



Australian  
Competition &  
Consumer  
Commission

# Draft Determination and Interim Authorisation

Applications for authorisation A91516 & A91517

lodged by

Australia Pacific LNG Pty Ltd, Queensland Curtis  
LNG Project, and Gladstone LNG

in respect of

coordinating maintenance activity at their LNG  
facilities on Curtis Island, Queensland.

Date: 18 February 2016

Authorisation numbers: A91516 & A91517

Commissioners:  
Sims  
Rickard  
Schaper  
Cifuentes  
Court  
Featherstone  
Walker

## Summary

**The ACCC proposes to grant authorisation to Australia Pacific LNG Pty Ltd, Gladstone LNG, and the Queensland Curtis LNG Project to coordinate the timing and scheduling of maintenance events at their LNG facilities on Curtis Island. The proposed authorisation is subject to a condition requiring the Applicants to publish information about scheduled maintenance which is disclosed between the Applicants.**

**The ACCC proposes to grant authorisation for five years.**

**The ACCC has also granted interim authorisation for the Applicants to commence the proposed conduct subject to the condition of authorisation.**

**The ACCC will seek submissions in relation to this draft determination before making its final decision.**

Australia Pacific LNG Pty Ltd, Gladstone LNG, and the Queensland Curtis LNG Project (the Applicants) are developing liquefied natural gas (LNG) facilities on Curtis Island, near Gladstone, Queensland. The Applicants' facilities convert natural gas into LNG for export.

The Applicants applied for authorisation to coordinate their maintenance scheduling, and to share information about maintenance service providers they have engaged and maintenance techniques they have used at their facilities.

### *Draft determination*

The ACCC considers that the proposed conduct is likely to give rise to a number of public benefits, particularly in relation to increasing the efficiency of undertaking LNG maintenance and reducing the likelihood of major disruptions to domestic gas markets, which could occur if multiple maintenance events at the Applicants' facilities overlap.

Interested parties in the LNG maintenance industry and domestic natural gas markets were generally supportive of coordinating maintenance scheduling. However, significant concerns were raised about the potential for the authorisation to create damaging information asymmetries in domestic gas markets.

These concerns focused on the Applicants' participation in domestic gas trading markets, particularly the gas hub at Wallumbilla and the Brisbane Short-Term Trading Market. When the Applicants' facilities go offline (e.g. for maintenance), they may sell excess gas in these domestic markets, sometimes in very large quantities. Similarly, at the conclusion of downtime, the Applicants may purchase gas from domestic markets when ramping up LNG production. These activities can drastically affect market prices.

Under the proposed conduct, the Applicants will gain knowledge of all planned LNG facility downtime associated with maintenance, and will therefore know when domestic markets may be affected by each Applicant's activities. This gives the Applicants the ability to trade advantageously in these markets, to the detriment of non-LNG participants.

The ACCC accepts that the proposed conduct gives rise to potentially significant information asymmetry detriments. For this reason, the ACCC is proposing to grant authorisation subject to a condition. The condition requires the Applicants to publicly disclose maintenance schedule information that they have shared with one another. This is intended to give all market participants access to information regarding the maintenance scheduled at the Applicants' facilities and therefore resolve the information asymmetry issue.

Subject to the proposed condition of authorisation, the ACCC is satisfied that the proposed conduct is likely to result in a public benefit that would outweigh the likely public detriment.

#### *Interim Authorisation*

At the time of lodging their applications, the Applicants also requested the ACCC grant interim authorisation to allow them to commence discussions about maintenance scheduling.

The Applicants submitted that maintenance events are likely to be scheduled for the second half of 2016 at some facilities and the Applicants currently do not know if there are any overlaps in their schedules. The Applicants submit that LNG maintenance takes a long time to plan (up to 18 months), and so interim authorisation is required to ensure they can resolve overlaps before maintenance occurs.

Given the concerns raised about the proposed conduct disadvantaging participants in domestic energy markets, the ACCC delayed its decision on interim authorisation until an appropriate condition of authorisation could be agreed.

The ACCC has undertaken targeted consultation on a draft condition provided by the Applicants. After consultation, the ACCC has made some amendments to the draft condition and considers the condition sufficient to grant interim authorisation.

The ACCC will seek further interested party views on the condition as part of its consultation on the draft determination. The condition imposed on final authorisation (should the ACCC decide to grant authorisation) may be different to the condition imposed on interim authorisation.

#### *Next steps*

The ACCC is undertaking consultation on the draft determination, including the proposed condition of authorisation, before making a final decision.

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# The applications for authorisation

1. On 15 October 2015 the **Applicants**, being:

(a) Australia Pacific LNG Pty Ltd (**APLNG**);

(b) Queensland Curtis LNG Project (**QCLNG**); and

(c) Gladstone LNG (**GLNG**)

lodged applications for authorisation<sup>1</sup> (A91516 & A91517) with the ACCC.

2. The Applicants are seeking authorisation to discuss, make and give effect to arrangements regarding the sequencing and timing of scheduled maintenance works, and associated shutdowns and outages, at each of their liquefied natural gas (**LNG**) facilities on Curtis Island. The Applicants are also seeking authorisation to share information about maintenance techniques and relevant service providers at each of their LNG facilities.

3. Authorisation is sought for 20 years.

4. At the time of lodgement, the Applicants also requested interim authorisation to enable them to commence the proposed conduct while the ACCC is considering the substantive application. The request for interim authorisation is considered at the end of this document.

## The Applicants

5. Each applicant is made up of a number of joint venture parties:

<b>APLNG</b>	<b>QCLNG</b>	<b>GLNG</b>
<ul style="list-style-type: none"> <li>• Australia Pacific LNG Pty Ltd and its subsidiaries (including Origin Energy)</li> <li>• ConocoPhillips Australia Pty Ltd as downstream operator</li> <li>• SINOPEC</li> </ul>	<ul style="list-style-type: none"> <li>• QGC Pty Ltd</li> <li>• QCLNG Operating Company Pty Ltd</li> <li>• QCLNG Common Facilities Company Pty Ltd</li> <li>• QCLNG Train 1 UJV Manager Pty Ltd</li> <li>• QGC Train 1 Pty Ltd</li> <li>• QCLNG Train 2 UJV Manager Pty Ltd</li> <li>• QCLNG Train 2 Pty Ltd</li> <li>• Walloons Coal Seam Gas Company Pty Ltd</li> </ul>	<ul style="list-style-type: none"> <li>• Santos GLNG Pty Ltd</li> <li>• PAPL (Downstream) Pty Limited (Petronas of Malaysia)</li> <li>• Total GLNG Australia</li> <li>• KGLNG Liquefaction Pty Ltd (KOGAS of Sth Korea)</li> </ul>

<sup>1</sup> 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). Applicants seek authorisation where they wish to engage in conduct which is at risk of breaching the CCA but nonetheless consider there is an offsetting public benefit from the conduct. Detailed information about the authorisation process is available in the ACCC's Authorisation Guidelines at [www.accc.gov.au/publications/authorisation-guidelines-2013](http://www.accc.gov.au/publications/authorisation-guidelines-2013)

	<ul style="list-style-type: none"> <li>• QGC Train 1 Tolling Pty Ltd</li> <li>• QGC Train 2 Tolling Pty Ltd</li> <li>• QGC Train 2 Tolling No. 2 Pty Ltd</li> <li>• CNOOC QCLNG Pty Ltd</li> <li>• CNOOC QCLNG Tolling Pty Ltd</li> <li>• Tokyo Gas QCLNG Pty Ltd</li> </ul>	
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6. The Applicants are each developing LNG facilities on Curtis Island at Gladstone, Queensland. Each facility will have two LNG ‘trains’,<sup>2</sup> meaning a total of six trains will eventually be operational. Currently:

- QCLNG is operating two trains at full capacity
- GLNG is operating one train at full capacity
- APLNG is in the initial phases of production with its first train.

7. GLNG expects its second train to commence production in Q2 2016 (and take 2-3 years to reach a steady production state), and APLNG expects to commence testing its second train in mid-2016.

8. Under the proposed conduct, the Applicants will seek to minimise instances where more than one LNG train is down at any given time.

## The proposed conduct

9. The Applicants wish to discuss, make and give effect to arrangements regarding the sequencing and timing of scheduled maintenance works, and associated shutdowns and outages, at each of their LNG facilities, in order to limit the extent to which scheduled maintenance works occur concurrently at the LNG facilities.

