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17 November 2014

Via online submission

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The Treasury  
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### **Competition Policy Review — Jemena response to Draft Report**

We welcome the opportunity to respond to the Draft Report published by the Review Panel as part of the review of Australia's Competition Policy.

As a participant in the energy transmission and distribution industries, Jemena has a strong interest in the review, particularly relating to the recommendations on the governance framework for our energy market.

Jemena is an \$8.5 billion company that owns and manages some of Australia's most significant gas and electricity assets. These include the:

- Jemena gas distribution network servicing 1.2 million customers around NSW
- the Eastern Gas Pipeline which delivers gas from Victoria's Gippsland basin to the ACT, Sydney and regional NSW
- the Queensland Gas Pipeline which supplies Gladstone and Rockhampton
- Jemena electricity network which delivers power to over 330,000 homes and businesses in north-west Melbourne
- part ownership of the ActewAGL electricity and gas distribution networks in the ACT as well as United Energy, which supplies electricity to over 600,000 customers across south-eastern Melbourne and the Mornington Peninsula.

### **Our energy markets are changing**

The Draft Report acknowledges that change is a constant presence in our economy, and that it brings opportunities as well as challenges. Nowhere is this more evident than in Australia's energy markets which are undergoing significant change with major implications for energy industry participants and our customers.

The competition and regulatory framework governing energy markets, including the institutions, their roles and the 'tools' available to them to perform those roles, is critical in supporting these changes in a way that promotes consumers' long-term interests.

In our view, refinements to the current framework will need to occur and we support the Review Panel's (Panel) Draft Report's focus on:

- revitalising a robust competition policy agenda and ensuring that competition drives the outcomes that customers value and that innovation occurs to provide energy services in an efficient, responsive and customer-focused way
- testing the efficiency and effectiveness of the framework to ensure they are capable of adapting to these changing circumstances.

### **Ensuring the policy and regulatory framework continues to support competition, innovation and customer empowerment**

As the Draft Report notes, the application of competition policy to Australia's energy markets has positively affected the choices and prices paid by customers for energy services. This framework provides clear, separate and accountable decision-making responsibilities – including relating to policy, coverage, the 'rules of the game' and economic regulation – and an overarching focus on customers' long-term interests. For this reason the current framework remains well placed to manage the changes occurring in energy markets.

We are concerned that the Draft Report's recommendations relating to the introduction of a new economic regulator – the Access and Pricing Regulator – and the disbanding of the National Competition Council represent significant changes to our framework.

We are also concerned that the Draft Report does not clearly articulate why the current regulatory framework, including the institutions and their roles, is not best placed to manage the changes in the energy market, nor does the Draft Report provide any evidence-base of the benefits and risks in alternative arrangements. We note the Draft Report provides considerable evidence and analysis of Australia's competition laws and the challenges in ensuring they are robust to manage the broader changes occurring in the Australian economy.

For these reasons, we do not support the Draft Report's recommendations to:

- introduce the Access and Pricing Regulator
- to disband the National Competition Council and transfer their access regulation functions to the Access and Pricing Regulator.

However we do support the Draft Report's recommendation to create the Australian Council for Competition Policy (ACCP) given it provides a potentially useful model for ensuring a 'pro-competition' focus is embedded in the institutions governing energy markets.

### **Incremental changes should be customer focused, evidence-based and following extensive consultation**

We agree that consumer confidence is vital for well-functioning energy markets, and we believe there are opportunities to refine the current framework to ensure they are capable of adapting to these changing circumstances.

For these reasons, we suggest that further changes to the framework should be incremental, and only follow thorough evidence-based review and consultation with a range of stakeholders.

The COAG Energy Council's review of the energy market's governance arrangements represents an important step in this process and we look forward to participating in this review.

We welcome the Panel's contribution to this complex issue. However, there are a range of other reform barriers that need to be addressed beyond the competition and regulatory institutions governing our energy markets. For example, jurisdictional constraints on pricing and metering, customer and stakeholder understanding of energy costs—including acceptance of cost reflective pricing—and a co-ordinated national approach to funding and delivering targeted assistance to customers in hardship, are all essential to supporting the changes occurring in the energy market in a way that promotes customers' long-term interests.

Our detailed submission addressing these points is attached to this letter, and would welcome the Panel's continued involvement in this process to ensure the policy, regulatory and market framework continues to promote the long-term interests of customers.

