

## **Undertaking to the Australian Competition and Consumer Commission**

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Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by the Company, CK Asset Holdings Limited, CK Infrastructure Holdings Limited and Power Assets Holdings Limited.

## Contents

<b>1</b>	<b>Person giving the undertaking</b>	<b>5</b>
<b>2</b>	<b>Background</b>	<b>5</b>
2.1	The parties to the Proposed Acquisition	5
2.2	The Proposed Acquisition	6
2.3	The ACCC's review	6
2.4	The ACCC's competition concerns	6
2.5	Objective of this Undertaking	6
<b>3</b>	<b>Commencement of this Undertaking</b>	<b>7</b>
<b>4</b>	<b>Cessation of Ongoing Obligations</b>	<b>7</b>
4.1	Withdrawal	7
4.2	Revocation	7
4.3	Waiver	7
4.4	Survival	7
<b>5</b>	<b>Jurisdiction</b>	<b>8</b>
<b>6</b>	<b>Undertaking by the Consortium</b>	<b>8</b>
<b>7</b>	<b>Divestiture of the Divestiture Business</b>	<b>8</b>
7.1	Divestiture	8
7.2	Consents	9
7.3	Transferred Personnel	9
7.4	Technical Assistance	10
7.5	Transitional Supply Agreements	10
<b>8</b>	<b>Process for approving a proposed purchaser</b>	<b>11</b>
8.1	Provision of a notice for a Proposed Purchaser	11
8.2	Approval of a Proposed Purchaser	11
8.3	Revocation of approval of a Proposed Purchaser	12
<b>9</b>	<b>Divestiture Business Protection</b>	<b>12</b>
9.1	Protection of the Divestiture Business	12
9.2	The Company's obligations in relation to the Divestiture Business prior to completion of divestiture	12
9.3	Existing Personnel	13
9.4	Transferred Personnel	13
9.5	The Company's ongoing obligations in relation to the Divestiture Business	13
9.6	Confidential Information	14
<b>10</b>	<b>Independent Management of the Divestiture Business</b>	<b>14</b>
10.1	Obligation to appoint an Approved Independent Manager	14
10.2	Process for approving a Proposed Independent Manager	14
10.3	Appointment of the Approved Independent Manager	15
10.4	Failure to appoint	15
10.5	Obligations and powers of the Approved Independent Manager	15
10.6	The Company's obligations in relation to the Approved Independent Manager	16
10.7	Resignation, revocation or termination of the Approved Independent Manager	17
<b>11</b>	<b>Independent Audit</b>	<b>18</b>
11.1	Obligation to appoint an Approved Independent Auditor	18
11.2	Process for approving a Proposed Independent Auditor	18

11.3	Appointment of the Approved Independent Auditor	18
11.4	Failure to appoint	18
11.5	Obligations and powers of the Approved Independent Auditor	19
11.6	Compliance Audit	20
11.7	The Company and the Consortium's obligations in relation to the Approved Independent Auditor	21
11.8	Resignation, revocation or termination of the Approved Independent Auditor	21
<b>12</b>	<b>Failure to divest the Divestiture Business within the Initial Sale Period</b>	<b>22</b>
12.1	Divestiture of the Unsold Business	22
12.2	Obligation to appoint an Approved Divestiture Agent	22
12.3	Process for approving a Proposed Divestiture Agent	22
12.4	Appointment of the Approved Divestiture Agent	22
12.5	Failure to appoint	23
12.6	Obligations and powers of the Approved Divestiture Agent	23
12.7	The Company's obligations in relation to the Approved Divestiture Agent	25
12.8	Resignation, revocation or termination of the Approved Divestiture Agent	26
<b>13</b>	<b>Notification of key dates and ACCC requests for information</b>	<b>26</b>
<b>14</b>	<b>Disclosure of this Undertaking</b>	<b>27</b>
<b>15</b>	<b>Obligation to procure</b>	<b>27</b>
<b>16</b>	<b>No Derogation</b>	<b>28</b>
<b>17</b>	<b>Change of Control</b>	<b>28</b>
<b>18</b>	<b>Costs</b>	<b>28</b>
<b>19</b>	<b>Notices</b>	<b>28</b>
19.1	Giving Notices	28
19.2	Change of contact details	29
<b>20</b>	<b>Defined terms and interpretation</b>	<b>30</b>
20.1	Definitions in the Dictionary	30
20.2	Interpretation	30
	<b>Executed as an Undertaking</b>	<b>31</b>
	<b>Schedule 1 – Dictionary and interpretation</b>	<b>36</b>
<b>1</b>	<b>Dictionary</b>	<b>36</b>
<b>2</b>	<b>Interpretation</b>	<b>38</b>
	<b>Schedule 2 – Proposed Purchaser Notice Form</b>	<b>40</b>
	<b>Schedule 3 – Undertaking Appointment</b>	<b>43</b>
	<b>Schedule 4 – Divestiture Business</b>	<b>47</b>
<b>1</b>	<b>The Divestiture Business</b>	<b>47</b>
<b>2</b>	<b>Pipeline Assets</b>	<b>48</b>
<b>3</b>	<b>Gas Storage Assets</b>	<b>49</b>
<b>4</b>	<b>Real Property</b>	<b>49</b>
<b>5</b>	<b>Business Contracts</b>	<b>49</b>
<b>6</b>	<b>Systems</b>	<b>50</b>
<b>7</b>	<b>Records and IP</b>	<b>50</b>
<b>8</b>	<b>Plant and equipment</b>	<b>51</b>
<b>9</b>	<b>Statutory licences</b>	<b>51</b>

<b>10</b>	<b>Assignable equipment warranties</b>	<b>51</b>
<b>11</b>	<b>Working capital</b>	<b>51</b>
<b>12</b>	<b>Securities</b>	<b>51</b>
<b>13</b>	<b>Excluded Assets and Liabilities</b>	<b>51</b>
	<b>Confidential Schedule 5 – Initial Sale Period</b>	<b>52</b>



## **1 Person giving the undertaking**

- (a) This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by:
  - (i) CKM Australia Bidco Pty Ltd (ACN 627 690 608) (the **Company**);
  - (ii) CK Asset Holdings Limited (**CKA**);
  - (iii) CK Infrastructure Holdings Limited (**CKI**); and
  - (iv) Power Assets Holdings Limited (**PAH**).
- (b) A reference in this Undertaking to the **Consortium** refers to CKA, CKI and PAH both jointly and severally, except that any reference to Consortium in clauses 6, 7.3, 8.2, 9.3(b), 9.4, 10.2, 10.5, 11 and 12 and Schedules 2 and 3 does not include either or both of CKI and PAH unless that party directly or indirectly acquires shares in the Company.

## **2 Background**

### **2.1 The parties to the Proposed Acquisition**

#### ***The Company***

- (a) The Company is an Australian company incorporated for the purposes of acquiring the APA Group.
- (b) The Company is currently a wholly-owned subsidiary of CKA. It is intended that CKI and PAH will, directly or indirectly through a subsidiary, acquire shares in the Company if certain approvals are obtained.
- (c) CKA, CKI and PAH are each substantial entities listed on the Hong Kong Stock Exchange:
  - (i) CKA's activities encompass property development and investment, hotel and serviced suite operation, property and project management, joint ventures in infrastructure and utility asset operation and aircraft leasing.
  - (ii) CKI has diversified investments in energy infrastructure, transportation infrastructure, water infrastructure, waste management, waste-to-energy, household infrastructure and infrastructure related businesses.
  - (iii) PAH is a global investor in energy and utility-related businesses, with interests in the generation of thermal and renewal power, the transmission of electricity, gas and oil, as well as the distribution of electricity and gas.

#### ***APA Group***

- (d) APA Group is an owner and operator of energy infrastructure assets and businesses in Australia. It is comprised of two trusts, being Australian Pipeline Trust and APT Investment Trust, which are registered managed investment schemes regulated under the Corporations Act. Units in APT are stapled to units in APTIT on a one to one basis to form a single APA Group stapled security which is listed on the ASX (ASX Code: APA).
- (e) APA Group owns or operates \$20 billion of energy infrastructure, including 15,148km of transmission pipelines and 28,600km of gas mains and pipelines. It also has interests in gas storage and processing, and gas-fired and renewable energy power generation businesses located across Australia.

## **2.2 The Proposed Acquisition**

- (a) The Company proposes to acquire 100% of the securities in APA Group (the *Proposed Acquisition*).
- (b) The Proposed Acquisition will be subject to certain conditions precedent including:
  - (i) approval of the Foreign investment Review Board; and
  - (ii) informal competition clearance from the ACCC.

## **2.3 The ACCC's review**

- (a) On 26 June 2018, the ACCC commenced its public review of the Proposed Acquisition.
- (b) The ACCC has undertaken market inquiries and considered information provided by the parties to the Proposed Acquisition, industry participants and others. The purpose of the ACCC's inquiries was to assess whether the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market in Australia in contravention of section 50 of the *Competition and Consumer Act 2010*.

## **2.4 The ACCC's competition concerns**

- (a) The ACCC has concluded that, in the absence of the Undertaking, the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in one or more markets.
- (b) The ACCC was concerned with the removal of the CK Consortium as a competitor in relation to new pipeline development.
- (c) The ACCC was also concerned about a lessening of competition for the supply of gas transmission and storage services in Western Australia. In particular, the ACCC was concerned that the Proposed Acquisition would result in the loss of competitive tension between:
  - (i) the Dampier to Bunbury Natural Gas Pipeline (owned and operated by CKI) and the Parmelia Gas Pipeline (owned and operated by APA) for the supply of gas transmission services to Perth;
  - (ii) the Goldfields Gas Pipeline (operated and majority owned by APA) and the Fortescue River Pipeline (owned and operated by CKI in a joint venture with TransAlta) for the supply of gas transmission services to customers in the Pilbara; and
  - (iii) the Mondarra Gas Storage Facility (owned by APA) and the Tubridgi Gas Storage Facility (owned by CKI) for the supply of gas storage services in Western Australia.

