

## Gosain, Seema

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**From:** Ridgeway, Stephen (AU) <Stephen.Ridgeway@au.kwm.com>  
**Sent:** Tuesday, 15 October 2013 10:27 AM  
**To:** Jones, David  
**Cc:** Greiss, Rami; Buik, Jessica; Cooke, Simon (AU)  
**Subject:** Re: Letter from Mr Rod Sims, ACCC Chairman [SEC=UNCLASSIFIED]

Confidential communication

Thanks David

Kind regards, Stephen

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**From:** Jones, David [mailto:David.Jones@accc.gov.au]  
**Sent:** Tuesday, October 15, 2013 08:53 AM  
**To:** Ridgeway, Stephen (AU)  
**Cc:** Greiss, Rami <Rami.Greiss@accc.gov.au>; Buik, Jessica <Jessica.Buik@accc.gov.au>; Cooke, Simon (AU)  
**Subject:** RE: Letter from Mr Rod Sims, ACCC Chairman [SEC=UNCLASSIFIED]

Dear Stephen

I will ensure that any further correspondence to the Minister on this matter is copied to both you and Simon Cooke when it is send.

Kind regards

**David Jones**  
Director | Merger Investigations Branch  
**Australian Competition & Consumer Commission**  
23 Marcus Clarke Street Canberra 2601 | <http://www.accc.gov.au>  
T: +61 2 6243 1393 | F: +61 2 6243 1212

 Please consider the environment before printing this email

Please note I am not in the office on Fridays\*

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**From:** Ridgeway, Stephen (AU) [mailto:Stephen.Ridgeway@au.kwm.com]  
**Sent:** Tuesday, 15 October 2013 12:11 AM  
**To:** Jones, David  
**Cc:** Greiss, Rami; Buik, Jessica; Cooke, Simon (AU)  
**Subject:** RE: Letter from Mr Rod Sims, ACCC Chairman [SEC=UNCLASSIFIED]

Confidential communication

Thanks David

For future correspondence, it would be good if you could copy me in at the same time please. The Minister gets a lot of correspondence.

Please also copy in Simon Cooke, one of our senior associates.

Kind regards, Stephen

**Stephen Ridgeway | Partner**  
**King & Wood Mallesons**  
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[stephen.ridgeway@au.kwm.com](mailto:stephen.ridgeway@au.kwm.com) | [Partner profile](#) | [www.kwm.com](http://www.kwm.com)

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**From:** Jones, David [<mailto:David.Jones@accc.gov.au>]  
**Sent:** Monday, 14 October 2013 3:59 PM  
**To:** Ridgeway, Stephen (AU)  
**Cc:** Greiss, Rami; Buik, Jessica  
**Subject:** Letter from Mr Rod Sims, ACCC Chairman [SEC=UNCLASSIFIED]

Dear Stephen

Please find attached a copy of a letter sent on Friday to Minister Nahan from Rod Sims.

Kind regards

**David Jones**  
Director | Merger Investigations Branch  
**Australian Competition & Consumer Commission**  
23 Marcus Clarke Street Canberra 2601 | <http://www.accc.gov.au>  
T: +61 2 6243 1393 | F: +61 2 6243 1212

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\*Please note I am not in the office on Fridays\*

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**From:** Buckley, Lisa  
**Sent:** Friday, 11 October 2013 3:49 PM  
**To:** 'Minister.Nahan@dpc.wa.gov.au'  
**Subject:** Letter form Mr Rod Sims, ACCC Chairman [SEC=UNCLASSIFIED]

Dear Minister,

Please see attached letter from Chairman Rod Sims, Australian Competition and Consumer Commission.  
Note a hard copy has been forwarded via external mail.

Regards,

**Lisa Buckley**  
Executive Assistant to the Chairman  
**Australian Competition & Consumer Commission**  
23 Marcus Clarke Street Canberra 2601 <http://www.accc.gov.au>  
T: +61 2 6243 1131

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Our ref: 51156  
Contact officer: Rami Greiss  
Contact phone: 02 6243 1226

11 October 2013

Hon Dr Mike Nahan MLA  
Minister for Energy; Finance;  
Citizenship and Multicultural Interests  
Level 12, 2 Havelock Street  
West Perth WA 6005

**By email:** [Minister.Nahan@dpc.wa.gov.au](mailto:Minister.Nahan@dpc.wa.gov.au)

Dear Minister

### **Proposed merger of Verve Energy and Synergy**

I am writing in relation to the Western Australian Government's proposal to merge the activities of the Electricity Retail Corporation trading as Synergy (Synergy) and the Electricity Generation Corporation trading as Verve Energy (Verve) (the proposed merger).

As you are aware, I, together with Commissioner Jill Walker and staff of the ACCC, met with representatives of the Western Australian Government and staff from the Western Australian Department of Finance on 23 July 2013.

From that meeting, and previous communications between staff of the ACCC and the WA Department of Finance, I understand that with effect from 1 July 2013 a joint board for Verve and Synergy has been formed, and that regulations have been tabled in the Parliament of Western Australia exempting certain conduct related to the proposed merger from relevant provisions of the *Competition and Consumer Act 2010* (the **Act**) in preparation for a full merger to occur on 1 January 2014<sup>1</sup>.

As I stated at the 23 July 2013 meeting, the ACCC is concerned that the proposed merger may be likely to have the effect of substantially lessening

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<sup>1</sup> Subclause 2(1) of the Conduct Code Agreement 1995, as amended, provides for notification to be given to the ACCC within 30 days of a State passing legislation (including regulations) in reliance of s 51 of the *Trade Practices Act 1974* (Cth) (now the Act).

competition in WA energy markets. As you are aware, Verve and Synergy account for well over 50 per cent market share of electricity generation and retailing respectively. Given the extent of vertical integration that would arise from the merger, the ACCC is concerned that the merged business would have the ability and incentive to restrict access by competitors to energy contracts, which is likely to lead to increased prices at the wholesale and/or retail level.

Further, the ACCC is concerned that the proposed merger will increase barriers to entry and expansion by independent retailers and generators. By creating a dominant, vertically integrated generator and retailer, the proposed merger will reduce the availability of counterparties for any new entrant wishing to enter into bilateral energy contracts, thereby increasing the risks associated with entry into generation or retailing. The expected reduction in energy being traded through the South West Interconnected System (SWIS) (due to the vertically integrated entity sourcing much of its energy requirements from its own generation) would also reduce transparency in the SWIS. Further, given the competition concerns arising from the proposed merger, it would increase the need for regulatory oversight. This would ultimately be to the detriment of electricity customers; consumers are served better by competition than by regulation.

The ACCC understands that the risk of harm to competition as the likely effect of a merger between Verve and Synergy has been highlighted previously, including in the 2009 Oates Review (commissioned by the then Western Australian Minister for Energy) and the Economic Regulatory Authority's 2011 annual report.

The particular circumstances of the proposed merger and the pre-merger steps taken by the Western Australian Government mean that there is already a single ultimate shareholder which controls both corporations, together with a joint board of directors. This limits the ACCC's ability to take action in relation to a potential contravention of section 50 of the Act. Accordingly, despite the ACCC's significant competition concerns discussed above, the ACCC will not be conducting an informal review of the proposed merger. However, the ACCC intends to outline its competition concerns about the proposed merger in a media release, given the previous media interest in this issue.

I would welcome the opportunity to discuss these issues with you, including the next time I am in Perth.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rod Sims', with a stylized flourish at the end.

Rod Sims  
Chairman