
Research and information

Submission to the Cooper Basin Act review

In July 1997 the Commission released its public submission to the South Australian Government's review of that State's Cooper Basin (Ratification) Act. The Act excepts a number of gas production and supply agreements from the competition provisions of the Trade Practices Act.

In the Commission's view, South Australian and national interests would be best achieved by free flow of gas between States in response to commercial deals made in a competitive environment.

The Commission recommended repeal of the exemptions of several agreements protected by the Ratification Act:

- the Letter of Agreement, which ties AGL to the Cooper Basin Producers and requires AGL to take gas at a single delivery point. In the Commission's view, these provisions are an impediment to interstate trading and alternative sourcing of gas for SA and NSW consumers;
- the Unit Agreement (an agreement to coordinate production arrangements across a number of blocks in the 'Subject Area' of the SA Cooper Basin). Because the Unit parties now operate their joint venture in conjunction with interests they hold outside the Subject Area, the Ratification Act exemption is outdated. The Unit Agreement appears to reinforce concentration of producer interests in the Cooper Basin and to be a potential barrier to separate marketing when feasible;

however, the Commission reserves its position as to the balance of public benefits and anti-competitive detriments of the Unit Agreement;

- contracts for the sale of liquid hydrocarbon products. These products are now sourced from South Australian and Queensland regions of the Cooper Basin. The contracts include non-exempt parties and so the exemption, which allows the producers to set common terms of sale, is ineffective. The Commission will assess public benefit arguments for the contracts under an existing authorisation application made to the Commission.

The Commission has called on the SA Government to introduce measures to foster third-party access to upstream infrastructure:

- by legislation or by an enforceable code of conduct; and
- by committing to extend concessionary terms associated with current exploration and production leases on an equal basis to new entrants to the Cooper Basin.

The Commission also recommended that the South Australian Government remove legislated limitations on Santos shareholdings, originally passed to prevent Bond Corporation gaining 51 per cent control of the company and consolidating it into the Bond group.

The SA Government has advised that all submissions to the review are public. The Commission understands that the Independent Investigator appointed by the SA Government, Mr Nick Dyki, has prepared a draft report, but its release has been delayed by the current SA election.

The SA Government will decide the outcome of the review. The National Competition Council will consider the review outcome in assessing the progress of the jurisdictions towards implementing COAG's competition and gas policy goals.

The Commission's submission to the Ratification Act review is available on its Internet home page.

Initiatives to deal with growing Internet problem

As consumer use of the Internet increases, the Commission has received a growing number of complaints about alleged misleading and deceptive conduct by Internet Service Providers (ISPs). These complaints include misrepresentations in advertising about the speed of Internet access and the experience of traders; overbilling; inadequate detail when billing; failure to supply technical support and other services as represented; failure to connect consumers to the Internet as agreed; failure to honour requests to disconnect; and the need to have a credit card to obtain services.

While some of these complaints do not fall within the provisions of the Act, the Commission is particularly concerned about advertisements placed by ISPs which misrepresent the price of Internet access, and failure to disclose all material conditions of the offers, including the full cost of access to the Internet, in contravention of ss 52, 53(e) and 53C of the Act.

After examining the print advertising of a number of ISPs the Commission found that many of the advertisements represent:

- free Internet access;
- a particular size of band width;
- nominal fees for access;
- free software; and
- free modem and software installation;

but do not state other important conditions such as:

- additional annual registration fees;
- minimum times of access;
- payments in advance; and
- additional telephone call charges (which are particularly relevant to country consumers).

The Commission considers that statements in advertisements to the effect that '*conditions apply' are not sufficient unless all of the material conditions and charges are stated. Material facts which may influence consumers' purchasing decisions must appear in the primary text and not in 'fine print', and any qualifications should be as bold, precise and compelling as the rest of the text.

The Commission has developed a strategy to address these problems. The strategy includes a direct mail out to ISPs to ensure that they are aware of their obligations under the Act, a leaflet dealing with advertisements for Internet access, and liaising with the Internet Industry Association concerning its code of conduct.

New publications

Global markets discussion paper

Recently, the Commission has increasingly found itself trying to deal with Australian consumers' complaints about products or services they have bought from other countries, usually through telemarketing, mail order or via the Internet. It has also had to deal with complaints from overseas consumers about Australian products sold by these methods. In some cases, redress can be provided; in others, the jurisdictional reach or remedies have not been available.

