30 May 2016

Mr Chris Pattas
General Manager, Networks
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

By email: Ringfencingguideline2016@aer.gov.au

Dear Mr Pattas

Electricity Ring-Fencing Guideline – Preliminary Positions Paper

CitiPower, Powercor and SA Power Networks (collectively termed the **Businesses**) appreciate the opportunity to make a submission on the Australian Energy Regulator's (**AER**'s) April 2016 Preliminary Positions Paper in relation to a new national electricity ring-fencing guideline.

While we understand and support the AER developing a new national electricity ring-fencing guideline by 1 December 2016, as is required by the National Electricity Rules, we consider there is an alternative approach which will be less burdensome on the AER and network businesses and will achieve better outcomes for consumers in both the regulated and unregulated markets.

The Businesses consider there are critical matters raised in the AER's Preliminary Positions Paper that warrant further consideration and significant modification:

- the AER presumption that networks competing in contestable markets will cause harm is unfounded and contrary to the CoAG Energy Council's view that networks should be able to compete in these markets. The importance of having networks participating in the competitive market was recently publicly reaffirmed by the Federal Minister who chairs the CoAG Energy Council;
- the emphasis in the Positions Paper is to ring-fence all contestable activities rather than focus the obligations on the regulated part of a network's business. This results in broad and onerous obligations which may only be removed through a process of waivers;
- the waiver process is unclear and based on the AER's current retailer authorisation exemption process. It is expected to be administratively complex, not transparent, time and resource demanding and therefore has the potential to undermine legitimate competitive activities of network businesses to the advantage of their competitors; and
- the AER has not undertaken any analysis to assess whether jurisdictional ring-fencing arrangements put in place around 15 years ago are still relevant in what is now a more disaggregated and highly competitive energy market.

The Businesses are of the strong view that the preliminary positions put forward by the AER go beyond existing competition policy, seek to extend the AER's powers beyond its authority under the National Electricity Rules, will lead to higher costs to consumers and are therefore not in the long term interests of consumers.

Accordingly, the Businesses are proposing an alternative approach to the guideline which will deliver a more effective and efficient outcome, cater for specific jurisdictional and business differences, avoid the significant administrative burden and deliver the best outcomes for consumers in both the regulated and unregulated markets.

We expand on these and other concerns in the attached submission and outline our alternative approach to developing a more balanced and appropriate guideline.

We trust you find our comments useful and we look forward to collaboratively working with the AER and other stakeholders throughout this important consultation process.

Yours faithfully

Brent Cleeve
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CitiPower & Powercor

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CitiPower, Powercor and SA Power Networks

RESPONSE TO THE AER'S RING FENCING GUIDELINE PRELIMINARY POSITIONS

30 MAY 2016

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1 Executive summary

CitiPower, Powercor and SA Power Networks (collectively **'the Businesses'**) have a number of concerns with the AER's preliminary positions for its Electricity Ring Fencing Guideline (**Positions Paper**).

The AER proposes to impose onerous ring fencing obligations on distributors, based on a presumption that robust ring fencing of distributors' activities will be beneficial for consumers. The AER offers no evidence to support such a key assumption.

The AER's approach fails to adhere to the principles of Best Practice Regulation published by the Council of Australian Governments, is inconsistent with the Australian Competition and Consumer Commission's recent statements regarding the benefits of leveraging expertise from one market into another and recent comments by the Federal Energy Minister supporting greater participation by distributors in competitive markets.

The AER's preliminary position is problematic, for the following reasons:

1. The AER has failed to demonstrate that there is a problem that needs to be addressed

   No market failure that gives rise to the need for stringent ring-fencing obligations has been identified by the AER, nor has the AER attempted to even define the markets that it is seeking to protect. Further, it is clear that some of the markets that the AER is effectively seeking to block distributors from entering, are already competitive and thriving. This suggests that the range of regulatory and legal mechanisms that are already in place are working effectively.

2. Competition is in the long-term interests of consumers

   The participation by distributors in markets that are considered to be competitive, or prospectively competitive, provides benefits to consumers in the form of greater choice, price differentiation and product/service innovation. The AER's Positions Paper seeks to discourage, and in some instances prevent, distributors from competing in these markets.

3. The AER's Positions Paper may result in unnecessary negative consequences

   Regulated and unregulated consumers will be worse off if the Businesses are prevented from maximising the efficient use of existing resources and assets. For example, the current drafting suggests that we would be required to remove telecommunications cables from our poles and ducts. If this is required, our consumers would not receive the financial benefits of these leasing arrangements (and will result in higher costs to telecommunications consumers).

   The 'ring-fence then waive' approach where the AER imposes broad and onerous obligations on all distributors who must then apply for waivers to continue to efficiently use assets, will be costly, time-consuming and lead to uncertainty. This approach is inconsistent with good regulatory practice.

   A national 'one size fits all' approach fails to consider the different corporate structures, service classifications and commercial objectives for participation in competitive markets of individual distributors.

In our view, there is an alternative and preferable ring fencing approach that will:

- reduce unnecessary costs;
- improve transparency;
- provide flexibility for the AER to have regard to the particular circumstances of a distributor;
- still allow the AER to properly monitor and manage a distributor's participation in competitive markets; and
- ensure benefits are delivered to all consumers.

This approach will involve each distributor developing a ring fencing policy that accords with ring fencing objectives set by the AER and takes into account the distributor's individual circumstance.

This approach reflects the framework established by the AER in relation to the regulation of other matters, including customer connections, cost allocation and tariff design. It will ensure that distributors and the AER will not need to engage in a significant number of waiver applications for the many activities undertaken by distributors that are not direct control services. This will lower ring fencing compliance costs, provide greater transparency to stakeholders and deliver a proportionate response to the ring fencing issue.

2 Introduction

Thank you for providing CitiPower, Powercor and SA Power Networks (**SAPN**) (collectively termed the **Businesses**), with the opportunity to comment on the Australian Energy Regulator's (**AER**) Electricity Ring-Fencing Guideline Preliminary Positions Paper (**Positions Paper**). We consider, when completed, this guideline will have important and profound implications for consumers and the electricity sector in general. Therefore we urge the AER to carefully consider the comments of all stakeholders before finalising its position.

