



Gorgon Gas Project: Application for Joint Selling Authorisation

**ACCC Draft Determination:
Response by the DomGas Alliance**

3 November 2009

The economic impact of cartel selling

1. At the discussion between the ACCC and the DomGas Alliance on 15 October 2009, the ACCC questioned why a greater number of gas sellers would promote competition and reduce prices.
2. It appears self-evident that having three independent Gorgon sellers in a market as opposed to a single Gorgon seller would promote competition and create downward pressure on prices.
3. As the ACCC's Allen Consulting Group report pointed out, separate selling creates competition and results in lower prices to consumers. Authorisation for joint selling would on the other hand reduce competition and result in higher prices.
4. Gas consumers also provided extensive factual evidence on how the absence of competition in the WA gas market, as the result of ACCC endorsed cartel selling arrangements, have resulted in new gas prices that are some three times that in Victoria.
5. The Draft Determination appears at odds with the ACCC's public statements on the anti-competitive impact of cartel arrangements:

“Generally speaking, a cartel is an anti-competitive arrangement between two or more competing businesses. Common forms of illegal cartel conduct are:

- **price fixing** occurs when competing businesses make an agreement that has the purpose or effect of fixing, controlling or maintaining the price of goods or services
- **market sharing** refers to agreements between competitors that divide up the market so that the participants are sheltered from competition
- **bid rigging** occurs where two or more competitors agree they will not compete genuinely with each other for particular tenders, allowing one of the participants in the agreement to win the tender
- **output controls** agreed on between companies can occur in the form of production or sales quota arrangements that involve an agreement between competitors to limit the volume of particular goods or services available on the market; they have the effect of inflating prices in the market.”¹

¹ ACCC website, 'What is a cartel', available at:
<http://www.accc.gov.au/content/index.phtml/itemId/882220>

6. The ACCC's website goes on to consider:
- “Cartels harm the Australian economy and public. Consumers, businesses and even governments can be forced to pay higher prices for goods and services. Cartels also distort economic markets, and serve to slow innovation—after all, companies charging supra-normal prices have little incentive to spend money on research and development.”²
7. In the ACCC's own words, cartels harm the Australian economy and public, force consumers, businesses and governments to pay higher prices for goods, and distort economic markets and innovation.
8. The ACCC's proposal to endorse this very type of arrangement by Shell, Chevron and ExxonMobil appears in contradiction to the ACCC's own public statements.

ACCC definition of cartel conduct	Gorgon conduct that the ACCC proposes to endorse
Price fixing	Shell, Chevron and ExxonMobil combining together to fix prices and terms for Australian consumers
Market sharing	Shell, Chevron and ExxonMobil agreeing not to compete against each other in selling Gorgon gas to Australian consumers
Bid rigging	Shell, Chevron and ExxonMobil agreeing not to compete against each other in selling Gorgon gas to Australian consumers
Output controls	Shell, Chevron and ExxonMobil acting to significantly delay domgas delivery and volume by falsely claiming an “oversupply” (!) in the WA domgas market

² ACCC website, 'What is a cartel', available at: <http://www.accc.gov.au/content/index.phtml/itemId/882220>

9. Authorisation for Gorgon would result in the direct transfer of wealth from Australian consumers, businesses and governments to three of the world's biggest oil and gas companies – Chevron, Shell and ExxonMobil.
10. It would represent market intervention to create an artificial market situation contrary to how efficient markets operate.
11. The ACCC's support for cartel selling arrangements – whether for the North West Shelf Joint Venture or Gorgon – represents a significant barrier to competition in the WA gas market.

Potential competition between different gas projects is limited

12. The Alliance notes the ACCC's belief that any anti-competitive impact of Gorgon joint selling would be moderated by competition from other gas projects.
13. This belief is not supported by the structure of the WA gas market and the actions of gas producers. The WA gas market is already characterised by a very tight grouping of producers with significant market power.
14. This absence of competition will be further entrenched by permitting the Gorgon participants to sell as a cartel. 75 per cent of Gorgon ownership is common with the North West Shelf Joint Venture – which continues to sell jointly without any authorisation from the ACCC.
15. There is now increased alignment between the North West Shelf/Gorgon entities and the other major supplier into the WA domestic market, Apache.



