APPLICATIONS FOR REVOCATION OF COVERAGE ON CERTAIN PORTIONS OF THE MOOMBA TO SYDNEY PIPELINE SYSTEM

STATEMENT OF REASONS

19 NOVEMBER 2003

CONTENTS

EXECUTIVE SUMMARY

This Statement of Reasons relates to the portions of the Moomba to Sydney Pipeline System (**Attachment 1**) comprising the pipelines referred to as:

- the Moomba to Wilton gas transmission pipeline, including compressor stations and other appurtenances. This pipeline is hereinafter described as the **MSP Mainline** and comprises three separate pipeline licences: SA:PL 7 (Moomba to Queensland border); Qld:PPL 21 (South Australia border to NSW border); and NSW:16 (Queensland/NSW border to Wilton).

- the transmission lateral branching off the MSP Mainline at Dalton and running to North Watson in Canberra. This pipeline is hereinafter described as the **Canberra Lateral** and comprises pipeline licence NSW:21.

The criteria for coverage under the National Third Party Access Code for Natural Gas Pipeline Systems (National Gas Code) have been assessed in the same order that they were assessed by the National Competition Council, namely Criterion B, followed by Criterion A, C and D. Paragraph numbers shown in brackets refer to the relevant paragraphs in the Council's final recommendations.

Consistent with the coverage criteria as set out in paragraphs (a) to (d) of section 1.9 of the National Gas Code, the whole MSP Mainline continues to meet Criteria A, C and D, and Criterion B in respect of the MSP Mainline from Marsden to Wilton, but does not satisfy Criterion B for the MSP Mainline from Moomba to Marsden.

Consistent with the coverage criteria as set out in paragraphs (a) to (d) of section 1.9 of the National Gas Code, the Canberra Lateral continues to satisfy each of Criteria A, B, C and D.

In accordance with section 1.34 of the National Gas Code, coverage of the MSP Mainline is to be:

- revoked for that part of the MSP Mainline from the exit flange at the Moomba processing facility to immediately upstream of the off-take point of the Central West pipeline at Marsden, New South Wales; and

- retained for that part of the MSP Mainline from the off-take point of the Central West pipeline at Marsden to the Sydney city gate at Wilton, New South Wales.

In accordance with section 1.34 of the National Gas Code, coverage of the Canberra Lateral is not revoked.

These decisions comply with the requirements of section 1.36 of the National Gas Code that the relevant Minister must decide to revoke coverage of the covered pipeline if not satisfied of one of more of those matters in paragraphs (a) to (d) of section 1.9 of the National Gas Code, but that the relevant Minister may decide to revoke coverage to the extent described, or to a greater or lesser extent than that described, in each application.

GLOSSARY

ACCC	Australian Competition and Consumer Commission
access arrangement	An arrangement for access to a covered pipeline that has been approved by the relevant regulator
ACT	Australian Capital Territory
ActewAGL interconnector	Pipeline connecting the ACT/Queanbeyan distribution network to the EGP (also known as EGP interconnector)
AGL	The Australian Gas Light Company, or an associated company. Does not refer to EAPL or APT.
APL	Australian Pipeline Limited (the responsible entity for the Australian Pipeline Trust)
APT	Australian Pipeline Trust
Canberra Lateral	The transmission lateral branching off the MSP Mainline at Dalton and running to North Watson in Canberra
Central West pipeline	The transmission lateral branching off the MSP Mainline at Marsden and running to Dubbo
Competition Principles Agreement	Agreement signed by First Ministers on 11 April 1995
(the) Code	National Gas Code
Cooper Basin gas producers	Santos/Delhi/Origin Energy/Novus Petroleum/Basin Oil
(the) Council	National Competition Council
coverage criteria	Criteria set out in section 1.9 of the National Third Party Access Code for Natural Gas Pipeline Systems
covered pipeline	A pipeline to which the provisions of the National Gas Code apply
Duke Decision	Duke Eastern Gas Pipeline Pty Ltd [2001] ACompT 2
EAPL	East Australian Pipeline Limited, the owner and service provider of the Moomba to Sydney Pipeline System
EGP	Eastern Gas Pipeline, owned by Duke Energy
Gas Access Regime	The gas access regime consists of the COAG National Gas Pipelines Access Agreement of 7 November 1997, the Gas Pipelines Access Law and the National Gas Code.

GLOSSARY (continued)

GasNet	GasNet Australia (Operations) Pty Ltd
Gas Transportation Deed	A deed between EAPL and AGL Wholesale Gas Limited which reserves a substantial share of MSP capacity until end 2016. Approved as an associate contract under the National Gas Code in March 2000.
Gippsland Basin producers	BHP-Billiton/Esso
(the) Interconnect	The pipeline between Wagga Wagga and Albury/Wodonga connecting the NSW and Victorian Gas networks. The portion between Wagga Wagga and Culcairn in NSW is owned by EAPL, and the portion running from Culcairn to Barnawartha in Victoria is owned by GPU GasNet.
MAPS	Moomba to Adelaide Pipeline System
MSP	Moomba to Sydney Pipeline System
MSP Mainline	the main pipeline running from Moomba to Wilton (Sydney City Gate)
National Gas Code	National Third Party Access Code for Natural Gas Pipeline Systems
NCC	National Competition Council
PJ	Petajoule, equal to 1,000,000 gigajoules (GJ) or 1,000 terrajoules (TJ)
SACBUP	South Australian Cooper Basin Unit Producers
SEAGas pipeline	A 680 km gas pipeline from Port Campbell (in south-west Victoria) to Adelaide currently under construction, and expected to be commissioned in January 2004.
(the) Tribunal	Australian Competition Tribunal
Tasmanian Gas Pipeline	A 732 km subsea and underground pipeline extending from the Australian mainland to Tasmania. It connects with the Eastern Gas Pipeline at Longford in Victoria and comes onshore at Bell Bay in Tasmania's north.
TPA	*Trade Practices Act 1974*
Victorian Gas Hub	The interconnection near Longford, Victoria, of the Eastern Gas Pipeline, Victoria's GasNet transmission system and the Tasmanian Gas Pipeline.

CRITERION B

that it would be uneconomic for anyone to develop another Pipeline to provide the Services provided by means of the Pipeline.

NCC FINAL RECOMMENDATION

1. In its final recommendations received on 18 November 2002, the National Competition Council ('the Council') noted that the owner of the Moomba to Sydney Gas Pipeline (MSP) System, East Australian Pipeline Limited (EAPL), did not rely on Criterion B to support its applications to revoke coverage of the Moomba to Wilton gas transmission pipeline (the MSP Mainline) and the Dalton to Canberra gas transmission pipeline (the Canberra Lateral). EAPL reserved its right to make an application based on this criterion in future. Nevertheless, the Council proceeded to evaluate this criterion consistent with the requirements of the National Third Party Access Code for Natural Gas Pipeline Systems (National Gas Code).

2. The test in Criterion B is whether it is 'uneconomic for anyone to develop another pipeline to provide the services provided by means of the' MSP Mainline and of the Canberra Lateral (Map 1). The services provided by the MSP Mainline were identified as the transport of natural gas from the production fields in the Cooper Basin to the gas sales markets in NSW; and for the Canberra Lateral the services from the Cooper Basin to the gas sales market in the ACT (6.13)[1].

3. The Council considered the terms 'uneconomic' and 'services provided by means of the pipeline' in assessing this criterion. Relevant findings included:

   (a) whether it is 'uneconomic' to develop another pipeline should be assessed in terms of the relevant costs and benefits of developing another pipeline for society as a whole, rather than the private costs and benefits facing the pipeline developer (6.8-6.9);
   (b) if a single pipeline can satisfy demand for relevant services at lower cost than two or more pipelines, the pipeline is then a natural monopoly and competition between two or more pipelines offering the same services would be inefficient (6.11);
   (c) to provide the same services as the MSP Mainline and the Canberra Lateral, another pipeline must be capable of providing gas transportation services from the same start point to the same end points as these pipelines (6.14);
   (d) no other pipelines currently provide, or are capable of being developed to provide the point-to-point transport services of the MSP Mainline or the Canberra Lateral (6.15-6.16); and
   (e) Criterion B is therefore considered to turn on the cost function associated with the provision of the relevant services (6.17).

4. In assessing whether it is uneconomic for anyone to 'develop another pipeline' to provide the services of the MSP Mainline and Canberra Lateral, the Council concluded that:

---

[1] Numbers in brackets refer to relevant paragraphs in the National Competition Council's Final Recommendations, November 2002

(a) new entry may be efficient if the required range of output exceeds the maximum potential capacity of the pipeline (6.18);
(b) the relevant range of output for assessing whether the MSP Mainline and the Canberra Lateral are natural monopolies is the maximum foreseeable demand for relevant services over the next 10-15 years (6.21);
(c) gas transmission pipelines typically exhibit natural monopoly characteristics, meaning that the average cost of transporting an additional unit of gas normally declines until the fully expanded capacity of a pipeline is reached (6.23); and
(d) Criterion B would be satisfied if it can be shown that the maximum potential capacity of the pipelines exceeds the maximum foreseeable demand for relevant services (6.26).

5. The Council concluded that it would not be economic to develop another pipeline to provide the point-to-point services of the MSP Mainline in view of the expandable capacity of this pipeline, the relatively modest costs of expansion compared to the costs of developing another pipeline, and the forecast demand for MSP Mainline services in the next 10-15 years (6.33).

6. Similarly, the Council concluded that it would not be economic to develop another pipeline to provide the point-to-point services of the Canberra Lateral in view of the expandable capacity of this pipeline, the relatively modest costs of expansion compared to the costs of developing another pipeline and the forecast demand for relevant services in 2005 (6.38).

7. On the basis of these conclusions, the Council found that the MSP Mainline and the Canberra Lateral each satisfied Criterion B (6.40).

MINISTERIAL FINDINGS

8. While I accept much of the Council's methodology where it relates to the provision of a single point-to-point transmission service, I am not satisfied that the Council has established an adequate framework for assessing Criterion B, particularly as it relates to the circumstances of the MSP Mainline. This conclusion reflects the rapidly expanding structure of natural gas pipeline networks, compared with their historical configuration when the Code was established in 1998, and the case law available for this criterion. The following considerations are relevant to Criterion B.

Methodology Used

9. Criterion B requires assessment of whether 'it would be uneconomic for anyone to develop another pipeline to provide the services provided by means of the Pipeline'. The use of these terms requires careful consideration. Separate assessment is needed for the MSP Mainline and the Canberra Lateral.

<u>Services Provided by Means of the Pipeline</u>

10. Much of the debate on access regulation (coverage) tends to focus incorrectly on the perceived monopoly characteristics of the pipeline as a physical asset, not whether the services provided by means of the pipeline in question are being provided in a monopoly fashion. There are several reasons for this confusion.

11. The National Gas Code operates under Clause 6 of the Competition Principles Agreement and Part IIIA of the *Trade Practices Act 1974*, known as the National Access Regime. The September 2001 report of the Productivity Commission Review of the National Access Regime has clarified that access regulation does not apply to the facility itself. Regulated access is provided only to the *services* produced by the facility, especially as ‘some facilities may provide a range of services only some of which may be eligible to be declared’[2].

12. Under the National Gas Code, an application for coverage (and revocation of coverage) is assessed against four specific coverage criteria.[3] Each of the coverage criteria relates to the services provided by means of the pipeline and is consistent with the criteria under the National Access Regime for declaration of a service.

13. While the coverage criteria under the National Gas Code apply to the services provided by means of a pipeline, the actual coverage decision relates to the pipeline itself. While a service is declared under the National Access Regime, a physical pipeline is covered under the National Gas Code. In this respect, the coverage process under National Gas Code differs from the declaration process under National Access Regime.

14. Although the MSP Mainline and Canberra Lateral have been covered pipelines since the inception of the National Gas Code in 1998, an access arrangement has yet to be finalised. On 2 October 2003, the Australian Competition and Consumer Commission announced that it had decided not to approve the access arrangement proposed by EAPL and provided details of the amendments required to approve a revised access arrangement.[4]

‘Services Provided’

15. A pipeline can be considered to simultaneously provide a range of gas transmission services to a number of different shippers and suppliers. These services are defined in the National Gas Code specifically to include (without limitation) haulage services such as firm haulage, interruptible haulage, spot haulage and backhaul, the right to interconnect with the covered pipeline and services ancillary to the provision of such services.[5] Services such as linepack, storage and uptake services are generally taken to fall within the ordinary meaning of services provided by means of a covered pipeline. Gas transmission services can be provided to both upstream and downstream markets, including to regional markets being serviced by these pipelines. These pipeline services do not include the production, sale or purchase of gas.

16. The Council did not assess in any detail the extent to which these pipeline services are currently being offered by the MSP Mainline and the Canberra Lateral, their relevance to the present applications for revocation of coverage or the ability of other pipelines to offer one or more of the same services. Instead, the Council has simply categorised them as ‘natural gas transport services’ for each of these pipelines (6.13). By bundling pipeline services in this way, there is a risk of equating them with the pipeline asset when assessing the coverage criteria. As noted above, this only applies to the coverage or revocation decision.

