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Competition Policy Review Secretariat  
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Lodged (online): [www.competitionpolicyreview.gov.au](http://www.competitionpolicyreview.gov.au)

### **Competition Policy Review – Issues Paper**

The Energy Supply Association of Australia (esaa) welcomes the opportunity to make a submission to the Commonwealth Government's Competition Policy Review Issues Paper.

The esaa is the peak industry body for the stationary energy sector in Australia and represents the policy positions of the Chief Executives of 34 electricity and downstream natural gas businesses. These businesses own and operate some \$120 billion in assets, employ more than 51,000 people and contribute \$16.5 billion directly to the nation's Gross Domestic Product.

The Association is strongly supportive of undertaking a review of competition laws and policy. Competition is a key source of productivity and efficiency in markets. It drives competitive prices, delivers better choices for consumers and raises living standards for all Australians. Ensuring competition laws and policies continue to be fit for purpose for Australia's evolving markets is therefore an important priority.

Significant progress has been made under the National Competition Policy and other subsequent reforms to facilitate the development of competitive markets for electricity and natural gas in Australia. This includes the development of national gas, electricity and retail frameworks underpinned by a solid institutional framework. But the process is incomplete. Various governments still assume multiple roles in the energy sector and the ability of electricity and natural gas market participants to efficiently respond to changing market dynamics is compromised by overly restrictive regulations and competing policy objectives.

The most appropriate way to maximise economic growth while also delivering a sustainable energy supply system is through a framework that encourages efficient and competitive supply. This requires identifying and prioritising initiatives that: minimise regulatory burden and market distortions; support competitive markets and a level playing field for all participants; and encourage market-based solutions for new investment. Coupled with robust concessions frameworks to provide targeted assistance to those most in need, such an approach will ensure consumers continue to benefit from efficient prices and reliable energy supply over the long term.

Consistent with this, we have outlined below the key issues facing the electricity and natural gas sectors. More detailed comments can be found in Attachment 1. Many of the issues discussed are best resolved within the institutional frameworks governing the electricity and natural gas sectors. But the Review Panel has a key role to play in considering and supporting the key reforms discussed. In particular, to encourage commonwealth and state/territory governments to complete outstanding reforms and continue promoting competition within both the upstream and downstream energy supply sectors.

### *Electricity*

The electricity supply system in Australia is undergoing a period of transformation. Advances in technology are fundamentally changing the way electricity is made, moved and consumed. Consumers have also experienced sharp rises in electricity prices in recent years as the system keeps pace with strict reliability standards and a range of other cost pressures, including environmental policies.

Declining electricity demand coupled with the rapid uptake of solar PV has created new challenges for the traditional electricity supply model. Weather events in Victoria and South Australia in early 2014 indicate that peak demand has not been eroded in the same way as overall consumption. While the long-term impacts of these trends need to be better understood, the development of a more dynamic, flexible and consumer focused electricity supply system would ensure a more efficient and sustainable response to these challenges. Key to this approach is ensuring market and regulatory frameworks allow for allocation of costs to participants in line with the requirements they place on the system and allocation of revenues to participants in line with the benefits they provide to the system. To do otherwise is inequitable.

For the electricity generation sector, a key factor that must be considered is the impact of policy uncertainty, particularly as it relates to climate change policy and energy policy. Investment in generation capacity is not a pertinent issue at present given declining demand, but continued uncertainty over climate change policy could discourage investment in the future, or potentially exacerbate the current oversupply situation even further.

It is premature to draw conclusions regarding the effectiveness of the current market design, which has to a large extent been robust to a range of distorting policy interventions. Nevertheless, the price signals arising from the current market framework appear unlikely to drive an efficient transition in the near term. Significant financial and commercial barriers to exit for existing generation plant are likely a factor in this regard.

Customers may benefit from the resultant low wholesale prices in the short-term, but this is not a sustainable outcome and there are likely to be adverse long-term consequences relating to poor reliability and future underinvestment. It is understood generators are already responding to difficult market conditions by reducing operational costs, primarily through reduced spending on non-essential maintenance.

