Australian Competition and Consumer Commission

Promoting Competition and Fair Trading

Australian Energy & Utility Summit
Sydney

Energy Market Access and Regulation

22 July 2004

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It's now been nearly a decade since all Australian governments committed to a comprehensive and ambitious agenda to improve Australia's economic performance known as National Competition Policy.

NCP sought to extend the economic reforms of the 1980s to all areas of the economy by opening up to competition formerly closed off areas such as state run electricity generation and transmission and gas pipelines.

The Australian Competition and Consumer Commission played a key role in this process by overseeing aspects of the deregulated government monopolies where it was deemed that competition could only be achieved through government intervention.

While there have been transition costs, sometimes falling unfairly on certain sectors of the economy, the evidence so far is that the benefits to the Australian economy have been substantial.

National Competition Policy and related reforms have coincided with the most consistent and sustained period of economic growth in our history.

While it's impossible to define precisely how much of this success is directly due to these reforms, the ACCC believes that NCP and related reforms have directly contributed to this impressive performance.

However, after a decade of reform the ACCC believes it is now time to reinvigorate and refine the current competition framework.

The reforms have exposed most sectors of the economy to the rigours of competition, but competition in some industries is held back by legislation or the structure of the industry.

Reforms to the electricity and gas industries have introduced competition into the parts of those industries that can be opened to competition, and regulation to the natural monopoly parts.

However, the ACCC is concerned by recent merger activity within the electricity industry, the plethora of regulatory approaches to distribution and retail regulation which imposes substantial costs on the energy sector and the fact we are still a long way from achieving a truly national market for energy.

So with that backdrop, I want to now turn to a few key areas of national infrastructure that have been impacted by National Competition Policy, look at the successes and the shortcomings and consider what action can be taken to ensure the reform process continues to ensure Australia's golden economic run continues.

Energy

Historically, the gas and electricity industries were state-based and publicly owned. Within the electricity industry, there was little interconnection between states. In the gas industry, supply to demand centres was typically met by a single basin through state owned pipeline infrastructure. In both cases the infrastructure for transporting and retailing electricity or gas was vertically integrated.

During the 1990s, Federal, State and Territory governments agreed through the Council of Australian Governments to reforms for both industries to improve their competitiveness and develop their respective national markets.

Although reforms proceeded on a sectoral basis, CoAG agreed to similar reforms for both industries, including:

- Placing utilities on a commercial footing through corporatisation
- Vertically separating generation, transmission, distribution and retail businesses and 'ring-fencing' these businesses from other activities
- Allowing for customer choice of supplier through full retail contestability
- Encouraging third party access to transmission and distribution infrastructure on fair and reasonable terms
- Removing restrictions upon interstate trade and, in the case of electricity, establishing the National Energy Market (NEM)

Gas

The opening up of the gas sector to competition flowed from the 1994 Council of Australian Governments agreement on free and fair trade in gas.

The agreement saw a major restructure of the gas industry, with monopolies such as pipelines being separated from more competitive segments of the gas industry, such as production and retailing.

In addition to structural reforms, governments agreed to remove barriers to interstate trade in gas. To support greater commercial arrangements, governments and industry developed a national framework creating a right of access by gas producers and retailers to Australia's major monopoly gas pipelines.

The record so far has been impressive.

The gas industry has ended the bad old days when local authorities took gas supplies from monopoly producers under long term contracts that left little room for an injection of competition from third parties.

Regulation has gone from legislating intra-state monopolies to promoting competitive markets by structural reform and facilitating access to monopoly infrastructure on terms that still encourage further investment. The regime was not simply intended to bring consumer prices down and undermine monopoly rents, but rather to stop private monopolies from holding back development of related markets. Evidence from related markets is that this initiative has been a success, although more so in some parts of the country than others.

