



16 June 2006

**Statement of Issues - Alinta proposed acquisition of AGL & Alinta-AGL Joint Merger Proposal reflecting the Merger Implementation Agreement signed on 1 June 2006.**

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to the Alinta Ltd (**Alinta**) proposed acquisition of the Australian Gas Light Company (**AGL**) (referred to as the **Alinta Acquisition Proposal**) and the Alinta-AGL Joint Merger Proposal reflecting the Merger Implementation Agreement signed on 1 June 2006 (referred to as the **MIA Joint Proposal**).
2. A Statement of Issues published by the ACCC is not a final decision regarding a proposed acquisition, but provides preliminary views, and draws attention to particular issues of varying degrees of competition concern to the ACCC as well as on the lines of enquiry that the ACCC wishes to undertake.
3. In line with the ACCC's *Merger Review Process Guidelines* (available on the ACCC's website: [www.accc.gov.au](http://www.accc.gov.au)) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by 3 July 2006 and anticipates making a final decision on 28 July 2006. However, the anticipated timeline can change in line with the *Merger Review Process Guidelines*. To be kept abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the ACCC's website which contains the Mergers Public Register. To find the Mergers Public Register follow the link to "Mergers" and then the link to "Mergers Public Register".
4. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is intended to also provide both the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

**Background**

5. On 21 February 2006, Alinta announced to the ASX its proposal to merge with AGL via a shareholder scheme of arrangement. Under the proposed transaction, Alinta would acquire 100% of the ordinary shares in AGL, having already acquired 19.9% of the shares in AGL.
6. On 13 March 2006, AGL rejected Alinta's merger offer and announced its intention to make its own takeover offer to acquire 100% of Alinta's ordinary

- shares. On 20 March 2006, Alinta subsequently announced its intention to make a takeover offer for all ordinary shares in AGL.
7. On 26 April 2006, Alinta and AGL signed a Heads of Agreement to merge the two companies. The Merger Implementation Agreement (**MIA**) formalising the Heads of Agreement was subsequently executed on 1 June 2006.
  8. Despite the signing of the MIA, AGL and Alinta both requested that the ACCC continue its assessment of their separate individual acquisition proposals. Therefore, in summary, the ACCC has assessed three proposals relating to AGL and Alinta:
    - **Alinta Acquisition Proposal** – Alinta’s proposed acquisition of AGL. Alinta has offered s.87B undertakings in relation to this proposal.
    - **MIA Joint Proposal** – the Alinta-AGL Joint Merger Proposal reflecting the Merger Implementation Agreement signed on 1 June 2006. Alinta has offered s.87B undertakings in relation to this proposal.
    - **AGL Acquisition Proposal** – AGL’s proposed acquisition of Alinta. AGL offered, and the ACCC has accepted, undertakings in relation to this proposal.
  9. On 16 June 2006, the ACCC issued a media release announcing that it has accepted section 87B undertakings offered by AGL pursuant to section 87B of the *Trade Practices Act 1974* (**the Act**). Accordingly, the ACCC does not intend to oppose the AGL proposed acquisition of Alinta (referred to as the **AGL Acquisition Proposal**).
  10. This Statement of Issues relates only to the Alinta Acquisition Proposal and the MIA Joint Proposal. The AGL Acquisition Proposal assessment has now been completed due to the acceptance of undertakings.

### **The parties**

11. AGL is a publicly listed company with a market capitalisation of approximately \$8 billion. The business of AGL encompasses operations and assets in the following areas of the energy industry:
  - gas distribution networks;
  - gas wholesale supply;
  - gas and electricity retail supply;
  - electricity generation; and
  - electricity distribution networks.
12. AGL is a key retailer of gas in NSW. It also provides significant gas and electricity retail supply services in Victoria, South Australia and the ACT. AGL has approximately 1.5 million electricity retail customers and 2.8 million gas retail customers nationally.
13. AGL holds a 30% interest in the Australian Pipeline Trust (**APT**), and a 50% interest in its responsible entity Australian Pipeline Ltd (**APL**). APT is a

publicly listed infrastructure trust, which has interests in a number of gas transmission pipelines throughout Australia. These assets include the Moomba to Sydney Gas Pipeline (**MSP**) and the Parmelia Pipeline (**Parmelia**) and an 88.2% interest in the Goldfield Gas Transmission Pipeline (**Goldfields**) in Western Australia.

