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Australian Energy Regulator

Submitted to AERCompliance@aer.gov.au



Rebidding and Technical Parameters Guideline

The Australian Financial Markets Association (AFMA) is responding to the Australian Energy Regulator's (AER) consultation paper on updates to the AER's Rebidding and Technical Parameters Guideline.

AFMA is the leading industry association representing Australia's financial markets - including the capital, credit, derivatives, foreign exchange, and other specialist markets such as gas, carbon, electricity and environmental products. Our membership is comprised of over 140 of Australia's leading financial market participants, including key participants in the NEM.

Key Points

- **The regulation of auto-bidders should be considered as part of the AEMC's review**
- **Regulators should look to the financial market's experience when considering how to regulate auto-bidding**

1. Auto-bidding and the NEM Review

Large numbers of utility scale battery energy storage systems (BESS) are entering the NEM, which has led to an increase in the use of auto-bidders. Auto-bidders can manage the high volume of rebids BESS units need to manage rapid changes in their operational state of charge. BESS need to manage their state of charge to optimise charging and dispatch across multiple markets and different time frames. This requires BESS to make many more rebids than conventional generating units. As a result AFMA does not consider this increase in rebids to be a concern for the market in and of itself.

While AFMA does not entirely share the AER's concerns about auto-bidders we appreciate your desire to ensure market participants have appropriate arrangements in place to configure, use and monitor them. We note that the NEM Review recommended that market bodies should "develop a broader understanding of the risks and opportunities created by algorithmic bidding to inform regulatory responses, including rule changes if needed" and that ECMC has asked the AEMC to lead this work.¹ AFMA considers that it is premature for the AER to attempt to include auto-bidders in its guidelines until the AEMC's work is completed.

2. Things to be considered in the AEMC's review

While our members broadly support the use of auto-bidders they have raised a number of issues that they think should be considered when regulating them:

¹ Recommendation 4A in [ECMC's NEM Review Recommendations – Implementation Pathways](#)

- a) **Late rebidding** – some of our members consider the frequent of late rebidding by some BESS operators has the potential to decouple dispatch outcomes from the efficient price signals
- b) **Rebidding reasons** – a number of members have raised concerns that the automated bid reasons given by some auto-bidders are not adequate to assess the purpose of the bid
- c) **Market stress** – members noted that there is limited experience of how auto-bidders behave during periods of market stress and consider the AEMC’s review should consider how they would perform during these periods.

3. Lessons from the Financial market

The financial market had to consider many of the same issues when introducing Direct Electronic Access (DEA) to listed markets and we think there would be value in the AER learning from this experience. DEA is the process that allows clients to use a market participants IT system to transmit orders directly into the market without the direct involvement of the market participant. While this is not exactly the same setup as auto-bidders in the NEM, we think the analogy of a market participant being responsible for an IT system that transacts without human involvement is relevant.

Following extensive consultation IOSCO developed a set of Principles for Direct Electronic Access to Markets which have been influential in the regulation of DEA globally,² including in Australia’s Market Integrity Rules. Not all of the principles are relevant to auto-bidders, but we think particularly the following principles could inform regulation of auto-bidding:

- Principle 3 – that market participants remain responsible for all transactions made under its authority
- Principles 6-8 – that require market participants to have adequate systems and controls for the system they are using

We also consider that principles along these lines would be general enough to deal with both traditional algorithmic auto-bidders and systems that incorporate AI.

Importantly we note that neither the principles or the Market Integrity Rules attempt to impose liability on IT providers for actions taken by market participants using systems they developed. We disagree with AER’s views on extending compliance obligations to third parties. From a policy perspective, we think it is inappropriate to seek to penalise non-market participants for the activities of market participants and this approach is inconsistent with approaches taken in other domestic and international markets where compliance liability always sits with the market participant responsible for the action.

From a practical perspective we consider this approach is likely to reduce the willingness of vendors to offer their products in Australia which could potentially deprive the Australian market of beneficial technologies. Additionally, we think the AER’s proposed approach relies on an extremely aggressive reading of the vicarious liability provision in section 68 of the National Electricity Law that we are unsure is supported by the provision. While we claim no expertise in civil penalty enforcement, we note that traditionally these types of vicarious liability provisions can only be relied on when successful action has been taken against the market participant for the underlying conduct and that they are typically used to prosecute getaway drivers, not car manufacturers. We think it is inappropriate and unhelpful for the AER to assert that the provisions could be used in the way presented in the consultation paper.

AFMA suggests that the AER should continue working with stakeholders and the AEMC on appropriate regulatory arrangements for auto-bidders. We consider that while appropriate

² <https://www.iosco.org/library/pubdocs/pdf/ioscopd332.pdf>

regulatory guidance may be helpful, the AER should also consider if rule changes are required to support the regulatory approach.

AFMA Recommendations

- i. The AER should work with the AEMC and industry to develop appropriate regulatory arrangement for auto-bidders, this work should be informed by IOSCO's previous work.
- ii. It is not appropriate to attempt to apply market conduct regulation to IT vendors.
- iii. The increased volume of bids from battery storage systems is not in and of itself a concern for the market.

AFMA would welcome the opportunity to discuss this submission further and would be pleased to provide further information or clarity as required. Please contact me at [REDACTED] or [REDACTED].

Yours sincerely,

[REDACTED]

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