



The Australian Gas Association

**Submission to the Australian Competition and
Consumer Commission**

**Greenfields Guideline for Natural Gas
Transmission Pipelines**

Response to Draft Guideline

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Overview

On 25 June 2002 the Australian Competition and Consumer Commission (ACCC) released the *Draft Greenfields Guideline for Natural Gas Transmission Pipelines* (the guideline).

The development of the guideline represents a positive acknowledgment that past regulatory decisions and outcomes have served as a discouragement to new investment in greenfields gas pipeline projects.

Since the development of the draft guideline a number of policy developments have occurred which have significantly advanced the policy debate on the need to facilitate greenfields gas developments, and mechanisms to achieve this end. The new mechanisms currently under consideration by Australian governments extend beyond the limited scope and underlying policy assumptions of the guideline, and represent far more comprehensive and effective potential responses to the identified need to facilitate investment in new gas infrastructure than finalisation of the guideline. In these circumstances, the AGA considers that further work on the guideline should not be progressed until the announced review of, and the various recommended changes to, the gas access regime make the shape of the future policy framework clearer.

Finally, despite representing a positive acknowledgement that flaws in the regulatory framework and past regulatory decisions may have acted as a barrier to investment, the draft guideline does not address in an adequate way the concerns of regulated gas businesses with the regulatory framework and its application.

Background

This submission responds to the Australian Competition and Consumer Commission *Draft Greenfields Guideline for Natural Gas Transmission Pipelines* released in June 2002.

The AGA represents the downstream sector of Australia's natural gas industry, including owners and operators of regulated gas distribution networks, gas pipelines and gas retailers. This submission represents the views of core AGA members owning regulated gas distribution networks and transmission pipelines.

Many of AGA's core members own combined gas distribution and transmission assets, making developments in access regulation covering greenfields transmission pipelines a critical area of concern. The AGA has previously participated in consultations with the ACCC on the draft guideline, including the public consultation forum held in Melbourne in November 2002.

Addressing barriers to greenfields distribution projects

The guideline does not address the significant regulatory barriers to greenfields gas distribution projects presented by the National Gas Code. Regulatory or policy approaches which do not address potential barriers to both distribution and transmission projects will not be an effective response to the issue of facilitating significant greenfields gas developments.

The ACCC guideline has been drafted as a transmission-specific document due to current division of regulatory responsibilities under the gas access regime, under which gas distribution networks are generally regulated by State or Territory based regulators. Greenfield gas projects, however, often have both a distribution and transmission component. This has required the ACCC and a number of state-based regulators to jointly assess and approve competitive tender processes for joint distribution-transmission projects (for example, in respect of the Loddon-Murray and Central Ranges projects).

Greenfield gas developments all face a range of potential commercial, technical and environmental barriers. In some cases, greenfield gas developments may not be commercial without significant contributions either from governments or local communities. Both Victoria and Tasmania are currently proposing limited financial support arrangements for specific greenfields gas projects highlighting the need for more effective low-cost regulatory options such as non-coverage under the Code and the lack of significant market power issues in relation to marginal and contestable projects.

Under the present regulatory framework, however, greenfield gas distribution projects face a number of significant and unnecessary regulatory barriers which have contributed to a lack of investment in distribution network expansions or extensions. These include:

- inadequate exclusive franchise periods available to gas distribution developments (generally limited to five years, although a small number of States have sought to implement *ad hoc* arrangements to attempt to overcome this restriction)
- inadequate rates of return which do not compensate the investor for the high levels of risk assumed in greenfield distribution developments where demand is uncertain
- high cost of competitive tender arrangements and the preparation of separate Access Arrangements for small system extensions or regional networks
- inability of distribution network owners to realistically obtain a capital contribution or recover an upfront surcharge from prospective users while maintaining final gas charges that encourage market development

Some of these barriers are common to those facing gas transmission pipeline developments.

The regulatory barriers described have contributed to a number of greenfield gas distribution projects being deferred or shelved since the introduction of the National

Gas Code. The AGA and its members have collated the details of these greenfields distribution projects under the National Gas Code to illustrate the necessity of including greenfields distribution projects in significant new measures to protect investment in gas transportation infrastructure (see [Table 1](#) below).

