

East Coast Gas System, Gas Supply Adequacy and Reliability Conference Competition Law Protocol

1 GAS SUPPLY ADEQUACY AND RELIABILITY CONFERENCES

Under section 91AD of the National Gas Law, AEMO has certain east coast gas system reliability and supply adequacy functions.

Under rule 692 of the National Gas Rules, AEMO may convene conferences with industry participants and other organisations for one or more of the following purposes in relation to the reliability or adequacy of the supply of natural gas within the east coast gas system:

- (a) to assess whether there is or is not an actual or potential threat, including the likelihood of the threat occurring;
- (b) to signal the need for an industry response to an actual or potential threat;
- (c) to obtain information on the nature and extent of an actual or potential threat. (**East Coast Gas System Conferences**).

2 COMPETITION COMPLIANCE STATEMENT

Attendees at East Coast Gas System Conferences may include parties who are competitors, including competitors in relation to the supply or acquisition of natural gas.

AEMO and all attendees at an East Coast Gas System Conference (the **Participants**) are committed to complying with all applicable laws, including the *Competition and Consumer Act 2010 (CCA)*.

The Participants agree to at all times adhere to the CCA and comply with this Protocol in the course of all East Coast Gas System Conferences and related correspondence / discussions. Participants must arrange for their representatives to be briefed on competition law risks and provided with a copy of this Protocol.

Jurisdictional representatives and employees or officers of the ACCC will be invited, and may attend, East Coast Gas System Conferences.

3 APPLICATION OF PROTOCOL

This Protocol must be tabled and noted at all East Coast Gas System conferences.

4 COMPETITION LAW OBLIGATIONS

The CCA prohibits anti-competitive conduct, including:

- (a) **cartel conduct** – arrangements between competitors to:
 - fix prices;
 - restrict supply or acquisition of goods or services;

- allocate customers, suppliers or territories; or
- rig bids.

A cartel can be entered into even though competitors never meet or speak directly. This is known as a 'hub and spoke cartel' where a third party facilitates the cartel by passing on information and commitments between competitors. The third party can be liable for this conduct.

- (b) **concerted practices** – other cooperation between competitors with the purpose, effect or likely effect of substantially lessening competition (e.g. sharing competitively sensitive information with competitors).
- (c) any **other contract, arrangement or understanding** which has the purpose, effect or likely effect of substantially lessening competition.
- (d) any **conduct by a company with market power** which has the purpose, effect or likely effect of substantially lessening competition.

A contravention of the CCA can result in significant penalties, including criminal sanctions for cartel conduct (including jail terms for individuals).

5 GUIDING PRINCIPLES

All attendees at East Coast Gas System conferences acknowledge that:

- (a) decisions regarding AEMO's east coast gas system reliability and supply adequacy functions including a proposed exercise of AEMO's direction or trading functions, are made unilaterally by AEMO in furtherance of its statutory powers under the National Gas Law and National Gas Rules; and
- (b) to the extent that AEMO consults with relevant entities (whether at East Coast Gas System Conferences or outside of those conferences) in relation to a proposed exercise of AEMO's direction or trading functions, this is solely to assist AEMO in making decisions in relation to the exercise of AEMO's direction or trading functions.

What you must do

- (a) Ensure that attendees at East Coast Gas System Assessment Conferences are not involved in the trading, sale or purchase of natural gas, unless such attendees are specifically invited by AEMO. It is expected that attendees would ordinarily be involved in and have knowledge of the operation of the Participant's relevant gas facilities.
- (b) Ensure that discussions at East Coast Gas System Conferences are limited to the matters contemplated by the agenda.
- (c) Only provide information at East Coast Gas System Conferences:
- in relation to ability to supply, capacity, production and other matters impacting on the reliability and adequacy of the supply of natural gas; and
 - that is requested by AEMO for the purposes of AEMO's East Coast Gas System reliability and supply adequacy functions.
- (d) Attendees at an East Coast Gas System Conference must make independent and unilateral decisions about their businesses. AEMO can provide information to attendees about an identified risk or threat and request that each attendee consider that information in making unilateral decisions about their business.
- (e) Immediately and clearly raise an objection if a matter is discussed that the attendee is concerned may give rise to competition law risks or a breach of this Protocol.

What you must not do

Attendees at an East Coast Gas System Conference must not agree on or reach an understanding in respect of any aspect of their market behaviour, including bidding and other behaviour in the Victorian Declared Wholesale Gas Market, the Short Term Trading Markets and the Gas Supply Hub. In particular, attendees must not discuss or agree on the following topics at an East Coast Gas System Conference:

- (a) the price or other terms and conditions on which attendees may supply or acquire natural gas or other goods and services;
- (b) who the attendees will or will not supply or acquire natural gas, or other goods or services, to or from;
- (c) restricting the volume of natural gas, or other goods or services, attendees will supply or acquire;
- (d) bids or tenders, including the nature of a bid that an attendee intends to make or whether that attendee will participate in the bid;
- (e) any other information that is not requested by AEMO for the purposes of AEMO's East Coast Gas System reliability and supply adequacy functions.

Under no circumstances may Participants share market sensitive information. Market sensitive information means confidential information about pricing, customer terms and conditions, supply terms and conditions, sales, marketing or procurement strategies, product development, margins or costs.

A Participant at a conference can indicate that information that it has been asked to provide is market sensitive or confidential in which case AEMO must engage directly with the participant outside of the conference where AEMO considers it necessary to obtain the information.

6 COMPLIANCE PROCEDURES

- (a) Before an East Coast Gas System conference, AEMO will give a conference notice in accordance with the East Coast Gas System Procedures.
- (b) At an East Coast Gas System conference, discussions between the Participants should be limited to those topics identified in the conference notice.
- (c) Where possible AEMO will arrange for an AEMO lawyer to attend each East Coast Gas System conference to monitor compliance with the CCA and this Protocol. There may be instances where an AEMO lawyer is unable to attend a conference, including because of the conference needs to occur on a very urgent basis.
- (d) AEMO may record conferences, including by making video recordings and phone recordings, for the purpose of creating a record of the conference.
- (e) AEMO will publish a record of the information obtained at a conference (excluding confidential information), as a brief meeting note, no later than 1 business day following the conference.