

NATIONAL COMPETITION COUNCIL UPDATE

Edition 19 November 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.

PROJECT UPDATES

CERTIFICATION OF ACCESS REGIMES

National Gas Access Regime

The National Third Party Access Regime for Natural Gas Pipelines has now been certified as effective in all jurisdictions other than Queensland and Tasmania. The Queensland Regime is still under consideration and Tasmania has not yet applied for certification. However, the Regime is operational in both these jurisdictions.

(NCC Contact Officer: Stephen Dillon 03 9285 7481 or Damian Adams 03 9285 7786)

CERTIFICATION OF ACCESS REGIMES cont.

Queensland Gas

The Queensland Government applied to the Council in September 1998 to recommend on the 'effectiveness' of the State's access regime for gas pipeline services (Queensland Regime). If a regime is certified as effective, services subject to the regime cannot be 'declared' for access under Part IIIA of the *Trade Practices Act 1974* (TPA).

In considering the regime's effectiveness, the Council has applied the principles set out in clauses 6(2) to 6(4) of the Competition Principles Agreement. The Council consulted with stakeholders and received a number of submissions, several of which raised concerns over the implications of substantial derogations embedded in the regime. The Council also obtained a report from the Australian Competition and Consumer Commission in April 2000 on the effects of the derogations.

The Council forwarded its recommendation on the effectiveness of the Queensland Regime to the Commonwealth Minister for Financial Services and Regulation in February 2001. Subsequently, the Minister notified the Council that he had received a substantial amount of new material from the Queensland Government and the owners of four gas pipelines subject to derogations under the regime. The Minister has sought the Council's advice as to whether this material raises new issues of relevance to his consideration of effectiveness.

To ensure that all relevant material is properly reflected in its advice to the Minister, the Council has withdrawn its February 2001 recommendation and will forward a fresh recommendation once it has given full consideration to the submission from the Queensland Government and the joint submission from major pipeline companies.

Given that considerable time has elapsed since interested parties had an opportunity to provide views on the effectiveness of the Queensland Regime, the Council considers it appropriate to release a draft recommendation prior to forwarding its final recommendation to the Minister. In doing so, the Council will consult with stakeholders, inviting comment on any certification issues that may be raised in the draft, including possible issues stemming from the new material noted above. The Council's final recommendation will take account of any relevant material arising through this process.

A copy of the Council's draft recommendation will be made available on the Council's web site once it is in a position to provide it.

(NCC Contact Officer: Stephen Dillon 03 9285 7481 or Michelle Groves 03 9285 7476)

CERTIFICATION OF ACCESS REGIMES cont.

NT Electricity

On 1 December 1999, the Council received an application from the NT Government to certify a regime as “effective” for access to NT electricity networks. The Council subsequently embarked on a public consultation process, publishing an issues paper in December 1999 and calling for submissions.

The Council released its draft recommendation in September 2000, noting that a number of issues remained outstanding against the Competition Principles Agreement (CPA) criteria. Therefore, the Council would be unable to consider the Code effective and recommend certification to the Minister.

Principal areas of concern included limitations on contestability and the out-of-balance energy system.

In March 2001, the Council was able to advise interested parties that the NT Government had addressed these outstanding matters and that the amendments proposed, if effected, would allow the Code to meet the CPA criteria. It also advised that the Council would be unable to put its final recommendation to the Minister until the proposed changes had been implemented.

The NT Government recently advised that the changes proposed have been implemented and the Council will now prepare and forward its final recommendation to the Minister.

(NCC Contact Officer: Trish Lynton 03 9889 9888)

Victorian Rail Access Regime

On 27 July 2001, the Council received an application from the Victorian Government for certification of the Victorian Rail Access Regime as “effective” under Part IIIA. Some of the track covered by this regime is also the subject of a declaration application lodged by Freight Australia, who operates track under lease from the Victorian Government.

While the coverage of each application differs, the commonality of a significant part of the infrastructure allows the Council to consider these two processes concurrently.

CERTIFICATION OF ACCESS REGIMES cont.

Victorian Rail Access Regime

The regime covers a range of matters including a negotiation framework, pricing principles and dispute resolution processes. It appoints the Office of the Regulator General (ORG) to administer the regime. The ORG has developed papers and guidelines to indicate how it will manage this appointment (available from www.reggen.vic.gov.au).

The Council will assess this application through a public process and will issue a draft recommendation for comment in December 2001.

(NCC Contact Officer: Trish Lynton 03 9889 9888)

South Australian Ports & Maritime Services Access Regime

In August 2001, the Council received an application from the South Australian Government to certify their Ports and Maritime Services Access Regime as being effective. The regime provides for third party access to certain maritime services provided at prescribed ports. These services include:

- vessel access to ports;
- pilotage services;
- berthing rights;
- port services for loading and unloading vessels; and
- the storage of goods.

The Council will assess this application through a public process. An issues paper to assist interested parties with their submissions will be made available on the Council's website.

(Contact Officer: Geraldine Anthony 03 9285 7473)

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 System'), servicing the area bounded by Kalbarri in the north, Kalgoorlie in the east, Albany in the south and the western coast of Western Australia.

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

WWW.NCC.GOV.AU

DECLARATION APPLICATIONS cont.

Western Power cont.

The Council released a discussion paper, consulted extensively with interested parties and sought submissions on the application. The Council's Final Recommendation on the matter will be made to the Western Australian Premier.