---

[2] *Review of the National Access Regime* (Report No 17), Productivity Commission, 28 September 2001, page 16

[3] *National Third Party Access Code for Natural Gas Pipeline Systems* (National Gas Code) Section 1.9 (a) to (d) – see Attachment 2

[4] *Final Decision: Moomba to Sydney Pipeline System Access Arrangement*, Australian Competition and Consumer Commission (ACCC), 2 October 2003

[5] *National Third Party Access Code for Natural Gas Pipeline Systems* (National Gas Code), Section 10.8

'By Means of the Pipeline'

17. The Council has taken a relatively narrow view of the requirements for Criterion B. It asserts that the use of the word 'pipeline' excludes from consideration 'facilities other than pipelines that could provide the services of the MSP Mainline and the Canberra Lateral' (6.12). No consideration is given to the possibility of other pipeline systems providing these services.

18. The Council argued that downstream pipeline systems such as the Interconnect[6] and the Eastern Gas Pipeline (EGP) to Sydney, should be excluded from this consideration because they do not accommodate the physical transport of gas between Moomba and Sydney (6.16). In the same way, the Council maintained that the ActewAGL interconnector from the EGP to Canberra should also be excluded as it does not provide the same point-to-point service as the Canberra Lateral (6.16).

19. However, in considering the Duke EGP case, the Australian Competition Tribunal ('the Tribunal') found that:

> *'there is no logic in excluding existing pipelines from consideration in determining whether criterion (b) is satisfied'.*[7]

The Tribunal's findings included an assessment of whether the Interconnect and MSP Mainline from Young to Sydney could be developed to provide the services of the EGP.[8]

20. While both the Interconnect and EGP emanate from different starting points, and therefore cannot be considered to provide transportation services out of Moomba, they do provide alternative means of delivering gas into the Sydney and ACT downstream gas markets, and in the case of the Interconnect to regional NSW markets. The extent to which they are part of a more integrated pipeline network that provides alternative links between Moomba and these various downstream markets, deserves consideration.

Pipeline Network

21. Gas pipeline investments in south-east Australia have seen the commissioning of the EGP, the construction of the joint venture SEAGas pipeline, the establishment of the Victorian gas hub and the construction of the Tasmanian Gas pipeline. Together with an increase in pipeline capacity, these investments have enhanced the ability to offer physical and financial swap and other hedging contracts across several pipeline systems (Map 2).

22. The gas transmission system in south-east Australia has now become a more integrated pipeline network. Transportation services to any given location around this network, either upstream or downstream, may be offered through a variety of means and by a variety of transmission service providers. As a consequence, physical capacity

---

6 The Interconnect pipeline between Wagga Wagga and Albury/Wodonga connecting the NSW and Victorian Gas networks. The portion between Wagga Wagga and Culcairn in NSW is owned by EAPL, and the portion running from Culcairn to Barnawartha in Victoria is owned by GPU GasNet.

7 *Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2, paragraph 57

8 *Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2, paragraphs 122 and 141-143

constraints along a single pipeline are unlikely to be a determining factor of gas supply, at least in the medium term.

Point-to-Point Assessment

23. The Council has maintained that pipelines emanating from the same starting point but travelling to other end points, or pipelines starting from different starting points but travelling to the same end point, are not relevant for the purposes of Criterion B (6.14). This may be appropriate in some circumstances, including for regional laterals and off-takes. However, network-related developments should also be taken into account when assessing individual pipelines for coverage and revocation purposes.

24. A Moomba to Sydney gas transmission service in future may be contracted for via the Moomba to Adelaide System (MAPS) and SEAGas pipelines and either of the Interconnect or the EGP pipelines (Map 2). It is therefore no longer appropriate to think in terms of gas transportation as being only from a single well-head or processing plant along a single transmission pipeline to a single off-take point. Yet this is largely the characterisation adopted by the Council for its consideration of the Moomba to Sydney Gas Pipeline System (3.3 and 6.15).

25. Insistence upon 'point-to-point' transportation along a single pipeline, or an associated requirement for physical duplication of an existing pipeline, is not justified in the context of a gas pipeline network. This does not provide a sufficient justification for the Council's conclusion that 'no other pipelines currently provide the point-to-point transport services' of the MSP Mainline (6.15). It would be unduly restrictive to conclude that a single transmission pipeline must provide the same point-to-point service as the MSP Mainline to be considered relevant to Criterion B.

26. This assessment is reinforced by the Australian Gas Light Company's (AGL) public announcement in December 2002 that it had signed contracts for the supply of gas from the Gippsland, Cooper/Eromanga and Surat/Bowen Basins to meet its future gas requirements in its NSW, Victorian, ACT and South Australian markets.[9] Consideration is also being given to the construction of a Ballera to Moomba sales gas pipeline to better integrate the Queensland and NSW markets.[10] Such upstream market developments are indicative of an increasing degree of inter-basin transfers and inter-pipeline competition, and highlight the fundamentally different character of the emerging gas pipeline network.

27. It is entirely consistent with the requirements of the National Gas Code that gas transmission services can be disaggregated across a range of pipeline systems provided they are sufficiently networked and interconnected. In these circumstances, the Council's conclusion:

> *'given that no other pipeline currently provides the services of the MSP Mainline or Canberra Lateral, criterion (b) turns on the cost function associated with the provision of the relevant services'* (6.17)

[9] *AGL Announces New Gas Supply Portfolio*, AGL media release, 18 December 2002

[10] *Major Agreements Herald a New Era in Gas Supply,* Origin Energy Media Release, 18 December 2002

does not hold for an integrated pipeline network. Much of the Council's analysis for Criterion B rests upon this conclusion. An alternative approach that does not rely upon the presumption of point-to-point transmission in such situations is required.

28. A more appropriate consideration is whether these other pipeline systems, acting alone or in combination as part of a network, are being operated or can be developed to provide the range of services provided by means of an existing pipeline. The Council's assessment framework for Criterion B has been based largely on a historical concept of single gas transmission pipeline operating in isolation across south-east Australia, a formulation that bears limited resemblance to current market realities.

Regional pipeline services

29. Regional laterals or pipelines with limited interconnection still warrant a point-to-point assessment even though they may have different starting points in some cases. Consistent with the above findings, some refinement is required to the existing assessment methodology for Criterion B taking into account the transmission services that are provided to these regional laterals by means of other pipelines.

30. The Council recognised that the MSP Mainline provides part of the natural gas transportation services from Longford (Bass Strait) via the Interconnect to Sydney, being that part of the service that lies between Young and Sydney (footnote 64, 6.13(a)). However, the Council did not include these services in its assessment of the requirements for satisfying Criterion B, focusing only on the services provided from Moomba. A point-to-point assessment between Young and Sydney is still appropriate, otherwise the MSP Mainline may operate as a gatekeeper over this alternative route for the supply of gas into the Sydney market.

31. Similarly, the MSP Mainline provides part of the natural gas transport services provided to the Marsden to Dubbo lateral (Central West pipeline), the Young to Lithgow lateral and the Junee to Griffith lateral (Map 2). These laterals rely in part upon the MSP Mainline to provide gas transmission services to their regional markets. All are relevant to consideration of the services provided by means of the MSP Mainline for the purposes of Criterion B.

32. Similarly the MSP Mainline provides transport services to the off-takes at Boorowa, Yass, Goulburn, Marulan, Moss Vale, Bowral, Mittagong and Picton. The Young to Sydney service should be taken into consideration here for the purposes of Criterion B, recognising the increasingly interconnected nature of the gas pipeline network.

33. Services provided by means of the MSP Mainline should not be restricted to Cooper Basin suppliers, given the opportunities for backhaul and financial swap arrangements. Gas suppliers in other areas, including the Gippsland, Bass and Otway Basins, are not precluded from opportunities to supply the Sydney and regional NSW markets via the Interconnect, the Wagga lateral and the MSP Mainline.

Uneconomic for anyone to develop another Pipeline

'Uneconomic'

34. Criterion B is essentially aimed at ascertaining whether the pipeline(s) in question are operating or have the potential to operate as a natural monopoly of gas transmission services, and therefore whether it would be 'uneconomic' to develop another pipeline.

35. The Council noted that the Australian Competition Tribunal did not take a narrow accounting view of what is 'uneconomic' in *Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2, adopting instead a 'social costs approach' that takes account of all relevant costs and benefits to the community as a whole (6.8). The Council also noted expert advice from *Ordover and Lehr 2001*[11] that the total cost of transporting gas is minimised (and the goal of economic efficiency is served) when the activity is undertaken by one firm rather than by two or more firms (6.10).

36. The Council did not seek to refine this methodology in the case of either the MSP Mainline or the Canberra Lateral. Its assessment relies on theoretical propositions of what might be considered 'uneconomic' activity and the fact that no party has proposed the development of another duplicate pipeline between Moomba and Sydney (6.30), or between Dalton and Canberra (6.36).

37. As indicated above, these are not relevant comparisons in an increasingly integrated gas network. The Interconnect and EGP pipeline systems, via the MAPS and SEAGas pipelines, offer potential alternative transport, backhaul and other services between Moomba and Sydney. The Council itself has recognised that:

> *'If an existing pipeline does not presently provide the services provided by the pipeline in question, but could economically be modified or expanded to do so, then criterion (b) is not met'* (6.5).

38. There is nothing in the evidence provided by the Council, or previous rulings by the Tribunal, to suggest this finding is not equally true of a 'pipeline network', not just a 'pipeline'. All indications are this is precisely the direction for gas pipeline investment in south-east Australia, and that existing or committed pipelines may be developed in future to provide such services in competition with the MSP Mainline.

39. The absence of a rigorous framework for applying the term 'uneconomic' to an integrated pipeline network does not override the requirement for satisfying Criterion B. Commercial imperatives, the differing requirements of network related investment and the wider societal implications involved, including for regional markets, must also be taken into account.

'For anyone'

40. The term 'for anyone' was not considered by the Council in terms of its potential monopoly implications. Clearly, where the present owner or operator seeks to duplicate an existing pipeline, there is an attendant risk this may simply consolidate an existing

[11] *Should Coverage of the Moomba-Sydney Pipeline be Revoked?*, Janusz A. Ordover and William Lehr, November 22, 2001, Attachment 5 to Moomba-Sydney Pipeline System, Final Recommendations, National Competition Council, November 2002

monopoly situation and provide little in the way of improved competition for gas transportation services along the pipeline route or as part of the network.

41. It is important to recognise the potential market power implications of having another pipeline developed with the same or similar ownership structures as the present pipeline. 'Anyone' in this instance should generally refer to 'anyone else'. Not only are ownership considerations relevant but contractual arrangements or other commercial structures that may impede the competitive supply of gas pipeline services should be taken into account in determining whether a proposed pipeline development is being undertaken by anyone else.

42. A requirement for independent ownership and arms-length commercial arrangements would seem necessary prerequisites in assessing whether it is 'uneconomic for anyone' to develop another pipeline, in terms of their ability or opportunity to exercise market power in relation to the services provided by means of the pipeline.

'To develop another pipeline'

43. The term 'another pipeline' is treated by the Council in the literal sense of having to replicate the MSP Mainline to provide a point-to-point transport service from the production fields in the Cooper Basin to gas sales markets in the NSW and the ACT (6.15). This is not appropriate to the case of an integrated pipeline network, as already indicated.

44. A more appropriate consideration is the extent to which it is uneconomic to 'develop another pipeline' to provide the range of upstream, downstream and regional gas transportation services provided by means of the MSP Mainline. As noted above, all regional NSW pipelines and off-takes, other than those along the EGP, presently rely upon services provided by means of the MSP Mainline including the Dubbo, Northern and Griffith laterals.

45. Consistent with the Tribunal's approach in the Duke Decision the Council recognised that the term 'develop' is sufficiently broad to encompass modifications or proposed enhancements to existing pipelines (6.5). There is no requirement for a fully interconnected transmission network to be in place at the time of a coverage decision.

46. The Council has adopted a 10-15 year timeframe for considering in demand and output terms whether the MSP Mainline and Canberra Lateral are to remain natural monopolies (6.21). Construction of the SEAGas pipeline will see the physical interconnection of southern Victoria and Cooper Basin suppliers with the rest of the south-east Australia gas network within twelve months. First gas flows along the SEAGas pipeline are scheduled for 2004 (4.69). Current lack of technical interconnection between Moomba and other elements of the gas pipeline network via the SEAGas pipeline should not be considered a limiting factor.

47. It is reasonable to allow for the fact that the owners and operators of the Moomba to Adelaide, SEAGas, Victorian transmission and Eastern Gas Pipelines all have an incentive to 'develop' their pipeline systems to provide an equivalent range of services to those currently provided by means of the MSP Mainline from Moomba to Sydney. This is exactly the policy outcome that the Council of Australian Governments has sought to achieve in reaching agreement to create a national market that is characterised

by more competitive gas supply arrangements (4.6). Such arrangements should include the competitive supply of gas transportation services where appropriate.

48. Finally, the requirements for Criterion B should also take into account whether it is uneconomic for anyone to develop or extend a regional pipeline in competition with the gas transmission services provided by means of the MSP Mainline to regional centres. This includes whether the MSP Mainline has the ability to exercise market power in relation to regional NSW laterals. Consideration of regional impacts also serves to reinforce the requirement to take account of wider societal implications noted above.

Suggested Approach

49. The Council did not consider whether the methodology used for assessing Criterion B, including expert advice provided to the Council by *Ordover and Lehr 2001,* was equally appropriate to the different circumstances of the MSP Mainline and of the Canberra Lateral. In noting the views of the Australian Competition Tribunal, the Council has simply indicated that it considered Criterion B is satisfied if a single pipeline can be shown to satisfy demand for relevant services at lower cost than two or more pipelines (6.11). This conclusion has the presumption of a monopoly service provider.

