

9 August 2007

**Singapore Power International / Babcock & Brown
acquisition of Alinta shares**

**Undertaking to the
Australian Competition and
Consumer Commission given under
s87B of the Trade Practices Act 1974
by**

**Babcock & Brown Infrastructure and
Babcock & Brown Power**

**on 10 August 2007
and accepted by the Commission**

on 13th AUGUST 2007

Definitions and interpretation

1 The meanings of the terms used in this document are set out below:

Term	Meaning
2004 Undertaking	the undertaking to the Australian Competition & Consumer Commission given under section 87B of the Act by Alinta Limited (now Alinta 2000 Limited), Alinta Network Services Pty Ltd (now Alinta Asset Management Pty Ltd), Alcoa of Australia Limited, AMPCI Macquarie Infrastructure Management No 1 Limited in its capacity as the responsible entity of the Diversified Utility and Energy Trust No 1, AMPCI Macquarie Infrastructure Management No 2 Limited in its capacity as the responsible entity of the Diversified Utility and Energy Trust No 2, and DBNGP Holdings Pty Limited dated 22 October 2004.
AAM	Alinta Asset Management Pty Ltd (ABN 52 104 352 650), formerly Alinta Network Services Pty Ltd.
Access Act	the Gas Pipelines Access (Western Australia) Act 1998 (WA) (as amended from time to time).
Act	the <i>Trade Practices Act 1974</i> .
Alinta	Alinta Limited (ABN 11 119 985 590).
Alinta Scheme Assets	the assets and liabilities of Alinta to be owned by Bidco, pursuant to Bidco's acquisition of the shares in Alinta Limited.
Associate	has the meaning given to that term in the Gas Access Law.
BB SPV	BB Space Cat Holdings Pty Ltd (ACN 124 512 376).
BBI	Babcock & Brown Infrastructure, consisting of Babcock & Brown Infrastructure Limited (ACN 100 364 234) (BBIL) and BBIS in its capacity as trustee of the Babcock & Brown Infrastructure Trust (ARSN 100 376 479).
BBI Adviser	a person who is employed by BNB or a BNB subsidiary and who: (a) has been involved in the provision of management, financial or investment banking advice to BBI in relation to the operation, construction or maintenance of the DBNGP; or (b) has been seconded to BBI and who has been involved in the

operation, construction or maintenance of the DBNGP,
in the prior 12 month period or since the Scheme Implementation
Date, whichever is the shorter time period.

BBIS	Babcock & Brown Investor Services Limited (ACN 099 717 638).
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BBP	Babcock & Brown Power, consisting of Babcock & Brown Power Limited (ACN 116 665 608) (BBPL) and BBPS in its capacity as trustee of Babcock & Brown Power Trust (ARSN 122 375 562).
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BBPS	Babcock & Brown Power Services Limited (ACN 118 165 156).
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BBP Adviser	<p>a person who is employed by BNB or a BNB subsidiary and who:</p> <p>(a) has been involved in the provision of management, financial or investment banking advice to BBP in relation to a Downstream Business; or</p> <p>(b) has been seconded to BBP and who has been involved in a Downstream Business,</p> <p>in the prior 12 month period unless otherwise consented to by the Commission in writing.</p> <p>For the avoidance of doubt, a person who is employed by BNB or a BNB subsidiary is not a BBP Adviser by reason only of the fact that they have been involved in providing advice to BBP prior to the Scheme Implementation Date in relation to the assets and liabilities of Alinta to be acquired by BBP under the SIA.</p>
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BBP Independent Person	<p>a person who is Independent of BBP. Without limitation a person who is not Independent of BBP is a person who:</p> <p>(a) is a current employee of, secondee to or officer of BBP;</p> <p>(b) has been an employee of, secondee to or officer of BBP in the past 2 years;</p> <p>(c) is a substantial security holder in BBP;</p> <p>(d) has a material contractual relationship with BBP;</p> <p>(e) has served on the board of BBP for a period which could, or could reasonably be perceived to, materially interfere with his or her ability to act independently of BBP;</p> <p>(f) has a relationship which could, or could reasonably be perceived to, materially interfere with his or her ability to act independently of BBP;</p> <p>or</p> <p>(g) is a family member of a person who is not an independent person (except by reason of this subclause).</p> <p>For the avoidance of doubt, a person does not cease to be a BBP Independent Person by reason only of the fact that they are employed by BNB or a BNB subsidiary.</p>
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Bidco	ES & L Pty Ltd (ACN 124 513 971) of Level 23, Chifley Tower, 2
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Chifley Square, NSW, 2000.

