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Submitted electronically AERringfencing@aer.gov.au

Dear Arek

Issues Paper: Updating the Ring-fencing Guidelines for Stand-Alone Power Systems and Energy Storage Devices

We are pleased to participate in the Australian Energy Regulator's (**AER's**) consultation process to update the *Ring-fencing Guideline for Electricity Distribution* (**Guideline**) to "reflect the changing nature of services offered by distribution businesses, including via new technology such as stand-alone power systems (**SAPS**) and storage devices".[1] It is critical to the long term interests of electricity users that the Guideline is amended in a way that fosters an environment that encourages all potential investors, including distributors (**DNSPs**) to innovate in the way services are delivered, including by way of investment in these new technologies. Where doing so will enable DNSPs to provide essential energy services efficiently and effectively to their customers. It is important that the amendments to the Guideline must contribute, and not detract from the achievement of the National Electricity Objective (**NEO**).

In considering whether the proposed amendments to the Guideline contribute to the achievement of the NEO, it is important that the AER consider the following principles:

1. Technological neutrality is paramount. Investment signals will be distorted if the Guideline expressly or implicitly excludes DNSPs from the adopting of certain technologies. This is likely to preclude technology and service based innovation and lead to sub-optimal customer outcomes. The AER has long recognised, in the context of the framework and approach, that the service being provided is the fundamental proposition, not the technologies used to provide it.

2. Regulatory intervention is justified only to the extent there is an actual or probable harm to competition. As an economic regulator, the AER is acutely aware of the damage that unnecessarily prescriptive intervention can cause to the development of competitive markets, particularly markets in their infancy. The AER should avoid updates to the Guideline based solely on theoretical risk of harm. Regulatory over-reach is likely to cause more damage to fledging competition or market development than allowing market forces the opportunity to self-correct. The lack of development of SAPS, particularly in the wake of the Black Summer bushfires is an example of the actual harm that premature or unnecessarily prescriptive regulation can do to the development of safe, efficient and effective outcomes for customers.

3. The adequacy of the existing consumer and competition protections under the energy regulatory framework and competition law. The National Electricity Rules (**NER**) already require DNSPs to comply with a number of processes and regulatory instruments that protect consumers from paying more than the efficient cost for regulated electricity services. These include the Cost Allocation Methodology, the Shared Asset Guideline, the Regulatory Investment Test for Distribution and the five-yearly revenue review process. Similarly, unregulated entities participating in or considering entry into markets for contestable services benefit from the restrictions on DNSPs imposed by the Guideline in its existing form and are protected against

[1] Australian Energy Regulator, *Updating the Ring-fencing Guidelines for Stand-Alone Power Systems and Energy Storage Devices, Issues Paper*, November 2020, 7.

anti-competitive conduct by the *Competition and Consumer Act 2010* (Cth) (**CCA**). Any concerns about its inability to monitor competition in unregulated markets are best referred to the Australian Competition and Consumer Commission (**ACCC**), rather than amendments to the Guideline that would preclude DNSPs from providing innovative, effective, efficient and safe solutions for customers. Equally, the AER is not in a position to monitor the activities of third-party providers of SAPS or storage solutions. By contrast, the AER has a broad set of regulatory processes and powers at its disposal to ensure the regulated services provided by an NSP do not cross-subsidise, or discriminate against non-affiliated, contestable electricity service providers (**Regulated Cost Framework**). The unregulated returns that an NSP may make, no different to those made by third party providers of SAPS or storage solutions, should not cause concern to the AER, provided the Regulated Cost Allocation Framework is applied in relation to the regulated activities of the NSP.

4. Exemptions from the Guideline will have pro-competitive benefits and is better for customers. Exemptions will facilitate appropriate DNSP participation in the development of SAPS and storage technologies by providing the flexibility necessary to develop new solutions and leverage their experience operating electricity networks to the benefit of consumers and third parties. Subjecting DNSPs to the administrative burden of a waiver system – or by expressly excluding DNSPs from part or all the market altogether – would impede innovation and dampen the development of competition. This will be to the obvious detriment of consumers.

Specifically, the AEMC design for DNSP led Priority 1 SAPS would be complemented by an exemption framework that aligns with the maintenance of 'poles and wires' supplies, that is essential for guaranteeing SAPS customers with emergency responses and a provider of last resort.

