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The Australian Energy Market Commission
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EPR0017
Review of the Effectiveness of Competition in the electricity market in the ACT: Issues Paper

Thank you for the opportunity to comment upon the Commission's *Review of the Effectiveness of Competition in the electricity market in the ACT - Issues Paper.*

The level of competition in a retail energy market is directly related to the extent to which regulated prices are allowed to transition to cost-reflective levels, facilitating the entry of new retailers and competitive activity. In the ACT, regulated electricity tariffs have been held below cost-reflective levels, for example by excluding customer acquisition costs from the price setting calculations and setting the retail margin too low. As a consequence, the development of competition in the ACT remains well below that achieved in other Australian jurisdictions.

Of particular concern is the ICRC's 2009 finding that in the previous two years 6,200 customers had reverted to the regulated tariff, indicating that they could not obtain a better deal on a market contract. There is no clearer evidence in a contestable market that price setting arrangements have failed to transition regulated tariffs to market based levels than customers reverting to the standing offer.

This finding reiterates our constant theme in the Commission's competition reviews; the greatest threat to retail competition is the retention of price regulation and the asymmetrical risk it poses to the industry, exacerbated by volatile wholesale markets. If regulated prices are set too high, low barriers to entry and expansion will ensure that any excess margins available to the incumbent retailer in the short-term will be rapidly eroded. However, if prices are set too low, the ability of new entrant retailers to compete will be impaired, jeopardising future investment signals and threatening the long-term security of supply.

In addition, the ACT feed in tariff scheme imposes additional jurisdictional-specific costs on retailers, and is a further disincentive for second tier retailers to enter and expand in that market. The scheme guarantees eligible customers a set feed-in rate (based on year of installation) for 20 years, with the potential for the rate to change annually (although the Government has set the 2010 rate for a period of two years).

Such an approach requires retailers to, in effect, establish a new retail product in their billing and customer management systems on each occasion the feed-in tariff rate changes, and retain that product for 20 years. Substantial system and operating costs are incurred for new product builds, and the retention of legacy products which are not available to new customers imposes additional administrative costs.

Responses to the questions raised by the Commission are provided in the appendix.

Please contact me on (03) 8628 1122 if you require additional information.

Yours sincerely,

Graeme Hamilton
Head of Regulation & Government Relations

Appendix – Responses to Issues for Comment

	Issue	Response
2	Have the structural conditions for energy retailing in the ACT supported or hindered the development of effective competition? Are these structures likely to support or impede further improvements in competition in the future?	Competition in the ACT is hindered by a failure to set regulated tariffs at cost-reflective levels, for example by not recognising customer acquisition costs and setting the retail margin allowance too low, as well as the adoption of unique jurisdictional regulations, such as the ACT feed-in tariff scheme.
3	Are there barriers to entry that impact on the development of effective competition? Have these barriers dissuaded prospective energy retailers from entering or can they be overcome? Are these barriers likely to persist or abate?	As above
4	Are there barriers to expansion or exit that impact on the development of effective competition? Have these barriers dissuaded prospective energy retailers from entering or can they be overcome? Are these barriers likely to persist or abate?	As above
5	Are there unique or specific features of the ACT electricity retailing environments that may support or impede the development of competition?	The uniqueness of the ACT market is overstated in explanations as to why the level of competition in the ACT is lower than in other jurisdictions. Low competition levels reflect a failure to set regulated tariffs at cost-reflective levels, and the adoption of unique jurisdictional regulations, such as the ACT feed-in tariff scheme, rather than any unique features of the ACT market.
5	To what extent do retailers compete with each other to acquire new customers and retain existing customers?	Whilst TRUenergy has products available for ACT consumers, we are not currently actively marketing those products.
6	What does the current level of rivalry between retailers indicate about energy retailing in the ACT?	The low level of rivalry reflects a failure to set regulated tariffs at cost-reflective levels, and the adoption of unique jurisdictional regulations, such as the ACT feed-in tariff scheme.
7	Has retail price regulation encouraged or impeded tariff innovation, product differentiation and service competition?	Price regulation and the restrictions upon varying the minimum terms and conditions of energy contracts impede innovation, differentiation and service competition. This is demonstrated by the dominance among second tier retailers of price discounted products, and restricted service level differentiation.

