Major Energy Users Inc.

Australian Energy Regulator

Better Regulation Program

Shared Assets Guideline

MEU Comments on the draft guideline

Submission by

The Major Energy Users Inc

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1. Introduction

The Major Energy Users Inc (MEU) welcomes the opportunity to provide comments on the AER draft shared asset guideline released in July 2013.

The guideline is being established under the recently approved revised network Rules, whereby customers who fully fund regulated assets through their electricity bills are able to share the benefits of unregulated revenues derived from the secondary use of regulated assets.

The guidelines are part of an overall work program to improve energy regulation and enhance consumers' long term interests.

It is in the long term interests of consumers for NSPs to use the regulated assets for other purposes, both as a way of reducing costs to electricity consumers and to provide a societal benefit. Because of these benefits, NSPs should be encouraged to seek other uses for the regulated assets. On this basis the MEU supports there being an incentive for NSPs to seek such additional uses.

Equally, as NSPs are fully reimbursed for the provision of the regulated assets, in principle, all additional revenue earned from secondary use of the assets should be paid to consumers who have effectively paid full value for their provision.

This draft guideline is an attempt to find a way to both incentivise NSPs and benefit consumers. In the view of the MEU, the AER has provided an outcome that is so heavily biased in favour of NSPs and provides so little benefit to consumers, that it raises the question – why bother?

The MEU does not consider the draft guideline meets the requirements of the rule changes.

2. The AER approach

The Rules set six principles for developing an outcome to share the unregulated revenue that is used by secondary use of regulated assets. The Rules (6.4.4(c) and 6A.5.5(c)) state that:

> "The *shared asset principles* are as follows:
>
> (1) the … *Network Service Provider* should be encouraged to use assets that provide [regulated] *services* for the provision of other kinds of services where that use is efficient and does not materially prejudice the provision of those [regulated] services;

(2) a shared asset cost reduction should not be dependent on the … *Network Service Provider* deriving a positive commercial outcome from the use of the asset other than for [regulated] *services*;

(3) a shared asset cost reduction should be applied where the use of the asset other than for [regulated] *services* is material;

(4) regard should be had to the manner in which costs have been recovered or revenues reduced in respect of the relevant asset in the past and the reasons for adopting that manner of recovery or reduction;

(5) a shared asset cost reduction should be compatible with the *Cost Allocation Principles* and *Cost Allocation Method*; and

(6) any reduction effected under paragraph (a) should be compatible with other incentives provided under the *Rules* "

The AER asserts that the Rules impose on them the following constraints and these are restated as follows (AER Explanatory statement page 10):

"…cost reductions must:

- reasonably reflect asset costs that service providers recover by charging for unregulated services
- consider only unregulated revenues earned from use of the shared assets, not other unregulated revenues
- be no greater than the depreciated regulatory value of the shared assets
- be undertaken only as part of our distribution and transmission regulatory determinations, usually every five years.

The MEU agrees that these constraints are imposed by the Rules but notes that the principles outlined in the Rules also impose a requirement that the NSP is only required to share the revenue from unregulated use of shared assets, when the cost to provide the unregulated service is less than the revenue it receives for providing the unregulated service – that is, when the NSP earns a profit from providing the service. If the NSP generates a loss, it is not to require consumers to share this loss.

In the explanatory statement (page 8) the AER also states:

"The draft guidelines set out that, for each service provider we regulate, we will:

- at the time of a regulatory determination, make shared asset cost reductions in advance for each year unregulated revenues earned from shared assets are expected to exceed 1 per cent of regulated revenues from standard control (or prescribed transmission) services

- determine cost reductions using the method set out in the guidelines
- reduce standard control (or prescribed transmission) service revenues by an amount equal to the cost reductions we determine
- encourage service providers to submit proposed cost reductions calculated in accordance with the guidelines
- consider proposed cost reductions calculated using alternative methods only if the result leaves consumers no worse off than under the method set out in the guidelines
- require minimum annual reporting and more comprehensive reporting with regulatory proposals."

