Determination

Application for authorisation AA1000538
lodged by
Vintage Energy Ltd, Metgasco Ltd and Bridgeport (Cooper Basin) Pty Ltd
in respect of
joint marketing and supply of natural gas produced from the ATP Vali field
Authorisation number: AA1000538

13 May 2021

Commissioners:
Keogh
Rickard
Brakey
Court
Ridgeway

Summary

The ACCC has decided to grant authorisation to Vintage Energy Ltd, Metgasco Ltd and Bridgeport (Cooper Basin) Pty Ltd (together, the Applicants) to:

- **jointly market natural gas from the ATP 2021 Vali field (Vali field), being a new gas field, for a period of five years until 4 June 2026;**
- **within this five year period, make gas supply agreements (GSAs) with customers for the supply of gas from the Vali field that contain common terms and conditions (including price) and have a maximum gas supply term of 15 years; and**
- **give effect to any such GSAs entered into during the five year period until 4 June 2041.**

(the Proposed Conduct).

Beyond the five year period, the ACCC expects the Applicants will engage in separate marketing of gas from the Vali field.

The ACCC considers that the Proposed Conduct is likely to result in some public benefit by enabling earlier development of the Vali field to bring this new source of gas supply to customers sooner than otherwise. The ACCC also considers the Proposed Conduct is likely to result in a small public benefit in the form of reduced transaction costs and/or increased operating efficiencies for major customers, gas processing operators and gas transmission pipeline operators.

The ACCC has considered whether the proposed joint marketing is likely to result in public detriment by enabling the Applicants to supply at higher prices or on less flexible terms than they would otherwise offer. The ACCC's preliminary view is that the Proposed Conduct does not materially enhance the Applicants' ability to supply gas on less favourable terms because the annual quantity of gas estimated to be jointly marketed from the Vali field represents a very small proportion of total annual east coast market gas demand and the Applicants are likely to face significant competition from actual and potential rival suppliers of natural gas to commercial and industrial customers in South Australia, Queensland and New South Wales.

Overall, the ACCC considers that the Proposed Conduct is likely to result in a net public benefit and has decided to grant authorisation as outlined above.

1. The application for re-authorisation

1.1. On 10 December 2020, Vintage Energy Ltd (**Vintage**), Metgasco Ltd (**Metgasco**) and Bridgeport (Cooper Basin) Pty Ltd (**Bridgeport**) (together, the **Applicants**) lodged application for authorisation AA1000538 with the ACCC to engage in joint marketing and sale of natural gas produced from the ATP 2021 Vali field (**Vali field**). The application was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

1.2. Authorisation provides businesses with legal protection for arrangements that may otherwise risk breaching the Act but are not harmful to competition and/or are likely to result in overall public benefits.

1.3. The Applicants also requested interim authorisation to allow them to begin jointly marketing and entering into conditional gas supply agreements (**GSA**s) with customers for the sale of gas from the Vali field, and supplying minor quantities of gas from the Vali field to customers on a fully interruptible basis until 31 December 2021. The ACCC granted interim authorisation on 29 January 2021. A copy of the interim authorisation decision is available on the ACCC's website.

1.4. The interim authorisation remains in place until the date this determination comes into force or interim authorisation is revoked.

The Applicants

1.5. All of the Applicants are oil and gas exploration and production companies in Australia. Vintage and Metgasco are ASX listed companies. Bridgeport is a wholly owned subsidiary of an ASX listed company. [1]

1.6. Each of the Applicants holds interests in various oil and gas tenements in Australia. [2] None of the Applicants currently produce or sell natural gas in Australia.[3]

The Proposed Conduct

1.7. The Applicants are seeking authorisation to jointly market and give effect to GSAs with customers with common terms and conditions (including price) relating to the supply of gas from the Vali field (the **Proposed Conduct**), which is a new gas field in the early stages of development and owned by the Applicants in accordance with the Authority to Prospect 2021 (**ATP 2021**) Joint Venture.

1.8. The Proposed Conduct does not impact on the marketing arrangements of the Applicants or any of their related parties in respect of gas produced from other fields, or gas produced from exclusive (sole risk) operations in the Vali field (if any). Further, if Bridgeport decides to reserve any of its share of gas from the Vali field for sale to Brickworks Limited (see paragraph 2.3 below), Bridgeport will not be a party to the Proposed Conduct for the proportion of gas which it reserves for sale to Brickworks Limited.

