
Adjudication

Authorisations

Determinations

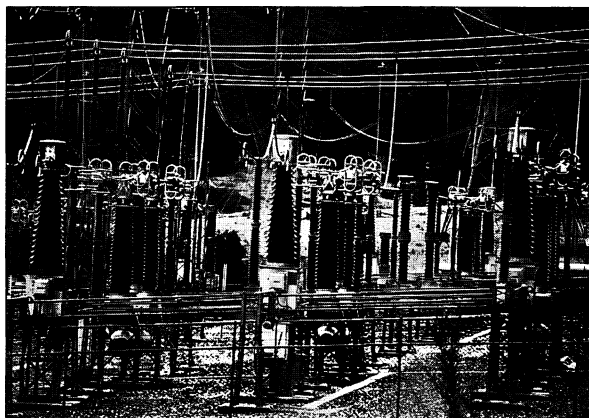
NECA and NEMMCO

National Electricity Code (A40074-6)

- Draft determinations proposing to grant conditional authorisation to the National Electricity Code issued 29 August 1997.
- Pre-decision conference held 18-19 September 1997.
- Final determination granting conditional authorisation to the National Electricity Code issued 10 December 1997.

On 15 November 1996 the National Electricity Market and Management Company (NEMMCO) and the National Electricity Code Administrator (NECA) lodged an application for authorisation to the National Electricity Code, which sets out the rules for trade in the National Electricity Market to operate in the south-eastern States of Australia.

The development of the National Electricity Market is the culmination of reforms stemming from COAG decisions taken in July 1991 for the electricity industry and other micro-economic reform.



Photography by Arthur Mostead

The National Electricity Code sets out the rules for:

- the operation of the wholesale spot market;
- the institutional arrangements for the operation of the spot market;
- provisions for the safe and secure operation of the interconnected electricity grid;
- metering arrangements;
- the network pricing arrangements for regulation of the transmission and distribution networks; and
- the transitional arrangements that are to apply in each of the participating jurisdictions.

The Commission considered that the arrangements in the National Electricity Code would have efficiency benefits that should flow through to all Australians. Benefits would arise from the development of a wholesale electricity market which would facilitate competitive trading in electricity, including the dispatch of generation on a least-cost basis.

Benefits would also arise from access to transmission and distribution wires on a non-discriminatory basis, thus facilitating upstream and downstream competition. The benefits of reform arising from efficiencies would be passed on to end users through retail competition, which would also drive efficiency in the upstream wholesale market.

Overall, benefits were expected to stem from more efficient utilisation of infrastructure and capital, and the consistent and transparent treatment of all market participants across the interconnected grid.

Despite the huge potential for benefits from the implementation of the National Electricity Market, the Commission considered that a number of problems detracted from the code

and reduced the likelihood that the full benefits of electricity reform would be realised. It considered the benefits of reform would be limited where:

- market distortions, due to perceived market immaturity, are not removed in a timely manner;
- the market is not allowed to operate without excessive intervention;
- certain derogations from the NEM arrangements are allowed to continue indefinitely; or
- trading in the market does not reflect competitive outcomes.

On 29 August 1997 the Commission issued a draft determination proposing to grant conditional authorisation to the NEC. (See *Journal 10* for further detail.)

A pre-decision conference was held on 18–19 September 1997.

On 10 December 1997 the Commission granted conditional authorisation to the NEC. These conditions deal with the transitional arrangements, some market distortions within the code, market monitoring and some barriers to entry created by the code provisions. The authorisation of the National Electricity Code will not take effect until the amendments required by the Commission are in place.

Some parts of the code have also been submitted to the Commission as an access code under Part IIIA of the Trade Practices Act, setting out the arrangements by which third parties can obtain access to the network infrastructure. The Commission's assessment of the access code is the subject of a separate determination, still to be finalised.

Following the completion of the assessment of the NEM Code, the Commission expects to have a significant ongoing role in the electricity sector. Apart from the Commission's traditional role in enforcing Parts IV and V of the Trade Practices Act, the following areas of work will arise:

- participation in the review of network pricing being undertaken by NECA;
- code changes for the NEM as the code is modified in the light of operational experience;
- assessment of individual access undertakings under the access arrangements in the NEM Code;
- convergence in the utility sector with consequent merger and market power issues; and
- the regulation of transmission pricing from 1 July 1999.

Newspaper and magazine distribution in NSW/ACT, Queensland and Victoria

On 12 December 1997 the Commission announced it would reauthorise the arrangements for distribution of newspapers and magazines in each of NSW/ACT, Queensland and Victoria.

The Commission decided to revoke the present authorisation and to substitute a new authorisation until 1 February 2001. Newsagents will be able to seek authorisation before February 2001 for remaining anti-competitive aspects of the system that have sufficient public benefit.

The Commission, like the Tribunal, decided that there had been a material change of circumstances since the authorisation was granted in 1980 for NSW/ACT, and in 1982 for Queensland and Victoria. These included the style of retailing operations and trading hours, the rise of constant news availability in other media, and lifestyle changes, which all affected the nature of the demand for newspapers and magazines and the way that demand was satisfied.

