



Tel: 1300 137 245  
Fax: 1800 654 337

AGL Energy Sales & Marketing Limited  
ABN 18 076 092 067

AGL Centre  
226 Greenhill Road  
Eastwood SA 5063

GPO Box 888  
Adelaide SA 5001  
[www.agl.com.au](http://www.agl.com.au)

8 September 2006

Manager, MCE Secretariat  
Department of Industry, Tourism and Resources  
GPO Box 9839  
Canberra ACT 2061

By email: [MCEMarketReform@industry.gov.au](mailto:MCEMarketReform@industry.gov.au)

### **Draft Criteria for Assessing the Effectiveness of Competition**

AGL<sup>1</sup> welcomes the opportunity to provide comments on the Ministerial Council on Energy's (MCE) consultation paper titled 'Draft Criteria for Assessing the Effectiveness of Competition'.

AGL strongly supports the removal of retail price regulation in those markets that are open to competition. The promotion of efficient investment in power generation and upstream gas capacity, the efficient use of energy, product and service innovation and the consumers long term interests with respect to price, quality and reliability will best be achieved through cost reflective market based retail prices.

The effectiveness of competition reviews to be undertaken by the Australian Energy Market Commission (AEMC) will provide independent assessments of the competitive state of the respective energy markets.

In AGL's view, the following matters should be considered as part of the guiding principles for competition effectiveness assessments:

- Competition is to be preferred over regulation requiring an emphasis on letting the markets work rather than regulating for potential inadequacies;
- Market structure indicators are important in establishing the potential for competition to exist and market outcome indicators demonstrate the level of competitive activity. An assessment of effective competition must take account of both types of indicators and utilise an appropriate number and balance of quantitative and qualitative measures. The potentially adverse consequence of too many indicators leading to a conservative interpretation where competition is effective needs to be avoided; and
- A balanced assessment be made using all of the guiding principles and criteria to avoid the potential for each individual criteria to be treated as a mandatory requirement for competition to be effective.

AGL acknowledges that any assessment of the effectiveness of competition can be arbitrary and the establishment of sound guiding principles and supporting criteria will assist in bringing a level of objectivity and robustness to such assessments. AGL, however, is concerned that the proposed broad range of indicators outlined in Table 1 of the consultation paper will make any assessment of the effectiveness of competition unnecessarily complex and difficult to interpret.

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<sup>1</sup> AGL represents the retail businesses of AGL.

The indicators outlined in Table 1 fall in four categories:

- Measures of effective competition (eg. customer awareness of competition);
- Factors that contribute to, or inhibit effective competition (eg. technical and cost conditions of supply);
- Indicators that cannot be quantified or difficult to quantify (eg. the general operation of gas and electricity markets); and
- Indicators that are not relevant (eg. anti-competitive conduct).

It is imperative that primary indicators used for the assessment of effective competition be measurable and relevant. Other factors may help support a finding of effectiveness of competition or to identify circumstances inhibiting effective competition. Such factors also assist with identifying actions that may be taken to address any market failures.

AGL strongly believes that the following outcome indicators identified by KPMG<sup>2</sup> are the primary measures of effectiveness of competition:

- Customers are aware that they have a choice;
- Customers know how to exercise choice and it is easy to do; and
- Choices (ie. Offers) are being made available to them.

In addition, AGL expects that where the AEMC determines that competition in a market is not yet effective then:

- The AEMC will also identify the barriers to effective competition (market failures), and recommend programs to address those failures; and
- The relevant regulator/jurisdiction will address the identified market failures, and adopt a light-handed approach to retail price regulation in transition to market based prices.

In undertaking the effectiveness of competition reviews, AGL believes that they should be undertaken prior to the expiry of the current regulated price paths, and that the AEMC should undertake reviews of the South Australian and Victorian energy market from 1 January 2007.

AGL looks forward to assisting the MCE in finalising the criteria and contributing to the AEMC in its consultations on effectiveness of competition reviews which are to commence after 1 January 2007.

AGL's detailed comments on the draft criteria for assessing the effectiveness of competition are contained in the following attachment. Please contact Carol Lydford, Manager Regulatory Development on 02-9921 2511 if you wish to discuss any aspect of our submission or require any additional information.