## **2.5 Objective of this Undertaking**

- (a) The Company does not consider that the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition. However, to address the concern that has been expressed by the ACCC, the Company has offered this Undertaking pursuant to section 87B of the Act.

- (b) The objective of this Undertaking is to address the ACCC's competition concerns as set out above that may otherwise occur as a consequence of the Proposed Acquisition. The Undertaking aims to achieve this objective by placing obligations on the Company to:
- (i) ensure that the Divestiture Business (which includes the Parmelia Gas Pipeline, the Mondarra Gas Storage Facility and an 88.2% interest in the Goldfields Gas Pipeline) is sold to an Approved Purchaser;
  - (ii) create or strengthen a viable, effective, stand-alone, independent and long term competitor in the development of new gas transmission pipelines;
  - (iii) create or strengthen a viable, effective, stand-alone, independent and long term competitor in the supply of gas pipeline transmission and storage services in Western Australia;
  - (iv) ensure that the purchaser of the Divestiture Business has all the necessary associated assets and rights to effectively compete in the development of new gas transmission pipelines;
  - (v) ensure that the purchaser of the Divestiture Business has all the necessary associated assets and rights to effectively compete in the supply of gas transmission and storage services in Western Australia;
  - (vi) maintain the economic viability, marketability, competitiveness and goodwill of the Divestiture Business prior to divestiture pursuant to this Undertaking; and
  - (vii) provide for the effective oversight of the Company and the Consortium's compliance with this Undertaking.

### **3 Commencement of this Undertaking**

This Undertaking comes into effect when:

- (a) this Undertaking is executed by the Company and each member of the Consortium; and
- (b) this Undertaking so executed is accepted by the ACCC, (*the Commencement Date*).

### **4 Cessation of Ongoing Obligations**

#### **4.1 Withdrawal**

The Company and the Consortium may request withdrawal of this Undertaking pursuant to section 87B of the Act at any time. This Undertaking is taken to be withdrawn on the date that the ACCC consents in writing to that withdrawal.

#### **4.2 Revocation**

The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

#### **4.3 Waiver**

The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or extend the date by which any such obligation is to be satisfied.

#### **4.4 Survival**

Unless and until this Undertaking is withdrawn in accordance with clause 4.1, clauses 1, 2, 3, 4, 5, 11, 13, 14, 15, 16, 17, 18, 19, and 20 survive completion of the obligations in clauses 6, 7, 8, 9, 10, 12 and Schedule 4 and Confidential Schedule 5.

## **5 Jurisdiction**

- (a) The Company and the members of the Consortium irrevocably submit to the jurisdiction of the Federal Court of Australia in relation to this Undertaking.
- (b) Unless and until notified in writing by the Company and the Consortium to the ACCC of the appointment of another person as agent within Australia, the Company and the Consortium appoints the person, the particulars of whom are set out in this clause 5, as their agent for the purposes of service of any process in relation to this Undertaking.
- (c) The Undertaking Signatory appoints the following person for the purpose of this clause 5:  
Allens Corporate Services Pty Ltd  
Level 33  
101 Collins Street  
Melbourne VIC 3000  
AUSTRALIA
- (d) The contact person for Allens Corporate Services Pty Ltd for the purposes of this clause 5 is:  
Lana Vaisman  
Company Secretary  
Allens Corporate Services Pty Ltd  
[Lana.Vaisman@allens.com.au](mailto:Lana.Vaisman@allens.com.au)  
Tel: 61 3 9613 8218

## **6 Undertaking by the Consortium**

Each member of the Consortium undertakes to use its rights and powers as an indirect shareholder of the Company to cause the Company to comply with this Undertaking.

## **7 Divestiture of the Divestiture Business**

### **7.1 Divestiture**

- (a) The Company must, in accordance with this Undertaking, divest, or cause the divestiture of, the Divestiture Business only to an Approved Purchaser.
- (b) In the event that clause 12 applies, the Company must not authorise the Approved Divestiture Agent to divest the Divestiture Business to a purchaser other than an Approved Purchaser.
- (c) The Company must divest, or cause the divestiture of, the Divestiture Business by:
  - (i) the sale of the Divestiture Business by way of a share and asset sale to the Approved Purchaser, pursuant to the Approved Sale Agreement on or before the end of the Initial Sale Period, otherwise clause 12 applies;
  - (ii) the transfer or grant to the Approved Purchaser of all Consents pursuant to clause 7.2;
  - (iii) the transfer of any Transferred Personnel required pursuant to clause 7.3;
  - (iv) compliance with any Approved Transitional Technical Assistance Agreement required pursuant to clause 7.4;
  - (v) compliance with any Approved Transitional Supply Agreement required pursuant to clause 7.5.

## 7.2 Consents

- (a) The Company must:
  - (i) obtain or assist the Approved Purchaser to obtain as expeditiously as possible, all Consents as required before the Divestiture Completion Date;
  - (ii) comply with all requirements necessary to obtain any Consents, including by promptly providing all information necessary for the Consents to be given;
  - (iii) act in good faith in its negotiations with the Approved Purchaser in relation to obtaining any Consents;
  - (iv) promptly pay the costs and expenses of any third party reasonably incurred in providing the Consents; and
  - (v) enter into an agreement with the Approved Purchaser and approved by the ACCC, or vary any existing Approved Transitional Supply Agreement as required by the Approved Purchaser, in relation to any goods or services that are required for the operation of the Divestiture Business which may be affected by any failure to gain a Consent.
- (b) If, seven Business Days before the Divestiture Completion Date, the Approved Purchaser fails to obtain or is unable to obtain one or more of the Consents as required under clause 7.2(a)(i), then the Company must:
  - (i) immediately provide to the ACCC in writing details of the:
    - (A) Consents that have not been obtained;
    - (B) reasons why the Consents have not been obtained; and
    - (C) information or material required to obtain the Consents; and
  - (ii) continue to do everything in its power to satisfy clause 7.2(a) as soon as possible after the Divestiture Completion Date (and until such time as clause 7.2(a) is satisfied).
- (c) Even if the Company has complied with clause 7.2, it remains a breach of this Undertaking if the Company is unable to effect the divestiture of the Divestiture Business by reason of a failure to obtain Consents.

## 7.3 Transferred Personnel

- (a) At the option of the Approved Purchaser, the Company must transfer or cause to be transferred to the Approved Purchaser:
  - (i) all employees employed by APA Group or its subsidiaries; and
  - (ii) all service providers under a contract for service contracted by APA Group or its subsidiaries,who are not employed by APT Parmelia Holdings Pty Ltd or SCP Investments (No 1) Pty Ltd or their subsidiaries' and who are, in the view of the Approved Purchaser, required by the Approved Purchaser to maintain, operate or conduct effectively:
  - (iii) the Divestiture Business; and
  - (iv) a new pipeline development business in Australia,and who consent to the transfer of their employment or contract for service to the Approved Purchaser (**Transferred Personnel**).

- (b) When fulfilling its obligations under clause 7.3(a), the Company must:
- (i) not directly or indirectly discourage any Transferred Personnel from any obligations to provide services to the Approved Purchaser;
  - (ii) effective on the Divestiture Completion Date, cause the APA Group and the Company to release the Transferred Personnel from any obligations to provide services to the APA Group and/or the Company;
  - (iii) effective on the Divestiture Completion Date, cause the APA Group and the Company to release the Transferred Personnel from any non-compete or similar restraint of trade obligation, to the extent that such an obligation would otherwise prevent the person from performing his or her contemplated role in relation to the Divestiture Business or Unsold Business; and
  - (iv) not procure, promote or encourage the transfer of any of the Transferred Personnel from the Approved Purchaser to the Company or a member of the Consortium or the APA Group, or a Related Body Corporate of the Company, the Consortium or the APA Group, for a period of six months after the Divestiture Completion Date.

#### **7.4 Technical Assistance**

- (a) At the option of the Approved Purchaser, the Company must supply or cause to be supplied to the Approved Purchaser, under an Approved Transitional Technical Assistance Agreement, any Technical Assistance that is required by the Approved Purchaser in order to operate the Divestiture Business.
- (b) The Company must ensure that any Approved Transitional Technical Assistance Agreement, and any renewal or extension of an Approved Transitional Technical Assistance Agreement, agreed to by the Company and the Approved Purchaser, provides for the supply of Technical Assistance:
  - (i) on a transitional basis for a period that is nominated by the Approved Purchaser and approved in writing by the ACCC; and
  - (ii) at cost and otherwise on arm's length terms.
- (c) To avoid doubt, the Company must seek prior written approval from the ACCC of any renewal or extension of an Approved Transitional Technical Assistance Agreement. Without limiting the ACCC's discretion, in making a decision on whether to approve a renewal or extension of an Approved Transitional Technical Assistance Agreement, the ACCC will have regard to the criteria set out in clauses 7.4(a) and 7.4(b).

#### **7.5 Transitional Supply Agreements**

- (a) At the option of the Approved Purchaser, the Company must ensure or procure the continued supply by the Company to the Approved Purchaser, under an Approved Transitional Supply Agreement, of any goods or services, that are required by the Approved Purchaser in order for the Approved Purchaser, having acquired the Divestment Business, to be established as a viable, effective, stand-alone, independent and long-term competitor in the supply of gas pipeline transmission services and gas storage in Western Australia and in the development of new gas transmission pipelines.



