

Ring-fencing Guideline Electricity Transmission Issues Paper

Attachment 1 Stakeholder feedback template

The template below has been developed to enable stakeholders to provide their feedback on the questions posed in the Ring-fencing Guideline Electricity Transmission Issues Paper and any other issues that they would like to provide feedback on. The AER encourages stakeholders to use this template and to provide reasons for stakeholders' views to assist the AER in considering the views expressed by stakeholders on each issue. Stakeholders should not feel obliged to answer each question, but rather address those issues of particular interest or concern. Further context for the questions can be found in the issues paper.

Submitter details

ORGANISATION: Australian Energy Operations

CONTACT NAME: Glen Thomson

EMAIL: gthomson@aeoperations.com.au

PHONE: 0416 213 968

Section 2.1 – Preventing cross-subsidies – Activities versus services

AER Question	Stakeholder feedback
1. What are the potential harms and benefits of the guideline referring to services, rather than activities?	<p>We consider that it is appropriate the transmission ring-fencing guideline refer to services rather than to activities.</p> <p>Consistent use of language is an important step in achieving alignment between the distribution and transmission ring-fencing regimes.</p>

Section 2.2.2 – Legal separation – Scope of services

AER Question	Stakeholder feedback
2. What are the potential harms and benefits for consumers, the market and TNSPs of requiring TNSPs to	<p>We support legal separation between transmission businesses providing transmission services and non-transmission services.</p>

<p>legally separate transmission and non-transmission services?</p>	<p>Operating in Victoria we understand that the incumbent TNSP AusNet has in place legal separation from its affiliated entity Mondo which provides competitive transmission and other non-transmission services.</p> <p>We agree with the AER that legal separation:</p> <ul style="list-style-type: none"> • provides transparency and assurance about separation arrangements, including the way costs are allocated. • supports the non-discrimination ring-fencing provisions to deal with each other at arms-length. <p>However, we agree with the AER that legal separation itself is not a sufficient ring-fencing tool to address discrimination where there is sharing of staff, offices, branding and commercially sensitive information.</p> <p>For this reason, it is important that both legal and functional separation be required between a transmission business and its affiliates providing non-transmission services.</p>
<p>3. How would the definitions for transmission services set out in Chapter 10 of the NER cover these new and emerging electricity services?</p>	<p>Classification of transmission services is necessary as part of this review.</p>
<p>4. What is the appropriate range of services TNSPs should be able to provide without legal separation? For example:</p> <ol style="list-style-type: none"> a) Distribution services; b) Contestable electricity services; and c) Non-electricity services. <p>What are the possible harms and benefits to consumers and the market from TNSPs offering these services?</p>	<p>We support transmission businesses being legally separated from providing non-transmission services.</p> <p>Where legal separation is not required we consider, at a minimum, there be effective accounting and transactional separation.</p>
<p>5. In the case of TNSP-owned batteries, should TNSPs be able to lease excess capacity to third parties? What are the potential harms and benefits to consumers, the market and TNSPs of this?</p>	<p>We do not consider that transmission businesses should be permitted to lease excess battery capacity to a third party without first obtaining a waiver from the AER.</p> <p>This aligns with distribution businesses that are now required to obtain a waiver if they seek to allow a retailer to use the spare capacity of a battery connected to the distribution network. The AER basis is the risk of cross-subsidisation of a competitive service.</p> <p>We support consistency of ring-fencing arrangements and see no reason, that given the size and regulated nature of transmission business, that they should be exempt from these ring-fencing requirements. Therefore, we support regulated transmission businesses being required to obtain a waiver to use assets such as batteries to provide services other than prescribed transmission services.</p>

Section 2.2.4 – Legal separation – Exceptions to legal separation

AER Question	Stakeholder feedback
6. In relation to non-transmission services, what would be the harms and benefits to consumers, the market and TNSPs of moving to a waiver approach rather than a revenue cap?	We support moving towards a waiver approach.
7. If a revenue cap approach was maintained, what would be the appropriate form and magnitude of that cap?	We do not consider that any revenue cap should be maintained.

