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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO THE NATIONAL ACCESS REGIME

MR G.R. BANKS, Chairman
MR J.H. COSGROVE, Commissioner

TRANSCRIPT OF PROCEEDINGS

AT BRISBANE ON THURSDAY, 14 JUNE 2001, AT 10.05 AM

Continued from 13/06/01

MR BANKS: Good morning. We're resuming our public hearings into the commission's position paper on national access regime. Our first participants this morning are Stanwell Corporation. Welcome to the hearings. Could I ask you please for the record to give your names and positions.

MR SIMSHAUSER: Paul Simshauser, general manager of trading, Stanwell Corporation.

MR CHIA: Kuan Chia, regulatory counsel, Stanwell Corporation.

MR BANKS: Good, thank you. Thanks very much for participating today. We received an earlier submission from you; haven't yet received one on the position paper and I guess that's why you're here. So I'll perhaps hand over to you to make whatever points you want to make and we'll see where that leads us.

MR SIMSHAUSER: Okay. I guess what we wanted to try and just talk through today was probably not so much dealing with conceptual issues as it is dealing with a bit of our experiences so far which we think probably maybe a useful contribution in one way, shape, form or another we hope. So I guess the starting point our experience is obviously mostly focused with access to electricity networks, although we have had a bit of experience with access to rail as well, but we'll probably focus today mostly on electricity networks. From the outset I guess the electricity market has, while it's been in train for a little while, probably crept up on all of us fairly quickly. As a result the actual access principles and so on, while they may be well entrenched, the application of those principles is a lot easier said than done. I have some sympathy for the network businesses in some respects because they're being asked to make some fairly quantum steps by what is now a very competitive market in terms of connecting to those particular networks.

Competitive markets have forced businesses to move fairly quickly and try and get into place commercial arrangements and in many respects they probably differ from what had been the norm in the past, primarily because in the past any problems were basically internalised throughout the vertically integrated firms that were the electricity commissions, certainly from our perspective and in my experiences in the QEC and subsequent reformations of that industry. Conceptually how we find the industry now, I guess, Stanwell is very aggressive in trying to develop new facilities in a range of markets. We're not just dealing in Queensland, we're dealing extensively in Queensland, New South Wales, Victoria. We're also dealing in Western Australia. We'll soon be pursuing similar sort of arrangements in South Australia and Tasmania. So our experience with a connection or access - gaining access to monopoly networks is probably in that sense somewhat unique.

We also obviously connect to transmission monopolies but we also spend a very large amount of our time connecting with distribution monopolies and there are some vague differences that we are finding in those markets. I guess as a general point you won't be surprised to hear me say we find that there are entirely too many regulatory regimes to deal with. This causes an enormous transaction cost on our business, just because we make a particular breakthrough in one particular area, by

no means are you going to get the same welcome treatment in the next jurisdiction that you're participating in. In fact even within a jurisdiction you will find that the regional distribution monopolies have different objectives or different appetites for risk in relation to their access arrangements. The current rules of engagement permit that. They're not particularly clear. The overarching principles are common but the application of those principles is wide open to interpretation.

I think probably one of the big issues that we face is that a large firm connecting to such networks is information symmetry. What's often crossed my mind is that if a very large, very sophisticated player like Stanwell is having difficulties with information symmetries, what hope has a small player got who doesn't have the access to resources, expertise, legal advice, engineering advice, economic advice, and if it's not of enormous concern to those who are looking at this entire framework, it should be. Our experiences so far in terms and conditions of gaining access have been wide and varied; some good, some not so good; some terrifying, some frustrating.

I'll just give you a few examples of these sorts of issues - and I won't mention any names because it's not really relevant. What is relevant is the fact that they have happened and the reason that they do happen is that there's scope to do so. First of all there's - in negotiating access to, you know, common infrastructure, we've come across an occasion where there have been unreasonable obligations on the generator injecting into the network. This has come in the form of being in the contract document, basically saying that your power station or your generating facility can be constrained on or constrained off under the terms of that agreement. In the national market at the wholesale level if you were constrained on or you were constrained off, there is generally some form of payment associated with that, providing it's not congestion-related. Congestion-related it's understood that's just going to happened. But in terms of being constrained on for a particular reason because there's reliability of supply problems, there is always access to some form of payment under the sort of arrangements that were envisaged, it was just simply a right that would be dictated on you because they had monopoly power and they could do so. Of course, if we were to go and find the options to go and connect somewhere else, there is none because they are a monopoly. So that's obviously of great concern to us.

Routine maintenance is also another issue that we've found somewhat problematic in our experiences. We have a, if you can envisage, a renewable energy-producing facility that is only able to produce at a particular time of the day or a day of the year or so on. There are obviously going to be times where it's essential that you get access to that particular network. If there is opportunities for routine maintenance, those routine maintenance, you would think, on a static sticks and wires should somehow be integrated with those associated with the generating set, particular if you're talking, for example, rice husks or sugar mills or whatever the case may be where there is a periodic outage times. Our experience in one particular case was that we would be given best endeavours to undertake routine maintenance of the access assets. I guess from our perspective we have a whole bunch of spinning turbines and boilers, you know, with controlled explosions going on inside and we're able to say to our host, "We will guarantee that between the months of X and Y we

will be available and we will be producing and outside that period of time we will be undertaking maintenance." For a network who has no such spinning parts or controlled explosions - in fact all we're talking about is a bunch of static poles and wires that don't shift from one day to the next. To not be able to try and coincide our maintenance with that to me just seems unreasonable.

Just let me be clear on this, too: I'm not talking about emergency maintenance. I understand, as well as anyone does, if all of a sudden you're in a position where a storm goes through and knocks poles out or whatever the case may be, that's fine. You would expect that, you know, the network is going to go down and there's nothing we can do about that. But to actually not be able to coincide maintenance for the organisation to optimise its production output obviously places some considerable strain on the efficiency of the solution.

In terms of supplier restoration or gaining access, where the actual access assets themselves - for whatever reason - have some form of outage, we were unable to get any form of commitment on the sort of restoration time that, you know, might reasonably be expected. So I guess there we're starting to get to more along the lines of service standards. Terms of payment, as a monopoly obviously they have pretty much a final say and to try and negotiate a term of payment, you know, is obviously very problematic. Once again, the lack of competition doesn't allow you to sort of move your business elsewhere.

Another issue that we've come across is the actual reliability of the system itself. Again, I guess this comes down to some form of service standard, in a way, but there seems to be quite a strong willingness on the part of those monopoly businesses to have all care and no responsibility in relation to the actual reliability of access itself. Just to put that into perspective, on the one hand we are being asked to be constrained on or constrained off without any form of penalty. On the other hand, they're saying, "Well, we can constrain ourselves on and off and we're not going to pay you anything for it." So it's sort of - you feel like you're constantly heading uphill battles on every account.

As a result of the combination of these supply restoration guarantees, or the lack of them, and also this non-commitment to any sort of firm access or penalties for being unavailable, there's no commercial signal going to those monopoly businesses for them to make an efficient decision on whether or not they should spend the money on maintenance and work the overtime and get the thing back on-line. I mean, it may be that the most efficient outcome for them is to actually leave themselves off-line and do the maintenance during the day. But in the absence of any signals, there is no pressure for them to actually bring their system back on-line again. Sorry, I feel like I'm going around in circles to get the point across. But I just think that, you know, one of the best things that regulatory, our frameworks can give to a monopoly business is the right sort of commercial drivers to make intelligent decisions that lead to efficient economic outcomes in terms of, you know, keeping their system available or having it available when it needs to be is probably more to the point.

