REVIEW OF COMPETITION POLICY

THE PRODUCTIVITY COMMISSION'S INQUIRY INTO CLAUSE 6 OF THE COMPETITION PRINCIPLES AGREEMENT AND PART IIIA OF THE TRADE PRACTICES ACT 1974

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IPA SUBMISSION TO THE PRODUCTIVITY COMMISSION'S INQUIRY INTO
Legislation Review of Clause 6 of the Competition Principles Agreement and Part IIIA of the Trade Practices Act 1974

1. Introduction

As long ago as 1945, Hayek showed why regulatory interventions inevitably beget further such measures and lead to the "road to serfdom", but his insights are often overlooked. Regulatory bodies drawing from the logic of their remit and, perhaps their self interest in retaining responsibilities, will usually seek additional powers. As the nature of markets shift, partly in response to the regulatory environment, some of these additional powers will be necessary for the regulatory authorities to undertake the tasks originally envisaged of them; the additional powers are, however, likely to further reduce the scope for market operations. .

The following addresses some of the areas in gas, electricity and rail where this is considered to be occurring and makes recommendations to reduce regulatory intrusion.

The effects of this intrusion can also be seen in telecommunications. The ACCC in the parallel inquiry to this one, while claiming, "The predominant trend is now clearly to remove regulation by reviewing the continuing need to regulate some services", is seeking additional powers to:

- control the content of telecommunications, "If content were to become a new source of bottleneck power." and
- to require certain expenditures by dominant firms, expenditures that the ACCC considers would be made by a business that was facing competitive pressures.

Permitting such extensions of the power of the state and can lead to dangerous economic distortions and cause resources to be directed away from meeting the needs of consumers towards meeting those of the regulator. Accordingly, we consider calls for the extension of powers should be firmly rejected. Indeed, it is our view that the present powers of the ACCC and other bodies under the Competition Principles Agreement are a regulatory tourniquet. These powers are a belt-and-braces approach, justifiable in a transition to a new regime but to be significantly moderated once the initial hurdle period has passed. If this is not forthcoming the out-turn will be re-regulation and a further period of ossification.

2. Competition and Property Rights: The Basis of Economic Prosperity

It is worth re-stating that individually owned, secure and transferable property rights combined with vigorous competition between sellers are the kernel from which our

present prosperity has grown. Free competition and secure property rights are the two arms of a pair of scissors, neither of which is useful without the other.

The earliest development of the modern economy took place in England and, albeit more slowly, other parts of western Europe because the sanctity of personal property rights that evolved encouraged the setting aside of income and leisure to allow improved future income levels. Early economists like Adam Smith (in his *Lectures on Jurisprudence*, 1760, rather than *The Wealth of Nations*) considered "preventing members of society encroaching on each others' property, or seizing what is not their own" to be "the first and chief" aim of government. Jean-Baptiste Say (1803) wrote, uncontroversially, that only with secure property rights can production achieve its highest output, a matter he regarded as "so completely self evident that demonstration is quite superfluous"[1].

We make these points because in the terminology of competition reform, the property rights arm of the scissors can be overlooked. Competition reform can no more bring prosperity without property rights secure from appropriation by others–private or government–than can a society in perpetual warfare with itself.

The competition authorities that have been expanded or created in the wake of the Hilmer Report have placed considerable emphasis on the promotion of rivalry as a means of enhancing output and living standards. But they have often been less cogniscent of the importance of property secure from measures by government (including their own arm of government) that constitute expropriatory "takings" and reduce the value of that property.

IPA welcomes this inquiry, which we see as an opportunity to re-seat property rights with competition at the head of the efficiency table.

3. Access to Essential Facilities

The Commission has outlined the processes whereby Clause 6 of the Competition principles Agreement and Part IIIA of the Trade Practices Act operates. Access to eligible services may be through the NCC declaration process[2] (after which the ACCC becomes the price regulator) or directly through the ACCC issuing a legally binding and non-appellable undertaking.

