

## **NCC UPDATE**

### **The Newsletter of the National Competition Council**

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This newsletter provides an update on the National Competition Council's work under the National Access Regime. (Part IIIA of the Trade Practices Act 1974)

The Regime provides a legal avenue for businesses to gain access to an essential service infrastructure owned by another business such as railways, gas pipelines and electricity transmission wires.

It also ensures that access is provided on reasonable terms and conditions.

#### **Publications**

In addition to this newsletter the National Competition Council (NCC) produces a range of information relating to National Competition Policy (NCP). A list of some recent speeches, community information/discussion papers and reports is provided below and can be accessed on the NCC's Web Site [www.ncc.gov.au](http://www.ncc.gov.au).

- Securing the Future of Australian Agriculture: An Overview (Community Information)
- Securing the Future of Australian Agriculture: Barley (Community Information)
- Securing the Future of Australian Agriculture: Sugar (Community Information)
- National Competition Policy: Some Facts (Community Information)
- Urban Water Reform (Community Information)
- Rural Water Reform (Community Information)
- Shop Trading Hours (Community Information)
- Improving our Taxis (Community Information)
- The International Context for Australia's Competition Reforms (Discussion Paper)
- Implementing a National Approach to Water Reform – Address to Utilicon 2000 (8 August 2000)
- Utility Reform: How Competition Policy is Changing Australia – Address to Utilicon 2000 (7 August 2000)
- Multi-user Infrastructure Access: Implications of Third Party Access for Infrastructure Access – Address to WA Infrastructure 2000 Conference (17 July 2000)
- The Impact of Competition Policy on Rural Australia – Address to the VFF (11 July 2000)
- National Competition Policy – A Five Year Stocktake – Address to CEDA Melbourne (7 July 2000)
- Introducing Competition in the Public Delivery of Health Care services – Presentation to the World Bank Human Development Week (29 February 2000)

For more information on National Competition Policy and the work of the National Competition Council see details below.

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## **PROJECT UPDATES**

### **AVIATION**

#### **APPLICATION FOR DECLARATION OF CERTAIN FREIGHT SERVICES AT SYDNEY INTERNATIONAL AIRPORT**

##### **The Application**

In November 1996, Australian Cargo Terminal Operators (ACTO) applied for declaration of particular services at Sydney International Airport. These services involved:

- the use of freight aprons and hard stands to load/unload freight from international aircraft; and
- the use of an area at the airport to store equipment used to load/unload international aircraft and to transfer freight from the equipment to/from trucks at the airport; and
- the use of an area to construct a cargo terminal at the airport.

The Council recommended declaration of the first two groups of services listed above and the Treasurer had accepted those recommendations and declared the services. Sydney Airports Corporation limited (formerly Federal Airports Corporation) applied to the Tribunal for a review of the Treasurer's decision.

##### **Tribunal Action**

The application was heard by the Tribunal in December 1998. The parties to the hearing were Sydney Airports Corporation, Ansett Australia, Australian Cargo Terminal Operators, South Pacific Air Motive and International Business Management Services. The Council's role was to assist, provide information and make reports as requested by the presiding member of the Tribunal (see section 44K(6) of the TPA).

The Tribunal handed down its decision on 1 March 2000.

##### **The Decision**

The Tribunal:

- Declared the service provided by the use of the freight and passenger aprons and the hard stands at Sydney International airport for the purpose of enabling ramp handlers to load freight from loading equipment onto international aircraft and to unload freight from international aircraft onto unloading equipment.
- Declared the service provided by the use of an area at Sydney International Airport for the purpose of enabling ramp handlers:
  - to store equipment used to load and unload international aircraft; and
  - to transfer freight from trucks to unloading equipment and to transfer freight from unloading equipment to trucks, at the airport.

The declarations are effective from 1 March 2000 until 28 February 2005.

The decision has clarified many of the contentious issues concerning the interpretation of the criteria for declaration. In particular, the Tribunal has endorsed the view that declaration is primarily concerned with the services of

natural monopoly infrastructure where access (or increased access) to those services would promote competition in another market.

Specifically, the Tribunal considered “that the ‘uneconomical to develop’ test should be construed in terms of the associated costs and benefits of development for society as a whole ” (ACT 2000, paragraph 204). The Tribunal considered that this interpretation was consistent with the underlying intent of the legislation as expressed in the second reading speech and picked up in the language of the statute.

