



Public Competition Assessment 9 January 2007

Alinta AGL merger proposals and the acquisition of APT by Alinta

Introduction

1. On 21 February 2006, Alinta announced to the ASX its proposal to merge with AGL via a shareholder scheme of arrangement. 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.
2. On 26 April 2006, Alinta and AGL signed a Heads of Agreement to merge the two companies ('**the Alinta-AGL Joint Merger Proposal**'). The Merger Implementation Agreement ('**MIA**') formalising the Heads of Agreement was subsequently executed on 1 June 2006.
3. Despite the signing of the MIA, AGL and Alinta both requested that the Australian Competition and Consumer Commission ('**ACCC**') continue its assessment of their separate individual acquisition proposals.
4. AGL held a 30% stake in Australian Pipeline Trust ('**APT**') at the time the various merger proposals were announced. Alinta subsequently acquired a further stake in APT and raised the possibility of continuing to increase that stake.
5. In effect, the ACCC considered four inter-related, but separate matters:
 - Alinta's acquisition of AGL;
 - AGL's acquisition of Alinta;
 - The Alinta-AGL Joint Merger Proposal (a descriptor chosen by the ACCC);
 - Alinta's subsequent proposal to retain an interest in APT and subsequently increase its interest in APT.
6. The first two matters listed above did not proceed.

Public Competition Assessments

7. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:
 - a merger is rejected;
 - a merger is subject to enforceable undertakings;
 - the merger parties seek such disclosure; or
 - a merger is approved but raises important issues that the ACCC considers should be made public.
8. This Public Competition Assessment has been issued because the ACCC has accepted section 87B court enforceable undertakings, as noted above, in relation to AGL's acquisition of Alinta, the Alinta-AGL Joint Merger Proposal and has also subsequently accepted a revised undertaking that related to the Alinta-AGL Joint Merger Proposal and Alinta's subsequent proposal to retain an interest in APT.
9. By issuing Public Competition Assessments, the ACCC aims to provide the market with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues. It also alerts the market to the circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change, because of developments.
10. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.
11. Many of the ACCC's decisions will involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources. While the ACCC aims to provide an appropriately detailed explanation of the basis for the views it forms, where this is not possible, maintaining confidentiality will be the ACCC's paramount concern, and accordingly a Public Competition Assessment may not definitively explain all issues and the ACCC's analysis of such issues.

The Parties

AGL

12. AGL is a publicly listed company with a market capitalisation of approximately \$8 billion at the time of the ACCC's assessment. The business of AGL encompasses interests in the following operations and assets:
 - gas transmission pipelines;
 - gas distribution networks;
 - gas wholesale supply;
 - gas and electricity retail supply;
 - electricity generation;
 - electricity distribution networks; and
 - supply of asset management and infrastructure services.
13. AGL is the incumbent supplier for retail 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 customers and 2.8 million gas customers nationally.
14. AGL held a 30% interest in APT, and a 50% interest in the responsible entity of APT, Australian Pipeline Limited ('**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 Pipeline ('**MSP**'), the Parmelia Gas Pipeline ('**Parmelia pipeline**') which supplies Perth, and an 88.2% interest in the Goldfield Gas Transmission Pipeline ('**Goldfields**') in Western Australia. During the assessment of these matters, APT also acquired GasNet, the Victorian gas transmission company, and Allgas, a gas distribution operation covering half of greater Brisbane.
15. AGL's asset management company subsidiary, Agility Pty Ltd ('**Agility**'), managed the operation of the MSP, the Parmelia pipeline, and the Goldfields through the provision of a range of services, in accordance with management agreements. Agility also provided services to the other infrastructure assets in which AGL had a direct or indirect interest, as well as actively seeking to provide services to unrelated third party customers.

Alinta

16. Alinta is a publicly listed company with a market capitalisation of approximately \$2.8 billion at the time of the ACCC's assessment. The business of Alinta encompasses operations and assets in the following areas of the energy industry:
 - gas transmission pipelines;
 - gas distribution networks;

- gas wholesale supply;
 - gas and electricity retail supply;
 - electricity generation;
 - electricity distribution networks; and,
 - supply of asset management and infrastructure services.
17. Alinta has approximately 1000 electricity customers and 532,000 retail gas customers nationally.
18. 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') which supplies Sydney from gas fields off the coast of Victoria. In addition to the gas transmission pipelines held through AIH, Alinta also has a 20% direct interest in the Dampier to Bunbury Natural Gas Pipeline ('DBNGP') in Western Australia, which supplies gas to the greater Perth region.
19. 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 a direct or indirect interest.