If you wish to discuss the submission please contact Alexis van der Weyden, Manager Regulatory Economics and Policy on (02) 9455 1575 or at [alexus.vanderweyden@jemena.com.au](mailto:alexus.vanderweyden@jemena.com.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. McMillan', with a long horizontal flourish extending to the right.

**Robert McMillan**  
General Manager Regulation  
Jemena Limited

# Jemena Limited

## Competition Policy Review

### Response to Draft Report

Public

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### **About Jemena**

Jemena is an \$8.5 billion company that owns and manages some of Australia's most significant gas and electricity assets. These include the Jemena gas distribution network servicing 1.2 million customers around NSW, the Eastern Gas Pipeline which delivers gas from Victoria's Gippsland basin to the ACT, Sydney and regional NSW, the Queensland Gas Pipeline which supplies Gladstone and Rockhampton, and our Victorian electricity network which delivers power to over 320,000 homes and businesses in north-west Melbourne. Jemena also part owns the ActewAGL electricity and gas distribution networks in the ACT as well as United Energy, which supplies electricity to over 600,000 customers across south-eastern Melbourne and the Mornington Peninsula.

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## 1. OVERVIEW

1. We welcome the opportunity to respond to the *Draft Report* as part of the Competition Policy Review of Australia's competition policy.
2. Australia's energy markets are undergoing significant change with major implications for us and our customers. The competition and regulatory framework governing our energy markets is critical in supporting these changes in a way that promotes our customers' long-term interests.
3. As a participant in the energy transmission and distribution industries, Jemena has a strong interest in this review, particularly the recommendations relating to changes to the governance frameworks. In our view, refinements to the current framework will need to occur and we support the Review Panel's (Panel) Draft Report's focus on:
  - revitalising a robust competition policy agenda and ensuring that competition drives the outcomes that customers value and that innovation occurs to provide energy services in an efficient, responsive and customer-focused way
  - testing the efficiency and effectiveness of the framework to ensure they are capable of adapting to these changing circumstances.
4. As the Draft Report notes, the application of competition policy to Australia's energy markets has positively affected the choices and prices paid by customers for energy services. This framework provides clear, separate and accountable decision-making responsibilities – including relating to policy, coverage, the 'rules of the game' and economic regulation – and an overarching focus on customers' long-term interests. For this reason the current framework remains well placed to manage the changes occurring in energy markets, and we would caution against wholesale change.
5. The Draft Report's recommendations relating to the introduction of a new economic regulator – the Access and Pricing Regulator – and the disbanding of the National Competition Council represent significant changes to our framework. Significant changes, if not considered in an evidenced-based and consultative way – consistent with best practice regulation principles – have the potential to increase the risk faced by investors, which can dampen incentives for innovation and investment in typically long-lived infrastructure assets. This is not in the long term interests of customers.
6. We do not support the Draft Report's recommendations to introduce the Access and Pricing Regulator given that:
  - it is unclear whether a regulator with a wide and disparate portfolio would improve the focus, accountability, and expertise in making pricing decisions that promote the long-term interests of customers, particularly in an environment of significant change in the energy market
  - there are opportunities to refine the current arrangements that have not been explored.
7. Additionally, we do not support the Draft Report's recommendations to disband the National Competition Council and transfer their access regulation functions to the Access and Pricing Regulator. A single body responsible for making both access and pricing decisions:
  - involves over-riding the separation of powers principle that has underpinned energy market reforms to date
  - may not improve decision-making accountability given its performance would need to be evaluated not on the basis of the quality of pricing decisions, but also where it chose to apply its regulatory 'powers', with access decisions potentially influencing pricing decisions.

