



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON ECONOMICS

Reference: Joint marketing arrangements on the North West Shelf

TUESDAY, 11 NOVEMBER 2008

CANBERRA

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**SENATE STANDING COMMITTEE ON
ECONOMICS**

Tuesday, 11 November 2008

Members: Senator Hurley (*Chair*), Senator Eggleston (*Deputy Chair*), Senators Cameron, Fierravanti-Wells, Joyce, Pratt and Xenophon

Participating members: Senators Abetz, Adams, Arbib, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Ellison, Farrell, Feeney, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Hanson-Young, Heffernan, Humphries, Hutchins, Johnston, Kroger, Ludlam, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Trood, Williams and Wortley

Senators in attendance: Senators Cameron, Eggleston, Fierravanti-Wells, Hurley, Joyce, Pratt and Xenophon

Terms of reference for the inquiry:

To inquire into and report on:

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.

WITNESSES

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Committee met at 7.09 pm

CHAIR (Senator Hurley)—I declare open this meeting of the Senate Standing Committee on Economics inquiry into the joint marketing arrangements on the North West Shelf in Western Australia. The inquiry will examine the impact of these marketing arrangements on competition in the upstream gas market and on prices paid by consumers. The committee is due to report in early December.

These are public proceedings, although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera.

[7.10 pm]

HOWELL, Ms Eva Alexandra, Chief Executive Officer, North West Shelf Venture

CHAIR—I welcome Ms Eva Howell from the North West Shelf joint venture. Would you like to make an opening statement?

Ms Howell—Yes, thank you. Madam Chair and members of the Senate economics committee, thank you for giving me this opportunity. Today I am representing BHP Billiton Petroleum, BP Developments, Chevron Australia, Japan Australia LNG, Shell Development and Woodside Energy. I am the Executive Vice-President, North West Shelf for Woodside, which operates the North West Shelf project, and in that capacity I am also the CEO of North West Shelf Venture. With Woodside and other companies, I have been involved in the supply side of the Western Australian domestic gas industry for 19 years.

As you are undoubtedly aware, the North West Shelf project is Australia's largest resources and infrastructure project. It supplies oil, condensate, LPG and LNG to global markets and piped natural gas to Western Australia's domestic energy sector. Over 30 years, the joint venturers have made capital investments totalling \$25 billion in Western Australia. That investment has been made by the joint venturers in not one but several interlinking joint ventures in which the participants have differing economic interests. Those ventures have evolved as sales opportunities have developed in two ways—first, through the discovery and proving up of further gas reserves and, second, through the involvement of large gas customers in the joint ventures.

Domestic gas supply provided the cornerstone for investment in the North West Shelf facilities. The domestic gas infrastructure was developed around what was initially one contract that has since evolved into five key supply contracts, with Verve Energy, Alinta, Alcoa, Hamersley Iron and Robe River. These contracts have endured for more than 20 years and will continue for many more. They, together with a contract entered into with BHP Billiton Direct Reduced Iron, account for almost the entirety of the production capability of the North West Shelf domestic gas production facilities and the gas which the domestic gas and incremental gas pipeline joint venturers have committed to sell into the domestic market up to 2020. However, it is not correct to say that the North West Shelf project participants have not marketed or sold additional gas after the DRI contract was entered into in 1995. Indeed, incremental gas has been sold to a number of customers and even in small quantities.

The original contract was with the State Energy Commission of Western Australia, then the state's unified electricity and gas utility. It had or developed the infrastructure and transportation capability through the effective control of the capacity of the now privately owned Dampier to Bunbury pipeline. Since the corporatisation and partial privatisation of that utility, there are two organisations—Synergy and Alinta—which have the capability to distribute gas to smaller users.

There are a number of producers and potential producers in Western Australia, but the ability of any gas producer to produce gas for the domestic market depends on a number of critical factors, and that includes, first, having commitment from purchasers in aggregate sufficient to

underwrite the initial capital investment in the project and its ongoing operating costs. The volume of sales needed to underwrite these capital investments requires purchasers who are willing to commit to large quantities of gas for a long period of time. This is why we and every other credible commentator in the field, including the ACCC, the Ministerial Council on Energy, the Office of Energy and economic analysts, have previously characterised the Western Australian gas market as a project market where producers' projects and buyers' projects come together to create a viable business case for new supply to enter the market.

Secondly, they need a sound, predictable and timely regulatory approval framework to permit projects to move from conception to implementation in a reasonable time frame which ensures that both suppliers' and buyers' projects can proceed. Thirdly, reasonably predictable availability of critical resources at reasonably predictable prices is required—a matter which has been particularly problematic for resource projects in Western Australia in the last three to four years. Fourthly, customers need to be able to transport gas from the place of production to where it is needed. In the case of the south-west of Western Australia there is presently only one pipeline, which is expanded as and when contracts are concluded, so there is little or no spare capacity at any time.

Joint marketing has in fact addressed a number of these factors outlined here and enhanced competition by enabling suppliers to enter the market. WA is a market in which predominantly large buyers and large sellers deal with each other for the supply of large quantities of gas over long periods. However, the joint venturers do put to the markets some smaller parcels of gas as and when it is possible and economic to do so. It is very different to the market in, say, North America, which has literally thousands of producers and production facilities that are generally of a much smaller scale, a very dense transportation network, storage facilities for gas, brokers and aggregators who act as intermediaries between the suppliers and the customers, and an advanced financial market for the purchase and sale of gas.

Despite these differences in the market, historically gas prices in Western Australia have been significantly lower than in eastern Australia or the USA. This demonstrates that market price is a direct function of overall supply versus overall demand. Separate marketing in Western Australia does not equate to lower prices. In fact, we believe that Santos's recent contracting via their own separate marketing activities has resulted in the highest pricing in the WA domestic gas market history.

The joint venturers' oil, condensate and LPG are sold separately because there are deep and what economists call liquid markets into which these products can be sold—markets that have storage facilities, brokers and aggregators and a related financial market where options, spot contracts and derivatives are traded. The Western Australian gas market and the Asia-Pacific LNG market have none of these characteristics; hence, LNG is also marketed jointly by the North West Shelf project participants.

Since gas supply started in 1984, the WA market has not developed any of the aforementioned characteristics. One of the critical factors for the North West Shelf participants in considering separate marketing of gas is an inability to clear in a timely and efficient manner the large and persistent trading imbalances that would inevitably arise. Neither physical nor financial settlement can operate effectively in the face of large and lumpy demand, inflexible transportation, lack of storage options and no market-clearing mechanisms or spot prices.

The joint venture participants market collectively because they produce collectively and have contracted to sell most of that production collectively under arrangements which have been in place for many years and will be in place for many years yet to come. They needed the confidence that their product would be sold to make the investments which they have made, and that required joint marketing of very large quantities of gas to the very large buyers involved. The joint activity remains fundamental to providing the certainty necessary to allow the continued investment that can only take place where each participant has similar revenue, cost and risk exposure. The joint venturers have honoured the commitments which they made to the state to develop projects and will continue to do so until the end of the projects.

A move to separate marketing at this time would introduce large costs and risks, which would ultimately be passed on to gas buyers. Efficiency and competition would be harmed in the short term and this in turn would have flow-on adverse effects upon future investment decisions of the North West Shelf venturers and other gas producers operating in Western Australia, potentially compounding the problems of gas supply into Western Australia in the medium and long term.

In summary, the North West Shelf project participants are committed to continuing the marketing of domestic gas to new and existing customers in Western Australia and ensuring that our gas-marketing practices comply with the requirements of the Trade Practices Act and other applicable laws and regulations.

Senator XENOPHON—One of the assertions you made is that credible commentators have said that these arrangements are satisfactory—I think that summarises what you said—and you mentioned the ACCC. The ACCC are currently conducting an investigation into certain aspects of the joint marketing arrangements of the North West Shelf; are they not?

Ms Howell—The ACCC is conducting a review, which was instigated by the North West Shelf Venture participants when they revoked the authorisation.

Senator XENOPHON—Yes, well the ACCC characterises it as an investigation. Be that as it may, you have said that there would be large costs and risks if the marketing arrangements are altered. What are those large costs and risks? You also said that they would be passed on to consumers. On what basis do you assert that?

Ms Howell—We have successfully developed fields to supply our contracts. As we go forward if we were to have separate marketing we would have to invest in new field developments separately. For example, we have just committed to a \$6 billion investment in infrastructure for North Rankin. That would become very difficult to do if all partners were not involved. One, two or a limited number of participants would have to carry the risk of the developments rather than following the initial concept of the joint venture, which is to spread it across all the participants.

Senator XENOPHON—Isn't there a fundamental distinction between a joint venture for the purpose of extracting the gas out of the ground and marketing it separately? There is a fundamental distinction, isn't there, in terms of risk?

Ms Howell—Yes, but my point is to bring new gas into the market there has to be an investment in the infrastructure. We explore collectively, we develop collectively and we sell collectively.

Senator XENOPHON—That is my question: why does that third step necessarily follow?

Ms Howell—My point earlier was that the risks need to be shared equally in equal shares across the whole chain.

Senator XENOPHON—There is a distinction between the risk in developing, producing and selling, isn't there? There is a fundamental difference in risk in all of those categories, all those steps.

Ms Howell—There are different risks, but if you are going to make very large investments you need to have certainty that the product coming out of the development is going to find a market.

Senator XENOPHON—The joint selling of domestic gas has been found to be anticompetitive in Europe by the European Commission since 2002. Do you agree with that assertion?

Ms Howell—The European market is completely different from the Western Australian market.

Senator XENOPHON—How so?