To partially address these challenges and avoid future unintentional negative outcomes on the structure and efficient operation of the wholesale electricity market, a key focus for government should be the provision of stable policy that continues to

stimulate competition and encourage efficient market entry. Equally, to the extent market conditions drive a degree of consolidation across the wholesale electricity market, it is important that governments and competition bodies are mindful of the underlying drivers. This includes understanding the ability of market participants to efficiently respond to unsustainable market conditions and the implications for impeding such a response.

With respect to the broader supply chain, completing the retail market deregulation process and encouraging the development of, and transition to, tariff structures that appropriately reflect the costs of the system is essential. This approach will allow consumers to flexibly adjust to cost-reflective price signals and ensure each pays their fair share of system costs, the long-term benefits of which are improved system utilisation and least-cost electricity supply.

### *Natural gas*

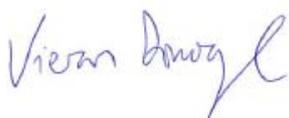
Australia is naturally endowed with significant reserves and resources and has historically benefited from the provision of secure, reliable and reasonably priced gas supply – relative to global standards – for some time. While gas is poised to continue playing an important role in the future of Australia’s energy supply industry, the domestic market is in a state of transition. Production costs are rising, political uncertainty is hampering onshore gas development in a number of regions and new demand from the Liquefied Natural Gas (LNG) industry is challenging market dynamics. This has placed increased scrutiny on market operations and the current policy settings.

As discussed throughout this submission, there are relevant differences between the Western Australian and east coast gas markets which may warrant a different approach from governments. But despite the different stages of development, two priority areas of reform have relevance to both markets and their particular circumstances. These include:

- stimulating resource development to mitigate supply and cost pressures for consumers over the short and longer term; and
- improving market transparency and access to information across the supply chain, while also having regard for existing investment arrangements.

Any questions about our submission should be addressed to Shaun Cole, by email to [shaun.cole@esaa.com.au](mailto:shaun.cole@esaa.com.au) or by telephone on (03) 9205 3106.

Yours sincerely



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# Attachment 1

## 1. Competition policy principles

The most appropriate way to maximise economic growth while also delivering a sustainable energy supply system is through a framework that encourages efficient and competitive supply. Consistent with the fundamental elements of Australia's competition policy (outlined in Box 2 of the Issues Paper), this requires identifying and prioritising initiatives that: minimise regulatory burden and market distortions; support competitive markets and a level playing field for all participants; and encourage market-based solutions for new investment.

In line with this approach, the Association has identified and discussed a range of competition related reforms in Sections 2-5 below.

## 2. Regulatory impediments to competition

### Overlapping and complicated regulatory frameworks

The energy supply sector is exposed to a plethora of regulatory obligations – created by governments, regulators and market bodies – beyond that contained in the *Competition and Consumer Act 2010* (CCA). As discussed below, this level of complexity and oversight is unnecessary and inefficient. It distorts investment in major infrastructure projects, impedes efficient market entry and exposes market participants to additional costs that are ultimately passed onto customers through higher prices.

Given the strong government focus on reducing red tape, the Review Panel should give consideration to the level of regulation in the energy supply sector to ensure it aligns with the fundamental elements of Australia's competition policy. Opportunities to reorient the regulatory framework towards less regulation could then be explored. Examples for consideration include:

- providing the Australian Energy Market Commission (AEMC) with an explicit mandate to review and reduce ineffective, duplicative, inefficient obligations and rules; and
- amending the National Electricity Law and National Gas Law to require the AEMC to test all new and amended rules against an objective of no net increase in regulatory burden.

### Retail price regulation and competition

Under the Australian Energy Market Agreement (AEMA) and the Council of Australian Governments National Partnership Agreement to Deliver a Seamless National Economy, jurisdictions committed to the removal of retail energy price regulation where effective competition can be demonstrated. Victoria and South Australia have since deregulated their retail markets, with New South Wales and

Queensland set to follow suit (at least in part) on 1 July 2014 and 1 July 2015 respectively.<sup>1</sup>

But there are a number of regions that are yet to fulfil their commitment. This includes the Australian Capital Territory, which has elected to retain electricity price regulation despite advice from the AEMC in 2011 suggesting it should be replaced with price monitoring to facilitate the development of effective competition. The evolution of retail competition in the small customer market also continues to be stymied in regions like Western Australia, where restrictions on retail market contestability persist and regulated prices are set below cost.

