

Foreword

The Australian Competition and Consumer Commission (ACCC) and the Public Utility Research Centre (PURC) are pleased to be co-publishers of this special volume of papers on the principles and practice of infrastructure regulation. The papers reflect the work of prominent Australian, New Zealand and international authors expert in the field of utility regulation — regulators, academics, consultants and advisers in the utility regulation field, and industry participants. The papers were selected from material presented at a one week utility regulation training program jointly conducted by the ACCC and PURC in Melbourne in November of 1997.

This course was a first for Australia, and was adapted from the successful *International Training Program on Utility Regulation and Strategy* conducted by PURC and the World Bank. The course was notable for the breadth of its coverage of issues involving utility regulation, both economic principles and practice. As such, the sessions were tailored to meet the pressing need to educate and re-educate regulators and policy makers for the rapidly changing regulatory and competitive environment. The success of the course could be judged from the range of its participants, who well represented Australian and New Zealand regulatory and policy-making bodies across all major utilities and jurisdictions.

The quality and breadth of the papers augurs well for infrastructure regulation in the future. The papers cover important fundamental principles, based on recent Australian and international literature and the work of pre-eminent academics and professionals. The discussion of the practice of utility regulation was also invaluable, and similarly draws by way of case studies, on the international environment, especially from the US, UK, New Zealand and Australia. This international flavour not only enhances the dissemination of greater expertise, but also facilitates the drawing of useful comparisons.

The general theme of the course and the papers is the observation that infrastructure regulation is not an end in itself, but rather, is directed at facilitating and augmenting the process of market reform, and contributing to the ongoing vitality, efficiency, and competitiveness of the market economy. The evolving environment of market reform has given rise to new areas of regulation which derive from, and are a response to, competition policy reforms such as legislated access to essential facilities, structural reform, competitive neutrality, and privatisations. The role of infrastructure regulation has correspondingly evolved itself from its traditional purpose of surveillance, detailed price controls, and arbitrary cost allocations. It is well understood that utility regulation is increasingly about maximising the potential for competitive processes to work or at least, helping to simulate market results, and always with an eye to the efficiency implications and resulting trade-offs among objectives. This approach implies a determination and analysis of the prevailing incentives which face industry participants. The regulatory regime introduced will then attempt to create incentives to induce greater efficiency, in addition to blunting the incentives which cause undesirable conduct. This regulatory evolution reflects the broad sweep of competition policy, which has gone beyond a primary reliance on anti-competitive conduct provisions to vigorous pro-competitive initiatives.

The importance of regulatory convergence is also becoming more appreciated. The Commonwealth and States have a role in regulation of infrastructure through the ACCC, NCC and State regulators. It is important that these organisations work together and cooperate so that regulation leads to efficient and competitive markets with good information, consistency of regulatory application, and minimal uncertainty.

We trust that this volume will contribute to the continual development of regulatory theory and practice and promote greater cooperation among regulators both within Australia and internationally. Readers of this publication, will have diverse backgrounds and objectives: you might be a regulator with well-defined mandates, an executive of a regulated firm identifying appropriate business strategies, an official in a government ministry or legislative body developing regulatory procedures, or a scholar studying regulation. Whatever your present role, we trust that upon reading this publication, you will be armed with a greater appreciation of the principles and practice of infrastructure regulation that is designed to help promote the on-going processes of market reform.

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The ACCC and PURC are grateful to the authors who have contributed papers for publication in this volume and wish to express our thanks to them. The papers reflect insightful observations from people eminent in utility regulation or in fields directly related to utility regulation. The authors have been cooperative in reviewing and developing materials originally prepared for the Utility Regulation Training Program for publication in this volume.

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The organisations

The Australian Competition and Consumer Commission

The Australian Competition and Consumer Commission was formed on 6 November 1995 by the merger of the Trade Practices Commission and the Prices Surveillance Authority. Its formation was an important step in the implementation of the national competition policy reform program agreed by the Council of Australian Governments. An independent statutory authority, the Commission administers the *Trade Practices Act 1974* and the *Prices Surveillance Act 1983* and has additional responsibilities under other legislation.

Under the national competition policy reform program the Trade Practices Act has been amended so that, with State/Territory application legislation, its prohibitions of anti-competitive conduct apply to virtually all businesses in Australia. In broad terms the Act covers anti-competitive and unfair market practices, mergers or acquisitions of companies, product safety/liability and third party access to facilities of national significance.

The Commission is the only national agency dealing generally with competition matters and the only agency with responsibility for enforcement of the Trade Practices Act and the associated State/Territory application legislation.

A legal regime to facilitate third party access to certain essential infrastructure was introduced to the Trade Practices Act (Parts IIIA and XIC) as part of the 1995 competition policy reforms. Access regimes apply only to significant infrastructure facilities with monopoly characteristics and with wide economic influence. Examples of the kinds of facilities which may be covered include gas transmission and distribution pipelines, electricity transmission and distribution wires, railway tracks, airport systems, water pipelines, telecommunication networks and certain sea ports.

