

REVIEW

Australian Energy Market Commission

STAGE 2 DRAFT REPORT

Review of the effectiveness of competition in
the electricity retail market in the ACT

Commissioners

Pierce
Henderson
Spalding

24 November 2010

Inquiries

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

E: aemc@aemc.gov.au

T: (02) 8296 7800

F: (02) 8296 7899

Reference: EPR0017

Citation

AEMC, Review of the effectiveness of competition in the electricity retail market in the ACT, Stage 2 Draft Report, 24 November 2010, Sydney

About the AEMC

The Council of Australian Governments, through its Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005 to be the rule maker for national energy markets. The AEMC is currently responsible for rules and providing advice to the MCE on matters relevant to the national energy markets. We are an independent, national body. Our key responsibilities are to consider rule change proposals, conduct energy market reviews and provide policy advice to the Ministerial Council as requested, or on AEMC initiative.

This work is copyright. The Copyright Act 1968 permits fair dealing for study, research, news reporting, criticism and review. Selected passages, tables or diagrams may be reproduced for such purposes provided acknowledgement of the source is included.

Summary

The AEMC's finding is that competition in the ACT electricity retail market for small customers is not effective. There are a number of inter-linking causes causing this:

- the weak presence of second tier retailers in the market reduces the overall level of awareness of full retail contestability, which is likely to make customers 'sticky' and therefore more difficult to attract away from ActewAGL Retail;
- this lack of awareness of FRC and ActewAGL Distribution's provision of distribution services could also give customers the perception that the product offered by ActewAGL Retail is more valuable than the product offered by other retailers (that is, there is a perceived product differentiation). This perception would increase the level of stickiness;
- the relatively small size of the market (approximately 150 000 customers) means that there are fewer customers over which to spread the fixed costs incurred to enter the ACT market. Therefore there is a risk to retailers that they may not capture a sufficient mass of customers to spread their upfront fixed costs over;
- the corporate structure of ActewAGL Retail and its economies of scale and scope are likely to provide it with cost advantages over a single fuel supply efficient new entrant; and
- the regulated price is based on the efficient costs of ActewAGL Retail rather than a new entrant retailer.

As a consequence, the actual margins available to second tier retailers may not be the same as those earned by ActewAGL Retail. Importantly, it appears that second tier retailers do not perceive the margins available to them to be a sufficient rate of return that is commensurate with the risks and uncertainties of operating in the market over the long-term. This perceived imbalance between the risk and reward of operating in the ACT has resulted in few retailers entering into (or expanding within) the market. Consequently, there has been very little retailer rivalry observed and there are currently limited offers available to small electricity customers in the market.

Given that competition is not effective, the purpose of the Stage 2 Draft Report is to recommend ways to promote the level of competition in the ACT retail electricity market. The AEMC has considered the various options and their ability to ultimately provide an environment that will encourage competition in the ACT electricity market. Importantly, prices do not need to increase for the degree of competition to improve in the market. Instead, the unique characteristics of the market can be addressed to make it easier for second tier retailers to enter into and expand within the market.

Following this analysis, the AEMC's draft advice to the ACT Government is to implement a two phase process. The main reason for a two phase process is that the AEMC considers the lack of customer awareness to be a significant factor influencing

competition in the ACT. Therefore, phase one consists of measures to foster customer awareness and reduce the 'stickiness' of customers, including:

- instigating a consumer education program for small electricity users (through the relevant department) that provides information on the electricity market;
- setting up a marketing campaign to inform customers of an internet and telephone facility for consumers to investigate and compare all current electricity supply products available to them as customer awareness improves;
- review the framework governing the customer protection and switching process, such that it is easy to understand and progresses smoothly. Informing customers of options for redress should problems arise;
- implementing nationally consistent frameworks, such as the NECF, as soon as practicable, to improve the harmonisation of regulatory requirements between the ACT and other jurisdictions; and
- possible merit in reviewing the guidelines for costs allocation relevant to ActewAGL.

Six months after the implementation of phase one, the AEMC subsequently recommends that the ACT Government implements phase two, which consists of:

- the removal of retail price regulation for small consumers of electricity;
- establishing a monitoring program on all prices and products (and other relevant matters) relating to the supply of electricity to small customers in the ACT; and
- establishing the monitoring program for a three year period with a review at the conclusion of this initial period to assess whether the program should continue for a second period.

Contents

| | | |
|----------|---|-----------|
| 1 | Introduction | 1 |
| 1.1 | Purpose of the Stage 2 Draft Report | 1 |
| 1.2 | Lodging submissions on the Stage 2 Draft Report | 1 |
| 1.3 | Structure of the Stage 2 Draft Report | 2 |
| 2 | Framework for the analysis..... | 4 |
| 2.1 | Findings on the effectiveness of competition..... | 4 |
| 2.2 | Regulatory obligations | 7 |
| 2.3 | Benefits of competitive markets | 7 |
| 2.4 | Effective competition in the ACT..... | 8 |
| 2.5 | Principles of good regulatory practice | 9 |
| 3 | Non-pricing options | 11 |
| 3.1 | Introduction..... | 11 |
| 3.2 | Option (i): customer education and information..... | 11 |
| 3.3 | Option (ii): harmonisation of regulatory requirements across jurisdictions..... | 15 |
| 3.4 | Option (iii): amending the competitive environment between incumbent and second tier retailers..... | 20 |
| 4 | Pricing options..... | 24 |
| 4.1 | Introduction | 24 |
| 4.2 | Option (A): retain the current TFT..... | 24 |
| 4.3 | Option (B): change the approach to setting the TFT | 26 |
| 4.4 | Option (C): replace the TFT with reporting and monitoring | 32 |
| 4.5 | Option (D): removal of retail price regulation | 36 |
| 4.6 | Draft findings | 37 |
| 5 | Overview of options and draft advice..... | 39 |
| 5.1 | Benefits and costs of options | 39 |
| 5.2 | Combinations of pricing and non-pricing options | 44 |
| 5.3 | Draft advice..... | 47 |
| 5.4 | Timing of implementation..... | 48 |

| | | |
|---------------------------|--|-----------|
| 5.5 | Responsible body | 49 |
| Abbreviations..... | | 51 |
| A | Consultation process | 53 |
| A.1 | Outline of process | 53 |
| A.2 | Way forward..... | 53 |
| B | Regulatory framework | 55 |
| B.1 | Principal legislation | 55 |
| B.2 | Transitional franchise tariff | 56 |
| B.3 | Licensing | 56 |
| B.4 | Energy industry levy | 58 |
| B.5 | Framework underpinning customer contracts | 58 |
| B.6 | Minimum service standards for retailers..... | 60 |
| B.7 | Protection of customers and financial hardship provisions..... | 60 |
| B.8 | Retailer of last resort arrangements..... | 65 |
| B.9 | Environmental requirements | 66 |
| B.10 | Electricity feed-in scheme | 68 |
| B.11 | Regulation of marketing conduct | 68 |
| B.12 | Role of ACAT | 71 |
| B.13 | Community service obligations | 72 |
| C | Price monitoring and reporting framework..... | 74 |
| C.1 | Purpose..... | 74 |
| C.2 | Structure of a price monitoring regime..... | 74 |
| D | Comparison of retailer availability | 76 |

1 Introduction

As requested by the Ministerial Council on Energy (MCE), the Australian Energy Market Commission (AEMC) is conducting a review into the effectiveness of competition in electricity retail market in the Australian Capital Territory (ACT Retail Review). The AEMC is currently seeking an extension from the MCE to delay publication of the Stage 2 Final Report. It is expected that the Stage 2 Final Report will be completed by 28 February 2011.

1.1 Purpose of the Stage 2 Draft Report

The Stage 1 Final Report (released in conjunction with this Stage 2 Draft Report) sets out the AEMC's reasons and analysis to support its finding that competition in the electricity retail market of the ACT is not effective. There are a number of inter-linking factors causing this. As a consequence of those factors, the actual margins available to second tier retailers may not be the same as those earned by ActewAGL Retail. Importantly, it appears that second tier retailers do not perceive the potential margins available to them to be a sufficient rate of return commensurate with the risks and uncertainties of operating in the market over the long-term. As a consequence, limited retailer rivalry and choice for consumers have been observed in the market.

As a result of the finding that competition in the ACT electricity retail market is not effective, the AEMC is required to provide advice on options to promote competition. That is, approaches on how to develop an environment where competition will be encouraged and the competitive pressure on ActewAGL Retail (the dominant incumbent) will be increased. Therefore, the purpose of this Stage 2 Draft Report is to provide possible options that may improve the effectiveness of competition. Stakeholders are invited to comment on these options.

The Stage 2 Draft Report assesses both pricing and non-pricing options to achieve this outcome. The pricing options include a range of measures relating to the approach to setting prices in the ACT. Similarly, the non-pricing options while having regard to the circumstances of the ACT market, evaluate options available to improve the ability for second tier retailers to enter into and expand within the market.

To address the issues identified in the Stage 1 Final Report, non-pricing options and pricing options should be applied in tandem.

1.2 Lodging submissions on the Stage 2 Draft Report

Written submissions from interested parties in response to this Stage 2 Draft Report are requested by **5pm, Friday 24 December 2010**.

Submissions should refer to project number 'EPR0017' and be uploaded electronically through the AEMC's online lodgement facility at www.aemc.gov.au.

All submissions received during the course of the ACT Retail Review will be published on the AEMC website, subject to any claims for confidentiality. The AEMC's approach to confidentiality is set out below.

Stakeholders should be aware that strict deadlines for the various milestones in the review process will be followed. Accordingly, full regard will be had to all submissions lodged within the specified time period; however, late submissions may not be afforded the same level of consideration. To ensure that submissions in response to the Stage 2 Draft Report are fully considered, submissions must be lodged by 24 December 2010.

1.2.1 Confidentiality

The AEMC's approach to confidentiality is set out in full at section 4.4 of the Revised Statement of Approach (RSOA). In general, information that is relied on by the AEMC in its reports should be published to allow it to be commented upon and tested in open debate.

The AEMC considers that its established practice of omitting confidential or commercially sensitive information contained in a submission prior to publishing the submission on its website offers adequate protection to stakeholders. Where certain information is considered to be (in all or in part) confidential or commercially sensitive, the party may request that the information be kept confidential. A request to maintain confidentiality should:

- be made in writing;
- clearly identify the information which is confidential and, where possible, separate that information from the other non-confidential information in the submission; and
- set out the basis upon which the information is confidential and/or commercially sensitive, including, for example, a statement as to any detriment that is likely to result to the person or any third party from the disclosure of that information.

Each request for confidentiality will be considered in the context of the ACT Retail Review and in accordance with the relevant procedures.

1.3 Structure of the Stage 2 Draft Report

The remainder of the Stage 2 Draft Report is structured as follows:

- **Chapter 2** summarises the analytical framework that has been utilised in forming options that will promote competition;
- **Chapter 3** assesses the non-pricing options that could be used to address consumer and retailer related concerns;

- **Chapter 4** provides an evaluation of options that could be implemented in relation to the Transitional Franchise Tariff (TFT);
- **Chapter 5** summarises the AEMC's draft advice on promoting effective competition in the electricity retail market in the ACT;
- **Appendix A** summarises the consultation process for the Stage 2 Draft Report;
- **Appendix B** provides an overview of electricity regulation in the ACT;
- **Appendix C** outlines a price monitoring regime based on the approach used in Victoria and other industries; and
- **Appendix D** provides a comparison of the number of retailers available in selected regional locations in NSW and Victoria, similar in size to the ACT market.

2 Framework for the analysis

This chapter explains the policy and analytical frameworks that underpin the development of the AEMC's draft advice for improving effective competition in the ACT retail electricity market. The chapter is structured as follows:

- a summary of the AEMC's findings from the Stage 1 Final Report on the effectiveness of competition in the ACT electricity retail market;
- a discussion on the benefits of competitive markets;
- what effective competition means in the context of the ACT; and
- an outline of the key principles of good regulatory practice.

2.1 Findings on the effectiveness of competition

The AEMC's finding is that competition in the ACT electricity retail market for small customers is not effective. There are a number of inter-linking factors for this:

- the weak presence of second tier retailers in the market reduces the overall level of awareness of full retail contestability (FRC), which is likely to make customers 'sticky' and therefore more difficult to attract away from ActewAGL Retail;
- this lack of awareness of FRC and ActewAGL Distribution's provision of distribution services could also give customers the perception that the product offered by ActewAGL Retail is more valuable than the product offered by other retailers (that is, there is a perceived product differentiation). This perception would increase the level of stickiness;
- the relatively small size of the market (approximately 150 000 customers) means that there are fewer customers over which to spread the fixed costs incurred to enter the ACT market. Therefore there is a risk to retailers that they may not capture a sufficient mass of customers to spread their upfront fixed costs over;
- the corporate structure of ActewAGL Retail and its economies of scale and scope are likely to provide it with cost advantages over a single fuel supply efficient new entrant; and
- the regulated price is based on the efficient costs of ActewAGL Retail rather than a new entrant retailer.

As a consequence, the actual margins available to second tier retailers may not be the same as those earned by ActewAGL Retail. Importantly, it appears that second tier retailers do not perceive the margins available to them to be a sufficient rate of return that is commensurate with the risks and uncertainties of operating in the market over the long-term. This perceived imbalance between the risk and reward of operating in the ACT has resulted in few retailers entering into (or expanding within) the market.

Consequently, there has been very little retailer rivalry observed and there are currently limited offers available to small electricity customers in the market.

In reaching this conclusion, the AEMC analysed the electricity retail supply market in the ACT (the relevant market) with reference to the MCE criteria. A summary of the AEMC's findings, covering each of the MCE criteria, is set out below.¹

2.1.1 Market structure

The market structure is not consistent with what would be expected in a market with effective competition, although certain demand-side characteristics of the market in themselves appear to be attractive to retailers. This finding is based on the following observations:

- although the ACT market is small, a number of characteristics such as, a relatively high average household consumption of energy (primarily as a result of the climatic conditions), winter peaking demand and high average incomes², appear to make the market attractive to retailers;
- while there are 19 retailers licensed in the ACT, only four licensees have small customers, of which only two retailers are accepting new customers. Therefore, the ACT market is dominated by the incumbent retailer, which has maintained a total share of the market greater than 90 per cent since FRC was introduced;
- since FRC commenced, retailer rivalry has been limited and has weakened more recently. However, ActewAGL Retail's 'win-back' campaign in response to the increased level of retailer rivalry in 2006-07 suggests that it responds well to competitive pressures; and
- the unique characteristics of the market may make it difficult for second tier retailers to profitably enter into and expand within the market.

2.1.2 Market conduct

The conduct of retailer and consumer switching patterns are not consistent with a market that has effective competition. In considering the relevant MCE criteria, the AEMC has found that:

- there is little retailer rivalry, as evidenced by limited marketing, product offerings and price rivalry. The incumbent retailer is the only retailer marketing in traditional media, in addition to maintaining a significant amount of promotional activity;

¹ For further information see: AEMC, *Review of the effectiveness of competition in the electricity retail market of the ACT - Stage 1 Final Report*, 24 November 2010.

² It is important to note that there is also a significant number of low income households in the ACT.

- sixty per cent of surveyed consumers are aware that they can choose their retailer; however, this is low compared with both Victoria (94 per cent) and South Australia (82 per cent);
- there is a lack of awareness and understanding by customers of FRC; and
- customer switching from the incumbent to second tier retailers has decreased markedly since 2007 and remains low today.

2.1.3 Market performance

The performance of the ACT electricity market is not consistent with what would be expected to exist in a competitive market. Overall, however, customers appear to be satisfied with the retail services provided to them.

In considering the relevant MCE criteria, the AEMC has found that:

- the actual margins available to second tier retailers may not be the same as those earned by ActewAGL Retail because of the unique characteristics of the market. Importantly, it appears that second tier retailers do not perceive the margins available to them to be sufficient to recover their costs and earn a rate of return that is commensurate with the risks and uncertainties of operating in the market over the long-term;
- the limited amount of retailer activity has resulted in a relatively low level of product innovation and offerings in the ACT retail electricity market, therefore, there is limited choice for customers; and
- customers appear to be satisfied overall by the quality of service in the ACT. This suggests that despite ActewAGL Retail's dominance, competitive pressure (that is, the threat of entry or expansion) has encouraged it to maintain a high quality of service. Additionally, most participants surveyed (in excess of 90 per cent) had never encountered any of the commonly identified retail problems, such as misleading marketing practices. However, there is a lack of awareness by consumers about the availability of independent assistance, should consumers have problems with their retailer. This is consistent with the number of complaints that the ACT Civil and Administrative Tribunal (ACAT) has received from non-hardship consumers, which has been low.

2.1.4 Compliance with social welfare and equity objectives

The AEMC has found that the social welfare and equity objectives relating to the supply of electricity in the ACT are clearly specified and are transparently funded. The various community service obligations operate in a manner that should not materially impede the effectiveness of competition in the retail supply of electricity to small customers in the ACT.

2.2 Regulatory obligations

Having found that competition in the ACT electricity retail market is not effective, there are a number of regulatory obligations that the AEMC is required to have regard to when formulating its advice to the ACT Government. The assessment framework consists of two complementary elements outlined in the AEMA and the Revised Statement of Approach (RSoA). In brief, the Australian Energy Market Agreement (AEMA) provides the context for the AEMC to structure its advice to the ACT Government on retail price controls to promote competition in the market going forward. The RSoA outlines the concepts and framework for the Retail Reviews and those regulatory obligations the AEMC must have regard to, for example, the national electricity objective. Note that in formulating its advice, the AEMC has also had regard to the South Australian and Victorian Retail Reviews.