- (b) The Company must ensure that any Approved Transitional Supply Agreement and any renewal or extension of an Approved Transitional Supply Agreement:
  - (i) is for a reasonable transitional period, to be nominated by the Approved Purchaser and approved in writing by the ACCC;
  - (ii) provides for the supply of the included goods and services at cost price; and
  - (iii) is on such terms other than price which are no less favourable to the Approved Purchaser than arm's length terms.
- (c) To avoid doubt, the Company must seek prior written approval from the ACCC of any renewal or extension of an Approved Transitional Supply Agreement. Without limiting the ACCC's discretion, in making a decision on whether to approve a renewal or extension of an Approved Transitional Supply Agreement, the ACCC will have regard to the criteria set out in clauses 7.5(a) and 7.5(b).

## **8 Process for approving a proposed purchaser**

### **8.1 Provision of a notice for a Proposed Purchaser**

- (a) To seek ACCC approval for a Proposed Purchaser, the Company or the Approved Divestiture Agent must provide the ACCC with a notice in the form prescribed in Schedule 2 to this Undertaking (*Proposed Purchaser Notice*), including:
  - (i) a draft sale agreement;
  - (ii) a draft transitional technical assistance agreement (where required by the Proposed Purchaser); and
  - (iii) a draft transitional supply agreement (where required by the Proposed Purchaser).
- (b) As soon as possible following the Commencement Date, the Company will share a list of potential purchasers of the Divestiture Business with the ACCC.
- (c) Unless the provisions of clause 12 apply, the Proposed Purchaser Notice must be provided to the ACCC at least 20 Business Days prior to the end of the Initial Sale Period. If clause 12 applies, the Company or the Approved Divestiture Agent must provide a Proposed Purchaser Notice as soon as practicable after identification of a Proposed Purchaser.

### **8.2 Approval of a Proposed Purchaser**

- (a) The ACCC shall have the discretion to approve or reject in writing the Proposed Purchaser identified in the Proposed Purchaser Notice, which includes consideration of:
  - (i) the draft sale agreement attached to the Proposed Purchaser Notice;
  - (ii) any draft transitional technical assistance agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 7.4(a) and 7.4(b); and
  - (iii) any draft transitional supply agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 7.5(a) and 7.5(b).

- (b) Without limiting the ACCC's discretion, in making the decision pursuant to clause 8.2(a), the factors to which the ACCC may have regard include whether the:
- (i) divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, taking into account the:
    - (A) likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser; and
    - (B) creation or strengthening of a viable, effective, stand-alone, independent and long term competitor in the development of new gas transmission pipelines.
  - (ii) draft sale agreement is consistent with this Undertaking;
  - (iii) Proposed Purchaser will complete the transaction as contemplated by the draft sale agreement;
  - (iv) Proposed Purchaser is independent of the Company and the Consortium;
  - (v) Proposed Purchaser is of good financial standing;
  - (vi) Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern; and
  - (vii) Proposed Purchaser is able to conduct the Divestiture Business effectively.

### **8.3 Revocation of approval of a Proposed Purchaser**

The ACCC may revoke an Approved Purchaser's status as the Approved Purchaser if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

## **9 Divestiture Business Protection**

### **9.1 Protection of the Divestiture Business**

From the Control Date, the Company must not sell or transfer its interest, or any assets comprising part of, or used in, the Divestiture Business (other than the sale of goods and services in the ordinary course of business) or make any Material Change, except in accordance with this Undertaking or (subject to the other terms of this Undertaking) as required to allow completion of the Proposed Acquisition.

### **9.2 The Company's obligations in relation to the Divestiture Business prior to completion of divestiture**

Without limiting this clause 9, the Company must, from the Control Date until the Divestiture Completion Date, take all steps available to it to:

- (a) ensure that the Divestiture Business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Business at the Control Date;
- (b) continue to provide or procure access to working capital and sources of credit for the Divestiture Business in a manner which is consistent with the financing of the Divestiture Business before the Control Date;
- (c) continue to provide or procure administrative and technical support for the Divestiture Business in a manner which is consistent with the operation of the Divestiture Business before the Control Date and in accordance with any plans established before the Control Date;



- (d) continue existing Agreements relating to the Divestiture Business with customers, suppliers and/or other third parties that are in place at the Control Date;
- (e) renew or replace upon expiry Material Contracts for the provision of goods or services to the Divestiture Business on commercial terms favourable to the Divestiture Business;
- (f) maintain the supply of those goods and services that are supplied by the Divestiture Business to existing customers in a manner consistent with the supply of those goods and services as at the Control Date;
- (g) carry out promotion and marketing of goods and services that are supplied by the Divestiture Business in accordance with any plans established before the Control Date.

### **9.3 Existing Personnel**

Without limiting this clause 9:

- (a) the Company must not, from the Control Date until the Divestiture Completion Date, terminate or vary the terms of employment or engagement of any personnel employed by APT Parmelia Holdings Pty Ltd or SCP Investments (No 1) Pty Ltd or their subsidiaries, or agree to do any of those things (except in the ordinary course of business); and
- (b) the Company will not procure, promote or encourage the transfer of any personnel employed by APT Parmelia Holdings Pty Ltd or SCP Investments (No 1) Pty Ltd or their subsidiaries to the Company or a member of the Consortium or the APA Group, or a Related Body Corporate of the Company, the Consortium or the APA Group, for a period of six months after the Divestiture Completion Date.

### **9.4 Transferred Personnel**

- (a) From the Control Date until the Divestiture Completion Date, the Company will not, other than as required by this Undertaking:
  - (i) terminate or vary the terms of employment or engagement of any of the Transferred Personnel, or agree to do any of those things (except in the ordinary course of business); and
  - (ii) directly or indirectly procure, promote or encourage the redeployment of personnel necessary for the operation of the Divestiture Business as at the Control Date to any other business operated by the Company or the Consortium.
- (b) As soon as practicable after the Commencement Date, the Company and the Consortium must direct their personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with the Company or the Consortium's obligations under this Undertaking.

### **9.5 The Company's ongoing obligations in relation to the Divestiture Business**

To the extent the Company has obligations in relation to the provision of transitional technical assistance or continued supply pursuant to clauses 7.4 and 7.5 of this Undertaking in relation to the Divestiture Business, the Company must not sell, assign, transfer, and/or licence directly or indirectly any of the assets required by the Company to fulfil such obligations without the prior written consent of the ACCC.

## **9.6 Confidential Information**

- (a) Subject to clause 9.6(b), the Company and the Consortium must not, at any time from the Commencement Date, use or disclose any confidential information about the Divestiture Business gained through:
  - (i) ownership and/or management of the Divestiture Business; or
  - (ii) fulfilling any obligations pursuant to this Undertaking.
- (b) Clause 9.6(a) does not apply to information that the Company or the Consortium requires to:
  - (i) comply with legal and regulatory obligations including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements; or
  - (ii) carry out their obligations pursuant to this Undertaking,provided such information is only used for that purpose and is only disclosed to those officers, employees, contractors and advisors of the Company or the Consortium who need to know the information to carry out the permitted purpose.

## **10 Independent Management of the Divestiture Business**

### **10.1 Obligation to appoint an Approved Independent Manager**

The Company must appoint and maintain an Approved Independent Manager to manage the Divestiture Business, from the Control Date until the Divestiture Completion Date in accordance with this Undertaking.

### **10.2 Process for approving a Proposed Independent Manager**

- (a) At least 15 Business Days before the Control Date, the Company must provide the ACCC with a notice for a Proposed Independent Manager in the form prescribed in Schedule 3 to this Undertaking (*Proposed Independent Manager Notice*), including a draft terms of appointment and a draft separation and management plan.
- (b) If clause 10.7 applies, the Company must provide the ACCC with a Proposed Independent Manager Notice within five Business Days after the relevant event occurs, otherwise clause 10.4(b) applies.
- (c) The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Manager identified in the Proposed Independent Manager Notice.
- (d) Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Manager, the factors to which the ACCC may have regard include whether the:
  - (i) person named in the Proposed Independent Manager Notice or identified by the ACCC has the qualifications and experience necessary to manage the Divestiture Business;
  - (ii) person named in the Proposed Independent Manager Notice or identified by the ACCC is sufficiently independent of the Company and the Consortium;
  - (iii) draft terms of appointment and the draft separation and management plan are consistent with this Undertaking; and
  - (iv) draft terms of appointment and the draft separation and management plan are otherwise acceptable to the ACCC.

### **10.3 Appointment of the Approved Independent Manager**

- (a) After receiving a written notice from the ACCC of its approval of the Proposed Independent Manager, the draft terms of appointment and draft separation and management plan, the Company must, by the Control Date:
  - (i) appoint the person approved by the ACCC as the Approved Independent Manager on the Approved Terms of Appointment; and
  - (ii) forward to the ACCC a copy of the executed Approved Terms of Appointment.

### **10.4 Failure to appoint**

- (a) If the Approved Independent Manager has not been appointed:
  - (i) by the Control Date;
  - (ii) within 15 Business Days after the Approved Independent Manager resigns or otherwise ceases to act as the Approved Independent Manager pursuant to clause 10.7; or
  - (iii) if the ACCC has not received a Proposed Independent Manager Notice pursuant to clause 10.2(b),then, clause 10.4(b) applies.
- (b) If clause 10.4(a) applies, the ACCC, at its discretion, may:
  - (i) identify and approve a person as the Approved Independent Manager, including approving the draft terms of appointment of the Approved Independent Manager and the draft separation and management plan; and/or
  - (ii) direct the Company to appoint a person who the ACCC has deemed is an Approved Independent Manager.