Ms Howell—For all the reasons I quoted earlier in terms of the ability to store gas, the financial instruments that are in place, spot markets and the numerous pipelines—the gas can go in any direction in Europe, so there are opportunities everywhere, just as there are in the US. The WA market is very different.

Senator XENOPHON—Shell and Chevron were forced by the EC to sell independently in Europe. They are still participating in the European market, aren't they?

Ms Howell—I cannot comment for Shell and Chevron. I am representing the venture participants today.

Senator XENOPHON—Similarly, joint selling has been found to be anticompetitive in New Zealand in relation to Shell's activities there. Why should it be permitted here? There are similarities between the two markets, aren't there?

Ms Howell—I cannot comment for Shell.

Senator XENOPHON—But in terms of the New Zealand market?

Ms Howell—I am not familiar with the New Zealand market. As I say, I cannot comment for Shell.

Senator PRATT—What is your explanation for the fact that recent gas prices in Western Australia are five times those in the eastern states?

Ms Howell—It is a matter of supply and demand. Basically, there is more demand than supply. It is simply a case of market forces.

Senator PRATT—How was the recent LNG5 contract with China priced, relative to the local Western Australian domestic market?

Ms Howell—There is misinformation; the LNG5 contracts are not for China. The China contract that the North West Shelf Venture has with Dapeng was signed several years ago. I believe there is confusion with contracts that Woodside has signed for gas, which is from other sources than the North West Shelf.

Senator PRATT—If I were to ask you whether the price was pegged at the equivalent of oil at US\$25 a barrel, how does that fit in the context of your statement?

Ms Howell—As I said, I believe that the one contract that the North West Shelf has with China—and it only has one contract—was signed several years ago. It was at a point when both the domestic market and the LNG market were experiencing very low prices.

Senator PRATT—I want to ask you about your role at Woodside, whether you have access to information on prices and contract terms negotiated by the joint venture with local customers and whether other partners have access to the same information.

Ms Howell—Information about prices?

Senator PRATT—Prices and contract terms.

Ms Howell—I have access to prices and contract terms of the contracts in which we participate.

Senator PRATT—What prevents Woodside from using such information when dealing with its own customers or customers outside the joint venture, or prevents other North West Shelf joint venture partners when dealing with their own customers and North West Shelf joint venture partners in a joint venture with, say, Apache?

Ms Howell—Woodside's domestic gas sales are all made through the North West Shelf Venture. It does not have any other domestic gas sales, so there is no conflict there.

Senator PRATT—So there is no contracting by any of the parties outside the joint venture?

Ms Howell—I cannot comment for all the partners but, currently, the active sellers of domestic gas in Western Australia are the North West Shelf partners and the Apache operated Harriet, East Spar and John Brookes joint ventures. None of our joint venture group are in those ventures. I cannot comment on whether other marketing activity is going on of future projects.

Senator PRATT—But if there was you would, essentially, have access across the joint venture to each other's information. My argument is aren't individual customers at a significant disadvantage, compared to producers, as to the kind of information they have access to?

Ms Howell—There are obviously other joint ventures operating in the WA market about which there is no knowledge of prices that are being negotiated.

Senator PRATT—In 1998, as part of the authorisation following the ACCC request, the joint venturers at that time undertook to double domestic gas-processing plants, but I note that investment did not occur. Why was that?

Ms Howell—I was not actually involved in the North West Shelf Venture in 1998, but I would surmise that 1998 was a period of significant downturn and the decision would have been driven by demand.

Senator PRATT—Did the joint venturers ever advise the ACCC that it had failed to meet these particular commitments and that the key justification for its authorisation was no longer valid?

Ms Howell—I cannot comment on that. I do not know, but I know the joint venturers have been in continuous discussion with the ACCC. So I would imagine they would have had that information at the time.

Senator PRATT—You have clearly indicated that we are in a highly competitive gas market, but why should Australians continue to protect this joint marketing venture cartel when the North West Shelf is ignoring the domestic gas market in favour of overseas consumers?

Ms Howell—First of all, the use of the word 'cartel'—

Senator PRATT—I am being quite inflammatory there.

Ms Howell—That was fundamentally incorrect both from a legal and economic perspective, and I would say pejorative—

Senator PRATT—I will admit to that.

Ms Howell—Sorry, what was the rest of the question?

Senator PRATT—Why should we continue to protect the North West Shelf joint marketing arrangements, and say, 'It's okay for you to continue to market in that way,' when it seems clear that it is very hard for the domestic market to compete with overseas demand?

Ms Howell—Other producers have come into the Western Australian market, so clearly people see that there is commercial business to be done there. In fact, the North West Shelf, which obviously started as the dominant producer—up at around 95 per cent—has, over the years, reduced its market share to the point that we are now around 60 per cent and falling.

Senator PRATT—In its submission to the committee, the North West Shelf joint venture relied on its findings of the ACCC authorisation that was made 10 years ago—I think I mentioned that—which has since lapsed. There have been considerable changes in the domestic market since then. The electricity market has been disaggregated and in terms of buyers we now have competition in the domestic market. Why shouldn't the North West Shelf joint venture be subject internally to the same kind of competition as the domestic market now is?

Ms Howell—As, I think, the ACCC stated in the 1998 determination, there are a number of factors—the disaggregation of the electricity market was certainly not cited. They said that separate marketing would be viable if some of these characteristics were to take place: a significant increase in the number of customers, entry of new competitive suppliers, additional transportation options, storage, brokers and aggregators, a gas related financial market and the development of significant short-term spot markets. Those were the issues they saw as making separate marketing feasible for the venture. But, as I said earlier, virtually none of those things have eventuated since 1998.

Senator EGGLESTON—I understand that, in March 2008, the ACCC's authorisation for your current joint marketing arrangements was revoked. I wonder what prompted you to make the request to the ACCC to revoke that arrangement?

Ms Howell—We believed that the authorisation was not necessary because we believed that we complied entirely with the Trade Practices Act. The authorisation is not required to market jointly, provided you act in accordance with the Trade Practices Act. In fact, having an authorisation is a kind of an indicator to financial lenders et cetera that there is no question that your marketing conditions will not be challenged. We did not feel that it was necessary anymore to have that authorisation; we were in compliance with the Trade Practices Act.

Senator EGGLESTON—Let's go back to your not feeling it was necessary to have the authorisation since, as you have said, you were seen to be completely within the law on the matter. What was the feeling that led you to think you did not need the authorisation? You said you felt that you complied with the Trade Practices Act. Was that the reason? Tell us how you felt you complied and no longer needed authorisation to give you the stamp of approval?

Ms Howell—It is probably a moot point that we needed the authorisation in the first place. But, obviously, when investment was made in the infrastructure, given the billions of dollars and the requirement to satisfy bankers and so on, a cautionary step was taken to have that authorisation. Now that the project is more mature we felt that that was no longer necessary and that there had never been any suggestion that we were not acting in accordance with the Trade Practices Act.

Senator EGGLESTON—And you have had legal advice to that effect, have you, that you would not be in breach of the anticompetitive provisions of the Trade Practices Act?

Ms Howell—I cannot comment specifically on that.

Senator EGGLESTON—Could you take that on notice because the committee would like to know that information?

Ms Howell—Yes.

Senator EGGLESTON—There are other gas producers. We have the Dampier-Bunbury pipeline. There are other gas producers further south, and I presume their gas comes into the pipeline?

Ms Howell—Yes.

Senator EGGLESTON—Is that marketed separately? I do not think they are associated with the North West Shelf joint venture, are they?

Ms Howell—I do not want to comment too much on other people's marketing, but there is joint marketing and I believe, to a small degree, some separate marketing that occurs in other joint ventures.

Senator EGGLESTON—These are small fields, as I understand it?

Ms Howell—They are small fields and small quantities of gas.

Senator EGGLESTON—So there is separate marketing for those operations?

Ms Howell—To my knowledge, the majority are jointly marketed. There are small parcels that have been separately marketed—

Senator EGGLESTON—But they are not marketed by the North West Shelf joint venture?

Ms Howell—No.

Senator EGGLESTON—In other words, other companies have product in this pipeline, if you like?

Ms Howell—Yes.

Senator EGGLESTON—And that is separately marketed?

Ms Howell—Yes.

Senator EGGLESTON—I suppose one of the unique features of Western Australia, compared to Europe and the United States, is that single pipeline which everybody feeds into?

Ms Howell—That is correct.

Senator EGGLESTON—It is possible obviously to separate out gas at the other end, but presumably you do it by volume rather than by colour or a tag or something of a chemical nature?

Ms Howell—Yes.

Senator EGGLESTON—So it is not so difficult to separate out. I have one last question I would like to ask you, because Senator Cameron may have some questions. Has the supply of gas now been restored, following the Varanus gas explosion? Are we up to the 1,000 terajoules a day level?

Ms Howell—Not entirely. Varanus Island has two joint ventures and the John Brookes joint venture has restored its supplies. There is still limited supply from the Harriet joint venture, but I believe that that is imminently coming back into production.

Senator EGGLESTON—Is the North West Shelf joint venture still maintaining its previous levels of production or has it increased?

Ms Howell—When the Varanus incident occurred, the North West Shelf Venture immediately, in discussions with government, moved to produce as much gas as it possibly could to help customers who were stranded by the outage. We continued to do that and are still continuing, to a lesser degree, until Varanus Island is back in production.

Senator EGGLESTON—You referred to increased prices following the Varanus incident. Did the North West Shelf Venture cancel any contracts?

Ms Howell—No.

Senator EGGLESTON—You said the answer for the increased prices is increased competition. Of what order is that increase in price?

Ms Howell—I do not know the details, obviously, of everybody's contracts, but in the recent Santos sale, which was announced some time ago, about a month ago, it appeared that the price had increased almost fivefold.

