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Advice

VENCorp and GasNet Access Arrangements – Reference Services

Introduction

VENCorp and GasNet have lodged revisions to their access arrangements. Lodgement occured under the provisions of section 2.28 of the National Third Party Access Code for Natural Gas Pipeline Systems (the National Code).

A significant difference exists between VENCorp and GasNet as to what should be the Reference Services that are to be provided by each. Reference Services are the Services that are specified in an access arrangement[1]. This has had the effect of inconsistent access arrangement revisions being lodged by VENCorp and GasNet. Currently the two approved access arrangements are consistent with each other.

I am asked to give my opinion on that difference and on the other issues that arise from the lodgement of the inconsistent access arrangement revisions.

Summary of Advice

In my opinion, there are "Services" within the meaning of the National Code that are being provided by GasNet to VENCorp. As such the revisions submitted by GasNet - which do not describe any such "Services" - should not be approved by the ACCC.

The Present Access Arrangements

The present access arrangements of VENCorp and GasNet were approved by the ACCC on 16 December 1998. The two access arrangements were jointly drafted on the basis that section 9.2 of the Victorian Third Party Access Code for

[1] See the definition of "Reference Services" in section 10.8 of the Code.

Natural Gas Pipeline Access Systems allowed an allocation of "obligations" between Service Providers where one is the owner and the other the operator of a Covered Pipeline. Section 10.2 of the National Code is in the same terms as section 9.2[1].

Page 8 of the ACCC's Final Decision dated 6 October 1998 in respect of the two access arrangements records that the fact that allocation was allowed by section 9.2 but some ambiguity had been found in that allocation. As a result the ACCC stated that it had proposed a number of amendments "to more clearly specify the terms and conditions of access." These amendments were accepted by the parties and the access arrangements approved accordingly.

The relevant provisions of the two access arrangements (and of the Victorian Gas Industry Tariff Order 1998, MSO Rules[2] and Service Envelope Agreement to the extent that they are referred to in those provisions or are otherwise relevant) are as follows:

GasNet:

Access arrangement clause 5.2.2 provides:

"TPA will make the tariffed transmission service available to VENCorp as User at the Reference Tariffs, on the terms and conditions and in accordance with the Reference Tariff Policy described in clauses 5.3 and 5.4 below."

Access arrangement clause 5.2.3 provides:

"The Services are likely to be sought by a significant part of the market."

Access Arrangement clause 2 provides:

""tariffed transmission service" means making the Principal Transmission System available to VENCorp, for VENCorp to operate in accordance with the MSO Rules."

Access arrangement clause 5.4.1 provides:

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[1] Section 10.2 provides as follows:

"10.2 Where:

(a) there is more than one Service Provider in connection with a Covered Pipeline;

(b) one is the owner and another the operator;

(c) responsibility for complying with the obligations imposed by this Code on the Service Provider is allocated among them by their Access Arrangements or their Access Arrangement;

each Service Provider is responsible for complying with the obligations allocated to it."

[2] The Victorian Market and System Operations Rules.

"TPA will make the Principal Transmission System available to VENCorp as User in accordance with its obligations under the TPA Service Envelope Agreement. VENCorp will then provide services to Users of the Principal Transmission System in accordance with the MSO Rules. In order to access the Principal Transmission System, Prospective Users will register as Market Participants under the MSO Rules. Users will be required to enter into a Gas Transportation Deed with VENCorp, under which they will agree to pay certain market fees to VENCorp as well as transmission charges which VENCorp will direct Users to pay directly to TPA."

TPA Service Envelope Agreement Recital C inter alia records that clause 5.3.1(a) of the MSO Rules requires TPA and VENCorp to enter into a service envelope agreement:

"to specify the capacity of TPA's pipelines available for use by VENCorp under various operating conditions and to provide for the Gas Transportation Services to be provided by TPA to VENCorp".

Clause 5.3.1(a) of the MSO Rules provides (omitting parts immaterial in present context):

"…VENCorp and a Transmission Pipeline Owner must enter into a service envelope agreement….under which the Transmission Pipeline Owner agrees, amongst other things, to provide to VENCorp gas transportation services and pipeline capacity by means of the pipelines of that Transmission Pipeline Owner that form part of the Transmission System on terms which are not inconsistent with: (1) the access arrangement, if any, of the Transmission Pipeline Owner; and (2) the Tariff Order, if applicable."