### **10.5 Obligations and powers of the Approved Independent Manager**

- (a) The Company must procure that any proposed terms of appointment for the Approved Independent Manager include obligations on the Approved Independent Manager to:
  - (i) maintain his or her independence from the Company and the Consortium, apart from appointment to the role of Approved Independent Manager, including not forming any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with the Company or the Consortium for the period of his or her appointment;
  - (ii) act in the best interests of the Divestiture Business at all times including ensuring that the Divestiture Business is managed and conducted in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Business at the Control Date;
  - (iii) not use any confidential information gained through the management of the Divestiture Business other than for performing his or her functions as Approved Independent Manager;
  - (iv) make only those Material Changes to the Divestiture Business that have been approved by the ACCC;

- (v) operate and manage the Divestiture Business to the maximum extent practicable, in a manner which is financially and operationally separate from the Company and the Consortium;
  - (vi) co-operate with the requests of any Approved Divestiture Agent or Approved Independent Auditor appointed pursuant to this Undertaking;
  - (vii) provide the following reports directly to the ACCC:
    - (A) a monthly written report regarding the implementation of and any suggested changes to the Approved Separation and Management Plan; and
    - (B) an immediate report of any issues that arise in relation to the implementation of the Approved Separation and Management Plan or the compliance of the Company or the Consortium with this Undertaking; and
  - (viii) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Manager pursuant to this Undertaking.
- (b) The Company must procure that any proposed terms of appointment for the Approved Independent Manager provide the Approved Independent Manager with the sole authority to:
- (i) manage and operate the Divestiture Business according to the Approved Separation and Management Plan until the Divestiture Completion Date;
  - (ii) provide any information requested by the Company pursuant to the protocol in the Approved Separation and Management Plan;
  - (iii) decide whether or not to provide access and the manner of such access to competitively sensitive information relating to the Divestiture Business requested by the Company which is not covered by the protocol in the Approved Separation and Management Plan;
  - (iv) renew or replace upon expiry Material Contracts for the provision of goods or services to the Divestiture Business on commercial terms favourable to the Divestiture Business;
  - (v) engage, redeploy or make redundant personnel employed in the Divestiture Business as the Approved Independent Manager determines necessary; and
  - (vi) engage any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager

#### **10.6 The Company's obligations in relation to the Approved Independent Manager**

Without limiting its obligations in this Undertaking, the Company must:

- (a) comply with and enforce the Approved Terms of Appointment of the Approved Independent Manager;

- (b) maintain and fund the Approved Independent Manager to carry out his or her functions, including:
  - (i) indemnifying the Approved Independent Manager for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Manager of his or her functions as the Approved Independent Manager, except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Manager;
  - (ii) ensuring that the Approved Independent Manager is fully able to acquire and pay for sufficient and timely delivery of all goods and services (including from third parties) which the Approved Independent Manager considers are required by the Divestiture Business; and
  - (iii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager; and
- (c) not interfere with the authority of, or otherwise hinder, the Approved Independent Manager's ability to carry out his or her obligations as the Approved Independent Manager, including:
  - (i) accepting (and directing its directors, contractors, managers, officers, employees and agents to accept) direction from the Approved Independent Manager as to the control, management, financing and operations of the Divestiture Business, and for the Divestiture Business to meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;
  - (ii) providing access to the facilities, sites or operations of the Divestiture Business required by the Approved Independent Manager;
  - (iii) providing to the Approved Independent Manager any information or documents that he or she considers necessary for managing and operating the Divestiture Business or for reporting to or otherwise advising the ACCC;
  - (iv) not requesting information or reports regarding the Divestiture Business from the personnel of the Divestiture Business except through the Approved Independent Manager; and
  - (v) not appointing the Approved Independent Manager, or have any Agreements with the Approved Independent Manager, to utilise the Approved Independent Manager's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Manager ceases to act in the role of the Approved Independent Manager.

#### **10.7 Resignation, revocation or termination of the Approved Independent Manager**

- (a) The Company must immediately notify the ACCC in the event that the Approved Independent Manager resigns or otherwise stops acting as the Approved Independent Manager before the Divestiture Completion Date.
- (b) The ACCC may revoke an Approved Independent Manager's status as the Approved Independent Manager if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

- (c) The ACCC may approve any proposal by, or alternatively may direct, the Company to terminate the appointment of the Approved Independent Manager if in the ACCC's view the Approved Independent Manager acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

## **11 Independent Audit**

### **11.1 Obligation to appoint an Approved Independent Auditor**

The Company must appoint and maintain an Approved Independent Auditor to audit and report upon the Company and the Consortium's compliance with this Undertaking.

### **11.2 Process for approving a Proposed Independent Auditor**

- (a) At least 15 Business Days before the Control Date, the Company must provide the ACCC with a notice for a Proposed Independent Auditor in the form prescribed in Schedule 3 to this Undertaking (*Proposed Independent Auditor Notice*), including draft terms of appointment and a draft audit plan.
- (b) If clause 11.8 applies, the Company must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs, otherwise clause 11.4(b) applies.
- (c) The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- (d) Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Auditor, the factors to which the ACCC may have regard include whether the:
  - (i) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor;
  - (ii) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of the Company and the Consortium;
  - (iii) draft terms of appointment and the draft audit plan are consistent with this Undertaking; and
  - (iv) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

### **11.3 Appointment of the Approved Independent Auditor**

After receiving a written notice from the ACCC of its approval of a Proposed Independent Auditor, the draft terms of appointment and draft audit plan, the Company must, by the Control Date:

- (a) appoint the person approved by the ACCC as the Approved Independent Auditor on the Approved Terms of Appointment; and
- (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

### **11.4 Failure to appoint**

- (a) If the Approved Independent Auditor has not been appointed:
  - (i) by the Control Date;
  - (ii) within 15 Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clause 10.8; or

- (iii) if the ACCC has not received a Proposed Independent Auditor Notice pursuant to clause 10.2(b),  
then clause 11.4(b) applies.
- (b) If clause 11.4(a) applies, the ACCC at its absolute discretion may:
  - (i) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan; and/or
  - (ii) direct the Company to appoint a person who the ACCC has deemed is an Approved Independent Auditor.

#### **11.5 Obligations and powers of the Approved Independent Auditor**

- (a) The Company must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:
  - (i) maintain his or her independence from the Company and the Consortium, apart from appointment to the role of Approved Independent Auditor, including not forming any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with the Company or the Consortium for the period of his or her appointment;
  - (ii) conduct compliance auditing according to the Approved Audit Plan;
  - (iii) provide the following reports directly to the ACCC:
    - (A) a scheduled written Audit Report as described in clause 11.6(a); and
    - (B) an immediate report of any issues that arise in relation to the performance of his or her functions as Approved Independent Auditor or in relation to compliance with this Undertaking by any person named in this Undertaking; and
  - (iv) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Auditor under this Undertaking.
- (b) The Company must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:
  - (i) access the facilities, sites or operations of the Divestiture Business and the other businesses of the Company as required by the Approved Independent Auditor;
  - (ii) access any information or documents that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC; and
  - (iii) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.

## 11.6 Compliance Audit

- (a) The Approved Independent Auditor must conduct an audit and prepare a detailed report (**Audit Report**) that includes:
  - (i) the Approved Independent Auditor's procedures in conducting the audit, or any change to audit procedures and processes since the previous Audit Report;
  - (ii) a full audit of the Company and the Consortium's compliance with this Undertaking;
  - (iii) identification of any areas of uncertainty or ambiguity in the Approved Independent Auditor's interpretation of any obligations contained in this Undertaking;
  - (iv) all of the reasons for the conclusions reached in the Audit Report;
  - (v) any qualifications made by the Approved Independent Auditor in forming his or her views;
  - (vi) any recommendations by the Approved Independent Auditor to improve:
    - (A) the Approved Audit Plan;
    - (B) the integrity of the auditing process;
    - (C) the Company and the Consortium's processes or reporting systems in relation to compliance with this Undertaking; and
    - (D) the Company and the Consortium's compliance with this Undertaking; and
  - (vii) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.
- (b) The Approved Independent Auditor is to provide an Audit Report to the ACCC, the Company and the Consortium at the following times:
  - (i) within 10 Business Days after the Control Date, at which time the Audit Report is to include the results of the initial audit and any recommended changes to the Approved Audit Plan, including the Approved Independent Auditor's proposed procedures and processes for conducting the audit (**Establishment Audit**);
  - (ii) every month from the date of the Establishment Audit until one month after the divestiture of the Divestiture Business is completed;
  - (iii) every three months after the date of provision of the last Audit Report pursuant to clause 11.6(b)(ii), until the ACCC confirms in writing to the Company and the Consortium that it is satisfied that the Company and the Consortium have fulfilled their obligations pursuant to this Undertaking; and
  - (iv) a final report due three months after the last report provided pursuant to clause 11.6(b)(iii).
- (c) The Company and the Consortium must implement any recommendations made by the Approved Independent Auditor in Audit Reports, and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report or such other period as agreed in writing with the ACCC.
- (d) The Company and the Consortium must comply with any direction of the ACCC in relation to matters arising from the Audit Report within 10 Business Days after being so directed (or such other period as agreed in writing with the ACCC).