Senator EGGLESTON—Do you think, in general terms, there is a case for more competition in the Western Australian gas market, with further fields developed further south?

Ms Howell—I think that the fact that the price has increased obviously makes it more attractive for other suppliers to come into the market. But the point I really want to make again about supply and demand is that the North West Shelf obviously has been going for 25 years; it does not have a lot of uncontracted gas. And then there are other, smaller suppliers. So the issue is about supply, not about the method of marketing, which is causing the prices to go up, in my opinion.

Senator EGGLESTON—Most of your gas is contracted for LNG and marketed overseas.

Ms Howell—And domestic gas. We have very large domestic gas contracts.

Senator EGGLESTON—What percentage of your production does domestic gas represent?

Ms Howell—Probably just over 20 per cent.

Senator CAMERON—Ms Howell, can you understand why, because of the set-up in the market in Western Australia, people would be concerned about the joint venture marketing as a monopoly marketer for that operation?

Ms Howell—I would not accept the monopoly label. The North West Shelf project, when it started in 1984, pretty much established the domestic gas market in Western Australia. Over that time, the customers have experienced reliable production and they have experienced low prices compared to other parts of the world—indeed, other parts of Australia when those earlier contracts were established—so I do not understand why people should be concerned by the North West Shelf project having supplied such large volumes of gas into the domestic market. The original commitment from the North West Shelf project was over 5,000 petajoules of gas. That is a very, very large quantity of gas that has been committed and has enabled number of businesses and so on to flourish.

Senator CAMERON—You say that the price of gas in Western Australia is about supply and demand and ‘simple market forces’. The marketing of gas in Western Australia is not simple, is it?

Ms Howell—The marketing is not simple but the issue at the moment is an issue of supply and demand. There is not enough supply.

Senator CAMERON—But you say the marketing is not simple. If it is not simple, why is it not simple—so that people do not have these concerns about the marketing approach?

Ms Howell—Sorry, I am not following the line—

Senator CAMERON—You say that the marketing is not simple. In your statement you said that the marketing is not simple. Why is it not simple?

Ms Howell—Any commercial negotiation or commercial contract is not a simple piece of business.

Senator CAMERON—You said to us it was simple market forces, but that is not consistent with what you are telling me now.

Ms Howell—No. I was differentiating between the actual fact of marketing and negotiating commercial contracts, which is a quite complex piece of business. At the moment the WA market is experiencing a supply and demand imbalance. To me it is a quite simple concept: there is not enough supply.

Senator CAMERON—What about international pricing? Do you look at international prices when you price your exports and your domestic gas supplies in your contracts?

Ms Howell—International prices are very variable. Every market is completely different depending on the local market conditions. So, no, we look at our local market conditions.

Senator CAMERON—So you are selling an international commodity but you do not look at international prices? Is that what you are telling me?

Ms Howell—That is correct.

Senator CAMERON—So nobody monitors what is happening with gas prices in your company?

Ms Howell—Oil prices are typically quoted. Apart from slight variations because of quality, it is an international commodity. Gas prices do not share that characteristic. There will be local characteristics as to the gas price but they will be quite different whether it is the USA, Europe or the Asia-Pacific area.

Senator CAMERON—But taking a company of your size, are you telling me that you do not monitor international gas prices? Is that what you are telling us? So you do not look at what is happening?

Ms Howell—Clearly, we are aware of international gas prices.

Senator CAMERON—That is what I am asking you.

Ms Howell—Yes, of course we are.

Senator CAMERON—I am asking you if you monitor them. Do you monitor international gas prices?

Ms Howell—We are aware of international gas prices.

Senator CAMERON—How do you make yourself aware?

Ms Howell—Public publications, journals and special information that is collected by consultants et cetera.

Senator CAMERON—So you employ consultants and direct employees to look at international gas prices?

Ms Howell—I am not sure where this is leading to. For me, I am working for the North West Shelf Venture. We are involved in the domestic gas market. I focus on the WA domestic gas market.

Senator CAMERON—But you cannot disentangle the North West Shelf Venture from its two areas of operation. One is exports and one is the domestic market.

Ms Howell—That is right.

Senator CAMERON—You say you simply look at the domestic market without any—

Ms Howell—No—

Senator CAMERON—And that is what—

Ms Howell—Of course we look at the LNG markets; that is our business.

Senator CAMERON—Of course, so you do look at them. But you don't look at New Zealand?

Ms Howell—No, because we do not have any operations in New Zealand.

Senator CAMERON—So, even though there are close economic relationships with New Zealand, you do not see New Zealand as having any relevance to the operation of your company at all?

Ms Howell—Are you referring to my company or to the North West Shelf venturers?

Senator CAMERON—Either.

Ms Howell—We do not have operations in New Zealand. We focus on where we have operations and where we have buyers.

Senator CAMERON—On the condensate excise, there have been statements made that an increase in that excise would be passed on to the consumer. Why would you pass that on when it has been a subsidy to assist the North West Shelf Venture for many years?

Ms Howell—First of all, let me say this. Any impost or any fixed cost has to go into consideration when we look at our business and when we look at the prices we charge. So if there is a change in our costs then we have to review that change and consider that for future prices.

Senator CAMERON—But your profits have been quite astronomical over the last few years. Compared to those of other companies, your profits have been high.

Ms Howell—Which company are we speaking about? Remember that I am here representing the joint venture.

Senator CAMERON—I am talking about the joint venture.

Ms Howell—The joint venture is not an incorporated entity. It does not have profits per se. The individual companies would.

Senator CAMERON—So how does the public estimate whether you are charging a proper price for gas if we do not know what your profits are?

Ms Howell—Obviously, the profits of the individual companies are available from public documents. I will make a comment though about—

Senator CAMERON—Could you provide those to me please?

Ms Howell—Woodside's or any other company's annual reports or financials are available.

Senator CAMERON—No, I am asking you to provide me with copies of those individual company profit statements that you are telling me are available. You are the chief executive officer.

Ms Howell—I am not the chief executive officer of Shell, Chevron, BHP, BP and Woodside.

Senator CAMERON—So you say we cannot question you about the individual profits of the components of this group because they operate as individuals. Is that right?

Ms Howell—I am responsible for the joint venture activities.

Senator CAMERON—Yes, but you are the chief executive officer and you are telling us that you cannot give us information about the venture—

Ms Howell—I am the chief executive officer of an unincorporated joint venture.

Senator CAMERON—This is where it all starts to get a bit interesting, doesn't it? We cannot establish the individual profits and we cannot establish executive salaries, I assume, so we cannot make a comment about the profitability and about the price of gas to the consumer. It is all these arrangements that we are worried about in terms of whether the consumer is getting a fair go. Can you understand that?

Ms Howell—I do not think it is relevant to the issue of joint marketing.

Senator CAMERON—You may not think it is relevant but I think we make come to a different conclusion on that.

Ms Howell—I have no comment.

Senator XENOPHON—Ms Howell, you have argued in your submission that the joint marketing arrangement should continue because the domestic gas market is immature. Is that a fair summary?

Ms Howell—Yes.

Senator XENOPHON—You say one indicator of this is the lack of new competitive suppliers.

Ms Howell—That is right.

Senator XENOPHON—However, the DomGas Alliance argues in its submission that the venture contributes to the significant commercial and economic barrier for new suppliers to the domestic gas market. Firstly, how would you respond to that claim? Secondly, isn't the venture a barrier to new market entrants and therefore doesn't it entrench the immaturity of the domestic gas market?

Ms Howell—There is no evidence that the joint marketing has created a barrier to other entrants. Indeed, there have been other entrants since the North West Shelf Venture started. As I

said, we started the domestic market essentially in Western Australia with 95 or 98 per cent. We have now diminished to around 60 per cent because of the entry of new suppliers.

Senator XENOPHON—It is still a significant market share though, isn't it?

Ms Howell—Yes, but falling. It is a significant share because we have discovered and developed a significant amount of reserves.

Senator XENOPHON—Sure, but isn't there almost a catch 22 in your argument about market immaturity in the sense that it would be more difficult for new competitive suppliers to come into the marketplace by virtue of the very significant market share that the venture has?

Ms Howell—I think you have to differentiate as to the market share that we have at the moment through these contracts that have been on foot for many years. I made the point earlier that the North West Shelf reserves are to a very large degree committed. Therefore there is ample opportunity for new suppliers to come into the market.

Senator XENOPHON—There is the issue that when the venture started, effectively you had to deal with a vertically integrated monopoly buyer. That was the case, wasn't it?

Ms Howell—Yes.

Senator XENOPHON—That would have been one of the reasons why there ought to have been joint marketing arrangements. You had to deal with one big vertically integrated monopoly supplier. That is a fair comment to make, isn't it?

Ms Howell—It is a fair comment. In addition of course there was a massive financial investment to start it.

Senator XENOPHON—But historically one of the significant reasons for that joint marketing arrangement was the fact that you had to deal with one monopoly supplier.

Ms Howell—One large contract.

Senator XENOPHON—Now you deal with 25 to 30 individual customers, so that is the case.

Ms Howell—We do not deal with 20 to 30. There are 20 to 30 customers in Western Australia. They are not all our customers.

Senator XENOPHON—But one of the significant reasons for the joint marketing arrangement—having one vertically integrated monopoly buyer—has changed, hasn't it?

Ms Howell—Yes, and that contract has been disaggregated, as I mentioned in my opening statement.

Senator XENOPHON—That has been disaggregated, but the marketing arrangement has not been disaggregated.

Ms Howell—That is correct.

CHAIR—Was that all, Senator Xenophon?

Senator XENOPHON—Yes.