The AER draft guideline imposes a scheme where the sharing mechanism will not be applied until the unregulated revenue using regulated assets exceeds 1% of the annual revenue requirement (ARR) or maximum allowed revenue (MAR) of the NSP, and that only 10% of this unregulated revenue will be passed back to consumers by way of reduced charges for providing the regulated service.

Whilst the MEU accepts that the AER principles tend to reflect the principles outlined in the Rules, it has imposed additional but major constraints on the amount consumers will benefit from consumers allowing the secondary use of the assets they are required to pay full value for. The MEU concerns about the conclusions the AER has reached are outlined in the following sections.

The AER posits that their approach minimises the costs to the NSP of the sharing process. However, the MEU considers that, in the AER seeking to minimise the transaction costs, it has developed a draft guideline that is extremely favourable to the NSPs and provides so little benefit to consumers that it raises the concern whether there is any value in imposing the requirement to share any of the unregulated revenue.

3. The "materiality" trigger

The MEU notes that the AER has reinterpreted and restated the Rules in order to develop its six principles. In particular the third principle detailed in the Rules is:

> (3) "a shared asset cost reduction should be applied where the use of the asset other than for [regulated] *services* is material"

The MEU accepts that the Rules impose a "materiality" provision before the application of the shared assets requirement is to be imposed and to reflect this, the first AER principle states that the revenue from unregulated shared asset revenue has to exceed 1% of the annual regulated revenue before the

requirement to share the benefit is imposed. In contrast, the Rules merely state that the revenue be "material" and do not set any explicit value.

The AER has stated that it uses the term "materially" as defined in Chapter 10 of the Rules (the Glossary) and used the 1% trigger because this is what is required for pass throughs. In fact the definition is:

> ***"Materially***
> **For the purposes of the application of clause 6.6.1**, an event results in a *Distribution Network Service Provider* incurring materially higher or materially lower costs if the change in costs (as opposed to the revenue impact) that the *Distribution Network Service Provider* has incurred and is likely to incur in any *regulatory year* of a *regulatory control period*, as a result of that event, exceeds 1% of the *annual revenue requirement* for the *Distribution Network Service Provider* for that *regulatory year*.
>
> **For the purposes of the application of clause 6A.7.3,** an event (other than a *network support event*) results in a *Transmission Network Service Provider* incurring *materially* higher or *materially* lower costs if the change in costs (as opposed to the revenue impact) that the *Transmission Network Service Provider* has incurred and is likely to incur in any *regulatory year* of a *regulatory control period*, as a result of that event, exceeds 1% of the *maximum allowed revenue* for the *Transmission Network Service Provider* for that *regulatory year*.
>
> **In other contexts, the word has its ordinary meaning**." (emphasis added)

The application of the 1% trigger is to apply only in the case of pass throughs (clauses 6.6.1 and 6A.7.3) and the rider at the end of the definition clearly states that in all other contexts, the term is to have its "ordinary meaning". The AER has erred in applying a trigger based on a limit which is set for specific purposes and is not to be used for any other purpose.

In the AEMC Final Determination on the network rule changes the AEMC provides an indication of what it considers is "material" in the case of shared assets. The AEMC states (page 196):

> "… a shared assets cost adjustment should be applied where the use of the asset other than for standard control services is material. This means the benefit of sharing the cost of the asset based on use should outweigh the administrative costs of implementing the shared asset cost adjustment mechanism;"

The AEMC explicitly states that materiality is to be measured in terms of the when the benefit from the unregulated use exceeds the transaction costs incurred in delivering the benefit to consumers. This is a far cry from the 1% of

ARR used by the AER and shows that the AER has erred in setting such a high level for its trigger.

In fact, the AER should have applied the term "materially" using the "ordinary meaning" and then applied the intention of the AEMC as it is explicitly detailed of the AEMC Final Determination. It is clear the AER has totally misinterpreted the stated intention of the AEMC in this reference to the shared assets mechanism and, by doing so, has the outcome of reducing the benefit that consumers gain from allowing shared used of regulated assets.

