangements by
North West Shelf gas producers**

Date; 5 March 2008

Commissioners: Samuel
King
Martin
Smith

Authorisation no. A18492

Public Register no. C2008/55

1. Introduction

- 1.1 Organisations who engage, or propose to engage, in certain anti-competitive business conduct that might breach the *Trade Practices Act 1974* (the Act) may apply to the Australian Competition and Consumer Commission (the ACCC) for authorisation of such conduct. If granted, authorisation provides immunity from legal action under the Act in respect of the relevant provisions of the proposed conduct.
- 1.2 The North West Shelf (NWS) joint venture is Australia's largest resource development project. The venture began in 1975 when a group of companies known as the NWS Project commenced a greenfields project exploring, and proposing to develop, oil and gas reserves off the north west of Western Australia. The NWS project participants established a joint venture for the sale of gas to the Western Australia domestic market and sought authorisation from the Trade Practices Commission (TPC) for their joint marketing arrangements.¹ The participants are Woodside Energy Limited, Shell Development (Australia) Pty Limited, BHP Billiton Petroleum (North West Shelf) Pty Limited, BP Developments Australia Pty Limited and Chevron Australia Pty Ltd.
- 1.3 In 1977 the TPC granted authorisation recognising the vast potential benefits to the Australian economy and how the success of the project depended on the joint venture arrangement.² This authorisation has no end date and will operate until the ACCC revokes it.

Revoking an authorisation

- 1.4 Section 91B of the Act provides that a person to whom authorisation was granted may apply to the ACCC for the revocation of the authorisation. On receipt of such an application, the ACCC is required to write to interested parties advising them of the application for revocation, its basis and inviting submissions in respect of the application for revocation.
- 1.5 If any submission objects to the proposed revocation, the ACCC may not revoke the authorisation unless it is satisfied that the public benefit is outweighed by the public detriment from any lessening of competition associated with the conduct.
- 1.6 Decisions of the ACCC to revoke an authorisation may be reviewed by the Australian Competition Tribunal (the Tribunal) provided the person dissatisfied with the determination applies to the Tribunal for a review within 21 days of the date of the determination.

¹ BOCAL, *North West Shelf Gas Application for Authorisation*, September 1975

² Trade Practices Commission, *North West Shelf Gas Application for Authorisation – Determination*, February 1977

- 1.7 On 14 December 2007, North West Shelf Gas Pty Ltd requested that the ACCC revoke authorisation A18492.

2. Submissions

- 2.1 On 21 December 2007 the ACCC wrote to 55 interested parties advising of North West Shelf Gas Pty Ltd's request for revocation in relation to authorisation A18492 and inviting submissions in relation to this request.
- 2.2 The ACCC has not received any objections to the revocation from any of the interested parties consulted. As a consequence, there is no need for the ACCC to assess the likely public benefits and detriments resulting from the revocation. Copies of public submissions are available from the ACCC website (<http://www.accc.gov.au>) by following the 'Public Registers' and 'Authorisations Public Registers' links.

3. The Statutory Tests

- 3.1 Under section 91B of the Act, a person to whom an authorisation was granted may apply to the ACCC for a revocation of the authorisation.
- 3.2 On receipt of such an application, the ACCC must, by notice in writing given to any persons who appear to the ACCC to be interested:
- Indicate that the revocation of the authorisation has been applied for;
 - Indicate the basis on which the revocation has been applied for; and
 - Invite submissions in respect of the revocation within a period specified by the ACCC.
- 3.3 After considering any submissions received, the ACCC may make a determination in writing:
- Revoking the authorisation; or
 - Deciding not to revoke the authorisation.
- 3.4 Under section 91B(5) if any submission objects to the proposed revocation, the ACCC may not revoke the authorisation unless it is satisfied that it would, if the authorisation has not already been granted, be prevented under subsection 90(6), (7), (8) or (9) from making a determination granting authorisation in respect of which the revocation is sought.

4. ACCC's Evaluation

- 4.1 North West Shelf Gas Pty Ltd requested revocation on 14 December 2007 on the basis that it considered that there was no need for immunity under the Act as the conduct for which authorisation was granted would not be in breach of the Act.
- 4.2 The ACCC wrote to potential interested parties on 21 December 2007 advising that the revocation had been requested and the basis on which the revocation had been applied for. The ACCC requested submissions be lodged by 21 January 2008. The letter and list of interested parties are available on the public register.
- 4.3 After considering the submissions made, the ACCC is satisfied that there is no objection to authorisation A18492 being revoked.

5. Determination

- 5.1 The ACCC revokes authorisation A18492.
- 5.2 This determination is made on 5 March 2008. Pursuant to section 101 of the Act, a person dissatisfied with this determination may apply to the Australian Competition Tribunal for its review. An application for review must be made within 21 days of the date of this determination; that is, on or before 26 March 2008. If no application to review is lodged by this date, the ACCC's determination will come into force on 27 March 2008.