



Australian
Competition &
Consumer
Commission

Determination

Applications for authorisation

lodged by

**Powercor Australia Limited, SPI Electricity,
United Energy Distribution, Jemena Electricity Networks (Vic)
and CitiPower**

in respect of

the approval and registration of civil contractors

Date: 23 April 2009

Commissioners: Samuel
Kell
Schaper
Court
Dimasi
Martin
Willett

Authorisations nos.: A91114
A91115
A91116

Public Register no.: C2008/2059

Summary

The ACCC has decided to grant authorisation to Victoria's electricity distribution businesses to enable them to require civil contractors to be pre-qualified and approved by them in order to perform work on electricity infrastructure projects. The ACCC has decided to grant authorisation for five years.

The authorisation process

The Australian Competition and Consumer Commission (ACCC) can grant immunity from the application of the competition provisions of the *Trade Practices Act 1974* (the Act) if it is satisfied that the benefit to the public from the conduct outweighs any public detriment. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

The applications for authorisation

On 15 December 2008 Powercor Australia Limited (Powercor), for itself and on behalf of Victoria's four other electricity distribution businesses (SPI Electricity, United Energy Distribution, Jemena Electricity Networks (Vic) and CitiPower), lodged applications for authorisation A91114, A91115 and A91116 with the ACCC.

The applicants sought authorisation for a proposal to require civil contractors to be pre-qualified and approved by them in order to perform work on electricity infrastructure projects. Civil contractors will be required to demonstrate that they possess the necessary management systems, capacity and expertise to undertake particular categories of civil work. This will entail civil contractors having to obtain accreditation of their management systems and have their personnel complete an industry training course.

It is proposed that the requirements apply to civil contractors engaged by both the distribution businesses and by third parties when performing augmentation or other work on distribution business assets.

Public benefit

The ACCC considers that the proposed arrangements will reduce the cost and time involved in distribution businesses ensuring that work undertaken by third party civil contractors to be connected to Victoria's electricity distribution network (augmentation work) is of a suitable standard.

The proposed accreditation scheme may also reduce the compliance burden on contractors undertaking augmentation work as they will only have to meet a single set of criteria to satisfy the distribution businesses as to their general competence to undertake such work.

In addition, by encouraging the use of accredited contractors by customers who wish to connect to the network, the proposed arrangements will reduce the incidents of work performed not being of an acceptable standard and having to be redone.

The proposed accreditation scheme will also assist customers in choosing civil contractors to undertake work for them and promote environmental management amongst civil contractors.

Public detriment

The cost of complying with the accreditation requirements may increase the cost of some, particularly smaller, civil contractors providing network augmentation services. In addition, increases in the cost of supply of these services may cause some suppliers to discontinue supplying network augmentation services, reducing choice of service providers for customers.

However, more generally, the ACCC considers that the manner in which the accreditation criteria have been developed and are proposed to be implemented militates against the arrangements impacting significantly on competition between contractors to provide augmentation works. In particular any contractor that meets the accreditation criteria will be eligible for accreditation and the distribution networks will still approve work undertaken by non accredited suppliers, if it meets required standards, albeit that the contractor will likely incur a higher auditing cost to have the work accredited.

Balance of public benefit and detriment

Overall, the ACCC considers that the likely public benefit generated by the proposed arrangements will outweigh the likely public detriment.

Determination

The ACCC grants authorisations A91114-A9116 to enable Victoria's electricity distribution businesses to require civil contractors to be pre-qualified and approved by them in order to perform work on electricity infrastructure projects. The ACCC grants authorisation for five years.

List of abbreviations

| | |
|---------|---|
| ACCC | Australian Competition and Consumer Commission |
| AER | Australian Energy Regulator |
| AS | Australian Standards |
| CCF | Civil Contractors Federation |
| ESCV | Essential Services Commission Victoria |
| ISO | International Organisation for Standardisation |
| JAS-ANZ | Joint Accreditation System of Australia and New Zealand |
| The Act | <i>Trade Practices Act 1974</i> |

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1. Introduction

Authorisation

- 1.1 The Australian Competition and Consumer Commission (the ACCC) is the independent Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.
- 1.2 The Act, however, allows the ACCC to grant immunity from legal action in certain circumstances for conduct that might otherwise raise concerns under the competition provisions of the Act. One way in which parties may obtain immunity is to apply to the ACCC for what is known as an ‘authorisation’.
- 1.3 The ACCC may ‘authorise’ businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment.
- 1.4 The ACCC conducts a public consultation process when it receives an application for authorisation. The ACCC invites interested parties to lodge submissions outlining whether they support the application or not and their reasons for this.
- 1.5 After considering submissions, the ACCC issues a draft determination proposing to grant the application or deny the application.
- 1.6 Once a draft determination is released, the applicant or any interested party may request that the ACCC hold a conference. A conference provides all parties with the opportunity to put oral submissions to the ACCC in response to the draft determination. The ACCC will, also, invite the applicant and interested parties to lodge written submissions commenting on the draft.
- 1.7 The ACCC then reconsiders the application, taking into account the comments made at the conference (if one is requested) and any further submissions received, and issues a final determination. Should the public benefit outweigh the public detriment, the ACCC may grant authorisation. If not, authorisation may be denied. However, in some cases it may still be possible to grant authorisation where conditions can be imposed that sufficiently increase the benefit to the public or reduce the public detriment.

The applications for authorisation

- 1.8 On 15 December 2008 Powercor Australia Limited (Powercor), for itself and on behalf of Victoria’s four other electricity distribution businesses (SPI Electricity, United Energy Distribution, Jemena Electricity Networks (Vic) and CitiPower), lodged applications for authorisation A91114, A91115 and A91116 with the ACCC.
- 1.9 The applicants sought authorisation for a proposal to require civil contractors to be pre-qualified and approved by them in order to perform work on electricity infrastructure projects. Civil contractors will be required to demonstrate that they possess the necessary management systems, capacity and expertise to undertake particular

categories of civil work. This will entail civil contractors having to obtain accreditation of their management systems and have their personnel complete an industry training course.

- 1.10 It is proposed that the requirements apply to civil contractors engaged by both the distribution businesses and by third parties when performing augmentation or other work on distribution business assets.
- 1.11 The applicants sought authorisations for an initial period of five years or for such other period as the ACCC deemed appropriate.