10. Specifically, the Applicants seek authorisation to engage in the following conduct (the **proposed conduct**):

- a. To make and give effect to arrangements or understandings among the Applicants regarding the sequencing and timing of the conduct of scheduled maintenance at the LNG facilities, including the sequencing and timing of shutdowns and partial plant outages associated with such maintenance by:
  - i. Identifying the maintenance requirements for each of the LNG facilities, including the scope and expected duration of

<sup>2</sup> Each train is an independent LNG production facility. The trains take raw gas, remove impurities, and then send the gas through multiple refrigeration processes to remove heat and increase density. At -161 degrees centigrade, the gas transforms into liquid, which can be more easily transported

maintenance campaigns and any shutdowns or partial plant outages associated with those maintenance campaigns

- ii. Classifying maintenance campaigns (e.g. major and minor)
- iii. Working to identify optimal maintenance windows having regard to factors such as climate, safety considerations and local resource constraints
- iv. Scheduling maintenance in such a way as to minimise contractor mobilisation and demobilisation
- v. Developing a process to:
  - A. Nominate preferred dates for planned maintenance
  - B. Negotiate and agree the proposed dates for planned maintenance at each of the LNG facilities
  - C. Inform one another of ad hoc unplanned maintenance requirements
  - D. Consult about variations to any maintenance dates
  - E. Resolve conflicts where maintenance dates overlap
  - F. Prepare and agree a schedule recording the planned maintenance dates for each LNG facility.

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

- i. Maintenance techniques and operational processes, including personnel requirements, specialist equipment and the use, storage, and transport and disposal of hazardous chemicals
- ii. Potential resource constraints associated with particular shutdown windows (e.g. accommodation) and discussing mitigation options
- iii. Disclosing the names of the maintenance contractors who have been appointed by each of the Applicants to perform the relevant LNG facility maintenance, subject to applicable third party confidentiality restrictions.

11. The Applicants submit that the proposed conduct is necessary because maintenance at LNG facilities is highly complicated and costly, and there are a limited number of maintenance service providers available to undertake such maintenance. The Applicants submit that the proposed conduct will allow them to avoid maintenance clashes and therefore minimise LNG train downtimes due to scheduled maintenance.

12. The Applicants seek authorisation for a period of 20 years.

# Background

## The Queensland LNG export industry

13. The Applicants' LNG facilities on Curtis Island represent a new export industry for Queensland. The facilities take gas principally extracted from coal seams in the Surat and Bowen basins, transport it to Curtis Island via a series of pipelines, and then convert it into LNG via an LNG train. From Curtis Island, the LNG is loaded onto ships and exported.
14. The Applicants' LNG facilities are currently the only LNG export facilities on Australia's east coast.
15. The LNG export industry being developed on Curtis Island is considerably larger than the existing gas industry on Australia's east coast. According to data obtained from the AEMC, daily gas demand at the Applicants' facilities will total close to 4500 TJ once they are complete. The average daily demand across the rest of the east coast of Australia is around 2000 TJ.<sup>3</sup>
16. The ACCC understands that at current operation levels, daily gas demand at the Applicants' facilities already exceeds daily gas demand for the rest of the east coast.

## Interaction with domestic energy markets

17. The Applicants' LNG production facilities at Curtis Island are the final step of a supply chain that starts with coal seam gas wells in the Surat and Bowen basins and ends in LNG being exported via ships. Each of the Applicants is largely vertically integrated throughout this supply chain; each applicant owns the upstream coal seam gas wells, much of the relevant gas transportation infrastructure, the LNG production trains, storage tanks, and export facilities.
18. The Applicants can also buy and sell gas in domestic trading markets and in bilateral private purchase/supply contracts with other domestic gas providers/acquirers. While domestic trading is not the primary focus of the projects, the Applicants may participate in domestic gas deals to acquire gas for export or to sell excess gas that cannot be processed or stored at their facilities.
19. The Applicants can have significant impacts on domestic markets because of their large production capacity relative to the rest of the market. If an Applicant decides to sell excess gas in domestic markets, this may result in dramatic price reductions. Similarly, the Applicants can significantly increase the market price for gas if they need to acquire gas to make up for short-falls from their own production wells.
20. The Applicants may choose to sell excess gas in domestic markets during maintenance events. Maintenance typically involves taking an LNG train offline (or reducing its capacity), and if gas flowing to the LNG train cannot be slowed or stored, the gas may be redirected to domestic markets for sale.

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<sup>3</sup> Taken from Figure 3.4 from the AEMC's East Coast Wholesale Gas Markets and Pipelines Framework Review, *Stage 1 Final Report*. Available at <http://www.aemc.gov.au/getattachment/d7fd10cc-5b7c-431b-b486-f7cef0bbe023/Stage-1-Final-Report.aspx>



21. The Applicants may also choose to acquire gas from domestic markets at the conclusion of a maintenance event. Acquiring gas from nearby markets can assist the LNG train return to peak production quickly.
22. The domestic markets in which the Applicants are most likely to participate are nearby gas trading markets such as the Wallumbilla Gas Hub (**Wallumbilla**) and Brisbane Short-Term Trading Market (**Brisbane STTM**).
23. However, other gas trading markets across the east coast may also be impacted. For example, if the Applicants direct excess gas into Wallumbilla, the low prices there may induce gas to be purchased and transferred to other east coast markets in NSW, Victoria, and South Australia. Similarly, large changes to supply or demand at Wallumbilla or the Brisbane STTM can impact the National Electricity Market as the price of gas in these markets affects the cost of producing electricity in gas-fired generators.
24. As noted above, each of the Applicants is comprised of a number of joint venture parties. Some of these joint venture parties also participate in domestic gas markets: For example, Santos (GLNG) participates in gas markets across the east coast; Total Gas (GLNG) participates at Wallumbilla; and Origin Energy (APLNG) participates in gas markets across the east coast. Origin Energy also owns a significant amount of electricity generation (both coal and gas-fired) across the east coast.

## Consultation

25. The ACCC tests the claims made by an applicant in support of its application for authorisation through an open and transparent public consultation process.
26. The ACCC invited submissions from a range of potentially interested parties including LNG train maintenance service providers, participants in domestic energy markets, and relevant state and federal government and regulatory bodies.<sup>4</sup>
27. The ACCC received seven submissions on the applications from interested parties, comprising:
  - a. two maintenance service providers supporting the proposed conduct
  - b. five participants in domestic energy trading markets. Four of these participants broadly support the proposed conduct but raise concerns about the potential for information asymmetries resulting from the conduct to distort domestic markets. The fifth shares these concerns and considers the proposed conduct unnecessary.

## The Applicants

28. The Applicants submit that the proposed conduct will result in a number of public benefits. In particular:

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<sup>4</sup> A list of the parties consulted and the public submissions received is available from the ACCC's public register [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister).

- a. Ensuring access to the limited supply of skilled labour and specialist equipment is achieved with minimal delays and at efficient cost by avoiding situations where multiple LNG trains require the use of these limited labour and equipment resources at the same time, and reducing the need for these resources to make multiple trips to Gladstone.
  - b. Minimising the impact on local infrastructure and communities by minimising the amount of maintenance labour and equipment at and around the facilities at any one time. The Applicants submit that a major shutdown and maintenance program involves around 600 additional workers at Gladstone and significant equipment mobilisation, and that multiple simultaneous maintenance events could overwhelm local services such as accommodation and barge/ferry operators.
  - c. Minimising the risk to health and safety during maintenance events. The Applicants submit that maintenance events are intense periods of around-the-clock activity by hundreds of workers, and involve many dangerous tasks (such as chemical treatments and heavy/high cargo lifts). The Applicants submit that concurrent maintenance events at Gladstone would increase the likelihood of health or safety incidents, and would stretch emergency resources.
  - d. Efficient management of coal seam gas resources. The Applicants submit that the flow of gas from coal seam gas wells is more difficult to control than from conventional gas sources, and that reducing the flow from a well is a last resort as the well can be damaged in the process and may not return to a regular flow (or may become 'shut-in' completely). The Applicants submit that simultaneous maintenance events could result in significant quantities of excess gas being extracted from wells, which would require the use of inefficient control methods such as flaring or reducing the flow from wells.
  - e. Allowing for a more sustainable local workforce by spreading out maintenance tasks, thereby reducing the need for costly fly-in/fly-out workforces, and providing employment and business opportunities for the communities in and around Gladstone.
29. The Applicants submit that no anti-competitive detriment will arise from the proposed conduct.
30. The Applicants submit that the proposed conduct will not reduce overall demand for maintenance services, and so will not reduce business or employment opportunities for maintenance service providers. The Applicants note that the proposed conduct does not include joint purchasing by the Applicants, and so will not restrict the number of maintenance service providers competing to supply services to the Applicants.
31. The Applicants also submit that the global market for LNG into which they export is highly competitive and so ensures that they are incentivised to only undertake necessary and efficient maintenance. The Applicants submit that their contracts with overseas buyers are generally long term (lasting up to 20 years), which minimises their incentive to strategically undertake maintenance to reduce supply or otherwise distort the market.

