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Mr Sebastian Roberts,
A/g General Manager, Regulatory Affairs – Electricity,
ACCC,
PO Box 1199,
Dickson, ACT 2602.

Dear Mr Roberts,

RE: Comments on 'Discussion Paper - Review of the Regulatory Test'

On 5 February 2003 the Australian Competition and Consumer Commission (ACCC) published the document 'Discussion Paper - Review of the Regulatory Test'. The ACCC invited submissions from interested parties, and as a part of the on-going consultation the ACCC held a public seminar in Melbourne on 28 July 2003.

On 24 July 2003 the Supreme Court of Victoria allowed the appeal of Murraylink Transmission Company against the decision by the National Electricity Tribunal that the proposed SNI transmission interconnection between New South Wales and South Australia should be justified under the ACCC's Regulatory Test.

The Supreme Court of Victoria decision sets important precedents regarding both the application and interpretation of the Regulatory Test that need to be taken into account by the ACCC in its present review. This submission by Energy Solutions Australia Pty Ltd reviews the Supreme Court of Victoria decision in order to highlight a number of those important precedents.

Please do not hesitate to contact me should you have any queries regarding this submission.

Regards,

Dr. A. Cook
Managing Director

THIS LETTER HAS BEEN SENT ELECTRONICALLY AND THEREFORE BEARS NO SIGNATURE

1.0 Background

SNI was proposed by TransGrid as a regulated electricity transmission interconnector between South Australia and New South Wales. In October 1998 TransGrid requested that NEMMCO and the Inter-Regional Planning Committee (IRPC) assess SNI under Clause 5.6.6(c) of the National Electricity Code (the Code), which required such assessment to be carried out in accordance with the Regulatory Test[1] as promulgated by the ACCC.

On 6 December 2001 NEMMCO made a determination pursuant to clause 5.6.6(c) of the Code that the SNI option was justified.

On 21 December 2001 Murraylink Transmission Company (MTC) applied to the National Electricity Tribunal (the Tribunal) for review of the determination.

On 31 October 2002 the Tribunal decided by a majority of two to one to dismiss the application for review.

MTC subsequently appealed the Tribunal decision to the Supreme Court of Victoria, and on 24 July 2003 Justice Nettle found that MTC had succeeded in its appeal. Justice Nettle therefore set aside the Tribunal's decision and remitted the matter to the Tribunal for reconsideration[2].

2.0 The Regulatory Test

The ACCC 's Regulatory Test is '*largely consistent with the standard principles used in economic cost benefit studies*',[3] which principles '*seek to maximise the sum of consumer and producer surplus based on estimates of efficient economic costs and benefits*'[4] i.e. there are not simply wealth transfers between individuals or sections of the economy. '*The cost benefit framework is robust and supports economically efficient decision making; that is, where incremental benefits are greater than incremental costs*.'[5]

The Regulatory Test cost benefit analysis includes a '*sensitivity analysis where the input assumptions are systematically varied to assess whether the estimated net benefits (or costs) of a project are particularly sensitive to any of the underlying assumptions or estimates*.'[6]

The ACCC has limited the scope of the Regulatory Test cost benefit analysis to '*only those costs and benefits that are directly related to the proposed project (i.e. a partial equilibrium analysis) while ignoring any of the flow-on or second round effects (i.e. a general equilibrium analysis)*.'[7] Regarding externalities, the ACCC required that the Regulatory Test should only take into account externalities that have been specifically addressed by the jurisdictional governments and their instrumentalities:

> '*The scope to include other costs and benefits which have not been addressed by governments and their instrumentalities and which may be subject to some conjecture should not be considered as part of an assessment of regulated network investments*.'[8]

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[1] ACCC, *Regulatory Test for New Interconnectors and Network Augmentations* (15 December 1999) (**Regulatory Test**)
[2] Murraylink Transmission Company v National Electricity Market Management Company, Victorian Supreme Court, No 8359 of 2002, 24 July 2003 (**The Decision**), http://www.austlii.edu.au/au/cases/vic/VSC/recent-cases.html
[3] Regulatory Test, page 4
[4] Ibid, page 4
[5] Ibid, page 6
[6] Ibid, page 7
[7] Ibid, page 12
[8] Ibid, page 14

The Regulatory Test document is broadly structured into three parts viz explanatory notes, the statement of the Regulatory Test itself, and notes on the methodology to be used in applying the Regulatory Test.