Draft determination

- 1.12 On 19 March 2009 the ACCC issued a draft determination proposing to grant authorisation for the conduct for five years.

Chronology

- 1.13 Table 1.1 provides a chronology of significant dates in the consideration of this application.

Table 1.1: Chronology of applications for authorisation A91114 – A91116

| DATE | ACTION |
|-------------------------|---|
| 15 December 2008 | Applications for authorisation lodged with the ACCC. |
| 19 and 23 December 2008 | Amendments to the application received. |
| 24 December 2008 | Public consultation processes begins. |
| 30 January 2009 | Closing date for submissions from interested parties. |
| 25 February 2009 | Applicants respond to issues raised in the public consultation process. |
| 19 March 2009 | Draft determination issued. |
| 9 April 2009 | Closing date for submissions on the draft determination. |
| 23 April 2009 | Final determination issued. |

2. Background to the application

The applicants

- 2.1 Powercor and the four other proposed parties to the arrangements for which authorisation was sought are Victoria's five electricity distribution-network license holders/network operators.
- 2.2 Powercor states that it is Victoria's largest electricity distributor with over 660,000 distribution customers across Melbourne's outer western suburbs and central and western Victoria. Powercor states of the four other Victorian electricity distributors:
- SPI Electricity services around 580,000 customers across an 80,000 square kilometre area in the eastern half of Victoria including the eastern metropolitan region of Melbourne.
 - United Energy services around 600,000 customers in Melbourne's south and south-eastern suburbs and the Mornington Peninsula.
 - Jemena services around 300,000 customers in Melbourne's north and north-west. Jemena is also contracted by United to operate and maintain United's distribution network.
 - Citipower services around 295,000 customers across a 157 square kilometre area in Melbourne's central business district and inner suburbs.

Victoria's electricity supply industry

- 2.3 Australia has an interconnected electricity supply system, the National Electricity Market, but often in physical, business-entity and legal terms, Australia's electricity-supply sector is still segmented along State/Territory lines. The industry supplies energy to about 2.2 million Victorian customers.¹ As in other states the Victorian electricity sector can be, conceptually, considered to be divided into four parts:
- Generation – the power stations
 - Transmission – the highest capacity trunk power lines leading from the power stations
 - Distribution – the so-called 'poles and wires', including street-by-street infrastructure
 - Retail – the sale of electricity and related products to end users.
- 2.4 The applicants are Network Distribution Service Providers – holders of electricity distribution licences under the *Electricity Industry Act 2000* (Vic).

¹ Essential Services Commission of Victoria www.esc.vic.gov.au reviewed January 2009

- 2.5 The provision of distribution services by these distribution businesses is conducted subject to various energy-sector laws and, in particular, under a regulatory regime called the Essential Services Commission Victoria (ESCV) Electricity Distribution Price Review. This regulatory regime covers the regulatory control period 1 January 2006 to 31 December 2010.
- 2.6 On 1 January 2009 the ESCV, which was the Victorian government body with responsibilities for that regime, transferred its regulatory responsibilities to the Australian Energy Regulator (AER). The AER is an independent statutory authority that is a constituent part of the ACCC. Under the *National Electricity Law* and *National Electricity Rules*, the AER is responsible for making a distribution determination – which includes, among other things, deciding on the appropriate classification of services and forms of control - for the next control period and is now following the process to do so over the final two years of the current control period.²
- 2.7 However, where distribution businesses are conducting connection and augmentation works such as those the subject of the current application, these activities are considered ‘unregulated’ – that is, they are not subject to the price controls of the distribution-service regulatory regime.

Electricity distribution-network connection/augmentation

- 2.8 The applicants’ request for authorisation relates to ‘connection and augmentation’ work – essentially, connecting end users to parts of the distribution networks, such as the so-called ‘poles and wires’, also commonly referred to as electrical infrastructure civil works.
- 2.9 In relation to electrical infrastructure civil works the applicants state:
- The structure of the Victorian distribution businesses is essentially territorial in that each business operates in a specified geographical area and is responsible for the distribution network assets in that area. Whilst in that context, the parties to this Application may not be considered true competitors, this is not the case where the parties are engaging in the provision of unregulated business services, including work in the civil contracting area. In this context, the parties are potentially competitive with each other and in the services to be acquired from potential civil contractors supplying services to the Victorian electricity network.
- 2.10 Electrical infrastructure civil works can be provided in a number of ways. Distribution businesses can undertake augmentation work on their existing assets, either themselves or by contracting out such work to third parties. In this respect, the applicants estimate that the cost of civil works contracted out by them is around \$30 million per annum.
- 2.11 In addition third parties will also seek to connect to the distribution network. The applicants state that customers wishing to connect to the Victorian electricity distribution network include industrial and residential estate developers constructing underground electricity ‘assets’. When, for example, a residential estate developer has included house-by-house underground powerlines on a new development, that

² See *Preliminary positions – Framework and approach paper – Citipower, Powercor, Jemena, SP AusNet and United Energy – Regulatory control period commencing 1 January 2011*, available through www.aer.gov.au/content/index.phtml?itemId=725003

aggregation of lines needs to be connected to the wider distribution network. Third parties wishing to connect to the network may also include small private landholders, for example, on rural properties.

- 2.12 Under their license obligations, each distribution business is required to offer customers wishing to connect to their electricity distribution network the option of the customer arranging their own design and/or construction work as an alternative to the distribution business undertaking this work.
- 2.13 Where a customer wishes for the distribution business to undertake such work the distribution business under ESCV Electricity Industry Guideline No. 14³, Provision of Services by Electricity Distributors, is required to tender for the provision of the works from at least two other people who otherwise compete for such work or are capable of doing so.
- 2.14 If a party is unhappy with the price a distribution business is offering for a network connection, it can ask the ESCV to exercise its power to determine what is a fair and reasonable price in the circumstances.⁴
- 2.15 The applicants estimate that around \$12 million worth of electricity-related civil infrastructure work is undertaken by private property developers each year.
- 2.16 The applicants state that, other than themselves, the biggest customers for electrical infrastructure civil works in Victoria are Australand, Delfin Property Group (Lend Lease), Central Equity, Dennis Family Homes, VicUrban, Peet & Co and Villawood.
- 2.17 The applicants estimate there are at least 300 civil contractors undertaking civil work in Victoria, however the applicants state that the number of civil contractors undertaking work in relation to electricity distribution assets in Victoria will be significantly less than this. The applicants state that the biggest providers of electrical infrastructure civil works in Victoria are Akron Roads, Winslow Constructions, Draper Civil Contracting and Daly's Construction.