Table: WA gas projects and participants

Project	Participants
NWSJV	Woodside, Chevron, Shell, BP, BHP Billiton, Mitsui-Mitsubishi
Pluto	Woodside
Macedon	BHP Billiton and Apache
Wheatstone	Chevron and Apache
Gorgon	Chevron, Shell and Exxon Mobil
Reindeer	Apache, Santos

16. The Macedon project is jointly owned by BHP Billiton (a NWSJV participant) and Apache (the other major supplier in the WA market).
17. In October 2009, Apache Energy also announced an agreement with Chevron to undertake joint development of Apache's Brunello and Julimar fields with Chevron's Wheatstone LNG project.
18. As shown below, Gorgon operator Chevron is in a JV or project agreement arrangement with seven WA gas producers: Woodside, Shell, BHP Billiton, BP, Mitsui-Mitsubishi and ExxonMobil, as well as the other major domgas supplier Apache Energy.
19. BHP Billiton is in a JV arrangement with six WA gas producers: Woodside, Shell, Chevron, BP and Mitsui-Mitsubishi, as well as Apache Energy.

Table: The WA producer club

	Woodside	Shell	Chevron	BHP	BP	MIMI	ExxonM	Apache	Santos	Tap	Kufpec
Woodside	Yellow	Red	Red	Red	Red	Red	Orange	Orange			
Shell	Red	Yellow	Red	Red	Red	Red	Orange	Orange			
Chevron	Red	Red	Yellow	Red	Red	Red	Orange	Orange	Orange	Orange	Red
BHP	Red	Red	Red	Yellow	Red	Red	Orange	Orange	Orange	Orange	Orange
BP	Red	Red	Red	Red	Yellow	Red	Orange	Orange			
MIMI	Red	Red	Red	Red	Red	Yellow	Orange	Orange			
ExxonM	Orange	Red	Red	Red	Red	Red	Yellow	Orange			
Apache	Orange	Orange	Red	Red	Red	Red	Orange	Yellow	Red	Red	Red
Santos			Orange	Orange				Red	Yellow	Orange	Orange
Tap			Orange	Orange				Red	Orange	Yellow	Red
Kufpec			Red	Orange				Red	Orange	Red	Yellow

-  Denotes producers in a direct JV or project arrangement
-  Denotes producers linked by a common partner. E.g. Woodside (North West Shelf) and ExxonMobil (Gorgon) both share Chevron as a common partner.

20. Alliance members advised at the 15 October 2009 meeting that gas producers appear to be coordinating gas marketing across projects by ensuring that any marketing occurs *sequentially*. This minimises potential competition between different projects.
21. Given the close alignment between all the major gas producers, it is vital that producers compete with each other by selling separately.
22. Any reliance on ACCC-sanctioned joint selling arrangements to create inter-project competition is mistaken and ignores the cross-ownership structures in the WA gas market.

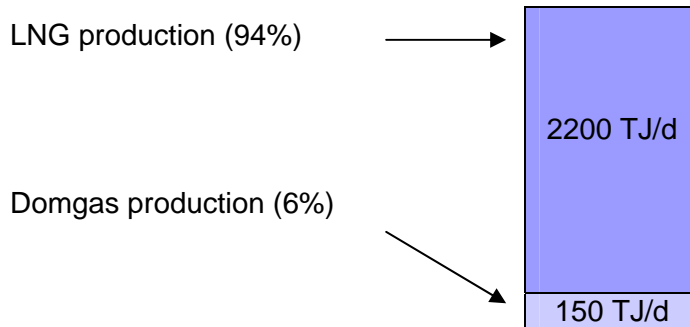
Separate selling and pricing knowledge

23. At the discussion, the ACCC questioned why Shell, Chevron and Exxon Mobil would individually sell at prices lower than what they would sell as a combined entity.
24. It is unclear to the Alliance *how* Shell, Chevron and ExxonMobil could determine what that combined selling price would be *in the absence of ACCC authorisation for cartel selling*.
25. Such price sharing would amount to serious criminal and civil breaches under the *Trade Practice Act* – which consumers would expect the ACCC to rigorously enforce.
26. In their previous submissions, Shell, Chevron and ExxonMobil gave commitments to comply with the *Trade Practices Act* and are no doubt aware of the criminal and civil penalties.

Balancing arrangements

27. The Gorgon participants and the ACCC refer to risks where one or more of the Gorgon participants were unable to secure domestic gas sales to meet their full domgas production share. Such risks are greatly exaggerated.
28. Firstly, as the Alliance has demonstrated, such concerns would only be valid in a market that is in oversupply - as is currently the case for the LNG market. It does not apply in the WA domgas market which is expected to remain extremely tight and in shortage until at least 2020.
29. Claims by the Gorgon participants about an “oversupply” in the WA gas market are false. The risks claimed about balancing future domgas production / contractual sales should also be dismissed.
30. Second, the Gorgon participants have failed to explain how any production could not be diverted to LNG production, given LNG production is expected to account for the bulk of production.
31. Indeed, the “up to 150 TJ/d” domgas production cited by the Gorgon participants equates to only 6 per cent of expected LNG production of 15 million tonnes per annum or 2200 TJ/d.
32. Even if producers were unable to place *half* the domgas production volume – which is highly unlikely given continuing tight WA gas market – this would add just 3 per cent to LNG production.