The statement of the Regulatory Test itself is:

> '*A new interconnector or an augmentation option satisfies this test if it maximises the net present value of the market benefit having regard to a number of alternative projects, timings and market development scenarios.*'

Thus, there is only one purely quantitative decision criterion in the Regulatory Test (i.e. to maximise the net present value of the market benefit). The Regulatory Test has no provision for subjective assessment with qualitative criteria. If costs or benefits of a particular preference cannot be assigned a 'reasonable value' for inclusion in the net present value analysis, then they are irrelevant for the purposes of the Regulatory Test. For example, in relation to the inclusion of environmental costs the Regulatory Test states:

> *'However, the Commission would have some concerns about automatically including all such costs and/or benefits into the assessment of a regulated network investment. ……., many of these external costs and benefits will be difficult to accurately measure. It is quite possible therefore, that network investments could be determined on the basis of unverifiable assessments of environmental costs and benefits.*'[9]

In addition, note 4 of the Regulatory Test states:

> *'In determining the market benefit, any benefit or cost which cannot be measured as a benefit or cost to producers, distributors and consumers of electricity in terms of financial transactions in the market should be disregarded. ……Only direct costs and benefits (associated with a partial equilibrium analysis) should be included and any additional indirect costs or benefits (associated with a general equilibrium analysis) should be excluded from the assessment.'*

3.0 The Decision of the Supreme Court of Victoria

MTC's application to the Supreme Court of Victoria was an appeal on a question of law pursuant to section 46 of the National Electricity Law. An error of law includes:

- The misconstruction of a statute or statutory instrument; and
- Making findings of fact in the absence of, or contrary to, the evidence[10].

An error of law in the application of the Regulatory Test therefore relates to the procedures and processes employed in the application of the Regulatory Test, rather than to a disagreement as to whether a particular fact is in error:

> '*…there is no error of law in taking one view of the facts as opposed to another, so long as there was evidence to support a particular view which was taken.*'[11]

[9] Regulatory Test, page 13
[10] The Decision, clause 15
[11] Ibid, clause 15

Consistent with the discussion of Section 2 of this paper, Justice Nettle placed significant emphasis on the requirement of a party interpreting and applying the Regulatory Test to undertake, and to clearly demonstrate that it has undertaken, a process of objective assessment:

> *'The purpose of the regulatory test is to assess alternatives on the basis of the economic criteria prescribed by the test, and not on the basis of subjective preference.'*[12]

Justice Nettle defined the objectivity requirement by indicating that relevant issues need to be considered by reference only to the economic criteria prescribed by the Regulatory Test, not by conceptions or other economic criteria exogenous to the Regulatory Test. Thus, no weight was to be given to the subjective assertions or preferences of the party interpreting and applying the Regulatory Test, or of any other party. This principle is clearly enunciated in Justice Nettle's decision, where he stated that the Tribunal erred in giving weight to the SNI proponent's preferences:

> *'The majority's only error, as I perceive it, was to apply to the identification of "practicable alternatives" an exogenous test of TransGrid's preference and motivation instead of the endogenous test of economic rationality that derives from the regulatory test.'*[13]

Consistent with this statement, the application of the Regulatory Test must be clearly constrained by the economic criteria prescribed by the Regulatory Test itself, and not influenced by any beliefs, inferences or other subjective values that cannot be objectively tied to one of the criteria prescribed by the Regulatory Test. Justice Nettle repeatedly proposed that the objective test that should be applied was:

> '*whether an objective operator, if acting rationally according to the economic criteria prescribed by the regulatory test, would be prepared to construct USNI if SNI were not approved'*[14]

3.1 Applying the Regulatory Test Objectively

The difficulty with applying the Regulatory Test objectively is that it '*does not define every concept with precision and it thereby leaves a large amount to general principles of cost benefit analysis.*' [15]

Justice Nettle's decision highlights at least three issues in relation to interpreting and applying the Regulatory Test:

- '*It is indeed littered with the need for judgements based on those principles'*[16],
- *'..assumes an understanding of economics and engineering which are left at large'*[17], and
- *'many of the concepts scattered throughout the test……. are all terms permitting of optional renderings.'*[18]

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[12] The Decision, clause 37
[13] Ibid, clause 92
[14] Ibid, clauses 38, 39, 41, 44, 50,
[15] Ibid, clause 12
[16] Ibid, clause 12
[17] Ibid, clause 13
[18] Ibid, clause 13

It is for these three reasons (if not more) that the application of the Regulatory Test can easily fall victim to subjective assessment.

