



17 November 2014

Competition Policy Review Secretariat  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Submitted by online: [www.competitionpolicyreview.gov.au](http://www.competitionpolicyreview.gov.au)

Dear Secretariat

### Competition Policy Review Issues Paper

Origin Energy Limited (Origin) welcomes the opportunity to comment on the Review Panel's Draft Report. Origin is supportive of the review process and makes the following comments for consideration:

- the recommendations to bring common sense and simplicity to Joint Venture (JV) arrangements are supported;
- there is overreach in the proposed concerted practices prohibition;
- the proposed misuse of market power prohibition is likely to create uncertainty and discourage competition; and
- structural and policy changes that improve energy market competitiveness should be progressed.

#### Bringing common sense and simplicity to Joint Venture (JV) arrangements

Origin strongly supports the objective of bringing common sense and simplicity to the current cartel provisions and joint venture (JV) arrangements. As noted in our previous submission, the current exemptions from the cartel provisions are inadequate in relation to the procurement activities associated with natural resource exploration and production, particularly in relation to preliminary discussion regarding project viability and cases where a single entity is responsible to procure goods and services for multiple JVs as well as itself.

Origin supports the recommendations of the Draft Report:

- to assess JVs under the civil regime set out in section 45 (recognising that the section 45 test will still apply to redress any JV that substantially lessens competition); and
- to extend the JV exemption to cover all collaborative activities (including collective acquisitions, which is really just procurement) in order to remedy the incongruous situation at present whereby joint supply is exempted but joint acquisition is not.

To the extent that the proposed change reduces the unduly onerous burden created by the current JV regime, it will likely enable market participants to devote more resources to productive activity, reducing cost of production, to the benefit of relevant markets and the economy as a whole.

Origin believes that these recommendations are common sense amendments and that the amendments do not in any way undermine or lessen the severity or seriousness of conduct that is intended to be caught under the cartel conduct regime.

#### Overreach of the proposed concerted practices prohibition

Origin is concerned by the Draft Report's recommendation to extend the application of section 45 to include 'concerted practices', as this is likely to capture pro-competitive conduct under the prohibition. It is not uncommon for results briefings or announcements to customers to include statements regarding prospective strategy, many of which could be caught by an enlarged section 45. Such statements function to inform the market of product offerings and expected conditions, and thereby enhance the competitive dynamic between market participants. Uncertainty regarding the scope of a new section 45 will chill information disclosure and thereby undermine market efficiency.

#### Prohibiting misuse of market power in a way that creates uncertainty and targets competitors, not competition

We are also concerned by proposed changes to section 46. As with those in relation to section 45, the proposed changes to the misuse of market power provision will create significant uncertainty around the scope of the prohibition, both in terms of what is proscribed in the first instance and what may be defensible by reason of 'legitimate business purpose' and 'long term interests of consumers'. In our view, there is much pro-competitive conduct that will be captured by the proposed new provision and, as a consequence, the proposed changes will deter legitimate business initiatives and thereby undermine economic growth.

Origin agrees with the view of the Business Council of Australia that the proposed changes will impose uncertainty and costs associated with the need to develop new jurisprudence around the new provisions and defences and be out of step with all antitrust law against the misuse or abuse of market power from a dominant position. Furthermore, Origin supports competition laws that protect competition and that prohibit anti-competitive conduct, not a particular class of competitors. Origin is concerned that the amendments to section 46 create a different rule for big business and believe this is out of step with the underlying principles of competition law in Australia.

#### Structural and policy changes regarding energy market competitiveness

The Draft Report contains strong support for the inclusion of the Northern Territory and Western Australia into the National Electricity Market (NEM), noting that no physical connection is required to do so. In principle, Origin supports an increase in consistency across state and territory energy markets, particularly in relation to regulatory standards. However, any possible incorporation of Western Australia and the Northern Territory into the NEM should be subject to careful consideration with an assessment of the relative costs and benefits.

As far as competition within gas markets is concerned, there have been a number of inquiries into the state of the market in recent years. It is Origin's view that gas market competition will not be assisted by further inquiries regarding competition. Rather, gas markets, which are currently robust and competitive and are anticipated to experience a step change in demand levels flowing from LNG projects, will be assisted by reforms that enhance simplicity and certainty. In this regard we note the history of market initiated

reforms, such as the short term trading markets and supply hubs, which have improved market operations. Such incremental reforms can be expected to enhance and refine the operation of transitioning gas markets moving forward.

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](mailto:sarah.paparo@originenergy.com.au).

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Tim O'Grady', written in a cursive style.

**Tim O'Grady**  
General Manager Public Policy & Government Engagement