Chart: LNG vs. domgas production



Gas storage facilities

33. The Alliance recalls the ACCC's comments that a key factor in its decision was the absence of a storage facility that would allow gas producers to store domestic gas for 3-5 years in the event of unfilled customer demand.
34. The Alliance is not aware of *anywhere in the world* where separate marketing by gas producers is dependent on producers having access storage facilities to store gas production for 3-5 years.
35. In practice, producers have the alternative of leaving the gas in the ground unprocessed, or diverting gas to LNG export production. This is basic industry practice which places commercial pressure but not an absolute obligation on the producer to enter into an onsale arrangement.
36. The ACCC has not explained why the absence of similar storage facilities for LNG production has not in any way prevented the Gorgon participants from separately entering into very large LNG contracts, over 20-25 year terms, with a very small number of LNG customers.

WA gas market developments

37. The WA Government's Gas Supply and Emergency Management Review Committee released its report in September 2009. Key recommendations include:
 - Implementation of a Gas Bulletin Board to provide web-based up-to-date gas system and market information, with consideration given to leveraging off the existing Australian Energy Market Operator Bulletin Board infrastructure;
 - That the Gas Bulletin Board include a non-compulsory facilitated trading market that provides for offers to sell and buy on standard transport and commodity contracts;

- Implementation of a Gas Statement of Opportunities that would provide long-term gas supply and demand forecasts to facilitate a competitive market and efficient investment, and inform Government policy development;
 - That the Bulletin Board and GSOO be administered by an independent Western Australian specific entity; and
 - Future consideration be given to a compulsory Short Term Trading Market following a review of the operation of the WA Bulletin Board and the gas market experiences in other Australian jurisdictions.³
38. As the WA Independent Market Operator had previously pointed out, a Gas Bulletin Board can be successfully implemented in Western Australia and within a short period of time.
39. An initiative by a privately owned West Australian based company, backed by a number of well established WA gas market participants, is likely to see an industry driven, independent and WA focused trading mechanism being launched during 2010. In addition to short to medium term trades, this initiative also aims at providing its members with market and pricing information presented in an aggregate manner.
40. These developments confirm that the ACCC proposals are likely to be overtaken by gas market developments. At the very least, the six year authorisation period proposed by the ACCC is excessive.
41. Should the ACCC decide to grant final authorisation, the period of authorisation should be limited to 2 years or until the establishment of a WA Gas Bulletin Board or comparable arrangement – whichever is the earlier.

BHP Billiton and Rio Tinto decision not to sell jointly

42. The ACCC would be aware of BHP Billiton and Rio Tinto's decision not to proceed with the joint marketing of iron ore from their proposed Australia iron ore joint venture. Under the terms of their agreement, the two companies had proposed to jointly sell up to 15 per cent of joint venture production.
43. This decision not to proceed with joint selling appears to have been taken in response to strong concerns by overseas iron ore customers on the anti-competitive impact of joint selling, and to assuage potential concerns by the European Commission.⁴

³ WA Office of Energy, *Gas Supply and Emergency Management Committee: Report to Government*, September 2009, p.5.

⁴ The Australian, 'BHP, Rio Tinto amend Pilbara iron ore joint venture', 15 October 2009, available at: <http://www.theaustralian.news.com.au/business/story/0,28124,26214337-36418,00.html>

44. As the Alliance has previously outlined, the European Commission has, and continues to maintain, a very strong stance against joint selling arrangements to promote competition and to protect consumers.
45. BHP and Rio's decision clearly recognises the anti-competitive impact of joint selling and the regulatory pressure asserted by European competition authorities.
46. In contrast, the ACCC will allow Chevron, Shell and ExxonMobil to combine together to sell *100 per cent* of Gorgon domestic gas to Australian consumers whilst selling LNG separately to overseas customers.
47. There is also a clear inconsistency between BHP Billiton's actions in regard to the proposed joint selling of iron ore, and its continuing participation in the North West Shelf joint selling arrangement.
48. It is disappointing that European steel producers would enjoy the benefits of competition as the result of regulatory pressure by the European Commission, while competition was denied to Australian gas consumers by the ACCC.
49. The ACCC's proposal to permit joint selling of Gorgon gas will result in less competition not more and can only result in higher energy prices for Australian consumers.

List of Attachments

1. WA Office of Energy, *Gas Supply and Emergency Management Committee: Report to Government*, September 2009.
2. The Australian, 'BHP, Rio Tinto amend Pilbara iron ore joint venture', 15 October 2009.