Table 1 - Greenfield gas distribution network projects under the Gas Code

Project	Potential consumers	Competitive tender held	Estimated project value	Outcome
Tasmania (2002)	385 000	Yes	\$200.0m	Project delayed – ongoing government funding negotiations with preferred distributor
Loddon-Murray Region (2001)	15 000	Yes	\$50.0m	Project shelved
North Bellarine Peninsula (2000)	4 000	No	\$11.0m	Proceeding following government funding – completion due 2004
Barwon Heads (2000)	1 300	No	-	Project deferred
Cardinia Shire (1999)	2 300	No	-	Completed
Yarra Ranges (1999)	14 000	Yes	\$16.0m	Project shelved
East Gippsland (1999)	22 000	Yes	\$14.0m	Project delayed
Central Ranges (1999)	50 000	Proposed	\$96.0m	Project delayed

From the table it can be observed that:

- proposed greenfield gas distribution projects with estimated project values in excess of \$390 million serving nearly 500 000 potential gas consumers have been deferred or shelved since 1999
- no competitive tender process for greenfield distribution projects under the National Gas Code has so far resulted in project completion
- of the two gas distribution projects that have proceeded, one has been provided with significant State government assistance to fund the ‘user’ surcharge component required under the Code to make the project economically feasible, and the second was exempted from being required to hold a competitive tender
- most of the proposed greenfield gas distribution developments which have been deferred or shelved under the National Gas Code are located in regional Australia

While the construction of new transmission pipelines can play a role in creating opportunities for greenfield distribution projects serving commercial and residential customers, a large number of deferred or shelved greenfield distribution projects have arisen in regional areas relatively close to major transmission pipelines. That is, the facilitation of new major transmission pipelines by itself will not overcome the

regulatory barriers that have contributed to the deferral or shelving of greenfield distribution projects in, for example, regional Victoria and Tasmania.

The failure of seven gas distribution network extension projects across Tasmania and regional Victoria highlights that seeking to encouraging greater transmission pipeline development is not sufficient to ensure greater access to natural gas in regional Australia. Gas distribution projects face similar critical regulatory barriers which must be recognised. These barriers could be positively addressed through the extension of measures proposed by the Council of Australian Governments' Energy Market Review to greenfield distribution projects and the implementation of the recommendation of the Productivity Commission's *Review of the National Access Regime* for access holidays for contestable distribution network augmentations and extensions.¹

Policy responses to existing regulatory barriers

Since the development of the guideline a number of significant policy responses to the regulatory barriers to greenfields developments have been proposed and developed through a number of high-level reviews and policy processes, including the:

- Final Report of the Council of Australian Governments Energy Market Review
- Productivity Commission *Review of the National Access Regime*
- Commonwealth Government *Interim Response to the Review of the National Access Regime*

Each of these reviews and processes has critical public policy implications for the regulation of gas transmission pipelines and distribution networks. In a number of significant ways, the developments have moved the public policy development process beyond the analytical and policy framework which underpinned the original draft guideline (drafted in early 2002).

In particular, these policy developments mean that the draft guideline will not be able to meet its stated objectives. The objectives of the guideline are to:

- address perceptions of regulatory risk with regard to the application of the regulatory framework and the ACCC's approach to the regulation of greenfields projects
- demonstrate the flexibility of the regulatory framework and the various approaches available for the structure of an access arrangement or access undertaking
- indicate the ACCC's preferred methods for dealing with project specific risks
- assist prospective service providers to evaluate the likely regulatory outcomes for potential or proposed greenfields projects.²

¹ Productivity Commission *Review of the National Access Regime: Inquiry Report*, September 2001, p.284

² ACCC *Draft Greenfields Guideline for Natural Gas Transmission Pipelines*, June 2002, p.1

It is clear through the conclusions and recommendations of independent reviews which have examined the issue of regulatory risk and the proposed policy responses of government that the guideline has failed to address perceptions of regulatory risk.

The development of a number of recommendations by the Productivity Commission, the Energy Market Review and responses to these recommendations also makes clear that Australian governments and a wide range of other stakeholders do not believe that the National Gas Code embodies the necessary flexibility to promote adequate investment in new and existing gas infrastructure.

The ACCC's restatement of its contested approach to dealing with project-specific risk, which regulated gas businesses have identified as a major impediment to appropriate regulatory treatment of greenfields investments, provides no positive impetus to potential greenfields developments.

