



Eastern Energy Buyers Group – application for authorisation A91594 & A91595

Interim authorisation decision

1 September 2017

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of the application for authorisation lodged by the Eastern Energy Buyers Group (**EEBG**) on 4 August 2017.
2. Interim authorisation is granted to enable EEBG to investigate potential electricity, gas and gas transport supply options, prepare tender documents, and issue one or more tenders. Interim authorisation does not extend to EEBG or its members entering into any supply agreements for electricity, gas or gas transport services.
3. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

The application for authorisation

4. EEBG seeks authorisation, on behalf of its current and future members, to establish a joint electricity and gas purchasing group, investigate potential options for gas and electricity supply, and conduct one or more joint tender processes.
5. The objective of the joint purchasing group is to combine the members' collective demand to secure cost-effective energy.
6. The current members of EEBG operate in the agri-business sector, in food production and processing of agricultural commodities. Each has significant operations in Victoria. Authorisation is sought to jointly tender to meet EEBG members' electricity and gas requirements within Victoria and in other states.
7. Authorisation is also sought to enable other industrial users of energy, operating in any energy intensive industry and with significant operations in Victoria, to join the group in the future, provided the combined energy consumption by the group does not exceed 16 PJ of gas or 4.5TWh of electricity.

8. EEBG seeks authorisation for 11 years.

The authorisation process

9. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

10. Section 91 of the Act allows the ACCC to grant interim authorisation before the ACCC has made a decision on the merits of the application.

11. The ACCC will only grant interim authorisation in appropriate circumstances. In many circumstances it is not appropriate to do so because interim authorisation allows an applicant, for a limited period, to engage in conduct before the ACCC has been able to fully assess whether the conduct satisfies the authorisation test.

Consultation

12. In order to consider EEBG's request for interim authorisation, the ACCC sought submissions from a range of potentially interested parties, including electricity and gas suppliers, gas transporters and Australian and Victorian government energy department and regulators / agencies. The ACCC also published the application on its public register. To date, no public submissions have been received.

13. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's [Authorisations Public Register](#).

Reasons for decision

14. In granting interim authorisation, the ACCC has taken into account the following factors:
- Interim authorisation is unlikely to significantly reduce competition for the supply of gas, electricity and gas transport services, as it is limited to investigating potential supply options, preparing tender documents, and conducting the tender process. No energy supply agreements will be entered into pursuant to the joint tender process unless the ACCC issues a final determination granting authorisation for the contracts to be made.
 - The proposed conduct is likely to result in some public benefits from transaction cost savings and increased competition for the supply of energy to EEBG members.
 - The ACCC's preliminary view is that any public detriment resulting from the conduct appears to be limited, given:
 - the quantities of electricity and gas the applicants intend to acquire through the joint purchasing group

- unsuccessful tenderers will still be able to compete to supply the vast majority of energy users in Victoria and the National Electricity Market more broadly, and
 - any information sharing required by the proposed conduct is confined to energy discussions between members and any ongoing consultation that would arise after the tender would only be in relation to ongoing administration of their energy supply agreements.
- There is public benefit in granting interim authorisation insofar as it will allow the joint purchasing group to commence the tender process and negotiate with the successful tenderer(s) and, if the ACCC grants final authorisation, allow the benefits from the joint purchasing to be realised earlier than would otherwise be the case.

Reconsideration of interim authorisation

15. The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.