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The Productivity Commission

The Productivity Commission is the Australian Government’s independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission’s independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

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| 25 October 2013 | | | ***Melbourne Office***  Level 12, 530 Collins Street  Melbourne VIC 3000  Locked Bag 2 Collins Street East  Melbourne VIC 8003  Telephone 03 9653 2100  Facsimile 03 9653 2199  ***Canberra Office***  Telephone 02 6240 3200  www.pc.gov.au |

The Hon Joe Hockey MP  
Treasurer

Parliament House

CANBERRA ACT 2600

Dear Treasurer

In accordance with Section 11 of the *Productivity Commission Act 1998*, we have pleasure in submitting to you the Commission’s final report into the National Access Regime.

Yours sincerely

|  |  |  |
| --- | --- | --- |
|  | Signature of Angela MacRae |  |
| Patricia Scott  Presiding Commissioner | Angela MacRae  Commissioner |  |

# Terms of reference

I, David Bradbury, Assistant Treasurer, pursuant to Parts 2 and 3 of the *Productivity Commission Act 1998*, hereby refer clause 6 of the Competition Principles Agreement (CPA), Part IIIA of the *Competition and Consumer Act 2010* (CCA) and the operation and terms of the Competition and Infrastructure Reform Agreement (CIRA) to the Productivity Commission (Commission) for inquiry and report within twelve months of receipt of this reference.

Through this inquiry, which is a milestone in the Seamless National Economy National Partnership, the Commission is to assess the role and efficacy of the National Access Regime (the Regime) and propose ways of improving its operation to ensure the efficient operation of and investment in essential infrastructure to promote competition and efficient investment in dependent markets.

### Background

The Regime is a regulatory framework that provides an avenue for firms to access certain ‘essential’ infrastructure services owned and operated by others, when commercial negotiations on access are unsuccessful. The Regime is intended to promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets.

The Regime was introduced in 1995 as a key part of the National Competition Policy (NCP), which brought in broad-ranging reforms to enhance productivity and growth in the Australian economy. The regulatory provisions of the Regime are contained in Part IIIA of the CCA and clause 6 of the CPA, which was signed by the Commonwealth and States and Territories in April 1995 to underpin the NCP.

In 2001, the Commission conducted an inquiry into the operation of the Regime. The Commission supported continuation of the Regime and made a number of recommendations to improve its operation — including in relation to clarifying the Regime’s objectives and scope, encouraging efficient infrastructure investment, strengthening incentives for commercial negotiation, and improving the certainty and transparency of regulatory processes. The Australian Government supported most of the Commission’s proposed measures and a number of operational reforms to Part IIIA have since been introduced.

The Council of Australian Governments (COAG) agreed on a new National Reform Agenda in February 2006. As part of that Agenda, COAG signed the CIRA to provide for a simpler and more consistent national system of economic regulation for nationally‑significant infrastructure, including for ports, railways and other key infrastructure. The CIRA included some specific reforms to improve the operation of the Regime, building on the Commission’s 2001 recommendations. Clause 8.1 of the CIRA provides that once it has operated for five years, the Parties will review its operation and terms.

### Scope of the inquiry

In reporting on the Regime and the CIRA, the Commission is to:

1. examine the rationale, role and objectives of the Regime, and Australia’s overall framework of access regulation, and comment on:
   1. the full range of economic costs and benefits of infrastructure regulation, including contributions to economic growth and productivity;
   2. the operation of the Regime relative to other access regimes, including its consistency with those regimes and the effectiveness of the certification process; and
   3. the roles of the National Competition Council, the Australian Competition and Consumer Commission and the Australian Competition Tribunal in the administration of the Regime, and the Minister as decision maker, and the relationship between the institutions;
2. assess the performance of the Regime in meeting its rationale and objectives, including:
   1. the effectiveness of enhancements made to the Regime and the regulatory reforms agreed under COAG’s National Reform Agenda; and
   2. how the Regime has been variously applied by decision makers, but not so as to constitute a review or reconsideration of particular decisions;
3. report on whether the implementation of the Regime adequately ensures that its economic efficiency objectives are met, including:
   1. whether the criteria for declaration strike an appropriate balance between promoting efficient investment in infrastructure and ensuring its efficient operation and use;
   2. whether the criteria for declaration are sufficiently well drafted in the legislation to ensure that its objectives will be met;
4. provide advice on ways to improve processes and decisions for facilitating third party access to essential infrastructure, including in relation to:
   1. promoting best-practice regulatory principles, such as those pertaining to regulatory certainty, transparency, accountability and effectiveness;
   2. measures to improve flexibility and reduce complexity, costs and time for all parties;
   3. options to ensure that, as far as possible, efficient investments in infrastructure are achieved; and
   4. ‘greenfield’ infrastructure projects and private sector infrastructure provision;
5. review the effectiveness of the reforms outlined in the CIRA, and the actions and reforms undertaken by governments in giving effect to the CIRA; and
6. comment on other relevant policy measures, including any non-legislative approaches, which would help ensure effective and responsive delivery of infrastructure services over both the short and long term.

### Process

The Commission is to undertake an appropriate public consultation process including holding hearings, inviting public submissions and releasing a draft report.

The Government will consider the Commission’s recommendations, and the Government’s response will be announced as soon as possible after the receipt of the Commission’s final report.

David Bradbury  
Assistant Treasurer   
[Received 25 October 2012]

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# Abbreviations

ACCC Australian Competition and Consumer Commission

access seeker a third party (as defined in the CCA, which provides that a third party is a person who wants access to an infrastructure service)

ACTO Australian Cargo Terminal Operators

AEMC Australian Energy Market Commission

AER Australian Energy Regulator

AGCNCO Australian Government Competitive Neutrality Complaints Office

AGS Australian Government Solicitor

APIA Australian Pipeline Industry Association

ARTC Australian Rail Track Corporation

BCA Business Council of Australia

CCA *Competition and Consumer Act 2010* (Cwlth) (formerly the *Trade Practices Act 1974*)

CIRA Competition and Infrastructure Reform Agreement

COAG Council of Australian Governments

CPA Competition Principles Agreement

GDP Gross Domestic Product

HVCCC Hunter Valley Coal Chain Coordinator

IPART Independent Pricing and Regulatory Tribunal (New South Wales)

NCC National Competition Council

NPA–SNE National Partnership Agreement to Deliver a Seamless National Economy

QCA Queensland Competition Authority

QCA Act *Queensland Competition Authority Act 1997*

the Regime the National Access Regime

the Tribunal the Australian Competition Tribunal