Senator CAMERON—I have a question. You indicated that there was a huge investment by the joint venture early in the piece. As I can see from looking at your recent figures, that investment has been well rewarded by significant profitability. Can you supply the committee with a historic analysis of your return on investment over the period of the 25 years that you have been receiving government subsidies?

Ms Howell—As I said, it is an unincorporated joint venture so it does not operate as a single financial entity. I will make the comment, though, that—contrary to the assumption that this has always been a profitable project—through what I call ‘the lean years’ of the nineties this project was far from highly profitable.

Senator CAMERON—That is what I am simply asking. Whether it is an unincorporated joint venture or not you can provide this analysis for us now, but when we ask you for some long-term analysis, you say, ‘We’re unincorporated.’ Why do you have one answer for one question and yet, over a longer timescale, you will not answer the question?

Ms Howell—Simply because we do not do financial analysis for the joint venture. The individual companies do their own financial analysis.

Senator CAMERON—So do you think that, because you are exploiting an Australian resource, we should find that your lack of capacity to provide us with information should be allowed continue—that you should be allowed to continue to operate the way you are doing, in this sort of cloak of secrecy?

Ms Howell—There is no cloak of secrecy. The financial information on the participating companies is readily available. We do not have collective financial statements. They do not exist.

Senator CAMERON—So you do not operate collectively generally, and the only area in which you do operate collectively is in marketing—is that correct?

Ms Howell—No. We explore collectively, we develop collectively, we produce collectively and we market collectively, as a joint venture—a very common structure for high-risk, high-investment projects.

CHAIR—Thank you for your evidence this evening.

Senator XENOPHON—Chair, may I put some questions on notice?

CHAIR—Ms Howell, are you prepared to take questions on notice?

Senator XENOPHON—Since we are under time constraints, can I provide some questions to you to take on notice?

Ms Howell—Yes.

Senator XENOPHON—They relate to the condensate excise pass-through in the context of statements by Woodside's CEO about the excise increase leading to an increase in the potential passing-on of those costs. Can you just confirm: is the excise charged on oil condensate or natural gas? Further, in a truly competitive market, would the joint venture be able to contemplate passing on the effects of the condensate excise to a select group of customers?

Senator CAMERON—Can I raise a point of order: I know we are running out of time and, while I completely agree that Senator Xenophon should have the opportunity to put the questions, normally these questions are put in writing to the company, following the meeting, so that we can get time to go on with the other witnesses.

Senator XENOPHON—Sure. I am happy to do that, and perhaps it is more satisfactory.

CHAIR—And I think Senator Pratt might have a couple.

Senator PRATT—Yes, I do.

CHAIR—Thank you Ms Howell.

Ms Howell—Thank you.

[8.00 pm]

GOH, Mr Gavin, Executive Officer, DomGas Alliance

HOHNEN, Mr Stuart, Chairman, DomGas Alliance

CHAIR—Welcome, Mr Hohnen. Do you have any comments to make on the capacity in which you appear?

Mr Hohnen—In my day job, I am Executive Chairman of Dampier Bunbury Pipeline, which runs the Dampier to Bunbury natural gas pipeline system and is a foundation member of the alliance.

CHAIR—I invite you to make an opening statement.

Mr Hohnen—Thank you for the opportunity to address the committee. The DomGas Alliance was formed in 2006 in response to serious gas supply shortages in Western Australia. We represent the majority of the state's gas consumption and gas transmission capacity, including smaller industrial and household gas users. We also represent a significant proportion of prospective demand for gas supply.

The committee's inquiry has great importance for Western Australia; indeed, for Australia's energy market. Western Australia has the most energy- and gas-dependent economy in Australia and has the highest gas consumption of all the states. Natural gas supplies half of WA's primary energy requirements and fuels 60 per cent of the state's electricity generation. Ensuring the availability and affordability of gas supply is critical for industry and households. Effective competition in upstream gas markets is critical in this regard.

The North West Shelf joint venture includes some of the world's largest oil and gas companies, comprising Shell, BP, Chevron, Woodside, BHP Billiton Petroleum and Mitsui and Mitsubishi. Each company has the right and obligation to own, take and separately dispose of its production entitlement. Instead of competing with each other, however, the companies combine as a cartel to negotiate prices and contract terms with individual consumers. The Trade Practices Act outlaws behaviour which would have the effect of substantially lessening competition or which constitutes price fixing.

The North West Shelf joint venturers obtained specific authorisation for joint selling in 1977, when they were dealing with a vertically integrated, state-owned monopoly, SECWA. They obtained a further authorisation in 1998 to deal with a change in joint venture arrangements. Neither of these authorisations is any longer in effect, yet the North West Shelf joint venturers continue to sell jointly. When seeking the 1998 authorisation, the joint venture participants claimed they needed certainty of the authorisation to double the capacity of the domestic gas processing facility, along with other investment. This commitment was never met.

The joint-selling arrangement substantially lessens competition by dramatically reducing the number of independent sellers from six to one. It concentrates significant market power in the

hands of the North West Shelf gas producers, with the joint venture controlling close to 70 per cent of the WA gas market and over 92 per cent of gas resources in developed fields. Given that Apache-led joint venturers control the bulk of the remaining market, this creates a situation where two producer groups effectively control almost 100 per cent of the market as well as the gas resources in developed fields.

The concentration of market power is exacerbated by the fact that the North West Shelf joint venturers, singly or in combination, control the bulk of undeveloped reserves or resources in the Carnarvon Basin and, as a result, the majority of prospective new developments in Western Australia. We have the Pluto development, which is solely owned by Woodside; we have the Wheatstone prospective development, which is owned by Chevron; we have the Gorgon prospective development, owned by Shell and Chevron; we have the Macedon development, which is in fact owned by BHP and Apache, which leads the joint venturers on the competing side of the gas market; and we have Julimar, which is owned by Apache and KUFPEC.

By contrast, downstream consumers have limited bargaining power, are totally dependent on existing producers for their energy supplies and are prevented by the Trade Practices Act from combining to buy jointly. The absence of a competitive market and the actions of the North West Shelf joint venture in limiting supply have had a significant impact on industry and households. Western Australia is currently experiencing a serious gas shortage, with gas users unable to secure long-term gas supplies in substantial quantity. New power station and project developers are having to look to coal for their fuel requirements.

Wholesale prices have risen five-fold over the past 18 to 24 months. Prices reported for recent sales are now around five times eastern state prices on a delivered basis. The market power of producers is demonstrated by Woodside's public threats to pass on to domestic consumers the cost of the condensate excise exemption removal. Whatever views committee members might have on the excise, there is absolutely no basis for consumers being required to compensate Woodside and its partners. The excise is payable on the production of condensate, not on natural gas. Other oil and gas producers in Western Australia have been required to pay the excise and have done so for many years. Woodside has not threatened to pass on the excise to condensate or LNG customers in Japan or China where competitive markets exist. This clearly demonstrates the degree of market power which the North West Shelf joint venture believes it holds as a result of the joint selling arrangement.

I now turn to the North West Shelf joint venture claims that independent selling is not feasible in Western Australia. The alliance believes these claims have no merit. Since the mid-nineties, the Western Australian downstream gas market has undergone significant transformation from one dominated by a vertically integrated monopoly buyer to one of 25 to 30 individual customers. The downstream market has also undergone separation of gas purchase and transmission, third party access to pipelines and deregulation of energy utility and markets generally. The number of customers is to a large degree determined by the North West Shelf policy of not dealing with quantities of less than about 15 terajoules a day, which has resulted in a significant number of large industrial consumers currently buying through aggregators. Joint selling by the joint venture participants is no longer required to balance the market power of a monopoly buyer. At the same time, the North West Shelf project has become highly profitable, as evidenced by Woodside's first half-yearly net profits for this year of over \$1 billion. The

alliance understands that separate selling is already taking place from Apache-led developments and is proposed for some of the prospective developments.

Joint selling arrangements for domestic gas supply have been found to be anticompetitive in other international jurisdictions. Two of the joint venture participants, Shell and Chevron, have been required by the European Commission to sell separately from joint venture fields in Norway and Denmark. New Zealand has also found joint selling of domestic gas to be anticompetitive and has required Shell to sell separately. Shell and Chevron, therefore, continue in Australia to engage in the same anticompetitive conduct that has been prohibited in relation to their operations elsewhere in the world.

Finally, I wish to bring to the committee's attention the alliance's concerns about proposed changes to the joint venture defence in section 76D of the Trade Practices Act. Under the existing act, producers can establish a joint venture defence only if they can prove the arrangement does not substantially lessen competition. The proposed amendments for cartels, however, create a major loophole with joint venture participants only needing to demonstrate that a price-fixing arrangement is for the purposes of a joint venture. If passed, the proposed amendments would undercut the committee's current inquiry. Any finding by the committee that the joint selling arrangement impacts consumers and competition will be rendered meaningless if Woodside and its partners can justify the joint selling arrangement merely on the basis that it is for the purpose of a joint venture.

To conclude, the committee has a vital opportunity through its findings and recommendations to promote competition in gas supply for consumers. The need for a competitive gas market is especially important in the current economic environment. Industry and households are already facing immense pressures from falling commodity prices, export demand and employment, without the threats of escalating gas prices from Woodside and its partners. The alliance believes there is no longer any public benefit in permitting some of the world's largest oil and gas companies to sell as a cartel to local consumers. Thank you, ladies and gentlemen.

CHAIR—What recommendations would you like to see come out of this inquiry?

Mr Hohnen—We would certainly like to see the issue of joint selling pursued vigorously by the ACCC and abolished in the case of the North West Shelf joint venture.

CHAIR—Would you like to see legislation that outlaws specific joint ventures in Western Australia or that makes changes to the Trade Practices Act? How would you see that happening?

