
Regulatory issues

Telecommunications

Competition notice information paper and guideline

Under the Trade Practices Act the Commission may seek injunctions restraining carriers or carriage service providers from engaging in anti-competitive conduct as defined in Part XIB of the Act. In addition, or alternatively, the Commission may issue a competition notice stating that a carrier or carriage service provider is engaging in anti-competitive conduct. The issuing of a notice has a number of consequences, primarily it enables the Commission to seek pecuniary penalties and other orders, and enables third parties to seek orders, including injunctions and orders as to damages resulting from the anti-competitive conduct.

The Commission has developed an information paper titled *Anti-competitive conduct in telecommunications markets* dealing with the approach it will usually take in analysing allegations of anti-competitive conduct in telecommunications markets. The Commission envisages that, given the evolutionary nature of the industry, and the dynamic changes likely to take place after 30 June 1997, revisions to the paper and further information papers will be published.

Under s.151AP of the Trade Practices Act, the Commission is required to formulate guidelines to which it must have regard in deciding whether to issue a competition notice, after it has formed the view that a carrier or carriage service provider has engaged in anti-competitive conduct. The first written instrument under this guideline provision was made on 27 June 1997.

The guideline, together with the information paper, is available from the Commission's Internet site.

Determination on interconnection prices

On 24 June 1997 the Commission issued a determination reducing the prices some service providers will pay for interconnection with Telstra's network from 1 July 1997. In the determination, the main usage charges for interconnection have been reduced on average by about 35 per cent, to 2.84 cents per minute in peak periods and to 1.34 cents per minute in off-peak periods. The charges are for Telstra's National Access service, which is currently used by a number of switched service providers to connect to, and provide services using, Telstra's network.

The determination also reduces the charges service providers must pay for non-code access, which allows customers to select a service provider without having to dial an override code.

The Commission's determination, made under s. 41 of the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997*, is part of the transitional arrangements for the industry as it moves to an environment of open competition.

The prices will apply at least until 31 December 1997. ACCC Commissioner Mr Rod Shogren said that, in the long term, access prices would most likely be primarily determined through commercial negotiations, and that the determination did not imply that all access seekers should pay the same price for interconnection in the future.

Copies of the determination are available from Graeme Woodbridge, ph. (03) 9290 1859, and from the Commission's Internet site.

Statement of deemed telecommunications services

On 30 June 1997 the Commission issued a statement listing telecommunications services to which carriers and services providers will have access from 1 July 1997. The services include those that Optus and Vodafone currently obtain from Telstra.

Under s. 39 of the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997*, the Commission must prepare a statement, in consultation with AUSTEL, specifying certain services to be deemed as declared services with effect from 1 July 1997. As a result, service providers will be able to be provided with these deemed services, on request, from any carriers or carriage service providers supplying the services.

The terms and conditions of access may be determined by commercial negotiation, an access undertaking submitted by the access provider and accepted by the Commission, or, if the parties cannot agree, by arbitration by the Commission.

The list of deemed services in the statement includes access services which provide basic voice telephony; an access service to facilitate the provision of Internet and frame-relay services; and a carriage service for the provision of broadcasting services on cable network, which will allow content providers to access pay TV networks.

The Commission chose not to deem transmission links between capital cities. Such transmission services are potentially contestable in the new environment where new carriers will be able to install their own facilities.

The statement also outlines the Commission's approach to determining which services should be deemed as declared services.

Copies of the statement are available from Commission offices and the Commission's Internet site.

ACCC draft directions on number portability

On 30 May 1997 the Commission issued draft directions to the Australian Competition Authority (ACA) on number portability. The

ACA will be formed on 1 July 1997 as a result of the merger between the Spectrum Management Agency and AUSTEL. The ACA is responsible for many consumer matters, technical regulation and the management of the radiofrequency spectrum, while the Commission is responsible for the administration of competition regulation in the telecommunications industry.

Under the *Telecommunications Act 1997* the Commission has statutory powers to give directions to the ACA about number portability. Number portability is defined as the ability of end users to change their carrier or carriage service provider and retain the same telephone number within the constraints of the Numbering Plan.

