

CHAPTER 1

Introduction

Background

1.1 The Trade Practices Amendment (National Access Regime) Bill 2005 was introduced into the House of Representatives on 2 June 2005 by the Parliamentary Secretary to the Treasurer, the Hon. Chris Pearce, MP.

1.2 On 15 June 2005, on the recommendation of the Senate Standing Committee for the Selection of Bills, the Senate referred the provisions of the Bill to the Economics Legislation Committee for inquiry and report by 5 September 2005.¹

Conduct of the inquiry

1.3 The Committee advertised the inquiry nationally and posted details on its internet site. In addition, it wrote to a number of organisations advising them of the inquiry and inviting them to make submissions.

1.4 The Committee received 16 submissions and three supplementary submissions to its inquiry. These are listed at Appendix 1.

1.5 The Committee held a public hearing at Parliament House in Canberra on Thursday, 11 August 2005. Witnesses who presented evidence at this hearing are listed in Appendix 2.

1.6 The Hansard of the Committee's hearing and copies of all submissions are tabled with this report. These documents, plus the Committee's report, are also available on the Committee's web site at http://www.apf.gov.au/Senate/committee/economics_ctte/access/index.htm.

1.7 The Committee thanks those who participated in this inquiry.

Report

1.8 The Trade Practices Amendment (National Access Regime) Bill 2005 implements the Government's legislative response to the Productivity Commission's review of the national access regime. Almost all submissions to the Committee's inquiry supported the Bill.

1.9 The Committee does not intend to detail all the measures in the Bill that are generally procedural in nature. These constitute the majority of amendments in the Bill and go to increasing the transparency of decision making, providing time lines for decision makers and increasing accountability through the publication of reasons and

1 Selection of Bills Committee, *Report No. 5 of 2005*, p. 3.

reporting on specific decisions and the operation of the regime in general. The unanimity of support for these measures suggests that the changes are welcome and they will improve the operational aspects of the Part IIIA national access regime.

1.10 Rather, the report focuses on those aspects of the Bill that provoked specific comment by submitters. The major area of concern was the method for introducing pricing principles into the regime, and the Committee makes a recommendation in this regard. Other areas of focus in the report include the objects clause and declaration criteria.

Productivity Commission Review of the National Access Regime

1.11 As the Trade Practices Amendment (National Access Regime) Bill 2005 is the legislative outcome of the Productivity Commission's review of the national access regime, a brief overview of that review follows in order to contextualise the Bill's amendments.

1.12 On 11 October 2000, the Assistant Treasurer referred Clause 6 of the Competition Principles Agreement and Part IIIA of the *Trade Practices Act 1974* to the Productivity Commission for inquiry and report.² The Commission was to report on current arrangements established by Clause 6 and Part IIIA for regulation of access to significant infrastructure facilities, and ways of improving them. It was to focus on those parts of the legislation that restrict competition, or that impose costs or confer benefits on business.

1.13 The Productivity Commission found that access regulation provides a means for businesses to use the services of 'essential' infrastructure, such as gas pipelines, the electricity grid and rail track, that is uneconomic to duplicate.³ Without such regulation, service providers might deny access to their facilities or charge monopoly prices for their services which could be costly to the community. Given these potential costs, the limited experience in Australia with access regimes and ongoing structural change in a number of infrastructure sectors, the Commission concluded that it would be inappropriate to abandon access regulation at this stage.

1.14 However, while the national access regime, operating in tandem with industry access regimes, has important advantages, the Commission found that it also has significant deficiencies. The most concerning of these is the potential for access regulation to deter investment in essential infrastructure. To lessen this risk, the Commission proposed new measures to be incorporated into the national access regime to facilitate efficient investment.

2 Productivity Commission, *Review of the National Access Regime*, Inquiry Report No. 17, 28 September 2001, p. iv.

3 Productivity Commission, *Review of the National Access Regime*, Inquiry Report No. 17, 28 September 2001, p. xii.

1.15 Additionally, the Commission proposed a range of modifications to the framework of Part IIIA to ensure that access regulation is better targeted and more workable. These include the following:

- inserting an objects clause and pricing principles to guide regulators and industry and to discourage unwarranted divergence across industry-specific regimes;
- strengthening the coverage criteria to ensure that mandated access would only occur where it would promote a substantial increase in competition. This would guard against the inappropriate declaration of essential facilities;
- streamlining the coverage criteria applying across the regime's different access routes to reduce the scope for inconsistent determinations;
- enhancing the prospects for negotiated outcomes and ultimately effective arbitrations, through modifications to the negotiate-arbitrate framework; and
- improving administrative efficiency and transparency to address the currently cumbersome and protracted arrangements.

1.16 The Government endorsed the bulk of the recommendations of the Productivity Commission.⁴ The Trade Practices Amendment (National Access Regime) Bill 2005 makes amendments to the *Trade Practices Act 1974* to give effect to those recommendations. The Government will implement a small number of other Productivity Commission recommendations through the development of industry-specific access regimes.⁵ Additionally, where amendments of Clause 6 of the Competition Principles Agreement are required, these will be the subject of intergovernmental discussions to be held following passage of the Bill.

4 Government Response to Productivity Commission Report on the Review of the National Access Regime, viewed on 18 July 2005, at:
http://www.treasurer.gov.au/tsr/content/publications/FinalReport_NationalAccessRegime.asp

5 Explanatory Memorandum, p. 2.