2.1 Overview

The AER has stated its concern with distributors entering unregulated markets throughout its Positions Paper. These concerns, however, are not supported by any market based evidence. As recently recognised by the Council of Australian Government's (**CoAG**), the Australian Competition and Consumer Commission (**ACCC**) and the Federal Energy Minister, distributors' participation in unregulated markets actually increases competition which will ultimately deliver benefits to consumers in the form of lower prices and more choice. Further, via the AER's existing Cost Allocation Guideline and Shared Asset Guideline, this participation also delivers benefits to regulated consumers.

Given the benefits that additional competition brings to consumers and markets, there is no place for stringent 'one size fits all' ring fencing arrangements that have the effect of reducing competition. This type of ring fencing will create unnecessary and large cost consequences for both regulated and unregulated consumers because distributors are different—they have different corporate structures, service classifications and commercial objectives for their participation in unregulated markets. In our view, an alternative and preferable approach that reduces unnecessary costs, is one that recognises the differences between distributors and the services they offer from the outset, but which still allows the AER to have oversight to ensure benefits are delivered to all consumers.

In this submission we identify:

- the benefits delivered to all consumers from distributors' participation in unregulated markets;
- the way in which many of the AER's concerns are already dealt with via existing regulations and legislation; and
- the detrimental outcomes from adopting a 'one size fits all' approach to ring fencing.

We then propose an alternative ring fencing approach where distributors develop ring fencing policies that accord with objectives set by the AER. This accords with the regulatory framework's approach to many other issues including customer connections, cost allocation and tariff design.

3 Problem identification

The AER has not made a case for stringent ring fencing provisions. Quite conversely, unregulated markets today are competitive and function efficiently and effectively in the absence of ring fencing. This is because there are a number of safeguards already in place to ensure distributors' participation in unregulated markets delivers benefits to regulated and unregulated consumers. Additional restrictions placed on distributors, and not on other market participants, will hamstring distributors' ability to compete—which will be to the detriment of market competitiveness and efficiency.

3.1 No market failure identified

The AER's starting point is that stringent ring fencing is in the interests of consumers. This starting point is repeated throughout the Positions Paper, such as when the AER:

- states 'our preference is to adopt the first approach, which assumes ring fencing is beneficial to customers';[1]
- proposes to ring fences all services that are not direct control services without considering the implications for particular services; and
- outlines onerous obligations without making a case for their inclusion, or explaining what each obligation is trying to achieve.

At no point has the AER demonstrated market failure or shown whether the costs it intends to impose through its ring fencing will be offset through lower prices and/or more consumer choice in unregulated markets.

Prior to subjecting a service to ring fencing, the AER should demonstrate that a distributor's participation in a market would create a market failure that would not be addressed by existing laws and regulations. This starting point is consistent with regulatory and competition principles as discussed below.

3.1.1 CoAG principles

The CoAG Best Practice Regulation Guide states that regulatory processes should be consistent with a number of principles including:[2]

- *Principle 1.* establishing a case for action before addressing a problem.

The AER has not provided any analysis or evidence of unfair advantage to distributors before proposing onerous new obligations.

- *Principle 2.* a range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed.

The AER has not presented any alternative options, including the status quo.

- *Principle 4.* in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:

    a. the benefits of the restrictions to the community as a whole outweigh the costs, and

    b. the objectives of the regulation can only be achieved by restricting competition.

[1] AER, Electricity Ring-Fencing Guideline; Preliminary positions, April 2016, p. 20.

[2] CoAG, Best practice regulation; A guide for ministerial councils and National standard setting bodies, October 2007.

The AER has not provided any analysis to demonstrate that benefits of the proposed obligations outweigh the costs.

- *Principle 8.* Government action should be effective and proportional to the issue being addressed.

The broad restrictions proposed by the AER are not commensurate with any perceived advantage held by distributors.

Furthermore, the AER's stringent ring fencing requirements will prohibit current efficient practices, impose significant costs and discourage distributor participation in unregulated markets. This directly contradicts the CoAG Energy Council's policy position which specifically supports distributors' participation in new energy markets. In its 4 December 2015 communiqué, it stated:[3]

> *The Council agreed that ring-fencing guidelines, which separate the competitive and regulated parts of network businesses, should facilitate the use of new technologies, like batteries. The Council also agreed that they should support greater participation by all providers, including network businesses, and that further refinement is required to protect the long-term interests of consumers*

The Council's position was reiterated by the Federal Energy and Resources Minister (chair of CoAG Energy Council), as quoted in the Australian Financial Review:[4]

> *Energy and Resources Minister Josh Frydenberg backed the networks' right to offer consumer services, saying market forces should be allowed to take their course. "If the networks are going to buy into some of the enhancements that are taking place at the retail end that's got to be a better outcome for the consumer," Mr Frydenberg said at Energy Networks 2016.*

3.1.2 Competition law

There is already a substantial body of law in Australia regarding competition, which applies economy-wide, is subject to constant review and already addresses any concerns of market failure.

Section 46 of the *Competition and Consumer Act 2010* (**CCA**), which prohibits the misuse of market power, requires regulators and litigants to first define the market in which the corporation is alleged to have market power. Currently, the provision states:

> *A corporation that has a substantial degree of power in a market shall not take advantage of that power in that or any other market for the purpose of….*

The proposed change to the legislation arising from the 2015 Competition Policy review by Professor Ian Harper (**the Harper review**), which the ACCC supports in its submission to the Treasury's discussion paper on the review, is:

> *to prohibit a corporation that has a substantial degree of power in a market from engaging in conduct…*

Both the current and proposed provisions require an assessment of whether a corporation has market power *in a market*.

The AER too, should examine the markets in which it believes distributors' participation would run counter to the AER's objectives before imposing ring fencing obligations. The AER's proposed approach, which starts with the

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[3] COAG Energy Council Meeting Communiqué, 4 December 2015 <https://scer.govspace.gov.au/files/2014/05/Energy-Council-Communique-4-Dec-2015-FINAL.pdf>

[4] AFR, Software developer wants to do a Tesla to the electricity grid, 20 May 2016 <http://www.afr.com/business/energy/electricity/software-developer-wants-to-do-a-tesla-the-the-electricity-grid-20160519-goyrfr#ixzz49QmknV7R>

assumption that all services that are not direct control should be ring fenced, is not aligned to the principles in the CCA.