8. We do support the Draft Report's recommendation to create the Australian Council for Competition Policy (**ACCP**), given it provides a potentially useful model for ensuring a 'pro-competition' focus is embedded in the institutions governing Australia's energy (and other) markets. This is crucial as competitive forces continue to play a growing role in determining services and prices in traditionally monopolistic energy network markets.
9. However, we do recognise that there are both potential benefits and risks in changes to the framework, and consistent with the principles of best practice regulation<sup>1</sup>, we encourage the Panel to clearly identify:
  - the 'problem' with the current framework including why it is not best placed to manage the changes in the energy market
  - the range of feasible options or 'solutions'
  - which option best promotes the long term interests of customers, using a clear evidence-base and following extensive consultation with stakeholders.
10. We agree that consumer confidence is vital for well-functioning energy markets, and we believe there are opportunities to refine the current framework to ensure energy markets are capable of adapting to these changing circumstances. However, investor confidence in the framework and refinements to the framework are vital to ensure that Australia's energy infrastructure sector is well placed to respond to the significant changes facing our market.
11. The COAG Energy Council's review of the energy market's governance arrangements represents an important first step in a thorough and consultative process for considering potential improvements to the energy market governance framework. The Panel should give consideration as to how its Final Report may link with COAG's review.
12. Encouraging a well-functioning energy market also requires addressing a range of other reform barriers beyond the competition and regulatory institutions governing our energy markets.
13. Table 1-1 summarises the key areas where the Panel could make material improvements.

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<sup>1</sup> COAG, Best practice regulation: Guide for Ministerial Councils and National Standard Setting Bodies, 2007.

[https://www.dpmc.gov.au/deregulation/obpr/proposal/coag\\_requirements/docs/COAG\\_best\\_practice\\_guide\\_2007.pdf#page=6](https://www.dpmc.gov.au/deregulation/obpr/proposal/coag_requirements/docs/COAG_best_practice_guide_2007.pdf#page=6)

Table 1–1: Summary of key improvement areas

Institutional function	Draft Report recommendation	Our view
Economic regulation of energy infrastructure	<ul style="list-style-type: none"> <li>• Creation of the Access and Pricing Regulator to make decisions relating to:               <ul style="list-style-type: none"> <li>– Pricing – as per the Australian Energy Regulator (AER)'s current economic regulation function</li> <li>– Access – as per National Competition Council's (NCC) current access function</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Do not support the creation of the Access and Pricing Regulator given:               <ul style="list-style-type: none"> <li>– The 'problem' has not been well defined, including why the current framework is not well placed to manage the changes occurring in energy markets.</li> <li>– The evidence base of risks and benefits has not been detailed or consulted upon</li> <li>– Refinements can be made to current framework to strengthen its support for competition, innovation and customer empowerment</li> </ul> </li> </ul>
Decision-making for coverage (access regulation)	<ul style="list-style-type: none"> <li>• Disbanding of National Competition Council, with coverage decisions to be made by the Access and Pricing Regulator</li> </ul>	<ul style="list-style-type: none"> <li>• Do not support access and pricing decisions being made by the same authority. Recommend either:               <ul style="list-style-type: none"> <li>– Revitalise the NCC and focus its task on coverage decisions</li> <li>– Transfer these functions to the ACCP (see below)</li> </ul> </li> </ul>
Competition policy advocacy, analysis and oversight	<ul style="list-style-type: none"> <li>• Creation of the Australian Council for Competition Policy (ACCP) to advocate for competition policy reform and oversee its implementation</li> </ul>	<ul style="list-style-type: none"> <li>• Support creation of the ACCP to ensure a 'pro-competition' focus continues to be embedded in the institutions governing our energy market.</li> <li>• Role of ACCP could evolve in response to continued customer, technological, market and policy changes. For example the ACCP could provide advice to the:               <ul style="list-style-type: none"> <li>– NCC (or become the decision-maker if the NCC is disbanded) or AER on 'what should be regulated and how', allowing the AER to focus on and be accountable for the implementation of the form of regulation.</li> <li>– AEMC and Governments on industry specific Rules or regulations that seek to achieve outcomes (such as competition and contestability) that may be better promoted through the general competition provisions of the <i>Competition and Consumer Act</i>.</li> </ul> </li> </ul>



### 2. OUR ENERGY MARKETS ARE CHANGING

#### Key messages

- We support the Draft Report's focus on:
  - revitalising a robust competition policy agenda and ensuring that competition drives the outcomes that customers value and that innovation occurs to provide energy services in an efficient, responsive and customer-focused way
  - testing the efficiency and effectiveness of the framework to ensure they are capable of adapting to these changing circumstances.

