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ESB Consultation paper – ACCC Retail Electricity Pricing Inquiry recommendation 1 (20 per cent market cap)– February 2018

EnergyAustralia is one of Australia's largest energy companies with around 2.6 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory. We also own, operate and contract an energy generation portfolio across Australia, including coal, gas, battery storage, demand response, wind and solar assets, with control of over 4,500MW of generation in the National Electricity Market (NEM).

EnergyAustralia strongly believes that effective competition is the best means to deliver benefits to energy consumers. There should be measures to address situations where the absence of competitive pressure allows a dominant participant to influence prices to the detriment of consumers. However we do not support the ACCC's recommendation to address structural competition concerns by imposing an inflexible rule on generator acquisitions.

Such a mechanism poses various challenges in design and implementation. Defining the measure of the acquisition cap (reflected in the questions posed by the ESB) involves making judgements on the ability of different technologies to mitigate market power, including in light of dynamic effects like network congestion and cross-regional power flows. For example, the ESB suggests the cap would apply at the regional level, however network constraints can occur within regions that give rise to transitory market power. Generators located near interconnectors also warrant consideration as their actions can constrain inter-regional power flows and affect price outcomes.

The electricity market is undergoing significant transition which brings into question the need for and effectiveness of a pre-defined cap on market concentration. The addition of large numbers of smaller renewable projects, with short commissioning lead-times, and eventual exit of large increments of thermal capacity are two key trends affecting ownership concentration at present. Current levels of investment in new renewable capacity reflects their falling costs and rising profitability, which reflect a systemic erosion of market power of incumbent thermal generators.

The exit of generators reaching end of useful life potentially confers power on remaining generators in the market but would not be addressed by restrictions on acquisitions. New requirements to notify the market of exit allow other generators to plan around this and should alleviate adverse price impacts from sudden exits. The existing concentration of ownership in Queensland and Tasmania, with concerns already raised in the case of Queensland, would also fall outside the ACCC's recommended cap on acquisitions.

We consider that the ACCC's recommendation was not strongly based on the cases it analysed[1]:

- Closure of Northern and the SA region
    - AGL's behaviour (including when Heywood was constrained) was not found to be in breach of market rules. The ACCC noted that high prices were a design feature of the NEM and provide a signal for new investment (e.g. Hornsdale) or re-entry of mothballed plant (e.g. Pelican Point)
    - As noted above, higher ownership concentration and potential market power conferred by having competitors exit the market would not be addressed by blocking acquisitions
    - the SA region is small with proportionately large but few dispatchable plant. Any structural competition concerns are unlikely to be solved by any caps on acquisitions and may be alleviated by proposed interconnection.
- Closure of Hazelwood - again, any concerns arising following the exit of plant would not be addressed by capping prospective acquisitions. We also consider concerns around coal generator bidding in the wake of the Hazelwood closure are a result of understating the importance of coal supply constraints over a transitory period before renewables investment came online. The AER also investigated high prices following Hazelwood's closure and found no evidence to suggest that prices were being driven behaviours usually associated with the exercise of market power (rebidding close to dispatch, physical or economic withholding)[2]
- Directions to Stanwell – this reflects concentration of current asset ownership. We acknowledge that the sale of all these assets to a single owner could give rise to concerns around market power, and recommend that these assets be sold off to multiple owners.

In summary we consider that the dynamic nature of the market, and associated difficulties in determining *a priori* an acceptable amount of market concentration, underline the desirability of considering acquisitions on a case-by-case basis under the ACCC's existing merger powers. To the extent there are shortcomings in the ACCC's ability to block anti-competitive acquisitions, or in the reviews of ACCC decisions by the Australian Competition Tribunal, these should be addressed directly, rather than solved via an inflexible rule.

If you would like to discuss this submission, please contact Lawrence Irlam on 03 8628 1655 or Lawrence.irlam@energyaustralia.com.au.

Regards

Sarah Ogilvie
Industry Regulation Leader

[1] ACCC, *Retail Electricity Pricing Inquiry Final Report*, June 2018, pp.77-87.
[2] https://www.aer.gov.au/wholesale-markets/market-performance/aer-electricity-wholesale-performance-monitoring-hazelwood-advice-march-2018