Mr Hohnen—We believe that the Trade Practices Act is adequate to deal with the issue in its present form, as indicated in the alliance's submission. We have concerns about the proposed cartel provisions and think they could create a significant loophole to benefit joint ventures such as North West Shelf.

CHAIR—So, in your view, it requires better policing by the ACCC?

Mr Hohnen—We believe so, yes.

Senator XENOPHON—During evidence given by Ms Howell, I put to her that the position of the European Commission position and New Zealand is that these joint venture arrangements are outlawed. She made the point that the arrangements are very different in terms of those markets and how gas is distributed, as I understand it. I want to put that fairly. What do you say about that? Is it the case that it has been outlawed in Europe and New Zealand because of significant appreciable differences in the structure of those markets?

Mr Hohnen—Certainly the market in New Zealand would be considerably smaller than the Western Australian market. The concerns that Ms Howell expresses about the sophistication of the market would not hold true in the New Zealand situation. As we said in our submission, we are already seeing separate selling from other joint ventures in Western Australia and from prospective projects in Western Australia. Again, as we said in the submission, we now have a much different downstream market position in Western Australia from the one we had in 1998 when the ACCC made its earlier findings. We have multiple sellers. We have interconnection of all the pipelines in Western Australia. We have significant potential within the pipeline system to deal with imbalances. We have trading of gas and gas transportation capability between the major buyers in Western Australia. We do not believe it is beyond the intelligence of sensible people to devise a separate selling arrangement in Western Australia.

Senator XENOPHON—In a practical commercial sense, how does the joint venture arrangement frustrate or prejudice your members? How does it work on a practical level? You have referred to prices being higher. What evidence do you have for that? Secondly, how does the arrangement actually impede—

Mr Hohnen—Can you imagine the challenge of one of my members renegotiating their arrangements with a joint venture company that comprises several of the major oil companies of the world and that has complete knowledge of everybody's contractual terms and prices? How do you negotiate in that environment? It is impossible. The extrapolation of this to prospective developments is one of the things that have really triggered off the concerns of our members. We have a proposed new supply from a series of new operations all being promoted by the same group of people who have all that knowledge of contractual terms and conditions right across the board. How does a buyer deal with that situation? They cannot put their heads together and share information because it is contrary to the Trade Practices Act.

Senator XENOPHON—Thank you.

Senator EGGLESTON—You said that Apache was selling separately. How is it doing that? Tell us about that. Is it to different customers?

Mr Hohnen—In terms of just the practicalities of how it works?

Senator EGGLESTON—Yes.

Mr Hohnen—I cannot give you details of that.

Senator EGGLESTON—You cannot?

Mr Hohnen—An example of those individual joint ventures is the recently announced Santos sale. It is an individual joint venture within one of the Apache joint ventures. It made a specific sale to a project on its own account. It was not a sale by Apache and Santos; it was a sale by Santos. And so it clearly has the means to deal with that within its joint venture and production structure.

Senator EGGLESTON—So, in other words: there is an agreement, for that joint venture, that the component companies can market separately as well as jointly?

Mr Hohnen—There clearly is.

Senator EGGLESTON—Is that a common arrangement?

Mr Hohnen—I believe so, elsewhere in the world. I was involved, in the late nineties, in negotiating a major gas supply contract with Apache. It was a very large contract and Apache dealt on its own regard, not on behalf of its joint venturers. It was selling its proportion of gas out of those fields, and how it was going to deal with the other owners' proportion of gas was really up to them.

Senator EGGLESTON—Who are the other joint venturers with Apache?

Mr Hohnen—It is in a number of joint ventures. The Harriet joint venture has a number of parties. I cannot remember them off the top of my head but there is Apache and there is Tap Oil; I am not sure of the others. The John Brookes development is a joint venture between Apache and Santos. Apache and Santos are joint venturers, I think, in the new Reindeer development. Then another prospective development is a joint venture between Apache and KUFPEC. So there are different combinations.

Senator EGGLESTON—I suppose we could get the details of those joint ventures from the chamber of minerals.

Mr Hohnen—Well, we can provide those to you. They are a matter of public record.

Senator EGGLESTON—Are they all separate platforms coming into the Apache development and then leading into the Dampier-Bunbury pipeline?

Mr Hohnen—Apache has a number of separate platforms and pipelines feeding into Varanus Island. It has a number of processing facilities on the island and then two pipelines leading off the island and connecting into both the Dampier-Bunbury pipeline and the Goldfields Gas Pipeline.

Senator EGGLESTON—And their market is domestic, is it? It is not LNG?

Mr Hohnen—Their market is totally domestic.

Senator EGGLESTON—So, from what you are saying, if they market separately, does that mean one component of the joint venture can compete against their joint venturer for the same contract—the same seller?

Mr Hohnen—That is correct. Well, presumably—I am not privy to their internal discussions.

Senator EGGLESTON—Would that be a common event?

Mr Hohnen—I believe so—in other markets it is certainly common.

Senator EGGLESTON—But you do not know about Western Australia?

Mr Hohnen—No.

Senator EGGLESTON—I understand from the evidence we have been given by the North West Shelf joint venture that they are operating within the provisions of the Trade Practices Act, so they are operating in a quite legal way in selling their gas in the way that they do. Would you agree with that?

Mr Hohnen—They clearly believe that they are operating within the provisions of the Trade Practices Act, but the requirement of the Trade Practices Act is that their behaviour—the way in which they organise their marketing—is not substantially lessening of competition. Quite frankly, we cannot believe that an amalgamation of six companies like that, with 70 per cent market share, cannot lessen competition in the marketplace. That is the key criteria.

Senator EGGLESTON—Yes, I accept what you are saying, but I, unfortunately, am not a lawyer—I do not know the full extent of the Trade Practices Act.

Senator CAMERON—Is that unfortunately or fortunately?

Senator EGGLESTON—Fortunately, probably! There are far too many lawyers in the federal parliament. Woodside, nevertheless, have given evidence, and they are prepared to take on notice the provision of that evidence to us, that they have legal advice that they are operating within the Trade Practices Act. Therefore, at this stage, one must accept what they are saying at face value—that they are doing what they are doing quite legally, hence that is quite acceptable in the Western Australian market. It may be that other companies may seek to undercut their prices and provide competition, which is not a bad thing, is it? If Woodside is operating legally, offering gas from the joint venture at price X, and Apache and its various joint venture partners offer gas at a cheaper price, then that is competition and the market surely cannot complain.

Mr Hohnen—Senator, I am just a simple engineer; I am not a lawyer either. But I think simple engineers and senators and others can make judgements about whether a particular sort of behaviour substantially lessens competition, without being lawyers.

Senator EGGLESTON—Well, does it come back to volumes? What volume of gas might the Apache joint ventures together be able to put into the Western Australian market?

Mr Hohnen—The Apache joint ventures put in a total of about 350 terajoules a day out of the total market—

Senator EGGLESTON—So that is a third, roughly.

Mr Hohnen—which is about a third of the market.

Senator EGGLESTON—In other words, about a third of the customers in WA in fact have a choice between the various Apache joint venture partners and the North West Shelf joint venture?

Mr Hohnen—Certainly, the Apache joint ventures have introduced a degree of competition into the marketplace since the mid-nineties.

Senator PRATT—Has that influenced prices?

Senator EGGLESTON—I was just going to get to that, if I might finish. That means that as a group the Apache joint venturers do offer competition to the North West Shelf. I think we should just establish that.

Mr Goh—Not in terms of all potential buyers. Our understanding is that the Apache joint ventures have supplied mainly smaller, potential customers who it appears are unable to secure supplies from the North West Shelf joint venture, which has focused on larger quantities of gas.

Senator EGGLESTON—So the North West Shelf is selling to the larger purchasers, and Apache is selling to the smaller ones. Thank you very much. I would like to just go to a question about price. I do not want to pre-empt Senator Pratt, but one of the issues that have arisen post the Varanus Island explosion is the question of price increases. Have you any knowledge of price increases?

Mr Hohnen—Pricing in the context of the Varanus Island incident is a short-term matter which I do not think is the subject of our concerns. We have certainly heard allegations of excessive pricing and so forth during the period of that outage, but that is not the subject of our submission and our interest in joint selling.

Senator EGGLESTON—Nevertheless, it is about competition. Specifically, we have heard suggestions that companies may have used force majeure provisions to cancel contracts and then sought to re-establish them with the same customers at higher prices. Do you have any knowledge of that kind of activity?

Mr Hohnen—I have no knowledge of that behaviour.

Senator EGGLESTON—Thank you.

CHAIR—Senator Pratt.

Senator PRATT—I wanted to ask you how you respond to the claim that it is all supply and demand, and an end to the joint venture marketing arrangements would not necessarily mean lower prices—and they may not, depending on what the international markets are doing anyway? Do you legitimately believe it would bring in greater competition and that would put downward pressure on prices?

Mr Hohnen—I do believe it will introduce greater competition. I do not believe that the removal of joint selling is going to immediately and fundamentally change the market. But the whole concept of prospective new developers being the same parties that are tied up in the dominant 70 per cent market player is calculated to have a significant effect on the market and on decisions to introduce new supply and the pricing of that new supply. It is not a natural competitive market.

Mr Goh—I could add to that. You essentially have the North West Shelf joint venture, in its operations, setting a minimum price for gas. Conceivably, the participants in prospective ventures are not going to set prices which in any way undercut the North West Shelf gas joint venture prices. Why would they when there is a commercial incentive to equal it, if not exceed it? There is the sharing of information between the joint venture participants and also outside the joint venture. That is the real concern in terms of competition.

