



Draft Determination and interim authorisation

Application for revocation of AA1000396 and the substitution of
authorisation AA1000620

lodged by Chevron Australia Pty Ltd, INPEX Operations Australia Pty
Ltd, Shell Australia Pty Ltd and Woodside Energy Ltd

in respect of

the coordination of maintenance activities at specified LNG facilities in
Western Australia and Northern Territory

Authorisation number: AA1000620

17 March 2023

Commissioners: Keogh
Brakey
Carver

Summary

The ACCC proposes to grant authorisation with conditions to enable Chevron Australia Pty Ltd, INPEX Operations Australia Pty Ltd, Shell Australia Pty Ltd and Woodside Energy Ltd to continue to discuss, make and give effect to arrangements regarding the sequencing and timing of scheduled maintenance and associated shutdowns and outages at 6 LNG export facilities located in the North West region of Australia. The conduct was previously authorised with conditions for 5 years on 2 March 2018. The proposed authorisation does not enable the Applicants to coordinate on gas pricing or supply.

The ACCC considers that the Conduct is likely to give rise to a number of public benefits, including improved efficiency in the maintenance of the LNG export facilities, greater reliability of LNG production from those facilities, the more efficient use of limited maintenance resources, and the reduction of safety risks.

When previously granting authorisation in 2018, the ACCC imposed a condition requiring the public disclosure of certain maintenance scheduling information. The ACCC was concerned that, without the condition, there was a potentially significant public detriment arising from the information asymmetry between the Applicants and other market participants. The condition was intended to give all market participants access to information regarding the scheduled maintenance and shutdowns at the Applicants LNG export facilities, and therefore address the public detriment.

Since the previous authorisation, the *Gas Services Information Rules* (17 December 2021) commenced, and require the Applicants to report maintenance information for their domestic gas facilities. This information is made available to the public on the Western Australian Gas Bulletin Board. The ACCC considers the reporting requirements under the *Gas Services Information Rules* address some information asymmetries in domestic gas markets.

However, those reporting requirements under the *Gas Services Information Rules* do not apply to the Applicants' LNG export facilities. For this reason, the ACCC considers an information asymmetry still exists. Therefore, the ACCC is proposing to grant re-authorisation with substantially the same condition as that imposed in 2018, requiring the Applicants to publicly disclose maintenance schedule information that they have shared with one another.

With the condition, the ACCC considers that the Conduct is likely to result in a public benefit that would outweigh the likely public detriment. We invite further submissions about this conclusion.

The ACCC proposes to grant re-authorisation for 5 years.

The ACCC has also granted interim authorisation to enable the Applicants to continue engaging in the Conduct while the ACCC is considering the substantive application.

1. The application for revocation and substitution

- 1.1. On 10 August 2022, Chevron Australia Pty Ltd (**Chevron**), INPEX Operations Australia Pty Ltd (**INPEX**), Shell Australia Pty Ltd (**Shell**) and Woodside Energy Ltd (**Woodside**) (together, the **Applicants**) lodged with the Australian Competition and Consumer Commission (the **ACCC**) an application to revoke authorisation AA1000396 and substitute authorisation AA1000620 for the one revoked (referred to as **re-authorisation**).
- 1.2. Re-authorisation is sought to enable the Applicants to continue to coordinate scheduling of planned maintenance at 6 liquefied natural gas (**LNG**) facilities in Western Australia and Northern Territory.
- 1.3. The application was made under subsection 91C(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). The ACCC may grant authorisation, which provides businesses with protection from legal action under the competition provisions in Part IV of the Act for arrangements that may otherwise risk breaching those provisions in the Act, but are not harmful to competition and/or are likely to result in overall public benefits.
- 1.4. The application for re-authorisation relates to the same conduct that is covered by authorisation AA1000396 (the **existing authorisation**).¹ However, this application for re-authorisation seeks to remove the condition imposed on the existing authorisation and extend the period of authorisation from 5 to 10 years.
- 1.5. Because the existing authorisation is due to expire before the ACCC is able to make a final decision about the application for re-authorisation, the ACCC has considered whether it is appropriate to grant interim authorisation to enable the Applicants to continue to coordinate scheduling of planned maintenance at their 6 LNG export facilities in Western Australia and Northern Territory. The request for interim authorisation is discussed further in section 6.

The Conduct

- 1.6. Re-authorisation is sought to enable the Applicants to continue to engage in the following conduct:
 - (a) to make and give effect to arrangements or understandings among the Applicants limited to the sequencing and timing of the conduct of scheduled maintenance at the facilities which support LNG production and the sequencing and timing of shutdowns and partial plant outages associated with such maintenance by:
 - i. identifying the maintenance requirements for each of the facilities that support LNG production, 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/minor shutdown maintenance or campaign maintenance)
 - iii. working to identify optimal maintenance windows having regard to factors such as climate, safety considerations and resource constraints

¹ Authorisation AA1000396 is available on the ACCC's [public register](#).

- iv. scheduling maintenance in such a way as to minimise contractor mobilisation and demobilisation costs
 - 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 facilities supporting LNG production
 - 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 relevant facilities, and
- (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, 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 Party to perform the relevant LNG export facility maintenance, subject to applicable third party confidentiality restrictions

(collectively, the **Conduct**).

1.7. For avoidance of doubt, the ACCC considers that:

- reference to ‘the facilities which support LNG production’ within the definition of the Conduct is confined to the Applicant’s LNG export facilities (as defined in paragraph 2.2) and does not include any coordination at their domestic gas facilities (as defined in paragraph 2.4)
- the Conduct is limited to coordinating on the items listed at paragraph 1.6(a) and (b) above.

Length of Authorisation

1.8. The Applicants seek re-authorisation for 10 years given the net benefits they submit are likely to arise from the Conduct going forward. The Applicants submit that since the existing authorisation was granted, there is evidence that the anticipated net benefits have occurred; relevant parties continue to support the arrangements; and market conditions remain stable. Specifically, while the Applicants acknowledge that there were further projects being announced and progressed in both the Northern Territory and Western Australia, they submit that there have been no changes to the maintenance requirements of the LNG export facilities or changes to the regulation of the LNG industry that would cause re-authorisation to be inappropriate.

- 1.9. Given that maintenance shutdowns are labour and capital intensive and require a significant number of highly skilled maintenance technicians, the Applicants submit that a period of 10 years will assist them in addressing resourcing constraints and will provide them with the certainty that they will be able to engage skilled workers to support their maintenance campaigns.

Condition

- 1.10. The existing authorisation was granted with a condition which requires the Applicants (except for Shell) to publish certain maintenance information that they have shared with one another (the **Condition**).² This information is required to be published as soon as practicable, but no later than two business days after the maintenance information is shared.
- 1.11. The Condition was imposed on the existing authorisation to address concerns regarding the likely, and potentially significant, detriment that could arise from the information asymmetry between the Applicants and other participants in the domestic LNG markets.
- 1.12. The Applicants submit that the Condition should cease to apply in any re-authorisation as the circumstances that were expected to eventuate in the existing period of authorisation, namely the development and commencement of a gas trading hub or short term trading market in Western Australia, that would lead to an information asymmetry have not arisen. The Applicants submit that they are not aware of any evidence which suggests such circumstances would arise during the next 10 years, and that the necessary information asymmetry arising from the Conduct does not exist to justify the imposition of the Condition.
- 1.13. The Applicants further submit that they are already required to report scheduled maintenance to the Australian Energy Market Operator pursuant to provisions of the *Gas Services Information Rules (17 December 2021)* well in advance of the scheduled maintenance works taking place, and that the Australian Energy Market Operator make this information publicly available on its website.³
- 1.14. The Applicants submit that Medium Term Capacity reporting under the *Gas Services Information Rules* will require the reporting of scheduled maintenance events at their domestic gas facilities as defined in paragraph 2.4, and that the *Gas Services Information Rules* will provide a greater level of visibility of the Applicants' domestic operations to the Western Australian domestic gas market than is presently available under the Condition.
- 1.15. However, the ACCC notes that the *Gas Services Information Rules* do not cover any period beyond 12 months into the future and does not include the reporting of maintenance at any of the Applicants' LNG export facilities as defined in paragraph 2.2.

