

National Electricity Market Management Company Limited

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11 November 1996

Professor Allan Fels
Chairman
ACCC
P.O. Box 19
BELCONNEN ACT 2616



96/14793D



RAC0001PWJ

Dear Professor Fels

National Electricity Code and Applications for Authorisation and Acceptance of an Industry Access Code

552 7956

I refer to the National Electricity Code ("the Code"), which was delivered to you on 9 October 1996 (marked "Version 2.0"), together with draft applications for authorisation of the Code and a draft application for acceptance of some of its chapters as an access code.

National Electricity Code Administrator Limited (NECA) and National Electricity Market Management Company Limited (NEMMCO) now submit to the ACCC the following:

1. Two applications under Sections 88 (1) (Forms A and B) and one application under Section 88 (8) (Form E) for authorisation of the Code for the purposes of Part VII of the Trade Practices Act and the Competition Codes.

As all three applications relate to the same market, the application described in Form A is lodged as the first application and the others are additional applications under Regulations 28 (5) and (6) of the Trade Practices Act Regulations.

Accordingly a cheque for \$10,500, representing the fee of \$7,500 for the first application and \$1,500 for each of the additional applications, is also enclosed.

2. Draft application for acceptance of the Code as an access code under proposed amending section 44ZZAA of the Act.

Details and arguments in support of both the draft access code application and the Section 88 applications are in the one **Submission** document enclosed.

The documents referred to in Chapter 1.8 of the **Submission**, which are lodged with the applications, have already been lodged with you on 9 October 1996, when the Code was delivered to you.


Both NECA and NEMMCO are the applicants in the applications for authorisation. NECA is proposed as the industry body to apply for acceptance of the Code as an access code.

As you will know, legislation to amend the Act to allow for acceptance by the ACCC of an access code submitted by an industry body has yet to pass the Commonwealth parliament and accordingly application for such a code cannot yet be lodged with the Commission. When the legislation passes a formal access code application will be lodged.

As your officers have pointed out in recent correspondence, it may be necessary, as the legislation currently stands, for all who may engage in actions under the Code which may breach section 47 of the Act, to join in an application for authorisation under section 88 (8) of the Act. In these applications for authorisation, only NECA and NEMMCO are applicants. Although we have requested that the Commission exercise its discretion to grant authorisation on terms that extend to future code participants. If our request is unable to be met, it will be our intention, following lodgement of these applications, to work with the Commission to arrange for all those who may require authorisation to be accounted for.

The Code and accompanying draft applications are commended for the consideration of the Commission.

Yours sincerely



Olaf O'Duill
Chairman
National Electricity Market Management Company Limited

13 November 1996

FORM B
COMMONWEALTH OF AUSTRALIA
Trade Practices Act 1974 - Sub-section (1)
AGREEMENTS AFFECTING COMPETITION:
APPLICATION FOR AUTHORIZATION

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88 (1) of the *Trade Practices Act 1974* for an authorization under that sub-section:

- (a) to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act; and
- (b) to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

1. (a) Name of applicants

National Electricity Code Administrator Limited
(ACN 073 942 775) ("NECA")
and
National Electricity Market Management
Company Limited (ACN 072 010 327)
("NEMMCO")

(b) Short description of business carried on by applicants

NECA: administration of the National
Electricity Code.

NEMMCO: management of the National
Electricity Market.

(c) Address in Australia for service of documents on the applicants

Level 8
350 Collins Street
Melbourne Vic 3000
Facsimile: (03) 9642 8526
Telephone: (03) 9642 8363
Attention: Mr Neville Henderson

until 31 December 1996, and thereafter to

Executive Chairman
National Electricity Code Administrator Limited
Level 7
14 Martin Place
Sydney NSW 2000
Attention: Mr John McMurtrie

