



26 May 2015

General Manager
Small Business, Competition and Consumer Policy Division
The Treasury
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PARKES ACT 2600

Submitted by online: competition@treasury.gov.au

Dear Secretariat

Competition Policy Review Issues Paper

Origin Energy Limited (Origin) welcomes the opportunity to comment on the Review Panel's Final Report. We have been broadly supportive of the review process and consider that it makes some important recommendations, particularly in relation to JV exemptions and coastal shipping. However, we share the concern of various market participants with recommendations regarding misuse of market power and concerted practices. Our position in relation to each of these recommendations is outlined below and in our previous submissions to the Panel. The recommendations to move some functions from the AER to the proposed Access and Pricing Regulator and to extend the NEM to WA and NT require further consideration.

1. Broader JV exemption

We welcome the recommendation that a broader JV exemption be applied to collaborative activities, including acquisition and supply, production and marketing, and with less formality regarding the required documentation of JVs. This will bring greater certainty to business and will likely enable market participants to devote more resources to productive activity, thereby reducing cost of production to the benefit of relevant markets and the economy as a whole.

Origin believes that these recommended changes are common sense improvements that will not in any way promote conduct that is intended to be caught under the cartel conduct regime.

2. Removing protectionism from coastal shipping

As outlined in the Final Report, Australia has a policy of reserving coastal shipping for locally flagged vessels, with foreign-flagged ships requiring a licence in order to carry cargo and passengers between Australian ports. Significant changes were made to the process of licensing foreign vessels in 2012 and the current process affords Australian ships the opportunity to argue that foreign vessels should not receive a licence where Australian ships are in a position to undertake proposed voyages.

We agree with the Panel's view that current coastal shipping regulation represents a form of protection for Australian-registered ships and we consider that it ought to be remedied so as to ensure Australian businesses have access to competitive coastal trading services. We are currently consulting with the government regarding coastal shipping regulation and consider that the cabotage regime for shipping should be conducive to

competitive coastal trading markets and any burdens imposed on foreign shops ought to be proportionate to demonstrated benefits to the community.

3. Effects test for misuse of market power

We are concerned with the proposed changes to the prohibition on misuse of market power, namely the introduction of an 'effects test', as noted in our previous comments on the Draft Report. We consider that the changes recommended in the Final Report present the same problems as those of the Draft Report insofar as the previously proposed defence has been replaced with a requirement for the Court to have regard to the extent to which the conduct enhances efficiency, innovation, product quality or price competitiveness in the market, or whether it prevents, restricts or deters competitive conduct or new entry. In our view, such a test creates significant uncertainty regarding the application of the new provision.

We do not agree with the Panel's view that the focus of the prohibition (on showing the purpose of damaging a competitor) is inconsistent with the overriding policy objective of the legislative regime (to protect and foster competition). Rather, Origin considers that the causative test is the best way of protecting and fostering competition, by prohibiting the misuse of market power without disproportionately deterring pro-competitive conduct. The proposed changes to section 46 will create significant uncertainty around the scope of the prohibition and, in our view, there may be 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.

4. Introduction of prohibition against concerted practices

We are concerned with the Panel's recommended expansion of the anticompetitive arrangement prohibition to cover concerted practices. We share the concern of other market participants that such an extension, in the absence of a definition of 'concerted practices', will create significant uncertainty with the potential to capture and/or discourage legitimate precompetitive conduct.

As noted in our comments on the Draft Report, it is not uncommon for results briefings or announcements to customers to include statements regarding prospective strategy, many of which could be caught by the newly enlarged prohibition. 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.

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,



Tim O'Grady
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