1.9. The Applicants seek to engage in joint marketing for five years, and to make and give effect to GSAs entered into during this five year period which may have supply terms up to and including 2041 (i.e. maximum gas supply term of 15 years, inclusive of renewals).[4]

Rationale

1.10. The Applicants submit that the Proposed Conduct would:

- expedite the development of the new Vali field, and enable the first supply / flow of gas from the Vali field to occur sooner than otherwise;
- increase gas supply from the Vali field (as the Applicants would have aligned intentions in developing and maximising gas extraction from the field);

1 New Hope Corporation Limited.

2 Either by itself or through its parent company, as outlined on page 4 of the application for authorisation.

3 Vintage has not previously produced or sold natural gas. Neither Metgasco, Bridgeport nor other entities within the New Hope Group have in the last several years produced or sold natural gas.

4 The Applicants submit that these GSAs will be entered into in a 'stepwise' manner within the five year authorisation period (see paragraph 4.33 below).

- enable greater competition with existing major gas suppliers which would contribute to downward pressure on pricing;
- enable aggregation of a larger volume of gas for sale to major customers than each Applicant can sell alone, and provide customers with long-term supply certainty; and
- achieve cost savings and efficiencies for prospective customers and for relevant pipeline transmission operators, as they would not have to negotiate and manage separate GSAs with each Applicant.

2. Background

The Vali field

2.1. The Vali field is a 370 km^2 area located within the Queensland Cooper/Eromanga Basin, and is covered by APT 2021 (a permit granted by the Queensland Government).

2.2. The Applicants' respective interests in the ATP 2021 Joint Venture and ATP 2021 are: Vintage 50%, Metgasco 25% and Bridgeport 25%.[5]

2.3. Vintage is the operator of the ATP 2021 joint venture, and the marketing and sales agent for all gas that will be extracted from the Vali field upon development (excluding any gas Bridgeport may reserve for sale to a company with whom it shares common shareholders, Brickworks Limited).[6]

2.4. As it is a new gas field, the Applicants expect that significant capital investment (e.g. additional drilling and infrastructure)[7] will be required to develop the Vali field's gas supply potential, and that the operating expenditure over the life of the field will be of similar magnitude.

2.5. The Applicants have been in discussions with Santos Ltd for processing of Vali gas at the Moomba gas processing plant and proposed connection of the Vali field to the Moomba gas gathering system (via construction of a 13km pipeline[8]). Figure 1 below shows the location of the ATP 2021 Vali field and nearby infrastructure, including the proposed gas pipeline.

