

# Chapter 1

## Introduction

### Referral

1.1 An amendment to the Excise Legislation Amendment (Condensate) Bill 2008 on 25 September referred to the Economics Committee for inquiry 'the joint marketing arrangements on the North West Shelf project and their impact on competition in the upstream gas market and on prices paid by consumers'.

### Background

1.2 The North West Shelf Venture is Australia's largest resource development project based on the gas and condensate fields of the North West Shelf of Western Australia. The Venture supplies natural gas to the domestic market in Western Australia, liquefied natural gas to Japan and condensate, crude oil and liquefied petroleum gas to international markets.<sup>1</sup>

1.3 The Venture has six participants who hold an equal one-sixth share in future gas sales. These are BP Developments Australia Ltd., Chevron Australia Pty Ltd., Japan Australia LNG Pty Ltd., Shell Development Ltd., BHP Petroleum Pty Ltd. and Woodside Energy Ltd. Woodside is the operator of the Venture and, under current sales arrangements, gas buyers have to deal exclusively with Woodside. Each of the six participants has the right and the obligation to own and take its production entitlement.<sup>2</sup>

1.4 The six Venture participants market gas to WA domestic customers through a joint selling arrangement, North West Shelf Gas Pty Ltd. This arrangement provides each participant significant market power with the Venture controlling about two-thirds of the WA gas market.<sup>3</sup> One other company supplies most of the rest.<sup>4</sup>

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1 North West Shelf Venture, <http://www.nwsg.com.au/about/venture.html>

2 DomGas, *Submission 1*, p. 5. The DomGas Alliance represents gas customers including Alcoa, Alinta, the Dampier Bunbury pipeline, Fortescue Metals, Newmont and Horizon Power and Synergy.

3 DomGas, *Submission 1*, p. 5.

4 Apache Energy is the second largest producer of both oil and gas in the offshore Carnarvon Basin in Western Australia. Its primary production hub is on Varanus Island, and it provides around 30 per cent of WA's domestic natural gas supply. BHP Billiton and ARC Energy supply about 5 per cent of the market.

## The context of this inquiry

1.5 The North West Gas Shelf joint selling arrangement was introduced in 1977 as part of an authorisation made by the Trade Practices Commission (now the Australian Competition and Consumer Commission).<sup>5</sup> In making the decision, the TPC recognised the potential benefits to the Australian economy and that the success of the project depended on the joint venture arrangement. Specifically, authorisation was granted for the partners to:

discuss and agree together the common terms and conditions (including price) upon which [their] gas...will be offered for sale to potential customers and to discuss and agree a method(s) for marketing such gas.<sup>6</sup>

1.6 The TPC's decision provided immunity from court action for conduct that might otherwise raise concerns under the competition provisions of the Trade Practices Act 1974. The Venture partners sought, and gained, a further authorisation from the application of the TPA in 1998.

1.7 On 14 December 2007, North West Shelf Gas Pty Ltd applied to the ACCC to revoke this authorisation on the basis that the joint marketing arrangements no longer needed authorisation. As part of its usual consultation process, the ACCC received eight submissions on the application. While all eight supported the revocation of the application, several queried whether the existing marketing arrangements were in keeping with the terms of the TPA.<sup>7</sup>

1.8 The DomGas Alliance<sup>8</sup>, most notably, argued that the 1977 authorisation is an 'historical anomaly' which no longer applies to current marketing arrangements. Moreover, it argued that in the absence of an authorisation for anti-competitive practices, North West Shelf Gas 'appears' to be in breach of section 45 of the TPA. The Alliance's submission to the ACCC formally requested a review of the current joint selling arrangements.<sup>9</sup> A review was also supported in separate submissions from the Dampier Bunbury pipeline, Horizon Power, Fortesque Metals and the State Minister for Energy and Resources, the Hon. Fran Logan MLA.

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5 Authorisation A18492

6 Australia Competition and Consumer Commission, 'ACCC revokes North West Shelf Gas joint marketing authorisation', *Media Release*, 6 March 2008.

7 This authorisation was for a fixed term. It expired in 2005. See 'North West Shelf authorisation', Australian Competition and Consumer Commission, 31 July 2008. <http://www.accc.gov.au/content/index.phtml/itemId/86976/fromItemId/621589>

8 The DomGas Alliance was formed in 2006 to represent the interests of gas consumers and transporters.

9 DomGas Alliance, *Submission*, 18 January 2008, p. 2. <http://www.accc.gov.au/content/trimFile.phtml?trimFileName=D08+7285.pdf&trimFileTitle=D08+7285.pdf&trimFileFromVersionId=821029>

1.9 Freehills, which represents the Venture participants, also supported revoking the authorisation but took issue with DomGas' concerns. Its submission noted that in 2007, the federal government acted to enhance protection for joint ventures under the TPA by including a broad-based joint venture defence to price fixing and exclusionary provisions. It added that joint venture activity, 'particularly when it is related to the development and operation of large scale infrastructure', is pro competitive. The Freehills submission also cited a 1998 ACCC inquiry into joint ventures which doubted whether the joint venturers could readily move to a separate marketing model.

1.10 In March 2008, the ACCC revoked the joint marketing authorisation.

1.11 In August 2008, the ACCC announced an investigation into whether the project should be allowed to continue selling gas as a single supplier, or if each of the project's six partners should have to strike their own individual sales arrangements. The investigation was initiated following a complaint by customers that the arrangement could be forcing them to pay higher prices. It has been reported that Woodside Petroleum would argue that the state's gas market was too small to demand that each of the partners trade as individual suppliers.

### **Conduct of the inquiry**

1.12 The committee advertised the inquiry nationally and posted details about the inquiry on its website. In addition, it wrote to selected organisations and relevant statutory authorities advising them of the inquiry and inviting them to make submissions.

1.13 The committee received 4 submissions to the inquiry which are listed at Appendix 1, and are available at the Committee's website; [http://www.aph.gov.au/Senate/committee/economics\\_ctte/tpa\\_unconscionable\\_08/index.htm](http://www.aph.gov.au/Senate/committee/economics_ctte/tpa_unconscionable_08/index.htm).

1.14 A public hearing was held in Canberra on 11 November 2008. There were three witnesses: Ms Eva Howell, Chief Executive Officer of the North West Shelf Venture, Mr Stuart Hohnen, Executive Director of the DomGas Alliance and Associate Professor Zumbo from the University of New South Wales School of Business Law and Taxation. The committee thanks all those who participated in the inquiry.

1.15 At the hearing, the committee placed several questions on notice for the North West Shelf Venture and the DomGas Alliance. The committee notes that its deadline for responses was not met.