

Submission to the ACCC

Background

1. Australia Pacific LNG Pty Limited Project (**APLNG**), the Queensland Curtis LNG Project (**QCLNG**) and the Gladstone LNG Participants (**GLNG**) (the **Applicants**) submitted applications for authorisation to the Australian Competition and Consumer Commission (**ACCC**) on 15 October 2015.
2. On 18 February 2016 the ACCC:
 - (a) decided to grant interim authorisation to the Applicants, subject to the imposition of a condition; and
 - (b) published its Draft Determination in which the ACCC proposes to grant authorisation to the Applicants for a period of five years, subject to the imposition of a condition.

Submission in response to Draft Determination

3. There are two separate matters on which the Applicants wish to make submissions to the ACCC in response to the Draft Determination. Each of these matters is addressed below.

Condition of authorisation

4. The ACCC has determined that a condition of authorisation should apply. The terms of the proposed condition are set out in Attachment A to the Draft Determination.
5. The Applicants agree with the terms of the proposed condition of authorisation.
6. The condition as currently drafted adequately addresses the information asymmetry issue which was raised in a number of the submissions that were made prior to the Draft Determination and accepted by the ACCC. In particular, the Applicants submit (in agreement with the ACCC) that any obligation that is imposed on them to publically publish Maintenance Information should be strictly limited to where that information has been disclosed by one of the Applicants to at least one of the other Applicants pursuant to the Authorisation.

Length of authorisation

7. The Draft Determination proposes that the proposed conduct be authorised for a period of five years.
8. The Applicants note the ACCC's conclusion that it considers there is some uncertainty about the impact of the proposed conduct on related markets and the degree to which its assessment of benefits and detriments arising from the proposed conduct will remain accurate. Therefore, taking into account the fine balance of public benefits and detriments, the ACCC considers that a periodic review of the proposed conduct and condition of authorisation is necessary.
9. The Applicants also note that the ACCC's determination as to the length of the authorisation is consistent with the general position stated in its Authorisation Guidelines.¹ However, as the Guidelines state, the ACCC considers the duration of an authorisation on a case-by-case basis.²

¹ ACCC, Authorisation Guidelines, June 2013, [7.12].

² Ibid.

10. The Applicants submit that their applications for authorisation constitute circumstances where it would be appropriate for the ACCC to depart from its position of generally adopting a five year authorisation period. The Applicants submit as follows:

- (a) **No objections:** The Applicants note that none of the submissions received by the ACCC raised any concerns about the 20 year period sought by the Applicants.
- (b) **Uncertainty for Applicants:** The first major shutdown for each LNG train at the LNG Facilities will occur approximately one year after each LNG train commences production. Following the first major shutdown, subsequent major shutdowns will be required to occur every three years. This means that towards the end of the proposed authorisation period one or more of the Applicants may be seeking to undertake a major shutdown of one of their LNG trains, thereby involving the Applicants engaging in the authorised conduct. At the same time, if a five year period of authorisation is adopted, the Applicants would be seeking re-authorisation of the conduct beyond that initial five year period. This would create considerable uncertainty for the Applicants as there would be a risk (even if only small) that the conduct might not be re-authorised thereby potentially jeopardising the ability of the Applicants to seamlessly carry out maintenance at their LNG Facilities. Therefore, the Applicants submit that a longer period of authorisation is required to enable each of them, at the very least, to carry out two major shutdowns of their respective LNG Facilities.
- (c) **Evaluation of public benefits and detriments:** Consistent with their submission above, the Applicants consider that the public benefits expected to arise from the proposed conduct may not be as pronounced if they are assessed by the ACCC following only one complete major shutdown of both LNG trains at each of the Applicant's LNG Facilities (i.e. towards the end of the initial five year authorisation period). That is, once each of the LNG Facilities have completed at least two major shutdowns for both of their LNG trains, a more accurate picture will have emerged as to the public benefits arising from the authorised conduct (and any potential detriments) as all affected parties, including the Applicants, maintenance service providers and participants in the domestic gas market will by that stage have experienced a number of shutdowns. In addition, there will at that time be a greater degree of certainty as to the effect of any additional mandatory public reporting obligations which may be implemented (and imposed on the Applicants) following the conclusion of the *East Coast Wholesale Gas Market and Pipeline Frameworks Review* that is currently being conducted by the AEMC.

Similarly the Applicants consider that the potential detriments must be evaluated based on relevant evidence of market impact of planned major shutdowns. The main example of market impact raised in submissions to date (the unplanned outage referenced in paragraph 118 of the Draft Determination) is not representative of expected future impacts from the authorised conduct, because it was an unexpected outage arising at a time when the affected LNG plant had limited flexibility to deal with the excess gas. The same market conditions will not be replicated when all six LNG trains are in operation.

- (d) **No additional public detriments likely:** In its Draft Determination the ACCC concluded that it considered the only potential public detriment likely to arise as a result of the proposed conduct was the information asymmetries which would be expected to arise as between the Applicants and participants in domestic gas markets. The Applicants do not consider that any additional public detriments would be likely to arise if the period of the authorisation were to be greater than five years. Further, to the extent that the ACCC has identified the information asymmetry issue, this potential detriment is effectively completely ameliorated by the Applicants complying with the proposed condition of authorisation which will continue to apply to them until such time as a comparable mandatory public reporting obligation is imposed on the Applicants and the ACCC consents to the condition of authorisation no longer applying to them.

11. For these reasons the Applicants submit that the authorisations the subject of the Applicants' applications should be granted for a minimum period of at least 10 years.