14. AGL's asset management company subsidiary, Agility Pty Ltd (**Agility**), manages the operation of the MSP, Parmelia and Goldfields through the provision of a range of services, in accordance with management agreements currently in place. Agility also provides services to the other infrastructure assets in which AGL has an interest, as well as actively seeking to provide services to unrelated third party customers.
15. Alinta is a publicly listed company with a market capitalisation of approximately \$2.8 billion. The business of Alinta encompasses operations and assets in the following areas of the energy industry:
  - Gas distribution networks;
  - Gas wholesale supply;
  - Gas and electricity retail supply;
  - Electricity generation; and
  - Electricity distribution networks.
16. Alinta has approximately 1000 electricity customers and 532,000 retail gas customers nationally.
17. Alinta further holds a 20% interest in Alinta Infrastructure Holdings (**AIH**), a publicly listed infrastructure trust, which itself has interests in a number of significant gas transmission infrastructure assets throughout Australia. These assets include the Eastern Gas Pipeline (**EGP**) and an interest in the Goldfields pipeline. In addition to the gas transmission pipelines held through AIH, Alinta also has a further 20% interest in the Dampier to Bunbury Natural gas Pipeline (**DBNGP**) in Western Australia.
18. Alinta's asset management subsidiary, Alinta Asset Management Pty Ltd (**AAM**), manages the operation of the EGP and the DBNGP by providing a comprehensive range of services, in accordance with the long-term and exclusive management agreements currently in place. AAM also provides a comprehensive range of services to other infrastructure assets in which Alinta has an interest.

### **Market definition**

19. The ACCC considered a number of relevant markets in assessing the proposals. The four key relevant markets for this Statement of Issues are:
  - the market for supply of wholesale gas to the south-eastern region of NSW (including Sydney);
  - the market for supply of wholesale gas to the Perth region;
  - the market for electricity generation in NSW; and,

- the market for electricity generation on the South West Interconnected System in Western Australia.
20. In assessing the effects on competition in these markets, the ACCC considers that control of gas transmission pipelines is a very important factor.

### **Overview of Competition Issues**

21. For the purpose of this Statement of Issues, the issues in this matter are divided into three categories: “*issues of concern*”, “*issues that may raise concerns*”, and “*issues unlikely to pose concerns*”. The ACCC is seeking comments from market participants in relation to all issues. Issues that the ACCC currently considers as “issues of concern”, are the issues in relation to which the ACCC has taken the preliminary view that a substantial lessening of competition will (or is likely to) occur in the markets identified.
22. Issues that the ACCC currently considers do not pose concern may potentially later become issues of concern depending on further information received by the ACCC.
23. In assessing the issues the ACCC has taken into account the most recent undertakings offered by Alinta pursuant to s.87B of the Act. Alinta offered separate undertakings in relation to the Alinta Acquisition Proposal and the MIA Joint Proposal, but there are many similarities between the two undertakings put forward by Alinta.
24. For the **Alinta Acquisition Proposal**, the ACCC is currently dividing the issues as follows:

*Issues of Concern:*

- Common ownership of substantial interests in the entities which own the EGP and MSP with the aggregation of Agility and AAM as service providers for those pipelines, combined with vertical integration with NSW retail markets.

*Issues that may raise concerns:*

- Aggregation of interests in the DBNGP, Parmelia and Goldfields pipelines, combined with the aggregation of Agility and AAM as service providers for those pipelines.

*Issues unlikely to pose concerns:*

- Aggregation of asset management and infrastructure service provider companies (Agility and AAM)
- Aggregation of interests in gas transmission pipelines in Queensland;
- Aggregation of interests in electricity distribution networks in Victoria;
- Aggregation of retail interests;
- Aggregation of electricity generation; and
- Aggregation of other interests.

25. For the **MIA Joint Proposal**, the ACCC is currently dividing the issues as follows:

*Issues of concern:*

- Common ownership of substantial interests in the entities which own the EGP and MSP with the aggregation of Agility and AAM as service providers for those pipelines, with no vertical integration with NSW retail markets.

*Issues that may raise concerns:*

- Aggregation of interests in DBNGP, Parmelia and Goldfields pipelines, combined with the aggregation of Agility and AAM as service providers for those pipelines.