3.1.3 Reliance on AEMC reviews to justify ring fencing

The Australian Energy Market Commission's (**AEMC**) reviews should not be used by the AER to justify its broad and stringent ring fencing provisions. This is because the AEMC:

- reviews are confined to specific markets such as storage (Integration of Energy Storage final report) and metering. The AER cannot rely on specific AEMC reviews to justify broad ring fencing arrangements that apply to all non-direct control services. Each market should be examined before ring fencing is proposed, consistent with the CoAG principles of Best Practice Regulation;
- did not analyse the markets for the current and potential level of competition, which is not consistent with competition principles;
- did not consider the impact of the CCA, which controls and prohibits the use of anti-competitive behaviour; and
- views have not been properly considered by CoAG and certainly have not been endorsed by CoAG.

Furthermore, the Businesses do not support all the AEMC's findings.

3.2 Competitive markets

Not only has the AER failed to demonstrate a market failure that requires onerous ring fencing, our analysis indicates that many unregulated markets are already highly competitive even though the AER's ring fencing currently does not apply.

3.2.1 Competitiveness of markets

The electricity industry has evolved significantly from when the jurisdictional guidelines were drafted. It is now characterised by:

- increased competition in the retail and generation sectors with over 60 retailers now authorised by the AER and more than 100 entities registered with the Australian Energy Market Operator (**AEMO**) to operate large scale generation;
- significant numbers of third-party service providers offering new infrastructure and energy services;
- hundreds of thousands of smaller distributed generators being connected to the grid; and
- emergent technologies such as battery storage and electric vehicles expected to become prevalent in coming years.

This increase in competitive market activity has occurred under the current ring fencing arrangements. It is therefore unclear why the AER now considers it necessary to impose more restrictions on distributors.

An indication of the competitiveness in some other unregulated markets is shown in the table below.

Table 3.1 Unregulated market competitors

Unregulated Market	CP/PAL/SAPN (or associated entities) in the market?	Competitors	Comments
Energy retailing	No	Over 60 retailers are presently operating in the NEM.	All Victorian distributors have voluntarily divested their retail operations without any regulatory intervention.
Commercial and residential solar and battery installation	CP/PAL associated entities	Over 4,500 certified solar installers in Australia.[5] Once trained by the manufacturer, electricians can also install batteries. Businesses in the market include AGL, Origin (over 360,000 customers), EnergyAustralia, Sun Edison, Solar Choice, Think Solar, Off-grid Energy etc.	
Grid storage	No	-	Commercial grid storage market not well developed
Renewable generation design and construction	SAPN/CP/PAL associated entities	Zinfra, UGL, John Holland, Downer, Leighton, Transfield, Lendlease, Siemens etc.	
Types 1-4 metering market	SAPN	SAPN is a meter provider for a small number of types 1-4 meters in South Australia. Over 20 providers of metering services.	CP/PAL have voluntarily divested virtually all of their types 1-4 meters without any regulatory intervention

The table shows that competition has flourished in many unregulated markets in the absence of regulatory intervention and that the role of distributors in these markets is non-existent or minor in nature. As distributors' unregulated service offerings become material, those services are often divested as they do not match the risk profile of their investors.

If the AER believes there are other markets not examined here in which market failure exists as a result of participation by or actions of distributors, we ask the AER to identify and provide evidence of those markets and the perceived market failure before applying broad and stringent ring fencing to all non-direct control services.

3.2.2 Treating distributors less favourably than other market participants

Retailers and other market participants already have a range of competitive advantages over the Businesses in unregulated markets. For example:

- a number of retailers, other distributors (including international distributors) and specialist new energy providers already possess more experience in generation construction, metering, project management and staff experience in new energy markets.

[5] Clean Energy Council, 'Find an installer', <https://www.solaraccreditation.com.au/consumers/find-an-installer.html>

- many retailers are vertically integrated and operate in a range of markets (such as generation, upstream and downstream gas markets, new energy products etc) allowing them to loss lead in new markets to establish scale and gain an advantage. Distributors already face restrictions on cross subsidising;
- many retailers have;
  - established communication channels (names, addresses, phone numbers) and higher brand awareness with customers;
  - more information about their customers than the Businesses (such as the load profiles, demographic information, customer preferences etc); and
  - larger scale and scope of operations than the Businesses, as shown in the table below;

Table 3.2 Retailer and the Businesses customer numbers

Business	Customers (electricity)	Customers total (electricity and gas)
AGL	2,261,000	3,735,000
Origin	2,801,000	3,884,000
EnergyAustralia		2,600,000
CitiPower	359,726	
Powercor	969,983	
SAPN	853,939	

As this analysis shows, the competitive advantages held by incumbent players in unregulated markets are formidable and these advantages have probably resulted in the absence of distributors in many of the unregulated markets that exist today. Given this evidence, it is hard to justify ring fencing (that would apply only to distributors) with the stringency proposed by the AER.

3.3 Sufficient safeguards already exist

We consider there should be two potential concerns with distributors entering competitive markets, which are:

- market power—distributors should not be able to engage in anti-competitive behaviour that restricts competition; and
- cross-subsidisation—customers that have paid for regulated services should not have those services used by distributors to earn commercial return without compensation.

There are already safeguards in place to manage both of these issues.

3.3.1 Competition and Consumer Act 2010

Several of the AER's obligations—such as staff sharing—appear to be aimed (at least in part) at safeguarding the competitiveness of unregulated markets.

There is already a substantial body of law in Australia regarding competition which applies economy-wide. This enables a consistent and uniform application of competition law that fosters competition across all forms of business enterprise and does not provide a regulatory benefit or disadvantage to any particular business class.

The CCA and the Australian Consumer Law in the schedule to the CCA, provide the legal foundation for this and generally prohibits corporations from engaging in anti-competitive conduct including section 46, which prohibits misuse of market power. This section has recently been reviewed (the Harper review[6]) with Treasury now considering amendments to the CCA, to which the ACCC has submitted its views. Section 46 of the CCA is thus both well established and recently reviewed for appropriateness. Distributors, like all other businesses, are subject to the CCA and so additional restrictions are not needed.

In developing the National Energy Customer Framework, one of the specific objectives considered by the (then) Standing Council on Energy and Resources (**SCER**) was the extent to which existing laws addressed an issue arising in the electricity framework. The AER has not (at least explicitly) had regard to the extent to which its concerns are already addressed by the CCA and the CCA's recent review. However, even if the AER did make such an assessment and found concerns, it would be the role of the CoAG and AEMC as the policy and rule makers, not the AER, to address any such concerns.

