

Darrell Channing
Director, Adjudication Branch
Australian Competition & Consumer
Commission
GPO Box 3131
CANBERRA ACT 2601

21 July 2009
Matter 81535325

Dear Mr Channing

REMCo Applications for Authorisation A91136 - A91138

Please find attached authorisation applications to deal with the transitional issue that we discussed yesterday in relation to the cartel amendments to the Trade Practices Act (TPA) that are due to take effect on 24 July (**Cartel Amendments**).

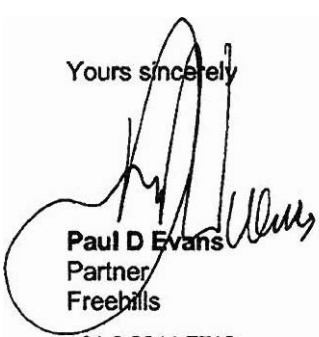
The conduct for which REMCo is seeking authorisation in the attached applications is identical to that covered by REMCO's previous applications. It is the same conduct for which the ACCC granted interim authorisation of 27 May 2009 and issued a draft determination of 15 July 2009. As a result, the submission in support of the previous applications applies equally to the attached applications.

REMCo is seeking interim authorisation from 24 July 2009 (the commencement date of the Cartel Amendments) until the ACCC makes a final determination. Granting interim authorisation will maintain the status quo (as noted by the ACCC in granting the previous interim authorisation on 27 May 2009).

Given the unusual nature of the current situation caused by the transition to a new regime, REMCo requests the ACCC exercise its discretion to waive the application fee. REMCo paid the relevant application fees in lodging the previous applications. The attached applications cover the same conduct as the previous applications and are only required because of a change of law while REMCO's applications are being considered. In these circumstances, it would impose an unduly onerous burden on REMCo to charge an additional application fee.

If you require any additional information, please do not hesitate to contact us.

Yours sincerely


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Doc 2449341

Form A Exclusionary provisions and associated cartel provisions: application for authorisation
(regulation 70)

Commonwealth of Australia

Trade Practices Act 1974 — subsections 88 (1A) and (1)

**EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS:
APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Trade Practices Act 1974* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.

1. Applicant

(a) Name of Applicant:

A91170

Retail Energy Market Company Limited (REMCo).

This application replaces application number A91136 submitted on 1 May 2009 and is to be read and determined together with the application in Form B in respect of agreements affecting competition and cartel provisions, accompanying this application, and Form E in respect of exclusive dealing dated 1 May 2009 (together, the **Application**).

A copy of the submission made in support of the Application was submitted to the Commission on 1 May 2009 (**Submission**).

(b) Description of business carried on by applicant:

REMCo is a company limited by guarantee, governed by an independent Board of Directors, and funded by industry participants on a cost recovery basis. REMCo is established by the industry participants to act as the retail market administrator for both the South Australian and Western Australian gas retail markets.

The functions of the retail market administrator are to: support meter registration; effect customer transfers; and undertake the balancing, apportionment and reconciliation of gas supply between retailers and shippers.

Further details of REMCo's operations are provided in the Submission.

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

Mr Paul Evans

Freehills Perth
QV.1 Building
250 St Georges Terrace
Perth WA 6000

2. Contract, arrangement or understanding

(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

Any contract, arrangement or understanding between REMCo and Retail Market Rules (RMR) participants or between RMR participants constituted by, or required under, Chapters 5 and 6 of the RMR, the Swing Service Provision Umbrella Deed, the Swing Service Provider of Last Resort Umbrella Deed or the Emergency Management Deed. A copy of the RMR is provided as an attachment to the Submission.

(b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:

The provisions are set out in the attached Submission.

(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

A description of the goods or services is set out in the attached Submission.

(d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

The term for which authorisation is sought and the grounds supporting that term are set out in the Submission.

3. Parties to the proposed arrangement

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

REMCo and RMR participants. The names and addresses of current RMR participants are set out in Schedule 1 of the attached Submission. The names and addresses of all future RMR participants are not known at this time.

(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

This application is not made on behalf of any other corporations or other persons. However, REMCo requests that any authorisation granted pursuant to this application be expressed so as to apply to or in relation to each RMR participant who:

- in the case of an authorisation to make a contract, arrangement or understanding constituted by or required under the RMR becomes a party at any time in the future; or
- in the case of an authorisation to give effect to a provision of a contract, arrangement or understanding constituted by or required under the RMR, becomes a party by becoming a RMR participant at the time after the authorisation is granted within the meaning of section 88(1) of the Act.

4. Public benefit claims

(a) Arguments in support of application for authorisation:

The arguments in support of the application for authorisation are set out in the attached Submission.

(b) Facts and evidence relied upon in support of these claims:

The facts and evidence relied upon in support of these claims are set out in the attached Submission.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

The markets in which the services described in 2(c) are supplied are set out in the attached Submission.

6. Public detriments

(a) Detriments to the public resulting or likely to result from the contract arrangement or understanding, for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

Details of the detriments to the public resulting or likely to result from the relevant contract, arrangement or understanding are set out in the attached Submission.

(b) Facts and evidence relevant to these detriments:

The facts and evidence relevant to these detriments are set out in the attached Submission.

7. Contracts, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made 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:

(b) Is this application to be so expressed?

No.

