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For Publication

Mr David Peters
Investigations 3
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

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Email: operations3@adcommission.gov.au

Dear Mr Peters

Siemens Wind Power Pty Ltd (Siemens)
Investigation into the Alleged Dumping of Wind Towers Exported to Australia from Vietnam (Case 405)

We refer to our previous submissions dated 17 July 2017 and the Importer Verification Meeting held on 1 August 2017 between Messrs Brotchie, Williams and yourself of the Anti-Dumping Commission (**ADC**), Mr Tesoriero and Ms Pereira of our client, and the authors.

We write to further address issues raised at that meeting. The submissions made below, where relevant, supplement our submissions of 17 July 2017.

1. **Tender process**

1.1 As discussed at the meeting, Siemens has a prima facie preference for engaging local wind tower manufacturers, in the interests of supporting local industry and communities.

1.2 Once Siemens has secured an Engineering Procurement Construction (**EPC**) contract with a wind farm proponent, it issues a tender request to selected overseas and domestic wind tower manufacturers. Examples of such requests are annexed at **Confidential Attachment 1**. Examples of tender quotations received by Siemens are annexed at **Confidential Attachment 2**.

1.3 The tender assessment and awarding process is a detailed and involved process. Essentially, Siemens seeks to determine the supplier quote that is the best value for money by utilising the 'ToCo' (or Total Cost) approach. This approach involves adjusting the quoted cost by taking into account factors such as qualification costs and quality level. SCF (or 'Supplier Comparison Factor') is the tool by which soft factors are accounted for. It awards a bonus for a factor which is above Siemens' requirements (such as proven delivery reliability), and a malus for a factor below Siemens' requirements. The input of Siemens experts in cross functions (see paragraph 2.2 below) is integral to this process, reflecting the importance of non-price factors to Siemens' tender award decisions. **[Confidential business information]** [redacted] A document setting out Siemens Awarding Procedure (relevant sections highlighted) is annexed at **Confidential Attachment 3**. Decisions are taken on the award of tenders at sourcing decision meetings.

1.4 Ultimately, Siemens' past experience with local wind tower manufacturers, and the imperatives of on-time delivery and reliability, were the critical factors in its decision not to engage either of the Applicants for the Hornsdale I and II wind farm projects the subject of this investigation.

1.5 However, although local manufacturers did not prove themselves to be within the zone of competitiveness for the supply of wind towers for the Hornsdale projects, Siemens has continued to work with and support local manufacturers where it can. For example, Siemens:

(a) engaged Ottoway for maintenance work on the Hornsdale wind towers and to retrofit 'elephant feet' (a component that holds the blades of the wind turbine during installation);

(b) engaged Ottoway to utilise their facility for Siemens maintenance works on the Snowtown II wind turbines; and

(c) has an ongoing dialogue with the Applicants to try and enhance their competitiveness for wind tower tenders. This includes recommending Siemens' qualified raw material and other component suppliers to the Applicants.

2. **Factors influencing the award of tenders**

2.1 The factors influencing Siemens' decision to award wind tower tenders, as discussed at the meeting and in the previous submissions, are set out in greater detail below.

Quality, Qualification process

2.2 Certitude regarding quality of production is critical to Siemens' sourcing decisions. As discussed at paragraph 7.12 of our previous submissions, Siemens' qualification requirements are stringent, and are a pre-condition to Siemens engaging a wind tower supplier. **[Confidential business information]** [redacted]:

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Reliable delivery, penalty for delay

2.7 Reliable delivery of wind towers is a key concern for Siemens given the risks it bears in respect of delay. In addition to the reputational risks (which may jeopardise Siemens' chances of securing future EPC contracts), Siemens faces a significant financial penalty for delay. For example, the Hornsdale I EPC contract included a penalty for late delivery of **[Confidential business information]** [redacted] and the Hornsdale II EPC contract included a penalty of [redacted] the financial burden borne by Siemens remains very significant.