Yours Sincerely,

Sean Kelly

General Manager Energy Regulation

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<sup>2</sup> KPMG *"The Effectiveness of Competition and Retail Energy Price Regulation"*, A discussion paper prepared by KPMG for the Energy Retailers Association of Australia, December 2003, p.4

## Detailed Comments on the Draft Criteria for Assessing the Effectiveness of Competition

### 1 Preamble

The Council of Australian Governments' (COAG) have agreed to phase out retail price regulation for electricity and natural gas where effective retail competition can be demonstrated. The Australian Energy Market Commission (AEMC) has the responsibility to assess the effectiveness of competition for the purpose of retention, removal or reintroduction of retail energy price controls<sup>3</sup>.

The AEMC assessments of effectiveness of competition are to commence from 1 January 2007 starting with those jurisdictions most likely to have effective competition. Reviews will be conducted biennially, unless the AEMC recommends otherwise, until all retail energy price controls are phased out<sup>4</sup>.

The Amended Australian Energy Market Agreement (AEMA) outlines that the AEMC will publicly report on its assessments of effective competition in which it will provide advice to each jurisdiction on<sup>5</sup>:

- their compliance with their agreement to phase out retail price regulation;
- ways to phase out retail price regulation; and
- ways to promote the growth of effective competition for those users or areas of a jurisdiction which do not enjoy effective competition.

AGL supports this initiative and expects that the States and Jurisdictions will take the appropriate action to implement any recommendations to remove retail price regulation, or amend existing regulatory arrangements to enhance competition in the relevant energy market if there are any factors that inhibit effective competition.

It is AGL's view that the effectiveness of competition reviews be undertaken prior to the expiry of the current regulated price paths so that any measures can be implemented to facilitate removal of price controls when the current regulated price paths expire. To that extent, AGL strongly believes that the AEMC should undertake reviews of the South Australian and Victorian energy markets from 1 January 2007.

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<sup>3</sup> Amended Australian Energy Market Agreement, June 2006, pg. 28

<sup>4</sup> *ibid*, pg. 29

<sup>5</sup> *ibid*, pp. 29 - 30

## 2 Effective Competition

The Ministerial Council on Energy (MCE) has reached the conclusion that 'effective competition' is sufficient in an energy market to warrant the removal of retail price control.

This view is similar to that adopted by the Independent Competition and Regulatory Commission (ICRC) in its recent review of the effectiveness of competition in the ACT<sup>6</sup>, whereby the ICRC declared that the ACT demonstrated 'sufficient' competition. The ICRC goes on to state that competition could only increase with the removal of price controls, which, in the view of the ICRC, inhibit competition.

## 3 Assessment of effective competition – domestic and international context

Effectively competitive markets can exhibit a combination of characteristics, not necessarily the same ones in any jurisdiction, thus making prescriptive pre-agreed benchmarks, whether set for a given jurisdiction or against prior reviews, either domestically or internationally, problematic. AGL therefore, agrees with the MCE in its view that the AEMC should take into consideration the specific characteristics of a given jurisdiction. Each jurisdiction will provide its own distinct circumstances, and the results in one jurisdiction may not necessarily imply the same competitive outcome as the results in another jurisdiction.

AGL also agrees that the AEMC should, where possible consider information taken from past effectiveness of competition reviews whether undertaken domestically or internationally. To that extent, AGL is of the view that the manner in which the Office of Gas and Electricity Markets in the UK (Ofgem) undertook its effectiveness of competition review, and subsequent recommendations from that review should be considered (taking into account any inherent differences in markets) as learnings for the reviews to be undertaken within Australia by the AEMC.

## 4 Specifications of the criteria and indicators

The MCE has identified a number of potential indicators to be used in consideration and assessment of effectiveness of competition, and that those indicators are based on the principles set out in Annexure 3 of the amended AEMA<sup>7</sup>.

It is AGL's view, as outlined earlier, that the necessary features to assess that a market exhibits effective or workable competition are<sup>8</sup>:

- Customers are aware that they have a choice;
- Customers know how to exercise choice and it is easy to do; and
- Choices (ie. Offers) are being made available to them.

