

# AEMO COMPETITION LAW MEETING PROTOCOL

## Competition Compliance Statement

AEMO is committed to complying with all applicable laws, including the Competition and Consumer Act 2010 (CCA).

In any dealings with AEMO regarding proposed reforms or any other initiatives whatsoever, all participants agree to adhere to the CCA at all times and to comply with this Protocol.

Participants must arrange for their representatives to be briefed on competition law risks and provided with a copy of this Protocol.

There are separate protocols that are particular to meetings held under an ACCC authorisation. Before attending a meeting or forum you should confirm with your manager or the Legal Team whether the meeting or forum has a specific protocol.

## Application of protocol

This Protocol must be tabled and noted at meetings which relate to one or more of the following issues:

1. Market reviews / historical pricing reviews
2. Rule changes which relate to wholesale pricing in the NEM, WEM or gas markets
3. Rule changes which relate to bidding, auction or settlement processes
4. Developments of new markets and regulatory regimes
5. Procurement of goods or services
6. Reliability planning
7. Development of new products or services, including products or services to be supplied by government entities
8. Any other topics which AEMO or a participant considers appropriate.

## Competition law obligations

The CCA prohibits anti-competitive conduct, including:

1. **Cartel conduct** – arrangements between competitors to:
  - fix prices
  - restrict supply or acquisition of goods or services
  - allocate customers 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.

2. **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)
3. Any **other contract, arrangement or understanding** which has the purpose, effect or likely effect of substantially lessening competition
4. 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).

## Guiding principles

### What you must do

Participants in AEMO discussions must:

1. Ensure that discussions are limited to the matters contemplated by the **agenda** for the discussion.
2. Make **independent and unilateral decisions** about their commercial positions and approach in relation to the matters under discussion with AEMO.
3. **Immediately and clearly raise an objection with AEMO or the Chair of the meeting** if a matter is discussed that the participant is concerned may give rise to competition law risks or a breach of this Protocol.
4. **Seek independent advice if** they want to exchange any other information or are unsure about their obligations under competition law or this Protocol.

### What you must not do

Participants in AEMO meetings must not discuss or agree on the following topics:

1. Which **customers** they will supply or market to.
2. The **price or other terms** at which Participants will supply.
3. **Bids or tenders**, including the nature of a bid that a Participant intends to make or whether the Participant will even participate in the bid.
4. Which suppliers **Participants** will acquire from (or the price or other terms on which they acquire goods or services).
5. **Refusing to supply a person or company access** to any products, services or inputs they require.
6. **Coordinating of maintenance** or other activities which may affect generation output.

Under no circumstances must Participants share **Competitively Sensitive Information**. Competitively Sensitive Information means confidential information relating to a Participant which if disclosed to a competitor could affect its current or future commercial strategies, such as pricing information, customer terms and

conditions, supply terms and conditions, sales, marketing or procurement strategies, product development, margins, costs, capacity or production planning.

### **Compliance procedures**

For meetings where this Protocol applies, AEMO will:

1. Circulate an agenda to Participants before the meeting; and
2. Take minutes or notes of the meeting.