## Interested parties

### *Maintenance service providers*

32. The ACCC contacted 40 maintenance services providers who either already have maintenance service contracts in place with one of the Applicants, or may be interested in providing maintenance services to the Applicants in the future.
33. The ACCC received two submissions from providers of maintenance services for LNG facilities: SVT Engineers and Monadelphous.
34. SVT Engineers are oil and gas engineering and safety specialists. SVT Engineers does not have any concerns about the proposed conduct.
35. Monadelphous provides specialist LNG facility shutdown and maintenance services, including the planning, management, supervision and execution of major and minor shutdowns. Monadelphous currently has a maintenance services contract with QCLNG and operates two workshops at Gladstone to assist with maintenance needs.
36. Monadelphous supports the proposed conduct. Monadelphous submits that the proposed conduct will allow for:
  - a. More efficient utilisation of labour and equipment by reducing the cost of mobilisation and demobilisation, and maximising the use of the preferred seasonal shutdown windows. Monadelphous submits that coordination will allow service providers such as itself to more confidently invest in capital for longer-term engagement (rather than scrambling to meet lumpy peaks in demand for maintenance services).
  - b. More attractive employment opportunities for the specialist labour required to undertake LNG maintenance. Coordinating will allow for the work to be spread out and well-timed, making it a more attractive proposal to prospective contractors. Monadelphous also submits that coordination will provide more opportunities to up-skill local labour, further reducing maintenance costs in the long run.
  - c. Better utilisation of local support infrastructure and services. Shutdowns require the use of local accommodation and transport, which will struggle to meet the needs of concurrent shutdowns at the facilities. Coordinated shutdowns will provide greater opportunities for local businesses.

### *Participants in domestic energy markets*

37. The ACCC contacted 18 participants in domestic gas trading markets, focusing on participants at Wallumbilla and the Brisbane STTM.
38. Origin Energy, ERM Power, Stanwell, EnergyAustralia, and the Energy Supply Association of Australia (which represents 34 electricity and downstream gas businesses) made submissions.

## Origin

39. Origin Energy (**Origin**) advises that it holds a 37.5 per cent share of the APLNG joint venture but that both Origin and APLNG participate in domestic gas markets and are therefore competitors as well.
40. Origin submits that the need for authorisation to discuss maintenance schedules amongst the Applicants could be negated through the public reporting of any planned maintenance.
41. Origin notes that the Australian Energy Market Commission's (**AEMC**) 4 December 2015 draft report<sup>5</sup> recommends the LNG facilities should be required to report their facility's short and medium-term capacity outlook and material intra-day changes in capacity (detailed at paragraph 85). Origin submits that this approach would be consistent with the requirements imposed on participants in the National Electricity Market (**NEM**). Origin submits that the increased transparency in the NEM from public disclosure of market sensitive information has proved effective in informing decisions regarding the scheduling of power station maintenance and transmission outages. Origin submits that a similar approach to market information could be adopted for the LNG facilities.
42. Origin submits that the ACCC should work with the AEMC and the Australian Energy Market Operator (**AEMO**) to establish a requirement for the public disclosure of maintenance information.

## Stanwell

43. Stanwell participates in gas trading markets and operates two gas-fired power stations in Queensland.
44. Stanwell submits that maintenance events at the LNG facilities often result in excess gas being redirected to domestic trading markets, which can impact the wholesale price of gas. Stanwell submits that the Applicants also have supply arrangements with some Queensland gas-fired electricity generators and therefore, maintenance events can impact the electricity market (i.e. the NEM) as well.
45. Stanwell provides an example of the impact of an unexpected shutdown at QCLNG's facility on 14 August 2015. Stanwell submits that excess gas from QCLNG's facility was sold at the Brisbane STTM and caused prices to fall from around \$4.00 to \$0.55 per gigajoule. Stanwell also submits that a gas-fired electricity generator at Oakey Power Station that is usually only used for peak demand was run consistently for the two days following the unexpected downtime. This shift in generation displaced generation from other sources (e.g. coal fired stations) over the two days.
46. Stanwell supports granting authorisation provided that market sensitive scheduled and unscheduled maintenance information is disclosed to all market participants. In particular, Stanwell submits:
  - a. Discussions regarding the scheduling of maintenance should occur in strict confidence with strong information barriers protecting the

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<sup>5</sup> Available at <http://www.aemc.gov.au/Markets-Reviews-Advice/East-Coast-Wholesale-Gas-Market-and-Pipeline-Frame>

information shared between facilities with the rest of the facility's organisation (including the trading team) while discussions are ongoing.

- b. Best estimate maintenance information must be published as soon as possible, ideally through the AEMO's Gas Bulletin Board. The facilities must adhere to a strict trading halt until the information is made public.
- c. Any changes to the maintenance schedules must be communicated as soon as possible, including unscheduled maintenance activities.

47. Stanwell also submits that the information published must contain:

- a. the name of the facility
- b. the volume of gas reduction
- c. the start and end date of the shutdown.

48. Stanwell submits that this level of information disclosure would bring a similar level of transparency to that required by participants in the NEM. Stanwell also submits that requiring this level of information disclosure would align with the current reform agenda in this industry, noting the current review being undertaken by the AEMC.

#### ERM Power

49. ERM Power (**ERM**) operates gas-fired electricity generators in Western Australia and Queensland, and retails gas to industrial users.
50. ERM submits that the applications are reasonable but that the Applicants' maintenance schedules should be made public. ERM submits that excess gas from one of the Applicants' facilities during a maintenance event may be sold in domestic markets, which can have significant impacts on price.
51. ERM submits that any information that affects price in these trading markets should be made available to all trading participants. ERM submits that the alternative is a situation in which some parties have 'inside information' that they can use to trade advantageously.
52. ERM submits that failure to make the maintenance information public would undermine non-LNG participants' ability to make informed and timely operational and commercial decisions, and would increase their exposure to risk. ERM submits that, over time, confidence would be eroded and trading would reduce, thereby reducing market liquidity and efficiency. ERM submits this would be inconsistent with COAG's National Gas Objective.<sup>6</sup>

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<sup>6</sup> The National Gas Objective as set out in Part 3 Division 1 of the National Gas Law is to *promote efficient investment in, and efficient operation and use of, natural gas services for the long-term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas*. ERM also quotes the COAG Energy Council's vision *for the establishment of a liquid wholesale gas market that provides market signals for investment and supply, where responses to those signals are facilitated by a supportive investment and regulatory environment, where trade is focused at a point that best serves the needs of participants, where an efficient reference price is established, and producers, consumers and trading markets are connected to infrastructure that enables participants the opportunity to readily trade between locations and arbitrage trading opportunities*. The second quote is

53. ERM submits that authorisation should be granted subject to:
- a. LNG participants being made to report all scheduled and unscheduled maintenance on the AEMO's Gas Bulletin Board.
  - b. The information disclosed should include the time and duration of maintenance events and impacts on the relevant facility's capacity.

Energy Supply Association of Australia

54. The Energy Supply Association of Australia (**ESAA**) describes itself as the peak industry body for the stationary energy section in Australia. The ESAA represents the policy position of the Chief Executives of 34 electricity and downstream natural gas businesses.
55. The ESAA submits that there are clear operational efficiencies that can be derived from the proposed conduct. However, the ESAA submits that the Applicants' size compared to the domestic market means that downtime at the Applicants' facilities can have significant impacts on domestic markets if excess gas from the LNG facilities is redirected to trading markets. As an example, the ESAA submits that on 1 November 2014, the Brisbane STTM suddenly dropped to a record low price of \$0.35 per gigajoule when QCLNG directed excess gas there.
56. The ESAA submits that, by coordinating downtime at the LNG facilities, the proposed conduct will avert the most significant market distortions (i.e. will reduce the potential for multiple facilities to be offline simultaneously, during which very significant quantities of gas could flood domestic markets).
57. However, the ESAA also submits that the maintenance schedule information is market sensitive and therefore should be published for all market participants to consider when making trading and operational decisions. Like Stanwell, the ESAA considers that the following information should be included for disclosure:
- a. the name of the facility
  - b. the volume of gas reduction
  - c. the start and end date of the shutdown.
58. The ESAA submits that, without this information, non-LNG participants will be disadvantaged when trading gas and confidence in domestic markets will be eroded.
59. The ESAA identifies the AEMO's Gas Bulletin Board as the appropriate place for the information to be disclosed.

EnergyAustralia

60. EnergyAustralia is a major energy trader, retailer, and generator across Australia's eastern states as well as in South Australia.

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taken from: <https://scer.govspace.gov.au/files/2014/05/COAG-Energy-Council-Communique-11-Dec-2014-FINAL2.pdf>

61. EnergyAustralia submits that there are efficiencies to be gained by the Applicants sharing information on maintenance schedules. However, EnergyAustralia submits that the proposed conduct will result in the Applicants having information not available to domestic markets that materially affects prices in those markets.
62. EnergyAustralia submits that outages at the Applicants' facilities can create significant volatility in market prices, and that without public disclosure of maintenance events at the facilities, non-LNG participants in trading markets will be disadvantaged, and confidence in these markets will be decreased.