The decision supports the concept that the ‘promotion of competition’ involves the idea of creating conditions or environment for improving competition from what it would be otherwise. The Tribunal considered that as “the purpose of an access declaration is to unlock a bottleneck so that competition can be promoted in a market other than the market for the service”, the ‘promotion of competition’ test is “concerned with the fostering of competition, that is to say it is concerned with the removal of barriers to entry which inhibit the opportunity for competition in the relevant downstream market” (ACT 2000, paragraph 106-107). (Contact Michelle Groves)

## **GAS**

### **Eastern Gas Pipeline – Final Recommendation**

The Council has released its Final Recommendation in respect of AGL Energy Sales and Marketing Ltd’s application for coverage of the Eastern Gas Pipeline under the National Gas Code. The Code has been agreed by all governments for implementation and certification under Part IIIA. The Council’s recommendation is for coverage of the pipeline. A copy of the Council’s recommendation is available at the Council’s website.([www.ncc.gov.au](http://www.ncc.gov.au))

The Council considered that the pipeline meets the four coverage criteria. In particular the Council was satisfied that it was not economic to develop another pipeline to provide the services provided by the Eastern Gas Pipeline, and that access to the services of the Eastern Gas Pipeline would promote competition in the South East Australian gas sales market. The Minister is scheduled to make his decision in September 2000. (Contact Luke Berry)

### **Application for Partial Revocation of Coverage of the Moomba to Sydney Pipeline System**

On 28 April 2000 the Council received an application to revoke coverage of three trunk pipelines within the Moomba to Sydney Pipeline System under the Gas Pipelines Access (NSW) Act 1998 and the Gas Pipelines Access (SA) Act 1997. The Moomba to Sydney Pipeline System carries gas from Moomba in SA to Wilton in NSW, delivering gas into NSW and the ACT and joining with the Interconnect which carries gas into Victoria. The three trunk pipelines for which revocation of coverage is sought are the main pipeline running from Moomba to Wilton and the transmission pipelines branching off it to Canberra and the

Interconnect. The application was made by East Australian Pipeline Limited as owner and operator of the pipeline system.

The Council launched a public process on the application and has received submissions from interested parties. The Council is currently considering issues arising from the public process and will be releasing a Draft Recommendation by 22 August 2000. Parties will have an opportunity to make further submissions to the Council within fourteen days after the draft recommendation is made publicly available. The Council must consider any further submissions received and submit its final recommendation on revocation to the Commonwealth Minister for Industry, Science and Resources with 28 days of the release of the draft recommendation. The Minister then has 21 days to decide the matter. (Contact Alison Smith)

### **NSW Gas**

The Council conveyed its recommendation on certification of the NSW Gas Access Regime to the Commonwealth Minister for Financial Services and Regulation in March 1999.

The Minister's decision has been delayed pending resolution of cross-vesting issues arising from the High Court decision in *Re Wakim: ex parte McNally*. (Contact Stephen Dillon)

### **Queensland Gas**

The Council conducted public consultation on certification of the Queensland Gas Access Regime in April 1999.

The Regime applies the National Gas Access Code (National Code) to Queensland gas pipelines. However the Queensland Regime includes a number of derogations (variations) from the National Code, affecting transmission pipelines. The principal derogations relate to pricing policies for four major transmission pipelines (see table below). In effect, the access pricing principles in the National Code do not apply to these pipelines for considerable periods of time.

When Queensland applied for certification of its Regime in September 1998, the Council was required to consider the implications of the derogations. The approach agreed by the Council was to consider whether the regulatory processes for the derogated pipelines – including pricing outcomes – provide a reasonable proxy for the National Code, and if not, whether discrepancies are significant. The Council sought the advice of the ACCC on these issues.

The ACCC has now completed a substantial report on these matters and the Council is considering its implications. The main body of the Report can be viewed on the Council's website. ([www.ncc.gov.au](http://www.ncc.gov.au))

The Council notes that the Queensland Regime was enacted in May 2000. While not currently certified, the provisions of the Regime – including obligations on pipeline owners – now apply.

