

FIRST TRANCHE ASSESSMENT: THE NORTHERN TERRITORY

SUMMARY

The Northern Territory has pursued a vigorous program of reforming its government businesses in recent years. The Territory is continuing this program in delivering its competitive neutrality obligations under the NCP. All businesses designated in the *Financial Management Act 1995* as Government Business Divisions (GBDs) have been reformed, or are programmed for review. Corporatisation and commercialisation (including through the application of full cost pricing and adoption of commercial accounting practices) are the primary mechanisms for applying competitive neutrality principles in the Northern Territory. To date, three GBDs have been corporatised and action to commercialise a further ten smaller GBDs has been commenced. The Northern Territory has established a competitive neutrality complaints handling mechanism within the Treasury.

The Northern Territory is also proceeding quickly with the delivery of its legislation review and reform commitments. It has set up a program for the review of 81 pieces of legislation, and is establishing an automated process for monitoring progress. Most reviews are scheduled for completion by 1998. The Territory's approach gives the Council confidence that it can complete all reviews and implement recommended reforms by the year 2000 target date set by COAG.

There is clear recognition in the Northern Territory of the benefits likely to flow from increased competition in the energy sectors. Third party access to privately owned gas pipelines is already available through the *Energy Pipelines Act 1981*. The Territory has endorsed the substance of the draft National Access Code for gas pipelines and is contributing to the finalisation of an inter-governmental agreement to implement the Code through nationally-based legislation. In addition, the Northern Territory Government indicated that it has reviewed all legislation pertaining to gas exploitation, development and transportation and has found no legislative or regulatory impediments to the sale of gas. The Council will reassess the progress achieved by the Northern Territory in implementing the National Access Code prior to July 1998.

COMPETITION CODE

Reform commitment: Enact legislation applying the Competition Code (the Schedule version of Part IV of the *Trade Practices Act 1974*) within the Northern Territory, with effect by 20 July 1996.

Implementation: The *Competition Policy Reform (Northern Territory) Act 1996* received the Royal Assent on 28 June 1996.

Assessment

Complies with commitment.

COMPETITIVE NEUTRALITY

Reform commitment: **Provision of a policy statement detailing the implementation of competitive neutrality policy and principles to the Northern Territory, including an implementation timetable and a complaints mechanism and progress against undertakings in the policy statement.**

The Northern Territory provided a competitive neutrality policy statement and an annual report in accordance with clauses 3(8) and 3(10) of the Competition Principles Agreement.

Issue: **Adequacy of the reform agenda: the scope and timing of the intended competitive neutrality reform and the progress to date.**

Assessment

The Northern Territory stated that it has reformed, or intends to review, all significant businesses, designated in the *Financial Management Act 1995* as GBDs. Included among the Territory's GBDs are entities such as NCOM, NT Fleet, Northern Territory Construction Agency and Government Printing Office, all of which provide services exclusively to government. Also included are entities such as the Darwin Bus Service, the Territory Wildlife Park and the Northern Territory Housing Commission which provide services to the wider community.

The Northern Territory's annual report stated that corporatisation and commercialisation will be the primary mechanisms for applying competitive neutrality principles. To date, there have been three corporatisations: the Power and Water Authority (PAWA), the Darwin Port Authority and the Territory Insurance Office.

Action to 'commercialise' a further ten smaller GBDs has also been commenced. Commercialised GBDs are required to:

- base pricing policies on the costs of resources used;
- pay the full cost of financing, including debt guarantee fees;
- pay tax equivalents in accordance with the Northern Territory Tax Equivalents Regime Manual;
- identify and separately cost all Community Service Obligations;
- adopt commercial accounting practices including accrual valuation and deprival valuation of non-current physical assets;
- pay the cost of the resources used in service provision including all employee, rental, insurance, legal and auditing costs; and
- report annually to the Northern Territory Government on their performance.

The Council is satisfied that the Territory's policy statement and progress to date meet the requirements of the first tranche of Commonwealth competition payments.

Issue: Adequacy of the reform agenda: operation of the competitive neutrality complaints mechanism.

Assessment

The Northern Territory has established a complaints mechanism within the Northern Territory Treasury, such that the Treasury assesses complaints and recommends to the Government on future action that might be taken. Details of all complaints will be reported in Treasury Annual Reports.

