Office of the Tasmanian Energy Regulator

Decision

Guideline for Ringfencing in the Tasmanian Electricity Supply Industry

October 2004
FUNCTIONAL RINGFENCING GUIDELINE

1. BACKGROUND

1.1. Objective

By limiting the ability of a distributor to distort competition in the contestable areas of the electricity supply industry, the Regulator is seeking to achieve the Regulator’s objectives under the Electricity Supply Industry Act 1995 to promote competition in the electricity supply industry and to protect the interests of consumers of electricity.

1.2. Application

Each distributor must comply with this guideline under its distribution licence.

1.3. Commencement

This guideline commences with effect from 29 May 2005, except to the extent otherwise provided in this guideline.

2. NOTIFICATIONS TO THE REGULATOR

A distributor must notify the Regulator:

(a) of any business that is, as at 29 May 2005, a related business, together with the names of the ultimate owners and of any directors, other officers and senior executives of the related business. This notice must be given on or before 14 June 2005;

(b) of the name of any business that, after 29 May 2005, becomes a related business, together with the names of the ultimate owners and of any directors, other officers and senior executives of the related business. This notice must be given within 10 business days of the distributor becoming aware of the business becoming a related business; and

(c) of any change in the ultimate owners, directors, other officers and senior executives of a related business. This notice must be given within 10 business days of the distributor becoming aware of the change.

3. NON-DISCRIMINATION

A distributor:

(a) must not, in conducting its regulated distribution services business, make decisions or act in a manner that unreasonably discriminates either against or in favour of any business providing contestable electrical services or against or in favour of the customers of any business providing contestable electrical services; and
must ensure that any information concerning its regulated distribution services business that it provides to any business providing a contestable electrical service is available to all other businesses providing the same contestable electrical service.

Explanatory Note: If information concerning a distributor’s regulated services business is particular to one contestable electrical services business, clause 3(b) would not require the distributor to provide that particular information to a second contestable electrical services business. Rather, clause 3(b) would require the distributor to provide to the second contestable electrical services business information of the same sort that is correspondingly particular to the second contestable electrical services business.

4. OPERATIONAL SEPARATION

4.1. Separation of organisational units

(a) A distributor must ensure that any part of its business providing regulated distribution services or marketing regulated distribution services and any part of its business, or of a related business, that provides contestable electrical services:

(1) operate independently; and

(2) have separate work areas.

(b) For the purposes of 4.1(a)(2), work areas will be regarded as separate only if:

(1) the work areas are in different buildings or on different floors of the same building; and

(2) the work areas are protected by access controls that prevent staff providing or marketing contestable electrical services and staff providing or marketing regulated distribution services from accessing one another’s work areas.

4.2. Separation of staff

(a) A distributor must ensure that employees that are distribution staff are not also staff of that part of its business, or of a related business, that provides contestable electrical services.

(b) Despite clause 4.2(a), a distributor may use employees that are staff of that part of its business, or of a related business, that provides contestable electrical services to provide regulated distribution services at a call centre, provided the distributor:

(1) ensures that staff at the call centre correctly identify whether the primary purpose of a customer enquiry relates to regulated distribution services or contestable electrical services;
(2) provides staff at the call centre involved in customer service with training sufficient to ensure compliance with this guideline; and

(3) provides staff at the call centre with established pro-forma responses for different types of enquiries.

4.3. Information access controls

(a) A distributor must establish, maintain and enforce appropriate access controls so that a user of the distributor’s information systems does not have discriminatory access to information concerning the distributor’s regulated distribution service business if the user is providing a contestable electrical service.

(b) The access controls a distributor must establish under clause 4.3(a) in relation to information on retail customers need not be established until three months prior to the date on which each successive tranche of retail customer becomes a tranche of contestable customers.

4.4. Customer communications

In communicating with a customer, whether in writing or verbally, in the conduct of its regulated distribution services business, a distributor must:

(a) not communicate with any customer in a way that would favour the distributor or a related business over another service provider in the provision of contestable electrical services;

(b) where appropriate, communicate to the customer that contestable electrical services may also be obtained from an independent service provider; and

(c) use best endeavours to make it clear to the customer that it is a distributor providing regulated distribution services.

