



Public Competition Assessment

19 September 2007

Singapore Power and Babcock and Brown - proposed acquisition of Alinta Ltd

Introduction

1. On 15 August 2007, the Australian Competition and Consumer Commission (ACCC) announced its decision not to oppose the proposed acquisition of Alinta Ltd by a consortium including Singapore Power International Pte Ltd and Babcock and Brown Limited (**proposed acquisition**), subject to section 87B undertakings accepted by the ACCC on 13 August 2007. The ACCC was of the view that the proposed acquisition, in conjunction with the undertakings, would be unlikely to have the effect of substantially lessening competition in a market in contravention of section 50 of the *Trade Practices Act 1974* (the **Act**).
2. The ACCC formed its view on the basis of the information provided by the merger parties and information arising from its market inquiries. This Public Competition Assessment outlines the basis on which the ACCC has reached its decision on the proposed acquisition, subject to confidentiality considerations.

Public Competition Assessment

3. 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.
4. This Public Competition Assessment has been issued because the proposed acquisition is subject to court enforceable undertakings.
5. 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.

6. 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.
7. 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 ACCC decision, 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

The acquirers

Singapore Power

8. Singapore Power International Pte Ltd (**SPI**) is a wholly owned subsidiary of Singapore Power Limited, a Singapore based company which is wholly owned by Temasek Holdings (Private) Limited.
9. SPI owns a 51% share in the SP AusNet group, which is primarily responsible for carrying on the Australian operations of Singapore Power Limited. SP AusNet's assets include:
 - the electricity transmission network in Victoria;
 - 1 of 3 gas distribution networks in Victoria (Central to Western Victoria/Western Melbourne); and
 - 1 of 5 electricity distribution networks in Victoria (Eastern Victoria/Eastern Melbourne).
10. SPI also owns SPI Management Services Pty Ltd, which provides core management services to SP AusNet group companies and their subsidiaries through a management services agreement.

Babcock and Brown Entities

11. The Babcock & Brown entities (the BNB entities) which will acquire the relevant Alinta assets are:
 - Babcock & Brown Power Limited and Babcock & Brown Power Services Limited in its capacity as trustee of the Babcock & Brown Power Trust (**BBP**);
 - Babcock & Brown Infrastructure Limited and Babcock & Brown Investor Services Limited acting in its capacity as trustee of the Babcock & Brown Infrastructure Trust (**BBI**); and
 - Babcock and Brown Wind Partners (**BBW**).
12. BBI, BBP and BBW are all ASX-listed stapled securities but are managed by wholly owned subsidiaries of Babcock and Brown Limited (**BBL**). The external Babcock and Brown managers provide investment, advisory and management services in relation to the funds' assets. As a result, senior managers and executives of BBI, BBP and BBW are often secondees from BBL, or BBL subsidiaries, rather than direct employees of the relevant listed company.
13. BBI and BBP have existing interests in various electricity generation assets in Victoria, New South Wales, Queensland, South Australia and Western Australia, and a gas distribution network and gas retail business in Tasmania (Powerco).

The target: Alinta Ltd

14. Alinta is an ASX listed company which manages, operates and owns a diversified portfolio of energy assets. The business of Alinta encompasses the following interests:
 - gas transmission pipelines in Victoria, NSW, Queensland, Tasmania, and Western Australia;
 - gas distribution networks in Victoria, NSW (including the ACT), and Western Australia;
 - gas and electricity retail supply in Western Australia;
 - electricity generation in Tasmania, Victoria, Western Australia and New Zealand; and
 - electricity distribution networks in Victoria, NSW and the ACT.
15. Alinta has two asset management company subsidiaries, namely:
 - Agility Pty Ltd (**Agility**) which operates and manages, among other assets, the Moomba to Sydney pipeline (**MSP**), the Parmelia Gas pipeline (**Parmelia pipeline**), and the Goldfields Gas pipeline in accordance with long-term and exclusive management agreements.

- Alinta Asset Management Pty Ltd (**AAM**) which operates and manages, among other assets, the Eastern Gas pipeline (**EGP**) and the Dampier-Bunbury Natural Gas pipeline (**DBNGP**) in accordance with long-term and exclusive management agreements.
16. Alinta also holds a 35% interest in the Australian Pipeline Trust (**APT**). APT is a publicly listed infrastructure trust which controls a number of gas and electricity assets including:
- the MSP which supplies gas transportation services to the south-eastern region of NSW including Sydney;
 - the Parmelia pipeline which supplies gas transportation services to greater Perth;
 - MurrayLink, an electricity interconnector which transports electricity between South Australia and Victoria;
 - DirectLink, an electricity interconnector which transports electricity between New South Wales and Queensland.
17. A section 87B undertaking given by Alinta on 3 August 2006 and varied on 27 November 2006 (see below) requires divestiture of any interest in APT.

