

IMPACT & IMPLEMENTATION REPORT (IIR)

Issue number	21		
Impacted jurisdiction(s)	Queensland, New South Wales, South Australia, Northern Territory, Tasmania, Victoria, Australian Capital Territory		
Proponent	AEMO	Company	AEMO
Affected gas market(s)	Gas Supply Hub	Consultation process (ordinary or expedited)	Ordinary
Industry consultative forum(s) used	Gas Supply Hub Reference Group	Click or tap to enter a date.	
Short description of change(s)	Amendments to the Gas Supply Hub Exchange Agreement to: <ul style="list-style-type: none"> • Allow trade restrictions between related entities 		
Procedure(s) or documentation impacted	Gas Supply Hub Exchange Agreement, Gas Supply Hub End of Day Benchmark Price Methodology		
Summary of the change(s)	<ul style="list-style-type: none"> • Allow trade restrictions between related entities 		
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Date IIR published	24/3/21	Date consultation concludes	26/4/21
Email address for responses	Hub_Reference@aemo.com.au		



IMPACT & IMPLEMENTATION REPORT – DETAILED REPORT SECTION

CRITICAL EXAMINATION OF PROPOSAL

1. DESCRIPTION OF ISSUE

1.1. Trade restrictions for related entities on the Gas Supply Hub

In November 2019, Shell completed the acquisition of ERM Power. Shell and ERM Power are currently members of the GSH and continue to operate separate trading teams within each of the respective organisations. Shell has recently approached AEMO to propose an amendment to the GSH Exchange Agreement to prevent trading between ERM and Shell on the GSH trading platform. Shell is concerned that trading between the related entities through the GSH could result in potential market conduct risks (within the National Gas Rules ("NGR")).

1.2. Summary of consultation undertaken in 2020

A discussion paper on the proposed trade restrictions between related entities was published in November 2020 to the GSHRG. AEMO sought feedback from GSHRG members on a series of questions to inform the consideration of potential trade restrictions between related entities. The discussion paper was discussed with the GSHRG at a meeting in December 2020, feedback from members is summarised in Appendix c of this report.

2. REFERENCE DOCUMENTATION

Reference documentation associated with this proposed change can be found in appendices to this report;

- Appendix A – Initial request from Shell to provide restricted trading functionality in the GSH.
- Appendix B – Additional information from Shell in relation to information shared between related entities.
- Appendix C – Summary of feedback from GSHRG consultation
- Appendix D – Proposed amendments to GSH Exchange Agreement
- Appendix E – Proposed amendments to GSH Benchmark Price Methodology

3. OVERVIEW OF CHANGES

Under the proposal, eligible related trading participants would be able to request, and have applied, restrictions in the trading systems that would prevent the execution of trades between those participants.

3.1. Eligibility threshold for trading restrictions

It is proposed that trading participants are eligible to request the application of trading restrictions if:

- a trading participant holds 50% or more of issued share capital of another trading participant; or
- a holding company holds 50% or more of issued share capital of both trading participants

The proposed eligibility requirements are similar, but not the same, to those that define a related body corporate under the Corporation Act 2001 (Cth) (the Corporations Act).



3.2. Applying to be a related trading participant

Both related trading participants would be required to make a written application to AEMO to request the application of trading restrictions. The application would include proof of ownership structure in the form of a recent company search to confirm the shareholding of the related entities.

3.3. Trade restrictions applied by trading system

The restrictions, if applied in the trading systems, would prevent the execution of trades between related trading participants. This restriction would apply for both on-market and off-market trades. Orders submitted by an entity would be identifiable to the related trading participants on the trading platform. A consequence of the proposed trading restrictions is that it is possible that bids and offers from the related trading participants could become crossed (bid price greater than offer price).

4. LIKELY IMPLEMENTATION EFFECTS AND REQUIREMENTS

Potential implementation implications and requirements were consulted on with members. Overall AEMO considers that the implementation effects to industry are minor in nature.

GSH Information disclosure between related parties

During consultation with members, concerns about the potential asymmetry of information that could exist between Shell and ERM were raised. It was argued this asymmetry would arise from the trading participants knowing each other's bids and offers on the trading platform.

As outlined in Appendix B and C, Shell and ERM are not subject to ring fencing and freely share information. As such, the application of the proposed restrictions in the trading system would not provide any additional transfer of information between related entities than they currently transfer.