#### **11.7 The Company and the Consortium's obligations in relation to the Approved Independent Auditor**

Without limiting its obligations in this Undertaking, the Company and the Consortium must:

- (a) comply with and enforce the Approved Terms of Appointment for the Approved Independent Auditor;
- (b) maintain and fund the Approved Independent Auditor to carry out his or her functions including:
  - (i) indemnifying the Approved Independent Auditor for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Auditor of his or her functions as the Approved Independent Auditor except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Auditor;
  - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor; and
- (c) not interfere with, or otherwise hinder, the Approved Independent Auditor's ability to carry out his or her functions as the Approved Independent Auditor, including:
  - (i) directing the Company and the Consortium personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 11;
  - (ii) providing access to the facilities, sites or operations of the Divestiture Business and the other businesses of the Company as required by the Approved Independent Auditor;
  - (iii) providing to the Approved Independent Auditor any information or documents he or she considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC;
  - (iv) not requesting any information relating to the compliance audit from the Approved Independent Auditor without such a request having been approved by the ACCC; and
  - (v) not appointing the Approved Independent Auditor, or having any Agreements with the Approved Independent Auditor, to utilise the Approved Independent Auditor's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Auditor ceases to act in the role of the Approved Independent Auditor.

#### **11.8 Resignation, revocation or termination of the Approved Independent Auditor**

- (a) The Company must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor.
- (b) The ACCC may revoke an Approved Independent Auditor's status as the Approved Independent Auditor if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

- (c) The ACCC may approve any proposal by, or alternatively may direct, the Company to terminate the appointment of the Approved Independent Auditor if, in the ACCC's view, the Approved Independent Auditor acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

## **12 Failure to divest the Divestiture Business within the Initial Sale Period**

### **12.1 Divestiture of the Unsold Business**

In the event that the divestiture of the Divestiture Business to an Approved Purchaser is not completed by the end of the Initial Sale Period, the Divestiture Business becomes an unsold business (**Unsold Business**) and the provisions of this clause 12 apply.

### **12.2 Obligation to appoint an Approved Divestiture Agent**

From the end of the Initial Sale Period, the Company must appoint and maintain an Approved Divestiture Agent to effect the divestiture of the Unsold Business.

### **12.3 Process for approving a Proposed Divestiture Agent**

- (a) At least 15 Business Days prior to the end of the Initial Sale Period, or if by that time the Company is not aware that clause 12 will apply, within 5 Business Days of becoming so aware, if the divestiture of the Divestiture Business has not been completed, the Company must provide the ACCC with a notice for a Proposed Divestiture Agent in the form of Schedule 3 to this Undertaking (**Proposed Divestiture Agent Notice**) including draft terms of appointment, a draft sale agreement, and draft marketing and sale plan.
- (b) If clause 12.8 applies, the Company must provide the ACCC with a Proposed Divestiture Agent Notice within five Business Days after the relevant event occurs, otherwise clause 12.5(b) applies.
- (c) The ACCC shall have the discretion to approve or reject in writing the Proposed Divestiture Agent.
- (d) Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Divestiture Agent, the factors to which the ACCC may have regard include whether the:
  - (i) person named in Proposed Divestiture Agent Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Divestiture Agent;
  - (ii) person named in the Proposed Divestiture Agent Notice or identified by the ACCC is sufficiently independent of the Company and the Consortium;
  - (iii) draft terms of appointment, draft sale agreement and draft marketing and sale plan are consistent with this Undertaking; and
  - (iv) draft terms of appointment, draft sale agreement and draft marketing and sale plan are otherwise acceptable to the ACCC.

### **12.4 Appointment of the Approved Divestiture Agent**

After receiving written notice from the ACCC of its approval of the Proposed Divestiture Agent, the draft terms of appointment, draft sale agreement and draft marketing and sale plan, the Company must, within two Business Days:

- (a) appoint the person approved by the ACCC as the Approved Divestiture Agent on the Approved Terms of Appointment; and
- (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

## **12.5 Failure to appoint**

- (a) If the Approved Divestiture Agent has not been appointed:
  - (i) within 10 Business Days after the Divestiture Business becomes an Unsold Business;
  - (ii) within 15 Business Days after the Approved Divestiture Agent resigns or otherwise ceases to act pursuant to clause 12.8; or
  - (iii) if the ACCC has not received a Proposed Divestiture Agent Notice pursuant to clause 12.3(b),then clause 12.5(b) applies.
- (b) If clause 12.5(a) applies, the ACCC may, at its absolute discretion:
  - (i) identify and approve a person as the Approved Divestiture Agent, including approving the draft terms of appointment of the Approved Divestiture Agent, draft business sale agreement and draft marketing and sale plan; and/or
  - (ii) direct the Company to appoint a person who the ACCC has deemed is an Approved Divestiture Agent.

## **12.6 Obligations and powers of the Approved Divestiture Agent**

- (a) The Company must procure that any proposed terms of appointment for the Approved Divestiture Agent include obligations on the Approved Divestiture Agent to:
  - (i) divest the Unsold Business only to an Approved Purchaser, at no minimum price;
  - (ii) maintain his or her independence from the Company and the Consortium, apart from appointment to the role of Approved Divestiture Agent, including not forming any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with the Company or the Consortium for the period of his or her appointment;
  - (iii) not use any confidential information gained through the divestiture of the Unsold Business other than for performing his or her functions as Approved Divestiture Agent;
  - (iv) follow the Approved Marketing and Sale Plan;
  - (v) use his or her best endeavours to enter into a binding agreement for the divestiture of the Unsold Business as quickly as possible using the Approved Sale Agreement and at no minimum price;
  - (vi) co-operate with the requests of any Approved Independent Manager or Approved Independent Auditor appointed pursuant to this Undertaking;
  - (vii) every 30 Business Days following appointment of the Approved Divestiture Agent, provide written reports directly to the ACCC which include:
    - (A) information regarding the implementation of the Approved Sale Agreement and the Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
    - (B) information regarding any suggested changes to any Approved Marketing and Sale Plan including any previous changes approved by the ACCC;

- (C) an account and explanation of all disbursements, fees and charges incurred by the Approved Divestiture Agent in undertaking his or her duties by month and to the date of the report;
  - (D) a schedule of agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 12.6(b)(iv));
  - (E) the efforts made to sell the Unsold Business;
  - (F) the identity of any advisers engaged;
  - (G) the identity of any persons expressing interest in the Unsold Business; and
  - (H) any other information required by the ACCC;
- (viii) within 30 Business Days after the completion of the divestiture of the Unsold Business, provide a written report directly to the ACCC which includes a final accounting of:
- (A) any moneys derived from the divestiture of the Unsold Business;
  - (B) all disbursements, fees and charges incurred by the Approved Divestiture Agent in fulfilling his or her duties; and
  - (C) all agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 12.6(b)(iv));
- (ix) immediately inform the ACCC of:
- (A) any issues that arise in relation to the implementation of the Approved Sale Agreement and any Approved Marketing and Sale Plan;
  - (B) non-compliance with this Undertaking by any person named in this Undertaking;
  - (C) any offers for the Unsold Business;
- (x) accept any offer for the Unsold Business upon instruction from the Company given in accordance with clause 12.7(d); and
- (xi) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Divestiture Agent pursuant to this Undertaking.
- (b) The Company must procure that any proposed terms of appointment for the Approved Divestiture Agent contain an irrevocable grant of power of attorney conferring all necessary power and authority on the Approved Divestiture Agent to:
- (i) negotiate with purchasers to divest the Unsold Business on terms considered by the Approved Divestiture Agent in his or her sole discretion to be consistent with this Undertaking and the Approved Marketing and Sale Plan;
  - (ii) execute agreements with the Approved Purchaser pursuant to clause 8.2(a);
  - (iii) upon instruction pursuant to clause 12.7(d), complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the Approved Sale Agreement; and
  - (iv) engage any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent.

- (c) Any irrevocable power of attorney granted pursuant to clause 12.6(b) will end upon resignation or termination of the Approved Divestiture Agent in accordance with clause 12.8, or in the event that the Unsold Business is divested in accordance with this Undertaking.

#### **12.7 The Company's obligations in relation to the Approved Divestiture Agent**

Without limiting its obligations in this Undertaking, the Company must, from the end of the Initial Sale Period:

- (a) comply with and enforce the Approved Terms of Appointment for the Approved Divestiture Agent;
- (b) maintain and fund the Approved Divestiture Agent to carry out his or her functions; including:
  - (i) indemnifying the Approved Divestiture Agent for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Divestiture Agent of his or her functions as the Approved Divestiture Agent except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Divestiture Agent;
  - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent;
  - (iii) paying such fees as are agreed between the Approved Divestiture Agent and the Company (but not fees contingent on the price to be obtained for the Unsold Business); and
  - (iv) if an agreement as to fees cannot be reached between the Approved Divestiture Agent and the Company within 15 Business Days after the end of the Initial Sale Period, the Company agrees to pay such fees as are directed by the ACCC;
- (c) not interfere with, or otherwise hinder, the Approved Divestiture Agent's ability to carry out his or her functions as the Approved Divestiture Agent, including:
  - (i) directing its personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 12;
  - (ii) providing access to the facilities, sites or operations of the Unsold Business as required by the Approved Divestiture Agent; and
  - (iii) providing to the Approved Divestiture Agent any information, documents or other assistance he or she considers necessary for carrying out his or her functions as the Approved Divestiture Agent or for reporting to or otherwise advising the ACCC;
- (d) within three Business Days after receiving notice from the ACCC that it has approved a Proposed Purchaser pursuant to clause 8.2(a), instruct the Approved Divestiture Agent to complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the Approved Sale Agreement; and
- (e) other than in accordance with clause 12.7(d) of this Undertaking, not instruct the Approved Divestiture Agent to divest the Unsold Business.