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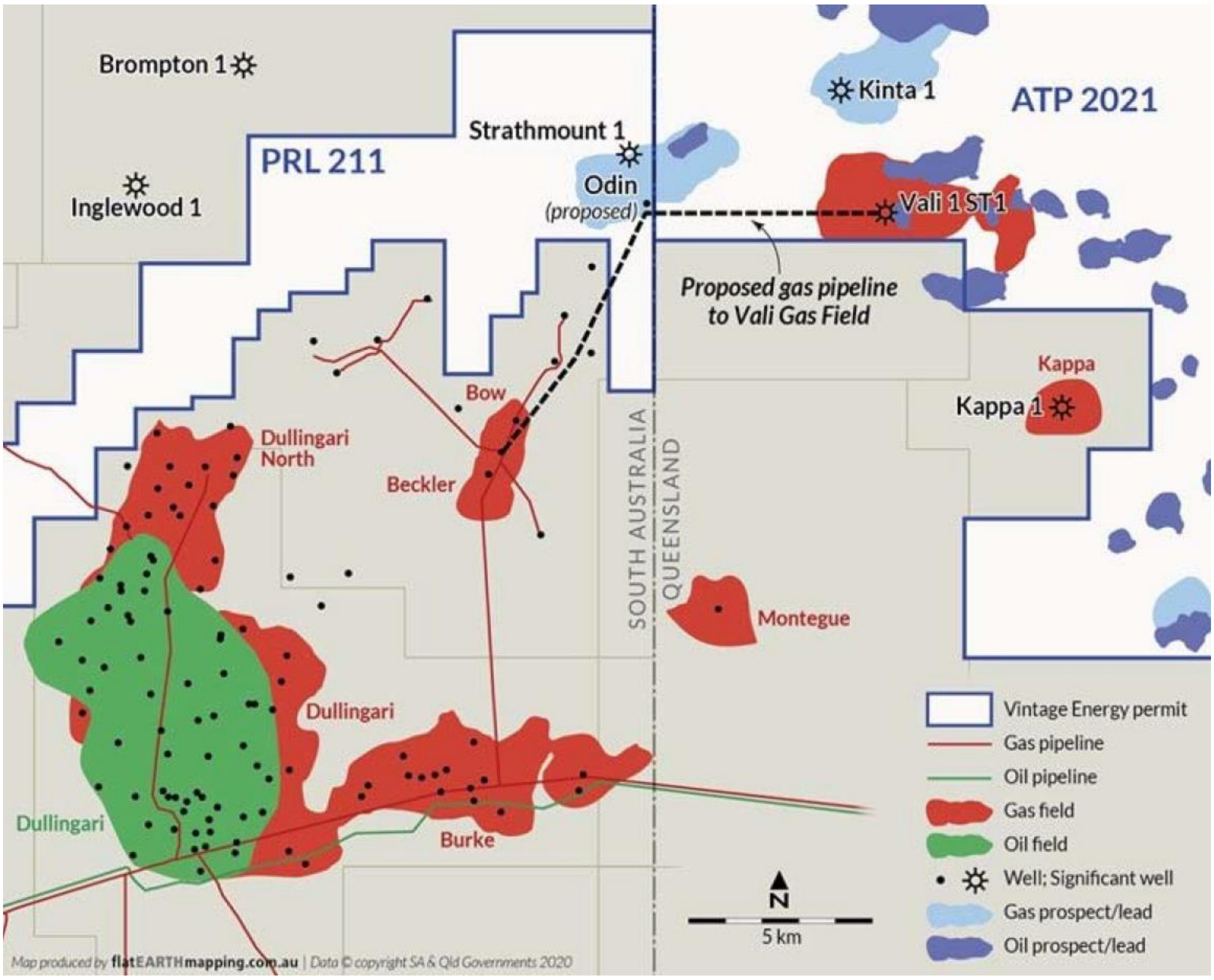
[5] As stated in the application for authorisation, before 2019, ATP 2021 was 100% owned by Metgasco. In 2019, the ATP 2021 Joint Venture was established, whereby Vintage and Bridgeport acquired their 50% and 25% interests respectively from Metgasco.

[6] Bridgeport may reserve 50 per cent of its share of gas for sale to Brickworks Limited. If Bridgeport does elect to reserve any of its share of gas for sale to Brickworks Limited, Bridgeport will not be a party to the Proposed Conduct for the proportion of gas which it reserves for sale to Brickworks Limited.

[7] As stated in the application, the long term development plan for the Vali Field assumes the drilling of eight wells, in addition to the existing Vali-1 ST1 well.

[8] The Applicants have advised that a potential tie-in point for the proposed new pipeline is at the Santos operated Beckler Field (located in South Australia).



2.6. There are a number of gas formations within the Vali field that are being explored by the Applicants: the Patchawarra, Toolachee, Tirrawarra and Nappamerri formations. The Patchawarra formation is the first formation within the Vali field where gas discovery has been made.

2.7. On 14 December 2020, the Applicants announced that the Patchawarra formation has been certified as having 'Gross 2P'[9] gas reserves of 33.2 PJ, following an independent review of the Applicants' drilling results in respect of the Vali-1 ST1 well.[10] The Applicants have not yet undertaken sufficient drilling to enable any resource bookings for the other formations within the Vali field.[11]

2.8. The annual gas production from the Patchawarra formation will be equal to approximately 0.5% of the annual domestic gas demand in the east coast market, and less than 0.2% when LNG export demand is included with domestic demand.[12]

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9 2P denotes 'Proved' and 'Probable' resources, which has at least a 50% probability that quantities recovered will equal or exceed the estimate.

10 Vintage's ASX release dated 14 December 2020, https://www.vintageenergy.com.au/content/documents/2020.12.14_Vali_field_reserves_update.pdf.