TPA Service Envelope Agreement clause 4(a) provides:

"subject to clause 4(b), the obligations of TPA under this Agreement are to provide the Gas Transportation Services and make available the Gas Transmission System to VENCorp at all times during the term of this Agreement in accordance with the requirements of Good Practice."

TPA Service Envelope Agreement clause 4(b) inter alia provides:

"if TPA fails to comply with clause 4(a), then TPA's liability is limited to the TPA Service Envelope Capacity".

Clause 1.1 of the TPA Service Envelope Agreement defines the TPA Service Envelope Capacity as "the capacity associated with some or all of the Gas Transmission System as set out in Schedule 1". Schedule 1 to the agreement describes over a considerable number of pages the assets of the Gas Transmission System (ie the PTS), the design capability of those assets and the various operating constraints.

Clause 1.1 of the TPA Service Envelope Agreement defines the "Gas Transportation Services" as the services set out in Schedule 3 to the agreement. Schedule 3 lists those services and it is apparent from that list

that, despite their name, they are **not** the services of haulage of gas per se, but are instead information provision, documentation and emergency management etc services without which VENCorp could not operate the gas transmission system.

VENCorp:

Access arrangement clause 5.2.1 provides:

"VENCorp will make tariffed VENCorp services available to Users or Prospective Users of the Principal Transmission System at the Reference Tariffs, on the terms and conditions, and in accordance with the Reference Tariff Policy described in clauses 5.3 and 5.4 below."

Access arrangement clause 5.2.2 provides:

"The Services are likely to be sought by a significant part of the market, being the three initial gas retailers"[1].

Clause 10.1 of the Victorian Gas Industry Tariff Order 1998[2]: defines "tariffed VENCorp services" as:

"The services performed by VENCorp that are set out in the MSO Rules."

Clause 1.2.1 of the MSO Rules sets out the obligations functions of VENCorp commencing with (clause 1.2.1(a)(1)) operating the "transmission system[3]". Importantly, clause 1.2.1(k) provides:

"for the purposes of the Tariff Order[4], the obligations and functions of VENCorp as described in this clause 1.2.1, are tariffed VENCorp services."

Access arrangement clause 5.4.1 provides:

"VENCorp will operate the Principal Transmission System made available to it by TPA (pursuant to TPA's Access Arrangement) for Users in accordance with the MSO Rules. In order to access the Principal Transmission System, Users will register as Market Participants under the MSO Rules. Users will be required to enter into a Gas Transportation Deed with VENCorp, under which they agree to

[1] This is a reference to what are now Origin Energy (Vic) P/L, TXU P/L and Pulse Energy P/L.

[2] This definition is imported into the VENCorp Access Arrangement by clause 2 thereof.

[3] This is defined in Chapter 11 of the MSO Rules as the "gas transmission system" as defined under the Gas Industry Act 2001. The definition of that term in section 3 of that act, once the effect of the Order deemed made under section 12 of that act is taken account of, is to limit the definition to the PTS. See Order in Council dated 9 December 1997 published on 11 December 1997 on page 3455 of the Victoria Government Gazette. Also see clause 7(7) of Schedule 5 of the Gas Industry (Residual Provisions) Act 1994.

[4] This is defined in Chapter 11 of the MSO Rules as the Victorian Gas Industry Tariff Order 1998.

pay certain market fees to VENCorp, and VENCorp directs them to pay directly to TPA the transmission charges charged by TPA to VENCorp in return for the services performed by VENCorp for the Users."

Clause 8.1 of the TPA Service Envelope Agreement set out VENCorp's obligations. In present context of most relevant are clauses 8.1(a)(2) and 8.1(a)(3)[1] which require VENCorp to observe "Good Practice" as defined in clause 1.1 of the agreement) and to operate the facilities of the PTS in a manner that does not "preclude or materially adversely affect" TPA's ability to comply with its obligations under clause 4 of the agreement. In essence this has the effect of requiring VENCorp to operate the PTS within its capacity and operating constraints as set out in Schedule 1 of the agreement.

Clause 11.2(a) of the TPA Service Envelope Agreement (which is intituled "Billing of Tariffed Transmission Services") provides:

"TPA must, on behalf of VENCorp, prepare and send to each Market Participant periodic invoices for the Tariffed Transmission Services provided by VENCorp to that Market Participant under that Market Participant's Gas Transportation Deed."