The major regulatory agency in Australia, the ACCC, now has powers that are arguably greater than those rescinded by governments under the National Competition Policy Agreements. These derive from the ACCC's ability to grant immunity from court challenge where it makes a determination of the correctness of a particular course. This and its corollary, an ability to prevent a development of which it disapproves, is tempered only by an appeal avenue to the Trade Practices Tribunal.

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[1] Bethall, Tom *The Noblest Triumph*, St Martin's Press, New York, 1998 (p.98).
[2] or its related State certification process.

Such an appeal process is normally impracticable in the business world where deals must be struck quickly or not at all; moreover, the Tribunal is composed of individuals who increasingly share a common philosophy with the ACCC.

That ACCC philosophy has a strong focus on the detrimental effects of monopoly which is seen to be able to charge excessive prices to customers. In fact most such monopolies are short-lived since if they extract high prices this rapidly attracts competition.

In addressing the prices that firms it regards as monopolies may charge, possibly because of the frameworks set for the industries it regulates, the ACCC tends to adopt arithmetical and highly formulaic price-setting arrangements. These centre on a form of profit control based on the Weighted Average Cost of Capital.

Any modern regulator's pricing decision can only work in one direction. Since, unlike a monopolist, no regulator is in a position to restrict supply, its price decisions can never have the effect of raising prices above the market level. The only effect can be to reduce prices. Yet, forced price reductions also make it difficult for competitive rivals to enter the market. Thus regulators' decisions tend to prevent competition, the very process they were created to enhance. Forced price reductions have two other detrimental effects:

- they reduce the incentive of the owner to maintain the facility at its peak service levels, and,
- they deter new investment both by the owner and others in similar circumstances.

In short, a forced price reduction acts against the longer term interests of all consumers by discouraging investment in new facilities, preventing rivals contending the regulated facility and reducing the incentives of the regulated facility's owners to optimise service levels. For these reasons the power of the state to require such price actions needs to be heavily constrained.

These matters were well recognised by the Hilmer Report which formed the basis of the matters under review. The thrust of the Hilmer recommendations, taken up in the National Competition Policy Agreements, was that a "covered" facility should be of major significance to the economy, and in this respect the report made specific mention of electricity transmission grids, major gas pipelines, major rail-beds and ports.

<u>Recommendation 1</u>: the notion of Essential Facilities should be more narrowly restricted than has been the practice and be confined to those "of major national significance".

4. Private Property Rights' Considerations in Addressing Access Issues

Ostensibly, the Hilmer Report itself did not differentiate between private and publicly provided essential facilities. It was however aware of the harm that could be visited on private property rights generally by regulatory seizure of some of those rights.

Hence, although Hilmer discussed wide notions of property that constitutes "essential facilities", for example, private baseball stadiums, the report understood the deleterious investment implications of regulation. Indeed, the authors said they were, "conscious of the need to carefully limit the circumstances in which one business is required by law to make its facilities available to another." (p.250). The Hilmer Report returned many times to emphasise the need to avoid undermining property rights and, hence, investment incentives, (e.g. p.256, 258). Hilmer added "While it is difficult to define precisely the nature of the facilities and industries likely to meet these requirements, a frequent feature is the traditional involvement of government in these industries, either as owner or extensive regulator".

In reality the impetus for the Hilmer report was to redress the competitive restraining effects of state government owned or controlled monopolies. In Australia in the early 1990s the only "essential facilities" were those businesses which enjoyed government support or protection from competition The Hilmer report followed from earlier work by the Industry Commission, especially into electricity supply, which demonstrated that the enforced government utilities' monopolies were high cost and inefficient.

The Hilmer report and the succeeding legislation was put in place to ensure the regulated aspects of these services were confined to the core "essential facilities" comprising the sorts of capital–electricity transmission grids, gas transmission pipelines major ports, major rail beds–that were mentioned in the report.

This inquiry offers an opportunity to re-focus on to these matters.