11 See the Applicants' letter to the ACCC dated 16 February 2021, https://www.accc.gov.au/system/files/public-registers/documents/Applicants%20-%20provision%20of%20further%20information%20-%2016.02.21%20-%20PR%20VERSION%20-%20AA1000538%20Vali%20Gas.pdf.

12 These percentages are calculated using the ACCC's forecast annual gas demand for domestic gas demand, and for domestic gas demand plus export LNG demand.

2.9. In an update to the ASX on 5 February 2021,[13] Vintage stated that the Applicants will defer the purchase/installation of flowline infrastructure and delay first gas production from the Vali field to later this year (or early next year).[14] Vintage stated that the Applicants will instead prioritise a work program to evaluate resources at the Vali field and nearby regions. This will include drilling of an additional well in the Vali field (Vali-2) in April 2021 to evaluate the Patchawarra formation[15] and the potential for gas in the Toolachee formation.

2.10. As noted in the ASX update, the Applicants consider that prioritising resources evaluation over first gas production may enable the Applicants to potentially market larger volumes of gas from the Vali field to customers.

3. Consultation

3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.

3.2. The ACCC invited submissions from a range of potentially interested parties including gas customers, gas processing and pipeline operators, industry associations, government agencies and relevant regulatory bodies.[16] The ACCC received two submissions in support of the application for authorisation.

3.3. Brickworks Limited is a large gas user in several eastern states. It shares common shareholders with Bridgeport, and is expected to buy gas from the Vali field from Bridgeport once supply is available.[17] Brickworks submits that while it would not normally support joint marketing, the risk of anti-competitive harm from the Proposed Conduct is low, as the Vali joint venture participants do not have significant market power and the gas reserves at the Vali field are very small. Brickworks considers that the Proposed Conduct would enable new supply of gas to be brought to market by new entrants, and enable them to better compete with incumbent gas producers in the east coast gas market. Brickworks is also supportive of the five year authorisation period (and the 15 year maximum term for any GSAs entered into during this period), as sought by the Applicants. It considers this period is appropriate in light of the small size of the Vali field reserves, and the characteristics of gas production (where gas volume will naturally taper off over time).

3.4. Epic Energy South Australia Pty Ltd (a gas transmission pipeline operator ex-Moomba) has no objection to the application. Epic Energy supports measures which encourage gas to be developed from new fields, and considers appropriate joint marketing arrangements are desirable and serve the interests of consumers as well as producers.

3.5. On 26 March 2021, the ACCC issued a draft determination proposing to grant authorisation. Following the draft determination, no submissions were received from interested parties and a pre-decision conference was not requested.

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13 Vintage's ASX release dated 5 February 2021, https://www.vintageenergy.com.au/content//2021.02.05%20ASX%20release%20Operations%20Update%20Final.pdf

14 Notwithstanding the delay, Vintage has indicated that it will continue to explore all avenues to accelerate production.

15 Following earlier drilling of the Vali-1 ST1 well, as referred to in paragraph 2.7 above.

16 A list of the parties consulted and the public submissions received is available from the ACCC's public register, https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/vintage-energy-ltd-%E2%80%93-vali-gas-joint-venture.

17 Under the Vali joint venture, Bridgeport may reserve 50 per cent of its share of gas from the Vali field to Brickworks Limited.

4. ACCC assessment

4.1. The ACCC's assessment of the Proposed Conduct is carried out 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/or may substantially lessen competition within the meaning of section 45 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. The Applicants submit that the relevant market is the 'east Australia gas market', which includes customers in Queensland, New South Wales, South Australia, Australian Capital Territory, Victoria and Tasmania and the Northern Territory who are connected to sources of gas in those jurisdictions (and nearby offshore resources) via a gas pipeline network.

4.4. The ACCC considers that the relevant area of competition is the supply of natural gas to commercial and industrial customers in the eastern coast of Australia, which would include at least customers served by transmission pipelines from Moomba to Queensland, New South Wales and South Australia (i.e. the customers that the Applicants are targeting in the first instance). The ACCC does not consider it necessary to precisely define the geographical scope of this relevant area of competition.

