

10<sup>th</sup> of April 2007

Australian Energy Market Commission  
PO Box H166  
Australia Square NSW 1215

Dear Dr Tamblyn,

Re: Review of the effectiveness of competition in the gas and electricity retail markets,  
Draft Statement of Approach.

We wish to make a submission on the above Statement of Approach. We do not have the resources to make a comprehensive review but would like to make a number of points in relation to some key points we support and key issues we have identified.

### **Key support points**

We support the following points in the Statement of Approach

- that analysis should reflect the dynamic nature of each of the markets being reviewed
- that assessment should draw on the approach to analyses adopted by other energy regulators (domestic and international) and relevant judicial pronouncements and commentary from economic and anti-trust experts
- that reference to both qualitative and quantitative data including data from publicly available sources is utilised
- the acknowledgement that each jurisdiction may have unique characteristics that must be taken into consideration
- that the AEMC will consult with ombudsman and conduct series of briefings/interviews with a range of stakeholders including consumer, community and welfare groups groups.

### **Key Issues**

An initial observation that we would like to make is that the Draft Statement of Approach lacks specificity. We understand, as the AEMC has outlined, that there is no single point or criterion that can be applied to determine market efficacy and hence no exhaustive list of matters for the purposes of review but more detail would have been beneficial. For instance by minimising the differences between electricity and other goods and services the unique features necessary to assess effective competition in the electricity sector are not adequately addressed; for instance the essential nature of

electricity and related to this the captured nature of the small end-user energy market, liquidity and risk management issues and how to appropriately assess and evaluate the experience of different classes of customers.

Having said this we recognise that the lack of detail in the current document provides scope for the AEMC to fine tune a model to enable it to assess effectiveness through employing a range of measures under the umbrella of the six criteria. The development of this approach, however, leaves insufficient opportunity to respond to what effectively will be the development of detailed effective competition criteria as it is applied and tested in the various jurisdictions beginning with Victoria.

A continuing issue in the Draft Statement of Approach is the reliance on economic efficiency as the overriding economic test when conventional economics also acknowledges ‘...that failures can occur in structurally efficient markets to the detriment of consumers’.<sup>1</sup> Also, as behavioural economics has shown, conventional economic definitions have clear limitations in relation to predicting consumer behaviour: market failures can also arise from ‘...consistent biases in consumer behaviour.’<sup>2</sup> We note that the Statement of Approach does acknowledge the place of behavioural economics in understanding market conduct.

Finally, we would like make a comment on the market conduct indicators and data accuracy. There is significant complexity in interpreting the meaning of data relating to customer behaviour – and what customers themselves think – as behavioural economics shows.<sup>3</sup> For instance the number of customers accepting market offers and/or switching retailers is not necessarily indicative of making the best possible choice.

One of the key issues will be the availability of accurate data for assessment, for instance, around customer data. In Queensland retailers will only be required to publish the indicative number of market NMIs relating to large and small customers rather than the actual number. This is only one example of a range of statistical data collection issues that will arise in developing effective criteria<sup>4</sup> and whether or not jurisdictional comparisons, which are another evaluation tool, can be properly made.

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<sup>1</sup> ‘Where competition is facilitating the delivery of economic efficiency, there is no need for regulatory intervention’ in AEMC (17 March 2007) ‘Review of the effectiveness of competition in the gas and electricity retail markets, Draft Statement of Approach’, p.6; OECD (20 April 2006), ‘Roundtable on Demand-Side Economics for Consumer Policy: Summary Report’, Directorate for Science, Technology and Industry Committee on Consumer Policy, Prepared by Ian McAuley, pp.4-5.

<sup>2</sup> OECD (2006) ‘Roundtable on Demand-Side Economics for Consumer Policy’, pp.4-5.

<sup>3</sup> Appendix II: Behaviour Biases in OECD (2006) ‘Roundtable on Demand-Side Economics for Consumer Policy’, pp.36-41.

<sup>4</sup> Queensland Government, Department of Energy (13 March 2007) ‘Electricity Industry Code. Third Edition’, p.98

Finally we not convinced that price deregulation is a necessary outcome of effective competition.<sup>5</sup> In Queensland the retention of the uniform tariff is vital for those in non-contestable regions and for those customers in contestable areas who will not be offered market contracts. Research is not conclusive on ‘...accurate scenarios associated with the removal of price caps and deregulated FRC’<sup>6</sup> and on this basis we urge a holistic and careful approach to any jurisdictional reviews the AEMC will be undertaking in respect of the impact on consumers. As Allen Asher has summed up in relation to the UK experience of deregulation: ‘The UK energy market is a good example of what happens when markets are de-regulated with insufficient understanding of, or interest in, the impact on consumers’.<sup>7</sup>

Yours sincerely,



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<sup>5</sup> Jim Wellsmore (2005), ‘Everyone’s a Winner?: Price protection in retail energy competition’ in Dr Jane Bathgate (Ed) *Electricity Issues: Interstate perspectives on full retail competition for residential consumers*, Centre for Credit and Consumer Law, Griffith University, pp.7-14; Diana Bowman, David Coghill and Graeme Hodge (2004) *Protecting Utility Consumers from market failure*, Centre for the Study of Privatisation and Public Accountability, Monash University.

<sup>6</sup> Diana Bowman et al (2004) *Protecting Utility Consumers from market failure*, p.41.

<sup>7</sup> Allan Asher (2006) ‘Consumer experience in the UK Energy Market’ in OECD ‘Roundtable on Demand-Side Economics for Consumer Policy’, p.28.