Gas consumption has grown at an accelerating rate since the mid-1990s, averaging four per cent since 1995, while gas has increased as a proportion of Australia's energy mix from 12 per cent in 1980/81 to 20 percent in 2000. The augmentation of coal fired energy with natural gas is also, of course, a big plus for the environment.

The development of an effective access regime over the past decade also means niche players can now invest in gas exploration and development, confident they can access transmission and distribution systems on reasonable terms.

Now, with access to pipelines and other infrastructure available we are seeing a number of new developments in the Otway Basin, coal seam methane developments in New South Wales and Queensland and other new fields coming on stream, such as Yolla and Patricia/Baleen. It is also encouraging to see a number of new explorers have taken acreage in the Cooper Basin and major exploration programs foreshadowed or underway in the Gippsland Basin.

This is in turn increasing investment, diversity in ownership and reducing concentration of ownership in upstream gas production markets.

The flow on effects of constraining the exercise of market power in the gas industry benefits all Australians. Material prepared by consultants ACIL Tasman for the ACCC's submission to the Productivity Commission estimates the benefits of gas and electricity access regulation to the economy at $2.2 billion to $11 billion over a 15 year period, and the costs at just $185 million.

Gas users have also benefited. The price of delivered gas would have been higher without regulation. ACIL Tasman estimates that without access regulation the price for transmission and distribution services could have been 25 per cent higher.

For the most part, those seeking access to gas pipelines are large businesses, such as wholesalers, retailers and major industry.

Even with this price restraint there has been considerable pipeline investment. Gas transmission companies are still very successful businesses. An example I can point to is the performance of the ASX Utilities Index. Businesses in this index outperformed the S&P ASX 300 accumulation index over the past four years. Moreover, the market

values of these businesses trade at a premium to the value of their regulatory asset bases. This suggests that regulated returns are higher than necessary to maintain regulated asset values.

All of which I would have thought rather put the lie to the industry's claim that ACCC regulation has, in the words of one major player "had a chilling effect" on investment.

That claim was again made in the wake of last week's ruling by the Competition Tribunal on the Moomba-Sydney pipeline access arrangement.

There's been a lot written about the importance of that decision in recent days – much of it overblown or just plain wrong.

I won't deny we were disappointed by the ruling, but it's worth putting a couple of things in perspective.

Put simply, the Tribunal did not directly review the proposed tariff. It also needs to be remembered the access arrangement only applies to 40 per cent of the pipeline so owners APT can already set their own charges on the majority of the pipeline where the tariff is unregulated. This is a consequence of an earlier and separate decision by the Minister to revoke coverage of most of the pipeline.

While applications for review of this decision were made to the Tribunal by Orica, Endeavour Coal, AMCOR, the Energy Users Association of Australia and the Energy Action Group, all of these applications did not proceed for various reasons.

Crucially, though, the Tribunal rejected arguments that the Moomba pipeline competes with the Eastern Gas Pipeline.

That pipeline delivers gas into Sydney at some 50 per cent more than the price on offer from APT's Moomba pipeline, which I would have thought pulled the rug out from under those who argue that there is genuine competition between pipelines into Sydney and therefore no need for regulation. This lack of competition between the two pipelines is consistent with the expert opinions provided to the NCC by Ordover and Lehr to assist its consideration of the MSP coverage revocation application.

You are also no doubt aware that the draft report of the Productivity Commission's review of the Gas Code has also recommended a substantial winding back of regulation.

The ACCC believes the draft report failed to take an economy wide view and consequently placed too much weight on the views and interests of the service providers. In our assessment, these recommendations, if implemented, could put the gains that have been won from the current regime at risk.

Now I would be the first to acknowledge that the gas sector has already undergone significant reform. But its origins - state based providers with government ownership - still exerts an influence on the emerging national energy market.

The gas market is characterised by limited supply sources and competition in the overall market remains underdeveloped. The market is not national in scope. The combination of high market concentration and the critical importance of energy for domestic and industry users underline the importance of effective regulation of the sector.

