
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 where the Commission is satisfied that the practice delivers offsetting public benefits.

Determination

Australian Wool Exchange Limited

In relation to AWEX's business rules (A30185)

- Draft determination issued 13 August 1998.
- Pre-determination conference held 2 October 1998.
- Final determination issued 30 December 1998.

On 31 July 1997 the Australian Wool Exchange (AWEX) lodged an application for authorisation in respect of its business rules. AWEX conducts auctions of wool at centres throughout Australia. More than 85 per cent of wool in Australia is sold through the Wool Exchange. Broadly, the business rules provide the foundation for AWEX's operations.

In 1994 the Commission granted authorisation in relation to AWEX's operations for three years. The current application incorporates a number of amendments to its rules and procedures which AWEX introduced to address the Commission's concerns raised in its earlier determination. Those amendments had the effect of reducing the potential anti-competitive

detriment of AWEX's conduct. Hence the narrower scope of the current application.

AWEX also lodged a notification in respect of its requirements that:

- wool offered for sale through the Wool Exchange be classed by a registered classer or classing house (unless otherwise agreed by buyer and seller); and
- any individual who wishes to class wool offered for sale by or through a Wool Exchange be registered.

The Commission was satisfied that the business rules would improve the efficiency and effectiveness of the marketing of wool, which will ultimately enhance Australia's exports. It considered that process would be further assisted by AWEX's collection and publication of a range of information from members. The Commission was satisfied that these benefits outweighed any anti-competitive detriment resulting from the business rules, with the exception of clauses 2.1 and 3.2, which require compliance with other rules of AWEX.

On 13 August 1998 the Commission issued a draft determination proposing to grant authorisation to the business rules except for clauses 2.1 and 3.2. A pre-determination conference was held on 2 October 1998.

On 30 December 1998 the Commission issued a final determination proposing to grant authorisation to the business rules, except for clauses 2.1 and 3.2, for five years with conditions. AWEX is required to bring to the Commission's attention any changes in its rules or procedures that may have competition implications or which may materially affect the circumstances relating to the granting of the authorisation.

Several applications have been made to the Australian Competition Tribunal to review the Commission's determination.

The notification was allowed to stand.

Draft determination

Mereenie Producers

In relation to Gasgo Sales Agreement (A90637-45)

On 6 January 1999 the Commission issued a draft determination proposing to grant authorisation to an application by the Mereenie Producers in relation to the Gasgo Agreement.

The agreement allows the sale of natural gas by the Mereenie Producers to Gasgo Pty Limited under a long term 'take-or-pay' contract. Under a take-or-pay clause the purchaser agrees to pay for a certain percentage of the total contract quantity irrespective of whether it is used. The applications also sought approval for the producers to discuss and agree on common terms, including price, for the supply of gas under the agreement.

The Mereenie joint venture is controlled by Santos Ltd (65 per cent) and Magellan Petroleum Australia Ltd (35 per cent). Gasgo is a subsidiary of the Power and Water Authority, a statutory body charged to supply electricity and evaluate the fuel and energy needs of the Northern Territory for the supply of electricity.

The Commission's assessment took into account the prevailing environment, including the fact that the present market for the supply and sale of gas in the Northern Territory is characterised by a sole gas producer and one dominant purchaser.

The Gasgo Agreement is the third in a series of contracts between the Mereenie Producers and Gasgo for the supply of gas. The first two contracts are still current. Although separate to the Gasgo Agreement, and not included in the present authorisation, the Original Gas Purchase Agreement between the Mereenie Producers and Gasgo contains pre-emptive rights which give Gasgo the first right of purchase in the event that any other party seeks to purchase gas from the Mereenie Producers. This potentially enables Gasgo to prevent gas sales by the Mereenie Producers to third parties.

The Commission took the view that the existence of the pre-emptive rights in the

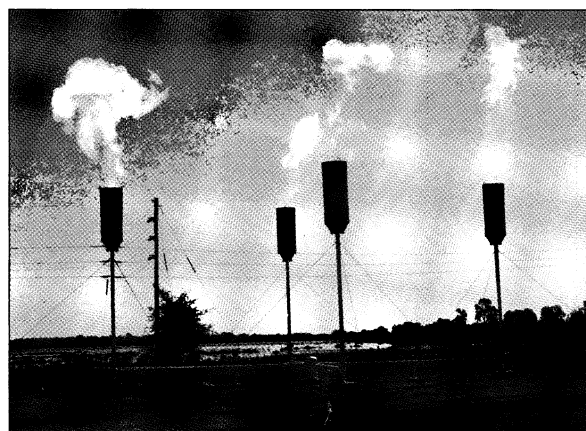
Original Gas Purchase Agreement was likely to increase the anti-competitive effects that were likely to flow from the other contracts negotiated by the Mereenie Producers, including the Gasgo Agreement. It had concerns that the Gasgo Agreement, in association with these pre-emptive rights, had the potential to prevent or hinder the entry of new gas purchasers who could potentially compete in downstream markets, by limiting the availability of gas for supply in the Northern Territory.