On 7 May 2001, Western Power instituted proceedings in the Federal Court in Perth against the Council and Normandy seeking to prevent the Council from considering Normandy's application for declaration of certain Western Power electricity transmission and distribution services. Western Power argues that the application services are not 'services' within the meaning of Part IIIA. These proceedings are ongoing.

(NCC Contact Officer: Michelle Groves 03 9285 7476)

Freight Australia

On 1 May 2001, the Council received an application from Freight Victoria Limited, a private company trading as Freight Australia, for declaration of the rail line services provided by the rail lines it leases from the Victorian Government, excluding services provided by sidings and some branch lines.

The Victorian Rail Access Regime regulates access to all rail lines leased to Freight Australia, including sidings and branch lines, but only for the purposes of transporting freight. If the services under application are declared, their access terms and conditions could be negotiated under the principles and arbitration processes of the national regime, framed by Part IIIA. The national regime could then cover all declared services and be used as a substitute for the Victorian regime for rail line services that transport freight.

The Council released an issues paper in June 2001, asking for submissions. It subsequently consulted extensively with interested parties and to discuss matters raised in the issues paper. Submissions have now closed and the Council will consider the matters raised as it finalises its recommendations to the Commonwealth Minister.

(NCC Contact Officer: Trish Lynton 03 9889 9888)

Portman Iron Ore Limited

On 9 August 2001, the Council received an application from Portman Iron Ore Limited for declaration of the services provided by the Koolyanobbing-Esperance rail line. WestNet Rail operates this line under a 49 year lease from the Western Australian Government.

Portman has subsequently requested that its application be placed on hold while it considers the impact of the introduction of the WA rail access regime (which commenced operation on 1 September 2001).

(NCC Contact Officer: Michelle Groves 03 9285 7476)

DECLARATION APPLICATIONS cont.

Aulron Energy Ltd

The Council has received an application under Part IIIA from Aulron Energy Limited for a recommendation to declare the service provided by the Wirrida — Tarcoola railway line.

The Wirrida-Tarcoola rail track forms part of the Tarcoola to Darwin railway, which is currently under construction. Third party access to the Tarcoola to Darwin rail track service will be regulated under the Australasia Railway Third Party Access Regime, through the *Australasia Railway (Third Party Access) Code* (the Code). The Commonwealth Treasurer certified the regime as effective under the section 44N of the TPA in March 2000.

Under section 2, the Code only applies to so much of the railway as has been constructed between Tarcoola and Darwin to the extent prescribed from time to time. It is the Council's understanding that while the Wirrida — Tarcoola rail track is already constructed, it has not been prescribed for the purposes of the Code.

This application will be considered through an expedited process as the Council has examined many of the issues raised by the application in its consideration of the Australasia Railway Third Party Access Regime. The process will involve consultation with the applicant, service provider and the South Australian and Northern Territory Governments prior to the Council forwarding its recommendations to the Commonwealth Minister.

(NCC Contact Officer: Michelle Groves 03 9285 7476)

NATIONAL GAS CODE

Revocation of the Moomba to Sydney & Dalton to Canberra Transmission Pipelines (NSW)

Following the decision of the Australian Competition Tribunal in the Eastern Gas Pipeline case, EAPL re-applied on 18 June 2001 for revocation of two pipelines within the Moomba to Sydney Pipeline System: the Moomba to Wilton pipeline and the Dalton to Canberra pipeline. The Council released an Issues Paper in late June calling for submissions. Submissions closed on 13 August 2001.

The Council has announced an extension of time to 17 December 2001 for the release of its draft recommendation.

(NCC Contact Officer: Michelle Groves 03 9285 7476)

Revocation of the Parmelia Pipeline (WA)

On 31 October 2001, the Council received an application for revocation of coverage of the Parmelia Pipeline in Western Australia under the Gas Pipeline Access (WA) Act 1998 (WA Access Act). The Parmelia Pipeline transports natural gas from the Perth Basin at Dongara to Perth and Pinjarra. It also provides some distribution services.

The application was made by CMS Gas Transmission Australia (CMS), the operator of the Parmelia Pipeline.

The Council is now calling for written submissions from interested parties and has prepared an issues paper to assist these submissions. Submissions are due by 5 December 2001.

The Council will publish a draft recommendation by 19 December 2001.

(Contact Officer: Michelle Groves 03 9285 7476 or Damian Adams 03 9285 7786)

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.

- *National Competition Policy: The Public Interest Test*, Address to the Economic Society of Australia, Canberra Branch, (President, May 2001)
- *A Changing Australia: The Business and Social Imperatives*, Address to the Institute of Chartered Accountants, (President, May 2001)
- *Competition Reform – Transforming the Industry*, Address to Utilicon 2001, (Executive Director, July 2001)
- *Reforming Rural Water Use: Benefits & Challenges*, Address to Utilicon 2001, (Executive Director, July 2001)
- The Council has provided three submissions to the Productivity Commission's review of Part IIIA of the *Trade Practises Act* and Clause 6 of the Competition Principles Agreement.

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

***The NCC Update is produced and distributed in electronic form only.
To be added to the email distribution list please email info@ncc.gov.au or
telephone Denise Leslie on (03) 9285 7497.***

**Level 12
2 Lonsdale Street
MELBOURNE**