Eligibility threshold for trading restrictions

The proposed eligibility requirements are similar to those that define a related participant under the Corporations Act. Unlike the definition of subsidiary under the Corporations Act, the threshold for applying for the trading restrictions would not consider if one company controls the composition of another company's board or if a company can cast or control the casting of votes at a general meeting of another company. These additional eligibility criteria are not included in the proposed definition for related trading participants because AEMO considers they have the potential to be overly burdensome to administer.

Market Conduct Rules

Shell proposed this change as it is concerned that if the 'related' entities traded with each other it may breach the market conduct rules of the gas trading exchange.

The proposed restriction of trading between related entities (or not qualifying for restrictions as the case may be) does not change member's obligations under the market conduct provisions in the National Gas Rules. AEMO is not advising or representing that a restriction on trading between members (regardless of the threshold set to restrict trading) will mean members are complaint with the market conduct rules, as enforcement of the market conduct rules is a matter for the AER, or any other regulatory requirements such as the Competition and Consumer Act.

Benchmark Price Calculation

It is proposed that the GSH Benchmark Price Methodology is updated to ensure that potential crossing of orders between related trading participants does not impact upon the determination of the benchmark price (see Appendix D). The methodology has also been amended to clarify the price determined on days where no transactions in the relevant products are executed.



Market Systems

The proposal would require a new Trayport release to enable minor configuration changes which would restrict the trading between related entities. The changes are part of existing Trayport functionality and meet the requirements of restricting both on and off market trades. The related entities will be able to identify the other entities bids and offers via colour coding in Trayport which shows trades which cannot be executed between the related entities. These restrictions will only be applied between related entities in the system once AEMO has approved the application.

5. OVERALL COST AND BENEFITS

The implementation costs of these changes are minor and AEMO expects no increase to ongoing GSH costs resulting from these changes. Based on industry feedback AEMO considers that these enhancements will deliver the following benefits:

- Having restrictions between related entities will enable there to be more members participating in the GSH which may lead to higher levels of liquidity and trading that would otherwise be the case.

Use of the Gas Supply Hub and these new features is voluntary, and participants are able to undertake their own assessment of whether the benefits of participation outweigh any cost to their organisation.

AEMO has considered other ways related entities could restrict trading with each other on the GSH including:

- Building a third party system outside of Trayport that then interfaces to the Trayport application to ensure that trades cannot be entered into by the related entities.
- Only having one of the related entities trading on the GSH

Given that Trayport has the functionality to enable trade restrictions, this will be the lowest cost and easiest to implement option, while encouraging participation on the GSH.

6. MAGNITUDE OF THE CHANGES

AEMO considers these changes are of a minor magnitude. The proposed changes require material but minor changes to the Exchange Agreement and market systems. AEMO considers that impact on industry participants is not material.

7. AEMO'S ASSESSMENT OF THE PROPOSAL'S COMPLIANCE WITH SECTION 135EB:

In accordance with NGR rule 135EB and NGR rule 540, AEMO is satisfied that the proposed changes will contribute to the National Gas Objective as they:

- are likely to result in additional volumes of gas being transacted through the Gas Supply Hub and promoting the efficient operation of the gas market.
- are likely to improve the ability for participants to transact in the market.
- are not costly to implement.

8. CONSULTATION FORUM OUTCOMES

AEMO raised the changes at an industry forum in December 2020 as well as issuing a discussion paper in November 2020. AEMO received feedback for the proposed changes from industry participants. Concerns which were raised have been addressed in section 1.1.2 see Appendix B for member responses.



IMPACT & IMPLEMENTATION REPORT – RECOMMENDATION(S)

9. SHOULD THE PROPOSED PROCEDURES BE MADE)?

AEMO recommends that the proposed amendments to the Gas Supply Hub Exchange Agreement are made.

10. PROPOSED TIMELINES

AEMO is proposing an implementation date of June 2021 the GSH Exchange Agreement changes. AEMO will provide market participants with 15 business days' notice prior to commencement.



APPENDIX A - INITIAL REQUEST FROM SHELL TO PROVIDE RESTRICTED TRADING FUNCTIONALITY IN THE GSH.



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16 October 2020

Subject: Request for enablement of Trayport functionality to prevent related party trading

The Shell Group (Shell) is an active market participant in a number of East Coast energy markets including the Declared Wholesale Gas Market ("DWGM"), Short Term Trading Markets ("STTM"), National Electricity Market ("NEM") and the Gas Supply Hub ("GSH").