Nevertheless, the AER has proposed ring fencing restrictions that effect competition issues in unregulated markets. The ring fencing guidelines should not go beyond, or seek to replicate, the existing competition laws, such as the CCA's anti-competitive provisions. Otherwise the AER would be implying that it has a different, and higher, standard of anti-competitive behaviour than existing laws. In so doing, we believe that the AER would be going beyond its executive duties and taking on the role of the legislature through its attempt to 'enhance' competition laws.

3.3.2 Information sharing

Distributors are subject to a number of information sharing restrictions and obligations. These include:

- chapter 7 of the National Electricity Rules (**NER**) that govern the types of meter information that can (and must) be provided to different participants;
- the *Privacy Act 1988* that governs the use of information to protect the privacy of consumers; and
- the distribution licenses that contain confidentiality provisions.

Additionally, as discussed, the CCA prohibits anti-competitive behaviour that may result from information sharing.

The Positions Paper outlines three additional information sharing obligations. The AER, however, has not identified the purpose, or additional benefits that will arise from these proposed obligations—both of which are unclear to the Businesses. Furthermore, the obligations appear to be inconsistent with other regulatory requirements and do not appear to be targeted at ring fencing issues, as discussed later in section 4.3.

The AER should rely on the existing information sharing provisions listed above unless it considers that these provisions are inadequate, however, this has not been shown.

3.3.3 Cost Allocation Guideline

The Cost Allocation Guideline governs the way in which we allocate costs between regulated and unregulated services. As noted by the AER:[7]

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[6] Competition Policy Review; Final Report, March 2015.

[7] AER, 'Powercor - Cost allocation method 2016', <https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements/cost-allocation-method/powercor-cost-allocation-method-2016>

'Powercor's cost allocation method (CAM) governs the manner in which Powercor is allowed to allocate costs to the distribution services that it provides. The allocation of costs between the services is required to accurately represent the costs incurred in providing those services. This prevents cross-subsidisation between the distribution and other services that Powercor provides.'

The purpose of this instrument is to ensure there are no cross subsidies between regulated and unregulated services. As such, cross subsidisation between regulated and unregulated consumers is already managed within the regulatory framework. It appears however that the AER wishes to add further obligations in relation to cross subsidies in its ring fencing guideline which is both duplicative and unnecessary.

If the AER believes that the cross subsidies are not currently being adequately addressed, it should consider changes to its Cost Allocation Guideline rather than propose alternative regulatory instruments. Otherwise the interaction between the two instruments becomes unclear. That is, if we allocate costs in accordance with the Cost Allocation Method, are we meeting our cross subsidy obligation under the ring fencing guideline or will the ring fencing guideline's obligations be assessed to some different standard?

3.3.4 Shared Asset Guideline

The shared asset principles in the NER and the Shared Asset Guideline encourage distributors to use standard control assets for other purposes where that use is efficient and does not materially prejudice the provision of standard control services.

The shared asset mechanism applies to assets that are:[8]

- already established, so have had their costs allocated using a service provider's approved cost allocation method;
- used to provide both unregulated and standard control services, but whose costs are allocated only to standard control services; and
- defined in regulatory terms, rather than physical terms.

Regulated consumers share the benefits derived from distributors' use of regulated assets to also provide unregulated services because distributors' regulated revenues are reduced. However, the Positions Paper now appears to firmly reject this notion and seeks to actively discourage the pursuit of alternative uses of network assets, undermining existing NER provisions. The Businesses seriously question whether this is in the long term interests of regulated or unregulated consumers.

3.3.5 Long term interests of consumers

As recently recognised by CoAG, the Federal Energy Minister and the ACCC by extension of its comments (discussed in section 4.2.1), distributors' participation in unregulated markets will actually increase competition and ultimately deliver benefits to consumers in the form of lower prices and greater choice. This participation will also deliver benefits to regulated consumers by maximising efficient asset utilisation (which is already subject to appropriate and adequate regulation through the AER's Cost Allocation Guideline and Shared Asset Guideline as well as existing safeguards against discriminatory, unfair or anti-competitive conduct in other existing legislation). These benefits are clearly in the long term interests of consumers.

The AER should use, and not duplicate, the existing regulatory framework that already acts to ensure that distributors' participation in unregulated markets is in the long term interests of consumers.

[8] AER, Better Regulation; Shared Asset Guideline, November 2013, p. 11.

4 Unnecessary consequences

A number of potentially unnecessary, negative and costly consequences arise from the AER's ring fencing positions. The AER's current 'one size fits all' approach to ring fencing gives rise to inefficiencies, higher costs for regulated and unregulated consumers and treats distributors unfairly when compared to their competitors.

Each market and each distributor's interest in a market differ. As a result, a 'one size fits all' approach to ring fencing raises unique consequences to different distributors. Below we illustrate a number of consequences of which the AER may not be aware, but which may arise from the AER's position on ring fencing. The extent and significance of these brings into question the AER's overall ring fencing approach.

4.1 Waivers

The AER's proposed approach of ring fencing direct control services from other services is extremely blunt, and will give rise to a large number of waiver claims. For our Businesses alone, we have already identified the need to seek over 60 individual waivers. From our limited comparison of CitiPower/Powercor and SAPN, it is clear the majority of waivers will be unique reflecting each distributor's unique business models and service offering (as illustrated throughout this chapter). Therefore, the AER's proposed bulk waiver process will provide limited and few efficiencies.

The waiver process is likely to resemble the AER's retailer exemption process which has generated over 2,000 exemptions, published in 106 pages of the AER's website. The waiver scheme will require significant resources from both the AER and the Businesses, and it is doubtful other stakeholders will have either the resources or the inclination to engage with such a number of waiver claims (unless the motivation is to seek to block competition in unregulated markets). Further, the process will result in a fragmented set of waivers, making it difficult for any stakeholder to understand which ring fencing provisions have been waived from which businesses. As such, this process is likely to be opaque, unwieldy and costly.

In addition, the AER has not considered the commercial impact of its 'ring fence then waive' approach. This approach will discourage distributors from investing or entering competitive markets, which will result in less competition, higher price pressure and fewer choices for consumers. This is because:

- the AER's proposed consultation on waiver applications would alert competitors to distributors' intentions in unregulated markets, undermining distributors' competitiveness;
- if the AER determined that waiver approvals would be subject to review (for example at predetermined intervals), distributors would face significant, and often insurmountable, risks when deciding whether to invest in and enter unregulated markets;
- the ability to respond to consumer demands and market pressures would be slower and less flexible resulting in lost opportunity and choice for consumers; and
- waivers will need to be granted for distributors just to continue to offer a range of existing services, including for example the rental of poles and ducts (as discussed in section 4.2.9), which brings risk and uncertainty to our investors.

