

30 January 2026

Department of Climate Change, Energy, the Environment and Water



Submitted online

Prohibited Energy Market Misconduct – Consultation Paper

The Australian Financial Markets Association (AFMA) is responding to the Department of Climate Change, Energy, the Environment and Water's (DCCEEW) Strengthening the Prohibited Energy Market Misconduct (PEMM) provisions in the *Competition and Consumer Act 2010* consultation paper.

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 is comprised of over 140 of Australia's leading financial market participants, including key participants in the NEM.

Key Points

- **AFMA supports DCCEEW's proposals to streamline regulatory governance arrangements**
 - **The proposed cross-market misconduct provisions:**
 - a) **confuse the AER and ASIC's responsibilities**
 - b) **risk penalising beneficial market activity**
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1. Governance

AFMA supports DCCEEW's proposals to streamline the increasingly complicated governance arrangements of energy regulators. We consider it is inefficient to have multiple regulators with overlapping responsibilities. Our members particularly point to the cost to participants of having to provide similar data to multiple regulators due to ineffective information sharing between regulators.

AFMA considers that the:

- **AER** – should be responsible for all energy specific physical market regulation
- **ASIC** – should be responsible for all financial market regulation
- **ACCC** – should focus on economy wide competition issues and not have energy specific functions

AFMA supports ending the ACCC's Electricity Market Monitoring Inquiry and transferring any ongoing functions, such as market monitoring, to the AER. AFMA is unsure of the value of the current PEMM provisions,¹ but to the extent that they remain in force, we think it is more appropriate for the AER to take over their administration, although we note the challenges of having two regulators administering the substantially lessening competition test and would be open to the AER having a different test.

While AFMA does not think that the ACCC should have a continuing energy specific role, our members are very keen to avoid duplicated data collection requirements. To the extent the ACCC continues to require electricity market specific data, we consider that the ACCC should be required to source that data from the AER rather than collect it itself. AFMA has had productive conversations with the AER about efficient data collection and minimising the cost of data collection for market participants, we therefore encourage

¹ <https://afma.com.au/policy/submissions/2025/r07-25-pemm-review.pdf?ext=.pdf>

DCCEEW to consider the views we expressed in our submissions to the AER’s wholesale market monitoring consultations about both collection and handling of confidential information.²

| AFMA Recommendations | |
|-----------------------------|---|
| i. | Energy market governance arrangements should be simplified with the AER as the primary physical market regulator and ASIC responsible for financial market regulation |
| ii. | The ACCC should have no ongoing energy specific role and should be required to rely on AER data for any remaining functions |

2. Market regulation

Sound market regulation is important to promote confidence in the integrity of markets, but AFMA is not convinced that the proposed approach will be effective. We consider that it is natural and appropriate for related markets, such as spot and contract markets, to interact with each other and for events in one market to have an impact on other related markets. It is therefore important to ensure that market misconduct regulation does not inadvertently penalise normal, beneficial, market activity. We therefore think it is important, before imposing market conduct regulation, to identify the conduct it is trying to address and to ensure that appropriate governance arrangements are in place to minimise overlap between regulators.

AFMA considers that it is desirable for there to be strong interaction between the physical and financial markets, and we think policy makers should be cautious about regulating cross-market conduct as there is significant risk of penalising positive market activity. It is important for the roles of the various regulators to be clearly defined and for overlap to be minimised. We consider that the AER should be the primary physical market regulator but do not think it is appropriate for it to be involved in financial market regulation, which should remain the responsibility of ASIC. While we think there should be close cooperation between the AER and ASIC, we think DCCEEW should be cautious about introducing cross-market regulation that could confuse the roles of the physical and financial market regulators. We consider that market conduct regulation works effectively in the financial market and that:

- a) There is no need for energy specific financial market regulation
- b) It is inappropriate for the AER to be given financial market powers

| AFMA Recommendations | |
|-----------------------------|---|
| iii. | The proposed cross-market misconduct provisions: <ul style="list-style-type: none">a) confuse the AER and ASIC’s responsibilitiesb) risk penalising beneficial market activity |

3. Batteries and auto-bidding

AFMA does not entirely share DCCEEW’s concerns about the impact of the increasing use of auto-bidders. We understand that the increasing use of auto-bidders has largely been driven by battery storage systems whose operational characteristics require them to make many more bids than conventional units, as they have to regularly update their state of charge and manage the prices that they charge and discharge at, which are impractical to manage manually. As a result, we do not think that the increase in the volume of

² See for instance sections 2 and 3 of our response to the AER’s Guidelines Consultation - [https://afma.com.au/getattachment/Policy/Submissions/2024/R01-22-AGD-Privacy-Review-Consultation-\(25\)/R26-24-Wholesale-Market-Monitoring-Guidelines.pdf?lang=en-AU&ext=.pdf](https://afma.com.au/getattachment/Policy/Submissions/2024/R01-22-AGD-Privacy-Review-Consultation-(25)/R26-24-Wholesale-Market-Monitoring-Guidelines.pdf?lang=en-AU&ext=.pdf)

bids is a concern in and of itself. We consider the technology's ability to respond rapidly to prices and changing information is efficiency enhancing and that the large volume of new battery projects coming into the market from new and existing participants will providing strong competitive pricing discipline in peak periods.

The consultation paper also asks for feedback on the role of artificial intelligence in bidding units. Our understanding is that currently auto-bidders typically do not use artificial intelligence but are based on algorithms developed by people to rebid when certain conditions occur. While we appreciate artificial intelligence may be used in future we do not think there is adequate information to comment on it at this stage.

While we do not share DCCEEW's concerns about the use of auto-bidders, we appreciate regulators would like to ensure that market participants have appropriate arrangements in place to configure, use and monitor them. We think there could be merit in investigating if market participants have adequate arrangements for their auto-bidders and support the AER doing further work to understand how auto-bidders are used. We also note that this approach of looking at supervisory arrangements for auto-bidders could apply to both conventional algorithmic auto-bidders and future artificial intelligence enable bidding.

AFMA Recommendations

- iv. The AER should do further work to understand how auto-bidders are used by market participants

4. Competition

We consider that competition and market conduct are different problems requiring different solutions. In the case of competition, while we note the decreasing volume of and increasing concentration of ownership of conventional dispatchable generation, we think there are a number of developments that are likely to diversify ownership.

The massive roll out of batteries is increasing the availability of dispatchable capacity, leading to a large number of new participants entering the market and giving smaller retailers access to dispatchable capacity that was previously only available to larger vertically integrated participants. Additionally, the Nelson Review has recommended that market concentration should be a factor when assessing Electricity Services Entry Mechanism proposals which is likely to lead to more diverse generation ownership. While we think DCCEEW should continue to monitor the state of competition in the NEM, we do not think that there is a case for further regulatory action at this stage.

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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