Under clause 14.12 of the AEMA, where competition is not yet effective for a market, group of users or a region, the AEMC must publicly report on:

- retail energy price controls (including those furthering social welfare and regional equity objectives) that can be imposed by the relevant State or Territory but which should, to the extent possible, not hinder further development of competition and ensure that the benefits outweigh the costs, and costs are minimised; and
- retail energy price controls that could be retained under the existing arrangements or be transferred to the AER and the AEMC at the discretion of each jurisdiction (such a transfer would not include the funding of community service obligations).

In assessing each of the non-pricing and pricing options outlined in chapters three, four and five of this report; the AEMC has, to the extent possible, considered the relevant costs and benefits. Furthermore, as required under Parts two and three of the RSoA, the AEMC has undertaken this assessment with a view to furthering the national electricity objective. Specifically, whether the options considered are consistent with the long term interests of consumers.

2.3 Benefits of competitive markets

Where competition is effective in promoting economic efficiency, there is generally no need for price regulation. Regulated prices will almost always be an imperfect substitute for prices determined by the competitive processes of a market and are likely to impose costs and distortions that would not otherwise be present. Specifically, as regulators have imperfect information, regulated prices will generally either be set too low, deterring investment and innovation, or too high, to the detriment of consumers. That is, it is a regulator that faces the risk of pricing decisions that would otherwise be taken by a business. Regulated pricing arrangements also lack the flexibility and timeliness of market prices. The distortions price regulation cause and the administrative and compliance costs it imposes are likely to be higher, and the benefits

lower, where price regulation is imposed on a competitive market compared to a situation where the market is not competitive.

Consumer representatives have raised concerns regarding issues that go beyond the operation and performance of the competitive market, such as the affordability of energy for low income households. Such representatives often assert that retail price regulation can be used to ensure that affordability of energy supply is maintained.

The AEMC acknowledges that affordability issues are an important matter to consider when reviewing the operation of a market. However, these issues are better addressed through appropriately targeted policies rather than by intervening to distort the efficient operation of the market. If energy prices rise in the future (due to, for example, the introduction of an emissions trading regime, investment shortfalls or scarcity of energy sector inputs), price regulation is not the answer and indeed could exacerbate the underlying causes of increased prices. Price regulation affects all market participants, not just those consumers experiencing hardship. A competitive market ensures that energy prices reflect the real costs of energy supply and sends appropriate price signals to firms regarding investment decisions and to consumers regarding their energy use.

Consequently, it is preferable to establish a market that operates free of regulatory intervention (to the greatest extent possible) and then implement specific, targeted policies to assist those consumers that would benefit from financial and non-financial assistance to enable them to actively participate in that market. This is not a simple matter. Nevertheless, it is an appropriate objective and relevant to the ACT Retail Review.

2.4 Effective competition in the ACT

As noted by Origin Energy, the ACT electricity market is unique within Australia. It is the only market that consists of a single vertically integrated incumbent holding a dominant market share.³

Also given the relatively small size of the ACT electricity market, a market structure resembling perfect competition – where there are multiple suppliers offering numerous products to consumers – may seem unlikely to occur. However, this is not to say that the market does not have the potential to become more competitive and provide better outcomes for consumers over time.

A dominant service provider that is placed under competitive pressure from a number of second tier retailers looking to enter the market (that is, the market is contestable) will need to reduce prices towards (marginal) costs, and to improve service levels, in order to attract customers and gain market share. Where it does not, it provides opportunities for competing or new entrant retailers to undercut its prices (and/or offer higher levels of service), and therefore take market share. In the longer term,

³ Origin Energy submission, 27 August 2010, p. 3.

competition also provides incentives to innovate to reduce costs, in order to reduce prices further (or increase profits).

If there is a credible threat of entry in the ACT market, the dominant incumbent will need to price its products at a competitive level in order to maintain (or gain) market share. The competitive pressure on the dominant incumbent will be enhanced if consumers are also actively participating in the market and are willing to seek out alternative products rather than continue with the 'standard products'. However, evidence of active switching between retailers it is not essential for a market to be considered competitive.

2.5 Principles of good regulatory practice

Given the AEMC's finding that competition in the ACT electricity retail market is not effective, the task of the AEMC is to provide advice to the MCE and the ACT Government on 'ways to promote the growth of effective competition' in accordance with clause 14.11(c) of the AEMA. In considering options to promote effective competition, the AEMC is guided by the principles of good regulatory practice.

The Council of Australian Governments (COAG) has developed a guide to best practice regulation for Ministerial Councils and intergovernmental standard-setting bodies. This includes bodies established by statute, or administratively by government, to deal with national regulatory problems. Each government agreed to ensure that regulatory processes in its jurisdiction will be consistent with the following principles:⁴

1. establishing a case for action before addressing a problem;
2. a range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed;
3. adopting the option that generates the greatest net benefit for the community;
4. in accordance with the Competition Principles Agreement,⁵ legislation should not restrict competition unless it can be demonstrated that:
 - (a) the benefits of the restrictions to the community as a whole outweigh the costs; and
 - (b) the objectives of the regulation can only be achieved by restricting competition;

⁴ COAG, *Best practice regulation - a guide for ministerial councils and national standard setting bodies*, October 2007, p. 4.

⁵ COAG agreed to the principles of competition policy in February 1994 and agreed to achieve and maintain consistent and complementary competition laws and policies to apply to all businesses in Australia.

5. providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear;
6. ensuring that regulation remains relevant and effective over time;
7. consulting effectively with affected key stakeholders at all stages of the regulatory cycle; and
8. government action should be effective and proportional to the issue being addressed.

A discussion of the above principles in conjunction with some of the factors that the government bodies should consider in applying these principles to the regulation making process when assessing potential responses to policy problems are included in the COAG guide.⁶

To the extent it is practicable under the terms of the AEMA and the MCE's request for advice, the AEMC has had regard to the COAG principles of best practice regulation in providing its advice in this Stage 2 Draft Report for the ACT Retail Review. In considering the options available that may promote the development of effective competition in the ACT, including consumer protection provisions and any regulatory or legislative changes, the AEMC has considered the objectives of each regulatory instrument, the options available for achieving that objective and the costs and benefits of those options.

⁶ COAG, *Best practice regulation - a guide for ministerial councils and national standard setting bodies*, October 2007, pp. 4-6.

3 Non-pricing options

3.1 Introduction

The Stage 1 Final Report concluded that there are a number of non-pricing issues inherent in the ACT electricity retail market that are impacting on its operation and, potentially, the degree of competition that currently exists. In brief, these non-pricing issues are:

- a low level of consumer awareness of the ability to switch retailers and who those alternative retailers may be (that is, customer stickiness);
- little consumer understanding of the implications of switching retailers (for example, that this does not have an impact on the physical supply of electricity); and
- concern from second tier retailers about additional factors that could be constraining their ability to enter into and expand within the market (such as, different regulatory requirements between jurisdictions, the dominance of ActewAGL Retail and its economies of scale and scope).

This chapter is divided into three options that outline potential changes that could be undertaken to address these concerns and improve the competitive nature of the market. The first option pertains to the demand-side of the market and consumer awareness, while the other two options focus on considerations that address the supply-side of the market. Specifically, the three options that have been considered by the AEMC are:

- customer education and awareness (to reduce customer stickiness and inform them of the operation of the market);
- achieving greater harmonisation of regulatory requirements across jurisdictions (that is, reducing the differences in the ACT requirements relative to other jurisdictions, to lower compliance and administrative costs for retailers); and
- strategies for increasing the prominence of second tier retailers relative to the incumbent (that is, the consideration of possible rebranding or possible merit in reviewing the guidelines on ActewAGL regarding cost allocation).

Each of these options are outlined below.

3.2 Option (i): customer education and information

To overcome the low level of consumer awareness of switching and the electricity supply chain, a targeted consumer education campaign could be introduced in the ACT. At present the level of awareness is low and the availability of information is limited.

3.2.1 Outline of this option

In its report for the Stage 1 Draft Report, Roy Morgan Research concluded that, on balance, the survey of residential users of electricity suggests that competitiveness is not strongly present in the ACT electricity retail market. ActewAGL Retail is the dominant electricity supplier, providing retail services to 91 per cent of the customers surveyed. Consumer awareness of full retail contestability (FRC) in the ACT is 60 per cent, which is lower than that observed in other jurisdictions. For example, in South Australia awareness is 82 per cent and in Victoria it is 94 per cent. In addition, 51 per cent of respondents could not name an electricity retailer alternative to their current one. Not unexpectedly, the degree of switching between retailers by customers has been very low at approximately 10 per cent. A similar result was obtained from the survey of small business customers.⁷

In addition, Roy Morgan Research's focus group survey report noted that participants wanted information that allows them to make informed decisions and comparisons about electricity supply services available to them – such as clearer cost comparisons, better disaggregation of cost components, and information about the discounts available.⁸

The apparent limited awareness of consumers about the ACT electricity market and their ability to choose a retailer is impacting the behaviour of consumers and, consequently, on the performance of the market. It may also be making it more difficult for second tier retailers to attract customers away from ActewAGL Retail. Therefore, in order for consumers to gain equitable access to the competitive market, they need to be able to obtain product information that is readily available and easy to understand. This suggests that there is a need for an appropriately targeted and timely consumer awareness and education campaign to inform customers of rival electricity suppliers in the ACT and the roles of companies in the supply chain.

There are two aspects to an adequate customer awareness campaign. Firstly, an awareness and education dimension to improve understanding for residential and small business customers about:

- their rights under the consumer protection framework;
- the electricity supply chain and the roles of retail, distribution and transmission companies in the market (and that changing retailer does not jeopardise supply service);
- the options and procedures available to them for seeking redress or complaining about marketing or selling misconduct; and
- the changes that may occur take place in relation to the calculation of the regulated price.

⁷ Roy Morgan Research Residential Report, p. 1; Roy Morgan Research Small Business Report, p. 1.

⁸ Roy Morgan Research Focus Group Report, pp. 18-20.

Secondly, a marketing dimension to facilitate choice, including:

- the range of alternative retailers and their contact details; and
- the benefits of seeking alternative offers and information from retailers and other sources (for example, information provided through a centralised website) regarding their electricity supply options.

Consumer education should not be limited to a short period or be conducted as a one-off event. It is equally important that this information be available to consumers on an ongoing basis and periodically brought to their attention through publicity campaigns.

To assist in this, there is a role for the establishment of a website that provides the information noted above, as well as up to date information on available offers from all licensed retailers active in the ACT. Similar websites already exist in other jurisdictions in Australia and overseas. Comparison or estimator tools and calculators allowing consumers to compare available offers are also widespread in other industries, notably financial services and mobile telephone communications, driven in part by a comparatively greater degree of product complexity, differentiation and innovation and corresponding demand from consumers for product information and explanation.

3.2.2 Achieving this outcome

The AEMC considers that the ACT Government would be the most appropriate body to introduce an education and information awareness campaign in the ACT. In this instance, this could be undertaken by the relevant government department (DECCEW). A marketing campaign to assist customers understanding of the switching process and provide a product information and comparison website could also be provided by either DECCEW or the ICRC.

In the Australian energy market, the Essential Services Commission of Victoria (ESC), Essential Services Commission of South Australia (ESCOSA), Independent Pricing and Regulatory Tribunal of NSW (IPART) and the Queensland Competition Authority (QCA) provide online offer comparison or estimation tools.⁹ These tools may be accessed through the organisations' respective websites. They provide a means of enabling consumer access to energy offer information at their convenience. In general, there are two methods by which energy offer information is compared:

- comparison of a customer's existing supply arrangements with a new offer; or
- an estimate of charges payable, based on historical consumption, under a range of possible offers in the marketplace.

Both methods provide an indication of the possible comparative savings available to a customer and what steps can be taken to change electricity service or provider.

⁹ For example see, www.myenergyoffers.nsw.gov.au/

For example, the ESC energy comparator provides a comparison of the charges payable under a new market offer with the consumer's current supply arrangement, based on information provided by the consumer about current billing and usage and the new offer. The ESC approach allows consumers to enter offer-specific elements such as contract length or discounts; however, it does not attempt to ascribe an actual value to these as part of its calculations.

By comparison, ESCOSA does not rely on consumers having a new energy offer to hand, but instead provides estimates of annual energy costs under various available plans and estimated annual savings, based on information provided by the consumer about current usage.¹⁰ The ESCOSA estimation tool does not factor in contract terms or discounts, although it does note applicable direct debit rebates or one off joining bonuses.

3.2.3 Assessment

A consumer education and information awareness campaign of the nature described above will provide tools to consumers that will allow them to make informed decisions about their electricity supply. Well informed consumers are a feature of a well functioning and competitive market, therefore the AEMC expects that over time, customer awareness will reduce stickiness. In addition, customers will become aware of FRC and supply options in the ACT, as well as, the roles of each player in the electricity supply chain.

As noted above, the consumer survey undertaken by Roy Morgan Research in the ACT revealed a general lack of awareness by consumers of their ability to choose an electricity supplier. To show what could be possible if the level of awareness is improved, a comparison of the number of retailers providing services in electrically similar locations (that is, similar number of customers with a similar load) to the ACT was undertaken. The locations chosen were Geelong in Victoria and Newcastle and Queanbeyan in NSW. The awareness of FRC in Victoria and NSW is 94 and 92 per cent respectively, with the assumption that both Geelong, Newcastle and Queanbeyan would have similar levels of awareness. A number of comparative (both government and privately operated) websites were analysed for a postcode in the central business district of each location. The maximum number of retailers operating in each location was ten for Newcastle and Queanbeyan and 12 for Geelong, compared with three in Canberra.¹¹

In addition, the AEMC anticipates that as a result of this awareness campaign, the perception of customers regarding their physical electricity supply in the event of a switch would improve. That is, an understanding that the physical supply of electricity by the distribution company will not alter as a result of changing electricity suppliers (retailers).

¹⁰ In addition to government operated websites like ESCOSA's, private independent websites such as Goswitch and Switchwise also provide comparisons of available offers for this and other markets.

¹¹ See Appendix D for further information.

For these reasons the AEMC considers that increasing the level of awareness in the ACT market could facilitate improved competitive outcomes and reduce customer stickiness.

In the subsequent marketing campaign, the AEMC notes that for it to be effective, consumers require an element of choice. That is, the supply-side of the market must be improved in parallel to provide customers with more supply options. As the number of retailers operating in the ACT increases, more consumers will consider switching either electricity retailers or services to better suit their needs. In turn, this may encourage retailers to offer a greater range of products to address consumer interest in alternatives to the standard supply services. That is, the lower costs incurred by retailers entering the market and attracting customers would facilitate greater active participation in the market by the demand-side. For example, a customer's active use of websites to search for alternative retailers and product offerings would reduce a retailer's customer acquisition costs, thereby reducing overall costs to the market. Consequently, this would result in an environment where competition is encouraged. The AEMC also considers that the marketing campaign by the ACT Government would reduce the marketing costs for second tier retailers considering entry into the ACT market.

In parallel with the marketing campaign, the AEMC recommends that the ACT Government reviews the framework governing the customer protection and switching process. This is primarily to ensure that the framework in place allows for the smooth transfer of consumers from one retailer to another. In the event that a problem should arise, it is essential that consumers are aware of the complaint process. That is, in the first instant, who should be contacted and the process for complaint escalation in the event the issue is not resolved.

In summary, while it is anticipated that the above benefits could be achieved, this option also has a cost. That is, costs would be incurred in the initial setup and ongoing maintenance of a comparative website and the production and implementation of a campaign to inform customers of FRC (whether this be through printed media or advertising on television and radio).¹² However, over the mid to long-term, these costs are expected to be lower compared with the benefits to consumers of greater choice of both suppliers and products that are reflective of the efficient costs of supply.

3.3 Option (ii): harmonisation of regulatory requirements across jurisdictions

3.3.1 Outline of this option

There are a number of ACT specific requirements that electricity retailers must comply with. The AEMC acknowledges that in some cases requirements are very similar to those in other jurisdictions (see Table 3.1 below). In other cases, there is a considerable

¹² In addition, as consumer awareness of FRC increases, some forms of information dissemination may no longer be required, further reducing costs.

difference. The AEMC notes that the different requirements between jurisdictions are not an ACT specific issue; however, whatever the degree of difference, retailers must accommodate the specific requirements if they are to participate in the market. This becomes an administrative cost (for example, developing IT systems) - largely upfront - to a retailer; however, the average cost will decline as its number of customers increases.

In the ACT there are a number of government initiated programs in the energy sector that place specific legislative requirements on energy retailers operating there. These programs include the feed-in tariff and carbon abatement schemes. For example, in relation to the ACT solar scheme, TRUenergy considers that the feed-in tariff arrangements are a disincentive to retailers entering the market. TRUenergy is of the view that 'while there are similar style schemes in place in other markets, the ACT scheme is considerably more complex as the scheme guarantees eligible customers a set feed-in rate (based on the year of installation) for 20 years'.¹³ In addition given that the rate may be adjusted annually, there are the added administrative costs of making these system changes and informing customers. These administrative costs may be small; however, as discussed in the Stage 1 Final Report, second tier retailers may be reluctant to incur these upfront fixed costs if they are uncertain about attracting the mass of customers required to spread these costs over.

