Regulatory issues

First annual regulatory reports for Phase II airports

The Commission issued its first annual regulatory reports for the privatised Phase II airports, as well as for Sydney airport, in April this year.

Phase II airports include Adelaide, Alice Springs, Canberra, Coolangatta, Darwin, Hobart, Launceston and Townsville. Phase I airports are Melbourne, Brisbane and Perth.

The reports outline the regulatory accounts for these 'core regulated' airports, including the impact of vehicle access charges and other charges on the price caps on aeronautical services.

They also contain information on price cap compliance, and prices monitoring for these airports. Sydney airport is not subject to a price cap and as such, no price cap reconciliation was undertaken.

Phase II airports recorded losses after interest and tax for the 1998–99 period, in line with most airports' expectation.

The Commission also released its reports on the Phase I airports, Brisbane, Melbourne and Perth. This is the second year of reporting for these airports. This article covers the reports for both the Phase I and Phase II airports.

The Commission is responsible for implementing and administering the economic regulatory framework applying to these airports under the *Trade Practices Act 1974*, the *Prices Surveillance Act 1983* and the *Airports Act 1996*. The framework includes access arrangements, and a price cap on aeronautical services for the privatised Phase I and Phase II airports.

To meet the transparency requirements under the regulatory framework, the Commission produces annual regulatory reports, which contain information on price cap compliance, quality of service monitoring, and prices monitoring for the 'core regulated' airports.

Price cap compliance

Price cap compliance is calculated on a revenue-weighted average price basis. This means increases in particular charges are weighted by that component's proportion of revenue for the previous period.

Phase 1 airports compliance

The Commission conducted price cap reconciliations for Melbourne, Brisbane and Perth airports for the 1998–99 period. Under the regulatory framework, airport operators have two years in which to pass back any charges exceeding the cap to users. Overall, the results indicated the airport operators' success in achieving real price reductions. Melbourne airport reduced prices in line with the price cap. Similarly, Brisbane and Perth airports would have achieved the target reductions if not for the inclusion of vehicle access revenue. However, because of this extra revenue both airports over-recovered revenue for the 1998–99 period.

Phase II airports compliance

The Commission also conducted price cap reconciliations for the Phase II airports for 1998–99. All have made adjustments to prices to comply with their price caps. However, some airport operators are over-recovering revenue against the cap because of the inclusion of vehicle access charges.

Vehicle access charges

Phase I charges

In 1998 the Commission became aware that Westralia Airports Corporation (WAC) and Brisbane Airports Corporation (BAC) proposed to introduce vehicle access charges for taxis of around $1 per vehicle. Under Pricing Declaration 83, increases in charges for aeronautical services must be notified to the Commission. Aeronautical services include, 'landside roads, landside lighting, and covered walkways'.

The Commission told BAC and WAC that they were required to notify the new vehicle access charges. They subsequently did so, but also outlined their disagreement with the Commission's interpretation of the legislation.

Direction 13 states that 'new or varied charges on existing services and charges on new or varied services are to be factored into the price cap arrangements if the services are declared'. The Commission considered that the vehicle access charge on taxis at Brisbane and Perth airports should be included in the price cap.

WAC provided the Commission with data on revenue from vehicle access charges on taxis. BAC, however, did not provide revenue or unit data. The Commission estimated revenue at Brisbane from industry sources.

The Commission conducted a price cap reconciliation based on these estimates and concluded that if taxi charges were included in the price cap reconciliations then both Brisbane and Perth airports would over-recover revenue in the range of two to three per cent.

Phase II airport vehicle access charges — Alice Springs, Canberra and Darwin airports

During 1998–99, the Commission was notified of new vehicle access charges for taxis at Alice Springs, Canberra and Darwin airports.

Northern Territory Airport Pty Ltd (NTA), the operators of Alice Springs and Darwin airports, provided data to the Commission on the estimated revenue derived from taxis at Alice Springs and Darwin.

The Commission estimated revenue from taxis at Canberra Airport using information provided by Capital Airport Group, the operators of Canberra Airport.

Revenue from taxi charges at Alice Springs, Canberra and Darwin airports were used in the calculation of compliance with the price cap for the 1998–99 period.

Prices monitoring — fuel throughput levy

The prices monitoring section of the reports details revenues from aeronautically related activities. The fuel throughput levies imposed at Brisbane and Perth were a major issue in the 1997–98 report and appear again in this year's report. The issue arose due to the introduction of a new charge by Perth and Brisbane on oil companies based on the volume of fuel being pumped to refuel aircraft. In a separate report in December 1998, the Commission recommended a stricter form of prices oversight on the grounds that the charge is not justified in costs terms, and that it could well represent a misuse of market power by the airport operators. The Government is still considering the Commission's report.