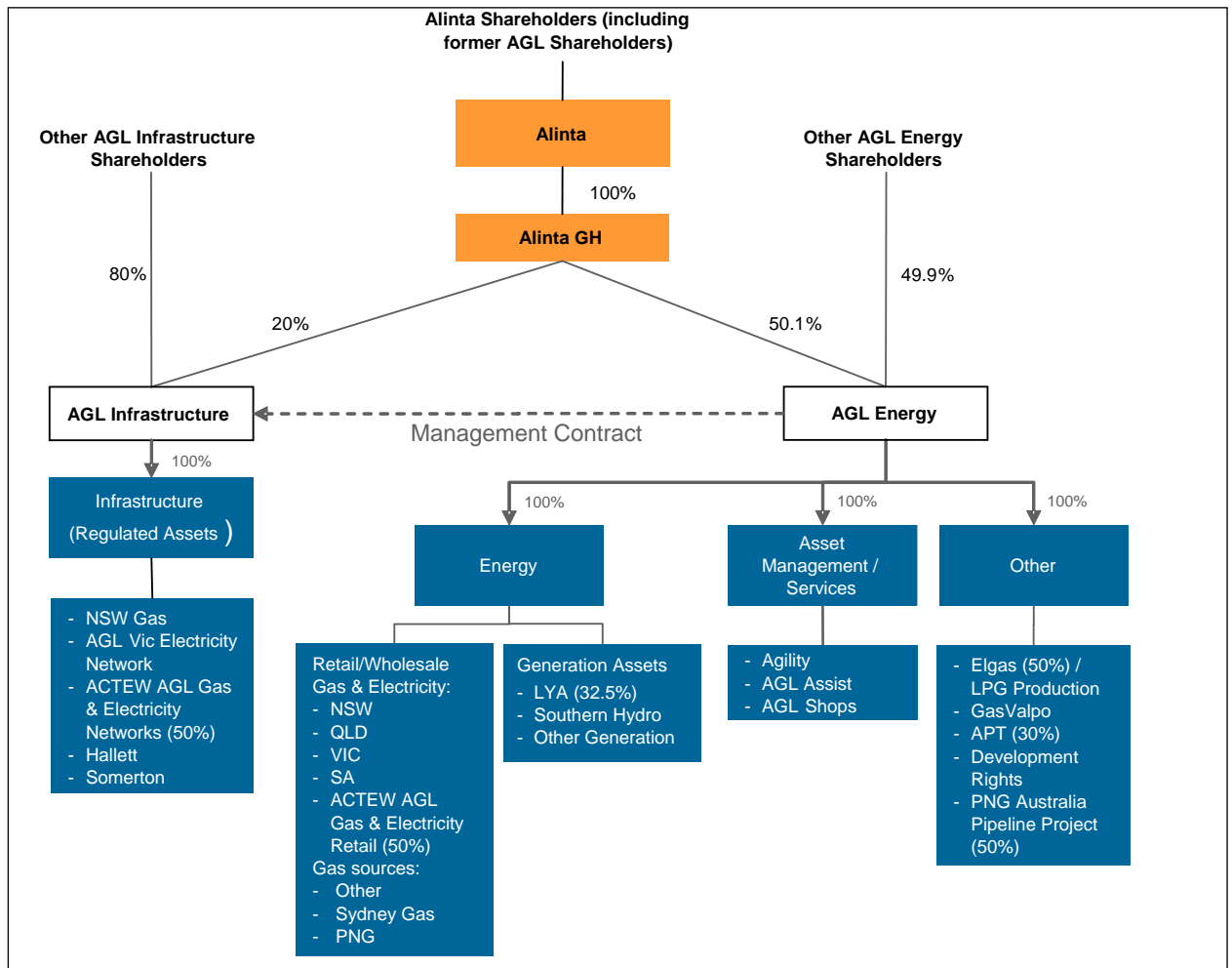
*Issues unlikely to pose concerns:*

- Aggregation of asset management and infrastructure service provider companies (Agility and AAM);
- Aggregation of interests in gas transmission pipelines in Queensland;
- Aggregation of interests in electricity distribution networks in Victoria;
- Aggregation of retail interests;
- Aggregation of electricity generation; and
- Aggregation of other interests.

