

The National Access Regime Inquiry
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Dear Sir / Madam

Legislation Review: Clause 6 of the Competition Principles Agreement and Part IIIA of the Trade Practices Act 1974

TransGrid would like to thank the Productivity Commission for the opportunity to comment on this particular Issues Paper.

In responding to this consultation TransGrid notes the following:

- The review has no scope to specifically change existing or pending access arrangements already agreed to or accepted under Part IIIA of the Trade Practices Act (TPA, 1974). In this regard it is noted that, under the National Electricity Code (NEC), access undertaking arrangements are currently open-ended¹, whilst in terms of the full Code and market rules the NEC is in effect until 31 December 2010 (refer Authorisation of 10 December 1997).
- The Issues Paper is the first step in an extensive consultation process to be conducted by the Productivity Commission.
- The Productivity Commission encourages follow-up submissions and will undertake appropriate liaison and dialogue with parties such as TransGrid, that operate under a Part 111A access regime.

In respect to this last issue, TransGrid would be pleased to share its experience as a provider of essential infrastructure under the NEC. This Code has been accepted by the ACCC as an industry access undertaking under Part IIIA of the Trade Practices Act. Accordingly, TransGrid considers itself well placed to provide insight into the practical application and operation of Part IIIA and to add value to this review process.

In particular, this letter offers initial general comments based on TransGrid's experience with the national electricity access regime, including the current operating environment, regulatory regime, and investment incentives. The attachment to this letter addresses some of the specific issues raised in the discussion paper.

The disincentives for efficient investment in new transmission infrastructure, under the current national transmission access arrangements, are of particular concern to TransGrid. One example of the sub optimal outcomes resulting from these disincentives to invest is that surplus thermal generation capacity in NSW is not reaching supply-strapped Victoria and South Australia.

A recent Business Council of Australia sponsored report titled "Australia's energy reform: An Incomplete Journey", by Rod Sims and Philip Stern, of Port Jackson Partners Limited² identified a significant problem in the electricity industry as being Insufficient electricity inter-connection links being built. The report specifically stated: "The clearest need for interconnection is into South Australia from either NSW or Victoria, but the energy market reforms have so far been unable to encourage the development of the needed interconnection" (page.66). The report

¹ The final ACCC Access Code determination was finalised on September 16, 1998.

recommends that "if regulated interconnectors are preferred then decision-making processes need to be streamlined" (page 67).

Attempts to streamline the process for transmission infrastructure investment have failed for the following key reasons:

1. The ability of upstream and downstream market participants to influence the investment and pricing arrangements under the NEC with the objective of minimising competition in their markets. It was not surprising to find owners of generation facilities in Victoria and South Australia using the National Electricity Market Code change process to reduce the scope for regulated investment in transmission infrastructure.
2. Failure of industry regulators to recognise the relative economic impacts of transmission. Typically, transmission costs make up only about 7% of an end use customer's electricity bill, whereas wholesale electricity generation represents typically about 45% of the same bill. An investment in transmission infrastructure can deliver direct savings in generation infrastructure, as well as enhancing wholesale market competition in electricity generation. It is worth noting that the ACCC regulatory test that is used to determine the relative economic merits of a regulated transmission investment proposal has limited consideration of market power in upstream or downstream markets.
3. Failure of new industry regulators to recognise the need to match accountability for outcomes with responsibility for decision making. The National Electricity Code Administrator (NECA) has recently proposed changes to the NEC that place much of the ultimate decision making power in relation to transmission investments with an inter-regional planning committee and a dispute resolution panel, while leaving the commercial and service level accountabilities with transmission service providers.

Attempts to introduce 'unregulated' transmission link regimes have been less than promising. Murraylink, the proposed unregulated interconnector between Victoria and South Australia, and the 'regulated' transmission link proposal between New South Wales and South Australia (SNI) are both options for enhancing connection of South Australia with the rest of the National Electricity Market. If the Murraylink option is adopted, an economically inefficient outcome is likely, including ongoing lost benefits to the South Australian community. Recent market modelling undertaken by Intelligent Energy Systems found that the Murraylink option ranks last or second-last in net benefit of all the alternative projects under all credible market development scenarios for connection into South Australia. (December, 2000)

Current disincentives to regulated transmission investment include low regulated rates of return, high levels of commercial risk arising from, among other matters, regulatory uncertainty, and evolving service standards. Rules for adjustments to regulated income associated with inefficient investment are unclear and there is no scope for the establishment of regulatory principles that have precedent value. There is also limited development of incentives aimed at emulating the efficiency drivers that would result from competitive markets for provision of essential infrastructure.