Senator PRATT—How much transparency is there? Clearly, the alliance must be monitoring international gas markets and looking at the local price, noting that in supply the local gas market is often losing out because international prices are quite high. What is your assessment of where the state gas market sits in relation to international pricing? That is not like a spot market; it is quite diverse and there are quite long-term contracts. How do you get transparency in that kind of environment?

Mr Hohnen—Gas markets around the world, as Ms Howell commented earlier, vary tremendously in terms of their characteristics and pricing. You can have gas markets operating at very low levels of prices and you can have the markets that rely on imported LNG operating at much higher prices. DomGas Alliance believes that, in a truly competitive market where supply is not being held back from the market and there is a sufficient number of competing players, pricing will find the appropriate level in the WA context.

Mr Goh—If I could add to that, the real concern is that what we are seeing now is pricing for domestic gas being applied at a premium to LNG netback prices. So the absence of a truly competitive domestic market is actually creating a price premium for producers which they are not getting from the international market.

Senator PRATT—How do you respond to the notion that, because there is such common infrastructure in relation to gas, such competition is not viable?

Mr Hohnen—I am sorry, I do not understand the question.

Senator PRATT—What I took from Ms Howell's presentation is the significant size of the investments and that the large-scale common infrastructure means that competition is unviable. How do you respond to that?

Mr Hohnen—The North West Shelf's investment in infrastructure in recent years has been related to its expansion for LNG. It has not been related to its domestic gas expansion. The capacity of the domestic gas operation of the North West Shelf has not increased substantially since the early days of the project. The number of customers who they have retained and the size of those customers is essentially the same, with one addition, which is BHP.

Senator PRATT—Surely, in an electricity grid, it does not mean you do not have competition in terms of the product that comes through it. Is that not right?

Mr Hohnen—Sorry—

Senator PRATT—I am trying to come to grips with the idea that one of the reasons why the venture is against competition in their own marketing is that they have common infrastructure, but surely there are other examples within the Western Australian market where that is not the case—for example, in electricity.

Mr Hohnen—Ms Howell talked about the difficulty of aggregating sufficient volumes to underpin investment. That is something that we in the pipeline business do every day. We have mounted three very large expansion projects in the last four years. We have committed \$1.8 billion to the Western Australian market. We have aggregated a series of diverse customer loads and engineered and financed those expansions. That is not all that difficult.

Mr Goh—I think the other point is that, when you are looking at these joint ventures, you have production infrastructure and exploration and operations going on. What we are talking about is the disposal of the product at the end point. Being required to sell independently and compete, in our mind, does not impact on the production of that resource. It is probably relevant to note that the argument was raised with the New Zealand authorities that joint selling was necessary to underpin investments. New Zealand found as a matter of conclusion that separate selling was not going to make an otherwise viable field nonviable. What I am trying to say is that it is not going to impact the viability or otherwise of a field.

Senator PRATT—Could you add some depth to the comparison between Western Australia and New Zealand, other than the fact that New Zealand have overturned their joint marketing?

Mr Hohnen—No, I would not be able to compare the New Zealand and Western Australian markets. I do not have enough information on the nature of the Western Australian market.

Senator CAMERON—Mr Hohnen, you say you are a simple engineer. I am trying to give weight to your evidence. You are not simply an engineer. You have widespread experience in the gas industry in Western Australia. Is that correct?

Mr Hohnen—Yes, I do.

Senator CAMERON—You consider yourself to be quite competent to comment on the gas industry in Western Australia.

Mr Hohnen—I hope so, Senator.

Senator CAMERON—Ms Howell outlined a range of reasons as to why monopoly marketing should continue. One of those reasons was that Europe has the capacity to store gas but we do not have that capacity in Western Australia. I am struggling to understand why a storage facility should be any impediment to multiple marketing. Can you tell me why that is so?

Mr Hohnen—I do not believe it needs to be. Clearly, one needs to balance on a daily and weekly basis the production from the fields and what is taken from the market. In the pipeline business, we do that every day. We take nominations from parties upstream as to what they think they are going to produce. The market matches that with what is taken out of the pipeline. There are differences between the inputs and the outputs on a daily basis, so we manage the imbalances—the pipeline does a deal of that. In Western Australia, we have some storage capability in a field near Dongara. But it is really a matter of how you manage the nomination process and plan your production requirements. A great proportion of Western Australia's gas is used on a continuous baseload basis in major alumina refining, major chemicals manufacturing and baseload power generation. So it is only a small proportion that fluctuates on a daily or seasonal basis.

Senator CAMERON—So you are asserting that the marketing arrangements that are in place disadvantage your members and the Western Australian community?

Mr Hohnen—They reduce the amount of competition that would otherwise exist in that marketplace. We would have six competing producers rather than a single dominant producer.

Senator CAMERON—If the normal neo-classical economic arguments for competition are to be applied here, more competition would mean lower prices?

Mr Hohnen—We believe so.

Senator CAMERON—If the venture is operating legally, as they claim, within the ACCC requirements of the Trade Practices Act do we need to change the Trade Practices Act?

Mr Hohnen—If the ACCC, after investigations by its enforcement division, finds they are operating within the provisions of the act I would strongly urge that the act be modified.

Mr Goh—The committee can assist all of these inquiries that are underway in terms of its factual findings on the basis of the information and evidence provided to it. The committee does have an invaluable role in this issue.

Senator JOYCE—In summary, and continuing on from Senator Cameron, the North West Shelf joint venture says it believes it is within the concept of the ACCC's act. You hold a contrary view to that—is that correct?

Mr Hohnen—That is correct.

Senator JOYCE—This is not a loaded question, and I will go to the next question if you cannot answer this, but can you clearly identify what sections of the act they are currently in breach of?

Mr Hohnen—We believe their behaviour is substantially lessening of competition. That is the fundamental test in the Trade Practices Act. As to which particular provision it is, I cannot tell you.

Mr Goh—It would be section 45. It also raises concerns under the existing section 45A which is the prohibition against price fixing.

Senator JOYCE—How does that affect you on a day-to-day basis? Do you get an uncompetitive product?

Mr Hohnen—We have a market that is really not a competitive market.

Senator JOYCE—Is there any prospect of anybody else entering the market to give you access to a better competing product?

Mr Hohnen—All the prospective new developments that would come into the market have ownership links with the existing North West Shelf joint venture or with Apache.

Senator JOYCE—So it is basically ipso facto. There is interconnectivity between all the partners?

Mr Hohnen—That is correct—with sharing of knowledge on contract terms, prices, timing and all the provisions that go into a commercial gas contract.

Senator JOYCE—So, implicit or explicit, they would know each other's actions and be able to price accordingly, would they not?

Mr Hohnen—In our view, yes.

Senator JOYCE—If they put up the price substantially do you think there would be any form of peel-off of any customers to any other form of alternative energy or would people just stop using the product?

Mr Hohnen—We already have examples in Western Australia where power generation has had to resort to coal and new project developers have had to look to coal for their fuel requirements.

Senator JOYCE—It could be an issue that, as someone puts up the price, even though their effect on the market is quite adamant—there is a purpose to where I am going—there would be minor sections of the market, in any way, shape or form, that would start using alternative products of coal or going to other alternative energy sources or finding some other minor player in the market that they would then do business with? My question is that as prices go up some sections of that market would actually be lost by those who have an arrangement, either implicit or explicit, in the North West Shelf? There would be a peel-off to other items. I am not loading you up for a question; I am explaining a proposition.

Mr Hohnen—Most of the alternative energy supply sources for the vast bulk of the market in Western Australia are tied specifically to gas. There are some that could use coal, but not significantly so. As for alternative energy sources, if you are talking about renewables and so forth, there is very limited application in terms of baseload power generation or in major mineral processing or in fertiliser development.

Senator JOYCE—Which is another inquiry, one that I am going to on Friday.

Mr Goh—Many of the existing gas users are price sensitive to energy, so many of them may not be able to swap over to alternative energy sources.

Senator JOYCE—So they would be out of business.

Mr Goh—Yes.

Senator JOYCE—So that is why they would use less, because otherwise they would be out of business. They would lose customers because some people would go broke. That is important, because it goes back to this whole premise of this so-called market power test. In some sections of the act, to get into the door of the court all those people have to prove is that if they were to put up prices they would lose some customers. You have just clearly explained that they would, yet it is quite evident that the way that they act is such that it is abhorrent to the market and so there has to be a more substantive test than a market power test as an instigator for actions. If for certain actions within the Trade Practices Act the market power test is required, then you have to go to a court and prove that this person can put up prices and not lose any customers, which would be impossible. So not only do you think they are in breach of the act but for some areas you would have to say that you need a stronger Trade Practices Act to be able to deal with those breaches.

Mr Hohnen—But it is not totally about pricing behaviour either, Senator; it is also about supply. Withholding supply is at least as powerful an action as putting up prices.

Senator JOYCE—Has the ACCC approached you and said, ‘We think there is something going on. We think there is something that smells. We are going to take this case up on your behalf’?

Mr Hohnen—The matter is being considered by the ACCC enforcement division at the present time, but it is being considered after our submissions.

Senator JOYCE—What feedback are you getting through that process as to how they are going?

Mr Hohnen—Very little.

Senator JOYCE—How long have they been at the job for?

Mr Hohnen—Since the beginning of this year.

Mr Goh—We raised those concerns in the middle of last year or in the first half of last year.

Senator JOYCE—So in the middle of last year you raised those concerns?

Mr Goh—Yes. We can provide the precise dates.

Senator JOYCE—That is a substantial amount of time.

Senator XENOPHON—Chair, could that be provided to the committee on notice?

CHAIR—Yes.

Mr Hohnen—We will provide the dates on which we have written to the ACCC, when we have provided submissions and when we have met with the ACCC.

Senator JOYCE—When was your last communication with the ACCC or when was the last time they communicated to you on the state of progress through this case?