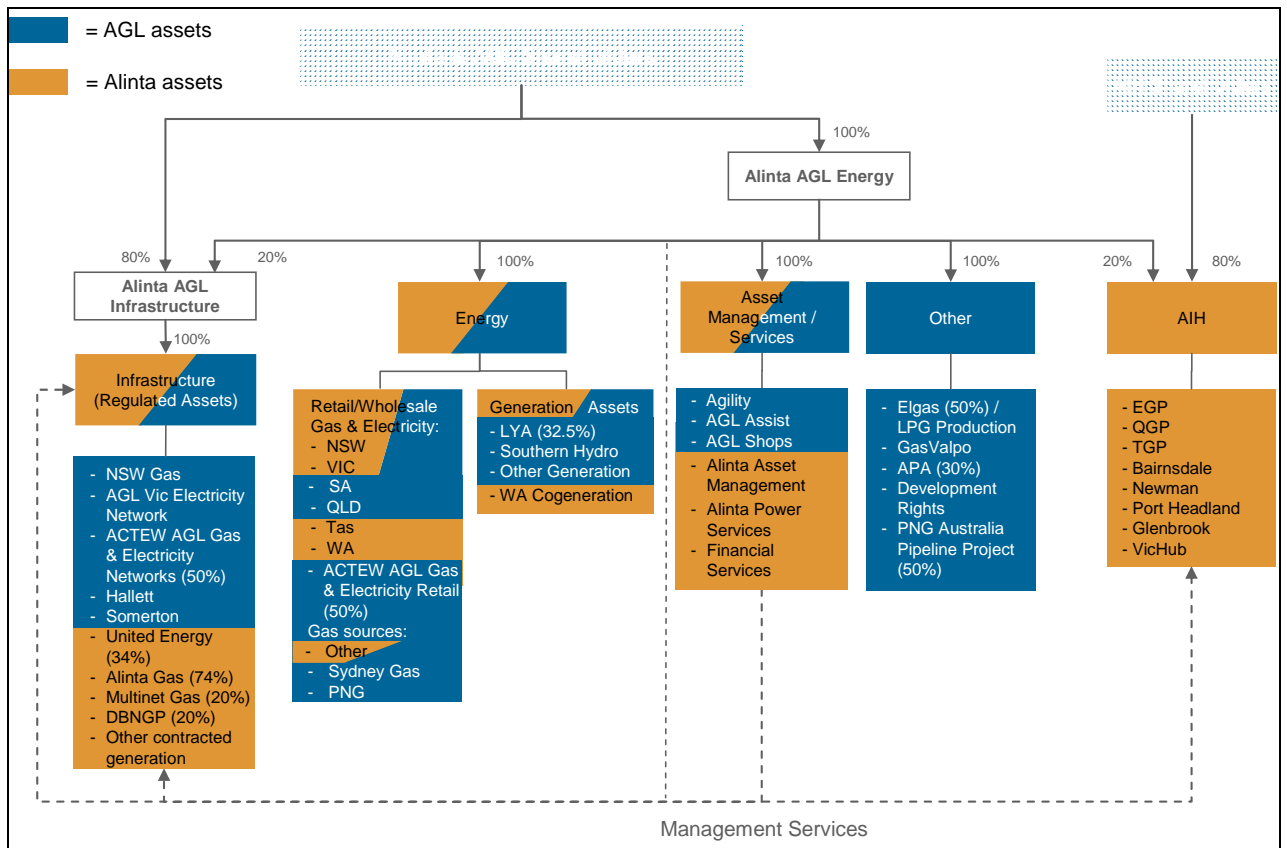
26. As can be seen above, the issues are broadly similar for the Alinta Acquisition Proposal and the MIA Joint Proposal and therefore they will be discussed together. One significant difference is that under the MIA Joint Proposal, the entity that holds the interest in the EGP and MSP will not have any significant interest in NSW retail markets. This removes an important vertical issue when considering issues that arise in the market for the supply of wholesale gas to the south-eastern region of NSW (including Sydney).

### **The Structure of the Alinta Acquisition Proposal and the Undertakings**

27. Alinta has offered Undertakings to the ACCC under s 87B of the Act in connection with the Alinta Acquisition Proposal.
28. The undertakings have been available for public comment on the ACCC website. The latest version of the undertakings put forward by Alinta and released publicly was on 31 May 2006. Alinta has subsequently put forward a number of further minor changes to the ACCC, which have been taken into consideration.
29. If Alinta were to acquire more than 50.1% of AGL, but less than 90%, then the undertakings contemplate the structure set out in the diagram below.



30. Importantly, in terms of the competition issues identified by the ACCC, the structure results in:
- Common ownership of substantial interests in the entities which own the MSP and the interest in the EGP.
  - Vertical integration of the MSP and EGP with AGL's NSW retailing operations.
  - Aggregation of the interest in the DBNGP, Parmelia and Goldfields pipelines, combined with vertical integration with Alinta's Western Australian gas retail business.
  - Aggregation of the interest in Agility and AAM, which provide management services to the EGP, MSP, DBNGP, Parmelia and Goldfields pipelines.
31. If Alinta were to acquire more than 90% of AGL, then the undertakings contemplate the structure set out in the diagram below.