³ ESCV Electricity Industry Guideline No. 14 Provision of Services by Electricity Distributors Issue 1 April 2004

⁴ Ibid, clause 7. The distributors are required by their licences to comply with these guidelines.

3. The applications for authorisation

- 3.1 The applicants propose to require civil contractors, whether engaged by the distribution businesses themselves or by third parties, to be pre-qualified and approved by the applicants before working on electricity infrastructure works in Victoria. This will require civil contractors to demonstrate that they possess the necessary management systems, capacity and expertise to undertake particular categories of civil work to the applicants satisfaction. This will entail civil contractors having to obtain accreditation of their management systems and have their personnel complete an industry training course.
- 3.2 The applicants propose to maintain a register of accredited contractors for particular categories of civil works. Only accredited civil contractors will be eligible to tender to provide electricity infrastructure works to the applicants.
- 3.3 In respect of electricity infrastructure work undertaken for third parties the applicants state that if the developer or other third party elects not to use an accredited civil contractor, the distribution business will not generally accept that work until the developer/third party demonstrates that the works satisfy the required technical standards. The developer/third party will need to satisfy the distribution business regarding how technical standards have been achieved in the absence of the required management systems and personnel training. The onus will be on the developer/third party to satisfy the distribution business.
- 3.4 In particular, prior to the work being accepted by a distribution business, work has to pass a compliance audit. A compliance audit for accredited civil work will involve random sampling of the work performed. Where civil work has not been performed by an accredited civil contractor, the sampling requirements will be more onerous. This in turn will lead to greater costs to the developer/third party and may also delay the work being accepted and therefore connected to the distribution network. Work that does not satisfy the compliance audit will not be accepted or connected to the distribution network.
- 3.5 The applicants sought authorisation for an initial period of five years or for such other period as the ACCC deemed appropriate.

The accreditation criteria

- 3.6 To be accredited, civil contractors will be required to have:
- a third party management system audit process for safety, quality and environmental matters specific to electrical infrastructure works, and
 - undertaken training courses on industry standard infrastructure works.

The third party management system

- 3.7 Civil contractors will be required to gain accreditation with a recognised accreditation body in respect of their management systems based on:
- AS 4810 Occupational health and safety management systems
 - ISO 9000 Quality management systems
 - ISO 14001 Environmental management systems
- 3.8 Management-systems standards are nationally or internationally agreed ways of managing or running a business or process. Businesses are audited to certify that they are operating in accordance with a specific standard.
- 3.9 According to SAI Global, a publisher licensed to distribute and sell Australian and ISO standards documents in Australia:
- AS 4801 specifies requirements for an occupational health and safety (OHS) management system to enable an organisation to formulate a policy and objectives taking into account legislative requirements and information about hazards or risks. It applies to those hazards or risks over which the organisation may exert control and over which it can be expected to have an influence. It does not state specific OHS performance outcomes.
 - The ISO 9000 series of standards (now at ISO 9001:2008) define the elements of organisation required by a company to operate and maintain a quality management system. For the purpose of accreditation, a company must document its practices in a quality manual, defining its operating procedures/processes, objectives, and policy for achieving them. These documents are assessed to ensure they fulfil the criteria of the ISO standard and cover all elements of the company's operations. The company is then assessed to ensure it complies with all elements of its documentation. Companies are re-assessed regularly to ensure they are maintaining their system in compliance with the standard.
 - ISO 14001 is a standard for implementation of an environmental management system. An environmental management system is a framework, which can be integrated with existing business processes, to identify, measure, manage and control environmental impacts and hence environmental risks effectively. An environmental management system also establishes the means for improving performance and moving towards environmental sustainability through best practice.
- 3.10 Civil contractors would achieve accreditation by incorporating Victorian electricity industry requirements into a management system that is audited by an independent accreditation body on an annual basis. The applicants describe a recognised accreditation body as an organisation that has certification from JAS-ANZ (Joint Accreditation System of Australia and New Zealand), the government appointed accreditation body for Australia and New Zealand responsible for providing

accreditation of conformity assessment bodies in the fields of certification and inspection.⁵

- 3.11 The applicants state that the initial cost of establishing a management system will largely depend on the size of the organisation the management system is to service. The applicants estimate, based on integrated management systems that can be purchased from the Civil Contractor's Federation (CCF) that costs for a small contractor (less than five employees) would be \$2255 for a CCF member (consisting of \$1980 for the initial purchase of the base system and a \$275 annual fee) and \$4510 for a non CCF member (\$3960 and \$550).
- 3.12 For larger organisations (greater than 5 employees and project works exceeding \$500,000) the applicants estimates these costs to be \$5855 (\$5500 and \$385) for CCF members and \$11,770 (\$11,000 and \$770) for non CCF members.
- 3.13 In addition to these costs the applicants state that the management systems will require auditing on an annual basis by a registered certification body. The applicants state that the cost of audits will largely depend on the organisation and management system used.
- 3.14 The applicants themselves do not propose to charge any fees for accrediting businesses.

Training courses

- 3.15 Personnel of companies in control of electrical infrastructure civil works will be required to complete an approved industry training course which, the applicants state, is designed to ensure personnel have the relevant skills and knowledge when undertaking civil works on electricity distribution infrastructure.
- 3.16 The applicants state that currently, personnel can obtain this training from GippsTAFE, which the applicants submit is one of Victoria's largest regional providers of vocational education and training products and services.
- 3.17 The applicants state that the training course will cover all the electricity industry requirements relating to undergrounding of electrical assets, such as no-go-zone requirements, ability to read and interpret underground construction plans and knowledge of electrical infrastructure requirements such as technical standards.
- 3.18 The course currently run by GippsTAFE is a one day course developed in conjunction with SPI with input from other Victorian electricity distribution companies. The course is delivered on site at the GippsTAFE Chadstone campus at a cost of approximately \$140 per person (as at March 2008).
- 3.19 The applicants state that GippsTAFE also proposed to offer the course off-site where there is sufficient demand through group bookings.
- 3.20 The applicants state that providers other than GippsTAFE are not precluded from offering an equivalent training course, provided that training course is approved by one or more of the Victorian electricity distribution businesses.

