

ENERGY NETWORKS ASSOCIATION

Submission to the Productivity Commission

**Review of National Competition Policy
Arrangements**

Response to Issues Paper

June 2004

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Overview

The Energy Networks Association (ENA) welcomes the release of the Productivity Commission's *Issues Paper – Review of National Competition Policy Arrangements* (the Issues Paper) and the commencement of the Commission's inquiry.

The competition framework for energy network businesses has been a key focus of National Competition Policy (NCP) reforms over the last decade. The direct and substantial experience of energy networks in the implementation of NCP components (such as the development of industry-specific third party access regime in electricity and gas) means that industry considers it is well-placed to provide some guidance to the Commission's inquiry on appropriate arrangements on the issues relating to extending NCP arrangements to new policy areas, and bringing to completion reforms already commenced.

Following experience to date with implementation of NCP reforms in electricity and gas, and the proposed refinement of these arrangements being considered currently by the Ministerial Council on Energy (MCE) and Council of Australian Governments (CoAG), the ENA has developed a number of best practice principles for the Commission's consideration which may be of assistance in its inquiry and recommendations.

Background

This submission responds to the Productivity Commission *Issues Paper – Review of National Competition Policy Arrangements* issued in April 2004.

The Energy Networks Association is the national representative body for gas and electricity distribution network businesses. Energy network businesses deliver electricity and gas to over 12 million customer connections across Australia through approximately 800 000 kilometres of electricity lines and 75 000 kilometres of gas distribution pipelines. These distribution networks are valued at more than \$28 billion, and each year energy network businesses undertake capital investment of more than \$2 billion in network reinforcement, expansions and greenfield extensions.

Impact of NCP reforms on energy networks

Energy network businesses have been at the forefront of, and significantly impacted by, the application of National Competition Policy reforms since the 1990s.

Key components of the NCP framework which have had significant effects include:

- intergovernmental agreements on electricity and gas market reform
- development of third party access regimes covering gas and electricity sector infrastructure

- implementation of competitive neutrality arrangements
- establishment of independent economic regulatory bodies to oversee pricing arrangements in relation to natural monopoly infrastructure

The ENA supports the objectives of the national competition policy initiative of improving the competitiveness and flexibility of the Australian economy and delivering higher living standards.

Due to the direct experience which energy network businesses have had with the implementation of some of the cornerstone NCP reforms over the past decade, the ENA considers that it is well positioned to offer a number of recommendations to the Commission's inquiry into extending NCP reforms into new areas, and bringing to completion a number of reforms still outstanding in some areas.

Extending existing NCP reform – unfinished work in energy

The Issues Paper seeks information on whether current energy initiatives being implemented by the Council of Australian Governments are appropriate ways to extend NCP reforms in this sector and whether there are specific impediments to additional reforms in this area.

The ENA strongly supports the focus being placed by Australian governments through CoAG and the MCE on achieving appropriate market, regulatory and governance arrangements in the energy sector. This work has been undertaken in the form of a series of joint ministerial statements and decisions, and the agreement on new institutional arrangements covering electricity and gas scheduled to be implemented from 2004 onwards. One of the first tangible elements of this energy market reform program has been the development of an Australian Energy Market Agreement and draft Commonwealth and State legislation to implement new institutional arrangements which are planned to eventually cover all sectors of the energy market.

The ENA considers that it is currently unclear whether these existing energy initiatives incorporate all the elements which are necessary for the development of a competitive and efficient energy market which underpins ongoing investment in new and existing infrastructure. Some principles which the ENA consider should be more explicitly contained in the existing energy market reforms include:

- transparency and clarity in the determination of the objectives for the energy market as a whole, and individual market and regulatory institutions within the market
- clearer delineation and structural separation between energy markets institutions, to ensure the separation of functions of market rule-setting, enforcement, generic competition law functions and policy advice

- strong and effective merit and judicial appeal provisions in relation to access pricing decisions to ensure accountability, limit the impact of regulatory error, and recognise existing property rights
- genuinely enhanced scope for market participation in the development of the regime
- recognition of the ‘public good’ characteristics of energy market regulation and the implications for funding of energy market institutions
- a commitment to strong accountability mechanisms for any market-funded institutions which are established
- a clear process for the achievement of the goal of improving the quality and reducing the overall cost of regulation, as opposed to a more mechanistic process of regulatory harmonisation and standardisation

From these specific concerns the ENA considers a number of generic principles can be derived. Explicit recognition of these general principles may be helpful for the Commission in future recommendations on extending the scope of NCP reforms and bringing to completion reforms already underway.

ENA Recommendation

The ENA considers that the Commission should recognise a number of general ‘best practice principles’ drawn from ENA experience in energy market reforms that will facilitate effective competition reforms:

- *in establishing regulatory regimes under NCP reforms it is critical that the objectives of the regime and any possible regulatory interventions allowed for under the regime in the market are clearly set out by governments*
- *dedicated bodies established to administer new competition arrangements should be given clear objectives, and, where new objectives are being delegated to existing bodies, governments should carefully consider the potential for conflicting priorities*
- *there should be a clear separation between regulatory rule making and rule enforcement*
- *where NCP reforms impact substantially on existing property rights merit and judicial review arrangements are critical to ensure accountability, and limiting the overall risks and costs of regulatory intervention*
- *where new regulatory and market arrangements are to be implemented, key stakeholders including industry and consumers must have effective opportunities to participate in both the initial and ongoing development of these arrangements*

The Energy Networks Association
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