The January 2004 Moomba Plant failure has also been used by some in the industry to push for the scrapping or winding back of gas regulation in order to promote system expansion. Others have portrayed the incident at Moomba as demonstrating a need for central planning. The ACCC views both of these positions as wrong.

Complete security of supply would require the construction of spare capacity that is only to be used in emergency circumstances, something unlikely to ever happen on a purely commercial basis. As such, the construction of uneconomic spare capacity pipelines would only ever proceed with either direct government support (perhaps through a subsidy) or the imposition of higher prices on users under normal operating conditions.

The Gas Code already permits new investment to be added to the regulatory asset base used in determining tariffs where the new investment generates 'system-wide benefits' or is necessary to maintain the safety, integrity or contracted capacity of services.

Some in the pipeline industry have suggested that if regulation is removed, higher profits would be channelled into the production of further capacity. With the greatest respect, this seems highly unlikely. When faced with a choice between returning higher profits to shareholders or undertaking additional non-commercial investment it would be surprising indeed if shareholders missed out.

It is a fallacy to claim that monopoly profits are needed to promote investment – in fact, history had demonstrated that investment is usually a major casualty of monopolies.

While there are numerous plans mooted for the construction of new transmission pipelines in Australia, there does not appear to have been any significant shortfall in investment under the gas access regime. The ACIL Tasman report for example demonstrates that the existing network already possesses significant reserve capacity.

ACIL Tasman's modelling of the Australian gas market indicates that over the next 10 years only limited capital expenditure on greenfield transmission pipelines will be required as most of the major demand centres already have significant reserve pipeline capacity.

Australia's relatively low energy and gas prices provide industry with a strong competitive advantage. This has been boosted by increasing competition in the gas and electricity markets over the past decade, but competition remains immature.

In the ACCC's view scrapping that regulation now would place these gains at risk.

We firmly believe the best approach to maintaining Australia's low energy prices is to continue to facilitate competition where this is feasible. Where competition is not feasible, effective regulation should be applied to restrain monopoly positions and mimic effective competition.

Electricity

The ACCC's involvement in the regulation of electricity grew out of the 1995 National Competition Policy and the subsequent agreement to establish competitive electricity arrangements for generation and open up access to the state-controlled transmission and distribution system.

Since 1999 the ACCC has progressively assumed responsibility for regulating transmission from state regulators. Over the first five years of this regime around $4.6 billion will have been invested in transmission. This investment adds around 36% to the replacement costs of transmission assets. This is very high considering the long life of these assets.

These high levels of investment have come at a price though. Transmission nominal prices have increased in all states, rising by an average of 16%. The increase in prices has been a result of growing demand and the need to accommodate efficient investment to ensure a reliable supply of electricity to Australia.

Given the huge changes in the electricity sector over the past decade, the ACCC now believes it is timely for us to review almost every aspect of our approach to regulating electricity transmission businesses. I want to now provide a brief overview of the ACCC's work, touching on our new regulatory principles, revised regulatory test and new service standard proposals. The ACCC's proposals in these areas represent a significant change in regulatory practice.

Regulating Electricity Transmission – the ACCC's new approach

The underlying objective of the regulatory changes proposed by the ACCC is to improve investment outcomes. By this I mean not just getting the amount of investment right, but also efficiency in the choice and delivery of investment projects.

Regulatory Principles

The focus of the review of the regulatory principles is on measures to increase certainty for investment and improve incentives for efficiency through decisions on the:

- asset base
- ex-ante capital expenditure (capex) framework
- efficiency carry-forward mechanism and
- weighted average cost of capital (WACC) parameters.

The Commission's first measure is to shift away from a periodic revaluation of the asset base toward a lock-in approach. Under the current Draft Regulatory Principles (DRP), our stated approach is to revalue *all* assets every five years on the basis of up to date replacement cost estimates, adjusted for asset age (through depreciation), and optimising out redundancy. This approach was useful as a transitional measure from government ownership to formal regulation by an independent regulator and dealt

with many of the problems associated with historical cost values such as poor historical records.