5. The use of storage devices on transmission networks should be considered anew. AusNet Services welcomes and supports the AER's acknowledgement that the issues arising from the use of storage devices by TNSPs will be different from those discussed in this consultation process. Regulatory outcomes that best contribute to the achievement of the NEO are those that are crafted to fit the market circumstances, and AusNet Services looks forward to participating in those discussions in the context of the AER's review of the Transmission Ring Fencing Guidelines.

AusNet Services' detailed responses to each of the consultation questions posed in the Issues Paper is contained in the submission attached to this letter.

We look forward to contributing further to the AER's deliberations throughout the remainder of the review. If we can assist the AER with any queries in relation to this submission, please contact Justin Betlehem on 0433691111 or justin.betlehem@ausnetservices.com.au.

Yours sincerely

Tom Hallam

General Manager Regulation

Attachment

Submission on AER Issues Paper: Updating the Ring-fencing Guideline for Stand-Alone Power Systems and Energy Storage Devices

1. Standalone Power Systems

Question 1: Do stakeholders agree that in some circumstances an exemption would be preferable to requiring DNSPs to apply for a ring-fencing waiver?

The amendments to the Guideline under consideration in this consultation process will only deal with Priority 1 SAPS. These are DNSP led-SAPS services that are provided only to existing DNSP customers as an alternative to a traditional 'poles and wires' network configuration. Despite the change in the technology used behind the customer connection point, there is no change to the customer's participation in the NEM (including retail arrangements) or to the DNSP's service obligations. The focus of this consultation on Priority 1 SAPS **only** is a critical point, as 3rd party-initiated SAPS (Priority 2 SAPS) have different objectives and justifications and raise different ring-fencing considerations. For Priority 1 SAPS, a fit-for-purpose ring-fencing guideline will be consistent with the DNSP's obligation to provide an integrated energy supply service to the customer's point of connection. Exempting the DNSP from the ring-fencing restrictions gives the DNSP flexibility in sourcing the generation component of the SAPS, which is the approach most compatible with the deployment of Priority 1 SAPS.

Exemptions are more cost-effective for both the DNSP and the AER given the time taken to prepare and review waivers for each individual project. Importantly in this case, exemptions are more aligned with the policy of Priority 1 SAPS.

The AEMC design for Priority 1 SAPS (refer to the AEMC's Final Report, Review of Stand-Alone Power Systems, May 2019 (**AEMC Final Report**)) is built around an integrated customer service whereby DNSPs adopt a SAPS solution in lieu of maintaining a 'poles and wires' supply to customers already connected to its network, but typically on the fringe, and where this is the efficient investment decision. The change in technology used behind the customer connection point does not affect the customer's participation in the NEM (including retail arrangements), nor the DNSP's service obligations. A Priority 1 SAPS solution would necessarily provide a premium reliability SAPS-based service to the customer, consistent with grid service reliability levels. For Priority 1 SAPS, the connection point supply remains the accountability of the DNSP, and a DNSP decision favouring this technology choice for maintaining supply to a customer is intended by the framework to be rigorous and transparent.

For DNSPs to have confidence that SAPS assets will deliver the service levels required, at the fringes of the network where they will typically be deployed, DNSPs will require flexibility in the way they source and operate these assets. The AEMC recognised this in its Final Report:

> *In addition, the Commission does not consider it is necessary to establish a set of factors to assist the AER in developing potential new deemed exemptions (similar to the existing 'regional office exemption') to apply in the context of SAPS. The process for amending the ring-fencing guidelines is set out in the NER and includes requirements on the AER to consult with a range of parties, including jurisdictions, participants, AEMO and other interested parties, in accordance with the distribution consultation procedures. The Commission considers these arrangements are sufficient to ensure that matters related to the potential development of new deemed exemptions (or changes to existing deemed exemptions) will be carefully considered and widely consulted.*[2]

The design the AEMC envisaged for Priority 1 SAPS also requires rigour and transparency from DNSPs deploying SAPS. The AEMC proposed that:

> *To further support DNSPs to achieve efficient planning and investment outcomes in respect of SAPS, the Commission is recommending a small number of changes to the existing network planning arrangements to increase transparency around both the opportunities for, and decisions made in respect of, SAPS:*

[2] AEMC, Final Report, Review of Stand-alone Power Systems, 30 May 2019, page 83