## **12.8 Resignation, revocation or termination of the Approved Divestiture Agent**

- (a) The Company must immediately notify the ACCC in the event that an Approved Divestiture Agent resigns or otherwise stops acting as an Approved Divestiture Agent before the completion of the divestiture of the Unsold Business.
- (b) The ACCC may revoke an Approved Divestiture Agent's status as the Approved Divestiture Agent if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- (c) The ACCC may approve any proposal by, or alternatively may direct, the Company to terminate an Approved Divestiture Agent if in the ACCC's view the Approved Divestiture Agent acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

## **13 Notification of key dates and ACCC requests for information**

- (a) The Company must notify the ACCC and each Undertaking Appointment in writing of:
  - (i) the anticipated date of the Control Date, at least five Business Days before that date;
  - (ii) the anticipated date of the Divestiture Completion Date, at least five Business Days before that date;
  - (iii) the occurrence of the Control Date, within one Business Day of that date; and
  - (iv) the occurrence of the Divestiture Completion Date, within one Business Day of that date.
- (b) The ACCC may direct the Company and the Consortium in respect of their compliance with this Undertaking to, and the Company and the Consortium must:
  - (i) furnish information to the ACCC in the time and in the form requested by the ACCC;
  - (ii) produce documents and materials to the ACCC within the Company or the Consortium's custody, power or control in the time and in the form requested by the ACCC; and/or
  - (iii) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have;
- (c) Any direction made by the ACCC under clause 13(b) will be notified to the Company and the Consortium, in accordance with clause 19.1(b).
- (d) In respect of the Company and the Consortium's compliance with this Undertaking or an Undertaking Appointment's compliance with its Approved Terms of Appointment, the ACCC may request any Undertaking Appointment to:
  - (i) furnish information to the ACCC in the time and in the form requested by the ACCC;
  - (ii) produce documents and materials to the ACCC within the Undertaking Appointment's custody, power or control in the time and in the form requested by the ACCC; and/or
  - (iii) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- (e) The Company will use its best endeavours to ensure that an Undertaking Appointment complies with any request from the ACCC in accordance with clause 13(d).

- (f) Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 13 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- (g) The ACCC may, in its discretion (which is to be exercised in good faith):
  - (i) advise any Undertaking Appointment of any request made by it under this clause 13; and/or
  - (ii) provide copies to any Undertaking Appointment of any information furnished, documents and material produced or information given to it under this clause 13.
- (h) Nothing in this clause 13 requires the provision of information or documents in respect of which the Company or the Consortium have a claim of legal professional or other privilege.

#### **14 Disclosure of this Undertaking**

- (a) The Company, the Consortium and the ACCC agree that Confidential Schedule 5 will remain confidential until after the completion of the divestiture of the Divestiture Business or Unsold Business.
- (b) The Company and the Consortium acknowledge that the ACCC may provide each Undertaking Appointment with a copy of this Undertaking which includes an unredacted version of Confidential Schedule 5.
- (c) The Company and the Consortium acknowledge that the ACCC may, subject to clause 14(a):
  - (i) make this Undertaking publicly available;
  - (ii) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
  - (iii) from time to time, publicly refer to this Undertaking.
- (d) Nothing in clause 14(a) or the confidential parts of this Undertaking referred to in 14(a) prevents the ACCC from disclosing such information as is:
  - (i) required by law;
  - (ii) permitted by section 155AAA of the Act;
  - (iii) necessary for the purpose of enforcement action under section 87B of the Act; or
  - (iv) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.
- (e) Nothing in clause 14(a) or the confidential parts of this Undertaking referred to in clause 14(a) prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

#### **15 Obligation to procure**

Where the performance of an obligation under this Undertaking requires a Related Body Corporate of the Company or a member of the Consortium to take or refrain from taking some action, the Company or the Consortium member (as relevant) will procure that Related Body Corporate to take or refrain from taking that action.



## **16 No Derogation**

- (a) This Undertaking does not prevent the ACCC from taking enforcement action at any time, whether during or after the period of this Undertaking in respect of any breach by the Company or the Consortium of any term of this Undertaking.
- (b) Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that the Company or the Consortium does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

## **17 Change of Control**

- (a) In the event that a Change of Control is reasonably expected to occur, the Company must:
  - (i) notify the ACCC of this expectation as soon as practicable; and
  - (ii) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on the Company pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified the Company in writing that a section 87B undertaking under this clause is not required.

## **18 Costs**

The Company and the Consortium must pay all of their own costs incurred in relation to this Undertaking.

## **19 Notices**

### **19.1 Giving Notices**

- (a) Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:
  - Email address:** [mergers@accc.gov.au](mailto:mergers@accc.gov.au)  
Attention: Executive General Manager  
Merger and Authorisation Review Division
  - With a copy sent to:** [mergersru@accc.gov.au](mailto:mergersru@accc.gov.au)  
Attention: Director, Remedies Unit  
Coordination and Strategy Branch  
Merger and Authorisation Review Division
- (b) Any notice or communication to the Company pursuant to this Undertaking must be sent to:
  - Name:** CKM Australia Bidco Pty Ltd
  - Address:** C/- Allens, Level 33, 101 Collins Street, Melbourne, Victoria 3000
  - Email address:** [Ted.Hill@allens.com.au](mailto:Ted.Hill@allens.com.au)
  - Attention:** Ted Hill



- With a copy sent to: Mr Victor Luk, c/o CK Infrastructure Holdings Limited, 12/F, Cheung Kong Center, 2 Queen's Road, Central, Hong Kong  
[victor.luk@cki.com.hk](mailto:victor.luk@cki.com.hk)
- (c) Any notice or communication to CKA pursuant to this Undertaking must be sent to:
- Name: CK Asset Holdings Limited
- Address: 7/F, Cheung Kong Center, 2 Queen's Road Central, Hong Kong
- Email address: [eirene.yeung@ckah.com](mailto:eirene.yeung@ckah.com)
- Attention: Ms Eirene Yeung, Member of Executive Committee and Company Secretary
- With a copy sent to: Ted Hill, C/- Allens, Level 33, 101 Collins Street, Melbourne, Victoria 3000  
[Ted.Hill@allens.com.au](mailto:Ted.Hill@allens.com.au)
- (d) Any notice or communication to CKI pursuant to this Undertaking must be sent to:
- Name: CK Infrastructure Holdings Limited
- Address: 12/F, Cheung Kong Centre, 2 Queen's Road Central Hong Kong
- Email address: [victor.luk@cki.com.hk](mailto:victor.luk@cki.com.hk)
- Attention: Mr Victor Luk, Group General Counsel
- With a copy sent to: Ted Hill, C/- Allens, Level 33, 101 Collins Street, Melbourne, Victoria 3000  
[Ted.Hill@allens.com.au](mailto:Ted.Hill@allens.com.au)
- (e) Any notice or communication to PAH pursuant to this Undertaking must be sent to:
- Name: Power Assets Holdings Limited
- Address: Rooms 1913-1914, 19th Floor, Hutchison House, 10 Harcourt Road, Central, Hong Kong
- Email address: [alexng@powerassets.com](mailto:alexng@powerassets.com)
- Attention: Company Secretary
- With a copy sent to: Ted Hill, C/- Allens, Level 33, 101 Collins Street, Melbourne, Victoria 3000  
[Ted.Hill@allens.com.au](mailto:Ted.Hill@allens.com.au)
- (f) If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).
- (g) If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

## **19.2 Change of contact details**

- (a) The Company and the Consortium must notify the ACCC of a change to their contact details within three Business Days.
- (b) Any notice or communication will be sent to the most recently advised contact details and subject to clauses 19.1(c) and 19.1(g), will be taken to be received.

## **20 Defined terms and interpretation**

### **20.1 Definitions in the Dictionary**

A term or expression starting with a capital letter.

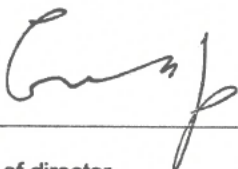

- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

### **20.2 Interpretation**



Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

## Executed as an Undertaking



Executed by CKM Australia Bidco Pty Ltd (ACN 627 690 608) pursuant to section 127(1) of the Corporations Act 2001 (Cth):

	
Signature of director	Signature of a director/ <del>company secretary</del>
<b>Ip Tak Chuen, Edmond</b>	<b>Andrew John Hunter</b>
Name of director (print)	Name of director/ <del>company secretary</del> (print)
Date 7 September 2018	Date 7 September 2018



Signed by CK Asset Holdings Limited (Cayman Islands company registration number MC-295063):

	
Signature of director	Signature of a director/ <del>company secretary</del>
<b>Kam Hing Lam</b>	<b>Ip Tak Chuen, Edmond</b>
Name of director (print)	Name of director/ <del>company secretary</del> (print)
Date 7 September 2018	Date 7 September 2018

Signed by CK Infrastructure Holdings Limited (Bermuda company registration number EC21980):

	
Signature of director	Signature of a director/ <del>company secretary</del>
<b>Ip Tak Chuen, Edmond</b>	<b>Andrew John Hunter</b>
Name of director (print)	Name of director/ <del>company secretary</del> (print)
Date 7 September 2018	Date 7 September 2018

Signed by Power Assets Holdings Limited (Hong Kong company registration number 46996):

	
Signature of director	Signature of a director/ <del>company secretary</del>
<b>Andrew John Hunter</b>	<b>Chan Loi Shun</b>
Name of director (print)	Name of director/ <del>company secretary</del> (print)
Date 7 September 2018	Date 7 September 2018

Accepted by the Australian Competition and Consumer Commission pursuant  
to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

11/9/18

Date

and signed on behalf of the Commission:

A handwritten signature in black ink, appearing to read 'D. Sims', written over a horizontal line.