BNB	Babcock & Brown International Pty Ltd (ACN 108 617 483).
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Business Day	a day other than a Saturday, Sunday or a public holiday in New South Wales or Western Australia.
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Commission	the Australian Competition and Consumer Commission.
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Curtailment	<p>any circumstance in which the gas haulage capacity available to a Shipper on the DBNGP at the relevant time is less than the Shipper's contracted capacity.</p> <p>For the purposes of this definition, the Shipper's contracted capacity is the maximum amount of capacity that a Shipper would have been entitled to take under its Shipper contract (excluding spot capacity) but for the exercise by the DBNGP Commercial Operator of any right under the Shipper contract.</p>
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DBNGP	the Dampier to Bunbury Natural Gas Pipeline in Western Australia.
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DBNGP Commercial Operator	DBNGP (WA) Transmission Pty Ltd or any other company appointed under the DBNGP Unitholders Agreement by the DBNGP Trust to carry out commercial functions in relation to gas transportation arrangements with Shippers on the DBNGP.
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DBNGP Group	means DBNGP Holdings Pty Ltd and its subsidiaries, and the DBNGP Trust.
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DBNGP Interest	20% interest in the DBNGP Group.
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DBNGP Operating Services Agreement	the operating services agreement under which the DBNGP Commercial Operator contracts a party, currently AAM, to provide asset management and network services in relation to the operation, construction and maintenance of the DBNGP.
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DBNGP Services	natural gas transportation services provided by means of the DBNGP.
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DBNGP Trust	the trust called the "DBNGP Trust" evidenced by a trust deed dated 6 September 2004 and of which DBNGP Holdings Pty Ltd (ACN 110 721 081) is the trustee.
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Downstream Business	the business of gas retailing or the business of electricity generation undertaken (or to be undertaken) by BBP where such business involves gas transported via the DBNGP, or any other business
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undertaken by BBP using gas transportation services provided by the DBNGP.

For the avoidance of doubt, such businesses include those businesses or entities of the nature described above which are to be transferred to BBP pursuant to the Umbrella and Participation Agreements which are listed in schedule 2, whether or not at any given time such businesses or entities are or were controlled by BBP.

Gas Access Code	the National Third Party Access Code for Natural Gas Pipeline Systems (as amended from time to time) as applied as a law of Western Australia by the Access Act.
Gas Access Law	the Gas Access Code and the Access Act (as amended from time to time).
Independent Auditor	an auditor who has been approved in writing by the Commission in accordance with clause 38 or clause 39.
Independent Person	<p>a person who is independent of BBI and BBP. Without limitation, a person who is not independent is a person who:</p> <ul style="list-style-type: none">(a) is a current employee or officer of BBI or BBP;(b) has been an employee or officer of BBI or BBP in the past 2 years;(c) is a substantial security holder of BBI or BBP or an officer of, or otherwise associated directly with, a substantial security holder of BBI or BBP;(d) has, within the past 2 years, been a principal of a material professional adviser or a material consultant to BBI or BBP or an employee materially associated with the provision of such services to BBI or BBP;(e) is a material supplier or customer of BBI or BBP or an officer of or otherwise associated directly or indirectly with a material supplier or customer of BBI or BBP;(f) has a material contractual relationship with BBI or BBP;(g) has served on the board of BBI or BBP for a period which could, or could reasonably be perceived to, materially interfere with his or her ability to act independently of BBI or BBP;(h) has a relationship which could, or could reasonably be perceived to, materially interfere with his or her ability to act independently of BBI or BBP; or(i) is a family member of a person who is not an independent person (except by reason of this subclause).
Officer	has the same meaning as in the Corporations Act 2001 (Cth).
Participation Deed	the deed entered into between BBIL, BBPL and Babcock & Brown Wind Partners Limited (ACN 105 051 616), and their respective subsidiaries, BNB and BB SPV.

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Proposed Alinta Acquisition	the acquisition by Bidco of the shares in Alinta as contemplated in the SIA.
Ring Fenced Information	confidential information which: (a) relates to the operation, construction or maintenance of the DBNGP; or (b) relates to Shippers but excluding BBP, that is obtained in the course of providing services to the DBNGP Commercial Operator under the DBNGP Operating Services Agreement or as the owner of an interest in the DBNGP.
Scheme of Arrangement	the scheme of arrangement between Alinta and its members under which all of the issued shares in Alinta will be acquired by Bidco.
Scheme Implementation Date	the date on which Bidco acquires all of the shares in Alinta.
Service Provider	has the meaning given to that term in the Gas Access Law.
Shipper	a person who is entitled, or has a bona fide intention, to use gas transportation services provided by means of the DBNGP, but does not include Alcoa of Australia Limited as a Shipper under the contract between the DBNGP Commercial Operator and Alcoa dated 7 February 1983 as amended from time to time.
SIA	the Scheme Implementation Agreement executed on 11 May 2007 as amended from time to time.
SPI	Singapore Power International Pte Ltd.
Subsidiary	has the same meaning as in the Corporations Act 2001 (Cth), excluding sub-sections 48(2) and (3).
Umbrella Agreement	the agreement between BB SPV, SPI, BNB and Bidco dated 23 March 2007.
Undertaking	the undertakings provided by BBI and BBP in this document.

- 2 No officer, employee or adviser of BNB or any subsidiary of BNB will be regarded as being "**directly involved**" in a business conducted by BBI or BBP by reason only of the fact that:
- (a) that person is an officer of BBI or BBP;