⁵ According to its website, JAS-ANZ accredits 63 CABs who in turn certify some 50,000 organisations. <http://www.jas-anz.com.au/> viewed 23 February 2009

Industry usage and support

- 3.21 The applicants submit that similar accreditation schemes have already been adopted by a range of government service authorities, including in the areas of water and sewage (Sydney Water, City West Water [Victoria] and South East Water [Victoria]) and roads (NSW RTA and VicRoads), who require contractors to gain accreditation in respect of their managements systems.
- 3.22 In addition, the applicants submit that the accreditation scheme has the support of key industry stakeholders including:
- the CCF
 - Energy Safe Victoria
 - the Urban Development Institute of Australia, and
 - the Association of Land Development Engineers.
- 3.23 The applicants state that while the requirement for accreditation will be new to some contractors, the requirements of the accreditation scheme are not. The applicants state that some civil contractors will have existing management systems in place that will comply with the accreditation requirements. Others will be required to amend their management systems to comply or introduce such systems where none currently exist.
- 3.24 The applicants contend that the accreditation process is independent of each of the electricity distribution businesses, ensuring an open and fair process for all civil contractors.
- 3.25 The applicants further submit that while electricity distribution businesses in other states and territories do not currently have a civil contractor accreditation scheme, the proposed Victorian scheme may provide a benchmark to follow.

Related applications

- 3.26 The ACCC has previously considered two exclusive dealing notifications lodged by electricity distribution businesses in relation to conduct similar to that proposed in the current application.
- On 6 September 2006 Queensland-based electricity distribution company Ergon Energy Corporation Limited lodged notification N50190. Ergon proposed to require residential subdivision developers who were directly engaging electrical-works contractors and consultants to engage only those contractors and consultants listed on an Ergon ‘Approved Contractors Register’ or those otherwise approved by Ergon.
 - On 16 September 2008 Queensland-based electricity distribution company Energex Limited lodged notification N93585. Energex proposed, among other things, to allow a developer to add a new subdivision electrical network to the Energex network on the condition that the developer used only the engineering-

consulting and construction services of parties pre-qualified by Energex as having appropriate skills and experience in relation to such services.

- 3.27 In the case of notifications in respect of third line forcing conduct such as those lodged by the Queensland electricity distribution businesses, immunity from the Act commences automatically 14 days after the notification is lodged, provided the ACCC does not formally object. The ACCC may revoke a third line forcing notification if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public. The ACCC did not object to either of the notifications lodged by the Queensland electricity distribution businesses.
- 3.28 The ACCC notes that the conduct the subject of these notifications differs from that proposed in the current application in that in respect of the above notifications a single electricity distribution business was proposing to require civil contractors to meet accreditation criteria set by it. In respect of the current application, competing electricity distribution businesses propose to collectively agree on the accreditation criteria that civil contractors will be required to meet.

4. Submissions received by the ACCC

Before the draft determination

- 4.1 The applicants provided a supporting submission with their application for authorisation and also provided additional information in response to a request from the ACCC.
- 4.2 The ACCC sought submissions from a range of interested parties, government bodies, industry associations and civil contractors. The ACCC received public submissions from:
- the Civil Contractors Federation Victorian Branch
 - Draper's Civil Contracting Pty Ltd
 - Proline Boring & Excavations Pty Ltd, and
 - Tarmac Civil Constructions Pty Ltd.

Following the draft determination

- 4.3 On 19 March 2009 the ACCC issued a draft determination in relation to the applications for authorisation. The draft determination proposed to grant authorisation. A conference was not requested in relation to the draft determination. The ACCC received no submissions in response to the draft determination.
- 4.4 The views of the applicants and interested parties are outlined in the ACCC's evaluation of the arrangements in Chapter 6 of this determination. Copies of public submissions are available from the ACCC website (www.accc.gov.au) by following the 'Public Registers' and 'Authorisations Public Registers' links.

5. The net public benefit test

- 5.1 The ACCC may only grant authorisation where the relevant test in section 90 of the Act is satisfied.

Application A91114

- 5.2 The applicants lodged application for authorisation A91114 under section 88(1) of the Act to make and give effect to a contract, arrangement or understanding, a provision of which is or may be an exclusionary provision within the meaning of section 45 of the Act.
- 5.3 The relevant test is found in section 90(8) of the Act.
- 5.4 Section 90(8) states that the ACCC shall not authorise a proposed exclusionary provision of a contract, arrangement or understanding, unless it is satisfied in all the circumstances that the proposed provision would result or be likely to result in such a benefit to the public that the proposed contract, arrangement or understanding should be authorised.

Application A91115

- 5.5 The applicants lodged application for authorisation A91115 under section 88(1) of the Act to make and give effect to a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act. The relevant tests for this application are found in sections 90(6) and 90(7) of the Act.
- 5.6 In respect of the making of and giving effect to the arrangements, sections 90(6) and 90(7) of the Act state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:
- the provision of the proposed contract, arrangement or understanding would result, or be likely to result, in a benefit to the public and
 - this benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision concerned was given effect to.

Application A91116

- 5.7 The applicants lodged application A91116 under section 88(8) of the Act to engage in conduct that constitutes or may constitute, exclusive dealing. The relevant test for this application is found in section 90(8) of the Act.
- 5.8 Section 90(8) states that the ACCC shall not authorise the proposed exclusive dealing conduct unless it is satisfied in all the circumstances that such conduct would result or

be likely to result in such a benefit to the public that the proposed conduct should be authorised.

Application of the tests

5.9 There is some variation in the language in the Act, particularly between the tests in sections 90(6) and 90(8).

5.10 The Australian Competition Tribunal (the Tribunal) has found that the tests are not precisely the same. The Tribunal has stated that the test under section 90(6) is limited to a consideration of those detriments arising from a lessening of competition but the test under section 90(8) is not so limited.⁶

5.11 However, the Tribunal has previously stated that regarding the test under section 90(6):

[the] fact that the only public detriment to be taken into account is lessening of competition does not mean that other detriments are not to be weighed in the balance when a judgment is being made. Something relied upon as a benefit may have a beneficial, and also a detrimental, effect on society. Such detrimental effect as it has must be considered in order to determine the extent of its beneficial effect.⁷

5.12 Consequently, when applying either test, the ACCC can take most, if not all, public detriments likely to result from the relevant conduct into account either by looking at the detriment side of the equation or when assessing the extent of the benefits.