Table 3.1 Comparison of the ACT and NSW regulatory requirements

| Regulation/legislation | NSW | ACT |
|--|--|---|
| Greenhouse Gas Abatement Scheme (GGAS) | <p><i>Electricity Supply Act 1995</i> (NSW)</p> <p>Requirements include the licensee must comply with:</p> <ol style="list-style-type: none"> 1. its greenhouse gas benchmarks; and 2. the <i>Electricity Supply Act 1995</i> (NSW) and statutory instruments in force under that Act, including <i>Electricity Supply (General) Regulation 2001</i> (NSW). <p>Part 8A of the <i>Electricity Supply Act 1995</i> (NSW) sets a State greenhouse gas benchmark expressed in tonnes of carbon dioxide equivalent (tCO₂-e) per capita. The initial level in 2003 was set at 8.65 tCO₂-e and progressively dropped to</p> | <p><i>Electricity (Greenhouse Gas Emissions) Act 2004</i> (ACT)</p> <p>Requirements include the licensee must comply with:</p> <ol style="list-style-type: none"> 1. its greenhouse gas benchmark; and 2. the <i>Electricity (Greenhouse Gas Emissions) Act 2004</i> (ACT) and statutory instruments in force under that Act. <p>The licensee must also submit an audited Benchmark Statement to the ICRC annually by 1 March of the year following the compliance year.</p> <p>The Scheme sets a Territory greenhouse gas benchmark expressed in tonnes of</p> |

¹³ TRUenergy submission, September 2010, p. 2.

| Regulation/legislation | NSW | ACT |
|------------------------|--|--|
| | 7.27 tCO ₂ -e in 2007 remaining at that level until 2012. This represents a reduction of five per cent below the Kyoto Protocol baseline year of 1990. | carbon dioxide equivalent (tCO ₂ -e) per capita. The level set for 2005 was 7.96 tonnes per capita. The benchmark was progressively reduced. In 2007, the benchmark was 7.27 tonnes per capita. It will continue at this level until the Scheme ends in 2020. These benchmarks correspond to those adopted in NSW. |
| GreenPower | <p>Requirements for licensed retailers are contained in the <i>Electricity Supply (General) Regulations 2001</i> (NSW) in clause 45B (1). That is:</p> <ol style="list-style-type: none"> 1. a supplier who offers to supply electricity to residential premises must: <ol style="list-style-type: none"> (a) offer (renewable energy sources offer) each potential new or moving customer the equivalent of a minimum 10% of the total electricity supplied from an accredited renewable energy source; 2. a renewable energy sources offer must state <ol style="list-style-type: none"> (i) whether the electricity to be supplied is under a standard form customer supply contract or negotiated customer supply contract (ii) tariffs/charges under the offer; and 3. a renewable energy sources offer must be a member of and comply with the requirements of an approved accreditation scheme. | <p>GreenPower offer scheme</p> <p>From 1 April 2009, the Licensee must comply with the following requirements:</p> <ol style="list-style-type: none"> 1. offer a GreenPower product to each new or re-connecting customer of the supplier; 2. at the same time as the GreenPower offer, make each potential new and reconnecting customer of the supplier aware that other products are available to them; 3. disclose all tariffs and charges associated with the GreenPower offer and all other products offered to each potential new and reconnecting customer of the supplier; 4. offer and make a GreenPower product available to all existing customers of the supplier at the existing customer's request; and 5. if a person being supplied a GreenPower product under a standard customer contract, permit the customer to revoke the supply agreement for the GreenPower product with the supplier without incurring any penalty or termination fee. |
| Feed-in tariff scheme | Regulatory framework of the Solar Bonus Scheme is set | Section 6 (3) of the <i>Electricity Feed-in (Renewable Energy</i> |

| Regulation/legislation | NSW | ACT |
|------------------------|---|---|
| | <p>out in the <i>Electricity Supply Act 1995</i> (NSW) and the <i>Electricity Supply (General) Regulation 2001</i> (NSW).</p> <p>The licensee must comply with the <i>Electricity Supply Act 1995</i> (NSW) and statutory instruments in force under that Act.</p> <p>Main aspects of the scheme include:</p> <ul style="list-style-type: none"> • period of operation is seven years from 1 January 2010; • legislation sets out how often the tariff is set; and • there are no reporting obligations for retailers under this scheme. | <p><i>Premium) Act 2008</i> (ACT)</p> <p>The licensee must comply with the <i>Electricity Feed-in (Renewable Energy Premium) Act 2008</i> (ACT) and statutory instruments in force under that Act.</p> <p>Main aspects of the scheme include:</p> <ul style="list-style-type: none"> • period of operation is 20 years from connection of the generator; • the rate of the tariff is determined by the Minister for each financial year; and • retailers are required to report quarterly on the number of customers receiving the feed-in tariff and the total amount of the premium paid over this period. |

3.3.2 Achieving this outcome

The aim of this option would be to facilitate the harmonisation of legislative requirements across jurisdictions or between the ACT and surrounding jurisdictions. There are a number of ways in which this could be achieved. The best solution is to have better harmonisation across jurisdictions, which could be facilitated through a nationally consistent legislative framework, for example, the National Energy Customer Framework (NECF).¹⁴ The NECF involves the harmonisation of State-based regulatory frameworks (with the exclusion of retail price regulation and community service obligations) for the retail energy market and energy distribution sector into a single set of national rules. Specifically for retailers, the NECF is predominantly implemented through licence conditions. This will mean that retailers operating in the national electricity and natural gas markets will only require one licence (issued by the AER) and will be subject to a consistent set of rules across all jurisdictions. However, it should be noted that under the NECF, jurisdictional specific programs like the greenhouse gas abatement program and the feed-in tariff scheme outlined in Table 3.1 above, are currently not included.¹⁵

Another possible approach to achieving greater harmonisation of the legislative requirements between the ACT and surrounding jurisdictions would be the introduction of a third-party provider that dealt exclusively with the fixed costs associated with ACT regulations and legislation for the whole market. For example, the right to operate the feed-in tariff scheme for all ACT customers could be established by government tender. As a result, second tier retailers need not set up specific compliance systems within their billing arrangements to take into account ACT specific regulations. That is, for a fixed fee these aspects could be outsourced to the successful tenderer.¹⁶ It should be noted that for such a scheme to operate efficiently would require that it remove all regulatory obligations from the retailers. In practice the AEMC considers that this would be very difficult to achieve.

3.3.3 Assessment

A new supplier entering an electricity retail market, must comply with any specific legislative or regulatory provisions relevant to that market. The fixed entry and administrative costs associated with those provisions are subsequently recovered from consumers as part of the cost associated with the supply of electricity. Therefore, the greater the customer base, the easier it is for a retailer to recover these costs. In the case of the ACT, a new entrant retailer may be more reluctant to enter because it will need

¹⁴ For further information see, www.ret.gov.au/Documents/mce/emr/rpww/default.html.

¹⁵ To this end, jurisdictional policy makers should be aware that the implementation of these policy options often come at a cost that should be minimised where ever possible.

¹⁶ The fixed fee involved in this transaction would be the cost per customer spread over all customers in the ACT and would be the lowest cost achievable - minimising the burden on the market. It could be appropriate for the ICRC to be given responsibility for the oversight and setting of this fee. This should circumvent some disputes between retailers over access to the particular services provided under this framework.

to covers its fixed costs of entry over a relatively small customer base (130 000 households) before making a profit. That is, potential entrants face relatively high costs per customer to set up in the ACT and this can deter entry if a retailer considers that the actual margin available to a second tier retailer is perceived to be insufficient to recover their costs and earn a return commensurate with the risks of providing electricity in the market over the long-term.¹⁷ As noted in the Stage 1 Final Report, the AEMC acknowledges that ACT specific regulation could be an issue in the ACT market; however, it is not considered to be a decisive factor in the prevention of entry by second tier retailers.

The possible alignment of the regulatory requirements for retailers operating in more than one jurisdiction would have benefits for competition. That is, through harmonisation of regulatory requirements, entry by second tier retailers into other jurisdictions is consequently reduced. This would make it easier and less costly for retailers to operate across jurisdictions. To some degree, this will be the benefit of the NECF. However, even after implementation of the NECF, there are a number of aspects that will remain at the discretion of the jurisdictions.

A third-party provider has been considered as a means of harmonisation of regulatory requirements within the ACT. However, the implementation of this scheme may be difficult in practice and there is no guarantee that it would prove a cost effective method to reducing the fixed costs associated with regulatory barriers. As it may be impossible to isolate all of the impacts on second tier retailers, there is a risk that a third-party provider may increase total costs and reverse competitive outcomes. Nevertheless, if these requirements are also aligned, such that there are no jurisdictional based regulatory differences, retailer rivalry should be greatly enhanced. But, it remains unclear whether the introduction of such harmonisation would remove costs, as it may be too difficult to transfer existing customers from current to new regimes. Therefore, as noted in the Stage 1 Final Report, the AEMC questions whether the costs associated with such options would be offset by the potential benefits to competition.

3.4 Option (iii): amending the competitive environment between incumbent and second tier retailers

3.4.1 Outline of this option

In terms of the structure of ActewAGL Retail, Origin Energy has noted that 'the current ring-fencing arrangements in the ACT may require additional consideration in the context of facilitating effective competition'.¹⁸ Origin Energy considers that this is an

¹⁷ In Belgium, there are separate regulators for the Flanders, Walloon and Brussels regions, each with different licensing and price control requirements for retailers operating in its region. It has been found that the differences in the requirements on retailers between regions may mean that entry is more limited in each region than would be the case if there was a single set of requirements across the whole country.

¹⁸ Origin Energy submission, August 2010, p. 3.

issue specific to the market structure of the ACT. That is, 'the ACT market, with a single vertically integrated incumbent holding a dominant market share, is unique in Australia'.¹⁹

In addition, consumer advocates have stated:²⁰

“We offer a note of caution at this point about the ‘bundling’ arrangements, whereby various essential service and related utility providers, some with shared parentage, are bundled together as a range of services at a discounted rate. We are concerned about the potential for cross subsidisation and the high potential for lack of transparency with this practice. We are also concerned about the actual incidence of costs and benefits and whether low income households have equitable access to any benefits of bundling, or whether they are effectively cross subsidising higher income consumers.”

To address this issue, the AEMC has considered actions that could be taken to create a more level playing field between the incumbent retailer and second tier retailers. The key to this appears to be that under the current organisational structure and operational approach, ActewAGL Retail achieves cost advantages over any of its potential rivals. This seems largely the result of the economies of scale and scope that it obtains from its dominant position in the market and from operating other utility businesses in the ACT.

ActewAGL's winter essentials magazine (as with other editions) contains all of the services that are administered by ActewAGL, which includes TransACT, ActewAGL Energy Shop, ActewAGL Retail, ActewAGL Distribution, Actew Corporation (water and wastewater) and ActewAGL Home Services. Each of these services has similar branding in spite of being a mix of both regulated and contestable services and across different sectors of the economy.

Not only could it be unclear to the householder as to what business unit provides what services (this is previously discussed in relation to consumer understanding of the electricity market), but it provides the opportunity for corporate and other joint costs (notably marketing which is clearly carried out on a joint basis) to be spread across the customers of the various services. In effect, the customer base is much larger than the 130 000 households using electricity services.

3.4.2 Achieving this option

The AEMC has considered two possible changes that could also affect the creation of a competitive environment for second tier retailers. These are:

- re-branding the electricity retail business of ActewAGL Retail; or

¹⁹ *ibid.*

²⁰ Consumer Agencies submission, 27 September 2010, p. 11.

- the complete removal of the ActewAGL Retail business unit from the Actew business group.

It is envisaged that either of these actions could break down the relationship between ActewAGL Retail and its related businesses and encourage fully 'arms length' transactions to take place.

An alternative to such changes could be possible merit in reviewing the guidelines on ActewAGL regarding cost allocation . In particular, the ability of joint marketing to be undertaken by the businesses could be assessed.²¹

3.4.3 Assessment

The separation of the electricity retailing business of ActewAGL Retail from other business activities should result in arm's length transactions between the various Actew-related business units. It may diminish the benefits from economies of scale and scope that may be accruing to ActewAGL Retail which are providing it with a cost advantage over second tier retailers. The degree of reduction in the economies of scope and scale will depend on the extent of separation.

However, the AEMC considers that such measures may not be in the best interests of customers. Removing economics of scale is likely to lead to increased prices for customers. Plus such an approach could result in changes to the bundling of products and services to customers. In addition, the rebranding of ActewAGL Retail electricity may result in increased costs for the business and a reduction in shareholder value. The AEMC notes that the extent to which any cross subsidisation exists currently within the ACT market remains unclear.

The AEMC considers that the more appropriate course of action would be to improve the ability for second tier retailers to enter the market. This would in turn maintain the competitive pressure on ActewAGL Retail to price efficiently. The threat of entry or/and active retailer competition will maintain a competitive discipline on ActewAGL Retail ensuring any benefit from economies of scale and scope would be passed through in lower charges for consumers.

The alternative to such measures, which is less dramatic and less costly to undertake, is to review and strengthen the ring-fencing arrangements now under the AER's jurisdiction. This seems to be a more proportional approach given the materiality of the issue. The AEMC notes that the current arrangements are in place for the regulatory control period 2009-14.²² Nevertheless, an earlier reassessment of these arrangements would be positive as it would open the structure of ActewAGL and its operations to independent scrutiny earlier and ensure that cost allocations, information flows and internal transactions are carried out to a high standard.

²¹ ICRC, *Ring fencing guidelines for gas and electricity network service operators in the ACT*, November 2002, p. 12.

²² National Electricity Rules, clause 6.17.1(b)

One particular issue is the allocation of money for marketing activities, which under the current ring fencing provisions may be undertaken jointly by the retail and distribution businesses. The AEMC however considers that the affect of this joint marketing may be reduced through the customer awareness campaign, as it would make customers more aware of alternative retailers operating in the market.

4 Pricing options

4.1 Introduction

The Stage 1 Final Report concluded that the actual margins available to second tier retailers may not be the same as those earned by ActewAGL Retail because of the unique characteristics of the ACT market (for example, customer stickiness). Importantly, given that retailers are not entering into or expanding within the ACT retail electricity market, it appears that second tier retailers do not perceive the margins to be a sufficient rate of return that is commensurate with the risks and uncertainties of operating in the market over the long-term.

Chapter 3 discussed non-pricing options that could be introduced to improve the current level of competition by making it easier (that is, reducing the costs and risks) for second tier retailers to enter into and expand within the market (for example, reducing customer stickiness). This chapter focuses on the pricing options that may also be considered to increase the degree of competition in the market.

Specifically, the pricing options being considered include:

- Option (A) - retain the current TFT (that is, maintain the status quo);
- Option (B) - change the approach to setting the TFT;
- Option (C) - replace the TFT with reporting and monitoring; and
- Option (D) - remove retail price regulation.

Each of these options are described below as well as the implications associated with each option.

4.2 Option (A): retain the current TFT

The status quo option is to retain retail price regulation in its current form. That is, retain retail price regulation and have the ICRC continue with its current approach to setting prices.

4.2.1 Outline of this Option

Maintaining the current price setting arrangements does not appear to be a viable option in the long-term given that the Stage 1 Final Report found that competition in the ACT electricity retail market is not effective, and the purpose of the Stage 2 Draft Report is to recommend ways to increase the level of competition.

The AEMC is of the view that implementing only non-pricing options, without also eventually making changes to the current price setting arrangements, will be insufficient to encourage second tier retailers to enter into and expand within the

market. Therefore, an increase in retailer rivalry or at least the competitive pressure on ActewAGL Retail created through the threat of entry would not be expected to occur. As a result, it is unlikely that consumers would benefit in the long-run from greater product innovation and offerings. However, consumers would continue to benefit financially from relatively low electricity prices based on ActewAGL Retail's efficient costs, which incorporate its cost advantages.

4.2.2 Achieving this outcome

No changes to the legislation for the ICRC or the terms of reference would be required under this option.

4.2.3 Implications

Given that retailers are not entering into or expanding within the ACT retail electricity market, it appears that second tier retailers do not perceive the margins to be a sufficient rate of return that is commensurate with the risks and uncertainties of operating in the market over the long-term. The AEMC is of the view that the non-pricing options alone will not adequately reduce the costs and risks for second tier retailers considering whether to enter into and expand within the market. Therefore, under this option the likelihood for enhanced competition (including improvements in the threat of entry and expansion) in the ACT electricity retail market is low.

Importantly, the inherent risks associated with price regulation will remain. This is because regulated prices are almost always imperfect substitutes for prices determined by the competitive processes of a market. Notably, when setting prices, regulators are constrained by both imperfect information and the frequency in determinations. As a result, there is a risk that retailers get stuck (that is, having made investments to acquire customers) providing retail services to recover those investments at prices that do not accurately reflect their costs. Retailers must consider this risk both now and in the future when deciding whether to enter into and expand within a market.

However, consumers are likely to benefit (at least in the short-term) from paying relatively low electricity prices based on ActewAGL Retail's efficient costs. This is because ActewAGL Retail may have slight cost advantages over second tier retailers because it undertakes some activities on behalf of other Actew and ActewAGL business units, thereby, possibly benefiting from synergies across the business units. Some economies of scope would also be expected to bring ActewAGL Retail some relative cost advantages.

Additionally, this option was supported by the Consumer Agencies' joint submission to the Stage 1 Draft Report.²³ For example, they noted that the lack of market size in the ACT constitutes a suboptimal condition. That is, the economies of scale in production mean that only a small number of electricity retailers can profitably enter the market, thus effective competition is forestalled. Therefore, they suggested that 'the

²³ The Consumer Agencies consists of Care Inc, ACTCOSS and Uniting Care Australia.

second best, and therefore optimum outcome given the market circumstances, is for continuation of current arrangements, which seeks [to protect] customers and maintain adequate regulation to keep the dominant retailer in check'.²⁴ However, the AEMC notes that often competition between two firms is able to deliver benefits to consumers.