Rationale for the Conduct

- 1.16. The Applicants submit that the benefits associated with the Conduct are greater now than at the time of the existing authorisation due to the effect that the COVID-19 pandemic has had on the availability and number of suitably skilled workers to conduct

² See ACCC Final Determination AA1000395 (2 March 2018), Attachment A – Condition of authorisation.

³ The Australian Energy Market Operator publish this information on the WA Gas Bulletin Board: <https://aemo.com.au/en/energy-systems/gas/wa-gas-bulletin-board-wa-gbb>.

the maintenance. Through the coordination of maintenance, the Applicants are seeking to ensure they are able to obtain appropriate equipment and appropriately skilled contractors to undertake the maintenance. On a broader level, the Applicants seek to ensure that the gas industry in the North West region of Australia continues to be internationally competitive by maximising LNG production. The Applicants also submit that the Conduct will also assist in the management of safety risks, such as fatigue management, and will reduce additional costs from simultaneous shutdowns.

2. Industry Overview

- 2.1. Australia has 10 operating LNG export developments. These are located in or off the coasts of the following states and territories:
 - Western Australia – five operating LNG developments and one under construction: these facilities are all included in the application for authorisation
 - Northern Territory – two operating LNG developments: only the Ichthys facility is included in the application for authorisation
 - Queensland – three operating LNG developments: these facilities are not included in this application for authorisation.
- 2.2. The Applicants have either developed, are developing or expanding, or may in the future develop or expand, LNG and associated facilities located onshore and offshore, which form part of six LNG projects in Western Australia and the Northern Territory, being the Gorgon, Wheatstone, Ichthys, Prelude, North West Shelf and Pluto LNG projects (the **LNG export facilities**). With the exception of the Prelude Project, all of the LNG export facilities are comprised of both onshore and offshore facilities. These LNG export facilities take natural gas principally extracted from large conventional natural gas reserves in the Carnarvon and Browse Basins, situated in the North West region of Australia.
- 2.3. Each of the LNG export facilities engage in the subsea extraction of natural gas and its processing to remove certain liquids and gases. This processed natural gas is then converted to LNG utilising a process called liquefaction to make it suitable for export.⁴
- 2.4. In addition to their LNG export facilities, two of the Applicants, being Chevron and Woodside, also supply gas to the Western Australian domestic market (referred to as the **domestic gas facilities**) as part of the following projects: Gorgon, Wheatstone, North West Shelf and Pluto. These domestic gas facilities differ from that of the LNG export projects as they do not, once processed, convert the gas into LNG. For avoidance of doubt, the domestic gas facilities do not fall within the scope of the proposed re-authorisation.
- 2.5. The Applicants submit that the infrastructure and facilities operated to process gas for supply to the domestic gas market at each of the domestic gas facilities can be operated independently from those of the LNG export facilities.⁵ Because of this, the Applicants submit that the LNG export facilities themselves do not supply gas to the

⁴ Liquefaction is the cooling of natural gas which changes it from a gas into a liquid that is 1/600th of its original volume and allows it to be shipped safely and efficiently abroad specially designed vessels. Once the LNG reaches its destination, it then warmed to convert it back to its gaseous state to allow it to be transported through local pipelines: <https://www.chevron.com/operations/liquefied-natural-gas-lng>.

⁵ See Applicants' Response to ACCC Questions, 26 January 2023. Available on the ACCC's [public register](#).

domestic market and that maintenance at their LNG export facilities therefore does not affect the availability or supply of gas to the domestic market.⁶

- 2.6. However, the ACCC considers that given the domestic gas facilities and LNG export facilities are at the same location, there is likely to be some shared infrastructure between them, such as the equipment used to extract natural gas from the basins and the pipelines that transport it to the onshore processing facilities. In these circumstances, the ACCC considers the Applicants may be able to redirect gas from their export operations to their domestic facilities if they are aware of shutdowns. As such, the ACCC does not accept the Applicants' submissions that the LNG export facilities have no impact, direct or otherwise, on the domestic gas markets.
- 2.7. There are currently nine different domestic gas production facilities, inclusive of the four operated by Chevron and Woodside, that supply gas to the Western Australia domestic market.⁷
- 2.8. The *Western Australia Domestic Gas Policy* (the **WA Policy**) was first formalised in 2006 with an aim to secure Western Australia's long-term energy needs and ongoing development by ensuring that LNG exporters also make a sufficient amount of gas available to the domestic market.⁸ The WA Policy requires the LNG export projects to, amongst other things, reserve gas for domestic use that is equivalent to 15% of LNG export volumes and is given effect to through individual contractual agreements between developers of LNG export projects and the Western Australian Government.
- 2.9. The LNG export facilities have various agreements under the WA Policy to supply gas to the domestic market in Western Australia. The Prelude and Ichthys projects do not have agreements under the WA Policy as they do not supply gas to the domestic market in Western Australia. Under the WA Policy LNG producers may propose to offset their commitments by supplying gas or other energy from alternative sources, rather than supplying from the LNG project itself.⁹
- 2.10. While there is a framework in the Northern Territory to facilitate the wholesale exchange of electricity between generators and retailers as part of the Interim Northern Territory Electricity Market, none of the Applicants' facilities supply gas to the Northern Territory domestic market as a matter of course; its demand is currently met through existing contracts with other suppliers, primarily the Darwin LNG project (which is not the subject of this authorisation).¹⁰
- 2.11. Ichthys LNG Project, the only one of the Applicants' LNG Projects with onshore facilities located in the Northern Territory, does not supply to the Northern Territory domestic gas market; it is however connected to the Power and Water Corporation domestic pipeline network, primarily to allow the facility to purchase gas to support plant commissions. Commercial arrangements are also in place which would allow the

⁶ See Applicants' Response to ACCC Questions, 26 January 2023. Available on the ACCC's [public register](#).

⁷ See 2022 Western Australian Gas Statement of Opportunities (Australian Energy Market Operator), 15 December 2022.

⁸ Note: The Policy was updated in August 2020 to strengthen compliance, improve transparency of commitments by producers and to ensure availability of gas for new industrial development within Western Australia.

⁹ See WA Domestic Gas Policy (3 December 2022) [here](#).

¹⁰ See INPEX's submission in relation to emergency LNG supply to Northern Territory [here](#).

Ichthys LNG project to supply gas to the Northern Territory domestic market in the event of an emergency.¹¹

- 2.12. In 2021-22, Australia exported 83 million tonnes of LNG, which is 4.7 million tonnes more than 2020-21.¹² Western Australia alone accounted for just over 50% of Australia's production of LNG.¹³ The Northern Territory has seen record export figures since the commencement of LNG production at the Ichthys LNG Project, with the value of exports in the 2021 financial year rising to \$13.1 billion.¹⁴ Australia's LNG export earnings are forecast to rise from \$70 billion in 2021-22 to \$90 billion in 2022-23 due to external factors placing upward pressure on LNG spot prices.¹⁵
- 2.13. Western Australia is one of the most energy and gas-dependent economies in Australia and consumes more gas than any other state.¹⁶ The Western Australian gas market has a limited number of large suppliers and consumers, with most of their gas being sold via bilateral, commercial and long-term contracts.¹⁷ Small volumes of gas are sold via short-term and spot gas sales in Western Australia.
- 2.14. According to data in the Australian Energy Market Operator's 2022 Western Australia *Gas Statement of Opportunities (WA Gas Statement of Opportunities)*,¹⁸ the Western Australian domestic gas market will face a tight supply demand balance between 2023 and 2029. It is forecasted that there will be insufficient gas supply to meet domestic demand up to 2026, however the deficit is small at around 45 TJ/day. The commencement of production at Woodside's Scarborough project in mid-2027 will result in potential gas supply exceeding domestic gas demand until 2029. From 2030 onwards, the Australian Energy Market Operator forecasts that the gas market will move into a larger deficit, with shortfalls of over 200TJ/day, driven by the planned retirement of coal and a decline in production from existing gas fields.