The MEU considers that applying the 1% trigger is incorrect and must be reduced to reflect the requirements of the Rules and the AEMC explicitly stated intentions.

In assessing materiality, the AER has failed to recognise that this unregulated revenue (less the costs of gaining it) becomes immediate profit to the NSP. Relating this NSP benefit to the ARR is totally inappropriate as the profit the NSP gains from the unregulated revenue has no relation to the ARR in the slightest. In fact, this unregulated profit could considerably increase the NSP overall profit without exceeding the 1% ARR trigger.

Further the AER guideline only requires the NSP to report to it when this 1% of ARR is exceeded, increasing the potential for the NSP to conceal the benefits that it is acquiring from using regulated assets to generate unregulated revenue.

The MEU considers that the trigger for applying the requirement for sharing must be where the revenue from unregulated use of the regulated assets exceeds the cost to the NSP of providing this unregulated service, including the transaction costs incurred by the NSP in generating the information needed to allow the AER to implement sharing the benefit.

The MEU trigger point more closely reflects the intention of the AEMC and the import of the Rules based principles applying to the use of shared assets.

4. What should be shared?

Consumers have consistently been of the view that what should be shared is the difference between the cost of providing the unregulated revenue and the resultant unregulated revenue – that is, the profit generated by the unregulated service provision. The MEU understands that a number of NSPs have a similar view. Such an approach makes sound commercial sense.

In counter to this quite sensible approach, the AER has observed that they do not have the power to require the NSPs to provide the costs they incur in

gaining the unregulated revenue – they only have the power to seek the costs for providing regulated services.

That is, the AER seems to be of the view that they can only require the NSP to advise:

- If they are providing unregulated services using the regulated assets and
- What the revenue is from this unregulated service provision.

The MEU considers this assumption by the AER is incorrect. It is clear from the new Rule and the AEMC explanatory determination that the AER is required to ensure that the **benefit** from providing unregulated use of the regulated assets is to be shared. To do this, the AER has the right (and has assumed it has the right) to require NSPs to advise on the revenue NSPs get from providing unregulated services. To require the NSPs to advise the costs for providing the unregulated service is no different to requiring the NSP to advise on the revenue gained from these services.

In fact, the AER has an obligation to ensure that NSPs do not include any costs for the provision of these unregulated services within the allowances for providing regulated services. This can only be done if the AER is satisfied that the costs incurred with providing the unregulated service are reasonable for the task[1]. If the declared costs to provide the secondary service are too low, the implication is that the NSP could be including some of the costs in the regulated allowance. A sensible approach to sharing the benefit, with appropriate incentives, means that the NSP is indifferent to whether the costs are allocated to the secondary service or included in the regulated allowance

At a pragmatic level, an NSP should not be required to share with consumers more that the profit they generate from the unregulated service. To do so would be inequitable. This means that the AER must know what the profit is before setting a sharing arrangement. The AEMC makes an observation in its Final Determination in reference to shared assets which seems to agree with this view.

The AEMC states[2]:

[1] The AER has stated a preference for using the revealed cost for opex as the basis for setting future allowances. The assumption made is that the revealed cost supported by an incentive to reduce costs should lead to the NSP being efficient. However, an NSP is incentivised to include the costs for providing unregulated services in its regulated allowance as currently all the profit from the unregulated service adds to the NSP's profit. If the unregulated service is unprofitable (as alleged by some NSPs) then the NSP has an even greater incentive to add costs for the unregulated service to the regulated allowance.
[2] AEMC Final Determination on the network rule changes page 207

> "The Commission reiterates its position that, in general, the NSP should have to bear some risk in the sharing arrangements so it takes that risk into account when deciding whether to enter a sharing arrangement of an asset. The NSP will be in the best position to assess and manage this risk. The NSP needs to be prudent in making its investment decisions when going into sharing arrangements. A benefit that the NSP may receive in sharing the asset is the likely potential to substantially gain revenue from that arrangement; while the only benefit to the existing customer is a reduction in its costs. It is the NSP's decision to share the asset with the objective of making a profit, balanced against whether it is a prudent decision to enter into such an arrangement."