Shell trades on the GSH as Walloons Coal Seam Gas Company Pty Limited and as ERM Power Retail Pty Ltd (which it recently acquired through its subsidiary Shell Energy Australia Pty Ltd). The two trading entities are both majority-owned by the Shell Group yet trade on behalf of different internal businesses and as such, significant consideration was given to the market conduct risks (within the National Gas Rules ("NGR")) posed by the existence of two related entities on the Gas Supply Hub. Namely, the market conduct risks relating to the following provisions:

- NGR 542 (b) and (c) – the risk of being perceived to be potentially acting fraudulently, dishonestly or in bad faith or similarly being perceived to be potentially or inadvertently distorting or manipulating prices including reported prices or;
- NGR 543 (1) (c) – the risk of inadvertently causing a transaction with itself; or
- NGR 543 (1) (d) – the risk of causing a transaction with an associate; and
- NGR 543 (3) – the risk of being perceived to be potentially manipulating or attempting to manipulate the price of products traded on the gas trading exchange.

A robust software solution would be the best control to assist in managing the aforementioned risks with related party transactions on the GSH. Therefore, this has been an option Shell has explored with the Australian Energy Market Operator ("AEMO") within the available Trayport software currently used to run the GSH. Through this, it has been established that the current version of Trayport has a presently inactive feature that allows the ability to prevent trades between certain nominated parties. It is also important to note that this type of feature is actively and effectively used in European markets.

Proposal

Shell requests that this feature be activated upon application to AEMO for nominated related parties that are related bodies corporate under Section 50 of the *Corporations Act 2001 (Cth)*. Shell notes this is the same test that applies for companies to not be considered competitors of each other under the *Competition and Consumer Act 2010* and where such companies are exempted from the application of various conduct provisions of that Act (e.g. refer Section 45 (8)).



Businesses that have their application approved should also be responsible for updating AEMO when they cease to be related bodies corporate.

Shell requests that this proposal be considered as soon as practicably possible such that this feature could be made available from or close to 1 January 2021.

Costs and Benefits

Shell believes this will result in a net benefit to the market as it will allow for effective regulatory compliance risk management and result in more liquidity and market transparency with a greater number of entities able to participate on the GSH. This is consistent with the objectives of the Australian government's recent announcement on the gas fired recovery plan which includes delivering an open, transparent and liquid gas trading system at Wallumbilla and also aligns with Council of Australian Governments ("COAG") gas market vision with respect to the establishment of a liquid wholesale gas market.

Shell does not believe this change will adversely impact GSH participants and given this functionality is already available with the current version of Trayport (and we understand operational in other overseas markets) and user acceptance testing ("UAT") has already been significantly progressed by AEMO, there should be no material costs associated with activating this feature. It is expected some changes will need to be made to the Gas Supply Hub Exchange Agreement, though these are not expected to be considerable.

We look forward to receiving a response from you regarding this proposal and the next steps. If you require any further information, please do not hesitate to contact Alice Paradisi on (07) 3024 7410.

Yours Sincerely,



David Guiver
General Manager Shell Energy Australia Trading



APPENDIX B - ADDITIONAL INFORMATION FROM SHELL IN RELATION TO INFORMATION SHARED BETWEEN RELATED ENTITIES .

Following the December 2020 meeting of the GSHRG, Shell provided additional information about the Shell and ERM Trading entities, their relationship and trading desk arrangements. This additional information is included here for context.

Additional information from Shell

Under the current arrangements, there is risk of inadvertent cross trading between related entities who are active on the GSH at the same time. This gives rise to a range of market conduct risks under NGR 542 and 543. Given these risks, some participants may be unwilling to allow their related entities to concurrently trade on the GSH, and may only permit one entity to trade at a time. This leads to a reduced number of trading participants on the GSH and reduces liquidity and market transparency.

Shell's proposal aims to address these issues by introducing a systemised control that will prevent related parties (who meet the relevant criteria) from inadvertently trading with each other. The proposal will alleviate concerns about potential cross trading (and is preferable to internal controls, that are not as likely to be as effective as this proposal) and enable related entities to be concurrently active on the GSH, thereby increasing the number of active trading participants and promoting liquidity and competition.