However, the Commission also accepted that newsagents were entitled to a period of stability for some years to enable transition to proceed in an orderly manner.

The Commission's decision is in keeping with the Commonwealth Government's 1996 submission to the Commission to give newsagents a period of stability and to allow the

parties to seek new authorisations for any remaining aspects of the distribution systems that restrict competition. It is also consistent with the views of the Tribunal, which saw a need for a period of transition before any change.

The Commission's concerns related to the restrictive arrangements which operate in respect of the sale of publications by newsagents, reinforced by horizontal agreements between publishers regarding territories and appointment of newsagents.

An important feature of the newsagency system is the distribution of newspapers for both home delivery and for retail sales. There was concern that the Commission's consideration would adversely affect home delivery of newspapers.

The Tribunal in its decision and the Commonwealth Government in its submission, however, recognised that an efficient, low cost home delivery system has considerable benefits, is very much in the publisher's interest and is likely to continue. The Commission agreed that there was ongoing public benefit in ensuring such a system continued even if it needed to be supported by some form of territorial exclusivity imposed by publishers.

In relation to distribution of newspapers and magazines to outlets for retail sale, the Commission noted that currently most outlets, other than authorised newsagents, received supplies via their newsagent and must share the commission on a 50/50 basis with the newsagent regardless of the costs of delivery involved.

The Commission accepted that there were strong arguments by retailers of newspapers and magazines which currently depend on authorised newsagents for supply and by newsagents who feel shackled by the current system that it be changed over a short timeframe. But the Commission was also conscious that if it did not allow an appropriate period of transition from the current system other authorised newsagents would be disadvantaged.

In its determination, the Commission supported:

- widespread dissemination of information and critical comment;

- the operation of an efficient, low cost home delivery system for newspapers, even where this results in a territorial exclusivity;
- a mechanism to provide home delivery of newspapers to disadvantaged groups such as customers in outlying areas;
- opportunities for small business to develop delivery systems for newspapers and magazines; and
- the provision of a period of stability for newsagents and publishers to allow them reasonable time to adjust their operations to changing market circumstances.

The Commission expects that during the transition period, publishers and authorised newsagents will need to make changes and prepare for changes to those parts of the system which are anti-competitive and do not deliver public benefit.



Photography by Arthur Mostead

Bristile Holdings Limited

In relation to acquisition of WA concrete tile assets of Pioneer Building Products (A70010)

On 26 September 1997 Bristile Holdings Limited lodged an application for authorisation to acquire the Western Australian concrete tile assets of Pioneer Building Products (PRT) Pty Limited.

Bristile was the only manufacturer of clay roof tiles in Western Australia and was a wholly owned subsidiary of Bristile Limited, which also manufactured clay bricks and pavers under the name 'Metro Brick' and provided transport,

haulage and storage services under the name 'Temple Freights'.

Bristile proposed to acquire the business of manufacturing concrete roof tiles carried on by Pioneer in Western Australia, and to establish an entirely new brand of roof tile to be manufactured at the Pioneer plant.

Bristile claimed that Pioneer's concrete roof tile manufacturing operation in Western Australia was an uneconomic operation for the Pioneer group. Accordingly, Pioneer had determined to exit the market in Western Australia by sale or closure.

The Commission viewed the relevant market as the market for the manufacture, supply and fixing of clay and concrete roof tiles in Western Australia.

It concluded that Bristile's acquisition of the Pioneer business would result in a significant increase in industry concentration. It also believed that the level of concentration and size of Bristile's market share following the acquisition would significantly enhance Bristile's ability to exercise unilateral market power or coordinate actions with the few remaining firms in the market. The Commission considered that imports were unlikely to be a significant constraint on the pricing policies of the local manufacturers, and that there were substantial barriers to entry to the market.

The Commission had concerns that if the proposed acquisition were to proceed, Bristile would be able to exert a considerable degree of control over both clay and concrete tile prices in the market. It was also concerned that Bristile would derive economies of scope from the transaction by sharing overheads between its concrete and clay tile business. These savings would permit Bristile to pursue concrete tile prices that could not be sustained by its competitors in the long run.

The Commission concluded that if the merger proceeded, the combination of substantial barriers to entry and the rise in concentration along with the potential for Bristile to engage in strategic behaviour would increase Bristile's ability to exercise market power to the detriment of competition.

Further, in the Commission's view the competitive detriment that would arise as a consequence of the acquisition would be substantially greater than if Pioneer chose to exit the market and liquidate its business.

Bristile argued public benefits in several forms would flow from the acquisition, including industrial rationalisation cost savings allowing prices in the industry to be contained, enhanced exports and international competitiveness, and a retention of consumer choice.

However, the Commission came to the view that the public benefits that would flow from the acquisition were likely to be minimal and certainly not of sufficient magnitude to offset any significant public detriments.

