

4 April 2024

Australian Energy Market Commission



Submitted online

Retailer Failure – Draft Report

The Australian Financial Markets Association (AFMA) is responding to the Australian Energy Market Commission's (AEMC) Draft Report regarding its review into the arrangements for failed retailers' electricity and gas contracts.

AFMA is the leading financial markets industry association promoting efficiency, integrity and professionalism in Australia's financial markets, including the capital, credit, derivatives, foreign exchange, energy, carbon, and other specialist markets. Our membership base is comprised of over 130 of Australia's leading financial market participants, including many energy firms who are key participants in Australian energy markets.

Key Points

- **AFMA supports the AEMC's decision to enhance the cost recovery arrangements for ROLRs**
- **The AEMC should ensure the scheme can accommodate the failure of a retailer within a corporate group**

The unprecedented disruptions in energy markets and the resulting failure of a number of retailers in 2022 highlighted the need to ensure the arrangements to manage failures are robust. We appreciate the AEMC's strong engagement with AFMA and our members on the review's implications for the financial market and we consider that the current recommendations are likely to achieve the AEMC's objectives without increasing risk in the financial market.¹

1. Minimising the impact on wholesale markets

AFMA supports the AEMC's decision to recommend a Retailer of Last Resort (ROLR) cost recovery framework based on allowing the ROLR to recoup the full cost of acting as a ROLR and making the failed retailer liable for the costs of the ROLR event. We consider that this is the simplest approach that will reduce the risks to the ROLR and provide strong disincentives to using the ROLR framework as a mechanism to voluntarily exit energy retailing. We consider that the proposed framework will be practical to implement and will not disrupt risk management in the financial market.

2. Corporate groups

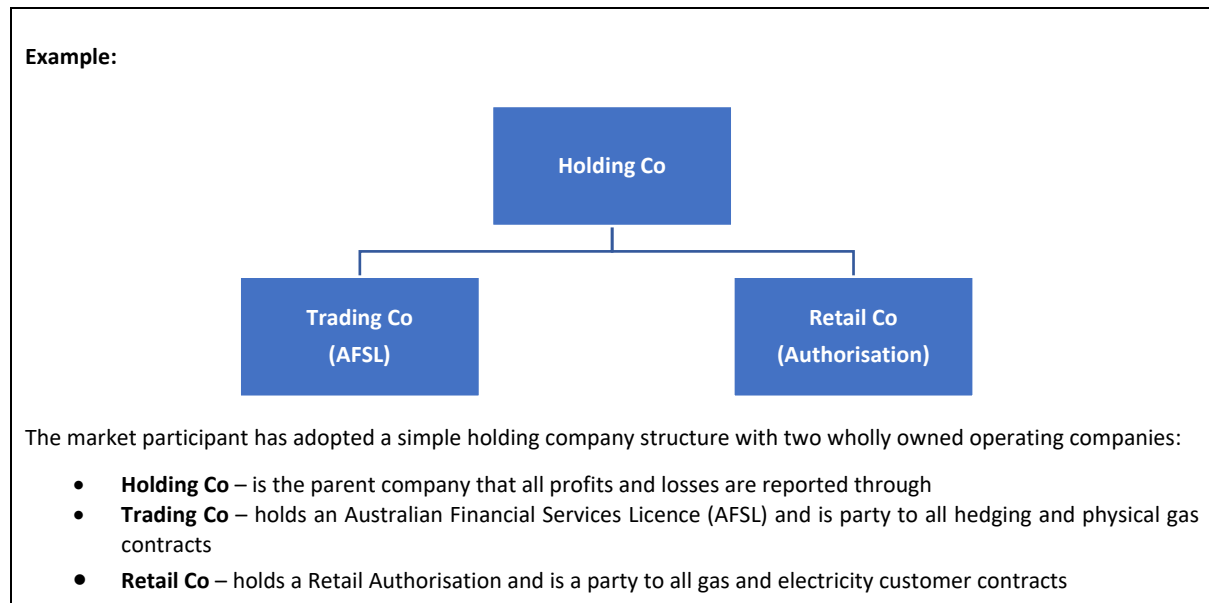
As highlighted in our submission to your Directions Paper AFMA considers that the review should address the practical challenges of applying the proposed reforms to retailers within corporate groups. Your recommendation to expand the scope of parties that ROLR regulatory information notices can be served on is a good example of how the regulatory framework can accommodate the commercial reality that, in many cases, key retailing activities will be performed by legal entities

¹Directions Paper - <https://afma.com.au/policy/submissions/2023/r36-23-retailer-failure-review-no2.pdf?ext=.pdf>

Initial Review - <https://afma.com.au/getattachment/76b66281-27ef-4d06-b4af-1a2112d8fe45/R72-22-Retailer-Failure-Review.pdf?lang=en-AU&ext=.pdf>

other than the authorised retailer. We think it is worth considering if a similar approach could be used for cost recovery orders and gas directions.

In our previous submission we provided the following example of a simple corporate structure that could be used by energy retailers:



Under the proposed arrangements the AER may serve information notices on all three companies but can only make cost recovery orders and gas directions in relation to Retail Co. In this example, neither the proposed gas directions power or the cost recovery mechanism would be effective as the relevant assets would be in different companies within the group. This would limit the effectiveness of the reforms and reduce their deterrent value and we consider there may be value looking to expand the scope of these powers to related companies.

AFMA Recommendations

- i. The AEMC's recommendations should address the impact of corporate groups on the effectiveness of the proposed reforms.

AFMA would welcome the opportunity to discuss this submission further and would be pleased to provide further information or clarity as required. Please contact me at lgamble@afma.com.au or 02 9776 7994.

Yours sincerely,

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