Whilst not discussing the costs of generating the unregulated revenue specifically, it does discuss that the costs involved in any implementation of secondary use need to be assessed to ensure that the decision made to enter the arrangement is prudent – prudency requires that there will be a profit from the transaction and this is clearly implied in the AEMC discussion.

The MEU considers that to share in just the revenue as proposed by the AER has two major drawbacks:

1. There is the potential that the payment of a share of the revenue will result in the NSP making a loss on the transaction. The NSP is then likely to attempt to recover this loss by increasing regulated revenue
2. By setting a low sharing value of the revenue (as is proposed by the AER) to avoid the risk of the NSP not making a profit, consumers will not gain an equitable share of the full value for providing the unregulated service that is the focus of the rule change.

The MEU considers that the AER has incorrectly assumed that it cannot access the costs for generating the unregulated revenue and thereby determine the profit from the transaction. By failing to assess the costs but setting a proportion of the revenue, the AER has unnecessarily increased the risks to NSPs **and** to consumers and, at the same time, unnecessarily minimised the benefit to consumers. Neither of these outcomes is intended by the rule change.

This conclusion is supported by AEMC shared asset principles (1) and (2) which state:

> (1) "the … *Network Service Provider* should be encouraged to use assets that provide [regulated] *services* for the provision of other kinds of services where that use is efficient and does not materially prejudice the provision of those [regulated] services;

> (2) a shared asset cost reduction should not be dependent on the … *Network Service Provider* deriving a positive commercial outcome from the use of the asset other than for [regulated] *services;*"

If the NSP is being encouraged to share the use of the regulated assets and it is not to pass on any losses that it makes, the AER has an obligation to consumers to ensure that NSPs are acting commercially in order to benefit consumers. The only way the AER can ensure this is by knowing both the revenue from and the costs for providing the unregulated service.

Under the building block approach to setting allowed revenues for provision of the regulated services, consumers are required to pay full value for the assets provided. It is therefore inequitable that NSPs can sell again the use of the assets to enhance the NSP profit. Indeed, the rule requirement to encourage this secondary use and then to share the benefits of this additional use, supports the MEU view of this inequity.

The AER has provided a view that it is not permitted under the National Electricity Law to seek information regarding the costs for providing unregulated services. The MEU agrees with this in relation to NSP revenue that does not use regulated assets. As the Law seems to assume that the use of regulated assets to provide secondary services which might be unregulated, this separation is less clear.

The AER is required by the Objective to ensure there is efficient investment in and use of the assets providing the regulated services. Secondary use of the assets is one way to achieve greater efficiency in the use of the regulated assets and the Rules now require the benefits of this improvement in efficiency to be shared with consumers. The Rules expect that the NSPs will be prudent in providing the secondary use as this leads to maximising the benefit to consumers.

The import of the Objective is that an NSP is not permitted to provide an unregulated service using regulated assets if the unregulated service negatively impacts the regulated service or reduces the efficiency of the regulated service provision. Further the Rules express an expectation that the NSP will be prudent in the provision of the secondary (unregulated) service so that there is a benefit to be passed to consumers.

The AER needs to ensure that the NSPs are being prudent in providing this secondary service and it can only ensure this by assessing the profitability of the secondary service provision. This can only be done by the AER knowing both the revenue from the unregulated service, the costs needed to provide it and whether the secondary service is negatively impinging on the regulated service delivery.

The MEU considers that the AER has a right to seek information as to the prudency of the unregulated service and whether this has any impacts on the regulated service delivery.

With access to this knowledge, the MEU considers that the AER should use the profitability from the provision of the unregulated service as the basis of the sharing mechanism.

5. The sharing proportion

The AER has determined that consumers will receive the benefit of 10% of the unregulated revenue from the use of shared assets once the unregulated revenue exceeds 1% of ARR or MAR.

