



Australian
Competition &
Consumer
Commission

Application for minor variation of authorisations A91567 & A91568

lodged by

South Australian Chamber of Mines and Energy
(SACOME)

in respect of

amending the list members participating
in a joint electricity purchasing group

Date: 16 August 2017

Authorisation number: A91567 & A91568

Commissioners:
Sims
Rickard
Schaper
Featherston

Summary

The Australian Competition and Consumer Commission has decided to vary authorisations A91567 & A91568 granted to the South Australian Chamber of Mines and Energy, in relation to the establishment of a joint electricity purchasing group.

The variation consists of amending the list of participating members to remove Arrium Ltd and add relevant subsidiaries of Arrium that would enter into any electricity supply agreements arising out of negotiations by the joint electricity purchasing group.

The application for minor variation

1. On 13 July 2017, the South Australian Chamber of Mines and Energy (**SACOME**), on behalf of itself and 27 South Australian organisations (the **Participating Members**), applied to the Australian Competition and Consumer Commission (ACCC) for a minor variation to authorisations A91567 & A91568.¹
2. Authorisations A91567 & A91568 were granted for SACOME and the Participating Members to establish a joint electricity purchasing group, conduct a joint tender for electricity supply arrangements and jointly negotiate the terms and conditions of their electricity supply agreements.
3. The ACCC granted authorisations A91567 & A91568 on 17 May 2017 for 11 years.
4. SACOME is seeking minor variations to authorisations A91567 & A91568 to allow changes to the list of participating members. The variation consists of removing Arrium Ltd as a participating member and adding five Arrium Ltd subsidiaries:
 - OneSteel Manufacturing Pty Ltd ABN 42 004 651 325 (subject to Deed of Company Arrangement)
 - OneSteel Trading Pty Limited ABN 50 007 519 646 (subject to Deed of Company Arrangement)
 - OneSteel Reinforcing Pty Limited ABN 22 004 148 289 (subject to Deed of Company Arrangement)
 - OneSteel Recycling Pty Limited ABN 28 002 707 262 (subject to Deed of Company Arrangement)
 - The Australian Steel Company (Operations) Pty Limited ABN 89 069 426 955 (subject to Deed of Company Arrangement).

¹ Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the *Competition and Consumer Act 2010* (the CCA). Applicants seek authorisation where they wish to engage in conduct which is at risk of breaching the CCA but nonetheless consider there is an offsetting public benefit from the conduct. Detailed information about the authorisation process is available in the ACCC's Authorisation Guidelines at www.accc.gov.au/publications/authorisation-guidelines-2013

5. The five companies listed above are the subsidiaries of Arrium Ltd that would enter into any electricity supply agreements arising out of participation in the joint electricity purchasing group.

Background

The applicants

6. SACOME is the peak industry body representing companies in the South Australian minerals, extractive, and oil and gas sectors, including those who provide services to these companies.
7. The Participating Members are organisations located in South Australia and are commercial users of electricity in their operations including the mining, university, property investment, manufacturing and food sectors.
8. The combined load of these 27 organisations represents approximately 16 per cent of the South Australian electricity load and less than one per cent of the load for the National Electricity Market (the **NEM**).

SACOME's submission in support of the application

9. SACOME submits that the proposed changes are necessary to ensure that the relevant companies within the Arrium Group that would enter into any electricity supply agreements negotiated with an electricity supplier are able to participate in the joint electricity purchasing group.
10. SACOME submits that the proposed changes satisfy the definition for a 'minor' variation in the CCA because the change is merely a technical one – changing a company name – and therefore there will be no change to the likely benefits or detriments.

Consultation

11. Before the ACCC consults on an application for a 'minor' variation, for the purposes of consultation it must first satisfy itself that the proposed variation is consistent with the definition of a minor variation in the CCA. The ACCC did so in this case.
12. The ACCC then invited submissions on the application from potential interested parties, including potential electricity suppliers and state and Commonwealth government representatives. No submissions were received.

ACCC assessment

13. The ACCC has assessed the application for a minor variation to authorisations A91567 & A91568 in accordance with the tests in section 91A of the CCA.
14. Broadly, the ACCC may vary an authorisation if it is satisfied that:
 - the proposed variation is minor, and
 - the variation would not result or would not be likely to result in a reduction in the net public benefit that arises from the authorisation.

15. A minor variation, as defined by section 87ZP of the CCA, is a single variation to an authorisation that does not involve a material change in the effect of the authorisation.

The proposed variation is minor

16. The ACCC is satisfied that the proposed variation is minor. The ACCC considers that the proposed variation will not involve a material change in the effect of the authorisations that were originally granted. The ACCC considers that the variation sought is consistent with the intent of the original authorisations and does not change the scope of the authorised conduct in any meaningful way. It will allow the subsidiaries of Arrium, who are the entities that enter into the relevant electricity supply agreements, to participate in the joint electricity purchasing group.

No reduction in the net public benefit of the arrangements

17. The ACCC is satisfied that the proposed variation will not result in any reduction to the net public benefit of the arrangements originally authorised. In the original authorisations, the ACCC considered that collective purchasing by the participating members was likely to result in public benefits including:

- transaction cost savings, and
- improved competition for generation and wholesale supply of electricity in South Australia.

18. The ACCC considered that the any reduced competition from the combining of Participating Members' electricity loads would be limited since:

- the successful electricity supplier will be selected as a result of a tender process which is open and transparent and will ensure that there will be competition between electricity suppliers to win the contract, and
- the proposed conduct involves a relatively small proportion of the electricity load of South Australia (16 per cent) and an even smaller proportion of the NEM (less than one per cent).

19. Therefore the ACCC was satisfied that the likely benefit to the public would outweigh the detriment to the public, including the detriment constituted by any lessening of competition, that would be likely to result.

20. The ACCC considers that the variation is consistent with the original intent of the bargaining group. It clarifies which relevant subsidiaries of Arrium Ltd can participate in the joint electricity purchasing group. It does not change the substantive scope of the joint electricity purchasing group or the nature of negotiations to be undertaken by the group. Therefore the ACCC considers that the variation would not result or be likely to result in a reduction in the net public benefit that arises from the original authorisation.

Determination

21. The ACCC is satisfied that the variation is minor as defined by section 87ZP of the CCA.

22. The ACCC is also satisfied that the public benefit test under section 91A(4) of the CCA is met. That is, the variation would not result, or would be likely not to result, in

a reduction in the extent to which the benefit to the public of the authorisations A91567 & A91568 outweighs any detriment to the public caused by the authorisations.

23. Pursuant to section 91A(3) of the CCA, the ACCC makes this determination varying authorisations A91567 & A91568 to vary the list of participating members in the joint electricity purchasing group as described at paragraph 4 of this determination.
24. This determination is made on 16 August 2017. If no application for a review of the determination is made with the Australian Competition Tribunal, the determination will come into force on 7 September 2017.