Mr Hohnen—We have had recent communication by telephone asking for progress but that has not been terribly forthcoming.

Senator JOYCE—Finally, do you think that you would be able to have the capacity, as a small player against giants of the global industry, not just giants of the Western Australian industry, to successfully prosecute a case on your own behalf with your own resources that would somehow lead to a conclusion and recourse under law for where you believe you are at? Do you think, taking your gut feeling approach, that if there were not the ACCC and it were just you against the North West Shelf firms that you would have the capacity and the resources and the likelihood of a satisfactory conclusion to recourse of action as to your complaint?

Mr Hohnen—The difficulty in this area is that the major buyers in Western Australia are totally reliant for their ongoing survival on a continuing source of gas from the North West Shelf development, which comprises the majority of the market. So in terms of getting some form of aggressive action moving it is a very difficult ask. That is the nature of market power.

Senator JOYCE—It certainly is. Thank you.

ACTING CHAIR (Senator Eggleston)—As there are no further questions, we thank you very much for appearing. Before you go, could you for the record explain what you do. You are the operators of the pipeline; is that the case?

Mr Hohnen—Yes. I am the chief executive of an entity called Dampier Bunbury Pipeline, which is the owner and operator of the Dampier to Bunbury natural gas pipeline, which is the asset. DBP has three corporate owners. One is an entity called DUET, which is an infrastructure investment trust, which holds 60 per cent. Alcoa owns 20 per cent and Babcock & Brown Infrastructure owns the other 20 per cent.

ACTING CHAIR—Thank you very much, Mr Goh and Mr Hohnen.

[8.46 pm]

ZUMBO, Associate Professor Frank, Private capacity

ACTING CHAIR—We welcome you to the inquiry, Professor Zumbo. Do you have any comments to make on the capacity in which you appear?

Prof. Zumbo—I am an associate professor in the Australian School of Business at the University of New South Wales.

ACTING CHAIR—Would you like to make a short opening statement?

Prof. Zumbo—I have some very brief opening comments. I do this with the purpose of trying to guide the committee as best I can. Basically, the issues before this inquiry can be broken down into three areas. Firstly, there is the competition law issue and that is basically the application of the Trade Practices Act. There are two issues there. One is: are the joint venturers engaging in any conduct that is in breach of the Trade Practices Act, in particular the competition provisions? Step two is: if they are engaging in any conduct that is in breach of the competition provisions, is there some defence that the joint venture can rely on? Alternatively, is there an authorisation in place? An authorisation, as we know, would give immunity from prosecution.

This competition law issue arises because there is no authorisation in place. If there had been an authorisation in place, we would not be talking about the application of the Trade Practices Act or breaches. However, because there is no authorisation, the question does arise as to whether there is a breach of the Trade Practices Act. In my opinion, there is a breach of section 45 of the Trade Practices Act. It can be through price fixing—and we know there is price-fixing conduct. Also there is conduct that is likely to have the effect of substantially lessening competition. So I would argue there is a breach of section 45.

Step three then would be: is there an appropriate defence? There are two defences in section 76C and 76D. Whether ultimately the joint venture is in breach of the Trade Practices Act depends on the application of that defence. Just to summarise: in terms of that defence, the joint venturers have the onus of proving that they do not have the purpose of substantially lessening competition, that there is not the effect of substantially lessening competition and that there is not the likely effect of substantially lessening competition. They have to prove all three of those.

The easiest one of those is the effect or likely effect. I think we can demonstrate that there is a likely effect of substantially lessening competition. The question is whether they have the purpose of substantially lessening competition. At that point you have to ask: what is the goal they are seeking to achieve by engaging in joint marketing? I would submit that there is only one goal, and that is to maintain or raise prices above competitive levels. If that is the case, then they would have the purpose of substantially lessening competition.

So, in summary, I would argue that the defence does not help the venturers. That leads us into a very difficult area because there may be a breach of the Trade Practices Act and no relevant

defence because the joint venturers have seen fit not to renew an authorisation or have asked for an authorisation to be revoked.

That takes me to the second set of issues for the committee, and that is: are there economic benefits and costs associated with the joint marketing? That is clearly in the domain of the question of whether there should be an authorisation. But because the joint venturers have asked for the authorisation to be revoked and will not renew another authorisation, that issue is not relevant to the first set of issues where there is a breach of the Trade Practices Act. If they feel there are economic benefits and costs, they should be applying or reapplying for an authorisation in the same way they did originally. But, because there is no authorisation, there is a question of whether the Trade Practices Act has been breached.

The third set of issues, quite apart from the application of the Trade Practices Act, is the question of the liberalisation of gas markets. If we are truly committed to the liberalisation of gas markets, we need three things. We need consumers to be able to choose their suppliers—contestability. We need transparent, non-discriminatory access to pipelines, and we have got that through national gas pipeline legislation and Western Australian legislation. But the third thing that you need for a truly liberalised market is a variety of producers separately marketing—independently marketing. Until you have that separate marketing, and you will not have a fully liberalised gas market, you will not have a truly competitive gas market and, in fact, the joint marketing activities become an impediment to the market ever reaching full maturity.

So those are the three sets of issues before the committee. I am now happy to take questions.

Senator CAMERON—Professor Zumbo, that was an interesting outline of your position. Can you just explain to me why the North West Shelf organisation would be in a position any different from that of a New South Wales coal consortium who were selling coal to the New South Wales power industry?

Prof. Zumbo—It depends on how they structure the arrangement in New South Wales. If they operate as a joint venture, then they may or may not have the benefit of the joint venture defences that were introduced a couple of years ago in 76C and 76D. So, no—they would not be different if they were operating as a joint venture. You would have to ask whether those joint venture defences apply. If they do, you have a defence; if not, you have a breach—because, typically, implicit in a joint venture or joint marketing arrangement is a breach of section 45: price fixing, or conduct that is likely to have the effect, if it does not have the purpose, of substantially lessening competition. That is why the defence was introduced: to provide some clarity to joint venturers.

The question then becomes an interpretation of that defence and its relevance to the particular joint venture. In this case, because the joint venture is such a dominant player in the gas market, it exposes it to a considerable risk that would not be faced by a much smaller joint venture for example, and that is why I am at a loss to explain why they asked for the authorisation to be revoked and did not review the authorisation.

My advice to any person in the position of the joint venture—given the considerable risk, given the size of the venture—is: if you have an authorisation you keep it, and if you do not have an authorisation you get one. It is just far too risky. The penalties under the Trade Practices Act

could be 10 per cent of turnover—\$10 million per offence. They are very significant penalties. There is a real question as to why they sought to revoke that authorisation. If it is there, you keep it. Why give it up? It is silly.

Senator CAMERON—Okay. Would it be a defence, in your opinion, for Woodside to argue that the purpose of the joint marketing is to offset the cost and the difficulties of the exploration and all of the set-up costs, and that there had to be some kind of quid pro quo from government? Would that be a defence?

Prof. Zumbo—You can have different purposes.

Senator CAMERON—I am not trying to build a defence; I just have an interest.

Prof. Zumbo—They could argue that that is a purpose, but the Trade Practices Act requires that we look at the substantial purpose. To me, every way you look at it from an economic, rational point of view, the purpose of joint marketing is to ensure that you get an appropriate rate of return, and that is the maximum that you can get, which implicitly has a temptation of maintaining or raising prices above competitive levels. Why else would you do it? Yes, you have costs to offset, but at the end of the day you are there to make a profit and the bigger the profit the happier you are. In this case, the lack of competitive constraint to keep those prices down, because of the dominant position of the joint venture, means that the purpose is to try to extract the best possible return, which would be to try to raise prices or maintain prices above competitive levels.

Senator CAMERON—Thank you.

Senator XENOPHON—Mr Hohnen in his evidence made reference to the concerns of the DomGas Alliance with respect to the proposed changes to the Trade Practices Act regarding cartels, in that that would somehow prejudice the alliance. Could you comment on that and flesh that out for the committee?

Prof. Zumbo—Yes. There are two issues. One is that the joint venture defence in 76C and 76D may be too broad, so that may need to be looked at—that is, the defence may be allowing conduct that has the effect of substantially lessening competition because you may have a problem in trying to establish the purpose. But in relation to the cartel behaviour, I am very concerned that joint ventures appear to have some preferential treatment in terms of the defence. I believe that the joint venture defence in cartels is far too broad and needs to be looked at very carefully.

Senator XENOPHON—Thank you.

Senator JOYCE—If I look at Woodside—I will be partisan—I would say that that is a Western Australian company dealing with an Australian resource against multinational competition. We are lucky to have an Australian company. Why are we going to make its life any tougher? What is our goal—to get rid of it?

Prof. Zumbo—No. Our goal is to maximise the welfare of consumers. That is the ultimate goal of the Trade Practices Act. We do not want companies to go bankrupt but, if they do as a

result of competitive pressures, that is a competitive market. Woodside is not a small company. None of the other joint venturers are small companies. They are all very large companies and very sophisticated companies, with a lot of experience in resource exploitation and development. These are not small companies. They enter into large transactions, they get the best advice and therefore they do not need any protection. No competitor requires protection from the competitive forces. The ironic thing is that we have very large entities being protected from competition by defence that may be too broad, although I suggest that the defence does not help them in this case, or that defence in relation to cartel legislation may be too broad. These companies certainly do not need that protection. They can stand on their own two feet, they can separately market and they can engage in a process where they can maximise their returns without jeopardising their future, even under separate marketing arrangements. They do that in other parts of the world, including New Zealand.