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

(i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

N/a

(ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

N/a

(iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Future parties will be new RMR participants in the Retail Market Scheme in South Australia or Western Australia.

8. Joint Ventures

(a) Does this application deal with a matter relating to a joint venture. (See 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?

N/a

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

N/a

9. Further Information

(a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

Mr Paul Evans
Freehills Perth
QV.1 Building
250 St Georges Terrace
Perth WA 6000

Dated 21 July 2024

Signed by/on behalf of the applicant


.....
(Signature)

Mr Paul D Evans
(Full Name)

Freehills
(Organisation)

Partner
(Position in Organisation)

DIRECTIONS

- 1. Use Form A if the contract, arrangement or understanding includes also a provision which is, or might be, a cartel provision and which is also, or might be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.**

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing their application for authorisation.

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. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.**
- 4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions.**

In providing these details –

 - (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and**
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.**
- 5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.**
- 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.**
- 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.**
- 8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.**

- 9. Where the application is made also in respect of other contracts, arrangements of 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, arrangements or understanding referred to in item 2.**
- 10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.**

Form B **Agreements affecting competition or incorporating related cartel provisions:
application for authorisation**
(regulation 70)

Commonwealth of Australia

Trade Practices Act 1974 — subsections 88 (1A) and (1)

**AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL
PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Trade Practices Act 1974* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

1. **Applicant**

(a) **Name of applicant:**

A91171

Retail Energy Market Company Limited (REMCo).

This application replaces application A91137 dated 1 May 2009 and is to be read and determined together with the application in Form A in respect of exclusionary provisions and cartel provisions, accompanying this application, and Form E in respect of exclusive dealing submitted to the Commission on 1 May 2009 (together, the Application).

A copy of the submission made in support of the Application was provided to the Commission on 1 May 2009 (Submission).

(b) **Short description of business carried on by applicant:**

REMCo is a company limited by guarantee, governed by an independent Board of Directors, and funded by industry participants on a cost recovery basis. REMCo is established by the industry participants to act as the retail market administrator for both the South Australian and Western Australian gas retail markets.

The functions of the retail market administrator are to: support meter registration; effect customer transfers; and undertake the balancing, apportionment and reconciliation of gas supply between retailers and shippers.

Further details of REMCo's operations are provided in the Submission.

(c) **Address in Australia for service of documents on the applicant:**

Mr Paul Evans
Freehills Perth
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250 St Georges Terrace

Perth WA 6000

2. Contract, arrangement or understanding

(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

Any contract, arrangement or understanding between REMCo and Retail Market Rules (RMR) participants or between RMR participants constituted by, or required under, Chapters 5 and 6 of the RMR, the Swing Service Provision Umbrella Deed, the Swing Service Provider of Last Resort Umbrella Deed or the Emergency Management Deed. A copy of the RMR is provided as an attachment to the Submission.

(b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:

The provisions are set out in the attached Submission.

(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

A description of the goods or services is set out in the attached Submission.

(d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

The term for which authorisation is sought and the grounds supporting that term are set out in the Submission.

3. Parties to the proposed arrangement

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

REMCo and RMR participants. The names and addresses of current RMR participants are set out in Schedule 1 of the attached Submission. The names and addresses of all future RMR participants are not known at this time.

(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

This application is not made on behalf of any other corporations or other persons. However, REMCo requests that any authorisation granted pursuant to this application be expressed so as to apply to or in relation to each RMR participant who:

- in the case of an authorisation to make a contract, arrangement or understanding constituted by or required under the RMR becomes a party at any time in the future; or
- in the case of an authorisation to give effect to a provision of a contract, arrangement or understanding constituted by or required under the RMR, becomes a party by becoming a RMR participant at the time after the authorisation is granted within the meaning of section 88(1) of the Act.

4. Public benefit claims

(a) Arguments in support of authorisation:

The arguments in support of the application for authorisation are set out in the attached Submission.

(b) Facts and evidence relied upon in support of these claims:

The facts and evidence relied upon in support of these claims are set out in the attached Submission.

5. Market definition

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The markets in which the services described in 2(c) are supplied are set out in the attached Submission.

6. Public detriments

(a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

Details of the detriments to the public resulting or likely to result from the relevant contract, arrangement or understanding are set out in the attached Submission.

(b) Facts and evidence relevant to these detriments:

The facts and evidence relevant to these detriments are set out in the attached Submission.

7. Contracts, arrangements or understandings in similar terms

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

(a) Is this application to be so expressed?

No.

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

(i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

N/A

(ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

N/A

(iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Future parties will be new RMR participants in the Retail Market Scheme in South Australia or Western Australia.

8. Joint Ventures

(a) Does this application deal with a matter relating to a joint venture (See 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?

N/A

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

N/A


9. Further Information

(a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Mr Paul Evans
Freehills Perth
QV.1 Building
250 St Georges Terrace
Perth WA 6000

Dated..... 27 July 2009

Signed by/on behalf of the applicant


.....
(Signature)

Paul D Evans
(Full Name)

Freehills
(Organisation)

Partner
(Position in Organisation)

DIRECTIONS

1. **Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.**

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4. **Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.**

In providing these details:

- (a) **to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and**
 - (b) **to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.**
5. **Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.**
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 7. **Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.**
 8. **Provide details of the detriments to the public which may result from the contract, arrangement or understanding including quantification of those detriments where possible.**
 9. **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.