



17 November 2014

Professor Ian Harper
Chair
Competition Policy Review Panel
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Chair and Panel Members

Thank you for the opportunity to respond to the Competition Policy Review Draft Report.

APA Group (APA) plays a key role in Australia's energy sector. APA is Australia's largest natural gas infrastructure business, transporting about half of the nation's natural gas usage through the assets it owns or operates, alongside other energy infrastructure investments in the electricity sector.

APA limits its comments in this submission to recommendation 46 of the review, namely that a single body (in this case the proposed standalone access and pricing regulator) should carry out the functions of assessing access declaration/coverage applications that are currently undertaken by the National Competition Council (NCC), and the setting of regulated prices through arbitration or the approval of access arrangements.

APA currently invests approximately \$400 million per year in expansion and maintenance activity across its pipeline assets, which includes a mix of regulated and unregulated assets. This investment relies on APA, and shippers, having confidence in the Australian third party access regime, in particular the actions of advisory bodies and decision makers including the NCC and the Australian Energy Regulator (AER).

APA believes there is scope for perceived and actual conflicts of interest associated with combining the roles of determining the scope of regulation, and the application of that regulation. APA believes that combining these functions would have a real impact on investor confidence in the appropriate application of access regulation in line with the intent of the National Access Regime.

Concerns over conflicts of interest were discussed by the Productivity Commission (PC) as part of its recent review of the National Access Regime. The PC's concerns relate to the fact that the National Access Regime is 'at large' in that it can apply to a very broad range of infrastructure. The PC thought combining these roles could introduce the potential for the unwarranted extension of the scope of the regime, as well as scope for the perception of heightened regulatory risk that is likely to have an adverse impact on investment.¹

In light of these observations, the PC concluded that these functions should remain separate. APA agrees with the PC's assessment of this matter, and its conclusions.

¹ Productivity Commission 2013, *National Access Regime: Productivity Commission Inquiry Report*, 25 October, pp 290-1



APA has further concerns with the proposal to combine access and pricing functions into a single body. These arise from the specific functions currently undertaken by the NCC under the National Gas Law, which are different to those under the National Access Regime.

Under the National Gas Law, the NCC is the final decision-maker² on the 'form of regulation' to apply to covered infrastructure. This decision determines whether full price regulation for a particular gas pipeline or network will apply (including the setting of at least one reference tariff), or whether alternative light handed options will apply through price monitoring and access to arbitration where negotiations fail.

Combining current NCC access and AER pricing functions into a single body would see that body being the direct and final determiner of the scope of its own price setting functions under the National Gas Access Regime. This is in contrast with the pricing regulator taking on the NCC's roles under the National Access Regime, which are purely advisory, and where the responsible Minister is the relevant final decision-maker.

APA considers that combining these gas access regime roles in a single regulator has the potential to create conflicts of interest that are otherwise avoidable. These types of conflicts should not be introduced into the Australian third party access framework.

APA would be pleased to provide further information to support the development of the final competition policy review report. If you would like any further information, please call Alexandra Curran on 02 9275 0020.

Yours sincerely

Peter Bolding
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² This decision is subject to administrative review by the Australian Competition Tribunal