The guideline is a necessarily non-binding document. It also provides no evidence that the ACCC has accepted the need for a 're-balancing' of access regulation identified by the Productivity Commission. Given this, the guideline may well have less value to potential investors in greenfields projects seeking to assess likely regulatory outcomes than the series of inadequate regulatory outcomes that have encouraged the development of new policy measures from Australian governments explicitly going beyond the limited scope of the guideline.

For these reasons the AGA considers that further work on the guideline should not be progressed until the announced review of, and the recommended changes to, the gas access regime make the shape of the future policy framework clearer. Further details of the inconsistency of the contents and underlying assumptions of the guideline with recent policy developments are given below.

Final Report of the Energy Market Review

The Energy Market Review released its final report in December 2002. Amongst its discussion on energy market developments the report addressed issues relating to regulatory uncertainty and new investment in gas infrastructure.

The report stated:

Current approaches to economic regulation are creating a perception of uncertainty for investment in new pipelines.³

The Energy Market Review panel also dismissed the position (advocated by the ACCC and incumbent gas users) that no action was required to protect new investment in gas infrastructure.⁴ Citing statements from AGA and other industry bodies on the negative impact of current access regulation on new investment, it concluded:

³ *Towards a Truly National and Efficient Energy Market* Council of Australian Governments Energy Market Review Final Report, p.189

⁴ See for example, *ACCC Reforming Australia's Energy Markets – Submission to the COAG Energy Market Review*, May 2002, p.9 <www.energymarketreview.org>

...the Panel considers that the above concerns are causing regulatory uncertainty that creates risk and costs that impact on the viability of new pipelines. For an otherwise marginal proposed pipeline, significant regulatory uncertainty may be sufficient to make the project unviable.⁵

Elsewhere the report noted:

The risk of a new pipeline being regulated, however, can create significant uncertainty — potentially sufficient to make otherwise marginally profitable proposed pipelines unprofitable and hence not proceed.⁶

The panel considered in detail the issues associated with whether or not access regulation was necessary or appropriate for greenfields pipelines. Noting that greenfields projects are by definition contestable in the construction phases, the final report states:

This means that in the short term at least, there is little or no scope for benefit from imposing the burden of regulation upon the pipeline company. Indeed taking the costs into account, the short term impact of regulation in these circumstances is likely to be negative.⁷

The Energy Market Review proposed three significant measures to reduce the potential for the current regulatory framework and the uncertainty it creates to deter new investment. These measures included:

- binding up-front coverage rulings for new pipelines
- 15 year economic regulation free periods for new transmission pipelines
- up-front regulatory agreements for new pipelines

These measures go beyond the outlining of possible future approaches to tariff-setting for new covered pipelines set out in the guideline. Each provides a fundamentally more certain, credible and effective response to the concerns of regulated businesses than the current regulatory framework and past regulatory outcomes which have discouraged new greenfield gas infrastructure projects.

Productivity Commission Review of the National Access Regime

The Productivity Commission's *Review of the National Access Regime* was the most comprehensive examination of the scope and operation of the current national third party access regime carried out since competition policy reforms were introduced in the 1990s.

The independent review concluded that there was a significant risk that the current national access regime, including industry-specific regimes such as the National Gas Code, would deter investment in essential infrastructure.⁸ In particular, and in contrast

⁵ Energy Market Review (2002) p.195

⁶ Energy Market Review (2002) p.212

⁷ Energy Market Review (2002) p.212

⁸ Productivity Commission (2001), p.xxii

to the ACCC's draft guideline, the Productivity Commission drew attention to the fact that regulatory risk under current access regimes is unnecessarily high.⁹

Detailed evidence on the issue of new investment in greenfields gas pipeline and distribution projects under the Code was considered by the Productivity Commission. It concluded that due to the high risk of regulatory failure under the existing arrangements specific mechanisms to assist greenfields distribution and transmission projects were required.

The Productivity Commission also dismissed contentions from incumbent energy users and regulatory authorities including the ACCC that no action was needed to improve the regulatory treatment of greenfields gas projects.¹⁰ The Productivity Commission drew the opposite conclusion, stating that:

...support for specific measures to facilitate new investment within access regimes generally, and Part IIIA in particular, has grown during this inquiry. In the Commission's view, the case for such measures is compelling. Thus, the focus for policy makers should not be on whether, but how to facilitate investment.¹¹

The Productivity Commission proposed a number of significant measures to reduce the potential for the current regulatory framework and the uncertainty it creates to deter investment. These measures included:

- fixed-term access holidays available to proposed investment in essential infrastructure which is determined to be contestable
- provision for a 'truncation' premium to be added to the cost of capital that has been agreed between a project proponent and the regulator prior to investment¹²

The Productivity Commission considered the adoption of measures to facilitate investment to be a high priority action, and urged Australian governments to work together to ensure significant action was undertaken by 2003.¹³

The measures the Productivity Commission recommended for consideration advance policy development beyond the outlining of possible future approaches to tariff-setting for new covered pipelines contained in the guideline. The decision to recommend in favour of consideration of a 'truncation' premium is a fundamental rejection of the ACCC's past approach of dismissing the need to specifically recognise the project-specific risks and the risk of truncated returns in the application of access pricing regulation on greenfields developments. Each of the measures highlighted by the Productivity Commission provides a more effective response to the identified regulatory barriers to new investment than the draft ACCC guideline.

⁹ Productivity Commission (2001), p.xxi

¹⁰ ACCC Submission to the Productivity Commission Review of the National Access Regime, December 2000 p.65 <www.pc.gov.au>

¹¹ Productivity Commission (2001), p.xxv

¹² Productivity Commission (2001), p.320

¹³ Productivity Commission (2001), p.320

Interim Commonwealth Government response

The Commonwealth Government announced its *Government Response to Productivity Commission Review of the National Access Regime* on 17 September 2002. This interim response endorsed the majority of the Commission's findings and recommendations for changes to the national access regime.¹⁴

The Commonwealth Government response endorsed the Commission's central findings that significant changes were needed to provide better guidance to encourage new investment, strengthen the role of commercial negotiation, and improve the certainty and transparency of regulatory processes.¹⁵ The Commonwealth Government also indicated that many of these issues would initially be taken forward in relation to the National Gas Code in a forthcoming review of the gas access regime.¹⁶ The interim response notes:

...the Government proposes to consider the practicality of additional regulatory measures, such as binding rulings, fixed-term access holidays and provision of a 'truncation' premium, in the forthcoming independent review of the operation of the Gas Access Regime.¹⁷

Taken together with the emphasis in the interim response on achieving an access regime which provides incentives for new investment, these comments clearly indicate that the appropriate course of action for the ACCC to take is to defer further work on the guideline until the recommendations of the Productivity Commission are fully examined in the announced review of the gas access regime.

Deficiencies in the draft guideline

The draft guideline does not adequately address the fundamental concerns of regulated gas businesses with application of the National Gas Code to new gas transmission pipelines.

A number of deficiencies with the guideline are outlined below. As noted previously, the recommendations and outcomes of a number of policy review and development processes have made the further development of the guideline redundant at this time. This section therefore does not provide extensive details of deficiencies in the guideline. Similarly, there are other deficiencies in the guideline that have not been detailed at all, as in AGA's view subsequent policy proposals and developments have made them apparent to all stakeholders.

¹⁴ *Government Response to Productivity Commission Review of the National Access Regime*, September 2002, p.1 <www.treasury.gov.au>

¹⁵ *Government Response to Productivity Commission Review of the National Access Regime* (2002), p.1

¹⁶ *Government Response to Productivity Commission Review of the National Access Regime* (2002), p.2

¹⁷ *Government Response to Productivity Commission Review of the National Access Regime* (2002), p.2

Guideline does not clearly represent the findings of the ACCC-commissioned consultancies

The report ‘Cost of Capital for Greenfields Investment in Pipelines’ by Davis and Handley commissioned by the ACCC in drafting the guideline reinforces several key contentions of regulated gas businesses about the high regulatory risks facing greenfields investments.

In particular, the study notes the potential for access prices determined on information not available at the time of investment to lead to significant disincentives to invest.¹⁸ In addition, the report notes that the regulatory treatment of greenfields investments should be viewed as a different issue to approaches taken to mature assets.¹⁹

Both of these important points are not adequately reflected in the guideline, which instead only cites the study to justify the ACCC’s current regulatory methodology in relation to a number of narrower issues, such as the use of the Capital Asset Pricing Model approach, or compensation for non-systemic risk.

Guideline does not provide sufficient certainty to overcome impediments to investment in the National Gas Code

The guideline provides illustrative examples of *possible* approaches that *might* be adopted by the ACCC in the future in relation to the assessment of Access Arrangements and Access Undertakings.