The Numbering Plan is the plan for the numbering of carriage services in Australia and the allocation and use of numbers in connection with the supply of such services.

The draft directions are intended to guide the ACA in making rules about number portability for inclusion in the Numbering Plan. They take into account the promotion of competition in the provision of carriage services and the long-term interests of users.

Copies of the draft directions are available from Graeme Woodbridge, ph. (03) 9290 1859, and the Commission's Internet site.

Gas

On 7 May 1997 the Commission approved two proposed agreements between East Australian Pipeline Limited (EAPL) and AGL Wholesale Gas Limited (AGL Wholesale) for the transportation of natural gas. The Australian Gas Light Company fully owns AGL Wholesale and has a majority interest (51 per cent) in EAPL.

Under s. 139 of the *Moomba-Sydney Pipeline System Sale Act 1994*, the Commission is required to either approve or refuse to approve any agreement between a Moomba operator (EAPL) and a controlling distributor or a related body corporate (AGL Wholesale). The

Commission concluded that neither contract was likely to have the effect of substantially lessening, preventing or hindering competition.

EAPL also requested the Commission's opinion on five 'generic' contracts, and the associated general terms and conditions, which it proposes will form the substance of all future contracts between EAPL and all other parties. However, since there is no provision in the Moomba-Sydney Pipeline System Sale Act for the Commission to consider contracts or contract forms in general, it decided not to express an opinion on these documents.

The two agreements approved by the Commission are based on two of these generic agreements. The Commission stressed that its approval of the agreements should in no way be taken as general approval of the 'generic' contracts on which they have been based.

National Competition Council

Applications for access

International freight services

Australian Cargo Terminal Operators Pty Ltd (ACTO) has submitted a number of applications under the Trade Practices Act asking the National Competition Council (NCC) to recommend that services provided by the Federal Airports Corporation (FAC), Qantas and Ansett be declared.

ACTO provides cargo terminal services to international airlines by breaking down and building up freight and transferring that freight to and from international aircraft.

The applications for declaration of FAC services relate to the use of facilities such as the freight apron, the hard stand and storage areas to enable ACTO to load and unload international freight from aircraft at both Sydney and Melbourne airports. The applications in respect of Qantas and Ansett services relate to the use of equipment used in the loading and unloading of aircraft and some aspects of their cargo terminal services.

If these services were declared, ACTO, and any other business interested in increasing its involvement in providing cargo terminal services to international aircraft, would have a legal right to negotiate access to those services and recourse to legally binding arbitration if that negotiation failed.

The NCC adopted a staged process to deal with the applications and initially considered the applications in respect of the FAC services. It sent its recommendation in respect of the FAC services to the Commonwealth Treasurer on 9 May 1997. The Treasurer has 60 days from this date to make a final decision.

Copies of the issues paper, the applications in respect of FAC services and the NCC's draft guide to the National Access Regime are available from the NCC.

NSW gas pipelines

On 19 February 1997 the NCC released a draft recommendation for the NSW access regime to be recognised as 'effective', subject to a number of amendments to be implemented by the NSW Government. Once a State Government's access regime is certified as 'effective', access conditions are exclusively governed by that regime, and other remedies under Part IIIA of the Trade Practices Act, such as declaration of a service, cannot be invoked.

Under the NSW access regime, access seekers will be given an enforceable right to negotiate third party access to major gas distribution services in New South Wales, including the Australian Gas Light Company's grid servicing over 730 000 industrial, commercial and residential customers across New South Wales.

In view of the fact that the NSW access regime has been developed as an interim measure until the national code is in place, the NCC has recommended that the NSW regime be certified for a maximum of five years, to be brought forward on implementation of the national code.

Rail freight services

The NCC is currently considering two applications for the declaration of rail services.

The first application is from Carpentaria Transport for the declaration of particular rail freight services transported on the line between

Brisbane and Cairns. The NCC sent its recommendation to the Premier of Queensland on 3 June 1997.

The second application, from Specialized Container Transport (SCT), is for declaration of rail services provided by Rail Access Corporation (RAC) of NSW. SCT is seeking access to two rail lines owned by RAC between Sydney and Broken Hill, in order to provide a freight forwarding service between Sydney and Perth.

