

23 June 2014

Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Lodged online: www.competitionpolicyreview.gov.au

Dear Sir/Madam

About Momentum Energy

Momentum Energy is a second tier retailer with current retail electricity licences in Victoria, New South Wales, South Australia, Queensland and the Australian Capital Territory. Momentum Energy is fully owned by Hydro Tasmania, one of the largest clean energy producers in Australia. We are members of the Energy Retailers Association of Australia (ERAA) and the Energy Supply Association of Australia (esaa).

As well as the positions included in this submission, Momentum Energy supports those set out in submissions of the ERAA and the esaa.

Executive Summary

Momentum Energy welcomes the opportunity to respond to the Competition Policy Review - Issues Paper. The original National Competition Policy helped facilitate a number of important reforms to the energy industry which set in train the creation of the National Electricity Market (NEM), the trading of electricity and gas across different markets, and the introduction of energy retailing. While the efficiency of today's electricity and gas markets has significantly improved since then it would be presumptuous to state that the energy markets we have today are as competitive as possible and there is nothing left to do. In light of the current challenges facing the energy industry there is a need to further improve the efficiency of Australia's retail energy markets. The energy sector is facing a number of pressures, including the decline in demand for energy, the increasing uptake of distributed generation, the introduction of smart metering and rising gas prices. These issues have the ability to fundamentally change the industry and the role retailers have in providing energy to customers. Momentum Energy believes there needs to be a strategic assessment of the current rules, laws and institutions which govern the retail markets to ensure the energy industry is best placed to deal with these significant issues. In reviewing the current set of laws and rules, it should commence with the National Energy Customer Framework (NECF). The assessment should also look at New Zealand which seems to have established the correct balance between protecting consumers and enabling the market to develop. Momentum considers that the Competition Policy Review is particularly timely in light of the challenges in the retail energy sector and like Hilmer, has the potential to unleash important reforms which will not just assist energy retailers, but the wider Australian economy.

Current Challenges in the Retail Energy Sector

The decline in consumer demand for electricity in the past five years has been a major cause for reflection for all parts of the sector. Where historically increasing demand drove investment in new infrastructure, the decreasing demand has been cause for reflection. The drivers for the decline in demand are multiple.¹ In the residential space, households' shift away from electric hot water and the uptake of solar photo voltaic cells driven by Government incentives provides some of the context. The other significant factor has been the closing down of major industries due to financial pressures and rising energy costs.² While retailers can and will adapt to the decline in demand it does necessitate that the sector is as efficient as possible, which may necessitate some reform.

In addition, energy retailers are facing significant competitive challenges from new energy supply options that are not saddled with the same onerous regulatory regime. Incumbent energy retailers must embrace the challenge of competing in new markets but they are entitled to do so on an equal footing. Just as those incumbents cannot be protected from new competition created by new technology, they cannot be expected to effectively subsidise new competitors' activities by being the default provider of their consumer protection requirements. Australia's 2014 retail energy regulatory regime is sub-optimal in that it imposes substantial regulatory costs on all grid energy users' bills and presents alternative energy sellers with a playing field tilted in their favour. Even if the Australian Energy Regulator revises its approach to alternative energy sellers and imposes a regulatory regime that more closely approximates that faced by retailers, and even if Victoria follows all other NEM jurisdictions into adoption of the NECF, the emergence of alternative energy sellers combined with the inexorable decline of NEM demand means that the current retail energy regulatory regime is untenable.

The predicted jump in gas prices as result of the exporting of LNG is likely to impact retailers as well. Along with the issue of affordability, the step change in gas prices will force customers to reconsider their need for gas and seek alternatives to mains supplied electricity and gas, as a way of reducing the price impacts.

For Momentum these are significant issues which will challenge retailers. In order for retailers to be in the best position to respond to these hurdles, there needs to a review to consider the right level of regulation and what laws and rules may needed to be amended. Without some paring back of the current laws and rules in light of these challenges there is the potential for retailer failure.

The New Zealand Retail Energy Sector

In considering any review of the Australian retail energy markets, Momentum Energy would encourage the Panel to examine the New Zealand retail market. Unlike the Australian retail energy markets which have historically been the responsibilities of the States and Territories, New Zealand's national government has always had responsibility for oversight of the entire energy sector. This is an important difference between

¹ The Sydney Morning Herald, 'No end in sight for drop in demand' 16 June 2014

² *Ibid*

the markets in Australia and New Zealand and one which Momentum believes has led to better outcomes in that market. Unlike Australia, the New Zealand Government has historically adopted a light-hand approach to the regulation of the market. Importantly this resulted in the deregulation of retail energy pricing in 2004, well before Victoria (January 2008 - Small Business, January 2009 - Residential), South Australia (1 February 2013) and New South Wales - July 2014). Energy pricing in New Zealand would seem far less mired in the controversy which has been exhibited in Australia. This light handed approach to the New Zealand market has helped to create a more balanced market between the rights of the consumer and those of commercial drivers of the retail businesses. The market is not subject to rules such as prohibitions on late payment fees, wrongful disconnection payments or prescriptive regulations about the content of energy bills or pricing information fact sheets. Equally, the roll-out of smart meters in New Zealand has been approached in a more commercial manner which has had a strong focus on the needs of the customer. This is significantly different to that of the Victorian Government that imposed regulations on the Victorian distributors which were not focused on what customers actually wanted from smart metering. Again the distinction here is in Australia regulation is more favoured than allowing the market to work.