The AER provides no explanation as to how this 10% value has been developed, other than to state (page 25):

> "Any benefit sharing proportion, or detailed method of determining cost reductions, is to an extent arbitrary. While we consider 10 per cent is a reasonable benefit sharing proportion, we are not able to set out mathematical proof that it will optimise consumer benefits."

The MEU disagrees that there is no mathematical way to assess a sharing allowance. Sharing usually means that two or more parties take a part of the benefit in proportion on some pre-agreed basis; most commonly this is done by equally sharing the benefit, or allocating the benefit in terms of ownership or risk taken.

The MEU accepts that the NSP will most likely incur costs in generating the unregulated revenue and that there may be some risk that the revenue will not exceed the costs estimated when the price for the unregulated service is agreed. Equally, consumers are taking the risk that the price they pay for use of the regulated assets is efficient – the NSP does not take this risk. Accepting that each party – NSP and consumer – have similar risks then it would be equitable that each should receive equal shares of the unregulated revenue less the costs involved in providing the unregulated service. On this basis, the mathematical outcome is that with consumers receiving 10% of the unregulated revenue, the implication of the AER approach is that 80% of the unregulated revenue is used in generating the unregulated revenue[3].

To assume the NSP will incur 80% of the unregulated revenue in costs is unsubstantiated and probably wrong. In the case of shared assets, the bulk of the costs (ie provision of the assets) are already recovered because

[3] Ie, if the unregulated revenue is $100, consumers would get $10. Assuming there is to be equal shares in the profit, the NSP would get $10 profit, implying the costs involved are $80

consumers are paying full value for them through the regulatory process. This means that the NSP should assess the unregulated revenue[4] in terms of:

- The marginal cost to the NSP in providing the unregulated service, and
- The stand alone cost for the seeker of the unregulated service in the absence of the regulated assets; that is the NSP should be seeking to "Ramsey" price the unregulated service as this would deliver the greatest profit to the NSP.

The final price for the unregulated service should lie between the marginal cost and the stand alone cost[5]. This approach is basic commercial practice and would ensure that the NSP would generate a profit from providing the unregulated service. It makes no commercial sense for the NSP to provide the unregulated service at less than the marginal cost – ie to deliberately make a loss.

Implicit in the AER assessment of the consumers' share of the unregulated revenue, is that the NSP would only price the unregulated service at 20% more than the marginal cost. The MEU is strongly of the view that this is unlikely and if the NSP did so, it would not be seeking to maximise the benefit of providing the unregulated service for either itself or consumers.

The AER also takes a societal view on unregulated revenues, in that they consider their sharing mechanism should provide a benefit more widely. For example on page 25, the AER notes

> "Finally, in proposing our 10 per cent approach, we have taken into account the societal benefits provided by unregulated services using electricity network assets. Services, for example, such as telephony, internet and other telecommunications products have significant value to the community more broadly. Electricity infrastructure is a least cost mode of delivery for many services. We seek to retain reasonable conditions for the ongoing use of network assets to continue to produce these other social benefits."

The MEU agrees that there are societal benefits from using regulated assets, but the AER has totally missed the point on where the unregulated revenue goes and, in doing so, has confused the issue of societal benefits with equitable sharing.

In theory, the maximum societal benefits would be provided by requiring the NSP to provide the unregulated service at the marginal cost. This is not a requirement of the Rules and would impose on electricity consumers an outcome where they effectively subsidise the secondary service seeker.

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[4] Indeed, it is encouraged to do so by AEMC Principles 1 and 2.
[5] This is the same basis that NSP set their prices for the use of regulated assets

Using the AER guideline as a basis, electricity consumers get 10% of the unregulated revenue and the NSP receives 90% of the revenue from which it has to absorb its costs. The societal benefit is not impacted by increasing (or decreasing) the consumers' share of the unregulated revenue – the same societal benefit is provided whether consumers get 10% or 50% of the revenue.

As noted above, the MEU considers that the AER has erred in using the revenue alone as the basis for setting the sharing basis. It has further erred in setting a sharing proportion which is too low by a large margin.

