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# Regulatory issues

## Telecommunications

### Facilities Access Code released

On 12 March 1998 the Commission released a Facilities Access Code under which telecommunication carriers can get access to certain facilities of other carriers.

The code will assist new mobile carriers to gain access to the telecommunications towers and sites of other carriers. This should promote the entry of new carriers, including new mobile operators.

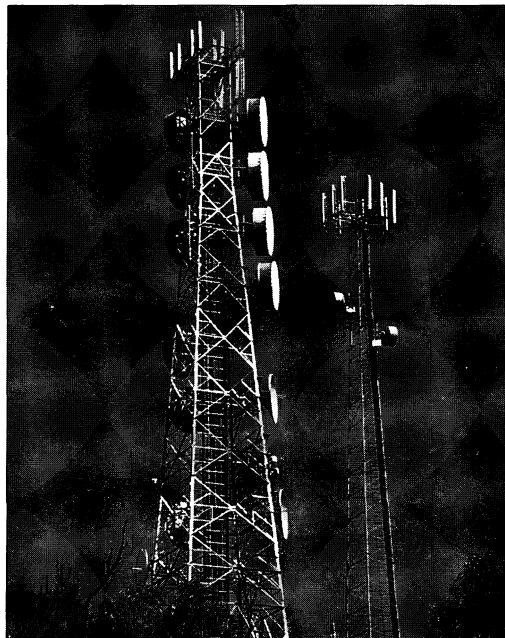
The code is designed to provide a streamlined, timely process for the co-location of facilities, thereby avoiding unnecessary duplication of infrastructure and reducing entry costs for carriers wanting to provide new mobile, wireless and fixed telecommunications networks in competition with Telstra, Optus and Vodafone.

The Minister for Communications, the Information Economy and the Arts, Senator Alston, asked the Commission to consider whether a code for access to telecommunications facilities should be developed.

A particular concern was that the code facilitate entry by new mobile and other radio-based telecommunications providers through access to existing mobile/radio facilities. The code needed to be in place before the spectrum auction in the first half of 1998.

A revised draft of the code, which also covers access to underground facilities, was released for further public comment on 14 April 1998. It is available from the Commission's website.

The Commission intends to table the final code in Parliament by mid-May 1998.



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### Number portability

On 15 April 1998 the Commission issued a draft guide on pricing principles for local telephone number portability. Local number portability, available from 1 May 1998, allows consumers to change their supplier of local telephone calls whilst keeping their number.

The Commission considers that telecommunications carriers should be responsible for their own costs of providing local number portability. The draft guide states that the only costs that should be recovered from the carrier receiving the customer are the administrative costs associated with the customer 'porting' the number. These are a minor proportion of the total costs of providing local number portability.

The guide sets out the principles that the Commission will apply if it is required to arbitrate a dispute between carriers over the terms and conditions of local number portability.

It is available from Commission offices and the Commission's website.

### **Draft guide to declaration of telecommunications services**

On 6 April 1998 the Commission issued a draft guide on the declaration of telecommunications services under Part XIC of the Trade Practices Act.

Part XIC is a key component of the new telecommunications regulatory framework and underpins the development of effective competition within the industry.

Through declaration, the Commission can require carriers such as Telstra to provide competitors with the services they need to supply competitive services to end-users.

Before the Commission can declare telecommunications services, it must be satisfied that declaration will promote the long-term interests of end-users.

A declaration of certain telecommunications services is a decision to regulate the terms and conditions on which those services are supplied to service providers. As such, the Commission must balance the benefits and costs likely to flow to end-users from regulation. The guide outlines the way in which the Commission proposes to approach this task.

Copies of the draft guide are available from the Commission's Melbourne Office and from its website.

### **Local call inquiry**

The Commission is currently conducting a public inquiry into whether local call resale and local interconnection services should be declared.

The inquiry will determine whether competitors should be able to interconnect more directly to customers' premises and whether local call resale should be subject to direct regulation by the Commission.

Following a public meeting to be held in Sydney on 9 June 1998, the Commission will issue a

draft report on its findings for further comment before issuing a final report.

A discussion paper outlining the inquiry process and identifying the key issues on which the Commission is seeking comment is available from Commission offices and its website.