4.2 Obligations

In its Positions Paper, the AER proposes eight ring fencing obligations. The AER states 'the following obligations are designed to assist in achieving the ring fencing objectives'.[9] However, the Positions Paper does not outline which obligations are directed at meeting which objectives, or the way in which the obligations meet the objectives.

The AER then seeks submissions on whether it should impose other obligations on distributors. It does not, however, seek submissions on whether the proposed ring fencing obligations are already too restrictive.

It is not appropriate to propose strict ring fencing obligations without outlining their purpose. Again, the AER's starting point must be reconsidered. The AER should justify its proposed obligations and demonstrate the way in which they are in the long term interests of consumers.

4.2.1 No staff sharing obligation

The AER's third obligation would prevent the Businesses from sharing staff between direct control and non-direct control services. This is the single most costly and restrictive obligation and seems to tackle an issue that has been largely dealt with through the existing Cost Allocation Guideline. The AER did not outline its reasons for the obligation and so it is not clear whether it is seeking to protect consumers in uncompetitive markets, competitive markets or both.

As discussed below, this obligation appears not to be based on a sound theoretical basis, unfairly treats distributors compared to other competitors and increases the costs to regulated and unregulated consumers.

Unfounded theoretical basis

The AER's obligation is in conflict with the ACCC's considerations of the benefits from leveraging a firm's technical expertise. In its 2016 submission to the Harper review, the ACCC noted (albeit in the context of the proposed new section 46 of the CCA):[10]

> *Competition, by its very nature, is deliberate and ruthless. Advantages gained through research and development, innovation or economies of scale do not lessen competition, even if the conduct causes competitors harm or forces them to exit a market.*
>
> - *…Passing on lower prices to consumers that a firm is able to offer as a result of increased efficiency is a normal part of the competitive process and will increase rather than lessen competition. This is the case even where the prices are at a level that competitors find hard to sustainably match… In the majority of cases such pricing strategies stimulate competition and are pro-competitive. Section 46 acts as a filter; it will only capture pricing strategies undertaken by a firm with substantial market power where that strategy has damaged the competitive process by substantially lessening competition.*
> - *Expansion by a firm into a new geographic area or into a complementary market that, because of the efficiency or technical expertise of the entering firm, causes others to exit or decide not to enter, is a normal part of the competitive process and will increase, not lessen competition.*

The ACCC highlights that drawing on technical expertise is a normal part of the competitive process and will increase, not lessen competition. The AER's obligation appear to be in direct conflict with the ACCC's

[9] AER, Electricity Ring-Fencing Guideline; Preliminary positions, April 2016, p. 26.

[10] ACCC, Options to strengthen the misuse of market power law, Submission to the Treasury, February 2016.

considerations and will increase costs to consumers in regulated and unregulated markets (as each market segment will now be required to incur, for example, finance costs on a standalone basis).

Unfair treatment of distributors

Distributors' competitors are not subject to the same ring fencing obligations. If the Businesses were required to separate their staff as proposed, we would be placed at an unfair disadvantage. For example our corporate staff (finance, legal, human resources) would not be able to provide services to regulated and unregulated entities. This would result in a substantial loss of economies of scale making us inflexible to respond to changing consumer demands and market conditions. Such restrictions would require corporate staff to be duplicated whereas our competitors could continue to leverage their economies of scale unencumbered.

Impact of changing efficient corporate structures and work practices

Distributors' corporate and field staff provide both regulated and unregulated services. This allows distributors to have efficient and flexible workforces, and allows regulated and unregulated consumers to share costs rather than each bear them on a standalone basis. The costs of undertaking regulated/unregulated services are allocated according to each distributor's Cost Allocation Method.

The specific impact to SAPN's Construction and Maintenance Services is outlined below.

4.2.2 SAPN's unregulated country projects and regulated emergency management

To respond adequately in emergency situations and meet regulated service standards, SAPN maintains a minimum workforce in many country locations. At times, when this 'regulated' workforce has spare capacity, it is used to support SAPN's Construction and Maintenance Services (**CaMS**) business unit that provides unregulated services such as NBN delivery, and transmission and construction maintenance. Similarly, while CaMS provides largely unregulated services, it also provides certain critical emergency response services back to the regulated SAPN business. With the AER's proposed ring fencing restricting staff sharing:

- SAPN would need to increase the number of its emergency response staff, thereby increasing costs to regulated consumers; and
- Unregulated consumers will bear higher costs because SAPN would be unable to provide unregulated services as efficiently.

Leveraging from the regulated business is not anti-competitive as it does not prevent others from entering the unregulated market. SAPN is still subject to competition and potential competition which ensures that prices in the unregulated market are appropriately constrained.

Staff sharing allows SAPN to flexibly and efficiently provide services to both regulated and unregulated consumers. It may be a factor why it benchmarks so well and is among the most efficient firms in the NEM.[11]

The following example demonstrates the impact of this obligation in relation to SAPN's connection services.

[11] AER, Annual Benchmarking Report; Electricity distribution network service providers, November 2015.

4.2.3 SAPN new customer connections

The vast majority of SAPN's 12,000 annual connections consist of both non-contestable elements (which must be undertaken by SAPN) and contestable elements. The connection work undertaken by SAPN will be classified as standard control services (for the portion funded by SAPN) and negotiated services (for the portion funded by the consumer). The same SAPN field crew undertakes the entire connection work (unless the customer seeks an alternative service provider (**ASP**) to provide the contestable element). Accounting separation, in accordance with the Cost Allocation Method, is employed to ensure that the costs are allocated efficiently.

It would be highly inefficient for new ring fencing obligations to require SAPN to send two separate field crews to complete the work when one would suffice. Under current arrangements SAPN is still subjected to competitive pressure because:

- in accordance with local legislation, consumers are able to select an ASP for the contestable component of the connection work. In its quote, SAPN includes a separate amount for the contestable work to make price comparisons easier. This ensures SAPN's costs for that work is competitive; and
- under SAPN's current ring-fencing obligations, where any exclusive SAPN materials are used (e.g. stobie poles), ASPs can source these at the same cost that SAPN would include in its quote if performing the works.