5.13 Given the similarity in wording between sections 90(6) and 90(7), the ACCC considers the approach described above in relation to section 90(6) is also applicable to section 90(7).

Definition of public benefit and public detriment

5.14 Public benefit is not defined in the Act. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.⁸

5.15 Public detriment is also not defined in the Act but the Tribunal has given the concept a wide ambit, including:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.⁹

⁶ *Australian Association of Pathology Practices Incorporated* [2004] ACompT 4; 7 April 2004. This view was supported in *VFF Chicken Meat Growers' Boycott Authorisation* [2006] ACompT9 at paragraph 67.

⁷ *Re Association of Consulting Engineers, Australia* (1981) ATPR 40-2-2 at 42788. See also: *Media Council case* (1978) ATPR 40-058 at 17606; and *Application of Southern Cross Beverages Pty. Ltd., Cadbury Schweppes Pty Ltd and Amatil Ltd for review* (1981) ATPR 40-200 at 42,763, 42766.

⁸ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677. See also *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242.

⁹ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

Future with-and-without test

- 5.16 The ACCC applies the ‘future with-and-without test’ established by the Tribunal to identify and weigh the public benefit and public detriment generated by arrangements for which authorisation has been sought.¹⁰
- 5.17 Under this test, the ACCC compares the public benefit and anti-competitive detriment generated by arrangements in the future if the authorisation is granted with those generated if the authorisation is not granted. This requires the ACCC to predict how the relevant markets will react if authorisation is not granted. This prediction is referred to as the ‘counterfactual’.

Length of authorisation

- 5.18 The ACCC can grant authorisation for a limited period of time.¹¹

Conditions

- 5.19 The Act also allows the ACCC to grant authorisation subject to conditions.¹²

Future and other parties

- 5.20 Applications to make or give effect to contracts, arrangements or understandings that might substantially lessen competition or constitute exclusionary provisions may be expressed to extend to:
- persons who become party to the contract, arrangement or understanding at some time in the future¹³
 - persons named in the authorisation as being a party or a proposed party to the contract, arrangement or understanding.¹⁴

¹⁰ Australian Performing Rights Association (1999) ATPR 41-701 at 42,936. See also for example: Australian Association of Pathology Practices Incorporated (2004) ATPR 41-985 at 48,556; Re Media Council of Australia (No.2) (1987) ATPR 40-774 at 48,419.

¹¹ Section 91(1).

¹² Section 91(3).

¹³ Section 88(10).

¹⁴ Section 88(6).

6. ACCC evaluation

6.1 The ACCC's evaluation of the proposed agreement is in accordance with the net public benefit test outlined in Chapter 5 of this determination. As required by the test, it is necessary for the ACCC to assess the likely public benefits and detriments flowing from the proposed arrangements.

The market

6.2 The first step in assessing the effect of the conduct for which authorisation is sought is to consider the relevant market(s) affected by that conduct.

6.3 The applicants submit that the relevant market in which to assess the arrangements is that for existing and prospective civil contractors wishing to work on electrical infrastructure assets in Victoria.

6.4 For the purpose of assessing this application the ACCC considers the relevant area of competition affected by the proposed conduct is that for the provision of electricity distribution network augmentation and connection work in Victoria.

6.5 In respect of this area of competition it is relevant to note that:

- Victoria's five electricity distribution businesses can each undertake augmentation work on their existing assets.
- Distribution businesses can also contract out such work to third party civil contractors.
- Each distribution business could potentially compete, with the distribution network asset owner, and third party civil contractors, to undertake augmentation works on each other's assets. For example, Jemena is contracted by United to operate and maintain United's distribution network.
- A range of third parties, from large commercial customers such as developers, and heavy electricity users such as large industrial businesses, through to small businesses and individual land or house holders, also require connection to the electricity grid. These 'customers' can engage one of the distribution businesses or third party civil contractors to undertake such work. Where a third party is engaged, the work has to be approved by the distribution business prior to connection.
- If a customer requests connection from a distribution business, the distribution business is required to conduct a tender for the provision of the connection service.
- If a party is unhappy with the price a distribution business is offering for a network connection, it can ask the ESCV to exercise its power to determine what is a fair and reasonable price in the circumstances.

6.6 The ACCC also considers that the provision of training courses to personnel undertaking electrical infrastructure civil works to be an area of competition that may be affected by the proposed arrangements.

The counterfactual

- 6.7 As noted in Chapter 5 of this determination, in order to identify and measure the public benefit and public detriment generated by conduct, the ACCC applies the ‘future with-and-without test’.
- 6.8 The applicants did not provide a view on the likely counterfactual if the arrangements are not authorised. However, the applicants have stated that the accreditation scheme will take effect upon authorisation being granted.
- 6.9 Given that the proposed arrangements may raise concerns under the Act, the ACCC considers that it is unlikely that the applicants will implement the arrangements if they are not authorised.
- 6.10 Regardless of whether the arrangements are implemented or not, each Victorian electricity distribution business will continue to assess, on a case by case basis, augmentation works undertaken by third parties before deciding whether to connect the works to the distribution network.
- 6.11 However, if the arrangements are not implemented, the electricity distribution business will not be guided in deciding whether to accept such works by reference to whether third party civil contractors undertaking works have been accredited in accordance with the proposed arrangements. That is to say, the electricity distribution businesses will not have a single, central, point of reference to allow them to determine whether the civil contractor is trained to a standard the distribution networks consider appropriate and/or is likely to adhere to specific quality standards the distribution businesses consider appropriate.
- 6.12 Instead, each individual electricity distribution business would be likely to set accreditation criteria of its own, formally or informally, and/or have more general regard to the level of experience and quality of work of the civil contractor in deciding whether to connect work undertaken to the distribution network.

Public benefit

- 6.13 The applicants state that currently, customers who engage civil contractors to perform augmentation work are not required to ensure the civil contractors are appropriately trained to perform such work and adhere to specific quality standards. The applicants submit that some of the consequences of this are:
- Work quality between civil contractors varies.
 - Potential hazards arise to the public when works are not performed to an appropriate standard – e.g. footpath tripping hazards developing over time.
 - Customers and distribution businesses are exposed to potential liabilities where defective works cause injury to persons or damage to property.
 - Additional time and resources are needed to correct defective works, which reduces overall efficiencies and increases costs to customers.