- *The DAPR reporting requirements in the NER should be amended and clarified to include a number of items specific to SAPS. Specifically, DNSPs should be required to report on SAPS opportunities over the forward planning period, SAPS projects committed for implementation over the planning period and SAPS options considered in the past year. Further, DNSPs should be required to report on the total numbers of SAPS implemented, and customer premises transitioned to SAPS, in their areas[3].*

Until the whole framework is established, including through provisioning in the NEL, NER, ring-fencing guidelines and any appliable jurisdictional instruments, DNSPs are unable to treat SAPS as an option. It accordingly does not yet appear in DNSP forward plans. However, to put the option in context, during the AEMC review exploring this option, AusNet Services advised the AEMC that it foresaw 300 to 400 potential connection point applications. These would be at the fringes of the network, in disparate locations, and are small installations. The AEMC observed in its final report[4] that it expected only small numbers of Priority 1 SAPS.

In the circumstances, a deemed exemption from ring-fencing prohibition on a DNSP providing the (notional) generation service component of the SAPS would best align with the intended application of Priority 1 SAPS. It would be essential in guaranteeing customers with emergency responses and a provider of last resort. This would be consistent with the framework placing accountability on the DNSP for the service outcome of an integrated SAPS. Individual waivers, and default waivers, would be an unnecessarily cumbersome approach, inconsistent with this form of supply connection by the DNSP being supported by the broader NEM framework (as noted above this is still being finalised). A waiver system would involve considerable time and cost for the DNSP and the AER, particularly in situations where the installation of the SAPS being considered is unlikely to have any material impact on competition.

Question 2: Are there other types of exemptions we should consider?

The exemptions framework should have regard primarily to the identification of DNSP led SAPS as Priority 1 SAPS, and the purpose of a process for their deployment being included in the NEM framework. Consequently, there should be a clear, separate exemption for Priority 1 SAPS.

The purpose for Priority 1 SAPS is strictly for the DNSP to continue to provide services to existing customers more efficiently. The regulatory framework's financial incentive properties drive DNSP behaviour to efficient decision making. The Priority 1 SAPS framework will include a high level of reporting and transparency.

Without a separate, clear exemption for Priority 1 SAPS, the suggested categories for exemptions may simply restrict the DNSP from adopting the most efficient solution.

In our view, a Priority 1 SAPS is an integrated asset solution for which the DNSP is fully responsible. This does not mean the DNSP would not procure the generation service from a 3rd party, but the DNSP will make this decision having regard to various factors, including confidence that the service can be provided to the DNSPs specification, maintained to that standard, and over many years. Only small numbers of SAPS are likely, and potentially established at disparate locations on the extremities of the network. The DNSP should have maximum flexibility to make decisions on the logistics and risk management of deployment method.

Question 3: In regard to the exemptions above, or any others, what is an appropriate threshold?

As discussed in response to Question 2, our view is that the Guideline should provide a broad exemption for all licensed DNSPs.

As only small numbers of Priority 1 SAPS are expected to be deployed, the AER may wish to consider temporarily applying a cap on revenue generated from Priority 1 SAPS as a secondary protection. The cap would be derived using a percentage of maximum allowed revenue, with the percentage set at a level that would not interfere with expected SAPS deployment. AusNet Services considers the threshold is most simply set as a percentage of the DNSP's Regulated Asset Base (**RAB**) for a given regulatory control period.

[3] Ibid, page viii
[4] Ibid, page iii

Question 4: Should exemptions for SAPS be defined in specific detail or are generic exemptions, which would apply more broadly, preferable?

For the reasons outlined above, a generic deemed exemption should be applied. This will enable the AER to preserve the integrity of the framework and the DNSPs to deploy Priority 1 SAPS where efficient, with the benefit also of DNSPs facilitating development the market for SAPS and broader service offerings for SAPS generation systems.

The use of detailed exemption categories would create the risk and high probability of services that should be exempt not being so, because they were not identified when the specific exemptions were being drafted. This would create unnecessary time and cost for the DNSP, who would need to apply for a waiver, and for the AER, who must consider the application.

Question 5: How can we be sure that DNSPs using exemptions are complying with the Distribution Guideline?

