

Variation to Undertaking given to the Australian Competition and Consumer Commission under s87B of the *Trade Practices Act* by Alinta Limited, Alinta Network Services 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.

## Recitals

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- A On 25 October 2004 the Commission accepted an undertaking from Alinta, ANS, Alcoa, DUET 1, DUET 2 and DBNGP Holdings to address competition concerns raised by the Proposed Acquisition (**Undertaking**).
- B Alinta Asset Management Pty Ltd (**AAM**, formerly known as ANS) was included as a party to the Undertaking because it was a party to the DBNGP Operating Services Agreement, pursuant to which it provided asset management and network services in relation to the operation, construction and maintenance of the DBNGP.
- C On 13 August 2007 the Commission accepted a separate but related undertaking from Babcock & Brown Infrastructure and Babcock & Brown Power (**2007 Undertaking**). Relevantly, in the 2007 Undertaking, the Commission acknowledged it may be appropriate to vary the Undertaking as it applied to AAM. This is because it was anticipated that AAM would, at some time in the future, no longer be a party to the DBNGP Operating Services Agreement.
- D As anticipated, from 1 May 2009, AAM ceased to be a party to the DBNGP Operating Services Agreement.
- E AAM proposes to vary the Undertaking so as to:
- remove AAM as a party to the Undertaking; and
  - remove potential obligations imposed upon AAM by the Undertaking.
- F The Commission has agreed, pursuant to section 87B of the Act, to accept this Variation.

## Agreed terms

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### 1.1 Commencement

This Variation comes into effect when:

- (a) this Variation is executed by AAM; and

- (b) the Commission accepts this Variation, so executed.

## 1.2 Variation of front page

The heading section on the front page of the Undertaking is varied by deleting the words, '*Alinta Network Services Pty Ltd*'.

## 1.3 Amended definitions

Clause 1.1 of the Undertaking is varied as follows:

- delete the defined term, '**ANS** means *Alinta Network Services Pty Ltd (ACN 104 352 650)*';
- delete the defined term, '**Ring Fenced Information**', and replace that defined term with, '**Ring Fenced Information** means *confidential information in respect of which EEWAT is, in its capacity as the Service Provider in connection with the DBNGP, subject to ring-fencing obligations under sections 4.1(f) and (g) of the Gas Access Code*'; and
- delete, '*ANS*' from the definition of '**Undertakings**'.

## 1.4 Amended background

Clause 2.4 of the Undertaking is varied by deleting, '*ANS*'.

## 1.5 Amended commencement and termination provisions

Clause 3.1(a) of the Undertaking is varied as follows:

- delete the words, '*Consortium Members, DBNGP Holdings and ANS*'; and
- replace those words with, '*Consortium Members and DBNGP Holdings*'.

## 1.6 Variation of Undertakings

- 1 Clause 5.3(c) of the Undertaking is varied as follows:
  - delete the words, '*Consortium Members, DBNGP Holdings and ANS*'; and
  - replace those words with, '*Consortium Members and DBNGP Holdings*'.
- 2 Clause 5.4(a) of the Undertaking is varied by deleting the words, "*(other than ANS)*".
- 3 Clause 5.5(a) of the Undertaking is varied by deleting that clause.
- 4 Clause 5.5(b) of the Undertaking is varied by deleting that clause.
- 5 Clause 5.5(e) of the Undertaking is varied by deleting the words, "*(other than ANS)*".

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- 6 Clause 5.5(f) of the Undertaking is varied by deleting that clause.
- 7 Clause 5.5(g) of the Undertaking is varied by deleting that clause.
- 8 Clause 5.9(b) of the Undertaking is varied as follows:
- delete the words, '*Consortium Members, DBNGP, EEWAT and ANS*'; and
  - replace those words with, '*Consortium Members, DBNGP and EEWAT*'.
- 9 Clause 11.2(a) of the Undertaking is varied as follows:
- in the first sentence, delete the words, '*Consortium Members, DBNGP Holdings and ANS*' and replace those words with '*Consortium Members and DBNGP Holdings*'; and
  - in the second sentence, delete, ', ANS'.
- 10 Clause 11.2(b) of the Undertaking is varied by deleting, ', ANS'.
- 11 Clause 12.2 of the Undertaking is varied by deleting:
- 'Alinta Network Services Pty Ltd  
Level 7  
The Quadrant  
1 William Street  
PERTH WA 6000  
Attention: Company Secretary'*

### **1.7 Removal of execution page**

The Undertaking is varied by removing the ANS execution page (page 18 of the Undertaking).

### **1.8 Acknowledgements**

AAM acknowledges that the Commission may:

- (a) make this Variation available for public inspection; and
- (b) from time to time publicly refer to this Variation.

### **1.9 Definitions and interpretation**

Any term in this Variation that is defined in the Undertaking has the meaning given in the Undertaking, unless the contrary intention appears.

'**Variation**' means this variation to the Undertaking.

# Freehills

EXECUTED by **Alinta Asset Management Pty Ltd**  
in accordance with section 127(1) of the *Corporations Act 2001*  
(Cth) by authority of its directors

sign here ► \_\_\_\_\_  
Director

print name \_\_\_\_\_

sign here ► \_\_\_\_\_  
Director/company secretary\*

\*delete whichever is not applicable

print name \_\_\_\_\_

**ACCEPTED BY THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
pursuant to section 87B of the *Trade Practices Act 1974*

\_\_\_\_\_  
Graeme Julian Samuel  
Chairman  
Australian Competition & Consumer Commission

Dated: \_\_\_\_\_