Western Australia Gas Bulletin Board

- 2.15. The Western Australia Gas Bulletin Board (the **WA Gas Bulletin Board**) is a public website that publishes forecast and historical data on the domestic production, transmission, storage, and usage of gas in Western Australia.¹⁹ The WA Gas Bulletin

¹¹ See INPEX's submission in relation to emergency LNG supply to Northern Territory [here](#).

¹² See Resource and Energy Quarterly (Department of Industry Science and Resources), September 2022.

¹³ See Resource and Energy Quarterly (Department of Industry Science and Resources), September 2022.

¹⁴ See Application for Revocation and Substitution AA1000620 (10 August 2022), Operation and maintenance of LNG Facilities at page 8.

¹⁵ See Resource and Energy Quarterly (Department of Industry Science and Resources), September 2022.

¹⁶ See <https://www.energy.gov.au/data/states-and-territories>.

¹⁷ In 2022, 84% of Western Australia's domestic LNG was utilised by the large customers (mining, minerals processing and industrial operations sectors), with only around 15% of total demand comprising of residential, commercial, and small industrial consumers. It is expected that domestic gas demand in Western Australia will grow over the coming years with a number of gas-fuelled projects under construction (see 2022 Western Australian Gas Statement of Opportunities (Australian Energy Market Operator), 15 December 2022).

¹⁸ See 2022 Western Australian Gas Statement of Opportunities (Australian Energy Market Operator), 15 December 2022.

¹⁹ See <https://aemo.com.au/en/energy-systems/gas/wa-gas-bulletin-board-wa-gbb/about-the-wa-gas-bulletin-board-wa-gbb>.

Board is enabled by the *Gas Services Information Rules*²⁰ and captures certain data regarding the projects that are connected to a WA Gas Bulletin Board Pipeline.²¹

- 2.16. Under the *Gas Services Information Rules*, the Applicants are required to submit to the Australian Energy Market Operator a Medium Term Capacity Outlook for each of their domestic gas facilities²² at the end of each calendar month. The Medium Term Capacity Outlook must include all planned maintenance during the next 12 months which they reasonably expect to have a material impact on their capacity.²³ The Medium Term Capacity Outlook is then published on the WA Gas Bulletin Board at the end of each monthly reporting period. The Applicants that operate domestic gas facilities are required to submit a revised Medium Term Capacity Outlook to the Australian Energy Market Operator as soon as practicable if there is a material change to the information they have provided.
- 2.17. The Gorgon, Wheatstone, North West Shelf and Pluto projects all have domestic gas facilities and are therefore required to report under the *Gas Services Information Rules*. None of the LNG export facilities, irrespective of whether they also have domestic gas facilities, are required to report any information under those changes to the *Gas Services Information Rules*.²⁴
- 2.18. On 29 March 2022, the Australian Energy Market Operator submitted a Rule Change Proposal to make changes to the *Gas Services Information Rules* which would require:
- that any registered production facility²⁵ that truck gas from their facility directly to a customer must provide the Australian Energy Market Operator with data on the volume of trucked gas on a monthly basis
 - for the Australian Energy Market Operator to publish trucked gas data on the WA Gas Bulletin Board in a monthly report.
- 2.19. These amendments were subsequently approved and took effect on 1 December 2021 with the Australian Energy Market Operator commencing publication of trucked gas information on the WA Gas Bulletin Board in January 2023.
- 2.20. The proposal arose because Woodside is trucking gas directly to customers from its Pluto LNG export facility and, since the gas does not enter the Western Australian domestic pipeline network, it is not currently reported on under the *Gas Services Information Rules*.²⁶

3. Consultation

²⁰ Part 4 of the *Gas Services Information Rules*.

²¹ As defined in Schedule 1 of the *Gas Services Information Rules*.

²² These are referred to in the *Gas Services Information Rules* as Registered production facilities. 'Registered production facilities' are defined as a facility at which natural gas is produced for injection into one or more Western Australian Gas Bulletin Board Pipelines: Schedule 1 - Glossary of the *Gas Services Information Rules*.

²³ 'Material impact' in this respect is defined as a change to capacity that is more than the greater of 10% of Nameplate Capacity or 10 TJ per day: sections 64(5) and 71(5) of the *Gas Services Information Rules*.

²⁴ See Applicants' Response to ACCC Questions, 26 January 2023. Available on the ACCC's [public register](#).

²⁵ As defined under Schedule 1 - Glossary of the *Gas Services Information Rules*. This includes all of the Applicants' domestic gas facilities.

²⁶ See <https://www.wa.gov.au/government/announcements/decision-trucked-lng-information-the-gas-bulletin-board>.

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Conduct.
- 3.2. The ACCC invited submissions on the application for re-authorisation from a range of potentially interested parties including maintenance service providers, participants in domestic energy markets and relevant state and federal government and regulatory bodies.²⁷ The ACCC received 6 submissions.
- 3.3. The Department of Jobs, Tourism, Science and Innovation on behalf of the Western Australian Government (the **Department**) submit that the proposed 10 years' timeframe is too long given anticipated dynamic changes in the Western Australian gas market. The Department submits the Condition should be retained for information transparency purposes should a trading hub emerge during the period of authorisation, noting recent discussions by the Western Australian Gas Advisory Board as recently as October 2021 around the development of a WA gas trading hub.
- 3.4. The Northern Territory Government Gas Taskforce (the **NT Government**) supports the application and submits that re-authorisation will allow the Northern Territory's LNG producers to keep skilled contractors in Australia by providing a means for consistent work in a timely manner.
- 3.5. The Australian Energy Market Operator made a submission in the context of its role in the Western Australian gas and electricity markets. This includes the administration of the WA Gas Bulletin Board. The Australian Energy Market Operator is supportive of measures that reduce domestic gas supply risks, including the coordination of outages of gas market participants and information transparency on gas production availability. The Australian Energy Market Operator notes that, to date, Chevron and Woodside²⁸ have been compliant with their reporting obligations. In these circumstances, the Australian Energy Market Operator does not hold concerns regarding the removal of the Condition or the proposed re-authorisation period of 10 years where the Applicants remain compliant with their reporting requirements on the WA Gas Bulletin Board. The Australian Energy Market Operator submits that the reporting requirements on the WA Gas Bulletin Board are ostensibly more extensive than the Condition on the existing authorisation and considers that the re-authorisation does not conflict with the objective of reducing domestic gas supply risks.
- 3.6. AGL Energy Limited (**AGL**) does not oppose the application for re-authorisation. However, AGL submits that, if granted, re-authorisation should be limited to a period of 5 years and the Condition imposed in the original authorisation should be continued. AGL submits that while there may be public benefits associated with the authorisation at present, the position may be different in 5 years due to changing market conditions. AGL notes that there is currently a large degree of volatility and uncertainty in the east coast gas market and that there are significant but not yet commercialised gas supplies in the Northern Territory. Given the situation in the east coast gas market, AGL suggests that the Northern Territory may need to supply gas to the east coast market in the foreseeable future which, it believes, could change market conditions over the next 5 years. AGL also submits that while the proposed coordination offers public benefits, in light of the resultant information asymmetry between the Applicants and other market participants, a condition which requires the publishing of scheduled maintenance information that they have shared with each other is appropriate.

²⁷ A list of the parties consulted and the public submissions received is available from the ACCC's [public register](#).

²⁸ As the only Applicants required to report maintenance information under the *Gas Services Information Rules*.

