



Our ref: AA1000558
Contact officer: Jaime Martin
Contact phone: 03 9290 1477

23 Marcus Clarke Street
Canberra ACT 2601
GPO Box 3131
Canberra ACT 2601
tel: (02) 6243 1111

22/06/2021

exemptions@acc.gov.au
www.acc.gov.au

Dear Sir/Madam

Equinix (Australia) Enterprises Pty Ltd and Ors – renewable energy joint purchasing group application for authorisation AA1000558 – interested party consultation

On 15 June 2021 the Australian Competition and Consumer Commission (the **ACCC**) received an application for authorisation from Equinix (Australia) Enterprises Pty Ltd (**Equinix**), HSBC Bank Australia Limited (**HSBC**), Nike Australia Pty Limited (**Nike**), J.Aron & Company LLC (**Goldman Sachs**) and H&M Hennes & Mauritz Finance AB (**H&M**) (the **Applicants**).

This application relates to a proposed joint procurement process for an aggregated hedged volume of electricity and equivalent volume of Green Products¹ from a solar or wind electricity generation facility connected, or to be connected, to the National Electricity Market, likely in New South Wales (**Facility**).

As a potentially interested party, you are invited to make a submission in relation to the application for authorisation, including the Applicants' request for interim authorisation (outlined further below). Further information about the authorisation process is provided in the ACCC's [Guidelines for authorisation of conduct \(non-merger\)](#).

If you do not wish to make a submission, no further action is required.

The proposed conduct

The Applicants propose to pool their electricity demand and place a single tender into the market calling for proposals for the terms on which a supplier (**Seller**) will enter into a Power Purchasing Agreement (**PPA**) with the Applicants in the form of a contract for differences (also known as a hedge) for electricity and for the physical delivery of 'Green Products' (including large-scale generation certificates) from a Facility.

In particular, the Applicants seek authorisation under the *Competition and Consumer Act 2010* (Cth) to:

- (a) jointly conduct a tender process to identify and select a Seller, including the joint evaluation of tender responses and the negotiation of PPA terms;
- (b) enter into a PPA with the Seller on the same general agreed terms and conditions; and

¹ Green Products means Large Scale Generation Certificates (**LGCs**) and any other rights, entitlements, credits, offsets, allowances, compensation, benefits or certificates of any kind, recognised or arising under any scheme, law, policy or arrangement established or regulated by or on behalf of a government authority which are or which become available to the owner or operator of any facility for the generation of electricity from a renewable source in connection with its existence or operations as a generator of electricity from a renewable source.

- (c) consult with each other and make joint decisions regarding the ongoing administration and operation of certain aspects of the PPA during the term of the contract.

The Applicants submit that the primary purpose of the PPA is to hedge the Applicants' exposure to the wholesale (spot) price of electricity in the NEM and to obtain Green Products. The scope of the authorisation sought does not extend to the Applicants' combining their electricity demand for the purpose of negotiating an electricity retail contract with an authorised/licenced electricity retailer in the NEM, which will be done individually.

Authorisation is sought for 24 years. A full copy of the application for authorisation is available on the ACCC's [Authorisations public register](#).

Interim authorisation

The Applicants request that the ACCC grant interim authorisation in relation to this application to enable the joint tender process to commence while the ACCC considers the merits of the application for authorisation.

The Applicants submit that interim authorisation is justified because:

- carrying out the joint tender process is unlikely to have any impact on any relevant market as it will not result in a change in purchasing behaviour of, or entry into any contracts by, the Applicants; and
- the Project is ready to move to the joint tender phase, and any delay in progressing the Project will have consequences for the timing of the commencement of the Project, which in turn will impact the Applicants' ability to achieve their renewable energy targets.

The ACCC endeavours to deal with requests for interim authorisation quickly. In making an assessment as to whether it is appropriate to grant interim authorisation, the ACCC is not required to undertake a full assessment of the benefits and detriments likely to arise as a result of the proposed conduct.

The ACCC decides whether to grant interim authorisation on a case by case basis. When it receives a request for interim authorisation, the ACCC will usually consider a range of factors, including:

- harm to the applicant and other parties if interim is or is not granted
- the urgency of the matter and
- whether the market would be able to return to substantially its pre-interim state if the ACCC should later deny authorisation.

Making a submission

The ACCC invites you to make a submission on the request for interim authorisation and/or substantive authorisation. In making your submission, please provide information, evidence and views about the likely public benefits, effects on competition and any other public detriment that you consider will result from the proposed conduct.

Please provide submissions on **either or both** the request for interim authorisation and the substantive application for authorisation by **2 July 2021**.

Please email your submission to exemptions@acc.gov.au, with the subject 'AA1000558 – Equinix and Ors – submission'. Alternatively, if you would like to provide comments over the phone, please contact Jaime Martin via the details below.

If you wish to request an extension, please contact us as early as possible. Submissions after the due date (or after any extension) may not be taken into account.

Your submission will be placed on the ACCC's [Authorisations public register](#), unless you have made a request (with reasons) to exclude part or all of the submission from the public register (see [Guidelines for Excluding Information from the Public Register](#)).

Timetable

The ACCC will progress its assessment of the application in a timely manner. An indicative timetable is set out below.

Indicative date	Stage in assessment process
15 June 2021	Lodgement of application and supporting submission.
22 June 2021	Public consultation process begins.
2 July 2021	Closing date for submissions from interested parties.
July 2021	Applicant responds to issues raised in the public consultation process.
July 2021	Interim authorisation decision.
July/August	Draft determination.
July/August 2021	Public consultation on draft determination including any conference if called.
August / September 2021	Final determination.

This letter has been placed on the ACCC's public register. If you have any questions or wish to discuss any aspect of this matter, please do not hesitate to contact Ms Jaime Martin on 03 9290 1477 or exemptions@acc.gov.au.

Yours sincerely



Sheridan de Kruiff
Joint General Manager (A/g)
Competition Exemptions

Equinix and Ors – application for authorisation A1000558

List of interested parties – initial consultation

Energy Consumers Australia
Energy Users Association of Australia
Clean Energy Council
NSW Department of Planning, Industry and Environment
Department of Industry, Science, Energy and Resources
Department of Agriculture, Water and the Environment
Treasury
Australian Renewable Energy Agency
Clean Energy Finance Corporation
Energy Efficiency Council
Australian Energy Market Operator
Australian Energy Market Commission
Australian Energy Council
Australian Chamber of Commerce and Industry
Energy Networks Australia
Major Energy Users
1st Energy Pty Ltd
ActewAGL
AGL Energy Limited
Alinta Energy
Aurora Energy
Cova U Pty Ltd
CS Energy
Diamond Energy Energy
Elysian Energy
Energy Australia
Engie
Enova Energy
ERM Power
Future X Power
Intergen
Meridian Energy
Momentum Energy
Next Business Energy Pty Ltd
OC Energy Pty Ltd
Origin Energy
Pooled Energy
Powerdirect
Powershop Australia
QEnergy
Red Energy and Lumo Energy

Sanctuary Energy
Simply Energy
Snowy Hydro
(Red/Lumo Energy)
Sumo Power
Sunset Power (Delta Electricity)
Vocus Group (M2/Dodo)
TransGrid
Ausgrid
Citipower
Ergon Energy
Essential