50. At least three different situations would seem relevant to the term 'develop another pipeline' under Criterion B:

(1) A single gas pipeline to provide a service, either from a new starting point and/or to a new delivery point. This could apply for example in the case of a greenfield project or the construction of a new regional lateral.

(2) A second pipeline (or lateral) to provide a service to locations already receiving either upstream or downstream transportation services from an existing pipeline (whether covered or not). This situation is relevant to that of the Canberra Lateral.

(3) An existing pipeline service (whether covered or not) that is progressively exposed to competition for transmission services as part of an interconnected gas pipeline network. Such a situation may be considered analogous to the service of transporting gas on the MSP Mainline from Moomba to Sydney.

51. I accept that the *Ordover and Lehr* methodology pertains more to the first and second situations outlined above, including that of the Canberra Lateral and other regional laterals, given the point-to-point nature of these services. However, it is not evident that the *Ordover and Lehr* methodology is as relevant in the case of the MSP Mainline, given the role of an integrated pipeline network in promoting competition for gas transportation services.

52. At least three independent gas transmission systems at each major up-take and off-take point would seem the minimum necessary for effective competition in gas transmission services across a pipeline network. This recognises the market power concerns of either single or duplicate pipelines, concerns about parallel pricing of transmission services or the maintenance of artificially high or low prices, and the need for separate and arms length commercial and ownership arrangements. Desirably, this should take the form of multiple shippers being able to contract independently along each of these pipelines.

53. There should not be a presumption of access regulation or monopoly service provision. This is especially the case where three or more independent pipeline systems can be shown to be in competition. Given the need for arms-length transactions, careful consideration should also be given to ownership, contractual and other arrangements when there are a limited number of independent pipeline connections.

Monopoly Characteristics of each Pipeline

MSP Mainline

54. I consider that the MSP Mainline is facing the third situation identified above, where an existing pipeline is being progressively exposed to competition for gas transmission services as part of an integrated network (paragraph 50.3).

55. The principal question for Criterion B is whether it would be uneconomic to develop another pipeline to provide the services provided by means of the MSP Mainline. The issue centres upon whether the MSP Mainline is operating, or has the potential to operate, in a monopoly fashion under the set of pipeline structures and investment conditions that presently exist. The greater the level of interconnection and network integration, and the more sophisticated the wholesale market for network service purposes, the less likely it is that an individual pipeline system can exert market power.

56. No evidence was presented in the Council's final recommendations that the actual circumstances facing the MSP Mainline with respect to its Moomba to Sydney service are still of a monopolistic nature. The characteristics identified by the Council are generic to natural gas pipelines (6.22-6.25); they simply record the nature of pipeline construction, operation and expansion. While it is acknowledged that natural gas pipelines inherently have monopoly-type characteristics, these factors do not guarantee that a pipeline can continue to operate as a natural monopoly under all network configurations.

57. Similarly, the Council did not analyse the ability or otherwise of the MSP Mainline to exert market power in such a way as to influence pipeline investment. Indeed, the question of competition between pipelines is assessed in relation to Criterion A for upstream and downstream markets, not for Criterion B in relation to gas transmission services. The Council has argued from the theoretical proposition that Criterion B is satisfied if it can be shown that the maximum potential capacity of these pipelines exceeds the maximum foreseeable demand for relevant services and if the pipeline is likely to exhibit declining costs over the range of output up to this maximum expandable capacity (6.26).

58. Neither of these considerations is definitive here in the context of a pipeline network, and bears limited relationship to the market realities facing the MSP Mainline. The Council's underlying assumption of a single point-to-point transportation service from Moomba to Sydney has been shown to be flawed. Lower average cost is not a guarantee of market success or competitive market outcomes. The quality and reliability of transport supply, the level of price discovery and transparency, the range of service delivery options, the degree of competition between pipelines and customer concern for value in the services actually provided are all important.

59. Present constraints on the Moomba to Adelaide Pipeline will be alleviated by the construction of the SEAGas pipeline. With the proposed construction of a Ballera to

Moomba sales gas pipeline, Cooper Basin gas suppliers will have at least three options to secure the competitive supply of gas transportation services into Queensland, NSW and South Australian/Victorian gas markets respectively. Similarly, downstream users in the Sydney market will have at least two other avenues to contract for the supply of gas via the Eastern Gas Pipeline and the Interconnect, in addition to the MSP Mainline. Assuming arms-length commercial arrangements are maintained, each of these routes is capable of providing a delivery service from the Cooper Basin as well as from other gas suppliers.

60. Given the increasingly integrated nature of the gas transmission systems in south-east Australia, I find that both upstream and downstream transportation services between Moomba and Sydney are capable of being provided by this network. Suffice it to say that for the purposes of Criterion B, pipeline developers have demonstrated that it is economic to develop significant parts of the gas pipeline network across south-east Australia. At least in part, these investments are in competition with the MSP Mainline transport service between Moomba and Sydney.

61. With the exception of regional pipeline services and the Interconnect (see below), I therefore accept the view that the MSP Mainline may no longer be able to afford to display the range of behaviours typical of a monopoly pipeline for the provision of its gas transportation services between Moomba and Sydney.

Regional NSW Pipelines and the Interconnect

62. This conclusion with respect to the MSP Mainline has an important qualification. As noted above, NSW laterals and other off-takes rely upon a transmission system that incorporates pipeline services provided by means of the MSP Mainline. I also consider that the Interconnect is facing the second situation identified above (paragraph 50.2), where an existing pipeline relies upon either upstream or downstream gas transportation services from the MSP Mainline.

63. Neither the Interconnect nor NSW regional pipelines formed part of EAPL's application for revocation of the MSP Mainline. Because of its focus on a point-to-point assessment only between Moomba and Sydney, the Council did not consider the gas transportation services provided to these pipelines by means of the MSP Mainline. These services remain crucial to an assessment of Criterion B, given the importance of the MSP Mainline to regional centres and as an alternative means of gas transmission to the Sydney market via the Interconnect.

64. The issue in each case is whether the gas transmission services of the MSP Mainline are provided, or have the potential to be provided in a monopoly fashion under present or likely future market structures such that it would be uneconomic for anyone else to develop another pipeline to service these regional centres or the downstream Sydney market.

The Interconnect

65. The Interconnect is a bi-directional flow pipeline with nominal physical capacity of approximately 34 PJ per annum south bound.[12] This capacity may be contracted to serve both Victorian and NSW gas markets, including regional markets upstream and

[12] *Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2, paragraph 122

downstream of Young (Map 2). Access to north bound users is presently limited by compression limits on the Victorian GasNet system at Wollert, with shipments in the order of 6 PJ per annum (Table 2). According to the Tribunal, there is scope for north bound capacity to be increased to 23-24 PJ per annum without additional investment through backhaul arrangements.[13]

66. Consistent with the methodology developed here for Criterion B, a sufficiently competitive and integrated pipeline network would not discriminate between north and south bound shipments along the Interconnect and would not diminish incentives for further development of this pipeline. North bound capacity of the Interconnect can be matched to that south bound without duplication or looping, simply by addressing the compression limits at Wollert. This would provide equivalent transmission services to Victorian gas suppliers seeking to compete for both Sydney and regional NSW centres.

67. Given these capacity considerations and EAPL's common ownership of the Interconnect north of Culcairn, as well as the Wagga lateral and the MSP Mainline, there is considerable doubt that it would be economic for anyone else to develop another pipeline to provide the services provided by the MSP Mainline to the Interconnect in servicing both regional NSW centres and the downstream Sydney market.

68. Without significant changes to present conditions, including separate and independent contracting arrangements, the Interconnect pipeline does not represent a viable alternative to the supply of gas transmission into Sydney or other regional markets. Instead, there is a real risk that transportation services along the MSP Mainline can be managed so as to limit incentives to develop another pipeline, including to discourage an upgrade of north bound compression on the Interconnect or to reduce incentives for the development of a trading hub with the Eastern Gas Pipeline at Wilton.

69. Under these circumstances, it would not be economic for anyone to develop another pipeline to provide the services provided by means of the MSP Mainline to the Interconnect between Young and Sydney. This part of the MSP Mainline would continue to satisfy Criterion B.

70. I note that EAPL included the Interconnect in the proposed access arrangement for the Moomba-Sydney Natural Gas Pipeline System on the basis that if its application for revocation of the MSP Mainline and the Canberra lateral is unsuccessful, the Interconnect should be viewed as part of the covered pipeline system, and that if successful, it should not be covered.[14] Code requirements for regulatory approval of associate contracts would still apply if the Interconnect is covered. The Gas Transportation Deed between EAPL and AGL Wholesale Gas, which was approved by the Australian Competition and Consumer Commission (ACCC) in 2000, is an example of an associate contract applying from Moomba along the MSP Mainline.

Regional NSW Laterals

71. A point-to-point assessment is also relevant in the case of the NSW regional laterals and off-takes. The MSP Mainline is in a dominant position with respect to these pipelines. There are no alternative sources of supply for gas transmission services other than via

---

[13] *Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2, paragraph 122

[14] *Final Decision, East Australian Pipeline Limited, Access Arrangement for the Moomba-Sydney Pipeline System*, Australian Competition and Consumer Commission, 2 October 2003, page xiv

the MSP Mainline, or via the Interconnect and the Wagga Lateral and then including the MSP Mainline (Map 2). A capacity of around 14 PJ per annum from Moomba to Young is required to provide gas transmission services to prospective users at Dubbo, Lithgow and Griffith (Table 2).

72. Maximum capacity of the MSP Mainline of 172 PJ per annum far exceeds the foreseeable demand for relevant services to these regional centres. Competition between two or more pipelines offering the same services as the MSP Mainline to these regional pipelines would be inefficient. I therefore accept the Council's methodology that a single pipeline can continue to satisfy demand at lower cost than two or more pipelines in these circumstances (6.11).

73. In these circumstances, it would be uneconomic for anyone to develop another pipeline to provide the services provided by the MSP Mainline to these regional NSW laterals, including upstream of the Interconnect at Young to the connection with the Central West pipeline from Marsden to Dubbo. This part of the MSP Mainline would also continue to satisfy Criterion B.

<u>Canberra Lateral</u>

74. The circumstances facing the Canberra Lateral are more typical of the second situation outlined above (paragraph 50.2), namely the construction of an additional transmission pipeline, the ActewAGL interconnector from the EGP, to a location already receiving transportation services from at least one other pipeline (the Canberra Lateral).

75. I therefore accept that the Canberra Lateral should be subject to relevant aspects of the Council's methodology for the consideration of monopoly characteristics under Criterion B.

76. The ActewAGL (or EGP) interconnector has the capacity to supply the same downstream haulage services as the Canberra Lateral (4.62). Existing and expandable capacity of these two pipelines considerably exceeds forecast ACT demand. There is no evidence of an emerging market for gas transportation services to the ACT, even with the link to the south-east Australian network.

77. Similarly, there is no evidence of an unbundling of these gas transportation services with transmission tariffs rolled into the ActewAGL distribution tariffs set for the ACT (4.136). I would therefore agree with the Council's assessment that the main benefit of the EGP interconnector has been increased security of supply to the ACT market (7.262).

78. It is also difficult for the EGP interconnector to be regarded as 'another pipeline' for the purposes of Criterion B because of common ownership interests. The Canberra Lateral is owned by EAPL which is 30 per cent owned by AGL through the Australian Pipeline Trust. The EGP interconnector is owned by ActewAGL which is also the dominant gas retailer in the ACT market. The existence of only two pipelines with common ownership risks monopoly control of gas transportation services into the ACT market.

79. Without significant improvements to these conditions, such as changes to ownership structures, the divestment of certain interests or the independent provision of at least a third set of gas transmission services within one of the two existing pipelines, it is likely

to remain uneconomic for anyone else to develop another pipeline to provide the services provided by means of the Canberra Lateral.

Conclusion for Criterion B

MSP Mainline

80. I have not been affirmatively satisfied that it is uneconomic for anyone to develop another pipeline to provide all the services provided by means of the MSP Mainline under Criterion B. It is or has been economic to develop other pipelines to provide gas transportation services in competition with the MSP Mainline between Moomba and Sydney.

81. Based on the above assessment, a summary of relevant considerations includes:

(a) insistence upon physical duplication or a single point-to-point transportation service is not appropriate for an increasingly integrated gas pipeline network;
(b) considerations relevant to a pipeline being progressively exposed to network competition must be taken into account;
(c) it has been economic to develop other gas pipelines such as the Eastern Gas Pipeline, the SEAGas pipeline as well as the Victorian Gas Hub in competition with the MSP Mainline. The present lack of technical interconnection is not a decisive factor, given the committed investments in place;
(d) the MAPS and proposed Ballera to Moomba pipelines offer alternative means of gas transmission out of Moomba in competition with the MSP Mainline to NSW;
(e) the SEAGas pipeline, due for completion in 2004, will alleviate existing constraints on the Moomba to Adelaide Pipeline;
(f) as part of this integrated network, other pipeline owners and operators can be expected to further develop their pipelines to provide a wide range of services in competition with those currently provided by the MSP Mainline;
(g) there are at least two alternative means for downstream gas users contracting gas pipeline services to Sydney via the Interconnect and Eastern Gas Pipeline, including for physical swaps and back haul arrangements;
(h) both upstream and downstream gas transmission services between Moomba and Sydney are capable of being provided on a competitive basis by this integrated pipeline network, provided ownership considerations are not an issue; and
(i) these competitive arrangements can be achieved within the timeframe of 10-15 years adopted by the Tribunal for considering whether the EGP was likely to remain a natural monopoly in output terms.[15]

82. This conclusion with respect to the MSP Mainline between Moomba and Sydney has an important qualification. The Interconnect and regional NSW laterals do not have alternative supply options and continue to rely solely upon the gas transportation services provided by means of the MSP Mainline. With current capacity and cost considerations as identified by the Council and under existing ownership and network structure arrangements, the MSP Mainline is in a position to act as gatekeeper over the provision of these pipeline services and to reduce the incentive to investments that would encourage greater inter-pipeline competition.

