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Mr Gary Banks
Chairman
Productivity Commission
Locked Bag 2 Collins Street East
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Dear Mr Banks

Productivity Commission

Discussion Draft – *Review of National Competition Policy Reforms*

Thank you for the opportunity to comment on the discussion draft *Review of National Competition Policy Reforms*.

The Commission's support of the Council of Australian Government's (CoAG) vision for the national energy market is encouraging. esaa welcomes the Commission's recommendations on competition reforms in the energy sector, particularly those relating to completion of all outstanding elements of the existing National Competition Policy reform agenda and implementation of the Ministerial Council on Energy package, to further the development of the national energy market.

As energy demand rises, the need for new investment in the stationary energy supply industry – for fuel supply, generation, transmission and distribution – is well documented. Enhancements to competition, greater certainty and reduced regulatory burdens, driven through a revitalised national competition policy, would do much to facilitate appropriate investment decisions and encourage new investment.

As noted in the discussion draft, competition has delivered considerable benefits to the economy over the last two decades. Within the electricity sector, competition reforms have improved productivity and provided internationally competitive electricity prices for customers. New generation and network capacity investments have taken place in response to these market signals.

In the gas industry, enabling third party access to transmission and distribution pipelines has supported the early development of greater downstream competition. However, as noted in esaa's earlier submission, the relatively aggressive economic

regulation experienced by the pre-existing pipelines has resulted in new pipelines being built and operated in a manner that tries to avoid economic regulation. esaa supports the Commission's findings in its *Review of the Gas Access Regime* and will pursue these proposed reforms with governments.

esaa supports the PC's proposed 'future reform agenda' in the *Review of National Competition Policy Reforms*. In particular, esaa is pleased that the Commission's review found no evidence of "significant problems" in relation to merger and acquisition activity in the energy sector. esaa commends the PC's position that "*any knee-jerk regulatory response could discourage investment in the industry and reduce the scope for market structures to evolve*".

However, esaa remains unconvinced of the need to further review whether the processes for assessing the competition implications of reintegration in the electricity industry need to be strengthened.

The energy markets are becoming increasingly mature and national competition policy has delivered significant improvements in the level of competition. The *Trade Practices Act 1974* (TPA) is the main legislative vehicle for administering competition policy and applies equally to *all* industries. In particular, the TPA prevents the exercise of market power and provides guidance on mergers and acquisitions for all commercial activities undertaken within the Australian economy. Any concerns about generator market power or vertical/horizontal integration should be dealt with using the TPA and not new, industry specific regulatory instruments.

The pursuit of sector specific regulatory approaches is unnecessary and inappropriate. To date, we have seen no evidence to suggest that the TPA provides the ACCC with insufficient regulatory power in relation to proposed mergers and acquisitions that have the potential to lessen competition. One of the goals of the National Competition Policy reform agenda was to move away from sector specific regulatory approaches and toward a robust framework for competition within the Australian economy. This remains an appropriate policy objective and the energy sector should be dealt with under this regime.

esaa supports the Commission's views on extending CoAG's responsibilities in relation to greenhouse gas abatement policies and its further analysis of areas where nationally coordinated action would lead to high pay offs. We agree with the Commission's intentions to enhance CoAG's abilities to coordinate greenhouse gas abatement measures across jurisdictions that are consistent with sustainable development goals: ensuring the economy, environment and society are equally weighted in policy considerations.

Since the implementation of the National Competition Policy reform agenda, and concomitant electricity reform agenda, increased competition in the national electricity market has undoubtedly contributed to lower wholesale prices. The roll out of full retail competition in most States and Territories was a key objective of National Competition Policy. Retail price regulation, in an environment where governments and suppliers have gone to considerable expense to introduce full retail competition (and where robust competition exists), is unnecessary. Retail price regulation serves to discourage new entrants to the retail market and blunts price signals to investors in

new supply capacity. In addition, it encumbers the demand management initiatives of the MCE as customers are not exposed to the real cost of their energy consumption.

esaa supports the Commission's position that, where governments wish to artificially restrain retail prices to achieve their social objectives, this should be done through Community Service Obligations and should require explicit payments from the relevant government for the subsidy. Therefore, esaa welcomes the Commission's goal to pursue further improvement in the efficiency of, and outcomes from, retail price and access regulation.

In pursuing the "next level" of competition reforms, as outlined in the "preliminary future reform agenda", we are confident the Commission will remain cognisant of the fact that National Competition Policy, although not fully implemented, has seen a significant increase in the level of competition in the energy supply industry. The benefits of this increase in competition have flowed to all consumers and the economy more generally. Further benefits to consumers will rely on new investments, which will only occur in a stable regulatory environment that is least-cost to industry. If the energy industry is singled out, and the regulatory burden becomes even greater and more uncertain than it is in other industries, this much needed investment will be threatened.

We support the direction of the Commission's draft recommendations and look forward to the release of the final report.

Yours sincerely

Brad Page

Chief Executive Officer