New South Wales already operates a rail access regime for third party access to the rail network. In considering this application for declaration, the NCC is required to look at the NSW regime to assess whether it is considered 'effective'. If the regime is found effective, the NCC cannot recommend declaration. The NCC is currently considering submissions in response to the declaration application. The NCC's recommendation was forwarded to the NSW Premier on 16 June 1997.

Copies of an issues paper, the NSW Rail Access Regime and SCT's application are available from the NCC.

Victorian shipping channels

The NCC sent its recommendation on the certification of Victoria's access regime for commercial shipping channels to the Commonwealth Treasurer on 8 May 1997.

Hunter Valley rail

The NCC is currently considering submissions in response to the NSW Minerals Council application for declaration of Hunter Valley Rail Lines and associated infrastructure. An issues paper is available from the NCC.

First tranche payments

The NCC is currently assessing whether each State/Territory has met its commitments under the National Competition Policy. Based on this assessment, the NCC will make recommendations on whether each State/Territory should receive its share of the first round of competition payments for meeting deadlines. The recommendations will be

submitted to the Commonwealth Treasurer by the end of June 1997.

Legislative review compendium

The legislative review compendium, recently released by the NCC, is a compilation of nearly 2000 Acts, enactments, ordinances and regulations that jurisdictions will review to remove all unnecessary barriers to competition.

Since the compendium is designed to be a working document, it will be regularly updated. The next edition is expected in the second half of 1997.

Copies can be purchased from Government Info Shops or by accessing the NCC web site at <http://www.ncc.gov.au>. Electronic copies can be obtained by contacting Angela Houpis on (03) 9285 7089.

NSW Independent Pricing and Regulatory Tribunal

Over the last few months the Independent Pricing and Regulatory Tribunal has considered a range of regulatory issues over a wide range of industries.

Water

Urban water

During 1996 the Tribunal put in place medium term price paths for the major urban water agencies in New South Wales. Three-year price paths were set for Gosford and Wyong Councils and four-year price paths were set for Sydney and Hunter Water Corporations.

Concurrently, the Tribunal issued a methodology for setting developer charges for the provision or upgrading of water and sewerage services in the areas covered by these agencies. This methodology establishes mechanisms to provide transparency in the water agency's processes for calculating developer charges.

An inquiry has begun into the pricing of the provision of certain sewerage backlog services in areas serviced by the Sydney Water Corporation and Gosford City Council.

Bulk water

In October 1996 the Tribunal issued a comprehensive interim report of its review of pricing of bulk water services throughout NSW. The main recommendations of the report were:

- identification of a clear need for better and more detailed information from the Department of Water and Land Conservation (DLWC) with respect to its activities and the costs associated with delivering its bulk water related services, because appropriate charges cannot be set until such information is forthcoming;
- a need to maintain the financial viability of the DLWC's bulk water services in the interests of all water users and other beneficiaries in the State; and
- apparent scope for improvements in efficiency and reductions in the costs of service delivery by the DLWC.

Comments were sought on the interim report, with further public hearings throughout New South Wales taking place during March 1997. The Tribunal is now expecting to make a price determination for bulk water services during June 1997 and to issue a final report toward the end of 1997.

Pricing policies of local water authorities

Following extensive consultation and public hearings throughout New South Wales in October 1996, the Tribunal released a report giving recommendations for pricing policies for local water authorities.

This report set out a common set of pricing principles that could largely form the basis of pricing policies by the 130 local government water authorities across New South Wales. While the inquiry identified significant scope for the application of common pricing principles, an important theme was the need to cater for diversity in actual practice in meeting particular local circumstances. The NSW Government is

now developing guidelines for local water authorities based on these pricing principles.

Electricity

Medium term price paths for TransGrid's electricity transmission services and wires and retail supply by NSW electricity distributors were set in March 1996. The Tribunal is currently considering minor changes to the price paths to cover the rapidly changing operations of the industry during a period involving major industry restructuring and the introduction of competition.

All distributors have been asked to provide information to maintain the Tribunal's ongoing monitoring of compliance with the price paths.