- 3.7. Energy Matrix Group owns and operates Gas Trading Australia (**gasTrading**). As of 1 July 2022, gasTrading manages the gas supply for 34 sites, representing 350 TJ per day of gas consumption or supply. gasTrading has also established the gasTrading spot market in Western Australia which services Western Australian Commercial and Industrial gas users and provides bespoke gas transport services to 21 gas consumer sites. Energy Matrix Group supports the re-authorisation but has concerns as to the removal of the Condition and the 10 year period of re-authorisation sought by the Applicants. Energy Matrix Group submits that while there is no Australian Energy Market Operator operated gas trading hub or short term trading market in Western Australia, a vibrant short term trading market does exist in Western Australia, notably those operated by gasTrading and Agora Gas. Energy Matrix Group notes the importance of timely information to ensure the continuity of trading in these markets. Energy Matrix Group submits that if the Condition is maintained in re-authorisation, they would support the 10 year re-authorisation period, however not without reservation given the speed of change in the relevant markets. Ultimately, Energy Matrix Group supports the 10 year re-authorisation period provided the Condition is maintained.
- 3.8. DomGas Alliance is a member-driven industry body representing natural gas users, infrastructure investors and producers in Western Australia that was formed in 2006 in response to a shortage of gas supply for new developments in Western Australia. DomGas Alliance made a submission commenting on the application for re-authorisation, noting concerns about the possible impacts of the re-authorisation, specifically surrounding maintenance outages and the possible effects on domestic supply.
- 3.9. DomGas Alliance submits that the Applicants should be required to demonstrate that the scheduling of their maintenance does not adversely impact domestic gas availability over that of LNG exports. DomGas Alliance notes that the Western Australian domestic gas market is highly concentrated, with few sellers and that there are several factors which have caused limited upstream competition and limited active marketing of domestic LNG in Western Australia. In this highly concentrated selling market, there is a danger of information symmetry and DomGas Alliance submits that it would benefit market efficiency for as much detail as possible to be made available as to planned maintenance outages on the WA Gas Bulletin Board. DomGas Alliance submits that a condition which requires the Applicants to disclose information shared between them at a more detailed level than previously made public is likely to be beneficial, and that any information shared between the Applicants should be made available on the WA Gas Bulletin Board.
- 3.10. In response to the issues raised by interested parties, the Applicants provided three further submissions. Relevantly, the Applicants submit:
- That the submissions from the Australian Energy Market Operator, NT Government and AGL do not raise any suggestion that re-authorisation should not be granted or identify any public detriments that would result from re-authorisation being granted.
 - That, while they agree with Energy Matrix Group that there are other spot and short duration markets in addition to the Australian Energy Market Operator market, in Western Australia the majority of LNG continues to be supplied under long-term contracts with only small volumes traded on spot and short

term markets.²⁹ The Applicants submit that reporting under the *Gas Services Information Rules* require the Applicants to report any planned service work over the following 12-month period that is expected to have a material impact on the capacity of a Registered Production Facility and must, as soon as practicable, report any material changes to this information as they arise. Information relevant to the facilities that may sell gas into spot and short duration markets is therefore available on the Gas Bulletin Board and provided 12-months in advance, such that the information asymmetry identified by Energy Matrix Group and associated damage to gas trading markets does not occur.

- With reference to the submission by DomGas Alliance, the Applicants acknowledge that DomGas Alliance has raised some concerns about the re-authorisation but submit that DomGas Alliance have proffered no evidence in support of their submissions. The Applicants submit that these concerns and DomGas Alliance's submission more broadly reflect a misunderstanding of the Conduct and the Condition.
- That the positions proffered in support of the submissions by DomGas Alliance and AGL regarding the Condition and the length of authorisation are factually inaccurate and, in any event, are not a basis for the imposition of a reporting condition or re-authorisation being granted for less than 10 years.

3.11. In response to the submission made by the Department regarding potential changes to the Western Australian domestic gas market and the development of a trading hub, the Applicants submit that the Department did not provide any evidence to justify these submissions and that it did not explain why such changes provide a basis for a shorter period of re-authorisation or the inclusion of the Condition. Specifically, in regards to potential changes to the market, the Applicants submit that:

- **Forecast of a tight market by the Australian Energy Market Operator in its 2022 WA Gas Statement of Opportunities** – the Conduct will not have any impact on the production of gas for supply by any of the Applicants into the Western Australia and Northern Territory domestic gas markets. The Applicants further submit that, in any case, any impact on the availability of domestic gas from a domestic gas facility in Western Australia will be reported under the *Gas Services Information Rules* on the WA Gas Bulletin Board.
- **Improved gas market transparency** – any improvement to gas market transparency would only serve to support the Applicants' position, as increased transparency would weaken any potential theory of harm in relation to the Conduct.
- **Third party tolling of gas resources** – it is unclear how the tolling of gas (if this change were to eventuate) could impact market dynamics, given that it would not involve a change to operations because the parties subject to the authorisation would not change and would continue to operate the LNG export facilities. Further, the applicants submit that because tolling contracts are entered into on a long-term basis, there is no ability for parties to enter these contracts in response to a short-term shutdown procedure.

²⁹ The Applicants submit that spot volumes make up a very small proportion of the overall LNG market (i.e., ~1-3% of total volumes).

- **Decarbonisation and greater penetration by renewables and hydrogen, including the transportation of hydrogen through existing networks** – decarbonisation would only serve to reduce the significance to the local economy of hydrocarbon production and in that context would reduce any public detriment associated with the re-authorisation. The Applicants submitted that this factor is not relevant to the length of re-authorisation given that major renewables and hydrogen developments are unlikely to alter the LNG supply chain in the next 10 years. The Applicants further submitted that it is also not relevant to the Condition as the reporting of maintenance of LNG production facilities is unlikely to impact renewables projects.
- **The development of a transparent trading hub** – the possibility of a transparent trading hub being developed and starting to operate in the next 10 years does not justify re-authorisation for a period of less than 10 years. The Applicants submit that the likelihood of a liquid and high volume gas trading hub or short term trading market operating in Western Australia is low. Even if a trading hub is developed in the next 10 years, the Applicants submit that additional reporting conditions placed upon LNG export facilities that do not supply to the Western Australia domestic market will not improve gas market transparency or efficiency.

3.12. With respect to the Condition, the Applicants submit that the Conduct only relates to their LNG export facilities and will therefore not have any direct impact on the existing domestic gas supply arrangements. They submit that any impact on the availability of domestic gas in Western Australia is already reported under the *Gas Services Information Rules* and agree with submissions from DomGas Alliance and the Australian Energy Market Operator that this reporting serves a useful function and addresses transparency issues that may arise between the Applicants and those acquiring domestic gas.

3.13. With respect to the length of authorisation, the Applicants submit, with reference to the submission by AGL that a shorter period of authorisation should be granted, that potential changes in the domestic LNG supply market conditions are not a basis for re-authorisation for less than 10 years. The Applicants submit that even if plans are put in place for gas produced in the Northern Territory to be supplied to the East Coast, this would not be relevant to three of the four Applicants and is not relevant to INPEX's Ichthys facility as it does not commercially supply domestic gas, does not participate in the domestic market and has no plans to do so in the future.

3.14. The Applicants also submit that the Australian Energy Market Operator is uniquely well placed to assess the relevant issues in an independent way and did not hold concerns regarding the removal of the Condition where the Applicants remain compliant with their requirements under the *Gas Services Information Rules* and that it did not have concerns regarding the proposed 10-year re-authorisation period.

3.15. Public submissions by the Applicants and interested parties are on the [public register](#) for this matter.

4. ACCC assessment

4.1. The ACCC's assessment of the Conduct is conducted in accordance with the relevant authorisation test contained in the Act.

4.2. The Applicants have sought authorisation for Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may

substantially lessen competition within the meaning of sections 45 and 47 of the Act. Consistent with subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (**authorisation test**).

Relevant areas of Competition

- 4.3. To assess the likely effect of the Conduct, the ACCC identifies the relevant areas of competition likely to be impacted. In this instance, the ACCC considers that the precise definition of the relevant areas of competition is not required for assessing the Conduct. The ACCC can consider the areas of competition in a broad sense when assessing the public benefits or detriments likely to arise the Conduct.
- 4.4. The ACCC has assessed the Conduct in the context of the following areas of competition:
- maintenance services in Australia for infrastructure used to process and prepare gas for the domestic market and for LNG exports. These services are supplied by a range of Australian and international specialists, and utilised by LNG producers in Western Australia, the Northern Territory, and Queensland and may be utilised by future LNG production projects during the period of authorisation
 - various markets for inputs to the supply of maintenance services in Australia, including transport and accommodation services
 - the wholesale supply of gas in Western Australia and the Northern Territory
 - industries in Western Australia and the Northern Territory for which wholesale gas is an input to production, including gas-fired electricity generation and retail gas supply.