### **Digital data and ISDN services**

On 30 April 1998 the Commission released its draft decision to declare ISDN services and amend the current declaration of digital data access services.

The decision should promote competition in the market for data-related services, including Internet, frame-relay and other services that facilitate electronic commerce, and therefore should help accelerate the development of Australia's information economy.

The decision effectively means that Telstra, the prime supplier of data services and the only provider of ISDN services, will be required to supply the services to access seekers on terms that ultimately can be arbitrated by the Commission if the parties cannot otherwise agree.

Declaration gives service providers greater flexibility and stronger bargaining power in their negotiations with Telstra to get access to network services which they can then use to provide a range of data-related products. This is likely to see increased competition, a better range and quality of products, and lower prices for end users.

By amending the service description for the digital data access service, which has already been declared, the Commission is removing unnecessary technical constraints imposed by Telstra in the service's provision. This should promote competition, particularly in regional markets, and allow service providers to offer innovative and cost effective solutions to customers.

The Commission began a public inquiry into competition in data markets with the issue of its discussion paper in December 1997. The inquiry examined whether to declare certain ISDN services for access and whether to amend

existing declarations for the digital data access service and transmission capacity (see below).

As a result of Telstra's veto over the Telecommunications Access Forum (TAF) reaching agreement on declaration of these services, individual members of the TAF made submissions to the Commission to undertake a public inquiry into the declaration of the services.

The Commission can declare services for access or make variations to declared services where it is in the long term interests of end users as defined in s. 152AB of the Trade Practices Act.

It has issued draft reports to enable interested parties to provide any further views they might have on the declaration of ISDN services and on amendments to the declaration of digital data access services. In particular, it is seeking comments on the definition of the ISDN service that is proposed for declaration, which is different from that initially provided by TAF members at the beginning of the inquiry. The definition has been put in functional terms, and unnecessary technical elements have been removed. The Commission wishes to ensure that the revised descriptions meet the needs of access seekers.

### **Intercapital transmission**

On 11 May 1998 the Commission issued its draft decision to declare intercapital and high bandwidth transmission services and to make technical amendments to the current transmission services declaration.

Declaration should promote competition in the voice and data-related services markets, including national and international telephone services, Internet and other high-bandwidth data services.

The decision would mean existing suppliers of transmission services, including Telstra and Optus, must supply the services to access seekers on terms that ultimately can be arbitrated by the Commission if the parties cannot otherwise agree.

In forming its draft view that declaration is in the long term interests of end-users, the Commission was concerned to ensure that regulatory tools were used appropriately and in a measured way in order not to discourage new investment in transmission infrastructure, whether from current providers or new entrants. The Commission understands there could be a number of new entrants which, in time, may further pressure Telstra and Optus to compete more intensely.

However, the Commission was also particularly concerned to see more competitive pricing introduced for transmission services quickly, especially for long-haul and higher capacity services above 2 Mbps. Continued high prices for these services seem to be holding back competition in both voice and non-voice services.

To allay concerns that declaration will force prices to unsustainable levels and discourage new entry and new investment, the Commission will provide further guidance on possible pricing approaches before making its final decision. This would include its approach to issues involved in the estimation of the costs for intercapital transmission, such as the treatment of excess capacity and rates of return commensurate with risk. The Commission is seeking the views of interested parties on these aspects.

It issued a draft report to give interested parties the opportunity to comment on the declaration and amendments.

## **Electricity**

### **National Electricity Code update**

On 10 December 1997 the Commission issued a determination in relation to the applications for authorisation of the National Electricity Code. The Commission concluded that, despite structural and administrative reform to the electricity industry at the jurisdictional level, the full benefits of reform would not be realised without the implementation of the national electricity market and access arrangements.

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It considered that the national arrangements had efficiency benefits in terms of better utilisation of infrastructure and capital than allowed for in the current State based regimes. The arrangements would also give rise to efficiency benefits from transparent and uniform treatment of wholesale participants across the interconnected grid.

However, the Commission identified a number of elements in the code that it considered detracted from the potential public benefit, and imposed a number of conditions to be met before authorisation could take effect.

On 18 February 1998 and 27 April 1998 NECA lodged with the Commission a number of proposed amendments to the National Electricity Code.

The Commission has called for submissions on the amendments, especially those submitted by NECA on 27 April 1998. The closing date for submissions is 15 June 1998.

