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ATTACHMENT A

**ELECTRICITY INDUSTRY
GUIDELINE No. 17**

ELECTRICITY RING-FENCING

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ELECTRICITY INDUSTRY GUIDELINE No. 17

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1 BACKGROUND

1.1 Objective

By limiting the ability of *distributors* to exercise vertical market power in the competitive areas of the electricity industry under this guideline, the *Commission* is seeking to achieve its objectives under section 8 of the *Essential Services Commission Act 2001* and in particular the objectives regarding efficiency in the electricity industry, misuse of monopoly market power, effective competition and benefits to users and consumers.

1.2 Application

Each *distributor* and each *retailer* must comply with this guideline under their *distribution licence* or *retail licence*, as the case may be.

1.3 Commencement

This guideline commences with effect from 1 March 2005.

2 NON-DISCRIMINATION

2.1 No unreasonable discrimination

In conducting its *distribution business*, a *distributor* must not make decisions or act in a manner that unreasonably discriminates in favour of any *electricity business* or in favour of the customers of any *electricity business*.

2.2 Assessment of unreasonable discrimination

Without limitation, in any assessment of whether discrimination is unreasonable under clause 2.1, regard must be had to the effect of the discrimination on economic efficiency, effective competition and customer benefit.

3 INFORMATION SHARING

A *distributor* must ensure that *distribution information* it provides to any *retail business* is available to all *retail businesses*, other than where to do so is prohibited by any *applicable law*.

4 OPERATIONAL SEPARATION

4.1 Separation of organisational units

A **distributor** must ensure that any **organisational unit** marketing or providing the **distributor's distribution goods and services** and any **organisational unit** within a **retail business**:

- (a) operate independently; and
- (b) have separate work areas with access controls that prevent **staff** of either **organisational unit** from entering into the work area of the other **organisational unit**.

4.2 Separation of staff

A **distributor** must ensure that its **distribution employees** are not also **staff** of a **retail business** and, if a **distribution employee** becomes or is found to be **staff** of a **retail business**, procure the **distribution employee's** immediate removal from its **distribution staff**.

4.3 IT access controls

A **distributor** must establish, maintain and enforce appropriate access controls so that users of information technology systems cannot access **distribution information**:

- (a) if the user is performing a **retail business** function; or
- (b) in a manner which enables the disclosure of that **distribution information** to a person who ordinarily performs **retail business** functions.

4.4 Emergencies and widespread supply interruptions

- (a) Only in an **emergency** or if widespread **supply** interruptions occur, a **distributor** may allocate incoming telephone calls concerning the **emergency** or the widespread **supply** interruptions to a **retail business**, if the **distributor** cannot manage all those telephone calls.
- (b) A **retailer** must manage any such telephone calls allocated to it by a **distributor**, and deal with the callers, in the same manner as the **distributor** otherwise would.
- (c) The **distributor** and the **retailer** must keep records of the number of telephone calls so allocated and of any other matter concerning the telephone calls that the **Commission** requires by notice given to the **distributor**.

5 BRANDING, MARKETING AND CUSTOMER COMMUNICATIONS

5.1 Branding and marketing

Each *distributor* and each *retailer* must brand and market itself in a manner that minimises any potential for *customer* confusion.

5.2 Customer communications

In communicating with a *customer*, whether in *writing* or verbally, in the conduct of its:

- (a) *distribution business*, a *distributor* must use best endeavours to make it clear to the *customer* that the *distributor* is an electricity distributor carrying on a *distribution business*; and
- (b) *retail business*, a *retailer* must use best endeavours to make it clear to the *customer* that the *retailer* is an electricity retailer carrying on a *retail business*.

5.3 Websites

Where a *distributor* and a *retailer* share a website, they must identify on each page of the website whether the *distributor* or the *retailer* is responsible for that page and the page must only deal with content directly relevant to the responsible *distributor* or the responsible *retailer*, as the case may be. If a *distributor* advertises a *retailer's retail goods and services* on a page it must allow non-discriminatory access to all *retailers* for such advertising or must provide a link to all other *retailers'* websites.

5.4 Retailer imputation of distributors' attributes

A *retailer* must not market its *retail goods and services* based on the reliability, quality, safety or any other attribute of *distribution goods and services* provided by any *distributor*.

5.5 Retailer claims about service standards

A *retailer* must confine any statements it makes about service standards to those associated with its *retail goods and services*.

6 OUTSOURCING

If a *distributor* or a *retailer* arranges for another entity to perform any of its business functions it must ensure that the entity complies with this guideline as if it were the *distributor* or the *retailer*.

7 DEFINITIONS

In this guideline, unless the context otherwise requires:

- (a) terms which appear *like this* and which are not otherwise defined in this guideline have the same meaning as in each *distributor's distribution licence*; and
- (b) *applicable law* includes a *distributor's distribution licence* and any codes or *guidelines* that a *distributor* must comply with under its *distribution licence*;

customer means a person who acquires or wants to acquire *distribution goods and services* or *retail goods and services*;

distribution business means the business carried on by a *distributor* under the *distributor's distribution licence* or exemption under the Act;

distribution employee in respect of a *distributor*, means a member of the *distributor's distribution staff* who is also an employee of the *distributor*;

distribution goods and services means any goods and any services supplied by a *distributor* in the *distributor's distribution business*;

distribution information means information concerning a *distributor's distribution goods and services* or obtained by a *distributor* in providing *distribution goods and services*;

distribution licence means a licence to *distribute* and *supply* electricity granted under the Act;

distribution staff in respect of a *distributor*, means *staff* of the *distributor* directly involved in marketing or providing the *distributor's distribution goods and services* (whether or not they are also involved in other functions) but does not include *staff* involved only in:

- (a) strategic decision making, including the executive officer or officers to whom *distribution staff* report either directly or indirectly; or
- (b) the *distributor's* administrative, accounting, finance, human resources or information technology support functions;

distributor means a person who holds, or is exempt from holding, a *distribution licence* under the Act;

electricity business means any business operating in or otherwise relating to an area of the electricity industry in which the provision of goods or services is competitive. Without limitation, the following businesses are *electricity businesses*:

- (a) a *retail business*;

- (b) a business carried on by a **generator** under the **generator's generation licence** or exemption under the **Act**;
- (c) a construction services business; and
- (d) a business that provides maintenance or repair services at its customers' premises;

emergency means an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person or which destroys or damages or threatens to destroy or damage any property;

organisational unit means a division, department, branch, group, team or unit of a business including, without limitation, a call centre;

retail business means the business carried on by a **retailer** under the **retailer's retail licence** or exemption under the **Act**;

retail goods and services means any goods and any services supplied by a **retailer** in the **retailer's retail business**; and

staff means any employees, consultants, independent contractors or agents.