5. Competition Policy and the Regulatory Foundations of Different Infrastructure

5.1 Infrastructure's Ownership and Regulatory Environment

The National Competition Policy is now in place and all legislated monopolies, government and private are being reviewed against criteria to ensure they are justified. The Commission's Issues Paper (p. 18) draws attention to the costs of access regulation. Our own recommendations on the access dimension are couched within a taxonomy of features based on ownership and the original conditions under which the facility was developed.

Accordingly, in addition to the need to avoid regulating facilities that are not of "major significance to the economy" there are six important classifications of essential service or bottleneck infrastructure that may justify a difference in regulatory policy approach:

1. That which has been built without any market protection, especially that built since 1995 which is almost by definition "entrepreneurial" rather than regulated.
2. That which introduces new competition, albeit is not identical to existing facilities.
3. Privately built infrastructure built prior to 1995 that enjoyed no government protection.
4. That which is owned by the private sector but was built under a regime that offered protection from competition.
5. That which was owned by a government but has since been sold under contractual terms to the private sector.
6. That which was built by and remains owned by a government.

A major concern rightly addressed in the Commission's Issues Paper is the costs that regulation may bring. These matters assume greater importance with private facilities. Ensuring the appropriate incentives are in place is crucial. In this respect, Australia has implemented an innovative approach with electricity transmission with "entrepreneurial interconnects". These enable the lines' owners to bid the capacity of the lines linking two areas, thereby arbitraging the price. One entrepreneurial line is currently operating in Australia and another is committed.

However, such market-driven measures can be undercut by government financed investments (or investments financed by compulsory charges on consumers). Subsidised facilities undermine the level playing field and therefore the incentive structure that is now being relied upon to provide reliable, low cost electricity. Similar considerations are present with gas and, at least in principle, with rail and ports.

5.2 New Infrastructure Built Without Market Protection

Where there are no regulatory restraints on competition, we see the most promising conditions under which entrepreneurs seek out new needs or seek the meeting of existing needs more cheaply. The outcomes of new infrastructure built under such conditions epitomise the gains made by competitive processes. For, although mistakes in competitive strategies are inevitable from time to time and excessive or wrongly sited infrastructure will be built, the outcome of the process of free market decision-making offers us the best use of resources and the widest scope for the application of human ingenuity. If excessive building occurs, unless there is (illegal) collusion the mistakes cannot be retrieved from the consumer. Indeed, in such circumstances the consumer obtains windfall gains as the rivals seek to cut their losses by expanding their market shares and in the process driving down the price.

Infrastructure built by private enterprise in the "post-Hilmer" era should not be required to grant access or be subjected to price restraints. The builders of such infrastructure are responding to a profitable opportunity that they foresee, one that, by definition, also confers gains on the buyers of the service. The two parties obtain a mutual gain. The sharing of the gain is one for bargaining between the parties but the consumers of the goods that the facility supplies cannot be worse off since without it

they would not have that particular access route and perhaps not the product that the access delivers.

For its part, the owner of the new facility in this “post-Hilmer” era, cannot obtain gain from it by virtue of some form of government granted privilege. The owner will, moreover, usually be building a project that carries some economic risk. Such risk may emanate from a failure of the market to develop in the predicted way, new competitors, or the “howling gales of creative destruction” stemming from a technology that renders existing approaches archaic.

Thus, in deciding to push ahead with the facility, the supplier had no lien on the idea and no lock on the supply itself. Once built, the facility is not protected from imitators. It may be that a successful facility becomes immensely profitable, like Microsoft Word. But it can only do so if it provides value in excess of that which imitators and new approaches provide.

Such mutual gain is at the heart of the private enterprise system. Attempts to “redistribute” it can only harm the process. This can be illustrated in the case of a new pipeline. The owner of the pipeline will usually have considered a spectrum of alternative market projections (and perhaps a spectrum of cost projections). There is uncertainty and, implicitly or explicitly, the owner will weight each scenario in making his investment decision. If his threshold is a rate of return of 15% and he is considering scenarios that might yield rates ranging from 25% to 5% but provide a weighted average rate of 15%, cutting off the potential to earn the higher rates will reduce the weighted average to something less than the threshold. The regulatory action would then eliminate the commerciality of the project. In such a case, the sponsor and the customers would both be losers.