Other relevant matters: the Alinta-AGL acquisition

18. On 26 April 2006, Alinta and AGL signed a Heads of Agreement to merge the two companies (the **Alinta-AGL acquisition**). On 16 June 2006 the ACCC issued a Statement of Issues, identifying a number of competition concerns resulting from the merger.
19. On 3 August 2006 the ACCC accepted an undertaking from Alinta, of which the key requirements, among other things, were for Alinta to divest its interest in APT. That undertaking was varied on 27 November 2006.
20. At the time SPI and the Babcock and Brown entities proposed acquiring Alinta, the APT interest had not been divested. Therefore, despite the undertaking given by Alinta to divest its interest in APT, when undertaking its competition assessment of the proposed acquisition the ACCC took into account the possibility that BBI may gain control of Alinta's interest in APT.

The proposed transaction

21. The parties proposed to implement the joint bid as follows:
- a new company ES & L Pty Ltd (**ESL**) would act as the bidding vehicle for the acquisition;
 - ESL would acquire all the securities in Alinta by way of scheme of arrangement, which would require shareholder and court approval;
 - the scheme would also involve the transfer of Alinta's 35% interest in APT to Alinta shareholders in specie;

- shortly before the scheme became effective ESL would become wholly owned by BBI;
- once the scheme is implemented the Alinta group of companies would be separated and its businesses and assets allocated between SPI, BBI and BBP.

22. **Table 1** below outlines the proposed asset allocation between BBI, BBP and SPI.

Agility and AAM – asset management contracts

23. While Alinta's two asset management company subsidiaries, Agility and AAM, would ultimately be allocated to SPI, it was proposed that certain operating contracts currently held by Agility and AAM would be transferred to BBI. In summary, it was proposed that BBI would hold the asset management contracts with respect to assets in Western Australia (excluding Parmelia pipeline) and SPI would hold the asset management contracts with respect to assets in Eastern Australia. The third column of Table 1 names the proposed operator of each asset following the acquisition.

Undertakings

24. In seeking informal approval from the ACCC the parties offered two sets of undertakings, namely:
- the 2007 APT Undertakings - offered by BBI and SPI in relation to the divestment of the APT interest and the MSP and Parmelia Pipeline asset management contracts; and
 - the 2007 DBNGP Undertakings - offered by BBI and BBP in relation to the ringfencing of the DBNGP and downstream electricity generation and retail assets.

Table 1 – Proposed Allocation of Businesses/Assets

Asset	State	Owner	Operator
Transmission and distribution			
Alinta AE electricity distribution	VIC	SPI	SPI
Multinet Gas Distribution Network (20.1%)	VIC	BBI	SPI
United Energy Electricity Distribution Network (34%)	VIC	SPI	SPI
Eastern Gas Pipeline	VIC / NSW	SPI	SPI
VicHub	VIC	SPI	SPI
NSW Gas Distribution	NSW	SPI	SPI
ActewAGL electricity and gas distribution partnership (50%)	ACT/NSW	SPI	SPI
Queensland Gas Pipeline	QLD	SPI	SPI
Tasmanian Gas Pipeline	TAS	BBI	SPI
AlintaGas Network (74.1%)	WA	BBI	BBI
Dampier-Bunbury Natural Gas Pipeline (20%)	WA	BBI	BBI
Goldfield Gas Pipeline (11.8%)	WA	BBP	BBI
Australian Pipeline Trust (35.4%) (APT)		In specie distribution to Alinta shareholders	
APT Key Transmission Assets			
Amadeus Pipeline	NT	APT	SPI
Roma to Brisbane Pipeline	QLD	APT	SPI
Carpentaria Pipeline	QLD	APT	SPI
Parmelia Pipeline	WA	APT	Contract divested or terminated
Midwest Pipeline	WA	APT	BBI
Moomba to Sydney Pipeline	NSW	APT	Contract divested or terminated
Power Generation			
Wattle Point Wind Farm	SA	BBW	BBW
Cawse Cogeneration	WA	BBP	BBP
Port Hedland	WA	BBP	BBP
Newman	WA	BBP	BBP
Glenbrook NZ	NZ	BBP	BBP
Bell Bay and Tamar project	TAS	BBP	BBP
Bairnsdale	VIC	BBP	BBP
Energy			
Wesfarmers LPG	WA	BBP	n/a

Asset	State	Owner	Operator
AlintaAGL (67%) ¹	WA	BBP	n/a

Timing

25. The following table outlines the timeline of key events in this matter.

Date	Event
30-Mar-2007	Alinta announced to ASX recommendation of bid for Alinta by Singapore Power and Babcock & Brown. ACCC commenced public monitoring.
12-Jun-2007	Draft 87B undertakings and transaction overview released by parties for commencement of ACCC market inquiries.
13-Jun-2007	ACCC commenced review under the Merger Review Process Guidelines.
25-Jun-2007	Closing date for submissions from interested parties.
26-Jun-2007	Former proposed date of 13 July 2007 for announcement of ACCC's findings amended to seek further submissions on draft undertakings.
25-Jul-2007	ACCC requested further submissions on revised draft undertakings regarding DBNGP from interested parties.
13-Aug-2007	87B undertaking accepted by ACCC. ACCC decided that it would not intervene pursuant to section 50 of the Trade Practices Act.