The Commission's role under access provisions typically involves assessing the terms and conditions, including prices, on which infrastructure services are provided. This role is undertaken in assessing access undertakings given by service providers or in determining disputes over access.

The Commission's internet website address is: <http://www.accc.gov.au>

The Public Utility Research Centre

PURC is located within the Warrington College of Business Administration at the University of Florida. Founded in 1972, PURC strives to enhance executives', regulators', academics', and students' knowledge of issues confronting public utilities and regulatory agencies through: sponsoring conferences, seminars, and training programs; engaging in research that addresses topics in the energy, telecommunications, and water industries; and preparing students for careers in infrastructure industries.

Funding by energy and telecommunications groups and the Public Service Commission in the State of Florida enables PURC to fulfill its mission. To ensure independence and guarantee impartiality, an Executive committee is composed of representatives from the University, electric and gas utilities, telecommunications firms, the Florida PSC, and the Florida Office of the Public Counsel.

During the past twenty-five years, PURC has grown from a small group hosting one conference per year to an interdisciplinary effort with expanded programs and research whose impact is recognized locally, nationally, and worldwide. To learn more about PURC visit our website at www.cba.ufl.edu/eco/purc.

The International Training Program on Utility Regulation and Strategy, an intensive two-week program held in Gainesville, is a collaboration between PURC and the World Bank. The program is designed to enhance the economic, technical, and policy skills required to design and manage sustainable regulatory systems for infrastructure sectors. The program focuses on a series of cross-sectoral and sector specific topics including trends and drivers of market reform; market structure; financial techniques in utility regulation; methods of incentive regulation; performance standards and enforcement; pricing; and managing stakeholder groups including government, industry and consumers. Over 50 sessions include case studies, practical exercises, and panel discussions with leading experts and international faculty.

About the authors

Mr Graeme Samuel is President of the National Competition Council (NCC). He is also a Company Director. He was a co-founder of Grant Samuel & Associates, corporate advisers. Until 1986, Graeme Samuel was Executive Director of Macquarie Bank Limited (from 1981–1986) in charge of its Victorian operations and a Director of its Corporate Services Division. His career as a Banker was preceded by 12 years as a Partner of leading Melbourne law firm, Phillips Fox & Masel.

Commissioner Rhonda Smith was appointed as a Commissioner with the ACCC in November 1995 for a period of three years. She is an economist and from 1981 was a Senior Lecturer in Economics at the University of Melbourne. From 1988 she was also a consultant economist and was appointed a member of the Copyright Law Review Committee in 1995. Ms Smith has been an expert witness and adviser in major trade practices litigation and acted as a consultant for the Trade Practices Commission, Prices Surveillance Authority and the private sector.

Dr Alan Bollard, Secretary of the New Zealand Treasury, was Chairman of the New Zealand Commerce Commission, the country's anti-trust and fair trading regulatory authority until February 1988. He was appointed as the Government's economic referee for the reviews of the Commerce Act in 1989 and 1992 and was appointed a lay adviser to the High Court. He has published widely in the area of industrial economics and anti-trust. Before becoming Chairman of the NZ Commerce Commission in 1994, Dr Bollard was Director of the New Zealand Institute of Economic Research for seven years, where he was involved in advising the Government and companies on a wide range of applied economic work and forecasting.

Dr Sanford Berg, is Distinguished Service Professor in the Department of Economics at the University of Florida. He is also the Florida Public Utilities Professor and the Director of the Public Utility Research Center (PURC). In addition, he has served as a consultant to various private and public organisations including the Florida Public Service Commission (FPSC), the Florida State Energy Office, the New York Public Congressional Office of Technology Assessment, Southern Company College, the World Bank, the Australian Bureau of Industry Economics, the Tampa Electric Company Citizens' Advisory Task Force for Siting New Generation Capacity (1989–1990), and the Florida Power Plant Licensing Task Force, Technical Advisory Group, 1993. Currently he is responsible for developing and delivering the two-week International Training Program on Utility Regulation and Strategy. Dr Berg has published widely with recent work focusing on public utility pricing policies and transitional regulation in the presence of new technologies.

Professor Stephen King is Professor of Economics at the University of Melbourne. Before this he was Research Fellow in the Economics Program and Director of the Competition and Regulatory Policy Program at RSSS, the Australian National University. Professor King has been consulted by various government bodies including the ACCC, IPART, the Victorian Government, the Industry Commission and AUSTEL. Professor King's recent work on competition policy and infrastructure reform led to the publication in 1996 of a major book: *Unlocking the infrastructure: the reform of public utilities in Australia*, with Professor Rod Maddock.

Dr Denis Lawrence has been a Director of Tasman Asia Pacific, Canberra, the consulting arm of Australia's Tasman Institute, since mid-1996. He has been involved with benchmarking, performance measurement and the analysis of government enterprise issues for the last ten years. Dr Lawrence has worked on a number of infrastructure projects with Tasman. Prior to joining Tasman, he was in charge of the Australian Bureau of Industry Economics program of international benchmarking of Australia's infrastructure.