There are numerous other examples for which a separate field and corporate staff would be required under the AER's preliminary positions. In fact, this would include all the Businesses' negotiated and unclassified services such as: supply enhancement at customer request; type 1-4 metering services; alteration and relocation of public lights; new public lights; reserve feeder construction; emergency recoverable works; provision of possum guards, provision of old billing data; meter testing at the request of a distribution network user; asset location and identification services; asset relocation services, and many more.

It would be highly inefficient to establish separate field crews and corporate staff to undertake these services. Prices in regulated and unregulated markets would rise. Another typical example is below.

4.2.4 SAPN Riverland crew undertaking multiple jobs in one day

A line crew(s) operating out of Barmera in South Australia's Riverland region may on one day be tasked to perform the following work in and around Renmark (approximately 30km or 45 minutes from Barmera):

- Complete repairs to damaged power lines and equipment following recent storm activity (standard control);
- Replace broken street lights (negotiated);
- Replace a faulty meter at a customer's premises (alternative control)
- Undertake connection work for a new customer (partially standard control, partially negotiated); and
- Assist in construction of new URD development (unregulated).

Line crews are trained to provide a range of power line services and work is packaged together to be undertaken as efficiently as possible. The work is packaged based on line crew and other resources availability and work locations. It is not aligned to AER service classifications. Depot locations, resources and staffing levels are established to meet regulated reliability and customer service standards at least cost. Cost allocation and accounting separation appropriately ring-fence costs and ensures no cross-subsidisation.

The AER's staff sharing (and location sharing) obligation would not allow for this arrangement to continue

If we sought waivers to maintain the efficiencies demonstrated in the above examples, the Businesses would need to submit 20 applications for current negotiated and unclassified services alone. This, however, assumes that waivers could be sought for broad and non-descriptive classifications such as SAPN's 'Other Services' service. If waivers were required for each sub-service (such as 'work required for network tariff change requests') SAPN alone would need to submit 48 waiver requests for negotiated services.[12]

More broadly, our examples demonstrate that the ring fencing guidelines raise unique problems and costs for different services, and in turn distributors. A one size fits all approach to ring fencing will not work.

4.2.5 Separate location obligation

The AER's second obligation is that a distributor must not locate a ring fenced service at the same physical location as the distributor.

A service is intangible and so the exact intent of this obligation is unclear. As drafted, however, this obligation could:

- prevent an unregulated service, such as telecommunication lines, being located on the Businesses' poles and in its ducts that are used to provide regulated services; and
- extend to warehousing (staff would not be able to access a warehouse if it housed assets used for regulated and unregulated services meaning distributors would need multiple warehouses. Our competitors are not required to use multiple warehouses for each service that they offer).

These examples would not be in the interests of consumers. As such, while we understand that the AER can only ring fence services and not assets—which is likely to have driven the AER's current wording of the obligation—the obligation is unworkable as drafted.

Three specific examples of this obligation's potential impact are shown below.

4.2.6 CitiPower/Powercor's call centres

CitiPower/Powercor provides call centre services to SAPN as well as to itself. Although related to distribution functions, the services provided to SAPN are not regulated services for CitiPower and Powercor because the service is not for their distribution networks.

For CitiPower/Powercor to continue to offer this service under the AER's proposed approach to ring fencing, they would need to duplicate the call centres in Bendigo and Melbourne because unregulated services could not be co-located with the regulated services. Furthermore, staff could not be shared. This outcome is not in the interests of South Australian or Victorian consumers as they would each need to bear the standalone call centre cost.

[12] AER, Final Decision SA Power Networks determination 2015–16 to 2019–20, Attachment 13 – Classification of services, October 2015.

4.2.7 SAPN's public lighting

SAPN's maintenance of existing public lighting and construction of some new public lights are classified as negotiated distribution services and so would be ring fenced.

It is not efficient to have dedicated public lighting crews and depots when the SAPN crews that perform power line work also undertake public lighting. To require separate crews and locations is a significant change from efficient operating practices and would impose considerable costs, ultimately borne by consumers.

4.2.8 Powercor metering services

Powercor has skilled Advanced Metering Infrastructure (AMI) installers because they completed the Victorian Government's mandatory AMI rollout. The installation, operation and repair of these meters to new customers is now an unclassified service, consistent with metering contestability arrangements.

Nevertheless, in many remote areas, competition is weak with few, or no installers present in the market (other than Powercor). If Powercor was required to establish separate depots for its staff that provide non-direct control metering services, Powercor's costs for providing the service would substantially increase. These costs would need to be passed through in the form of higher prices. It is even possible that with the higher costs, Powercor could decide to exit the market completely.

We understand that similar ring fencing obligations typically target information control in corporate headquarters between regulated and unregulated entities. If this is the intent of the obligation, it should be achieved in a different way. Requiring separate corporate headquarters is not efficient as we would incur additional overheads that our competitors will not, making us less competitive to the detriment of all consumers.

4.2.9 Separate legal entity obligation

Given the broad scope of services to be ring fenced, the obligation for separate regulated and unregulated legal entities appears to prevent distributors from offering any shared services at all. This is illustrated below.

4.2.10 CitiPower poles and ducts

CitiPower leases a number of its poles and ducts for telecommunication services. This benefits unregulated consumers as they receive lower prices than having to construct infrastructure to house critical telecommunication assets—this would be highly inefficient to duplicate. It also benefits regulated consumers as the regulated revenue is reduced by a proportion of the unregulated revenue earned, in accordance with the Shared Asset Guideline

Under the obligations as drafted, CitiPower would need to remove all telecommunication assets from its network and stop offering this service. It would only be permissible for a separate legal entity to lease the poles and ducts. However, they are owned by CitiPower, meaning a separate entity would not have the ability to lease them. Furthermore, the obligations that disallow regulated and unregulated services being co-located, and the need to establish separate staff to manage leasing issues, would restrict CitiPower from offering the service.

We believe do not believe this outcome to be in the interest of regulated or unregulated consumers.

4.3 Information sharing

The AER's information sharing obligations do not appear to be well targeted to ring fencing related issues and are inconsistent with existing regulatory requirements.