A desirable outcome of the present review of the Regulatory Test is therefore that the ACCC should make every effort to remove ambiguities and therefore limit as much as possible multiple interpretations which could potentially lead to subjective decision making (and therefore the potential for errors of law).

Note that there is no error of law involved '*in taking one view of the facts as opposed to another, so long as there was evidence to support the view that was taken.*'[19]

As Justice Nettle repeatedly stressed, central to the objectivity criterion was whether any objective operator, actually rationally, in accordance with the economic criteria prescribed by the Regulatory Test, would be able to reach the same conclusions or outcome. Note that the objectivity criterion was considered not in the context of just the SNI proponent, but any objective operator.

An objective assessment therefore needs to be broadly based, and not just take into account solely considerations of the proponent (or a selected few National Electricity Market (NEM) participants).

> '*The appellant contends that the Tribunal was bound in law to make an objective assessment of whether unbundled SNI (USNI) was a practicable alternative and that it erred in law by deciding the question on the subjective basis that TransGrid refused to be a proponent of USNI. I think that the appellant is right.*'[20]

The views or preferences of the proponent regarding a particular project are largely irrelevant, and should not be included in the assessment unless they can be quantified (in dollar terms) as a reasonable and legitimate cost. The objective is to improve supply outcomes for the NEM as a whole, not just to increase the asset base of the proponent. The Regulatory Test is not simply a mechanism whereby a proponent can obtain approval to build projects that focus on its own business (or political) objectives.

3.1.1 Subjective Inputs to an Objective Decision Making Process

The Regulatory Test allows for subjective inputs to its objective decision making process through tools which include market development scenarios, sensitivity analysis and NPV maximisation in most but not all credible scenarios. In that case the party applying the Regulatory Test is required to demonstrate that the process underlying a decision is defensible, credible and practicable i.e. 'Could another rational person, taking all the same facts into account, come to a similar conclusion?' The overriding requirement is therefore to demonstrate with a reasonable degree of confidence that these subjective factors have been analysed in an objective manner:

[19] The Decision, clause 15
[20] Ibid, clause 23

> '*It is one thing to say that TransGrid had a real and not unreasonable fear of the risk of stranding, and it is quite another to conclude that an objective operator acting rationally according to the regulatory test criteria would not be prepared to wear the risk. An inference that such an objective operator would not be prepared to wear the risk could not be drawn without first considering all of the competing evidence as to the likelihood of objective behaviour and forming a view as to why the inference should be preferred. The majority did not do that.'*[21]

That is, Justice Nettle did not find that it was wrong to consider any subjective inputs. Rather, he considered that the decision maker (i.e. the Tribunal, and by inference NEMMCO) was wrong to rely on that subjective factor without conducting its own objective analysis. This statement can best be illustrated by consideration of the key issue of whether Unbundled SNI[22] (USNI) should have been treated as a practicable alternative to SNI.

3.1.1.1 Unbundled SNI as a Practicable Alternative to SNI

The Tribunal concluded that USNI was not a practicable alternative to SNI for the purposes of the Regulatory Test on the subjective basis that TransGrid refused to be a proponent. This decision was arrived at by taking as the criteria of a practicable alternative that it was required to be:[23]

- '*relevantly substitutable'*,
- '*technically feasible'*, and
- '*commercially feasible'*.

That SNI and USNI were '*relevantly substitutable'* was not in contention, nor was the fact *'that the existence of a proponent was not a prerequisite for a project to be considered a practicable alternative'*[24]. Intertwined with the second point however was the need to consider '*the significance to be attributed to TransGrid's refusal to be a proponent of USNI, and there is no doubt that was controversial*'[25]. Such refusal stemmed from TransGrid's concerns regarding the stranding risk[26] associated with USNI. The majority of the Tribunal concluded that USNI was not commercially feasible and therefore not an alternative project on the basis of TransGrid's subjective preferences and motivation arising out of the stranding risk. However, Justice Nettle agreed with MTC's contrary view that:

> *'....the act of determining that an interconnection proposal satisfies the regulatory test favourably alters conventional perceptions of the project's practicability…….. What matters is how large the net market benefit is likely to be, as the magnitude of the net market benefit determines the value/merit of overcoming any of the (typically fewer) remaining obstacles to implementation.*
>
> *Practicability is an economic concept that, when applied to regulated investments, can be substantially achieved by a finding that a project – that can otherwise be legally implemented – passes the regulatory test. ……..*

[21] The Decision, clause 39
[22] Unbundled SNI (USNI) was a scaled down version of the SNI project.
[23] The Decision, clause 24
[24] Ibid, clause 26
[25] Ibid, clause 27
[26] Stranding risk arises from a concern that the ACCC (the transmission regulator) may write down the value of an asset if it considers that that the asset is not sufficiently utilised.

.....it is a characteristic that is substantially conferred by a favourable determination'[27]

There is always a risk-reward trade-off. A practicable alternative may have a higher degree of risk compared to another, but it may also deliver significantly higher benefits entirely commensurate with that increased risk. In that case identification of a risk by itself does not make the project not practicable. What is important is that the risk needs to be put in context by considering its likelihood of occurrence, and trading that off against whether the higher benefits are sufficiently high to outweigh the higher risk.

As TransGrid has put forward:

> '*Different parties have different appetites for risk and different perceptions of the risks that face them*.'[28]

It is the different appetites for risk that determine the number of parties interested to participate in the '*competition for regulated projects under the auspices of the regulatory test'*[29]

The Regulatory Test's objective decision criterion is maximisation of NPV. In that case risk must be objectively evaluated in terms of the total benefits and costs of an alternative project. Therefore an alternative project cannot be excluded from consideration under the Regulatory Test analysis simply because it may be high-risk. It can only be excluded after it has been confirmed that it does not maximise the NPV relative to another alternative project. This could conceivably occur if the high risk translates to significant cost, and this has a bearing on the final NPV i.e. identification of a relevant risk must be measured in dollar terms and included as a separate cost component of the project. In that case '*the concept of practicability is therefore substantially informed by the regulatory test.*'[30]

An additional aspect to the Regulatory Test assessment of SNI was '*TransGrid's refusal to build and to let the appellant [MTC] build USNI*.'[31] The Tribunal decided that should be equated to the absence of a proponent, and therefore a lack of commercial feasibility. However, Justice Nettle stated:

> '*But given that the question is to be decided by reference to the economic criteria prescribed by the regulatory test, the range must include those entities who would be willing to construct USNI if given the chance to do so*.'[32]

Under those circumstances '*the subjective predilections and motivations of TransGrid'*[33] should not be substituted for the actions of '*an objective operator .... acting rationally according to the economic criteria prescribed by the regulatory test.*'[34]

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[27] The Decision, clause 29
[28] Gregory Houston, '*Witness Statement'*, National Electricity Tribunal, Application No. 1 of 2001, http://www.nera.com/wwt/misc_documents/5584.pdf, paragraph 188
[29] Letter from K Cosgriff (NSW Treasury) to M Rawstron (ACCC) (undated) page 2
[30] The Decision, clause 36
[31] Ibid, clause 35
[32] Ibid, clause 35
[33] Ibid, clause 38
[34] Ibid, clause 38

3.3 Stranding Risk

Justice Nettle dealt in some detail with the stranding risk purportedly associated with the development of USNI. He found that the Tribunal majority erred in law on the basis that they:

- relied on the subjective risk assessment of the proponent (i.e. TransGrid), when in fact there was evidence before the Tribunal which allowed it to carry out its own objective risk assessment; and
- in failing to objectively assess the risk of stranding, the Tribunal failed to identify that the consequential effect or impact of the risk was not insubstantial.

The Tribunal had evidence as to the likely physical effect of the usage of Murraylink on the usage of USNI, and as to the likely financial effects for TransGrid if the risk of under-usage were realised. The majority in the Tribunal paid regard to the first part of that evidence:

> '*We accept Mr Campbell's analysis …*'[35]

However, the Tribunal did not pay proper attention to the body of that evidence which contained Mr Campbell's statistical analysis:

> *'If ……. MurrayLink were 75% contracted, the stranding risk would be a risk of a 1 MW or 1% reduction in flows along USNI assets for 7% of the times that MurrayLink had positive flows. Since, however, USNI assets were planned to be in operation for only 2.5% of the time that MurrayLink were bidding to reduce flow, the risk of reduction in flow along USNI assets as a result of restrictions in flow along MurrayLink would be of the order of 1% of 7% of 2.5% or, in other words, 0.00175% of USNI total flow; and*
>
> *If it were assumed that MurrayLink were not contracted, the stranding risk would be a risk of an average 15% to 16% reduction in flows along USNI assets for 64% of the times that MurrayLink had positive flows, and since USNI assets were planned to be in operation for only 13% of the time that MurrayLink were bidding to reduce flow when uncontracted, the risk of reduction in flow along USNI assets as a result of restriction in flow along MurrayLink would be of the order of 16% of 64% of 13% or, in other words, 0.013312% of USNI total flow'*[36]

The key question (which the Tribunal did not consider) was:

> '*why a risk of that order of magnitude which was calculated in the statistical analysis should be regarded as economically significant in the context of concern'* [37], and
>
> *'the point is whether a risk of restriction of that order of magnitude would so much deter an objective operator, acting rationally according to the economic criteria prescribed by the regulatory test, as to refuse to construct USNI if SNI were not'*[38]

[35] The Decision, clause 40
[36] Ibid, clause 42
[37] Ibid, clause 43
[38] Ibid, clause 44

The Tribunal's failure to consider these issues constituted an error of law because '*the significance of Mr Campbell's analysis concerning the percentage reduction in flows along USNI assets ……was at once so strikingly relevant and cogent that the Tribunal could not give fair and sensible reasons for its decision without adverting to it and assigning reasons for its rejection. '*[39]

One wonders further about the materiality of the stranding risk associated with USNI from the following statements, which confirm arrangements for minimising financial losses to TNSPs:

> '*the flexibility in depreciation arrangements described earlier means that most reductions in RAB value due to re-optimisation or redundancy will be reflected in depreciation without the need for immediate write-offs of asset values and therefore will not represent a financial loss to the TNSP. ... To the degree that the approach imposes some residual risks on the regulated entity, this is normally reflected in the return on capital*';[40] and
>
> *'mechanisms in place to provide for faster return of capital (depreciation) on assets at risk, places the means and decision to significantly diminish any possible commercial loss in the hands of the TNSP. To the extent that a residual risk of loss remains, the beta factor used to develop the regulatory rate of return already reflects many elements of commercial risk via the benchmark basis for its determination. If the anticipatory write-down option is not exercised the TNSP has made a choice to enjoy the fruits of the regulatory rate of return on assets at risk against the capital loss associated with by-pass. To the extent the choice reflects a regulatory rate of return which is over-generous it is hard to argue that any additional compensation is warranted.*'[41]

4.0 Discussion

4.1 How has the Regulatory Test performed against its Objectives?

In developing the Regulatory Test the ACCC relied heavily on the two key principles of economic efficiency and competitive neutrality.[42]

The ACCC has stated that:

> '*the Commission has based the regulatory test on the traditional cost-benefit analysis framework but with a number of clarifications to limit any adverse impacts that regulated network investments might have on the competitive processes in the contestable parts of the industry.'* [43]

This is consistent with the ACCC's concerns that the Code, which was introduced to further the National Competition Policy Review and to lead to enhanced competition and efficiency within States and Territories as well as between jurisdictions,[44] not serve to entrench monopolistic behaviour in the transmission sector. Upon authorising the Code, the ACCC stated:

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[39] The Decision, clause 58
[40] ACCC, *Statement of Principles for the Regulation of Transmission Revenues (Draft)* (27 May 1999) p 52
[41] Ibid, pp 52-53
[42] *Regulatory Test* executive summary, page 2
[43] Ibid, executive summary, page 2
[44] Refer to Clause 1.2.1(d) of the Code.

> '*The Commission is concerned with the extent to which the* [Code] *provisions may be arrangements which protect NSPs and other network users from potential externalities, create a barrier to market entry, and limit contestability of network augmentation. All of these may limit competition for augmentation and may increase costs to network users.'* [45]

The SNI process, incorporating the approvals by the IRPC, the NEMMCO Board (and its attendant due diligence process), the National Electricity Tribunal, and the recent decision by the Supreme Court of Victoria, provides a mechanism to decide how well the Regulatory Test stands up against the ACCC's objectives. In the light of the decision of the Supreme Court of Victoria, the conclusion must surely be that there are serious deficiencies. However, closer examination shows that it is not appropriate to conclude that the Regulatory Test itself is fundamentally flawed.

