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NEWS RELEASE

ACCC WILL NOT APPEAL AGL TRIBUNAL DECISION

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The Australian Competition and Consumer Commission has decided that it will not apply for judicial review of the decision by the Australian Competition Tribunal to grant conditional authorisation to AGL Energy Limited's (AGL) proposed acquisition of Macquarie Generation.

"While the ACCC was disappointed with the Tribunal's decision, there is no avenue of appeal that would test the merits of the Tribunal's decision," ACCC Chairman Rod Sims said.

"Given that a judicial review process would only consider whether the Tribunal followed the correct procedure or acted within its powers, the ACCC did not consider that there was value in applying for such a review."

The ACCC opposed the proposed acquisition by AGL because we considered that it was likely to have the effect of substantially lessening competition in the New South Wales retail electricity market.

The Tribunal was required to apply a different test, in which it had to be satisfied that the proposed acquisition would be likely to result in such benefit to the public that it should be allowed to occur. The Tribunal found that the benefits to the public of the proposed acquisition outweighed any detriment to competition.

Background

On 4 March 2014, the ACCC opposed the proposed acquisition under section 50 of the CCA, which prohibits acquisitions which would have the likely effect of substantially lessening competition.

On 24 March 2014, AGL made an application to the Tribunal under section 95AT, seeking authorisation for the proposed acquisition, subject to behavioural conditions.

Pursuant to section 95AT, the Tribunal had to be satisfied in all the circumstances that the proposed acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to occur. This required the Tribunal to conduct a balancing exercise to weigh the public benefits that are likely to result from the proposed acquisition against the detriment arising from any lessening of competition.

The role of the ACCC was to assist the Tribunal. This included making inquiries, calling and examining witnesses, making submissions to the Tribunal, and preparing a report for the Tribunal.

AGL's application was heard by the Tribunal in Sydney for eight days between 2 to 13 June 2014.

On 25 June 2014, the Tribunal granted conditional authorisation to the proposed acquisition. The ACCC had 28 days in which to apply for judicial review of the decision, but such a review would not test the merits of the Tribunal's decision.