

TRADE PRACTICES ACT 1974
UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER
COMMISSION GIVEN UNDER SECTION 87B

by

DBNGP (WA) TRANSMISSION PTY LTD (ABN 69 081 609 190)

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27 October 2004 as varied on []

1. DEFINITIONS

Acquisition means the acquisition of the shares in EEWAT, the shares in EEWAN and the units in EEPT by the Consortium through DBNGP Holdings on 27 October 2004.

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Act means the *Trade Practices Act 1974* (Cth).

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Alcoa means Alcoa of Australia Limited (ABN 93 004 879 298), trading as Alcoa World Alumina Australia.

ANS means Alinta Network Services Pty Ltd (ACN 104 352 650).

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Business Day means a day other than a Sunday, Saturday or a public holiday in Western Australia.

Commission means the Australian Competition & Consumer Commission.

Consortium means the consortium formed by the Consortium Members for the purposes of the Acquisition.

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Consortium Members means the Unitholders and Shareholders.

Consortium Undertakings means the s 87B undertakings provided by the Consortium Members, ANS and DBNGP Holdings and accepted by the Commission on 25 October 2004.

DBNGP means the Dampier to Bunbury Natural Gas Pipeline in Western Australia.

DBNGP Holdings means the trustee of the Trust, being DBNGP Holdings Pty Limited (ACN 110 721 081).

DBNGP WA Pipeline Trust means the DBNGP WA Pipeline Trust, formerly known as EEPT.

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DBP Nominees means DBNGP (WA) Nominees Pty Limited (ABN 78 081 609 289), formerly known as EEWAN.

DBP Transmission means DBNGP (WA) Transmission Pty Ltd (ABN 69 081 609 190), formerly known as EEWAT.

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DBP Transmission Undertaking means the undertaking provided by DBP Transmission in this document.

DUET means DUET 1 and DUET 2.

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DUET 1 means the AMPCI Macquarie Infrastructure Management No 1 Limited in its capacity as the responsible entity of the Diversified Utility and Energy Trust No 1 (ABN 99 108 013 672).

DUET 2 means AMPCI Macquarie Infrastructure Management No 2 Limited in its capacity as the responsible entity of the Diversified Utility and Energy Trust No 2 (ABN 15 108 014 062).

EEPT means Epic Energy (WA) Pipeline Trust, now known as DBNGP WA Pipeline Trust.

EEWAN means Epic Energy (WA) Nominees Pty Ltd (ACN 081 609 289), now known as DBP Nominees.

EEWAT means Epic Energy (WA) Transmission Pty Ltd (ABN 69 081 609 190), now known as DBP Transmission.

EEWAT Undertaking means the undertaking provided by EEWAT and accepted by the Commission on 1 November 2004.

Related Body Corporate has the meaning given to it by the Corporations Act.

Varied Consortium Undertakings means the undertakings provided by the Consortium Members and DBNGP Holdings which replace the Consortium Undertakings in their entirety from the date of acceptance by the Commission.

Shareholders means WNG, Alcoa and DUET as the shareholders in DBNGP Holdings.

Trust means the trust established by the Unitholders of which DBNGP Holdings is to be the trustee and which will hold the:

- (a) shares in DBP Transmission (the current operator of the DBNGP);
- (b) the shares in DBP Nominees; and
- (c) the units in DBNGP WA Pipeline Trust (the current operator of the DBNGP).

Unitholders means WNG, Alcoa and DUET, and any special purpose vehicles established by them or any of them, as the unitholders in the Trust.

WNG means Westnet Infrastructure Group Limited (ABN 40 087 857 001), formerly known as Alinta Limited.

2. BACKGROUND

2.1 On 9 August 2004, the Consortium advised the Commission of the proposed Acquisition. The Commission expressed concerns about the proposed Acquisition.

2.2 On 27 August 2004:

- (a) the Consortium had offered to give certain undertakings under section 87B of the Act to allay the concerns of the Commission; and
- (b) the Commission had informed the Consortium that it agreed in principle to the Consortium's proposed undertaking terms and therefore did not propose to intervene in the matter pursuant to section 50 of the Act, subject to the Commission's acceptance of appropriate undertakings under section 87B of the Act.