Another issue which I guess you'd probably hear from a number of people trying to gain access to electricity networks is the concept of getting the transmission use of system pass-through. You know, there's a so-called benefit associated with embedding down into a distribution network. Part of that access arrangement is that if there is any avoided cost from upstream transmission costs then they should be passed through to the generator who has given them that benefit.

I think to sort of say that simply because you plug into a low-voltage network you automatically get all rights to all transmission costs is obviously not true. It's a zero sum gain. If there has been any saving then it needs to be passed through. If there hasn't, then there should be no pass-through. But I guess in our position so far, some of the issues that we had come across is how do you determine what that benefit is, or unnecessary obligations in order to gain the access to that transmission use of system pass-through. If a system, for example, in Victorian peaks during winter, there may be a temptation on the part of the distribution network saying, "Well, unless you're available 100 per cent of the time throughout winter then we're not going to give you any of that avoided cost because there is no avoided cost." But that's not actually, you know, a sensible outcome. What we should be really focusing on in these particular issues is making sure that the supply is there when it's required. I mean, winter is a very long period and not every day is cold, so not every day is going to drive peak demand. You know, some sort of rational sort of response, it would seem to me, is to try and work out well, "What are the drivers that cause the costs in transmission?" and that's invariably the peaks of the year, and they probably look at, say, the 10 or 15 coldest days of the year causing the highest demand and therefore that's going to drive the next level of transmission investment. So if we can have a generating installation that manages to cull those 10 or 15 years and actually defer some transmission costs, then surely that's actually been a far better outcome than being available for 100 per cent of the time in terms of costs on society. I think that's a really big issue.

A lot of these issues that I've spoken about sort of, I guess, in one way, shape, form or another I've sort of heard, "Well, if you want these things you've got to pay more," and I think, "Well, why is that so? You were getting a rate of return to provide these sort of services," and the sort of response that we'll hear back is that, "Well, all we're getting is our weighted average cost of capital which is a risk-free rate." Well - I won't swear here, of course - but, I mean, that's complete bollocks. Last I saw, I didn't see a single regulated monopoly business in Australia earning bond rates - that's the risk-free rate, well, that's the proxy for risk-free rate, you know, the 10-year bond rate - and I haven't seen a single monopoly business anywhere in Australia who is earning bond rates. Any firm in any industry that's earning anything above bond rate is obviously getting some form of risk-adjusted return for their business.

The sorts of issues that we've raised here are obviously risks of their business. They are the risks that they can control. They're not risks that we can manage. Trying to pass those risks onto us obviously just increases our cost. If we're going to try and price those sorts of risks into our projects, you know what that's going to do to our hurdle rate. We don't know how to price it properly because we can't manage

it. So we're always going to have to err on the side of caution or, in my case, if we don't I'm sure sooner or later I'm going to get scrapped by our board of directors in one way, shape form or another for making silly investment decisions. So with this entire access sort of framework, the risks need to be apportioned to those who can best control them. I don't think - I'm not suggesting for a moment that risks that are uncontrollable by anyone should be just thrust onto those who are closest to it. But where there is a definable risk that can be quantified by the organisation and managed by that organisation, then surely they should be the ones that are held accountable and responsible for it.

I guess from our observations of the marketplace and our observations of the regulators and those being regulated is that there seems to be this desire to run with a very light-handed regulatory approach. I wonder whether that's come from the likes of the wholesale electricity market where the principals there are establishing a code and have a very light-handed regulatory response. It works under the conditions of wholesales markets because there are a large numbers of competitors, there are a large number of generators, a large number of retailers. So light-handed - and, you know, a nine-chapter code of conduct are governing the rules of engagement and they're pretty definitive about how the actual rules of engagement are to operate. Because there's competition amongst all of those participants, light-handed regulation can work. When you've got a monopoly business regulated in a light-handed response, what would we expect? I mean, when I hear regulators say a light-handed regulatory approach on a monopoly business, I just wonder, you know, did these guys miss EC110 or something? I mean, you know, the fundamental basics of a monopoly business are that they will extract monopoly profits if uncontained. I mean, I just know myself, if I was in one of those businesses I'd be doing exactly that and I certainly don't blame the businesses themselves.

So any form of access principals and governance over a monopoly business need to be extremely heavy-handed. You know, the rules of engagement need to be set very definitively. If you actually speak to a lot of these regulated monopolies - a lot of these issues that we have sort of discussed through - invariably what they're looking for is to be told how to do it. I mean, realistically, when I sit down with a regulatory manager from a monopoly network and start talking to them about access to their grid, they don't want to hand these sorts of things over to us, and I don't blame them because it's taking on risks that they don't have to take. I mean, they're a monopoly so they're not forced to do this sort of thing. I can't go and take my business anywhere else. I'm forced to deal with this one firm.

That they don't come and put these sorts of things or accept these things in their terms and conditions of access - which to our way of thinking are all fairly reasonable sorts of approaches to engaging in business - there's just no incentive there for them to do it. I don't think any of them are prepared to stick their necks out and say to their boards of directors, "We've signed this deal with Stanwell to connect to that grid, we've given them all sort of very commercial terms and agreements, and by the way we didn't need to do any of it because no-one has told us to." The incentives aren't there. So that regulation needs to be fairly well embedded. The rules of engagement need to be defined and need to be defined very clearly.

I sound like an overheated school principal I know. That's sort of not what I mean to say. It's just I can't see how a regulated business would want to go and take on risks when they don't have to. I know myself if I can pass a risk on to someone else then I'm going to do it every time. So again I've got a lot of sympathy for the networks in the way they're handling their business. I certainly don't blame them for what they're doing. I just think that the actual framework under which they are required to do business is just incomplete.

MR BANKS: Has your experience in that respect been the same in different jurisdictions? You mentioned earlier that you were operating in four jurisdictions.

MR SIMSHAUSER: Yes. We have had pretty mixed sort of experiences. I wouldn't say that I've found this complete set of problems with each individual player that we have dealt with. Some of the aspects we have raised here are less of an issue than with others.

MR CHIA: Yes, I guess some issues have been of particular concern in respect of some network service providers. But the other issue is the response from the regulator. The Queensland Competition Authority has chosen to take a light-handed approach, while in Victoria we have found that the ORG has taken a more sort of proactive role and we very much appreciate their support in resolving these sorts of issues because very often, as Paul mentioned, because of the problem of information asymmetry, we're in a very weak marketing position and we're very much reliant on the network service provider doing the right thing by us.

MR BANKS: On the question of information asymmetry, how do you see that being resolved, other than through complete prescription say by the regulator?

MR SIMSHAUSER: From our perspective it basically means that we need to go and poach staff from those network businesses. That's the simple fact. We need to go in and pull people out of those businesses so we can find out whether or not they're serious. In the past, I kid you not, that's what we have been forced to do. That's a big cost on our business; literally having to go in and poach staff and try and gain an understanding on how to deal with it.

Initially when we started off we were just a bunch of dumb generators. I mean, what did we know about network businesses. So we have had to go and find really good expert staff to try and help us get over the line. Of course, when you take or when you employ staff from any organisation, their information dates quickly, as you can imagine. But that's what we have been faced with and that's how we have been forced to respond.