14. The Draft Report acknowledges that change is a constant presence in our economy, and that it brings opportunities as well as challenges. Nowhere is this more evident than in Australia's energy markets which are undergoing significant change with major implications for energy industry participants and our customers.
15. For Eastern Australia's gas markets, the establishment of Liquefied Natural Gas (LNG) export facilities will enable gas producers to access the international market for natural gas, with its strong demand and higher prices. The changes are likely to put upward pressure on gas prices. Jemena owns and operates the principal gas network in NSW and in our case, our customers in NSW have a range of options other than gas to power their homes and businesses. Rising gas prices will make it more difficult for us to attract new customers and lower our prices.
16. In the electricity market, customers are no longer passive consumers of a 'low involvement' product. Rather they are increasingly engaged in decisions on energy, looking to new (and increasingly affordable) technologies that allow them to produce their own energy and manage their consumption. These trends are likely to drive further innovation in the energy market, which in turn will lead to new energy market participants and changes in the roles of existing participants, like Jemena.
17. Well-functioning energy markets require competition and regulatory institutions that are capable of adapting to change, with a focus on promoting competition and innovation in markets. Refinements to the framework will need to occur as technologies, markets and the competitive landscape continue to change.
18. We therefore support the Draft Report's focus on testing the efficiency and effectiveness of the framework governing energy markets to ensure they are capable of adapting to these changing circumstances.

### 3. THE FRAMEWORK REMAINS WELL PLACED TO MANAGE THE CHANGES OCCURRING IN OUR ENERGY MARKETS

#### Key messages

- The application of competition policy to Australia's energy markets has positively affected the choices and prices paid by customers for energy services.
- This framework provides clear, separate and accountable decision-making responsibilities – including relating to policy, coverage, the 'rules of the game' and economic regulation – and an overarching focus on customers' long-term interests.
- The current framework remains well placed to manage the changes occurring in energy markets.

19. As the Draft Report notes, the application of competition policy to Australia's energy markets has significantly affected the choices and prices paid by customers for energy services.
20. These competition policy reforms – such as the structural reform of the energy market players (separating natural monopoly from contestable elements) and of the competition and regulatory institutions governing these markets – has placed downward pressure on the cost of energy services and increased choice for customers.
21. These structural changes have enabled further reforms in some jurisdictions (such as Victoria), including the privatisation of energy market players and the development of a regulatory framework which provides strong incentives for businesses to invest and operate efficiently. In our experience, private ownership together with incentive regulation has produced considerable benefits in the long-term interests of consumers.
22. The Victorian Government also notes that the regulatory framework has generally served Victorian interests well, including an 18 per cent reduction in average annual electricity network prices for Victoria, in real terms, between 1996 and 2013<sup>2</sup>.
23. In our view, the competition and regulatory framework governing energy markets, including the institutions and the 'tools' available to these institutions, exhibits many of the best practice regulatory principles. The framework provides clear, separate and accountable decision-making responsibilities – including relating to policy, coverage, the 'rules of the game' and economic regulation – and its overarching focus on customers' long-term interests means the current framework remains well placed to manage the changes occurring in energy markets.
24. We note the AEMC's views that the energy market reforms, including the creation, governance and participation in the National Electricity Market (NEM) represents a case study in successful microeconomic reform.<sup>3</sup>
25. We support the recommendations in the Draft Report for completing a number of energy market reforms, including the removal of government ownership in the NEM and the deregulation of retail gas and electricity prices across all jurisdictions.

<sup>2</sup> Victorian Government – Department of State Development, Business and Innovation, Victoria's Energy Statement, 2014 p39.

<sup>3</sup> AEMC. National Electricity Market: A Case Study in Successful Microeconomic Reform, 2013.

<http://www.aemc.gov.au/getattachment/8c426f7d-ea5c-4823-9b86-510dfd4e82dd/The-National-Electricity-Market-A-case-study-in-mi.aspx>

### 4. REFINING THE FRAMEWORK TO ENSURE IT SUPPORTS COMPETITION, INNOVATION AND CUSTOMER EMPOWERMENT

#### Key messages

- Refinements can be made to the current framework to ensure it supports competition, innovation and customer empowerment.
- We do not support the Draft Report's recommendations to:
  - introduce the Access and Pricing Regulator
  - disband the National Competition Council and transfer their access regulation functions to the Access and Pricing Regulator creating a single body making both access and pricing decisions.
- We do support the Draft Report's recommendation to create the Australian Council for Competition Policy.

