

28 January 2025

Ms Stephanie Jolly  
Executive General Manager Consumer, Policy and Markets  
Australian Energy Regulator  
GPO Box 3131  
Canberra ACT 2601

**Lodged by email: [AERringfencing@aer.gov.au](mailto:AERringfencing@aer.gov.au)**

Dear Ms Jolly,

## **Submission by Symphony Infrastructure Partners – Draft changes to Ring-fencing Guideline (Electricity Transmission)**

Symphony Infrastructure Partners Pty Ltd (**Symphony**) welcomes the opportunity to provide feedback on the AER's Draft Ring-fencing Guideline (electricity transmission) – Version 5 (**Draft Guidelines**).

The Draft Guidelines are a welcome regulatory development to address the risk of discrimination and barriers to entry faced by independent third-party contestable transmission service providers seeking to compete with the Transmission Network Service Providers (**TNSPs**) and their related entities. Addressing those risks will create a faster, more efficient and transparent connection process, which will ultimately lead to better outcomes for consumers.

### **About Symphony Infrastructure Partners**

Symphony, established in 2022, is a specialist investor and provider of critical infrastructure and services. Operating across Australia and New Zealand, Symphony builds, owns, and operates electricity network connections and related infrastructure, serving the renewable energy and digital infrastructure sectors in Australia and New Zealand.

With a portfolio of Australian companies (ART, Energy 3, Clutch Consulting, RJE Global, Cowell Electric, Catalpa Group, Solas Infrastructure and Lighthouse Industries) boasting over 90 years of power infrastructure experience and more than 1,200 staff, Symphony delivers turnkey connection solutions to renewable energy developers, energy utilities, TNSPs and resource sector clients.

Symphony has contributed to over 70 renewable energy projects and connected over 10GW of renewable generation to the transmission network.

Symphony is providing a competitive and viable alternative in the delivery of contestable transmission connection services and remains committed to expanding its capabilities and capacity to support the energy transition across the market.

### **Fundamental principles – increasing competition will drive better outcomes**

Symphony supports the proposed expansion of the ring-fencing guidelines to capture functional separation of TNSPs' prescribed transmission services and negotiated transmission services from the provision of contestable (i.e. non-regulated) electricity services.

#### **The need to remove barriers to entry**

As the energy transition proceeds, it is critical to ensure there is capacity in the market to deliver the connection infrastructure required to connect the new generation and dispatch capacity to the transmission network. It is,

therefore, essential to the energy transition that barriers to entry are removed and that there is a level playing field for independent third parties to compete with TNSPs and their related entities to deliver this connection infrastructure.

The levelling of the playing field will encourage new entrants and increase competition, which in turn will create a faster, more efficient and transparent connection process. Given the unprecedented scale out of the TNSPs' regulated transmission networks required as part of the energy transition, it is more critical now than ever before to ensure an open and competitive market for contestable connections. In the absence of fair competition, there is a real risk that renewable energy projects will be delayed and incur greater connection costs as TNSPs necessarily become increasingly focused on their regulated major transmission projects rather than on smaller scale contestable connection services.

The existing barriers to entry present a risk to the timely delivery of the renewable generation and dispatch capacity required for the energy transition, including, the risk that independent parties will be less willing to invest in building additional delivery capacity to meet market demand at a time when more capacity in the market is required than ever before.

### **The need to address market perceptions**

The AER should be deeply concerned that a widespread and tangible perception persists in the market that there is a lack of genuine choice for contestable transmission services outside of TNSPs. This is a significant issue for Australia's energy transition and evidenced by the limited number of projects that have awarded contestable *Identified User Shared Asset* scope to independent third parties since that asset classification was introduced into the National Electricity Rules in 2018.

This perception is reinforced by TNSPs and their contestable related entities providing 'bundled' connection offers (comprising both the contestable and non-contestable portions). Such behaviour undermines cost transparency as between the non-contestable and contestable portions and also increases the risk (or perception) that TNSPs may inflate the cost of the non-contestable portion so as to enable their related entities to offer a more competitive price for the contestable portion.

### **The need to address TNSPs' uncompetitive advantage**

TNSPs' monopoly over services such as connection application processes, negotiated network augmentations and negotiated modifications give the TNSPs and their related entities a natural and uncompetitive advantage over independent contestable service providers. In addition, TNSPs may obtain commercially sensitive information in the course of providing such monopoly services which could be used to their commercial advantage when pursuing contestable opportunities. For example, a TNSP may obtain information about a customer's prospective project pipeline. Additionally, the profits from those negotiated services could be used to subsidise business development activities for contestable services.

We encourage the AER to seek to redress this uncompetitive position as much as possible through these Draft Guidelines because the benefits of a more competitive market for contestable services will far outweigh the impact of any additional compliance requirements on TNSPs. Ultimately, this will lead to better outcomes for the energy transition and consumers. To achieve that outcome, the related entities of TNSPs need to be placed, so far as possible, in the same position as independent third parties. The Draft Guidelines should reflect that fundamental principle as much as possible.

Against these general comments, we address below some specific issues relating to the Draft Guidelines.

### ***The guidelines should be expanded to capture all negotiated services***

Symphony supports the approach taken by the AER in the Draft Guidelines to apply the anti-discrimination provisions to all types of negotiated transmission services.