- Greater administrative burdens are placed on distribution businesses through having to deal with non-compliance issues and complaints from councils, customers and regulators.
- Distribution businesses are required to take ownership of completed works without having any direct influence over the quality or standard of work performed.

6.14 The proposed arrangements are designed to address these issues.

Promoting quality and safety of augmentation works

Submissions

- 6.15 The applicants submit that the proposed arrangements will increase safety and ensure maintenance of minimum quality standards in works undertaken. The applicants also submit that the proposed arrangements will reduce the incidents of contractors having to undertake reworks before having works connected to meet the standards required by the distribution businesses.
- 6.16 Proline Boring and Excavations and Draper Civil Construction submit that the proposed arrangements will assist in ensuring that works undertaken are of the highest standard of quality and increase levels of safety.

ACCC view

- 6.17 The ACCC notes that currently each distribution business requires augmentation work undertaken by third parties to be assessed by it prior to connection. Generally, the distribution business will not accept the work until the civil contractor can demonstrate that the work satisfies the technical standards required by the distribution business. In this respect, it would appear that the procedures currently employed by each distribution business ensure the quality and safety of augmentation works that are connected to the network.
- 6.18 However, as noted by the applicants, augmentation work performed by third parties is not always performed to the standard required by the distribution business to allow connection to the network in the first instance. It is generally the case that deficiencies in the standard or quality of the work are identified and rectified through compliance audits such that the works are ultimately of the required quality and safety standards to allow connection. However, to the extent that the proposed accreditation requirements reduce the incidents of augmentation works not being of the required safety and quality standards in the first instance, this is likely to improve overall safety in the performance of augmentation works.
- 6.19 In addition, the proposed arrangements may assist in improving the overall standard of works, other than works in relation to augmentation of the electricity distribution network, performed by accredited civil contractors.
- 6.20 Further, as discussed below, the proposed arrangements may assist in ensuring that quality and safety standards in respect of augmentation work that is connected to the network is achieved in a more cost-effective and efficient manner.

Compliance and administration costs in maintaining quality and safety standards

Submissions

- 6.21 The applicants submit that the accreditation scheme will reduce the compliance burden on distribution businesses in having to deal with non-compliance issues and undertaking or requiring third party contractors to undertake reworks.
- 6.22 The applicants also submit that the arrangements will reduce the compliance burden on civil contractors presently required to deal with different standards when dealing with different distribution businesses.
- 6.23 Specifically, the applicants state that the compliance audit required before augmentation work can be connected to the network will be less onerous when the party undertaking the work is accredited, leading to lower costs to the party undertaking the work and/or their customer and minimising delays in works being connected to the network.
- 6.24 The CCF submits that the proposal brings to the industry a level of consistency of approach to prequalification that is supported by the majority of contractors often faced with meeting the differing requirements of several clients within the same industry sector.

ACCC view

- 6.25 As noted, each distribution business requires augmentation work to pass a compliance audit, based on standards established by the individual distribution business, before being connected to the network.
- 6.26 Adoption of the accreditation scheme will mean that individual distribution businesses will have more confidence in the quality and safety standards of work undertaken by third party contractors, which in turn is likely to reduce the cost and time involved in distribution businesses undertaking compliance audits of augmentation work undertaken by third parties. In this respect, the accreditation program appears to be an efficient and cost-effective means of promoting quality and safety standards amongst civil contractors undertaking network augmentation works.
- 6.27 The accreditation scheme may also reduce the compliance burden on contractors as they will only have to meet a single set of criteria to satisfy the distribution businesses as to their general competence to undertake augmentation works.
- 6.28 For some, particularly smaller, contractors who may only undertake electricity network augmentation works on an irregular basis, the accreditation requirements may increase their compliance costs as the cost of meeting the general accreditation criteria may be greater than the cost involved in demonstrating that a single set of works undertaken by them are of sufficient standard.
- 6.29 However, the ACCC is satisfied that, overall, the accreditation scheme is likely to lower the cost involved in ensuring network augmentation works undertaken by third party contractors meet required standards of quality and safety.

- 6.30 In addition, the proposed arrangements will encourage customers seeking connection to the network to employ an accredited contractor to undertake augmentation work as auditing costs will be lower where an accredited contractor has been employed. By encouraging the use of accredited contractors, the proposed arrangements will reduce the incidents of works not being accepted by distribution businesses in the first instance, which will also reduce the cost involved in connecting to the network.

Assisting customers in choosing civil contractors

ACCC view

- 6.31 The proposed accreditation scheme will also assist customers in assessing the quality of civil contractors competing to supply augmentation services.
- 6.32 Some, particularly smaller customers or customers with smaller jobs, such as private-individual rural, regional and metropolitan-fringe landowners who purchase such services on a single or very limited number of occasions, are likely to have less experience in or knowledge of the suitability of individual contractors to undertake the required works. For these customers, standardised assurance measures/indicators of systems and expertise – such as the proposed certification and training accreditation program – are likely to assist in choosing a contractor and provide a degree of assurance as to the quality of the work to be provided.
- 6.33 Similarly, the proposed accreditation scheme will assist accredited contractors in promoting their services to prospective customers.
- 6.34 In this respect, the ACCC notes that the applicants propose to establish and promote a website publicising the accreditation scheme and providing details of accredited suppliers as well as publicise the scheme on their own individual websites and that of the CCF.

Promotion of environmental management

ACCC view

- 6.35 To be accredited, civil contractors will be required to comply with ISO 14001 for implementation of an environmental management system. ISO 14001 requires the adoption of an environmental management system framework that can be integrated with existing business processes to effectively identify, measure, manage and control environmental impacts and hence environmental risks. ISO 14001 also promotes adoption of an environmental management system that establishes the means for improving performance and moving towards environmental sustainability through best practice.
- 6.36 The ACCC considers that the encouragement to obtain ISO 14001 environmental management systems certification, given the likely behavioural effects on companies when gaining certification, is likely to produce a public benefit in that contractors are likely to be better equipped to avoid environmental damage and take into account environmental costs.

