



DEW-D0010432

Date: 29 October 2020

Director
Murray-Darling Basin Inquiry
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601
waterinquiry@acc.gov.au

Dear Director

The Government of South Australia supports moves to strengthen confidence in the water market, especially in relation to improved transparency and water literacy, and welcomes the Australian Competition and Consumer Commission's (ACCC) interim report.

The Department for Environment and Water (DEW) has provided its full cooperation to the ACCC Murray-Darling Basin water markets inquiry, providing data and information and meeting several times with ACCC officers leading up to and following the release of the interim report.

Basin governments and the Murray-Darling Basin Authority (MDBA) have a reasonable track record of addressing issues around market transparency and availability of information through implementation of the Basin Plan and the National Water Initiative. It is acknowledged, however, that there are opportunities to further improve the operation and regulation of the Murray-Darling Basin water market – to maximise the economic performance of irrigated agriculture and prevent market distortion or exploitation.

The interim report includes a range of key findings and proposals. Whilst some of the proposals can be readily implemented or are already underway, for others, account needs to be taken of the fundamental and long-standing agreements between Basin governments for water management. Significant changes would be required, with potentially large third-party risks for consumptive users and for the environment that would need to be carefully considered, addressed and managed.

Responses to the key findings and proposals in the interim report are provided below.

Conduct of market participants

DEW supports the suggested improvements to regulation of market participants and specifically to water brokers. Water brokers are already regulated under the Commonwealth *Competition and Consumer Act 2010* and, in many cases, also operate under the Australian Water Brokers Association voluntary code of conduct. Despite this, there are further opportunities to increase confidence in the conduct of water brokers.

Whilst increased regulation for water brokers is supported, it is important to ensure that licensing or similar compliance arrangements are balanced with the need to retain sufficient competition between service providers and ensure that smaller water brokerage entities are not unnecessarily prevented from continuing to operate or made unviable.

Opportunities to utilise existing regulatory frameworks should be fully explored to minimise red-tape and administrative arrangements. It would be preferable to implement any licensing regime at the Murray-Darling Basin or national level, rather than at the state level, to avoid duplication of and to ensure ease of operation for water brokers across different states and territories.

Improving trade processes and market transparency

The proposed actions to improve the transparency and accessibility of information necessary to participate in the market, including timely and accurate trade data, is supported. This finding aligns with recent reports from the Interim Inspector-General's inquiry into the management of Murray-Darling Basin water resources, the MDBA Murray-Darling Basin Water Market Products Scoping Study and the MDBA 2019 Water Trade Price Reporting audit.

For water allocation and entitlement transfers in South Australia, DEW already requires the seller to disclose the agreed price for the trade in writing – in accordance with Section 12.48 of the Murray-Darling Basin Plan. A reason is required for a zero dollar trade prior to an application being processed and approved. South Australian water trade forms and water licensing systems are also currently being reviewed to assess the required changes to enable trade purpose and other information to be captured and reported. The capturing and reporting of information will use terminology consistent with that in Victoria and New South Wales, wherever possible.

South Australia is also in the process of reforming its ageing water licensing system and automating and improving state-wide and interstate water trade transactions. More robust and reliable register services will enhance the ability of South Australian water-dependent businesses to utilise water licences as collateral for loans, reduce transaction costs and red-tape and support more efficient business decision making by parties seeking to trade and invest. The modernised water register also has a more advanced data structure that will enable streamlined exchange of data with other water registers, based on agreed data standards and technical protocols for interfacing. The new system is expected to be operational by mid-2021.

Improving market architecture

DEW is supportive of some of the market architecture reform options identified by the ACCC, including improvements to policy transparency and consultation processes and improving consistency across Basin States' accounting and metering requirements. However, there is concern about the feasibility of some of the proposed changes that relate to allocation and carryover policies, formal markets for storage and delivery capacity and application of transmission loss factors to water deliveries in the southern-connected Basin.

The architecture of the Murray-Darling Basin water market is based on long-standing agreements about how the southern connected Basin is operated and how water is shared and stored. This includes the *Murray-Darling Basin Agreement* (the Agreement), which is also underpinned by the critical principle that each state is entitled to decide how to use its own share of the water resource available to it. Each party to the Agreement retains discretion to allocate water in accordance with its own policy and legislative framework.

Since the mid-1880s, all states have pursued expanded irrigated agriculture activities. The type and extent of irrigation dependent development and the subsequent establishment of each State's water rights has historically occurred with direct correlation to the reliability of the water supply afforded through these sharing rules. There is no "one size fits all".

Many of the market architecture options identified by the ACCC are inter-related and would require material changes to the Agreement. While some of the proposed changes may be possible, it is likely that they would require lengthy and complex negotiations between parties to existing agreements and significant trade-offs, which may not be acceptable to all parties. There is a potential risk of significant third-party impacts and a quest for consistency in specific arrangements across states may actually lead to significantly more complicated arrangements as a result.

While DEW is not opposed to investigating and considering opportunities to improve some of the more complex market architecture issues identified by the ACCC, it is important that the context and rationale for the current market architecture and the feasibility and possibility of implementing some of the options are clearly articulated in the final report.

Changes to market governance

The ACCC finding that there are opportunities to better align governance frameworks to focus on the development, oversight and regulation of markets, and to promote open and fair trade across the Basin, is supported. The proposal to focus on harmonisation and co-ordination, rather than centralisation of information sources, roles and responsibilities, is also supported.

The interim report has raised a significant number of complex issues relating to the operation of Murray-Darling Basin water markets. South Australia would welcome the opportunity to discuss some of the feedback provided in this response in more detail and considers the interim report as a solid basis for developing the final recommendations. It is important, however, that the findings and recommendations are not made in isolation by the ACCC and that comprehensive and genuine consultation with all stakeholders is undertaken during the final phase of the inquiry.

Thank you for providing the opportunity to comment on the interim report.

Yours sincerely



Dan Jordan
A/EXECUTIVE DIRECTOR, WATER AND RIVER MURRAY