The Association has long supported the removal of retail price regulation where retail markets are contestable. Open, competitive energy markets free from distortions such as retail price regulation naturally encourage prices to be efficient through the development of competitive market offers. Competition in retail electricity markets, as in other sectors of the Australian economy, incentivises businesses to improve consumer needs, find ways to lower their costs and to pass those savings onto consumers. As a result, retail prices are set as low as is sustainably possible while businesses can still make an appropriate return.

Given changing market dynamics and rising costs, the continued development of efficient and competitive retail energy markets has never been more important. It is essential retail price deregulation and promoting greater competition in retail markets remains a priority for governments. At a minimum, this includes enabling full retail contestability and ensuring regulated tariffs are set independently and at a level that enables retail competition to flourish.

### **National Energy Customer Framework**

The National Energy Customer Framework (NECF) was developed by state and Federal governments in 2011 to harmonise consumer protections into a single set of national laws and reduce red tape for businesses. Under the framework, retailers only have to comply with a single set of energy laws administered by the Australian Energy Regulator (AER), rather than a different set of laws for each state they operate in. This increase in regulatory consistency reduces barriers to market entry by making it easier to operate across national energy market borders, the key benefits of which are more competition and improved services for customers.

The NECF has proved challenging to implement. Some states have committed to significant derogations and others have been slow to enact enabling laws. The Association is supportive of the implementation of the NECF in all jurisdictions and urges all state/territory governments to complete the transition.

### **Enhancing transparency in domestic gas market conditions**

Information transparency and liquidity are key features of well-developed gas markets globally and it is important to investigate how these attributes can be enhanced across the domestic supply chain. With the east coast gas market in the

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<sup>1</sup> Natural gas prices will continue to be regulated in New South Wales from 1 July 2014. Queensland will retain electricity price regulation in regional Queensland.

midst of a transitional period (due to the anticipated tripling of demand), exploring how best to enhance transparency and encourage flexible access to supply is an appropriate area of focus in this regard.

A number of recent and ongoing government initiatives have been established with the aim of enhancing these market attributes, including: the Short Term Trading Markets; the Gas Bulletin Board; and the Gas Statement of Opportunities. The Wallumbilla supply hub is also an example of another key reform that has the potential to further enhance market development.

On this basis, an incremental approach to reform that has appropriate regard for existing contracts is likely to be the most appropriate response. Such an approach provides a better balance of risks/benefits relative to more heavy-handed reform and would likely be consistent with supporting industry-led initiatives such as the 'trade facilitator' model currently under development on the east coast.

The Association has provided more detailed commentary in relation to east coast gas market reform priorities and other related issues in its response to the Eastern Australian Domestic Gas Market Study.<sup>2</sup> Addressing these issues will require a coordinated effort by governments and industry, but there is a clear role for the Commonwealth in engaging with stakeholders to develop and coordinate the most efficient path forward.

Unlike the east coast, the existence of a range of wholesale gas market rigidities specific to Western Australia have constrained the development of a competitive and secure domestic gas market. Current characteristics of the Western Australian wholesale gas market include: limited diversity of supply; infrastructure capacity constraints; limited price transparency; and increasing energy costs.

Given these constraints, domestic gas users have concerns as to whether or not LNG producers would commit to providing domestic gas supply at volumes and prices more consistent with a well-functioning market in the absence of a gas reservation policy.

In recent years, a number of initiatives have been pursued to deliver a more competitive and efficient market. These include the development of a Western Australian based Gas Bulletin Board and GSOO, as well as investment in additional production and storage capacity. It is also understood the WA Independent Market Operator is currently investigating the potential for a facilitated wholesale gas trading market.