But repeated revaluation creates its own problems such as the level of uncertainty that a transmission company might be subject to. Revaluing investments every five years creates the potential for significant variations from one period to the next. That revaluation might result in a windfall gain or downward loss for the TNSP. But either way, any investment currently is at risk of being devalued five years down the track, and the costs of the investment may never be recovered. This does not create a lot of certainty for potential investments.

The ACCC intends to resolve this uncertainty by locking-in the asset base by accepting initial jurisdictional valuation and adding in new investment at cost. The attraction of this option is that a lock-in of the jurisdictional asset base is unlikely to deter new investment and will produce a smoother price path than periodic revaluations.

The ACCC's second measure is to shift from a backward looking ex-post prudency assessment of capital expenditure to a forward looking ex-ante approach. Under the current method, the ACCC has to determine the amount of expenditure to be included in the asset base after the investment has been made. The ACCC does this through setting a benchmark of "good industry practice", and adopting the regulatory test as the starting point for assessing the prudency of the investment.

The evidence suggests that current method has some potential shortcomings, which have been highlighted for example through the need for the ACCC to reset the revenue caps for TransGrid and Energy Australia.

Above all, it creates uncertainty for transmission companies when investing. It's also a very complicated task for the ACCC to determine, as it requires detailed analysis of the need for the project, technical specification and costs and benefits of each project at the time that the investment is made.

The proposed ex-ante cap involves a forward looking assessment of investment requirements over the regulatory period. Transmission companies are still free to decide on the size and timing of investment projects to meet statutory and code obligations. However, any company that decides to invest more than the fixed cap will not be compensated for that investment unless it is approved by the ACCC Importantly, the ACCC will not conduct an ex-post prudency assessment of the TNSP's investments. At the regulatory reset the ACCC will roll into the asset base the lesser of the firm cap or the actual amount spent.

The ACCC believes that there are a number of benefits of moving away from our current approach to a forward looking approach to approving investment:

- it improves incentive for transmission companies to invest in the most efficient projects
- it is potentially a less intrusive and more "light handed" regulation of investment than an assessment made on a project by project basis.

- it improves investment certainty by eliminating backward looking assessments, thus making it more consistent with the ACCC's preferred option of "locking-in" the jurisdictional asset base.

The ACCC acknowledges that there may be some drawbacks from adopting a pure ex-ante regime. Capital expenditure made on the basis of a firm ex-ante cap can provide limited flexibility to deal with unforseen investments that may be required. To address this, the ACCC is proposing that certain projects be excluded from the firm cap.

The ACCC has identified three cases in which investment might change significantly from the forecast:

- departures from load growth forecasts
- significant unforseen events such as changes in legislation
- large and unpredictable projects.

The ACCC has proposed specific solutions for each of these cases. If there is a significant departure from load growth forecasts the ACCC will build in flexibility into the capital expenditure program to ensure that it can increase to meet this demand.

For events which are significant and unforseen that affect the future investment program we are proposing to build "off-ramps" into the cap. These "off-ramps" will be treated in a similar manner as to a pass-through mechanism. Finally, for large and unpredictable projects the Commission will exclude these projects from the cap and assess these projects upfront at the beginning of the regulatory period. If these projects do eventuate then assuming we have approved the project upfront, the Commission will automatically roll that project into the asset base.

Whether the ACCC adopts an ex-post prudency or ex-ante framework the regulatory test will have a role. Relying on the regulatory test requires that the checks and balances set out in the code are appropriate. However, it is not clear that these checks and balances work effectively.

The first check comes from a transmission company's consultation on its application. However, interested parties are unlikely to possess sufficient skills, expertise, resources or time to make an informed assessment. The evidence shows that, with the exception of interconnector investments, many applications of the regulatory test have not undergone critical assessment by interested parties.