As discussed in response to Question 1, the AEMC design for Priority 1 SAPS intends considerable rigour and transparency of activities by DNSPs in implementing the framework. This includes the forecasting of opportunities to deploy SAPS systems in the DNSPs Distribution Annual Planning Report, and reporting on SAPS options considered in the past year, and the details of actual SAPS deployments.

The information provided in accordance with the Priority 1 SAPS framework should be sufficient for stakeholders to observe whether any application is inconsistent with permitted DNSP deployment.

The AER could mitigate the risk of cross-subsidies and damage to competition by all other existing ring-fencing guideline requirements, as well as the pricing regime, Regulatory Investment Test Distribution (**RIT D**), Cost Allocation Method (**CAM**) and Shared Asset Guideline (**SAG**).

Question 6: In the above criteria do the exemption thresholds satisfy the Distribution Guideline criteria of benefits outweighing costs?

The principal governing process to guide the deployment of Priority 1 SAPS is the framework being established in accordance with the AEMC design. The AEMC's review determined the circumstances in which a SAPS solution led by the DNSP would benefit all network users. That SAPS solution is necessarily an integrated solution, with the DNSP either providing or otherwise procuring the generation assets. These are not independent of the DNSP solution. Accordingly, an exemption that enables DNSP deployment consistent with the intended framework application will inherently satisfy the criteria of benefits outweighing costs.

2. Storage Devices

General observations

AusNet Services has direct experience with the use of a battery providing support services on its network. In 2014 we installed a 1MW battery, initially as part of a trial in the Melbourne metropolitan region, but have relocated this to Mallacoota, at the extremity of our network in far east Victoria, for service from early 2021. The Mallacoota community is served by a very long radial line, which experiences frequent supply disturbances caused by strong winds bringing down tree branches and flying bark. The battery provides a short-term continuity support service during such interruptions. Additionally, we anticipate during normal network operation the battery would provide local voltage control support.

By operating a battery as it does in Mallacoota, AusNet Services is providing distribution services, which is permitted under the Guideline. However, there is the potential for a DNSP to use batteries and other storage devices which provide regulated distribution services to also provide other, non-regulated services without compromising the battery's distribution service capability. Precluding the DNSP from pursuing these opportunities disadvantages customers, who do not receive the full benefit of the battery's value stack capabilities (e.g. reduced generation curtailment).

We accept that an unfettered ability for DNSPs to offer storage-based services could be perceived as potentially having a deleterious impact on the market competition. This is despite the pro-

competitive benefits of DNSPs-led innovation, and the opportunity for learnings from DNSP projects to be of significant benefit to other market participants, including increasing confidence in the demand for new services. The utilisation of storage services is still embryonic, and DNSPs can make a significant contribution. For this current phase in industry development, we suggest the solution that would most benefit market development and the interests of end customers is for DNSPs to be able to participate in the market up to a defined cap on revenue earned or RAB invested, and provide value stacking that incentivises the efficient operation of storage. The DNSP to be required to provide detailed reporting on its activities and learnings. This would be similar to reporting required under ARENA funded projects, and the AER's Demand Management Incentive Allowance.

Question 7: What other benefits, harms or risks should we consider?

In the Issues Paper, the AER notes that unlike for SAPS, there is currently no proposed regulatory framework specifically for storage devices[5]. One observation concerning this distinction is that the use of storage is already accommodated in the NER and can be deployed by DNSPs for distribution services.

AusNet Services experience with its 1MW battery demonstrates the use of a battery in the provision of support services for the network. This particular battery has been deployed exclusively in the provision of distribution services.

However, a more efficient use of storage devices is likely to arise from exploiting the value stack of the device, beyond its use for distribution services. It is in regard to the delivery of these services that ring-fencing arrangements need to be updated.

The Issues Paper recognises the benefits from NSP participation in provision of value stacked storage services, including the deep knowledge the network businesses have on network needs, potential to host storage assets most efficiently, and potential to act as a platform for 3rd parties to conduct contestable services.

In addition to these benefits however, NSPs can also play a crucial role in proving the potential 'use cases' for new technology storage. The role of storage in the electricity market, especially beyond direct network needs, is not mature. The work of NSPs, based on the application of storage for network needs, provides an innovation opportunity to explore value stacking opportunities and provide valuable learnings for the whole of the market.