The authorisation application and the proposed amendments to the code, together with other relevant material, are available from NECA's website at <http://www.neca.com.au>

For further information please contact the Electricity Group on ph. (02) 6243 1249 or email [electricity.group@acc.gov.au](mailto:electricity.group@acc.gov.au).

## Gas

### National access code — gas

On 7 November 1997 Australian Governments agreed that the Commission would take on the role of regulator for third party access to natural gas transmission pipelines in all States and Territories other than Western Australia, which will appoint its own independent regulator. The Commission will also be the regulator for the Northern Territory distribution system.

The national access regime for natural gas pipeline systems (transmission and distributions) is underpinned by the National Third Party Access Code for Natural Gas Pipeline Systems. Under the code the operator of a covered transmission pipeline is required to lodge an access arrangement with the Commission.

On 3 November 1997 Victoria submitted three access arrangements for consideration under the Victorian gas code ahead of the national code coming into effect. Other pipeline operators are expected to lodge their access arrangements during 1998.

## Victorian gas transmission access arrangements

On 3 November 1997 the Energy Projects Division (EPD) of the Victorian Department of Treasury and Finance submitted access arrangements for the Victorian natural gas transmission systems to the Commission for approval under the Victorian code. EPD also lodged access arrangements for the three Victorian gas distributors with the Office of the Regulator-General.

The Victorian Government introduced the Victorian code in advance of the national code to help expedite the restructuring of its natural gas systems at the transmission, distribution and retail levels. The Victorian code largely mirrors the national code and is expected to be superseded by it. The three transmission access arrangements being assessed by the Commission are from:

- Transmission Pipelines Australia Pty Ltd and Transmission Pipelines Australia (Assets) Pty Ltd for gas transmission services on the Principal Transmission System;
- Transmission Pipelines Australia Pty Ltd and Transmission Pipelines Australia (Assets) Pty Ltd for gas transmission services on the Western Transmission System; and
- VENCORP as operator of the Principal Transmission System.

In addition VENCORP has applied to the Commission for authorisation of the market system and operation rules under Part VII of

the Trade Practices Act. GASCOR has applied for authorisation of a generic gas service performance contract between Gas Services Business Pty Ltd and the various transmission and distribution entities. Gas Services Business is the new company formed by the Victorian Government to provide various maintenance and administration services previously carried out by GASCOR.

The Commission intends to release its draft determination on the access arrangements and related authorisation applications at the same time, and understands the Office of Regulator-General intends to release its draft determinations concerning the Victorian distribution access arrangements in a similar time frame. This will provide an opportunity for interested parties to make further submissions.

## Airports

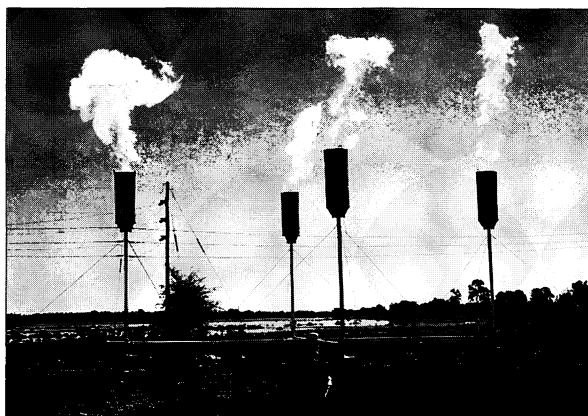
### ACCC airport access workshop

On 20 February 1998 the Commission held an airport access workshop to explain the Part IIIA legislative framework as it affects the aviation industry and provide guidance to airport operators in developing undertakings. The workshop also provided a forum for industry views on the coverage of s. 192 of the Airports Act. Topics discussed included dispute resolution mechanisms, access pricing principles for airports and airport services likely to be declared.

The Commission invited Alan Limbury from Strategic Resolution to speak on dispute resolution mechanisms to assist airport operators in drafting access undertakings. Mr Limbury is an expert in competition and antitrust law and is a leading practitioner in alternative dispute resolution. He is a member of the Trade Practices Committee of the Business Law Section and Chairman of the Alternative Dispute Resolution Committee of the Law Council.

