



1 September 2006

## Statement of Issues - Australian Pipeline Trust proposed acquisition of GasNet

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to the proposed acquisition of GasNet by Australian Pipeline Trust (**proposed acquisition**).
2. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC's preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
3. In line with the ACCC's *Merger Review Process Guidelines* (available on the ACCC's website at [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 10am on Monday, 11 September 2006, and anticipates making a final decision in mid to late September. However, the anticipated timeline can change in line with the *Merger Review Process Guidelines*. To keep 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 Register. To find the Mergers Register follow the link to "Public Registers" and then the link to "Mergers 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 also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

### Parties

#### *Australian Pipeline Trust*

5. Australian Pipeline Trust (APT) owns, or has an interest in, over 8000 km of gas transmission pipelines in Australia. APT has a significant presence in NSW, QLD, NT and WA. APT transports close to 25% of Australia's natural gas consumption through a network of pipelines which comprise a mix of mature, established pipelines and more recent greenfields pipelines. APT pipelines

include the Moomba to Sydney Pipeline (**MSP**), its laterals and the Vic/NSW gas interconnect.

6. The proposed acquisition is to occur through Australian Pipeline Ltd (**APL**), the responsible entity for APT.

### *GasNet*

7. GasNet Australia (Operations) Pty Ltd (**GasNet**) owns and maintains 1,930 km of high pressure gas transmission pipeline networks, which serve a total consumption base of approximately 1.4 million residential consumers and approximately 43,000 industrial and commercial users throughout Victoria.
8. GasNet's operations are shown in blue in the diagram below.



Source: [www.gasnet.com.au](http://www.gasnet.com.au)

### *AGL*

9. The Australian Gas Light Company (**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

10. AGL holds a 30% stake in APT as well as 50% of the shares in APL.

## The Transaction

11. On 22 August 2006 APT announced to the ASX an offer to acquire 100% of the issued shares of GasNet.
12. The competition effect of the proposed transaction is likely to depend on the outcome of the proposed Alinta-AGL joint merger proposals. On 29 August 2006, AGL released its Scheme Booklet to the ASX recommending that shareholders vote in favour of the proposal to merge its infrastructure business with Alinta Ltd and subsequently demerge the AGL energy business. On the same day Alinta Ltd (**Alinta**) released its Scheme Booklet recommending that its shareholders vote in favour of a merger of Alinta's and AGL's infrastructure and asset management businesses and the separation of AGL's energy business. The proposed schemes, if approved, will lead to AGL divesting its interest in APT and APL.

## Timeline

13. Details regarding the ACCC's requests for information and its indicative timelines are available on the ACCC's website. To find these details, follow the link to 'Mergers' and then the link to 'Mergers Public Register.'
14. The ACCC assessment so far has proceeded as follows.

19-Jun-2006	ACCC commences review under Merger Review Process Guidelines
28-Jun-2006	ACCC requests further information from APT. ACCC timeline suspended
14-Jul-2006	ACCC receives further information from APT. ACCC timeline recommenced
04-Aug-2006	Closing date for submissions from interested parties
16-Aug-2006	Proposed announcement of ACCC findings delayed to allow for provision of further information by APT. ACCC timeline suspended.
22-Aug-2006	Babcock & Brown withdraws from the process. APT announces intention to acquire 100% of GasNet.
1-Sep-2006	ACCC published a Statement of Issues outlining preliminary competition concerns

## Regulatory Environment

15. Under the market carriage capacity management system operating in Victoria, users pay tariffs to both the system owner, GasNet, and the independent system operator, Victorian Energy Networks Corporation (**VENCorp**). Approximately 85 per cent of the combined tariff is paid to GasNet. The ACCC is the regulator responsible for approving these tariffs.
16. VENCorp is the Victorian statutory authority established under the *Gas Industry Act 2001* (Vic) responsible for operating Victoria's gas transmission network and wholesale gas spot market. VENCorp is the independent system operator (but not the owner) of the gas Principal Transmission System (PTS) in Victoria.
17. VENCorp's access arrangement for 2003–07 (**AA**) was approved by the ACCC on 13 November 2002. VENCorp's AA sets out the required reference services – the services VENCorp is required to provide in order to fulfil its statutory obligations under the *Gas Industry Act* and the Market System and Operational Rules (**MSO Rules**) – in relation to the PTS. The MSO Rules govern the operation of the PTS and wholesale gas market in Victoria and form part of VENCorp's AA.
18. GasNet is the owner of the PTS. GasNet's current access arrangement approved by the ACCC is for the period 2003-07. Revisions to that arrangement, commencing on 1 January 2005, were approved on 15 December 2004. It sets out GasNet's required reference service – being the availability of the PTS for use by gas participants.