Despite this progress the reform process remains largely incomplete, particularly with respect to the upstream gas market. The development of further competition in WA's wholesale gas market is still potentially inhibited by: authorisation for joint selling and marketing; management of retention leases; a lack of price transparency; and a lack of responsiveness and flexibility in gas transportation. Coupled with the risks

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<sup>2</sup> Copy of submission available at [http://www.esaa.com.au/files/Policy\\_submissions\\_2014/140210\\_Eastern\\_Australian\\_Domestic\\_Gas\\_Market\\_Study\\_-\\_esaa\\_submission.pdf](http://www.esaa.com.au/files/Policy_submissions_2014/140210_Eastern_Australian_Domestic_Gas_Market_Study_-_esaa_submission.pdf)

associated with continued regulation of retail tariffs, further work is necessary to facilitate a competitive, secure and reliable gas market.

### **Regulatory restrictions on planning and land use**

Complex and costly approvals procedures and inflexible restrictions on land use can create significant barriers to business entry or expansion. Aside from potentially restricting the allocation of land to its highest-value use, this can have an adverse impact on competition by delaying or even preventing investment at a time when there is demand for additional energy supply.

#### *Planning and approvals processes*

There are greater opportunities to rationalise approvals for energy infrastructure projects in some jurisdictions than others.

Victorian arrangements for development approval have been raised in the past as being divergent from other states in the areas of: approvals for wind farm developments; timeframes taken for connection agreements; and acquiring approvals for vegetation management and cultural heritage.

Major development approvals processes are generally considered to be effective but could be improved by providing greater coordination of secondary approvals and statutory timeframes for decisions.

A lack of alignment between approvals processes and the commercial realities faced by many energy sector developments has also been raised in the past. Greater flexibility in site layout and design without the need for amendments to development approvals or works permits may assist.

With respect to the resources sector, policy setting must also avoid duplicative and often inconsistent state and federal requirements. According to research conducted by the Australian Petroleum and Exploration Association, duplicative state and federal regulations may be holding back projects worth around \$200 billion without any environmental benefit.<sup>3</sup> The Productivity Commission reiterated these concerns, highlighting the overlap and duplication of similar regulatory processes as “one obvious source of unnecessary burden for proponents of major projects”.<sup>4</sup> Government initiatives to reduce green/red tape should therefore be supported, including the proposed one-stop-shop for environmental approvals.

#### *Land access policy*

While the esaa strongly supports policies that encourage best practice community engagement, arbitrary and non-evidence based approaches to land access and planning policy more broadly should be avoided across all technology and energy resource types. Interventions of this nature often give rise to unintended and negative consequences. These include delayed and inefficient investment, an outcome of

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<sup>3</sup> The Australian Petroleum Production and Exploration Association, *Cutting green tape: streamlining major oil and gas project environmental approvals processes in Australia*, February 2013.

<sup>4</sup> The Productivity Commission, *Major Project Development Assessment Processes – Research Report*, November 2013.

which may be higher energy costs for consumers over the long term. Two recent examples where such an approach has been taken include wind farm planning laws in Victoria and unconventional gas exploration/production restrictions on the east coast.

Aside from a lack of evidence-based rationale for introducing the policy initially, the arbitrary imposition of wind farm planning restrictions in Victoria has led to a perverse situation for some projects that are not able to develop on the basis of the most efficient and advanced technology. The new planning policy in Victoria was implemented with no transitional arrangements and extremely limited capacity for existing projects to be modified so that even relatively minor technology adjustments may not be pursued.

As discussed earlier with respect to the importance of encouraging new gas resources, the development of unconventional gas reserves and resources has been constrained on the east coast to date, principally as a result of political uncertainty and overly restrictive planning laws and regulatory frameworks. New South Wales is at the forefront of this issue and serves as an example of the problems that could emerge across the broader east coast market unless appropriate policy settings are in place for the exploration, production and supply of gas.

To avoid such outcomes in the future and ensure energy and resource development is sufficient to support domestic and export requirements, it is critical that government land access and planning policies are carefully considered. In particular, government policies should give adequate consideration to the concerns of local communities, but also focus on the key role of energy in the Australian economy, both in terms of value creation and as an essential service.

Regulations should be based on sound scientific principles and assessment, maintain high environmental and safety standards and provide regulatory certainty and consistency across all jurisdictions. Above all, they should provide a stable and predictable regulatory foundation for the development of gas resources.

