

NCC UPDATE

Edition 18 April 2001

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, on reasonable terms and conditions, to essential service infrastructure.

PUBLICATIONS

In addition to this newsletter the National Competition Council produces a range of information relating to National Competition Policy.

A number of recent speeches and reports are listed below and can be accessed at www.ncc.gov.au.

- Third Tranche Assessment Framework (February 2001)
- Background Papers on Water Reform (March 2001)
- Address to the NSW Council of Professions (President, February 2001)
- National Electricity Market Under National Competition Policy (An Address by the Executive Director, March 2001)

The Council provides an email notification service for new listings on its website. To be added to the notification service please email: info@ncc.gov.au

For further information on any of the issues considered in this newsletter visit the NCC's website at:

WWW.NCC.GOV.AU

PRODUCTIVITY COMMISSION REVIEW

In January 2001, the Council forwarded a submission to a review by the Productivity Commission of Part IIIA of the Trade Practices Act (TPA) and clause 6 of the Competition Principles Agreement (CPA).

The submission includes a summary of declaration and certification applications since 1996, and outlines the Council's current approach to Part IIIA matters. The submission is available on the Council's website at www.ncc.gov.au

The Productivity Commission released an initial position paper on 29 March 2001. It can be obtained from the Commission's website at <http://www.pc.gov.au/inquiry/access/positionpaper/index.html>.

PROJECT UPDATES

CERTIFICATION OF ACCESS REGIMES

Northern Territory Gas

The Council received an application from the Northern Territory Government for certification of its gas access regime on 13 March 2001.

The Council has released an issues paper and is seeking comments from interested parties.

(NCC Contact Officer: Luke Berry 03 9285 7782)

New South Wales Gas

On 28 October 1998, the Council received an application to certify the NSW gas access regime. In March 1999 the Council recommended to the Commonwealth Minister for Financial Services and Regulation that regime be certified.

The Minister announced that he had decided to certify the NSW Access Regime on 29 March 2001. The Minister's decision was delayed pending resolution of cross-vesting issues arising from the High Court decision in *Re Wakim: ex parte McNally*.

(NCC Contact Officer: Stephen Dillon 03 9285 7481)

Victorian Gas

The Victorian Government applied for certification of its gas access regime in July 1999. In April 2000 the Council recommended to the Commonwealth Minister for Financial Services and Regulation that the regime be certified. The Minister announced on 29 March 2001 that he had decided to certify the Victorian Access Regime as effective.

(NCC Contact Officer: Alison Smith 03 9285 7480)

NSW Rail

In November 1999, the Minister certified the NSW Rail Access Regime as effective until 31 December 2000. The relatively short certification period reflected concerns as to whether the NSW Regime could harmonise with national reform arrangements in rail. The certification has now expired.

(NCC Contact Officer: Trish Lynton 03 9889 9888)

Queensland Gas

The Council received Queensland's application to certify its gas access regime in September 1998.

While the Queensland Code was submitted to the Council as an application of the National Gas Code, it incorporates a number of significant derogations from the National Code. The derogations affect several major transmission pipelines and cover matters such as access prices and information flows to access seekers.

The Council initially considered whether the Queensland Regime remained broadly consistent with the National Gas Code. If it did, the Council could draw upon its earlier assessment that the National Gas Code was effective. The Council sought the advice of the ACCC on whether the regulatory processes, including tariff outcomes, for the derogated pipelines were broadly consistent with the National Code and the extent to which differences are significant.

The ACCC completed a substantial report in April 2000. It reported that the derogations significantly alter a number of regulatory processes, tariff and other outcomes from those in the National Code. The Council considers the variations to be sufficiently material that it cannot regard the Queensland Regime as a consistent application of the National Code.

As such, the Council has been obliged to consider the Queensland Regime on a stand-alone basis against the certification principles (set out in clause 6 of the CPA).

The Council forwarded its recommendation on the regime to the Commonwealth Minister for Financial Services and Regulation in February 2001. The Council notes that the Queensland Regime was enacted in May 2000. While not certified, the provisions of the Regime – including obligations on pipeline owners – now operate.

(NCC Contact Officer: Stephen Dillon 03 9285 7481)

Western Australia 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 reached agreement with Western Australia on most of these issues.

The Council was not able to reach agreement with Western Australia on a way to resolve issues relating to interstate rail operators. This left a significant issue outstanding. The Western Australian Government withdrew its application for certification in November 2000.

(NCC Contact Officer: Stephen Dillon 03 9285 7481)

NT Electricity

In December 1999, the Northern Territory (NT) Government applied for certification of an access regime covering its electricity network.

