Regulatory issues

Telecommunications

Telstra's undertakings for PSTN, GSM and AMPS originating and terminating access

On 7 November 1997 Telstra lodged three access undertakings with the Commission. These undertakings specify the terms and conditions upon which Telstra undertakes to meet its standard access obligations to supply PSTN (public switched telephone service), GSM (digital mobile) and AMPS (analogue mobile) originating and terminating access. The undertakings cover a period of three years.

Under Part XIC of the Trade Practices Act the Commission, after considering an access undertaking, must accept or reject the undertaking. The Commission has published the undertakings and released a discussion paper to assist parties in making submissions to the Commission.

The Commission has commenced its analysis of the undertakings, and intends to publish its findings and preliminary views. It will invite further submissions and may hold a public forum to allow parties to comment on its analysis and preliminary views.

It is unlikely, however, that the above process will be completed before mid-1998.

The undertakings and the Commission's discussion paper are available from its website.

TAF access code

In December 1997 the Commission approved the access code developed by the Telecommunications Access Forum (TAF), which included model terms and conditions for access to declared services, including originating and terminating access services on the public switched telephone network (PSTN), global systems for mobiles (GSM) and advanced mobile phone system (AMPS) networks, transmission services, digital data access, conditioned local loop and AMPS to GSM diversion services. The code provides a fast-track approval route for access undertakings which adopt the code's model terms and conditions. The code will provide more certainty for both access providers and access seekers, and eliminates the need for each term and condition to be individually negotiated. The code's development demonstrates that industry self-regulation can work and has an important and continuing role.

Domestic intercarrier roaming

In September 1997 the Minister for Communications asked the Commission to consider conducting an inquiry into whether domestic intercarrier roaming should be 'declared' under Part XIC of the Trade Practices Act, to provide potential bidders of the upcoming spectrum auction with as much certainty as possible as to their ability to roam onto the existing digital networks. Under Part XIC, services can be declared if they are in the long term interests of end-users.

Roaming, whether commercially negotiated, or provided under the access regime as a declared service, will facilitate new entry in mobile communications by allowing customers of the new network to roam onto existing networks where it has no current presence. Therefore new entrants will be able to offer 'national coverage' before their own network rollout is completed.

The Commission is currently conducting an inquiry into whether to declare services facilitating intercarrier roaming between existing and new digital mobile networks, to be established in the 800 MHz and 1.8 GHz

bands, and held a public hearing in Melbourne on 20 January 1998.

The Commission has worked with interested parties and the TAF to establish what services could be declared. It also engaged a consultant to provide technical advice on the nature of roaming and related services.

Facilities Access Code

Upon request from the Minister for Communications, the Commission has developed a draft code of access to telecommunications transmission towers, tower sites and underground facilities (Facilities Access Code). Compliance with a facilities access code will be a licence condition for carriers. This code will provide interested entrants to the mobile market with guidance on the processes and procedures for obtaining access, and will encourage the co-location of facilities where reasonably practicable. The Commission is currently assessing the public submissions received in response to the draft code and intends to have a code finalised by late March 1998.

Competition in data markets

The Commission is conducting a public inquiry into Integrated Services Digital Network (ISDN) and other data services. The purpose of the inquiry is to consider whether to amend the service declaration of the already declared services of 'digital data access' and 'transmission capacity', and to consider whether to declare domestic ISDN originating access and domestic ISDN terminating access. The inquiry was initiated partly in response to requests from the TAF, and partly in response to the Commission's investigation into alleged anti-competitive conduct in relation to ISDN supply and pricing. This highlighted the need for urgent consideration of the extent of regulation of the ISDN market. The Commission hopes to complete the inquiry by the end of March 1998.