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- (b) that person is an officer of a BNB subsidiary providing management, financial advisory, investment banking or administrative support services to BBI or BBP; or
 - (c) that person is employed by or seconded to a BNB subsidiary providing management, financial advisory, investment banking or administrative support services to BBI or BBP.
- 3 In the interpretation of a clause of this Undertaking, a construction that would promote the purpose or object underlying this Undertaking (whether that purpose or object is expressly stated in this Undertaking or not) shall be preferred to a construction that would not promote that purpose or object.
- 4 In the interpretation of this Undertaking, material not forming part of this Undertaking may be considered to:
- (a) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause taking into account its context in this Undertaking and the competition concerns intended to be addressed by this Undertaking and the clause in question; or
 - (b) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause taking into account its context in this Undertaking and the purpose or object underlying this Undertaking leads to a result that does not promote the purpose or object underlying this Undertaking.
- 5 In determining whether consideration should be given to any material in accordance with clause 4, or in considering any weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to the:
- (a) effect that reliance on the ordinary meaning conveyed by the text of the clause would have (taking into account its context in this Undertaking and whether that meaning promotes the purpose or object of this Undertaking); and
 - (b) need to ensure that the result of this Undertaking is to address the Commission's competition concerns.
- 6 In performing its obligations under this Undertaking, each of BBI and BBP will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking.
- 7 References in this Undertaking to BBI and BBP include, where the context allows, references to wholly owned subsidiaries of BBI and BBP and, where the context allows, a reference to BBI includes any entity performing maintenance, operation or construction related to the DBNGP under the control of BBI.
- 8 Where the performance of an obligation under this Undertaking is imposed on BBI, if complete performance of the relevant obligation requires a subsidiary of BBI to take some action or refrain from taking some action, BBI will procure that subsidiary to take that action or refrain from taking that action and, if necessary, will procure the offering of undertakings on identical terms to this Undertaking by the subsidiary to the Commission.
- 9 Where the performance of an obligation under this Undertaking is imposed on BBP, if complete performance of the relevant obligation requires a subsidiary of BBP to take some action or refrain from taking some action, BBP will procure that subsidiary to take that action or refrain from taking that action and, if necessary, will procure the offering of undertakings on identical terms to this Undertaking by the subsidiary to the Commission.

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- 10 A Shipper is not discriminated against by virtue only of the DBNGP Commercial Operator making Curtailment decisions by reference to the type of haulage services for which the Shipper has contracted.

Background

Acquisition of all Alinta shares

- 11 On 30 March 2007, Alinta and Bidco, amongst others, executed a scheme implementation agreement in relation to the Proposed Alinta Acquisition. On 11 May 2007, following negotiation of certain amendments to that scheme implementation agreement, Alinta and Bidco, amongst others, executed the SIA in relation to the Proposed Alinta Acquisition.
- 12 By an agreement dated 23 March 2007, as amended, Bidco, BB SPV and SPI agreed a mechanism by which the Alinta Scheme Assets would be allocated between SPI and BB SPV. The allocation of Alinta Scheme Assets is subject to a separate undertaking given to the Commission by BBI and SPI.
- 13 It is intended that the DBNGP Interest will be acquired by BBI and that BBI will perform or control the performance of the DBNGP Operating Services Agreement by AAM or a subsidiary of BBI.
- 14 BB SPV and SPI have sought informal clearance of the Proposed Alinta Acquisition by the Commission.
- 15 Without any admission that the Proposed Alinta Acquisition implemented by the Scheme of Arrangement would contravene section 50 (or any other provision) of the Trade Practices Act, BBI and BBP offer this Undertaking to the Commission in relation to the Proposed Alinta Acquisition.
- 16 The Commission is prepared to accept this Undertaking as it provides a mechanism to address competition concerns that otherwise arise or may otherwise arise in relation to the Proposed Alinta Acquisition.
- 17 In particular this Undertaking addresses the Commission's concern that BBI, post acquisition, would have the opportunity to use its DBNGP Interest or its position under the DBNGP Operating Services Agreement to favour BBP, which is a Shipper of gas on the DBNGP and a competitor in downstream markets of other Shippers. Consequently, the Commission seeks this Undertaking to ensure that:
- (a) Ring Fenced Information does not pass from BBI to BBP; and
 - (b) BBI does not discriminate in favour of BBP.
- 18 This Undertaking seeks to address similar competition issues to those which are addressed by the undertakings given by Alinta and AAM in the 2004 Undertaking. It is intended to complement the 2004 Undertaking.
- 19 The Commission acknowledges that following acceptance of this Undertaking and the implementation of the Scheme of Arrangement, it may be appropriate to vary the 2004 Undertaking as it applies in relation to Alinta and AAM and the Commission will take this into account in considering any requests by:
- (a) Alinta 2000 Limited and AAM to the effect that clauses 5.4(a), 5.4(b), 5.5(a), 5.5(b), 5.5(f) and 5.5(g) of the 2004 Undertaking be withdrawn; and
 - (b) AAM to the effect that clauses 5.9(b), 11.2(a) and 11.2(b) of the 2004 Undertaking be withdrawn to the extent that they apply to AAM.

Commencement and termination of Undertaking

Commencement of Undertaking

- 20 This Undertaking comes into effect when the following conditions are satisfied:
- (a) this Undertaking is executed by BBI and BBP;
 - (b) the Commission accepts this Undertaking;
 - (c) the Scheme Implementation Date has occurred,
(Commencement Date).
- 21 For the avoidance of doubt, each party to this Undertaking is only responsible for the obligations given by it, and, notwithstanding that the undertaking is contained in a single document, it constitutes separate undertakings given by BBI and BBP and:
- (a) BBI may apply to the Commission to withdraw or vary its undertakings without the consent of BBP; and
 - (b) BBP may apply to the Commission to withdraw or vary its undertakings without the consent of BBI.