---

[15] *Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2, paragraph 138

83. Without significant improvements to current arrangements, including separate and independent contracting arrangements along the Interconnect from Young to Sydney and to service regional NSW centres, I am satisfied that it is uneconomic to develop another pipeline to provide those services provided by means of the MSP Mainline to the Interconnect and to regional NSW pipelines. These services provided by means of the MSP Mainline continue to satisfy Criterion B.

84. Under section 1.34 of the Code (see Attachment 2), I may decide to revoke coverage of the MSP Mainline to a greater or lesser extent than requested by the applicant, having regard to the part of the pipeline that it is necessary to provide services that prospective users may seek. Unlike the National Access Regime, the provisions of the National Gas Code require coverage and revocation decisions to apply only to a physical part of the pipeline, rather than to the capacity and other services provided by means of the pipeline even though these form the basis for the coverage criteria.

85. Accordingly, and taking into account the above assessment on the monopoly characteristics of the MSP Mainline (paragraph 61), coverage should be revoked for that part of the pipeline between the exit flange at the Moomba processing facility to immediately upstream of the off-take point of the Central West Pipeline at Marsden as the first regional lateral in NSW. This represents some 72 per cent of the pipeline's length (see Map 2).

86. However, access is required to the remaining part of the MSP Mainline between Marsden and Wilton to provide upstream and downstream gas transmission services to prospective users in Sydney and regional NSW centres, including via the Interconnect. As this part of the MSP Mainline continues to satisfy Criterion B, the question of coverage or revocation relies upon satisfaction of the other three coverage criteria.

<u>Canberra Lateral</u>

87. Based on the above assessment, a summary of relevant considerations for the Canberra Lateral includes:

   (a) whether it is economic to develop another pipeline should be assessed in terms of the relative costs and benefits for society as a whole;
   (b) existing and expandable capacity along the Canberra Lateral and the ActewAGL (EGP) interconnector considerably exceeds forecast ACT demand;
   (c) the decision not to cover the Eastern Gas Pipeline in May 2001 does not guarantee that open access conditions prevail for gas deliveries to the ACT market;
   (d) there are substantial common ownership characteristics between the Canberra Lateral and the EGP interconnector, including with the dominant distributor and retailer in the ACT gas market;
   (e) consideration of the Canberra Lateral should include a point-to-point assessment as this pipeline is not sufficiently part of an integrated gas network;
   (f) there is no proposal for a third independent pipeline connection to the ACT;
   (g) the existence of only two pipelines with common ownership risks monopoly control of gas transportation services to the ACT market;
   (h) the main benefit of the EGP interconnector has been the increased security of supply to the ACT market;
   (i) there is no evidence of an emerging market for the competitive provision of gas transportation services to the ACT, even with the linkage to the integrated gas network via the EGP interconnector; and

(j) there is no evidence of unbundling of these services, with gas transportation tariffs rolled into the ActewAGL distribution tariffs for the ACT.

88. Consequently, I am satisfied that that it is uneconomic for anyone to develop another pipeline to provide the services currently provided by means of the Canberra Lateral. I therefore find that the Canberra Lateral continues to satisfy Criterion B.

CRITERION A

> ***that access (or increased access) to the Services provided by means of the Pipeline would promote competition in at least one market (whether or not in Australia), other than the market for the Services provided by means of the Pipeline***

NCC FINAL RECOMMENDATION

89. The National Competition Council has adopted a comprehensive framework, developed by *Ordover and Lehr,* for assessing Criterion A. This framework has three components, namely the ability or otherwise of the pipeline owner to exercise market power by:

    (a) charging monopoly prices for transport services in dependent markets (7.109-7.494);
    (b) engaging in explicit or implicit price coordination or collusion (7.495-7.511); and
    (c) possessing other incentives or opportunities to distort competition in adjacent markets (7.512-7.616).

90. The Council considered that this framework is consistent with the approach in the Duke Decision and addressed each of the issues identified by the Tribunal in pursuing these lines of inquiry (7.105).

Monopoly Pricing

91. The Council concluded that the MSP Mainline and the Canberra Lateral both have the ability and the incentive to exploit market power by charging monopoly prices in dependent markets, to the detriment of market competition (1.27). Relevant findings included:

    (a) monopoly gas pipelines are able to exploit market power by setting prices for transport services substantially in excess of long-run economic costs (1.28);
    (b) the critical determinant of whether monopoly pricing will be profitable is whether there is effective competition in dependent markets to constrain such behaviour (1.29);
    (c) in upstream gas markets, the only viable alternative at present – the Moomba to Adelaide Pipeline – is capacity constrained (1.31);
    (d) nor is there likely to be scope to divert gas sales into Queensland markets in the foreseeable future (1.31); and
    (e) while there are signs of emerging competition, there is no evidence that downstream gas sales markets in Sydney and Canberra are effectively competitive at present (1.33).

92. In considering whether monopoly pricing is likely to result in higher delivered prices for gas and/or higher gas production, the Council concluded that:

    (a) shipping tariffs to Sydney since 2000 were not indicative of vigorously competing pipelines (1.35);
    (b) there is little evidence of effective competition at retail level (1.36);

(c) the MSP's ability to monopoly price may be especially potent in regional markets (1.37); and
(d) collectively, the evidence suggests that downstream gas sales markets are not sufficiently competitive to constrain Moomba to Sydney Pipeline System pricing (1.39).

93. Based on expert advice, the Council concluded that assessed MSP pricing outcomes provided corroborative evidence to these structural conditions that competition in upstream and downstream markets is not sufficiently effective to constrain monopoly pricing, on the basis that current MSP tariffs are:

(a) 32% above the ACCC's likely regulated tariff under the National Gas Code;
(b) 28%-50% higher than tariffs derived from an initial capital cost base reflecting the 1994 purchase price; and
(c) 29% above estimated contestable market prices under hypothetical new entrant pricing (7.401).

94. In assessing whether coverage would promote competition in dependent markets, the Council concluded that coverage is likely to:

(a) promote competition in upstream markets regardless of whether lower transport tariffs are passed on to customers, or are expropriated in the short run by upstream producers (7.458); and
(b) promote competition in downstream markets regardless of whether lower transport tariffs are passed on to customers, or are expropriated in the short run by downstream gas sellers (7.413).

<u>Price Coordination or Collusion</u>

95. The Council acknowledged that there is a reduced risk of price collusion and parallel pricing behaviour between the MSP and the EGP (7.503), but cited expert views that it cannot be 'dismissed out of hand' (7.504). The Council also noted Duke Energy's view that the Australian Competition Tribunal was not persuaded there was a significant risk of price coordination in the Duke Decision (7.508).

<u>Incentives to Distort Competition</u>

96. The Council found there is a very close relationship between the owner of the pipeline EAPL, the controlling owner Australian Pipeline Limited (APL) and the 30 percent beneficial owner AGL. Legal restrictions on discriminatory behaviour were considered unlikely to constrain APL's ability to use the MSP Mainline to advantage its affiliates and so distort competition in downstream markets (1.64), including through the Gas Transportation Deed at least until 2006 (1.69).

97. The Council noted that the MSP's ability to distort competition would otherwise be constrained by a finding of effective competition in downstream markets, but argued that competition in these markets was still evolving (1.72).

<u>Conclusion</u>

98. Based on this assessment, the Council concluded that both the MSP Mainline and the Canberra Lateral satisfy Criterion A, as coverage would:

(a) promote competition in both upstream and downstream markets as a consequence of the ability and incentive of the pipelines to charge monopoly prices for transport services; and
(b) promote competition in downstream markets as a consequence of the ability and incentive of the pipelines to distort competition in those markets through vertical leveraging (7.617).

MINISTERIAL FINDINGS

Methodology Used

99. The primary purpose of regulated access (coverage) is to promote third party access to services provided by means of a natural gas pipeline so as to remove potential barriers to entry for uncontracted capacity and to promote competition in upstream and downstream markets. Such barriers can arise due to opportunities for monopolistic or anti-competitive behaviour by pipeline owners or operators that reduce competition in either upstream or downstream markets.

<u>Promote Competition in at least one market</u>

'Promote Competition'

100. I accept the broad framework developed by the Council, based on expert advice from *Ordover and Lehr 2001,*[16] for assessing whether access regulation will promote competition by limiting the ability or incentive of pipeline owners and operators to exploit market power, namely:

(1) the ability of the relevant pipeline owner to charge monopoly prices;
(2) the ability of the relevant pipeline owner to engage in explicit or implicit price collusion; and
(3) other incentives or opportunities to distort competition in dependent markets (7.104).

101. This broad framework is adopted below for ascertaining whether access regulation would promote competition in at least one dependent market.

'In at least one market'

102. A clear distinction is drawn in Criterion A between 'the market for the services provided by means of the pipeline', namely the market for gas transmission services provided by the MSP Mainline and the Canberra Lateral, assessed under Criterion B, and the ability or otherwise for pipeline coverage to promote competition in a related market serviced by that pipeline. The latter is assessed here.

103. Criterion A turns on the ability or otherwise of a pipeline to exploit market power in at least one dependent market, either upstream or downstream (whether or not in Australia). There are a number of dependent markets potentially affected by a decision to revoke coverage of the MSP Mainline and Canberra Lateral, including the upstream

[16] *Should Coverage of the Moomba-Sydney Pipeline be Revoked?*, Janusz A. Ordover and William Lehr, November 22, 2001, Attachment 5 to Moomba-Sydney Pipeline System, Final Recommendations, National Competition Council, November 2002

activities of gas exploration, production and processing and downstream reticulation, wholesaling and retailing (7.3).

104. I accept the market delineation provided by the Council, namely that the relevant dependent markets are:

(a) the upstream gas sales market for gas produced in the Cooper Basin;
(b) downstream gas sales markets along the routes of the MSP Mainline and Canberra Lateral (regional NSW markets); and
(c) downstream gas sales markets for Sydney (via the MSP Mainline) and in the ACT (via the MSP Mainline and the Canberra Lateral) (7.41).

<u>Ability or incentive to exploit market power</u>

105. Each element in the *Ordover and Lehr* framework (paragraph 100) relies upon an assessment of the ability or incentive of the pipeline owner or operator to limit competition in a dependent market. The Australian Competition Tribunal has resolved in the Duke Decision that:

> '*the notion of promotion of competition involves a consideration that if the conditions or environment for improving competition are enhanced, then there is a likelihood of increased competition that is not trivial*.'[17]

106. Notwithstanding the expert argumentation developed by the Council, the conclusion as to what would be a non trivial outcome in competition terms remains a relatively subjective one. In a dynamic and evolving market, subject to many interactions and imperfections, it is by no means clear what should be viewed as a sufficient increase in competition in an upstream or downstream market as to warrant the removal of access regulation.

107. This is especially the case in ascertaining whether a pipeline owner or operator has sufficient market power in an upstream or downstream market. Much of the Council's analysis relies on the conclusion that Criterion B has been met, reflecting in part the reordering of the coverage criteria. Consequently, the Council does not distinguish between the extent to which curtailing market power through access regulation would actually promote competition or simply result in a transfer of monopoly rent upstream or downstream (7.413 and 7.458).

108. Similarly, the Council does not draw an adequate distinction between the actions of pipeline owners or operators that limit competition and other impediments to upstream or downstream competition not related to access. Criterion A relates to whether access or increased access to a pipeline would promote competition in a related market, not the level of competition in that market. Non competitive behaviour by other participants in related markets should not provide a justification for regulation of gas pipelines, unless this behaviour is also attributed to, or directly associated with the access related activities of the pipeline owner or operator.

109. Some reassessment and refinement of the Council's approach is therefore required.

---

17 *Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2, paragraph 75

Suggested Approach

110. Building on the framework developed by the Council, certain minimum requirements are necessary both to limit the ability of gas transmission pipeline owners and operators to exert market power in dependent markets and to constrain the ability of either upstream or downstream participants to exercise power in that market by the way they contract for these pipeline services, namely that:

(a) at least three independent (either competitive or regulated) pipelines can offer, or are capable of offering, transmission services in each dependent market;
(b) competitive market factors, as identified by the Tribunal, either should be or are likely to be sufficiently evident in each dependent market, including the absence of price collusion or coordination;
(c) provision of gas pipeline services in an upstream or downstream market should not be qualified to a significant degree by vertical integration or horizontal consolidation; and
(d) consideration may be given to individual circumstances on a case-by-case basis, such as the specific requirements for regional areas.

