# INFORMATION EXCHANGE COMMITTEE MEETING

FOR NOTING

SUBJECT: AEMO PROTOCOL FOR MANAGING COMPLIANCE WITH COMPETITION LAW

AGENDA ITEM: 1

## 1. PURPOSE

To ensure that IEC members understand their obligation in relation to competition law risks and AEMO's Protocol for managing this risk.

## 2. SUMMARY

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 other initiatives, 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.

## 3. COMPETITION LAW OBLIGATIONS

The CCA prohibits anti-competitive conduct, including:

1. **Cartel conduct** – arrangement between competitors to:
   - fix prices
   - restrict supply or acquisition of goods or services
   - allocate customers or territories
   - 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 commitment between competitors. The third part can be liable for this conduct.

2. **Concerted practices** – other cooperation between competitors with the purpose, effect or likely effect of substantially lessening competition (eg 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 sustainably lessening competition

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

## 4. MANAGING COMPETITION LAW - 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 relations 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

**What you must not do**

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

1. Which **customers** will they 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 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

Under no circumstances must Participants share **Competitively Sensitive Information**. Competitively Sensitive Information means confidential information relating to the Participant which if disclosed to a competitor could affect its current or future commercial strategies, such as pricing information, consumer terms and conditions, supply terms and conditions, sales, marketing or procurement strategies, product development, margins, costs, capacity or production planning.

**Compliance Procedures**

For meeting where this protocol applies, AEMO will:

1. Circulate an agenda to Participate before the meeting
2. Take minutes or notes of the meeting.

## 5. RECOMMENDATIONS

The IEC members note their obligations relating to compliance with competition law.

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