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Deleted: <#>Proposed Acquisition means the proposed acquisition of the shares in EEWAT, the shares in EEWAN and the units in EEPT by the Consortium through DBNGP Holdings.¶

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Deleted: <#>Unitholders Agreement means the agreement between the Unitholders which governs the relationship between them relating to DBNGP Holdings and the Trust.¶

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2.3 On 25 October 2004, the Commission accepted the Consortium Undertakings,

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2.4 As part of the Consortium Undertakings, the Consortium Members and DBNGP Holdings undertook to procure EEWAT to offer within 10 Business Days of the completion of the proposed Acquisition, an undertaking under section 87B of the Act to comply with the terms of the Consortium Undertakings that were relevant for EEWAT.

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2.5 Accordingly, EEWAT offered the EEWAT Undertaking for acceptance by the Commission. The EEWAT Undertaking was accepted by the commission on 1 November 2004.

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2.6 As a result of changed circumstances relating to the ownership of the DBNGP, the Consortium Members and DBNGP Holdings have offered the Varied Consortium Undertakings for acceptance by the Commission.

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2.7 DBP Transmission offers the DBP Transmission Undertaking to reflect the Varied Consortium Undertakings for acceptance by the Commission, which replaces the EEWAT Undertaking in its entirety from the date of acceptance by the Commission.

3. COMMENCEMENT AND TERMINATION OF THE DBP TRANSMISSION UNDERTAKING

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3.1 The DBP Transmission Undertaking comes into effect when the following conditions are satisfied:

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- (a) the DBP Transmission Undertaking is executed by DBP Transmission; and
- (b) the Commission accepts the DBP Transmission Undertaking so executed.

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3.2 The DBP Transmission Undertaking will terminate on the date on which the Varied Consortium Undertakings terminate.

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4. DBP TRANSMISSION UNDERTAKING

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DBP Transmission undertakes to comply with the terms of the Varied Consortium Undertakings that are relevant for DBP Transmission.

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5. REVIEW OF DBP TRANSMISSION UNDERTAKING

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If:

- (a) DBP Transmission is unable to comply with its obligations under the DBP Transmission Undertaking; or
- (b) DBP Transmission believes that it is necessary to seek some variation due to changed circumstances (including any material change in the Western Australian gas or electricity industries),

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then DBP Transmission and the Commission agree that they will review the DBP Transmission Undertaking and negotiate in good faith the variation or withdrawal of the DBP Transmission Undertaking in light of such circumstances having regard to the need to avoid any substantial lessening of competition in any relevant market for the purposes of section 50 of the Act.

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6. CONFIDENTIALITY

DBP Transmission acknowledges that the Commission will make the DBP Transmission Undertaking available for public inspection.

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7. FORCE MAJEURE

7.1 No Liability

DBP Transmission will not be liable for any non-performance of any obligation under the DBP Transmission Undertaking if the non-performance is due to Force Majeure, as defined in the Varied Consortium Undertakings.

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7.2 Notice to Commission

If DBP Transmission is by reason of Force Majeure unable to perform an obligation under the DBP Transmission Undertaking, it will:

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- (a) notify the Commission as soon as practicable (and in any event within 10 Business Days) of the cause and extent of non-performance and the date of commencement of Force Majeure;
- (b) use its best endeavours to remove or overcome the Force Majeure; and
- (c) if the Force Majeure event continues beyond a reasonable period, negotiate in good faith with the Commission a means to satisfy the relevant obligation under the DBP Transmission Undertaking.

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8. Service of Notices

8.1 Any notice or other communication to the Commission pursuant to the DBP Transmission Undertaking must be sent to:

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

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[Commission to advise of updated address for service of notices]

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or in whatever manner the Commission subsequently notifies DBP Transmission.

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8.2 Any notice or other communication from the Commission pursuant to the DBP Transmission Undertaking must be sent to:

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DBNGP (WA) Transmission Pty Ltd
Level 6

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12-14 The Esplanade
Perth WA 6000

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Attention: Company Secretary

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8.3 DBP Transmission may, as required from time to time during the course of the DBP Transmission Undertaking, update its address.

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Executed by **DBNGP (WA) Transmission Pty Ltd (ABN 69 081 609 190)** in accordance with section 127 of the Corporations Act by or in the presence of:

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Signature of Secretary/other Director

Signature of Director or sole Director and sole Secretary

Name of Secretary/other Director in full

Name of Director or sole Director and sole Secretary in full

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

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Chairman, Graeme Julian Samuel
Australia Competition and Consumer Commission

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Date: _____

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