Notwithstanding the above point, the purpose of the Stage 2 Draft Report is to recommend ways to promote competition in the ACT retail electricity market. Implementing non-pricing options, without also eventually making changes to the current price setting arrangements, is likely to result in only a marginal increase in competition (if any).

4.3 Option (B): change the approach to setting the TFT

Another option being considered by the AEMC is to retain retail price regulation in the ACT electricity market, but change the approach to setting the TFT. This Option aims to maintain price regulation while attempting to address the issue that second tier retailers do not perceive the margins to be a sufficient rate of return that is commensurate with the risks and uncertainties of operating in the market over the long-term.

4.3.1 Outline of this Option

On the basis that retail price regulation is to remain in the ACT, there are a number possible changes that could be made, these include:

- changing the basis of the calculation of the TFT from the efficient costs of ActewAGL Retail to the costs of a single fuel supply efficient new entrant. This should address concerns raised by some stakeholders that the current basis for calculating costs is not appropriate and does not result in a TFT that is compatible with encouraging retailer competition;
- changing the methodology for periodically adjusting the TFT over time from a cost-based approach to an index-based approach. That is, changing the TFT over time to reflect changes in cost inputs (for example, wholesale electricity prices). This could assist retailers in dealing with volatile cost inputs (depending on the current frequency of pricing determinations) although it will still require the calculation of an initial price level; and
- directly passing through changes in wholesale electricity costs and any carbon tax or cost imposed by government schemes such as an Emissions Trading Scheme (ETS). This would allow the regulated retail price to recover uncontrollable and volatile cost inputs in a more timely manner. However, this may have negative implications for consumers.

Each of these options are discussed in more detail below.

²⁴ Consumer Agency submission, 27 September 2010, pp. 10-11.

4.3.2 Achieving this outcome

Changing the methodology for determining the TFT requires two adjustments to the current arrangements, namely:

- changes to the terms of reference provided by the ACT Attorney-General to the ICRC; and
- changes to the ICRC Act and/or the Utilities Act to insert specific requirements relating to pricing decisions for the electricity retail market.

4.3.3 Implications

The aim of altering the approach to calculating the TFT is to ensure that actual margins provide second tier retailers a sufficient rate of return that is commensurate with the risks and uncertainties of operating in the market over the long-term. This increase retailer rivalry in the market or at least the competitive pressure on ActewAGL Retail created through an enhanced threat of entry. Importantly, the TFT would need to reflect the costs and risks involved for a single fuel supply efficient new entrant providing retail services in the ACT. Therefore collecting information from second tier retailers would be required. Additionally, a 'full' Customer Acquisition Cost (CAC) or Customer Acquisition and Retention Cost (CARC) allowance would need to be included.²⁵

Change the basis of the TFT calculation

Changing the basis of the TFT calculation from the efficient costs of ActewAGL Retail to the costs of a single fuel supply efficient new entrant could increase the TFT in the short-term (if the non-pricing options are not also undertaken). Notably, this will require the calculation and inclusion of a 'full' allowance for CAC/CARC.²⁶ The reason why the TFT may increase in the short-term is because it is currently based on ActewAGL Retail's efficient costs, which are likely to be lower than the costs second tier retailers would incur to operate in the market, due to its economies of scale and scope and the other unique characteristics of the market (for example, customer stickiness).

However, prices do not need to increase for the degree of competition to improve in the market. Instead, the unique characteristics of the market can be addressed to make it easier for second tier retailers to enter into and expand within the market (although this would require also implementing the non-pricing options). This is the most

²⁵ A CAC allowance is intended to recover the costs associated with acquiring new customers in a competitive market, such as marketing costs and the costs of transferring and switching customers. Similarly, a CARC allowance is set to recover the costs of acquiring new customers and retaining existing customers. All else being equal, CARC is lower than CAC.

²⁶ Currently the TFT only includes an allowance for sales and marketing costs to communicate the TFT arrangements. This cost element was determined in 2003 and has been escalated for inflation over time.

efficient and beneficial outcome for consumers and so is in line with the National Electricity Objective (NEO).

Finally, this change would result in an approach that is more in line with the price setting approaches used by regulators in other jurisdictions (for example, NSW and QLD - Box 4.1).

Box 4.1: Overview of NSW and QLD retail price setting methodologies

The methodology used to set prices by the Independent Pricing and Regulatory Tribunal (IPART) in NSW and the Queensland Competition Authority (QCA) in Queensland is different from that used by the Independent Competition and Regulatory Commission (ICRC) in the ACT. In particular, for the calculation of the Retail Operating Costs (ROC) and Wholesale Electricity Costs (WEC) allowances. These methodologies are briefly summarised here.

ROC allowance:

The ICRC sets the TFT to allow for the recovery of the efficient costs incurred by the incumbent retailer, ActewAGL Retail. The ICRC does not include a 'full' Customer Acquisition Cost (CAC) or Customer Acquisition and Retention Cost (CARC) allowance, although the ROC does include some sales and marketing costs to communicate the TFT arrangements.

In contrast, IPART currently sets its prices based on a standalone incumbent retailer that is not vertically integrated into electricity distribution and has economies of scale with an existing customer base to defend. Additionally, in its most recent determination, IPART switched from including a CAC allowance in the ROC to incorporating an estimate of CARC.

QCA sets prices based on the costs of a representative retailer, rather than an actual retailer, which has a significant share of the market, is efficient and has a customer base that is representative of all customers in Queensland connected to the NEM. The QCA has included a CARC component in each of its determinations since 2007.

WEC allowance:

Since 2007 the ICRC has used independent and verifiable market-based information on the price of forward contracts. This approach takes into account the spot price for the NSW-ACT region of the NEM, load profile and hedging costs.

Historically IPART set the WEC allowance based on the Long Run Marginal Cost (LRMC) of electricity generation, but recently has changed its approach to calculate market-based costs of energy, or the higher of market-based and LRMC costs. Additionally, IPART now includes a specific 'volatility allowance' to account for market risk.

The QCA initially estimated the WEC allowance on the basis of the standalone LRMC cost of the most efficient combination of generating technologies for the Queensland region, but later moved to a 50/50 weighting of LRMC and market-based costs.

This change should ensure that second tier retailers are able to recover their costs and earn a rate of return that is commensurate with the risks involved in operating in the market. However, it does not address the unique characteristics of the ACT market, and so without also implementing the non-pricing options, could increase prices in the short-term.

Nevertheless, this should increase retailer rivalry in the market, or at least the competitive pressure on ActewAGL Retail, created through the threat of second tier retailer entry and expansion. This should also encourage improved product innovation and more product offerings. However, the actual outcome (that is, retailer entry and expansion) could depend on the conduct of ActewAGL Retail, which may be able to utilise its cost advantages and set market prices below the level that second tier retailers would entice entry and expansion by second tier retailers.

Additionally, the regulatory risk that the prices will not accurately reflect costs at some point in the future still remains due to imperfect information and the timing between determinations. Finally, this approach requires determining the costs of a single fuel supply efficient new entrant, which could be difficult to define and calculate.

In summary, changing the basis of the TFT from the efficient costs of ActewAGL Retail to the costs of a single fuel supply efficient new entrant, is likely to have the following implications:

- prices could increase in the short-term (without also implementing the non-pricing options);
- should ensure that second tier retailers are able recover their costs and earn a rate of return that is commensurate with the risks involved in operating in the market;
- retailer rivalry may increase in the market, or at least the competitive pressure on ActewAGL Retail; and
- should encourage improvements in product innovation and offerings.

Additionally, the regulatory risk that the prices will not accurately reflect costs (both now and in the future) remains. Finally, this approach requires determining the costs of a single fuel supply efficient new entrant, which may be difficult to define and calculate.

Indexing the TFT

Some stakeholders have indicated that one of the problems of the current approach to setting the TFT is that it may not always track fluctuations (in particular, increases) in the cost elements over time. For example, increased wholesale electricity prices during a pricing period (that is, between ICRC determinations) would not be reflected in the TFT. It has been suggested that is one deterrent for second tier retailers considering whether to enter into and expand within the market. Changing the methodology for calculating the TFT from a cost build-up approach to an index-based approach could work to address this issue. An index-based approach may also prove to be a simpler method for adjusting the regulated retail price over time.

In assessing an index-based approach to adjusting the TFT, it is first necessary to determine the most appropriate index to track changes in energy costs. Possible options could be one, or a combination of:

- an index based on changes in the CPI. However, there is evidence that suggests energy costs have historically increased at a rate greater than CPI. If this is the case, then an alternative index should be considered;
- an index based on the market contracts available in the ACT (similar to the approach to be adopted in South Australia, see Box 4.2 below). This option would be difficult because there are currently very few trackable market contracts available in the ACT. Therefore, this could result in a volatile index. In addition, using market contracts would create a circularity problem as it would be in the interest of a dominant incumbent to increase market prices (to the extent possible) in order increase the regulated price; or
- an index that tracks movements in the wholesale electricity market. To date, wholesale electricity costs have been the most volatile component of the cost base and this indexing approach would provide some cost recovery certainty for retailers (it essentially shifts some of the WEC-related risks from retailers to consumers). However, retailers have other uncontrollable costs in addition to their wholesale market costs. Thus, retailers would still be exposed to some uncontrollable cost movements during a pricing period. This suggests that the ICRC would still need to realign prices and costs periodically.

Additionally, consideration needs to be given to:

- whether the index should be bound by a floor and cap to limit the possible volatility for consumers during the pricing period;
- how often should prices adjust with the index over time; and
- how often should the cost base be reassessed. There would be a benefit (in terms of lower regulatory costs) if the time between recalculating the cost base was long. However, if parties are uncertain about the performance of this approach then a shorter period may be preferred. A shorter period also provides greater assurance that prices are cost reflective.

However, even if an index can suitably track retailer costs, resulting in a simplified process for updating the TFT over time, the ICRC would still need to determine the initial cost base. If the initial cost build-up is not based on a single fuel supply efficient new entrant, the level of competition is unlikely to improve (as set out in Option A). Therefore, the most appropriate approach may be a combination of changing the basis of the TFT and an index-based approach. The implications of doing this would be the same as changing the basis of the TFT, although regulatory costs could be reduced through less frequent pricing determinations.

Notwithstanding, it should be acknowledged that, to date, the ICRC has generally (with the exception of the most recent pricing decision) set regulated prices annually. This relatively high frequency increases the likelihood that the regulated retail price will be cost reflective (for ActewAGL Retail) even if all of the components are not entirely controllable. As a result, if price regulation remains in the ACT, the benefits from adopting an index-based approach to adjusting the TFT over time appear limited (unless the ICRC is planning to set prices less frequently).

Box 4.2: Overview of the SA indexing approach

The Essential Services Commission of South Australia (ESCOSA) has confirmed plans to move to a new way of setting electricity standing contract prices from 1 January 2011, replacing the traditional cost-build up approach. Its new hybrid cost and index-based approach will result in annual price reviews with new standing contract prices taking effect on August 1 each year. In a final report on its new methodology, ESCOSA says it needs to change the existing approach to setting electricity standing contract prices because of the ongoing uncertainties and volatility that are currently impacting the wholesale market due largely to uncertainties over carbon pricing and the development of other climate change policies. At present, less than 30 per cent of residential customers remain on the electricity standing contract with most customers purchasing electricity under a competitive 'market contract'.

ESCOSA decided the best way for fixing electricity standing contract prices is to implement a hybrid cost-based and index-based approach, called the Relative Price Movement (RPM) approach. The major elements of the RPM methodology include:

- a review of costs in year one of the price path period via the usual cost build-up approach, to determine prices to apply from 1 January 2011;
- allowing standing contract prices to change at the commencement of each financial year of the price path (beginning 1 July 2011), in line with changes to market contract prices in SA. The Commission will calculate an RPM index, measuring the change in weighted average market contract prices to determine the allowed change in standing contract prices; and
- changes in the standing contract price resulting from the RPM index calculation will be bound by a floor and cap, to provide some certainty over

the extent to which prices will move over the price path period.

Should the RPM index calculation breach the floor or cap, prices will be fixed at the floor or cap. If there are sufficient grounds to allow standing contract prices to move beyond the floor or cap, the Commission may undertake a 'special circumstances' review.²⁷

Direct pass through

Directly passing through changes in wholesale electricity costs and/or any carbon tax or cost imposed by government schemes such as an ETS would allow regulated retail prices to change with various cost drivers. This would reduce the risk for second tier retailers considering entering into and expanding within the ACT electricity market because it would allow the recovery of certain, pre-specified uncontrollable costs. As a result, retailer rivalry or the competitive pressure on ActewAGL Retail could improve. However, this method is likely to:

- create more volatility in the TFT, which some consumers may find difficult to manage. To counter this, price smoothing approaches could be developed. However, this could result in inefficient price signals to consumers; and
- not address the question of whether the cost base for the TFT is appropriate or sufficient to encourage enhanced competition.

While this method may provide greater certainty to retailers that changes in certain cost elements will be passed onto consumers promptly, it does not address whether the underlying cost base is appropriate. As a result, it would make sense to explore this option in combination with changing the basis of the TFT from the efficient costs of ActewAGL Retail to the costs of a single fuel supply efficient new entrant. However, retailers are better placed to manage the risks associated with changes in cost inputs (for example, wholesale electricity prices) through their hedging arrangements. Therefore, a direct pass through mechanism does not appear to be appropriate.

4.4 Option (C): replace the TFT with reporting and monitoring

An alternative to maintaining retail price regulation (either in its current form or in an amended form) is to replace it with a price monitoring and reporting program.

4.4.1 Outline of this Option

This option would allow prices to be determined by the market rather than the ICRC. As a transitional measure to completely removing price regulation, a period of market monitoring by either the ICRC or the AER could be established. This is similar to the approach taken in Victoria in removing retail price regulation for small electricity consumers (see Box 4.3 below). The objective of this price monitoring scheme would be

²⁷ Power Industry News 703, *New SA pricing methodology*, 16 August 2010.

to identify and publish trends in standing and market offer prices over the previous 12 month period (that is, after the event) as well as other relevant information such as switching rates of consumers and available products. These reports should inform market participants and the ACT Government on the structure, conduct and performance of the market (see Appendix C for further information on a possible price monitoring and reporting framework). In addition, it promotes transparency and so discipline on the conduct of ActewAGL Retail.

However, it is important to note that despite the removal of price regulation, the prices will end up at the same level in Options B and C (assuming the prices are set correctly in Option B). This is because the regulated prices in Option B would be set at the level that second tier retailers are able to recover costs and earn a rate of return commensurate with the risks of operating in the market, which is the same level that second tier retailers would enter into and expand within the market in Option C (that is, the market price). Therefore, it is important to reduce the risks and costs for second tier retailers to enter into and expand within the market (through the non-pricing options). This will either result in increased retailer rivalry or greater competitive pressure on ActewAGL Retail through an enhanced likelihood of entry and expansion. Regardless, it is likely to result in improvements in product innovation and offerings.

The price monitoring reports would also provide a timely indication of any market failure. If concerns arise, this could trigger a further inquiry by the AEMC into the effectiveness of electricity retail competition in the ACT. If the AEMC did conduct another review, it would be undertaken in accordance with the AEMA and provide the basis for policy decisions on appropriate responses to any demonstrated market failure. This could include recommencing direct price regulation.²⁸

ActewAGL Retail has emphasised this point noting that 'in assessing whether re-regulation is appropriate, it is necessary to undertake a detailed analysis of whether it is the *best* option for addressing the problem, taking account of the potential costs and benefits, using an economic cost benefit framework'.²⁹ A price monitoring program would provide the required information and analysis to make such a decision.

The AEMC notes that in its 2006 retail price determination, the ICRC concluded that the ACT electricity retail market was sufficiently competitive to allow for the removal of the regulated tariff. It suggested that a price monitoring program be established as an interim measure to full market deregulation.³⁰ The ICRC considered this change would lead to further opportunities for competition to evolve. This conclusion was, among other things, based on: the potential and actual competition in the market; the number of retailers; the discounts being offered through market tariffs; the steadily falling customer share of the incumbent retailer; the level of customer awareness; the widespread advertising taking place; and the range of service options available to

²⁸ AEMA, clauses 14.14(b) and 14.14(c).

²⁹ ActewAGL Retail submission, 6 September 2010, p. 8.

³⁰ ICRC, *Final Report - Retail prices for non-contestable electricity customers*, April 2006, pp. 15-23.

small customers. However, this suggestion was not implemented by the ACT Government at that time.

Box 4.3: Price monitoring and reporting in Victoria

In February 2008, the AEMC completed its review of the effectiveness of competition in energy retailing in Victoria and concluded that there is effective competition in the retail supply of electricity and gas in Victoria. Accordingly, the AEMC provided advice on ways to remove retail price regulation in Victoria.

The Victorian Government subsequently removed price regulation for small consumers from 1 January 2009. Since that time prices have been set by retailers, who are required to publish standing offers and market offer prices in the Victorian marketplace.³¹

However, the Essential Services Commission (ESC) continues to monitor the standing offer and market offer prices set by retailers and is still required to formally report to the Minister for Energy and Resources under section 39A of the Electricity Industry Act 2000 and section 47 of the Gas Industry Act 2001 on these prices and other features of the competitive market.³²

In a separate report, the ESC also describes how well energy retailers treat their customers, including those experiencing financial hardship, against established performance indicators. In doing so, this reviews retailers' call centre performance and complaints.

In December 2009, the ESC published its first price monitoring report, which provides government, consumers and other interested parties with information regarding the operation of Victoria's competitive market.³³

The purpose of the report was to improve transparency of the performance of the retail energy industry by providing information on the standing and market offer products available to consumers in Victoria and an analysis of energy costs over time compared with tariffs being offered by retailers in other jurisdictions.