The MEU considers that, in principle, an equitable sharing approach has profit (ie revenue less costs) as the basis for sharing and that the sharing proportion should be no less than 50% of the profit be the consumer benefit.

In fact, because consumers are already paying full value for the assets used to provide the unregulated service, consumers are entitled to all of the profit from the unregulated service. The MEU accepts that this would not provide an incentive to the NSPs to seek to provide these unregulated services and so some sharing of the net benefit (ie profit) is appropriate.

The Rules shared assets principle (6) requires that the shared asset adjustment must reflect other incentives provided under the rules. These other incentives notionally provide NSPs with 30% of savings reductions, so this would imply that the sharing under the shared assets could be as high as 70% of the profit to consumers with the other 30% to the NSP. However, the MEU accepts that these other incentive schemes are symmetric penalty/bonus arrangements where NSPs are faced with the risk of penalties. In the case of shared assets, the AEMC shared assets principle (2) states that consumers are not to be exposed to losses and therefore a lower sharing proportion to consumers of between 50-70% would be more equitable.

6. The ex post adjustment

The AER has interpreted the Rules, when coupled to the AEMC Final Determination wording, to mean that the AER is not permitted to make (page 13):

> "… ex post reconciliations for the following reasons:
>
> - The NER do not specifically allow ex post reconciliations and imply real-time cost reductions.
> - The AEMC considers ex post reconciliations should not be necessary.
> - Consumer benefits from services begun only in the preceding regulatory period will be limited, because only a short period of operation will have been possible.

- We propose to monitor the accuracy of forecasts compared with actual unregulated service and revenue outcomes, with a view to possibly changing our approach and the NER if necessary."

The MEU accepts that without an ex post adjustment to allow for unregulated revenue from using shared assets, but created during a regulatory period, there is the potential that consumers will not receive the full benefit of the additional unregulated revenue generated within the period. The expectation would be that in the reset process for the next period, these new unregulated revenues would be included in the ex ante assessment made by the AER.

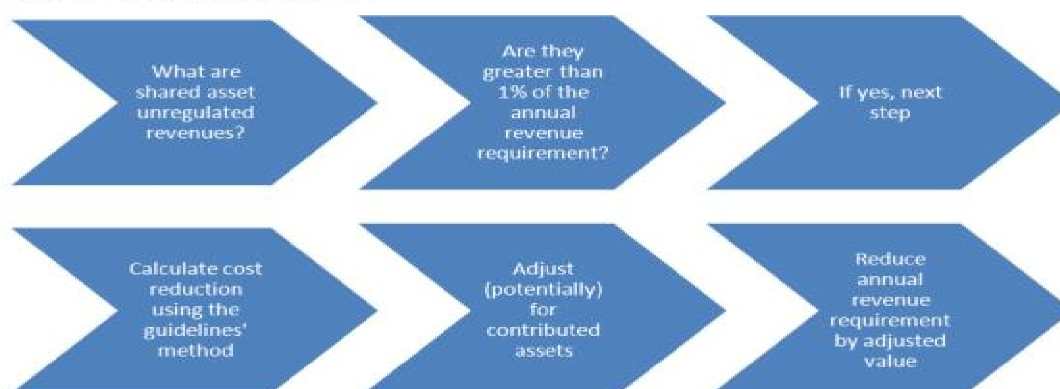
The MEU considers that not including ex post adjustments provides an enhanced incentive on NSPs to seek **and maximise** such unregulated revenue. However, to adjust for the loss of the benefit by not adjusting ex post, the MEU considers that consumers should be allowed a greater share of the resultant benefit in subsequent periods.

On this basis, consumers should be granted more than the 70% (required to match other incentives) of the benefit in subsequent periods.

If, however, a greater share of the benefit is not provided to consumers, then the benefit should be assessed annually and provided to consumers as part of the annual adjustment of prices. In this regard, the MEU notes that there is already considerable adjustment that occurs annually in setting revenues and prices to reflect CPI adjustments, previous year over/under recoveries, and inclusion of settlement residues (for revenue capped entities) and CPI adjustments and inclusion of changed transmission charges (for price caped DNSPs).