26. The competition and regulatory framework governing our energy markets, including the institutions, their roles and the 'tools' available to them to perform those roles, is critical in supporting competition, innovation and customer empowerment in a way that promotes consumers' long-term interests.
27. We agree that well-functioning energy markets require:
- customers to be confident that the policy and regulatory framework is acting in their long-term interests
  - customers to be empowered in their energy decision-making, including participating in regulatory decision-making
  - a well-resourced and focused economic regulator operating within a framework of clear, separate and accountable decision-making responsibilities
  - policy and regulatory settings that are transparent and predictable, such that changes are both consultative and evidence-based
  - competition and regulatory institutions that are capable of adapting to change, promote competition and innovation including new market players and business models.
28. In our view refinements can be made to the current framework to strengthen its support for competition, innovation and customer empowerment.

#### 4.1 THE FRAMEWORK SHOULD PROMOTE THE LONG-TERM INTERESTS OF CUSTOMERS

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29. Well-functioning energy markets require customers to be confident that the policy and regulatory framework is acting in their long-term interests. Confidence in the framework will minimise unnecessary changes or government intervention.

30. Recent reforms have been designed to better align the policy and regulatory framework with the long-term interests of customers.<sup>4</sup> These changes to how network revenues are determined and adjusted over time, and the role and ability of customers to participate in this decision making process, were undertaken in a highly consultative and evidenced-based way. These changes should provide confidence to customers that the outcomes are promoting their long-term interests.

### 4.2 CUSTOMERS SHOULD BE EMPOWERED IN THEIR ENERGY DECISION-MAKING

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31. Well-functioning energy markets require customers to be empowered in their energy decision-making, including participating in regulatory decision-making. Policy makers, regulators and network businesses are increasingly focused on ways to encourage more informed customer decision making about the way energy is used.
32. We support the Draft Report's focus on ways to encourage more informed customer decision-making about the way energy is used, including more cost reflective network prices and access to clear, easily understood, information about customers' energy usage and their choices in the energy market.
33. The Australian Energy Market Commission (AEMC) has approved several changes to the NER that facilitate more informed customer decision-making by encouraging reforms to network pricing, improving the ability of customers to access information about their electricity consumption, and providing increasing customer choice around their metering and other energy service providers. The changes include a suite of reforms in response to the AEMC's 2012 Power of Choice Review.
34. We are committed to empowering our customers to make informed energy decisions about how and when they use energy – including how they choose to use our network – and provide them with more control over their energy bills. This includes:
- Ensuring the structure of our network prices keeps pace with the diversity in how people use the network to encourage more informed energy decision making. We have been engaging extensively with our customers and stakeholders on this issue in the course of developing our 2016-20 regulatory proposal for the Jemena Electricity Network.<sup>5</sup>
  - Empowering our customers with information about their energy usage. To that end, in recent years, we have developed an internet portal which gives customers access to their smart meter usage information, and we are currently exploring trials of in-home energy displays to help vulnerable customers better access this information.<sup>6</sup>
35. In our view policy makers, regulators and network businesses are well advanced in empowering customers in their energy decision-making.

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<sup>4</sup> The AER's *Better Regulation* program aimed to deliver an improved regulatory framework focused on promoting the long term interests of electricity consumers. This followed from changes to the National Electricity and Gas Rules that were published by the AEMC on 29 November 2012.

<http://www.aer.gov.au/Better-regulation-reform-program>

<sup>5</sup> <http://jemena.com.au/customer/electricity/community-engagement/Presentations-and-submissions.aspx>