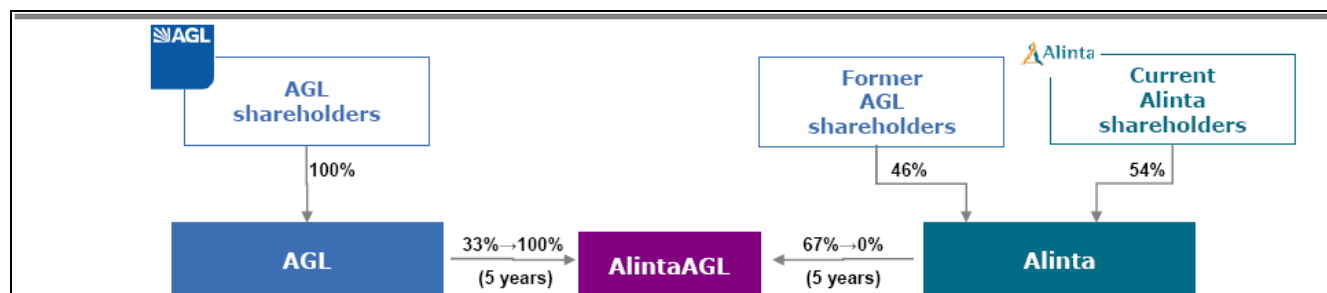


32. Importantly in terms of the competition issues identified by the ACCC, the structure results in:
- Common ownership of substantial interests in the entities which own the MSP and the interest in the EGP.
  - Vertical integration of the interest in MSP and EGP with AGL’s NSW retailing operations.
  - Aggregation of the interest in the DBNGP, Parmelia and Goldfields pipelines combined with vertical integration with Alinta’s Western Australian retail gas business. The ACCC notes that the ownership interest in the DBNGP is diluted under this scenario due to the proposed 20% interest in Alinta AGL Infrastructure, which will hold a 20% interest in the DBNGP. However, AAM will continue to provide management services to the DBNGP.
  - Aggregation of the interest in Agility and AAM, which provide management services to the EGP, MSP, DBNGP, Parmelia and Goldfields pipelines.
33. In relation to the proposed structure after the merger, the formal commitment in the undertakings offered by Alinta require it to allocate the AGL gas distribution assets in NSW, gas and electricity networks in the ACT, and the electricity distribution network in Victoria to a separately listed Infrastructure Company in which it will not hold an interest of greater than 30%.

34. The undertakings offered by Alinta in relation to the Alinta Acquisition Proposal also make other commitments, including (in summary form) the following commitments:
- That there be no cross directorships between APL and Alinta. In particular, none of the directors of APL will be directors or employees of Alinta.
  - That Alinta will not extend the scope of services provided by Agility to APT in relation to the MSP.
  - That Alinta will ring fence the EGP Marketing Services Division and that confidential information be protected, including through each employee providing a specified confidentiality undertaking to shippers.
  - That Alinta will not discriminate between shippers in providing marketing services to AIH in relation to the EGP.
  - That Alinta will provide audits of compliance with the undertakings.
35. The complete undertakings offered by Alinta are available on the ACCC website by following the link to ‘Mergers’ then the link to ‘Mergers Public Register’ then the link to ‘Alinta Ltd – Proposed acquisition of AGL.’

**The Structure of the MIA Joint Proposal and the Undertakings**

36. Alinta has also separately offered undertakings to the ACCC under s 87B of the Act in connection with the MIA Joint Proposal.
37. The undertakings have been available for public comment on the ACCC website. The latest version of the undertakings put forward by Alinta that was released publicly was on 24 May 2006. Alinta has subsequently put forward some further minor changes to the ACCC, which have been taken into consideration.
38. The proposed structure under the MIA Joint Proposal is set out in the following two diagrams provided by Alinta.





# Australia's Leading Energy and Infrastructure Companies



## Gas Transmission Pipelines

- Dampier to Bunbury Pipeline (20%)
- Australian Pipeline Trust (30%)

## Infrastructure Investments

- Alinta Infrastructure Holdings (20%)

## Gas Distribution Networks

- AlintaGas Networks (74%)
- Multinet (20.1%)
- NSW Gas Distribution Network
- ActewAGL Gas Network (50%)
- GasValpo

## Electricity Distribution Networks

- United Energy Distribution (34%)
- Victorian Distribution Network
- ActewAGL Electricity Network (50%)

## Asset Management

- Alinta Asset Management
- Agility asset management

## Contracted Generation

- Wattle Point (SA) - 91MW
- Cawse (WA) - 16MW



## Upstream Gas

- PNG Upstream Gas Project
- Sydney CSM project (50%)
- Wholesale gas supply arrangements

## LPG

- Elgas
- HC Extractions

## AGL Retail (NSW, Vic, SA, Qld, ACT)

- 1.5m electricity customers
- 1.4m gas customers
- ActewAGL Retail (50%)

## Electricity Generation

- Southern Hydro
- Loy Yang A (32.5%)
- Hallett Power Station
- Somerton Power Station
- Offtake from Bairnsdale Power Station

## Growth Projects

- PNG Australian Pipeline Project
- Acquisition of up to 100% of AlintaAGL
- Hallett wind generator 95MW (SA)
- Bogong 130MW (Vic) and West
- Kiewa 12MW (Vic) hydro generators
- Hallett gas generator expansion 250MW (SA)
- Townsville gas generator 370MW (Qld)
- Wind development projects, such as Bluff 45MW (SA), Dollar 79MW (Vic) and Macarthur 330MW (Vic) wind generators
- Leaf Gully Stage 1, 300MW (NSW) and Stage 2 500MW (NSW) generators

## AlintaAGL

### Electricity Generation (WA)

- Pinjarra Cogen - 2x140MW
- Additional developments under Alcoa generation alliance