Future with and without the Proposed Conduct

4.5. In applying the authorisation test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.

4.6. The Applicants submit that without the Proposed Conduct, development and gas supply from the Vali field will be significantly delayed, because:

- the investment decision to commit further capital required to develop the Vali field in order to supply gas relies on each Applicant being able to secure a GSA. Joint marketing would provide increased certainty for the Applicants to expedite this investment decision; and
- absent the Proposed Conduct, the Applicants would need to negotiate a gas balancing agreement, put in place separate marketing strategies, have separate discussions with gas processing and pipeline operators, and develop a more complex development plan (to accommodate disparate gas sales conditions).

4.7. The ACCC considers that in the likely future without the Proposed Conduct, the Applicants would still be able to develop the Vali field to bring this new source of gas supply to the market. However, this development is likely to occur later due to the need to secure separate GSAs, and the negotiations required to put in place a gas balancing agreement and separate marketing arrangements.

Public benefits

4.8. 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 the term should be given its widest possible meaning, and includes:

> *…anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements … the achievement of the economic goals of efficiency and progress.*[18]

4.9. The Applicants submit that the Proposed Conduct is likely to result in the following public benefits:

- expedited or increased gas supply and greater competition in the east Australia gas market;
- increased incentive for investment in infrastructure;
- aggregation of gas volumes; and
- cost savings and efficiencies.

4.10. The ACCC's assessment of the likely public benefits from the Proposed Conduct follows.

Facilitation of new source of gas supply to customers sooner

4.11. The Applicants submit that while the Vali field reserves are not significant in the context of the east Australian gas market, the Proposed Conduct would enable these reserves to be developed sooner, which would assist to minimise the risk of gas shortages. The Applicants consider this to be a public benefit, given the east coast gas market is forecast to have a gas supply shortfall in the future.[19]

4.12. The Applicants consider that the Proposed Conduct would result in a greater supply and more efficient production of gas from the Vali field, due to the alignment of the Applicants' incentives on development and gas sales. They also consider that joint marketing will enable them to better compete with existing gas 'majors' than each Applicant could alone, which will increase competition between gas suppliers and contribute to downward pressure on gas prices.

4.13. As stated in paragraph 4.7 above, the ACCC considers that the Proposed Conduct is likely to enable earlier development of the Vali field to bring this new gas supply to customers sooner. The ACCC considers that this is likely a public benefit, particularly given the forecast gas supply shortage on the east coast of Australia. The ACCC also notes that submissions from Brickworks Limited and Epic Energy consider that bringing on new supply of gas is a public benefit. However, the size of this benefit will be commensurate with the relatively modest amount of gas that is proposed to be jointly marketed.

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18 *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.

19 See page 7 of the application for authorisation. AEMO's 2020 Gas Statement of Opportunities projected gas supply shortfall for the southern states from 2024. In the ACCC's Gas Inquiry Interim Report (January 2021), the ACCC forecasted that gas shortages would be likely to emerge in 2026 for the east coast, and as early as 2024 for the southern states.

4.14. The ACCC notes that, over the long term, the Proposed Conduct is not likely to result in a greater total supply of gas from the Vali field than would otherwise be supplied. Supply of new gas from the Vali field is likely to occur both with and without the Proposed Conduct, and the amount of gas which can be extracted is limited by the available reserves which the Applicants intend to develop.

4.15. The ACCC also notes that the Applicants and Brickworks Limited consider the Proposed Conduct will enable the Applicants to better compete with incumbent gas producers in the east coast gas market. However, on the basis of the small volumes of gas that is proposed to be jointly marketed, the ACCC considers the Proposed Conduct is unlikely to have any significant impact on the competitive dynamics or gas prices.

Incentives for investment infrastructure

4.16. The Applicants submit that the Proposed Conduct will provide incentives for the Applicants to commit to the required development of the Vali field to supply gas to customers.

4.17. The ACCC considers that the Proposed Conduct is likely to provide the Applicants with increased certainty and incentives to expedite a decision to commit to the capital investment required to develop and supply gas from the Vali field to customers sooner. In that regard, the ACCC considers this falls within the same category of benefit as identified (i.e. bringing gas to market sooner).

Aggregation of gas volumes

4.18. The Applicants submit that the Proposed Conduct will enable aggregation of more gas for sale to major commercial and industrial customers in the east Australia gas market than the small volumes the Applicants could sell individually. They consider this will enable them to bid for larger-volume contracts, which would make their bids more attractive to major customers. [20]

4.19. The Applicants also consider that, absent the Proposed Conduct, their ability to enter into gas swap arrangements with other gas producers would be limited, due to the small size of each Applicant's individual volumes.