4.4.2 Achieving this outcome

To achieve the outcome of replacing the TFT with a reporting and monitoring regime, it would first need to be decided whether the ICRC or the AER would undertake the price monitoring program. Then, instead of issuing a terms of reference to the ICRC to undertake a pricing determination, the ACT Attorney-General would need to request the ICRC or AER to undertake a price monitoring program for a certain period. This could be initially set at three years with a review into the program at the conclusion of

³¹ Essential Services Commission, *Energy Retailers: Comparative Price Report - Pricing and the Competitive Market 2008-09*, December 2009, p. 8.

³² *ibid*, p. 1.

³³ *ibid*.

that time. The terms of reference could specify the matters that the ICRC or AER should report on. These should include the key indicators of market structure, conduct and performance that it deems relevant, such as switching, prices and product offerings. It would also be important to obtain information from all of the licensed retailers in the market to obtain a complete view on the market and provide useful information to the public and the government. Appendix C provides more information on a possible price monitoring and reporting framework.

Importantly, the ACT Government would retain the option to re-introduce price regulation if it considered that this course of action was warranted.

4.4.3 Implications

This option does not provide any ex ante assessment or review of retail prices being offered by the incumbent or any other retailer active in the small consumer segment of the electricity market. The removal of the TFT will allow the market to determine a price, product range and degree of rivalry. The monitoring program would report on prices and other matters that have been available over the previous 12 months to the public.

However, it is likely to reduce regulatory costs (relative to the status quo) because pricing determinations would no longer be required. This assumes that the costs associated with monitoring and reporting will be lower than the costs related to a pricing determination. Additionally, the risks associated with regulation (both now and in the future) would be removed.

In considering the possible implications, it is important to note that in the ACT gas market, prices have moved very little and the number of active retailers has not increased greatly since the market was deregulated. However, there is no public monitoring and reporting program and so there is little information available on the operation of the gas market.

The AEMC also notes ActewAGL Retail's submission to the Stage 1 Draft Report that, 'any price surveillance or monitoring regime must be designed in a way that does not impose unreasonable regulatory risk, burden or uncertainty'.³⁴ The AEMC agrees with this comment.

In a competitive market, the prices, product range and number of active retailers would be determined by the market. ActewAGL Retail, which is likely to currently possess some cost advantages relative to second tier retailers, may be able to increase prices up to the point where no additional retailers have an incentive to enter into and expand within the market (if the non-pricing options are not also undertaken). However, this depends on the relative economies of scale and scope of second tier retailers and whether there are constraints for entry and expansion. Therefore, prices could increase in the short-term (although this unlikely to occur if the non-pricing options are also implemented).

³⁴ ActewAGL Retail submission, 6 September 2010, p. 8.

Nevertheless, if the unique characteristics of the ACT market are addressed, prices are unlikely to increase in the short-term, and it is possible that prices would actually fall over time as a result of larger retailers with greater economies of scale (taking advantage of the size of their operations in other jurisdictions) entering the market (although it could still be difficult for these retailers to match ActewAGL Retail's scope in this market). Therefore, it is critical to address the unique characteristics of the ACT market that are constraining effective competition.

Additionally, the monitoring and reporting role of either the ICRC or the AER would play an important factor in the operation of the market. Public monitoring would improve consumer, retailer and government information about the market. Importantly, the reports would inform the ACT Government on the structure, conduct and performance of the market and whether it is necessary to reintroduce price regulation. In addition, the reporting promotes transparency and so discipline on the conduct of ActewAGL Retail.

4.5 Option (D): removal of retail price regulation

This Option is the complete deregulation of electricity prices in the ACT, without price monitoring or public reporting.

4.5.1 Outline of this Option

This Option is essentially the same as Option (C) without the price monitoring and reporting program

4.5.2 Achieving this outcome

The complete removal of retail price regulation in the ACT could be achieved by the ACT Attorney-General not providing the ICRC with a terms of reference. This is the favoured option of ActewAGL Retail that considered 'the AEMC should consider a first best option, being the recommendation of full price deregulation'.³⁵

It should be noted that even following complete deregulation, the ACT Government would retain the ability to reintroduce full retail price regulation under the ICRC (or Utilities) Act should it be required in the future. However, in the absence of a monitoring and reporting program, it would be difficult to determine whether a market failure has occurred and reintroducing regulation is necessary.

4.5.3 Implications

As with Option (C), this Option does not provide any ex ante assessment or review of retail prices being offered by the incumbent or any other retailers active in the small consumer segment of the electricity market. The complete removal of the price

³⁵ ActewAGL Retail submission, 6 September 2010, p. 8.

regulation would allow the market to determine a price, product range and degree of rivalry. However, there is no control over what prices will be and given ActewAGL Retail's economies of scale and scope in the market, its prices (and products) will likely be central to any retailer rivalry.

In support of this Option, ActewAGL Retail noted that following deregulation of natural gas prices in the ACT from 2004, there has been little evidence of significant price increases. For example, ActewAGL Retail noted that 'the ease and success of this transition demonstrates that a price monitoring system may be an unnecessary and costly step in the deregulation process, particularly when considered in the context of the seven years of transitional pricing arrangements in the ACT'.³⁶ It should be noted that retailer rivalry in the natural gas sector has however remained low since price regulation ceased.

The only real difference between this Option and Option (C) is that it does not include any structured public monitoring and reporting program. While there is a benefit of lower regulatory costs, the disadvantage is that consumers, retailers and the ACT Government are unlikely to be fully informed about the products, prices and activity in the market. This will make it more difficult for decision makers to determine whether it is necessary to reintroduce price regulation. Notwithstanding, the threat of reintroducing price regulation still remains. The AEMC notes that in the long-term, it may make sense to eventually move to this Option after a period of price monitoring and reporting.

4.6 Draft findings

In summary, the key implications of each pricing Option include:

- Option (A) - prices are likely to remain relatively low; however, it is unlikely that retailer rivalry or the competitive pressure on ActewAGL Retail will improve. As a result, there are unlikely to be improvements in product innovation and offerings. In addition, the regulatory risk that the prices will not accurately reflect costs (both now and in the future) remains;
- Option (B) - prices could increase in the short-term (if non-pricing options are not also undertaken); however, retailer rivalry should improve, or at least the competitive pressure on ActewAGL Retail. This should ensure that second tier retailers are able to recover their costs and earn a rate of return that is commensurate with the risks involved in operating in the market and so greater product innovation and offerings. Notwithstanding, the regulatory risk that the prices will not accurately reflect costs (both now and in the future) remains. Additionally, it may be difficult to adequately define a single fuel supply efficient new entrant;
- Option (C) - prices could increase in the short-term (if the non-pricing options are not also undertaken); however, prices would end up at the same level as Option

³⁶ ActewAGL Retail submission, 6 September 2010, p. 8.

(B). In addition, retailer rivalry should improve, or at least the competitive pressure on ActewAGL Retail. This should result in the most efficient level of prices in the long-run and greater product innovation and offerings (assuming other market constraints are reduced). Finally, monitoring and reporting promotes transparency and so discipline on the conduct of ActewAGL Retail and provides decision makers with information on whether the reintroduction of regulated prices is necessary; and

- Option (D) - the implications are the same as Option (C) except consumers, retailers and the ACT Government are likely to be less informed about the products, prices and activity in the market. This will make it more difficult for decision makers to determine whether it is necessary to reintroduce price regulation, although the threat reintroducing price regulation still remains. Additionally, the regulatory costs associated with price monitoring and reporting would be removed.

These pricing options need to be considered with the various non-pricing options to determine the combination that will be most effective in promoting competition in the ACT electricity retail market. The next chapter looks at both the non-pricing and pricing options to determine the combination that will be most effective in improving the level competition in the market.

5 Overview of options and draft advice

5.1 Benefits and costs of options

This section considers the costs and benefits of implementing the various pricing and non-pricing options that have been outlined in the previous chapters of this report and develops the recommended approach for improving competition in the ACT electricity retail market. In doing so, the AEMC has had regard to the analytical framework set out in Chapter 2. That is, this analysis has been carried out with reference to the national electricity objective, the objectives of the AEMA, the benefits of competitive markets and principles of good regulatory practice.

5.1.1 Benefits and costs of non-pricing options

Chapter 3 describes the non-pricing options aimed at improving the environment for retail entry for both the demand and supply side issues identified in the Stage 1 Final Report. These options look to:

- improve customer education and information;
- minimise the effects of ACT specific regulatory and legislative requirements on the entry conditions for second tier retailers; and
- improve the competitive environment between the incumbent and second tier retailers entering the market through a review of cost allocation requirements on ActewAGL.

The level of costs and benefits of these options are ultimately dependent on the pricing option selected. However, independent of that choice, the costs and benefits associated with each of these options are summarised below.

Option (i) - improve customer education and information

This option is to address the low level of consumer awareness of the ability to switch retailers and to combat the lack of understanding by consumers on the implications of switching retailers (that is, the differences between transmission, distribution and retail in the electricity supply chain).

| Pros | Cons |
|---|--|
| <ul style="list-style-type: none">• provides information and tools to consumers that will allow them to make informed decisions about their electricity supply.• this information could encourage consumers to consider switching either electricity retailers or services to better | <ul style="list-style-type: none">• direct costs of implementing an education and information campaign for the ACT Government.• risk that it is ineffective if these factors prevent retail competition.• start-up costs associated with website |

| Pros | Cons |
|--|---|
| <p>suit their needs.</p> <ul style="list-style-type: none"> could encourage retailers to offer a greater range of products to address consumer interest in alternatives to standard supply services, resulting in increased retailer rivalry. | <p>design and ongoing maintenance.</p> <ul style="list-style-type: none"> some on-going cost to retailers to provide required information for the website. |

Option (ii) - harmonisation of regulatory requirements across jurisdictions

During consultation stakeholders noted that in the ACT there are specific regulatory requirements that retailers are required to address. As noted in the Stage 1 Final Report, stakeholders highlighted the historical dominance of ActewAGL Retail and the ACT's feed-in tariff scheme as potential disincentives to second tier retailers entering the market. Therefore, this option assesses methods that could be utilised to harmonise the regulatory requirements across jurisdictions to improve the entry conditions of the ACT electricity retail market for second tier retailers.

Furthermore, to improve the harmonisation of cross jurisdictional regulatory requirements, implementation of the NECF should be undertaken as soon as practicable

| Pros | Cons |
|--|--|
| <ul style="list-style-type: none"> aligns the ACT market more closely with other jurisdictions. lowers compliance and administrative costs for retailers. provides opportunities for retailers that are active in other jurisdictions to extract any available benefits in economies of scale in operating in both jurisdictions. | <ul style="list-style-type: none"> the ACT Government will need to take into account policy developments in other jurisdictions when setting its own energy policies. on-going costs to achieve inter-jurisdictional agreement - transitional arrangements to change, which may impact on existing users. risk that retailer rivalry does not improve as a result of improving inter-jurisdictional consistency. unlikely to be effective as difficult to isolate effects/costs for second tier retailers. |

Option (iii) - amending the competitive environment between incumbent and second tier retailers

This option aims to address any impact due to the cost advantages inherent to ActewAGL Retail. The aspects that are analysed under this option are the rebranding of the ActewAGL businesses (that is, corporate separation) and a review of the cost allocation arrangements between ActewAGL Distribution and ActewAGL Retail.

| Pros | Cons |
|---|---|
| <ul style="list-style-type: none"> decreases second tier retailers' cost disadvantage relative to ActewAGL Retail. reduces barriers to entry and expansion for second tier retailers. could encourage greater rivalry between ActewAGL Retail and second tier retailers. may encourage retailers to offer a greater range of products and services. | <ul style="list-style-type: none"> reduces efficiency benefits created through ActewAGL Retail's economies of scale and scope, which could otherwise be passed on to consumers. regulatory costs to review and amend ring-fencing requirements for ActewAGL Retail. |

In summary, of the non-pricing options outlined above, the AEMC considers that improved customer awareness and swift adoption of the NECF would be the most influential in promoting competition in the ACT electricity retail market. There may also be merit in reviewing the cost allocation between the ActewAGL business units.

5.1.2 Benefits and costs of pricing options

As set out in Chapter 4, the AEMC has considered four pricing options in forming its draft advice on ways to promote competition in the ACT electricity retail market. These are:

- (A) retain the current TFT;
- (B) change the TFT to that of a single fuel supply efficient new entrant;
- (C) replace the TFT with reporting and monitoring; and
- (D) remove retail price regulation.

The benefits and costs associated with each of these pricing options are summarised below.

Option (A) - retain the current TFT

This option assesses the impacts to the ACT electricity retail market of maintaining the current price regulation regime.

| Pros | Cons |
|--|--|
| <ul style="list-style-type: none"> regulated prices remain relatively low (consumers benefit from ActewAGL Retail's cost advantages). | <ul style="list-style-type: none"> does not address the other unique characteristics of the ACT electricity retail market limiting the effectiveness of competition in the market. no improvement in the level of competition. |

| Pros | Cons |
|------|---|
| | <ul style="list-style-type: none"> • unlikely to be improvements in product innovation and offerings. • regulatory risk that the prices will not accurately reflect costs (both now and in the future). • the actual margins available to second tier retailers may not be the same as those earned by ActewAGL Retail. • the margins available to second tier retailers could continue to be perceived as insufficient to account for the risks of operating in the market over the long-term. |

Option (B) - change the approach to setting the TFT

Across the NEM, each jurisdiction uses slightly different methodologies to calculate regulated prices. This option canvasses several changes that could be made to how the regulated price is set in the ACT. The changes range from the simple addition of a cost element for customer acquisition and retention costs to changing the basis of the calculation from the efficient costs of the incumbent retailer to that of an efficient single fuel provider new entrant.

| Pros | Cons |
|---|--|
| <ul style="list-style-type: none"> • price setting methodology is likely to be aligned more closely with that of other jurisdictions; • should ensure that second tier retailers are able to recover their costs and earn a rate of return that is commensurate with the risks involved in operating in the market. • retailer rivalry could improve, or at least the competitive pressure on ActewAGL Retail. • should encourage improvements in product innovation and offerings. | <ul style="list-style-type: none"> • does not address the other unique characteristics of the ACT electricity retail market limiting the effectiveness of competition in the market. • without the implementation of the non-pricing options, there could be a possible increase in prices in the short-term until competition in the market is developed. • may be difficult to adequately define a single fuel supply efficient new entrant. • regulatory risk that the prices will not accurately reflect costs (both now and in the future). |

Option (C) - replace the TFT with reporting and monitoring

An alternative to maintaining retail price regulation (either in its current form or in an amended form), is to replace it with a public price monitoring program overseen by the

ICRC or the AER.³⁷ This option aims to eliminate the TFT as a possible deterrent to second tier retailers entering the ACT market.

| Pros | Cons |
|--|--|
| <ul style="list-style-type: none"> • retailer rivalry could improve, or at least the competitive pressure on ActewAGL Retail. • should encourage improvements in product innovation and offerings. • some administrative and regulatory costs related to price monitoring and reporting, but these should be less than the costs of the current price setting approach. • improved information to assist government decision making (as compared to Option D). • greater information (from the monitoring program) available to consumers and to retailers (as compared to Option D). | <ul style="list-style-type: none"> • does not address the other unique characteristics of the ACT electricity retail market limiting the effectiveness of competition in the market. • without the implementation of the non-pricing options, there could be a possible increase in prices in the short-term until competition in the market is developed. • some administrative and regulatory costs associated with carrying out a price monitoring and reporting regime. |

Option (D) - remove retail price regulation

In the ACT, price regulation of natural gas for small customers was removed in 2004. Therefore, this option was to assess the likely impacts on the market of undertaking a similar approach with electricity price regulation.

| Pros | Cons |
|--|--|
| <ul style="list-style-type: none"> • retailer rivalry could improve, or at least the competitive pressure on ActewAGL Retail. • should encourage improvements in product innovation and offerings. • administrative and regulatory costs are removed. | <ul style="list-style-type: none"> • does not address the other unique characteristics of the ACT electricity retail market limiting the effectiveness of competition in the market. • without the implementation of the non-pricing options, there could be a possible increase in prices in the short-term until competition in the market is developed. • lack of transparency and an information deficiency to guide policy decision making (for example, whether there is a need to reintroduce price regulation in the future). • lack of market information readily available to consumers and retailers. |

³⁷ Note that this is the approach utilised by the ESC in Victoria.

5.2 Combinations of pricing and non-pricing options

The AEMC has concluded that a mixture of non-pricing and pricing options is required. In respect of the non-pricing options, the Stage 1 Final Report concluded that:

- the weak presence of second tier retailers in the market reduces the overall level of awareness of full retail contestability, which is likely to make customers 'sticky' and therefore more difficult to attract away from the incumbent, ActewAGL Retail;
- this lack of awareness of FRC and ActewAGL Distribution's provision of distribution services could also give customers the perception that the products offered by ActewAGL Retail (that is, electricity) is more valuable than the product offered by other retailers (that is, there is a perceived product differentiation). This perception would increase the level of stickiness; and
- there may be possible merit in reviewing the guidelines for costs allocation relevant to ActewAGL.

Therefore, these non-pricing aspects are common to all of the combined options that have been considered by the AEMC.

Consequently, the question to then address is which pricing option should be combined with the non-pricing changes and when, to provide the greatest benefit to retailers and consumers as required under the AEMA and, as a result, provide a greater likelihood that the goal of improving competition in the market will be achieved. However, the assessment carried out for this Stage 2 Draft Report indicates that not all combinations of options appear to be equally successful in meeting this goal. The table below sets out a summary of the various options that have been discussed in this report.