In this regard, there is a clear opportunity for rationalisation of unconventional resource development policy across the states. This could be guided by the multiple land use framework and harmonised framework for coal seam gas (CSG) developed by the former Standing Council on Energy and Resources (SCER).

### **Transparent application of retention lease policy**

Given a reliance on high-cost offshore gas resources and limited diversity of domestic supply, the management of retention leases is an issue that has particular relevance to Western Australia. The government previously outlined changes to the management of oil and gas retention leases with a view to delivering greater scrutiny of applications. These included:

- Verifying that companies seeking to retain a lease over oil or gas fields have a legitimate need to secure gas for long-lived production projects and are not simply seeking to obtain a competitive commercial advantage by their retention.

- Should a field become commercial, requiring the company holding the retention lease to apply immediately to the Minister for a production licence to bring the field on line. Alternatively, at the end of the retention lease period, the lease should be offered on a tender basis for a production licence.

Arguably the most essential component of the retention lease system, limited transparency with respect to the way in which commerciality is assessed has raised some concerns about the appropriateness of retention lease policy arrangements more broadly. In particular, that a potentially narrow assessment of commerciality and lack of third party participation and transparency in the assessment process could potentially subdue obligations on producers to bring commercially viable gas resources to production.

Resource development is a high risk and capital intensive activity and there are multiple commercial considerations that govern the overall timing and scale of project development. As such, it is important to provide resource businesses with the scope to deliver efficient investment across their broader portfolio. But given the need to promote continued resource development, the Association is supportive of actions to provide greater clarity and transparency around the application of retention leases.

### **3. Government-provided goods and services and competitive neutrality**

#### **Privatisation of government owned infrastructure**

Establishing the right regulatory framework is one thing, but businesses must be able to make efficient investment decisions within that framework. Where governments assume multiple roles, including that of asset owner, competing interests can arise and potentially impede such outcomes.

Government involvement in the electricity sector beyond that of policy maker and regulator can create a conflicting set of interests, the outworking of which may be inefficient policy decisions and diminished stakeholder returns.

Various state governments continue to play multiple roles in the electricity sector, including policy, price regulation, asset ownership and consumer protections. This inevitably brings tensions that do not appear to have been well-balanced over recent years, with network businesses being subject to abrupt changes in rates of investment in Queensland and New South Wales.

Over the long term, consumers will be best served if governments consolidate their roles and focus efforts on: joint oversight of electricity sector developments with other governments via the COAG Energy Council; and addressing jurisdictional specific issues through direct policy instruments.

In the short-term, the principal benefits of asset sales will be to improve a government's fiscal position, enabling more funding for key infrastructure of the type less suited to private sector financing (e.g. state schools, hospitals, etc.). Under the Federal Government's Asset Recycling Scheme, states and territories that sell assets and reinvest the sale proceeds to fund infrastructure will be eligible for Federal Government incentive payments equivalent to 15 per cent of the sale. We support

state and territory governments taking advantage of this initiative but would note the greatest benefits are likely to come from full asset privatisation rather than leasing/minority share arrangements.

From the perspective of consumers, there will likely be little obvious change as most state-owned energy businesses have been structured to operate commercially and either compete against privately owned businesses (generation, retail) or are regulated by the same regulator (networks). Consequently, the overarching governance will act to protect consumers from adverse outcomes.

But equally, the reforms to date mean that immediate benefits in the form of significantly lower prices for example, are not likely. Public messaging on the benefits of privatisation should reflect this, as previous overselling of the benefits of privatisation per se (as opposed to the broader reform program) has likely contributed to the current public antipathy.

There is currently a fiscal disincentive to privatise based on the competitive neutrality framework which requires that state-owned businesses make tax equivalent payments to the state treasury. On privatisation, this income stream diverts to the Commonwealth in the form of actual corporate income tax payments. The Federal Government's Asset Recycling Scheme should go a long way to mitigating this disincentive.

### **Electricity tariff reform**

The rapid uptake of rooftop solar photovoltaic (PV) panels and high penetration of energy intense domestic appliances – especially air-conditioners – has reinforced the need for more efficient and equitable tariff structures. Under the current flat rates offered, consumers do not face cost-reflective prices and this leads to unfair cross-subsidies.