<sup>6</sup> <http://jemena.com.au/customer/electricity/smart-meters/portal/>

## 4 — REFINING THE FRAMEWORK TO ENSURE IT SUPPORTS COMPETITION, INNOVATION AND CUSTOMER EMPOWERMENT

### 4.3 THE ECONOMIC REGULATOR SHOULD BE WELL-RESOURCED, FOCUSED AND ACCOUNTABLE

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36. We agree that a well-resourced and focused economic regulator operating within a framework of clear, separate and accountable decision-making responsibilities is crucial for a well-functioning energy market. It provides confidence to policy makers, customers and investors.
37. However we question whether the introduction of a new economic regulator – the Access and Pricing Regulator – that covers a wide and disparate portfolio will necessarily improve the focus, accountability, and expertise in making decisions that promote the long-term interests of our energy customers. As highlighted in Section 4.4, an economic regulator with a wide portfolio may have the tendency to adopt a ‘one size fits all’ approach to regulation, particularly if the regulator is not well resourced or experienced in navigating the inevitable (and in some cases, significant) sectoral differences in between infrastructure markets.
38. For these reasons we do not support the Draft Report’s recommendations to introduce the Access and Pricing Regulator.
39. Additionally, a single body making both access and pricing decisions effectively means that it can control the scope of its own authority. This is undesirable given that separation of powers is an important principle in the energy market, and one from which private investors derive much confidence. Such a body may also have diluted accountability given its performance would need to be evaluated not on the basis of the quality of its access and pricing decisions, but also where it chose to apply its regulatory ‘powers’.
40. In our view, the Draft Report’s noting of the telecommunications access regime – where the ACCC performs both declaration and arbitration functions – does not reflect a model that is best placed to manage the changes occurring in the energy market.
41. We therefore do not support access and pricing decisions being made by the same authority and would recommend either:
- The NCC be revitalised with its scope and accountability targeted to coverage decisions; or
  - The transfer of these functions to the ACCP (see Section 4.5)
42. The Draft Report notes that stakeholders have indicated that separating the functions of the AER from the ACCC would go a long way to improving accountability in decision making in the energy sector.<sup>7</sup> In our view, this represents a sensible refinement to our current framework.

### 4.4 TRANSPARENT AND PREDICTABLE POLICY AND REGULATORY SETTINGS

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43. Well-functioning and innovative energy markets also require policy and regulatory settings that are transparent and predictable, such that customers, stakeholders and policy-makers can have confidence that change to the framework occurs in a consultative and evidence-based way.
44. Consistent with the principles of best practice regulation<sup>8</sup> this obliges a clear articulation of the ‘problem’, the range of feasible options or ‘solutions’ and the identification of the option which best promotes the long term

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<sup>7</sup> Draft Report, p61.

<sup>8</sup> COAG, Best practice regulation: Guide for Ministerial Councils and National Standard Setting Bodies, 2007.

[https://www.dpmc.gov.au/deregulation/obpr/proposal/coag\\_requirements/docs/COAG\\_best\\_practice\\_guide\\_2007.pdf#page=6](https://www.dpmc.gov.au/deregulation/obpr/proposal/coag_requirements/docs/COAG_best_practice_guide_2007.pdf#page=6)

interests of customers, using a clear evidence-based approach and following extensive consultation with stakeholders.

45. The Draft Report notes that in the AEMC's view some of the key factors driving the success of energy market reforms to date were that:
  - material problems were defined and clear reform objectives were set
  - strong and appropriate support structures were established with key stakeholder participation and the pace of the reform allowed for effective consultation across all stakeholders.<sup>9</sup>
46. In this context, we are concerned by a number of the Draft Report's broad assertions that appear to be neither evidence-based nor made following consultation with a range of stakeholders. In particular the assertions about:
  - regulatory 'capture' and as a result inflexibility in regulatory approaches<sup>10</sup>
  - investment decisions being distorted as a result of inconsistency in regulatory approaches.<sup>11</sup>
47. In our view, there is little evidence to support these concerns, particularly in the energy market.
48. Rather, the Draft Report's assertion that industry specific regulators may lose the necessary independence from the regulated industry seems to be reliant on the views of a small number of stakeholders.<sup>12</sup> From this flows the Draft Report's recommendation that a single access and pricing regulator would reduce the risk of capture. We are not aware of any credible observer positing that the AER has been subject to capture by regulated network businesses, and we note that in developing and consulting on its Better Regulation reforms, the AER examined the operation and success of a range of 'regulatory tools' in place in the energy sector and other sectors both in Australia and overseas.
49. The Draft Report's assertion that regulatory precedent plays a diminished role in decision making by industry specific regulators, and that efficient investment decisions will occur when there is "national uniformity to industry regulation"<sup>13</sup> also seem to be misplaced, particularly in the energy market.
50. Given the size of the energy sector and its importance to dependent markets, we recognise the importance of promoting efficient investment to enhance productivity and growth in the Australian economy. Efficient investment is most likely to occur where regulators follow processes and make decisions that are consistent with best practice regulatory principles. One of the key principles is "to take into account relevant industry circumstances and changes in those circumstances over time...to reflect developments in best practice regulation and in relevant economic and finance theories."<sup>14</sup> That is, efficient investment decisions are more likely to occur when regulatory decisions are not only transparent and predictable, but also responsive to market conditions.
51. The Draft Report does not acknowledge the risks associated with a single access and pricing regulator applying national uniformity to industry regulation. For example, the changes occurring in the energy market heighten the risks associated with a 'one size fits all' approach to economic regulation that may occur in a multi-industry regulator covering a wide and disparate portfolio. This is most likely to occur when the regulator is not well resourced or experienced in navigating the inevitable sectoral differences between infrastructure markets.