Table 5.1 Summary of price and non-price options

| Options | Option elements | Comments |
|---------|---|---|
| 1 | A – retain the TFT (i) improve customer awareness and (ii) implement the NECF. | Prices remain relatively low (consumers benefit from ActewAGL Retail's economies of scale and scope). Customer awareness less likely to be effective. No evidence that regulated prices have not been sufficient for ActewAGL Retail to recover its costs. Retailer rivalry and competitive pressure on ActewAGL Retail unlikely to improve. Regulatory risks remain. Product innovation and differentiation could |

| Options | Option elements | Comments |
|---------|--|---|
| | | remain low. |
| 2 | <p>B – change the TFT to an efficient single fuel new entrant</p> <p>(i) improve customer awareness and (ii) implement the NECF.</p> | <p>Does not address the other unique characteristics of the ACT electricity retail market limiting the effectiveness of competition in the market.</p> <p>Without the implementation of the non-pricing options, there could be a possible increase in prices in the short-term until competition in the market is developed.</p> <p>Retailer rivalry may improve over the medium-term.</p> <p>Regulatory risks remain.</p> |
| 3 | <p>C – replace the TFT with reporting and monitoring</p> <p>(i) improve customer awareness and (ii) implement the NECF.</p> | <p>Without the implementation of the non-pricing options, there could be a possible increase in prices in the short-term until competition in the market is developed.</p> <p>TFT-related barriers are removed.</p> <p>May encourage improvement in competition.</p> <p>Administrative costs of monitoring.</p> <p>Increased information to improve policy decision making - work with other public information for consumers.</p> <p>Better informed market.</p> |
| 4 | <p>D – remove retail price regulation</p> <p>(i) improve customer awareness and (ii) implement the NECF.</p> | <p>Without the implementation of the non-pricing options, there could be a possible increase in prices in the short-term until competition in the market is developed.</p> <p>TFT-related barriers are removed.</p> <p>May encourage improvement in competition.</p> <p>No administrative costs.</p> <p>Requires the customer education campaign to increase information available to the market.</p> <p>Does not provide information for decision makers to re-regulate if required.</p> |

Table 5.1 indicates that the first combined option (**Option 1**) of retaining the current TFT and addressing consumer awareness of competition in addition to the other issues identified in the non-pricing options is unlikely to be successful in creating and

sustaining a more competitive environment. If the TFT is not changed at all, then second tier retailers could continue to be reluctant to enter the market. While it is expected that customer awareness would be enhanced through an education and information campaign and aid in the reduction of customer stickiness. If second tier retailer entry is not also enhanced the benefits of undertaking a consumer awareness program will be limited.

In brief, if the TFT is retained in the long term then the value of implementing the other options decreases significantly. In addition, the regulatory costs of setting the TFT will continue as well as the cost to the market of distorting the market by government intervention. Over the long-term this combination is unlikely to be successful at improving competition.

The first alternative to the above is to retain the TFT, although fix it at the efficient costs of a new entrant, and implement non-pricing changes to the market to address the other barriers to entry (**Option 2**). As discussed in Chapter 4, the success of this pricing option is somewhat dependent on the degree of change that is carried out. The inclusion of an allowance for CAC/CARC in the TFT alone will be unlikely to encourage retailers to enter (or consider entering) the market. This is because the basis of the cost build up would still be ActewAGL Retail's efficient costs. As a result, it is unlikely that the retail allowance will be sufficient for a second tier retailer.

The calculation of the TFT on the basis of a single fuel supply efficient new entrant may be more successful in its relevance to potential entrants. However, this approach raises questions over the assumptions required about a single fuel supply efficient new entrant. In other jurisdictions, such as NSW and Queensland, the potential new entrants used to set a cost base are specifically described. Therefore, it may be necessary for the ICRC to develop a description for a single fuel supply efficient new entrant in the context of the ACT market. However, with this combination, the overall risk of regulatory failure remains.

In addition, the degree of change made to the TFT will also influence the success of the changes that can be carried out to address the other barriers to entry. There may be some benefits arising from implementing a consumer education program and addressing the cost advantages that ActewAGL Retail has over second tier retailers. However, if retailer rivalry remains limited because retail price regulation remains in place, the benefits from the other actions may not be significant. In addition, the regulatory costs of setting the TFT will continue as well as the cost of distorting the market by regulatory intervention. In conclusion, this course of action is not recommended.

The third pricing option is to replace price regulation with a public monitoring program (**Option 3**). This allows prices to be determined by the market and information on these prices to be publicly reviewed by the relevant regulator. While ActewAGL Retail would remain, certainly in the short term, the most significant retailer in the market, this option has the benefit of removing ex ante price regulation in the market.

This arrangement would be enhanced if the consumer awareness program is also implemented - improving the operation of the demand side of the market - and the other barriers to entry are redressed. The threat of the ACT Government re-introducing direct price regulation if it considers this appropriate would remain and may also act as a deterrent to retailer misconduct. Together, the combination of these actions should provide an environment that is conducive to competition developing. Specifically, the market should become contestable. That is, even if there are not numerous retailers active in the market in the short term, the threat of entry from a number of retailers should be more realistic. The credible threat of entry in itself will encourage ActewAGL Retail in particular, to provide products that consumers desire at prices that they are willing to pay. To price at a level higher than this, for example, will provide encouragement to a second tier retailer to enter the market quickly and compete against ActewAGL Retail. An attempt to increase prices above justified levels would also increase the likelihood that direct price regulation would be re-introduced by the ACT Government.

The fourth option discussed in Chapter 4 was to remove price regulation entirely (**Option 4**). That is, remove all prices with no oversight by either the ICRC or the AER. As with the previous option, this would provide an arrangement that should encourage second tier retailers to compete on price. The threat of the ACT Government re-introducing direct price regulation if it considers it appropriate would remain and may act as a deterrent to retailer misconduct.

Again, as with the previous option, the benefits of this choice would be enhanced if the actions aimed at addressing the non-pricing issues are also enacted. However, in this case, the introduction of the consumer awareness campaign is more critical. Without a monitoring program, the consumer education role of the ACT Government (through the relevant department) becomes the only source of information available about the market and its developments. While useful to market participants, this would not provide the ACT Government with all information that would be relevant to making policy decisions in relation to the small customer segment of the electricity market. The AEMC considers that there is an element of safety in retaining monitoring in the short-term as competition is fostered in the market. However, in the long-term, monitoring could be removed.

For this reason, while this fourth option should see some success in achieving the goal of promoting competition, it is not the preferred course of action that the AEMC would recommend to the ACT Government. Instead, the AEMC's draft advice to the ACT Government is to implement the various non-pricing elements contained within option three above, in addition to the subsequent removal of the TFT.

5.3 Draft advice

The AEMC has considered the various options and their ability to ultimately provide an environment that will encourage competition in the ACT electricity market. Following this analysis, the AEMC's draft advice to the ACT Government is to implement a two phase process. The main reason for a two phase process is that the

AEMC considers the lack of customer awareness to be a significant factor influencing competition in the ACT. Therefore, phase one consists of measures to foster customer awareness and reduce the 'stickiness' of customers, including:

- instigating a consumer education program for small electricity users (through the relevant department) that provides information on the electricity market;
- setting up a marketing campaign to inform customers of an internet and telephone facility for consumers to investigate and compare all current electricity supply products available to them as customer awareness improves;
- review the framework governing the customer protection and switching process, such that it is easy to understand and progresses smoothly. Informing customers of options for redress should problems arise;
- implementing nationally consistent frameworks, such as the NECF, as soon as practicable, to improve the harmonisation of regulatory requirements between the ACT and other jurisdictions; and
- possible merit in reviewing the guidelines for costs allocation relevant to ActewAGL.

Six months after the implementation of phase one, the AEMC subsequently recommends that the ACT Government implements phase two, which consists of:

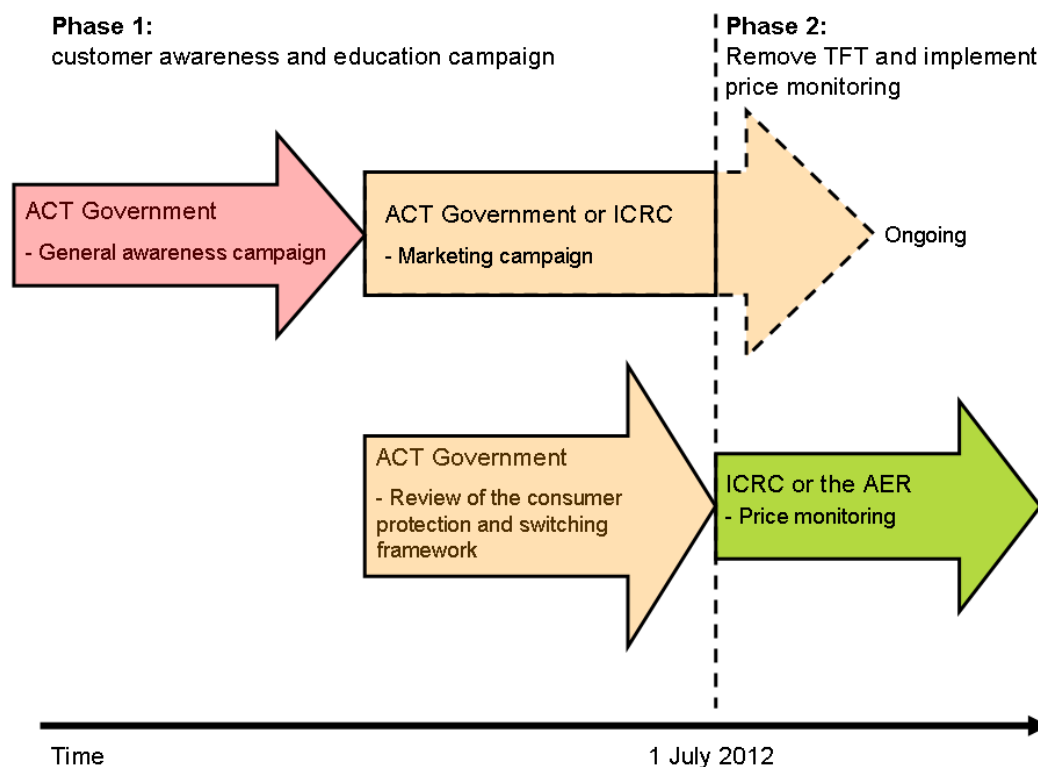
- the removal of retail price regulation for small consumers of electricity;
- establishing a monitoring program on all prices and products (and other relevant matters) relating to the supply of electricity to small customers in the ACT; and
- establishing the monitoring program for a three year period with a review at the conclusion of this initial period to assess whether the program should continue for a second period.

5.4 Timing of implementation

The ICRC's latest pricing determination sets prices through 30 June 2012. This provides the ACT Government with at least 12 months from the release of the AEMC's Stage 2 Final Report to consider and implement the advice contained in that report. The AEMC considers that a period of six months should be sufficient to undertake a targeted customer awareness campaign prior to the removal of the TFT. It is recommended that the awareness campaign be timed such that it ends when the current TFT expires. This would allow time to educate customers of FRC and their ability to switch retailers, while also providing second tier retailers sufficient time to prepare for entry into the market. The AEMC appreciates stakeholder views on this matter.

A graphical representation of this two phase process is outlined in Figure 5.1 below.

Figure 5.1 Recommended approach and timing to promote competition



5.5 Responsible body

As noted in section 3.2, the clause 14.12 of the AEMA states that the AEMC must publicly report on:

- retail energy price controls that could be retained under the existing arrangements or be transferred to the AER and the AEMC at the discretion of each jurisdiction.

For example, under the proposed framework for the NECF, the AER will assume responsibility for the enforcement of the proposed National Electricity Retail Law and the National Electricity Retail Rules. This is likely to include responsibility for the regulation of electricity and natural gas retail markets (with the exception of retail price regulation) for most jurisdictions within Australia. Therefore, the AEMC notes the growing role of the AER in the development of retail markets and the possible role it could have in monitoring prices in the future. However, it may still be appropriate for the ICRC to undertake this monitoring role, given their extensive expertise in the energy sector of the ACT. The AEMC appreciates stakeholder views on this matter.

The ACT Government needs to consider the most appropriate body for monitoring with reference to recent and forthcoming market developments (such as the NECF).

The government may also consider extending its monitoring program to include natural gas. While there has been no retail price regulation for some time, the limited

activity in that market (as indicated by the limited available data) suggests that increasing available information could be beneficial and would be limited additional cost.

Abbreviations

| | |
|-------------------|---|
| ACAT | ACT Civil and Administrative Tribunal |
| ACCC | Australian Competition and Consumer Commission |
| ACG | Allen Consulting Group |
| ACT Retail Review | Review into the effectiveness of competition in electricity retail market in the Australian Capital Territory |
| ACTCOSS | ACT Council of Social Service |
| AEMA | Australian Energy Market Agreement |
| AEMC | Australian Energy Market Commission |
| AER | Australian Energy Regulator |
| CAC | Customer Acquisition Cost |
| CARC | Customer Acquisition and Retention cost |
| Consumer Agencies | Care Inc, ACTCOSS, and Uniting Care Australia |
| CPI | Consumer Price Index |
| CSOs | Community Service Obligations |
| DECCEW | Department of the Environment, Climate Change, Energy, and Water |
| ESC | Essential Services Commission of Victoria |
| ERAA | Energy Retailers Association of Australia |
| ESAA | Energy Supply Association of Australia |
| ESCOSA | Essential Services Commission of South Australia |
| FRC | Full Retail Contestability |
| GGAS | Greenhouse Gas Abatement Scheme |
| ICRC | Independent Competition and Regulatory Commission |

| | |
|-------|--|
| IPART | Independent Pricing and Regulatory Tribunal of NSW |
| LRMC | Long Run Marginal Costs |
| MCE | Ministerial Council on Energy |
| NEM | National Electricity Market |
| QCA | Queensland Competition Authority |
| ROC | Retail Operating Costs |
| RSoA | Revised Statement of Approach |
| TFT | Transitional Franchise Tariff |
| WEC | Wholesale Electricity Costs |

A Consultation process

A.1 Outline of process

The MCE Request for Advice requires the AEMC to follow a two stage reporting and advice process for the ACT Retail Review. This is as follows:

- Stage one addresses the question of whether competition in the ACT electricity retail market is effective. Following consideration of submissions in response to an Issues Paper, the AEMC published a Stage 1 Draft Report setting out its draft findings on this matter. Submissions were received and considered. Subsequently a Stage 1 Final Report³⁸ has been published outlining the AEMC's finding and reasons for its decision on this matter in parallel with this Stage 2 Draft Report.
- Stage two of the review process addresses the finding arising from stage one. That is in the context of the ACT Retail Review, where competition was found not to be effective, that:
 - stage two will provide draft advice on ways to promote competition in the relevant market.

This Stage 2 Draft Report sets out the AEMC's draft advice and will be published for consultation. Following consideration of the submissions received, the AEMC will publish a Stage 2 Final Report to the relevant jurisdictional Minister and the MCE on its recommendations.

A.2 Way forward

The focus of this Stage 2 Draft Report is to inform stakeholders of the AEMC's draft advice on ways to promote competition in the electricity retail market of the ACT. Submissions obtained from stakeholders should focus on any additional information that supports or refutes the AEMC's position. This will provide invaluable input into the development of the final advice published in the Stage 2 Final Report and tabled at the MCE.

The key dates for stage two are set out below.

| Date | Milestone |
|--|------------------|
| Publication of the Stage 1 Final Report and Stage 2 Draft Report | 24 November 2010 |
| Submissions on the Stage 2 Draft Report | 24 December 2010 |

³⁸ AEMC, Review of the effectiveness of competition in the electricity retail market of the ACT - Stage 1 Final Report, 24 November 2010.

| Date | Milestone |
|---|------------------|
| due | |
| Publication of the Stage 2 Final Report | 28 February 2010 |

B Regulatory framework

This Appendix sets out the regulatory framework that electricity retailers in the ACT are required to comply with. The ACT regulatory framework includes the specific requirements prescribed by legislation and a range of subordinate instruments including regulations, licences, codes and guidelines. These requirements affect many aspects of energy retailing, including prohibiting the retailing of energy without a licence. In addition, the energy products and services offered by retailers must comply with specific requirements, including the terms and conditions on which they are offered (including for some products the price), and the way in which information about products and services are communicated to prospective customers.

This Appendix does not cover wider obligations that retailers are required to comply with, including:

- obligations contained in the National Electricity Rules and the National Electricity Law for retailers operating in the NEM. These obligations include, for example, the requirement for retailers to provide financial security in the form of prudential guarantees, and other wholesale market obligations; and
- obligations contained in ACT and Commonwealth legislation that are not part of the regulatory framework for electricity retailing, but are required to be complied with by electricity retailers. Examples include obligations under the *Trade Practices Act 1974* (Cth), *Corporations Act 2001* (Cth), and *Fair Trading Act 1992* (ACT) among others.

B.1 Principal legislation

The principal legislation regulating the supply of electricity from an electricity network to premises for consumption (electricity retailing) in the ACT is the *Utilities Act 2000* (ACT) (Utilities Act). In relation to electricity retailers in the ACT the Utilities Act gives effect to (among other things), the following obligations:

- the licensing framework;
- the energy industry levy;
- industry codes submitted by third parties or determined by the ICRC;
- a customer contracts framework; and
- an avenue for consumer complaints to ACAT.

Under the Utilities Act and the *Independent Competition and Regulatory Commission Act 1997* (ACT), the ICRC is responsible for administering the licensing system that applies to electricity retailers and enforcing compliance with those licenses. The ICRC is also responsible for approving standard customer contracts and the approval or determination of industry codes.