No allegations of non-compliance were received up to 31 December 1996.

The Council accepts that the Northern Territory has established a mechanism for dealing with complaints consistent with the requirements of the Competition Principles Agreement. However, the Council draws attention to its earlier comments regarding the desirability of an independent complaints handling mechanism. The Council will monitor the effectiveness of complaints handling by the Northern Territory.

STRUCTURAL REFORM OF PUBLIC MONOPOLIES

Reform commitment: Before a party introduces competition to a sector traditionally supplied by a public monopoly, it will remove from the monopoly responsibilities for industry regulation to prevent the former monopolist from enjoying a regulatory advantage over its rivals. Before a party introduces competition into a market traditionally supplied by public monopoly and before a party privatises a public monopoly, it will undertake a review of the structure and commercial objectives of the monopoly.

Issue: Adequacy of progress against reform objectives

Assessment

The Northern Territory stated that it has not introduced competition to a market supplied by a public monopoly nor privatised a public monopoly in the reporting period.

LEGISLATION REVIEW

Reform commitment: Provision of a timetable detailing the Northern Territory's program for the review and reform of existing legislation restricting competition by the year 2000, and satisfactory progress against the timetable.

The Northern Territory provided a timetable for the review and reform of existing legislation which restricts competition in accordance with clause 5(3) of the Competition Principles Agreement and an annual report covering progress on implementation in accordance with clause 5(10) of the Competition Principles Agreement.

Issue: Adequacy of the review program**Assessment**

The Northern Territory regulation review timetable is such that the majority of the 81 reviews scheduled will be completed by 1998, with all reviews completed by mid-1999. Its annual report states that “the scheduling reflects the Northern Territory’s commitment to the review and reform process”.

The Northern Territory Government expects to have commissioned a Northern Territory legislation review data base by June 1997. It is anticipated that this will provide the basis for monitoring progress against the review timetable. The Government has undertaken to publish amendments or changes to the review timetable each year in July.

Although the Northern Territory did not provide an explicit commitment to complete reform implementation arising from its program by the year 2000, the Council is satisfied that the process according to the published timetable is likely to achieve this goal and that the Northern Territory annual report demonstrates a commitment to achieving this goal.

The Council is satisfied that the review and reform program meets the Northern Territory’s first tranche legislation review obligations.

The coverage of each jurisdiction’s legislation review program will be an ongoing assessment issue. Any pieces of legislation which restrict competition subsequently found not to be on the timetable will need to be listed for review for jurisdictions to be assessed as continuing to meet the spirit of the Competition Principles Agreement.

Issue: The competition policy implications of new legislation are routinely examined**Assessment**

The Northern Territory stated that it requires all Cabinet Submissions dealing with new or amended legislation to address NCP requirements. Where anti-competitive elements are identified, the legislation must be accompanied by an impact statement which addresses, among other things, the principles in clause 5 of the Competition Principles Agreement.

The Northern Territory advised the Council that it has completed an audit of post-April 1995 legislation. The audit identified five pieces of legislation as restricting competition. Two of these – the *Grain Marketing Act Repeal 1996* and the *Gaming Machine Bill (No 2) 1995* – had already been scheduled for review. The remaining three – *the Retirement Villages Bill 1994*, *the Private Security Act 1995* and *the Meat Industries Bill 1996* – have been included on the review program.

The Council is satisfied that the Northern Territory has met its first tranche Competition Principles Agreement obligations with respect to the requirements of clause 5(5), including legislation restricting competition enacted after April 1995.

Issue: Adequacy of progress with legislation review and reform***Assessment***

The Northern Territory scheduled five reviews for completion by 31 December 1996 in its June 1996 review timetable. Three were completed on schedule, while one was still in progress as at 31 December 1996 and another is under consideration for a national review.

Of the 40 reviews scheduled for completion by 30 June 1997, seven were completed at the time of issue of the Northern Territory's Annual Report on 9 May 1997, 29 were under way and four had been deferred. In most cases, reviews have resulted in the repeal of legislation.

While the Council is satisfied with the first tranche progress achieved by the Northern Territory, it is seeking greater detail of the reforms arising from the review process for future assessments.