Gas

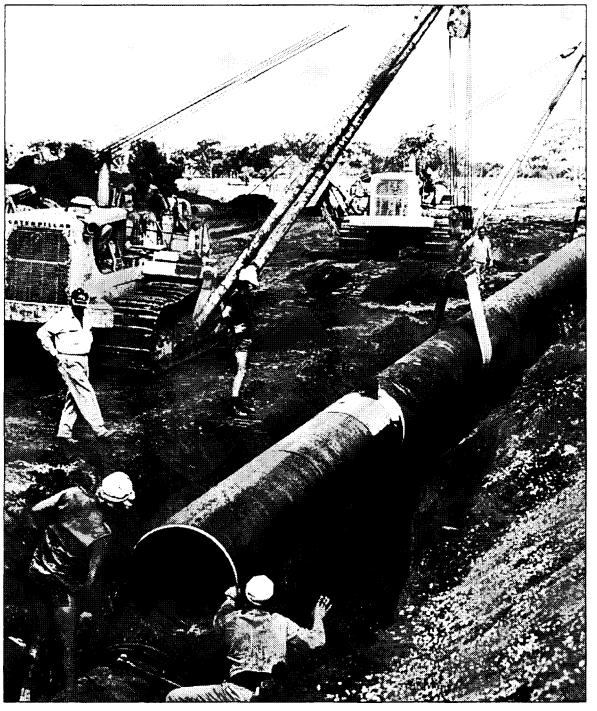
Victorian gas industry issues paper

The Commission has released an issues paper following a submission by the Victorian Government of proposed gas transmission pipeline access arrangements for approval by the Commission under the Victorian Third Party Access Code for Natural Gas Pipeline Systems.

The issues paper also covers a related application for authorisation under Part VII of the Trade Practices Act of Service Performance Contracts, and the expected application for authorisation of the Victorian Gas Industry Market and System Operations Rules.

The issues paper provides an overview of the various arrangements, applications and associated documents submitted to the Commission. It also lists a number of issues that the Commission has identified as relevant to its assessment of the access arrangements and authorisation applications.

The issues paper is available from Kristine Gill on (02) 6243 1274 and at the Commission's website.



Geelong autogas pricing study

The Commission recently examined Geelong autogas pricing and found that Geelong consumers pay more for autogas than their Melbourne counterparts.

This follows from either a lack of incentive or willingness to compete by those in the market, rather than from any apparent breach of the Trade Practices Act.

No evidence of Trade Practices Act breaches was found, but the Commission will continue to monitor prices and pursue any evidence relating to suspect behaviour.

The study was sought by the RACV after numerous complaints about price differences between Geelong and Melbourne. Significant discounting and price volatility for the product ceased in Geelong in 1993.

Melbourne differs from Geelong in that it has significantly higher levels of competition, with more than 600 service stations selling autogas. There are only about 50 such sites in the Geelong area. In Melbourne there are more players at the marketer/wholesaler level, higher average volume throughputs per retail site and generally greater diversity of products offered at service stations.

Additionally, there are independents in Melbourne who actively seek autogas volume by discounting so there is greater pressure on Melbourne retail prices and wholesalers often must discount their supply prices to protect their volume through retail sites.

Despite the lack of autogas price discounting in Geelong since 1993, the Commission observed that the persistent discounting of petrol in Melbourne continues to spread into the area. With returns to retailers in Geelong under pressure for petrol and, in many cases, the lower levels of diversification of products sold from local retail sites, the incentive to discount other fuels, such as autogas and distillate, lessens in places like Geelong.

The study found that when discounting of autogas stopped in Geelong, a key player opted to chase margin on this product rather than volume, thereby maximising revenue. Without competitive pressures that player has not been forced to reconsider that approach, although this may change following Woolworths' entry to the market in December 1997.

Due to confidential information gathered during its study, the Commission will not release a report on the matter, but a brief summary is available from the Commission's Melbourne office.

Airports

Declaration of airports services discussion paper

In December 1997 the Commission released a discussion paper, *Declaration of Airport Services — Section 192 of the Airports Act*, outlining its initial assessment of services at privatised Phase 1 airports that are subject to declaration for access by third parties.

Background

Under s. 192 of the *Airports Act 1996*, 12 months after privatisation of core regulated airports, any airport service for which an access undertaking under Part IIIA of the Trade Practices Act has not been accepted by the Commission will be automatically declared for access.