Future with and without the Conduct

- 4.5. In applying the authorisation test, the ACCC compares the likely future with the Conduct that is the subject of the authorisation to the likely future in which the Conduct does not occur.
- 4.6. With the Conduct, the Applicants will continue to coordinate on the scheduling of maintenance events at the LNG export facilities. They will also exchange information about maintenance techniques, potential resource constraints and contractors they have employed.
- 4.7. In the future without the Conduct, the ACCC considers that each Applicant would independently plan and schedule maintenance at the LNG export facilities. Each Applicant would not share information with other Applicants, but would likely become aware of at least some aspects of their competitors' maintenance plans and processes from other sources, such as:
- industry participants
 - maintenance service providers

- maintenance information published on the Western Australian Gas Bulletin Board.³⁰
- 4.8. The Applicants submit that scheduling maintenance campaigns in any given calendar year is influenced by regulatory requirements, external drivers (for example, inclement weather) and internal company considerations focused on minimising downtime and interruptions to production and exports. The Applicants submit that, in the North West region of Australia, weather has a significant influence on the scheduling of maintenance of LNG export facilities.³¹
- 4.9. Given the optimal window for LNG maintenance is narrow, in the future without the Conduct, the ACCC considers that it is likely two or more of the Applicants will schedule concurrent or overlapping shutdown maintenance at the LNG export facilities. As a result, there is a possibility that suitably qualified and skilled personnel and equipment may be unavailable for some planned maintenance activities, causing longer than anticipated shutdowns of the LNG export facilities.

Public benefits

- 4.10. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

*... we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as 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.*³²

- 4.11. The Applicants submit the existing authorisation has given rise to a number of significant public benefits, which will continue should re-authorisation be granted. These were: safety considerations; maximisation of gas production; availability of skilled workers and equipment; and cost savings.
- 4.12. The ACCC has considered those potential public benefits under the following headings:
- improved efficiency in the maintenance of LNG export facilities
 - greater reliability of LNG production
 - reducing safety risks.

Improved efficiency in the maintenance of LNG export facilities

- 4.13. The Applicants submit that:

³⁰ Pursuant to the *Gas Services Information Rules*.

³¹ The Applicants submit that the optimal windows for LNG train shutdowns in the North West region are between April to May and September to October due to a number of reasons including tropical cyclone season, high rainfall and thunderstorm activity, higher efficiency of LNG trains at lower ambient temperatures and overseas demand for LNG exports increasing during the northern hemispheres winter months.

³² 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 shutdowns are labour and capital intensive and without the Conduct, there is a material risk that maintenance and shutdowns will occur concurrently at more than one LNG export facility. This will have the effect of a more challenging procurement process for the supply of skilled contracts and appropriate equipment to undertake maintenance, including the possibility that these services are not available at all.
 - The demand for technical maintenance or associated services has not been reduced as a result of the Conduct and that the Conduct has assisted in mitigating some of the constraints the Applicants would otherwise experience in sourcing skilled contractors and equipment to undertake maintenance. Re-authorising the Conduct would assist the Applicants to continue to address resourcing constraints which supports their maintenance campaigns, leading to business continuity.
- 4.14. The ACCC notes the Applicants' submission that maintenance programs can require a large number of skilled workers for periods of up to 40 days, depending on the complexity and extent of the work.³³ Further, planning for a major shutdown can take between 18 and 24 months and requires significant pre-planning and the coordination of limited resources.³⁴
- 4.15. The ACCC understands that the LNG export facilities are likely to schedule maintenance during optimal windows, avoiding adverse weather conditions and avoiding periods of high demand and maximum equipment efficiency.³⁵
- 4.16. The Australian Energy Market Operator submits it is supportive of measures which reduce domestic gas supply risks, including the coordination of outages. The Australian Energy Market Operator noted that these measures were especially important given concerns about ongoing coal supply as increased gas consumption will likely be required for electricity generation.
- 4.17. The ACCC accepts that:
- major maintenance at the LNG export facilities is labour intensive
 - maintenance at the LNG export facilities requires specialist equipment and a significant number of highly skilled maintenance technicians³⁶
 - maintenance campaigns require significant pre-planning and the coordination of limited resources
 - there is a limited supply of specialist maintenance contractors and original equipment manufacturer vendors required to support LNG shutdowns and that

³³ See Application for Revocation and Substitution AA1000620 (10 August 2022), Operation and maintenance of LNG Facilities.

³⁴ See Application for Revocation and Substitution AA1000620 (10 August 2022), Operation and maintenance of LNG facilities.

³⁵ The Applicants submit that the optimal windows for LNG train shutdowns in the North West region are between April to May and September to October due to a number of reasons including tropical cyclone season, high rainfall and thunderstorm activity, higher efficiency of LNG trains at lower ambient temperatures and overseas demand for LNG exports increasing during the northern hemispheres winter months.

³⁶ The Applicants submit that, in addition to core operational workforce, approximately 600 to 1,600 specialist workers are required to support a major shutdown at each LNG export facility: see Application for Revocation and Substitution AA1000620 (10 August 2022), 23.

these same technicians also support the maintenance campaigns of other oil and gas facilities within Australia and internationally

- the LNG export facilities are located in remote parts of Australia
- the Applicants incur mobilisation, demobilisation and other associated costs to get these specialist contractors and vendors to the North West region of Australia as part of each maintenance campaign.

4.18. In light of these factors, the ACCC considers that coordination between the Applicants about the scheduling and sequencing of scheduled maintenance activities for the LNG export facilities is likely to result in a more efficient use of these limited resources and that this is likely to represent a public benefit.

4.19. The ACCC considers that, without the Conduct, each Applicant would be likely to act in their own interests when seeking to acquire maintenance services for their respective LNG export facilities. Given the likelihood that each of the Applicants would schedule maintenance for their respective LNG export facilities within optimal windows and the submission by the Applicants regarding the long lead-times for maintenance services, the ACCC considers that, without the Conduct, there is a risk that the supply of maintenance services may be unable to readily respond to situations of high demand for their services.

4.20. The ACCC considers that this could lead to undesirable market outcomes and could increase the risk of LNG export facilities potentially facing unexpected and/or extended shutdowns. By enabling the Applicants to better coordinate their demand for maintenance services, the ACCC considers that the Conduct increases the likelihood of better market outcomes for the supply of maintenance services and that this is likely to represent a public benefit.

4.21. The ACCC accepts that the Conduct is likely to ensure that maintenance of LNG export facilities can be planned with confidence that suitably qualified and skilled workers and the necessary equipment will be available to complete the work. Compared to the future without the Conduct, where maintenance would likely be scheduled on an individual basis and may therefore be concurrent rather than consecutive (resulting in skilled worker and equipment shortages), the ACCC considers that the Conduct is likely to result in public benefits in the form of more efficient maintenance of the LNG export facilities.

Greater reliability of LNG production

4.22. The Applicants submit that:

- The continued coordination of shutdowns and campaign maintenance will avoid the risk of LNG production being affected at any of the LNG export facilities and results in the maximisation of production of gas. This leads to a reliable supply of LNG by the Applicants to its overseas customers, particularly in Asia, ensuring that the industry located in the North West region of Australia continues to remain internationally competitive.
- In order to remain internationally competitive, they need to be able to guarantee the supply of LNG to their customers. Failure to meet contracted LNG volumes would give rise to financial penalties and damage the industry's reputation more generally as a reliable and competitive source of LNG.
- Weather is a major factor in maximising LNG production in the North West region of Australia, because:

- overseas demand for LNG is higher in the northern hemisphere winter months of December to February and it is undesirable to take LNG export facilities offline for maintenance during these periods of high demand.
 - efficiency of LNG trains is higher at lower ambient temperatures and the lower ambient temperatures from June to August enable LNG export facilities to marginally increase production.
- 4.23. The ACCC acknowledges the Applicants submission that they will face significant competition from LNG producers in other countries, particularly within the Middle East and North America. Given the Applicants' submission on the importance of guaranteed supply of LNG to customers on their ability to remain internationally competitive, the ACCC acknowledges that the maximisation of LNG production and the reduction of extended shutdowns could assist the Applicants in meeting their contracted LNG volumes.
- 4.24. Routine maintenance and inspections are important to ensure continued safe operation over the life of LNG export facilities. Coordinating maintenance scheduling should reduce the likelihood that multiple LNG export facilities are offline simultaneously. This reduces the potential for both key maintenance service providers to be waylaid on other maintenance work and for equipment shortages because equipment is being used at another facility.
- 4.25. The ACCC considers the Conduct is likely to result in public benefits by reducing LNG export facility downtime, thereby increasing the reliability of the supply of LNG. The ACCC notes there is some overlap between the claimed benefits of improved efficiency and increased output, and the same public benefit should not be counted twice, but in any event the ACCC considers that both are beneficial outcomes of the Conduct.
- 4.26. The ACCC considers that the public benefits associated with the increased reliability of LNG production and exports is linked to domestic gas markets via the operation of the WA Policy. As set out in paragraph 2.8 above, the WA Policy requires the LNG export projects to, amongst other things, reserve gas for domestic use that is equivalent to 15% of LNG export volumes. The ACCC therefore considers that, to the extent that the coordination of maintenance between the Applicants results in a greater reliability of LNG production, the Conduct is also likely to result in a public benefit for domestic markets.
- 4.27. The ACCC has also considered whether the environmental impacts of an increased LNG production would diminish this public benefit and/or potentially create public detriments. On the information available, the ACCC cannot quantify the environmental impact from the increased LNG production in Western Australia and the Northern Territory. The ACCC has taken into account the important role of both LNG exports and domestic gas production to the Western Australia and the Northern Territory economies and the large reliance by both states on natural gas as part of their overall energy supply,³⁷ as well as the role gas may play in Australia's plan towards a transition to net-zero emissions.³⁸ The ACCC also acknowledges, to the extent that increased gas production results in less reliance on other sources of energy that

³⁷ For example, see <https://www.energy.gov.au/data/australian-energy-mix-state-and-territory-2020-21#:~:text=Coal%20provided%20more%20than%20one,primary%20energy%20mix%20in%20Tasmania>.

³⁸ For example, see 2022 Western Australian Gas Statement of Opportunities (Australian Energy Market Operator), 15 December 2022.

create greater carbon emissions (such as coal-fired electricity generation), that this could potentially result in a public benefit.

Reducing safety risks

- 4.28. The Applicants submit that the maintenance and shutdowns at the LNG export facilities involve high-risk activities, and the risk of safety incidents will inevitably be higher if two or more shutdowns occur at the same time. This is particularly relevant for the facilities that are in close proximity, placing a strain on emergency services. The Conduct will assist in the management of safety issues by reducing activity levels at multiple LNG export facilities and reduce the strain on emergency response resources if there is a safety incident.
- 4.29. The ACCC accepts that conducting LNG export facility maintenance involves workers completing higher risk activities and therefore an increased focus on safety to reduce risk is appropriate.
- 4.30. In the event a significant safety incident occurs at two or more facilities, particularly at the Gorgon, Wheatstone, North West Shelf and Pluto facilities, which are closely located, emergency services may be placed under additional pressure to respond.
- 4.31. The ACCC considers that the Conduct is likely to result in public benefits to the extent that it increases the likelihood that emergency services will be better able to respond to safety incidents at the LNG export facilities in circumstances where the coordination of maintenance under the Conduct will allow the Applicants to limit and/or prevent, as is reasonably practicable, shutdowns occurring simultaneously at two or more LNG export facilities.

Public detriments

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

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.³⁹

- 4.33. The ACCC has considered the following potential public detriments:

- information asymmetry between the Applicants and participants in the relevant markets
- reducing competition for maintenance services
- potential to facilitate unauthorised coordination.

Information Asymmetry

- 4.34. In 2018, interested parties raised significant concerns about the potential for the Conduct to create damaging information asymmetries in domestic gas markets. These concerns focused on the Applicants' participation in domestic gas markets. The ACCC agreed that the authorised conduct could allow the Applicants to gain knowledge of coordinated maintenance schedules and trade using this knowledge to the detriment of entities other than the Applicants. At the time the existing authorisation was

³⁹ Re 7-Eleven Stores (1994) ATPR 41-357 at 42, 683.

considered, interested parties submitted, and the ACCC agreed, that a gas trading hub or short term trading market would likely be developed and commence operations in Western Australia in the near future and that these circumstances could give rise to information asymmetries. It was also noted that there was already a gas trading market operating in Western Australia, which it was submitted involved significant volumes of gas, and that this was likely to commence in the Northern Territory in the future.

- 4.35. The ACCC considered that it was likely the Applicants would participate in domestic gas trading markets during the period of authorisation, with or without the establishment of a formal gas trading hub or short term trading market within that time, and this would give rise to an information asymmetry. The ACCC therefore granted authorisation in 2018 with the Condition. This was intended to address the potentially significant information asymmetry and to give all market participants access to information regarding the maintenance scheduled at the Applicants' facilities and therefore address the competitive detriment arising from the Conduct. With the Condition of authorisation, the ACCC was satisfied that the Conduct was likely to result in a public benefit that would outweigh the likely public detriment.
- 4.36. The Applicants now submit that no gas trading hub or short term trading market has been developed or commenced during the period of the existing authorisation and that no circumstances have emerged that suggest either will be developed over the term of the reauthorisation sought.⁴⁰ They therefore consider that no significant information asymmetry problems are likely to arise in that time.
- 4.37. On the other hand, the ACCC notes that the Department has submitted that a transparent trading hub could be developed and start operating in the next 10 years, which could create greater potential for LNG exporters to impact available supply and prices in the Western Australian domestic gas market. The Department submits that, in that scenario, the domestic market would have no visibility of information that would allow it to respond to planned maintenance; this is important as, during periods of maintenance, LNG export facilities may need to divert gas from the local market or withdraw gas from storage. The ACCC further notes Energy Matrix Group's submission that there is a vibrant market for trading gas in Western Australia and that it can be reasonably expected that a market for trading gas in the Northern Territory will develop in the near to medium term.⁴¹
- 4.38. The ACCC also considers that an information asymmetry exists regardless of whether a trading hub or short term trading market is created. For example, if a trading hub or short term trading market is created, the ACCC considers that the Applicants may have the ability to leverage their knowledge of when each of the LNG export facilities go offline for maintenance to sell excess gas on the domestic market, or otherwise trade advantageously in the affected markets to the detriment of other market participants. Even without a trading hub or short term trading market, though, the ACCC considers that information asymmetry may allow the Applicants an advantage in 'off market' transactions, such as bilateral gas supply arrangements. Electricity markets may be affected too, as significant quantities of electricity are produced in

⁴⁰ See Application for Revocation and Substitution AA1000620 (10 August 2022), Operation and maintenance of LNG facilities at page 14 – 15.

⁴¹ The ACCC notes the Applicants' submission that uptake on the spot trading markets in Western Australia is currently relatively limited. See Application for Revocation and Substitution AA1000620 (10 August 2022), Operation and maintenance of LNG facilities at page 15.

gas-fired generators in Western Australia. Electricity is also generated using gas-fired generators in the Northern Territory.