B.2 Transitional franchise tariff

Another important regulatory instrument is the ICRC's TFT. The TFT sets the price for the supply of electricity to non-contestable franchise customers. It applies to customers who have not elected to enter into a negotiated contract with either the incumbent retailer, ActewAGL Retail, or an alternative licensed electricity retailer.

The TFT was issued as part of transitional arrangements to the introduction of full retail contestability in the ACT on 1 July 2003. It was intended to ensure that customers consuming less than 100 MWh/year were able to remain on non-negotiated contracts. A price direction relating to the TFT is made by the ICRC in response to terms of reference issued by the ACT Attorney General.³⁹ The first TFT was issued by the ICRC for a period from 1 July 2003 to 30 June 2006. Four further TFTs have been issued, each applicable for a one year period up to 30 June 2010. The most recent TFT is to apply for a two year period from 1 July 2010 to 30 June 2012.

B.3 Licensing

Unless exempted, a person must not retail electricity in the ACT without a licence.⁴⁰ The ICRC is responsible for administering the licensing framework outlined in the Utilities Act including granting, varying, transferring and revoking electricity retail licences. A licence to retail electricity to franchise customers however, may only be granted by the ICRC with the written approval of the Minister.⁴¹ The ICRC is also responsible for determining and monitoring compliance with licence conditions, granting exemptions from compliance with licence conditions, determination of licence fees, and approval or determination of industry codes.

The ICRC must grant a licence if satisfied that:⁴²

- the applicant has the capacity, as determined in accordance with the relevant technical and prudential criteria adopted by the ICRC, to comply with the licence conditions and to operate a viable business as licensee. The ICRC will take into account matters such as: the previous good character of the applicant; the applicants risk management strategy; the financial resources available to the applicant; advice from external ratings agencies; whether the applicant has met the prudential requirements to be a market participant in the NEM; the ability of the applicant to meet licence conditions; statutory code requirements and

³⁹ ICRC, *(Price Direction for the Supply of Electricity to Franchise Customers) Terms of Reference Determination 2009 (Disallowable Instrument DI2009-196)*. The price direction is also made in accordance with the ICRC Act.

⁴⁰ Utilities Act, ss. 6(c) & 21

⁴¹ *ibid.*, s. 37(3).

⁴² *ibid.*, s. 37(2)

guidelines; the experience of the applicant; human resources available to the applicant; and external resources (among other things);⁴³ and

- the applicant satisfies any other requirement that is relevant to the ICRC's objects under the Utilities Act, (the ICRC's objects are provided in s. 3 of the Utilities Act).

The Utilities Act provides for a licence to be subject to a number of general conditions specified in the Utilities Act.⁴⁴ Licences to supply electricity are also subject to special conditions specified in the Utilities Act.⁴⁵ The ICRC is able to determine other conditions to be included in the licence (including the term of the licence) as long as those conditions are not inconsistent with a requirement of the Utilities Act or any other law of the ACT.⁴⁶

By virtue of the Utilities Act and its retail licence, a retail licensee is required to comply with industry codes and technical codes that apply to the licensee. These codes include the Electricity Metering Code, Electricity Customer Transfer Code, Prepayment Meter System Code, Electricity Network Use of System Code, Electricity Feed-In Code, and the Utilities (Consumer Protection Code) Determination 2010 (Utilities Consumer Protection Code).

These codes impose a range of (generally consumer protection related) obligations on energy retailers (including electricity retailers). The ICRC is responsible for considering draft industry codes submitted by third parties for approval, and determining industry codes in accordance with s. 59 of the Utilities Act. Before approving or determining an industry code the ICRC must undertake a process of public consultation.⁴⁷

Retail licences also require the licensees to comply with environmental requirements provided in the licence, as well as the ACT Greenhouse Gas Abatement scheme, the *Electricity Feed-in (Renewable Energy Premium) Act 2008 (ACT)*, and the GreenPower offer scheme. These obligations are discussed in further detail in section B.9 of this appendix below.

Furthermore, the retail licences require licensees to comply with any direction by the ICRC, or the Chief Executive responsible for administering Part 5 of the Utilities Act.⁴⁸ Licensees are also required to comply with any applicable ring fencing requirements.⁴⁹

43 ICRC, *Guidelines on technical and prudential criteria for licence applications under the Utilities Act 2000 (ACT)*, March 2009, pp. 8-19.

44 Utilities Act, s. 25.

45 *ibid.*, ss. 27 & 28.

46 *ibid.*, s. 25(1).

47 *ibid.*, s. 60.

48 Part 5 of the Utilities Act deals with the technical regulation of utilities. The Chief Executive has the following functions under the Utilities Act: to monitor and enforce compliance with technical codes; to provide advice to the Minister and ICRC about technical codes, including advice about compliance by utilities with the codes; and to report to ICRC the operation of Part 5 of the Utilities Act and the costs incurred by the ACT in relation to the operation of Part 5 of the Utilities Act.

B.4 Energy industry levy

Under the Utilities Act electricity retailers are required to pay the energy industry levy.⁵⁰ The levy is imposed on energy utilities to recover the amount of the ACT's national regulatory costs, and local regulatory costs in relation to the energy industry sectors.⁵¹

In 2008-09 and 2009-10 the energy industry levy replaced the licence fees for energy utilities (including electricity retailers). The amount of the levy is set by the Chief Executive Officer of the ICRC.⁵²

B.5 Framework underpinning customer contracts

The Utilities Act provides a contractual framework for the supply of electricity. In addition the Utilities Consumer Protection Code regulates the terms and conditions upon which a retailer may supply electricity to small customers under a standard or negotiated customer contract.

B.5.1 Standard customer contract

The standard customer contract is a contract for the supply of electricity offered to customers by the incumbent retailer in the ACT, ActewAGL Retail. The standard customer contract is required to be approved (where terms are submitted by third parties) or determined by the ICRC.⁵³ It applies to customers who consume less than 100 MWh per year of electricity, and who have not elected to enter into a negotiated contract with either ActewAGL Retail or with an alternative electricity retailer.

The price charged to customers under the standard contract is set by the ICRC through the TFT in response to terms of reference issued by the ACT Attorney-General. Some of the terms of the standard customer contract are specified in the Utilities Consumer Protection Code which applies to electricity retailers by virtue of their retail licence and the Utilities Act.⁵⁴

The terms specified in the Utilities Consumer Protection Code include matters relating to:⁵⁵

49 The current ring fencing requirements are set out in the ICRC, *Ring fencing guidelines for gas and electricity network service operators in the ACT*, November 2002.

50 Utilities Act, s. 54C.

51 *ibid.*, s. 54B.

52 For the actual amounts levied to each energy utility sector (these being electricity distribution, electricity supply, gas distribution and gas supply) see *Utilities (energy industry levy - other) Determination 2009 Notifiable instrument NI 2009-476*, www.act.gov.au.

53 Utilities Act, ss. 89 & 90.

54 *ibid.*, s. 56.

55 ICRC, *Consumer Protection Code*, July 2010, clauses 15–20.

- the obligation of the retailer to supply electricity to franchise customers;
- circumstances where the retailer is not required to supply electricity;
- circumstances when the retailer can and cannot disconnect customers including the disconnection of service for failure to pay accounts and during emergency situations;
- when the retailer can interrupt the supply of electricity; and
- when security deposits may be required by the retailer and other particulars relating to security deposits.

B.5.2 Negotiated customer contract

A negotiated customer contract is a contract between an electricity retailer and a customer for the supply of electricity on terms other than those of the standard customer contract.⁵⁶

Unlike for the standard customer contract, the ICRC does not determine the electricity price for negotiated contracts. The Utilities Consumer Protection Code does, however, specify some terms that are to be given effect as part of a negotiated contract. These terms apply to customers that are on a negotiated contract and consume less than 100 MWh annually. The terms specified include matters relating to:⁵⁷

- disconnecting the supply of electricity by the retailer when the customer fails to pay their account;
- the cooling off period under a negotiated customer contract. The cooling off period must not be less than ten business days from when the contract is made and when the customer is provided with the full terms, conditions and applicable costs of the contract. During the cooling-off period the customer may terminate the contract with no liability for payment or compensation to the retailer;
- the ability of a customer to rescind the contract if a marketer is in serious breach of the Utilities Consumer Protection Code;
- notice by an electricity retailer to a customer of the end of the negotiated contract period; and
- repayment of security deposits by retailers to customers, and the purposes for which security deposits are not to be used.

⁵⁶ Utilities Act, s. 95.

⁵⁷ ICRC, *Consumer Protection Code*, July 2010, clauses 22-27.

B.6 Minimum service standards for retailers

The Utilities Consumer Protection Code sets out minimum service standards that utilities in the ACT (including electricity retailers) are required to comply with. These standards apply unless alternative arrangements have been agreed to by the utility and the customer, or events are outside of the utility's control.⁵⁸

Rebates are to be paid by electricity utilities for failure to meet the minimum service standards upon application by entitled customers. The minimum service standards include:⁵⁹

- that utilities must acknowledge complaints from customers immediately and respond to the complaint within 20 business days. If the utility fails to meet this standard, then it must pay \$20 (upon application by the customer) to the entitled customer; and
- if a customer's installation is physically connected to the electricity network, and the customer is entitled to the supply of electricity, then the customer must be provided with that service:
 - on the same day as the request is made if the request is made before 2:00pm; or
 - by the end of the next business day if a request is made after 2:00pm; or
 - on a day agreed between the customer and the utility.

If this standard is not met, the customer may apply for a rebate of \$60 to a maximum of \$300 for each day after the date the service should have been provided.

Utilities must make customers aware of the minimum service standards and inform them of entitlements available if the utilities do not meet the standards.⁶⁰

B.7 Protection of customers and financial hardship provisions

The Utilities Consumer Protection Code contains further provisions apart from those that deal with standard and negotiated electricity customer contracts (described above) relating to the protection of customers and consumers. Some key provisions of the Code are summarised in the table below.

Table B.1 Key provisions of the Consumer Protection Code

58 *ibid.*, clause 11.1.

59 *ibid.*, Schedule 1.

60 *ibid.*, clause 11.5.

| Clause | Provision |
|---|---|
| Conduct of utilities (clause 5) | <ul style="list-style-type: none"> • A utility must act ethically, fairly and honestly in all its dealings with a customer or consumer. • A utility must not call or contact a customer or consumer: <ul style="list-style-type: none"> — during a public holiday in the ACT; — on a Saturday or Sunday, between midnight and 9:00am or between 5:00pm and midnight; or — on any other day, between midnight and 8:00am or between 8:00am and midnight; <p>unless it is during an emergency or the customer or consumer has given express approval.</p> |
| Complaints procedures (clause 6.1) | <p>A retailer must develop, maintain and implement procedures to deal with:</p> <ul style="list-style-type: none"> • a complaint of a customer or consumer; and • the resolution of a dispute between the retailer and a customer or consumer. <p>A utility that receives a complaint from a customer or consumer must advise the customer or consumer of the utility's complaint handling practices and procedures in its initial response.</p> |
| Utility to provide information (clause 7.1) | <ul style="list-style-type: none"> • A utility on request must provide a customer or consumer with information about the services provided by the utility to the customer or consumer's premises. • A utility must, on request, provide a customer or consumer with information about: <ul style="list-style-type: none"> — load profiles and power factors, if applicable; — meter readings for utility services provided to the customer's premises by the utility; — the account of a customer with the utility; and — efficient energy consumption; <p>to the extent that the information is</p> |

| Clause | Provision |
|---|---|
| | reasonably available to the utility. |
| Utility to prepare summary (clause 9.1) | <ul style="list-style-type: none"> • A utility must prepare a statement summarising the rights of customers, consumers and the utility under the Utilities Act, the Consumer Protection Code and the relevant customer contract with respect to the utility service provided by the utility under the customer contract. • A utility is not required to prepare the statement for a customer who has agreed with the utility to alternative arrangements or standards. |
| Special needs - disconnection or interruption to services (clause 10.1) | <ul style="list-style-type: none"> • If a customer or consumer provides evidence from a registered medical practitioner or a hospital that a person residing at the customer or consumer's premises requires a life support machine, the operation of which requires a utility service, the relevant utility must record those premises as a life support machine supply address. • Where the operation of a life support machine requires electricity supply services, the electricity supplier must immediately notify the electricity distributor that a premises has been registered as a supply address. The electricity distributor must update its special needs records not later than two business days after notification. • The utility must not disconnect the utility service to the supply address while any life support equipment is in use at the supply address unless: <ul style="list-style-type: none"> — it has been notified by the customer or consumer, in the case of electricity supply services, by the electricity supplier, that the person no longer resides at that address or no longer requires the life support machine; or — the customer or consumer fails to provide evidence to a utility, at the utility's request, that the person still resides at that address and still requires the life support machine. • The utility must give the customer or consumer not less than four business days written notice of a planned interruption to the supply of utility services at the supply address. |

| Clause | Provision |
|---|--|
| | <ul style="list-style-type: none"> • A period of notice longer than four business days may be given provided it is: <ul style="list-style-type: none"> — requested by the customer or consumer; — reasonably necessary; and — able to be provided by the utility. • The utility must: <ul style="list-style-type: none"> — to the extent that it is able, assist the customer or consumer, upon request, to prepare a contingency plan in case of an unplanned interruption in the supply of the utility service to the customer or consumer; and — provide an emergency telephone contact number. |
| Maximum intervals between sending customer accounts (clause 13.3) | A utility must send a customer account to each customer at least every 120 days from the issue of the last customer account unless the customer and the utility have agreed to an alternative arrangement. |
| Content of customer accounts (clause 13.5) | <p>A customer account must contain (amongst other things) the following information:</p> <ul style="list-style-type: none"> • the charges payable (fixed and variable), specifying the particular utility service they are for, and whether they are utility service related charges or charges for other goods and services; • any amount deducted, credited or received under: <ul style="list-style-type: none"> — an ACT Government sponsored rebate or concession scheme; or — an instalment plan which applies to the customer; • the amount of any payments received from the customer during the account period; • the amount of any arrears or credit standing to the customer's name; • the total amount due; • the due date for payment; and • a telephone number for the customer to |

| Clause | Provision |
|--|--|
| | <p>call for any queries relating to:</p> <ul style="list-style-type: none"> — the customer account; — the complaints handling procedures of the utility; — how to claim a rebate from the utility if the minimum service standards are not met; — how to make a hardship complaint to the ACT; and — how to apply for an ACT Government sponsored rebate or concession that the utility provides. |
| Payment of customer accounts (clause 13.7) | <ul style="list-style-type: none"> • A utility must give a customer not less than 12 business days to pay the customer account from the date on which the customer account is sent to the customer, unless an alternative period has been agreed between the utility and the customer. |
| Difficulties in paying customer account (clause 13.14) | <ul style="list-style-type: none"> • If a customer informs a utility that the customer is experiencing difficulty in paying the customer account or requires payment assistance, the utility must offer the customer: <ul style="list-style-type: none"> — an advance payment plan or instalment payment plan option; — information about and referral to, any hardship program offered by the utility; — information about, and referral to, any ACT Government assistance program; and — information about independent financial counselling services, <p style="margin-left: 40px;">at no cost to the customer.</p> • A utility is not required to offer an advance payment plan or an instalment plan to a customer who has, in the previous 12 months, had two or more advance payment or instalment plans cancelled due to non-payment. |
| Instalment plan options (clause 13.15) | <ul style="list-style-type: none"> • A utility is not required to offer an advance payment plan or an instalment plan to a customer who has, in the previous 12 months, had two or more advance payment or instalment plans cancelled |

| Clause | Provision |
|--------------------------------|--|
| | due to non-payment. |
| Interest charges (clause 14.1) | <ul style="list-style-type: none"> • A utility may charge interest on the account of a customer if at least 14 days have passed after the due date for payment of the account. • A utility may charge interest on the account of a customer from the due date of payment of the account. • If the customer is a franchise customer, the utility must not charge a rate of interest which: <ul style="list-style-type: none"> — is not specified in the standard customer contract; and — exceeds the default rate. |

B.8 Retailer of last resort arrangements

All jurisdictions in the NEM, including the ACT, have schemes in place to ensure that the customers of a second tier electricity retailer who exits the market in an unplanned fashion are guaranteed to continue receiving a supply of electricity. These Retailer of Last Resort (RoLR) arrangements reflect the essential nature of electricity supply.

In the ACT the ICRC is responsible for coordinating the RoLR process and to transfer customers to the RoLR. The process is set out in the ICRC's Retailer of Last Resort Guidelines. The trigger for a RoLR in the ACT is if a retailer ceases either permanently or temporarily to be able to lawfully supply electricity.⁶¹ Examples of a RoLR trigger include where a retailer is issued a suspension notice by AEMO, or the retailer's licence is suspended or cancelled by the ICRC.

A retailer supplying RoLR services must have a standard RoLR contract. The standard RoLR contract must contain (among other things) provisions to the effect that:⁶²

- the RoLR must supply electricity to the customers of a failed retailer;
- the RoLR must supply RoLR services until the termination of the RoLR contract by the customer, or three months from the relevant trigger time;
- information must be provided to the customer including an explanation of what has happened to the customer's former electricity supplier and of the RoLR process; and

⁶¹ ICRC, *Retailer of Last Resort Guidelines*, December 2002, p. 4.

⁶² *ibid.*, pp. 2-3.

- the charges payable by the customer are the greater of the RoLR default tariff (as defined by reference to tariffs regulated by the ICRC) or the AEMO pool price plus a margin of ten per cent (margin capped at \$20 per MWh with adjustment for change in the CPI relative to the December quarter of 1998).