Over time this may lead to inefficient system utilisation and also require an increasing proportion of consumers – particularly low income households – to pay more than their fair share of network costs. Coupled with a government preference for funding energy related initiatives through grid-supplied electricity rather than on budget (discussed in further detail below), this will also diminish the competitiveness of grid-supplied electricity over the long term.

To address the underlying inequity and allow for more efficient use of the electricity network, it is important to encourage the development of, and transition to, a new tariff structure that reflects the true cost drivers of the system. This implies accounting not only for how much energy is consumed from the grid, but also the time and rate at which it is consumed, consistent with the make-up of network costs.

There is a range of tariff structures that can potentially achieve the desired outcome. It must be noted that despite time-of-use tariffs are a step in the right direction, they are not necessarily fully cost-reflective and may only be an interim solution. Tariffs based on capacity rather than consumption are likely to be more efficient solutions over the long term. Ultimately the approach may differ in different parts of the country depending on variations in climate, availability of alternative energy sources such as reticulated gas and so on.

Advanced metering is a critical element of the reform agenda. In conjunction with market deregulation and more cost-reflective and flexible tariff structures, advanced metering will enable consumers to realise the full benefits of broader and more diverse product offerings tailored to their particular needs. Wide-spread uptake of advanced metering will also play an important role in driving efficient outcomes across the entire supply chain where electricity tariffs better reflect the costs of energy supply.

Governments have a key role to play in allowing industry to deliver the most efficient long-term tariff solution. This includes enabling the deployment of advanced metering infrastructure to the extent it is inhibited in some regions and assisting industry with communicating benefits to some consumers.

### **Providing a level playing field**

Over the coming years there will be a range of new retail products offered by incumbents and new entrants. These new choices will provide consumers with better services and lower prices. But the current approach of exempting the emerging class of businesses known as energy service companies (ESCOs) from certain regulatory requirements, while continuing to fund government policies through grid-supplied electricity, is unsustainable and an impediment to competition.

Customers face a legitimate choice whether to invest in solar panels (and in due course other technologies to assist self-supply) to meet part of their supply needs. But a portion of customers, including households who are not able to install solar (e.g. renters and apartment dwellers) and heavy industrial/commercial users, will continue to be reliant on centrally produced electricity. Under current arrangements, these customers are poised to bear an increasing share of the cost of government policies that continue to be funded through energy bills rather than on budget. Recent regulatory exemptions provided to ESCOs offering solar leasing arrangements have added to this distortion.

The AER recently considered how ESCOs offering solar leasing should be regulated. The AER argued ESCOs should be exempt from having a retail licence and some of the requirements placed on retailers, as consumers could rely on existing businesses to provide consumer protections. Unfortunately this overlooks the fact that such services are not free and that ESCOs are competing directly with the incumbents. This approach could result in an outcome where a customer sources the majority of their energy from a solar leasing company, but the regulatory burden is principally borne by the grid supplier.

Regulatory costs are borne by businesses and ultimately passed on to consumers through higher prices. This becomes problematic when businesses providing the same service face different regulatory burdens. The challenge for regulators is to strike the balance between encouraging competition from new providers while also ensuring a level playing field. Given the transition towards self-supply is already well underway, the onus is on governments and regulators to consider whether the current regulatory burden and mechanism for funding government policy initiatives is appropriate.

#### **4. Potential reforms in other sectors**

As the esaa represents the stationary energy sector, we do not offer comments on policy issues specifically relating to other sectors.

#### **5-6. Competition laws and administration of competition policy**

The CCA provides for an effective and well respected regime. To this end, the Association does not believe there is a need to overhaul specific provisions of the CCA either from a competition or consumer protections standpoint. But there are a number of high-level observations that can be made in relation to the administration of competition policy. This includes the role of the Australian Competition and Consumer Commission (ACCC) in enabling the electricity market to efficiently respond to unsustainable market conditions and the structure/role of the AER

#### **Australian Competition and Consumer Council authorisations**

*Having regard for the current state of the electricity market*

While the National Electricity Market (NEM) is largely recognised as a successful microeconomic reform, experience has demonstrated that it is a market subject to significant government interventions that struggles to deliver long-run marginal cost to investors over time. This issue is particularly acute at present given the current state of oversupply in the wholesale market, key drivers for which include: declining electricity demand; and increased renewable energy plant underwritten by the Renewable Energy Target (RET).

