

House of Representatives Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Australian Competition and Consumer Commission annual report 2017-18

Department/Agency: Australian Competition and Consumer Commission

Topic: Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019

Date: 18 September 2019

MP: Craig Kelly

Hansard page number: 17

Question:

Mr CRAIG KELLY: At the moment, if I have a generation asset and I say, 'Look, let's just close the thing down,' if I didn't have a substantial degree of market power I would sell it for \$500 million, but because I do have a substantial degree of market power it works out that it's better for my profitability, for my company, to close it down and not sell it to a competitor, and therefore I can benefit from a higher wholesale price. Is that conduct potentially captured by the new act?

Mr Sims: I'd have to take that on notice; I looked at those provisions some time ago—unless Mr Greiss has an answer. I think I'd rather take it on notice and give you a decent, thoughtful response.

Answer:

Whether or not the new Prohibiting Energy Market Misconduct prohibitions apply to a decision to cease operating a generation asset will depend upon the particular details of the conduct. Where a corporation ceases operating a generation asset on a permanent basis (including by giving up its generation licence, such that it is no longer even technically capable of supply), the ACCC considers it unlikely that compliance with the prohibitions in the *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019* would require it to sell those assets to a competitor, rather than shut the asset down. The prohibitions which address (i) the availability of financial contracts and (ii) bidding in the wholesale spot market, relate to the corporation's failure to offer contracts or bid where it could do so, not to a failure to enable a competitor to offer contracts or bid through acquisition of its assets.