

22 March 2013

Mr Ross Campbell
Director
National Competition Council
Level 21, 200 Queen Street
MELBOURNE VIC 3000

Dear Mr Campbell

Coverage Application – South Eastern Pipeline System (SEPS)

We refer to APA's further submission to the National Competition Council dated 20 March 2013.

APA's submission was dated some 6 days after the closing date for submissions. APA's submission responds to various points made in KCA's submission which was submitted prior to the closing date and had been published allowing APA to make comment on the KCA submission. In the interests of fairness and natural justice, KCA believes it should be given the same opportunity to respond to APA's submission. KCA therefore sets out a number of brief points in this letter.

- First, APA has asserted that it will sell the SEPS as part of the sale of the Moomba to Adelaide Pipeline System (**MAPS**). However, while the sale of MAPS is mandated by a section 87B undertaking given by APA to the ACCC, no such requirement applies to the SEPS.

KCA submits that the NCC should disregard APA's submission on this point. There is no certainty that the SEPS will be sold with MAPS or that the SEPS will actually be sold at all. Unless and until a transfer of ownership of the SEPS actually occurs, the fact remains that APA is the current owner of the SEPS. If the SEPS were sold at any point during the coverage period, it would remain open for any new owner to approach the NCC at that point.

KCA submits that the NCC should not base its current decision on mere speculative possibilities. To do so, would invite pipeline owners to manufacture potential sale scenarios whenever their assets were potentially subject to regulation.

- Second, APA has asserted that if the SEPS were sold "*it is likely that the new owner of SEPS will have more limited dealings with Origin than APA does*". KCA notes that this statement by APA is very heavily qualified, including the words "likely" and "more limited". The qualifications were presumably included for good reason, namely that APA does not know whether the SEPS will be sold and does not know whom the new buyer could be, if indeed anyone.

KCA submits that the NCC should similarly disregard APA's submission on this point. It is irrelevant whether or not any new owner of the SEPS would have more limited dealings with Origin. The fact remains that APA is the current owner and operator of the SEPS. Moreover, it is entirely possible that any new owner or operator may have similar incentives to favour Origin.

- Third, APA has asserted that '*any consequential reduction in the volume of gas transported on the SESA and SEA Gas pipelines would have little effect of APA's revenue in the short to medium term.*' KCA does not have visibility of APA's commercial arrangements with third parties. However, the fact remains that the risk of discrimination does exist and for a number of reasons beyond revenue alone, including to ensure more efficient utilisation of infrastructure.

KCA highlights that APA's submission also appears to be carefully crafted. APA has referred to the "short to medium term", but has not referred to the "medium to long term". The medium to long term is clearly relevant to the proposed 10 year limitation of coverage. Moreover, any incentives that exist in the medium to long term will influence behaviour in the short to medium term.

- Fourth, APA has asserted that it has historically offered the same commercial terms to KCA that it has offered to Origin. However, the relevant competition issue for the downstream gas market is actually what commercial terms will be offered by APA to Beach, not necessarily to KCA. Moreover, as identified in KCA's submission, there is no obligation on APA to continue to offer the same commercial terms to all. There is no guarantee that APA would offer reasonable terms.

It is self-evident that KCA would not be making this coverage application if KCA were confident that all parties accessing the SEPS would receive the same commercial terms **and** which are reasonable. Moreover, APA would presumably not be opposing this application for coverage if APA were intending to provide all parties with access on that basis.

In summary, notwithstanding that APA has made a submission outside the permitted time period, APA's submission has little substance and should be disregarded by NCC.

Yours sincerely



Darren Williams
Operations Support Manager