



GPO Box 520  
Melbourne VIC 3001  
Telephone: (03) 9290 1444  
Facsimile: (03) 9290 1457  
[www.aer.gov.au](http://www.aer.gov.au)

21 July 2017

Hon Josh Frydenberg MP  
Minister for the Environment and Energy  
Parliament House  
CANBERRA ACT 2600

Dear Minister

Thank you for your recent letter where you expressed concern about the bidding behaviour of Queensland generators and asked whether the AER requires additional powers to respond to these bidding practices.

As you know, one of the core roles of the AER is to monitor wholesale electricity markets. As part of this role we are required to publish a report whenever the spot price for electricity exceeds \$5,000/MWh. These reports identify and describe the factors contributing to the high prices, including bidding and rebidding behaviour, network issues, or changes to demand and generator availability.

It is important to recognise that strategic bidding and economic withholding (that is offering capacity at high prices) are not breaches of the Electricity Rules. However, bidding and rebidding that a generator does not have the intent to honour or that are not made on a reasonable basis are breaches of the Electricity Rules. It is important that bids and rebids be made in 'good faith' so market participants have access to accurate information that they can respond to. AEMO also needs to be able to rely on bids in maintaining security of the power system.

We have looked into the high price events on the 14 occasions in January and February of this year where spot prices in Queensland exceeded the \$5,000/MWh and did not find that the Queensland generators breached the bidding and rebidding rules.

We have however voiced concern (most recently in our State of the Energy Market report) over the ability of CS Energy and Stanwell, who each hold a significant market share, to exert influence over price. They will get dispatched at almost any level of demand. Without threat of entry any generator with this degree of market share will be able to significantly affect the price.

# Released under FOI

It is not illegal to have market power or exercise that power. A breach of the misuse of market power provision (section 46) of the *Competition and Consumer Act 2010* requires that a corporation take advantage of its market power for the purpose of:

1. eliminating or substantially damaging a competitor,
2. preventing the entry of a person into that or any other market, or
3. deterring or preventing a person from engaging in competitive conduct in any market.

This as you are aware, falls under the ambit of the ACCC.

While this responsibility for anti-competitive conduct in the electricity market sits with the ACCC, we do have new functions and powers to assess the effectiveness of competition in the wholesale electricity market. In particular, we have a new obligation to report every two years into the effectiveness of wholesale market competition. This function plays an important role in supporting the efficient operation of the wholesale market as it allows detection of issues affecting market efficiency.

Other reviews are also investigating competition issues in electricity markets. Notably, on 27 March 2017 the Treasurer, the Hon Scott Morrison MP, directed the ACCC to hold an inquiry into the supply of retail electricity and the competitiveness of retail electricity prices. The Inquiry will look at the drivers of retail electricity prices over time, including factors at all levels of the supply chain that may affect price.

Addressing your concern around generator bidding and rebidding behaviour is not an issue of granting us extra powers. However, an ability for the AER to gather oral evidence (through a provision equivalent to section 155(1)(c) of the *Competition and Consumer Act 2010*) may provide us with the ability to bring these issues to the fore more quickly for policy makers to address.

Should you or your staff require any further information in regards to matters raised in this letter, please do not hesitate to contact me on (03) 9290 1419 or Michelle Groves, the AER CEO on (03) 9290 1423.

Yours sincerely,



Paula W. Conboy  
Chair

CC: Hon Curtis Pitt MP  
Acting Minister for Energy, Biofuels and Water Supply

Mr Rod Sims  
Chair  
Australian Competition and Consumer Commission