Clause 1.1 of the TPA Service Envelope Agreement defines "Tariffed Transmission Service" as having the same meaning as in the Victoria Gas Industry Tariff Order 1998 where (in clause 10.1) it is defined as (omitting parts immaterial in present context):

"making the tariffed transmission pipeline available to VENCorp for VENCorp to operate in accordance with the MSO Rules."

Complex as these provisions are, their effect can be simply described as follows:

(a) TPA as owner will make the PTS available to VENCorp for it to operate in accordance with the MSO Rules;

(b) VENCorp is thus the User (within the meaning of the National Code[2]) of the PTS;

(c) The capacity and operating constraints of the PTS are as defined in the Service Envelope Agreement;

(d) When operating the PTS, VENCorp will do so within the capacity and operating constraints set out in the Service Envelope Agreement;

(e) Viz a viz VENCorp, the Users of the PTS are the Victorian gas retailers.

[1] Reference should, however, also be made to clauses 8.1(a)(5), 8.1(a)(8) and 8.1(a)(9) that are of similar effect.

[2] The definition of "User" is set out in the main text below.

It is important to note that, although clause 5.3.1(a) of the MSO Rules provides that the Service Envelope Agreement may cover "gas transportation services", as drafted the agreement does not provide for gas haulage per se. Instead what it does, as its primary task, is make available to VENCorp capacity on the PTS for it to operate in accordance with operating constraints. And it is as part of that operation that VENCorp transports gas over the pipeline.

That said, one should not lose sight of the fact that Schedule 3 of the Service Envelope specifies services that quite clearly, in my opinion, are capable of being categorised as ancillary services in terms of paragraph (c) of the definition of "Service" contained in section 10.8 of the National Code[1]. And these are, without question, services that are provided by GasNet to VENCorp.

The Revised GasNet Access Arrangements

The GasNet revisions do not specify any "Service" provided by GasNet to VENCorp[2].

Instead, GasNet argues that the only "Service" provided is by VENCorp to end-users[3]. This service is described as the transportation of gas under the MSO Rules[4]. The corollary of that argument is that there is no "Service" within the meaning of the National Code supplied by GasNet to VENCorp.

GasNet states[5] that for the purpose of the Reference Tariff calculation the Reference Service comprises two components being:

> "(a) VENCorp Services which VENCorp provides itself (these are dealt with in the VENCorp access arrangement); and
>
> (b) the Tariffed Transmission Service, being the availability of the GNS (the GasNet system) which is sourced by VENCorp through the Service Envelope Agreement."

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[1] This definition is set out in full in the next section of this advice.

[2] Thus GasNet has deleted from its access arrangement clauses 5.2.2, 5.2.3, 5.4.1 and 5.4.2. I have not set out clause 5.4.2 above as it is not strictly relevant to the issues at hand. However for completeness I set it out now:

> "5.4.2: Details of the terms and conditions on which TPA will supply each Reference Service are contained in clauses 2.1 and 2.2 and Schedule 1, paragraph 1 of the Tariff Order which set out the initial Reference Tariffs, and Part A of Schedule 5 of the Tariff Order, which outlines the tariff control formula applicable to the Reference Tariffs."

[3] See clause 3.2 of the GasNet access arrangement itself and section 10.3.3 of the GasNet access arrangement submission

[4] See GasNet. access arrangement submission, page 124, paragraphs 10.3.3(b) and (c).

[5] See Clause 3.2 of the GasNet access arrangement.

This appears on its face to produce a logical inconsistency in that on the one hand GasNet say that there is no "Service" provided by it to VENCorp, but on the other hand – for the purposes of calculating tariffs - say there is.

In support of its position, the following propositions are advanced by GasNet. I shall deal with each in turn – indicating the counterarguments in each case.

Definition of "Service" in section 10.8 of the National Code does not include use of a pipeline

At the heart of this argument appears to be the proposition that the definition of "Service" in section 10.8 of the National Code is materially different from the definition of "Service" in section 44B of the Trade Practices Act 1974[1]. Section 44B falls within Part IIIA of the Trade Practices Act 1974 which provides for third party access.

GasNet argue that this difference, particularly the omission from the section 10.8 definition of the reference to a "Service" including the "use of an infrastructure facility", supports the proposition that the National Code governs "access to services provided by means of a pipeline" rather than services that involve the use of a pipeline per se.

In my view that argument is incorrect.