The Commission concluded that the proposed acquisition of Pioneer's Western Australian concrete tile assets by Bristile would lead to a substantial lessening of competition in the Western Australian market for clay and concrete roof tiles. While accepting that there were some minimal public benefits from the acquisition, the Commission was of the view that such benefits were not sufficient to outweigh the anti-competitive detriment.

On 3 November 1997 the Commission issued a final determination denying the authorisation application.

Australian Stock Exchange Limited and Options Clearing House Pty Ltd

In relation to ASX business rules for derivatives (A90599)

- Draft determination proposing to grant conditional authorisation issued 24 September 1997
- Pre-decision conference held 3 November 1997
- Final determination proposing to grant conditional authorisation issued 3 December 1997

On 21 August 1997 the Australian Stock Exchange Limited (ASX) and Options Clearing House Pty Ltd (OCH) jointly lodged an application for authorisation in relation to

changes to ASX business rules which provide for participation and trading in ASX's automated derivatives markets.

The main issues considered by the Commission related to the regulation of participation and trading in ASX's derivatives markets.

In relation to the participation rules, the Commission considered that the public interest was served through maintaining investor confidence and protection by limiting access to the market to those participants who meet the capital adequacy requirements and the other admission criteria. Further, the Commission considered there was public benefit in rules which protected the integrity of the market though requiring clearing members to have adequate physical and staff resources and through the disciplining of participants for inappropriate conduct.

The Commission was concerned that some rules were subjective and undefined. However, it noted, in relation to options, that there were appropriate review and appeal mechanisms in place to ensure disciplinary action was not taken in instances where the circumstances did not warrant such action.

However, the Commission noted that these same review and appeal mechanisms did not consistently apply to the share ratios market. In particular, the Commission was concerned that the rules in relation to the approval and withdrawal of approval of SEATS ratio operators made no mention of rights of appeal against decisions by the Board (to uphold a decision by ASX to reject or withdraw approval) to the Appeal Tribunal.

Further, the Commission was concerned that rule 9.7.3(f) provided the ASX Board with an absolute discretion in relation to the approval of ratio advisers and also noted there were no rights of appeal against a decision by the Board to reject or withdraw approval as an authorised ratio adviser.

In relation to trading, the Commission considered the move to an automated system was likely to result in significant improvements on the old trading floor regime.

The Commission accepted that there was public benefit in setting minimum rules and standards which applied to all transactions and participants in the derivatives market to the extent that they contributed to the efficient operation of the market and provided for a more secure environment for investors, provided that they did not unreasonably inhibit competition.

Further, the Commission considered it important that ASX have powers to take immediate actions to protect investors and the integrity of the market and was satisfied that adequate safeguards existed to prevent ASX and participants from engaging in conduct which was detrimental to competition in the market.

On 24 September 1997 the Commission issued a draft determination proposing to grant authorisation subject to a number of conditions. A pre-decision conference was held on 3 November 1997, and further submissions were received following the conference.

On 3 December 1997 the Commission issued a final determination granting authorisation to ASX business rules contained in sections 7, 9, 10, 11 and 12 for five years. Authorisation of the rules contained in section 9 was made subject to the condition that ASX further amend the ASX business rules to:

- delete rule 9.7.3(f);
- include provisions for appeal to the Appeal Tribunal in relation to decisions by the ASX Board to reject or withdraw an application for an authorised ratio adviser; and
- include provisions for appeal to the Appeal Tribunal in relation to decisions to reject or withdraw approval as a SEATS ratio operator.

Notification

The Commission also considered notification N30723 lodged by ASX in respect of third line forcing exclusive dealing conduct. In particular, the conduct requires Registered Independent Options Traders (RIOTs) to acquire services from clearing members and refusing to register,

or continue to register, them as RIOTs unless they have in place at all times appropriate arrangements with a clearing member for the acquisition of such services.

The Commission was satisfied that the public benefits arising from enhanced market liquidity through having RIOTs trade in the market, balanced with maintaining financial integrity, were likely to outweigh any public detriments which might result through requiring RIOTs to clear their trades through a clearing member and decided to allow the immunity provided by the notification to stand.

Notifications

Notifications considered

Macquarie Bank Ltd (N90413) (Allowed to stand)

In relation to taking over share issues under CHESS and other marketable securities (such as units in public managed funds or trusts) (third line forcing).

Tammet Pty Ltd Service Station (N90415) (Allowed to stand)

Exclusive dealing notification for offer of discounted fuel for customers bearing any supermarket docket (third line forcing).

Lyndel Nominees Pty Ltd Service Station (N90416) (Allowed to stand)

Exclusive dealing notification for offer of discounted fuel for customers bearing any supermarket docket (third line forcing).

Morcon Pty Ltd Western Service Station (N90417) (Allowed to stand)

Exclusive dealing notification for offer of discounted fuel for customers bearing any supermarket docket (third line forcing).

Lewnat Pty Ltd Mobile Erindale (N90418) (Allowed to stand)

Exclusive dealing notification for offer of discounted fuel for customers bearing any supermarket docket (third line forcing).