Australian Competition & Consumer Commission

The Australian Gas Association

1999 Convention

19 October 1999, Perth

ADVANCING COMPETITION: WHERE?

Mr Allan Asher
Deputy Chairperson
Australian Competition and Consumer Commission

Advancing Competition: Where?

Introduction

I have been asked to speak to you today on advancing competition in the national gas industry. I believe this to be an opportune time to speak on this topic, as Australia is at a critical stage in the gas reform process. While gas reform has been underway for some years now, we are really only just starting to implement the reforms, having spent three or four years developing the reform framework – focussed significantly on development of the National Third Party Access Code for Natural Gas Pipeline Systems.

The need for ongoing gas reform

I would like to begin today's presentation to you by outlining the proposed terms of reference for the new national Gas Policy Forum. As you are aware, there have been a number of policy groups established under the umbrella of gas reform most recently: NGPAC to administer the Code and GRIG to establish the administrative arrangements for third party access to pipelines. GRIG has now been disbanded as it has fulfilled its terms of reference. However, whilst significant progress has been made many matters have either not been determined or tested in practice.

All jurisdictions and relevant industry bodies agreed there would be benefit in establishing a new group to enable ongoing discussion of remaining gas reform issues. The agenda for the Gas Policy Forum will be to provide high level oversight of, and advice to governments to ensure the momentum and direction of reform is maintained. The Forum will also look at further developing ongoing gas market related policy initiatives, particularly where joint jurisdictional action can enhance the efficient and effective operation of the market.

The Forum's role will also extend to managing priorities for future gas policy development in relation to 'free and fair trade in natural gas', and advise on policies as they may relate to the growth of the gas market. Additionally, the agenda will ensure the goal of nation-wide full customer choice is achieved and will foster consistent policy making in relation to key retail issues.

Finally, the Forum will assess and develop a consensus on any remaining infrastructure issues that may effect competition in related markets and security of gas supply and examine ways of reducing the costs of regulation for government and industry.

I will now turn to upstream issues.

Upstream reform

I have been asked to speak on upstream reform and how it fits in with the gas reform process, specifically 'has the upstream sector escaped reform with their monopoly still intact?' Until recently, Eastern Australia typically had one joint venture monopolist selling gas into each jurisdiction. Supply competition in Eastern Australia is still severely limited, with only two joint ventures now selling gas into NSW and Victoria, and even there they have only

penetrated each other's market to a limited extent.

Having a competitive upstream sector is crucial to gas reform being successful. In the gas market of the US, for example, it was a highly diverse gas supply industry that really drove competitive reform of the entire industry. Once third party access to essential facilities was provided (critically to pipelines and distribution networks, as processing facilities are typically run independently from gas exploration and production businesses), producers began vigorously competing to sell their gas and prices fell significantly and services improved. Brokers appeared, who had no physical assets, but provided an aggregation service. They grouped customers' demand to allow significant bulk discounts to be achieved or buy up and combine cheap small production quantities to create marketable parcels of gas.

I believe that until Australia develops a more competitive upstream gas sector, many of the potential benefits from gas reform will either not be realised or be captured by the upstream industry.

The need for upstream reform in Australia has been examined most recently by the Upstream Issues Working Group (UIWG)– a sub-group of the GRIG which comprised representatives from all jurisdictions, relevant industry bodies and regulators. The UIWG issued a final report to Government in December 1998, which identified three main issues to be addressed to promote more competition between natural gas producers. The recommendations made were in three key areas: acreage management; marketing arrangements; and access to upstream facilities.

Acreage management

The UIWG considered that while the offshore acreage management regime was working effectively, there was a clear need to make some onshore regimes similarly transparent. Jurisdictions, on the whole, have accepted this recommendation and are implementing it through changes to legislation. Ideally, prospective tenements will be smaller than those granted in the past, and the process will be more transparent – including publishing the selection criteria beforehand and the winning bids after the allocation.

Marketing arrangements

The UIWG report concluded that while some Australian gas markets may currently be considered as immature, markets are evolving in ways that will eventually support separate marketing by individual joint venture participants. The UIWG recommended that the ACCC and State governments should encourage separate marketing whenever and as soon as it is feasible to do so.

