

20 December 2019

Lyn Camilleri
General Manager, Electricity Markets Branch
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Submitted via email: electricitymonitoring@acc.gov.au

Dear Ms Camilleri

Re: ACCC guidelines on the Prohibiting Energy Market Misconduct Bill

Thank you for the opportunity to comment on the issues to be addressed in the guidelines associated with the *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019* introducing new prohibitions into the *Competition and Consumer Act 2010* (CCA). This letter outlines a submission from ATCO Australia (ATCO).

As an owner and operator of energy and logistics infrastructure in Australia for over 55 years, ATCO is proud of its ongoing commitment to supporting the communities in which we operate. ATCO is a long-term investor with a clear vision of delivering customer value through sustainable growth, continuous investment, improvement and innovation.

The disruption of energy markets has highlighted the importance of consistent policy settings, regulatory certainty and appropriate investment signals to ensure that customers continue to receive safe, affordable and reliable energy.

Feedback on issues for consultation

ATCO considers that the ACCC should develop the guidelines using consistent concepts, process and remedies that exist under current market misconduct provisions, in particular those already set out in the CCA. ATCO's detailed responses to issues 1 – 4 are set out below.

Issue 1 - Key concepts

ATCO considers that the guidelines, as far as possible, should not be tailored to the context of the electricity industry, but should be consistent with broader market misconduct principles and provisions that exist under the relevant legislation, in particular, those already set out in the CCA.

New concepts should be developed as far as possible based on broader principles set out in the relevant legislation and case law to help ensure that regulators, market participants and consumers have clarity and that there is consistency in the provisions that should apply to all forms of market misconduct.

Issue 2 - Processes and remedies

ATCO considers that the new remedies and processes in the guideline should be consistent with the processes, information and clarifications detailed in the ACCC's Compliance and Enforcement Policy.

ATCO further considers that detailed guidance would assist market participants, in particular to put in place the necessary internal processes, practices and training and awareness programmes to help to ensure that their business operations are compliant. Detailed guidance will also assist regulators and consumers with transparency and improved confidence that the prohibitions set out in the law are being complied with.

ATCO cites the ACCC's Merger Review Process Guidelines as a good example of the amount and type of information, and the elements of relevant processes that should be included in the proposed guidelines.

Issues 3 & 4 - Examples of conduct that is likely / unlikely to breach the prohibitions

ATCO suggests that the conduct examples contained in the ACCC's "Retail Electricity Pricing Inquiry" Report (July 2018) and outlined in various submissions to the Senate Standing Committee on Economics (Economics Committee) in 2019 would provide good references to develop explanations to illustrate the types of conduct that is likely / unlikely to breach the prohibitions.

About ATCO

ATCO has been proudly operating in Australia and providing employment opportunities for more than half a century. ATCO is a customer-focussed global company that develops, builds, owns and operates a range of energy infrastructure assets, supporting residential, business and commercial consumers. ATCO is committed to investing in its people, innovation and technology to drive leading-edge application-based research.

In Australia, ATCO:

- owns and maintains two non-regulated gas distribution networks in Albany (LPG) and Kalgoorlie (natural gas), together with the largest (Mid-West and South-West) gas distribution network in Western Australia, servicing over 760,000 connections through more than 14,000 km of natural gas pipelines and associated infrastructure;
- owns an exempt retailer (Source Energy Co) in the Wholesale Electricity Market that provides electricity to around 500 embedded network customers in strata developments through a combination of solar photovoltaic systems, grid purchases and battery storage;
- owns and operates two power generation facilities (a joint-owned facility in Adelaide and a wholly-owned facility in Karratha) with a combined capacity of 266 MW;
- is drawing on its established expertise in natural gas to explore the future role of hydrogen through the research and development of ATCO's Clean Energy Innovation Hub (an embedded hybrid microgrid system that incorporates renewable solar generation, battery storage, natural gas backup generation); and
- manufactures and delivers modular building solutions to a diverse group of customers.

ATCO's Australian businesses are part of the worldwide ATCO Group with approximately 6,000 employees and assets of \$24 billion. ATCO is a diversified holding corporation with investments in Structures & Logistics (workforce housing, innovative modular facilities, construction, site support services, and logistics and operations management), Energy infrastructure (electricity generation, transmission and distribution; natural gas transmission, distribution and infrastructure development;

energy storage and industrial water solutions; and electricity and natural gas retail sales),
Transportation (ports and transportation logistics) and Commercial Real Estate.

If you have any questions or would like to discuss any of these issues further please contact me or
Amy Stanley, General Manager Human Resources & Corporate Affair.

Yours sincerely



J.D. Patrick Creaghan
Managing Director & Chief Operating Officer