Market definition

20. The ACCC considered a number of relevant markets in assessing the proposals.
21. The key markets in which concerns arose were:
- the market for supply of wholesale gas to greater Sydney (including the south-eastern region of NSW); and
 - the market for the supply of wholesale gas to the Perth region.
22. In assessing the effects on competition in these markets, the ACCC considered control of gas transmission pipelines to be a very important factor.

Overview of Competition Issues relevant to each of the matters

23. The key competition issues in each of the matters raised in this Public Competition Assessment all related to the same assets. The key issues in all of the matters were:
- Effects in the market for supply of wholesale gas to greater Sydney, due to the aggregation of:

- Alinta's interests in the EGP. Alinta's interest in the EGP arose via two means: first, via Alinta's interest in AIH, which owns the EGP; and secondly, via Alinta's subsidiary, AAM, controlling the management and operational contracts for the EGP; and
 - any interest in the MSP. Interests in the MSP arose via three means: first, via AGL's interest in APT, the owner of the MSP; secondly, via AGL's subsidiary, Agility, controlling the management and operational contracts for the MSP; and finally, by Alinta acquiring a direct stake in APT.
- Effects in the market for the supply of wholesale gas to the Perth region, due to aggregation of:
 - Alinta's interests in the DBNGP. Alinta's interest in the DBNGP arose via two means: first, Alinta's direct 20% stake in the DBNGP; and secondly, via Alinta's subsidiary, AAM, controlling the management and operational contracts for the DBNGP; and
 - any interest in the Parmelia pipeline. Interests in the Parmelia pipeline arose via the same three means outlined above for the MSP, excepting for the fact that APT's interest in the Parmelia is 88.2%, not 100%.
24. The ACCC's competition assessment concluded that the full independence of the key pipelines supplying Sydney (the MSP and EGP) and Perth (the DBNGP and Parmelia pipeline) was critical, and that any aspect of a transaction that lessened the independence of the pipelines would be likely to substantially lessen competition in the relevant wholesale gas markets (greater Sydney and greater Perth respectively).
25. The ACCC did not consider that the aggregation of the other AGL or APT assets with Alinta's assets was likely to raise competition concerns.

AGL proposed acquisition of Alinta

26. The following table outlines the key events in relation to AGL's proposed acquisition of Alinta.

24 Mar 2006	AGL made a submission to ACCC on competition issues
29 Mar 2006	ACCC commenced market inquiries following public release of AGL's proposed undertakings
28 Apr 2006	Closing date for submissions from interested parties
29 May 2006	Proposed announcement of ACCC findings
15 May 2006	Announcement of ACCC findings deferred to this date to allow market inquiries and assessment of joint merger proposal
16 Jun 2006	ACCC accepted undertakings from AGL

27. On 16 June 2006, the ACCC issued a media release announcing that it had accepted undertakings offered by AGL pursuant to section 87B of the Trade Practices Act 1974 in relation to AGL's proposed acquisition of Alinta.
28. The undertakings provided that AGL would do the following:
- complete a proposed demerger in accordance with the structures and asset allocations as described in its submission (subject to AGL shareholder approval). The demerger structure involved the structural separation of interests in the EGP and the MSP, as well as the structural separation of interests in the Parmelia pipeline from the DBNGP;
 - ensure that two demerged corporate structures are ultimately established post-acquisition: an Infrastructure Company ('Infrastructure Co') and an Energy Company ('Energy Co').
 - ensure there are no cross-shareholdings between the proposed Infrastructure Co and Energy Co;
 - constitute Infrastructure Co and Energy Co as separately listed entities on the ASX with separate Boards and management; and
 - put in place hold separate arrangements for the period prior to the demerger in order to ensure the separation of AGL's interest in APT and Alinta's interests in the EGP and DBNGP.
29. The undertakings also provided that in the event that the demerger did not occur, AGL would divest its interest in APT and APL and the Agility contracts associated with the MSP and Parmelia pipelines and sufficient assets and capability from Agility to operate and service these contracts. AGL was also required to divest some other specified contracts. Detailed clauses set out the specifics of the divestment process.
30. The undertakings ensured that all of the key competition issues were addressed. In particular, it ensured that there would be ownership and control separation of the pipelines supplying common areas. In particular, the undertakings would ensure complete separation of the EGP from the MSP and the Parmelia pipeline from the DBNGP. Further information regarding the competition analysis of aggregation of the various interests is available in the description of the other matters below.
31. The undertakings are available on the ACCC website. The acquisition did not proceed.