## Competition Issues

19. The ACCC has determined that if AGL divests its interest in APT, there are unlikely to be any competition concerns. The ACCC notes that if Alinta acquires the APT interest by way of the scheme of arrangements, it has given undertakings to the ACCC to hold the APT interest separate and subsequently divest the APT interest.
20. However, the ACCC has identified issues that may raise competition concerns if the proposed Alinta and AGL merger proposal schemes do not go ahead and AGL retains its 30% interest in APT.
21. The proposed acquisition will mean that in addition to the key NSW pipeline (the MSP) being owned by APT, it will also own the key Victorian pipeline system. AGL, the most significant gas retailer in NSW and a significant gas and electricity retailer in Victoria and NSW, will hold a significant interest in APT and its responsible entity.
22. Competition issues arise due to the significant increase in vertical integration. The ACCC has identified the Victorian wholesale and retail natural gas markets as the relevant markets for assessing the competition issues.

23. In general, the ACCC has significant competition concerns where owners of upstream bottleneck facilities, such as gas transmission pipelines, also have direct or indirect interests in competitive downstream operations that depend upon the upstream facilities.
24. Despite the regulatory environment, the owners of the upstream facilities often maintain significant discretion over the operation, maintenance, pricing and expansion of the facilities that they control, so that they could (if vertically integrated) potentially favour downstream related entities to the detriment of downstream competition and the competitive process.
25. Market inquiries have revealed that currently GasNet acts independently and treats retailers fairly, and is supportive of expansion efforts. After the acquisition, GasNet may have the incentive and ability to anti-competitively discriminate in favour of the AGL retailing interests.
26. Market inquiries have suggested that since each of the key retailers' interests are clustered in particular areas, and since each retailer tends to organise supplies of gas from certain locations, anti-competitive discrimination by GasNet is possible if GasNet is owned by an organisation that is itself linked to a retailer. Market inquiries have also suggested that a discriminatory approach to recovering costs is possible in the Victorian gas regulatory environment and that discrimination could occur by giving discounts on tariffs.
27. The regulatory environment is clearly an important factor in assessing the ability to anti-competitively discriminate in favour of certain retail operations and harm the downstream competitive process. The competition concerns may, to some extent, be offset by VENCorp's role in the Victorian gas market and the fact that GasNet operates on a market carriage basis (as opposed to a contract carriage approach).
28. The degree of influence that AGL may exert over APT and the incentives that APT will have after the acquisition are critical issues in the ACCC's assessment of the competition issues.

## **ACCC's Future Steps**

29. The ACCC will finalise its decision on this matter after it considers the further market responses invited by this Statement of Issues.
30. The ACCC now seeks submissions from market participants on each of the issues that have been raised in this Statement of Issues and any other issues market participants consider are relevant to the ACCC's assessment of this matter.
31. Submissions are to be received by the ACCC by no later than 10am on 11 September 2006. Relevant contact details and updates on the timeline are available on the ACCC's website ([www.accc.gov.au](http://www.accc.gov.au)) by following the link to 'Mergers' and then the link to 'Mergers Public Register.' The ACCC will consider the submissions received from the market (including submissions from

the acquirer) in light of the concerns that it has identified and, in conjunction with all other information available, will make a final decision as to the appropriate course of action to take to resolve any competition concerns that have been identified.

32. It is expected that a final decision will be made in mid to late September. However, the anticipated timeline may change in line with the *Merger Review Process Guidelines*. A Public Competition Assessment for the purpose of explaining the ACCC's decision will be published on the ACCC website following the ACCC's public announcement.