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<sup>9</sup> Draft Report, p121.

<sup>10</sup> Draft Report, p296.

<sup>11</sup> Draft Report, p296.

<sup>12</sup> Monash Business Policy Forum, Submission to Competition Policy Review - Issues Paper.

<sup>13</sup> Ibid p140.

<sup>14</sup> ACCC in Productivity Commission, National Access Regime, Inquiry Report, October 2013, p142.

## 4 — REFINING THE FRAMEWORK TO ENSURE IT SUPPORTS COMPETITION, INNOVATION AND CUSTOMER EMPOWERMENT

Standardised treatment of regulated industries could in fact distort investment, rather than promote efficient investment.

52. In our view, the periodic development of and ongoing consultation around guidelines, including the AER's Better Regulation guidelines, enhance efficient investment decisions by promoting transparent and predictable regulatory settings that are responsive to market conditions.

### 4.5 COMPETITION AND REGULATORY INSTITUTIONS THAT ARE CAPABLE OF ADAPTING TO CHANGE

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53. Well-functioning energy markets require competition and regulatory institutions that are capable of adapting to change, with a focus on promoting competition and innovation in markets.
54. As customers increasingly look to manage their energy needs, their expectations of their energy providers will change. This will drive further innovation in the energy market, which means the role of existing energy market participants, is likely to change. The regulatory framework and energy market design must be able to adapt to these changing circumstances. For example we should not:
  - persist with 'traditional' direct economic regulation of services and prices in energy markets where there is workable competition,
  - preclude new business models (including network business models) from driving innovation in newly contestable markets As the Draft Report emphasises, our competition framework should focus on protecting competition (or the competitive process), rather than protecting competitors.
55. Policy makers have highlighted the importance of regulatory and policy settings encouraging competition and innovation (including from network business models) and competition if we are to manage these changes in a way that promotes customers' long term interests.<sup>15 16</sup>
56. In our view, the Draft Report's recommendation to create the ACCP provides a potentially useful model for ensuring a 'pro-competition' focus continues to be embedded in the institutions governing energy markets.
57. Its role could evolve as the form of regulation required in historically monopolistic infrastructure markets changes in response to customer, technological, market and policy factors. For example, the ACCP could provide advice to the:
  - NCC (or become the decision-maker if the NCC is disbanded) or AER on 'what should be regulated and how' (somewhat akin to the NCC's gas coverage decisions, but covering electricity and potentially decisions made by the AER in relation to the 'classification of services'<sup>17</sup>), allowing the AER to focus on and be accountable for the implementation of the recommended form of regulation.

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<sup>15</sup> Australian Government, Energy White Paper - Green Paper 2014, p viii

<sup>16</sup> CoAG Energy Council, Meeting Communique, May 2014.

<sup>17</sup> The Jemena Electricity Network provides a range of services to the community. Some of these services – such as our core distribution network services – are provided solely by us. However, other services are provided in more competitive markets, meaning we compete alongside other businesses to provide these services to our customers, such that direct regulatory oversight by the AER is not required. The NER require us to indicate how our services should be regulated ('the classification of distribution services') including which services require direct regulatory control by the AER of the prices we charge or revenues we recover from our customers, indirect regulatory control with the AER approving a negotiating framework or being involved in any arbitration, and which services are best left unregulated with outcomes determined in the competitive market.

- AEMC and Governments on industry specific Rules or regulations that seek to achieve outcomes (such as competition and contestability) that may be better promoted through the general competition provisions of the *Competition and Consumer Act*.<sup>18</sup>

58. This would:

- Promote competition and innovation by ensuring direct regulation of service and prices is only used where it is necessary, and where it clearly provides the greatest benefits to the community of all available options.<sup>19</sup>
- Avoid a highly variable workload for the NCC, which has resulted in the NCC disbanding its staff secretariat and purchase secretariat services from the ACCC.<sup>20</sup>
- Ensure that, where possible, there is reliance on the general competition provisions of the *Competition and Consumer Act*, rather than bespoke jurisdictional or energy industry specific arrangements.