The AER's sixth obligation is that a distributor providing direct control services must:

> *protect information provided by a customer or prospective customer and ensure its use is only for the purpose for which that information was provided*

This obligation appears to restrict the way in which distributors use information (i.e. only for the purpose for which it was provided), irrespective of whether the distributor provides ring fenced services. By way of example this may prevent a distributor from using contact information collected as part of a customer connection for the purpose of notifying the customer of an emergency or outage.

The AER's eighth obligation is that a distributor providing direct control services must:

> *ensure information obtained by the DNSP is not disclosed to any party without the informed approval of the customer or prospective customer to whom it pertains*

This obligation appears to be inconsistent with chapter 7 of the NER, which has the effect of requiring distributors to provide access to metering data to certain market participants.[13] The information sharing obligations that already exist under both the South Australian and Victorian licenses appear to have a similar effect, but are not inconsistent with existing rules. Those obligations provide that information may only be shared with the consent of customers, unless sharing such information is allowed for under relevant laws or rules.[14]

The purposes of the AER's information sharing obligations are unclear. They create uncertainty and additional layers of complexity when determining which rules apply when and to what information, and will make it more difficult for consumers to communicate with their distributor. Therefore the obligations are not in the interests of consumers.

[13] NER, clause 7.7 Entitlement to metering data and access to metering installation.

[14] ESC, Electricity Distribution Licence; Powercor Australia Limited, clause 18. ESCOSA, Distribution Licence; SA Power Networks, clause 16.

5 Proposed approach

A more flexible approach that requires distributors to develop their own ring fencing policies, in accordance with ring fencing objectives, will significantly reduce the unnecessary negative consequences of ring fencing that are not in the interests of consumers.

Such an approach will still allow competition to flourish in unregulated markets as distributors will be required to demonstrate the way in which their policies ensure that the ring fencing objectives are met. The AER would have oversight of this process.

5.1 Ring fencing policies

Numerous unnecessary consequences that increase costs to consumers arise from a 'one size fits all' approach. While the AER may claim that any particular unnecessary consequences could be dealt with by a waiver, the volume and uniqueness of waivers makes this process unworkable. The ring fencing guideline should recognise and accommodate distributors' individual circumstances from the outset in order to avoid the costs from unintended consequences. This can be achieved by a guideline that sets out ring fencing objectives and then requires distributors to periodically develop ring fencing policies that accord with the objectives. The AER would consult on each distributor's policy and then approve it only if the distributor adequately demonstrated that the policy meets the guideline. This approach is consistent with the connections framework, the Cost Allocation Guideline and the Tariff Structure Statement process.

Such an approach will:

- provide flexibility to accommodate different;
  - corporate structures—ring fencing obligations impact distributors differently depending on their corporate structure such as CitiPower/Powercor's and SAPN's shared call centre;
  - competitive markets entered—the markets entered will determine the appropriateness of obligations. Entering the distributed storage market, for example, is very different to using existing assets for regulated and unregulated purposes (such as leasing ducts and poles). Arguably, the latter should not be subject to (for example) staff sharing restrictions. Additionally, the geographical location of markets, which can affect the existing and future level of competition, may impact on the stringency of ring fencing requirements applied to that market;
  - service classifications—the appropriateness of ring fencing obligations depend on the service to which they are being applied, such as whether it should be applied to SAPN's public lighting service;
- lower ring fencing costs—distributors will not need to submit, and the AER will not need to assess, large numbers of waiver claims. Importantly, a more refined approach will facilitate a distributor's entry into competitive markets where they will drive down prices and increase consumer choice;
- provide greater transparency—distributors will need to outline the way in which specific ring fencing obligations will be in consumers' interests. Additionally, rather than market participants needing to engage in numerous waiver claim consultations, and sift through numerous waivers to determine which obligations apply to distributors, there will be only one consultation and one policy for each distributor in the NEM; and
- is an approach that is proportionate to the extent of the potential concern—it does not apply ring fencing where it is unwarranted or against consumers' interests only to then require the identification and waiving of ring fencing in such circumstances.

This more flexible approach will remove the unnecessary negative consequences that arise from the AER's current position.

5.2 Policy objectives

A distributor's ring fencing policy would need to meet the AER's ring fencing objectives. The AER has outlined four objectives of ring fencing, being:

1. avoid the anti-competitive effects of cross-subsidies between the contestable and non-contestable activities offered by an NSP that would adversely affect markets for contestable services or the efficient provision of regulated services;
2. avoid discriminatory interactions between the contestable and non-contestable services offered by an NSP that would adversely affect markets for contestable services or the efficient provision of regulated services;
3. avoid providing a preferred or related party with an unfair advantage in offering contestable services that stem from information acquired in providing a regulated services; and
4. in achieving the first three objectives, promote an even playing field that may encourage market entry.

We agree that the first three of these objectives should be included in the ring fencing guideline, but not the fourth.

An even playing field in unregulated markets does not, and cannot, exist. Retailers, for example, will always possess information advantages when compared to other competitors. Multinational competitors will hold greater economies of scale, technical expertise and experience etc. It is feasible to have an even playing field with respect to the regulations to which each market participant faces. However, this would imply no ring fencing at all (which we are not suggesting). We consider this objective should be removed.

We consider the following two objectives should be added to the AER's first three:

1. the ring fencing guidelines should recognise individual business circumstances (the reasons for this are discussed above); and
2. regulation should not result in a lessening of competition in competitive markets—this recognises that restricting distributors from appropriately competing (i.e. in a manner that is consistent with existing competition law) in competitive markets is not in the interests of consumers.

We consider therefore that there should be five objectives.

5.3 Policy considerations

We consider that for our Businesses, our ring fencing policies may include, for example, the following types of ring fencing restrictions to ensure our operations in unregulated markets meet the objectives:

- explicit processes and procedures to restrict the flow of commercial and private information;
- a framework for addressing staff sharing (to ensure appropriate information controls and prevent unfair advantage accruing to unregulated activities, while also not disadvantaging distributors as per the AER proposed obligations);
- a transparency policy and training for our staff to ensure that consumers know whether they are engaging in an unregulated service for which they can seek alternative suppliers, or a regulated service; and
- rigorous staff information, compliance and enforcement activities.

These types of arrangements, when coupled with existing legislation and regulations (such as the CCA and the Shared Asset Guidelines) will ensure that we meet the five proposed objectives.

Appendix A - Responses to the AER's questions

Question 1: What aspects of current jurisdictional ring-fencing arrangements have or have not worked well?

