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Dear ██████████

ACCC submission to the gas pipeline regulation reforms draft legal package

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to comment on the draft legal package giving effect to the decision regulatory impact statement.

Over the course of its Inquiry, the ACCC has observed that a large number of pipeline operators appear to have been engaging in monopoly pricing, giving rise to unnecessarily high delivered gas prices and having an adverse effect on economic efficiency (the costs of which are ultimately borne by consumers). The ACCC has found that the lack of publicly available pricing and financial information hinders the ability of shippers to negotiate effectively with pipeline operators and to readily identify any exercise of market power.

The upcoming reforms to pipeline regulation are expected to help constrain the market power of pipeline operators and provide greater price transparency. The ACCC has made submissions on many aspects of the reforms and has been actively involved in their development. The ACCC strongly supports the draft legal package proposed to give effect to these important reforms, as well as the policy clarifications and proposed refinements set out in the consultation paper.

Further details of our views on specific drafting, policy clarifications and proposed refinements are set out in the attached Stakeholder Feedback template. We look forward to engaging further as the reform process progresses.

Yours sincerely

Anna Brakey

Commissioner

Questions for stakeholders

Number	Question	Response
1 Page 22	Do you agree with the proposal to allow Chapter 4 of the NGL, or particular provisions in this chapter, to be applied to a person other than a service provider if prescribed in Regulations? If not, please explain why not.	Agree. There is a potential for a single shipper to contract most or all capacity on a pipeline to the detriment of other actual or potential users.
2 Page 22	Do you think it is necessary to prescribe any persons other than a service provider in the Regulations at the commencement of the legal package, or should it be assessed at a later stage? If you think the Regulations should prescribe any persons other than a service provider at the commencement of the legal package, please explain why.	It is appropriate to assess, as a priority, whether to prescribe persons currently holding a significant proportion of nameplate capacity on a pipeline.
7 Page 30	Do you agree with the proposal to require expansions of non-scheme pipelines to be treated as part of the same pipeline for the purposes of the NGL and NGR? If not, please explain why not.	The ACCC agrees that this refinement will reduce regulatory costs and complexities and pose more of a constraint on the exercise of market power by service providers.
8 Page 32	Do you agree with the proposed changes to the pipeline classification and reclassification mechanism? If not, please explain why not.	Agree, however the AER should be able to re-classify a pipeline on its own initiative, rather than only in response to an application by a service provider. This is necessary to ensure a consistent approach is taken throughout the market, and also to accommodate where changes in circumstances occur (since the original classification was made under jurisdictional law).
9 Page 34	Rule 109 currently prohibits a service provider from making it a condition of the provision of a particular pipeline service that the prospective user accept a non-gratuitous service unless the bundling of services is reasonably necessary. Do you: (a) Agree with the scope of this prohibition, which has been adopted in the draft legal package and only applies to the bundling of non-gratuitous services? (b) Think the prohibition should apply more broadly to any bundling of services (i.e. gratuitous and non-gratuitous services) unless it is reasonably necessary?	(b) – the prohibition should include both gratuitous and not-gratuitous services. A service provider may be in competition with other service providers in relation to some services. A service could be offered on a gratuitous basis to preclude competition from another service provider, with the cost recovered through higher charges on the pipeline service.
10 Page 35	Do you think s. 134 of the NGL (renumbered s. 148E), which imposes obligations on producers in relation to the supply and haulage of natural gas using scheme pipelines, should be retained in the regulatory framework or removed? Please explain your response to this question.	The ACCC supports retaining this provision of the NGL as it provides users with an ability to obtain terms and conditions from a producer for gas unbundled from transport costs. This encourages greater pricing transparency to better enable users to compare offers between gas producers.
11	If you think the obligation (refer to question 10) should be retained in the NGL, do you think:	a) Extending the provision to apply to retailers will enable gas users to compare retailer offers directly with offers from gas producers. It would also improve the pricing