Following the notice, interested parties can object to an application to either the dispute resolution panel and eventually to the Commission, but only if the augmentation is not a reliability augmentation. The risk is that the appellants may not have the best interests of the market in mind when challenging an application.

Finally, the ACCC's fourth measure is the introduction of an efficiency carry-over mechanism for operating and maintenance expenditure. The efficiency carry-over mechanism rewards the TNSP with higher profits when the firm manages to lower its costs.

The fundamental cornerstone to the ACCC's approach to regulation is an incentive based regime within a price capping framework. The aim is to provide transmission companies with the incentives to operate more efficiently and undertake needed investment. If they are able to outperform benchmark costs they can keep the excess revenue and vice versa. If the company gains additional profit by beating the benchmark costs it will carry over that profit into the next regulatory period.

I think it is important that the Commission recognise that the TNSP's environment might change, such as for example because of changes in available technology or expanding network sizes. Therefore, in setting the target for operating and maintenance expenditure, the ACCC will have regard to the expenditure levels that have been achieved, but will retain the discretion to consider arguments by TNSPs and other interested parties on why the future level will be different to the past.

The ACCC will release the draft decision of the revised *Regulatory Principles* by early August and a final decision by the end of 2004.

Regulatory Test

The regulatory test has been around for a while now and as most of you are familiar with the test. The regulatory test provides a planning tool for TNSPs and regulator assessment of new investment proposals. It's a test that simply compares costs and benefits of feasible options, including transmission and generation options and chooses the one that maximises the 'net benefits'. In comparing alternative options the regulatory test can, however, help determine issues such as the use of transmission versus local generation; timing of projects and the scale of projects.

The regulatory test has resulted in strong investment outcomes and is well understood by TNSPs. However, it does not explicitly take into account competition benefit outcomes. Much debate has surrounded the issue of whether the impact of increased transmission capacity on competition between generators should be taken into account when conducting a regulatory test. The idea is that there is limited competition between generators in some regions and that transmission investment can bring competition from inter-state generators.

The review of the regulatory test has aimed to address this concern by including a competition benefits test. Competition benefits are defined as efficiency gains to the market from greater competition between generators.

There are a couple of comments I would like to make on competition benefits. The first is that investment is high now so it is not clear that taking account of competition benefits is warranted. The second is that even if we accept the case for a competition benefits test there are some practical hurdles to address. We don't want to put an existing proven test at risk so any competition benefits test should supplement, rather than replace, the existing test. Nonetheless, the principal of taking account of competition benefits is well justified.

The ACCC has tried to model the effect of transmission investment on competition between generators. The ACCC engaged Frontier Economics to assist us in the

consideration of the framework for the calculation of competition benefits using market simulation techniques on designated projects such as QNI 200MW and SNOVIC 400 upgrades.

The Commission proposes to continue its work on competition benefits after the release of the revised regulatory test. However, we don't see our further work affecting the definition of competition benefit. The aim of this additional work is to provide further guidance to the market on how 'competition' benefits should be measured.

The ACCC aims to release the final decision of the regulatory test by late July.

Service Standard Guidelines

Service standards are an essential part of the package in providing incentives to improve service standards for a given level of costs. Currently, the guidelines use a TNSP's own historical performance to set a performance benchmark such as the number of outages and constraints.

The ACCC is aiming to develop an incentive regime which is primarily focussed on addressing outages and constraints that do have a significant market impact. If the ACCC does not take such an approach the service standards regime would become irrelevant.

The ACCC recognises that most transmission outages don't have an affect on the market and that the guidelines as they stand now do not deal with the market impact of transmission networks.

The ACCC proposes that the first step in developing this regime and making it work is to identify the market impact of transmission networks and how to quantify that impact before we even consider the financial incentives that should be put in place.