MR BANKS: Yes, so you don't think that the requirement or regulatory requirement to divulge information would be effective?

MR SIMSHAUSER: I think it would be an excellent start. It's certainly better than no requirement whatsoever. You then obviously have to have the capacity internally

to be able to deal with that information. That's just a cost of doing business. But I think to actually, in the absence of anything else - you know, the requirement to divulge information would be an excellent start.

MR CHIA: But I guess there's also the issue of the quality of the information, because very often we need forecasts in terms of loads, demand and all sorts of factors like that, which have a degree of subjectivity. I guess there are vested interests on the part of the network service provider to come up with limited information.

MR SIMSHAUSER: I don't believe we'll ever get a perfect outcome there, I guess is the short answer, but we can try and close the gap. I've spent years forecasting in electricity in all areas of the business, from the financials to the production and prices and all sorts of stuff - investment capital and capacity. I know as well as the next guy, you know, you can make a forecast sing and dance if you want it to, and wear a tutu, but if there's something on the table you've at least got a starting point for your analysis.

MR COSGROVE: We were told yesterday by some people from the gas industry that the gas industry code does contain some information disclosure provisions. Are there similar provisions in the national electricity code?

MR SIMSHAUSER: There are requirements to a certain extent. Certainly at the grid level there are some - you know, at the transmission system level there are requirements. With respect to the distribution - - -

MR COSGROVE: You're not sure?

MR SIMSHAUSER: Yes. Actually, to be honest, the extent of those requirements is unclear to me. Whether or not it's sort of in a time frame that's of any use to long dated assets like generators, you know, I'm not familiar with.

MR COSGROVE: These monopoly distributors that you're having to deal with I guess have a certain degree of potential competition to which they're exposed, not in the short run, but presumably gas distribution for example could be a constraint on the exercise of monopoly power on their part.

MR SIMSHAUSER: Yes.

MR COSGROVE: That might lead you to think that they would have some self-interest in dealing commercially with customers such as yourselves, rather than seeking all the time to in effect raise revenue to a point where they might eventually deter people from using their services, and so they would eventually experience a decline in their share of the market - the total energy market I'm thinking of. Do you see any influences of that kind constraining them?

MR SIMSHAUSER: I guess your comments there make some sense in light of an experience we had in the southern states with a particular network business actually

trying to charge us common user charges for connecting to their network. Whenever we had historically in the past - at either the transmission or distribution level of access - when you were gaining access to that network you would expect to pay for your connection costs into the grid, your direct lines going into it. But I mean, that's the extent of the charges that you will pay in terms of the networks, along with the maintenance of those lines.

In one particular case we had a network business who tried to charge us just common use of the system, as a consumer does. We sort of pointed out to them that we're not consuming at all; we're actually injecting into the grid for those consumers and the consumers are the ones who pay those charges. So maybe their objective there was to try and lower the costs to all of their consumers by tackling the generator.

In that particular case we made it quite clear to the distributor that if you did that, you would actually kill the project. The actual sort of charges they were levying on us were sufficient enough to basically kill the project off completely. We subsequently had to go and have a very quick talk with regulators in that particular area and have the issue resolved, which we have sort of sent off. It will probably get resolved over the next few days I think, in our favour fortunately. But as an electricity generator, we are always going to have to use their grid because we can't inject into the gas network.

MR COSGROVE: Yes. No, I was thinking of their position.

MR SIMSHAUSER: Yes. So I think as a consumer, yes, you might be right. Perhaps that was the motivation for that particular infrastructure problem that we were having. But as an injector into the grid, for us, we are in a unique position in that gas won't tame them at all. In fact we're probably the player where we'll draw from the gas network and inject into the electricity network.

MR COSGROVE: Yes.

MR BANKS: Is there, in your experience again across jurisdictions - I mean, you talked about the attitude of the regulators - but is there also a difference that may come out of say either degree of vertical integration or common ownership up and down stream? Could this be a factor as well?

MR SIMSHAUSER: We have been in a position where one of the businesses that we were negotiating with also had some form of interest as a competitor of ours in various submarkets that we're involved in. I was never able to determine whether they would give themselves the same form of agreement, if you know what I mean. I know what they were giving to us, and if I were in their shoes I would most certainly try and do the same thing. I have just wondered what their own internal customer would have been granted in the form of a connection and access agreement. Unfortunately I just don't know what the answer to that question is.

MR BANKS: I guess the other thing I was going to ask is, to what extent are there

arbitration provisions that can resolve some of your problems and any comment you had on those.

MR SIMSHAUSER: I guess so far the sorts of arbitration experiences that we have had, as Kuan mentioned - we found the ORG in Victoria to be really quite good.

MR BANKS: So that was in the context of a dispute?

MR SIMSHAUSER: Yes. We basically put a position to them and they have - I mean, I guess I say that because they ruled in favour of us, we found it a good experience. I guess what I found in that decision was it was consistent with national market practice. So I guess that's how I would explain that one. It was a good outcome because we probably got the right outcome, or it appears we will get the right outcome. The draft decision went our way. It is consistent with the rest of the market. That's the sort of answer I'm looking for.

I mean, at the end of the day I don't mind if rules go against us. If the rules are there, we can deal with them. Then we just need to make commercial decisions on our own. But when we're seeing a scattergun approach to access, it makes business very hard. Ideally in our game you sort of work up a bit of a template type project and try and then spread those template costs across a number of projects of very similar ilk. The probable finding is that our network issues are proving to be radically different. In the case of Queensland, I guess the regulator in Queensland has tended to show an inclination to adopt more of a light-handed approach.

MR BANKS: What do you mean by that though?

MR SIMSHAUSER: Rather than sort of take issues and run with them as a formal dispute, it's more a matter of probably standing back and letting the two participants go and belt it out. Of course, if you're dealing with a monopoly, guess who is going to win - and rightly so.

MR BANKS: So there's significant discretion there for the regulator in fact not to interpose itself.

MR SIMSHAUSER: It would appear so, yes.

MR COSGROVE: Is your experience - apart from the different approaches adopted by different regulators - affected also by whether or not the distributors you are negotiating with are privately owned or government owned?

MR BANKS: Excellent question, John.

MR SIMSHAUSER: In short, yes.

MR COSGROVE: With the privately owned companies being more willing to negotiate, or the reverse?

MR SIMSHAUSER: Probably the reverse, and therefore the regulators tend to be a little bit heavier in their approach.

MR BANKS: That would be fair to say?

MR COSGROVE: They find it more easy to negotiate with the government owned?

MR SIMSHAUSER: Yes. There's probably a will there to - and it doesn't mean that the negotiations will be fruitful - but you won't just get a simple, straight out, "No, sorry, go away, this is our decision." So yes, I mean, just for an example, we have found the other two distribution networks in Queensland - you know, they have always shown a willingness to sit down and thrash out the issues with us. I mean, we may not get the answers we want to hear but it's not a matter of them just sort of putting up walls and saying, "Mr Simshauser and Chia, don't bother coming around and seeing us, we've already made our decision."

I believe that they believe they're doing the best thing for their business. They're operating within the constraints that are placed around them. So on that basis, as I said right at the outset, I do have some sympathy for the position they're in. I mean, these guys are just trying - if I was in their shoes, I'm absolutely certain I would be doing the same thing. Unfortunately I'm not in that position. I'm on the other side of the fence. I honestly think if these sorts of rules were put into place or examined, where problems are emerging in the market, if some sort of framework was put into place that gave all of these businesses marching orders it just removes a lot of these deficiencies that are emerging - and the subsequent inefficiencies that will arise as a result of them.