IPART's electricity team has kept close contact with the developments in industry restructuring and the development of competitive markets to ensure that the Tribunal's pricing policies remain responsive to the rapidly changing nature of the industry.

Gas

The Tribunal is considering a determination for third party access to the gas distribution network of AGL gas companies. A draft undertaking was submitted by AGL, and the Tribunal prepared a draft determination to assist with consideration of the issues.

After public hearings and extensive liaison with interested parties, the date by which AGL was required to submit an undertaking was extended to 31 March 1997. The Tribunal's Secretariat issued a progress report which discussed a range of issues that had arisen during these consultations.

A further short extension has been given to provide adequate opportunity for AGL to consider Tribunal views on the proposed arrangements.

Public transport

Urban public transport

A final report of the Tribunal's major review of public passenger transport pricing in New South Wales was released in November 1996. Annual pricing determinations are continuing,

with a determination of CityRail and STA bus and ferry prices scheduled for June 1997.

Countrylink services

Following the transport review the Tribunal also considered a separate reference on the pricing of rail services by the Countrylink division of State Rail. An interim report which discussed several options for Countrylink services was released in March 1997.

Several options were presented for consideration, including:

- replacing most rail services with bus and coach services;
- tendering out services on a competitive basis to different potential operators;
- a range of efficiency improvements which would lead to a reduction in costs and subsidy requirements; and
- a 'do nothing' option of continuing Countrylink's modest cost reduction program.

Following consideration of comments on the interim report a final report is planned for mid-1997.

Intrastate air services

An interim report with recommendations for the deregulation of air services in New South Wales was issued in March 1997. The proposals would involve:

- simultaneously deregulating all routes from May 1999;
- deciding and announcing deregulation by mid-1997;
- carriers declaring their planned route operations under deregulation by July 1998; and
- repealing the *Air Transport Act 1964* and abolishing the Air Transport Council (ATC).

Following consideration of comments a final report is scheduled for mid-1997.

Third party access

Register of access agreements

The Tribunal now maintains a register of agreements for third party access to public infrastructure in New South Wales.

Arbitration of access disputes

The Tribunal provides arbitration services for disputes in the negotiation of access agreements. The Tribunal can act as the arbitrator or can refer the matter to an arbitrator chosen from an approved panel.

An access dispute between the Rail Access Corporation and the National Rail Corporation was referred to the Tribunal on 23 August 1996 for arbitration. This dispute was the first of its type in Australia under the new third party access rules resulting from the Hilmer competition reform process.

The dispute was successfully resolved on 12 March 1997 when a consent award was made by the Tribunal acting as arbitrator.

Other activities

Review of local government benchmarking

During 1997 the Tribunal will undertake a review of the application of performance benchmarking within local government. The terms of reference for the review include:

- implementing the benchmarking activities outlined in the NSW Government Policy Statement on the Application of National Competition Policy to Local Government, June 1996;
- reviewing the role and scope of benchmarking local government activities having regard to the need to reflect local conditions and circumstances;
- examining current performance benchmark models developed within Australia and

overseas for application at the local government level; and

- examining mechanisms which may assist and support local governments in effectively benchmarking their activities.

Assistance to other pricing agencies

Section 9 of the recently amended Independent Pricing and Regulatory Tribunal Act allows the Tribunal to give assistance to other agencies in pricing matters.

Tribunal staff have provided support and assistance to the ACT Energy and Water Charges Commissioner in the investigation of electricity, water and sewerage charges supplied by ACTEW Corporation in the Australian Capital Territory. This has involved the preparation of a report containing financial analysis of agency business plans and development of proposals for current and future price paths.

Some assistance has also been given to the South Australian Competition Commissioner in a review of pricing issues for SA Water.

Public information — IPART's web site

Up-to-date details of current Tribunal activities are now available through the Tribunal's new Internet web site that was launched in March 1997. The web site can be found at:
<http://www.ipart.nsw.gov.au>

The contents of the site include 'What's New', details of current investigation timetables, recent reports and publications (for downloading), general information about how the Tribunal operates, relevant legislation, submissions and public hearing transcripts, and Tribunal contacts.

Interested parties can register with the Tribunal (email to ipart@tpgi.com.au) to receive regular advice by email of recent updates to the site.