Set out in full below are both definitions:

Section 10.8:

""Service" means a service provided by means of a Covered Pipeline (or when used in section 1 a service provided by means of a Pipeline) including (without limitation):

(a) haulage services (such as firm haulage, interruptible haulage, spot haulage and backhaul);

(b) the right to interconnect with the Covered Pipeline; and

(c) services ancillary to the provision of such services."

Section 44B:

""Service" means a service provided by means of a facility and includes:

(a) the use of an infrastructure facility such as a road or railway line;

(b) handling or transporting such things as goods or people;

[1] See GasNet access arrangement submission, page 123.

(c) a communications service or similar service;

but does not include

(d) the supply of goods; or

(e) the use of intellectual property;

(f) the use of a production process;

except to the extent that it is an integral but subsidiary part of the service."

As will be noted from comparison of the two definitions, both require that the "Service" be provided "by means of" something. In the case of section 10.8, it is "by means of" a Covered Pipeline or Pipeline. In the case of section 44B, it is "by means of" a "facility".

While it is true that the section 10.8 definition omits the express reference to "use of an infrastructure facility", what appears to have been overlooked is that the section 10.8 definition is expressly stated to be "without limitation". In other words, the section 10.8 definition is plainly not meant to be an exhaustive one, whereas it might be argued that the section 44B definition is intended as exhaustive[1]. And because the section 10.8 definition is not exhaustive, the omission of an express reference in that definition to "use of a pipeline" is, in my opinion, beside the point.

To the extent that there has been jurisprudence on what is meant by a "Service" in terms of Part IIIA of the Trade Practices Act 1974, it is relevant to note that the Full Federal Court and Australian Competition Tribunal have held that "Service" does not include the facility itself but may include the use of that facility. See *Rail Access Corp v NSW Minerals Council* (1998) ATPR 41-663 @ 41, 388 and *Sydney International Airport* (2000) 41-754 ATPR @ 40,756. While that distinction is based on the section 44B definition, it is still relevant to the section 10.8 definition as it makes plain that the proper distinction to draw is between the pipeline itself and what one does on, over or with that pipeline. In particular, the pipeline itself is not a "Service" but things done on, over or with that pipeline are capable of being a "Service".

That apart, it seems peculiar to say that use of a pipeline is not a "Service" under the National Code when throughout there is reference to "User" and "Prospective User" both of which are defined in section 10.8 by reference to a contract for a "Service". Is one to disregard the plain implication of the Code's use of the words "User" and "Prospective User", namely that use in some manner or form is

[1] I put to one side the argument that might be made – based on the use of the word "includes" in the section 44B definition – that even that definition is not intended as exhaustive.

involved?[1] On GasNet's argument, one would, which seems odd – to say the least.

There is a further, not insignificant, point worth making. Inherent in the concept of an access arrangement is that there be a "Service"[2]. The corollary is that if there is no "Service" identified in an access arrangement, then arguably it is not in fact an access arrangement. An internal inconsistency in GasNet's argument thus appears.

That said, I apprehend that GasNet might argue that because section 10.2 of the National Code allows the "allocation" of obligations as between itself and VENCorp, it can "allocate" the obligation to provide a "Service" to VENCorp alone. I would agree with that if there was one joint access arrangement – something that is recognised as a possibility in paragraph (c) of section 10.2. But that is not the case here. Instead we have two separate access arrangements. And within that structure I do not think it possible for GasNet to lodge something that is called an access arrangement but which omits the essential element of there being a "Service".

Of course, this is all said not taking into account the point, earlier made, that Schedule 3 of the Service Envelope Agreement describes services that appear well capable of being categorised as ancillary services. And as such, even if GasNet's arguments on "use of a pipeline" were to be accepted, its revised access arrangement would still have to describe those ancillary services.

VENCorp not a "User" (or "Prospective User")

GasNet also argue that VENCorp is not a "User"[3]. It seems to me that logically, this also requires that it be argued that VENCorp is not a "Prospective User" too although GasNet do not say as much.

The definitions of "User" and "Prospective User" in section 10.8 of the National Code are as follows:

> "'User' means a person who has a current contract for a Service or an entitlement to a Service as a result of an arbitration."
>
> "'Prospective User" means a person who seeks or is reasonably likely to seek to enter into a contract for a Service and includes a User who seeks or may seek to enter into a contract for an additional Service."

In other words, the first part of the definition of "User" and the whole of the definition of "Prospective User" both expressly rely upon there being a "contract

[1] See also section 3.2(a) of the National Code.

[2] See section 3.2(a) of the National Code, the relevant provisions of which are set out in a footnote below.

