

4 October 2006

Melbourne | Sydney

Ms Sandra Dureau
General Counsel
Australian Pipeline Trust
241 O'Riordan Street
MASCOT NSW 2020

Our reference
GTAP.1770577

Dear Sandra

Roma to Brisbane Pipeline – Access Arrangement

You have asked us to summarise the effect of the judgments of the Full Court of the Federal Court in *ACCC v ACT and EAPL* [2006] FCAFC 83; [2006] FCAFC 127, on the use of net present value depreciated optimised replacement cost (**NPV DORC**) as a method of calculating the Initial Capital Base (**ICB**) of a pipeline.

In summary the position is as follows:

1. The Tribunal found that the Commission incorrectly applied the Code in the way it set the ICB of the Moomba to Sydney pipeline system.
2. The Tribunal then itself undertook the task of setting the ICB and, in doing so, decided that NPV DORC was the most appropriate method of calculation in the circumstances of that particular case.
3. The Full Court held that the Tribunal had incorrectly interpreted the Code when deciding that the Commission had incorrectly applied the Code.
4. The Full Court did not decide, and nothing it said suggests, however, that NPV DORC may not be an appropriate, or the most appropriate, method for calculating the ICB of a pipeline in any particular case. A decision on its appropriateness in any given case would depend on a consideration of all the other factors the Code requires to be taken into account and their application to the circumstances of the particular case.
5. As regards the calculation of DORC, the Tribunal concluded ([2004] ACompT 8 at paragraph 38) as follows:

"However, in our opinion the theoretical underpinning of DORC has progressed over the years to the point where it can now be recognised that straight line depreciation is too crude a tool to be used where there is the opportunity for a more sophisticated analysis."

Further, the Tribunal decided that, in the case before it, "attention should be directed to the proper application of a NPV approach to depreciation" and that it was not an adequate response (to the Commission's responsibility to resolve differences of opinion as to the way the relevant principles should apply to the particular factual situation) "to claim that the task is too difficult" (paragraph 38).

6. The Full Court did not decide, and nothing it said suggests, that the Tribunal was not entitled to reach the conclusions referred to in 5 above or that the conclusions were wrong.

Please contact us if you need anything further.

Yours sincerely



Geoff Taperell
Partner