
Adjudication

Authorisations

The Commission has the function, through the authorisation process, of adjudicating on proposed mergers and certain anti-competitive practices that would otherwise breach the Trade Practices Act.

Authorisation provides immunity from court action and is granted if the Commission is satisfied that the practice delivers offsetting public benefits.

Determinations

The full reports of the following five determinations can be obtained from the ACCC website at:
<<http://www.accc.gov.au/electric/fs-elec.htm>>.

National Electricity Code Administrator

In relation to code changes for network pricing and market network service providers (A90704-6)

- Draft determination issued on 28 December 2000.
- Final determination issued on 21 September 2001.

On 26 July 1999 the Commission received applications for authorisation of changes to the National Electricity Code. The proposed amendments to the code outlined in the applications deal with arrangements to allow the participation of market network service providers (MNSPs) in the national electricity market (NEM).

At the same time, the National Electricity Code Administrator (NECA) also submitted an application to vary the NEM access code to encompass changes to the network connection and network pricing arrangements. The authorisation and access code applications were amended on 18 August 1999, at which time NECA also sought authorisation of the network pricing code changes and an approval to vary the access code to take into account the MNSP code changes.

In its original authorisation of the code (10 December 1997) the Commission expressed its concerns that the code's network pricing arrangements provide little incentive for the efficient location of investment in network or generation options. The Commission stated that:

The Commission's acceptance of the applicants' position has been on the basis that the code will deliver overall public benefits provided the concerns of users will be addressed in, and the necessary code changes will be made as a result of, NECA's review of network pricing. However, if the NECA review is unable to deliver code changes which result in a more efficient set of network prices, then the expected balance between public benefit and anti-competitive detriment may be materially different and may provide grounds for the Commission to revoke this authorisation.

The Commission considers that its original concerns about investment and location incentives have not yet been fully addressed. The Commission has therefore imposed conditions of authorisation to address these concerns and requires further work on the scope for improvement of the network pricing arrangements. Such work will consider:

- greater integration of transmission signals into the energy markets;
- improved usage pricing;
- an effective beneficiaries-pay approach to new network investments; and
- financial transfers to support a market-wide, user-pays approach to the existing network and uniform general charges.

Apart from the above concerns, the Commission has identified some other issues that detract from the public benefit of the network pricing arrangements and which must also be addressed.

National Electricity Code Administrator

In relation to Queensland technical derogations (A90751-3)

- Draft determination issued on 12 September 2001.
- Final determination issued on 3 October 2001.

On 24 October 2000 the Commission received applications for authorisation of changes to the national electricity code. The applications were submitted by NECA on behalf of the Queensland Government. The code changes aimed to ensure the Queensland/New South Wales interconnector (QNI) was commissioned in time for the 2000–01 summer demand in Queensland. The Commission granted a conditional interim authorisation to amend the code on 6 December 2000.

The Commission maintains its view that varying transition periods and different derogations in the participating jurisdictions may have anti-competitive effects, by providing a competitive advantage to participants in their respective jurisdictions. And that the operation of the derogations, by limiting the universal application of the code, will affect the public benefits that the code is expected to deliver.

However, the Commission decided that the proposed code changes would deliver public benefits that outweigh any associated anti-competitive detriment subject to a condition. The condition is the same as that included in the Commission's interim authorisation of 6 December 2000, so it should not require any additional code changes nor alter the operation of the NEM since the commissioning of the QNI in February 2001.

The Commission proposes to limit the period of authorisation to 31 December 2010.

National Electricity Code Administrator

In relation to treatment of losses, interim issues and inter-regional transfer of TUoS (A90766–8)

- Draft determination issued on 1 June 2001.
- Final determination issued on 19 September 2001.

On 8 December 2000 the Commission received applications for authorisation of changes to the national electricity code. The proposed amendments to the code outlined in the applications dealt with:

- inter-regional transfer of transmission use of system charges (TUoS); and
- treatment of losses (interim issues).