The ACCC proposes to release the draft decision in mid July and a final decision in September. The draft decision will outline what information the ACCC intends to publish about market impacts and transmission constraints. This decision does not propose to set financial incentives on TNSPs at this stage.

Mergers

As I alluded to earlier in my speech, the Commission remains concerned by a number of recent mergers within the electricity industry.

Recently the Commission has received several applications for informal clearance for proposed acquisitions that would bring many of the elements of the electricity supply chain back together and would re-aggregate the contestable generation and retail sectors. Such substantial re-aggregation in the NEM would be a reversal of the pro-competition structural reforms that have been achieved over the past decade.
There are three types of mergers that raise competition concerns in the National Energy Market, in particular:

1. Horizontal mergers between generators

As you would no doubt be aware, the Commission has considered applications for mergers of large baseload generators in Victoria. In general, our main concern is the ability of a large merged entity to manipulate spot prices and also to influence future contract prices.

The Parer Report recognised these concerns and recommended further disaggregation in the generation sector to stimulate competition, and specific criteria for mergers between generators to be included in the ACCC's Merger Guidelines. However, it is not clear whether Parer's recommendations are likely to be effective. The Federal Court's decision on AGL suggests that regardless of any changes to the merger guidelines, it is still the court's decision that is determinative. As some of you may have seen from our recent submission to the Productivity Commission, it is the ACCC's view that these complex issues might be more effectively addressed through a policy response by State Governments or the Ministerial Council on Energy.

2. Vertical mergers between transmission, distribution, generation and retail entities

Vertical mergers may give the merged entity the ability and the economic incentive to restrict the level of competition in the contestable market by restricting its competitor's access to the essential facilities it controls. The entity could do this by raising prices, imposing terms for access that raise cost for their competitors, or through a more subtle reduction in the quality or timeliness of the essential service.

The Commission has recently considered these issues in relation to the proposed acquisition of TXU Australia by SP Energy. The proposal raised significant competition concerns regarding the joint ownership of parts of the National Electricity Market transmission network with merchant activities in generation and retail.

The ACCC regards the structural separation of the operation and control of the transmission from merchant activities as an important competition issue in the NEM.

However, following the offer of court-enforceable undertakings by SPE, the ACCC is satisfied that its concerns have been addressed and will not be intervening to block the acquisition.

These undertaking provide for the separation of the transmission and generation businesses, including certain activities associated with the ownership and operational control of TXU's Master Hedge Agreement with Ecogen and Torrens Island Power Station.

The ACCC is satisfied that the undertaking provided by SPE appropriately addresses our concerns, including the commitment to non-discrimination, restrictions on access to information and enhanced ring fencing commitments.

3. Vertical mergers between generation and retail sectors

The Commission is concerned that cross ownership between base-load generators and large incumbent retailers may reduce the ability of other retailers to secure competitively priced hedge contracts. As retailers need hedge cover in order to mitigate the risk of price volatility in the spot market, this may have the effect of raising barriers to both entry and expansion for electricity retailers.

Such vertical integration also creates an incentive for other generators and retailers to merge, creating a market dominated by integrated generator-retailers. This would increase barriers to entry, leading to fewer new entrants and less intense competition in the retail market. However, the Commission recognises that this may be an issue primarily because of the current state of development of the NEM. There is nothing intrinsically wrong with vertical integration between generators and retailers in the long term (in fact, the Commission recognises many advantages), provided both generation and retail markets become and remain effectively competitive.

The Commission is also concerned that the section 50 test used by the Commission to assess merger proposals may not be an adequate instrument for detecting market power in the NEM. The section 50 framework traditionally uses rules of thumb like the Herfindahl–Hirschman Index (HHI) market concentration measure. However, it is becoming apparent that the traditional competition measures do not capture the unique characteristics of the National Energy Market and how these can lead to a substantial lessening of competition.

This is a significant challenge that the Commission faces in addressing the issues raised by electricity mergers and we are eager to develop solutions to prevent inappropriate concentration and re-aggregation in the electricity industry.