### Alinta Retail (WA)

- 532,000 gas customers
- 1,000 electricity customers

67%

33%



39. Importantly, in terms of the competition issues identified by the ACCC, the structure contemplated under the MIA Joint Proposal results in the following:
- Common ownership of substantial interests in the entities which own the MSP and the interest in the EGP.
  - Separation of the interest in AGL's NSW gas retailing operations from the interest in the MSP and EGP.
  - Aggregation of the interest in the DBNGP, Parmelia and Goldfields pipelines. Vertical integration between these pipelines and Alinta's Western Australian gas retail business arises via the proposed 67% stake in the Alinta-AGL retail entity. AGL has an option to acquire 100% of this business within 5 years.
  - Aggregation of the interest in Agility and AIH, which provide management services to the EGP, MSP, DBNGP, Parmelia and Goldfields pipelines.
40. The undertakings offered by Alinta in relation to the MIA Joint Proposal are substantively the same as the undertakings being offered by Alinta with respect to the Alinta Acquisition Proposal. The undertakings include (in summary form) the following commitments:
- That there be no cross directorships between APL and Alinta. In particular, none of the directors of APL will be directors or employees of Alinta.
  - That Alinta will not extend the scope of services provided by Agility to APT in relation to the MSP.
  - That Alinta will ring fence the EGP Marketing Services Division and that confidential information be protected, including that each employee provide a specified confidentiality undertaking to shippers.
  - That Alinta will not discriminate between shippers in providing marketing services to AIH in relation to the EGP.
  - That Alinta will provide audits of compliance with the undertaking.
41. The complete undertakings offered by Alinta are available on the ACCC website by following the link to 'Mergers' then the link to 'Mergers Public Register' then the link to 'Alinta-AGL Joint Merger Proposal reflecting MIA signed on 1 June 06'.

**Issues of concern: common ownership of substantial interests in the entities which own the EGP and MSP**

42. Under both the Alinta Acquisition Proposal and MIA Joint Proposal, a newly formed single entity will have the following interests in relation to NSW gas transmission pipelines post-acquisition:
- a 30% interest in APT which owns the MSP;
  - a 50% interest in APL, the responsible entity for APT;

- a 20% interest in AIH which owns the EGP;
  - 100% ownership of Agility which provides infrastructure and asset management services for the MSP; and
  - 100% ownership of AAM which provides infrastructure and asset management services for the EGP.
43. The EGP and the MSP are the only pipelines supplying gas into the south-eastern region of NSW (including Sydney) and the ACCC considers that any degree of common ownership of the pipelines will have significant competition effects in the market for supply of wholesale gas to the south-eastern region of NSW (including Sydney).
44. An important element in assessing the competition effects is the degree to which Alinta will be able to exercise significant influence over the decision-making (and therefore the assets) of APT (which owns the MSP) and AIH (which owns the EGP).
45. The ACCC considers that, notwithstanding the provisions of the undertakings, Alinta will have the ability to exert a high degree of influence over APT through a combination of the following main factors:
- The significant holdings of 30% of the units in APT. With the exception of Petronas' 10% unitholding, the remaining unitholders are widely dispersed, so Alinta will have the ability to exert significant influence in the appointment of directors.
  - The 50% shareholding in APL provides further avenues for influence over the operations of APT.
  - Agility's provision of services pursuant to its management services agreement with APT provides further scope for Alinta to exert influence, although the ACCC notes that the scope of Agility's role in APT has been reduced since 2000, particularly in relation to critical areas such as marketing.
  - While the undertakings offered by Alinta prevent Alinta directors or staff from being on the board of APL or holding positions at APT, they do not limit the ability of Alinta to exert influence in the appointment of directors through its unitholder voting rights.
46. The ACCC considers that Alinta is currently able to exercise a high degree of influence over AIH through a combination of the following main factors:
- Alinta currently has a significant 20% unitholding in AIH, through which it is able to exert substantial influence (particularly given the widely dispersed nature of the remaining unitholdings in AIH).
  - Alinta currently has exclusive long-term management and service arrangements (mainly via AAM) through which Alinta is able to exert substantial influence over the operation of AIH. AAM has a high degree of control over important areas such as the marketing of gas.

47. The ACCC considers that, by being able to influence the operations of the EGP and MSP, Alinta will have the ability to increase the degree of market power of both pipelines with adverse consequences for competition in the wholesale gas market in the south-eastern NSW region (including Sydney) by potentially reducing gas producers' ability to supply gas on competitive terms. The ACCC took into account the percentage of capacity that is contracted on the EGP and MSP currently and into the future.
48. Even if Alinta were able to influence the operations of only one of the pipelines, the ACCC would still be likely to have concerns about the common ownership of both pipelines. This is because the mere ownership of an interest in one pipeline would create the incentive for Alinta to change its conduct in the operation of the other pipeline under its influence.
49. The ACCC does not consider that the ring fencing and confidentiality undertakings are likely to sufficiently address the competition issues that arise in the market for supply of wholesale gas to the south-eastern region of NSW (including Sydney) due to the aggregation of the indirect ownership interests in these pipelines and the interests that exist due to management contracts. The measures in the undertakings may assist in addressing some issues arising from vertical integration, but they do little to address horizontal aggregation concerns that change the incentives in operating the pipelines.
50. The ACCC considers that the concerns arising from aggregation of the interests in the EGP and MSP are more significant under the Alinta Acquisition Proposal than under the MIA Joint Proposal. This is because, under the Alinta Acquisition Proposal, the Alinta holding entity will also control a significant gas retailer in Sydney (i.e. AGL). Such vertical integration raises the prospect of anti-competitive discrimination and foreclosure against rivals in gas retailing, and would also be likely to raise barriers to new entrants. Currently vertical integration exists between AGL and its interest in the MSP, however, the prospect of such anti-competitive behaviour is limited at present by the existence of the EGP as an alternative source of delivered gas to retail markets. If vertical integration occurs in conjunction with common ownership of the EGP and the MSP, then this constraint will be removed or severely weakened.
51. Under the MIA Joint Proposal, the proposed acquisition reduces the vertical integration (because ownership of the pipelines is intended to be separated from the key gas retail interests in NSW) which the ACCC considers may have some pro-competitive effects. The ACCC seeks further comments from market participants in relation to this issue.
52. The ACCC has noted the effect that the proposals may have in the market for electricity generation in New South Wales. The ACCC considers that gas-fired generation is likely to play an important competitive role in the future and that common ownership of interests in the MSP and EGP, via holdings in APT and AIH, may raise barriers to entry for potential new gas-fired generation players by making it less likely that they will obtain competitive gas supplies. The ACCC also notes the vertical issues that arise with electricity in relation to the Alinta Acquisition Proposal due to AGL's potentially significant role in generation.