111. To avoid a situation of potential duopsony or duopoly control, the equivalent of at least three sets of transmission pipeline services are the minimum necessary to promote competition in each dependent market. It is not material whether these pipelines are covered or uncovered so long as there is transparency in the price and non-price terms and conditions that apply to each.

112. Each of these transmission services should be independent and not be capable of influence or control through cross-ownership arrangements. Such services may be provided either by physically distinct gas pipelines or, using the SEAGas pipeline as an example, by quite distinct ownership and contractual arrangements which effectively amount to separate commercial 'pipelines within a pipeline'.

113. In itself, this may not be sufficient, however. As well as competition from other pipelines, the Tribunal identified a number of factors influencing the ability of a pipeline to charge monopoly prices in a dependent market (7.105 (a)). These include the countervailing power of other market participants, market behaviour in upstream and downstream markets, available pipeline capacity, gas reserves and demand issues and the role of long term contracts. These considerations are assessed in paragraphs 117-160.

114. Consistent with the *Ordover and Lehr* framework, account must be taken of other factors which affect the depth of competition or otherwise result in price collusion or price coordination (7.105 (b)). This includes the scope for parallel pricing, long term contracts, price discrimination, information disclosure requirements and the role of spare capacity in constraining market behaviour. These concerns are addressed in paragraphs 161-167.

115. Lastly, consideration is also required of particular forms of industry organisation or structure such as vertical leveraging and horizontal consolidation, with a judgement made of the opportunities or incentives to distort competition (7.105 (c)). These matters are assessed in paragraphs 168-184.

116. Taken together, these requirements provide a comprehensive basis for assessing whether pipeline owners and operators have sufficient ability or incentive to exercise market power in either upstream or downstream markets. They are consistent with the Tribunal's rulings in the Duke Decision case and the AGL Cooper Basin decision 1997.[18]

Ability to Charge Monopoly Prices

Upstream Markets

117. Both the MSP Mainline and the Canberra Lateral have an upstream market with the same product, functional, geographic and temporal characteristics, namely the upstream sales market for natural gas produced in the Cooper Basin (7.41). Separate consideration of the Canberra Lateral in this context is not necessary.

118. Two transmission pipelines under different ownership structures currently service the Cooper Basin market, namely the MSP Mainline and the Moomba to Adelaide Pipeline System. The SEAGas pipeline to South Australia, presently under construction, can be expected to relieve existing capacity constraints on the MAPS. The Council acknowledged that once this pipeline is completed in 2004, total spare capacity on pipelines serving South Australia is likely to be substantial (7.146).

119. Given the more integrated nature of the gas transmission network, the fact that the MAPS may be fully contracted to 2005 does not prevent the possibility of swaps or backhaul arrangements for NSW/ACT sales gas occurring prior to this date. The potential for further capacity expansions on this pipeline over time is also a relevant consideration (7.143). The Tribunal in the Duke Decision noted that:

> '*The market transactions of backhauls and swaps mean that gas quantities can exceed physical capacity with no expenditure*" and that "*the potential is there for capacity to be increased as a result of those transactions as competition develops in the gas market*.'[19]

120. As previously noted, construction of a third sales gas pipeline from Ballera to Moomba was mooted in December 2002. This announcement was made after the Council had presented its final recommendations, in the context of an AGL announcement of new gas supply arrangements to deliver substantial quantities of Queensland coal seam methane from 2006.

121. Development of a Ballera-Moomba interconnect as a bi-directional pipeline, would provide southern and Cooper Basin suppliers with the means of diverting sales gas into Queensland in competition with NSW, ACT, South Australian and Victorian markets. The Council acknowledged that it was not able to assess the implications of diverting sales gas into Queensland (7.161). While feasibility arrangements are yet to be completed, and provided independent ownership and contractual arrangements are put in place, a competitive outcome for the MSP Mainline rather than a regulated one is more likely to allow such a pipeline to proceed.

---

18 *Alliance Petroleum Australia Pty Ltd; Review of the Gas Access Regime Application for a review of a determination of the Australian Competition and Consumer Commission made on 27 March 1996 revoking authorisation No A90424 and granting a further authorisation (AGL Cooper Basin Natural Gas Supply arrangements* [1997] ACompT 2

19 *Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2, paragraph 94

122. Despite the Council's concerns about capacity and other technical constraints on the Roma to Brisbane pipeline (7.162), advice to my Department from the Queensland Department of Natural Resources and Mines is that the Roma to Brisbane pipeline is currently being looped to provide additional capacity.[20]

123. These developments suggest that within perhaps two to three years, Cooper Basin gas producers could have two viable alternatives to the MSP Mainline to compete for gas sales to downstream markets. This is well within the five to ten year timeframe adopted by the Council for giving principal weight to factors likely to influence the competitive environment (7.57). In the absence of specific concerns from the Council about upstream competition as it relates to the MSP Mainline, this also suggests that the Tribunal's requirement for competitive market factors to be sufficiently in evidence is also likely to be met.

124. Given these developments, I do not agree with the Council's conclusion that the MSP Mainline is likely to have sufficient market power upstream to charge monopoly tariffs for shipping Cooper Basin gas (7.196). Instead, I find that the requirements identified in paragraph 110 to promote competitive market behaviour appear to be satisfied in upstream gas markets. It is unlikely that access regulation would improve upon this situation.

Downstream Markets

125. The potential for more competitive outcomes downstream must also be considered, given that satisfaction of Criterion A requires access regulation to promote competition in only one dependent market. While both the MSP Mainline and the Canberra Lateral face the same upstream markets, they service quite different downstream gas markets, namely in Sydney and regional NSW centres and in the Canberra region, as noted earlier.

126. The Council only accepted EAPL's application on the basis that it constituted separate revocation applications for each pipeline (3.4). However, this separation is not adequately maintained in the Council's analysis of downstream markets. Consideration of whether coverage would prevent monopoly pricing is required in each case, together with the implications for regional markets in NSW.

(a) MSP Mainline - Sydney Market

Structural Conditions

127. The Sydney gas market is serviced by three principal transmission systems – the MSP Mainline, the Eastern Gas Pipeline and the Interconnect via the Wagga lateral and the MSP Mainline from Young to Sydney (Map 2). Treatment of the Interconnect requires special consideration because of cross-ownership concerns and its dependence upon the MSP Mainline (see below). While Sydney gas purchasers also have access to alternative sources of supply through the distribution network at Camden, these cannot reasonably be regarded as independent pipeline services because of ownership considerations. These gas supplies essentially form an embedded part of the Sydney distribution system.

---

[20] E-mail of 8 July 2003 from Queensland Department of Natural Resources and Mines to Commonwealth Department of Industry, Tourism and Resources

128. In relation to the major downstream markets serviced by the MSP Mainline, the Australian Competition Tribunal found as part of the Duke Decision that:

    (a) pipeline capacity constraints would not impede competition in NSW gas markets over the next 10-15 years; and
    (b) existing gas reserves, combined with likely future discoveries, will be sufficient to meet projected demand in south-east Australia over the same period.[21]

129. The Council also found that capacity reserved to AGL Wholesale Gas under the Gas Transportation Deed will decline from 2007 to around 34 per cent of current daily capacity of the MSP (7.602). Sufficient excess capacity should therefore become available for other shippers on a first come first served basis. Such arrangements do not preclude opportunities for further downstream competition to emerge within the same five to ten year timeframe adopted by the Council, provided there are sufficiently competitive arrangements in relation to the supply of gas transmission services.

130. In relation to the Eastern Gas Pipeline, the Tribunal found that:

> *'… it is not disputed that the construction and commissioning of the EGP has resulted in a not insignificant level of competition at the wholesale and retail levels for sales gas in NSW. Nor is it disputed that the construction of the EGP produced at least the environment for basin on basin competition. In and of itself, the construction and commissioning of the EGP has been pro-competitive'*.[22]

131. The Council concluded that MSP Mainline and the Eastern Gas Pipeline offer quite different services which limit the scope for substitution (7.200), arguing that to increase its market share, the Eastern Gas Pipeline must rely on Gippsland Basin producers increasing their production capacity and winning an increased share of the NSW gas market (7.203).

132. This view was premised mainly on a point-to-point requirement for market competition. However, these two pipelines generally service quite different end-use customers, given the structure of the Sydney gas market. Constraints on the Eastern Gas Pipeline's ability to offer a similar range of services to the MSP Mainline include the lack of physical connection between the MSP Mainline and the EGP and the dominant position of AGL as the main gas distributor and retailer. The physical duplication of the two pipeline systems from Wilton to Horsley Park before connecting with the AGL distribution system is confirmation of the dominant position of the MSP Mainline and the extent to which this constrains the EGP's ability to compete for regional NSW markets.

The Interconnect

133. The situation in respect of Interconnect gas along the MSP Mainline downstream to Sydney was not considered separately by the Council in relation to Criterion A. However, the Council's findings relating to the ownership and operation of the Moomba to Sydney Pipeline System, which includes EAPL's ownership of the Interconnect north of Culcairn, should be taken into consideration (4.86-4.116).

---

[21] *Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2, paragraphs 95-97 and 103
[22] *Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2, May 2001, paragraph 81

134. The Interconnect is part of the network of transmission pipelines in south-east Australia and facilitates gas delivery services from Moomba south to Victoria or from Longford and the Otway region north to regional centres in southern NSW, Sydney and Canberra. As EAPL owns the Interconnect north from Culcairn, the Wagga lateral as well as the MSP Mainline, this puts them in a position of considerable market power given too that there is no physical connection between the MSP Mainline and the Eastern Gas Pipeline other than through the AGL-owned distribution system in Sydney or the ActewAGL network in Canberra.

135. In addition, companies vertically related to EAPL, namely AGL Gas Networks, AGL Retail Energy and ActewAGL provide the gas distribution networks and retail services in most of the NSW regional centres, except in the Wagga Wagga and Tumut districts where Country Energy is the distributor and retailer.

136. While there is some competition in pipeline services between Longford and Sydney via the Interconnect and the Eastern Gas Pipeline, the MSP Mainline has a monopoly on the provision of transport services to NSW regional markets and into Sydney via the Interconnect (7.97(b)).

137. These arrangements leave open the possibility that future actions either by EAPL as the owner, Australian Pipeline Limited (APL) as the controlling owner, or by AGL as a 30 per cent beneficial owner may qualify the independence of Interconnect gas or place discriminatory requirements on third party shippers seeking to use this pipeline.

138. To promote competition in these downstream markets, southern gas suppliers need some certainty that they can secure uncontracted capacity on competitive terms via the Interconnect and the MSP Mainline from Young to Sydney (and to other NSW regional centres – see below). To avoid a possibility of monopoly control and to ameliorate the potential to exercise market power through monopoly pricing, it is therefore necessary to maintain access to the services provided by means of the MSP Mainline to Interconnect gas.

139. Provided open access conditions are maintained along the Interconnect from Young to Sydney, the combination of these three pipeline services would appear to meet the above minimum structural requirement to allow competition to emerge in the Sydney downstream market. In the absence of an independent third pipeline to Sydney, including akin to that for the SEAGas pipeline, promoting competition in this case requires access to the services provided by this part of the MSP Mainline.

140. Two further questions remain - the degree of market competition in the emerging Sydney gas market and the extent to which other market factors affect the ability to promote competition in this downstream market.

Degree of market competition

141. The Council argued that recent movements in Eastern Gas Pipeline and MSP tariffs are not supportive of vigorous competition (7.205 and 7.261). However, published tariffs for what are largely bundled gas transportation services apply to the marginal or high cost purchaser. They take no account of the range and quality of gas transmission services on offer to individual customers and say little about the extent of market competition at any point in time. Rather than being indicative of monopoly pricing,

published tariffs are more likely to reflect a lack of transparency in the wholesale and forward markets for gas.

142. Certain improvements in the competitive market environment since the Duke Decision in May 2001 should be taken into consideration, many of which were acknowledged by the Council:

(a) full retail contestability for gas was introduced in the NSW markets in January 2002 (7.219);
(b) the NSW Government has informed the Council that there are no regulatory or technical barriers to gas users in NSW contracting directly with a gas producer and negotiating access to gas pipelines to ship that gas (7.219), including to switch from one source of supply to another (7.220);
(c) EAPL has informed the Council that the MSP currently has contracts with three parties other than AGL (7.239);
(d) EGP has initiated a temporary forward haulage service, contracted before July 2002 and terminating on 31 December 2004 (7.263);
(e) there is emerging evidence of customer churn, with some 5PJ of additional load transferred to the EGP rather than the MSP, in addition to at least 20 PJ in foundation contracts (7.273);
(f) the EGP is currently supplying 20-25 PJ per annum (4.157) representing an estimated 20 per cent of gas demand in NSW; and
(g) the rate of small retail customer transfer was about 2 per cent on an annualised basis as at April 2002 (7.284). By August 2003 about 4 per cent of small retail customers had switched suppliers.[23]

143. While the additional volumes are not significant, the signs are at least positive that competitive market factors are beginning to emerge in the Sydney gas market. The Council noted that a comparison of tariffs and recent tariff movements for the MSP Mainline and the Eastern Gas Pipeline is not consistent with vigorously competing services (7.204-7.205). I have also taken note of the Council's concerns that competition in downstream markets still has a considerable way to go, and that there is considerable evidence that downstream markets are not yet sufficiently competitive to constrain the MSP Mainline's ability to charge monopoly tariffs (7.303).