- 4.39. The Applicants submit that the information they are required to report to the Australian Energy Market Operator under the *Gas Services Information Rules* is more extensive than the information that is reported under the Condition and that accurate maintenance information is being published on the WA Gas Bulletin Board for their domestic gas facilities, thereby mitigating any concern about information asymmetry.⁴² The Applicants submit that the relevant market participants in the Western Australian domestic gas market are well informed on the planned maintenance at each of the domestic gas facilities via the reporting on the WA Gas Bulletin Board.⁴³
- 4.40. However, the Applicants are only required to report under the *Gas Services Information Rules* on planned maintenance at their domestic gas facilities. The *Gas Services Information Rules* do not require the Applicants to report on information shared between themselves or coordination undertaken in relation to maintenance services at their LNG export facilities.
- 4.41. The ACCC notes that the Ichthys LNG export facility, located in Darwin, Northern Territory, is connected to the Power and Water Corporation pipeline network and has the necessary commercial and physical arrangements in place to supply gas to the Northern Territory domestic market on an emergency basis. The ACCC also notes that the Ichthys LNG export facility is currently exempt from reporting to the Australian Energy Market Operator's during the National Gas Rules.⁴⁴ The ACCC therefore considers that there is no maintenance information reported for the Ichthys LNG export facility other than that required by the Condition.
- 4.42. The ACCC considers that the reporting required under the current iteration of the *Gas Services Information Rules* will prevent some of the information asymmetries between the Applicants and other market participants about scheduled downtime of their domestic gas facilities and the associated public detriment. However, the ACCC notes that even with the reporting requirements under the *Gas Services Information Rules* the Applicants would not report maintenance events occurring on domestic gas facilities outside the 12-month window specified under the Medium Term Capacity Outlook.
- 4.43. In light of this, the ACCC considers that the Conduct gives rise to information asymmetries, which are likely to generate anticompetitive detriments.

Reducing competition for maintenance services

- 4.44. Coordination of maintenance events by the Applicants involves the sharing of information about service providers in relation to maintenance at the LNG export facilities. 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 position weakened as the timing for when their services are required will already have been allocated between the Applicants.

⁴² See Applicants' Response to ACCC Questions, 26 January 2023. Available on the ACCC's [public register](#).

⁴³ See Applicants' Response to ACCC Questions, 26 January 2023. Available on the ACCC's [public register](#).

⁴⁴ On 15 August 2019 the Australian Energy Market Commission made a final rule providing an exemption from Northern Territory LNG facilities, Darwin LNG and Ichthys LNG, from Bulletin Board information reporting requirements. The Final Determination is available here: <https://www.aemc.gov.au/sites/default/files/2019-08/Final%20determination.pdf>.

- 4.45. As part of the consultation process for the existing authorisation, the ACCC contacted maintenance service providers. Two service providers made submissions in support of the existing authorisation and one of them made submissions noting that the proposed conduct would result in more efficient utilisation of labour and equipment. There were no submissions made by maintenance service providers which raised concerns about coordination between the Applicants reducing their ability to compete for contracts.
- 4.46. The ACCC again contacted several maintenance service providers as part of the re-authorisation consultation process, however none of the providers made any submissions.
- 4.47. The ACCC considers that while the Conduct may lead to less independent rivalry and competition amongst the Applicants for the purchase of maintenance services for their LNG export facilities, it is unlikely this will give rise to significant public detriment given the benefits that are likely to be obtained by the more efficient use of limited maintenance services resources and the likelihood that this will result in overall better market outcomes. The ACCC considers that any public detriment arising from this would likely be outweighed by the public benefits generated by the Conduct.
- 4.48. The ACCC has also considered whether the Conduct may lead to greater concentration for the supply of maintenance services. The ACCC considers that this is also unlikely to give rise to a significant public detriment given the Applicants will have an incentive to promote competition among maintenance service providers, as creating a dominant maintenance service provider would limit the Applicants' choice and likely increase their costs.

Potential to facilitate unauthorised coordination

- 4.49. As with any application for coordinated conduct, authorisation raises the potential for coordination beyond the scope of the conduct authorised. While the 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 to coordination on prices or the joint acquisition of maintenance services that would significantly reduce the ability of service providers to compete for contracts and secure business on fair and reasonable terms.
- 4.50. Neither the existing authorisation nor the *Gas Services Information Rules* enable the Applicants to coordinate maintenance services at any domestic gas facilities. The reporting obligations under the *Gas Services Information Rules* are limited to submitting to the Australian Energy Market Operator a Medium Term Capacity Outlook for each of their domestic gas facilities at the end of each calendar month which includes all planned maintenance during the next 12 months which they reasonably expect to have a material impact on their capacity.
- 4.51. As some of the Applicants also have domestic gas facilities, there is some risk that information shared between the Applicants in coordinating maintenance services at their LNG export facilities could give rise to unauthorised coordination in relation to the domestic gas facilities.
- 4.52. The Applicants submit that there has been no such unauthorised coordination during the period of the existing authorisation, nor any complaints of such conduct. The ACCC notes that no concerns about such coordination have been raised during the period of the existing authorisation. The ACCC also notes that such conduct does not fall within the scope of the Conduct for which re-authorisation is sought, and to the

extent such conduct breached the Act it would not fall within the protection from legal action that re-authorisation would grant.

Balance of public benefit and detriment

4.53. The ACCC considers that the Conduct is likely to result in public benefits in the form of:

- improved efficiency in the maintenance of LNG export facilities
- greater reliability of LNG production
- reducing safety risks.

4.54. However, the ACCC considers that the Conduct is also likely to generate some information asymmetry and may generate a potentially significant lack of transparency that is likely to result in public detriment.

4.55. In order to address this public detriment, the ACCC is proposing to grant re-authorisation with substantially the same condition that applied in the existing authorisation.

Condition

4.56. The Applicants submit that the Condition is no longer required. Further to their submission as outlined at 1.12-1.14 above, the Applicants submit that a reporting condition should not be imposed on the basis that a similar condition is imposed on East Coast LNG producers.⁴⁵ The Applicants submit that, while the East Coast LNG producers engage in similar conduct, they operate in a structurally different market to that of the Applicants. The Applicants further submit that the Conduct must have a direct impact on the market or the supply or acquisition of domestic gas in the Northern Territory or Western Australia to justify a reporting condition being imposed and that such an impact does not exist.

4.57. The ACCC notes the Australian Energy Market Operator's view that it does not hold concerns regarding the removal of the Condition. In its submission, the Australian Energy Market Operator noted that the reporting obligations for the Applicants under the *Gas Services Information Rules* are ostensibly more extensive than the reporting conditions imposed by the Condition and that the terms of the re-authorisation do not conflict with the Australian Energy Market Operator's objective of reducing domestic gas supply risks.

4.58. The ACCC also acknowledges the Applicants' submission that reporting both under the Condition⁴⁶ and to the Australian Energy Market Operator may create inefficiencies, additional costs, and allocation of resources, and could also result in inconsistency and disparity between the two information sets. However, the ACCC does not agree that an additional burden arises, given the information reported under the *Gas Services Information Rules* relates only to domestic facilities and not to the Applicants' LNG export facilities. The ACCC further notes submissions by the

⁴⁵ See ACCC, Authorisation AA1000544 (24 February 2021). Available on the ACCC's [public register](#).

⁴⁶ The Applicants submitted that, since the Condition of the existing authorisation came into force, there have been 11 maintenance events reported by the Disclosing Producers pursuant to the Condition.

Department and the Energy Matrix Group which support retention of the Condition, which are outlined in detail in section 3 above.

- 4.59. The ACCC considers that the Condition is appropriate because of the circumstances in the Western Australia market. Those circumstances include that the Applicants are not required to report the scheduled maintenance on the LNG export facilities under the *Gas Services Information Rules*, while at the same time some of the Applicants would be competing for the limited supply of maintenance services for their domestic gas facilities. Under the Conduct the Applicants would be authorised to make and give effect to arrangements or understandings regarding the sequencing and timing of the conduct of scheduled maintenance at their LNG export facilities. The Applicants submit that the planning and coordination of these maintenance activities may take place up to 18 to 24 months before the maintenance occurs. In these circumstances the Applicants could have maintenance schedules in place well before any reporting requirement under the *Gas Services Information Rules* for any domestic gas facilities comes into effect.
- 4.60. The ACCC considers that the reporting requirement under the Condition will reduce the risk of any unauthorised coordination of maintenance services affecting the domestic gas facilities and will provide transparency and oversight as to what information is shared and maintenance is coordinated at the LNG export facilities.
- 4.61. The ACCC is therefore proposing to impose a condition of authorisation which would require the Applicants (except Shell in relation to the Prelude LNG export facility) to publicly disclose all maintenance schedule information that they have shared with one another (including, for the avoidance of doubt, maintenance schedule information that goes beyond a 12 months' period outlook) and ensure that that information remains accurate. A copy of the proposed condition is at Attachment A.⁴⁷
- 4.62. The ACCC considers that it is not appropriate for the proposed condition to apply to Shell in relation to the offshore Prelude LNG export facility as it has no connection to the Western Australia or Northern Territory domestic gas network and the information asymmetry outlined above does not arise regarding this facility. In contrast, the other Applicants also supply gas to the Western Australian domestic market from their domestic gas facilities as part of the Gorgon, Wheatstone, North West Shelf and Pluto projects.
- 4.63. With the proposed condition, the ACCC is satisfied that the Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Conduct.