## **The Applicants' response**

63. The Applicants lodged two submissions responding to the submissions from domestic trading market participants.<sup>7</sup>
64. The Applicants submit that many of the concerns raised by market participants are not relevant to the proposed conduct. They note that the proposed conduct does not involve the Applicants exchanging information or coordinating in relation to:
  - a. the production of gas (e.g. production volumes, production scheduling or capacity or maintenance of upstream gas infrastructure)
  - b. arrangements or contracts for the supply, storage, consumption, diversion or flaring of gas
  - c. any of the Applicants' gas positions (e.g. whether or when they may seek to acquire or sell gas, or have already contracted to acquire or supply gas)
  - d. the identity of any customers to whom they may supply gas, and the timing, volumes or prices for those supply commitments.
65. The Applicants submit that the proposed conduct is confined to discussing and agreeing maintenance scheduling and timing.
66. The Applicants also submit that the proposed conduct will not generate a significant increase in private information held by the Applicants. They note that without authorisation, each of the Applicants would likely become aware of each other's maintenance schedules from discussions with key maintenance service providers about their availability, observing activity on Curtis Island, and private approaches from other Applicants offering to supply gas for certain periods.
67. Similarly, the Applicants note that they already individually publish their short-term (seven day) forecast for facility throughput and pipeline capacity on AEMO's Gas Bulletin Board, so the market will have at least seven days' notice of facility downtimes. They also note that the submissions regarding the impact of unexpected downtimes are not relevant as those events are, by definition, unexpected and could not be published in advance in any scenario.
68. The Applicants also submit that they each have numerous options for managing gas flows and selling excess gas, including:

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<sup>7</sup> The Applicants lodged a joint submission and QGC (one of the parties behind QCLNG) made a separate submission.

- a. reducing gas flow from production sites where applicable
  - b. utilising gas storage or diversion options
  - c. bilateral contracts with other gas users (including the other LNG facilities).
  - d. flaring gas.
69. The Applicants submit that because of these various options, it is unlikely any one maintenance event will have a predictable impact on domestic markets. They also submit that it is unlikely that the proposed conduct will allow any of the Applicants to be certain of gas flow changes resulting from any one maintenance event, thereby reducing the value of the information they gain via the proposed conduct.
70. The Applicants also submit that the concerns raised in submissions regarding price impacts on the domestic market also apply to the future without the authorisation. The Applicants submit that, absent authorisation, there is an increased possibility that multiple maintenance events would occur simultaneously, and that such events would be likely to have significant impacts on domestic markets.
71. Finally, the Applicants submit that the ongoing AEMC review of east coast gas markets is considering the information asymmetry and transparency issues in detail, and that the concerns raised by interested parties are better dealt with in the AEMC's process. The Applicants submit that, should the ACCC consider imposing conditions on the authorisation, those conditions should be restricted to the relevant conduct and not the broader informational issues being raised in submissions.

## ACCC assessment

72. The ACCC's assessment of the proposed conduct is carried out in accordance with the relevant net public benefit tests<sup>8</sup> contained in the *Competition and Consumer Act 2010* (Cth) (the **CCA**). In broad terms, the ACCC may grant authorisation if it is satisfied that the likely benefit to the public from the proposed conduct would outweigh the likely detriment to the public, including from any lessening of competition.

## Relevant areas of competition

73. The ACCC considers that the precise definition of the relevant areas of competition is not required for assessing the Applicants' proposed conduct. The ACCC can consider the areas of competition in a broad sense when assessing any public benefits or detriments likely to arise from the proposed conduct.
74. The ACCC has assessed the applications for authorisation in the context of the following areas of competition:
- a. LNG facility maintenance services in Australia. These services are supplied by a range of Australian and international specialists and utilised by LNG producers in Western Australia, the Northern Territory,

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<sup>8</sup> Subsections 90(5A), 90(5B), 90(6), 90(7), 90(8).



and Gladstone; and may be utilised by future LNG production projects during the period of authorisation.

- i. Various markets for inputs to the supply of maintenance services, including transport and accommodation services, are also likely to be relevant.
- b. The wholesale supply of natural gas (domestic and export) on the east coast of Australia.
- c. Industries on the east coast of Australia for which wholesale gas is an input to production, including gas-fired electricity generation and retail gas supply.

## **Future with and without**

75. To assist in its assessment of the proposed conduct against the authorisation tests, 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.
76. The LNG export industry in Queensland is in its infancy, and is likely to develop significantly in coming years. Therefore, there is no 'status quo' that the proposed conduct can be compared with.
77. None of the Applicants' facilities has undertaken a major maintenance event yet but maintenance events are likely to be scheduled at some of the facilities for the second half of 2016.
78. Under the proposed conduct, the Applicants will coordinate on the scheduling of maintenance events. They will also exchange information about contractors they have engaged and maintenance techniques they have employed.
79. In the future without the proposed conduct, it is likely that each applicant would schedule their own maintenance individually. It is unclear to what degree this situation would be likely to result in overlapping maintenance events; the Applicants have submitted that they have some ability to infer each other's maintenance events from:
  - a. discussions with maintenance service providers about their availability
  - b. observing preparatory activity on Curtis Island
  - c. observing previous maintenance events and projecting likely future maintenance times
  - d. bilateral approaches from other Applicants offering to supply gas for discreet periods of time (i.e. when their facilities are offline for maintenance).<sup>9</sup>
80. These factors may reduce the potential for maintenance events to overlap in the future without the proposed conduct. However, these inferences are unlikely to be

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<sup>9</sup> See QGC submission 30 November 2015

as effective as the proposed conduct in coordinating a schedule of maintenance, and therefore the risk of overlapping maintenance events would still be present.

81. If the risk of overlapping maintenance events is large (or the cost of overlaps occurring is high), each of the Applicants may unilaterally opt to publicly disclose their maintenance schedule. This is suggested as an alternative to the proposed conduct by Origin Energy (a part-owner of APLNG).
82. However, this may not be a stable arrangement; for example, if two of the Applicants unilaterally decided to publish their maintenance schedule, the third would have little incentive to publish theirs.
83. Furthermore, while unilateral publishing of each Applicant's maintenance schedule may help identify overlaps, without authorisation the Applicants may not be able to discuss among themselves the best way to change dates so that overlaps are removed. Without coordination, there may be additional effort and expense in changing the timing of maintenance once it becomes known that there are overlapping schedules.
84. Finally, the AEMC is currently undertaking a significant review of Australia's east coast gas markets—the *East Coast Wholesale Gas Markets and Pipelines Framework Review*. On 4 December 2015, the AEMC released a draft of its Stage 2 report that included a number of recommendations to expand the information the LNG facilities are required to publicly disclose.<sup>10</sup>
85. Specifically, the AEMC is recommending that the Applicants disclose:
  - a. the nameplate capacity of their facilities
  - b. a daily, seven day forecast, of the expected capacity of each of their facilities
  - c. any changes to the expected capacity of their facilities in the following two years, including the timing and impact of planned activities that may reduce or increase the daily capacity of the facility relative to its normal capacity. This information may include:
    - i. the expected start and end dates of activities expected to affect daily capacity
    - ii. a description of the relevant activity
    - iii. the expected daily capacity of the facility during that period
  - d. any material intra-day change in capacity for each facility.
86. If adopted, these recommendations would require the Applicants to disclose any maintenance events scheduled in the next two years, which means they would be able to identify overlaps with one another. However, as noted above, the Applicants would not be authorised to discuss their schedules in order to resolve overlaps. Accordingly, while the AEMC's recommendations would result in the

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<sup>10</sup> Available at <http://www.aemc.gov.au/Markets-Reviews-Advice/East-Coast-Wholesale-Gas-Market-and-Pipeline-Frame>

Applicants knowing each other's future maintenance plans, the Applicants' ability to address those overlaps would be limited.

87. It is also unclear if and when the AEMC's recommendations will be adopted. The AEMC is currently consulting on the draft Stage 2 report and will release a final report in May 2016. For the recommendations to be adopted, they will have to be included in the AEMC's final report. The final report is provided to the Council of Australian Governments (**COAG**), which will decide whether to action the report's recommendations. If COAG chooses to support the recommendations regarding the Applicants' facilities, a number of changes to relevant legislation and rules would then need to be made. The ACCC understands that this process is unlikely to be completed in 2016.
88. Therefore, the likely future without the authorisation involves the Applicants having some insight into each other's maintenance schedules at some point prior to the maintenance activity, but not with the accuracy or confidence (or in sufficient time to avoid concurrent scheduling) provided by the proposed conduct—at least in the short term.
89. The likely future without the authorisation does not involve the Applicants discussing their schedules, even if they are able to ascertain that there are overlaps. It may still be possible to avoid these overlaps; clashes may be resolved through relevant third parties that want to avoid simultaneous maintenance events as well (e.g. key maintenance service providers), but this is unlikely to be as effective or efficient in resolving overlaps as the proposed conduct (and may raise concerns under the CCA).
90. Finally, the likely future without the authorisation does not involve the Applicants sharing information about contractors they have engaged and maintenance techniques they have employed. The Applicants may be able to obtain some of this information through other channels (e.g. discussions with maintenance service providers), but these channels are unlikely to be as effective as the proposed conduct in disseminating relevant maintenance information between the Applicants.

## Public benefit

91. 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.<sup>11</sup>

92. The ACCC's assessment of the likely public benefits from the proposed conduct follows.

## Reducing the costs and downtime associated with maintenance

93. Coordination between the Applicants is likely to reduce the likelihood that multiple LNG trains are offline simultaneously. This reduces the potential for key

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<sup>11</sup> *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.

maintenance service providers to be waylaid at other facilities, and therefore is likely to reduce the downtime associated with maintenance at the Applicants' facilities.