The Commission will be looking to encourage separate marketing wherever it sees the opportunity to do so.

Access to upstream facilities

The UIWG endorsed industry's view that ideally, third party access to upstream facilities should be determined through commercial negotiations. There was a strong concern, however, that without some established framework for such negotiations, new entrants may not be confident of their ability to gain access on reasonable terms and conditions.

The UIWG report therefore recommended that the Australian Petroleum Production and Exploration Association (APPEA) should develop a set of best practice principles for access to upstream facilities. These principles would then be considered by UIWG before being brought to Ministers for their endorsement. Ministers agreed to this approach.

A draft of the principles was considered by the UIWG in May, after which APPEA was asked to amend the draft to make the principles more positive and to include as a minimum:

- firm timelines within which negotiations should take place over the terms and conditions of access;
- a principle that access tariffs should be cost reflective; and
- a process of dispute resolution or mediation in case negotiations break down.

A second draft of APPEA's principles was produced which the Association told UIWG was its final document which it intended to distribute to member companies. Unfortunately, this second draft did not address any of the three critical issues listed above. This meant that the UIWG was unable to recommend that Ministers endorse the principles. In the view of the majority of UIWG members, they do not represent best practice and are unlikely to provide sufficient confidence to potential new entrants that they can gain access to existing facilities on reasonable terms.

It is now left to jurisdictions to legislate as they see fit to provide third party access to upstream facilities. It is fundamental that potential new entrants are not discouraged from bidding for acreage by uncertainty as to whether they could negotiate access on commercial terms to existing processing facilities. Failure to achieve access on reasonable terms typically makes only the large finds economic, since the explorer has then to construct its own processing facilities, and this acts as a disincentive for new players to explore.

The Commission believes that this is a significant issue and needs to be addressed to ensure that new entrants are not discouraged, so that eventually we can develop a more competitive upstream sector.

Regulation in Practice

In the gas industry, regulators are appointed to promote competition via effective access to necessary infrastructure and the removal of existing barriers to entry. However, regulation of any nature operates best if there is consistency across and within jurisdictions in the application of regulatory principles and legislation.

The Commission, as national regulator (except in WA), is currently assessing a number of access arrangements. To date the Commission has released a final determination on the Victorian pipeline system and has released a draft determination on the Central West pipeline. The following is a state by state update on developments in gas reform.

Victoria

In Victoria, the government has vigorously pursued the separation and privatisation of its gas businesses, including the creation of an independent system operator for the transmission

network with a complex set of market rules to govern its behaviour. Given the nature of the market rules, the Victorian Government sought authorisation of them under the Trade Practices Act, which was granted, subject to a number of variations to the original proposal. In the face of a challenge to that authorisation in the Australian Competition Tribunal by BHP Petroleum, the Victorian Government passed legislation to exempt its new market regulation from the operation of competition law entirely.

The arrangements had the ongoing protection of a Commission interim authorisation while they were before the Tribunal. In the Commission's view the exempting legislation introduces scope for inconsistency with the outcome that may be decided by the Tribunal or action of the parties to resolve the proceedings. It now appears that the Victorian Government intends to maintain the statutory exemption even though BHP Petroleum has now withdrawn its appeal. The Commission has expressed its concern over the continued application of the exemption.

Queensland

In Queensland, the opposite situation is occurring, with a Government owned electricity corporation purchasing a private gas distributor/retailer. What's more, the two previous government owned electricity retailers are reported to be proposing to aggregate all potential future gas demand in the State and commit to 20 year gas purchase contracts with PNG producers for annual volumes close to four times the current Queensland gas demand. One of these retailers, Energex (which purchased Allgas) has applied for authorisation for exclusive dealing in the resale of PNG gas to Queensland gas users. In considering Energex's application for interim authorisation, the Commission received a significant number of submissions expressing concern at the potential for the Queensland government's involvement to create distortions in both electricity and gas markets. Indeed Entenergy's Managing Director was recently reported to state that the most significant reason Entenergy is withdrawing from its position as 50 percent partner in the proposed 900 MW expansion of the Tarong power station is:

> … the market uncertainty created by the (Queensland) Government's potential support of the PNG pipeline project and the associated generation projects that will come along with that have created a large amount of uncertainty regarding the market outlook for power in Queensland.[1]

Given reports that the vast majority of the PNG gas is proposed to be used in electricity generation, it is difficult to imagine exactly who is going to buy all the additional electricity. One conservative estimate translates the reported volumes of PNG gas into around 2700 MW of electricity. This would supposedly come on stream around 2003, when the total installed generating capacity will be around 9000 MW (excluding Milmerran and Kogan Creek – which together would add an additional 1660 MW). NEMMCO expect peak demand for electricity in Queensland to be around 7800 MW in 2003. With electricity demand in Queensland increasing at about 300 MW per year, it will be some time before the excess capacity can be absorbed.

---

[1] *US giant pulls out of $1b power proposal*, The Canberra Times, Wednesday 8 September 1999, p.17.

Clearly there is an important role for government in the reform process, particularly in the identification and independent regulation of those industry sectors for which competition is not feasible. Indeed, the 1980's and 90's have been different to the 1960's and 70's because governments, on the whole, have been getting out of markets and leaving the competitive sectors of industry to industry players.

One concerned industry participant recently used the experience of the initial arrangements that led to development of the North West Shelf as a warning of what can result from excessive government intervention in a major resource development. To facilitate the North West Shelf development, the WA Government entered into long term take or pay contracts with the producers for volumes significantly in excess of the existing WA market requirements. The market did not expand rapidly in the way required to utilise all the gas contracted for and the WA Government was making significant losses. Eventually, the Commonwealth Government had to come to WA's assistance by passing legislation with the effect that it would forego significant royalty revenues on domestic gas sales from the North West Shelf until 2005.

Getting back to gas reform more generally, Queensland passed the Gas Pipelines Access Law around 12 months ago, but is yet to proclaim it. In signing the intergovernmental agreement to implement the national gas code, Queensland agreed on the basis of significant derogations. These derogations principally relate to preventing any review by the regulator of the tariff and tariff related matters for the four main existing Queensland pipelines as part of their access arrangement approval process under the Code. The owners of those four pipelines would still be obliged to bring in an access arrangement to the Commission for approval, but the reference tariffs will be those taken from the existing access principles. These will not be subject to public or ACCC scrutiny until the nominated review date expressed in the individual access arrangements. The review dates vary from around 10 years through to over 20 years.

Given the significance of these derogations, in March of this year the NCC asked the ACCC to provide advice as to whether the Queensland Gas Pipeline Access Regime is broadly consistent with National Access Code. The NCC is considering an application by the Queensland Government for certification of the 'effectiveness' of the Queensland regime under Part IIIA of the Trade Practices Act. The Commission has recently just received information from the Queensland Government to allow it to commence this review.

South Australia

Another significant barrier to effective gas reform is the existence of provisions in gas supply or transportation contracts that may act to impede access and growth of a gas trading market.

In South Australia, the lead legislator for the Gas Pipelines Access Law, a great deal of effort was put into the introduction of a regulatory framework for third-party access to pipelines. However, provisions in gas haulage contracts that would maintain the *status quo* for some years after the introduction of retail contestability are a potential barrier to effective gas reform.

The Commission recently released its issues paper seeking submissions on Epic Energy's proposed access arrangement for the Moomba to Adelaide Pipeline System. The issues paper

raises for industry comment the limitations on third-party access arising from the reservation of the pipeline system's firm capacity and provisions of the existing haulage agreements.

Putting aside terms and conditions of service, the main issues are whether there is demand for firm and interruptible services from other users and whether firm and interruptible services can be made available without the need to construct new delivery points and laterals where that is operationally unnecessary. Consistent with Code principles at section 2.24, the Commission wishes to establish whether:

- investment in new facilities to overcome current contractual restrictions limiting third party access to the system would be efficient investment; and

- negotiation of access by prospective entrants with the two present users of the system is a satisfactory means for them to obtain access in the period until 2006, given that the retail contestability timetable is 5-6 years ahead of that timeframe.

