



Contact officer: Mark McLeish
Contact phone: (03) 9290 1834

Gadigal people of the Eora Nation
Level 27, 135 King Street
Sydney NSW 2000
GPO Box 3131
Canberra ACT 2601
Tel 02 9230 9133
www.accc.gov.au

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Energy Ministers Secretariat
Department of Climate Change, Energy, the Environment and Water
GPO Box 858
CANBERRA ACT 2601

Via email: WMMR@dcceew.gov.au

Dear Energy Ministers Secretariat

Re: Consultation – Wholesale market monitoring and reporting reforms

The ACCC is supportive of regulators holding appropriate information gathering powers in order to ensure the efficient and effective operation of electricity and gas markets. As such, we support the proposed legislative changes to improve and expand the Australian Energy Regulator's (AER) wholesale market monitoring and reporting framework.

Our [previous submission](#), provided to this process on 25 August 2022, outlines the ACCC's Inquiry functions in electricity and gas, as well as the ability for the ACCC and AER to work together to minimise regulatory duplication and appropriately share information.

Electricity market monitoring inquiry 2018-25

The AER receiving the power to monitor the electricity hedging contracts market will improve transparency and aid policy development. This will protect competition and facilitate the effective functioning of the electricity market by supporting the provision of risk management options to smaller, non-vertically integrated retailers.

The ACCC's Inquiry into the National Electricity Market November 2022 report noted that the electricity hedging contract market plays an important role in enabling competition amongst both electricity retailers and generators. A competitive contracts market should facilitate the entry of new retailers and generators into the National Electricity Market and enable them to participate and compete alongside larger incumbents.

While exchange-traded contract volumes and prices are reported regularly and publicly, there is little visibility of activity in the over-the-counter market. Improving transparency in the over-the-counter market will be essential, especially as smaller retailers become increasingly reliant on over-the-counter hedging contracts. Monitoring hedging contracts provides crucial insights into the strength and resilience of both generators and retailers.

In our November Report, the ACCC recommended the AER should monitor contracts market trading by registered National Electricity Market participants as part of its wholesale monitoring functions. The scope of expanded wholesale market monitoring powers should apply to monitoring and analysis of contracts market trading by registered National Electricity Market participants, including over-the-counter trading. The AER should report on key issues, but only disclose commercially sensitive information when there is a material public benefit in public reporting.

Gas Inquiry 2017-2030

On 25 October 2022, the Government extended the ACCC's gas inquiry role through to 2030. As part of this inquiry we will continue to use our compulsory information gathering powers to regularly collect gas contracts and offers from gas suppliers, and analyse and report on this wholesale market data in our six-monthly interim reports. The ACCC seeks to minimise the compliance burden this information gathering places on industry, including by coordinating our notices with other agencies where possible, and making use the additional information now available through the Gas Bulletin Board.

It is important to recognise that the compliance burden on industry is increasing, including with the impending mandatory gas code. As such, we support the inclusion of section 30AE(b) which requires the AER to consider whether the information it requires is publicly available or can be obtained another way. This will further strengthen the need for a coordinated approach with other agencies and ensure the AER and ACCC continue to work together to share information to minimise any burden on industry.¹ The ACCC is committed to supporting the AER, including through sharing information where appropriate.

With the intention of minimising compliance costs, we note the ability for the AER to monitor and review bilateral trading agreements and the potential overlap with the ACCC's gas inquiry role. We understand from the August 2022 consultation paper that the intention in including bilateral trading agreements is to allow the AER to:²

'...monitor bilateral contractual transactions that underpin trade on wholesale gas markets (STTMs, DWGM and the GSH), and interact or impact on that trade.'

Consistent with this intent, we would suggest amending section 30AC(1)(a)(iv) as follows:

'bilateral trading agreements, ~~including their~~ where they have an effect on wholesale gas markets;'

Absent this change, the AER could potentially be required to systematically report on and review all bilateral trading agreements in the east coast gas market, including those that have no bearing on the wholesale gas markets, which could impose an unnecessary burden on industry and a duplication of effort across the AER and ACCC.

In addition to this drafting change, we have identified a number of instances in the draft Bill where the term 'market' is used rather than wholesale gas market (i.e. sections 30AC(2)(b)(i) and 30AF(2)(a)(i)&(ii)). For clarity, we would suggest amending these provisions by replacing the term 'market' with 'wholesale gas market'.

Finally, under section 30AF, the AER must prepare guidelines. We suggest the guidelines should also, under section 30AF(2)(e) set out 'the type of information the AER does not expect to request'.

Yours sincerely



Anna Brakey
Commissioner
Australian Competition and Consumer Commission

¹ As outlined in the consultation paper, the ACCC can share energy-related information under s. 157A of the Competition and Consumer Act 2010.

² See [August 2022 consultation paper](#), pg. 19.