## QUEENSLAND PIPELINES SUBJECT TO DEROGATIONS

Pipeline License (PPL) Number	Description of pipeline	Revisions commencement date (derogation terminates)
2	Wallumbilla to Brisbane	29 July 2006
24	Ballera to Wallumbilla	30 December 2016
30	Wallumbilla to Rockhampton via Gladstone	The sooner of: (a) the date the capacity of the pipeline exceeds the nominal capacity specified in the pipeline license or (b) the date the regulator approves revisions that must be submitted by 31 August 2016
41	Ballera to Mt Isa	1 May 2023

### Northern Territory Gas

On 20 April 2000, the Council received applications from Envestra Limited to revoke coverage under the Gas Pipelines Access (Northern Territory) Act 1998 (NT Act) of the following natural gas pipelines owned by Envestra:

- the Palm Valley to Alice Springs (transmission) pipeline; and
- the Alice Springs gas distribution network.

The effect of revocation is to remove a pipeline from regulation under the National Gas Pipelines Access Code (National Code). In effect, the owner of the pipeline is relieved of any obligation to grant access to third parties.

On 6 July, the Council released its recommendations that coverage of each pipeline be revoked. In essence, the Council was not satisfied that regulated access to the pipelines would promote competition in another market or confer net public interest benefits.

The Hon Daryl Manzie, MLA, in his capacity as the NT Minister for Resource Development, subsequently approved the Council's recommendations in deciding to revoke coverage of both pipelines. (Contact Stephen Dillon)

### RAIL

#### Western Australian Rail

The Western Australian Government applied for certification of the WA Rail Access Regime in February 1999. The Council's public process identified a number of issues, subsequently addressed by Western Australia. Among the refinements agreed to by the State were the creation of an independent rail access regulator with broad powers to enforce compliance with the Regime.

The Council released a Draft Recommendation in September 1999, stating its preliminary view that the amended WA Regime would be an effective access regime. The Council received eleven submissions on the draft and liaised further with key stakeholders. As a result of these processes, the Council identified a number of additional concerns. The Council has now reached agreement with Western Australia on addressing most of these issue and considers that the Regime constitutes a robust set of access arrangements for infrastructure owners and users. However, the one remaining issue – the treatment of interstate train operations – is critical and Council cannot recommend certification without this issue being resolved. (Contact Michelle Groves)

### **Northern Territory/South Australian Rail**

On 23 March 2000, the Treasurer certified a Regime covering the proposed rail line from Darwin to Tarcoola until 31 December 2030. The Treasurer's recommendation was consistent with that of the Council.

The Regime submitted to the Treasurer for consideration was significantly different to that submitted to the Council for consideration in March 1999.

The Regime now incorporates a balanced approach to access. It provides a framework for access negotiations that gives investors sufficient certainty to proceed with the project, while ensuring access on terms and conditions that could be expected in a competitive market.

A key feature of this Regime is that it allows for the central involvement of an independent Regulator who can develop guidelines, assist in dispute resolution and generally monitor the effectiveness of the Regime. The regime provides further safeguards against the infrastructure owner favouring its rail operator at the expense of others.

All prices for access are to be struck within a floor/ceiling band, set in accordance with efficient forward looking costs.

The certification recommendation is for a relatively long period. This gives further certainty to the access provider. However, as the rail line is yet to be built, there is no history to indicate how the access provider will manage its above and below rail businesses and a few of the Regime's approaches are unique. Such a long certification could see inappropriate elements in the Regime entrenched for the entire period, increasing uncertainty for rail operators.

To rebalance these respective risks, the Regime incorporates a comprehensive review three years after operations commence. This review will be public and conducted by the Northern Territory and South Australian Ministers, supported by the independent Regulator's assessment of the effectiveness of the Regime. This gives the Northern Territory and South Australian Governments an early opportunity to make the changes necessary to address any problems revealed through the first years of operations. (Contact Trish Lynton)

### **ELECTRICITY**

## **NT Electricity**

In December 1999, the NT Government lodged a Regime covering its electricity network, requesting that the Council consider recommending to the Minister that he certify the Regime.

The Council subsequently issued an issues paper and called for public comment on the Regime. It received submissions from potential new entrants and significant users of NT electricity. The issues paper and submission are available from the Council's website. ([www.ncc.gov.au](http://www.ncc.gov.au))

Having reviewed these submissions and a report from its consultant, Network Economics Consulting Group Pty. Ltd., the Council has outlined a range of issues that raise concerns. The NT Government is considering these issues and the Council expects to receive a range of proposed changes in the near future.

The Council is expecting to release a draft recommendation later this year. (Contact Trish Lynton)

### **The aim of the National Competition Council is.....**

**“To help raise the living standards of the Australian community by ensuring that conditions for competition prevail throughout the economy that promote growth, innovation and productivity.”**