

23rd August 2019

Mr David Hatfield
Director
Adjudication
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

Dear Mr Hatfield,

Authorisation AA1000450 submitted by LFRA – Information Request

Detailed below are our responses to the request for further information set out in your letter of 16th August 2019.

Q1. *“...The ACCC notes that, among other provisions, LFRA has sought authorisation in relation to the exclusive dealing provisions in s 47 of the Competition and Consumer Act 2010. Please outline which aspects of the Proposed Conduct are at risk of breaching the exclusive dealing provisions...”*

A1. The LFRA does not believe that any aspects of the Proposed Conduct are likely to contravene the exclusive dealing provisions of the Competition and Consumer Act 2010. The reference to exclusive dealing was included for completeness to ensure that, in the event that the ACCC considered that any aspect of the Proposed Conduct was at risk of contravening the exclusive dealing provisions, that the authorisation would be broad enough to cover such conduct.

Q2. *“...Please confirm that LFRA is not seeking authorisation to engage in collective boycott (s 45AD) as part of the proposed conduct...”*

The LFRA confirms that it is not seeking to engage in collective boycott as part of the Proposed Conduct.

Q3. *“...The ACCC notes that, as part of the Proposed Conduct, LFRA is seeking authorisation for future members of the buyers group, ‘provided that the total electricity consumption of the Buyers Group does not exceed 1% of electricity consumption in any State or Territory in Australia’. Please outline how this threshold of 1% is intended to work in practice – for example: how LFRA proposes to monitor electricity consumption of the group and how a potential new member’s additional*

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electricity consumption will be assessed. Please also explain why 1% was chosen as the appropriate threshold..."

- A3. Before any member is permitted to participate in the group, LFRA will confirm the most recent year's electricity consumption in each State and Territory for the potential new member. The LFRA will also retain up to date data relating to the electricity consumption of the existing members for that State or Territory to ensure that the total consumption of electricity by the potential new member and existing members in that State or Territory does not exceed 1%.

The threshold of 1% of electricity consumption in any State or Territory is approximately double the highest current combined electricity demand of Participating Members for a State or Territory (being the State of Western Australia). It was chosen by LFRA to allow for potential increases in electricity demand by current or new Participating Members over the duration of the authorisation, whilst remaining consistent with the overall objectives and intended scale (and likely corresponding impact) of the Proposed Conduct.

The LFRA would not object if the ACCC considered that it was appropriate to authorise a higher maximum threshold.

- Q4. *"...The ACCC notes that LFRA's application refers to 'electricity suppliers'. Please clarify whether LFRA intends to engage with both retailers and generators..."*

- A4. While the LFRA considers that electricity retailers would be the most likely parties to participate in the tender process, the LFRA would not exclude suitably qualified generators from participating in the process.

- Q5. *"...The ACCC also notes that, in section 6 of LFRA's application ('Market Information and Concentration'), LFRA defines the relevant markets as 'generation and wholesale supply' in the National Electricity Market and the WA Wholesale Electricity Market, and 'retail supply of electricity for commercial and industrial customers' for the Northern Territory. Please clarify the difference between the NEM and WEM markets and the NT market which necessitates this different characterisation of these markets..."*

- A5. The LFRA understands that:

- At the wholesale level, the NEM, WEM and NTEM are separately managed to facilitate the wholesale exchange of electricity between generators and retailers in the geographic areas in which they each operate, and are not interconnected. However, LFRA would have no objection if the ACCC considered that a broader (e.g. national) generation and wholesale electricity supply market definition was appropriate.
- At the retail level, the ACCC has previously considered state based (e.g. rather than national) market(s) for the retail supply of electricity. LFRA acknowledges and wishes to clarify that, taking this approach, relevant markets would include market(s) for the retail supply of electricity to commercial and industrial customers in each state or territory in which

Participating Members propose to acquire electricity (i.e. not just NT as currently referenced in section 6). The LFRA would also have no objection if the ACCC considered that a broader geographic market definition was appropriate.

Irrespective of the precise market definition, LFRA considers that the Proposed Conduct would not be likely to substantially lessen competition in any relevant market, for the reasons set out in the Application.

Q6. *"...In describing the relevant electricity-related markets in section 6 of LFRA's application ('Market Information and Concentration'), Victoria is not listed as a relevant state in the NEM. Please clarify whether Victoria was intentionally excluded..."*

A6. The exclusion of Victoria from the second paragraph of section 6 describing the NEM was unintentional. The LFRA notes that Victoria is included in the third paragraph of section 6, which sets out total consumption of electricity in the NEM.

Should you have any further queries, please let me know.

Yours sincerely,



Philippa Kelly
Chief Executive Officer