Mr Alan Booker joined Office of water services (Ofwat), Birmingham, in November 1990, as Deputy Director General of Water Services. He was formerly Managing Director of Biwater Supply Limited and of Bournemouth & West Hampshire Water Companies and Chief Executive of East Worcestershire Water Company. In 1980 Mr Booker became Managing Director of the East Worcester Water Company where he remained until 1988, until he took part in a management buy-out of the company in association with Biwater. Mr Booker is a Civil Engineer by profession.

Professor Henry Ergas is a Senior Research Associate of the Centre for Research for Network Economics and Communications at the University of Auckland. From 1978 to 1993, Professor Ergas held a number of senior positions at the OECD in Paris. During his time at the OECD he was responsible for many studies of regulations and industry policy, including the 1987 Report on Structural Adjustment and Economic Performance. He has taught at Monash University and the Kennedy School of Government at Harvard. Professor Ergas is one of four members of an Expert group advising the Minister for Communications in Australia on regulatory policy.

Mr Mark Jamison is the Director of Telecommunications Studies for the Public Utility Research Centre at the University of Florida. He researches telecommunications competition and strategy issues, and conducts training programs on utility regulation, including assisting in directing the international regulatory training program for the World Bank. From February 1993 through June 1996, he was a manager of regulatory policy for Sprint, a telecommunications company. Prior to joining Sprint, he worked for US state commission staffs, including the Iowa Utilities Board where he was Head of Research. He has written numerous papers and testimonies on regulatory costing and pricing issues.

Dr Stewart Joy has enjoyed a diverse career, cutting across both private and public sectors and academia. Currently he is in Consultancy as Principal of Stewart Joy Associates Pty Ltd Economics and Transport Consultants. Other positions have included Deputy Director General of the Ministry of Transport in Victoria, State Manager of National Australia Bank, Chief Economist of British Railways, and Senior Lecturer in Economics at Monash University. Dr Joy has produced an extensive amount of consulting work over many years for a diverse range of organisations including the World Bank, Victorian Government and the US Department of Transportation. His work has covered a broad range of issues, including access principles, transport reforms and development, privatisations, and benefit/cost analysis.

Dr Joshua Gans is Associate Professor and lecturer in economics at the Melbourne Business School (MBS) of the University of Melbourne. Prior to this post at the MBS, Dr Gans was an economics lecturer at the University of New South Wales. Throughout 1996 and 1997, he worked as a Consultant for London Economics in Melbourne. In

this capacity, he undertook a plethora of projects related to infrastructure reform, regulation and privatisation, in areas such as energy, transport and communications reforms.

Professor Philip Williams holds the Foundation Chair of Management (Law and Economics) and is Assistant Director of the Melbourne Business School. The focus of his current research is the economics of law. He has published articles and books on the theory of the firm, trade practices policy, small business and the cost of litigation. He is extensively involved in giving expert advice to leading corporations in Australia and New Zealand in areas of pricing, takeovers and trade practices. This consulting work involves giving opinions and appearing as an expert witness for firms involved in commercial litigation. He is a member of the Trade Practices Committee of the Law Council of Australia.

Professor Kevin Davis is the Colonial Mutual Professor of Finance and Head of the Department of Accounting and Finance of the University of Melbourne. Before this post he was the Director of its Master of Applied Finance Programme. He has been very prolific as an author, mainly specialising in issues of corporate finance, privatisation, treasury management, and capital costs. Professor Davis has also acted as a Consultant for various organisations including Federal Treasury, the ACCC, the ASC, Telstra and Macquarie Bank.

Mr John Handley is currently a Lecturer in Finance at the University of Melbourne where he undertakes research in finance and teaches in various corporate finance and investment subjects at both undergraduate and postgraduate levels. His specific research interests include security valuation and design, capital raising, equity markets and project evaluation. Prior to joining the University of Melbourne in 1993, Mr Handley spent five years with an international investment bank where he provided a range of corporate finance services to both public and private sector clients.

Professor Peter Forsyth is Head of the Department of Economics at Monash University. Prior to this, he taught and researched at the University of New England, Australian National University and the University of NSW, after completing a Doctorate at the University of Oxford. He was editor of, and contributor to, *Microeconomic Reform in Australia* (Allen and Unwin, 1992). He has undertaken studies on pricing and regulation issues for agencies such as the ACCC and the Industry Commission.

Luke Woodward is General Counsel for the ACCC. He is the former head of the Mergers Branch of the ACCC (and the TPC). Prior to that he was a litigation practitioner with the Attorney-General's Department, where he conducted several major trade practices cases. In these roles, he has come face to face with each aspect of the regulatory information challenge. Mr Woodward has been responsible for using statutory information gathering powers, for the testing of information through formal and informal consultation mechanisms, for the preparation of formal reasons for decision, and for the conduct of judicial and administrative review proceedings.