In an effort to address the enforcement challenges presented by cross-border consumer transactions, the Commission has released a discussion paper, *The Global Enforcement Challenge: Enforcement of Consumer Protection Laws in a Global Marketplace*.

The discussion paper highlights the problems already encountered by consumers buying in the global market and discusses various enforcement strategies which could be adopted to address these problems.

In the Commission's view, traditional methods of consumer protection are not always suitable to deal with cross-border difficulties for both consumers and businesses, and international cooperation to protect consumers will be crucial to ensure the benefits of the emerging global market are fully realised. Consumers need confidence in the new forms of marketing such as international telemarketing and mail order, and the Internet. Only then will they feel confident in accessing the benefits of the international marketplace — such as access to improved choice and, in many instances, cheaper prices.

The Commission's discussion paper has been circulated to domestic and overseas consumer protection enforcement agencies, relevant consumer lobby groups, business organisations and others with expertise in this area. The Commission's goal at the end of the project is to produce a resource manual for enforcement agencies, consumers and ethical traders which will lead to initiatives designed to improve cooperative enforcement efforts, and promote fair and ethical trading in the global marketplace.

The paper can be obtained from the Commission's home page, from Commission offices, or by contacting Ms Jacqueline Pearce on (02) 6264 1582.

Telecommunications access pricing guide

The Commission's guide on access pricing principles for the telecommunications industry outlines the Commission's approach when considering access pricing issues under Part XIC of the Trade Practices Act. It was released after an extensive consultation process following the release of a draft guide in February 1997.

The pricing principles will assist telecommunications competitors to gain access

to each other's networks at reasonable prices to deliver competitive services to consumers.

Under Part XIC of the Act, the Commission is required to consider the terms and conditions of access when assessing undertakings by providers of key network services (such as originating and terminating calls) and when arbitrating disputes over access.

The guide affirms that the Commission will use long-run costs as the basis for arbitrating disputes over access pricing in the telecommunications industry.

However, the Commission's role in determining access prices is secondary to commercial negotiations between parties which have the primary responsibility for setting access prices.

The pricing principles guide is available for \$10.00 from Commission offices, and from the Commission's web site.

Declaration of telecommunications services information paper

The Commission has issued an information paper entitled *Declaration of Telecommunications Services: The Public Inquiry Process*, which provides an overview of the declaration process in relation to telecommunications services.

Part XIC of the Trade Practices Amendment Act introduced a new regime governing access to telecommunications services. Once a service has been declared, service providers must be provided with that service and specified ancillary services, on request, by any carrier or carriage service provider supplying the services. The access regime will thus enable industry operators to make use of each other's networks to provide carriage and content services to their customers.

The information paper is designed to assist potential access seekers in developing their proposals for public inquiries into whether particular services should be declared. Any person may make a written request to the Commission to hold a public inquiry, although it would be desirable for parties seeking the

declaration of a service to first approach the Telecommunications Access Forum as this may enable a service to be declared sooner than if a public inquiry were held. The information paper discusses the matters the Commission will consider in deciding whether to hold a public inquiry and the procedures that would be involved in conducting such an inquiry.

Copies of the paper are available from the Commission's Internet web site.

Guide to the Act for employment services

The Commission has produced an easy-to-read guide to assist current and prospective participants in the market for government-funded employment services. The Commission envisages that many of the businesses tendering for these contracts will be small businesses which will benefit directly from the protection afforded by the Trade Practices Act.

The initiative has been welcomed and supported by the Chairman of the Employment Services Regulatory Authority (ESRA), Associate Professor David Round. The Federal Government has called for tenders for a wide range of employment services costing \$1.7 billion over 19 months. Associate Professor Round said that the protections afforded by the Trade Practices Act would be crucial to ensuring fair competition in the emerging market.

The guide is available through the Internet home pages of ESRA (<http://www.esra.gov.au>), the Department of Employment, Education, Training and Youth Affairs (DEETYA) (<http://www.deetya.gov.au>), and the Commission (<http://www.accc.gov.au>). Printed copies are also available free on request from either ESRA (03 9285 7342) or the Commission (02 6264 2805).