8	On what basis, and to what extent, might retailers be expected to compete in the future?	The greatest threat to retail competition is the retention of price regulation and the ongoing potential for regulated tariffs to be set below market-based levels.
9	What does the nature and extent of marketing activity indicate about the level of competition? What do the types of marketing activities undertaken by retailers indicate about the level of competition?	Marketing strategies are developed in accordance with each respective retailer's business model, with the market determining the success of each approach. As a low-involvement commodity, energy sales are overwhelmingly retailer-driven, with low transfer rates reflecting little marketing activity.
10	Is there evidence of retailers engaging in mis-selling and other anti-competitive marketing practices?	This is a compliance issue not relevant to the retention of price regulation.
11	What effect, if any, does retailer exposure to fluctuations in wholesale electricity price have on retailers' ability to offer competitive product and service offerings?	It is the role of retailers in the competitive market to manage wholesale risk, and retailers compete on this basis. However, the ability of regulators to accurately forecast, in some cases years in advance, movements in wholesale markets when setting retail prices is problematic in the extreme. The regulatory risk this imposes on retailers diminishes the benefits of competition that would otherwise flow to consumers.
13	What motivates customers to switch from a standing offer to a market contract or to switch retailer? For those customers who are not willing to participate in the competitive market, what underpins their decision to remain on a standing offer?	It is primarily in response to a marketing contact that a customer will switch retailer. The low levels of customer transfers reflect a lack of marketing activity which in turn is driven by the barriers to entry and expansion identified above.
14	Are customers able to access information that is easy to understand, relevant and up to date, and enables competing offers to be compared? Do customers rely on this information when deciding whether to switch? If not, why not?	As customer transfers are overwhelmingly in response to marketing contact, the low level of customer transfer activity reflects a lack of marketing activity.
15	Are retailers able to recover their efficient costs at current standing and market offer contract tariffs? Are future expected profit margins likely to be sufficient so as to encourage new entry and increase competition or insufficient such that new entry is deterred?	No, retailers are not able to recover their efficient costs at current pricing levels. Future expected profit margins, based on a continuation of the current pricing approach, are unlikely to be sufficient to encourage new entry and expansion. Cost recovery and sufficient profits to encourage competition will remain problematic within a price regulated framework. The rationale for establishing the competitive market is that regulators are incapable of replicating efficient market outcomes. The failure to transition prices to cost-reflective levels, represents an ongoing impediment to retail competition.

16	Do retailers actively compete to offer the products, services, prices and other conditions of supply which are most attractive to customers? Do retailers respond to changes in consumer preferences?	Regulated tariffs and the inflexibility of the regulatory framework restrict the dimensions upon which retailers compete. Nevertheless, the growth of green energy products is evidence that developments in consumer preferences are reflected in product offerings, to the extent the regulatory framework allows.
17	To what extent do retailers compete with each other in terms of price to acquire new customers and retain existing customers?	Other jurisdictions have shown that price is the dominant source of competitive tension for second tier retailers. However this has been restricted in the ACT by the failure to transition regulated tariffs to cost-reflective levels.
18	Are there classes of customers who are unable to access the benefits of competition? If so, what factors contribute to the difficulties experienced by these customers?	The market is characterised by generic offers available to all consumers, based on tariff-type, not any social or consumption-level dimension.
19	What steps, if any, do retailers take to assist customers experiencing difficulties in participating in the competitive market? Are these initiatives effective in assisting these customers?	Customer "difficulties" generally relate to bill payment rather than participation in the competitive market. Whilst payment difficulties generally reflect broader financial issues, given that energy is only a small proportion of total household expenditure, retailers provide multi-layered assistance including through customer hardship programs.