NECA requested that interim authorisation be granted to both sets of code changes in the applications and, on 12 December 2000, the Commission granted interim authorisation to the applicants.

On 18 December 2000 the applications were amended to include code changes relating to:

- improvements to the projected assessment of system adequacy;
- pricing under extreme conditions;
- demand-side participation; and
- end-user advocacy.

In this amended application, NECA requested that the Commission grant interim authorisation to the code changes relating to pricing under extreme conditions. On 14 February 2001 the Commission granted interim authorisation to the code changes clarifying the pricing provisions in the code.

The Commission commented that:

For the first time consumer groups and Australian businesses will have the same rights as generators, transmission networks and electricity retailers in influencing changes in the rules governing the operation of the national electricity market.

The ACCC's decision means that consumers will now be better placed to benefit from competition in the electricity market.

The changes will require NECA and NEMMCO to improve their consultation with consumer groups and businesses.

An industry levy will also be imposed to ensure that consumer groups are better resourced to take part in the continuing development of the NEM.

The Commission's determination also authorises other amendments to the NEM that are broadly aimed at enhancing the operation of the market through improved information provision, increased demand-side participation and the preservation of pricing signals when there is an imbalance in electricity supply and demand.

National Electricity Code Administrator

In relation to change to Victorian derogation on full retail competition (A90786–8)

- Draft determination issued on 4 July 2001.
- Final determination issued on 8 August 2001.

On 19 March 2001 the Commission received applications for authorisation of amendments to the derogations contained in chapter 9 of the national electricity code. The applications were submitted by NECA on behalf of the Energy Policy Division of the Victorian Department of Natural Resources and Environment (EPD). The proposed derogations relate to the metering arrangements of chapter 7 of the code.

The EPD is seeking to amend the derogations contained in chapter 9 of the code, in conjunction with the introduction of full retail competition (FRC) in Victoria. The proposed changes to the Victorian derogations:

- introduce transitional arrangements for metering services in the wholesale electricity market; and
- provide the local network service providers (LNSPs) with a monopoly for the provision of metering services.

The code changes allow:

- retail level metering data to be used in the current wholesale electricity market;
- the details of metering arrangements to be determined by each jurisdiction; and
- competition to occur on the basis of either existing meters or time-of-use (interval) meters.

While the code changes establish a framework for the introduction of FRC, the details relating to FRC are currently being finalised by state governments in consultation with consumer groups, industry participants, regulators and other state governments.

National Electricity Code Administrator

In relation to averaging loss factors in distribution networks (A90783–5)

- Draft determination issued on 6 June 2001.
- Final determination issued on 3 October 2001.

On 20 March 2001, the Commission received applications from NECA for authorisation of changes to the national electricity code. The amendments to the code relate to a proposal to allow distribution network service providers (DNSPs) to assign smaller contestable customers to non-physical transmission connection points (TCPs) using an averaged transmission loss factor (TLF). The proposal will replace the existing obligation on DNSPs to assign all such customers to physical connection points.

The Commission considers that accurate signalling of transportation losses in the spot market is necessary to provide economically efficient locational price signals and to ensure that central dispatch and pricing achieve the most efficient outcome. Losses are also important in ensuring that new investment is appropriate and that the right balance is achieved between investment in generation, demand-side measures and/or the main transmission network. For

the smaller urban customers connected within distribution networks, transmission losses contribute only a small proportion of the delivered energy cost. This is because TCPs of distribution zone substations are physically and electrically close together and hence the differences in transmission losses are small. Consequently, any differences in electricity prices from averaging loss factors at the transmission level are likely to be insignificant, compared with the averaging inherent in DLFs.

The Commission considers that the averaging of TLFs in distribution networks for smaller urban customers is unlikely to distort economic signals to any greater degree than the system now in place. It is accepted that this process will entail some degree of cross subsidisation. However, averaged transmission losses will only apply to smaller urban customers where it is said to be not practicable to assign DCPs to TCPs.