4.5. Publications including Websites

(a) If a distributor’s regulated distribution services business and another part of its business publish documents or share a website:

(1) each document or page of the website must be identified as one the regulated distribution services business or other part of the distributor’s business is responsible for; and

(2) each document or page of the website must only deal with content directly relevant to whichever of the regulated distribution services business and the other part of the distributor’s business that is responsible for that document or page.

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(b) If a distributor advertises contestable electrical services provided by it or a related business in a document or on a page of the website relating to its services, it must allow non-discriminatory access to all providers of contestable electrical services for such advertising or must offer to provide a link to other contestable electrical service providers’ websites on a non-discriminatory basis.

4.6. Outsourcing and Subcontracting

(a) Subject to this and any other guideline, a distributor may engage another person to perform any of its regulated distribution services business functions, including functions undertaken as retailer of last resort.

(b) If a distributor arranges for another person to perform any of its regulated distribution services business functions, it must ensure that the person conforms with this guideline as if it were the distributor.

(c) Clause 4.6(a) does not relieve a distributor of its obligations to comply with this guideline as if it had not engaged another person to perform any of its regulated distribution services business functions.

5. ADDITIONAL OBLIGATIONS

The Regulator:

(a) may, by notice to the distributor, require the distributor to comply with obligations in addition to those contained in this guideline; and

(b) before giving notice to the distributor under clause 6(a) that it must comply with obligations in addition to those contained in this guideline, will undertake a consultative process on the same basis as required under clause 7(c).

6. WAIVERS

The Regulator:

(a) at the request of a distributor may grant a waiver of one or more of the distributor's obligations under provisions of this guideline, in general or in specified circumstances; and

(b) before granting a waiver under clause 6(a) will undertake a consultative process on the same basis as required under clause 7(c).

7. PROCEDURES FOR AMENDING THE GUIDELINE

(a) The Regulator may amend this guideline to reflect:

(1) changing circumstances, including changes in the regulatory framework;

(2) developments in other national electricity market jurisdictions; or

(3) the creation of new services and products by a distributor.
(b) The Regulator may amend this guideline if the Regulator considers that an amendment is necessary or desirable to promote competition in the electricity supply industry or to protect the interests of consumers of electricity.

(c) In making any amendment to this guideline the Regulator will undertake a consultative process at least as comprehensive as the process that applies to code changes under Chapter 8 of the National Electricity Code.

8. DEFINITIONS

In this guideline, unless the context otherwise requires:

(a) terms which appear like this and which are not otherwise defined in this guideline have the same meaning as in the distributor’s distribution licence; and

(b) contestable customer has the same meaning as the Electricity Supply Industry Act 1995;

contestable electrical services means:

1. retailing of electricity services provided to contestable customers;

2. any electrical service comprising work funded or partly funded by customer contributions for an extension of a distributor’s system or an increase in the capacity of a service; and

3. other contestable electrical services as determined by the Regulator;

customer means a person who acquires or wants to acquire distribution services or contestable electrical services;

distribution licence means a licence authorising the operation of a distribution network granted under the Electricity Supply Industry Act 1995;

distribution staff means staff directly involved in marketing or providing regulated distribution services (whether or not they are also involved in other functions) but does not include staff involved only in:

1. strategic decision making, including the executive officer or officers to whom distribution staff report either directly or indirectly; or

2. administrative, accounting, finance, human resources or information technology support functions;

distributor means a person (or entity) who holds a distribution licence under the Electricity Supply Industry Act 1995;

regulated distribution services means those distribution services regulated under the provisions of the Electricity Supply Industry (Price Control) Regulations 2003;
related business in respect of a distributor means any business in the electricity supply industry or other business that provides electrical services that:

(1) is carried on by a subsidiary of the distributor;
(2) is a business in which the distributor is a joint venturer;
(3) is owned by the same persons that own the distributor; or
(4) has a director or other officer or key executive that is also a director or other officer or key executive of the distributor or of another related business; and

staff means any employees, independent contractors or agents.