Other Factors Affecting the Ability to Promote Downstream Competition

144. While opportunities for more robust downstream competition are still emerging, several aspects of the Council's analysis no longer carry the same weight in the light of recent pipeline investments to create a more integrated pipeline network and the considerations involved in developing the methodology suggested for this criterion.

145. The Council devoted considerable analysis to suggest that if commercial pricing outcomes deviate materially from long run economic cost, this serves to demonstrate that a pipeline owner or operator is able to exert market power in a downstream market (7.315-7.405). This is argued to result in either lower delivered gas prices or to allow the expropriation of benefits to monopoly gas retailers in the Sydney market (7.449).

---

[23] *Market Data for NSW FRC Gas Market, January 2002 to August 2003*, Gas Market Company

146. This difference is important. Access regulation should not be justified on the basis that it transfers economic rent. The Australian Competition Tribunal has also observed in its Duke Decision that:

> 'C*riterion (a) requires consideration of whether competition would be promoted – not whether it is efficient'*.[24]

147. While an *efficient* tariff may deliver significantly lower gas prices to customers of gas transported by the MSP, the presumption behind the Council's analysis is one of a more or less permanently regulated pipeline facing diminishing regulated tariffs down to long term economic cost. Maintaining access regulation to push tariffs down to a theoretical perfect competition level will not serve the long term public benefit if this results in under-investment in gas pipelines and an associated inability to promote competitive gas supplies. In such circumstances, regulation would become a surrogate for market competition and the costs (direct and indirect) are likely to exceed the long term public benefit.

148. Increasing investment in gas transmission is a key indicator of more competitive market conditions developing downstream. Pipeline investors who perceive that access regulation has not taken proper account of commercial and market risks and has prevented them from earning reasonable returns on their investment, will either not develop an existing pipeline or only build a new pipeline fit for purpose. Such outcomes would do little to assist in promoting competition in downstream gas markets longer term.

149. The same presumption of implicit monopoly power applies to the Council's assessment of the role of gas access regulation in downstream markets (7.406-7.452). The Council variously argued that:

    (a) coverage provides downstream gas purchasers with a right to access spare capacity on the MSP at an efficient price set by an independent regulator (7.410);
    (b) lower tariffs will either create incentives for new entrants, or the prospect of increased returns in gas sales markets would encourage new entry (7.411-7.412); and
    (c) the ACCC's draft indicative tariffs and other cost based estimates confirm that a regulated price would be significantly lower than prices absent coverage (7.449).

150. These arguments face a fundamental flaw. They rely on the fact that the MSP Mainline is a covered pipeline for assessing relative outcomes using a 'with and without coverage' test rather than focusing on the requirements to promote competition. It is essentially a circular proposition to suggest that because regulated tariffs may guarantee the lowest factor cost for inputs to the production process and provide other rights or obligations, such outcomes should then serve as a justification for access regulation.

151. I agree with the findings of the Council (and the Tribunal) that long term contracts are not a significant barrier to downstream competition (7.234). These are commercial arrangements between market participants. Concern for inadequate contract provisions or a lack of sufficient liquidity and flexibility in the contract market should be addressed primarily through financial market mechanisms, rather than through access regulation.

---

[24] *Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2, paragraph 109

152. I cannot accept the Council's view that revocation of part or parts of the MSP Mainline would be at odds with the policy intent of all Australian governments in 1997 in applying coverage under Schedule A of the National Gas Code (7.448). The purpose of the Code is to regulate gas transmission pipelines that may otherwise be capable of exerting market power, not to establish an immutable regulatory framework for gas access in its own right. The fact that market structures have changed significantly over a period of five years does not invalidate the original decision to apply coverage to the MSP Mainline. A fundamental policy objective of Australian governments has been to encourage a competitive national market for natural gas, including encouraging investment in the transportation of natural gas.

(b) MSP Mainline - Regional NSW Markets

153. Regional destinations with their own lateral connection have the same upstream market as the MSP Mainline, namely the gas purchase markets in the Cooper Basin. This has already been considered. However, the downstream market is that provided by their lateral connections to Dubbo, Lithgow, Griffith and other off-takes which are quite separate from the Sydney or ACT gas markets.

154. It is appropriate for the purposes of Criterion A that the MSP Mainline is viewed as a series of pipeline services emanating from the same starting point in the Cooper Basin to each of these different regional destinations. The issue is the extent to which access to the services provided by means of the MSP Mainline would promote competition in these downstream regional markets.

155. I agree with the Council that the MSP Mainline's ability to charge monopoly prices may be especially potent in the case of regional markets (1.37). These centres have no alternative gas supply options and the MSP Mainline is a monopoly provider of pipeline services to their regional lateral (7.293). Given the small size of these regional markets (about 14 PJ per annum compared with 172 PJ per annum), the MSP Mainline is in a dominant position in terms of its ability to act as a gatekeeper in respect of these regional laterals.

156. Access to gas transmission services to these regional markets should therefore be treated separately from that provided to the downstream Sydney market. This is important to ensure that regional areas are not disadvantaged by more or less competitive market conditions in what to them are unrelated downstream gas markets.

(c) Canberra Lateral - ACT Market

157. The ACT situation is more straightforward. There are only two avenues to source supplies of natural gas to the ACT market, either through the Canberra Lateral or through the ActewAGL interconnector from the EGP which was opened in July 2002.

158. Even though the website of the Australian Pipeline Trust contains published tariffs and terms and conditions for obtaining access by interested third parties, I am concerned that there is still considerable potential for monopoly control in the ACT gas market. At present there only three licensed retailers in the ACT market, ActewAGL, Energex and Country Energy.[25] ActewAGL is the only active retailer, holding 100 per cent of retail

[25] Independent Pricing and Regulatory Commission Website indicates Country Energy received a gas retail licence in February 2003

sales to both large and small customers (7.288). Energy Australia let its retail licence in the ACT lapse in 2000.

159. According to the Council, the principal benefit of the ActewAGL interconnector has been an enhanced security of supply to the ACT market (7.262). ACT demand for natural gas is typically integrated into forecast demand for natural gas in NSW and not treated as a separate market. While the introduction of full retail contestability in 2002 offers scope for competition to improve over time, there is no evidence as yet of enhanced price competitiveness between different sources of gas supply (7.262), and no evidence of customer switching between sources of supply in the ACT (7.276).

160. Considerable improvement is needed before the above minimum requirements are sufficiently in evidence to moderate the potential for market power in the ACT gas market. I agree with the Council that the development of downstream competition still has a way to go in the ACT and that wholesale and retail markets are not sufficiently competitive to constrain the Canberra Lateral's ability to charge monopoly tariffs (1.56).

Ability to Engage in Price Coordination or Collusion

<u>MSP Mainline</u>

161. No evidence was provided in the Council's final recommendations that there is a substantial risk of price coordination in the case of the MSP Mainline or that this risk may exceed that for the EGP. Instead, the Council argued that constraining prices to cost-based levels through regulation would act to reduce any possible risk of collusion (7.507).

162. I accept there is always a risk of price coordination, even in sophisticated markets. The powers available under the Trade Practices Act are directed to prevent this. No case is presented that the requirements of the gas sector are different from other sectors in this regard.

163. The mere potential for price coordination to occur should not be sufficient for public policy purposes to justify access regulation under the National Gas Code. Otherwise, this becomes a circular argument, with access regulation designed to prevent any form of adverse market interaction being used to justify the continued use of such regulation.

164. Nor is it clear that coverage would necessarily reduce the risk of price coordination or collusion other than in circumstances already identified where provision has been made for the supply of Interconnect gas along the MSP Mainline. The Tribunal has acknowledged the argument that current information disclosure requirements in the National Gas Code may, if anything, increase the risk of collusion.[26] Consideration of possible refinements to the information disclosure requirements of the Code forms part of the recently announced Productivity Commission Review of the Gas Access Regime.

165. As collusive behaviour may also be in breach of the Trade Practices Act, it is a matter for the Australian Competition and Consumer Commission as the responsible regulator to maintain a watching brief in response to possible concerns in this regard.

---

[26] *Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2, paragraph 114

166. I therefore find that coverage of the MSP Mainline would not necessarily be more conducive to addressing the risk of price collusion or price coordination other than in addressing the circumstances already identified in respect of Interconnect gas.

Canberra Lateral

167. The Council did not specifically address the question of price collusion or price coordination in the case of the Canberra Lateral. Suffice it to say that there is not yet sufficient evidence of downstream competition in the ACT gas market to warrant consideration whether such activities may qualify the depth of market competition.

Other Incentives to Distort Competition

168. The third element of the assessment framework developed by the Council examined the scope for the owners of the MSP Mainline and Canberra Lateral, or associated affiliates, to create or apply potential market power to distort competition in adjacent markets. The Council analysis concentrated upon vertical leveraging concerns (7.512-7.616), although recent developments suggest the potential for significant horizontal consolidation across the gas pipeline network in south-east Australia should also be recognised.

Vertical Integration

169. The Council devoted considerable attention in its final recommendations to clarifying potential interactions between EAPL as the owner of the MSP Mainline and the Canberra Lateral, Australian Pipeline Limited, AGL and other participants. This included the attendant risks of either EAPL or AGL seeking to leverage its market position to obtain monopoly profits or to discriminate against other market participants in gas transportation or retail gas markets.

Upstream Markets

170. In assessing the potential implications of these vertical linkages upstream, the Council concluded that whilst the South Australian Cooper Basin Unit Producers Letter of Agreement and the Gas Transportation Deed remain in place until 2006, the owners of the MSP have no incentive to discriminate in favour of AGL in the relevant upstream gas sales market (7.589).

171. The Council considered these vertical linkages between MSP and AGL were neutral as to whether coverage would promote competition in the upstream gas market (7.589). I accept these findings.

Downstream Markets

172. The Council's analysis was primarily concerned with the potential for vertical leveraging in the downstream Sydney market. There are a number of legitimate concerns that need to be assessed.

173. I accept the Council's findings that there is a very close relationship between AGL, the Australian Pipeline Trust, Australian Pipeline Limited and EAPL (7.577) and that as a matter of law, either Australian Pipeline Limited or EAPL could potentially discriminate in favour of AGL's interests provided such discrimination is not against

the interests of all the unit holders in Australian Pipeline Trust (7.576). I also accept that legal restrictions on decision making by the Australian Pipeline Trust[27] are unlikely in many circumstances to provide a constraint on the MSP acting in a manner to advantage an affiliate and so distort competition (7.564).

174. These circumstances have particular relevance in the ACT market where ActewAGL is a monopoly distributor and retailer and also owner of the EGP interconnector. Concerns about vertical leveraging are likely to persist whilst ever AGL or EAPL has the ability or incentive to act in a monopoly fashion. This is consistent with the above assessment that considerable improvement is needed to moderate the potential for AGL or EAPL to exercise market power in the ACT gas market.

175. Vertical leveraging concerns are also apparent in the case of the Interconnect to Sydney and small regional markets in NSW where there are few alternative gas transmission options. Both EAPL and Australian Pipeline Limited may have an incentive and the ability to discriminate in favour of AGL's interests, especially in cases where independent shippers seek access to the MSP Mainline to promote competition in these downstream markets. These concerns put an important qualification on the extent of downstream competition in the absence of access regulation.

176. It may be argued that Australian Pipeline Limited (or indeed EAPL) does not have the necessary incentive to discriminate in favour of AGL's downstream interests. At issue is the desire of AGL to generate monopoly profits through the MSP Mainline when it has only a 30 per cent interest in the Australian Pipeline Trust, compared with a substantially larger incentive to expropriate monopoly profits at distribution and retail level where it has a 100 per cent beneficial interest.

177. Such arguments do not diminish concerns about vertical integration. They ignore the potential for different anti-competitive behaviours by vertically leveraged businesses depending on the circumstances involved. There can be an incentive both to minimise transportation tariffs along the MSP Mainline to limit competition from the Eastern Gas Pipeline and an incentive to maximise tariffs for shipments along the Interconnect to limit supplies in competition with AGL Wholesale Gas. Limited transparency in gas contracts and lack of adequate wholesale and forward markets for natural gas in the Sydney region permit such dualistic behaviours. This underlines the importance of maintaining independent and arms length arrangements along both the Eastern Gas Pipeline and the Interconnect, given the already dominant position of AGL in this downstream market.

178. Some elements of the Council's analysis are less compelling. The Council cited the high rates of capacity utilisation reserved to AGL Wholesale Gas under its Gas Transportation Deed until 2006, expressing concern this may limit the scope for new entry by third parties downstream given that transport services under this Deed are on terms equal to the best terms negotiated by any other customer (7.615).

179. However, it is not clear that the characteristics of the Gas Transportation Deed differ in a material way from those of a major foundation contract, including in relation to 'most favoured customer' provisions that typically underwrite major pipeline investments. While substantial take or pay arrangements exist in the period to 2006 (details are

[27] *Australian Pipeline Trust - legal constraints on decision making*, Attachment 1 (confidential document) to Moomba-Sydney Pipeline System, Final Recommendations, National Competition Council, November 2002

confidential), the Council has not provided evidence that the volume of non-contracted capacity and/or constraints on upsizing of the MSP Mainline in these and future years would result in uncompetitive outcomes.

180. Finally, the Council found that without the discipline of coverage, EAPL would have an ability to increase tariffs without the loss of a major customer (7.616). The Council relied in large part on its assessment that the relevant downstream gas sales markets are not sufficiently competitive and are unlikely to become so in the short to medium term (7.614). While this may be true, the question is not whether there is a need for further wholesale and retail market competition, but whether retaining a major foundation customer is a sign of a lack of market competition. This aspect of the argument is not persuasive.