The Commission is disinclined to accept the existing agreements as binding the regulator's decision on approval of the access arrangement without further inquiry, given that the agreements are relatively recent, having been executed in late June 1995 as part of the PASA privatisation. The Regulator must be satisfied that agreements made after March 1995 do not contain exclusivity rights. I also note that June 1995 was well into the COAG reform era.

Concerns have been raised with the Commission that if the capacity reservation provisions in existing contracts are not addressed, South Australia may end up with an access regime that is sterile.

NSW

NSW was quick to embrace the concept of gas reform – passing legislation to introduce a NSW Gas Code significantly prior to the introduction of the National Code. The NSW Code was heavily based on the latest draft of the National Code at the time. The intention of the NSW Government was to amend its gas law to substitute the National Gas Code for the NSW Code as soon as it was agreed to. NSW expected the National Code to take some time to be finalised, which turned out to be true, and did not want to wait that long.

Unfortunately, the first regulatory decision by the NSW regulator was delayed significantly due to a number of reasons, not the least of which was the reluctant provision of information by the distribution network owner. There were a number of potential new market entrants lining up to access the greater Sydney market for the first time, but when the decision was finally released, the reference tariffs were generally held to be so high that new entrants could not economically compete with the incumbent. Some potential entrants also had difficulties contracting for gas supplies out of central Australia because Santos insisted that it would only deliver gas contracted for supply in South Australia to the inlet to the Moomba-Adelaide pipeline and not the Moomba-Sydney pipeline. As a result, the potential benefits from competition in gas supply in NSW were not realised.

The interconnect pipeline that joined the Moomba-Sydney pipeline system with the Victorian transmission system has allowed interbasin competition in Victoria and NSW for the first time, but the restricted volumes, the Longford-related supply constraints and existing sales contracts have meant that it has had little overall effect on either market.

Hopefully the entry of a new pipeline into the NSW market and revised reference tariffs on the distribution network will finally bring some competition into gas supply in NSW.

Northern Territory

With regard to the status of gas reform in the Northern Territory, the Commission has recently settled an action with the NT government regarding anti-competitive provisions of an NT Government owned corporation's gas purchase contract. Additionally, the Commission is in the early stages of considering the proposed Amadeus Basin to Darwin pipeline access arrangement. The NT has nominated the ACCC as both its transmission and distribution pipeline regulator.

Western Australia

WA has opted for a state based regulator to regulate the transmission and distribution pipeline systems. The WA regulator has been in regular contact with the Commission and other state-based regulators and participates in the National Utility Regulators Forum in an effort to ensure consistency in decision making.

The West has in the past had a somewhat unique system of determining access principles and reference tariffs for each gas transmission pipeline. As you can imagine, this did not facilitate consistency in regulatory principles, pricing or conditions between WA's pipelines. This has necessitated a period of transition to the new regime in WA.

The Commission has been involved via Part IV of the Trade Practices Act in gas transmission and asset sales in WA. This involvement has been because of alleged anti-competitive behaviour and misuse of market power.

Recent developments in WA suggest gas reform is paying dividends – with significant reductions in transmission tariffs on the Goldfields Pipeline and very large reported falls in delivered gas prices to the South West.

There is certainly the danger that differences in approach by the various jurisdictions and regulators may impede interstate trade in natural gas and impose unnecessary compliance costs on gas entities that operate in a number of jurisdictions. Mr Len Gill, the General Manager, Wholesale, for Eastern Energy, was quoted in a feature article in the September '99 Issue of the Australian Gas Journal as saying:

> We've got the 1900s rail gauge problem in gas, with different market rules in each state. And it took decades to resolve the rail gauge issue.

Distribution

One of the fundamental problems still facing reform in distribution networks is the ability to access gas - without it no access arrangement or access principles are going to facilitate effective competition. This again highlights the importance of gas reform throughout the entire industry as each sector is interlinked and is interdependent. However, this does not

mean the regulation of distribution assets should be ignored or be a token activity. The position and power held by incumbent operators should not be underestimated, as the incumbent has a number of incentives to maintain the status quo and to resist any new entrant.