4.20. On current information, the ACCC's view is that aggregation of gas volumes for sale to major customers is not likely to result in additional public benefit over and above the benefit identified above from bringing gas to market earlier. The ACCC notes that the Proposed Conduct does not enable the Applicants to aggregate gas volumes from other fields.

4.21. The ACCC accepts that it would be easier to facilitate gas swap arrangements with larger volumes of gas. However, it is unclear the likelihood and extent to which gas swaps would be required in the future. The ACCC also notes that the combined volumes of the Applicants is still relatively small compared to the rest of the market.

Cost savings and efficiencies

4.22. The Applicants submit that the Proposed Conduct will result in reduced transaction costs for major commercial and industrial customers, as they would be able to secure gas through a single contract negotiation with the Applicants (instead of negotiating

[20] To support this, the Applicants indicated that they had been approached by a commercial customer seeking a large volume of gas than either of the Applicants could supply individually.

with multiple gas suppliers to cover their gas needs). Similarly, the Applicants consider that the Proposed Conduct would result in reduced transaction costs and increased operating efficiencies for gas processing and gas transmission pipelines operators through aligned negotiation with the Applicants (e.g. on matters such as pipeline capacity and daily administration of gas nominations).

4.23. The Applicants also submit that joint marketing would allow them to pool their knowledge of east Australian gas market customers and eliminate the need to have duplicated marketing resources.

4.24. The ACCC considers that the Proposed Conduct is likely to result in some small public benefit through reduction of transaction costs for major commercial and industrial customers, as well as gas processing and gas transmission pipelines operators. However, the ACCC does not consider that the Proposed Conduct is likely to achieve any material cost savings and efficiencies through aggregation of marketing resources and intelligence. The ACCC notes that authorisation is only sought in relation to joint marketing of gas produced from the Vali field; therefore, the Applicants are likely to continue to make investments in gathering and analysing customer and market information in relation to other fields.

Conclusion on public benefits

4.25. The ACCC considers that the Proposed Conduct is likely to result in:

- some public benefit by enabling earlier development of the Vali field to bring this new source of gas supply to customers sooner than otherwise; and
- a small public benefit in the form of reduced transaction costs and/or increased operating efficiencies for major customers, gas processing operators and gas transmission pipeline operators.

Public detriments

4.26. 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.*[21]

4.27. The Applicants acknowledge that allowing competitors to engage in marketing together rather than independently reduces the number of independent market participants. However, they submit the Proposed Conduct will not have an effect of substantially lessening competition nor give rise to any other public detriment, because:

- The annual quantity of gas estimated to be jointly marketed is insignificant (less than 0.2% of the total annual east coast market gas demand, including LNG export demand), and will not have any impact on the competitive dynamics.
- The Vali field is a new production field, and the Applicants are new gas producers in the east Australian gas market with low or negligible market share.
- The Applicants will not be ‘price setters’ nor have an ability to impose less favourable terms on customers. Rather, potential customers will have multiple sources of supply to compare offers from the Applicants.

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

- The Applicants will face significant competition from numerous gas producers (including those with LNG facilities).
- Joint marketing is limited in time.

4.28. The ACCC considers that, where commercially feasible, separate marketing is likely to result in a more competitive outcome than would be the case under joint marketing. Joint marketing has the potential to result in public detriment if it allows the joint marketers to supply gas at higher prices and/or on less favourable terms and conditions.

4.29. In this case, the ACCC considers that the Proposed Conduct is not likely to result in public detriment by materially enhancing the Applicants' ability to supply gas at higher prices and/or on less favourable terms and conditions than they would likely achieve with separate marketing. A key factor in reaching this view is that the annual quantity of gas estimated to be jointly marketed from the Vali field represents a very small proportion of total annual east coast market gas demand. The ACCC also considers that commercial and industrial customers in South Australia, Queensland and New South Wales are likely to have a number of alternative sources of supply and will assess the Applicants' offer against those of rival suppliers, including Santos, Beach, other Cooper Basin gas suppliers and Surat Basin gas suppliers. These alternative sources of supply are likely to constrain the Applicants' price and service offers.