Section 2.2.5 – Legal separation – Grandfathering arrangements

AER Question	Stakeholder feedback
8. If legal separation is applied, how should existing services be treated?	<p>If legal separation is applied we consider that a transitional approach should be adopted similar to the approach taken with respect to distribution businesses when the distribution ring-fencing guideline was introduced.</p> <p>We consider that a transitional approach both will recognise the range of circumstances faced by the various transmission businesses and reflects the need for certainty and confidence amongst participants, or potential participants, in developing markets.</p> <p>If grandfathering arrangements were to be introduced then this would ultimately lead to a very complicated regime where different rules applied to different transmission businesses. This would undermine consumer confidence in ring-fencing regimes and make it far more difficult to observe when the ring-fencing regime is being complied with due to the various unique rules that would be in place.</p>

Section 3.1 – Preventing discrimination – Obligation not to discriminate

AER Question	Stakeholder feedback
9. What are the key potential harms and risks that an obligation not to discriminate should target?	<p>An obligation not to discriminate should be focused on preventing anti-competitive behaviour and cross-subsidisation. We support the AER introducing the four tools identified in the issues paper to address any discrimination.</p> <p>We consider that by implementing the four tools identified, this adequately addresses the risks of information sharing and discriminatory practices.</p>
10. What are the potential harms and benefits to consumers, the market and TNSPs of strengthening the obligation not to discriminate?	<p>It is important that given the regulated size and nature of transmission businesses, that they should not be able to discriminate in favour of their own related electricity service providers. Imposing strict anti-discrimination obligations will support development of new and existing competitive markets.</p> <p>Conversely, without anti-discriminatory measures, this will allow related electricity service providers to receive unfair advantages at the expense of competition and market development.</p>

Section 3.2 – Preventing discrimination – Functional separation

AER Question	Stakeholder feedback
<p>11. What are the potential harms and benefits to consumers, the market and TNSPs of introducing additional functional separation obligations for:</p> <ul style="list-style-type: none"> a) staff sharing; b) office sharing; and c) branding and cross-promotion? 	<p>Full functional separation should be introduced between regulated transmission services and contestable transmission services.</p> <p>In our view, full functional separation would involve a prohibition on:</p> <ul style="list-style-type: none"> • sharing of staff • sharing of offices • sharing of brands or cross-promotion. <p>The benefits of full functional separation with respect to staff and office sharing are that it greatly reduces the risk of information prejudicial to competitive markets being passed to an unregulated affiliate of the transmission business.</p> <p>Because there is a strong commercial incentive to share information, functional separation is warranted to reduce this risk and prevent related electricity service providers from gaining an advantage in contestable markets.</p> <p>One reason for this is that there is currently little in place in the way of ring-fencing requirements to prevent a TNSP informing its unregulated entity of new contestable works.</p> <p>Separate branding, and the prevention of cross-promotion, is needed to promote competitive outcomes in contestable markets. Without such a restriction, a related electricity service provider may be perceived by customers to have an advantage over its competitors by reason of its relationship with the transmission business.</p> <p>It is also important that an affiliated entity providing competitive services is not able to cross-promote the TNSP, as this will ultimately lead to shared branding, which the restriction on cross-promotion seeks to avoid.</p>
<p>12. Should any new functional separation obligations apply to all contestable services? Should any exceptions apply, and if so, why?</p>	<p>Full functional separation should apply to all contestable services without exception.</p> <p>In Victoria we consider that full functional separation is especially important as the regulatory and legislative framework for how parties connect to the transmission network in Victoria is different from other jurisdictions. This is because Victoria is the only jurisdiction in the National Electricity Market (NEM) where the Australian Energy Market Operator (AEMO) has declared network functions.</p> <p>In Victoria if we, as a contestable transmission business, were to build and own a terminal station, then we also have the right to undertake the operation and maintenance on those assets.</p> <p>This is different in all jurisdictions other than Victoria, where a competitive transmission business would have to hand those assets over to the incumbent TNSP to operate and maintain.</p> <p>We want to maintain competition in Victoria and believe that</p>

	<p>ring-fencing and the requirement for full functional separation is a mechanism that can be used to promote competition for connections and contestable services.</p> <p>Full functional separation will serve to prevent instances where the incumbent TNSP could impose advantages to an affiliate in terms of the timing and cost of the “cut-in” to the shared network, or through the price, terms and conditions associated with the operation and maintenance for the identified user shared asset.</p> <p>Ring-fencing could further support competition for competitive connection services by requiring that bids involving both regulated (prescribed and negotiated) and unregulated works be separated, to remove the risk of cross-subsidisation by the incumbent TNSP to lower the costs associated with the unregulated works.</p> <p>An incumbent TNSP could also be required to provide proforma connection contracts for regulated works, to remove the risk of discrimination in non-price terms and conditions.</p> <p>If there is a reason why functional separation should not apply, then we support applying for a waiver from those requirements.</p>
--	---