The regulation of gas distribution networks is typically the responsibility of the State regulators. There has already been debate from industry and between regulators on inconsistencies between the jurisdictions regulatory approaches.

The Duke Energy is planning to build a pipeline from Longford in Victoria to Sydney. Duke, who will own and operate the pipeline, is now considering duplicating the AGL trunk lines from Wollongong to Wilton (the location of the end of the Moomba-Sydney pipeline in the outskirts of Sydney) and from Wilton to Horsley Park, to take gas to one of their major customers. The fact that it is more economic for Duke to bypass such an extensive section of the existing regulated pipeline system than pay the reference tariffs is a clear sign of either ongoing market power by the incumbent or regulatory failure - or both. I understand that IPART is soon to release its second decision on reference tariffs for the AGL gas network.

Winners and Losers

I have spoken to many North American companies who look back at their gas reform experience and state that at the time they had to be dragged kicking and screaming into the new competitive era - with access to infrastructure. However, once they accepted the new way of operating they have never looked back. While their tariffs may have fallen their volumes have risen and they are now making more than before. However, those that held out against competition and tried to keep their patch ended up withering and dying. This should be a salutary lesson for Australian companies.

I think the identification of winners and losers needs to be separated into short term and long term. Beginning with the short term, the Commission realises there are costs associated in preparing an access arrangement. Service providers have made this abundantly clear to the Commission on a number of occasions and today I am sure will no different. The cost as it has been expressed to me is two fold, one is the time and financial costs of preparing the access arrangement and going through the process as determined in the Code. The second is the uncertainty of regulatory outcomes especially given the infancy of access arrangement determinations.

The first is not such a significant issue given the ability to recover that expenditure in the access arrangement. The second is from the Commission's perspective a greater issue and I would like to address this concern via the Commission's development of Regulatory Best Practice Principles and the Commission's very public commitment to regulatory consistency.

The Commission has always been a strong advocate for consistency in regulation across jurisdictions – and not just in gas. The Commission has sought to bring a consistent approach to regulation of a number of industries that it has responsibility for, including electricity, gas, telecommunications, airports and ports.

The Commission, in conjunction with several national and state bodies, has sought to refine its decision making in the areas of gas and electricity reforms via the formation of specialist

consultation groups.

The Energy Committee

The Commission has created an Energy Committee to be responsible for its regulatory decision-making on gas and electricity matters. This initiative should also assist in achieving consistent regulatory outcomes. For the time being, the Energy Committee membership will be drawn from (as appropriate for particular decisions) the Chairperson and Deputy Chairperson, Commission full-time members and the State based regulators who are ex officio associate members of the Commission. The additional regulatory experience and expertise of the associate members should assist in achieving consistent approaches at all regulatory levels.

Among other things, the Energy Committee assists in the coordination of Commission decision-making with that of the state regulators. By giving State regulators input at the national level, the Energy Committee ensures that relevant regional considerations are reflected appropriately in Commission decision-making.

The Utility Regulators Forum

The Commission has also established a forum of Australian utility regulators which meets on a regular basis to facilitate effective cooperation and communication between regulators.

Federal, state and territory regulators are now facing new regulatory roles and responsibilities in newly competitive and commercially oriented public utility markets which have been subject to structural reform and, in some cases, privatisation. New regulatory policies, principles, methodologies and procedures are being developed in areas where there is limited or no past experience or established methodologies.

The regulators forum provides a mechanism for facilitating the development and adoption by regulators of consistent regulatory principles and methodologies, particularly in relation to interstate regulatory issues, for facilitating the exchange of information and experience and for sharing skills and resources during this important regulatory learning period.