AGL also considers that in interpreting the results of effectiveness of competition reviews, it is important to assess the competitive state of the market as a whole rather than focusing on single measures as individual mandatory criteria to draw conclusions. This was the approach

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<sup>6</sup> Final Report Retail Prices for Non-contestable Electricity Customers, ICRC, report 8 of 2006, April 2006

<sup>7</sup> *ibid*, "Indicators of Competition in Retail Energy Markets", Annexure 3, pg. 1

<sup>8</sup> KPMG "The Effectiveness of Competition and Retail Energy Price Regulation", A discussion paper prepared by KPMG for the Energy Retailers Association of Australia, December 2003, p.4

adopted by the Ofgem in its review of the energy markets in the UK in November 2001. For example, while Ofgem noted that there were still a number of barriers to entry, the market 'as a whole' was considered to be operating at a sufficient level of effective competition to warrant the removal of retail price controls.

A similar approach was also adopted by the ICRC. In its final report, the ICRC concluded that "the competitiveness of the market cannot be determined by a single characteristic or indicator. As such, the Commission has identified the following characteristics to be consistent with a competitive market:

- The existence of a number of competing retailers and/or **imminent potential entry** of new competitors;
- Actual and/or **potential competition** between those retailers; and
- Innovation in products and services offer to consumers by active retailers"<sup>9</sup>.

*[Emphasis added].*

The MCE has outlined that the data of each criteria will be obtained through either customer and retailer surveys or existing data channels. AGL supports this approach.

#### **4.1 Weighting of the criteria**

AGL does not believe that specific weighting should be attached to the predetermined criteria for assessing the effectiveness of competition. Rather, it is AGL's view that the criteria deemed to be representative of the necessary features to assess effective or workable competition as outlined in section 4 above, should be considered as 'primary measures' to enable a decision to be made by the AEMC. Any other criteria should be considered as 'complimentary measures' that help validate a decision or to identify barriers to effective competition.

For example, the primary measure of customer "Choice", may be confirmed through a combination of customer surveys (those who have made a conscious choice), number of retailers, number of customers on market contracts, churn rates etc, without pre-judging the weight of any one of the indicators, but by striking an appropriate balance. For example, a market with few retailers, and low churn rates does not necessarily indicate lack of customer choice if customers surveys indicate overwhelmingly that customers exercised choice, or that there are low barriers to entry.

Indeed, standard competition law assessments in Australia and similar jurisdictions in Europe, the North America and New Zealand recognise that competitive terms and conditions can often be assured through the presence of any one only, or a number of strong competitive constraints.

For example, the presence of vigorous competition between the existing competitors can ensure a competitive outcome regardless of the high barriers to entry. Similarly, very low barriers to entry can be sufficient to ensure that customers can obtain competitive terms and conditions even in very concentrated markets.

On the other hand, if there is no single strong competitive constraint present, a range of competitive constraints can have a sufficient cumulative effect.

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<sup>9</sup> *ibid*, pg. iii

## 4.2 Criteria and indicators

AGL is of the view that effectiveness of competition can be established with a focus on the three key indicators outlined in section 4, together with an appropriate, or a combination of, complimentary market structure and market outcome indicators. This approach will also help identify barriers to effective competition. These indicators may be grouped as follows:

- Customers are aware that they have a choice
  - Customer awareness of choice and full retail contestability.
  
- Customers know how to exercise choice and it is easy to do
  - Ease of obtaining and comparing information;
  - Ease and cost of changing retailers.
  
- Choices (ie. Offers) are being made available to them
  - Number and market shares of competing or potential suppliers;
  - Trends in market share and industry rivalry;
  - Customers accepting market offers and/or switching;
  - Barriers to entry;
  - Offers available to customers.

AGL's detailed comments on each indicator are contained in Appendix A.

## **5 Other items AGL considers relevant in assessing the effectiveness of competition and removal of retail price regulation**

### **5.1 Transitional Arrangements**

In the event that the AEMC determines that effective competition has not been achieved in a market, and that transitional price regulation is necessary, then AGL strongly believes that a light-handed approach should be adopted by the relevant regulator to facilitate the transition to market based prices.