The Council released 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 Council reviewed these submissions and a report from its consultant, Network Economics Consulting Group Pty Ltd, and outlined a range of concerns to the NT Government.

The Government proposed a number of amendments to the regime that addressed many of these concerns. However, a number of issues remained outstanding when the Council released its draft recommendation in September 2000. These issues related primarily to the introduction of retail contestability and the pricing of out-of-balance energy.

The NT Government has now proposed amendments to address these residual issues which should allow the Council to recommend certification. Details of the proposed amendments are contained in the *process update* issued on 30 March 2001 and available from the Council's website at www.ncc.gov.au. Submissions on these proposals are due by 30 April 2001.

The Council can only issue a recommendation on the basis of a fully amended Code. The implementation timetable envisaged by the NT Government will not allow the Council to provide the Commonwealth Minister with its final recommendation until August 2001.

(NCC Contact Officer: Trish Lynton 03 9889 9888)

DECLARATION APPLICATIONS

Western Power

On 9 January 2001 the Council accepted an application for declaration of certain electrical transmission and distribution services provided by Western Power Corporation. The application was made by Normandy Power Pty Ltd, NP Kalgoorlie Pty Ltd and Normandy Golden Grove Operations Pty Ltd.

The application covers electrical transmission and distribution systems situated in the south west of Western Australia (known as the 'South West Interconnected Network'), servicing the area bounded by Kalbarri in the north, Kalgoorlie in the east, Albany in the south and the western coast of Western Australia. The applicants seek access to the services to allow the transmission of electricity from electricity generators, particularly the Parkeston power station, to consumers in the south west of Western Australia.

In February 2001, the Council released a discussion paper outlining the Council's preliminary assessment of the application against the declaration criteria. The Council's preliminary view is that the application meets each of the declaration criteria. The period for making submissions on the application ended on 26 March 2001. The Council is now preparing its recommendation to the Western Australian Premier on whether the service should, or should not, be declared.

(NCC Contact Officer: Alison Smith 03 9285 7480)

MATTERS BEFORE THE AUSTRALIAN COMPETITION TRIBUNAL

On 27 October 2000, Duke Energy made an application to the Australian Competition Tribunal for a review of the decision to cover the Eastern Gas Pipeline under the National Gas Code.

The Tribunal conducted hearings on the matter from 29 January until 8 February 2001. As provided for under the Gas Pipelines Access Law, the Tribunal has extended the time period for finalising its decision to 24 April 2001.

(NCC Contact Officers: Luke Berry 03 9285 7782)

NATIONAL GAS CODE

Eastern Gas Pipeline & Moomba to Sydney Pipeline Systems FINAL DECISIONS

On 16 October 2000, the Commonwealth Minister for Industry, Science, and Resources, Senator the Hon Nick Minchin, decided to cover the Eastern Gas Pipeline under the National Gas Pipelines Code. An application for a review of the decision was subsequently lodged (see above). The Eastern Gas Pipeline transports natural gas between Longford, Victoria and Horsley Park in Sydney. The Minister's decision followed an application on 7 January 2000 for coverage lodged by AGL Energy Sales and Marketing Ltd.

Also on 16 October 2000, the Minister decided against revocation of coverage under the Code of parts of the Moomba to Sydney pipeline system. East Australian Pipeline Ltd had applied for revocation of these parts of the pipeline on 28 April 2000.

The Minister's decisions in the case of both pipelines were in accordance with recommendations by the Council.

(NCC Contact Officer: Luke Berry 03 9285 7782)

Queensland Gas Pipelines—Revocation Applications

The Council received applications in August 2000 to revoke coverage of four gas pipelines from the provisions of the *Gas Pipelines Access (Queensland) Act 1997*. The applications related to the following Queensland pipelines:

- Peabody-Mitsui Pipeline (owned by Peabody Moura Mining Pty Ltd);
- Kincora to Wallumbilla Pipeline (owned by Oil Company of Australia Ltd);
- Dawson Valley to Duke Queensland Gas Pipeline (owned by Oil Company of Australia); and
- Dalby Gas Distribution Network (owned by Dalby Town Council).

On 3 November 2000, the Council recommended that coverage of each pipeline be revoked. The Council found that regulated access was unlikely to promote competition in another market and was contrary to the public interest, as the costs outweighed the benefits of regulation.

On 23 November, the Hon. Senator Nick Minchin, Federal Minister for Industry, Science and Resources, decided to revoke coverage of the three transmission pipelines.

On 28 November, the Hon. Tony McGrady MLA, Queensland Minister for Mines and Energy, decided to revoke coverage of the Dalby network.

All decisions were in accordance with the Council's recommendations.

(NCC Contact Officer: Stephen Dillon 03 9285 7481)

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