To a large extent the market design has been robust to these factors. Nevertheless, it is important to note that the price signals arising from the current market framework appear unlikely to drive an efficient transition in the near term. Significant financial and commercial barriers to exit for existing generation plant are likely to be a significant factor in this regard.

Customers may benefit from the resultant low wholesale prices in the short-term, but this is not a sustainable outcome and there are likely to be adverse long-term consequences relating to poor reliability and future underinvestment. It is understood generators are already responding to difficult market conditions by reducing operational costs, primarily through reduced spending on non-essential maintenance.

Given these issues, it is not unreasonable to assume there may be some degree of market consolidation in the future. As it currently stands, any coordination between market participants to respond to inefficient market conditions would be in breach of the cartel provisions of the CCA, meaning they would require Authorisation by the ACCC or some form of government intervention. The ACCC also has a key role to play in authorising merger and acquisition activity within the sector. With respect to the latter, the reasoning given by the ACCC in its refusal of AGL Energy's bid to purchase the Macquarie Generation portfolio from the NSW Government is concerning.

The ultimate outcome of this decision is yet to be determined, as the matter appears set to be resolved through legal proceedings. But regardless, it is not clear the

ACCC's assessment adequately recognises the challenges currently faced by the generation sector. This includes how the national electricity market will look over the next decade as embedded generation continues to grow and reduce reliance on the electricity grid. Further, the assertion that three vertically integrated companies holding a major share of generation capacity and retail contracts is unacceptable would appear to be inconsistent with assessments of market power in other sectors.

The esaa is not suggesting the electricity sector should be treated differently to any other market. But is important the ACCC and governments take these issues in to consideration as the market seeks to efficiently adjust to changing market dynamics.

#### *Understanding the intent of door-to-door sales*

The ACCC has taken action against a number of companies over the past three years in relation to illegal door-to-door selling practices. The Association understands the rationale for taking such action and agrees that it is important to heavily discourage any breaches of the CCA. But in assessing the conduct of businesses and handing down findings, the esaa considers there is scope to have greater regard to the intent of the activity (e.g. to differentiate between malicious intent, genuine errors etc. on a case by case basis).

The orders handed down by the ACCC to date have imposed significant penalties on businesses, the indirect impact of which is an effective halt on door-to-door sales across the sector. It is not clear closing off a key channel of communication between businesses and consumers was the desired outcome, particularly given it may lead to lower levels of competition than would otherwise have been achieved.

#### *Joint selling and marketing of gas*

The ACCC granted authorisation for the North West Shelf Joint Venture to have its joint marketing authority re-instated in 2010, citing that the Western Australian market had not developed sufficiently over the last decade to make separate marketing of incremental volumes of gas from the North West Shelf partners a viable prospect. But the ACCC did acknowledge that suitable market conditions may evolve in the medium term – including increased competition amongst suppliers, increased storage capacity and secondary trading – and as a result, authorisation was only granted to the North West Shelf Joint Venture out to 2015.

The Western Australian government has taken a number of steps towards the emergence of those market conditions referenced by the ACCC. These include the development of a Western Australian based Gas Bulletin Board and Gas Statement of Opportunities as well as investment in additional gas storage at the Mondarra Gas Storage Facility. It is critical these factors are considered by the ACCC when the joint marketing authority currently granted to the North West Shelf Joint Venture comes up for renewal in 2015.

### **Clarifying the role of the Australian Energy Regulator**

The review of energy market bodies scheduled to commence shortly will provide an important opportunity to better clarify the functions of key energy market institutions, including the Australian Energy Market Operator (AEMO), AEMC and AER. The

Association does not believe there is any justification for expanding the regulatory powers of the AER, but better defining its role and accountabilities would be useful. The Association also believes the principles underpinning the funding of these bodies continue to be relevant.