The costs of discrimination (including perceived and potential discrimination) make it appropriate to impose ring-fencing obligations across the board on all negotiated transmission services, not just certain categories of negotiated transmission services.

If TNSPs are not required to ring-fence all their negotiated transmission services, then independent third parties will not be able to compete on a level playing field. This will distort the market for contestable connection services. It will

also place an unacceptable barrier to entry and, consequently, there will be significantly reduced competition in the market for contestable transmission services. As stated above, this will ultimately increase costs for parties seeking to connect to the transmission networks and risk prolonging the connection process. Again, the increase in cost will ultimately be borne by consumers and longer connection processes will delay the energy transition.

### ***Expanding ring-fenced information requirements to negotiated services***

Symphony supports the AER's proposal to extend the definition of ring-fenced information to include information obtained through negotiated transmission services. As noted above, TNSPs and their related entities have an unfair advantage when it comes to obtaining commercially sensitive information by virtue of their monopoly over non-contestable services. To ensure there can be genuine competition in the market for contestable connection services, it is critical that TNSPs ring-fence information regarding connection applications. This should include all non-public information regarding a connection applicant and its project, including all details and terms of the offer to connect and the scope and price of the negotiated services. Such measures will help mitigate the risk of TNSPs' contestable related entities obtaining an unfair competitive advantage by accessing sensitive customer or network information. The only circumstances where it would be appropriate for TNSPs to share confidential information relating to its negotiated services with its contestable related entities are already captured in the Draft Guidelines (e.g., where disclosure is made with the consent of the relevant customer).

### ***Separation of staff***

We acknowledge that the AER does not propose to make any changes to staff separation requirements, at least not at this time. However, Symphony considers that the AER should reconsider this position. Appropriate separation of staff is a necessary component of the ring-fencing requirements to ensure their efficacy and is consistent with requirements for ring-fencing information. Without appropriate staff separation, TNSPs' related entities will continue to have an unfair advantage in pursuing the contestable scope of connection projects.

An unfair advantage could arise in the form of inadvertent sharing or misuse of commercially sensitive information (for example where information disclosed to the TNSP for the purposes of the negotiated connection process is used in tendering and negotiating the contestable scope).

An unfair advantage could also arise in the negotiation process where the TNSP and its related entity share staff involved in both negotiating the non-contestable agreements and the bid for the contestable services. If the same staff are used for both contestable and non-contestable portions, there is a risk that the internal costs referable to negotiating the contestable scope will be subsidised through the non-contestable services. Moreover, if customers and independent third parties delivering contestable services have to engage the same TNSP personnel to negotiate terms for both the non-contestable services as those personnel involved in the TNSP's related entity's competing bid for the contestable services, there is a risk that customers will be offered less favourable terms for the negotiated scope if they do not award the contestable scope to TNSP's related entity.

This unfair advantage would be mitigated if TNSPs were required to ensure that the personnel involved in the connection application process (including negotiation of the terms of the connection agreements for the non-contestable components of the connection) for a particular project are not the same personnel as those involved in bidding for and negotiating the contestable portion.

It should also be a requirement that appropriate information barriers and protocols be put in place between the two teams.

Symphony is concerned that the proposed approach to staff separation in the Draft Guidelines gives undue weight to the additional costs TNSPs may incur from additional staff separation requirements. We recognise that TNSPs and their related entities are operating in a resource-constrained market. However, TNSPs are sufficiently large organisations able to resource separate commercial teams for the contestable and non-contestable scope. Any additional costs for TNSPs will be outweighed by the benefits of a more competitive market where customers can be more confident of pursuing contestable transmission services from independent third parties without that having a detrimental impact on the terms and delivery of the negotiated transmission services.

## ***Cross branding and promotion***

We note that the AER does not propose to introduce restrictions on cross-branding and promotions to negotiated services. We agree with the AER on this aspect of the Draft Guidelines.


## ***Reporting on negotiated services***

Symphony supports any requirements for additional reporting, such as those mentioned in the Draft Guidelines. This additional reporting is consistent with the purpose of the ring-fencing guidelines.

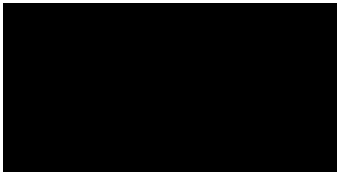
Symphony considers that there should also be mandatory reporting on the following additional matters:

- Whether a TNSP imposes different requirements where its related entity is not selected to provide contestable services;
- Whether the commercial and technical terms of a negotiated service for a transmission connection vary depending on whether it is the TNSP's related entity or an independent third party providing the contestable connection services; and
- The TNSP's compliance with the ring-fencing guidelines and what compliance measures are implemented.

Lastly, Symphony encourages the AER to take a proactive approach in ensuring TNSPs are complying with the current obligations and (once implemented) the new obligations, as well as competition law more generally. The market for contestable transmission services will become more transparent, competitive and effective, to the ultimate benefit of consumers, if connecting customers can be confident that TNSPs are complying and that there will be real regulatory consequences if they do not comply.

Symphony looks forward to engaging further with the AER and other stakeholders on this important issue. If you would like to discuss any aspect of this submission, please contact Damien Hughes via email at .

Yours sincerely



**Steve Butler**  
Chief Executive Officer