20 June 2014

Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Submitted by online: www.competitionpolicyreview.gov.au

Dear Secretariat

Competition Policy Review Issues Paper

Origin Energy Limited (Origin) welcomes the opportunity to contribute to the Commonwealth Government's Issues Paper released as part of its Review of Competition Policy. Origin is Australia's leading integrated energy company focused on gas exploration, production and export, power generation and energy retailing. Our comments below suggest ways to minimise regulatory burden in order to preserve and promote competitive energy markets, proposes some improvements to cartel provision exemptions and provides key considerations for policy development.

At the outset, we note that competition in energy markets has been a significant achievement flowing from the Hilmer Competition Review. The wholesale National Electricity Market (NEM) is now 15 years old and has successfully attracted private sector investment to achieve reliability standards and deliver low prices to customers,[1] while retail electricity markets have been similarly competitive.[2] The NEM and related markets have not developed in exactly the same way as the 1990s designers envisaged and this should not be seen as a failure, rather as an example of where policy makers are not able to determine the evolution of market structure.

It is also important to note that energy is a heavily regulated sector, as compared with other sectors identified in this review, and has been the subject of various reviews relating to competition in recent years. In general, these reviews have found that competition within Australian energy markets is strong and increasing.

1. Regulatory burden

While Australian energy markets have achieved a high degree of competition, there are certain areas in which excessive regulation has meant that competition has not developed as much as it might have. Retail price deregulation is yet to be implemented in all states. While deregulatory processes are progressing, some states have retained ownership of competitive segments of the industry and cross subsidies that impede competition. Deregulation is critical to achieving cost reflective pricing, an essential condition for competitive and robust markets. Recent customer prices increases have mainly been due to network price increases, demonstrating the shortcomings of regulatory controls as opposed to efficient competitive markets. Moving forward, cost reflective pricing, and associated competitive pressure, will be essential to driving new

[1] NEM spot prices are currently at roughly the same level as they were when the market commenced in 1998.
[2] In 2012, Victoria was ranked most the competitive market of its kind by an international think tank; vaasaETT, 2012 World Energy Retail Market Rankings, http://www.vaasaett.com/wp-content/uploads/2012/06/World-Energy-Retail-Market-Rankings-2012-FINAL-SHORT-VERSION.pdf

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technology (such as smart meters) and removing embedded cross subsidies and distortions, which is a necessary step to curb network expenditure.

Progress in creating national frameworks for energy regulation has been slow and incomplete. This is most obviously illustrated by the National Energy Customer Framework (NECF), and there are other examples of cross sector regulation that has a significant bearing on energy market participants, such as the various state regimes for licensing. Multiple frameworks increase the regulatory burden for all market participants and ultimately raise costs for consumers. Therefore, achieving framework consistency should be a policy priority.

In our view, the set up of relevant regulatory bodies can significantly impact a market's regulatory framework and operation, and can therefore have a bearing on the efficiency of market regulation. In this regard, we advocate more clarity regarding the role of the AER, as compared with that of the ACCC, and that the AER be adequately resourced to reflect its role. This would facilitate better information flows to create better functioning markets. It would also bring energy into line with other industries, where specific regulators have functions and powers that are clearly distinct from larger inter-sector regulators, and are resourced accordingly.

2. Cartel provision exemption

In capital intensive sectors where investment is risky, market participants often employ joint ventures (JVs) to minimise risk and thereby facilitate efficient and viable investment. Under the current law, there are exceptions from the cartel provisions in the CCA for JVs and collective acquisitions, but we consider these to be inadequate in certain respects in relation to natural resource exploration and production.

For example, under the current law, in order to engage in preliminary discussions regarding the viability of potential exploration or production JVs, it is often necessary for market participants to establish a 'preliminary' JV in order to jointly commission analysis. Joint analysis is necessary not only to share costs but also to enable both parties to direct and control investigative studies and to secure rights to findings regarding prospective resources. However, in the absence of a preliminary JV, market participants that jointly commission analysis risk breaching price fixing provisions of the CCA. Establishing preliminary JVs diverts significant business resources from both parties and these vehicles often have no long term purpose. In our view, it would be more efficient to have broader JV exemptions that allow market participants in the resource sector to jointly commission analysis without needing to establish a separate preliminary JV.

Another example arises in relation to the supply of services to multiple JVs. Within the resources sector, services will often be acquired by a single entity in relation to various projects. This occurs because JV arrangements will typically appoint the majority interest holder as managing 'operator' of the vehicle. This party may happen to operate several JVs as well as its own (wholly owned) operations, and these projects are likely to compete with one another. Under the current law, where an operator seeks (as a matter of business efficiency) to contract for services for both its wholly owned operations and one or more of its JVs, it must carefully ensure that supply arrangements are structured so as to fall within the 'collective acquisition' provisions of the CCA. Doing so is a complex and time consuming task. This diversion of significant business resources could be avoided if the CCA set out a clearer and more straightforward definition of collective acquisition i.e. where an agreement is jointly negotiated and the parties have an intention to acquire collectively.

3. Promoting growth and international competitiveness

Reforms to competition law and policy will impact Australia's international competitiveness insofar as removal of barriers to competition will function to enhance innovation and productivity. In this regard, we broadly advocate government policy to encourage the development of the LNG industry, which has the potential to continue to contribute significantly to economic growth but is operating in a highly competitive global market. Accordingly, reforms to energy and related sectors (such as infrastructure) should be mindful of the significant role of the LNG sector.

In the context of other legislative changes that may be suggested as part of this review, including changes to foundational principles of competition law, we consider it important that account be taken of the impact of technological developments on energy markets over the past decade, and their likely impact in years to come. Increasingly efficient appliances, better real-time pricing and usage information and distributed generation capacity have served to lower energy demand in a matter that appeared inconceivable to most five years ago. The impact of such technological developments on large incumbent participants is analogous to the impact of e-commerce on the retail sector. Accordingly, we consider that any proposed changes to key competition law principles (such as market definition) ought to take account of these changes.

Should you have any questions or wish to discuss this information further, please contact Sarah Paparo on (02) 8345 5132 or sarah.paparo@originenergy.com.au.

Yours sincerely,

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