Chairman

11/9/18

Date

## Schedule 1 – Dictionary and interpretation

### 1 Dictionary

**ACCC** means the Australian Competition and Consumer Commission.

**Act** means the *Competition and Consumer Act 2010* (Cth).

**Agreements** means any contract, arrangement or understanding, including any contract, arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding.

**Approved Audit Plan** means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Auditor will audit and report upon compliance with this Undertaking.

**Approved Divestiture Agent** means the person approved by the ACCC and appointed under clause 12 of this Undertaking.

**Approved Independent Auditor** means the person approved by the ACCC and appointed under clause 11 of this Undertaking.

**Approved Independent Manager** means the person approved by the ACCC and appointed under clause 10 of this Undertaking.

**Approved Marketing and Sale Plan** means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Divestiture Agent will market and effect the divestiture of the Unsold Business.

**Approved Purchaser** means the person approved by the ACCC under clause 8 of this Undertaking.

**Approved Sale Agreement** means the contract approved by the ACCC in accordance with the terms of this Undertaking, by which the Company will divest the Divestiture Business to an Approved Purchaser and an Approved Purchaser will acquire the Divestiture Business from the Company.

**Approved Separation and Management Plan** means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Manager will:

- (a) separate the Divestiture Business from any business to be retained by the Company; and
- (b) manage and operate the Divestiture Business independently of the Company and any retained business.

**Approved Transitional Supply Agreement** means any agreement, for the supply of goods or services (other than Technical Assistance) by the Company to the Approved Purchaser, approved by the ACCC in accordance with the terms of this Undertaking.

**Approved Transitional Technical Assistance Agreement** means any agreement, for the supply of Technical Assistance by the Company to the Approved Purchaser, approved by the ACCC in accordance with the terms of this Undertaking.

**Approved Terms of Appointment** means the terms of appointment for the Approved Independent Manager, Approved Independent Auditor or Approved Divestiture Agent, as applicable, as approved by the ACCC in accordance with the terms of this Undertaking.

**Associated Entity** has the meaning given by section 50AAA of the Corporations Act.

**Audit Report** has the meaning given to it in clause 11.6(a) of this Undertaking.



**Business Day** means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

**Change of Control** means:

- (a) the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of the Company to any other person or entity that may impact compliance with this Undertaking in its entirety; or
- (b) the sale or transfer of any assets necessary, or which may be necessary, to enable the Company to continue to comply with this Undertaking in its entirety.

**Commencement Date** means the date described in clause 3 of this Undertaking.

**Company** means CKM Australia Bidco Pty Ltd (ACN 627 690 608).

**Consortium** is defined in clause 1(b) of this Undertaking.

**Control Date** means the date on which the Proposed Acquisition is completed.

**Consents** means any Government Consents or Third Party Consents.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Divestiture Business** means the items described in Schedule 4 to this Undertaking.

**Divestiture Completion Date** means the date the divestiture of the Divestiture Business is completed.

**Entity Connected** has the meaning given by section 64B of the Corporations Act.

**Establishment Audit** has the meaning given to it in clause 11.6(b)(i) of this Undertaking.

**Government Consents** means any consents from any government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the operation of the Divestiture Business.

**Initial Sale Period** is defined in Confidential Schedule 5 to this Undertaking.

**Material Change** means any change to the structure, attributes, extent or operations of the Divestiture Business or product or service sold by a Divestiture Business that may affect, or impact on, the competitiveness of the Divestiture Business.

**Material Contract** means any Agreement that is necessary for the operation of the Divestiture Business.

**Other Company Pipeline Assets** has the meaning given in clause 4 of Schedule 4 of this Undertaking.

**Proposed Acquisition** is defined in clause 2 of this Undertaking.

**Proposed Divestiture Agent** means a person named in a Proposed Divestiture Agent Notice.

**Proposed Divestiture Agent Notice** has the meaning given to it in clause 12.3 of this Undertaking.

**Proposed Independent Auditor** means a person named in Proposed Independent Auditor Notice.

**Proposed Independent Auditor Notice** has the meaning given to it in clause 11.2 of this Undertaking.

**Proposed Independent Manager** means a person named in a Proposed Independent Manager Notice.

**Proposed Independent Manager Notice** has the meaning given to it in clause 10.2 of this Undertaking.

**Proposed Purchaser** means a person named in a Proposed Purchaser Notice.

**Proposed Purchaser Notice** has the meaning given to it in clause 6.1 of this Undertaking.

**Public Mergers Register** means the ACCC's public register of merger clearances, available at [www.accc.gov.au](http://www.accc.gov.au).

**Public Section 87B Undertakings Register** means the ACCC's public register of section 87B undertakings, available at [www.accc.gov.au](http://www.accc.gov.au).

**Related Bodies Corporate** has the meaning given to it by section 50 of the Corporations Act.

**Related Entities** has the meaning given to it by section 9 of the Corporations Act.

**Related Parties** has the meaning given to it by section 228 of the Corporations Act.

**Technical Assistance** includes advising on technical knowledge documentation, supporting the Approved Purchaser on acquiring specific assets necessary for the ongoing conduct of the Divestiture Business, providing staff with suitable experience and skills to assist and/or advice on technical issues, assisting in training for the Approved Purchaser's staff, and providing guidance on regulatory and legal aspects relating to the transfer of or application for licences.

**Third Party Consents** means any Consent from any entity that is not a government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the operation of the Divestiture Business.

**Transferred Personnel** has the meaning given to it in clause 7.3 of this Undertaking.

**Undertaking** is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

**Undertaking Appointment** means the Approved Independent Manager, the Approved Independent Auditor or the Approved Divestiture Agent, as applicable.

**Unsold Business** has the meaning given to it in clause 12.1 of this Undertaking.

## **2 Interpretation**

In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:

- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
- (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
- (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;

- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (l) a construction that would promote the purpose – or object – underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
  - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
  - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph 2(m) of this Interpretation clause, or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
  - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
  - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, the Company and the Consortium will do everything reasonably within their power to ensure that their performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (q) a reference to:
  - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
  - (ii) a party includes its successors and permitted assigns; and
  - (iii) a monetary amount is in Australian dollars.

## **Schedule 2 – Proposed Purchaser Notice Form**

Please note: in relation to information given on or in relation to this form, giving false or misleading information is a serious offence.

### **A. Method of Delivery to the ACCC**

The completed form with requested documents attached may be provided to the ACCC using the following method:

#### **Email**

Subject line: Proposed Purchaser Notice – Undertaking given to the ACCC under section 87B of the *Competition and Consumer Act 2010* (Cth) by [the Company]

Address: [mergers@accc.gov.au](mailto:mergers@accc.gov.au)

Attention: Executive General Manager - Merger and Authorisation Review Division

With an email copy sent to:

Address: [mergersru@accc.gov.au](mailto:mergersru@accc.gov.au)

Attention: Director, Remedies Unit, Merger Coordination and Strategy Branch, Merger and Authorisation Review Division

### **B. Information Required**

The ACCC requires the following information in order to assess a Proposed Purchaser.

- 1 In relation to the Proposed Purchaser, please provide the following information:
  - (a) Name of the Proposed Purchaser:
  - (b) Address:
  - (c) Contact name:
  - (d) Telephone number:
  - (e) Other contact details:
- 2 Please attach a submission containing the following information to this form:
  - (a) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business;
  - (b) details of the Proposed Purchaser's experience in the relevant market/s;
  - (c) the names of the owner/s and/or the directors of the Proposed Purchaser;
  - (d) details of any of the following types of relationships between the Company (or the Consortium) and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:
    - (i) the Company (or the Consortium) and the Proposed Purchaser are Associated Entities;
    - (ii) the Company (or the Consortium) is an Entity Connected with the Proposed Purchaser;

- (iii) the Proposed Purchaser is an Entity Connected with the Company (or the Consortium);
  - (iv) the Company (or the Consortium) and the Proposed Purchaser are Related Entities;
  - (v) the Company (or the Consortium) and the Proposed Purchaser are Related Parties;
  - (vi) any Related Party, Related Entity or Entity Connected with the Company (or the Consortium) is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;
  - (vii) the Company (or the Consortium) and the Proposed Purchaser have a contractual relationship or had one within the past three years, other than those attached to this form;
  - (viii) the Proposed Purchaser is a supplier of the Company (or the Consortium) or has been in the past three years;
  - (ix) the Company (or the Consortium) is a supplier of the Proposed Purchaser or has been in the past three years; and
  - (x) any other relationship between the Company (or the Consortium) and the Proposed Purchaser that allows one to affect the business decisions of the other; and
- (e) a section addressing the following factors, including any information adverse to the Proposed Purchaser, in the power, possession or control of the Company:
- (i) whether the draft sale agreement is consistent with this Undertaking;
  - (ii) whether the Proposed Purchaser will complete the transaction as contemplated by the draft sale agreement;
  - (iii) whether the Proposed Purchaser is of good financial standing;
  - (iv) whether the Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;
  - (v) whether the Proposed Purchaser is able to conduct the Divestiture Business effectively;
  - (vi) whether the divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including:
    - (A) any relationships (including but not limited to shareholding interests, other proprietary interests, contracts, arrangements or understandings) between the Proposed Purchaser and other entities in a relevant market, and the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser;
    - (B) whether the Proposed Purchaser, having acquired the Divestment Business, will be a viable, effective, stand-alone, independent and long term competitor in the supply of gas pipeline transmission and storage services in Western Australia;
    - (C) whether the Proposed Purchaser, having acquired the Divestment Business, will be a viable, effective, stand-alone, independent and long term competitor in the development of new gas transmission pipelines;

- (D) whether the Proposed Purchaser, having acquired the Divestment Business, will have all the necessary associated assets and rights to effectively compete in the supply of gas transmission and storage services in Western Australia; and
- (E) whether the Proposed Purchaser, having acquired the Divestment Business, will have all the necessary associated assets and rights to effectively compete in the development of new gas transmission pipelines; and
- (vii) any other matters that may affect the Proposed Purchaser's capacity or ability to acquire or operate the Divestiture Business, such as outstanding legal action or disputes.