The guideline is necessarily a non-binding informational document. There is no requirement or guarantee that the ACCC adopt consistent approaches to those laid out in the guideline. This provides very little upfront certainty for potential investors, given changes in regulatory approaches in the past (for example, in relation to pre or post-tax approaches), inconsistency between regulators approaches, and the high degree of regulatory discretion in the National Gas Code.

The draft guideline actually serves to illustrate the wide discretion available to regulatory authorities under the existing regulatory framework. The extent of discretion, and the opportunity for regulators to adapt such a range of widely varying methodologies, is itself a key flaw in the framework which needs to be addressed. The existence of such wide discretion itself is a core issue of concern and a crucial regulatory barrier to new investment.

Potential investors require significantly greater degrees of pre-investment (or *ex ante*) certainty, for example, on cost of capital assumptions and the fair sharing of efficiency benefits and above average performance over time, than offered by the guideline. These concerns are responded to in the Energy Market Review’s proposal to allow binding upfront agreements between the proponents of greenfield projects and regulatory authorities.

¹⁸ Davis, K and Handley, J. Report on Cost of Capital for Greenfields Investments in Pipelines, 30 April 2002, p.21 <www.accc.gov.au>

¹⁹ Davis and Handley (2002), p.7

Guideline does not recognise and reflect the commercial drivers and processes that underpin significant greenfields investment

The guideline appears to indicate that the ACCC wishes to inappropriately participate in commercial processes, and proposes information disclosure mechanisms and requirements beyond of those envisaged by the National Gas Code.

For example, in relation to the issue of the treatment of self-insurance, the guideline indicates that the ACCC may in the future seek to obtain access to notifications of commercial boardroom decisions and third party advice and confirmation that commercial insurance arrangements are appropriate. This represents an unnecessary level of intrusion into the commercial management of the regulated business and its governance processes.²⁰

The draft guideline implies that a ‘benefit sharing’ model outlined would be able to assist in mitigating the down-side risks of a project failing to find a significant market.²¹ Current regulatory approaches cannot realistically mitigate against a project failing to meet the proponents *ex ante* expectations. The concern of regulated businesses is that given this, benefit sharing of forecast efficiencies and the potential for downward revisions to the risk component of the weighted cost of capital in future regulatory periods still presents project proponents with asymmetric risk which acts to deter greenfields investments.

The ACCC guideline claims that ‘most favoured nation’ (MFN) clauses may prevent efficient price discrimination and pipeline utilisation. An academic report commissioned by the ACCC from the National Economic Research Associates similarly claims that MFN clauses may slow market development and result in sub-optimal efficiency outcomes.²²

It is clearly beyond the scope and expertise of the ACCC to effectively second-guess complex commercial decisions and outcomes in a relation to fully contestable greenfields pipeline developments. It is not a productive or an appropriate role for competition regulators to seek to make judgements about commercial contractual issues (noting that the National Gas Code precludes regulators from undermining contractual arrangements). Regulators are not well-placed to make judgements about risk sharing mechanisms between foundation customers and the mechanisms which actual investors have found to be necessary to proceed with large capital investments.

Guideline relies on invalid international comparisons with extremely different regulatory frameworks and commercial characteristics

The guideline has been informed by an ACCC commissioned study by National Economic Research Associates on regulatory approaches adopted in the United States.

²⁰ ACCC Draft Greenfields Guideline for Natural Gas Transmission Pipelines, June 2002, p.16

²¹ ACCC Draft Greenfields Guideline for Natural Gas Transmission Pipelines, June 2002, p.18

²² ACCC Draft Greenfields Guideline for Natural Gas Transmission Pipelines, June 2002, p.23

Comparisons between the United States and Australian regulatory frameworks which do not recognise the different regulatory systems and market conditions, including the highly developed and mature state of the US pipeline network, are unlikely to assist in clarifying issues facing Australian greenfields developments.

The ACCC has indicated on a number of occasions in the past that it considers elements of the US approach to regulation to have significant weaknesses. It is unclear, therefore, why alternative approaches on a range of detailed regulatory issues are canvassed, with the implication that they represent regulatory approaches the ACCC might choose to adopt.

Establishing that the treatment of specific regulatory issues in a different gas market could, if applied, result in even greater risk and uncertainty for pipeline proponents in Australia's emerging gas market does not represent an adequate response to the barriers in the Australian regulatory framework. As noted, these barriers have been comprehensively examined by the Productivity Commission in its *Review of the National Access Regime* and the Commission has proposed a series of potential solutions that go beyond the narrow scope of the guideline.