We understand that there will be minimal development costs involved in implementing the proposal, given that the functionality already exists in Trayport (but has not been turned on).

The concerns from some participants around information asymmetry should be considered in the context of such entities not being competitors and exempted from competition laws under the Competition and Consumer Act 2010. Such concerns are valid only where the entities in question are competitors.

This does not apply in the case of Shell and we would like to highlight the following:

The Shell Group owns 75% of Walloons Coal Seam Gas Company Pty Ltd ("Walloons") and 100% of ERM Power Retail Pty Ltd (a wholly owned subsidiary of Shell Energy Australia Pty Ltd). The Shell Group via a 100% owned subsidiary QGC Pty Ltd also manages the operations of Walloons. Under competition law, Walloons and ERM Power Retail Pty Ltd are not competitors, no ring-fencing arrangements are required to be in place and are both serviced by an integrated trading team. The effect of the proposal is simply to provide an additional control that will eliminate any possibility of inadvertent cross trading which might be perceived as a form of market manipulation where undertaken by parties who are not competitors with each other. The control would utilise already developed Trayport functionality that we understand is operational in markets overseas.

Introducing the change now will lower barriers to entry relating to compliance risk and ensure that as Australia's gas market evolves, the GSH will be able to accommodate a wide range of participants with varying company structures. Reducing barriers to entry will promote competition and facilitate the development of deep, liquid and more transparent trading markets.



APPENDIX C – SUMMARY OF FEEDBACK FROM GSHRG

Summary of Stakeholder Feedback from GSHRG held on 1/12/2020

#	Question	Feedback	Response
1.	<i>Do you have any concerns with the proposal from Shell to restrict trading between related trading participants?</i>	Concerns were raised that if Shell and ERM are separate trading entities then the proposal could lead to an asymmetry of information, whereby those parties would know each others bids and offers on the GSH but other trading participants would not know this information.	As outlined in Appendix A, while the entities have separate trading accounts, the entities are not subject to ring-fencing arrangements and are both serviced by an integrated trading team and therefore they freely share information. As such, the proposed change would not provide any additional information exchange between the related participants than they already to share.
2.	<i>Is a 75% shareholding threshold appropriate for related trading participants to be eligible to apply for trading restrictions?</i>	Feedback was received that there should be no need to have the threshold for defining a Related Trading Participant in the GSH any higher than the Corporations Act definition for Related Bodies Corporate.	AEMO agrees with this feedback and has amended the shareholding eligibility threshold (> 50%) to align with the Corporations Act definition.
3.	<i>Are there any other characteristics other than shareholding threshold that should be required to qualify for trading restrictions between the trading participants?</i>	Feedback was received that AEMO should use the Related Bodies Corporate definition from the Corporations Act to define Related Trading Participants in the Exchange Agreement.	AEMO is concerned that using the related bodies corporate definition from the Corporations Act could potentially be burdensome to administer in relation to limb regarding control of the composition of the Board, as control of the Board may not be based solely on shareholding. Using just the shareholding test as the requirement for restrictions requires only a company search to be performed and validated.



4.	<i>Are there any additional issues or risks not identified in this paper that should be considered further as part of an implementation impact assessment?</i>	Feedback was received that any application should remain voluntary,	AEMO agrees with this feedback, the proposed arrangements are voluntary.
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APPENDIX D – GAS SUPPLY HUB EXCHANGE AGREEMENT CHANGE

Blue represents additions Red and strikethrough represents deletions – Marked up changes.

6.6 Restricted Trading

- (a) Trading Participants may at any time apply to the Operator to restrict trading between themselves in the Trading System to ensure that Bids and Offers of the Trading Participants are not matched (**restricted trading**).
- (b) To be eligible for restricted trading between Trading Participants, all the Trading Participants must be **Related Trading Participants**.
- (c) If:
 - (i) a Trading Participant is a subsidiary of another Trading Participant; or
 - (ii) a Trading Participant is a subsidiary of a holding company of another Trading Participant, the Trading Participants are **Related Trading Participants**.
- (d) A **holding company**, in relation to a Trading Participant, means a body corporate of which the Trading Participant is a subsidiary.
- (e) A Trading Participant is a **subsidiary** of a holding company or another Trading Participant (the second Trading Participant) if:
 - (i) the holding company or second Trading Participant:
 - (A) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the Trading Participant; or
 - (B) holds more than one-half of the issued share capital of the Trading Participant (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
 - (iii) the Trading Participant is a subsidiary of a subsidiary of the holding company or the second Trading Participant (subclause (e)(i) above applying *mutatis mutandis* in determining if the Trading Participant is a subsidiary of a subsidiary or if the subsidiary is a subsidiary of the holding company or the second Trading Participant)
- (f) Trading Participants that wish to apply for restricted trading between themselves in the Trading System must submit an application to the Operator in the form and contain the information specified by the Operator.
- (e) The Operator may, within 5 Business Days of receiving an application, ask the applicants to provide further information or clarification in support of the application. If such a request is made, the application is taken to have been made when the further information or clarification is provided to the Operator's satisfaction. If the applicants do not provide further information or clarification