At the end of the day you know what a generator is like. It's a volumes game, for the most part. Anything that's constraining your access, or altering the production profile that you sort of wish to pursue, has a cost on your business.

MR BANKS: You said at the outset that you weren't intending to talk much about rail, but are your problems that you have struck in electricity - are there comparable ones in the area of rail or are there areas in which you would want to comment on any major differences?

MR SIMSHAUSER: Do you want to take that?

MR CHIA: Yes. I guess what we've found is that the Queensland Competition Authority has adopted a different approach in rail compared with electricity. They've taken a much more pro-active approach which is very much appreciated but notwithstanding that I guess there are issues in terms of the approach that was adopted in terms of Queensland Rail having a voluntary access undertaking and having issues associated with that. In terms of having QCA having sort of control over that process is somewhat diluted. So I guess there are issues there in terms of how the whole process was undertaken as opposed to the approach adopted by the

QCA which we very much support and having invested the time, energy and resources in trying to pave the way for people seeking access to the infrastructure.

MR SIMSHAUSER: I guess conceptually the idea of a voluntary access code by a monopoly - I'll just refer back to my earlier comments I guess - - -

MR COSGROVE: Yes, but it's not voluntary in the end. It has to be accepted by a regulator.

MR SIMSHAUSER: Sure.

MR COSGROVE: And possibly certified by the national competition council as well.

MR CHIA: But I guess I was more referring to the time lines. I guess what we've done is try to enter into an arrangement with two other coalmines to provide the critical mass to attract any third-party operator to come into Queensland, and that introduces a degree of uncertainty because very often there's only a small window of opportunity for long-term contracts to be renegotiated. Once you miss that then you're locked in with Queensland Rail for another 10 years or whatever. So there are those sort of issues which I think we've encountered.

MR SIMSHAUSER: Which, yes, is a part of that process. I mean, if I was a power generator and I wanted to lock out competitors when the window of opportunity existed back in 1998, I would have just gone to the government and said, "Well, listen, don't worry about going through and employing all these consultants to rip apart the industry, I'll do it myself; trust me." Of course, I would have made sure that I'd finally got around to restructuring and deregulating myself somewhere around about 2001, by which time I'd pretty much built everything that was required in Queensland for the next five or six years. I mean, these are - you know.

MR COSGROVE: Yes.

MR SIMSHAUSER: There are always going to be incentive problems.

MR BANKS: To what do you attribute the delays in getting the rail regime up?

MR SIMSHAUSER: Probably a clever behaviour by Queensland Rail. I mean, if you're a monopoly and you're about to face some form of access regime, surely your profit maximising position would be to prolong those as long as possible and you can't - I mean, if Queensland Rail didn't do that, you'd sort of be wondering what they're up to, wouldn't you? That's their role in life, is to maximise - they're a commercial organisation. This is the thing. It's very easy for us to sort of sit back and sort of call all the monopoly businesses, you know, monsters or whatever the case may be, but in actual fact all they're doing is just maximising their profits. You can't expect them to self-regulate and, you know, it's just not their objective to do so. They're there to maximise profits. So any form of self-regulation or light-handed regulation, that's the sort of outcomes surely that we would expect. I just keep

putting myself into their shoes. I'm sure I'd do exactly the same thing. So the role of access frameworks and regulators - you know, their role is just so critically important in order for the competitive ends of those industries to flourish.

MR COSGROVE: I don't know whether you've had much of an opportunity to look at the proposals we put forward in our position paper. In your initial submission to us you had something to say about the possible nature of an objects clause, as it's called, of an overarching statement that might guide the implementation of access regimes. I was wondering if you had had such a chance and whether you've got any thoughts on what we put forward, which was pretty much intended to balance the needs for efficient use of essential infrastructure, which is largely where you're coming from, I guess, with the desirability of also promoting investment in infrastructure.

MR SIMSHAUSER: Yes. I guess our sort of view on that object clause was - we think there probably needs to be a very clear statement of objectives within the broader set and those sort of - the issues we would expect to be in there is, you know, that clearly starting the economic efficiency objectives, you know, highlighting the fact that there are community considerations, that economic development goals should be linked to the industries themselves, that economic development goals were linked to the industry goals. I guess being the big, green generators we are, we always like to see you put something in there about the environment, although I'm not sure that we'd have too many people agreeing with us on that. But we always think that if there's a sort of an environmental slant to differing alternatives they ought to at least get a look in, you know.

I guess that may seem like a very vague statement, but as a basic objective you can imagine a situation where we're just talking about one before or a wind farm that gets up or doesn't, based on a charge that should never have been passed through in the first place. If the wind farm didn't go ahead that's another couple of hundred thousand tonnes of CO2 that gets spewed out into the atmosphere over the next few years, in the absence of it, you know, because its replacement is always going to be a fossil fuel fired installation. So I guess in that perspective I guess maybe something like no discrimination between technologies might be the right way to couch that, or something like that, in terms of those objectives.

MR CHIA: That's right and I guess we would appreciate any thought in terms of introducing the concepts of sustainability and environmentally responsible outcomes. That is something we note that the Victorian government has recognised, in that the establishment of the Essential Services Commission, or proposed establishment, and we also understand that COAG has recognised that this issues needs to be taken into account when developing a national energy policy and we would very much support those moves.

MR SIMSHAUSER: So whilst maybe we're green hippies in the marketplace it seems at least the Victorian government agrees with us and the COAG appears to be sort of starting to think that way. So I guess there is a precedent for our sort of suggestion there.

MR COSGROVE: What's the fuel stock for your generators?

MR SIMSHAUSER: Our primary installation is coal-fired. From there everything that we produce outside of that is all renewable space so hydro-electric, wind, a biomass, solar. So we've made a commitment we won't build any more coal-fired installations. Basically the one that our business is founded on is sort of the one and only, and thereafter we're going to stick pretty much to renewables or otherwise very high efficiency, a fossil fuel, you know, combined-cycle gas type application or co-generation. So our business direction from here on in is that, you know, we're out there trying to move that whole renewable market forward and try and help the federal government deliver their 2 per cent policy and try and stay out of the path of angry green groups in the process.

MR BANKS: I mean, you've got this opportunity to comment on the position paper. You've not explicitly addressed it but I give you the opportunity now, if you've had any general comments, or you're welcome to come back to us.

MR CHIA: We have prepared a submission and we will appreciate the opportunity to lodge it within the next few days. But I guess we support the general thrust of the findings of the Productivity Commission and I guess Paul has highlighted the sorts of issues of particular interest to us. We believe that some of your proposals will go some way to meet our concerns but I guess we very much appreciate a bit more sort of pro-active approach to dealing with these issues because I guess, as Paul indicated, it's very difficult to take a light-handed approach when you haven't got any competitive environment and I guess our view is competition is the best form of regulation. But in the absence of that, you need to establish an appropriate framework and once the market is operating efficiently and commercially then regulators may choose to take a more light-handed approach.

MR SIMSHAUSER: I mean, the proposals and all that sort of stuff - I mean, they all make really good sense. I guess that what we've tried to talk about today is that unfortunately the devil is in the detail. So I mean, conceptually - cheers.