The Airports Act does not list airport services subject to declaration. Instead, it outlines the criteria against which airport services can be assessed for declaration. However, these criteria differ from those used to assess services for declaration under Part IIIA. Services subject to declaration under the Airports Act are airport services provided at core regulated airports that are both:

(i) necessary for the purposes of operating and/or maintaining civil aviation services at the airport; and

(ii) provided by means of significant facilities at the airport, being facilities that cannot be economically duplicated.

The discussion paper is designed to provide the aviation industry with the Commission's preliminary views on which airport services are likely to be declared under the Airports Act and assist the industry in understanding the declaration criteria and associated access issues.

In the discussion paper, the Commission interprets each of the declaration criteria and assesses whether certain services provided by airport operators satisfy the criteria.

Photography by Arthur Mostead

Interpreting the criteria

Criterion (i): necessary for the purposes of operating and/or maintaining civil aviation services at the airport

Criterion (i) limits the application of s. 192 to civil aviation services. The Commission interpreted this criterion as excluding non-essential services such as those provided by retail outlets.

In assessing which airport services meet criterion (i), the Commission drew on the National Competition Council's decision to recommend declaration of freight handling services at Sydney and Melbourne Airports and work by the former Prices Surveillance Authority (PSA) on airports, in particular its inquiry into the aeronautical and non-aeronautical charges of the Federal Airports Corporation. In that report the PSA considered the question of which services and facilities are functionally necessary for aviation services.

Criterion (ii): provided by means of significant facilities at the airport, being facilities that cannot be economically duplicated

In assessing criterion (ii) the Commission focused on the concept of 'economic to duplicate'. The wording of this criterion is similar but not identical to the 'uneconomical for anyone to develop another facility to provide the service' test in s. 44G(2)(b) of Part IIIA of the Trade Practices Act.

In interpreting criterion (ii) the Commission was guided by the NCC's approach to s. 44G(2) and its decision on the Australian Cargo Terminal Operator's application for declaration of freight handling services:

> The Council sees these tests [as set out in criterion (ii)] as no more stringent than the tests in section 44G(2)(b) and (c). To the extent that the application [for declaration of freight handling facilities at Sydney and Melbourne Airports] meets this criteria, the Council concludes that the service meets the requirements of the second element of the definition of 'airport service'.[1]

The NCC concluded that Sydney and Melbourne Airports had characteristics that gave them 'significant market power and natural monopoly characteristics' and that it would be uneconomical for anyone to develop another airport.

In relation to whether specific airport services could be economically duplicated, the Commission also considered the following:

- Could the service be provided at an off-airport location?

1 NCC, 'Applications for declaration of certain airport services at Sydney and Melbourne international airports — Reasons for decision', May 1997, p. 54.

- Could the service be provided at another airport?
- Could the service be economically duplicated on-site?

A key issue for the Commission in assessing whether services can be provided off-site is the link between the service in question and other airport facilities, such as runways. In some cases the complementarity of services may mean that a particular service cannot meaningfully be provided in isolation from other services.

Conclusion

The Commission concluded that the services likely to be declared under s. 192 of the Airports Act were:

- airside facilities (runways, taxiways, aprons, etc.);
- passenger processing areas (check-in, holding lounges, immigration and customs service, etc.);
- sites for providing refuelling;
- sites for storing ground service and freight handling equipment;
- sites for light/emergency maintenance; and
- landside vehicle facilities.

The Commission's discussion paper is available from Lisa Francis on (03) 9290 1870 or the Commission's website.

Photography by Arthur Mostead

National Competition Council update

National water reform

In February 1994 the Council of Australian Governments resolved to develop a strategic framework to reform the Australian water industry. The framework provides a comprehensive program for reforming both urban and rural water sectors and includes:

- pricing reform based on the principles of consumption based pricing, full cost recovery, and removal of cross-subsidies, with remaining subsidies made transparent;
- implementation by States and Territories of comprehensive systems of water allocations or entitlements;
- by 1988 the structural separation of the roles of services provision from water resource management, standard setting and regulatory enforcement;
- adoption of two-part tariffs for urban water where cost effective;
- the introduction of arrangements for trading in water allocations or entitlements;
- by 2001 rural water changes reflecting full cost recovery and the achievement wherever practicable of positive real rates of return on the written-down replacement costs of assets; and
- future investment in new schemes or extensions to existing schemes which are economically viable and ecologically sustainable.