[redacted] In relation to Snowtown II, Ottoway was **[Confidential business information]** [redacted] late in delivery of its 20 towers, which were due to be delivered in the early and middle stages of the project. [redacted]

[redacted] The Hornsdale I and II projects, however, consisted of only 32 towers each and a short lead time of **[Confidential business information]** [redacted] respectively, removing any buffer for delivery slippage. Siemens sought to make the Applicants competitive in the tender process by considering a scenario whereby [redacted]

Geography

2.10 It should not be assumed that domestic wind tower manufacturers will, by virtue of being 'local', be competitive due to transportation factors. Consideration must be given to the (often considerable) distance between the relevant wind farm site and the manufacturer.

2.11 For example, Keppel, being based in Portland VIC, is some 750km from Hornsdale SA. The logistical difficulties, time and cost of transporting the towers to site was a key factor in making Keppel uncompetitive as against Ottoway in the Hornsdale tender process. Ottoway, being based in Whyalla SA, is some 200km from the Hornsdale site (which, for point of reference, almost halved the land transportation costs). As for overseas suppliers, port to site distances may be less than domestic manufacturer to site distances. For example, the distance between Port of Adelaide and the Hornsdale site is approximately 250km. To the extent that price is a factor in sourcing decisions, low seafreight costs and other advantages enjoyed by overseas manufacturers (lower labour costs, economies of scale, conversion costs) allow overseas manufacturers to remain competitive.

Capacity

2.12 Further to paragraph 7.13 of our previous submission, Siemens submits that the Applicants' inability to supply the entirety of the Australian wind tower market in the investigation period (as claimed) is supported by:

(a) **[Confidential business information]** [redacted]; and

(b) Keppel's decision in October 2014 (ie. only a few months before commencement of the investigation period) to 'mothball most of the fabrication facilities at [its] Portland works' and to reduce its workforce by approximately 100 full time employees.[1]

2.13 Recent discussions between Siemens and each of the Applicants have confirmed that, at present (ie. following reinvigoration of the wind tower market in the wake of the June 2015 RET determination) Ottoway can produce approximately 300 wind tower sections per year, and Keppel can produce approximately 500 wind tower sections per year. Given the industry move towards 5 section towers, this amounts to approximately 60 and 100 wind towers respectively per year. Siemens notes that the capacity figure in respect of Keppel is corroborated by General Electric International, Inc (**GE**): see GE Submissions dated 24 July 2017 at 5.3. A recent article cites Keppel's capacity at 175 wind towers per year.[2] A recent article cites Ottoway's capacity at 80 wind towers per 12 to 18 months.[3]

2.14 As to capacity, Siemens firstly submits that claimed capacity to produce wind tower sections cannot be considered in isolation from run-rate. That is, in order for Siemens to have confidence in a wind tower supplier, it must be satisfied that the supplier can produce the required number of tower sections, and that it can do so at a consistent pace as dictated by the EPC head contract. Regard must therefore be had not only to the size of production facilities, but a supplier's ability to retain a skilled workforce (including project management), and to meet the quality factors set out above at paragraph 2.2.

[1] Keppel Prince Engineering Pty Ltd, 'Media Release: Windtower Fabrication - Keppel Prince Engineering' (23 October 2014) <http://reneweconomy.com.au/wp-content/uploads/2014/10/keppel-prince.jpg>.
[2] The Age, 'Windmill maker's $2m growth spurt will see 50 more workers join the daily grind' (10 March 2017) <http://www.theage.com.au/victoria/windmill-makers-2m-growth-spurt-will-see-50-more-workers-join-the-daily-grind-20170310-guvp9a.html>.
[3] Whyalla News, 'Ottoway secures windfarm contract' (9 May 2017) < http://www.whyallanewsonline.com.au/story/4649048/ottoway-secures-windfarm-contract/>.