53. It is noted that the EGP is currently not covered under the Gas Code, and that the MSP is only partially covered (with the Moomba to Marsden section of the pipeline not subject to regulation). Decisions with respect to coverage have regarded separate ownership of the pipelines as important to the degree of competition in the relevant gas markets.<sup>1</sup> The aggregation of the interests in the EGP and MSP may compromise the separate ownership and have significant effects in the market for supply of wholesale gas to the south-eastern region of NSW (including Sydney).
54. The ACCC recognises that regulation of gas transmission pipelines may play a significant role in limiting competition concerns arising from horizontal aggregation. However, the ACCC does not consider that the mere possibility that pipelines might become covered in the future to be an answer to the competition concerns arising from aggregation of gas transmission interests.
55. The ACCC is continuing its assessment of the competition issues identified in relation to the MSP and EGP. In this regard, the ACCC invites further submissions from market participants on the competition issues concerning the MSP and EGP, as well as on the corresponding markets in which these pipelines participate.

**Issues that may raise concerns: aggregation of gas transmission interests in Western Australia**

56. Under the Alinta Acquisition Proposal, the new Alinta holding entity will own the following interests in Western Australian gas transmission pipelines:
  - a 30% interest in APT which owns the Parmelia and 88.2% of the Goldfields pipeline;
  - a 20% interest in a new entity which will have a 20% interest in the DBNGP (assuming Alinta obtains at least a 90% interest in AGL);
  - a 20% interest in AIH which has an 11.8% interest in the Goldfields pipeline;
  - ownership of Agility as the management service provider for the Parmelia and the Goldfields pipelines; and
  - ownership of AAM which has a significant management role in the operations of the DBNGP.
57. Under the MIA Joint Proposal, a new entity will hold the following interest in Western Australian gas transmission pipelines:
  - a 30% interest in APT which owns the Parmelia and 88.2% of the Goldfields;
  - a 20% interest in the DBNGP;
  - a 20% interest in AIH which has an 11.8% interest in the Goldfields;

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<sup>1</sup> Duke Eastern Gas Pipeline Pty Ltd [2001] ATPR 41-821; Hon. Ian Macfarlane MP, Minister for Industry, Tourism & Resources: *"Applications for revocation of coverage on certain portions of the Moomba to Sydney Gas Pipeline System"*, 19 November 2003.

- ownership of Agility as the management service providers for the Parmelia and Goldfields pipelines; and
  - ownership of AAM which has a significant management role in the operations of the DBNGP.
58. An important element in assessing these competition issues relates to the degree to which the new entity will be able to exercise significant influence over operational decision-making in relation to the Parmelia, DBNGP and the Goldfields pipelines. The ACCC considers that the holding company will be able to exert significant influence over such decision-making post-merger.
59. The new entity's influence over the Parmelia and Goldfields pipelines raises similar issues to the degree of influence that Alinta could exert over the MSP, as discussed earlier.
60. The new entity's influence over the DBNGP raises similar issues to the degree of influence that Alinta could exert over the EGP, as discussed earlier. However, it should also be noted that, as part of the sale of the DBNGP in 2003, the relevant companies associated with the DBNGP executed s.87B undertakings providing for ring fencing of the DBNGP, in order to address vertical competition issues arising from Alinta's interests as an owner, user and service provider to the pipeline.
61. The ACCC considers that the newly formed holding company will have a high degree of influence over all pipelines, particularly given the significant management role the newly merged asset management and infrastructure service provider entity will be likely to have in relation to the DBNGP.
62. In assessing the competition concerns in Western Australia, a key issue is the extent to which the Parmelia constrains the DBNGP and the effects this has in the market for supply of wholesale gas to the Perth region and the market for electricity generation on the South West Interconnected System in Western Australia. The DBNGP is currently subject to coverage under the Gas Code, whilst the Parmelia is not covered.
63. Market participants have suggested that, despite the Parmelia having significantly less capacity than the DBNGP and despite relatively limited current gas sources for the Parmelia, the pipeline plays an important competitive role because:
- there is on-going exploration for gas in the Perth basin that would be likely to utilise the Parmelia for delivery and provide a significant competitive constraint; and
  - the Parmelia, particularly when used in coordination with gas storage facilities, has the ability to act as an alternative source of gas during peak gas demand periods (which typically occurs when gas-fired generators in the Perth region are operating at capacity due to high electricity demand in Perth).
64. The competition effects of aggregation of the Parmelia and the DBNGP are increased when vertical issues are taken into consideration. Under the Alinta Acquisition Proposal, Alinta will retain control of its gas retail business in WA.