AGL is of the view that where transitional price regulation is maintained such as the Voluntary Transitional Pricing Agreement (VTPA) implemented in the NSW gas market, should be considered an appropriate tool to effectively and efficiently allow for light handed regulation, and that this form of regulation allows for removal of price regulation in a timely manner when the biennial competition reviews undertaken by the AEMC warrant removal.

Where competition is deemed not to be effective, it is imperative that the AEMC identify the market failures that have led to its conclusion, so that those market failures may be corrected to achieve effective competition. Consideration should also be given to establishing a program to address the market failures to expedite the achievement of effective or workable competition.

### **5.2 Vulnerable Customers**

The amended AEMA states that “social welfare objectives will be met through clearly specified and transparently funded State or Territory community service obligations that do not materially impede competition”<sup>10</sup>

AGL strongly supports this view, and considers that price regulation and assistance to customers in financial hardship should be managed as two separate issues. Effective and efficient assistance to customers in financial hardship requires adequate, well targeted and transparent community service obligations. As outlined in our submission on the National Framework for Electricity and Gas Distribution and Retail Regulation, AGL believes that a model of ‘shared responsibility’ is the most effective and efficient arrangement to deal with issues of financial hardship, and that assisting customers in financial hardship is a mutual social obligation to be shared between retailers, governments, customers and welfare and community groups.

Retail price regulation should not be maintained where the AEMC has determined that a market is effectively competitive. It is at best a ‘blunt instrument’ which does not adequately protect groups or classes of customers, such as the vulnerable and precludes the majority of customers from fully enjoying the benefits of the competitive market.

AGL notes that the Independent Competition and Regulatory Commission (ICRC) has expressed that restricting general retail tariffs via regulation is a poor means of addressing social policy issues and that targeted assistance programs by government to be a more effective and equitable way to address customer difficulties<sup>11</sup>. AGL urges the relevant regulators to fully recognise this matter when the effectiveness of competition reviews are being undertaken.

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<sup>10</sup> *ibid*, pg. 29

<sup>11</sup> ICRC Draft Decision on Retail Prices for Non-Contestable Electricity Customers, p. 35

## Appendix A

Item	Indicator	AGL Comments
<b><i>Criteria: Independent rivalry in the market</i></b>		
1	<ul style="list-style-type: none"> <li>Number and market shares of competing suppliers including the presence of large suppliers</li> </ul>	<p>AGL believes that this is one of the indicators that will help establish the extent of customer choice but needs to be interpreted with caution.</p> <p>An incumbent retailer in an area may shift from having a large 'regulated' base to a large 'market' base purely due to its competitive marketing activity. A stable market share should not necessarily be considered to interpret no market activity, but rather, it may identify that the incumbent is competing to the same extent as second tier retailers.</p> <p>AGL suggests that an indicator of the independent rivalry in the market is the number of 'licensed retailers' in a market rather than competing suppliers. However, AGL notes that care should be taken not to conclude that only those retailers who are 'active' represent a competitive market, but rather 'active' and 'inactive' licensed retailers represent the competitive state of a market.</p> <p>The threat of active participation (low barriers to entry) from those retailers who are licensed or potential new entrants is sufficient to maintain an efficient and effective market (note ICRC decision).</p> <p>It may be argued that an active retailer in an adjacent jurisdiction or two incumbents, for example, one in gas and one in electricity in the same jurisdictions can be seen as potential competitors where barriers to entry are low.</p> <p>AGL therefore suggests that the following new indicators may also demonstrate potential rivalry:</p> <ul style="list-style-type: none"> <li>whether there is competition or potential competition evident from adjacent regions; and</li> <li>whether there is competition or potential competition from convergence between the retailing of gas and electricity.</li> </ul>
2	<ul style="list-style-type: none"> <li>The degree of concentration (the extent to which a small number of players account for a large share of the market)</li> </ul>	<p>Concentration by itself is not a sufficient reason to conclude a lack of competition. High concentration could simply be that the incumbent is acting very competitively to retain share or that the retail tariff is too low. The degree of concentration may also be due to 'targeted marketing' by second tier retailers. Concentration should only be a problem if its inhibiting effect on competition can be identified.</p> <p>The underlying comments provided in item 1 are also applicable to this indicator.</p>
3	<ul style="list-style-type: none"> <li>The technical and cost conditions of supply</li> </ul>	<p>AGL believes that this is not a measure of effectiveness of competition but a factor that may inhibit competition.</p>