Termination Date

- 22 This Undertaking will cease on the date on which the earliest of the following events occurs:
- (a) BBI ceases to be a unitholder in the DBNGP Trust and ceases to perform or control the performance of the DBNGP Operating Services Agreement;
 - (b) BBP ceases to hold any interest in a Downstream Business;
 - (c) a natural gas transmission pipeline that is not yet in existence and is able to provide gas transportation services from the Carnarvon Basin to the most northerly point of the Parmelia pipeline or Perth in competition with the DBNGP is constructed and is owned and operated by entities which are not related bodies corporate of BBI or BBP; or
 - (d) the Commission consents to the withdrawal of this Undertaking in accordance with s87B of the Act.

Transitional provisions

- 23 For the 4 month period from the Scheme Implementation Date or such longer period as the Commission consents to in writing (**Transitional Period**), notwithstanding any contrary provision in this Undertaking:
- (a) BBI is not in breach of clause 30(f) or clause 30(h)(2) by reason only of the fact of all of the issued shares in Alinta being acquired by Bidco;
 - (b) BBP is not in breach of clause 32(f)(5) by reason only of the fact of all of the issued shares in Alinta being acquired by Bidco; and
 - (c) for the avoidance of doubt, any conduct by a person who was an employee of Alinta 2000 Limited immediately prior to the Scheme Implementation Date that is not prohibited by the 2004 Undertaking will not be regarded as a breach of clause 30(h)(2) or clause 32(f)(5) of this Undertaking.

Ringfencing of the DBNGP

- 24 If BBI makes:
- (a) a decision pursuant to the DBNGP Operating Services Agreement that relates to Curtailment; or
 - (b) a recommendation to the DBNGP Commercial Operator in respect of any decision to be made by the DBNGP Commercial Operator that relates to Curtailment,
- then, within 7 Business Days of that decision or recommendation being made or communicated to an adversely affected Shipper, that Shipper may request that the Independent Auditor obtain written reasons from BBI for that decision or recommendation. It is acknowledged that the implementation of the audit process under this clause should in no way of itself be construed as amounting to a Shipper being treated unfairly or on a discriminatory basis.
- 25 BBI will provide the Independent Auditor with the written reasons (including relevant technical data) for its decision or recommendation referred to in clause 24 within 7 Business Days of BBI receiving a request for reasons from the Independent Auditor. It is acknowledged that the reason for a Curtailment decision or recommendation may be that an emergency situation or other circumstances requiring an immediate decision or recommendation existed (however explanation of, and technical data on which such decisions are based must still be provided as required by this Undertaking).
- 26 BBI is not required to provide reasons pursuant to clauses 24 and 25 for a decision unless the decision in respect of which reasons are sought, will on its own or in combination with other decisions have the effect that:
- (a) on a given day, the capacity that is available to a Shipper is less than the Shipper's contracted capacity by at least 1 TJ or 2% of the Shipper's contracted capacity; or
 - (b) in a given 2 month period, the capacity that is available to a Shipper is less than the Shipper's contracted capacity by at least an amount equal to 5TJ or 5% of the Shipper's contracted capacity,
- provided that where more than one decision or recommendation contributed to the reduction in capacity available to a Shipper and reasons are requested within 7 Business Days of the last decision or recommendation which resulted in contracted capacity being reduced by more than the thresholds specified above, reasons must be provided in relation to each decision or recommendation which contributed to the contracted capacity being reduced by more than the thresholds specified.
- 27 BBI will require the Independent Auditor to form an opinion as to whether BBI's decision or recommendation may have breached this Undertaking and inform the Shipper that has made a request under clause 24 whether it is satisfied with the reasons given by BBI. Subject to any contrary legal obligation, BBI may instruct the Independent Auditor not to provide the Shipper with reasons for a decision or recommendation referred to in clause 24.
- 28 For the purposes of clause 30(c), a reference to BBP includes a reference to any entity or business listed in schedule 2 whether or not that entity or business is owned or controlled by BBP at any given time.
- 29 For the purposes of clause 30(c) and clause 30(d), any reference to BBI includes entities or businesses listed in schedule 3 but does not include any entity or business listed in schedule 2.

30

BBI undertakes that:

- (a) it will not discriminate between Shippers in performing its functions under the DBNGP Operating Services Agreement;
- (b) it will not nominate for appointment as a member of the board of the DBNGP Group:
 - (1) any person who is an officer or employee of BBP; or
 - (2) any person who is an officer of a BNB subsidiary providing management, financial advisory, investment banking or administrative support services to BBP; or
 - (3) any BBP Adviser; or
 - (4) any person who is directly involved in a Downstream Business in any capacity; or
 - (5) a person who is not a BBP Independent Person unless otherwise consented to by the Commission in writing;
- (c) any person who is both a director of BBP and a director of BBI:
 - (1) will be excluded from and will not be present during any discussions and voting at a meeting of the board of BBI where such discussions or voting involve the operation, construction or maintenance of the DBNGP; and
 - (2) will not be provided with or otherwise have access to any Ring Fenced Information;
- (d) subject to clauses 25 and 51, BBI will not communicate or otherwise allow access to Ring Fenced Information:
 - (1) outside of BBI except on a confidential basis to those persons specified in schedule 1 to this Undertaking, on the terms specified in schedule 1 to this Undertaking; or
 - (2) to any officer or employee of BBP or to a BBP Adviser;
- (e) BBI must procure that each person to whom Ring Fenced Information is disclosed or provided pursuant to clause 30(d)(1) observes the restrictions on the use or disclosure of Ring Fenced Information in this Undertaking as if they were obligations of that person. In this regard, BBI will take all steps that BBI is reasonably capable of taking for the purpose of:
 - (1) preventing a breach of the obligations of confidentiality in relation to the Ring Fenced Information by such a person;
 - (2) enforcing the obligations of confidentiality in relation to the Ring Fenced Information owed by such a person; and
 - (3) preventing any further breaches of confidentiality in relation to the Ring Fenced Information by such a person; and