Horizontal Consolidation

181. There is a risk that horizontal consolidation will undermine the ability of both upstream and downstream markets to contract independently for the transport and supply of gas. This is an area not addressed by the Council. Already there is considerable public reporting on the possible sale of pipeline assets.[28]

182. Consistent with the approach suggested in this statement, upstream and downstream markets should be serviced by at least three independent pipeline systems to provide for competitive gas transportation services, in some cases with multiple service providers operating within each pipeline.

183. Changed ownership structures and lack of separate accounting and arms-length contractual arrangements would qualify the minimum structural requirements for promoting competition (see paragraph 110). Both upstream markets in the Cooper Basin and in the downstream Sydney and ACT markets would be affected by reducing competition for gas transmission services. Suffice it to say that horizontal consolidation runs the risk that the requirements for revocation of gas access regulation, as outlined in this statement, may not be met in future.

184. Under competitive market arrangements, the trend should be in the opposite direction with greater separation of pipeline ownership from the transmission service provider function. It remains to be seen whether changes to gas access regulation, including as a result of the current Productivity Commission Review of the Gas Access Regime, will be sufficient to reinstate this trend.

Conclusion for Criterion A

185. The essential question for the MSP Mainline (and separately the Canberra Lateral) is whether access regulation will promote competition in either upstream or downstream gas markets, compared with conditions absent that coverage.

Upstream Markets

186. On the basis that principal weight should be attached to the likely competitive environment in the next five to ten years (7.57), I am not satisfied that access to the

---

[28] *APT runs ruler over Epic's pipelines,* The Courier Mail, 4 September 2003, page 25
Li may join Epic tussle for pipelines, The Australian, 9 October 2003, page 21
Gas giant eyes Epic Pipeline, The Australian, 4 November 2003, page 21

services provided by means of the MSP Mainline would promote competition in upstream gas markets.

187. Based on the above assessment, a summary of relevant considerations includes:

(a) the structural and other requirements needed to promote competitive market behaviour appear to be satisfied;
(b) Cooper Basin suppliers are serviced by two independent transmission pipelines under different ownership structures, with the prospect of the Ballera to Moomba pipeline providing opportunities to divert sales gas into and out of Queensland within two to three years;
(c) the AGL announcement in December 2002 includes the availability of substantial quantities of coal seam methane gas in Queensland from 2006; and
(d) the Roma to Brisbane pipeline is being looped to provide additional capacity.

188. There is no additional suggestion of price collusion or coordination upstream. Even taking account of vertical leveraging concerns, the MSP Mainline is not likely to have sufficient market power to sustain monopoly tariffs for shipping Cooper Basin gas over this period.

189. Separate consideration of the upstream sales gas market for the Canberra Lateral is not necessary as it faces the same market delineation as the MSP Mainline. Consequently, I have concluded that access to the services provided by means of the MSP Mainline and of the Canberra Lateral will not promote competition to upstream gas markets.

<u>Downstream Markets</u>

MSP Mainline

190. Constraints on the emerging nature of competition in the downstream Sydney gas market have more to do with limitations in the distribution and retail market, including the integrated nature of the AGL/ActewAGL Group, than the question of pipeline coverage. However, the Sydney market is yet to demonstrate the structural conditions necessary to allow adequate competition for gas pipeline services.

191. Access to the services provided by means of the MSP Mainline can be expected to promote competition in this downstream market. Based on the above assessment, a summary of relevant considerations includes:

(a) the Sydney market is serviced only by two principal gas transmission systems – the MSP Mainline and the Eastern Gas Pipeline;
(b) existing gas reserves combined with likely future discoveries, will be sufficient to meet projected demand in south-east Australia over the next 10-15 years;
(c) capacity constraints are not expected to impede competition in NSW gas markets over this period;
(d) there have been more positive signs in the Sydney market environment since the Duke Decision in May 2001; and
(e) however, the emerging nature of retail competition is being impeded by the dominant market position of the principal distributor and retailer.

192. No evidence was provided that there is an additional substantial risk of price coordination, or that this risk may exceed that for the EGP. Nor is it clear that coverage

would necessarily reduce the risk of price coordination. However, there is a substantial risk of vertical leveraging discriminating in favour of the wholesale and retail markets, given the close relationship between AGL, EAPL and Australian Pipeline Limited.

193. Given the lack of an independent third pipeline into Sydney, structural conditions for a competitive downstream market can only be maintained if there are independent and arms-length contractual arrangements for Interconnect gas along the MSP Mainline from Young to Sydney. In the absence of more robust commercial arrangements, akin to those of the SEAGas pipeline, access is required along the MSP Mainline to maintain an alternative means of competitive gas supply into Sydney.

194. In addition, regional NSW markets have no alternative gas supply options other than via the MSP Mainline or Interconnect. There is no physical connection between the Eastern Gas Pipeline and the MSP Mainline other than through the ActewAGL interconnector and the Canberra Lateral. The MSP Mainline therefore has the ability to limit or distort competition in these regional markets, including by way of control over Interconnect gas. Together with common ownership considerations and the risk of vertical leveraging and horizontal consolidation, the MSP Mainline is in a position to operate as an effective gatekeeper for transmission services provided to these markets.

195. I therefore find that access to those parts of the MSP Mainline providing downstream services to the Interconnect to Sydney, and to regional laterals in NSW, would promote competition in at least one market.

196. As access or increased to the services provided by means of the MSP Mainline would promote competition in at least one market, namely the downstream markets of Sydney and regional NSW centres, I am satisfied that Criterion A is met.

Canberra Lateral

197. I am satisfied that access to the services provided by means of the Canberra Lateral would promote competition in at least one market other than the market for the services provided by means of the pipeline. Based on the above assessment, a summary of relevant considerations includes:

(a) there is considerable potential for monopoly control in the ACT gas market;
(b) considerable improvements in structural and market conditions are needed to moderate the potential for the Canberra Lateral to exercise market power;
(c) there is no evidence yet of enhanced price competitiveness between different sources of supply and no evidence of customers switching between these sources in the ACT gas market;
(d) there is not yet sufficient evidence of downstream competition to warrant consideration of whether price collusion or coordination may qualify the depth of market competition; and
(e) concerns about vertical integration have particular relevance in the ACT market.

198. I therefore find that access to the services provided by means of the Canberra Lateral would promote competition in the downstream ACT market, and that the Canberra Lateral therefore satisfies Criterion A.

CRITERION C

that access (or increased access) to the Services provided by means of the Pipeline can be provided without undue risk to human health or safety

NCC FINAL RECOMMENDATION

199. None of the public submissions argued that this criterion was not met.

MINISTERIAL FINDINGS

200. Neither the MSP Mainline nor the Canberra Lateral application involves capacity or other transmission services that might bring safety related considerations into play. I note that the relevant States and Territories have regulations dealing with the safe operation of gas pipelines.

201. I am satisfied that access (or increased access) to the MSP Mainline and the Canberra Lateral pipelines, as facilitated by the Code, can be provided without undue risk to human health or safety.

202. I am therefore satisfied that Criterion C is met for both the MSP Mainline and the Canberra Lateral pipelines.

CRITERION D

that access (or increased access) to the Services provided by means of the Pipeline would not be contrary to the public interest.

NCC FINAL RECOMMENDATION

203. The Council considered that the costs of access regulation would need to outweigh the public benefit of regulating services with substantial market power in order for this criterion not to be satisfied (9.3).

Asymmetric Regulation

204. In view of the Australian Competition Tribunal's decision in May 2001 not to approve coverage of the Eastern Gas Pipeline, the Council considered various arguments in submissions that it would not be appropriate to regulate the MSP Mainline and Canberra Lateral in these circumstances. These included equity considerations, impacts on the commercial value of the Eastern Gas Pipeline and potential adverse effects on the incentive to invest in infrastructure generally.

205. The Council did not accept these arguments. Relevant findings included:

(a) each application for coverage or revocation should be considered on its merits (9.21);
(b) it is not contrary to the public interest to regulate pipelines that are able to exercise substantial market power, whilst not regulating pipelines without market power (9.23);
(c) the Eastern Gas Pipeline was financed and constructed in an environment where the MSP system was already a covered pipeline (9.25);
(d) the Council was not aware of any reasons why coverage would raise unique issues of investment risk (9.27);
(e) issues of investor uncertainty that may otherwise be associated with greenfield pipelines do not arise in this instance as the MSP is a mature pipeline (9.27); and
(f) at the time of listing on Schedule A of the National Gas Code, Governments regarded the MSP as having market power and requiring regulation (9.28).

Direct Costs of Regulation

206. The Council recognised that there are direct costs associated with pipeline regulation and that these costs can be significant. Relevant findings included:

(a) regulatory costs include the pipeline owner's costs of preparing access arrangements and the regulator's costs of assessing compliance with the National Gas Code's requirements. There is also the risk of regulator error (9.30);
(b) the benefits of regulating access flow from the restraint of monopoly pricing, lower consumer prices and improved viability for upstream and downstream industries (9.33);

(c) direct costs of regulation are low compared with the potential tariff reductions on the MSP Mainline and Canberra Lateral (9.35-9.36); and
(d) the benefits of coverage for competition are likely to be significant, particularly for large users, and outweigh the costs (9.38-9.39).

Information Disclosure

207. In considering the costs and benefits of the National Gas Code's information disclosure provisions, including whether such provisions may facilitate parallel pricing, the Council found that:

(a) these disclosure provisions were designed to provide access seekers with information to aid negotiation of transportation contracts (9.43);
(b) the Tribunal conclusion in the Duke Decision that the dangers of information disclosure might outweigh the benefits of greater transparency, was based on its view that Duke's incentives are to maximise throughput and not engage in price discrimination (9.47);
(c) arguments that the Code's disclosure requirements enhance the risk of parallel pricing fail to recognise that regulation constrains prices to cost-based levels (9.48); and
(d) the benefits of information disclosure in respect of the MSP Mainline and Canberra Lateral in promoting a better informed market are likely to outweigh any costs associated with increased potential for parallel behaviour (9.49).

Conclusion

208. Based on this assessment, the Council concluded that regulated access to the services of both the MSP Mainline and Canberra Lateral would not be contrary to the public interest (9.50), and that Criterion D was therefore satisfied.

MINISTERIAL FINDINGS

209. Criterion D is the public benefit test. It does not qualify the findings made under the other three coverage criteria. The Tribunal has clarified that Criterion D requires assessment of whether there are any other matters that should be taken into consideration.[29] The fact it is framed as a double negative means that the Criterion D is satisfied if retention of access regulation is not contrary to the public interest.

Public Interest Considerations

Regulatory Asymmetry

210. A number of submissions argued that regulatory asymmetry has adverse effects on investment incentives[30] and that coverage of the MSP Mainline and Canberra lateral should therefore be revoked. Submissions from upstream producers and end users argued that regulatory symmetry is not necessary.

[29] *Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2, paragraph 145
[30] Submissions to NCC by Duke Energy, Australian Gas Association, Australian Council for Infrastructure Development

211. I accept the Council's findings in relation to regulatory asymmetry. The National Gas Code recognises that the public benefits of regulating access to a service can change due to changes in market conditions, including the emergence of market competition or technological change affecting the economic viability of new infrastructure. Over time, the cost of regulation and other factors may outweigh the benefits for a given set of pipeline services. Each case must be assessed on its merits.

212. The fact that the MSP was originally listed in Schedule A to the National Gas Pipelines Access Agreement does not mean that it should always remain regulated. The inclusion of both coverage and revocation procedures indicates the clear policy intent that only pipelines continuing to satisfy each of the four coverage criteria in section 1.9 of the National Gas Code are to remain regulated, while others would not be covered or coverage would be revoked.

213. The notion of 'asymmetric regulation' is something of an artificial construct. It is not an unreasonable outcome that some pipelines are regulated while others are unregulated in situations where market structures and conditions are different, there is still scope to exercise market power and for competition for gas pipeline services is evolving. I therefore agree with the Council's conclusion that asymmetric regulation would not be contrary to the public interest.

Direct Costs of Regulation

214. I agree with the Council's findings on the costs and benefits of regulation, provided this is administered in accordance with the requirements of the National Gas Code.

215. Regulation under the National Gas Code can ensure that access seekers can obtain access to uncontracted capacity on known terms and conditions, pipeline owners and operators do not earn excessive rents where they have an ability to exercise market power and gas consumers can have access to gas at reasonable prices. As the demand for gas is relatively inelastic, there is potential for the exercise of market power to result in significant increases in economic rents.

216. This conclusion is supported by the Council's analysis that an average tariff reduction of 0.5 cents per gigajoule for the MSP Mainline and Canberra Lateral would produce public benefits exceeding the direct costs of regulation incurred by EAPL and by the ACCC (9.35-9.36). The direct costs of regulation would not be contrary to the public interest in these circumstances.

Information Disclosure

217. I accept the Council's findings that information disclosure requirements under the National Gas Code, and the risk of parallel pricing, are not contrary to the public interest under Criterion D.

218. Information disclosure requirements are fundamental to improving market transparency and to redressing the information asymmetry between pipeline operators and prospective users of pipeline services. The National Gas Code provides existing and prospective users with a right to specific information. It places obligations on the pipeline operators to provide information to the market, it provides the regulator with

power to obtain information from existing and prospective users and the pipeline operators, and it obliges the regulator to protect confidential information.