Senator JOYCE—If I were Woodside, I would be saying, ‘If you want to find something that’s a problem, go to the refineries anywhere in the west or the east where Caltex, Shell, Mobil and BP all use the same refinery and have the same buy-sell arrangements that the refinery gives.’ Surely our arrangement is a little bit more disjointed than theirs, which is complete and utter collusion at an agreed price.

Prof. Zumbo—I do not believe it is that different. In a sense, the buy-sell arrangements are coordinated activities by the oil companies. The joint venturers are engaging in coordinated activities. They are clubs—whether you call them cartels or not, they are clubs that benefit the members, which are the joint venturers in this case or the oil companies in the case of the buy-sell arrangements. That club is benefiting at the expense of consumers. Our goal is the protection and maximisation of the welfare of consumers.

Senator JOYCE—If I were the solicitor for any of the people in the joint venture, I would say, ‘Whatever defence they’re using at the refinery is the defence we’re going to use.’ The moment that they had the knowledge or forethought that they had proved a cartel arrangement here, a smart player would say that therefore there must be a cartel arrangement at the refinery gate.

Prof. Zumbo—The one difference that I should highlight is that the oil companies would strenuously argue that they are not engaging in price fixing. And they would strenuously argue that, even though they engage in buy-sell, they are separately marketing; whereas the joint venturers are engaging in price fixing and coordinated activity. That is the fundamental difference. So the joint venturers do have a privileged position over the oil companies in that regard.

As I said, if there were any doubt, yes, the joint venture has contributed enormous benefits, but we have to make sure that those benefits are not outweighed by the cost, which is a loss of competition and higher prices to consumers. Ultimately, what I still cannot understand is: if the benefits that the joint venture believe they are contributing outweigh the cost—that is, the reduction in competition—why don’t they seek an authorisation? That would put the issue beyond doubt.

Senator PRATT—Is it fair to say that, if there is a high level of competition in international gas markets and the North West Shelf joint venture has the benefit of that, surely we need to

promote high levels of competition domestically too, and consumers in our domestic gas market are being unfairly punished because they do not have the same level of competition?

Prof. Zumbo—Absolutely. It has been admitted tonight that there is a lesser degree of competition in the Western Australian gas market, because we have been told by the joint venture representatives that the global markets are very competitive. My concern also in that case is not only that Western Australian consumers are being disadvantaged but that there may even be the possibility that there is cross-subsidisation—that the domestic consumers to some degree are cross-subsidising the need for the joint venturers to cut their prices on global markets, because those global markets are more competitive, and hence make those up somehow with domestic consumers. That is an argument. Whether or not it is true is a matter for the ACCC. Ultimately, I think the quicker the ACCC can provide an answer to whether or not there is a breach of the Trade Practices Act, the better. If there is a breach, they should institute proceedings; if there is no breach, it would be because the joint venture defences in 76C and 76D are too broad. I would be the first to suggest we need to look at that very carefully, particularly now that the issue has arisen in cartel legislation.

Senator PRATT—Some of the justifications for joint marketing are the size of the current market and that the market is lumpy, there is no storage and there is not enough diversity among consumers. Do any of those justifications have a legitimate place in arguing out these issues?

Prof. Zumbo—I would say two things in response to that. One is that the Western Australian gas market has come a long way from the early days of the venture. We do have contestability in terms of consumers. There is an access regime in terms of gas pipelines. So there is a level of maturity that has developed and continues to develop. My fundamental proposition to the committee is that you will never get the market to develop to a fully mature status until you remove the joint marketing arrangements, because the joint marketing arrangements are an impediment to the development of all the factors you pointed out. Until you have separate marketing, all these additional facilities will not develop. There is no incentive to develop them because you essentially have a very dominant player, it being the North West Shelf project.

ACTING CHAIR—We have heard evidence that there is competition in the Western Australian market—that the Apache group and its various joint ventures have a third of the gas and the North West Shelf joint venture has two-thirds. And we have heard that the Apache joint venturers operate separately, market separately and have different price structures. That is a degree of competition, surely, within what is not a very large market, which is unique in having a single pipeline, and so on? What would your response to that be?

Prof. Zumbo—My response would be, yes, there is some competition but you can have a lot more competition for the benefit of consumers. That is very important to realise because the test is whether it is likely to substantially lessen competition or it has that purpose, and you look at that by reference to the market power. You would determine market power by an ability to raise prices without losing business. It would be clear that the joint venturers could raise prices in some instances and the customers could not move because there is not a sufficient supply elsewhere. Apache may not have sufficient supplies to satisfy that large quantity of demand from that particular buyer. So the level of substitution is not as great as it should be, and there is the fact that the joint venturers can exercise market power. All those factors give rise to the issue that the joint venture may substantially lessen competition.

ACTING CHAIR—Nevertheless, the joint venturers stated that they had the authorisation revoked because they had had legal advice that they were operating within the Trade Practices Act. So here we have a joint venture saying that its operations are quite legal and that a degree of competition has been established through the various Apache joint ventures. Should we be concerned? It would seem that it is all a legal arrangement.

Prof. Zumbo—No. As a lawyer you never assume anything. Even the best legal advice is no guarantee that in court you will not lose. They may have legal advice. I would be very interested to see that legal advice. It conflicts with my advice to the committee. Different lawyers have different views, and I accept that. However, if I were a joint venturer I would not take comfort in that legal advice, no matter how good it was, with all due respect to the lawyers who may have provided it, simply because, ultimately, it is the ACCC that can take the prosecution. Unless I had a level of comfort from the ACCC that it would not prosecute, I would not be relying on legal advice. The penalties are far too great under the Trade Practices Act. So the question arises: has the ACCC given any indication that it does not believe that the joint venture has a case to answer? I think that is a very valid question. If the joint venturers have been given a level of comfort from the ACCC then I believe the committee would need to know that, and obviously the rest of Australia would need to know that, because these are very big issues affecting a very big gas market, with considerable detrimental impacts on consumers in that market.

Senator XENOPHON—Following on from Senator Eggleston's questions, do you interpret the revoking of the joint selling authorisation as a sign of confidence that the current joint marketing arrangements are in compliance with the provisions of the Trade Practices Act, or is it a matter of it being hard to win cases under the Trade Practices Act?

Prof. Zumbo—I have been thinking about this issue and I heard the evidence earlier, but I am still no further along in working out why they sought a revocation of the authorisation. Obviously, they must have had a level of confidence. I would not be relying on my legal advisers. The joint venturers may have, and that might be the reason. If the ACCC gave me a level of confidence, I would certainly be relying on that. So there is the question: why? You have immunity—that is, you cannot be prosecuted—and you go from that situation to one where you could be prosecuted. Why would you do that? You expose yourself to enormous risk—why, when you have an authorisation in place? As I said, I am still at a loss.

Senator XENOPHON—Can you recall any precedent where an entity, a company or a joint venture arrangement has sought to revoke an authorisation?

Prof. Zumbo—None that come to mind. I have to emphasise to the committee that, if you have an authorisation, you have total immunity from the act. Authorisations are highly prized. They are hard to get sometimes. When you have one, you keep it. You do not give it up, especially with the penalties being so great. They have given it up willingly. As I said, I do not understand that. I cannot even see any public relations value with giving up an authorisation. As I said, I am totally at a loss to understand, unless they have been given a level of comfort from the ACCC.

Senator JOYCE—They would not have been able to develop what they have developed if they were fools. So they are not fools. Why would someone want to give up an authorisation if

they had it? You must have some idea of why someone would want to give away their invisible cloak?

Prof. Zumbo—I can think of only two reasons—and, obviously, I am not in the minds of the joint venturers or the ACCC. One reason is that the ACCC has given the joint venturers a level of comfort; that the ACCC does not believe that the arrangements are in breach and that the ACCC will not take action. The other possibility—and I am thinking as laterally as I can—is that, my experience and dealings with the ACCC over a very long time, occasionally the ACCC will use an application for an authorisation as a way of, if you like, trying to leverage concessions or trying to move the debate forward. An applicant comes to the ACCC seeking an authorisation. The ACCC says: ‘We’ve got some issues here and there. Perhaps if you did this, you tweaked that and you gave us a little bit here, that would make us more amenable to granting the authorisation.’ The only other possibility that I can think of within that context is that the 2005 authorisation—the one they sought for revocation—was coming up for renewal. Maybe there was a concern on the part of the joint venturers that, if there was an authorisation in place, it would give the ACCC some leverage. But, as I said, I am clutching at straws on that one. I would be more concerned if the ACCC has given a level of comfort to the joint venture partners—

Senator JOYCE—Without an authorisation.

Prof. Zumbo—Yes, that the joint venturers can seek the revocation without fear that the ACCC will take action.

Senator JOYCE—In summary, the reason someone might suggest to give up an authorisation is that, while there is an authorisation in place, the ACCC has a form of leverage and, as it is a public document, they can say: ‘We will give you an authorisation but this is the quid pro quo. This is what you give to us.’ So then the joint venturers say: ‘We don’t want that quid pro quo. We want open gambit to do what we want, without having to be responsible to another organisation.’

Prof. Zumbo—Yes. The North West Shelf venturers are just running the gauntlet. It may be that they have looked at their legal advice and relied solely on that. But, as I said, if I were advising them I would not be relying simply on legal advice when you could be up for 10 per cent of your turnover as a penalty. It is far too risky, unless the lawyers have got lots of insurance.

Senator JOYCE—Not at the moment they don’t—not with the crisis.

ACTING CHAIR—As there are no further questions, thank you very much, Professor Zumbo, for appearing before us tonight. There are requests for several questions to be taken on notice and, because we have a tight reporting time for this inquiry, we would appreciate having those answers back to the secretariat by a week from today and, if not, could you please advise the secretariat.

Prof. Zumbo—I will. Thank you for the opportunity to appear.

Committee adjourned at 9.13 pm