Quality of service monitoring

Monitoring of Phase I airports indicated overall a good quality of service across a range of services. Melbourne airport showed strong passenger and airline survey results and quality of service at Perth airport was also generally rated well, particularly its check-in facilities and car parking. Brisbane also rated well on indicators such as its runways and taxiways, and various passenger facilities. The Commission also reported on quality of service at Sydney airport.

New contract for gas haulage

On 4 January 2000 East Australian Pipeline Limited (EAPL) applied for approval of a proposed associate contract with AGL Wholesale Gas Limited (AGLWG). This contract, called the Gas Transportation Deed (GTD), is about AGLWG's haulage arrangements on the Moomba–Sydney pipeline system (MSPS) for 2000–2016. The application was lodged under s. 7.1 of the National Third Party Access Code for Natural Gas Pipeline Systems (code).

AGLWG acquires most of its haulage services through the MSPS under the Gas Transportation Agreement (GTA) made with EAPL on 30 June 1994, originally supposed to run until 31 December 2016.

The GTD sets out the broad relationship between EAPL and AGLWG and replaces the GTA on 30 June 2000. It will specify the pricing of haulage services provided to AGLWG from 30 June 2000–1 January 2007 (first period) and 1 January 2007–31 December 2016 (second period).

The termination of the GTA and its replacement by the GTD is a response to emerging competitive markets in gas supply. The GTD is a major part of AGL preparations to transfer its natural gas transmission assets to a new corporate vehicle. Shares in EAPL will be transferred to the listed vehicle, which will be subject to an initial public offering of 70 per cent in June 2000.

The Commission assessed the contract's likely effect on competition by considering:

- the likely future state of the relevant market if the agreement is entered into, compared with
- the likely future state of the market if the agreement does not go ahead.

The Commission considered the gas transmission and gas supply markets in the south-eastern states of Australia relevant in assessing the GTD.

On 8 February 2000 the Commission released an issues paper, which was circulated to 32 interested parties.

The applicant, EAPL, submitted that the GTD would have competitive benefits including:

- putting AGLWG on the same footing as other gas retailers;
- giving AGLWG the same haulage rights as any gas retailer; and
- increasing the efficiency of the pipeline.

Submissions by other interested parties included concerns that:

- AGL may enjoy more favourable tariffs and terms and conditions making market entry more difficult for others and giving AGL an advantage;
- there should be ways to easily compare AGL's terms with others;
- all contracts/discounts should be published;
- the tariff arrangements did not make EAPL 'truly independent' of AGL;
- the period of agreement was too long relative to change in the market; and
- AGL may effectively control Australian Pipeline Trust after the float.

In the light of these concerns and the original GTD application, the Commission focused on a few major competition issues:

- the pricing provisions for AGLWG;
- the provisions for AGLWG to make minimum monthly payments to EAPL; and

- a requirement that AGLWG receives access to new receipt and delivery points.

The Commission also considered the effect of AGL's proposal to relinquish some haulage rights, and assessed EAPL's submissions on the pro-competitive effects of the GTD.

In response to issues raised in public submissions and concerns identified by the Commission, the parties to the GTD put forward a revised agreement. The following revisions to the GTD addressed the Commission's competition concerns with the pricing provisions:

- 'minimum published reference tariffs' applicable to AGLWG will move in line with published reference tariffs from time to time;
- any discounts accorded AGLWG for service supplied outside the GTD framework in the period 2007–2016 will be treated in the same way as discounts accorded third parties;
- indications of comparability and dispute resolution processes were established;
- flow-through to AGLWG of any discount is limited to the same period, capacity, volumes and other charges as applicable to the service outside the GTD. Further, in the period 2007–2016, flow-through will be delayed by up to six months, addressing a Commission concern that the provision over-protected AGLWG from advantages negotiated by third parties; and
- the revised GTD incorporates confidentiality provisions for third-party services.

The revised GTD, sent to the Commission on 9 March 2000, was approved under s. 7.1 of the code. The Commission reached this decision very much in the context of the GTD being part of the processes by the parties leading up to the float of the new transmission pipelines corporate vehicles — and AGL's selling down its interest in EAPL from 76.48 per cent to 30 per cent. This sell-down means that EAPL and AGLWG will have opposite incentives on pass-through, which tends to allay the Commission's competition concerns.

New agreement between Qantas and British Airways

In May this year the Commission authorised a new expanded joint services agreement between Qantas and British Airways. The agreement allows the two airlines, among other things, to agree on fares and has been authorised for a period of three years. The agreement replaces an earlier agreement approved by the Commission in May 1995.