Item	Indicator	AGL Comments
		For example customers may not be able to <b>exercise choice</b> because of lack of retailers or competitively priced products due to favourable costs structures arising from absence of competitive neutrality. It may be argued that in New South Wales, the Electricity Tariff Equalisation Fund ("EETF") distorts wholesale costs thus impacting on non-EETF retailers' ability to enter the market or offer competitive products.
4	<ul style="list-style-type: none"> <li>Number of competing consumers in the market</li> </ul>	AGL believes that this is not an appropriate measure of competition. The energy market comprises some 11 million customers in the NEM that are able to access competitive energy contracts.
5	<ul style="list-style-type: none"> <li>Existence of economies of scale and scope</li> </ul>	<p>AGL believes that this is not a measure of effectiveness of competition but an outcome that may be due to competition to drive retail costs down. It may also be argued that small new entrant retailers who are not encumbered by legacy systems may be more efficient in competing in their target market segments.</p> <p>There is ACCC oversight on mergers and acquisitions that may impact on competition.</p> <p>Natural monopoly businesses (such as networks) on the other hand exhibit economies of scale and scope, where effective competition is not likely and these services remain regulated.</p>
6	<ul style="list-style-type: none"> <li>Trends in market share and the extent of industry rivalry over time</li> </ul>	AGL notes that comments as per item 1 apply also to this indicator.
<b><i>Criteria: Ability of suppliers to enter the market</i></b>		
7	<ul style="list-style-type: none"> <li>Investment trends by new and incumbent firms</li> </ul>	This is not a relevant indicator of effectiveness of competition and will be difficult to measure. AGL believes that this should not be included as measure for these reasons, but instead the number of licensed retailers may be more relevant, noting our comments under item 1.
8	<ul style="list-style-type: none"> <li>History of entry and exit of retailers</li> </ul>	<p>AGL does not believe that this indicator is necessary, if item 1 is being included.</p> <p>Since full retail competition in each state, the number of retailers in each state has increased. Commonly, the main cases of reduction in retailers are where there have been structural changes in the market mainly due to mergers and acquisitions, as such, the AEMC should consider this when interpreting the results if using the indicator of 'history of entry or exit of retailers' and that a reduction in retailers does not necessarily reflect diminished competition.</p> <p>We note that entry of new retailers even if they later exit a market can demonstrate low barriers to entry.</p>
9	<ul style="list-style-type: none"> <li>Existence of barriers to entry, including costs associated with</li> </ul>	Low barriers to entry can help demonstrate effectiveness of competition even where there are a small number of retailers and is a useful indicator to support the measure of customer choice. Removal of barriers

Item	Indicator	AGL Comments
	entry or exit from the market and related regulatory arrangements	<p>to entry is an important factor in 'ensuring' an effectively competitive energy market. It should be recognised however, that the existence of barriers to entry, which are able to be rectified within a timely manner or which are not considered to be materially impeding competition should not delay the removal of retail price regulation. As witnessed in the Ofgem review<sup>12</sup> of effectiveness of competition in the UK, there can remain a number of minor barriers to entry so long as there are plans to rectify those barriers. It is AGL's view that where barriers to entry exist, there should be an agreed timetable put in place to remove the barriers to entry by the relevant regulator.</p> <p>AGL considers that the costs of licences to enter the market are generally comparable, with other costs generally dictated by the varying regulations in each state requiring those retailers who 'cross borders' to implement numerous systems and processes. As a barrier to entry, it is expected that the number and inconsistency of regulations will be generally replaced with a common set of regulations for retailers to adhere to as a result of the transition to a single national framework, as such, this aspect should not be relied upon to warrant the continuation of price regulation.</p>
10	<ul style="list-style-type: none"> <li>The degree of vertical integration and the character of 'vertical relationships' with customers and with suppliers and the extent of vertical integration</li> </ul>	There may be several vertically integrated businesses providing effective competition, provided the natural monopoly aspects are properly ring-fenced and regulated, hence this indicator will need to be interpreted with caution.
11	<ul style="list-style-type: none"> <li>The ease with which new firms may enter and secure a viable market</li> </ul>	This indicator is the same as barrier to entry. Refer to comments under item 9.
12	<ul style="list-style-type: none"> <li>Incentive for supplier to enter the market having regard to "profit margin / headroom"</li> </ul>	<p>The level of profit margin is not necessarily an indicator of 'effective competition'. The margins in any jurisdiction may vary depending upon a range of factors, including the level of margin allowed in existing regulated tariffs for which market offers often use as a benchmark to discount against.</p> <p>AGL accepts that lack of headroom under regulated tariffs can be a significant contributing factor as to why competition may not be effective. In addition to lack of headroom, retail tariff structures can also be a barrier to effective competition in some market segments.</p> <p>Where it is established that customers do not have choice (of products or retailers), then profit margins and headroom under regulated tariffs should be examined in order to facilitate competition.</p>
13	<ul style="list-style-type: none"> <li>The nature of any formal,</li> </ul>	AGL does not see how this indicator is relevant. In addition, it is not clear how this will indicator would be