MR BANKS: I guess the other thing we have in mind is that the national regime in a sense can exert discipline on the industry's specific regime over time. So I guess we have in mind that operating as a team player which could lead to greater coalescence of the other regimes and I think one of your particular concerns is, you know, even just with the jurisdictional variations and interpretation - - -

MR SIMSHAUSER: Yes, I noticed that as one of the issues creating that single regulator responsible for Part IIIA and those sorts - I mean, they're obviously all sort of steps sort of heading towards the right direction for us, I guess. It will all help, it all counts.

MR BANKS: Could I ask one question about this and the possible implications of light-handed regulation. It might be the case that one effect of that would be a greater willingness on the part of, let's say, electricity distributors to invest in

additional capacity, which presumably then would put a company such as yours in a position of a little bit more bargaining strength as the distributor that you're trying to tap into has that additional capacity of wanting to sell. I don't know whether you agree with that or not, but if you did, might that not be a reason for not having, say, heavy-handed regulation which might mean that you're selling into a rather constrained marketplace?

MR SIMSHAUSER: I think in reality when I say heavy-handed regulation I don't mean to just go in and beat the daylights out of the poor old distributor. What I'm basically saying is that I think where problems are emerging, I don't expect a monopoly to go and resolve it of its own goodwill because the incentives aren't there. At the end of the day most of the distributors are based on that, you know, the revenue caps and depreciated optimised values and all that sort of stuff. Where the distribution business has - I mean, at the end of the day distribution businesses have the incentive to grow and the way they grow is by expanding their network assets, and they can only do that if a demand is truly there.

If the demand isn't there then they're goldplating the network and the regulator is going to come along and say, "Listen, you're not going to recover that." Of course for the distributor there's a risk that their forecasts or whatever may be wrong and that's why they're not getting the bond level rate of return. There is some sort of risk component added into their - but I don't think the application of light or heavy-handed regulation in that respect will necessarily change the - - -

MR BANKS: Investment decision.

MR SIMSHAUSER: Yes. I think the investment decision has got to be based on, you know, can they submit to the regulator a reasonable case for those assets and it's then just a matter of whether the regulator believes it or not, and I think that's going to happen under either light or heavy-handed regulation. I don't think you'd ever get to the point where you'd let a distribution business just go all out.

MR COSGROVE: Yes. Of course, these decisions often are made at the margin and particular factors, possibly risks associated down the track with what they would regard as unduly heavy regulation, might be enough to postpone an investment decision or in some cases even cancel an investment.

MR SIMSHAUSER: Yes. That's obviously very much a possibility. In our particular case as an injector into a network, I'm not sure how to follow that line by argument through. I can see both occurring in some cases. We may facilitate the need to not invest and cancel investment rather than drawing it down from the grid. By us turning up, there is no longer a requirement for them to expand their network, in which case we'd put our hand out and say, "We'd like some of that saving," of course. But there is also the inverse, where if they don't augment the grid then the sort of size of generating plant that we envisage putting in won't be able to proceed because the capacity of the line is not great enough.

I think in that particular case - I can only put myself in the shoes of the

distributor, and I'd be sort of talking regulators through the fact that at the end of the day there's a fair amount of pain associated with capacity constraints on the system to the point where blackouts occur, because politicians start tumbling, and I always reckon that's a pretty good argument to get an investment up. I know if I was a regulator that would scare the daylights out of me too, working for the government as they are. So I'm not sure that light or heavy-handed regulation would alter those sorts of key - does that make sense, John? Do you know what I mean?

MR COSGROVE: Yes, I can see what you're saying.

MR SIMSHAUSER: I think probably that's more of a function of a political pain that you'll experience if the pair of you - that being the regulator and the network business - actually make a motza of it.

MR BANKS: All right, thanks very much for that. We appreciate you turning up and talking through those issues, and look forward perhaps to seeing the submission. Perhaps if we've got any questions on that, you won't mind if we come back to you a bit later.

MR SIMSHAUSER: Absolutely. That's fine. Thanks very much for your time and I will reply as soon as we can.

MR COSGROVE: Terrific.

MR BANKS: Thank you. We'll break now for a few minutes' break.

MR BANKS: Our next participant is from the Queensland Mining Council. Welcome to the hearings. Could I ask you to give your names please and the capacity in which you're here.

MR KLAASSEN: My name is Ben Klaassen. I'm the economist with the Queensland Mining Council.

MR SCOTT: My name is Russell Scott. I'm commercial manager with Anglo Coal Australia Pty Ltd. I'm here as a member of the Queensland Mining Council. My company is a member of the mining council.

MR BANKS: Thank you. Thank you very much for attending today. We received a submission from you which helped us in preparing our position paper and look forward to what responses you have to that paper. We haven't yet had an indication of those so we're in your hands and will let you go through them and then we'll pick up some issues for discussion.

MR KLAASSEN: Thanks, Gary. I'll open with just a few very brief comments touching on some of the main themes in our original submission and also responding very briefly to a couple of the key points in your draft report. The mining council's principal interest in terms of competition policy currently is rail. Rail, for a lot of the coal mining companies in Queensland in particular is, if not the highest then amongst the top two or three highest cash operating costs that they have. Of course they operate in a very competitive market so reductions in rail charges feed straight through to the bottom line and into enhanced competitiveness and of course a more favourable prospect for investment.

Our main goal in terms of rail access is to develop an effective regime for the coal and minerals system in Queensland, a state based regime. We see the issue of rail access as being principally stage based and also for other infrastructure types that are state owned, but that said, we see the national access regime as performing a very important role in acting as the potential default regime that will apply in the event that effective state arrangements cannot be put in place and we believe, although we have not been a direct participant in Queensland in the workings of a national access regime, we believe that that default role has already served our interests well to this point.

In terms of this review we're looking mainly for recommendations that strengthen the national regime's role in that default regard. In particular we think it's important that the administrator of the national regime retain a fair degree of discretion in how it interprets and applies those tests in the competition principles agreement which determine the effectiveness of a state regime. We support the concept in the draft report of importing those tests of effectiveness into the act. That seems to make sense; to the extent that you can make the legislation as stand alone as possible, that's a good idea. We also support making it clear in the act that for an access regime to be deemed to be effective that it needs to provide sufficient information for access seekers to be able to participate in negotiations on something approaching an equal information basis. We have quite an extensive list of the types

of information which we believe an access regime needs to incorporate to deliver that information symmetry between the two parties.

Finally, we support the concept of a national regime providing a guidance to a state and industry specific regimes in regard to key attributes such as basic pricing principles, again in the interests of making the legislation as helpful and as stand alone as possible. So that's all I wanted to say by way of opening remarks. Unless Russell wants to say anything we're happy to receive questions.

MR SCOTT: No, that's well covered.

MR BANKS: Perhaps there are a couple of points that you've raised there. I mean, the one in relation to pricing principles I guess we gave considerable thought to that in the position paper, just to draw you out a little bit more on that, what you thought, what we had come up with there was appropriate from your point of view. Have you had a chance to consider those?

MR KLAASSEN: Yes, I understand that's proposal 8.1. It's one of your tier 1 proposals.

MR BANKS: Yes.

MR KLAASSEN: Basically they look pretty good in the broad. They're less detailed, I suppose. It's a shorter list of items than we suggested in our submission. There are a couple of concerns though and it may be a matter of interpretation. In particular - well, let's go through them in turn. The first one refers to generating revenue across the range of regulated services so that the entity at least meets its efficient long-running costs of providing access, including a risk based return on investment. Fine, that's good stuff. That was consistent with our key suggestions.

