



EnergyAustralia

8 December 2014

Competition Policy Review Secretariat
The Treasury
Langston Crescent
PARKES ACT 2600

EnergyAustralia Pty Ltd
ABN 99 086 014 968

Level 33
385 Bourke Street
Melbourne Victoria 3000

Phone +61 3 8628 1000
Facsimile +61 3 8628 1050

enq@energyaustralia.com.au
energyaustralia.com.au

Dear Competition Policy Review Secretariat

EnergyAustralia submission to the Competition Policy Review Draft Report

EnergyAustralia welcomes the opportunity to make a submission to the Competition Policy Review Draft Report.

EnergyAustralia is one of the country's largest vertically integrated energy companies supplying 15 per cent of energy in the National Electricity Market and over 2.5 million retail customers. We note the Independent Panel's reference to our previous submission in the Draft Report and appreciate consideration of our views.

The Draft Paper covered a broad and complex range of issues impacting the Australian economy and the Independent Panel should be congratulated on the level of analysis applied to develop a comprehensive set of recommendations.

This submission is limited to the recommendations we consider may directly impact the operation of the energy sector, particularly as the sector continues to transform with increasing decentralisation and decarbonisation of energy production.

1. Finalising the Energy Reform Agenda

EnergyAustralia supports draft recommendation 16 encouraging State and Territory Governments to finalise the energy reform agenda. As highlighted by the Independent Panel, some jurisdictions' unwillingness to implement COAG reforms such as the National Energy Retail Law and retail price deregulation reduce competition and act as a barrier to market entry.

EnergyAustralia also supports the Independent Panel's recommendation that network reliability standards be transferred to a national framework. With network costs accounting for over 50% of total customer bills in some jurisdictions, it is vital that network planning decisions are closely monitored. A national reliability framework will help ensure a consistent approach and that the appropriate balance between reliability and efficiency is achieved.

2. Cartel Conduct

EnergyAustralia supports draft recommendation 22 to simplify cartel conduct prohibitions in the Competition and Consumer Act. In particular, a broad exemption for joint ventures and other collaborations would remove the redundancy inherent in current provisions. Collaboration is an important source of efficiency and innovation in markets. Unnecessary curtailment of such activity could deprive consumers of the potential benefits.

The electricity generation sector would benefit from consolidation to address its current state of oversupply. Joint ventures and similar forms of business collaboration represent options via which this consolidation could occur naturally. A broad exemption for joint ventures under the cartel conduct prohibitions removes an unnecessary barrier to this process occurring.

3. Mergers

EnergyAustralia supports draft recommendation 30 to apply greater consistency to the merger process applied by the ACCC. However, we argue for a further change to the informal merger process to align it with the proposed changes to the formal process. Specifically, the public benefits test ought to be applied at all three potential stages in the process (as opposed to only being an explicit part of the formal process). Informal assessments are potentially biased and misleading to participants relative to possible formal assessment outcomes if they only test for a substantial lessening of competition (SLC).

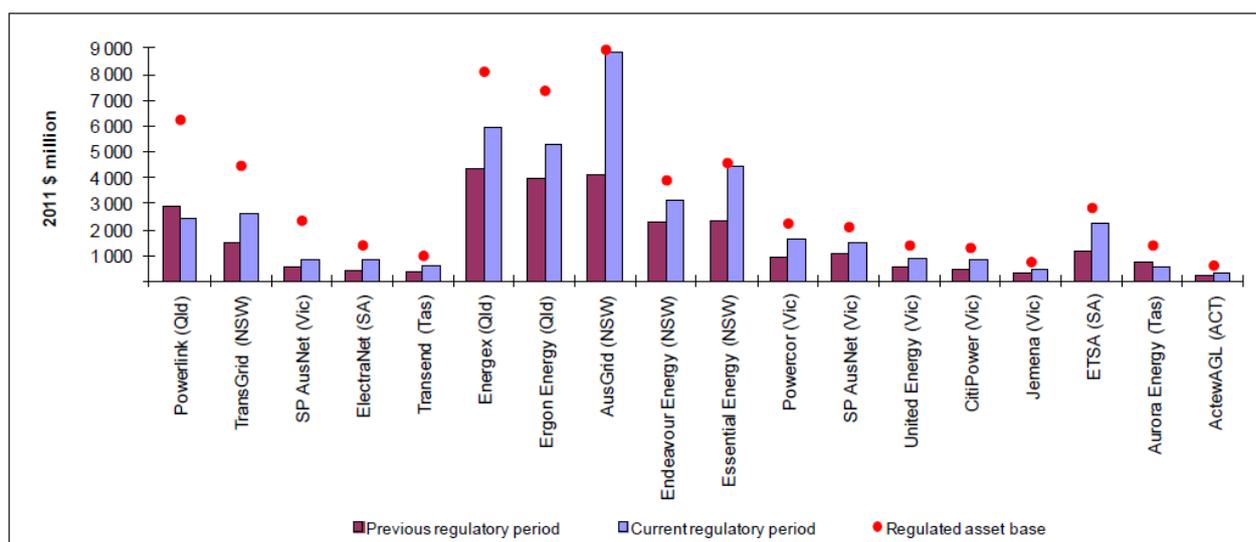
While informal processes are by definition less amenable to prescription the Commission 'informally' applies a SLC test and it should be guided to apply a public benefits test in the same way.

4. Access and Pricing Regulator

EnergyAustralia notes recommendation 46 that access and pricing functions of the energy, telecommunications and water industries be transferred to a single regulator. Whilst EnergyAustralia supports the principle of a 'monopolies regulator', we urge the Panel to fully consider the impacts of this change. The Panel should recognise the challenges any new regulator faces and the potential for perverse outcomes which often come at consumers' expense.

Using the energy sector as an example, the Australian Energy Regulator (AER) is still a relatively young regulator having only been established in 2005. The AER's short history as the regulator of monopoly distribution service providers shows the challenges any regulator will face in its formative years. The AER took up responsibility for distribution and transmission network determinations from jurisdictional regulators from 2008. Figure 1 shows the expenditure of transmission and distribution services in the final years of regulation by jurisdictional regulators and the most recent determination undertaken by the AER. These increases in transmission and distribution charges have flowed through to consumers and are one of the primary reasons by energy bills have increased significantly in the last decade.

Figure 1: Electricity Network Investment – Previous and Current Regulatory Period



Source: AER Submission to Senate Select Committee on Electricity Prices, 2012

If an access and pricing regulator were to be established, EnergyAustralia supports the ACCC administering competitive and consumer protection elements of the energy sector. The ACCC has sufficient experience in this area and is well equipped to subsume the powers of the AER.

Splitting regulatory functions is a complex process and it is inevitable that there will be 'grey areas' of responsibility that will sit between regulators or, conversely, could be administered by multiple regulators. There are also significant administrative costs for Government and businesses associated with regulatory function change. Should the panel proceed with recommendation 46, it should undertake a detailed analysis of the costs and benefits of any change to ensure it will deliver benefit to consumers and the economy. Further, we encourage the Panel to recommend to policy makers that if the recommendation is to be implemented that it be done so in its entirety. Any piecemeal approach will result in increased regulatory burden and administrative cost with no commensurate consumer benefit.

5. Further information

For further information on any issues raised in this submission please contact Lee Evans, Policy & Advocacy Manager, on (03) 8628 1185 or at lee.evans@energyaustralia.com.au.