



# INDUSTRY COMMISSION

Professor Fred Hilmer  
National Competition Policy Review  
Locked Bag 32  
Queen Victoria Terrace  
PARKES ACT 2600

Dear Fred

## INSTITUTIONAL ARRANGEMENTS FOR THE REGULATION OF NATURAL AND MANDATED MONOPOLIES

During our discussions in December you asked for the Commission's views on the best institutional arrangements to adopt for a general regime for the regulation of natural and mandated monopolies.

The Commission favours the establishment of a new body to advise the Trade Practices Tribunal (TPT) on access arrangements in monopoly markets. In reaching this view the Commission gave attention to a range of possible models but considered that among these a new body was appropriate to perform this essentially new task. It also considers that a new body could set its own approach and acquire the special skills needed for the task. Gaining the support of the States is important for the success of a new regulatory regime. Using this model, the States can participate in its formation and operation, introducing a national character to the agency and the wider regime.

There are two other possible models for providing this type of economic advice to the TPT. Both alternate models adapt existing institutions to the role by using:

- the Trade Practices Commission (TPC), or the TPC and Prices Surveillance Authority (PSA) combined; or
- the PSA.

The difficulty with adapting the TPC to this role is that it would involve the one organisation in both the prosecution of anti-competitive behaviour and the resolution of access issues; in other words the TPC would, effectively, be both prosecutor and judge.

In the case of the PSA, the Commission considers that its current approach to issues and its institutional experience is both narrower and different to that required of the proposed access agency.

The Commission proposes that existing competition policy be modified to:

- first, extend to natural and mandated monopolies the TPC's current role in investigation and prosecution of restrictive trade practices rules;
- second, deem the TPT sole determinant of economic issues in trade practices proceedings, including terms of supply where appropriate;
- third, create an access agency to provide the TPT with research and analytical assistance for the resolution of terms of supply issues; and
- fourth, legislate an economic definition of monopoly markets to enable the TPT to compile and regularly review a list of markets which fall within the definition.

The TPC would continue to monitor and investigate activities by monopolies or act on complaints of abuse of monopoly power by consumers or other businesses. An allegation of misuse of market power by a natural or mandated monopoly, such as predatory pricing or a denial of access, could be brought before the TPT by the TPC or by private action. If the TPT upheld the allegation, it would refer the issue for advice on appropriate terms of supply to the access agency. The TPT would consider this advice in making an order.

The TPT would also seek advice from the access agency when:

- a nominated monopoly volunteers, or agrees with the TPC, that terms of supply require resolution; or
- the Council of Australian Governments decides that a TPT determination is warranted.

Clearly the Commission's proposal raises a number of issues not spelled out in this letter. I invite the review team to pursue these with Ed Willett, who can be contacted on 264 3245.

Yours sincerely

Bill Scales

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