Qantas and British Airways had asked that the new agreement should be approved for an indefinite period. They claimed that the existing agreement had not harmed consumers and that competition had increased in relevant markets, leading to lower prices on the routes and a decreased market share for the two airlines. They also argued that any anti-competitive detriment from the arrangement was outweighed by demonstrated public benefits such as lower fares, expanded services, improved product quality, cost savings, increased competitiveness for Qantas, and tourism and trade spin-offs.

While the Commission was satisfied that competition has increased, especially from Asian carriers, during the current agreement, it had still to establish that this was a permanent feature of the markets concerned. The Commission also believed that the some of the public benefits claimed by the airlines were obtainable from their membership of the one-world global alliance, an arrangement which does not involve the same degree of anti-competitive conduct as the Qantas–British Airways arrangement.

In limiting authorisation to three years the Commission identified a number of uncertainties, including:

- the extent to which increased competition in the Europe and South-east Asian markets is permanent;
- the impact of British Airways' reconfiguration of its aircraft cabins on the availability of economy seats; and
- the impact on markets and alliances of:

  – the entry of new carriers into Australian domestic markets;

  – the newly established relationship between Singapore Airlines and Virgin Atlantic; and

  – the buy-out of Ansett Holdings by Air New Zealand, and Singapore Airlines in turn securing 25 per cent of Air New Zealand.

The text of the determination approving the new agreement until 21 July 2003, is available on the Commission's website at www.accc.gov.au

Proposed charges rejected

On 27 April 2000 the Commission released a draft report rejecting Telstra's proposed wholesale charges to competitors using its fixed line telephone network.

Competitors use the network to supply long distance, fixed-to-mobile and mobile-to-fixed calls.

The Commission has found that consumers could save up to $250 million if Telstra reduced its charges to efficient cost levels. The proposed charges are estimated to be about 30 per cent higher than the costs an efficient operator in a competitive market would incur.

Telstra's proposed charges were set out in an undertaking given to the Commission on 24 September 1999 and relate to services known as Domestic Public Switched Telephone Network (PSTN) Originating and Terminating Access.

Over the past six months, the Commission has undertaken extensive costing work to assess the charges. It indicates that they should be on average 1.8 cents per call end-minute (for 1999–2000) and 1.5 cents per call end-minute (for 2000–2001). Telstra proposes charging 2.3 cents per call end-minute and 2.0 cents per call end-minute respectively.

When the Commission began regulating Telstra's charges in late 1997, they were about 4.7 cents per call end-minute. The proposed charges are now around half of that and the Commission estimates that they should be reduced even more.

Since 1997–98, cost reductions and an increase in traffic volumes, along with recent increases in line rental charges, mean that per minute costs and charges have declined. Prices should now be approximately 40 per cent of the original 4.7 cents per call end-minute.

Telstra's proposed charges would have placed it at the high end of the range of international charges. The outcome of the Commission's decision would place the charges around the bottom of the range.

The competitors likely to be affected by the decision include Cable & Wireless Optus, AAPT, Primus and other telecommunications carriers. Altogether there are around 37 carriers.

Impact of reductions in charges

Currently Australian consumers pay about $5 billion a year for national and international calls. Telstra has about 75 per cent of national long distance services and 50 per cent of international services.

Consumers also pay about $3.8 billion a year for mobile services. Telstra accounts for about 50 per cent of mobile connections, with Cable & Wireless Optus and Vodafone having 32 and 18 per cent respectively.

Charges for these services are estimated to be between 30 and 45 per cent of the costs incurred by service providers in supplying long distance, fixed-to-mobile and mobile-to-fixed calls to consumers. Reducing charges for Domestic PSTN Originating and Terminating Access services would save Telstra's competitors around $70–80 million a year.

Competition should result in most of these savings being passed on to consumers through lower prices. Lower prices offered by long-distance carriers would create pressure on Telstra to reduce its prices for long-distance calls. This could translate into a saving of up to $250 million a year for consumers.

What are the benefits for consumers?

Most users of the 10 million telephone lines in Australia will benefit.

Consumers could expect to save, on average, around $20–25 a year on their phone bills. Some heavy users will save hundreds of dollars each year, particularly rural users who frequently make long-distance calls.

Likewise, a small business user who makes on average five national long distance calls each week day, of around 3 minutes each, is likely to save about $30 a year.

The draft report is available from the Commission's website at: http://www.accc.gov.au

Comments on the draft report were due on 26 May 2000. The Commission expects to issue a final report around the end of June 2000.

Part XIC arbitrations

Primus Telecommunications/ AAPT and Telstra

In March 2000 Primus Telecommunications Pty Ltd and AAPT Pty Ltd individually notified the Commission of an access dispute with Telstra Corporation Limited.

The disputes relate to Telstra's supply of local carriage service — that is, when Telstra supplies wholesale local calls using its own network so that competitors can provide local calls to consumers.

The Commission has begun the arbitration process in both disputes.