Currently, the RoLR for the ACT is ActewAGL Retail.⁶³

B.9 Environmental requirements

The ACT electricity retail licences require retailers to comply with a number of environmental measures.

First, retailers are required to develop and comply with strategies for promoting energy efficiency, demand management and sustainable energy sourcing. Retailers are also required to report annually to the ICRC on their implementation of, and compliance with, these strategies.

Second, retailers are required to offer GreenPower products to potential new or reconnecting customers and make GreenPower products available to existing customers. GreenPower is a joint initiative of the ACT, NSW, SA, Queensland, Victoria and WA government agencies to provide accreditation for renewable energy products. A GreenPower product is a product accredited under the rules and guidelines of the National GreenPower Accreditation Program as having ten per cent or more accredited GreenPower.⁶⁴

Electricity retailers are also required to comply with the ACT greenhouse gas abatement scheme set out in the *Electricity (Greenhouse Gas Emissions) Act 2004* (ACT). This scheme:⁶⁵

- establishes ACT, and individual greenhouse gas benchmarks to be met by electricity retail suppliers, market customers and certain other people who supply and consume electricity annually;
- provides for greenhouse gas benchmarks to be complied with by acquiring certificates relating to the carrying out of activities that promote the reduction of greenhouse gas emissions; and
- provides an economic incentive to undertake activities resulting in the reduction of greenhouse gas emissions by imposing a penalty on greenhouse gas emissions above the benchmark.

A benchmark participant's⁶⁶ compliance with its greenhouse gas benchmark for a year is calculated by subtracting the participant's greenhouse gas benchmark from the

⁶³ ICRC, *Licence to Supply Electricity under the Utilities Act 2000 (ACT) granted to ACTEW Retail Ltd and AGL ACT Retail Investments trading as "ActewAGL Retail"*, Schedule 1, clause 2.

⁶⁴ ICRC, *Licences to supply electricity under the Utilities Act 2000 (ACT)*.

⁶⁵ *Electricity (Greenhouse Gas Emissions) Act 2004* (ACT), s. 3(2).

number of tonnes of carbon dioxide equivalent of greenhouse gas emissions in the year for which the participant is responsible. Where this calculation is greater than zero a greenhouse shortfall exists, and the benchmark participant has failed to comply with its greenhouse gas benchmark.⁶⁷

An amount of a greenhouse shortfall can be carried forward to the following compliance year but must be abated in that year or a penalty is required to be paid by the electricity supplier for the greenhouse shortfall.⁶⁸ The amount of greenhouse shortfall carried forward in relation to a year may not exceed ten per cent of the benchmark participant's greenhouse gas benchmark for the year.⁶⁹ Retailers may abate greenhouse shortfalls through surrendering abatement certificates and counting any renewable energy certificates.⁷⁰

Scheme participants are required to demonstrate compliance with the scheme by lodging an annual greenhouse gas benchmark statement with the ICRC by no later than 1 March of the year following a compliance year, or at a later date permitted by the ICRC. The statement must contain:⁷¹

- an assessment of the benchmark participant's greenhouse gas benchmark for the previous year;
- an assessment of the participant's liability (if any) for the greenhouse penalty for the previous year;
- an assessment of the participant's liability (if any) for a greenhouse penalty payable in relation to a greenhouse shortfall carried forward from the year before the previous year; and
- anything else required by the regulator.

The ACT scheme is distinct from the Australian Government's mandatory renewable energy target scheme.⁷² Renewable energy certificates surrendered by retailers under the Commonwealth scheme may however, be counted towards a retailer's greenhouse gas benchmark, or to abate a greenhouse shortfall under the ACT scheme.

⁶⁶ A retail supplier is a benchmark participant under s. 9(a) of the *Electricity (Greenhouse Gas Emissions) Act 2004* (ACT).

⁶⁷ *Electricity (Greenhouse Gas Emissions) Act 2004* (ACT), s. 11.

⁶⁸ *ibid.*, ss. 12 & 16.

⁶⁹ *ibid.*, s. 12(6).

⁷⁰ *ibid.*, ss. 11 & 12(4). Renewable Energy Certificates are created under the *Renewable Energy (Electricity) Act 2000* (Cth).

⁷¹ *ibid.*, s. 17.

⁷² The Australian Government scheme is created under the *Renewable Energy (Electricity) Act 2000* (Cth).

B.10 Electricity feed-in scheme

The ACT electricity feed-in scheme is established under the *Electricity Feed-in (Renewable Energy Premium) Act 2008* (ACT) (Feed-in Tariff Act). It seeks to compensate premises (other than premises exempt under the Feed-in Tariff Act) with renewable energy generators that have a total capacity of less than 30kW that feed electricity from the premises to the distribution network.⁷³

Electricity retailers are obliged under the scheme and by virtue of their retail licence to pay occupiers of premises for the total amount of electricity generated at the premises in accordance with the payment methodology outlined in the Feed-in Tariff Act.⁷⁴ Electricity distributors are required to reimburse electricity retailers the difference between the amount payable under the scheme and the normal cost of electricity.⁷⁵

In September 2010, the ACT Government announced an expansion of the feed-in tariff scheme. Under the expanded scheme, both medium and large-scale renewable energy projects will be included. The elements of the expanded ACT feed-in tariff scheme are:⁷⁶

- an overall scheme cap of 240 MW of generating capacity;
- large-scale generation category for generators larger than 200 kW (category cap of 210 MW);
- medium-scale generation category for generators between 30 kW and 200 kW (category cap of 15 MW); and
- existing micro generation category (household rooftops) up to 30 kW (category cap of 15 MW).

B.11 Regulation of marketing conduct

Part 5 of the Consumer Protection Code relates to the marketing conduct of utilities (including electricity retailers). Both retailers and their marketers are required to comply with the relevant clauses of Part 5. Selected marketing conduct requirements are summarised in the table below.

Table B.2 Consumer Protection Code marketing provisions

| Clause | Provision |
|--|---|
| Marketing obligations – obligations of | For the purposes of marketing, a marketer |

⁷³ Feed-in Tariff Act, s. 5B.

⁷⁴ *ibid.*, ss. 6(3) & 8.

⁷⁵ *ibid.*, s. 6(2). The normal cost of electricity is outlined in s. 6A.

⁷⁶ See DECCEW, *Electricity feed-in tariff stage 2* for further information at <http://www.environment.act.gov.au/energy/fit>.

| Clause | Provision |
|--|---|
| marketer (clause 29.1) | <p>must:</p> <ul style="list-style-type: none"> • understand and comply with the obligations of Part 5 of the Consumer Protection Code and all applicable Laws; • have product knowledge, including knowledge about tariffs, billing procedures, payment options, and redress available to all customers and consumers experiencing financial hardship; • understand and be able to explain all offers made to customers and consumers; and • understand what is misleading, deceptive or unconscionable conduct. |
| Marketing obligations – obligations of utility (clause 29.2) | <p>Where a marketer is not a retailer, the retailer on whose behalf the marketer is contracted, must:</p> <ul style="list-style-type: none"> • take steps to ensure that the marketer meets the conduct requirements set out in clause 30.1 of the Consumer Protection Code (see below); and • obtain a written statement of compliance with Part 5 of the Consumer Protection Code and all applicable Laws from the marketer where the marketer introduces a customer or consumer to the utility or where the marketer arranges or facilitates a supply arrangement on behalf of that utility. |
| Contact with customers – conduct (clause 30.1) | <p>A marketer shall:</p> <ul style="list-style-type: none"> • not harass or coerce a customer or consumer; • not engage in misleading, deceptive or unconscionable conduct, whether by act or omission; • not make false or misleading representations; and • provide all relevant facts in an accurate and truthful way. <p>A marketer must not call or contact a customer or consumer:</p> <ul style="list-style-type: none"> • during a public holiday in the ACT; • on a Saturday or Sunday, between midnight and 9:00am or between 5:00pm |

| Clause | Provision |
|--|---|
| | <p>and midnight; or</p> <ul style="list-style-type: none"> • on any other day, between midnight and 9:00am or between 8:00pm and midnight, <p>unless the customer or consumer has given express approval.</p> |
| <p>Contact with customers – duties of marketers (clause 30.2)</p> | <p>To the extent not otherwise required by the <i>Door to Door Trading Act 1991</i> (ACT), a marketer that contacts a customer or consumer for the purposes of marketing must, as soon as practicable, clearly:</p> <ul style="list-style-type: none"> • identify his or her name and the name of the company that the marketer works for; • where the marketer is not a utility, the name of the utility on whose behalf the marketer is acting; • identify, if requested, the marketer's contact number and address, and the contact number and address of the utility on whose behalf the marketer is acting; • explain the purpose for contacting the customer; and • ask the customer if the customer or consumer wishes to proceed further in the marketing process. <p>If a customer or consumer indicates, at any time during a conversation with a marketer that the customer or consumer does not wish to proceed, the marketer must cease marketing promptly and must not contact that customer or consumer for the purposes of marketing for not less than 28 days, unless requested by the customer or consumer.</p> <p>Where a marketer makes personal contact with a customer or consumer either at the customer or consumers premises or outside the premises, the marketer must display an identity card.</p> |
| <p>Contact with customers and consumers – contract information (clause 30.3)</p> | <p>A marketer must provide the following information to the consumer at or immediately before the consumer enters into a contract with the utility:</p> <ul style="list-style-type: none"> • the type and frequency of accounts the consumer will receive, and the payment methods available to the consumer; • details of applicable charges and service levels that will apply to the consumer |

| Clause | Provision |
|--------|---|
| | <p>including, if applicable, any fees or commissions that a marketer is entitled to receive as a result of introducing the consumer to a utility or facilitating a supply arrangement between the consumer and utility;</p> <ul style="list-style-type: none"> • the full name, address and telephone number of the utility; • the consumer's entitlement to a cooling-off period; • the length of the cooling-off period; • any rights the consumer has to cancel or rescind the contract and any charges that would apply on cancellation, together with a notice explaining the right of the consumer to rescind the contract, and a notice that may be used by the consumer to rescind the contract; • the full terms of the contract including the period of the contract, unless the contract is formed electronically; • the name and contact number of the utility responsible for providing the relevant connection services, if this differs to the utility providing the supply service; • the consumers right to make a complaint and to whom it should be made; • any other information reasonably necessary for the consumer to make an informed decision about entering into a contract. |

B.12 Role of ACAT

ACAT's functions relating to licensed utilities are established in the Utilities Act. It has the power to consider applications relating to complaints about the supply of electricity to customers by retailers. It has jurisdiction in regards to (among other things):⁷⁷

- complaints about hardship caused, or likely to be caused, by the disconnection of the electricity supply;
- contravention of a customer contract; and

⁷⁷ Utilities Act, s. 172.

- contravention of the protection of personal information provisions (s. 51 of the Utilities Act 2000).

ACAT may make orders and determinations that are binding on retailers in relation to matters within its jurisdiction. The directions and declarations it may make include:⁷⁸

- a direction for a retailer not to withdraw an electricity service where it would cause hardship;
- where a service has been withdrawn and causes hardship, a direction for the retailer to restore the service as soon as practicable within 24 hours;
- in relation to a customer debt for a residential premises that would cause substantial hardship for a customer, ACAT may, in writing, declare that the debt is discharged in whole or to a stated extent. The amount of the debt so discharged may not be more than \$10 000. The amount discharged through the ACAT declaration is a debt due to the utility by the ACT Government; and
- a written direction for a retailer to pay a complainant a stated amount for loss or damage. This amount may not be more than \$10 000.

B.13 Community service obligations

Apart from the role of ACAT described above, the Utilities Act also provides for CSOs the purposes of which are:⁷⁹

- to oblige utilities to provide utility services in accordance with relevant ACT Government programs, for example, for community services, the environment or other social issues; and
- to achieve that result by agreement with particular utilities or, where agreement is not reached, by directions of the Minister; and
- to provide utilities with a reasonable recompense for the provision of services in accordance with such directions.

Under the CSO provisions the Minister for a Government program may give a written direction to a utility (including an electricity retailer) to take a stated action that the Minister considers appropriate to ensure that the utility's services are provided in accordance with the program. Such a direction may, for example, require the utility to provide particular services to particular classes of people free of charge, at stated charges, or subject to stated discounts or rebates.⁸⁰

Directions under the CSO provisions can only be given if the responsible Minister is satisfied that despite all reasonable efforts having been made, no agreement has been

⁷⁸ *ibid.*, Part 12, Division 12.5.

⁷⁹ *ibid.*, s. 219.

⁸⁰ *ibid.*, s. 221.

reached with the utility about achieving the intended result or about the liability for the associated costs.⁸¹ Furthermore, for a community service direction to have effect, the ACT Treasurer must certify in writing that proper arrangements exist for the ACT to pay the utility the amount of costs stated in the direction or determined by arbitration in accordance with the Utilities Act.⁸²

CSO provisions have been used to provide concessions for electricity supply to consumers who hold a Centrelink health care card, Centrelink or Department of Veterans' Affairs pension card.⁸³ The Government has noted that at any one time, there are over 22 000 households in the ACT receiving the Energy Concession.⁸⁴

81 *ibid.*, s. 220.

82 *ibid.*, s.223. The arbitration provisions are provided in s. 225.

83 The concession is administered by the ACT Department of Disability, Housing and Community Services. Five energy providers are currently registered.
http://www.dhcs.act.gov.au/wac/concessions/energy_concession

84 ACT Government, *Draft sustainable energy policy 2010-2020*, December 2009, p. 19.

C Price monitoring and reporting framework

One of the pricing options being considered to promote competition in the ACT electricity retail market is to replace price regulation with reporting and monitoring requirements. This approach was taken in Victoria, where retail price regulation was removed in January 2009. The ESC is required to monitor the prices set by retailers and formally report to the Minister for Energy and Resources.⁸⁵

This Appendix sets out a framework for price monitoring and reporting, which is drawn from the approach currently used in Victoria, as well as monitoring regimes undertaken in other jurisdictions.

C.1 Purpose

The purpose of requiring price monitoring and reporting is to provide greater transparency and information to consumers, retailers and policy decision makers. The benefit of this approach relative to the option of removing price regulation without monitoring and reporting on prices, is that stakeholders will remain informed about the structure, conduct and performance of the ACT electricity retail market and therefore be able to make better informed decisions.

Importantly, greater information and transparency should lead to improved policy decision making (for example, the need for changes in the Energy Concession overtime). Additionally, if in the future the ACT Government determined that price regulation was once again necessary, this information would be relevant to making this decision. Finally, this information is also helpful to regulators in other jurisdictions for benchmarking purposes.

C.2 Structure of a price monitoring regime

The AEMC envisages that an annual report would be published. This would use information and data provided by ActewAGL Retail and other active retailers in the market, as well as any relevant publicly available information and data. The annual report may include:

- customer market shares of each active retailer;
- historical customer switching rates;
- indices for some of the key cost inputs (for example, wholesale electricity costs);
- historical average standing offer charges for each retailer by customer type (that is, residential and small business);
- historical average market offers for each retailer by customer type;

⁸⁵ For more information see Box 4.4.

- benchmarking prices in the ACT against other jurisdictions;
- analysis of the demographics of those customers on market offers;
- marketing behaviour of active retailers;
- analysis of Energy Concessions for disadvantaged customers;
- historical customer complaints (possibly provided by ACAT); and
- analysis of the ring fencing arrangements for the ActewAGL group of companies.

D Comparison of retailer availability

| City and post code | IPART (MyEnergyOffers) | ESC (YourChoice) | GoSwitch | SwitchWise |
|----------------------------|---|---------------------|---|--|
| Queanbeyan (NSW), 2620 | ActewAGL Retail AGL Country Energy Integral Energy Lumo Energy Origin Energy Powerdirect Red Energy Sanctuary Energy TRUenergy | No retailers listed | ActewAGL Retail Country Energy EnergyAustralia Integral Energy Origin Energy Red Energy TRUenergy | ActewAGL Retail Country Energy EnergyAustralia Integral Energy Origin Energy Powerdirect Red Energy TRUenergy |
| Newcastle East (NSW), 2300 | AGL Australian Power & Gas EnergyAustralia Integral Energy Lumo Energy | No retailers listed | AGL EnergyAustralia Integral Energy Origin Energy Powerdirect | AGL Australian Power & Gas Country Energy EnergyAustralia Integral Energy |

| City and post code | IPART (MyEnergyOffers) | ESC (YourChoice) | GoSwitch | SwitchWise |
|---------------------|---|--|---|---|
| | Origin Energy Powerdirect Red Energy Sanctuary Energy TRUenergy | | TRUenergy | Lumo Energy Origin Energy Powerdirect Red Energy TRUenergy |
| Geelong (VIC), 3220 | No retailers listed | AGL Australian Power & Gas Click Energy Dodo Power & Gas EnergyAustralia Neighbourhood Energy Origin Energy Powerdirect Red Energy Simply Energy TRUenergy | AGL Australian Power & Gas Click Energy Country Energy Dodo Power & Gas EnergyAustralia Neighbourhood Energy Origin Energy Red Energy Simply Energy TRUenergy | AGL Australian Power & Gas Click Energy Country Energy Dodo Power & Gas Lumo Energy Momentum Energy Neighbourhood Energy Origin Energy Red Energy Simply Energy |

| City and post code | IPART (MyEnergyOffers) | ESC (YourChoice) | GoSwitch | SwitchWise |
|----------------------|------------------------|---------------------|------------------------------|--|
| | | | | TRUenergy |
| Canberra (ACT), 2600 | No retailers listed | No retailers listed | ActewAGL Retail TRUenergy | ActewAGL Retail EnergyAustralia* TRUenergy |

Note: * EnergyAustralia is currently not accepting new customers in the ACT.