National competition policy reforms

In addition to the specific package of water reforms the water sector is also subject to the general national competition policy (NCP) reforms. Therefore it is subject to the requirements of prices oversight of government

business enterprises, competitive neutrality policies and principles, structural reform of public monopolies and review of restrictive legislation.

Some of the principles for reform in these areas have already been incorporated in the specific water reform package. However, some of the general NCP provisions are stronger than those contained in the strategic framework. For example, the requirement for governments to move toward corporatisation of their major urban water authorities is stronger under the competitive neutrality provisions.

Access

To date there have been no formal access applications under Part IIIA in relation to water infrastructure. The NCC has, however, been approached several times about issues regarding access to water infrastructure services and considers that access may become an issue in the future. There has been some discussion with the NCC about whether or not water infrastructure services meet the conditions which would make them open to declaration under Part IIIA.

To assist thinking in this area, the NCC commissioned Tasman Asia Pacific to examine whether water facilities are likely to meet the criteria for declaration under the National Access Regime. Tasman concluded that in some circumstances services provided by water infrastructure facilities could meet the criteria. A key finding of the report was that other aspects of water reform, such as price reforms, need to be developed in parallel with any introduction of third party access for water services.

The task ahead

Implementation of national water reforms extends beyond competition policy matters to embrace social policy issues such as recognising the environment as a legitimate user of water. As a result the NCC considers the implementation of the reforms has the potential to have a greater impact on community welfare than any other single NCP measure. It will therefore treat the implementation of agreed water reforms as a high priority in its assessment of second and third tranche payments.

For further information contact Paul Swan at the NCC on (03) 9285 7479.

National gas reform

The NCC is playing a significant role in progressing the reform of Australia's natural gas industry. The reforms are aimed at promoting free and fair trade and lower prices for consumers.

Historically, Australia's natural gas industry evolved as a series of State-based operations dominated by a few large enterprises. Within each State a single transmission pipeline connected a single gas basin with population and industrial centres. Competition was constrained by the 'natural monopoly' characteristics of gas pipelines, and governments supported anti-competitive arrangements to facilitate development of the industry.

This resulted in highly integrated supply chains in each State supported by long-term exclusive contracts between producers, pipeliners and retailers. This has meant that gas has been supplied to customers as a bundled package of gas and gas haulage services from a monopoly distributor supplied by other vertically integrated monopolies.

To address these concerns COAG resolved in February 1994 to remove impediments to free and fair trade in natural gas. Payments to the States were made dependent on adequate progress in implementing the reforms. The NCC recommends to the Federal Treasurer in 1997, 1999 and 2001 as to whether each jurisdiction has satisfied its commitments on gas reform.

National Gas Access Regime

The NCC, as part of the Gas Reform Implementation Group, played a role in developing the national access code for gas pipelines. The code, which was finalised in 1997, will provide persons with the right to

negotiate access to gas pipeline services on reasonable terms and conditions approved by an independent regulator — with a right to binding arbitration to resolve disputes.

Customers will be able to buy gas directly from a gas producer of their choice and purchase gas transportation separately from a gas pipeline company or through a gas retailer.

The States and Territories will apply to the NCC for certification of their access regimes established under the national code. The NCC will seek public comment on each of the regimes. In particular it will need to be convinced of the merit of any proposed derogations from the code.

All States and Territories are expected to have implemented the national code by 30 June 1998. The NCC will consider each jurisdiction's progress in implementing the code when recommending the second instalment of the first tranche competition payments.

The NCC will also make recommendations on applications under Part IIIA of the Trade Practices Act to declare services provided by gas pipelines.

The NCC's report on the national gas access regime is available from the NCC or its website at *http://www.ncc.gov.au*. The national code is available at the DPIE website at *http://www.gasreform.dpie.gov.au*. For further information contact Michelle Groves on (03) 9285 7476, Steven Ross on (03) 9285 7785 or Stephen Dillon on (03) 9285 7481.