The Commission accepted that there was significant public benefit in providing for the continued and secure supply of gas into the Northern Territory over the term of the Gasgo Agreement.

Although it took the view that the anti-competitive detriment likely to result from the Gasgo Agreement was substantial, and was increased by the existence of the pre-emptive rights in the Original Gas Purchase Agreement, it was outweighed by the likely public benefit.

The Commission proposes to grant authorisation for the duration of the agreement, which is the earlier of 1 July 2009 or the completion of delivery of the contracted amount of gas. It accepted the applicants' request to extend the authorisations to their respective successors and assigns that become parties to the Gasgo Agreement in the future.

A conference on the draft determination was held in Sydney on 25 January 1999. The Commission will issue its final determination after consideration of the issues raised by interested parties at the conference and subsequent submissions.



Photography by Arthur Mostead

Copies of the draft determination are available on the Commission's website or by contacting Ms Suzie Copley on (02) 9230 9112.

Interim authorisation

National Electricity Market Management Company and the National Electricity Code Administrator

Amended National Electricity Code

On 28 August 1998 the National Electricity Market Management Company (NEMMCO) and the National Electricity Code Administrator (NECA) applied for authorisation of the amended National Electricity Code (NEC). The applicants also requested interim authorisation of the amended NEC, so that the proposed changes could be implemented before the commencement of the National Electricity Market. The applications were subsequently amended on a number of occasions.

The Commission granted interim authorisation to the amended NEC on 7 October 1998, 25 November 1998 and 6 January 1999. It also made two previous determinations in relation to the NEC on 10 December 1997 and 19 October 1998.

The current applications propose amendments to the NEC including:

- changes required for the Commission to accept the National Electricity Market access code;
- establishment costs;
- credit support arrangements;
- excess generation payments;
- start of trading day;
- technical derogations for Energy Brix;
- ancillary services;
- billing period gross energy;
- regional system operator;
- correction of typographical errors; and

■ State based derogations:

- South Australia: definition of the jurisdictional regulator, amending definitions, Northern Power Station Agreements, registration as a customer, definition of a transmission network, loss factors, power system security support, nomenclature standards, settlements residue, transmission network service pricing, regulation of distribution pricing, regional boundaries, new regulatory instruments, registration as a generator, registration as a network service provider, regulation of distribution network connection, system planning, and capital contributions;
- New South Wales: distribution of the settlements surplus;
- Queensland: amendment to dispatch in the Queensland region (restrictions on generator rebidding), spot price determination (rate of change constraints and settlements); and
- Victoria: role of VPX and GPU Powernet.

The Commission is reviewing the current applications together with submissions from interested parties. Its draft determination will be released for public comment.

Notifications

Notifications considered

Colonial Mutual General Insurance (N30826-41) (Allowed to stand)

Supply of product at a discount on condition that customers also acquire second product from members of the Colonial Group or the HIH Group or from Australian Unity (third line forcing).

Boehringer Ingelhiem Pty Ltd (N30823) (Allowed to stand)

Offer to veterinarians of free or discount packages to attend a veterinary conference on

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condition they acquire certain quantities of eligible Boehringer products from a wholesaler (third line forcing).

Manchester Unity Friendly Society NSW Ltd (N30824) (Allowed to stand)

Preferred provider arrangement between members of the Manchester Unity Friendly Society (third line forcing).

AHL Projects Pty Ltd (N90509) (Allowed to stand)

Sale of 40 allotments on condition purchasers acquire home construction services from a nominated builder (third line forcing).

Optus Network Pty Ltd, Optus Mobile Pty Ltd, Optus Vision Pty Ltd (N30821, N90627-8) (Allowed to stand)

Offer of discount by Optus to persons who subscribe to telephony services on condition they acquire Internet services from Microplex (third line forcing).

Microplex Pty Ltd (N30822) (Allowed to stand)

Offer of discount on Internet services to persons who subscribe to any of the telephony, mobile or pay TV services supplied by Optus Networks, Optus Mobile and Optus Vision respectively (third line forcing).

Mobile Innovations Pty Ltd (N90629) (Allowed to stand)

Supply of handset insurance on condition customers acquire certain network services and ancillary goods from Vodafone (third line forcing).

MDU Australia Insurance Co Pty Ltd (N30808) (Allowed to stand)

MDUAIL offers its professional indemnity policies to doctors who are members of MDU; to dentists in NSW and ACT who are members of the Australian Dental Association (NSW) branch and MDU; to dentists anywhere in Australia who are members of MDU (third line forcing).

NODRUB (N90626) (Allowed to stand)

Offer of discount fuel linked to grocery sales (third line forcing).

Australian Wool Exchange Ltd (N90475) (Allowed to stand)

Requirement that wool offered for sale through AWEX be classed by a registered classer; individuals wishing to class wool must be registered under rules (third line forcing).