



SENATE ECONOMICS COMMITTEE INQUIRY INTO THE NORTH WEST SHELF JOINT SELLING ARRANGEMENTS

Opening statement, 11 November 2008

- Thank you Chair for the opportunity to address the Committee.
- My name is Stuart Hohnen, Chairman of the DomGas Alliance, in which capacity I appear today. I am also Executive Chairman of Dampier Bunbury Pipeline a foundation member of the Alliance.
- With me is Gavin Goh, Executive Officer of the Alliance.
- 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, and indeed for Australia's energy market.
- Western Australia is 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% of the State's electricity generation.

- Ensuring 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 and comprises Shell, BP, Chevron, Woodside, BHP Petroleum and Mitsui-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 NWS JV's 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 JV arrangements.
- Neither of these authorisations is any longer in effect. Yet the NWS JV's continue to sell jointly.
- When seeking the 1998 authorisation, the JV participants claimed they needed the certainty of the authorisation to double the capacity of the domestic gas processing facility.
- 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 NWSG producers with the Joint Venture controlling close to 70% of the WA gas market and over 92% of gas resources in developed fields.
- Given that Apache-led Joint Ventures control the bulk of the remaining market, it creates a situation where two producer groups effectively control almost 100% of the market as well as gas resources in developed fields.
- The concentration of market power is exacerbated by the fact that the NWS joint venturers – singly or in combination control the bulk of undeveloped reserves/resources in the Carnarvon Basin - and as a result, the majority of prospective new developments in Western Australia:
 - Pluto: Woodside;
 - Wheatstone: Chevron;
 - Gorgon: Shell, Chevron;
 - Macedon: BHPB, Apache;
 - Reindeer: Apache, Santos;
 - Julimar: Apache, Kufpec.
- By contrast, downstream consumers have limited bargaining power, are totally dependent on existing producers for their energy supplies, and are prevented by the TPA from combining together to buy jointly.
- The absence of a competitive market and the actions of the North West Shelf Joint Venture in limiting supply has 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 fivefold over the past 18-24 months.

- Prices reported for recent gas sales are now around five times Eastern States 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 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 China or Japan – 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's claims that independent selling is not feasible in Western Australia.
- The Alliance believes these claims have no merit.
- Since the mid 1990s, the West Australian downstream gas market has undergone significant transformation from one dominated by a vertically-integrated monopoly buyer to one of 25-30 individual customers.
- The downstream market has also undergone separation of gas purchase and transmission; third party access to pipelines; as well as energy utility and market deregulation.

- The number of customers is to a large degree determined by the NWSJV's policy of not dealing with quantities less than about 15 terrajoules per day of gas. This has resulted in a significant number of large industrial consumers currently buying from 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 net profit 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 prospective new developments.
- Joint selling arrangements for domestic gas supply have been found to be anti-competitive 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 anti-competitive and has required Shell to sell separately.
- Shell and Chevron therefore continue in Australia to engage in the same anti-competitive 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 purposes” of the 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.