Even if, in this case, a new developer were to arrive and build the pipeline, that developer would have done so in the light of the experience gained by the original developer. The process would still result in an inferior outcome because the regulatory process would have demonstrated a cost in originating new ideas and will deter investment in searching out new opportunities.

We have seen an example of this with the Central West gas pipeline. This was a marginal project which required a Commonwealth grant in order for its owner, AGL, to justify its go-ahead. The ACCC required AGL to lower its prices based on a rate of return on capital of 7.5% compared to a rate it sought of 10%.

Although such an outcome brings lower costs to the customers in the area, the decision undermines entrepreneurship. It has no place in a situation where there is no monopoly. AGL had no franchise to supply gas to the area in question. It has many rivals in Australia seeking opportunities to find new markets. The outlet is from the Moomba to Sydney pipeline, largely owned by AGL but operated by EAPL as a totally independent entity. Had an AGL rival approached EAPL they would have secured the same conditions as those gained by AGL.

AGL had determined that the customers for the pipeline would be willing to pay $2.78 per gigajoule in 2004 but the ACCC has determined they must pay no more than

$2.32. Intervention to reduce a price sought by an enterprise in this way is a sure route to economic stagnation. At best it will lead to the entrepreneur engaging in wasteful deception to try to persuade the regulator that his costs are really higher or his market weaker than he has said they are. Most likely, it also sends a message to all businesses looking at expanding networks under the ACCC's oversight that they must please more than the target customers. Hence, the decision of the ACCC to cut the price of using the pipeline in this way will have a sobering effect on other worthwhile ventures.

Recommendation 2: that there be no application of the access provisions to new facilities that are not built under government regulatory protection.

3. A Duplicated Facility

The declaration and undertaking provisions are designed to operate where there is a monopoly "essential service". Clearly the conditions for deciding when this is the case often call for considerable judgement. However in the case of gas pipelines we have seen the NCC develop a considerable extension of the concept of monopoly.

An additional pipeline brings new competition. This means the basic premises on which the competition policy arrangements are set for infrastructure do not apply. The regulatory arrangements are posited on natural monopoly, an oxymoron where new competition actually emerges. Regulation in those cases contains all the inevitable downside costs but no upside benefits.

In principle, this is acknowledged by regulators. Thus, the NCC said in one of its own publications[3], "Against these benefits (of increasing competition by giving a business a right to use another business's infrastructure), access regulation can also entail costs if it is applied inappropriately or too widely." Although such wording leaves the agency with maximum scope not to interpret its own activities as "inappropriate" or "too wide" this is a useful acknowledgement. The NCC notes that such regulatory actions would be detrimental for a number of reasons but most importantly by reducing incentives to invest in infrastructure.

The IPA sought revocation of the coverage of the Moomba to Sydney EAPL gas transmission pipeline with the building of the rival Duke Energy line from Bass Strait. The IPA also sought that the Duke Energy line not be covered. This provided a test about whether the NCC would "walk the talk".

We argued,

> *The Eastern Gas Pipeline means we have Coke versus Pepsi in pipelines to Sydney and the case for their regulation has disappeared. With the construction of the Eastern Gas pipeline, the conditions that could warrant either an undertaking or any other form of regulated price and access*

[3] The National Access Regime: A Draft Guide to Part IIIA of the Trade Practices Act, NCC August 1996 p.7

conditions disappear. The two pipelines themselves have considerable over-capacity and they will be engaged in a price war. ……. With two pipelines supplying an area, as long as there is no collusion, the case for regulation rests solely on the benefits to the regulators themselves.

The existence of two transmission pipelines serving NSW is the very definition of competition, the absence of which provided the initial rationale for regulation.

The NCC argued that they should regulate both pipelines since they did not traverse parallel routes and that, even if they did, regulation would still be necessary to prevent collusion! It is clear such analytical reasoning by the NCC gives regulatory agencies the opportunity to control virtually every economic activity in the country.

