

Economic Regulation in Transport & Logistics

*Ensuring a competitive
environment through economic
regulation*



**Australian
Competition &
Consumer
Commission**

Joe Dimasi
Executive General
Manager – Regulatory
Affairs Division

Melbourne 2007

Outline

- **The National Access Regime (Part IIIA)**
 - What is it?
 - What is its purpose ?
 - How does it work?
 - negotiation, declaration, arbitration
 - Case example: Virgin Blue vs Sydney Airport Corporation Limited
- **Other ACCC activities**
 - **Monitoring**
 - Aviation
 - Waterfront
 - **Authorisation of coal logistics chains**
 - Dalrymple Bay
 - Port Waratah

Why is access regulation necessary?

- **Natural monopoly characteristics and market power**
 - Some regulatory oversight is necessary to act as a constraint on potential anti-competitive behaviour and to encourage competition in upstream and/or downstream markets.
- **The regulation paradox**
 - As a result of industry deregulation:
 - Introduce greater competition in dependent markets
 - Rise of independent and visible regulation

The National Access Regime

- Part IIIA - what is it ?
 - It is a negotiate/arbitrate framework
 - Part IIIA establishes a regime to assist third parties obtain access to services provided through facilities with natural monopoly characteristics to promote competition in upstream or downstream markets.
 - Wherever possible, third party access to services of significant infrastructure facilities should occur on a commercially agreed basis.
 - Part IIIA recognises that agreement on terms and conditions of access through commercial negotiation is not always possible.

The National Access Regime

- **What the ACCC doesn't do**
 - **It does not decide which industries are subject to Part IIIA**
 - **It does not have a proactive role. It responds to the requests of participants**
 - **State regulators have responsibility in many sectors**

Part IIIA – how it works

negotiation, declaration & arbitration

- **Example: Virgin Blue vs Sydney Airport Corporation Limited**
 1. Private commercial negotiation between VB and SACL
 2. VB applies to NCC for services to be declared under Part IIIA (Oct 2002)
 3. NCC recommended to Treasurer that services not be declared (Jan 2004)
 4. Treasurer's accepted NCC's recommendation (Jan 2004)
 5. VB applies to Australian Competition Tribunal for review of Tsr's decision (Feb 2004)
 6. Tribunal declares domestic airside services (Dec 2005)
 7. SACL applies to Federal Court for review of Tribunal's determination (Jan 2006)
 8. Federal Court dismisses SACL's appeal (Oct 2006)
 9. SACL applies for special leave to appeal to the High Court (late 2006)
 10. High Court refuses SACL's application (Mar 2007)
 11. VB notifies ACCC of access dispute with SACL (Feb 2007)
 12. ACCC accepts notification and proceeds to arbitrate dispute (Feb 2007)
 13. Virgin Blue withdraws notification of access dispute indicating that the parties have resolved the dispute through commercial agreement (May 2007)

Commercial negotiations may continue between parties

The National Access Regime – recent developments

- **February 2006**
 - **COAG signed a Competition and Infrastructure Reform Agreement**
 - consistent regulation for ports, railways and other export-related infrastructure);
 - time limits on regulatory decisions
 - certification of all State and Territory access regimes by 2010;
 - national system of rail access regulation using the ARTC undertaking as a model.
- **February 2007**
 - **COAG agreed a timetable for certification**
- **Recent Part IIIA amendments (October 2006)**
 - Introduction of objects clause, pricing principles
 - Encouraging time limits on regulatory decision making

Part IIIA – access undertakings

- **National arrangements for interstate track**
 - **ARTC interstate rail network provider**
 - **2002 ARTC access undertaking**
 - **New proposed access undertaking expected**

Part VIIA - ACCC monitoring

- **The Role of regulatory monitoring**
- **Airports**
 - **ACCC monitors prices, costs and profits of aeronautical services (at Adelaide, Brisbane, Canberra, Darwin, Melbourne and Sydney Airports)**
 - **ACCC also monitors quality of service at the price monitored airports.**
 - **Government response to Productivity Commission report into price regulation of airport services**

Airports

- Prices and quality of service monitoring
- Through monitoring, provide information to the public on prices (measured as aeronautical revenue per passenger) and quality
- Recent reports
 - Prices, measured as aeronautical revenue per passenger, increased at most airports during 2005-06, although to a lesser degree than in previous years.
 - In 2005-06, price changes ranged from a fall of 1.1 % at Canberra to a rise of 12% at Darwin. At Adelaide, a more significant average price increase (49%) was primarily the result of introducing a Passenger Facilitation Charge for the new Terminal 1 (as agreed with users).
 - On quality, Brisbane recorded the highest rating for the fourth consecutive year, while Adelaide's ranking improved with the commissioning of the new terminal.

ACCC monitoring – container stevedoring

- ACCC monitors prices, costs and profits of container terminal operators at the ports of Adelaide, Brisbane and Burnie, Fremantle, Melbourne and Sydney
- 8th annual ACCC report released in November 2006
 - The report showed that at Australia's largest container terminals, stevedoring unit revenues and costs both increased, while productivity fell.
 - This contrasts with a pattern of declining real unit revenue and costs and increasing productivity that occurred in the late 1990's following waterfront reform.
 - New asset investment continuing to occur.

Coal chain logistics

- **Authorisations – Part VII**
 - **Dalrymple Bay**
 - **Port Waratah Coal Services**
 - **Short term capacity allocation schemes developed by industry**
 - **ACCC authorisations were conditional on industry commitments to long term investment in capacity expansion**
 - **Annual reporting to ACCC on long term investment plans**
 - **ACCC responded quickly to allow industry to introduce schemes to alleviate congestion and improve coal chain efficiency**

Conclusion

- Under National Access Scheme terms & conditions of access to transport infrastructure should be negotiated between the parties on a commercial basis.
- Where there is significant market power meaningful negotiations may not be possible
 - access regulation can be a useful tool which aims to foster competition and promote efficiency.
- The National Access Regime is now over a decade old
 - A significant and new reform in the mid 90s
 - Facilitated the deregulation of infrastructure
 - Its application has undergone period of settling in



**Australian
Competition &
Consumer
Commission**