The second one, however, refers to prices that should not be so far above costs as to detract significantly from efficient use of services and investment in related markets. Our concerns in that regard would relate to the manner in which that is interpreted. In our debates with regulators and the provider for rail services in Queensland there has been the issue of what we would call discriminatory pricing - other people call it Ramsey pricing. We appreciate the theory that underlines Ramsey pricing and we can accept it as a principle but only to a point.

We very strongly believe that firstly the weight of evidence to support a discriminatory pricing approach should be very high. We're concerned that it's something that an access provider can say very easily, that we need to price different services differently to maximise utilisation of the infrastructure but it's a hard thing to prove and we think it should only apply in fairly patently obvious circumstances. In Queensland for example it may be acceptable in distinguishing between the level of cost recovery of coal and minerals traffic as opposed to passenger services, you know, services that have been for a long time patently incapable of recovering their stand alone cost.

MR BANKS: Or perhaps other rail freight?

MR KLAASSEN: Yes, other types of rail freight. We're strongly opposed though to the operation of that sort of pricing within a commodity group like coal or coal and minerals. We think the weight of evidence is too high, don't think it's provable and it leaves the way open for lots of grief, the special deals.

MR BANKS: Is there anything you want to add on that, Russell?

MR SCOTT: In terms of pricing for monopoly services such as rail infrastructure or monopoly port infrastructure for example, my own feeling is that the members of the industry should compete vigorously as they do in getting their production to the mine gate. So efficient production methods, cost controls, training and all these other good things that go into producing a competitive product and I believe as does happen, there's vigorous competition in the actual marketplace overseas between producers, bearing in mind always that you have to think in terms of the Indonesians and the South Africans and the Chinese and so on as well as the Australian markets when you talk about competition but the actual provision of services from government owned or monopoly infrastructure should be very transparent and should be on a user pays basis and there should not be discrimination between like traffics.

So as Ben said, for pragmatic reasons you would expect to see or we have seen and would expect to see in the future some discriminatory pricing with grain producers or XPTs or general freight and coal but within those traffics we would expect to see a user pays basis of pricing.

MR KLAASSEN: Basically the same price for the same service and that concern sort of crosses both that second suggested pricing principle and the third one. I mean, we think multipart tariffs are a good idea. They're economically sensible in sending the right signals to users and investors but again a reference to price discrimination when it aids efficiency, we think that that market based approach needs to be very carefully constrained and we actually suggested in our submission a set of subpoints for constraining that sort of approach and it alludes to the sort of things we've been talking about - no discrimination within markets.

MR COSGROVE: No discrimination within the coal freight market itself?

MR KLAASSEN: Say for example within coal as a class of user of the infrastructure.

MR COSGROVE: Might it not be possible that price discrimination would allow a mine which is only marginally profitable to continue its operations?

MR SCOTT: Yes, it would but effectively it means that the rest of the industry, the rest of the coal industry, is subsidising that particular operation in the first instance so you would have to address issues of equity there. The second thing is that we have seen in the past, particularly in New South Wales, major mines brought into operation on the basis of a form of rail subsidy and they're still in operation. One of

the problems that has bedogged the Australian industry over the last 20 years - coal industry - has been an almost endemic overproduction and one of the contributing factors to that has been a penchant of governments to subsidise mines into the marketplace which, if there hadn't been some form of hidden support, would not have been committed, would not have been developed, and I guess we would have expected to see some stronger price history than we might have over the last 25 years.

MR BANKS: Would you be more worried, I mean, as a general proposition, if you were dealing with a government provider rather than a private provider in relation to issues to do with price differentiation or do you see it being of no - I mean the point you are raising there has to do, I guess, with industry policy overlap. Would you like to comment on that?

MR SCOTT: I believe it's always - it will continue to be an issue. I mean, if you are talking about a private operator, there would be obviously a temptation to increase their revenue by subsidising or supporting a new entrant into the market with lower rates. I'm not sure how you ever completely address that. I just think you're conscious of it. I think one of the absolute essentials is transparency. I mean, the one thing that will encourage or preserve discrimination within a market like the coal rail traffic, for example, will be secret deals. If you don't have secret deals, if you have transparency, then the chances of discriminatory pricing reduce dramatically.

MR KLAASSEN: Our approach is that the question of ownership comes very much secondary to the question of structure and a private monopolist will have the same motivations, of course, as a government owned monopolist, though just might be a little more efficient in carrying them out. As Russell said, the history of coal and minerals rail freights in Queensland has been classically monopolistic. The government has had the power, it has made those, or attempted to make those sorts of decisions that you're alluding to in that charging differential rates for different mines based on some assessment of their capacity to pay, and the result has been a real mess and, of course, we're only now, in the last five years - and we hope more so with access - starting to drag ourselves out of that, get a degree of visibility; a degree of uniformity and fairness, We'd be loathe to see a system under the name of Access set up which basically allowed a return to those past practices which are, we think, inherently murky and difficult to prove.

MR SCOTT: Certainly, I think, you know, as a general statement they certainly don't promote the national interest. I mean, we're talking in a lot of cases about a coal supply chain, and if one link in that chain is behaving in such a way as to distort the market or bring about different economic outcomes, then I think that's not something we should really be subscribing to.

MR BANKS: That's useful and I think we'll go back to your submission. In thinking about this more and just looking at them up again now, I think you've got some quite reasonable - - -

MR SCOTT: But we have found, I mean, there's a tremendous reluctance on the part of almost every monopoly service provider that I've ever dealt with to disclose useful information or to be transparent.

MR COSGROVE: Is that intended to be a feature of the Queensland undertaking?

MR SCOTT: No, it's not, at least this point. The good thing about how the Queensland arrangements has run to date and a lot of it is due to the quality of the work, well, firstly, the intention and the quality of work of the Queensland Competition Authority in preparing a draft, at this stage, a draft decision on Queensland Rail's undertaking, which is very comprehensive. It provides for a high degree of transparency, although we would like to see more and we've said that to the Competition Authority and it very deliberately steered away from - or it considered and steered away from - the idea of allowing QR to pick winners, or play one mine off against another in terms of differential rates.

They've accepted the concept of effectively posted tariffs, reference tariffs they're called, with a fairly sophisticated structure we think, a multi-part structure, and made it very clear that departures from those tariffs and individual circumstances will have to be clearly justified in terms of differences in costs and risk factors, or differences in service characteristics to those typical services upon which the reference tariffs are based.

MR COSGROVE: You mentioned in your opening remarks that the default mechanism in the national regime has already had some effect in Queensland. By that do you mean effect in terms of influencing the content of this undertaking?

MR KLAASSEN: We believe it has. It's a hard thing to be sure of, of course, but as you know the Queensland government some years ago now made an initial application to the NCC for certification of a regime and it was basically the act and we supported the concept of a state based regime very strongly, but we said to the NCC that that needed to be backed up with a detailed undertaking. Now, the Queensland government subsequently withdrew that application and we can only presume it's because the NCC gave them clear indication that in that, for want of a better term, minimalist form, it did not meet some precedent conditions that had been established, for example, by the NCC's examination of the New South Wales regime.

MR SCOTT: I think it to be fair, I mean, the regime that was put to the NCC, as far as I am aware, was a very generic - was far too generic, I mean, it wasn't a matter of content or detail, or whatever, so it really wasn't until the QCA - until the railways were declared and the voluntary - or the undertaking, came about that you actually started getting some real meat and substance into the regime.

