Meridian Energy Australia Pty Ltd
Level 15, 357 Collins Street
Melbourne VIC 3000

7 March 2019

COAG Energy Security Board
Email: info@esb.org.au

ACCC Retail Electricity Pricing Inquiry Recommendation 1 Consultation Paper

Meridian Energy Australia Pty Ltd and Powershop Australia Pty Ltd (MEA Group) thank the Energy Security Board (ESB) for the opportunity to comment on the ACCC Retail Electricity Pricing Inquiry Recommendation 1 Consultation Paper (Consultation Paper).

The MEA Group is the owner and operator of the Mt Mercer and Mt Millar Wind Farms as well as the Hume, Burrinjuck and Keepit hydroelectric power stations. The MEA Group also owns and operates Powershop Australia, an innovative retailer committed to providing lower prices for customers which recognizes the benefits for customers of a transition to a more renewable based and distributed energy system.

The MEA Group welcomes the opportunity to provide this response to the Consultation Paper. The MEA Group is strongly supportive of the benefits to consumers that can flow from a genuinely competitive market and fully comprehends the desire to ensure that historic structural arrangements relating to ownership do not interfere with such an outcome.

Notwithstanding this, we do not consider that the case has been adequately made for the imposition of a generation cap (as described in the Consultation Paper) in addition to the existing prohibitions set out in the Competition and Consumer Act 2010 (Cth) (CCA). We consider the current test as set out in the CCA, namely whether an acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market, to be appropriate. In particular, we do not believe that consumers, the market or the economy will benefit from prohibiting acquisitions that do not substantially lessen competition. Indeed, it is likely that prohibiting such acquisitions is likely to damage consumer outcomes by discouraging investment in generation without any associated consumer benefits.

Accordingly, we do not consider the proposed inclusion of a generation cap to be appropriate.

While we do not believe that the ESB should proceed with this proposal, we are aware that COAG has directed the ESB to proceed with this proposal in some form, and therefore we have provided responses to the questions in the Consultation Paper in Annexure A.

If you have questions please do not hesitate to contact me.

Yours sincerely

Justin Mulder
Head of Energy Markets
Meridian Energy Australia

Are there factors which stakeholders feel have not been adequately considered by the ACCC that would have a material impact on determining either:

1. the per cent market share at which the ownership cap is set
2. whether the cap should be set in terms of nameplate capacity or some other measure.

For example, how should factors like the dynamic nature of market responses and constraints caused by generators operating in the relevant geographic area, be taken into account?

We do not consider a fixed cap appropriate. The nature of ownership (passive vs active), the role in the market (dispatchable, baseload, intermittent, reserve etc.) and fuel constraints (hydro, gas, wind, solar etc.) among other factors means that a single fixed percentage could have substantially different market impacts. For example, it is possible that a participant could assemble a portfolio of wind, solar and hydro generation with substantially more than 20% of nameplate capacity that would rarely, if at all, produce that much energy.

Likewise, if one party held all of the generation of one type (especially if it played a key market role and there were barriers to new entrants e.g. hydro), then even if they held less than 20% of generation capacity they might be able to exhibit significant market power.

In light of the above, we do not consider setting the cap in terms of nameplate rating to be appropriate but also do not believe any alternative measure to be appropriate.

Are there other approaches used in some international jurisdictions based on the actual potential to exercise market power that would be preferable to the ACCC recommended approach? What are the drawbacks of these approaches?

As discussed above, and in our answers below, we do not consider a fixed cap appropriate and support a qualitative approach based on actual market power and market impact. We believe the current test set out in the CCA to be the appropriate test.

The ACCC envisaged exemptions for cases where there is takeover of a portfolio from an entity with no NEM generation capacity at the time. Should flexibility also be considered for entities which own only a very small amount of generation capacity located in another NEM region?

Clearly there should be significant flexibility if this proposal proceeds. As a simple example, it has long been considered that there would be competition and efficiency benefits if other large retail organisations (e.g. supermarkets, banks, telcos) entered the market. That an acquisition of an existing player by such a pro-competitive party might be precluded simply because they have existing exposure (whether as a first step to explore the market prior to such an acquisition, or as a result of participation in the market to support their own power purchasing arrangements) would be nonsensical and counterproductive.

What factors should be taken into account when determining the dispatchable capacity of a generation portfolio?

Dispatchable generation is not all alike and the idea that the market can be separated into just non-dispatchable and dispatchable is misguided. For example, a "run of the river" with very limited dispatchability might invest in battery storage to increase their underlying dispatchability but in doing so they could be counted as doubling their capacity rather than making their existing capacity more certain. Likewise, a large hydro generator, a battery storage solution and a run of the river hydro plant all have quite different profiles and are barely comparable. In gas and liquid fuel generation, fuel availability and pipeline contractual arrangements can have significant impacts on plants that otherwise are quite similar.

How should technologies such as variable renewable generation and demand response be accounted for?

There is no simple answer to this question. Clearly such generation and demand response can play a significant role in limiting the market power of other participants. However, there is no mathematical formula as to what level of involvement would achieve this impact. For this reason, we support qualitative rather than quantitative measures.

How should capacity owned in adjoining NEM-regions or the ability of some generators to influence transmission flows factor into the calculation?

This is a complex factor but it is unlikely capacity owned in adjoining markets should be a factor (as opposed to the value of the interconnector flows themselves) unless that participant was able to exercise significant market power in that region itself. It is difficult to determine how an ability to influence transmission flows could be measured or

determined in isolation and this is more likely a factor that the ACCC should consider in its assessment of any proposed transaction under the current test in the CCA.

What factors should be taken into account when determining the AER's enforcement powers in relation to the ownership cap?

In our view, the ACCC powers should be those prescribed by the CCA. The AER's role should be limited to providing information and advice to the ACCC as it currently does.

With regard to the compliance regime, what factors should be considered to ensure market participants are adequately incentivised to comply and cannot circumvent the cap (for example through changing company structures)?

As previously noted, if a qualitative rather than quantitative test was adopted this would be become irrelevant as the question would be whether the proposed structure resulted in a "substantial lessening of competition" and not the formulaic application of some fixed (but not necessarily relevant) cap.