APPLICATION TO LOCAL GOVERNMENT

Reform commitment: Provision of a policy statement detailing the implementation of competition principles to local government in the Northern Territory, and progress against undertakings in the policy statement.

The Northern Territory provided a policy statement in accordance with the requirements of clause 7 of the Competition Principles Agreement.

Assessment

The Northern Territory stated that there are no businesses operated by local government within the Northern Territory. The Northern Territory has included local government by-laws in its legislation review program.

Given the size of local government in the Northern Territory, the Council considers that competitive neutrality reform is unlikely to be relevant.

The Council considers that the Northern Territory has complied with its first tranche commitments in relation to local government reform.

PROGRESS ON RELATED REFORMS**ELECTRICITY****Recent history of reform in the Northern Territory**

The Northern Territory will not be a participant in the national electricity market.

The PAWA is a vertically integrated monopoly which also delivers water and sewerage services throughout the Territory. The PAWA has been corporatised and structurally reformed to remove its regulatory functions from water and sewerage activities. It retains regulatory control for electricity services.

Reform commitment: None.

GAS

Recent history of reform in the Northern Territory

Third party access to privately owned gas pipelines is provided for under the *Energy Pipelines Act 1981*.

In 1997, the Northern Territory endorsed the substance of the draft National Access Code for gas pipelines and is contributing to the finalisation of an Intergovernmental Agreement to implement the Code through nationally-based legislation.

The Northern Territory Government reported that it has reviewed all its legislation pertaining to gas exploitation, development and transportation and that there are no legislative or regulatory impediments to the sale of gas.

Reform Commitments in Relation to Implementation of a National Framework for Access to Gas Transmission Lines

Reform commitment: Agreed to implement complementary legislation so that a uniform national framework applies to third-party access to all gas transmission pipelines both between and within jurisdictions by 1 July 1996.

Reform commitment: Noted that legislation to promote free and fair trade in gas, through third-party access to pipelines, should be developed co-operatively between jurisdictions and be based on the following principles:

- pipeline owners and/or operators should provide access to spare pipeline capacity for all market participants on individually negotiated non-discriminatory terms and conditions;
- information on haulage charges, and underlying terms and conditions, to be available to all prospective market participants on demand;
- if negotiations for pipeline access fail, provision be made for the owner/operator to participate in compulsory arbitration with the arbitration based upon a clear and agreed set of principles;
- pipeline owners and/or operators maintain separate accounting and management control of transmission of gas;
- provision be made for access by a relevant authority to financial statements and other information necessary to monitor gas haulage charges; and

- access to pipelines would be provided either by Commonwealth or State/Territory legislation based on these principles by 1 July 1996.

Reform commitment: Noted that open-ended exclusive franchises are inconsistent with the principles of open access expounded in points 1, 2 and 3 above:

- agreed not to issue any further open-ended exclusive franchises; and
- agreed to develop plans by 1 July 1996 to implement more competitive franchise arrangements.

The above agreed reforms were subsequently amended at the COAG meeting of 14 June 1996 and should be read in conjunction with the following commitments:

Reform commitment: Agreed that the national access framework would be finalised as follows:

20 June 1996	Finalisation of the principles in the draft Access Code.
30 June 1996	Release of the draft Access Code for a two month stakeholder consultation period.
30 September 1996	Access Code and associated draft Inter-Governmental Agreement to be finalised and submitted to Heads of Government for endorsement.

Reform commitment: Agreed:

- (a) the Access Code should apply to distribution systems as well as transmission pipelines;³¹ and
- (b) the Commonwealth Minister for Resources and Energy would convene a meeting of State and Territory Energy Ministers to settle on a mode of regulation that would maximise competition and facilitate investment in the gas industry.

Assessment

As accepted by the Council, the Prime Minister's letter of 10 December 1996 has amended the previous timeframes flowing from the 1994 and 1996 Communiqués. In accepting the Prime Minister's proposals, jurisdictions agreed to give legislative effect to the National Access Code by 1 July 1997. This will not be achieved.