MR COSGROVE: This has been a fairly lengthy process, nevertheless, hasn't it? Have your members considered the possibility of applying for declaration?

MR SCOTT: Look, it's always an option, but I think that the process has been lengthy and until now, though, it's been fairly positive and cooperative as far as the

parties are concerned. It's covered a lot of ground and the QCA has been pretty thorough and they've addressed a number of issues that haven't been addressed in these things before, that I'm aware of, and it has dragged on. The industry's extremely disappointed that it's taken two and a half years to get to here and in fact the industry is very keen that it be brought to conclusion ASAP, like within weeks rather than months and this is no secret.

The industry has made this clear to the Queensland Rail and the Competition Authority. But it hasn't been a process of parties being tardy particularly. There's been a lot of work; limited resources involved and I think my own feeling is that the outcome is reasonably good for both parties, providing that now people get on with the job and go ahead from where we are now. And the mining council has said that there are areas that we disagree with in the draft determination, but overwhelmingly we would rather see it concluded and go forward. I guess as part of that, if I was the Queensland government, and I don't know whether they will, but I would probably take that access regime to the Competition Council and ask for certification, so the process will go - - -

MR KLAASSEN: Yes, that's a good summary. We've got the draft report which provides a good basis to go forward. The key thing now is to see it translate into practice and the two key parties there are Queensland Rail and the Competition Authority and we're giving a very strong message to both that they need to do those things within their power to make that happen. In terms of QR it is to commit to accepting the final decision, which should be out in a couple of weeks, hopefully, and that's yet to happen, but we hope they will and then set about, as quickly as possible, revising their undertaking to give effect to that final decision and we're telling the Competition Authority that we believe that they should provide some encouraging backdrop to that, if you like, and if necessary initiate a series of steps in their act - legal steps - which will deliver a revised acceptable undertaking in due course if the QCA needs to exercise its compulsive powers.

MR SCOTT: But the industry philosophy, the mining council philosophy has very much been we will work at a state level within the state structure to produce an outcome that's appropriate to Queensland companies and the Queensland government, and I think we're just about there, or we are there. If something was to go awry and for one reason or another the regime got bogged down or in two years we were still no further ahead, then obviously the national default mechanism assumes some significance in the process. For what it's worth, the problem with the existing process is probably something that we - I know we mentioned in our submission. The problem is, and this was the case with the rail access regime process in New South Wales, was that in fact the Competition Council recommended a declaration of the Hunter Valley rail system which in fact fell at the last hurdle, we didn't get the responsible minister endorsement and, of course, you then contemplate your navel and say, "Where do you go from here." So one of the problems with the Part IIIA is in fact, the process can take a route and then be stopped dead at the state level.

MR BANKS: What's - it's in here - I've just forgotten now what your position was

on the role of ministers.

MR SCOTT: Our initial position was that the balance we said was basically appropriate the level of involvement of ministers in deciding certifications and declarations was appropriate, but on reflection and looking at your report and your analysis of the comments we accept that, if you can, it would be appropriate to remove the ministerial discretion from those processes. But certainly, if that doesn't prove to be achievable, your supporting conditional requirements on requiring ministers to explain their decisions to be deemed to have accepted an application if they refuse to make it is very important indeed.

MR BANKS: Some people have not liked that proposal and indeed have been particularly concerned about it in conjunction with our other tier 2 proposal about having a single regulator, rather than two. On balance, looking at the pros and cons of the options, we thought the actual ACCC might have the strongest claim on that. I'd appreciate any views you had on that issue, because that's something that we are clearly considering in the light of a lot of feedback, so some have that thought that, well, if you only had one regulator and no minister you've lost aspects of due process, particularly given that they're issues to do with public interest and subjective assessment about national significance and so on, and they're to be taken into account. Do you have a view on any of that in relation to the number of regulators and how that interacts with the ministerial involvement?

MR KLAASSEN: As a matter of principle we can see sense in having the one regulator that covers all functions, without having gone through and hunted for possible conflicts of interest within the span of functions that would then be conducted by, say, the ACCC, but at the level of principle, it seems to make sense to us. In terms of the ministerial involvement in that context, I can appreciate the point and, as I said, if it was deemed that that was stretching the bow too far, then the retention of ministerial involvement needs to be backed up with those supporting conditions to provide some discipline to minister's involvement.

MR BANKS: Another question I was going to ask you about - unless you had something, John - was to come to the declaration criteria, and in particular the promotion of competition test, and going back to your submission on page 9, you made two points that actually conflict with what (indistinct) come out and I want to give you the opportunity to go to the argument for that. Firstly, you were particularly attached to the clause "whether or not in Australia" in relation to the promotion of competition in at least one (indistinct) and you were also not really opposed to, as you say, any qualification to the effect that such an increase in competition, being actual or large. We, I guess, for reasons outlined in the position paper thought that introducing the word "a substantial increase" would help, because at that time (indistinct) some of the cases around it looked like we could get outcomes that weren't really going to promote efficiency because they were line ball in terms of impact on competition.

In relation to whether or not in Australia - we have a discussion there on page 131 and 132 where, I guess we're saying that if the only effect was to provide a

benefit to offshore consumers - and that doesn't seem to be a reason for going ahead. But from the perspective of a primarily an export industry, I think, there's different light that needs to be shed on this and I give the opportunity to talk about it.

MR KLAASSEN: Okay, well, I'll preside my comments with the perspective from which we approached those recommendations and the entire inquiry and that is from the point of view of an organisation that has not been directly, actively involved in these processes, so we don't have that direct experience to draw on, but we'd look at it from the point of view of a system which we may need to rely on in the future and which - the face-plate appearance of, in terms of its strength, we think has a back-flow benefit to the state arrangements that we're working within now.

We've always looked upon that condition of competition in the market, whether or not in Australia, as providing an avenue for exporters to argue the case for a declaration where the competition that would be enhanced refers to their ability to enter new overseas markets. That's a scenario that we see as being beneficial to the national interest. We appreciate the point you make about increased supply from any source perhaps depressing world prices, but that's a pretty fine argument to run. It's a difficult one.

Having said that, if that clause was taken out, I'm not sure what it would imply. Would it imply that if the competition that was being enhanced was an example that we've mentioned would it be necessarily precluded? I don't know. I don't think it is, frankly, a major point, because in the areas of interest to us we think - for example, rail - the infrastructure, the size of the industry and the importance of competition would mean that it would meet the other tests anyway.

MR SCOTT: I think there's an interesting point you can make in practical terms, if you like to demonstrate the point that Ben is making about international car competivity, and that is it that I guess it would have been the late 80s, early 90s, was the period when just about every coalmine in Queensland had a significant super royalty, surrogate royalty, monopoly rent or whatever included in its rail freights, and it was acknowledged by people generally, although people didn't know quite how much it was in those days.

One of the behaviours that we as an industry saw at that stage was coalmines were built in Indonesia specifically which would otherwise have been built in Queensland and New South Wales, so you had companies like BHP, Rio Tinto, New Hope Collieries, in fact going off and building coalmines in another country, because the cost of service inputs for monopoly infrastructure in Australia meant that they couldn't make the required rate of return. To me it's always been a very telling piece of behaviour, and in fact the Indonesian coal industry could be actually argued to have developed almost from that point into possibly a major competitor in south-eastern or in northern Asian markets and Asian markets. You can put another interpretation on that as well if you want to, but that's some behaviour that we did see in the late 80s, early 90s.