This case also indicates the failure of the revocation provisions addressed in the Commission's Issues Paper (p. 30)

Recommendation 3: that where two substantial pieces of infrastructure serve the same market, no regulation, aside from normal anti-monopoly provisions of Part IV, should be required.

Recommendation 4: that the building of significant infrastructure serving a market or source alongside infrastructure that is "covered" should require automatic revocation of the former

5.4 Pre-1995 Private Infrastructure Built Without Government Protection

The regulations on "essential facilities" take an arbitrary definition of the targeted facility. Thus, the notion of an essential facility can be stretched to include manufacturing plant. For example, a car assembly line owned by Ford could be regarded as a bottleneck facility to an intending vehicle assembler, especially if there were only one such plant conveniently situated. A rival supplier could require access on fair and reasonable terms. The ACCC could eventually specify such terms.

Similarly, an oil refinery, say the BP plant in Western Australia, might be regarded as an essential facility by an explorer who has discovered a nearby small field. The refinery owner would clearly seek to charge any business that wished to use that plant to toll-refine its own product a price that was close to the applicant's next best alternative. In the eyes of many, such action might be regarded as extortionate. Nonetheless, the law cannot and should not compel such access to be provided for the sorts of reasons that Hilmer emphasised.

Although in the case of a manufacturing facility there is a specific exclusion, the principle is no different for infrastructure facilities. Hence, where private firms have constructed infrastructure with no assistance from government, they should be obliged to offer access, if at all, only in the most exceptional of circumstances.

The foregoing is all the more necessary because the Hilmer concerns about the damage done when property rights are not fully respected received less prominence in

the succeeding legislation. As the Commission points out[4], the arbitrated price under Clause 6(4)(i)(i) appears to rule out allowing the owner the full benefit of any losses he may incur out of such an obligation (the efficient components pricing rule). But it would be no different for a private pipeline to seek to fully exploit market power than it would for a refinery, a hospital or any other facility. We refrain from forcing the owners from providing access so that they earn no more than a specified return because experience demonstrates that attempts to exploit such power founder under an avalanche of new competitors they attract.

The treatment of private pre-1995 infrastructure was put to the test when, in 1999, the NCC joined with other parties to try to force Rio Tinto to open its railways in WA to a then competitive iron ore producer. In that case a rather strangely based legal decision and the eventual merger of the two firms thwarted the attempt[5]. But is seeking to force the opening of a privately built railway to a rival firm the way to encourage new infrastructure? Our own view is that the undermining of property rights in such action would invariably have a greater adverse effect than the extra costs the applicant would incur in paying the quasi-rents to the owner or seeking out alternative avenues.

Recommendation 5: that privately owned infrastructure established without government protection prior to 1995 should not be required to be "covered" without the regulatory agency demonstrating exceptional need.

5.5 Infrastructure Owned by Private Enterprise and Built under Government Protection

Where governments have allowed particular businesses a monopoly over some essential facilities, terminating that monopoly involves an attenuation of property rights, albeit rights that were inappropriately extended in the first place.

Options for moving forward include a sunsetting of the exclusion provisions and the recompensing of the private business concerned. The latter may be more pertinent where the private owner won a franchise that involved payment to the government. This is a situation similar to that involving taxi cabs, where the scarcity "rents" themselves are caused solely by government licences. Strategies for removing the impediment will always involve some attenuation of the property right the owners consider themselves to have (a view shared, in the case of taxi licences by others like bankers who lend on the basis of the artificially created value). Restricting and preferably eliminating the effects of shortage created by the government action is necessary but the property rights holders should not be expropriated without fair compensation.

Recommendation 6: that access to privately owned infrastructure established under government franchise or protection be opened under conditions that

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[4] Issues Paper p33.

[5] In that case there may also have been some contractual requirements on Rio to open its line to others but these were not tested in the case itself.

provide adequate recompense for the government undertakings their development involved.

5.6 Privatised Facilities

Where governments have sold facilities that were (and remain) monopolies, the terms of that sale cannot be overturned without giving rise to "sovereign risk" issues, which would undermine the property right certainty that we have shown to be so essential to prosperity.