Particularly in the area of access and access pricing, regulators face new challenges in developing appropriate regulatory principles, methodologies and procedures which effectively address issues such as:

- the commercial interests of facility owners and access seekers;
- consequences for competition, economic efficiency and end users;
- asset valuation, cost of capital, depreciation and related costing issues;
- preventing monopoly pricing while encouraging the development of economically efficient rate structures;
- the appropriate application of price cap or rate base direct regulation methodologies versus more flexible negotiation/arbitration models;
- the tension between providing adequate regulatory certainty while retaining sufficient

regulatory flexibility; and

- the expertise, analytical, modelling, information and procedural requirements to perform these regulatory functions in practice.

The Utility Regulators Forum should assist regulators to address these issues in a cooperative and consultative way, and in doing so, to identify and deal appropriately with any overlap of jurisdictional powers, while fostering a coordinated and consistent approach to regulation.

The Utility Regulators Forum has recently released a discussion paper on Best Practice Utility Regulation. The Commission and other regulators are committed to achieving best practice regulation, and this paper and the principles it identifies form an important part of that process.

In formulating best practice principles and processes it is worthwhile considering what regulators, utilities and customers need or want from the regulatory system. Having consulted widely, the regulators forum concluded that a key requirement of utilities was for clarity of regulation and well-defined regulatory objectives.

Utilities also want regulators with efficient processes and procedures, industry consultation and to have input into the processes used by a regulator. When decisions to regulate are made, consideration needs to be given to the costs of compliance.

Concerns have been raised about the lack of predictability in regulation and inconsistent treatment of market participants. This leads to confusion and reduced efficiency and effectiveness of compliance. There are also concerns about regulators prejudging issues and lacking objectivity. To address these concerns, regulatory decisions need to treat and be seen to treat utilities openly, consistently and fairly.

Utilities expressed a desire for the regulator to have industry experience, a body of past precedents and be willing to listen to arguments with an open mind. They want regulators to be flexible and supportive, and to be prepared to update decisions or adjust the style of regulation if circumstances change. Finally, utilities want regulators that are accountable for their decisions, and appropriate appeal mechanisms.

Regulators expressed a desire for a regulatory system in which utilities are willing to communicate and consult on proposals that are likely to have regulatory implications. Regulators want utilities to be committed to the regulatory framework and to appreciate that they share common objectives, such as improving customer service standards and the development of the industry. They also wanted utilities to recognise the legitimate role of regulators and to cooperate in providing information on which reliable regulatory decisions can be made.

Consumer representatives desire regulatory systems that provide them with access to their utilities, appropriate levels of consultation and effective complaint resolution mechanisms.

Principles of best practice utility regulation

The cost of all the new regulatory organisations that have been established in each

jurisdiction is ultimately borne by the community. This means that it is in our interests to ensure that regulation is as efficient and effective as possible. This prompted the Utility Regulators Forum to develop the Best Practice Utility Regulation discussion paper I referred to earlier. This paper attempts to identify the behaviours and characteristics that represent best practice in regulation of utilities.

The following principles are characteristic of best practice regulatory behaviour. The principles can serve as a checklist for utilities and regulators for examining current and proposed regulatory tools. They can also serve as the basis for the development of benchmarks by which regulators can monitor and compare their performance with each other. The nine principles identified were:

1. Communication
2. Consultation
3. Consistency
4. Predictability
5. Flexibility
6. Independence
7. Effectiveness and efficiency
8. Accountability
9. Transparency

The principles need to be considered as a 'package', as there must be a degree of balancing some of the principles against others. For example, the principle of flexibility (adapting regulatory approaches and tools over time and to suit circumstances) could be seen as contrary to the principles of consistency and predictability. The objectives of maximising public benefit should be kept in mind when competing priorities are considered.

Before I move on I would like to take you back to who the winners and losers are in the gas reform process as I stopped at the short term. Without commitment from all jurisdictions and all sectors of industry to reform there will be no long term winners only losers. Consumers will lose out in the form of high prices and lack of gas supply options. Industry participants shall also lose with diminishing market share of energy sources given the use of coal as a source of energy is increasing, while natural gas is decreasing as a percentage of all energy consumed.