The Australian Retail Energy Sector - NSW, Victoria and the National Energy Customer Framework

The development of retail competition in the NEM states of Australia has historically been driven more by government policy. The oversight of the States and Territories has been a substantial handbrake on retail competition due to the differences in the rules governing each of the markets and the politicisation of energy pricing. While switching rates provide some basis for comparing the competitiveness of markets they do not provide much insight into the efficiency of the rules and laws governing the market. In NSW, for example, where one in five customers switched retailers in 2012,³ the actual market share of second tier retailers providing electricity is much less than that in Victoria, and for gas is substantially smaller.⁴ The smaller market share of second tier retailers is probably due to the decisions of NSW governments not to sell its retail businesses until 2011 and deregulate retail electricity prices until 1 July 2014. As well as this the difficulties in procuring gas and transporting gas into the NSW gas market represent major barriers to second tier retailers entering NSW to be dual fuel retailers. These examples highlight that despite full retail contestability being introduced more than 10 years ago, it is only more recently that the impacts of key reforms have really begun to take effect. As such it is important to ask what else could be done to further competition in this market?

Equally, the Victorian market while generally having a higher degree of customer switching, product offerings and larger number of active second tier retailers the market is plagued by an onerous regulatory regime.⁵ The framework is largely the same as what it was at the commencement of the retail market in 2002 albeit some changes for smart metering. The onerous regulatory obligations of the wrongful disconnection payment scheme have helped to instil a litigious approach to customer disputes that rewarded customers for poor behaviour. Due to the political nature of energy disconnections and affordability there is little interest

³ Review of Competition in the Retail Electricity and Natural Gas Markets in New South Wales, page 16

⁴ VaasaETT '2011/12 World Energy Market Rankings' (Helsinki 2012), p.17

⁵ *Ibid* & see <http://www.energyandresources.vic.gov.au/energy/about/legislation-and-regulation/national-energy-customer-framework>

from the government to review the effectiveness of the scheme and additional costs which eventually have to be recovered through higher chargers.

The efforts of the States and Territories to establish the NECF highlights the problematic nature of making policy affecting energy retailing. Having commenced in 2004 with the intention of creating a more efficient national retail framework, the process laboured for eight years largely as a result of it being a process of harmonisation of existing laws and rules than about creating a brand new set. While the creation of a single national framework was supported by retailers, there were a number of issues which have made it less than ideal. Firstly, the NECF is somewhat out of step with the market today in that it is far too wedded to historical practices which are inefficient and are not in touch with the needs of the customer - such as the provision of copious amounts of information, either physically or electronically which most customers do not care about. The other important aspect of the NECF was that it has not created a single set of laws and rules, due to certain States derogating from the NECF for political reasons and its problematic introduction. Despite the NECF being due to commence on 1 July 2012 in all markets, it ended up only commencing in the ACT and Tasmania on that date and still has yet to commence in Victoria and Queensland. In Victoria particularly the uncertainty about whether the framework will commence has created significant issues for Momentum Energy entering the retail gas market for the first time.

Strategic Review

Momentum recommends that the Competition Policy Review should recommend a strategic review of retail energy regulation in the NEM, to be undertaken by the Productivity Commission at an appropriate point after the NECF has been implemented across the NEM. The strategic review would cover the current laws, rules and institutions which govern the NEM retail market and seek to ensure they are as effective and efficient as possible. More importantly, the review should consider how to increase competition, which laws and rules remain desirable and which are out of date. The appropriate body to conduct this strategic review would be the Productivity Council rather than the Australian Energy Market Commission, which answers to the state Ministers. The Strategic Review should also look at comparable markets including New Zealand, which seems to have established a better balance between protecting consumers and enabling the market to develop.

Conclusion

The challenges facing the industry are significant and need to be understood in terms of the pressure they will have on competition in the future. The National Competition Review should lead to a strategic review of retail energy regulation in the NEM. In undertaking this review, Momentum would recommend a comparative analysis of the level of regulation of the New Zealand retail energy market against the NEM states in Australia to determine what additional reforms might be needed. The NSW and Victorian retail energy markets both exhibit high switching activity, but when compared with New Zealand seem less developed and more inefficient. While the recent implementation of the NECF is positive, more needs to be done to ensure it is sufficient to support the development of Australia's retail energy markets. Only through a critical assessment of the current regulatory framework of the NEM markets can we determine what additional reforms are required to ensure retailers are suitably placed to deal with the challenges affecting the industry.

If you would like to discuss this submission or any other matter, please contact Momentum's Regulatory Manager Luke Brown on (03) 8612 6437 or luke.brown@momentum.com.au.

Yours sincerely

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