The Commission believes that the averaging envisaged in these code changes does not have a material impact on competitive outcomes in the spot market. The Commission considers that the level of complexity involved in these code changes is not significantly greater than the current system and does not increase potential barriers to entry for new participants and barriers to direct trading for end-use customers. The Commission believes that there is a public benefit in reduced administration costs and certainty in the arrangements for averaging transmission losses between TCPs while the alternative of assigning every DCP to a TCP is complex and does not increase the benefit to end users.

The Commission considers that the proposed arrangements and conduct set out in the averaging loss factors in distribution networks code changes are likely to result in a benefit to the public which outweighs the potential detriment from any lessening of competition. The Commission proposes to limit the period of the authorisations to 31 December 2010.

The Australian Pensioners League of Western Australia

In relation to an agreement between Western Australian funeral directors for the provision of funeral director services to the Australian Pensioners League at a fixed price (A70012)

- Draft determination issued on 5 September 2001.
- Final determination issued on 25 October 2001.

On 10 January 2001 the Australian Pensioners League of Western Australia (APL) lodged an

application for authorisation of an agreement between the APL, Western Australian Funeral Directors Association (WAFDA) and some non-WAFDA funeral directors. The agreement is for the provision of funeral directors services to an APL funeral fund, on behalf of members who have contributed to that fund and for whom the funeral director services are provided, at a fixed concessional rate.

The APL funeral fund is a funeral pre-payment scheme available to aged, invalid and widowed pensioners in Western Australia, and some supernuants, to allow the elderly the benefit of planning a burial or cremation, at a much lower cost.

The fixed rate offered by the funeral fund is negotiated annually with the WAFDA on behalf of its members, and with individual non-WAFDA members who choose to participate in the scheme.

The Commission considers that while the proposed arrangements will reduce price competition between WAFDA members to that section of the market covered by the arrangements, the Commission notes that the arrangements cover only a small section, and the lower priced end, of the relevant market. Most significantly, the Commission considers that the arrangements are likely to result in a lower price to fund members than could otherwise be negotiated.

The Commission also considers there are public benefits arising from the arrangements, particularly the provision of funeral directors services at a price significantly lower than the market one to a section of the community that the applicant claims is under-privileged.

The Commission concluded that the public benefits likely to result from the proposed arrangements are sufficient to outweigh any anti-competitive detriment. The Commission granted authorisation for five years, subject to the condition that if the Commission requests, APL will furnish a copy of any contracts between the parties entered into under the authorisation.

Notifications

Notifications finalised

The following notifications have been allowed to stand.

Caltex Australia Petroleum Pty Ltd (N31120) Provision of rebates to Holden National Leasing Limited customers provided they use Caltex fuel card.

Lower Empire Vale Harvesting Co-op Ltd (N31130) Membership provisions that require a member to make available to Lower Empire Vale Co-op all sugar cane grown by the member.

Primary Industry Bank of Australia Ltd (N31136–8) Proposing to lend money to farmers on condition they enter into a contract with Rabo Finance and Securities and Rabobank Australia Branch.

National Australia Bank Limited, National Margin Services, NMS Nominees, Your Prosperity, National Online Trading (N40450–3) Also includes Allianz Aust Insurance. Supply a National product on condition that the customer also acquires services from NMS Services and/or NMS Nominees.

National Australia Bank (N40457) Offering to supply a National product on condition that customers also acquire one or more William M. Mercer Pty Ltd products (third line forcing).

Malpass Enterprises Pty Ltd (N50125) Proposing to offer a 2–4 cents per litre discount to Farrys IGA customers who produce a voucher from Farrys IGA Supermarket.

The Royal Automobile Club of Queensland Ltd (RACQ) (N50128) Installation of home security systems and monitoring services at a discount to RACQ members (third line forcing).