The Issues Paper also sets out several harms and risks that may arise from NSP participation in storage asset-based services. The AER notes that '… *this market is in the early stages of development, so that any decision on access may have a material and lasting impact on how the market develops'*[6]. However, NSP participation will be instrumental in advancing the development of the market in a timely way. The ring-fencing arrangements should ensure that it does not hold back the progress of storage markets.

The AER should consider avoiding the unnecessarily stifling technical innovation led by DNSPs by imposing onerous restrictions that are based on a theoretical risk, rather than any evidence that such a risk is probable or even likely.

Question 8: If NSPs use storage devices in contestable markets, how can any potential harms be managed?

Efficiency of service delivery and use of resources is a key consideration in enabling NSPs to use storage devices in contestable markets. Customers would be disadvantaged by precluding NSPs from the application of all the battery's value stack capabilities (e.g. reduced generation curtailment).

Nevertheless, unfettered rights on DNSPs to offer storge based services in the marketplace could be seen as likely to have a deleterious impact on the competitive market. However, there is no evidence that any DNSP has, thus far, or intends in the future to behave in this way to hinder the development of competition.

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[5] AER, Issues Paper, Updating Ring-fencing for Stand-alone Power Systems and Energy Storage Devices, November 2020, page 23

[6] Ibid, page 26

For this current phase in industry development, we suggest the solution that would most benefit market development and the interests of end customers is for DNSPs to be able to participate in the market via a general exemption, up to a defined cap on revenue earned, and provide value stacking that incentivises the efficient operation of storage. The DNSP to be required to provide detailed reporting on its activities and learnings. This would be similar to reporting required under ARENA funded projects, and the AERs DMIA.

A revenue threshold for non-distribution services, including *other electricity services*, of at least 5% of net revenue would allow for distribution networks to use these new storage options to resolve the many emerging reverse electricity flow issues over the next decade.

Additionally, there are already several mechanisms in place to prevent such conduct in the first place, including the anti-competitive conduct prohibitions in the CCA, the open and transparent planning processes that apply to distribution and transmission network planning.

Question 9: How should we weigh these benefits and harms to determine if a waiver should be granted? What are the priorities?

Priority should be to contributing to the achievement of the NEO by encouraging innovative and commercial solutions to be developed and brought to market. It must not be assumed that excluding DNSPs and constraining their related parties in developing storage systems will enhance the market's ability to achieve this objective.

While the possibilities for using new technology storage devices are yet to be proven and markets developed, the benefits from NSP participation need to be tapped. NSP activity will facilitate development of markets, mitigating actual harms. Therefore, a general exemption to a capped value, as discussed in response to Question 8, would be the preferable ring-fencing approach.

A waiver approach would still need to facilitate NSP participation, to give impetus to the development of storage device-based services. The waiver approach would be expected to be costly and time consuming for all parties, and due to uncertainty of outcomes is not helpful for forward planning.

However, if the AER ultimately determines to apply a waiver approach, then a set of principles which would guide the AER assessment of an application should be provided with the guideline, sufficient to give NSPs confidence to include storage technologies in their plans which contribute to network and industry development.

Question 10: Should we distinguish between direct and indirect uses of storage devices?

The NSPs, both distribution and transmission, are all facing many and varied challenges as a result of the transition to renewables and there are significant issues with the ability of customers both at a distribution and transmission level to connect and use grids, in a timely and economic fashion. In some cases, connection is virtually impossible to due to thermal capacity or system security or stability concerns. The most timely, economic and effective solutions to address those problems should be the primary objective and the ability to achieve such outcomes should not be prevented or constrained (deliberately or inadvertently) by ring fencing guidelines. In the current phase of development of new technology storage device-based services, NSPs should have flexibility to deploy storage devices with direct and indirect uses. The industry and consumers will be best served if NSPs are able to innovate with the use of storage devices and distinguishing between direct and indirect uses would likely and unhelpfully constrain this.

AusNet Services also questions the accuracy of the nomenclature used in this discussion. The example in the Issues Paper of a DNSP leasing the excess capacity on a storage device used to provided regulated services to a third party[7] is no different to a DNSP leasing space on its poles and wires to a telecommunications provider and should be treated differently.

We suggest that the partnering of NSPs and contestable providers to deliver innovative uses and cost sharing arrangements can be managed by existing structures and protections. The

[7] Ibid, page 29

appropriate regulatory treatment for a storage device example is therefore to apply the SAG and CAM to ensure the revenue/costs earned from/incurred in providing an unregulated service using a regulated asset are allocated correctly.