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<sup>18</sup> See AEMC discussion on potential ring fencing arrangements to apply to network businesses in newly contestable metering markets. <http://www.aemc.gov.au/getattachment/890a8cc8-96bb-4d4c-b8ec-3c47cfb7b70/Presentation.aspx>

<sup>19</sup> Productivity Commission, National Access Regime, Inquiry Report, October 2013, p330.

<sup>20</sup> The NCC notes that since the end of the NCP assessment program and competition payments, the Council's role has been confined to consideration of applications relating to third party access under Part IIIA and the NGL. With applications being relatively few and intermittent this has led to a highly variable workload and was responsible for a recent decision by the NCC to disband its staff secretariat and purchase secretariat services from the ACCC. National Competition Council, Submission to the Competition Policy Review: Issues Paper, 2013.



### 5. ANY CHANGES SHOULD BE CUSTOMER FOCUSED, EVIDENCE-BASED AND FOLLOW EXTENSIVE CONSULTATION

#### Key messages

- We welcome the Panel's contribution to this complex issue, and would encourage the Final Report to provide a clear evidence-base identifying the 'problem' with the current framework, and the options for addressing the problem including the potential benefits and risks.
- The COAG Energy Council's review of the energy market's governance arrangements represents an important step in this process. The Panel should give consideration as to how its Final Report may link with COAG's review.
- Encouraging a well-functioning energy market requires addressing a range of other reform barriers beyond the competition and regulatory institutions governing our energy markets.

59. We agree with the Draft Report that the challenge for policymakers and regulators is to capture the benefits of these changes in our economy by ensuring that they are not unduly obstructed by competition and regulatory policies and institutions while preserving traditional safeguards for consumers.
60. Given the structural reform of our energy market and the competition and regulatory institutions governing these markets has placed downward pressure on the cost of energy services and increased choice for customers, we would caution against wholesale change. In our view, the current framework remains well placed to manage the changes occurring in energy markets in a way that provides confidence to customers that it continues to promote their long-term interests.
61. There are opportunities for refining this framework, and we recognise that any governance arrangement – including the institutions, their roles and the 'tools' available to them in carrying out these roles – has benefits and risks. In considering the most appropriate refinements we would encourage the Panel to better specify 'the problem' that they are seeking to address and consider the full range of benefits and risks of the available options in an evidenced-based and consultative way, consistent with best practice regulation principles.<sup>21</sup>
62. In particular we encourage the Panel to clearly identify in its Final Report:
- the 'problem' with the current framework including why it is not best placed to manage the changes in the energy market ('do nothing option'<sup>22</sup>),
  - the range of feasible options or 'solutions'
  - which option best promotes the long term interests of customers.
63. The COAG Energy Council's review of the energy market's governance arrangements represents an important step in this consultative process. The Panel should give consideration as to how its Final Report may link with COAG's review.

<sup>21</sup> COAG, Best practice regulation: Guide for Ministerial Councils and National Standard Setting Bodies, 2007.

[https://www.dpmc.gov.au/deregulation/obpr/proposal/coag\\_requirements/docs/COAG\\_best\\_practice\\_guide\\_2007.pdf#page=6](https://www.dpmc.gov.au/deregulation/obpr/proposal/coag_requirements/docs/COAG_best_practice_guide_2007.pdf#page=6)

<sup>22</sup> Best practice regulation requires considering a 'do nothing' option to be identified to allow a comparisons of the relative costs and benefits of the alternatives.

64. We welcome the Panel's contribution to this complex issue, and would welcome the Panel's continued involvement in this process to ensure the policy, regulatory and market framework continues to promote the long-term interests of customers.
65. However, encouraging a well-functioning energy market requires addressing a range of other reform barriers beyond the competition and regulatory institutions governing our energy markets. For example, addressing the following issues are all essential to supporting the changes occurring in the energy market in a way that promotes customers' long-term interests, including:
  - jurisdictional pricing and metering infrastructure constraints on pricing reform
  - customer and stakeholder understanding of energy supply and costs (including acceptance of cost reflective pricing)
  - emerging industry-specific electricity regimes that seek to preclude or diminish the opportunity for new business models (including network businesses) to drive innovation in new services and markets
  - the need for a co-ordinated national approach to funding and delivering targeted assistance to customers in hardship.