Australian Energy Regulator

At its meeting in August last year the Ministerial Council on Energy agreed to abolish the National Electricity Code Administrator and establish two new bodies - the Australian Energy Markets Commission (AEMC) and the Australian Energy Regulator (AER).

The AER's regulatory functions will initially include regulating electricity transmission revenues, and ensuring compliance with the National Electricity Code. From July 2005, the AER will regulate gas transmission for all jurisdictions except Western Australia, with provision for Western Australia to join the gas regulatory scheme by agreement. The AER will become responsible for national regulation of energy distribution and retailing (other than retail pricing) by 2006.

The principles behind the Australian Energy Regulator were that it should be:

- independent in its decision making, but through its close links to the ACCC able to take an approach consistent with competition law
- achieve national consistency in regulating electricity and gas transmission and distribution.

In line with that first point, the AER has been established under the *Trade Practices Act*, and will be a part of the ACCC but a separate legal entity. This means that the AER will make decisions on regulatory matters independently of the ACCC.

It will comprise three Members who will be statutory appointments, including a full time Chair and two part time Members. One of the members will be a Commissioner of the ACCC, namely, me.

There will be a single body of staff providing assistance to both the AER, and to the ACCC on energy matters, creating a substantial body of specialist skills and knowledge. This will deliver the objective of a single national energy regulator and avoid duplication of processes by the ACCC and AER.

This brings us to the second point – consistency in regulation.

Different approaches to regulating utilities across industries distort investment decisions and create unnecessary costs and barriers for utilities operating in more than one industry.

In short, whether industry or consumers choose gas or electricity should not be determined by differing regulations in those sectors favouring one or the other. The goal of regulation should not be to favour one rival or the other, but to allow both to develop in a way that encourages competition within, and between the two, to the benefit of industry, end users, and the nation.

Consistency in regulation across gas and electricity, and across the different jurisdictions, will reduce regulatory costs to business and reduce barriers to entry by interstate companies.

The AER will ensure that at all times there is a consistent approach to all aspects of competition law such as mergers, enforcement and so on.

So how will this all work in practice?

The ACCC will continue to perform its existing functions under the Trade Practices Act. These include:

- enforcement of Part IV (Restrictive Trade Practices, including mergers)
- authorisation of conduct under Part VII that may otherwise contravene the Trade Practices Act
- approval of access codes and acceptance of access undertakings.

Recent amendments to the Trade Practices Act facilitate a new streamlined process for amending the electricity and gas codes, allowing the ACCC to rely on consultations undertaken by the AEMC in making our rulings.

The amendments also streamline the authorisation process for the National Electricity Code, allowing the ACCC to rely on consultations that have been separately undertaken by the AEMC in a code change process.

The AER will assume the ACCC's current electricity transmission revenue regulation functions, and NECA's National Electricity Code compliance monitoring and enforcement functions.

During 2006, the AER will become responsible for the regulation of electricity distribution and retailing, other than retail pricing. Jurisdictions may transfer responsibility for regulation of retail prices to the AER.

The transfer of distribution and retail regulation to the AER will require the development of a national framework. The Ministerial Council on Energy will shortly release for consultation an issues paper on distribution and retail regulation. Following consultation on the issues paper, a national distribution and retail regulatory framework will be developed, and considered by the Ministerial Council in 2005.

The plethora of regulatory approaches to distribution and retail regulation imposes substantial costs on the energy sector, and inhibits the establishment of national energy retailers. Progress on the task of harmonising distribution and retail regulation is needed urgently to reduce the compliance burden on the energy sector.

Conclusion

Nearly a decade on, the evidence shows National Competition Policy has been good for industry, good for consumers and good for the nation.

But we can't rest on our laurels, and the task now is to tackle the barriers that continue to inhibit competition, and stand in the way of further reforms which will continue to keep the Australian economy competitive, for the benefit of all Australians.