219. I am aware of concerns that these information disclosure provisions may not have functioned in the way originally intended and that the regulators' information collection powers has received lengthy consideration by the Natural Gas Pipelines Advisory Committee in recent times. While my decision must be based on current circumstances, I would expect the Productivity Commission review of the Gas Access Regime to address the appropriateness of the current information disclosure requirements under the National Gas Code.

220. I find it difficult to accept arguments that in situations where competition is still evolving, greater information transparency and disclosure could be considered to be detrimental to market development. Accordingly, I agree with the Council that the benefits of information disclosure in promoting transparency and more informed market behaviour are likely to outweigh any costs associated with the potential for parallel pricing.

<u>Price versus Non-Price Regulation</u>

221. A concern raised by user groups is that is in the public interest to maintain coverage of the MSP Mainline and the Canberra Lateral as revocation would release EAPL from the ring-fencing and associate contract provisions of the National Gas Code, potentially leading to the reintroduction of barriers to entry by third party access seekers.

222. Under the National Gas Code, a gas pipeline is either covered with respect to both pricing and non-pricing provisions, or not covered with respect to any of these provisions. Revocation of coverage would release a regulated pipeline from any obligation to maintain structural and accounting separation of its tied business arrangements or to seek approval for associate contracts.

223. I note that this matter is included as part of the terms of reference for the Productivity Commission review of the Gas Access Regime, including the question of whether coverage should relate only to tariff setting provisions. In the interim, there is public benefit in maintaining structural and accounting separation between related business enterprises to avoid cross subsidisation, minimise conflicts of interest and ensure potential new barriers to entry do not arise as the gas market matures.

<u>Onus of Proof</u>

224. Under current Gas Code coverage criteria, there is relatively limited scope for actual market behaviour to serve as an indicator of whether pipeline services should or should not be regulated. The Code does not provide a ready benchmark for what might be regarded as competitive market behaviour. As noted earlier, this can lead to a presumption of regulation or to an inclination to consider access regulation as a precautionary rather than as a last step measure.

225. Missing is a clear sense of the practices and principles expected of pipeline owners and operators to ensure that these pipeline services are provided in a competitive manner. It is not unreasonable for pipeline operators to be judged on their relative behaviour in the market place, the degree to which price transparency is maintained, whether the

information requirements of market participants are met and the terms and conditions for various pipeline services clearly evident.

226. What is needed is to reverse the onus of proof for meeting the requirements for access regulation. Coverage should apply to those pipelines which are being managed contrary to competitive market principles. There should not be a presumption of access regulation, but industry should also be held more accountable for the market-based performance of its pipelines.

227. Lack of effective accountability on pipeline owners and operators is evident in the difficulties currently facing regulators in obtaining information relevant to coverage or regulatory matters, a tendency to release significant information after decisions or recommendations have been made, and sustained differences over the information disclosure requirements of the National Gas Code. The need to address these issues was recognised as part of the terms of reference for the Productivity Commission review of the Gas Access Regime.

228. Given the significance of the MSP, there is a legitimate public interest concern to ensure that access arrangements for the MSP Mainline are not removed until an appropriate accountability framework is in place.

Linkages between Criteria A and B

229. The National Gas Code makes no provision for linkages between Criterion B and the other assessment criteria in section 1.9 of the Code. It has been assumed to date that it is possible to clearly differentiate between whether it is uneconomic to develop another pipeline to provide gas transmission services (Criterion B) and the extent to which those transmission services can promote competition in upstream and downstream markets (Criterion A).

230. The potential for confusion is evident in the Council's analysis on the degree of inter-pipeline competition. This is currently evaluated under Criterion A, whereas it is more relevant to considering the competitive provision of gas transmission services under Criterion B.

231. The ability to maintain a satisfactory distinction becomes less clear with progressive integration of a gas pipeline network, as individual transmission services become progressively exposed to competition from other gas pipeline service providers. This affects the relative competitive position of buyers and sellers in both upstream and downstream gas markets.

232. I consider it would not be contrary to the public interest to maintain access regulation of the MSP Mainline and Canberra Lateral until these matters are sufficiently clarified. These relationships could perhaps be examined as part of the recently announced Productivity Commission review of the Gas Access Regime.

233. However, I am required to assess these applications for revocation of the MSP Mainline and the Canberra Lateral under the existing provisions of the National Gas Code. This means that the requirement to satisfy Criteria A, B and C, as well as Criterion D, must each be assessed on their merits.

Conclusion for Criterion D

234. Concerns for regulation asymmetry, cost of regulation and information disclosure requirements do not provide a convincing public interest argument for revoking coverage of the MSP Mainline and the Canberra Lateral under Criterion D.

235. The National Gas Code does not allow access regulation to be retained only in respect of non-pricing provisions or permit potential relationships and interactions between the coverage criteria to be considered. I am concerned that without coverage, existing requirements for ring fencing and approval of associate contracts would no longer apply, and that more permanent barriers to competition may be reintroduced particularly in the ACT market where retail competition is not presently evident. Accordingly, I believe that it would not be contrary to the public interest for regulated access to the services provided by means of both the MSP Mainline and the Canberra Lateral to be retained.

236. I am therefore satisfied that the MSP Mainline and the Canberra Lateral both satisfy Criterion D.

Attachment 1

Description of the Pipeline

Table 1: The MSP Mainline and Canberra Lateral

Pipeline Licence	*Location/Route*	*Length (km)*	*Diameter (mm)*
MSP Mainline			
SA:PL7	Moomba to Queensland border	111 (including 10km loop at Moomba)	864 660
Qld:PPL21	South Australia border to NSW border	56.2	864
NSW:16	Queensland/NSW border to Wilton	1,142	864
Canberra Lateral			
NSW:21	Dalton to ACT border	52	273
	ACT/NSW border to North Watson	6	273

Table 2: Capacities of EAPL Gas Pipelines

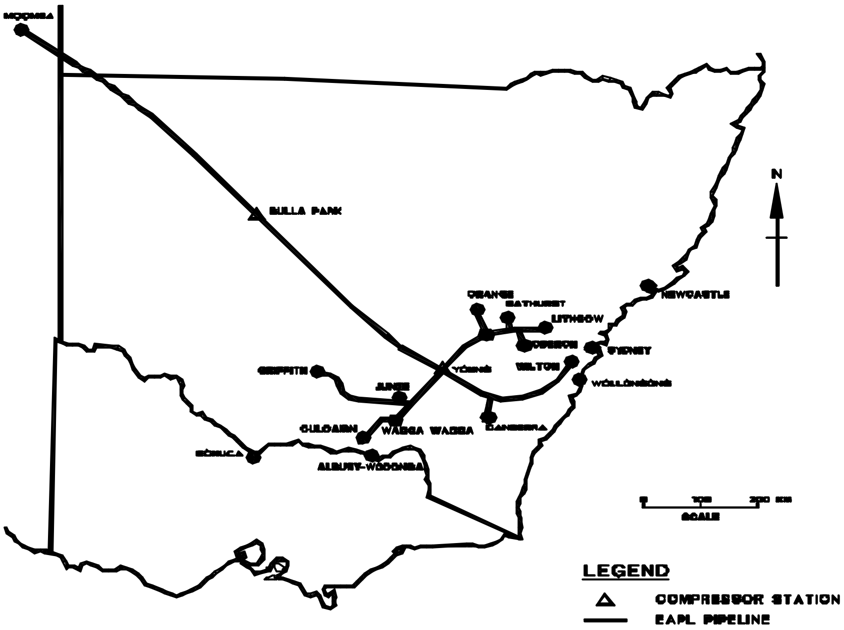
Pipeline	**Pipeline Owner**	**Capacity TJ/day**	**Capacity PJ per annum equivalent**
Moomba-Wilton Mainline	EAPL/APT	470	172
Interconnect (south bound)	EAPL/APT/GasNet Australia	52[31]	20
Interconnect (north bound)	EAPL/APT/GasNet Australia	11 - 17	4 – 6.2
Young-Wagga Wagga	EAPL/APT	87.7	32
Young-Lithgow lateral	EAPL/APT	20	7.3
Junee-Griffith lateral	EAPL/APT	10.8	3.9
Dalton-Canberra lateral	EAPL/APT	45	16.4
Marsden-Dubbo[32]	APT	8.3	3

Sources: Section 1.4 of EAPL Access Arrangement Information for MSP, 5 May 1999, ACCC Website, www.accc.gov.au/gas/fs-gas.htm;
Gas Statistics Australia 2002, the Australian Gas Association, Feb 2003

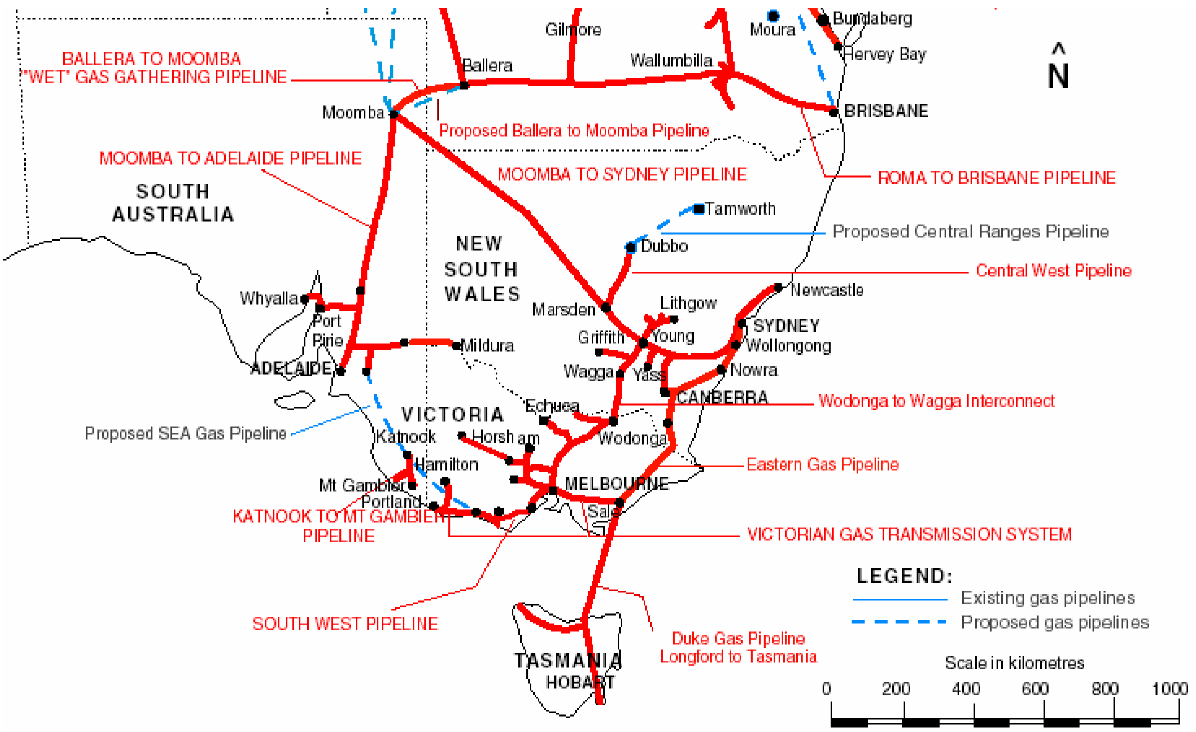
[31] The 52 TJ/day (20PJ/year) south bound Interconnect capacity is in addition to the capacity contracted to Delivery Points between Young and Wagga Wagga, and the Griffith lateral

[32] Sourced from Gas Statistics Australia 2002, the Australian Gas Association, Feb 2003

Map 1
The Moomba-Sydney Pipeline System[33]



Map 2. South-East Australia Gas Transmission Network



33 EAPL application for revocation, page 4, in National Competition Council Final Recommendations, paragraph 3.3

Attachment 2

National Gas Code - Extracts

COVERAGE CRITERIA

Section 1.9

(a) that access (or increased access) to Services provided by means of the Pipeline would promote competition in at least one market (whether or not in Australia), other than the market for the Services provided by means of the Pipeline;

(b) that it would be uneconomic for anyone to develop another Pipeline to provide the Services provided by means of the Pipeline;

(c) that access (or increased access) to the Services provided by means of the Pipeline can be provided without undue risk to human health or safety; and

(d) that access (or increased access) to the Services provided by means of the Pipeline would not be contrary to the public interest.

COVERAGE DECISIONS

Section 1.34

…the Relevant Minister must make a decision:

(a) that Coverage of the Covered Pipeline is revoked; or

(b) that Coverage of the Covered Pipeline is not revoked.

If the Relevant Minister decides that Coverage of the Covered Pipeline is revoked, the Relevant Minister may do so to a greater or lesser extent than requested by the applicant if, having regard to the part of the Pipeline that is necessary to provide Services that Prospective Users may seek, the Relevant Minister considers it appropriate.

Section 1.36

The Relevant Minister must decide not to revoke Coverage of the Covered Pipeline, to any extent, if the Relevant Minister is satisfied of all of the matters set out in paragraphs (a) to (d) of section 1.9, but the Relevant Minister must decide to revoke Coverage of the Covered Pipeline (either to the extent described, or to a greater or lesser extent than that described, in the application) if not satisfied of one or more of those matters.