In summary, based on TransGrid's experience with the National Electricity Market access regime, there are major unresolved issues in developing the best framework for ensuring the economic development of essential infrastructure. It would be useful as part of this Productivity Commission review, to canvass participants in other regimes to ascertain if this is a common concern. The AGL Company, for example, is so concerned about the limited commercial prospects in regulated infrastructure investment that it has a stated business strategy of reducing its exposure to this area of business. This includes both gas and electricity network infrastructure covered by either effective access regimes or access undertakings accepted by the ACCC.

I trust that this letter and the attached comments are of assistance to the Productivity Commission and look forward to further involvement in this important project. Furthermore, please be advised that this document can be made available for public scrutiny, and as such is not commercially sensitive.

Should you wish to discuss any of the matters raised in this submission, please feel free to contact me on (02) 9284 3434 or via e-mail: phil.gall@tg.nsw.gov.au

Yours sincerely

Philip Gall 19/12/00

Philip Gall
Manager – Regulatory Affairs

Attachment to Letter - Productivity Commission Legislation Review Issues Paper: Clause 6 of the Competition Principles Agreement and Part IIIA of the Trade Practices Act 1974

Specific Comments

Monopoly rents, pricing and electricity

The paper is incorrect in assuming monopoly rents are extracted by transmission companies exercising monopoly power in the electricity industry (page 17).

TransGrid, as the primary electricity transmission facility owner in New South Wales, does not extract monopoly rents in the industry. Under the current electricity industry specific access regime, TransGrid has its prices regulated, its revenues capped, open access to its Network and both its service standards and facilities heavily regulated.

Therefore, the statement that there are high connection charges and usage charges set close to the marginal cost of service provision, thereby leading to only small efficiency costs in the electricity industry (page 17), is factually incorrect in the case of non-vertically integrated transmission providers such as TransGrid. It is also a distortion of the identification and amount of efficiency gains, which can be made in the industry.

Uneconomic to develop another facility and need to endorse "Community perspective"

The criterion of 'uneconomical for anyone to develop another facility to provide the service' is discussed in *Re Review of Declaration of Freight Handling Services at Sydney International Airport* (2000) ATPR 41-754 at 40,793. In this decision, uneconomical was interpreted in terms of costs and benefits to society as a whole, and not in terms of a narrow accounting or profitability point of view.

This interpretation is consistent with the intention of Part IIIA and the Productivity Commission's stated approach to the national access regime from a 'community-wide' perspective. Accordingly, TransGrid suggests that this interpretation should remain in its current form (page 26).

Objects clause in Part IIIA

TransGrid agrees that Part IIIA should contain a specific objects clause. The inclusion of such a specific clause would assist interpretation of the legislation, and support both the implementation and administration of the legislation. The objects clause should specify that the purpose of Part IIIA is to improve the efficient and effective operation of a market, and in our case electricity, including access (page 21).

Part IIIA and distributional concerns

Part IIIA is inappropriate for pursuing distributional concerns, and should be restricted to access only. The purpose of the Part IIIA should be to provide the legislative setting to encourage genuine competition within an industry in order to achieve improved community welfare, not to discriminate between classes of consumers on perceived equity grounds. (page 22)

Public interest

The 'public interest' criteria was considered in *Re Specialised Container Transport (1997) ATPR (NCC) 70-004*. In addition to economic efficiency, the Council decided the NCC should consider other factors including social welfare and equity, interests of consumers generally, competitiveness of Australian business, ecologically sustainable development and economic and regional development.

The public interest test should be retained and defined in legislation, rather than be included in the objects of Part IIIA. The reason for this is that it would provide greater certainty as to regulatory requirements for access and implementation of these criteria.

The onus on the facility owner to show that it would be contrary to the public interest should be retained as an additional measure to ensure a public benefit does accrue from access. (page 27)

Administrative and transparency issues

TransGrid considers that no time limits for decision making should be placed upon the ACCC in respect of authorisations. The reason for this is that it provides the ACCC with the opportunity to thoroughly consider and investigate any issues prior to making authorisations, and enhances transparency and efficiency, especially given the significance and sensitivity involved in this process (page 31).

Access holidays

TransGrid considers the granting of Access holidays to prospective market participants sets an undesirable precedent and sends the wrong market signals. Access holidays are an inappropriate option for addressing a number of adverse impacts of mandated access on investment in infrastructure facilities. The reason for this is that private sector investment is usually accompanied by some form of protection, such as subsidies, exclusive rights, and taxation benefits. The provision of access holidays to secure initial infrastructure investment, which would not otherwise be viable, will merely foster inefficiency to both the immediate and long-term detriment of the community (page 35).