[3] See GasNet access arrangement submission, page 123.

for a Service". In particular, you must have, or want, a "contract for a Service" to be a "User" or "Prospective User". And once you are a "User" or "Prospective User", you can seek access under an access arrangement to the "Services" specified in that access arrangement – see section 3.2 of the National Code.

As such, once one accepts that there is a "Service" being provided by GasNet to VENCorp and that either there is a contract for that "Service" or that VENCorp wants such a contract, then VENCorp automatically becomes a "User" or "Prospective User". Accordingly the argument that VENCorp is not a "User" or "Prospective User" stands or falls on whether there is a "Service" being, or to be provided by GasNet to VENCorp. That leads one back to where we started, namely the conclusion that there is such a "Service".

VENCorp not a third party and not a significant part of the market

Gasnet further argues that VENCorp is not a third party and not a significant part of the market[1].

The first argument appears to derive from the fact that the National Code is intituled the *National Third Party Access Code for Natural Gas Pipeline Systems*. However in the body of the National Code there is instead, in the relevant provisions, consistent use of the words "User" and "Prospective User"[2]. As such the operative words are "User" and "Prospective User", not "third party".

But putting that point to one side, even if the words "third party" are relevant, it seems to me self-evident that VENCorp is a third party in the sense in which those words are typically used in the phrase "third party access". In that context, I would draw attention to the definition of "third party" in section 44B of the Trade Practices Act 1974 which is as follows:

> ""Third Party", in relation to a service, means a person who wants access to the service or wants a change to some aspect of the person's existing access to the service."

While there is no similar definition in the National Code, the definition in section 44B is of some assistance in that it shows that the words "third party" are

[1] See GasNet access arrangement submission, pages 123 -124. As part of this argument (at page 124) GasNet hypothesises as to what happens if a Prospective Users seek from GasNet the service that it provides to VENCorp, namely the use (or as GasNet put it, "the making available") of the PTS "and which, under the Code, GasNet could be compelled to provide." The response to that is to note that the arbitration provisions in section 6 of the National Code – which I take to be the compulsion that GasNet refer to – operate in relation to "Spare Capacity" as defined in section 10.8. Paragraph (b) of that definition applies to market carriage pipelines which the PTS is. The paragraph makes it clear that "Spare Capacity" means the capacity to provide a Service "without impeding the provision of that service to any other user". Thus the answer to the "related issue" lies in whether giving access to the PTS to a User in addition to VENCorp would impede VENCorp in its operation of the PTS; if yes, GasNet could legitimately decline.

[2] The words "third party" are rarely used in any operative provisions of the National Code. One of the few examples of their use that I have found is in the definition of "Market Carriage" in section 10.8.

typically used as shorthand for someone who wants access to a "Service". VENCorp plainly is such an entity.

As for the second argument, I have to say that I am not entirely sure how seriously it is advanced. I say that because I would have thought it beyond argument that VENCorp, as sole operator of the PTS, is a significant part of the market[1].

Clause 11.2 of the Service Envelope Agreement

GasNet argues that clause 11.2(a) of the Service Envelope Agreement is inconsistent with GasNet's current access arrangement[2].

The alleged inconsistency, as best I can ascertain, is that while the GasNet access arrangement refers to it making the tariffed transmission service available to VENCorp as user (see GasNet access arrangement clause 5.2.2 set out above), clause 11.2(a) refers to the "Tariffed Transmission Services provided by VENCorp to that Market Participant". Clause 11.2(a), and the definition of "Tariffed Transmission Service" to which that clause refers are also set out above.

Putting to one side the fact that clause 11.2 is intended to address billing, and as such its relevance to the issues at hand may well be questioned, where this argument seems to have gone astray is in failing to notice that the definition of

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[1] One might speculate as to whether, in this argument (which appears to be based on an interpretation of section 3.2(a)(i) of the National Code), inadvertent confusion has arisen either as between the "market" and "participants in a market" and/or as between the seeking of a Service and how that seeking is evidenced. To explain; section 3.2(a)(i) provides as follows:

"3.2 The Services Policy must comply with the following principles:

(a) The Access Arrangement must include a description of one or more Services that the Service Provider will make available to Users or Prospective Users, including

(i) one or more Services that are likely to be sought by a significant part of the market: …."