Conclusion on public benefits

- 6.37 The proposed arrangements will reduce the cost and time involved in distribution businesses ensuring that work undertaken by third party civil contractors is of a suitable standard of quality and safety.
- 6.38 The proposed accreditation scheme may also reduce the compliance burden on contractors undertaking augmentation work as they will only have to meet a single set of criteria to satisfy the distribution businesses as to their general competence to undertake such works.
- 6.39 In addition, by encouraging the use of accredited contractors, the proposed arrangements will reduce the incidents of work performed not being of an acceptable standard and having to be redone.
- 6.40 The proposed accreditation scheme will also assist customers in choosing civil contractors to undertake work for them and promote environmental management amongst civil contractors.

Public detriment

Cost of accreditation

Submissions

- 6.41 Tarmac Civil Constructions submits that forcing civil contractors to implement and maintain third party accreditation of their management systems will impose a severe financial penalty on contractors. Tarmac Civil Construction submits that this will be particularly onerous for businesses for whom only a small component of their works relates to electrical-civil works.
- 6.42 Tarmac Civil Constructions submits that while it does not disagree that some sort of pre-qualification process is a good idea, being able to display that a company has sufficient quality, safety and environmental systems in place to control the electrical-civil component of their works should be sufficient.
- 6.43 In response, the applicants submit that while a formalised accreditation system may be new to some civil contractors, others will already have suitable systems in place which will satisfy minimum accreditation requirements. The applicants state that they do not believe that the cost of establishing a new system will impose an unreasonable financial burden and that systems that promote quality and safety may ultimately lead to long-term cost savings through reducing the need to undertake reworks.

ACCC view

- 6.44 As discussed at paragraphs 3.11 and 3.12, the applicants estimate the initial cost of complying with the accreditation requirements for an organisation that does not currently have systems in place that meet any of the requirements at between \$2255 and \$4510 for a business with less than five employees and between \$5855 and \$11,770 for a business with more than five employees.

- 6.45 This potential increase in the cost involved in civil contractors offering services to customers is likely to be reflected in the price paid by customers for these services.
- 6.46 However, as discussed above at paragraphs 6.21 to 6.30, the proposed arrangements may also reduce some of the costs involved in supplying these services by reducing the costs of compliance audits and the incidents of reworks having to be undertaken. In addition, not all civil contractors will incur additional costs in having to meet accreditations criteria as some will already have in place systems that partially or fully comply with the proposed criteria.
- 6.47 Notwithstanding this, the proposed accreditation criteria will be likely to increase the direct cost of providing network augmentation services to customers for some civil contractors. In particular, smaller contractors, or contractors for whom electricity infrastructure works is not a large part of their business, are likely to incur larger relative increases in the cost of providing these services by virtue of having a smaller customer base from which to recover any increase in costs incurred.
- 6.48 In addition, if the increase in costs incurred by some businesses was sufficient to cause them to discontinue providing electricity network augmentation services, this may potentially reduce the choice of service providers for customer. This is discussed in greater detail below.

Restriction on choice of civil contractors for customers

Submissions

- 6.49 The applicants submit that the accreditation process is independent of the distribution businesses and is open to all civil contractors that meet the required standards, ensuring that the process is open and fair.
- 6.50 The applicants further submit that the accreditation process is consistent with processes adopted by Victorian statutory organisations in respect of water and road infrastructure.
- 6.51 Similarly, the CCF submits that virtually all state and local-government authorities, water, irrigation and catchment-management authorities, together with numerous private-sector contractors require contractors to apply for prequalification prior to tendering on works, and that the principle aspects of this prequalification require the contractor to provide verification of its management systems, expertise, capability and past history.
- 6.52 Tarmac Civil Constructions submits that the proposed arrangements, and particularly the cost involved in achieving accreditation, will have the effect of reducing competition within the industry as the proposed arrangements will better suit larger companies that already have such arrangements in place, as required by some state government authorities.

ACCC view

- 6.53 Agreements between competitors that restrict customers ability to choose who they deal with can distort market signals and suppress competitive dynamics that would exist in a competitive market. Such agreements also have the potential to increase barriers to

- entry or expansion, which can reduce the competitive restraint applying to market participants.
- 6.54 In respect of the proposed accreditation scheme, if the cost of complying with the scheme was sufficient to dissuade some civil contractors from continuing to offer relevant services to customers, this would reduce customers' choice of supplier.
- 6.55 Further, if some civil contractors were to experience an increase in the cost of doing business disproportionate to that of their competitors, this may also put them at a competitive disadvantage in offering services to customers.
- 6.56 The ACCC notes that those civil contractors that already have systems in place that partially or fully comply with the accreditation criteria will incur fewer additional costs as a result of the proposed arrangements than those that do not. However, where these civil contractors will not incur an additional cost, or will incur a lesser additional cost, in complying with the accreditation criteria, this is because they have already previously incurred these costs.
- 6.57 More generally, the ACCC considers that the manner in which the accreditation criteria have been developed and are proposed to be implemented militate against the arrangements impacting significantly on competition between contractors to provide augmentation works. In particular, the ACCC notes that the proposed accreditation scheme is independent of the distribution networks and any contractor that meets the accreditation criteria will be eligible for accreditation.
- 6.58 Further, the ACCC notes that:
- the distribution networks will still approve work undertaken by non accredited suppliers, provided the work meets the quality and safety standards set by the individual distribution business, albeit that the contractor will likely incur a higher auditing cost to have the work accredited
 - if a customer elects to have augmentation services supplied directly by a distribution business, the distribution business will be required to tender for the provision of the service and
 - the reasonableness of any price quoted by a distribution service for network connection is appealable to the ESCV.
- 6.59 In addition, the ACCC notes that under the proposed arrangements there will be no agreement on the terms on which the parties to the agreement, or any other suppliers, will supply augmentation services, beyond the agreement in relation to the accreditation criteria.
- 6.60 Accordingly, the ACCC does not consider that the proposed arrangements will impact significantly on competition on price or other terms and conditions for the supply of augmentation services.
- 6.61 However, the ACCC notes that the scale of works for which smaller customers are likely to require services is likely to be less attractive to larger contractors. Accordingly, smaller customers are more likely to engage smaller suppliers to carry out augmentation work. To the extent that the proposed arrangements impose a cost burden on, particularly, smaller suppliers that they would not otherwise incur, there may be

some impact on the terms and conditions at which some smaller customers are supplied, both through suppliers passing through these additional costs and/or if some suppliers cease to offer these services.