These matters have become issues with the Victorian price re-set where the Office of the Regulator-General is being challenged by the regulated distributors. Similar issues will arise with the ACCC with the re-sets under Part IIIA for SPI Powernet.

Recommendation 7: that provisions be put in place requiring regulatory agencies to fully abide by any undertakings given by governments to the new owners of privatised industries.

5.7 Infrastructure Owned by Governments and Developed Pre-Part IIIA

Where the infrastructure, for example a pipeline, was built by a government agency and no other competitive provider was permitted to offer the service in the same manner, some means of ensuring access is required. In such cases an access regime is the most efficient means of ensuring that competition whittles away any rents or excess charges the benefit of consumers and other downstream users.

The alternative would be to rent out the facility's services to maximise profits. It makes sense to use price to ration a scarce resource (but pricing merely to cover marginal costs seldom makes sense, except temporarily of if the demand for the facilities is in terminal decline). Nonetheless, it is not in the interests of the community for governments to price their own facilities to gain monopoly profits.

Government owned and operated infrastructure provides the purest case for the operations of the Hilmer principles.

Recommendation 8: that the Provisions of Part Clause 6 of the Competition Principles Agreement and Part IIIA of the Trade Practices Act 1974 be left unchanged with regard to government infrastructure.

Recommendation 9: to avoid any misunderstandings like that which may be the cause of disputation between the Victorian ORG and electricity distributors, any future sale of such infrastructure be undertaken on the understanding that these provisions will apply in full.

6. *Pricing issues*

6.1 Regulatory Approaches

We have already commented upon the apparent inability of the regulator, under Clause 6(4)(i)(i) to apply the efficient components price regime. In this respect, it is highly unlikely however that any Australian regulator would do so. Unlike the situation of "regulatory capture" traditionally referred to in the literature[6] the capture of Australian regulators is one by consumer interests in having low prices in the immediate future. Indeed, it is difficult to envisage how prices could be set by regulators in excess of the levels that customers would pay.

In any event, to our knowledge, aside from prices set by competitive tender, other than auction determinations, there has been no price determination by Australia's regulators in the post-Hilmer era that privately owned suppliers have found acceptable.

The original intentions of "light handed" regulation have clearly not eventuated in any Australian jurisdiction. The notion of CPI-X has been perverted from its original intent as expressed by Littlechild. Littlechild's proposal was to set an external basis for a price cap and require the natural monopoly (which he envisaged would gradually cease to be a monopoly) to keep its average real prices below this and an allowance for productivity improvements. As applied it has come to be based on a firm specific forecast of future costs, adjusted by the regulator to exclude costs that he regards to be excessive and unnecessary.

In terms of paperburden, the simplicity envisaged is totally lost[7].

Recommendation 10: the Commission should seek out ways that allow greater automaticity in price determination, thereby reducing the need for regulators to undertake the sort of detailed price determination that invariably prevails at the present time.

6.2 Regulators' Historical Price Determinations and Suggested Future Approaches

In terms of regulators' decisions, the recent re-set in Victoria applied an after-tax WACC (Real) of 6.8% compared to the levels sought of between 7.3% and 8.4%. The following table outlines other decisions in of which the original application price has been pared back, sometimes considerably.

The regulators will claim that the sort of returns offered for the investments concerned are handsome in view of certainty of the returns given the sunk nature of the assets. However the real issue is the replacement costs. As is demonstrated by the ACCC's proposal to require Telstra to undertake investment that the company may not favour

[6] See Stigler, G.L. *The Theory of Economic Regulation*, Bell Journal of Economics and Management Science 2(1), 3-21, (1971)
[7] And as a regulator, Littlechild himself found it politically impracticable to apply his own theory.

but which the ACCC considers necessary, a price set too low may offer inadequate incentive to replace capital.

Whatever the "just price" it is clear that a complex system like the Victorian gas network would not have been built in the first place if the sponsors had been told that their profit levels would be capped at a real rate of 7.75%.

