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Senate Economics Legislation Committee
Parliament House
Canberra

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Response to Inquiry into the Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018.

Thank you for the opportunity to provide a submission on the important issue of energy management and costs.

COSBOA understands that the general aim of this legislation is to prohibit explicit forms of anti-competitive conduct in electricity retail, contract and wholesale markets.

It is further understood that this conduct broadly relates to retail pricing, financial contract market liquidity and conduct in wholesale spot markets.

COSBOA's position on this legislation is driven by the fact that the escalating electricity price in Australia has been one of the pre-eminent concerns of small business in Australia in recent years (as communicated to the COSBOA Secretariat by COSBOA's member organisations). In some cases, member organisations have reported that annual electricity costs for small businesses have increased by as much as 80% in the last three years. This against a backdrop of CPI growth of less than 2.5% per annum over the same period.

While we acknowledge that the issues surrounding the recent sharp increases are complex (in terms of the need to amortise the cost of transmission and distribution infrastructure over a declining demand for grid power due to the growth of roof top solar installations) these increases are unsustainable from a wider economic viewpoint and risk destruction of small business (and associated employment) if left unchecked.

COSBOA notes that, unlike most other markets, the Australian electricity market has not merely evolved from private sector in a free market environment.

Rather, the current structure (and operation) of the market has evolved from a hotch-potch of independent and disconnected decisions by States and Territories, as well as regulators, that has led to extreme levels of market concentration in every NEM region. This was evidenced by the ACCC in their inquiry. This market is now monopolistic in nature dominated by between one and three generators. As a result, customers, particularly small businesses, have footed the bill.

Within this context, and in consideration of the findings of the 2018 ACCC *Electricity Supply and Prices Inquiry*, COSBOA believes that the Australian Government must be given a suite of measures of increasing severity that can be used to address problems in relation to observed anti-competitive operation of the national electricity market in Australia.

While we note recent commentary by opponents of the proposed legislation - on the grounds of the sovereign risk associated with the asset divestiture provisions of the proposed legislation - the ACCC Inquiry and the severity of the economic hardship created by the electricity increases in recent year clearly point to serious and unprecedented market failures with far reaching economic consequences for all Australians.

Given that electricity is a major input costs for Australian households and businesses, any failure by the Australian Government to intervene represents a far greater risk to the future economic well-being of all Australians than any potential small decrease in shareholder/superannuation returns for a few years.

The Australian Government therefore has an absolute obligation to intervene in the market given the observed market failures and the adverse economic consequences that will likely flow in the future if these issues are not addressed – including the capacity to force divestiture where all other potential remedies have been exhausted.

COSBOA therefore believes that forced divestiture should only be available to the Australian Government on a ‘last resort basis’.

Within this context, we believe that the proposed legislation includes clear safeguards that instil forced divestiture as an option that is only available to government where there is a strong public (and legally defensible case) to do so – and where all other potential remedies have been fully explored prior to initiating such action.

It is for this reasons that COSBOA strongly advocates the retention of a ‘forced divestiture’ option given the criticality to the electricity market to the Australian economy as a whole.

We all must acknowledge that it is astonishing that Australians, who are living in a country with the most abundant energy resources in the world, are now paying the highest prices in the world for electricity. Small business is one of the groups bearing the brunt of this cost which also impacts on their employees and their customers.

Clearly the electricity market has failed.

The Australian Government must therefore be given access to all potential remedies of anti-competitive conduct in a market that is crucial to the economic well-being of Australian small businesses and households alike.

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