to the Operator's satisfaction within 15 Business Days of the request, then the application lapses.

- (f) The Operator must accept or refuse an application for restricted trading within 15 Business Days of receipt of the application or, if later, receipt of any additional information or clarification requested under paragraph (e).
- (g) If the Operator is satisfied that an application is complete and the Trading Participants are eligible for restricted trading, then the Operator must accept the application and notify the Trading Participant and the operator must engage the restricted trading functionality in the Trading System between the Trading Participants in the application from the date specified by the Operator in the notice to the Trading Participants.
- (h) If the Operator is not satisfied that Trading Participants are eligible for restricted trading, then the Operator must refuse the application.
- (i) If the Operator refuses an application for restricted trading, then it must give the applicants written reasons for the refusal.
- (j) Trading Participants that are subject to restricted trading between themselves in the Trading System must notify the Operator immediately if they are no longer Related Trading Participants.
- (k) The Operator will cease restricted trading in the Trading System between Trading Participants as soon as possible after being notified by Trading Participants under subclause 6.6(j) or if AEMO otherwise becomes aware that the Trading Participants are no longer Related Trading Participants.
- (l) Trading Participants that are subject to restricted trading between themselves in the Trading System represent and acknowledge that the Operator has not given to them any advice, representation, assurance or guarantee as to compliance with any laws including but not limited to the National Gas Rules and the Competition and Consumer Act 2010 (Cth) as a result of the Operator granting or facilitating restricted trading.

13.1.2 When Orders match

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- (h) both the Bid and Offer are submitted by Trading Participants that are not subject to restricted trading between themselves in accordance with clause 6.6 at the time of submitting the Bid and Offer.



APPENDIX E - BENCHMARK PRICE METHODOLOGY CHANGE

Blue represents additions ~~Red~~ and strikethrough represents deletions – Marked up changes.

GAS SUPPLY HUB - END OF DAY BENCHMARK PRICE METHODOLOGY

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Step 2

The EOD Benchmark Price for a day for a Location for the Applicable Product will be the EOD Benchmark

Price published for the previous day for that Location, unless:

(a) there is an open Bid price at the end of the trading day on the day for the Location for the Applicable Product that is higher than the EOD Benchmark Price published for the previous day for that Location, **in which case the highest priced bid will determine the Price**; or

(b) there is an open Offer price at the end of the trading day on the day for the Location for the Applicable Product that is lower than the EOD Benchmark Price published for the previous day for that Location, **in which case the lowest priced offer will determine the Price**.

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Methodology Conditions

(a) Only Transactions, Bids and Offers on the Exchange Trayport trading screen will be included in the determination of an EOD Benchmark Price.

(b) Pre-matched Trades will not be included in the determination of an EOD Benchmark Price.

(c) Conditional Bids or Offers (i.e. All or None) will not be included in the determination of an EOD Benchmark Price under Step 2. **If a Bid and Offer are submitted by Related Trading Participants, and Step 2 (a) and (b) are satisfied, then AEMO may not include that Bid and Offer in the determination of an EOD Benchmark Price under Step 2.**

(d) Only Bids or Offers for at least 5TJ/day will be included in the determination of an EOD Benchmark Price under Step 2.

(e) Only Bids or Offers that are open and displayed on the Exchange Trayport trading screen for at least 5 continuous minutes will be included in the determination of an EOD Benchmark Price under Step 2.

(f) The volume weighted average price per Unit under Step 1 will be calculated to two decimal places.

(g) Where there has never been a Transaction, Bid or Offer for the Applicable Product for a Location, the initial default EOD Benchmark Price for the Applicable Product for that Location will be \$5/GJ.