Market inquiries

26. The ACCC conducted market inquiries with a range of industry participants, including competitors, potential competitors, customers, other regulatory agencies and other interested parties. Submissions were sought in relation to the substantive competition issues and the proposed undertakings.

Market definition

27. The ACCC considered a number of relevant markets in assessing the proposed transaction.

28. The key markets in which competition concerns could arise in absence of the undertakings were:

- the market for supply of wholesale gas to greater Sydney (including the south-eastern region of NSW);
- the market for the supply of wholesale gas to the greater Perth region;
- the separate state-based markets for the wholesale supply of electricity in South Australia, Victoria, New South Wales and Queensland; and
- the supply of wholesale gas in Western Australia.

¹ AGL has an option, which will be triggered following the transaction, to increase its interest in AlintaAGL to 100% or 0%. BBP's interest in AlintaAGL will be determined by AGL's decision whether or not to exercise its option.

Competition analysis and decision to accept undertakings

29. As noted above, when undertaking its competition assessment, and deciding to accept the undertakings offered by SPI, BBI and BBP, the ACCC took into account the possibility that BBI could gain control of Alinta's interest in APT. In such circumstances, the ACCC was concerned that BBI would be able to exert a high degree of influence over APT, and APT's assets.
30. Therefore, a number of the competition concerns identified by the ACCC in its competition assessment relate to the aggregation of BBI's assets with APT's assets.
31. Further, in its competition assessment the ACCC formed the view that BBI and BBP were not functionally or economically independent from BBL and therefore, any assets held by BBI and BBP could not be considered to be structurally separated. As a result, some of the competition concerns identified by the ACCC relate to the aggregation of BBI's assets with BBP's assets.
32. In forming this conclusion the ACCC recognised that BBL holds only a relatively small ownership share in BBP and BBI, however, considered to the following factors indicated that BBL had a significant degree of control over both BBI and BBP:
 - the existence of common directors to both BBI and BBP;
 - the provision of management services to BBP and BBI by BBL;
 - the provision of other specialised functions, such as electricity trading, hedging, dispatch and settlement services, to BBI and BBP by BBL;
 - the degree of information sharing between BBP, BBI and BBL;
 - the structure of fees paid by BBI and BBP to BBL under their Management Services Agreements; and
 - the provision of asset management functions by wholly owned subsidiaries of BBL to BBI and BBP.

Aggregation 1: Operation and management of the MSP and EGP

33. In the absence of the undertakings, the ACCC was concerned that the proposed acquisition could result in the aggregation of interests in the EGP with interests in the MSP.
34. SPI will both own and manage, via its subsidiary AAM, the EGP. In the absence of the undertakings, SPI, via its subsidiary, Agility, would control the asset management contracts for the MSP.
35. The EGP and the MSP are the only two pipelines supplying gas to greater Sydney. The ACCC considers that full independence of the key gas pipelines supplying greater Sydney is critical to maintain competitive tension between the pipelines and ensure competition in the market for the supply of wholesale gas to greater Sydney.

36. While SPI would not own the MSP, the ACCC was concerned that through an exclusive long-term asset management arrangement for the MSP via its ownership of Agility, SPI would have the ability to exert substantial influence over the operation of the MSP in such a manner as to lessen competition between the MSP and the EGP. The ACCC concluded that any aspect of the transaction that lessened the independence of the pipelines would be likely to substantially lessen competition in the supply of wholesale gas to greater Sydney.
37. To resolve this competition concern, the ACCC accepted the 2007 APT Undertakings which require the parties to divest or terminate the asset management contract with respect to the MSP.

Aggregation 2: Ownership and operation of the DBNGP and Parmelia pipeline

38. BBI proposes to acquire a 20% stake in the DBNGP and control the asset management contract for the DBNGP. In the absence of the undertakings, if BBI were to acquire Alinta's interest in APT, it would also hold a significant interest in the Parmelia pipeline.
39. The ACCC was concerned that the proposed acquisition could result in the combined ownership, by BBI, of interests in the DBNGP and the Parmelia pipeline.
40. While it was not the ultimate intention of the parties, there was also some possibility that, as a result of the structure of the transaction, SPI would gain control of both the contract relating to asset management of the Parmelia pipeline (via its acquisition of Agility) and the contract relating to the operation and management of the DBNGP (via its acquisition of AAM).
41. The DBNGP and the Parmelia pipeline both supply gas to greater Perth region. As with aggregation 1, the ACCC considers that full independence of the key gas pipelines is critical and concluded that any aspect of the transaction that lessened the independence of the pipelines would be likely to substantially lessen competition in the supply of wholesale gas to greater Perth.
42. To resolve this competition concern, the ACCC accepted the 2007 APT Undertakings which require BBI to divest any interest it holds in APT. Further, the ACCC accepted an undertaking to ensure that the parties divest or terminate the asset management contract in relation to the Parmelia pipeline.