Number	Question	Response
Page 35	<p>a. it should continue to just apply to producers, or do you think the obligation should extend to retailers? Please explain your response to this question.</p> <p>b. it should continue to just apply to scheme pipelines, or do you think the obligation should extend to non-scheme pipelines? Please explain your response to this question.</p>	<p>transparency of retailers offering delivered gas. However, we note that retailers may source gas from a number of producers to meet customer needs. The current wording of the provision may need to be modified to account for this if it is to apply to retailers as well.</p> <p>b) The pricing transparency benefits of the provision are also applicable where gas is to be delivered through non-scheme pipelines, particularly given the move to reporting individual prices for gas transportation. As such, the provision should arguably be extended to non-scheme pipelines.</p>
17 Page 47	<p>Do you agree with the proposal to require service providers to publish the following non-price terms and conditions alongside the individual prices paid by shippers:</p> <ul style="list-style-type: none"> (i) the date the trade was entered into and the service term; (ii) the type of service provided and the service priority (e.g. firm, as available or interruptible); (iii) the receipt and delivery points at or between which the service is provided and in the case of a forward haul or backhaul service, the direction of the service; (iv) the contracted quantities, expressed as a maximum daily quantity (in GJ/day) and maximum hourly quantity (in GJ/hour); (v) the price escalation mechanism; (vi) whether or not the transaction is on the same or substantially the same terms as the pipeline's standard terms for that service; and (vii) the imbalance and overrun allowance associated with the service? <p>If you do not agree with this proposal because you think there are:</p> <ul style="list-style-type: none"> a other non-price terms and conditions or information that should also be reported (e.g. other non- liability caps, gas specification, higher heating value requirements etc), please identify what those other non-price terms and conditions are and why you think they should be reported; and/or b some non-price terms and conditions listed in (i)-(vii) that should not be reported, please identify what those non-price terms and conditions are and why you think they should not be reported. 	<p>The ACCC agrees with the proposal to require publication of the listed non-price terms and conditions. This will help address the information asymmetry that exists between service providers and prospective users.</p>
18 Page 52	<p>In relation to past capital contributions, do you:</p> <p>(a) Agree with the proposal to extend the requirement to consider past capital</p>	<p>We note that the adjudicator is already required to take into account the (overall) amount of capital expenditure, and the return of capital recovered, since the commissioning of the pipeline NGR 569(5)(b)(ii) and (iii) (which are proposed in NGR</p>

Number	Question	Response
	<p>contributions to non-scheme pipelines? If not, please explain why not.</p> <p>(b) Think the requirement to consider past capital contributions should only apply to contributions of capital by the user to fund installations or the construction of new facilities, or should it also apply to contributions to the original construction of the pipeline? Please explain your response.</p> <p>(c) Think the extent to which a party has fully recouped past capital contributions should be taken into account by the relevant adjudicator when making an access determination?</p>	<p>113Z).</p> <p>It is appropriate to extend the ability for the adjudicator to consider past capital contributions by individual parties and the extent to which they have been recouped, in the case of non-scheme pipelines. This should include contributions to the original construction of the pipeline.</p>
<p>21 Page 56</p>	<p>Do you agree with the proposal to accord small shippers that are using either a scheme or non-scheme pipeline the option to elect to have a dispute mediated by a regulator appointed mediator? If not, please explain why you think the extension of this option to scheme pipelines should not occur.</p>	<p>Agree that this option should be given to small shippers on scheme pipelines as well, rather than it being at the discretion of the dispute resolution body.</p>
<p>22 Page 58</p>	<p>Do you agree with the proposed approach to each of the transitional arrangements set out in Table 9.1? If not, please explain why not.</p>	<p>The proposed transitional provisions would allow the AER five months to publish their pipeline information disclosure guidelines from the commencement date. In turn, the obligation on service providers to publish the new financial information, historic demand information and cost allocation methodology would only commence four months after the end of the designated financial year in which the AER publishes their guideline.</p> <p>We note the potential for there to be a considerable delay before the new information requirements commence. Assuming a service provider's designated financial year is a standard financial year, if the commencement date is after January 2022 (and the AER take the full five months), the obligation to publish would only after a considerable further period of from November 2024.</p> <p>There is merit in the obligation commencing four months after the AER publishes the pipeline information disclosure guidelines, or sooner. This will ensure there is not an undue delay to this important information being made available to users.</p>
<p>26 Page 68</p>	<p>Do you agree with the proposal to remove the scheme pipeline grandfathering arrangement for contracts that were in force prior to 30 March 1995? If not, please explain why not.</p>	<p>Agree. The ACCC supports the removal of grandfathering for any 'relevant exclusivity rights' arising before 30 March 1995 as this will improve the potential for more efficient outcomes. Such 'relevant exclusivity rights' are manifestly detrimental to competition and should not continue. More generally, the ACCC also supports removing the exemption for pre 30 March 1995 contracts (including any exclusivity rights they contain) from the restriction on preventing or hindering access set out in section 133.</p> <p>We note parties who raise concerns about a loss of rights have already had the benefit of these clauses for some 26 years and the economy has borne the efficiency loss of these effects for this same period. It is reasonable to bring these efficiency losses to an</p>