2.15 Siemens secondly submits that, if the Applicants are able to produce the claimed 300 and 500 wind tower sections (ie. 160 wind towers) per year (or, at best, based on the recent news articles, 255 towers combined), and they are able to rectify their historical quality, delivery and reliability issues, then on the basis of the Australian wind tower market 2013 - 2017 assessment (at Public Attachment 4 to the Application), they are likely to win tenders at or near their capacity in the coming years. Moreover, even with Keppel and Ottoway producing wind towers at their full capacity, the Australian wind tower market would need to be supplemented by wind towers imported from overseas in the range of about 460 - 560 wind towers per year for the years 2017 and 2018.

3. **Material injury, causation**

3.1 As discussed at the meeting, there are a number of barriers to the Australian wind tower industry's expansion and global competitiveness. These factors, it is submitted, are 'other factors' that should be considered under the principle of non-attribution. These include:

(a) inability to recruit skilled labour - around the time of the Snowtown II project, for example, Ottoway had difficulties engaging labour to perform the painting function at its Whyalla facilities. This included efforts to recruit a labour force from overseas including the Philippines, without success. It is suggested that the paucity of skilled labour around (or willing to relocate to) the Applicants' facilities hampers their ability to improve and expand their operations;

(b) lack of capex - see for example paragraph 5.7 of our previous submissions; and

(c) Australian industry has remained focused on the domestic market (which is limited in both size and stability) rather than looking for opportunities to expand into the global market. Australian manufacturers have put themselves at a competitive disadvantage to global manufacturers, who have been able to take advantage of increased volume and scale of production (which positively impacts run-rates, quality control and costs) and develop strong working relationships with global EPC contractors (thereby removing the need for re-qualification).

4. **Tariff Classification Order Application made by Keppel**

4.1 It has recently come to Siemens' attention that on 12 July 2017, Keppel lodged a TCO Application in respect of base sections for wind generator towers (Tariff code 7308.90, which is the same as that for the goods the subject of the investigation): see **Attachment 8**. It is submitted that this:

(a) amounts to a concession by Keppel that there is no local industry in respect of these tower sections; and

(b) appears to be at odds with the requirement in s 269TB(1) of the *Customs Act 1901* (Cth) that there is an Australian industry in respect of the goods the subject of the investigation.

4.2 Siemens respectfully requests that the ADC investigate this matter further.

5. **ADC Case 221**

5.1 In response to the ADC's request for comment on how the present investigation differs from the ADC's investigation into the dumping of wind towers exported from the People's Republic of China and the Republic of Korea (**Case 221**), Siemens submits that that case should not form the basis for any assumption or analysis in relation to the present investigation. There are marked differences between the two cases, most pressing of which is Australian market conditions.

5.2 In short, Case 221 had an injury examination period from 1 January 2008 (and an investigation period of 1 January 2012 to 30 June 2013), with the wind tower market found to be comprised of 240 wind tower in 2012 and 51 wind towers in the first six months of 2013. At that time, the RET, being the primary driver of the Australian wind tower market, was 41,000 GWh. However, 15 months lost investment in large-scale renewable energy in Australia commenced in February 2014 with the Government's announcement of a review of the RET, and the RET was reduced to 33,000 Gwh in June 2015. The uncertainty that accompanied the review and reduction of the RET directly impacted the size of the Australian wind tower market (notably, only 1 project comprising 3 wind towers was commissioned in 2014) and had significant flow-on effects in terms of domestic manufacturers' capacity, qualifications, workforces and financial viability. These issues are critical to an assessment of whether there was material injury to the Australian market during the present investigation period, and whether any injury was caused by alleged dumping. Accordingly, it is submitted that Case 221 is an inappropriate comparator, and the ADC should consider the present investigation on its own facts.

If you have any questions concerning this submission please contact us.

Yours sincerely

Clayton Utz

Zac Chami, Partner
+61 2 9353 4744
zchami@claytonutz.com

Elodie Cheesman, Lawyer
+61 2 9353 5141
echeesman@claytonutz.com

Our ref 11276/80188323