94. The proposed conduct may also allow for maintenance services to be acquired at lower cost. Many key maintenance providers will need to travel (potentially from overseas) to service the Applicants. Coordination between the Applicants may allow them to schedule a sequence of maintenance events at Curtis Island that minimises the need for multiple travel costs and therefore reduces overall maintenance costs.
95. Similarly, it may be more feasible for maintenance service providers to establish a dedicated local labour force at Gladstone if the work is sequenced rather than clumped together. A local labour force would further reduce mobilisation and demobilisation costs for the Applicants, and may also reduce the need to procure ancillary services such as temporary accommodation.
96. By coordinating the scheduling of maintenance events at Curtis Island, the proposed conduct is likely to facilitate shorter, more efficient maintenance events at each Applicant's facilities.

### **Reducing inefficiencies arising from events of significant volatility in domestic gas trading markets**

97. As noted by the Applicants and submissions from participants in domestic energy markets, one of the gas management options available to Applicants during a maintenance event is selling excess gas in domestic trading markets. In particular, the Brisbane STTM and Wallumbilla markets are physically connected to the Applicants' LNG facilities at Curtis Island, as well as their CSG wells in the Surat and Bowen basins.
98. As detailed at paragraph 15, the daily volume of gas flowing to Curtis Island is significantly larger than the daily gas used by the rest of Australia's eastern states. Accordingly, the Applicants can have significant impacts on the volume of gas supplied to domestic trading markets, which can cause drastic changes to market prices.
99. Exposure to this volatility impacts the operational decisions of market participants. For example, an electricity generator with both coal- and gas-fired stations needs to regularly select its optimal generation mix. Significant changes in price can result in these operational decisions becoming inefficient, which impedes the affected market participants' ability to minimise costs and compete effectively. If these events pose significant operational risk to market participants, they may decide to invest in non-gas operational technologies when, absent the additional price volatility, gas options would have been most efficient.
100. The Applicants submit that they have a number of gas management options available to them (see paragraph 68), of which selling to domestic markets is only one. Therefore, individual maintenance events may not require a LNG facility to sell gas in domestic markets. However, the impact on domestic markets is likely to be greater if multiple LNG facilities are offline simultaneously because it is more likely that large quantities of excess gas will be redirected to domestic markets.
101. Similarly, when LNG facilities are ramping up production after a maintenance event, they may purchase gas from the domestic market in order to get sufficient

quantities of gas flowing to their facilities quickly. A situation where multiple LNG facilities are simultaneously ramping up production post-maintenance would likely result in substantial increases to domestic gas prices.

102. Coordination between the Applicants is likely to minimise occurrences of simultaneous maintenance events at Curtis Island, and therefore reduces the potential for significant volatility in domestic markets.

### **Reducing the need to employ wasteful, last resort gas control techniques**

103. During maintenance events (and other LNG facility downtime), gas from the Applicants' respective CSG wells will still be flowing towards Curtis Island. This gas will need to be managed by the Applicants until their facilities return to operation.
104. The Applicants submit that they have a number of options for managing their gas during LNG facility downtime, including selling gas on domestic trading markets, selling gas as part of bilateral supply agreements, and storing gas at Curtis Island and other storage facilities.
105. The Applicants also note two gas flow management options that are particularly undesirable: turning down CSG wells; and flaring gas.
106. Turning down CSG wells is a technique to physically slow the flow of gas from wells. Each well will have a different capacity to be turned down, depending on the well's characteristics. However, turning down a CSG well is generally considered risky as it can result in permanent reduction of the flow from the well, or in the well becoming 'shut-in'—meaning the flow of gas stops completely. Once a well is shut-in it may not be possible to re-open the flow of gas, or re-opening the well may be costly.
107. Turning down a CSG well is therefore an undesirable gas management technique as it risks permanent damage to the well and potentially losing the gas reserves entirely.
108. Flaring gas is simply burning off excess gas. The gas supply chain has regular flaring points built into it to release pressure if needed. There are flaring points at Curtis Island.
109. Flaring gas is both wasteful and environmentally damaging, as flared gas releases pollution.
110. The ACCC considers that coordination between the Applicants is likely to reduce the likelihood of multiple LNG facilities being offline simultaneously, and therefore reduce the quantities of gas that need to be redirected. By avoiding situations where very large quantities of gas need to be redirected, the proposed conduct should reduce the need for inefficient, last resort gas management techniques such as turning down wells and flaring gas.

### **Reducing the negative impact of maintenance events on third parties and the local community**

111. LNG train maintenance events are logistically complex and labour intensive. The Applicants submit that around 600 skilled contractors will be needed onsite during

major maintenance events. Furthermore, the Applicants submit that maintenance events involve around-the-clock activity for 30 days, with a number of particularly high-risk undertakings.

112. The Applicants submit that providing a safe environment for maintenance service providers will be a key priority during maintenance events. Simultaneous maintenance events increase the complexity of overseeing activities and ensuring that all work is done safely. The Applicants also submit that simultaneous events may require local emergency response resources to be spread more thinly, increasing the potential for negative health impacts during maintenance events.
113. The ACCC accepts that maintenance events can also stretch local resources such as accommodation, transport, and logistics services. If these local resources are stretched beyond capacity then additional resources will have to be sourced from further afield at greater cost. The ACCC accepts that there may also be some impact on health and safety if maintenance events are poorly coordinated, though we note that health and safety regulations would still need to be adhered to at each work site. Furthermore, the industry appears to be experienced in managing these work sites; for example, Curtis Island has been the site of numerous LNG construction, testing, and production work sites for the past few years.
114. The ACCC considers that coordination between the Applicants will reduce the likelihood of simultaneous maintenance events at Curtis Island, and therefore reduce the negative impact of maintenance events on local communities. Avoiding these situations should reduce costs for the Applicants and may increase the safety of maintenance events.

## **Public detriment**

115. The CCA does not define what constitutes a public detriment and the ACCC considers its meaning as essentially the opposite of public benefit. In this regard the Tribunal 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.<sup>12</sup>

116. The ACCC's assessment of the likely public detriments from the proposed conduct follows.

## **Information asymmetry between the Applicants and participants in domestic gas markets**

117. The proposed conduct is likely to exacerbate an existing information asymmetry problem in domestic gas trading markets.
118. When excess gas flowing to the Applicants' facilities is redirected to domestic markets, the additional volume entering the market can cause significant changes to market prices. For example, the two incidents highlighted in submissions of excess LNG gas flowing into the Brisbane STTM resulted in sudden and significant

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<sup>12</sup> *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

drops in the market price of gas (to \$0.35 and \$0.55 compared to the 2015 average of \$3.22<sup>13</sup>).<sup>14</sup>

119. Currently, each of the Applicants knows its own maintenance schedule and therefore knows future periods where their own excess gas is likely to be redirected to domestic markets. As each Applicant is also a trader in these domestic markets, this information gives them the ability to trade advantageously with market participants who do not know future maintenance timing; for example, by entering into forward contracts that take advantage of future price changes caused by LNG facility downtimes.
120. Under the proposed conduct, each of the Applicants will also be privy to each other's maintenance schedules. In this way, it is likely to increase the information advantage accruing to the Applicants when trading in domestic markets.
121. Even if the Applicants do not actively seek to exploit this information asymmetry, they will still have access to market sensitive information about the operations of the other two Applicants that is not available to other participants in domestic markets. This means other market participants face greater risk when trading; and noting the impact that LNG train downtime can have on nearby markets, this risk may be large.
122. The information disadvantage to non-LNG participants in these trading markets has the potential be a significant public detriment. Trading without the market sensitive LNG downtime information exposes non-LNG participants to being taken advantage of, and reduces their ability to efficiently manage their gas positions. This would impose substantial additional costs on these businesses and expose them to significant and unnecessary risk. Over time, this risk may undermine confidence in domestic gas markets; for example, forward trading of gas may be hindered by uncertainty over future LNG facility activities.
123. A lack of confidence in these markets will reduce participation and liquidity, further reducing each participant's ability to efficiently manage their gas positions.
124. The ACCC also notes that these impacts may be felt beyond the gas trading markets near Curtis Island (the Brisbane STTM and Wallumbilla) as gas can flow in pipelines across Australia's eastern states. The information asymmetry is also likely to be relevant to 'off market' transactions, such as bilateral gas supply arrangements. The NEM may be affected too, as significant quantities of electricity are produced in gas-fired generators in Queensland and other eastern states.

## **Reducing competition for maintenance services**

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

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<sup>13</sup> Calculated from the AEMO's "STTM Price and Withdrawals" data. Available at:

<http://www.aemo.com.au/Gas/Market-Data/Short-Term-Trading-Market-Data>

<sup>14</sup> The ACCC notes that these two incidents involved unexpected outages at Gladstone, which the proposed conduct is unlikely to affect. The market may not react so significantly to expected outages at the facilities. However, the examples demonstrate that the Applicants' facilities are capable of creating significant price volatility in these markets in the right circumstances.

position weakened as the timing for when their services are required will already have been allocated between the Applicants.