Number	Question	Response
		end after 26 years.
27 Page 77	<p>Do you agree with the proposal to require the following non-price terms and conditions to be published by Part 18A facility service providers alongside the individual price information?</p> <ul style="list-style-type: none"> - the facility by means of which the service is provided; - the date the contract was entered into or varied and the service term (start and end dates); - the type of service provided (for example, a storage service, compression service) and the priority given to the pipeline service (such as firm, as available or interruptible); - the contracted quantity, which for: <ul style="list-style-type: none"> – a compression service facility should be the maximum daily quantity (in GJ/day); – a storage facility should be: <ul style="list-style-type: none"> • the storage capacity the subject of the transaction (in GJ); and • where relevant, the injection and withdrawal capacity, expressed as a maximum daily quantity or MDQ (in GJ/day); - whether the service is provided on the same or substantially the same non-price terms as those set out in the standing terms published by the service provider; - the price paid for the service as specified in the contract (if these prices are not expressed on a \$/GJ/day or \$/GJ basis, service providers will also be required to publish the price converted to such a basis together with an explanation as to how the conversion was made); - the price structure applicable to the service (for example, whether it is a fixed price or a variable price or a combination of the two); and - any price escalation mechanism applicable to the price paid for the service. <p>If you do not agree with this proposal because you think there are:</p> <p>a) other non-price terms and conditions or information that should also be reported, please identify what those other non-price terms and conditions are</p>	<p>The ACCC agrees with the proposed disclosure requirements for compression and storage facility operators.</p> <p>However the reference to ‘price paid’ could be clarified to ‘price payable’ - see comment on rule 101E(1)(k) below (in relation to pipelines).</p>

Number	Question	Response
	<p>and why you think they should be reported; and/or</p> <p>b) some non-price terms and conditions that should not be reported, please identify what those non-price terms and conditions are and why you think they should not be reported.</p>	
28 Page 77	Do you agree with the proposal to align the requirements for the standing terms with those that will apply to pipeline service providers? If not, please explain why not.	The ACCC agrees there is merit in aligning the requirements for compression and storage facility operators with those applying to pipeline service providers.

Feedback on proposed changes

Section	Agreed measure	Feedback on proposed changes to the NGL / NGR / Regulations
NGR 101E(1)(k)		<p>The ACCC's understanding is that service providers will be required to publish the prices payable under an access contract, rather than the price paid each time it is paid, which would be impractical. There is merit in clarifying the drafting (particularly r 101E (1)(k)) by referring to 'actual prices payable'. This would be particularly relevant where a service provided for under an access contract may not necessarily be used (and a variable charge not incurred).</p> <p>Assuming again that it would be impractical to publish actual amounts invoiced / paid, there is still the question of whether service providers would be required to update their information to report on:</p> <ul style="list-style-type: none"> a) the price set out in the access contract (r 101E(1)(k)), and separately, the price escalation mechanism that applies (r 101E(1)(n)), or b) the price <u>currently</u> payable under the access contract (i.e. calculating the current price given the above). <p>The ACCC's understanding is that the current drafting would require (a) above. While this would reduce the regulatory burden on service providers, it would complicate market participants' efforts in understanding the prices currently being paid.</p>