BBI will advise the Commission of any breach of the obligations of confidentiality in relation to the Ring Fenced Information by such a person within 2 Business Days of BBI becoming aware of the breach;
- (f) persons directly involved in the operation, construction or maintenance of the DBNGP under the DBNGP Operating Services Agreement will perform those functions in premises which are physically separate from officers or employees of BBP and from BBP Advisers;
- (g) it will maintain Ring Fenced Information on files and on systems that are either separate from those used by, or that prohibit access to that

Ring Fenced Information by officers and employees of BBP and by BBP Advisers;

- (h) it will not employ or engage in any role directly involved in the operation, maintenance or construction of the DBNGP:
 - (1) any person who is, or has been in the prior 12 month period, an officer or employee of BBP, unless otherwise consented to by the Commission in writing;
 - (2) any person who is, or has been in the prior 12 month period, directly involved in a Downstream Business, unless otherwise consented to by the Commission in writing; or
 - (3) a BBP Adviser.

31 BBI also undertakes that AAM or any entity whose performance of the DBNGP Operating Services Agreement is controlled by BBI will comply with the ringfencing obligations in Section 4 of the Gas Access Code in relation to its activities in Western Australia, other than the obligations in sections 4.1(c), (d) or (e), as if it were a Service Provider and as if BBP were its Associate for the purposes of the Gas Access Code.

32 BBP undertakes that:

- (a) it will require its officers, employees and BBP Advisers to inform it if they receive or have received any Ring Fenced Information in the prior 12 month period;
- (b) it will advise the Commission within 2 Business Days of it becoming aware of any officer or employee of BBP or any BBP Adviser, obtaining access to Ring Fenced Information;
- (c) it will take all steps reasonably necessary to ensure that Ring Fenced Information acquired by any person subject to BBP's influence or control, is not passed to any other person;
- (d) unless otherwise consented to by the Commission in writing, it will take all steps reasonably necessary to ensure that a person which BBP knows has had access to or acquired Ring Fenced Information in the prior 12 month period is not directly involved in a Downstream Business;
- (e) it will not second, permit to be seconded, or recommend for secondment to the DBNGP Group:
 - (1) any person who is or has been in the prior 12 month period, an officer or employee of BBP;
 - (2) any person who is or has been in the prior 12 month period, directly involved in a Downstream Business; or
 - (3) a BBP Adviser;
- (f) unless otherwise consented to by the Commission in writing, it will not employ or engage in any role to be directly involved in a Downstream Business:
 - (1) any person who is or has been in the prior 12 month period or since the Scheme Implementation Date (whichever is the shorter time period), an officer or employee of BBI; or
 - (2) any person who is or has been in the prior 12 month period, an officer or employee of the DBNGP Group; or
 - (3) any person who is employed by BNB or a BNB subsidiary and who is or has been in the prior 12 month period,

engaged in the provision of advisory services to the DBNGP Group; or

- (4) a BBI Adviser; or
 - (5) any person who does or has had access to Ring Fenced Information in the prior 12 month period;
- (g) a person who:
- (1) is or has been in the prior 12 month period or since the Scheme Implementation Date (whichever is the shorter time period), an officer of BBI;
 - (2) is or has been in the prior 12 month period or since the Scheme Implementation Date (whichever is the shorter time period), directly involved in BBI performing its obligations under the DBNGP Operating Services Agreement; or
 - (3) does have or has had access to Ring Fenced Information in the prior 12 month period, unless otherwise consented to by the Commission in writing,

will not be permitted to be involved in:

- (4) commercial negotiations on behalf of BBP as Shipper on the DBNGP; or
 - (5) communications on behalf of BBP as Shipper on the DBNGP with the DBNGP Commercial Operator or BBI;
- (h) communications between any person directly involved in a Downstream Business and the DBNGP Commercial Operator and/or BBI will not be subject to confidentiality restrictions that would prevent its disclosure to the Independent Auditor or the Commission; and
- (i) no decision of or discussion by the board of BBP on any issue which relates to or is significantly affected by the operation, construction or maintenance of the DBNGP will proceed until all directors of BBP who are also directors of BBI and are present at or participating in the meeting of the Board of BBP (the **Relevant Directors**) have declared formally that they:
- (1) have not been present at any meeting of the board of BBI held after the Scheme Implementation Date when the operation, construction or maintenance of the DBNGP was discussed; and
 - (2) have not received Ring Fenced Information in the prior 12 month period,

and in the event that a Relevant Director fails or refuses to make such a declaration then:

- (3) BBP will exclude that Relevant Director from the meeting; or
- (4) if that Relevant Director is not excluded from the meeting, then the issue will not be discussed and no decision will be made on that issue.