Question 11: Should we clarify the scope of clause 3.1(d)i of the Distribution Guideline?

AusNet Services contends that an appropriate position for the Guideline to take is to enable DNSPs to pursue non-network solutions that may be uneconomic absent the ability to earn unregulated revenues that offset the cost of the storage or other device. This would lower barriers to entry for third parties wishing to bring new products and services to market and encourage innovation, particularly on a smaller scale.

AusNet Services believes that clause 3.1(d)i as currently drafted does not prevent such endeavours. However, if the AER and/or a significant number of other stakeholders believe it does, then the scope of clause 3.1(d)i should be clarified to ensure there is no confusion about the breadth of endeavours that are permitted.

3. Improving the Distribution Guideline

General observations

Our exploration of future distribution level markets indicates that there is a need for flexibility in the arrangements whilst models are explored and tested. An entity such as AusNet Services, which is seeking to contribute to such industry development, can offer considerably more value to this work if the DNSP is able to work cooperatively with its related market services business in exploring potential futures. The Guidelines can facilitate this by distinguishing between services being offered in mature markets and in the interests of progressing industry development in less mature areas. While certain joint activity may still require waiver authorisation, the inclusion of principles set in the guidelines against which an application would be assessed, would provide some confidence to entities to contemplate entering industry development initiatives. We note that even contemplating joint activity would likely breach the guidelines, and so this may also need to be addressed.

Question 12: Can improved staff sharing registers provide the transparency of staff sharing that is needed?

AusNet Services supports an enhancement to the current publicly available staff-sharing registers and considers it an effective way to strengthen the transparency of staff sharing arrangements between a DNSP and its affiliates.

Question 13: Will changing the term 'confidential information' to 'ring-fenced information', make ring-fencing obligations in relation to information sharing clearer?

We support the AER's proposal to amend the title of the term 'confidential information' to 'ring-fenced information to avoid the misunderstandings regarding 'confidential information'.

Question 14: Will reporting all breaches in relation to substantive Distribution Guideline clauses in 10 business days improve the overall timeliness of breach reporting and reduce the administrative burden on DNSPs?

We support the increase to the breach reporting timeframe from 5 business days to 10 business days, however reporting all breaches in 10 business days would not be the most efficient approach. If the AER wants more timely visibility of immaterial breaches, the guideline should require a quarterly potential breach report. A quarterly reporting process of immaterial potential breaches and more timely reporting of priority breaches more closely resembles other regulatory breach management processes.

A quarterly reporting process of immaterial (or all other) potential breaches would encourage DNSPs to not spend a disproportionate amount of time on developing interpretation arguments, while at the same time achieving the objective of providing more timely visibility to the AER over potential non-compliances.

Questions of "breach" and "materiality" invariably involve matters of interpretation and a requirement to report all breaches within 10 business days will likely encourage DNSPs to focus

more time on matters of interpretation on not only the substantive question of “breach”, but also ancillary questions around the time when corporate “knowledge” crystalises.

DNSPs are less likely to unnecessarily labour over matters of interpretation if there is a periodic and orderly process for reporting lower level potential breaches which, like the annual compliance review process would afford an opportunity for both the AER and the DNSP to work through areas of concern, differences of view or opportunities for improvement in a periodic and orderly fashion.

Question 15: Will calendar year compliance reporting minimise the administrative burden on DNSPs?

We support the introduction of calendar year compliance reporting for the Distribution Guideline, which would assist us to spread the workload of many compliance teams who are already busy with Regulatory Information Notice (RIN) audits.

Question 16: Are the current Distribution Guideline obligations, in relation to branding and cross promotion, proportional to the potential harms? If so, how might the branding and cross-promotion obligations in the Distribution Guideline be amended to make them more targeted?

AusNet Services agrees with other stakeholders that have questioned whether the provisions in the Distribution Guideline in this regard are too broad and therefore not proportionate to the harms they seek to prevent. A more proportionate approach would be for the branding restrictions to apply in circumstances involving purchasing decisions or active marketing of services and not restrict interchangeable branding in the delivery phase of a project or service. This approach would ensure that DNSPs do not have to ensure separate branding in situations that do not pose any real risk of harm. For example, the brand included on PPE or vehicles used in field services is unlikely to pose any material risk of confusion or discrimination.