The Council acknowledges that the Northern Territory is committed to implementing the National Access Code and is contributing to the development of an intergovernmental agreement to implement the Code through nationally-based legislation. The Council is also aware that the timetable for this process now envisages South Australia, as lead legislature, passing the legislation

³¹ See footnote 7.

in October/November 1997, with other jurisdictions following later that year or in early 1998. This timetable has not yet been the subject of formal agreement between the jurisdictions.

There has been considerable slippage from the original timetables in the 1994 and 1996 Communiqués and from the timetable outlined in the Prime Minister's letter. The Council is concerned that jurisdictions meet the timetable now being developed through the Gas Reform Implementation Group and to be provided in the Intergovernmental Agreement.

The Council recommends that, for the Northern Territory to be assessed as having satisfied its first tranche commitments in respect of implementation of the National Access Code, it will need to have implemented the Code in accordance with the timetable to be agreed in the Intergovernmental Agreement. The Council proposes to reassess this matter for report to the Commonwealth Treasurer prior to July 1998.

Reform Commitments in Relation to Issues Other than a National Framework for Access

Arising from the February 1994 and June 1996 meetings of COAG, all jurisdictions undertook to put in place a range of reforms designed to permit the free and fair trade in gas between and within jurisdictions.

Reform commitment: **Agreed that reforms to the gas industry to promote free and fair trade be viewed as a package, that each government would move to implement the reforms by 1 July 1996.**

Assessment

The Council sees this as a general statement that encompasses all agreed reform commitments in relation to both the commitments in respect of a national framework for access to gas pipelines and the other gas reforms detailed below. The Council sees the 1 July 1996 deadline as binding unless it has been amended by subsequent unanimous agreement between the parties.

Reform commitment: **Agreed to remove all remaining legislative and regulatory barriers to the free trade of gas both within and across their boundaries by 1 July 1996**

Assessment

The Northern Territory Government reported that it has reviewed all its legislation pertaining to gas exploitation, development and transportation and that there are no legislative or regulatory impediments to the sale of gas.

The Council is satisfied that there are no remaining legislative or regulatory barriers to free and fair trade in gas in the Northern Territory. Accordingly, the Council considers that the Northern Territory has complied with its first tranche commitments in this area. However, the Council considers this matter an on-going commitment and will take into account in future assessments any legislative or regulatory barrier that is subsequently discovered.

Reform commitment: **Agreed to adopt AS 2885 to achieve uniform national pipeline construction standards by the end of 1994 or earlier.**

Assessment

The Northern Territory has adopted AS2885 in accordance with the timetable.

The Council considers that the Northern Territory has complied with its first tranche commitments in this area.

Reform commitment: **Agreed that approaches to price control and maintenance in the gas industry be considered in the context of agreed national competition policy.**

Assessment

The Northern Territory reports that it places no control on pricing in the gas industry.

The Council considers that the Northern Territory has complied with its first tranche commitments in this area.

Reform commitment: **Agreed that where publicly-owned transmission and distribution activities are at present vertically integrated, they be separated, and legislation introduced to ring-fence transmission and distribution activities in the private sector by 1 July 1996.**

Assessment

There are no publicly-owned distribution activities in the Northern Territory.

The only publicly-owned transmission infrastructure is the Daly Waters to Macarthur River pipeline which is owned by the PAWA but operated by NT Gas Pty Ltd (a subsidiary of AGL) under a 20 year agreement. NT Gas Pty Ltd is not involved in gas distribution.

The Council considers that the Northern Territory has complied with its first tranche commitments in this area.

Reform commitment: **Agreed to place their gas utilities on a commercial footing, through corporatisation, by 1 July 1996.**

Assessment

The Northern Territory's only publicly-owned facility is operated by a private company under a 20 year agreement. The Council considers that the Northern Territory has complied with its first tranche commitments in this area.

ROAD TRANSPORT

Reform commitment: **Adopt the first reform module (heavy vehicle charges) with effect from 1 July 1995. Commit to the MCRT timetable for future road transport reforms.**

Assessment

The Northern Territory implemented the heavy vehicle charges through the *Road Transport Charges (Northern Territory) Act 1995*.

The Northern Territory stated in its annual report that it is committed to implementing the reform agenda agreed at the meeting of the MCRT on 14 February 1997.

The Council considers the Northern Territory to have complied with its first tranche road transport reform commitments.