33 For the avoidance of doubt, unless expressly prohibited under the terms of this Undertaking, nothing in this Undertaking:

- (a) prevents BBI performing functions under the DBNGP Operating Services Agreement, including BBI or any such entity providing information and advice to the DBNGP Commercial Operator;
- (b) prevents necessary day to day operational communications between:

- (1) persons performing functions under the DBNGP Operating Services Agreement; and
- (2) representatives of BBP,

arising in connection with a person's performance of functions under the DBNGP Operating Services Agreement, or in connection with BBP operating as a Shipper of gas on the DBNGP (but not in connection with commercial negotiation relating to gas transportation on the DBNGP);

- (c) prevents BNB or one or more subsidiaries of BNB being engaged by BBI and/or BBP or by the BNB subsidiaries providing the management services to those funds, for the provision of the following services:
 - (1) financial advisory and/or investment banking services in connection with specific projects;
 - (2) management or custody services;
 - (3) administrative support services, including legal, accounting, compliance, tax and treasury related services.

34 Nothing in this Undertaking:

- (a) requires BBI to provide confidential information relating to a Shipper to the Independent Auditor (without the consent of that Shipper) if the provision of that information would:
 - (1) result in the DBNGP Commercial Operator being in breach of a pre existing contract with that Shipper; or
 - (2) result in the DBNGP Commercial Operator or BBI being in breach of the Gas Access Code or the 2004 Undertaking; or
- (b) prevents any other communications that are notified to the Commission in writing and in respect of which the Commission indicates in writing that it has no objection.

General

Subcontracting

- 35 BBI and BBP will not enter into any contract with any entity for performing operation, construction or maintenance functions related to the DBNGP which inhibits the operation or effectiveness of this Undertaking.

Independent Auditor

- 36 BBI and BBP will jointly maintain the appointment of an Independent Auditor until the termination of this Undertaking.
- 37 Within 10 Business Days of the Commencement Date, BBI and BBP must notify the Commission, in writing, of the name and contact details of the proposed Independent Auditor, including evidence that the proposed Independent Auditor is an Independent Person and a BBP Independent Person with the relevant expertise to perform the role of Independent Auditor, and the proposed terms of engagement (**Proposed Independent Auditor**).
- 38 If within 15 Business Days of receipt by the Commission of the information referred to in clause 37, the Commission does not object to the Proposed

Independent Auditor or the proposed terms of engagement, BBI and BBP will jointly appoint the Proposed Independent Auditor within 5 Business Days.

- 39 If within 15 Business Days of receipt by the Commission of the information referred to in clause 37, or such further period as is required by the Commission and notified to BBI and BBP in writing prior to the expiration of the 15 Business Day period, the Commission objects to the Proposed Independent Auditor, BBI and BBP must, within 5 Business Days of the Commission nominating an alternative Independent Auditor, appoint the alternative Independent Auditor nominated by the Commission on terms acceptable to the Commission.
- 40 The terms of engagement agreed to by BBI and BBP under clause 38 or 39 must require the Independent Auditor to:
- (a) consider any information provided to it pursuant to clause 25 and determine whether it is satisfied that the decision or recommendation made by BBI may have constituted a breach of this Undertaking;
 - (b) provide to the Commission a copy of a report on its reasons for that determination;
 - (c) inform Shippers whether it is satisfied with the reasons given by BBI;
 - (d) prepare a detailed audit report to be supplied to the General manager of the Mergers and Asset Sales Branch of the Commission 30 Business Days after each anniversary of the commencement of this Undertaking, reporting on (without limitation):
 - (i) BBI's and BBP's compliance with this Undertaking;
 - (ii) full reasons for the conclusions reached in the audit report, including references to the supporting evidence;
 - (iii) any qualifications made by the Independent Auditor in forming its views; and
 - (iv) any recommendations by the Independent Auditor to improve the integrity of the audit process and the elimination of any qualifications, including, without limitation, any reasonable recommendations to improve BBI's and BBP's processes or reporting systems;
 - (e) notify the Commission of any likely failure by BBI or BBP to comply with the obligations in this Undertaking within 5 Business Days of the Independent Auditor forming the view that a likely failure to comply has occurred or will occur.
- 41 Unless otherwise agreed to by the Commission BBI and BBP will not appoint the Independent Auditor, or have any agreements, understandings or arrangements with the Independent Auditor, to utilise the Independent Auditor's services for anything other than compliance with this Undertaking as required by this Undertaking.
- 42 BBI and BBP will cancel the appointment of the Independent Auditor if the Commission, in its discretion, informs BBI and BBP of its view that the Independent Auditor is no longer an Independent Person or does not have relevant experience and skills to act as the Independent Auditor, or if the Commission advises BBI and BBP in writing that it has formed the view that the Independent Auditor is not properly performing his or her functions.
- 43 In the event that the appointment of the Independent Auditor is cancelled in accordance with clause 42, BBI and BBP must, within 5 Business Days of the Commission nominating an alternative Independent Auditor, appoint an Independent Auditor nominated by the Commission on terms acceptable to the Commission.