Alinta proposed acquisition of AGL

32. The following table outlines the key events in relation to Alinta's proposed acquisition of AGL.

29 Mar 2006	Alinta provided draft s87B undertakings for public consultation
30 Mar 2006	Alinta provided a substantial submission on competition issues
28 Apr 2006	Market inquiries were completed
31 May 2006	Alinta formally offered revised undertakings
16 Jun 2006	ACCC released a Statement of Issues
3 Jul 2006	Market inquiries in relation to the Statement of Issues were completed
3 Aug 2006	Matter suspended from consideration, pending further information from Alinta

33. The 16 June 2006 Statement of Issues also related to the Alinta-AGL Joint Merger Proposal. Details regarding the Statement of Issues and the key competition issues is supplied in the discussion of the Alinta-AGL Joint Merger Proposal below.
34. This matter was withdrawn by Alinta and closed by the ACCC on 21 September 2006. The acquisition did not proceed.

Alinta-AGL Joint Merger Proposal

35. Unlike AGL's proposal to acquire Alinta and Alinta's proposal to acquire AGL, the Alinta-AGL Joint Merger Proposal did proceed.
36. The following table outlines the key events in relation to the Alinta AGL Joint Merger Proposal.

04 May 2006	Alinta submission on competition issues sent to ACCC
24 May 2006	Alinta offered revised draft s87B undertaking to ACCC
24 May 2006	ACCC commenced market inquiries in relation to revised draft s87B undertaking
16 Jun 2006	ACCC Issued Statement of Issues - market inquiries commenced
03 Jul 2006	Market inquiries in relation to Statement of Issues completed
03 Aug 2006	ACCC accepted undertakings from Alinta

37. The following two diagrams show the proposed structure after the Alinta-AGL Joint Merger Proposal.





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 (30%)
- 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
- Caspe (WA) - 16MW



AlintaAGL

Electricity Generation (WA)

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

Alinta Retail (WA)

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



Upstream Gas

- PNG Upstream Gas Project
- Sydney CSM project (30%)
- 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 Balmisdale 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

67%

33%



38. In its Statement of Issues on 16 June 2006, the ACCC identified the following competition issues:

Issues of concern

- common ownership of substantial interest in the entities which own the EGP and MSP with the aggregation of Agility and AAM as service providers for those pipelines;

Issues that may raise concerns

- Aggregation of interests in the DBNGP, Parmelia pipeline 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 interest in electricity distribution networks in Victoria;
- aggregation of retail interests;
- aggregation of interests in electricity generation.

39. On 3 August 2006, the ACCC issued a media release announcing that it had accepted undertakings offered by Alinta pursuant to section 87B of the TPA in relation to the Alinta-AGL Joint Merger Proposal. The undertakings alleviated the ACCC's concerns as articulated in the Statement of Issues.

40. In summary, the undertakings provided by Alinta in relation to the Alinta-AGL Joint Merger Proposal require:

- that Alinta divest any interest that it has in APT and APL by a specified confidential date;
- that Alinta divest the Agility contracts (Agility is currently a subsidiary of AGL) that involve supplying management and operational services to the MSP and Parmelia pipeline if required by the ACCC. Subsequently, on 29 September 2006, the ACCC indicated that it would not relieve Alinta of the undertaking to divest the Agility contracts as it became apparent that the contracts would offer considerable scope for Alinta to control the pipelines.
- that Alinta abide by various hold separate and ring fencing commitments in relation to the MSP and Parmelia pipeline for the specific transitional period

during which the abovementioned divestments are required to occur, including a commitment by Alinta not to nominate or vote on APL board appointments.

41. Market inquiries in relation to the Statement of Issues had confirmed that the issues listed in the 16 June 2006 Statement of Issues as issues unlikely to pose concerns, did not in fact raise significant competition issues. The ACCC noted that there would be likely to be infrastructure services providers other than Agility and AAM to compete to be the service providers for new gas and electricity infrastructure projects. The ACCC noted the aggregation of the interests in the transmission pipelines in Queensland did not remove any competitive dynamic, although regardless, Alinta's commitment to divest APT removed any aggregation. The ACCC noted the natural monopoly characteristics of the Victorian electricity transmission businesses and the lack of a competitive dynamic prior to the acquisition.
42. In relation to the retail interests, the ACCC noted the existence of other significant retail players along the eastern seaboard. In Western Australia, the ACCC noted AGL's limited operations in that sphere. In relation to electricity generation, the ACCC noted that the acquisition did not appear to raise any significant horizontal aggregation issues or significant vertical competition issues that did not already exist prior to the acquisition.
43. The ACCC did not consider that the aggregation of interests in the Goldfields pipeline and the DBNGP would substantially lessen competition in downstream gas and electricity markets. In particular, the ACCC noted the distance between the two pipelines and the relatively limited competitive dynamic created by generators in the south-west interconnected electricity system which are powered by gas from the Goldfields pipeline. The ACCC noted that Alinta offered to divest the interest in APT, which owned the majority of the Goldfields pipeline. However, Alinta intended to retain the Agility contract for the provision of operational and maintenance services to the Goldfields pipeline.