Section 3.3 – Preventing discrimination – Information access and disclosure

AER Question	Stakeholder feedback
<p>13. What are the potential harms and benefits to consumers, the market and TNSPs of aligning the transmission and distribution guidelines in relation to information access and disclosure?</p>	<p>The sharing of privileged information received by a regulated TNSP with an unregulated affiliate can negatively impact competition. Consequently, the separation of staff and offices akin to that required of distributors is a necessary step.</p> <p>Stricter rules regarding information sharing must be imposed. In this regard, we support the AER aligning this with the current obligations applied in the distribution ring-fencing guideline.</p>
<p>14. Are there any potential inconsistencies with the Transmission Connections and Planning Arrangements rule change we need to consider?</p>	<p>The Transmission Connections and Planning Arrangements rule change does not apply in Victoria.</p>

Section 3.4 – Preventing discrimination – Requirement for service providers to comply

AER Question	Stakeholder feedback
<p>15. What are the potential harms and benefits to consumers, the market and TNSPs of aligning the transmission and distribution guidelines in relation to obligations on third party service providers that support the provision of prescribed transmission services?</p>	<p>We support the AER aligning the transmission ring-fencing guideline with the distribution ring-fencing guideline and consider it appropriate that non-discrimination obligations are extended to third-party service providers.</p> <p>We also support transmission businesses being able to apply for a waiver from some, but not all, elements of this obligation, consistent with the distribution guideline.</p>

Section 4 – Compliance

AER Question	Stakeholder feedback
16. What are the potential harms and benefits to consumers, the market and TNSPs of expanding the scope of compliance reporting?	<p>We support the AER aligning the compliance reporting with that required of distribution businesses.</p> <p>We understand that a culture of compliance is critical to building consumer confidence in energy markets.</p> <p>We also consider that compliance regime distributors are subject to balances the competing needs to minimise cost and provide confidence that the ring-fencing guidelines obligations are being adhered to.</p>
17. Should the timeframe for reporting all breaches be extended to 15 days?	The reporting timeframe should be extended to 15 business days so that it aligns with the distribution ring-fencing guideline.

Section 5.1 – Other issues - Waivers

AER Question	Stakeholder feedback
18. Would there be benefit in the AER providing more clarity on the application and assessment process for waivers?	<p>We support the AER making the waiver and subsequent assessment process as transparent as possible.</p> <p>The easier this process is to understand, the greater certainty transmission businesses will have when submitting a waiver application to the AER. A clear and efficient waiver process will reduce administrative burden on both the AER and transmission businesses as it will result in less 'back and forth' until the AER requirements are met.</p>
19. Do you agree with the AER's initial views that certain clauses should not be subject to waivers (e.g. the obligation not to discriminate and information access and sharing)? Please explain your reasons.	<p>We agree with the AER that certain clauses should not be subject to waivers.</p> <p>The separation of accounting obligations are essential elements of the Guideline for giving effect to objectives of transparency and accountability and should be exempt from the waiver process.</p> <p>We also consider waivers should not be allowed in relation to the cost allocation obligation. Waivers could undermine certainty and confidence in the market for non-network services, and customers' confidence in efficient prices for regulated services.</p> <p>Allowing waivers from the general obligations not to discriminate could undermine competition in the market for non-network services. We consider this approach will support establishment of a level playing field for provision of non-network services.</p> <p>We also believe that there should not be an ability to obtain a waiver from functional separation requirements. This would align with distribution businesses, where there are certain exemptions built into the guideline.</p>
20. Which elements of the assessment criteria used to assess waiver applications by DNSPs would be appropriate for transmission?	We believe that the waiver assessment criteria that applies to DNSPs would be equally as appropriate for TNSPs.
21. What factors should we take into account in considering the duration of waivers?	<p>Any waiver issues should be for a defined period of time.</p> <p>When determining the appropriate waiver length, the AER will need to consider that over time, the reasons why the</p>

	<p>waiver was granted may no longer be valid.</p> <p>One reason for this is that competitive markets may have developed in the area the waiver was sought.</p> <p>For this reason, the AER will need strike an appropriate balance between the benefits of granting the waiver, and the harm to competitive markets that could arise if the length of the waiver is too long.</p>
<p>22. Are there any circumstances where class waivers may be appropriate for transmission?</p>	<p>Class waivers may arise in certain situations and it useful to have the ability to grant such a waiver if the need arises.</p>

Section 5.3 – Other issues – Additional ring-fencing obligations

AER Question	Stakeholder feedback
<p>23. What are the potential harms and benefits to consumers, the market and TNSPs of removing the ability of the AER to impose additional obligations on a TNSP (clauses 9 and 10 of the guideline)?</p>	<p>We support certainty of obligations, and we agree with the AER that a more comprehensive and stable set of guidelines is to be preferred when compared with an ad hoc approach to ring-fencing.</p>
<p>24. Are there any other issues in relation to this review that you would like the AER to consider?</p>	<p>We consider that for a ring-fencing guideline to be effective it must be actively enforced.</p>