<sup>12</sup> Review of domestic gas and electricity competition and supply price regulation – Evidence and Initial Proposals, Ofgem, November 2001

Item	Indicator	AGL Comments
	stable and fundamental arrangements between firms which restrict their ability to function as independent entities	assessed. With regards to ring fencing, please refer to our comments on vertical integration (item 10).
14	<ul style="list-style-type: none"> <li>The general operation of the gas and electricity markets</li> </ul>	It is AGL's view that this indicator cannot be measured, as such should not be considered relevant.
<b><i>Criteria: The exercise of market choice by customers</i></b>		
15	<ul style="list-style-type: none"> <li>Customer awareness of competition of choice and Full Retail Contestability</li> </ul>	AGL supports this indicator as one of the primary, relevant and measurable indicators of effectiveness of competition.
16	<ul style="list-style-type: none"> <li>Ease of obtaining and comparing information</li> </ul>	AGL supports this indicator as one of the primary, relevant and measurable indicators of effectiveness of competition.
17	<ul style="list-style-type: none"> <li>Extent and type of marketing activity</li> </ul>	This indicator will be difficult to establish, and can be more appropriately assessed by whether customers are able to exercise choice through surveys, similar to those already undertaken by some jurisdictional regulators.
18	<ul style="list-style-type: none"> <li>Number of competing suppliers of which customers were aware</li> </ul>	AGL believes that this indicator is a supporting indicator to item 15, and, in AGL's view should not be considered a 'primary' indicator. Also refer to comments under item 1 with respect to the number of retailers.
19	<ul style="list-style-type: none"> <li>Proportion of customers satisfied with the service they receive from their retailer</li> </ul>	This is a measure of customer satisfaction, not a criteria for customer choice. A customers perception of poor service may in fact be related to network matters such as reliability and may be common across all retailers. The important factor here is whether customers who were dissatisfied with a particular retailer's service (such as accurate and timely bills), were aware and able to choose another retailer (refer to our comments under items 15, 16, 22 and 23).
20	<ul style="list-style-type: none"> <li>The range and quality of services provided</li> </ul>	It is AGL's view that it will be difficult to obtain a definitive measure for this indicator. It can also be considered to be partly related to item 19.
21	<ul style="list-style-type: none"> <li>Anti-competitive or misleading behaviour including the impact of unilateral and coordinated exercise of market power</li> </ul>	This is illegal behaviour which is not necessarily an indicator of customer awareness, ease and choice, but can be a factor that reduces customer choice for which there are immediate and punitive sanctions. This may also be difficult to establish without proper process through litigation. This behaviour is dealt with in provisions of the Trade Practices Act.