126. However, no maintenance service providers raised concerns with the ACCC about coordination between the Applicants reducing their ability to compete for contracts. Monadelphous supported the coordination of maintenance scheduling and submitted that coordination would increase the efficiency of its maintenance service provision.

127. Nevertheless, the ACCC considers that the proposed conduct may result in fewer opportunities for maintenance service providers to win contracts with the Applicants. For example, if coordination between the Applicants results in a sequence of maintenance events occurring at Curtis Island one after the other (as is foreshadowed in the applications), the contractor selected to service the first LNG train is likely to have an advantage when bidding for the subsequent maintenance events.

128. Contractors will still have the ability to bid for all maintenance events at the Applicants' facilities. However, if a single service provider is regularly awarded the contracts for all maintenance events then, over time, this may distort markets for the supply of maintenance services.

129. However, the ACCC notes that the Applicants have an incentive to promote competition among maintenance service providers, as creating a dominant service provider would limit the Applicants' choice and likely increase their costs.

130. Furthermore, any lessening of competition for maintenance services at Curtis Island will be taking place during a large expansion of Australia's LNG industry, and so overall competition for maintenance services in Australia may increase. On current scheduling, around 21 LNG trains will be operating in Australia by 2020.<sup>15</sup> By comparison, in 2014 Australia had just three projects and seven LNG trains in total operating.

131. Accordingly, the ACCC considers that this public detriment is not likely to be significant.

## **Potential to facilitate unauthorised coordination**

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

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<sup>15</sup> The 21 LNG trains figure is based on the ACCC's understanding about a range of current and future LNG projects including: Wheatstone (2 trains commencing from around 2017-18); Gorgon (3 trains commencing shortly); Pluto (1 train operational); North West Shelf (5 trains operational); Prelude FLNG (1 train commencing about 2017-18); Darwin LNG (1 train operational); Ichthys LNG (2 trains commencing in 2017-18); QCLNG (2 train operational); APLNG (2 trains with 1 operational currently); and GLNG (2 trains with one operational currently).



133. The ACCC notes that such conduct would not be protected from prosecution under the proposed authorisation, and may breach the CCA. The ACCC considers that the Applicants' applications for authorisation suggest that they are aware of their responsibilities under the CCA, and therefore that this detriment is not likely to arise.

## **Balance of public benefit and detriment**

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

135. The ACCC considers that the proposed conduct is likely to generate a number of public benefits. In particular, the ACCC accepts that the proposed conduct has the potential to generate meaningful efficiency gains and reduce the cost of maintaining the Applicants' LNG facilities.

136. The proposed conduct also has the potential to: reduce incidents of significant volatility in domestic gas markets, particularly the gas trading markets near the Applicants' facilities (Wallumbilla and the Brisbane STTM); minimise the need to employ wasteful gas management techniques; and reduce the negative impacts of maintenance events on the local Gladstone community.

137. The ACCC considers that efficient management of maintenance events at Curtis Island will generate benefits that flow to the Applicants, maintenance service providers, participants in domestic energy markets, and the local Gladstone community.

138. However, the ACCC considers that the conduct is also likely to generate some public detriments. In particular, the ACCC considers that the proposed conduct will exacerbate an information asymmetry issue that could undermine the integrity of domestic energy trading markets, especially the gas trading markets close to the Applicants' facilities (the Brisbane STTM and Wallumbilla). The ACCC considers that this detriment has the potential to be significant.

139. The ACCC is therefore proposing to impose a condition of authorisation (discussed below).

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

141. Accordingly, subject to the proposed condition, the ACCC proposes to grant authorisation.

## Condition of authorisation

142. The CCA allows the ACCC to grant authorisation subject to conditions.<sup>16</sup> The ACCC may impose conditions, including to ensure that the net public benefit test is met, or continues to be met, over the proposed period of authorisation.
143. In response to concerns raised by market participants, the Applicants provided a draft condition of authorisation to the ACCC aimed at addressing concerns about potential information asymmetries arising as a result of the proposed conduct. In essence, the draft condition requires each of the Applicants to publish information regarding relevant maintenance scheduled at their facilities, once they have disclosed that information to other Applicants.

## Consultation on the draft condition

144. On 19 January 2016, the ACCC undertook targeted consultation on the draft condition<sup>17</sup> with interested parties in domestic gas markets. A copy of the draft condition as provided to interested parties is available from the ACCC's public register at:  
<http://registers.accc.gov.au/content/trimFile.phtml?trimFileTitle=D16+6177.pdf&trimFileFromVersionId=1192170&trimFileName=D16+6177.pdf>
145. The ACCC received submissions on the draft condition from Stanwell, ERM Power, the Competitive Energy Association (the **CEA**)<sup>18</sup>, and SENEX Energy (**SENEX**).
146. In general terms, the submissions support the ACCC's proposal to impose a condition of authorisation but make some suggestions on expanding the scope of the condition.
147. ERM notes that the draft condition only requires the Applicants to publicly disclose maintenance information that they have shared between them. ERM submits that the Applicants should be required to provide updates to previously disclosed information if that information is no longer accurate, even if the updated information has not been shared between the Applicants. ERM submits that inaccurate information will mislead market participants.
148. ERM also submits that the condition should be expanded to cover the broader information disclosure regime envisaged in the AEMC's draft recommendations (detailed at paragraph 85), even though this goes beyond the scope of the proposed conduct for which authorisation is sought. ERM submits this broader information disclosure should be required until the AEMC's recommendations are enacted. ERM notes that the AEMC recommendations are unlikely to be enacted in the near future, and considers that domestic gas markets will not be able to operate efficiently until a greater degree of information transparency is achieved.
149. Stanwell and the CEA also made submissions. Like ERM, they each submit that the Applicants should be required to update previous information that has become inaccurate. Both also submit that the disclosure of information must occur as soon

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<sup>16</sup> Section 91(3).

<sup>17</sup> The consultation draft of the proposed condition had been modified to take account of initial ACCC feedback.

<sup>18</sup> The CEA represents the policy positions of 22 electricity and downstream natural gas businesses operating in competitive wholesale and retail energy markets.

as is reasonably practicable, and that disclosure must relate to all aspects of outage information addressed by the proposed authorisation, including short term or forced outages.

150. Stanwell and the CEA also both submit that the clauses setting out when the Applicants will be released of the requirement to disclose information should be amended to require explicit consent from the ACCC.
151. SENEX is a resources company with exploratory licences in the Queensland coal seam gas regions. SENEX submits that publication of the maintenance information should occur contemporaneously with the disclosure of maintenance schedules between the Applicants.

### **ACCC amendments to condition of authorisation**

152. As noted above, ERM submits that the proposed condition should cover the broader information disclosure regime envisaged in the AEMC's draft recommendations.
153. Notwithstanding this suggested approach, the condition proposed by the ACCC is aimed at reducing detriment arising as a result of the proposed conduct.
154. As noted by ERM in its submissions, the AEMC is currently reviewing the appropriateness of broader information disclosure requirements. The ACCC considers that the AEMC is the appropriate body to determine the scope of industry-wide information disclosure requirements, and to implement those reforms.
155. Accordingly, the condition proposed by the ACCC addresses only the information asymmetry resulting from the proposed conduct; that is, the disclosure of information relating to maintenance dates and schedules, and general information about each maintenance event.
156. However, in accordance with concerns raised during consultation, the ACCC considers that the termination of the obligation to publish relevant information should be contingent on ACCC consent. This is reflected in the condition proposed by the ACCC.
157. The ACCC does not consider that the condition should include a requirement to require updating of published information where that information has not been shared by the LNG Producers. LNG Producers will have the incentive to share any revised planned maintenance dates to ensure that the revised dates do not clash with the other LNG Producers' activities. This would trigger the requirement to disclose maintenance information and thereby see the previous information updated.
158. Regarding SENEX's request for publication of maintenance information to occur contemporaneously with disclosure between the Applicants, the ACCC considers that the current drafting, which requires the Applicants to publish maintenance information "as soon as is practicable" after disclosing it between themselves, is sufficient.
159. The proposed condition also reflects amendments to the consultation draft of the condition to:

- a. Clarify the distinction between sharing information between the Applicants and publishing it publicly (in the draft condition these are both referred to as 'disclosing')
- b. Ensure that information shared between a subset of the Applicants is still captured by the condition
- c. Some minor edits for clarity and simplicity.

160. The ACCC considers that the proposed condition will resolve the information asymmetry issues created by the proposed conduct. This will provide market participants with greater certainty over the timing of impacts on domestic markets caused by maintenance at the Applicants' facilities. The ACCC considers that the proposed condition therefore resolves the major public detriment generated by the proposed conduct.

161. The proposed condition is provided in full in Attachment A.

## **Length of authorisation**

162. The CCA allows the ACCC to grant authorisation for a limited period of time.<sup>19</sup> This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriments for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

163. In this instance, Applicants seek authorisation for 20 years. The Applicants submit this period is appropriate given the long life span of their LNG facilities, and the need for regular maintenance throughout.