Length of authorisation

- 4.64. The Act allows the ACCC to grant authorisation for a limited period.⁴⁸ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
- 4.65. In this instance, the Applicants seek re-authorisation for 10 years.

⁴⁷ The proposed condition is substantially the same as the Condition imposed on the 2018 authorisation, however references to the National Gas Law and the National Gas Rules have been removed.

⁴⁸ Subsection 91(1) of the Act.

- 4.66. The Australian Energy Market Operator does not oppose re-authorisation for a further 10 year period. However, the ACCC notes Energy Matrix Group's reservation as to this duration, given that the Northern Territory and Western Australian markets were changing very quickly and that was an argument for a shorter term of authorisation.⁴⁹
- 4.67. The Department, DomGas Alliance and AGL support a shorter period for re-authorisation of 5 years due to changing market conditions. The ACCC notes AGL's submission that there is currently a large degree of volatility and uncertainty in the east coast gas market and that there are significant but not yet commercialised gas supplies in the Northern Territory which may be used to address the predicted shortfall in the East Coast.
- 4.68. The ACCC also notes the Applicants' opposition to a shorter authorisation period, and notes Energy Matrix Group's submission that if a condition is imposed, authorisation should be granted for 10 years.
- 4.69. The ACCC considers that the appropriate period for re-authorisation is 5 years given the ongoing changes to the relevant market, including the:
- transition to greater reliance on renewable energy sources
 - potential creation of short term trading market and/or spot trading market in Western Australia
 - uncertainty in the domestic energy markets in Western Australia and the Northern Territory, including gas and electricity
- 4.70. For these reasons, the ACCC proposes to grant re-authorisation for the Conduct for 5 years.

5. Draft determination

The application

- 5.1. On 10 August 2022, Chevron Australia Pty Ltd (**Chevron**), INPEX Operations Australia Pty Ltd (**INPEX**), Shell Australia Pty Ltd (**Shell**) and Woodside Energy Ltd (**Woodside**) (together, the **Applicants**) lodged an application to revoke authorisation AA1000396 and substitute authorisation AA1000620 for the one revoked (referred to as re-authorisation) in respect of the Conduct as described in paragraph 1.6.
- 5.2. The Applicants seek re-authorisation for 10 years.
- 5.3. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

The authorisation test

- 5.4. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Conduct.
- 5.5. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that with the proposed condition in Attachment A the Conduct would be

⁴⁹ See submission by Energy Matrix Group (16 September 2022) on the ACCC [public register](#).

likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Conduct, including any lessening of competition.

- 5.6. Accordingly, the ACCC proposes to grant re-authorisation with the condition at Attachment A of this Draft Determination.

Conduct which the ACCC proposes to authorise

- 5.7. The ACCC proposes to revoke authorisation AA1000396 and grant authorisation AA1000620 in substitution to enable the Applicants to coordinate the timing and scheduling of maintenance events at their LNG export facilities (as described in paragraph 2.3) and defined in paragraph 1.6 as the Conduct. The ACCC proposes to grant authorisation with the condition at Attachment A.
- 5.8. The ACCC proposes to grant authorisation in respect of Division 1 of Part IV of the Act, and sections 45 and 47 of the Act.
- 5.9. The ACCC proposes to grant authorisation AA1000620 for 5 years with the condition at Attachment A.
- 5.10. This draft determination is made on 17 March 2023.

6. Interim Authorisation

- 6.1. The ACCC has decided to suspend the operation of authorisation AA1000396 and grant interim authorisation in substitution for the authorisation suspended to enable the Applicants to engage in the Conduct as defined at paragraph 1.6. Interim authorisation is granted with the same condition as set out at Attachment A.
- 6.2. The ACCC may grant interim authorisation if it considers it appropriate to do so for, amongst other things, the purpose of enabling due consideration to be given to an application for the revocation of an authorisation and the substitution of a new one, or for any other reason.⁵⁰
- 6.3. The existing authorisation is due to expire on 24 March 2023. This is before the ACCC will make a final decision about the application for re-authorisation. In granting interim authorisation, the ACCC has taken into account:
- that it is unlikely that granting interim authorisation would have any significant impact on the status quo. Re-authorisation is sought on substantially the same terms as the existing authorisation and interim authorisation would allow the Applicants to continue to coordinate while the ACCC considers the application for re-authorisation.
 - that there is some urgency for the interim authorisation to provide the Applicants with certainty that they will be able to continue coordinating their maintenance activities beyond 24 March 2023 while the ACCC considers the application for re-authorisation
 - granting interim authorisation is unlikely to result in harm if the application for re-authorisation is later denied. The ACCC acknowledges that, if re-authorisation is ultimately not granted, it is likely that the Applicants would have

⁵⁰ Section 91(2) of the Act.

already shared some information regarding future maintenance activities beyond the period of authorisation. The ACCC considers that while the Applicants would be unable to retract or take back this information, they would be unable to continue to share information beyond what had already been shared.

- 6.4. Interim authorisation is granted in respect of Division 1 of Part IV of the Act and sections 45 and 47 of the Act.
- 6.5. Interim authorisation commences immediately and remains in place until it is revoked; the date on which the application for re-authorisation is withdrawn; or the date the ACCC's final determination comes into effect.

7. Next steps

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

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 Chevron, INPEX and/or Woodside (each a **Disclosing Producer**) disclose to another Disclosing Producer or Shell in the course of scheduling maintenance activities for LNG export facilities in Western Australia and/or the Northern Territory pursuant to the Conduct.
2. Each Disclosing Producer must publish the following information (**Maintenance Information**):
 - a. the Disclosing 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;
 - iii. Shutdown of greater than one LNG train but not greater than one and a half LNG trains;
 - iv. Shutdown of greater than one and a half of an LNG train but not greater than two LNG trains;
 - v. Shutdown of greater than two LNG trains but not greater than two and a half LNG trains;
 - vi. Shutdown of greater than two and a half LNG trains but not greater than three LNG trains;
 - vii. Shutdown of greater than three LNG trains but not greater than three and a half LNG trains;
 - viii. Shutdown of greater than three and a half LNG trains but not greater than four LNG trains;
 - ix. Shutdown of greater than four LNG trains but not greater than four and a half LNG trains; or
 - x. Shutdown of greater than four and a half LNG trains

where such Maintenance Information has been disclosed by a Disclosing Producer to another Disclosing Producer or to Shell pursuant to the authorisation as soon as is practicable after, but within 2 business days of, the disclosure. For the avoidance of doubt, the information to be published pursuant to this paragraph does not include preliminary discussions between Disclosing Producers and Shell for the purpose of determining possible dates for Scheduled Maintenance Activities.

3. For the purposes of this requirement of publication, a Disclosing Producer will reasonably expect the occurrence of Scheduled Maintenance Activities when the Disclosing 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 export 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 Disclosing Producer will satisfy the publication requirement under paragraph 2 if it 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 Disclosing Producer may be subject to change for a number of operational or commercial reasons. The provision of the Maintenance Information by the Disclosing Producer may be made subject to the following disclaimer:

"[insert name of Disclosing 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 Disclosing Producer]'s reasonable expectations and is subject to change."*

7. Each Disclosing Producer must, as soon as is practicable, amend and/or update its published Maintenance Information as necessary to ensure that the published Maintenance Information continues to accurately reflect the Disclosing Producer's reasonable expectations about Scheduled Maintenance Activities.
8. The Disclosing Producers will comply with the requirements in paragraphs 2 and 7 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 and:
 - i. one or more Disclosing 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 requirements in paragraphs 2 and 7 of this condition no longer apply.