In 93-94 the Queensland government committed to in fact an increase in coal

royalties and a reduction in rail freight rates, and if you in fact look at the increase in new mine builds and increased production out of Queensland since the mid-90s compared to the late 80s to the mid-90s, it's quite a contrast. So I think these things are very important in a high volume, low profit margin export industry.

MR COSGROVE: Still, what matters for you is the extent of competition in domestic markets. You can't do anything about the extent of competition overseas; you've got to try to encourage competition within Australia in order to increase your international competitiveness.

MR KLAASSEN: Correct.

MR COSGROVE: I've just been trying to think whether it might be easy to work something along those lines into the declaration criteria, and I must say I'm stumped at present, but that's the situation, isn't it?

MR KLAASSEN: Yes.

MR COSGROVE: You want domestic competition to be internationally competitive, in order to be internationally competitive.

MR SCOTT: That's right.

MR KLAASSEN: Now, on the other one, in terms of opposing any qualification on the level of competition to be achieved, again that's from the perspective of not wanting to minimise the potential usefulness of the regime to us. We can appreciate the commission having drawn on the experience of actual participants in the process in wanting to make some distinction to wean out trivial, marginally beneficial cases. We would have concerns about the meaning of "substantial", although I notice in your report you say that it is a concept that is already applied in competition law. We'd prefer the bar not to be high but we can respect a sensible analysis which says that there has to be some screen.

MR COSGROVE: Okay, and I guess consistent with that you would have a distinct preference for the tier 1 declaration criteria over the tier 2.

MR KLAASSEN: Which - - -

MR COSGROVE: It's proposal 6.2.

MR KLAASSEN: I certainly saw tier 2 as having some virtues in being more specific. I mean, I didn't read tier 2 as necessarily in one direction - that is, 6.2 - in terms of making everything harder. I interpreted that to be more the commission looking to zero in on those factors which it believes should determine the acceptance or otherwise of an application. For example, removing reference to health and safety and environment and assuming correctly that they can be dealt with public interest provisions makes sense.

MR COSGROVE: It puts more emphasis on efficiency than - - -

MR KLAASSEN: It does put more emphasis on efficiency, and we can appreciate that. So I saw it as fairly targeted.

MR BANKS: And possibly as an export industry it doesn't pose some of the potential problems that you were talking about earlier in relation to tier 1, finding the market where competition is going to occur and so on.

MR KLAASSEN: And being more specific.

MR BANKS: Yes, okay. Thanks for that. You talked about having an extensive list of information disclosure items. Have I missed something? Is that something - - -

MR KLAASSEN: I can read them off, but they appear actually in two different parts of our submission.

MR BANKS: Okay. No, well, let me go back to it. I thought you may have been talking about a separate document that you had in - - -

MR KLAASSEN: No, but if you require some clarification on that we're happy to give you a consolidated list but, just very briefly, pricing principles, and we have a preference for posted prices. We think disclosure of key cost elements is essential, asset values, return and operating costs, so that the appropriateness of charges can be verified; of course, the physical characteristics of the service and the facility; who are the current holders of capacity, their entertainments and what's available in terms of surplus capacity and when; the procedures for capacity management; interface requirements; the procedures for negotiating and settling disputes; and of course, any ring-fencing arrangements. Those in a nutshell are the main headings of the information that is being developed, hopefully, for the Queensland regime, and we think it's a pretty good list. We think that the starting point in balance between an access seeker and an access provider is going to be so large that there is a heavy information requirement needed to bring that back up to some degree of evenness, so we would think any effective regime has to be very comprehensive.

MR COSGROVE: Certainly any regime, no matter how conditional - the two regimes that we've been associated with, the rail infrastructure in New South Wales and up here, are both name-plate, negotiate and arbitrate regimes. To the extent that a regime anticipates access seekers negotiating with the owner of facilities, then there's got to be some symmetry of information. It comes back to the recurring theme, I think, which is the more transparency you have, the - and in most cases there should be no reason why the access provider needs to be coy or twee about information because they're there because they're a monopoly service provider in most cases, so they can't argue commercial-in-confidence and so on too strongly.

MR KLAASSEN: The position we've actually put in Queensland, but the competition authority hasn't accepted it, is that all rail access agreements should be

disclosed. We're in favour of an access agreements library where anybody can walk in and see exactly what's been agreed to by whom and between whom. Now, we're not going to get that.

MR BANKS: Why? Has there been a reason given for not accepting that proposal?

MR KLAASSEN: I guess the reluctance to some extent seems to lie not so much with the coal industry but with general freight carriers - I think seems to be part of the sticking point. So freight carrier A might have a deal that is perhaps better than freight carrier B is prepared to sign up to. I guess disclosure of previous agreements is just the same as 100 per cent look-through transparency really. But I think that most GOCs or monopoly service providers are keen to think they have some pricing discretion. I think it's as simple as that, because if it's all transparent and it's like walking into a post office and buying a stamp, there's not much fun in life. It's much more fun if you can sit down and have extensive negotiations and so on. That's my own personal feeling, but I think there's an element of that in there.

MR SCOTT: We've put transparency at the top of our list whenever we articulate our objectives from competition policy. It's number one.

MR COSGROVE: Can I just clarify one point. On page 6 you say that you would support further development of the national regime to lessen the negotiate-arbitrate nature of the process. A few people have suggested that the model could be declare-arbitrate, in other words, you'd cut out the negotiation step altogether. I take it that that's not what you're advocating here; you're rather wanting to have various parameters such as transparency and pricing principles made part of the regime in order to make negotiation more fruitful. Is that the way to interpret your remarks?

MR KLAASSEN: Yes, that's correct. Having said that, I think negotiations almost invariably end up with arbitration anyway, but to the greatest extent that the act can give guidance and reduce the field of possible dispute by making it obvious what the outcome is going to be, then so much the better.

MR BANKS: I think we're done with the questions. Were there any other comments you wanted to make before we close?

MR COSGROVE: No, I don't have any more, Gary.

MR BANKS: We really do appreciate - I think we have learnt a bit through that discussion and going back to your submission on a couple of points there as well. We appreciate your contribution.

MR KLAASSEN: My only question would be, is there anything that you would like us to provide by way of support, either written submission - are there any gaps that we've - - -

MR BANKS: Perhaps you might just leave that with us. I mean, anything that you wanted - in terms of perhaps the points that we've discussed there - to reaffirm it

could be just even a letter to me - a dot point letter emphasising particular points. If you wanted to think a bit more again about this - where we've come out in terms of the declaration criteria, particularly the tier 1 versus tier 2, that could be helpful as well. One thing we haven't talked about too much is this question of an access holiday for greenfields investment. We probably don't have time to go through it in any detail now but if you have any reactions to what we've said in the report on that - we've had subsequent discussions in hearings in Sydney, a transcript of which should be on the Web by now, in particular I think with network economics and a consulting group - that would be very helpful.

MR KLAASSEN: Thank you.

MR BANKS: Just for the record if there's anyone else here in Brisbane who would like to appear - there being no-one I adjourn the hearings and we will resume in Perth next week on Monday, 18 June at 9 o'clock. Thank you.

AT 11.47 AM THE INQUIRY WAS ADJOURNED UNTIL
MONDAY, 18 JUNE 2001

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