Guideline makes inappropriate and unsupported policy judgements

The guideline makes a number of unsupported and arbitrary policy assumptions and judgements which are inappropriate for a body which has the sole function of administering existing regulatory and legislative frameworks.

One example of this is the ACCC's statement that in assessing an Access Undertaking under Part IIIA of the *Trade Practices Act*, the ACCC would apply the principles set out in the National Gas Code (including the pricing approaches outlined in Section 8 of the National Gas Code).²³ In the ACCC's Access Undertaking guideline the regulator has stated that it will require pricing outcomes to be based on an 'efficient costs', a National Gas Code term with no foundation in the legislation on Access Undertakings. The greenfields guideline notes further that the ACCC considers there are many common tariff principles between undertakings and the Code.²⁴

Another example of an arbitrary policy assumption is made in relation to forecast linked 'benefit-sharing' mechanisms. The guideline notes that one mechanism available under the Code for attempting to limit the potential investment risks associated with incorrect forecasts in Access Arrangements is 'trigger events'. The guideline then outlines that 'as a preferred alternative' demand scenarios could be linked to a benefit-sharing mechanism.²⁵ It is not detailed in the guideline why the suggested form of benefit-sharing is preferred over the use of an existing provision of the Code establishing trigger mechanisms.

In the absence of such justification, the statement that the ACCC would prefer the adoption of particular arrangements regarding demand uncertainty appears

²³ ACCC Draft Greenfields Guideline for Natural Gas Transmission Pipelines, June 2002, p.9

²⁴ ACCC Draft Greenfields Guideline for Natural Gas Transmission Pipelines, June 2002, p.9

²⁵ ACCC Draft Greenfields Guideline for Natural Gas Transmission Pipelines, June 2002, p.18

inconsistent with the philosophy of the National Gas Code. The operation of the Code is underpinned by the fact that it is the role of service providers to propose those arrangements (including benefit-sharing arrangements) which best meet the needs of the particular project or asset.

Finally, the ACCC discusses some issues that led to the Australian Competition Tribunal overturning the decision based on the National Competition Council recommendation on coverage of the Duke Eastern Gas Pipeline and market-based tariffs. In reference to market-based tariffs the guideline asserts:

...in principle a negotiated tariff would only be expected to be greater than a reference tariff to the extent that the service provider can exert market power.²⁶

This statement implies an entirely different test of market power than that set out in the coverage criteria in the National Gas Code, and the judgement of the Australian Competition Tribunal in *Duke Eastern Gas Pipeline*. Indeed, if such a subjective and uncertain test were to be adhered to, the policy intent of Hilmer to prevent regulators from both regulating assets and determining the scope of assets to be regulated would be completely overturned.

The claim that an ACCC determined reference tariff for a pipeline represents precisely the tariff required to recover efficient costs, and that any tariffs above those tariffs signifies the exercise of market power is inconsistent with the findings of the Productivity Commission's *Review of the National Access Regime*. As this review found, regulators should be aware of the high probability of regulatory error, and the lack of precision that is likely to be possible when assessing such abstract concepts as efficient costs assessed on a forward-looking basis.

More critically, the premise that any market-based tariff that exceeded a regulator approved reference tariff would be evidence of an exercise of market power is inconsistent with the recent Western Australian Supreme Court decision *Re: Dr Ken Michael AM; Ex parte Epic Energy (WA) Nominees Pty Ltd & Anor*. One key outcome of the WA Supreme Court ruling is that it has been established that the National Gas Code and other similar access regimes are designed to and can only seek to promote access pricing outcomes similar to those which would emerge in a 'workably competitive' market.²⁷

Importantly, the Court signaled that access regulation cannot and should not be expected to replicate outcomes under a perfectly competitive market, a concept which the Court considered a theoretical abstraction.²⁸ The ACCC's statements in the guideline on this topic therefore reflect an inaccurate view of the role of regulators and access regulation.

The Australian Gas Association
February 2003

²⁶ ACCC Draft Greenfields Guideline for Natural Gas Transmission Pipelines, June 2002, p.24

²⁷ *Re: Dr Ken Michael AM; Ex parte Epic Energy (WA) Nominees Pty Ltd & Anor* [2002] WASCA 231 [128]

²⁸ *Re: Dr Ken Michael AM; Ex parte Epic Energy (WA) Nominees Pty Ltd & Anor* [2002] WASCA 231 [128]