Item	Indicator	AGL Comments
<b><i>Criteria: Differentiated products and services</i></b>		
22	<ul style="list-style-type: none"> <li>Differentiated products and services that reflect innovations on the part of sellers in response to the preference of customers, and prices that reflect the efficient costs of those products and services</li> </ul>	<p>In AGL's view these two sub-categories are very similar and that a more appropriate indicator may be that there are 'competitive/alternative' products in the market. In general, retailers will offer products that they can, within the existing regulations.</p> <p>The number of offers in any market will change from time to time depending upon the success of the offer. Due to the nature of energy as a product, the range of different products will not be as broad in the energy market compared with, for example, the grocery market.</p> <p>Retailers may, and often do choose to differentiate themselves and their products by way of contract terms, price, service level, environmental matters etc. However, the determination of effectiveness of competition should not be based purely on the assumption that a vast array of energy "products" will encourage more market activity. AGL does not consider that a low number of products and/or services should necessarily reflect a lack of competition, and that the AEMC should consider this when assessing the effectiveness of competition in each jurisdiction.</p>
23	<ul style="list-style-type: none"> <li>Price and non-price offers – evidence that suppliers are actively competing by offering innovative products that meet customer needs. The AEMC will need to consider the type and range of products and services offered.</li> </ul>	Refer response to indicator 22.
<b><i>Criteria: Prices and profit margins</i></b>		
24	<ul style="list-style-type: none"> <li>The AEMC is to assess the prices and profit margins of retailers over time by using annual reporting information. Such considerations would include an assessment of whether there could be sustained price increased over competitive levels.</li> </ul>	<p>The assessment of prices and profit margins of retailers over time using annual reporting information is not, in AGL's view, an appropriate measure of effective competition. In general, many retailers will operate businesses across jurisdictions, and therefore, it will be impossible to 'single out' the annual results for a jurisdiction for independent review. In AGL's view the more appropriate indicator is that there are 'competitive/alternative' products (customers have choice) in the market.</p> <p>AGL notes that the level of profit margin available to retailers in a market with 'regulated retail tariffs' may, if set too low, be considered a potential barrier to entry and should be considered in the context of the ability of retailers to enter the market.</p>

Item	Indicator	AGL Comments
<b><i>Criteria: Customer switching behaviour</i></b>		
25	<ul style="list-style-type: none"> <li>The extent of offers being made and sought</li> </ul>	AGL's view is that this indicator is already reflected in item 22 and 23 (differentiated products and services and price and non price offers).
26	<ul style="list-style-type: none"> <li>The number of customers accepting market offers and/or switching retailers</li> </ul>	<p>The effectiveness of competition test should be based on whether customers have access to offers and are able to exercise the right of choice, either to take an alternative offer or to remain on standing offer contracts.</p> <p>High switching or churn rates may indicate an active level of market activity however low switching or churn rates do not necessarily reflect low levels of competition but may in fact reflect a strong retention initiatives by the incumbent retailer. It is typical of an effectively competitive market that whilst firms will work hard to attract new customers, existing suppliers will work hard to keep them through attractive offers. Any efforts to monitor effects of competition should not just concentrate on churn from one retailer to another. There must be due weight given to customers who have accepted a market offer from the incumbent retailer, or who have decided to remain on a regulated contract. These customers have compared options and exercised choice in the market place and concluded that staying with the incumbent retailer was the best option for them.</p>
27	<ul style="list-style-type: none"> <li>The costs incurred when switching and the time requirements to switch from one service provider to another</li> </ul>	<p>This indicator supports AGL's proposed characteristics of a competitive market, in that customers know how to exercise choice and it is easy for them to do so.</p> <p>We believe this be measured through direct surveys of customers who have changed retailers.</p>
28	<ul style="list-style-type: none"> <li>The degree to which these factors vary between region and customer type</li> </ul>	AGL does not consider this indicator as relevant. As outlined in the consultation paper, the MCE expects that the AEMC will take into consideration the jurisdictional differences when undertaking reviews. It is AGL's expectation therefore, that factors in one jurisdiction will have no bearing on factors in another jurisdiction.
29	<ul style="list-style-type: none"> <li>The degree to which this has changed over time become relevant</li> </ul>	The indicators on customer switching are relevant in supporting the customer choice indicator. However, these can become costly to monitor over time with potentially erroneous interpretation. For example, the telecommunications industry saw initial high levels of switching followed by a decline and stabilisation. Customer switching will vary over time.