The Commission raises the question of whether a system, first suggested by King[8], of a regulatory holiday akin to a patent could be offered for an initial period of a new project. We consider this has merit in those cases where it is considered that the infrastructure will constitute an "essential facility" and it faces no realistic competition. In our view such a scheme is, however, inferior to no regulation since it requires some reduction of the proposal's returns from the infrastructure investment and, hence its net present value. In essence, it is therefore likely to deter some marginal projects. Nonetheless such an approach is preferable to the alternative current highly investment-deterring regime.

The application of regulatory holidays might have particular attraction where a business wishes to reduce risks of early competition in a market it is considering serving.

Thus, a gas producer will have good information that the size of his reserves is adequate to provide the necessary product stream. However, he cannot be sure of the extent to which his product will influence the price in the target markets. As a producer and owner, he will certainly wish to restrict competitive fields' access to his target markets. If he were to carry that competitive product he would insist on a price marginally below the competitor's next best alternative unless other competitors looked able to obtain access to his market at a lower price.

Government may require that the transmission facility be a designated 'essential facility'. (Such a designation would of course draw attention to the logical inconsistency that the pipeline could hardly be essential since a prosperous life went on prior to its construction.) If so designated and the owner were to be obliged to carry competitors' gas, the value the gas producer obtained for his gas at the target market would be likely to be reduced. The incentive to construct the pipeline would thereby be reduced.

If required to allocate 'spare capacity' to competitors the producer has every incentive to minimise the extent of that capacity and the facility is also likely to be constructed with a sub-optimal capacity.

This will be all the more so to the degree that the producer-builder is required to offer capacity to a competitor at a price that he regards as likely to offer inadequate recompense. And the deterrence factor in building a new pipeline would be further

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[8] King S. 2000, 'Access: What, Where and How?', Paper presented at the Productivity Commission and Australian National University (Joint Conference) on *Achieving Better Regulation of Services,* Australian National University, Canberra, 26-27 June.

increased if a regulatory regime were introduced obliging him to displace his own product in order to carry that of his competitor.

<u>Recommendation 11</u>: where a regulator sets the price based on the value of a facility, that value should reflect replacement costs.

<u>Recommendation 12</u>: the Commission support the development of a regime that allows a limited regulatory access holiday.

Table 1: Regulators' Price Decisions

ISSUE	REGULATOR	Applicant charge	Determined charge	Date
AGL gas contract market	IPART	Annual revenue reduction from $140m to $128m	Annual revenue reduction to $99m	May 1997
Vic gas	ACCC/ORG	9.7-10.2 return real pre tax	7.75% return real post tax	Oct 1998
Wagga gas (GSN)	IPART	Original 11.1% later offer 9.0%	7.75%	March 1999
Telstra Interconnect	ACCC	4.7c/minute	2.0c/minute with 1.6 c suggested Sept 1999	June 1999
Adelaide Airport	ACCC	8.89% real pre-tax or $3.66/passenger	8.25% real pre-tax or $3.45/passenger	June 1999
Mildura gas	ORG	Tender at 9% real pre-tax	9% real pre-tax	June 1999
Albury gas	IPART	9.6%	7.75%	July 1999
NSW vesting contracts	ACCC	43.64 cents	no more than 40 cents	Sept 1999
NSW distribution prices	IPART		16% real price reduction 1999-2004 7.5% (7.75% AIE, AE) 15% O&M reductions (10% AE, 5% AIE)	Sept 1999 Draft Determination
AGL Pipelines for the Central West Pipeline	ACCC	Real pre-tax WACC of 10% tariff increasing after 2001 at CPI+1.36%	Real pre-tax WACC at 7.5% meaning prices are frozen in real terms post 2001	Sept 1999 Draft Decision
AGL Pipelines for the Central West Pipeline	ACCC	Real pre-tax WACC of 9-9.5% tariff increasing after 2001 at CPI+1.36%	Real pre-tax WACC at 7.8% (5.4% post-tax nominal) tariffs as proposed for 2 yrs then to fall by real 0.06% p.a	July 2000 Final Decision

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