



3 April 2020

Electricity Markets Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

Submitted electronically: [ElectricityMonitoring@accc.gov.au](mailto:ElectricityMonitoring@accc.gov.au)

### **Draft Guidelines on Part XICA – Prohibited conduct in the energy market consultation 2020**

Alinta Energy welcomes the opportunity to make a submission to the consultation on the proposed ACCC Guideline on the Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill (Bill).

Alinta Energy is an active investor in energy markets across Australia with an owned and contracted generation portfolio of nearly 3,300MW and with an excess of 1.1 million electricity and gas customers. As a complying market participant, Alinta Energy is covered under the prohibited conduct contained in the energy market bill and is thus well placed to provide comment.

The NEM is a fundamentally complex and sophisticated market. As such, Alinta Energy is cognisant of the material task facing the ACCC in developing appropriate guidance for the new prohibited conduct legislation. Nonetheless, with the ACCC's current roles in the NEM, Alinta Energy is of the view that the ACCC is well placed to continue to thoughtfully engage with industry on the development of this new role.

#### ***Interpretation of guidelines should remain flexible***

Throughout the consultation process it has been noted that the definitions and operation of the legislation are without precedent in both energy law and the Competition and Consumer Act, creating a significant challenge for the ACCC and industry alike. Throughout the consultation process, several participants have sought increased clarity by way of examples from the ACCC on their interpretation of part XICA.

Upon reflection of the draft guidelines and the examples contained within, it is clear to Alinta Energy that the inherent complexity of the NEM means that different market operation scenarios can be subject to a range of differing interpretations.

Whilst there are some obvious examples provided which demonstrate what would constitute a clear breach of the part XICA, many others may only hold true under simplistic assumptions based on market conditions at a particular point in time.

Nonetheless, in practise, participants in the NEM each operate unique and sophisticated risk profiles, wholesale management practises and individual sales strategies. All examples, now and into the future, are similarly influenced by the portfolio structure, size, region, level of integration, market maturity and competition strategy of individual participants.

By way of example, there remains an inherent risk that many of the examples provided within the draft guidelines add little value without a corresponding detailed understanding on the physical risk position of each individual market participant. In addition, a concurrent and detailed explanation of market participants' physical position, hedge position, trading strategy and future commercial intentions would need to be made available.

For the purposes of providing detailed examples within the draft guidelines, it would be overly onerous for the ACCC to provide all this information to aid the understanding of the examples provided and even if it were available, it would still be open to subjective debate, given these examples only represent the ACCC's initial views at this point in time.

This is not to criticise the ACCC's approach to the draft guidelines per se, rather to acknowledge the challenging scale of the task given to the ACCC by Government.

Furthermore, the NEM is currently undergoing a rapid and unprecedented level of evolution as the transition to renewables is made. In the future this will create many unforeseen challenges and scenarios that at this point in time remain un contemplated given the ever-changing and dynamic nature of the NEM. For example, at present, the draft guidelines predominantly provide examples which align to simple thermal generation or retailer scenarios. However, in the future prohibited market conduct may need to be dynamic enough to cover scenarios which contemplate a distributed fleet of battery technologies providing ancillary services such as inertia to households whom are retailers themselves selling energy to their neighbours in a two-way marketplace.

What the discussion above is illustrating is that there is a clear risk that if examples are provided, they risk adding little value, or worse still, normal and pro-competitive conduct may be inadvertently misinterpreted as undesirable under part XICA, potentially distorting pro-competitive market conduct going forward and inhibiting market development.

Alinta Energy is of the view that the examples provided within the draft guidelines should be removed to ensure that the risk of the information being misinterpreted is minimised and to subsequently provide both the ACCC and industry with the flexibility to comply with part XICA upon implementation.

The quality and stability of the ACCC's regulatory guidance is vital for the electricity sector given the long asset lives and the impact that regulatory uncertainty can have on the willingness for investors to commit significant capital. As such, Alinta Energy would encourage consideration of removing the examples provided within the draft guidelines, allowing the ACCC to maintain appropriate flexibility in assessing individual situations on individual merit specific to the unique market conditions that exist at the time.

If the decision is made to retain the examples, Alinta Energy would suggest the ACCC should insert a descriptive preamble into the Guidelines acknowledging the limitations of the examples in light of the issues which Alinta has raised above.

### **Conclusion**

Alinta Energy appreciates the work the ACCC has undertaken to date and looks forward to participating in the ongoing consultation process and would encourage consideration of the points raised above.

If you have any queries in relation to this submission, please contact me via email:

[REDACTED]

Yours sincerely,

[REDACTED]

**Shaun Ruddy**  
Manager National Retail Regulation