



**TEC SUBMISSION**  
**AER DRAFT RING-FENCING GUIDELINE**  
**SEPTEMBER 2016**

TEC reiterates its position in our submission in our submission to the preliminary positions paper that the AER has not provided sufficient evidence of the costs and benefits of ring-fencing in the electricity or other sectors to enable consumer advocates to make informed assessments of the AER's proposed position. We regret that this strongly expressed position was not reflected in the AER's summary of stakeholder positions on the preliminary positions paper, and therefore agree with PIAC's submission on the draft guideline that

...there is no evidence that ring-fencing arrangements provide new entrants with an adequate level of protection from the damaging market power of an incumbent, without the supplementary actions needed to create a level playing field. In such a context, including where structural separation cannot currently be enacted, PIAC is of the view that ring-fencing needs to be as robust as possible, and in particular should contain strong measures around monitoring, transparency and compliance, so that consumers can have confidence that the guideline is being strongly enforced.

We also note that the TEC et al position paper *Networks and batteries: What's best for consumers?*, to be released in early October, proposes that battery services either be classified as unregulated or be required to be procured via opex. In both cases, the role of ring-fencing becomes more critical, as networks would not be able to own batteries and add them to their RABs.

In most respects we consider that the AER is proposing a guideline that will (probably) strike an effective balance between reducing the risk of networks cross-subsidising and discriminating in favour of ring-fenced affiliates on the one hand, and restricting competition on the other. Indeed, we consider that if networks decide not to enter the market for new products and services such as batteries because ring-fencing is too onerous, they would effectively be admitting that they are not willing or able to compete in a competitive environment. That is, we regard strong ring-fencing as an enabler rather than a barrier to a more competitive market, and see no reason why the guideline would place financial or administrative obligations or risks on networks and ring-fenced affiliates that would be greater than those applying to third party competitors.

In particular, we support:

- The proposed set of principles to assist in designing obligations.
- The concept and quantum of a materiality threshold for the guideline to apply (especially since it applies to all related costs incurred within a FY, rather than being disaggregatable into smaller projects).
- The proposed reporting, compliance and enforcement requirements.
- The newly simplified proposed approach to waivers (assuming this would now preclude exemptions such as those currently granted to Ergon and Energex for their grid-side battery projects).

TEC largely concurs with the arguments put forward by ECA and PIAC in their submissions. We also consider there would be merit in an infographic intended to explain the guideline to providers of new products and services, so they can have confidence that the existence of related businesses does not represent a threat to a level playing field for competition. Finally, given the interest of

TNSPs in battery projects (eg, TransGrid and ElectraNet), we would welcome the timely application of a similar guideline to transmission businesses.

We therefore recommend that the AER:

1. Clarify the basis on which it will decide what is a minor matter and what is a matter appropriate for consultation, and strengthen section 5.2.3 to reflect this.
2. Reverse its decision to exclude senior executives from staff sharing provisions.
3. Report annually (eg, in the State of the Energy Market report) on such matters as the number of exemptions granted; whether it had detected any violations of the guideline in the previous year; and its view as to the impact of the guideline on the effectiveness of competition in the market for new products and services.
4. Publish an infographic to explain to proponents of new products and services how the guideline works.
5. Commit to the periodic review of the effectiveness and impact of the guideline (at least after five years, possibly after two years).
6. Indicate when it intends to introduce a complementary guideline for TNSPs.

Please contact Mark Byrne, TEC's Energy Market Advocate, for more information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Angel', written in a cursive style.

Jeff Angel

Executive Director