The jurisdictional guidelines were largely established when the NEM was embryonic and the industry was dominated by government-owned vertically integrated entities with few competitors, centralised generation operations and jurisdictions opening their retail franchises to competition—over differing timeframes. The ring-fencing focus then was largely directed at ensuring entities undertaking the competitive retailing and generation functions were not being subsidised by regulated monopolies.

After 16+ years of operation, with jurisdictional ring-fencing guidelines in force, the NEM has evolved considerably. Jurisdictional corporatisation and privatisation agendas have disaggregated the industry. Competition in the retail and generation sectors has increased significantly with more than 60 AER-authorised retailers and in excess of 100 large AEMO-registered generators. Networks in the NEM are increasingly accommodating 'two-way' power flows from increased distributed generation. Advances in photo-voltaic (PV) technology and subsidies driven by government policy have encouraged hundreds of thousands of generators to now be connected to distribution networks.

Clearly, the current jurisdictional ring-fencing regimes have not inhibited competition. The AER should adopt a flexible ring fencing approach that accommodates distributors' differences so to not impede competition in the future.

Other instruments such as the Cost Allocation Guideline, Shared Asset Guideline, CCA and Privacy Act are in place to prevent regulated activities subsidising unregulated activities and serve to prohibit anti-competitive practices.

Question 2: Do you consider these objectives discussed in section 2.1 adequately reflect the harm ring-fencing is seeking to avoid and the benefits of an even playing field?

We agree with the AER's first three objectives but not the fourth. It is only possible to have a level playing field in terms of the obligations to which competitors are subject to—this would mean no ring fencing. Each competitor has its own advantages and disadvantages which is a natural part of a competitive market.

We propose two additional obligations to the AER's first three, being:

- the ring fencing guidelines should recognise individual business circumstances; and
- regulation should not result in a lessening of competition in competitive markets

Question 3: Do you agree with the service classification approach to ring-fencing which is discussed in section 3.3? Is there a better alternative?

We do not support the AER's approach to ring fencing. The AER's approach is blunt and is not proportionate to the issues that should be resolved through ring fencing. The approach gives rise to numerous problems. For example, SAPN currently provides a wide variety of contestable services including:

- negotiated distribution services;
- unregulated distribution services; and
- (unregulated) non-distribution services.

Some negotiated distribution services (existing public lighting services, non-standard connections and asset relocation services etc) are not contestable services—they can only be performed by SAPN. While it is appropriate to ensure appropriate accounting separation, it would not be sensible for these services to be subject to other separation obligations (specifically legal separation and physical separation) being proposed in the AER's Positions Paper.

These problems stem from the AER's starting premise, which incorrectly assumes ring fencing is in the interests of consumers. A better approach is to develop a ring fencing guideline that outlines ring fencing objectives and then requires each distributor to develop and submit ring fencing policies to the AER for approval. It would be incumbent on the distributors to demonstrate the way in which their policies are in the interests of regulated and unregulated consumers.

Question 4: Does the proposed approach to ring-fencing adequately deal with the prospects for development of the contestable market for DER?

No. The DER market has evolved and is now characterised by many suppliers. The AER's ring fencing provisions would have the effect of restricting a distributor's ability to compete in these markets and would result in underutilised DER assets—increasing costs to regulated and unregulated consumers.

To overcome specific network issues, we envisage that distributors could identify solutions which would be included in their ring fencing policies. Ring-fencing should not prevent or in any way inhibit innovation from being realised. We acknowledge many third party DER service providers will be keen for distributors to be prohibited from offering solutions that may compete with some aspects of their offerings but we firmly believe the AER's current positions would not be in the long-term interest of consumers.

Question 5: Are there other ring-fencing obligations we should impose on NSPs that provide services into contestable markets?

No. Already the obligations are overly restrictive. Distributors should develop ring fencing obligations within their ring fencing proposals, to be assessed by the AER.

Question 6: What costs would be incurred in meeting these obligations?

We have highlighted the unnecessary negative consequences of the AER's obligations in this submission. The Positions Paper would require regulated and unregulated consumers to each bear the standalone costs of a business. This is not in consumers' interests as it will create upwards price pressure in regulated and unregulated markets. Rather, the existing Cost Allocation and Shared Asset Guidelines allow for sharing services and costs in the interests of all consumers, with the CCA providing an assurance that this will not be anti-competitive.

We note that there would be:

- increased ongoing transaction costs;
- increased ongoing auditing and reporting burden;
- significant costs to alter accounting systems and procedures;
- potentially significant immediate and ongoing costs to separate and/or duplicate the following shared services;
  - IT;
  - property;
  - fleet; and
  - staff.

Question 7: Should assets sharing be restricted between regulated services and contestable service provision?

No. Distributors should be encouraged to maximise efficient asset utilisation as this benefits both regulated and unregulated consumers. We support the Shared Assets Principles/Guideline and the recently developed Shared Assets Guideline for managing this issue.

Question 8: Do the factors set out above reflect the issues we should consider in deciding whether to grant a ring-fencing waiver?

We do not support a 'ring fence then waive' approach. Additionally, the AER has placed the onus of a cost-benefit analysis on distributors. This may be acceptable for new services but given the large number of currently non-direct control services (the provision of which benefits both regulated and unregulated consumers through, for example, the Shared Asset Guideline) it is unreasonable to place a burden on distributors to undertake such analysis.

Question 9: In which circumstances should the customers of ring-fenced services and not customers of the DNSP's services in general pay the additional costs of complying with ring-fencing obligations?

It is unreasonable and beyond the AER's jurisdiction to impose regulation impositions on unregulated activities.

Question 10: How else could the AER minimise the administrative cost of ring-fencing while maintaining the integrity of its approach?

As detailed in our submission, distributors should submit ring fencing policies for approval by the AER. This will significantly cut down on the costs of ring fencing that would arise under the AER's approach from hindering competitive markets and from the development, consultation and assessment of many waiver claims.

Question 11: Is it reasonable for the AER to consider these transitional arrangements to the new ring-fencing guideline?

If existing services become subject to more ring-fencing, a period of at least 18 months should be granted to adapt current business structures, practices and systems.

Question 12: How can we ensure ring-fencing compliance is robust and effective without imposing excessive costs that may ultimately be borne by consumers?

Distributors should propose appropriate compliance processes and procedures. The AER may request audited compliance reports from distributors. Additionally, the AER could monitor market activity and competitiveness in certain markets in which they have concern.