Under the MIA Joint Proposal, Alinta will have a 67% interest in the gas retail business in WA, however, AGL will have an option to acquire 100% of this interest over 5 years.

65. There is already a degree of vertical integration between gas transmission and gas retailing in the south-western region of Western Australian, arising as a result of Alinta's interest in the DBNGP. However, the existence of the Parmelia as an independent source of gas supply has the ability to limit the extent to which Alinta is currently able to engage in anti-competitive conduct through foreclosure strategies in relation to competitors. Should Alinta obtain control of the Parmelia, this constraint may be removed.
66. Further effects in Western Australia may arise in the market for electricity generation on the South West Interconnected System. Gas-fired electricity generators are an important source of generation in Western Australia. The Goldfields, Parmelia and DBNGP pipelines all have the potential to supply gas to generators in this region, although the ACCC notes the current transmission constraints that may affect the role of the Goldfields in that regard.
67. At present, the ACCC does not consider this to be a significant competition issue due to the position of strong incumbency in electricity generation currently held by Verve Energy. However, the ACCC recognises that vertical integration between gas transmission operations and generation interests (including possible future generation developments) may raise barriers to entry for players other than Alinta which may seek to establish generation capabilities connected to the South West Interconnected System to supply this region in the future.
68. The ACCC recognises that regulation of gas transmission pipelines plays a significant role in limiting competition concerns arising from horizontal aggregation. However, the ACCC does not consider that the mere possibility that pipelines might become covered in the future to be an answer to the competition concerns arising from aggregation of gas transmission interests.
69. The ACCC is continuing its assessment of the competition issues identified in relation to Western Australia, as discussed above. In this regard, the ACCC invites further submissions from market participants on the competition issues concerning Western Australia, particularly in relation to the DBNGP, Parmelia and Goldfields pipelines.

#### **Issues unlikely to pose concerns**

70. The aggregation of the asset management and infrastructure service provider companies Agility and AAM is of concern to the extent that they facilitate control of the pipelines, as discussed above. The aggregation in itself however is considered to be an issue unlikely to pose competition concerns as market participants have indicated to the ACCC that:
  - infrastructure owners have the ability to provide these asset management and infrastructure services in-house;
  - market participants have suggested that international firms with relevant experience and local knowledge can fulfil the same function in the

Australian domestic market with sub-contractors or similarly through joint-ventures; and

- the contracts are largely long-term and tied to regulated monopolies.
71. The aggregation of interests in gas transmission pipelines in Queensland is considered to be an issue unlikely to pose competition concerns as:
- the APT Carpentaria and Roma to Brisbane pipelines, and AIH Queensland Gas Pipeline supply different regions and are currently covered; and
  - market participants contacted were not concerned in relation to the impact on competition following completion of the proposed PNG pipeline.
72. The aggregation of interests in electricity distribution networks in Victoria is considered to be an issue unlikely to pose competition concerns as market participants suggest that competition between the adjoining networks appears to be only marginal and the networks are currently regulated by the Victorian Essential Services Commission.
73. The aggregation of retail, electricity generation and other interests are considered to be issues unlikely to pose competition concerns as Alinta and AGL have only minor geographic overlap in these areas.

#### **ACCC's Future Steps**

74. The ACCC will finalise its decision on this matter subsequent to considering the further market responses invited by this Statement of Issues.
75. At this stage, the ACCC anticipates completing its further market inquiries by 3 July 2006. Submissions are to be received by the ACCC by that date. The ACCC will consider the submissions received from market participants, including submissions from the acquirer in light of the concerns that have been identified and (in conjunction with information and submissions provided by all parties) make a final decision as to the appropriate course of action to resolve any competition concerns that remain outstanding.
76. The ACCC anticipates making a final decision on 28 July 2006. However, the anticipated timeline may change in line with the *Merger Review Process Guidelines*. To be kept abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the ACCC's website which contains the Mergers Public Register. To find the Mergers Public Register follow the link to "Mergers" and then the link to "Mergers Public Register".