7. The inherent incentive

The AER approach is typified by the following graphic provided as figure 1 in the AER draft guideline



This approach highlights an essential inconsistency. If the unregulated revenue is marginally less than the "1% of ARR" trigger, there is no sharing and the NSP retains 100% of the unregulated revenue. If the unregulated revenue is marginally greater than 1% of ARR, the NSP retains 90% of the revenue and consumers get 10%.

The inherent incentive is for NSPs to keep the unregulated revenue below the 1% trigger point, even if this means that the potential revenue they could acquire is greater. Should the sharing rate be increased, this incentive becomes greater.

It was because of this that the MEU proposed in its response to the Issues Paper that there should be a sliding scale with multiple trigger points each with its own related sharing percentage[6]. This approach would then smooth the sharing benefit in order to eliminate the impact of the different benefit to consumers either side of the trigger point.

However, as the MEU points out above, the trigger point is required to be where the benefits to consumers of from sharing the revenue stream exceed the transaction costs incurred in providing the benefit to consumers rather than the inappropriate application of a trigger stipulated for a matter unrelated to the use of shared assets. Using this lower starting point as the trigger, the concerns identified by the MEU regarding the incentive for NSPs to keep the revenue below the 1% trigger point is no longer an issue.

8. A preferable solution

The MEU considers the considerations raised above provide a low cost way for the AER to implement a sharing mechanism that meets the requirements of the Law and the Rules.

However, it is clear from the information included in the explanatory statement that much of the AER approach is predicated on sparse information and unproven assertions from the NSPs. It is these assertions that have led the AER to conclude that the NSPs are providing access to regulated assets at the marginal cost (or even lower) because this is required of them by legislation. If this is the case, the AER approach has some validity.

Unfortunately, the draft guideline has been developed based on insufficient information on which to develop a sound and sensible approach to the issue. The AER must carry out further investigations to asses the legitimacy (or otherwise) of the information that has been provided to it.

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[6] This approach is similar to the progressive tax scale used for personal income tax

With this in mind, the MEU has a view that the draft guideline should be initially promulgated as developed by the AER (subject to some changes noted below), but with a very limited life – perhaps no more than two years – and during this time the AER should seek better information on which to develop a more appropriate guideline. During this two (?) year period the AER should seek:

- From each NSP advice on each of the contracts the NSP has to provide secondary services to others using regulated assets. The NSP should advise the revenue achieved from each contract and the costs incurred in providing the contracted services.
- Verification (or otherwise) of the assertions made by some NSPs as to the extent NSPs can set the price for providing secondary services using regulated assets.
- The likelihood of NSPs being aware of significant new contracts for use of regulated assets at the time of a reset. This identifies the magnitude of the risks consumers take in only using an ex ante assessments for allocating the shared assets revenue. It also provides guidance as to the extent the consumer share of the profits should exceed the 70% level.
- Advice as to the transaction costs for providing consumers with their share of the benefit of using shared assets for secondary use. This provides substantiation for the setting of the trigger point
- An approach to verifying the extent of the costs incurred by the NSPs in providing the secondary service

Using this better information, the AER will be in a much better position to assess how the secondary use of shared assets is operating in practice and the extent of changes needed to provide a more equitable outcome for consumers and NSPs.

For the limited two (?) year period, the guideline as proposed should be implemented with the following changes:

- The trigger point should not be set at 1% of annual allowed revenue but where the benefit to consumers matches the transaction costs required to deliver the benefit
- Because the extent of the contracts for the secondary use are not known with confidence on an ex ante basis, the guideline should allow for a yearly adjustment to admit new secondary use contracts into the sharing mechanism as they occur.

The MEU considers that the approach it suggests allows the necessary additional time for the AER to be able to develop a new approach based on known facts (rather than assertions), provide some benefit to consumers in the interim but not lock in a process that has a number of quite obvious flaws.

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