2. (a) Brief description of contract, arrangement or understanding and, where already made, its date
- The initial National Electricity Code as defined in section 6(1) of the National Electricity Law ("the Code"). A copy of the proposed Code (Version 2.0, as proposed to be amended by Addendum 1) is provided as Attachment 1 to the applicants' submission ("Submission") to the ACCC lodged in support of this Application dated 13 November 1996.
- (b) Names and addresses of other parties or proposed parties to contract, arrangement or understanding
- The other proposed parties to the Code, being all those persons who in the future register with NEMMCO under the Code as Code Participants.
3. Names and addresses (where known) of parties and other persons on whose behalf application is made
- This application is not made on behalf of any other corporation or other person. However:
- (a) The authorization being applied for by this application is to be expressed so as to apply to or in relation to each other person who, in the case of an authorization to make the Code, becomes a party to the Code by registering with NEMMCO as a Code Participant at a time after it is made or, in the case of an authorization to give effect to a provision of the Code, becomes a party to the Code by registering with NEMMCO as a Code Participant at a time after the authorization is granted within the meaning of section 88(10) of the Act.
- (b) This application is expressed to be made also in relation to other proposed contracts, arrangements or understandings that will be in similar terms to the Code within the meaning of sections 88(13), (14) and (15) of the Act.
4. (a) Grounds for grant of authorization
- Authorization is sought on the grounds set out in the Submission.
- (b) Facts and contentions relied upon in support of those grounds
- The facts and contentions relied on by the applicants in support of these grounds are set out in the Submission.

5. This application for authorization may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the above-mentioned contract, arrangement or understanding.

(a) Is this application to be so expressed? Yes, each other proposed contract, arrangement or understanding for the purposes of sections 88(13), (14) and (15) of the Act, being each other proposed contract, arrangement or understanding to be made between a person who registers with NEMMCO under the Code as a Code Participant, the applicants and each existing Code Participant at that time, the terms of which are comprised in the Code.

(b) If so, the following information is to be furnished:

(i) the names of the parties to each other contract, arrangement or understanding Not applicable, as no other contract or arrangement has been made or understanding has been arrived at as at the date of this application.

(ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application The applicants. Other than to state that the other parties to each other proposed contract, arrangement or understanding for the purposes of sections 88(13), (14) and (15) of the Act will be the person who registers with NEMMCO under the Code as a Code Participant and each existing Code Participant at that time, the names of those other parties are not known as at the date of this application.

6. (a) Does this application deal with a matter relating to a joint venture (section 4J of the Trade Practices Act 1974)

No

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable

(c) If so, by whom or on whose behalf are those other applications being made?

Not applicable

13 November 1996

7. Name and address of person authorised by the applicant to provide additional information in relation to this application

The persons nominated in 1(c) of this form.

Dated 13th November, 1996.....



Signed on behalf of NECA

Signed on behalf of NEMMCO

John McMurtrie
.....
(Signature)

Olaf O'Duill
.....
(Signature)

Mr John McMurtrie
Chairman, National Electricity Code
Administrator Limited
Level 7
14 Martin Place
Sydney NSW 2000

Mr Olaf O'Duill
Chairman, National Electricity Market
Management Company Limited
Level 25
367 Collins Street
Melbourne Vic 3000

* Note: References in this application to the Act also include the Competition Codes of each participating jurisdiction as defined in the Competition Policy Reform legislation now in force in each participating jurisdiction.

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Furnish with the application particulars of the contract, arrangement or understanding in respect of which the authorization is sought. Those particulars shall be furnished -
 - (a) in so far as the particulars or any of them have been reduced to writing - by lodging a true copy of the writing; and
 - (b) in so far as the particulars or any of them have not been reduced to writing - by lodging a memorandum containing a full and correct statement of the particulars that have not been reduced to writing.
5. Where the application is made also in respect of other contracts, arrangements or understandings which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangement or understanding referred to in item 2.

NOTICES

1. In relation to item 4, your attention is drawn to sub-sections 90(6) and (7) of the *Trade Practices Act 1974* which provide as follows:

“(6) The Commission shall not make a determination granting an authorization under sub-sections 88(1), (5) or (8) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or understanding, in respect of a proposed covenant, or in respect of proposed conduct, unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed covenant, or the proposed conduct, as the case may be, would result, or be likely to result, in a benefit to the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if -

 - (a) the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;
 - (b) the proposed covenant were given, and were complied with; or
 - (c) the proposed conduct were engaged in,

as the case may be.

“(7) The Commission shall not make a determination granting an authorization under sub-section 88(1) or (5) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a contract, arrangement or understanding, or, in respect of a covenant, unless it is satisfied in all the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that that benefit outweighs or would outweigh the

detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision or complying with the covenant.”

2. If an authorization is granted in respect of a proposed contract, arrangement or understanding the names of the parties which are not known at the date of this application, the authorization shall, by sub-section 88(14) of the *Trade Practices Act 1974*, be deemed to be expressed to be subject to a condition that any party to the contract, arrangement or understanding will, when so required by the Commission, furnish to the Commission the names of all the parties to the contract, arrangement or understanding.