If one were to focus on "participants in a market" alone, it might just be possible to conclude that VENCorp does not represent a "significant part of the market" in terms of section 3.2(a)(i) of the National Code because it (ie VENCorp) is only one among many entities that participate in that market. However, as can be seen, section 3.2(a)(i) does not use the word "participants", it uses the word "market". Plainly what is meant by the words "significant part of the market" is that the "Service" made available to Users and Prospective Users is one that a significant part of the market as a whole seeks. This seeking might be evidenced by numerous market participants requesting it, or by only one such participant requesting it on behalf of all the others. The latter is, of course, the situation with VENCorp. Thus the mere fact that VENCorp alone seeks a "Service" does not lead to the conclusion that Service is not sought by a significant part of the market. Instead one has to look behind VENCorp to see on whose behalf it seeks that Service and when one does that it becomes readily apparent that the Service is sought by a significant part of the market.

[2] See GasNet access arrangement submission, page 124.

"Tariffed Transmission Service", to which clause 11.2(a) refers, is "making the tariffed transmission pipeline available to VENCorp for VENCorp to operate in accordance with the MSO Rules". In other words, there is no inconsistency at all.

Service Envelope Agreement alone suffices

GasNet's next proposition is that VENCorp does not require the current specification in GasNet's access arrangement of a Reference Service, "as it has an entitlement to the system availability under the Service Envelope Agreement"[1].

What this proposition overlooks is that the Service Envelope Agreement does not specify any "Service" within the meaning of the National Code except in respect of the services in Schedule 3 that might be characterised as ancillary services. Instead the agreement's prime task is to specify the capacity and operating constraints of the PTS.

Or to put it another way and adopting the distinction developed by the Full Federal Court and the Australian Competition Tribunal, the agreement primarily describes the facility as distinct from the services provided.

As such, absent a description in GasNet's access arrangement of the "Services" that GasNet provides to VENCorp, there will be no complete description of those "Services" at all because the Service Envelope Agreement contains no such complete description.

As part of this argument it is also argued[2] that because the "main purpose" of a "Service" is "to enable a User who does not have a contract for that service to enjoy a "short circuit" route to seek access to the Reference Service at the applicable Reference Tariffs (ie by means of the arbitration process in the Code)" and VENCorp already has an entitlement to "system availability" under the Service Envelope Agreement, therefore it does not require a specification of a "Service" in the GasNet access arrangement.

I can see nothing in the National Code, or indeed the definition of "Service" in section 10.8 that suggests that its "main purpose" is as described. Moreover this argument appears to overlook the definitions of "User" and "Prospective User" which both refer to "contract for a Service". In particular as a "User" one will have a contract for a "Service", and as a Prospective User one will want such a contract. Thus the distinction between those who have a "Service" and those who want one is effected by means of those two definitions. But this does not mean, nor does it have the effect, of limiting "Service" so that it only applies where there is no "contract for a Service". If that was the case, the definition of "User" would be rendered otiose.

[1] See GasNet access arrangement submission, page 124. .

[2] See GasNet access arrangement submission page 124.

The reference to “arbitration” may represent an attempt to invoke the second part of the definition of “User” which on its face refers to “arbitration” alone, not to there being a contract for a “Service”. However such an approach overlooks sections 6.26 and 6.27 of the National Code pursuant to which any arbitral decision may be reflected in a contract for a “Service”. Thus, even where there is an arbitration, that ultimately can lead to a contract for a “Service”.

What Next?

The question that then arises is what can the ACCC as the Relevant Regulator now do.

As I have already noted, in 1998 when the ACCC concluded that allocation of “obligations” under section 9.2 of the Victorian Code was ambiguous, it decided that amendments were required to the access arrangements of both TPA and VENCorp.

It effected these amendments by utilising its powers under section 2 of the Victorian Code to decline to approve the proposed access arrangements. This resulted in the submission of amended access arrangements which ultimately were approved. Section 2 of the Victorian Code is in substantially the same terms as section 2 of the National Code.

It seems to me that the same process can, and should, be followed by the ACCC to address the present impasse. In that regard, I would draw attention to the provisions of section 2.35, 2.37A, 2.38, 2.38A and 2.42 of the National Code which similarly allow the ACCC to decline to approve revisions to an access arrangement and (if no revisions acceptable to it are submitted) draft and approve its own revisions. That said, I would note, that in my opinion, it would not be possible for the ACCC in that process to accept an access arrangement from GasNet that did not specify any "Service". To do as much would be inconsistent with the point I made earlier about a "Service" being an essential part of an access arrangement.

Geoff McCormick

10 May 2002