Queensland Rugby Union Limited (QRU) (N50129) Offering to supply a product or services that compete with those of the QRU's naming right sponsors and exclusive suppliers without first obtaining the consent of the QRU (third line forcing).

Western Australian Land Authority t/a LandCorp (N70169) House and land packages (1000 lots) in Atwell Perth — nominated builders.

Western Australian Tourism Commission (N70203) Supply of network entitlements to tourism operators on condition they become members of their local visitors centre and the relevant regional tourism association.

HBF Health Funds Inc. (N70204–5) Ancillary health goods and services providers not permitted to process claims of other health insurers on the electronic point of sale processing device.

RACWA, RACWA Holdings, RAC Insurance (N70207–9) Proposing to offer discounts, goods and services to customers on condition they become a member of the RAC Club.

Western Power Corporation (N70210) Proposing to supply electricity to Western Power Corporation for the mid-west region of Western Australia from generation facilities constructed, owned and operated by the supplier.

The Australian Baseball Federation (N90853) Proposing to implement a preferred buyer program for items used in the sport of baseball.

Optus Mobile (N90865) Proposing to offer customers the Optus wireless IP service which will only be accessible via Optus Multinet, Optus Private IP or by Optus Internet.

Optus Networks Pty Ltd & Optus Internet Pty Ltd (N90867) Proposing to offer long distance services to a customer at a discount on condition that the customer also acquires Internet services from Optus Internet Pty Ltd (third line forcing).

GBST Holdings Pty Ltd (N90884) Software developed by GBST requires installation of software products produced by Progress Software Corporation (third line forcing).

Caltex Australia Petroleum Pty Ltd (N90889) Issue of fuel buster tokens to customers of third party retailers for the purchase of fuel.

Tourism Queensland (N90890) Offer of discount to Tourism Queensland customers who use Mastercard to acquire particular holiday products and services.

Optus Networks Pty Ltd (N90891) Proposing to offer incentives to customers on condition that they acquire rental of a PABXX system from Comlease and maintenance services from Fujitsu (third line forcing).

Diners Club International (N90892) Proposing to issue vouchers to its members, offering discounts on other benefits.

Smile Communications (N90893) Offering to supply online data back-up services to customers at a discount on condition they acquire Internet services from Optus Internet.

Roads and Transport Authority (N90894) Carriage of construction works in NSW — insurance extended to cover contractors.

Comlease AFG Ltd (N90895) Offering of services on the condition that its customers acquire maintenance services from Fujitsu and Optus Networks.

Scholastic Australia Pty Ltd (N90897) Offering a discount to persons who acquire software and services supplied by Scholastic.

Signature Security Group Pty Ltd (N90898) Proposing to offer discounts for the supply of monitored base home alarm systems on condition customers are policy holders of GIO General Ltd.

Coles Myer Ltd (N90901–12) Proposing to offer discounts on specified goods to customers who are Coles Myer credit account holders.

Zurich Financial Services Australia Group (N90915–21) Proposing to offer discounts on the supply of investment products to customers who acquire superannuation products from another Zurich entity.

Australian Windows Publishing Pty Ltd (N90922) Offer to persons who acquire a version AWP of Ezi Website Lite at a discount on condition that they acquire Internet services from Optus Internet Pty Ltd.

Partnership Planning Limited (PPL) (N90924) Offering clients a share-trading service for securities listed on the ASX provided that the clients use one of a number of brokers engaged by PPL as their broker.

Architectural Projects Pty Ltd (N90926) Nominated builder for residential allotments at Mawson Lakes South Australia (third line forcing).

MCH Services (Sydney) Pty Ltd t/a Merchant Court Hotel (N90927) Supplying a range of business-related goods and services to members of a purchasing consortium known as e.conomy (third line forcing).

Diners Club International (N90928) Bonus points system — an arrangement with Avis Aust, Mirvac Hotels, Six Continents Hotel Group and Winemakers Choice.