164. The ACCC notes that the applications for authorisation are being considered at the outset of the LNG industry on Australia's east coast. The impact of this industry on natural gas markets across Australia's east coast will be better understood when the industry is more fully developed.

165. Accordingly, there is some uncertainty about the impact of the proposed conduct on related markets, and the degree to which the ACCC's assessment of benefits and detriments arising from the proposed conduct will remain accurate.

166. Furthermore, and noting the fine balance of public benefits and detriments discussed above, the ACCC considers that the condition of authorisation is integral to the ACCC's proposal to grant authorisation. The ongoing effectiveness of the condition is crucial to minimising the potential for public detriments to arise in the future.

167. The ACCC considers that periodic review of the proposed conduct and condition of authorisation is necessary. The ACCC therefore proposes to grant authorisation for a period of five years.

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<sup>19</sup> Subsection 91(1).

# Draft determination

## The applications

168. Applications A91516 & A91517 were made using a Form A and a Form B, under subsections 88(1) and (1A) of the CCA.

169. The Applicants are seeking authorisation to discuss, make and give effect to arrangements regarding the sequencing and timing of scheduled maintenance works, and associated shutdowns and outages, at each of their LNG facilities. The Applicants are also seeking authorisation to share information about maintenance techniques and relevant service providers at each of their LNG facilities.

170. Authorisation is sought as the proposed conduct may contain a cartel provision or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the CCA, including as an exclusionary provision within the meaning of section 45 of the CCA.

171. Subsection 90A(1) of the CCA requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

## The net public benefit test

172. For the reasons outlined in this draft determination, and subject to the proposed condition set out in Attachment A, the ACCC is satisfied, pursuant to sections 90(5A), 90(5B), 90(6) and 90(7) of the CCA, that in all the circumstances the conduct for which authorisation is sought is likely to result in a public benefit that would outweigh any likely detriment to the public constituted by any lessening of competition arising from the proposed conduct.

173. The ACCC is also satisfied pursuant to section 90(8) that, subject to the proposed condition in Attachment A, the conduct for which authorisation is sought is likely to result in such a benefit to the public that the proposed conduct should be allowed to take place.

## Conduct which the ACCC proposes to authorise

174. The ACCC proposes to grant conditional authorisations A91516 & A91517 to Australia Pacific LNG Pty Ltd, Queensland Curtis LNG Project, and Gladstone LNG to, subject to the condition set out in Attachment A:

- a. Make and give effect to arrangements or understandings among the Applicants regarding the sequencing and timing of the conduct of scheduled maintenance at the LNG facilities, including the sequencing and timing of shutdowns and partial plant outages associated with such maintenance by:
  - i. Identifying the maintenance requirements for each of the LNG facilities, including the scope and expected duration of maintenance campaigns and any shutdowns or partial plant outages associated with those maintenance campaigns
  - ii. Classifying maintenance campaigns (e.g. major and minor)

- iii. Working to identify optimal maintenance windows having regard to factors such as climate, safety considerations and local resource constraints
- iv. Scheduling maintenance in such a way as to minimise contractor mobilisation and demobilisation
- v. Developing a process to:
  - A. Nominate preferred dates for planned maintenance
  - B. Negotiate and agree the proposed dates for planned maintenance at each of the LNG facilities
  - C. Inform one another of ad hoc unplanned maintenance requirements
  - D. Consult about variations to any maintenance dates
  - E. Resolve conflicts where maintenance dates overlap
  - F. Prepare and agree a schedule recording the planned maintenance dates for each LNG facility.
- b. Exchange information for the purpose of making and giving effect to the arrangements and understandings referred to in paragraph (a) – including information about:
  - i. Maintenance techniques and operational processes, including personnel requirements, specialist equipment and the use, storage, and transport and disposal of hazardous chemicals
  - ii. Potential resource constraints associated with particular shutdown windows (e.g. accommodation) and discussing mitigation options
  - iii. Disclosing the names of the maintenance contractors who have been appointed by each of the Applicants to perform the relevant LNG facility maintenance, subject to applicable third party confidentiality restrictions.

175. The ACCC proposes to grant authorisations A91516 & A91517 for five years.

176. This draft determination is made on 18 February 2016.

## **Next steps**

177. The ACCC now seeks submissions in response to this draft determination. In addition, consistent with section 90A of the CCA, the Applicants or an interested party may request that the ACCC hold a conference to discuss the draft determination.

## Interim authorisation

178. Section 91 of the Act allows the ACCC to grant interim authorisation where the ACCC considers it appropriate to allow the parties to engage in the proposed conduct while the ACCC is considering the substantive applications for authorisation.
179. At the time of lodging the applications, the Applicants requested interim authorisation to *immediately commence discussions and take steps to agree on the sequencing and timing of scheduled maintenance at the LNG facilities, including the sequencing and timing of associated shutdowns and outages.*<sup>20</sup>
180. The ACCC considers that this is a request for interim authorisation to be granted for the full set of proposed conduct.
181. The ACCC considers requests for interim authorisation on a case by case basis. The ACCC's authorisation guidelines provide some information about factors the ACCC may have reference to when considering a request for interim authorisation. The relevant excerpt from the authorisation guidelines is provided in Attachment C.
182. Broadly, the ACCC will consider:
- a. whether the proposed conduct has the potential to be significantly anti-competitive
  - b. whether granting interim authorisation will permanently alter the competitive dynamics of the market or inhibit the market from returning to its pre-interim state if final authorisation is later denied
  - c. the urgency of the need for interim
  - d. any possible harm to the Applicants from having their request for interim denied
  - e. any possible harm to interested parties from granting or denying interim authorisation
  - f. any public benefits or detriments the ACCC is able to assess at the time of considering the request for interim authorisation.
183. The Applicants submit that interim authorisation is appropriate as more of the Applicants' LNG production facilities will be coming online during the ACCC's substantive assessment of the applications, and so the need for coordination is increasing.
184. The Applicants submit that the lead time on major maintenance events can be up to 18 months and that the first major maintenance at their facilities is likely to be conducted in September-October 2016 and April-May 2017.

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<sup>20</sup> See section 1.5 (page 3) of the Applicants' submission in support of their applications for authorisation.

185. The Applicants submit that they are already procuring the services of specialist contractors for these maintenance events and putting in place the necessary logistical arrangements to support the maintenance campaigns.
186. The Applicants submit that there is a real potential that overlapping shutdowns will occur if the Applicants do not obtain interim authorisation.
187. As discussed in the 'balance of public benefits and detriments' section above, the ACCC considers that the proposed conduct is likely to generate a number of public benefits. In particular, by coordinating the schedule of maintenance events at the Applicants' facilities, the proposed conduct has the potential to generate meaningful efficiency gains and reduce the cost of maintenance, as well as reducing the likelihood of major disruptions to domestic trading markets.
188. The ACCC accepts that these benefits can be brought forward by granting interim authorisation, and that delays to interim may impose significant costs on the Applicants.
189. However, the ACCC also considers that the proposed conduct is likely to generate public detriments; in particular, the proposed conduct will result in the Applicants sharing information that may affect domestic gas trading markets. The distortion from this information asymmetry issue has the potential to be significant.
190. The ACCC notes that, because the proposed conduct involves exchanging information, it will be difficult to 'undo' the impact of granting authorisation. Should the ACCC move to revoke interim authorisation, the Applicants would still be aware of each other's current maintenance schedules (though this information would become less relevant over time).
191. The ACCC considers that such a situation would likely generate public detriments in the form of the information asymmetry issues, even after authorisation was revoked.
192. Accordingly, and in line with the ACCC's draft determination, interim authorisation is granted subject to the condition provided in Attachment D.<sup>21</sup>
193. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

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<sup>21</sup> The condition in Attachment D is substantively identical to the condition associated with the draft determination (contained at Attachment A) but relates to interim authorisation only.



