

31 October 2023

Ms Gina Cass-Gottlieb  
Chairperson  
Australian Competition & Consumer Commission (ACCC)  
Lodged online on the [public register](#)

Dear Ms Cass-Gottlieb,

**Response to Australian Competition & Consumer Commission's Draft Determination on the Application for Authorisation AA1000643**

The Clean Energy Investor Group (CEIG) welcomes the opportunity to provide feedback on the [Australian Competition & Consumer Commission \(ACCC\)](#)'s draft determination on the authorisation for coordination between the Australian Energy Market Operator (AEMO) and current and future AEMO Industry Participants on the scheduling of System Works (the draft determination) published in October 2023.

CEIG represents domestic and global renewable energy developers and investors, with more than 16GW of installed renewable energy capacity across more than 76 power stations and a combined portfolio value of around \$38 billion. CEIG members' project pipeline is estimated to be more than 46GW across Australia. CEIG strongly advocates advocate for an efficient transition to clean energy with a focus on the stakeholders who can provide the cost-effective capital required for this transition.

**Key Points**

- **CEIG does not support the ACCC's proposal to not grant authorisation** for coordination between AEMO and current and future AEMO Industry Participants on the scheduling of System Works raised by ACCC in its October 2023 draft determination.
- CEIG believes that there is a **net gain for the public interest if AEMO engages in the Proposed Conduct** as opposed to not being able to do so.
- Coordination between the AEMO and market participants to discuss System Works has **proven to be valuable**.

- The July 2023 interim authorisation granted to AEMO includes **appropriate protocols to prevent collusion**.
- The ACCC has **not reported any issues** thus far.

## CONTEXT

CEIG does not support the ACCC's proposal to not grant authorisation for the coordination between AEMO and current as well as future AEMO Industry Participants in relation to the scheduling of coordinating outages of generation, transmission and distribution assets for the purposes of repairs, maintenance, renewals, upgrades and new connections (System Works) to ensure the safe, secure, and reliable operation of Australia's energy systems, minimise the risk of energy outages, and ensure the continued operation and integrity of the NEM, while excluding the sharing of specific generator's wholesale prices, costs, and margins (Proposed Conduct), as outlined in the ACCC's draft determination.

### **Benefits of coordination between AEMO and Industry Participants**

#### Reliability and cost reduction

The AEMO's proactive approach to coordinating maintenance activities aligns with its overarching goal of achieving an enhanced electricity supply system. By optimising the scheduling of network repairs and maintenance, AEMO aims to reduce unexpected outages and last-minute cancellations. This directly translates to improved grid reliability, which, in turn, leads to more stable and consistent energy supply. Such enhanced reliability contributes to lower operational costs for energy providers, which can then be passed on to consumers in the form of cheaper electricity prices.

Coordinating network maintenance and upgrades efficiently can improve the reliability of the grid. By avoiding emergency and uncoordinated plant shutdowns, energy providers can minimise adverse impacts on both energy producers and consumers such as unnecessary supply interruptions and potential instability in the energy grid.

#### Minimising curtailment

Coordinating network maintenance is also critical to mitigate curtailment. Not coordinating transmission outages efficiently can lead to plant curtailment and result in reliability concerns and higher prices for consumers. The ability to align generation and network maintenance activities is essential for minimising curtailment and ensuring a reliable, cost-effective energy supply for consumers.

The collaborative efforts of AEMO and industry participants are instrumental in achieving the twin goals of improving electricity supply reliability and mitigating costs. The coordination of System Works not only enhances the sustainability of renewable energy generation but also contributes to more affordable and stable electricity prices for consumers, making renewable energy sources more attractive and viable for the broader energy landscape in Australia and beyond.

### **Adverse impacts in the absence of the Proposed Conduct**

CEIG has found numerous potential adverse outcomes associated with relying on bilateral discussions, as suggested in the ACCC's Draft Determination:

- Bilateral discussions without robust regulatory oversight can reduce competition in electricity and maintenance markets, as they may lead to anti-competitive agreements, a concern recognised by the ACCC, which also anticipates public harm due to decreased competition and maintenance service acquisition in the absence of the Proposed Conduct.
- Coordination in the absence of the Proposed Conduct might result in delays and decreased efficiency in addressing electricity system issues. AEMO argues that uncoordinated outages associated with System Works pose a significant risk of inadequate electricity supply and adverse price impacts. AEMO also notes that the Projected Assessment of System Adequacy lacks essential contextual information about outages, such as issues arising during planned maintenance.
- Bilateral negotiations also raise the potential for collusion, as participants might exploit these discussions to manipulate market conditions for their benefit. As exemplified in the draft determination, if a participant learns through the bilateral discussions about a competitor's plant problems or prolonged outages, it could incentivise other generators to withhold supply intentionally, artificially inflating prices by manipulating the spot market.
- The Draft Determination contends that bilateral discussions could be conducted with minimal additional burden. However, the AEMO has stated that under the Draft Determination, addressing systemic energy sector risks is impractical due to limitations in visibility, time, and resources for extensive bilateral discussions required to collect essential data and arrive at informed decisions. The AEMO further argues that relying on bilateral discussions for managing critical incidents is inefficient, unlikely to provide comprehensive risk assessment of critical infrastructure, and increases the risk of failing to ensure a sufficient and reliable energy supply.

### **The issue of collusion**

CEIG acknowledges the ACCC's concerns, namely that the Proposed Conduct, involving information sharing and coordination among competitors, could harm the public interest by reducing competition in wholesale electricity and maintenance services markets, potentially leading to collusion. However, it is crucial to emphasise that coordination does not necessarily equate to collusion. The collaboration of industry participants on essential aspects like network maintenance is in the interest of improving grid reliability and reducing costs which ultimately benefits consumers.

To mitigate the risk of collusion or anti-competitive behaviour, regulatory bodies such as the ACCC can play a crucial role. CEIG notes that there are already protocols in place from the interim authorisation granted to the AEMO on 13 July 2023. Those protocols mitigate the issue of collusion by establishing and enforcing clear guidelines and rules that govern information sharing and coordination among competitors. The AEMO has asserted that by incorporating these conditions, such as the necessity of a competition lawyer approved by the ACCC to be present and the invitation of the ACCC and state government representatives, any potential for collusion is effectively eliminated. Furthermore, the ACCC has recognised that the risk of collusion is minimal when the sole purpose of information sharing and coordination is to ensure the safe and reliable operation of electricity systems and when all the stipulated conditions in the interim authorisation are fulfilled.



In addition, CEIG notes that no issues of collusion have been reported by the ACCC thus far. The AEMO has also found that discussions have not yet raised any issues of collusion. Instead, the meetings primarily involve AEMO going over planned outages, using publicly available information, and verifying the timing with the relevant participants. The AEMO has also stated that it is unaware of any anti-competitive issues stemming from these meetings and believes that the fact it has not had to use its powers under the National Electricity Rules indicates the authorisation is working as intended.

CEIG thanks the ACCC for the opportunity to provide feedback on its draft determination and looks forward to continued engagement on those issues. Our Policy Director can be contacted at [marilyne.crestias@ceig.org.au](mailto:marilyne.crestias@ceig.org.au) if you would like to further discuss any elements of this submission.

Yours sincerely,



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