Restriction on choice of training providers

Submissions

- 6.62 The applicants submit that there is no deterrent to other training providers offering an equivalent training course to the GippsTAFE course currently recognised by the applicants if other course providers are able to meet relevant industry criteria.
- 6.63 Proline Boring and Excavations submits that it would be happy to attend an accreditation course through GippsTAFE and would appreciate it if a training course could be offered in South West Victoria, in a large regional area such as Warrnambool.

ACCC view

- 6.64 The ACCC considers that the requirement to attend training provided by an approved training provider will have little impact on competition between contractors. In particular, the cost of the training course provided by the currently approved training provider is around \$140 per person. In addition, other training providers are free to develop their own courses and seek to have them approved by the applicants.
- 6.65 Similarly, the ACCC does not consider that the proposed arrangements will materially impact on competition between training providers. As noted, any training provider is free to develop its own course and seek to have it approved. In addition, to the extent that the proposed arrangements do currently confer a degree of exclusivity to GippsTAFE in providing relevant training, the training opportunity foreclosed to other providers is not significant in the context of the provision of training courses more generally.

Conclusion on public detriment

- 6.66 The cost of complying with the accreditation requirements may increase the cost of some, particularly smaller, civil contractors providing network augmentation services. In addition, increases in the cost of supplying these services may cause some suppliers to stop supplying network augmentation services, reducing choice of service providers for customers.
- 6.67 However, more generally, the ACCC considers that the manner in which the accreditation criteria have been developed and are proposed to be implemented militates against the arrangements impacting significantly on competition between contractors to provide augmentation works. In particular:
- any contractor that meets the accreditation criteria will be eligible for accreditation
 - the distribution networks will still approve work undertaken by non accredited suppliers, if it meets required standards, albeit that the contractor will likely incur a higher auditing cost to have the work accredited

- if a customer elects to have augmentation services supplied directly by a distribution business, the distribution business will be required to tender for the provision of the service, and the reasonableness of any price quoted by a distribution service for network connection is appealable to the ESCV.

Balance of public benefit and detriment

- 6.68 The ACCC may only grant authorisation if it is satisfied that, in all the circumstances, the proposed conduct is likely to result in a public benefit that will outweigh any public detriment.
- 6.69 In the context of applying the net public benefit test at section 90(8)¹⁵ of the Act, the Tribunal commented that:
- ... something more than a negligible benefit is required before the power to grant authorisation can be exercised.¹⁶
- 6.70 The proposed accreditation scheme will reduce the cost and time involved in distribution businesses ensuring that work undertaken by third party civil contractors is of a suitable standard and reduce incidents of work performed not being of an acceptable standard and having to be redone. The proposed scheme may also reduce the compliance burden on contractors undertaking augmentation work.
- 6.71 The accreditation scheme will also assist customers in choosing civil contractors to undertake work for them and promote environmental management amongst civil contractors.
- 6.72 The cost of complying with the accreditation requirements may increase the cost of some, particularly smaller, civil contractors providing network augmentation services and potentially reduce choice of service providers for customers.
- 6.73 However, the manner in which the accreditation criteria have been developed and is proposed to be implemented militates against the arrangements impacting significantly on competition between contractors. In particular any contractor that meets the accreditation criteria will be eligible for accreditation and the distribution networks will still approve work undertaken by non accredited suppliers if it meets required standards. Further, if a customer elects to have augmentation services supplied directly by a distribution business, the distribution business will be required to tender for the provision of the service, and the reasonableness of any price quoted by a distribution service for network connection is appealable to the ESCV.
- 6.74 On balance, the ACCC considers that the public benefit is likely to outweigh the public detriment.

¹⁵ The test at 90(8) of the Act is in essence that conduct is likely to result in such a benefit to the public that it should be allowed to take place.

¹⁶ Re Application by Michael Jools, President of the NSW Taxi Drivers Association [2006] ACompT 5 at paragraph 22.

Length of authorisation

- 6.75 The ACCC generally considers it appropriate to grant authorisation for a limited period of time, so as to allow an authorisation to be reviewed in the light of any changed circumstances.
- 6.76 In this instance, the applicants seek authorisation for an initial period of five years or for such other period as the ACCC may deem appropriate. The ACCC grants authorisation to the proposed accreditation scheme for five years.

7. Determination

The applications

- 7.1 On 15 December 2008 the applicants lodged applications for authorisation A91114, A91116 and A91116 with the Australian Competition and Consumer Commission (the ACCC).
- 7.2 The applicants lodged application for authorisation A91114 under section 88(1) of the Act to make and give effect to a contract, arrangement or understanding, a provision of which is or may be an exclusionary provision within the meaning of section 45 of the Act.
- 7.3 The applicants lodged application for authorisation A91115 under section 88(1) of the Act to make and give effect to a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act.
- 7.4 The applicants lodged application A91116 under section 88(8) of the Act to engage in conduct that constitutes or may constitute, exclusive dealing.
- 7.5 The applicants, Victoria's five electricity distribution businesses, seek authorisation for a proposal to require civil contractors to be pre-qualified and approved by them in order to perform work on electricity infrastructure projects. Civil contractors will be required to demonstrate that they possess the necessary management systems, capacity and expertise to undertake particular categories of civil work. This will entail civil contractors having to obtain accreditation of their management systems and have their personnel complete an industry training course.
- 7.6 It is proposed that the requirements apply to civil contractors engaged by both the distribution businesses and by third parties when performing augmentation or other work on distribution business assets.

The net public benefit test

- 7.7 For the reasons outlined in Chapter 6 of this determination, the ACCC considers that the arrangements for which authorisation is sought under applications A91114 and A91116 are likely to result in such a benefit to the public that the arrangements should be allowed to take place.
- 7.8 For the reasons outlined in Chapter 6 of this determination, the ACCC considers that in all the circumstances the arrangements for which authorisation is sought under application A91115 are likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the arrangements.

Conduct for which the ACCC grants authorisation

- 7.9 The ACCC has decided to grant authorisation to the proposed arrangements for five years.

Date authorisation comes into effect

- 7.10 This determination is made on 23 April 2009. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into force on 14 May 2009.