# Attachment A – Proposed condition of authorisation

1. The purpose of this condition is to make publicly available "Maintenance Information" (as defined in paragraph 2) that an LNG producer the subject of this condition (an **LNG Producer**) discloses to another LNG Producer in the course of scheduling maintenance activities pursuant to the authorisation granted by the Australian Competition and Consumer Commission on **[insert date]** (**Authorisation**).
2. Each LNG Producer must publish the following information (**Maintenance Information**):
  - (a) the LNG Producer's reasonable expectation of the dates when the Scheduled Maintenance Activities (as defined in paragraph 4) will commence and conclude;
  - (b) whether the Scheduled Maintenance Activities are expected to involve any of the following:
    - (i) Shutdown of one half or less of an LNG train;
    - (ii) Shutdown of greater than one half of an LNG train but not greater than one LNG train; or
    - (iii) Shutdown of greater than one LNG train,where such Maintenance Information has been disclosed by an LNG Producer to another LNG Producer pursuant to the Authorisation as soon as is practicable after, but within 2 business days of, the disclosure to the other LNG Producer(s). For the avoidance of doubt, the information to be published pursuant to this paragraph:
    - (c) does not include preliminary discussions between LNG Producers for the purpose of determining possible dates for Scheduled Maintenance Activities; and
    - (d) does include amendments to published Maintenance Information that have been disclosed to another LNG producer pursuant to the Authorisation.
3. For the purposes of this requirement of publication, an LNG Producer will reasonably expect the occurrence of Scheduled Maintenance Activities when the LNG Producer has undertaken sufficient planning to define the scope of the shutdown of one or more of its LNG trains (including any partial shutdowns) associated with the Scheduled Maintenance Activities and has confirmed the availability of contractors for the proposed shutdown period.
4. For the purposes of this requirement of publication, Scheduled Maintenance Activities means the performance of scheduled maintenance activities at an LNG Facility:
  - (a) involving the complete or partial shutdown of an LNG train; and
  - (b) where the shutdown is expected to have a duration of a minimum of 1 day.
5. The LNG Producer will satisfy the publication requirement under paragraph 2 if it:
  - (a) provides the Maintenance Information to the Australian Energy Market Operator (**AEMO**) who accepts receipt of the Maintenance Information and publishes it on the Natural Gas Services Bulletin Board (**Bulletin Board**) or similar publication; or

- (b) if the Maintenance Information is not able to be published on the Bulletin Board, publishes the Maintenance Information on its internet website in a manner that is easily accessible to interested parties.

6. It is acknowledged that the Maintenance Information published by the LNG Producer may be subject to change for a number of operational or commercial reasons. The provision of the Maintenance Information by the LNG Producer may be made subject to the following disclaimer:

*"[insert name of LNG Producer] provides the Maintenance Information on the basis that the information:*

- *is provided in good faith and is published as a condition of the Authorisation granted by the ACCC; and*
- *is based on [insert name of LNG Producer]'s reasonable expectations and is subject to change."*

7. The LNG Producers will comply with the requirement of publication under paragraph 2 unless and until:

- (a) they are required to publish the Maintenance Information or information substantially the same as the Maintenance Information in compliance with another statutory or regulatory obligation including, but not limited to, an obligation of publication arising under the National Gas Law or the National Gas Rules (or any regulation, rule, procedure or instrument made thereunder) and:

- (i) one or more LNG Producers have notified the ACCC, in writing, of the relevant statutory or regulatory obligation, including details of the publication requirement; and
- (ii) the ACCC has advised, in writing, that the publication requirement in paragraph 2 of this condition no longer applies; or

- (b) the ACCC has otherwise advised, in writing, that the publication requirement in paragraph 2 of this condition no longer applies.

8. Nothing in this condition obliges an LNG Producer:

- (a) to update information previously published under this condition; or
- (b) to make any other information publicly available,

in a way that would involve publication of information that that LNG Producer has not disclosed to another LNG Producer pursuant to the Authorisation.

## Attachment B – Public benefit tests in CCA

**Subsections 90(5A) and 90(5B)** provide that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:

- the provision, in the case of subsection 90(5A) would result, or be likely to result, or in the case of subsection 90(5B) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(5A) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of subsection 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.

**Subsections 90(6) and 90(7)** state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:

- the provision of the proposed contract, arrangement or understanding in the case of subsection 90(6) would result, or be likely to result, or in the case of subsection 90(7) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(6) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision was given effect to, or in the case of subsection 90(7) has resulted or is likely to result from giving effect to the provision.

**Subsection 90(8)** states that the ACCC shall not:

- make a determination granting:
  - i. an authorisation under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
  - ii. an authorisation under subsection 88(7) or (7A) in respect of proposed conduct; or
  - iii. an authorisation under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or
  - iv. an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

- make a determination granting an authorisation under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.

## Attachment C – ACCC guidelines on interim authorisation

The ACCC will determine whether to grant interim authorisation on a case by case basis taking into account relevant factors including:<sup>22</sup>

- The object of the Act, which includes enhancing the welfare of Australians through the promotion of competition. The ACCC is therefore unlikely to grant interim authorisation to proposed conduct that has the potential to be significantly anti-competitive unless compelling reasons are provided.
- The extent to which the relevant market will change if interim authorisation is granted. Interim authorisation is more likely to be granted when it will maintain the market status quo. Interim authorisation is unlikely to be granted if doing so would permanently alter the competitive dynamics of the market or inhibit the market from returning to its pre-interim state if final authorisation is later denied.
- The urgency of the need for interim authorisation. Relevant to this, the ACCC will consider whether an application could have been lodged sufficiently early to have made the request for interim authorisation unnecessary.
- The possible harm, if any, to the applicant if a grant of interim authorisation is denied.
- The possible harm to other parties (such as customers and competitors) if a request for interim authorisation is granted or denied.
- Any possible public benefits or detriments that the ACCC can assess at the time of considering the request for interim authorisation. However, granting interim authorisation does not require the ACCC to determine whether the relevant authorisation test is, or is likely to be, satisfied.

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<sup>22</sup> A number of these factors were described by the Tribunal in *Re Queensland Timber Board* (1975), ATPR 40-005 at 17,122–123.

## Attachment D – Condition of interim authorisation

1. The purpose of this condition is to make publicly available "Maintenance Information" (as defined in paragraph 2) that an LNG producer the subject of this condition (an **LNG Producer**) discloses to another LNG Producer in the course of scheduling maintenance activities pursuant to the interim authorisation granted by the Australian Competition and Consumer Commission on 18 February 2016 (**Interim Authorisation**).
2. Each LNG Producer must publish the following information (**Maintenance Information**):
  - (a) the LNG Producer's reasonable expectation of the dates when the Scheduled Maintenance Activities (as defined in paragraph 4) will commence and conclude;
  - (b) whether the Scheduled Maintenance Activities are expected to involve any of the following:
    - (i) Shutdown of one half or less of an LNG train;
    - (ii) Shutdown of greater than one half of an LNG train but not greater than one LNG train; or
    - (iii) Shutdown of greater than one LNG train,where such Maintenance Information has been disclosed by an LNG Producer to another LNG Producer pursuant to the Interim Authorisation as soon as is practicable after, but within 2 business days of, the disclosure to the other LNG Producer(s). For the avoidance of doubt, the information to be published pursuant to this paragraph:
  - (c) does not include preliminary discussions between LNG Producers for the purpose of determining possible dates for Scheduled Maintenance Activities; and
  - (d) does include amendments to published Maintenance Information that have been disclosed to another LNG producer pursuant to the Interim Authorisation.
3. For the purposes of this requirement of publication, an LNG Producer will reasonably expect the occurrence of Scheduled Maintenance Activities when the LNG Producer has undertaken sufficient planning to define the scope of the shutdown of one or more of its LNG trains (including any partial shutdowns) associated with the Scheduled Maintenance Activities and has confirmed the availability of contractors for the proposed shutdown period.
4. For the purposes of this requirement of publication, Scheduled Maintenance Activities means the performance of scheduled maintenance activities at an LNG Facility:
  - (a) involving the complete or partial shutdown of an LNG train; and
  - (b) where the shutdown is expected to have a duration of a minimum of 1 day.
5. The LNG Producer will satisfy the publication requirement under paragraph 2 if it:
  - (a) provides the Maintenance Information to the Australian Energy Market Operator (**AEMO**) who accepts receipt of the Maintenance Information and publishes it on the Natural Gas Services Bulletin Board (**Bulletin Board**) or similar publication; or

- (b) if the Maintenance Information is not able to be published on the Bulletin Board, publishes the Maintenance Information on its internet website in a manner that is easily accessible to interested parties.

6. It is acknowledged that the Maintenance Information published by the LNG Producer may be subject to change for a number of operational or commercial reasons. The provision of the Maintenance Information by the LNG Producer may be made subject to the following disclaimer:

*"[insert name of LNG Producer] provides the Maintenance Information on the basis that the information:*

- *is provided in good faith and is published as a condition of the Interim Authorisation granted by the ACCC; and*
- *is based on [insert name of LNG Producer]'s reasonable expectations and is subject to change."*

7. The LNG Producers will comply with the requirement of publication under paragraph 2 unless and until:

- (a) they are required to publish the Maintenance Information or information substantially the same as the Maintenance Information in compliance with another statutory or regulatory obligation including, but not limited to, an obligation of publication arising under the National Gas Law or the National Gas Rules (or any regulation, rule, procedure or instrument made thereunder) and:

- (i) one or more LNG Producers have notified the ACCC, in writing, of the relevant statutory or regulatory obligation, including details of the publication requirement; and
- (ii) the ACCC has advised, in writing, that the publication requirement in paragraph 2 of this condition no longer applies; or

- (b) the ACCC has otherwise advised, in writing, that the publication requirement in paragraph 2 of this condition no longer applies.

8. Nothing in this condition obliges an LNG Producer:

- (a) to update information previously published under this condition; or
- (b) to make any other information publicly available,

in a way that would involve publication of information that that LNG Producer has not disclosed to another LNG Producer pursuant to the Interim Authorisation.