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- 44 If an Independent Auditor resigns or otherwise terminates its appointment, BBI and BBP must submit the name and contact details and all other information required by clause 37 in relation to its choice of a successor Independent Auditor to the Commission for approval within 20 Business Days of the resignation or termination. Clauses 38 and 39 then apply as if the successor Independent Auditor were the Proposed Independent Auditor.
- 45 In the event that the Commission does not approve the Proposed Independent Auditor, or the terms of engagement, BBI and SPI must within 5 Business Days of the Commission nominating an alternative Independent Auditor, appoint an Independent Auditor nominated by the Commission on terms acceptable to the Commission.
- 46 BBI and BBP will ensure the Independent Auditor complies with any reasonable request made by the Commission to the Independent Auditor in relation to the audit report. The nature and content of any request made by the Commission to the Independent Auditor will also be communicated to both BBI and BBP.
- 47 BBI and BBP acknowledge that the Commission and Independent Auditor may communicate directly in relation to the audit referred to in clause 40.
- 48 BBI and BBP will implement any recommendations of the Independent Auditor made pursuant to clause 40(d)(iv) within 5 Business Days after receiving the Independent Auditor's audit report.
- 49 If BBI or BBP reasonably believes that the implementation required by clause 48 is likely to take more than 5 Business Days, it must notify the Commission as soon as practicable in writing, stating:
- (a) the reasons why it believes the implementation will take more than 5 Business Days, including supporting evidence;
 - (b) the steps it is taking to implement the recommendations; and
 - (c) an estimate of the date by which the recommendations will be fully implemented.
- 50 BBI and BBP will furnish the Commission with a report detailing the progress of implementing the Independent Auditor's recommendations every 5 Business Days until they are fully implemented.
- 51 BBI and BBP will cooperate fully with the Independent Auditor and shall ensure that the audits are able to be conducted by the Independent Auditor on the basis of any relevant information in BBI and BBP's control. To the fullest extent possible, BBI and BBP will ensure the Independent Auditor is given access to all relevant information, including, without limitation:
- (a) access to officers, employees, representatives and agents of BBI or BBP for any relevant purpose, including to find out how this Undertaking is to be implemented and understood and BBI or BBP will direct those officers, employees or representatives to answer the Independent Auditor's questions honestly and comprehensively;
 - (b) access to (to the extent it is within BBI's or BBP's control) information about customers, and the customers themselves, in order to obtain information about customers' experience of BBI or BBP and its services and compliance with this Undertaking; and
 - (c) access to all the records of BBI or BBP, in whatever form, relevant to the Independent Auditor's inquiries whether specifically requested or not.
- 52 Whatever the processes used to appoint an Independent Auditor, the fees and expenses incurred by the Independent Auditor in carrying out his or her functions under this Undertaking will be payable by BBI and BBP.

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- 53 BBI and BBP will authorise the Independent Auditor to engage any technical expertise or other assistance as the Independent Auditor reasonably requires to conduct the audits and BBI and BBP will meet any and all costs of the Independent Auditor.
- 54 BBI and SPI will, within 15 Business Days of the commencement of this Undertaking, provide a report to the Commission detailing the efforts that BBI and SPI have made toward compliance with this Undertaking.

Further information

- 55 At the Commission's direction, BBI or BBP will itself, and BBI or BBP will procure that, any BBI or BBP officer, employee, agent or contractor identified by the Commission will:
- (a) furnish information to the Commission;
 - (b) produce documents to the Commission in relation to which BBI or BBP has custody, control or power; and/or
 - (c) attend the Commission at a time and place appointed by the Commission to answer any questions the Commission (its Commissioner, its staff or its agents) may have,
- in relation to BBI's or BBP's compliance with this Undertaking.
- 56 BBI and BBP will comply with any direction made by the Commission under clause 55 within 5 Business Days or such other period of time as may be agreed by the Commission.
- 57 Information furnished, documents produced or information given in answer to questions may be used by the Commission for any purpose consistent with its statutory functions.
- 58 Any direction made by the Commission under clause 55 will be notified to the company secretary of BBI or BBP, as the case may be.

Authorisation

- 59 The Commission may authorise the Mergers Review Committee, a member of the Commission or a member of the Commission staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the Commission may impose.

Limitation of liability

- 60 Limitation of liability of BBIS:
- (a) BBIS enters into this Undertaking only in its capacity as trustee of the Babcock & Brown Infrastructure Trust (BBIT) and in no other capacity;
 - (b) a monetary liability arising under or in connection with this Undertaking can be enforced against BBIS only to the extent to which BBIS can be satisfied out of property of BBIT out of which BBIS is actually indemnified for the liability;
 - (c) the limitation of BBIS's monetary liability referred to in clause 60(b) applies despite any other provision of this Undertaking and extends to all monetary liabilities and obligations of BBIS in its capacity as trustee of BBIT in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Undertaking;
 - (d) the parties other than BBIS may not sue BBIS in any capacity other than as trustee of BBIT, including seeking the appointment of a receiver (except in relation to property of BBIT), a liquidator, an administrator or any similar person to BBIS or prove in any liquidation,

administration or arrangement of or affecting BBIS (except in relation to property of BBIT); and

- (e) the provisions of this clause 60 do not apply to any obligation or liability of BBIS in its capacity as trustee of BBIT to the extent that it is not satisfied because under the BBIT Constitution or by operation of law there is a reduction in the extent of BBIS's indemnification out of the assets of BBIT as a result of fraud, negligence or breach of trust on the part of BBIS.

61 Limitation of liability of BBPS:

- (a) BBPS enters into this Undertaking only in its capacity as trustee of the Babcock & Brown Power Trust (BBPT) and in no other capacity;
- (b) a monetary liability arising under or in connection with this Undertaking can be enforced against BBPS only to the extent to which BBPS can be satisfied out of property of BBPT out of which BBPS is actually indemnified for the liability;
- (c) the limitation of BBPS's monetary liability referred to in clause 61(b) applies despite any other provision of this Undertaking and extends to all monetary liabilities and obligations of BBPS in its capacity as trustee of BBPT in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Undertaking;
- (d) the parties other than BBPS may not sue BBPS in any capacity other than as trustee of BBPT, including seeking the appointment of a receiver (except in relation to property of BBPT), a liquidator, an administrator or any similar person to BBPS or prove in any liquidation, administration or arrangement of or affecting BBPS (except in relation to property of BBPT); and
- (e) the provisions of this clause 61 do not apply to any obligation or liability of BBPS in its capacity as trustee of BBPT to the extent that it is not satisfied because under the BBPT Constitution or by operation of law there is a reduction in the extent of BBPS's indemnification out of the assets of BBPT as a result of fraud, negligence or breach of trust on the part of BBPS.

