



Tuesday, 22 September 2020

Via email: Adjudication@accc.gov.au

Miriam Kolacz
Senior Analyst, Adjudication, Merger and Authorisation Review
Australian Competition & Consumer Commission
Level 17 Casselden Place
2 Lonsdale Street,
Melbourne 3000

Dear Miriam,

Request to amend the application for revocation of A91495 and A91496 and the substitution of authorisation AA1000514 to include a request for interim authorisation

The current ACCC authorisation of the Clean Energy Council's Solar Retailer Code of Conduct (A91495 & A91496) is due to expire on 15 October 2020. The Clean Energy Council lodged an application to re-authorise the Solar Code through the revocation and substitution process on 15 May 2020.

The Clean Energy Council seeks to amend the above mentioned application for the reauthorisation of the Solar Code to include a request for an interim authorisation to allow parties to continue to engage in the proposed conduct while due consideration is given to the application for re-authorisation.

The ACCC may grant authorisation which provides businesses with legal protection for arrangements that may otherwise risk breaching competition law but are not harmful to competition and/or are likely to result in overall public benefits. The Clean Energy Council has sought re-authorisation in relation to the following provisions of the Act which might apply to the Conduct: Division 1 of Part IV (cartel conduct), section 45 (contracts, arrangements or understandings, and concerted practices), and section 47 (exclusive dealing).

The public benefit of the Solar Code has already been established as indicated in the Draft Determination of 13 August 2020,

'The ACCC considers that the Solar Code has resulted, and is likely to continue to result, in public benefits. In particular, for complex products such as solar PV systems, the obligations on retailers under the Solar Code (for example, regarding advertising, information disclosure and consumer education) help consumers make better and more informed purchasing decisions. The ACCC also considers that the Solar Code is likely to result in public benefits in

the form of increased consumer protections from key commitments required by signatories, which go beyond what is required by law.'

As the 2015 authorisation is due to expire on 15 October 2020, the Clean Energy Council requests that the interim authorisation take effect from this date until such a time that the final determination is made in relation to AA1000514. Without interim authorisation, there is a risk that the Code Administrator along with current Signatories to the Solar Code will be left without the legal protection afforded to it by the ACCC authorisation. Without these protections, the Solar Code could not serve its function to provide increased consumer protections in the small-scale solar industry.

As of 21 September, there are 1060 solar retailers who are Signatories to the Solar Code. These solar retailers have committed to comply with the Solar Code as authorised by the ACCC. In order to maintain market status quo, the Clean Energy Council requests that the ACCC considers the grant of an interim authorisation while the public submissions and related issues are given due consideration in authorisation AA1000514.

Please do not hesitate to contact me should you have further queries.

Kind regards,



Mindy Lim
Code of Conduct Manager
Clean Energy Council

From: Mindy Lim [REDACTED]
Sent: Wednesday, 23 September 2020 12:56 PM
To: Staltari, Danielle; Adjudication
Cc: David Sanders; Kolacz, Miriam; Mahony, Andrew; Black, Susie
Subject: RE: Request for interim authorisation [SEC=OFFICIAL]

Hi Danielle

I would like to confirm that the CEC is seeking interim authorisation for A91495 and A91496 (as referred to in our letter dated 22 September) which is the version of the Code that the ACCC authorised in 2015, currently in force today and is due to expire on 15 October 2020. The letter and this response can be placed on the public register.

Regards
Mindy