Reform Timetable

Turning to the gas reform process and what is to be done, the reality is we have only just begun. What has been achieved is the development of the National Gas Code and the Gas Access Law even this is not yet operational in some jurisdictions. There are still significant transitional measures in place with previous cross subsidies slowly being unwound. The next stage in the reform process is the development and implementation of access arrangements. The Commission is still assessing first round access arrangements as are a number of the state regulators. Following this is the final two stages of gas reform which are commercial negotiations and dispute resolution.

Stepping back and viewing gas reform with a wider lenses, I reiterate the aim of gas reform is to promote competition. This will require a change in the current structure of the gas industry

in Australia. What this means is a change in the manner in which the upstream sector operates, a change in the way transmission pipeliners operate and a change in the practices in which the distribution networks operate. Succinctly, a fundamental change in corporate culture - gas businesses can no longer operate as monopolies.

The US experience has demonstrated that change can take place. Reform in the US as I have already spoken on took some time to achieve but the benefits are wide spread. This type of change required commitment from all participants to reform. Similarly, in Australia widespread industry reform cannot be contemplated without commitment from all sectors including: gas producers, pipeline operators, retailers, relevant government jurisdictions and appropriate industry and consumer bodies.

Commitment

This brings me to the final talking point suggested for me today - 'does anyone care'. I think that what I have already spoken to you about today has answered this question. Yes, industry, consumers, and government all care about gas reform. The question is then, how much?

Government

The National Gas Code has yet to be proclaimed in some jurisdictions and in those where it has, only small number of Access Arrangements have been determined. The Commission, as nominated Regulator for transmission pipelines in all jurisdictions (except Western Australia), has made final determinations on the Victorian pipelines access arrangements, while the Independent Pricing and Regulatory Tribunal (IPART) in NSW and the Office of the Regulator General (ORG) in Victoria have made determinations with respect to distribution network access arrangements in their states.

Complaints

If there was complete indifference to gas reform in Australia, the Commission would receive no complaints of any nature regarding gas reform and the process or at the very least comments pertaining to the disassembly of the regulatory regime. This has not been so. Obviously there are pipeline companies that would like to be able to continue to earn the profits they were prior to being regulated – but even so, the complaints received have been the regime is too onerous in terms of its pricing principles and/or requirements to release information. On the other hand, the majority of 'complaints' that the Commission has heard voiced are frustration that the regulatory regime is not going far enough or progressing quickly enough.

Once people understood that the gas reform process was about deregulating all the potentially competitive areas of the gas supply industry, while giving access to the services provided by infrastructure for which competition was not feasible, an expectation of growth and flexibility in supply conditions was created. People were led to believe that the days of only one gas supplier who sold on a delivered basis were over. Thus far, however, very little of what was expected has been delivered.

In fact, there are some quite worrying signs. The Australian Financial Review ran an article a few weeks ago with the headline, "Vic gas prices tipped to rise after deregulation". This

claim was made by the Australian Gas Users Group, based on its belief that following privatisation of the Victorian gas retailers, there would only be 'sluggish competition' and that the retailers were now submitting proposed prices that were 6 to 8 per cent higher than before. The claims were rejected by a Victorian Government spokesperson. A more recent article appearing in the Age states several tranche one customers have had an average of 10% increase in price. Whether this is in fact so will be a real test of the success of the reform process. Additionally, we hear of Boral Energy and its increase in prices by 5 – 7 %. Likewise this too will test the success of the reform process in South Australia.

Conclusion

There are a number of potential new sources of gas supply for eastern Australia in the next few years – PNG, Timor Sea, coal seam methane. It is an exciting time with the potential to radically change the whole gas supply industry.

Third party access to transmission pipelines and distribution networks is a crucial element in Australia being able to realise the full potential of these possibilities. We need to minimise the cost of this regulation and the compliance burden on the owners of the infrastructure, but the benefits of providing access on reasonable terms should far outweigh these costs.

Governments in Australia need to recapture the vision of gas reform and work together to ensure that the appropriate legislation and regulations are in place. It is important that as these new projects are developed, an appropriate balance is struck between mitigating risk through long term, large volume contracts and leaving sufficient flexibility to allow markets to develop.

We need to recognise that Australia is still only just beginning to implement the agreed gas reforms and to work together to achieve the benefits this process can bring.