Aggregation 3: Electricity transmission assets and interests in electricity generation assets

43. In the absence of the undertakings, the ACCC was concerned that the proposed acquisition could result in the aggregation of BBP's interests in electricity generation assets and APT's current interests in regulated electricity transmission assets (to be acquired by BBI).

44. BBP owns a number of power generation interests in Victoria, South Australia, Queensland and New South Wales. BBI, via Alinta's interest in APT, could hold an ownership interest in the MurrayLink and Directlink interconnectors, which transmit electricity between Victoria and South Australia, and Queensland and New South Wales respectively.
45. If such aggregation were to occur, the ACCC was concerned that BBI would have the incentive to operate the MurrayLink and DirectLink interconnectors in such a manner as to advantage BBP's electricity generation assets in the relevant regions, but most particularly in South Australia where BBP owns significant power generation assets.
46. The ACCC was thus concerned that aggregation 3 could lead to a substantial lessening of competition in the state-based markets for the wholesale supply of electricity in South Australia, Victoria, New South Wales and Queensland.
47. To resolve this competition concern, the ACCC accepted the 2007 APT Undertakings which require BBI to divest any interest it holds in APT.

Aggregation 4: Ownership interests in the DBNGP and downstream interests in gas-fired electricity generation, and electricity and gas retail

48. In the absence of the undertakings, the ACCC was concerned that the proposed acquisition could result in the aggregation of BBI's interests in the DBNGP with BBP's existing and future downstream interests in gas-fired electricity generation, and gas and electricity retail, in the greater Perth region.
49. As noted above, BBI will own a 20% stake in the DBNGP and control the asset management contract for the DBNGP.
50. BBP will acquire AlintaAGL, which is Alinta's Western Australian gas and electricity retail businesses and cogeneration assets (if AGL does not exercise its option to acquire Alinta's 67% interest in AlintaAGL). BBP already owns a 70% interest in the Kwinana gas-fired power station.
51. Given the ACCC's conclusions on the relationships between BBI and BBP, the ACCC was concerned that BBI may have an incentive to engage in price and/or non-price discrimination against competing shippers of gas on the DBNGP and in favour of BBP. Competing shippers are buyers of wholesale gas that is transported along the West Coast through the DBNGP, and include electricity power generators, gas retailers, smelters, and mines.
52. The ACCC was therefore concerned that aggregation 4 could lead to a substantial lessening of competition in the markets for the supply of wholesale gas in Western Australia.
53. To resolve this competition concern, the ACCC accepted the 2007 DBNGP Undertakings which require BBI and BBP to implement ringfencing between the operation and management of the DBNGP and BBP's downstream gas and electricity businesses in Western Australia.

Summary of the 2007 APT Undertakings and 2007 DBNGP Undertakings

54. In summary, the key purpose of the 2007 APT Undertakings is to:
- ensure the MSP asset management contract is divested or terminated, so that the operation of the MSP remains separate from the ownership and operation of the EGP;
 - ensure Alinta's interest in APT is divested if, for any reason, it is held by BBI after the scheme of arrangement is implemented;
 - ensure the Parmelia pipeline asset management contract is divested or terminated, so that the operation of the Parmelia pipeline is separate from ownership and operation of the DBNGP;
55. The 2007 APT Undertakings also require BBI and SPI to commit to 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. Further, BBI and SPI are prohibited from making certain appointments to and from APT.
56. To prevent the potential for discrimination to result from the aggregation of BBI's ownership interests in the DBNGP with downstream interests in gas-fired electricity generation (currently owned by BBP), and gas and electricity retail (to be acquired from Alinta by BBP), (that is aggregation 4) the 2007 DBNGP Undertakings require BBI and BBP to:
- abide by provisions which prohibit BBI operating the pipeline so as to discriminate in favour of BBP's downstream interests;
 - ring fence the operations of BBI and BBP to the extent that they relate to the DBNGP and BBP's downstream interests; and
 - abide by provisions which prohibit BBI from disclosing to BBP confidential information relating to the DBNGP.

Conclusion

57. On the basis of the above, including taking into account the proposed undertakings, the ACCC formed the view that the proposed acquisition would not be likely to result in a substantial lessening of competition in a market in contravention of section 50 of the Act.