4.30. The ACCC notes that the Applicants are continuing to explore other gas formations within the Vali field. This means that over time, the Applicants may discover more gas in the Vali field which may be commercially viable. The ACCC notes that if there is any major discovery of gas such that there is a material change in circumstances, the ACCC is able to review the authorisation, including seeking submissions from interested parties.[22]

Balance of public benefit and detriment

4.31. For the reasons outlined in this determination, the ACCC considers that the Proposed Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Proposed Conduct.

Length of authorisation

4.32. The Act allows the ACCC to grant authorisation for a limited period of time.[23] 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.

4.33. In this instance, the Applicants seek authorisation to engage in joint marketing for five years and, within this five year period, to make and give effect to GSAs that may have supply terms up to and including 2041 (i.e. maximum gas supply term of up to 15 years, inclusive of renewals), for the following reasons:

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[22] If following a review the ACCC is satisfied that the likely public benefit from the proposed arrangements no longer outweighs the likely detriment to the public, including any detriment constituted by a lessening of competition, the ACCC may revoke the authorisation.

[23] Subsection 91(1).

a) The Vali field is still in its early stage of development. As such, marketing of gas needs to be done in a ‘stepwise’ fashion (over five years), given the uncertainties/unknowns associated with the field’s gas supply.

b) A stepwise approach is also necessary, as some customers may have reservations (about the Applicants’ small size and limited experience), or may have already secured their gas needs for the next few years and not be ready to engage with the Applicants.

c) The main drilling program to develop the 2P reserves within the Vali field is scheduled to occur from 2021 to 2026. The Applicants need sufficient certainty to invest in this program.

d) Long-term contracts will provide greater bankability of the Vali field (for the purpose of capital raising), and underwrite the investment required by the Applicants to further develop the Vali field and related infrastructure in order to supply gas. Long-term supply will also provide greater certainty for customers.[24]

e) The Applicants would be able to include gas price review provisions in the long-term GSAs.

f) While GSAs of up to 10 years are consistent/common in the east Australian gas market, given the contracts may need to be entered into ‘stepwise’, a contract with a 10 year term may require a 15 year authorisation period.

4.34. The ACCC notes that Brickworks Limited’s submission is supportive of the length of authorisation period requested by the Applicants (see paragraph 3.3 above).

4.35. Based on the information available to it, the ACCC considers that the period of authorisation sought is appropriate. The ACCC has decided to grant authorisation to the Applicants to engage in joint marketing of gas from the Vali field for five years; and make/give effect to any GSAs entered into during this five year period that may have a maximum gas supply term of 15 years. All GSAs must expire on or before 4 June 2041. The ACCC considers that this period of authorisation is appropriate, as it is likely to meet customer requirements and provide the Applicants with sufficient certainty to expedite the Vali field development and future gas supply.

5. Determination

The application

5.1. On 10 December 2020, the Applicants lodged an application for authorisation AA1000538 with the ACCC under subsection 88(1) of the Act. The Applicants sought authorisation for the Proposed Conduct outlined at paragraph 1.7.

The authorisation test

5.2. 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 Proposed 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 Proposed Conduct.

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[24] The Applicants state that there will be opportunities to market Vali Field gas ex-Moomba to major gas utility customers or industrial/power generation consumers.

5.3. For the reasons outlined in this determination, the ACCC is satisfied that the Proposed Conduct would be 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 Proposed Conduct, including any lessening of competition.

5.4. Accordingly, the ACCC has decided to grant authorisation.

Conduct which the ACCC has decided to authorise

5.5. The ACCC has decided to grant authorisation to the Applicants in respect of the Proposed Conduct outlined at paragraph 1.7 above.

5.6. The ACCC has decided to authorise the Applicants to:

a) jointly market natural gas from the Vali field for a period of five years until 4 June 2026;

b) within this five year period, make gas supply agreements (GSAs) with customers for the supply of gas from the Vali field that contain common terms and conditions (including price) and have a maximum gas supply term of 15 years; and

c) give effect to any such GSAs entered into during the five year period until 4 June 2041.

Date authorisation comes into effect

5.7. This determination is made on 13 May 2021. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into effect on 4 June 2021.