The key issue in the Supreme Court of Victoria was the extent to which a proponent (and even decision makers) is able to exclude alternative projects. The conclusion was that the decision maker must objectively consider the suitability of other projects as alternative projects rather than reject them just because the proponent asserts such rejection is warranted:

> '*The purpose of the regulatory test is to assess alternatives on the basis of economic criteria presented by the test, and not on the basis of subjective purposes'*[46]

This does not mean that the decision maker cannot consider the subjective factor put forward by the proponent. Rather, the factor must be considered objectively. Justice Nettle proposed as the objective test that:

> *'whether an objective operator, if acting rationally according to the economic criteria prescribed by the regulatory test, would be prepared to construct USNI if SNI were not approved'*

The challenge therefore for the ACCC is to ensure as a part of the present review the Regulatory Test is indeed objectively applied in the future.

4.2 The Network and Distributed Resource Code Changes

The responsibility for the approval of new regulated interconnectors has recently been shifted by the Network and Distributed Resources (NDR) Code change package. Whereas the SNI assessment involved a process whereby the IRPC (and subsequently NEMMCO and the Tribunal) oversaw the application of the Regulatory Test, the present requirement is essentially one of self-assessment. That self assessment has been introduced places even greater emphasis on the lessons of the Supreme Court of Victoria, and the need to ensure that the application of the Regulatory Test is properly carried out. It is noted that only the Victorian structural framework for network development completely separates the investment decision making role from the transmission asset ownership role, and therefore completely eliminates the potential for subjective preferences.

4.3 Practicable Alternative Projects

The Regulatory Test requires the maximisation of the net present value of market benefits over a range of practicable alternative projects, encompassing generation, network and demand side projects.

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[45] ACCC, *Determination: Applications for Authorisation – National Electricity Code* (10 December 1997) page 146
[46] The Decision, clause 37

The focus of the Supreme Court of Victoria was whether a particular network project (i.e. USNI) should have been treated as a practicable alternative project. Through a reasoned process the Supreme Court of Victoria arrived at the conclusion that the Tribunal erred in not considering USNI as a practicable alternative project. There is no reason why that same reasoned process should not also broadly apply to the assessment of practicable alternative generation and demand side projects.

For example, consider the situation where a particular generation project is eligible to be treated as a practicable alternative project. In that case one assumes that the particular generation project and the proposed network project are first '*relevantly substitutable*'[47]. If the main obstacle to entering into a network support agreement is then one of allocating risks related to the potential liabilities faced by the relevant Transmission Network Service Provider if it is in breach of or negligent in the delivery of its supply obligations, then the Supreme Court of Victoria decision appears directly relevant. In that case the failure to negotiate a network support agreement directly with an owner/developer would not appear to be sufficient grounds to exclude the generation project from consideration as a practicable alternative project. Rather, as previously noted in this discussion paper:

> '*Practicability …… is a characteristic that is substantially conferred by a favourable determination,*'[48] and
>
> '*Different parties have different appetites for risk and different perceptions of the risks that face them*.[49]

In that case objective decision making clearly requires the generation project should be treated as a practicable alternative project, and the range of entities considered for a network support agreement should be extended to '*include those entities who would be willing ……. if given the chance to do so*. '[50]

5.0 Conclusion

The ACCC '*based the regulatory test on the traditional cost-benefit analysis framework but with a number of clarifications to limit any adverse impacts that regulated network investments might have on the competitive processes in the contestable parts of the industry*.'[51] Subjective preferences arbitrarily imposed by parties charged with applying the Regulatory Test may very well lead to outcomes in opposition to that objective. In that case subjective preferences may potentially legitimise poor decision making, increase risk for private investors, and result in customers paying higher than necessary charges for network services.

The ACCC needs to implement sufficient safeguards so only objective decision making as identified by Justice Nettle is permitted, and subjective preferences are not permitted to distort the Regulatory Test decision making process,

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[47] The Decision, clause 24
[48] Ibid, clause 29
[49] Gregory Houston, '*Witness Statement*', National Electricity Tribunal, Application No. 1 of 2001, http://www.nera.com/wwt/misc_documents/5584.pdf, paragraph 188
[50] The Decision, clause 35
[51] Regulatory Test, Executive Summary