In his presentation he discussed alternative approaches to dispute resolution and

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arbitration in airport access undertakings, as outlined below.

Mr Limbury commented on two dispute resolution models as possibilities for the aviation industry. The first model involves the establishment of an expert committee with expertise in the aviation industry. The committee arbitrates the dispute and imposes a solution. This model may have the advantage of providing the continuity that an *ad hoc* arbitrator might not provide. A possible disadvantage is that arbitrators often seek a middle ground between the positions of the parties. This might encourage the parties to push the middle ground off centre by putting extreme positions. However, this problem might be overcome by the development of alternative mediation/arbitration strategies such as 'US baseball arbitration', mediation/arbitration, and a South African hybrid.

US baseball arbitration requires each party to give its most reasoned claim to the arbitrator. The arbitrator then must choose the most reasonable claim, which becomes the final determination. This approach gives the parties an incentive to put a reasonable position. An extreme position is less likely to be chosen by the arbitrator.

Mediation/arbitration involves an individual acting as mediator between the parties and then, if no agreement is reached, acting as an arbitrator. The advantage of this model is that the mediator/arbitrator has full information about the positions of the parties to make an informed and fair decision. However, concerns may arise as to the legitimacy of the arbitrated determination because, as mediator, the arbitrator becomes aware of the parties' bottom line.

The South African hybrid approach allows the arbitrator to make an impartial decision at the beginning of the process (which is kept secret) and then to guide the parties as mediator to a resolution. If there is no agreed resolution the parties are bound by the initial decision made by the arbitrator (which is revealed). The advantage of this process is that it may overcome the concerns about the mediation/arbitration approach mentioned previously. However, it is much more

expensive to run a full scale arbitration that may ultimately prove to be unnecessary if the parties agree during the mediation stage.

The second model involves the introduction of a dispute resolution adviser, who could be appointed by an industry administration committee. Mr Limbury considered this model to have a number of desirable properties. The dispute resolution adviser is independent of the conciliator and the mediator, who are also present in this model. The role of the dispute resolution adviser is to provide advice, on request, on methods of resolving the matter. The dispute resolution adviser could be an airport industry representative or someone whose expertise is in dispute resolution, or both. An expert in dispute resolution was the preferred option, however, as he/she would learn about the aviation industry during the appointed time in the role, would be trained in dispute resolution and would be less likely to bring pre-existing prejudice to the negotiations.

### **Airports access undertakings**

The Commission has received access undertakings from Melbourne and Perth Airports under the access provisions of the Trade Practices Act.

The undertakings establish the terms and conditions for airport users to access a range of services at the airports, including services provided by airside facilities (runways, taxiways, aprons, etc.); passenger processing areas; and aircraft refuelling, equipment storage, cargo, and maintenance sites.

On 14 May 1998 the Commission issued a draft determination proposing to reject Melbourne Airport's access undertaking in its current form. The draft determination gives a detailed assessment by the Commission of each section of the undertaking. Melbourne Airport and interested parties have the opportunity to comment on the draft determination before the Commission makes its final determination. Melbourne Airport can vary its undertaking and resubmit it to the Commission for further assessment.

If the Commission does not accept the undertakings some airport services will be automatically declared as of July 1998.

The Commission is still considering the Perth Airport access undertaking.

Copies of Melbourne Airport's access undertaking, the draft determination, an issues paper and a number of submissions are available from Lisa Francis on (03) 9290 1870 or from the Commission's website. Perth Airport's access undertaking and an issues paper are available from Catherine Maloney on (03) 9290 1856 or from the Commission's website.

## National Competition Council

### Australia Post review — final report

On 11 March 1998 the NCC released its final report on its review of the provision of postal services in Australia. The NCC undertook a review of the *Australian Postal Corporation Act 1989* as part of the Commonwealth Government's national competition policy review of legislation that restricts competition.

The NCC recommended that Australia Post's obligation to provide an Australia-wide letter service be retained and that it be fully funded. It also recommended the retention of Australia Post's reservation for the carriage of household letter services, with a mandated uniform rate of postage. The main changes recommended were the introduction of open competition in business letter service and in all international mail services.

It also recommended that the postage rates for household letters continue to be subject to prices oversight by the ACCC, and that Australia Post should not be permitted to charge more than the uniform rate for the delivery of business letters.



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