Service of notices

62 Any notice or other communication to the Commission pursuant to this Undertaking must be sent to:

General Manager, Mergers & Asset Sales
Australian Competition & Consumer Commission
470 Northbourne Avenue
Dickson ACT 2602

or in whatever manner the Commission subsequently notifies to BBI and BBP with no less than 5 Business Days notice.

63 Any notice or other communication from the Commission to BBI pursuant to this Undertaking must be sent to:

The Company Secretary
Babcock & Brown Infrastructure
Level 23 The Chifley Tower
2 Chifley Square
Sydney NSW 2000

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or as otherwise notified by BBI to the Commission with no less than 5 Business Days notice.


64 Any notice or other communication from the Commission to BBP pursuant to this Undertaking must be sent to:

The Company Secretary
Babcock & Brown Power
Level 23 The Chifley Tower
2 Chifley Square

or as otherwise notified by BBP to the Commission with no less than 5 Business Days notice.

Executed by

EXECUTED by **Babcock & Brown Infrastructure Limited**
in accordance with section 127(1) of the *Corporations Act 2001*
(Cwth) by authority of its directors


sign here ▶ 
Director
print name Phillip Green

sign here ▶ 
~~Director~~/company secretary

*delete whichever is not applicable

print name MICHAEL JOHN RYAN

EXECUTED by **Babcock & Brown Investor Services Limited**
in its capacity as trustee of the Babcock & Brown Infrastructure Trust
in accordance with section 127(1) of the *Corporations Act 2001*
(Cwth) by authority of its directors

sign here ▶ 
Director
print name Phillip Green

sign here ▶ 
~~Director~~/company secretary

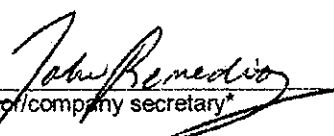
*delete whichever is not applicable

print name MICHAEL JOHN RYAN

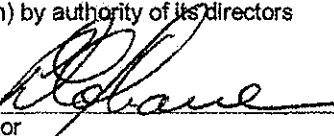
Freehills


EXECUTED by Babcock & Brown Power Limited
in accordance with section 127(1) of the Corporations Act 2001
(Cwith) by authority of its directors

sign here ► 
Director
print name PETER HOFBAUER

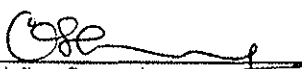
sign here ► 
Director/company secretary*
*delete whichever is not applicable
print name JOHN REMEDIOS

EXECUTED by Babcock & Brown Power Services Limited
in its capacity as trustee of the Babcock & Brown Power Trust
in accordance with section 127(1) of the Corporations Act 2001
(Cwith) by authority of its directors

sign here ► 
Director
print name PETER HOFBAUER

sign here ► 
Director/company secretary
*delete whichever is not applicable
print name JOHN REMEDIOS

ACCEPTED BY THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION


Graeme Julian Samuel
Chairman
Australian Competition and Consumer Commission

Dated: 13th August 2007

Schedule 1

1 Subject to the Gas Access Law, for the purposes of clause 30(d), BBI may communicate or otherwise allow access to Ring Fenced Information outside of BBI:

- (a) to a person or company engaged by BBI or the relevant BBI subsidiary to provide operational support to BBI in performing its functions under the DBNGP Operating Services Agreement and otherwise in operating the DBNGP;
- (b) to a person or company engaged by BBI or the relevant BBI subsidiary to provide professional advisory services, including management, financial, investment banking, engineering, legal and accounting services;
- (c) as required by law, or stock exchange if required by listing rules, or in relation to any proceedings before a court, tribunal or governmental agency; or
- (d) with the prior written approval of the Commission.

provided that, other than where a disclosure is required by law, the person has been made aware that the Ring Fenced Information is confidential and has agreed to keep that Ring Fenced Information confidential.

2 This Schedule 1 does not permit BBI to communicate or otherwise allow access to Ring Fenced Information to any officer or employee of BBP or to any BBP Adviser.

Schedule 2

- 1 The following businesses and entities are expected to be owned or controlled by BBP following implementation of the Umbrella Agreement and Participation Deed:

Port Hedland Power Station

Newman Power Station

Glenbrook Power Station

Bairnsdale Power Station

Cawse Cogeneration

Wesfarmers LPG

AlintaAGL (67%)

Goldfields Gas Pipeline (11.8%)

Tamar Power Project

Wholesale energy trading and marketing (AEATM)

Schedule 3

- 1 The following businesses and entities are expected to be owned or controlled by BBI following implementation of the Umbrella Agreement and Participation Deed:

Multinet Gas (20.1%)

Tasmanian Gas Pipeline

AlintaGas Network (74.1%)

Dampier-Bunbury Natural Gas Pipeline (17%)

Western Australia operations and maintenance business (excluding the Parmelia Pipeline)