Alinta's subsequent proposal to retain an interest in APT and increase its interest in APT

44. In August 2006, Alinta commenced acquiring APT shares. On 21 August 2006, Alinta lodged a Notice of Substantial Shareholder to the ASX, and by 22 August 2006 had acquired a 10.25% unit-holding in APT. An application was made by APT to the Takeovers Panel in relation to this acquisition by Alinta.
45. The ACCC did not need to take any action at this time, due to the existence of the signed 3 August 2006 undertakings from Alinta that committed Alinta to divesting *any* interest that it has in APT and APL by a specified confidential date.

46. The following table outlines the key events in relation to the Alinta AGL joint merger proposal.

17 August 2006	Alinta announced that it had acquired units in APT
8 September 2006	Draft 87B undertakings proffered by Alinta to replace the 3 August 2006 undertakings. ACCC commenced market inquiries in relation to new undertakings.
6 October 2006	ACCC announced that it would not accept the 8 September offer of revised undertakings from Alinta. The 3 August 2006 undertakings therefore remained in force.
6 November 2006	ACCC commenced market inquiries in relation to new offer of revised undertakings by Alinta
9 November 2006	Market inquiries were completed in relation to 6 November offer of revised undertakings
22 November 2006	Expected announcement of the ACCC's findings in relation to Alinta's 6 November offer of undertakings was delayed.
27 November 2006	ACCC announced that it accepted replacement undertakings. The 27 November 2006 undertakings replace the 3 August 2006 undertakings.

47. On 27 November 2006, the ACCC accepted new section 87B undertakings proposed by Alinta, to replace the Alinta-AGC Joint Merger Proposal undertakings (accepted on 3 August 2006). The new undertakings were materially similar to the previous undertaking given by Alinta on 3 August 2006, with the following key differentiating points:

- in the event that APT ceases to have any interest in the MSP, Parmelia pipeline and GasNet, Alinta's commitment to divest APT falls away; and
- Alinta is permitted to vote on the appointment of new independent directors to the Board of the governing body of APT, APL. The undertakings specified in detail the definition of "independent director."

48. The ACCC accepted the revised undertakings recognising that the key competition issues arising from Alinta having an interest in APT arose only due to APT's ownership of the MSP, Parmelia pipeline and GasNet, and not APT's other assets. Therefore, the ACCC considered that if APT divested MSP, Parmelia pipeline and GasNet, then Alinta could retain any interest in APT. However, the ACCC was highly concerned about any influence that Alinta may have over APT in the period prior to any divestment. In particular, the ACCC was concerned about effects in the market for supply of wholesale gas to greater Sydney, due to the aggregation of Alinta's interest in the EGP and APT's interest in the MSP. The EGP and the MSP are the two key sources of gas for greater Sydney. The ACCC was also concerned about the effects in the market for the supply of wholesale gas to the Perth region, given the aggregation of interests in the DBNGP and the Parmelia

pipeline, the two key pipelines supplying greater Perth. Therefore, the final undertaking only permitted Alinta to appoint independent board members.

49. In respect of APT's intended interest in GasNet, the ACCC did consider that Alinta obtaining any interest in GasNet would raise competition concerns. The ACCC noted the competitive dynamic created by the interconnect between the GasNet system and APT's MSP pipeline and associated laterals, which acts as route for gas from Gippsland to greater Sydney, and therefore creates a direct competitive dynamic for the EGP.
50. After extensive market inquiries, the ACCC did not consider that Alinta obtaining a direct interest in APT's other interests raised significant competition concerns.
51. In respect of APT's interest in the Goldfields pipeline, as stated above, the ACCC did not consider that the aggregation of interests in the Goldfields pipeline and the DBNGP would substantially lessen competition in downstream gas and electricity markets. In particular, the ACCC noted the distance between the two pipelines and the relatively limited competitive dynamic created by generators in the south-west interconnected electricity system which are powered by gas from the Goldfields pipeline. In relation to the northern WA regions where the Goldfields pipeline and DBNGP are proximately located and where Alinta has other interests, the ACCC noted the potential threat of new entry through the building of a new pipeline to significant customers in the area and the countervailing power of existing and potential new customers in that area.

CONCLUSION

52. The Alinta-AGL Joint Merger Proposal occurred on 25 October 2006, causing among other things, AGL's interest in APT to move to Alinta.
53. Alinta's acquisition of AGL and AGL's acquisition of Alinta did not proceed.
54. Alinta acquired a further interest in APT, beyond the interest it acquired from AGL. Various legal disputes (not involving the ACCC) remain in relation to this interest.
55. The 27 September 2006 undertaking applies to Alinta in relation to any interest that it has in APT. At the time of writing, it is unclear whether APT will divest MSP, the Parmelia pipeline and GasNet, and therefore it is still unclear whether Alinta will have to divest its interest in APT and APL.