3 Please also attach to this form:

- (a) the finalised draft of the sale agreement for approval by the ACCC in accordance with this Undertaking;
- (b) the finalised draft of any transitional technical assistance agreement for approval by the ACCC in accordance with this Undertaking;
- (c) the finalised draft of any transitional supply agreement for approval by the ACCC in accordance with this Undertaking; and
- (d) any documents required to support the information provided by the Company pursuant to this form.

### **Schedule 3 – Undertaking Appointment**

This form sets out the information required by the ACCC in relation to proposed appointment of the following positions under the Undertaking;

- Independent Manager; or
- Independent Auditor; or
- Divestiture Agent;

(the *Undertaking Appointments*).

This form is to be used for each of the above appointments.

Please note: in relation to information given pursuant to this form, giving false or misleading information is a serious offence.

#### **A. Method of Delivery to the ACCC**

The completed Undertaking Appointment form, along with the additional requested information is to be provided to the ACCC with the subject line:

Proposed [insert relevant Undertaking Appointment ie. Independent Auditor/Divestiture Agent/Independent Manager] Form – [insert name of undertaking]

to the below email addresses:

Address:                      mergers@accc.gov.au  
Attention:                  Executive General Manager  
                                    Merger and Authorisation Review Division

With a copy sent to:

Address:                      mergersru@accc.gov.au  
Attention:                  Director  
                                    Remedies Unit  
                                    Coordination and Strategy Branch  
                                    Merger and Authorisation Review Division

#### **B. Information Required**

The ACCC requires the following information in order to assess a proposed Independent Auditor, Divestiture Agent or Independent Manager (ie. the relevant Undertaking Appointment):

- 1 Proposed Undertaking Appointment Details:
  - (a) the name of the Proposed Undertaking Appointment; and
  - (b) the name of the proposed Undertaking Appointment's employer and contact details including:
    - Address;
    - Contact name;
    - Telephone number; and
    - Other contact details.

2 A submission containing the following information:

- (a) details of the Undertaking Appointment's qualifications and experience relevant to his or her proposed role pursuant to the Undertaking;
- (b) the names of the [owner/s and the directors (delete any that do not apply)] of [the Undertaking Appointment's employer];
- (c) details of any of the following types of relationships between the Company (or the Consortium) and the Undertaking Appointment or the Undertaking Appointment's employer, or confirmation that no such relationship exists whether within Australia or outside of Australia:
  - (i) the Company (or the Consortium) and the Undertaking Appointment's employer are Associated Entities;
  - (ii) the Company (or the Consortium) is an Entity Connected with the Undertaking Appointment's employer;
  - (iii) the Undertaking Appointment's employer is an Entity Connected with the Company (or the Consortium);
  - (iv) the Company (or the Consortium) and the Undertaking Appointment's employer are Related Entities;
  - (v) the Company (or the Consortium) and the Undertaking Appointment's employer are Related Parties;
  - (vi) any Related Party, Related Entity or Entity Connected with the Company (or the Consortium) is a Related Party, Related Entity or Entity Connected with the Undertaking Appointment;
  - (vii) the Company (or the Consortium) and the Undertaking Appointment or the Undertaking Appointment's employer have a contractual relationship or had one within the past three years, other than those attached to this form;
  - (viii) the Undertaking Appointment's employer is a supplier of the Company (or the Consortium) or has been in the past three years;
  - (ix) the Company (or the Consortium) is a supplier of the Undertaking Appointment's employer or has been in the past three years; and
  - (x) any other relationship between the Company (or the Consortium) and the Undertaking Appointment or the Undertaking Appointment's employer that allows one to affect the business decisions of the other;
- (d) details of any relationships (including but not limited to shareholding interests, other proprietary interests, contracts, arrangements or understandings), 'or confirmation no such relationships exist', between the Undertaking Appointment or the Undertaking Appointment's employer and other entities in the supply, acquisition, transmission and distribution of gas within Australia within the past three years; and
- (e) details of any existing or past contractual relationships, 'or confirmation no such relationships exist', between the Undertaking Appointment or the Undertaking Appointment's employer and the ACCC.

3 A document outlining the terms of appointment for the proposed Undertaking Appointment.



### **C. Specific Information required for Undertaking Appointments**

The ACCC requires the below information in relation to the relevant Undertaking Appointment.

#### ***Proposed Independent Auditor***

- 4 A finalised draft audit plan for the Divestiture Business, drafted by the Proposed Independent Auditor and outlining (to the extent possible) the Proposed Independent Auditor's plans in regard to the Establishment Audit and the Audit Reports.

#### ***Proposed Divestiture Agent***

- 5 The finalised draft business sale agreement drafted by the Proposed Divestiture Agent in consultation with the Company. The draft business sale agreement is to provide for the divestiture of the Unsold Business.
- 6 The Proposed Divestiture Agent's draft marketing and sale plan for the Unsold Business.

#### ***Proposed Independent Manager***

- 7 The finalised draft separation and management plan for the Divestiture Business detailing the measures and timing to be implemented by the Company and the Approved Independent Manager in order to fulfil the Company's and the Approved Independent Manager's obligations pursuant to this Undertaking. This plan is to be drafted by the Proposed Independent Manager in consultation with the Company to achieve the objectives of the Undertaking including:
  - (a) the intended mode of operation of the Divestiture Business until completion of its divestiture;
  - (b) separation measures to ensure the Divestiture Business is operated in a manner which is financially and operationally separate from the Company, including the:
    - (i) separation of the books and records of the Divestiture Business from those of the Company;
    - (ii) severance of the Divestiture Business's participation in any private shared information technology networks, to the extent possible without compromising the viability of the Divestiture Business;
    - (iii) implementation of specific electronic, information and physical security measures to maintain the confidentiality of any competitively sensitive information of the Divestiture Business; and
    - (iv) severance of arrangements to share personnel and plant between the Divestiture Business and any businesses to be retained by the Company, to the extent possible without compromising the viability of the Divestiture Business;
  - (c) details of contracts for the provision of goods or services to the Divestiture Business which will expire after the completion of the divestiture of the Divestiture Business to the Approved Purchaser and the actions which will be taken to ensure they are replaced, renewed and/or renegotiated on commercial terms favourable to the Divestiture Business;
  - (d) personnel planning to maintain appropriate personnel levels and ensure that the Divestiture Business has access to all personnel necessary to operate the Divestiture Business;
  - (e) any Material Changes to the Divestiture Business required in order to fulfil the Company's and the Approved Independent Manager's obligations pursuant to the Undertaking;

- (f) the cooperation required from the Independent Manager with the Company in relation to the divestiture of the Divestiture Business, including:
- (i) the activities to be conducted by the Independent Manager that are necessary for the effective operation of the Divestiture Business, having regard to the nature of the Divestiture Business (including the extent to which the Divestiture Business already has a management structure in place prior to the proposed acquisition that will be retained during the hold separate period);
  - (ii) the method by which due diligence information, site visits and personnel interviews by and to prospective purchasers of the Divestiture Business will be managed;
  - (iii) the method by which the Independent Manager and the Company will preserve the confidentiality of the Divestiture Business's competitively sensitive information from the Company and its advisers throughout this process; and
  - (iv) a protocol whereby the Approved Independent Manager can provide any information requested by the Company without disclosing the details of the Divestiture Business's competitively sensitive information to the Company.

## **Schedule 4 – Divestiture Business**

### **1 The Divestiture Business**

- (a) Pursuant to this Undertaking, the Company undertakes to divest the Divestiture Business, being all of the issued share capital (free of encumbrances) in:
  - (i) APT Parmelia Holdings Pty Ltd; and
  - (ii) SCP Investments (No 1) Pty Ltd.
- (b) As at the Control Date, APT Parmelia Holdings Pty Ltd will own:
  - (i) APT Parmelia Pty Ltd; and
  - (ii) APT Parmelia Trust.
- (c) As at the Control Date, SCP Investments (No 1) Pty Ltd will own:
  - (i) Goldfields Gas Transmission Pty Ltd;
  - (ii) SCP Investments (No 2) Pty Ltd, which in turn will own Southern Cross Pipelines Australia Pty Ltd; and
  - (iii) SCP Investments (No 3) Pty Ltd; which in turn will own Southern Cross Pipeline (NPL) Australia Pty Ltd.
- (d) The companies comprising the Divestiture Business own all the assets required to operate, or to facilitate the operation of the following gas transmission pipelines and facilities as stand-alone, competitively viable, long term businesses:
  - (i) the Parmelia Gas Pipeline;
  - (ii) the Mondarra Gas Storage Facility; and
  - (iii) the Goldfields Gas Pipeline.
- (e) The companies comprising the Divestiture Business own the assets described by category below (or, if not, those assets will form part of the Divestiture Business to be divested):
  - (i) Pipeline Assets, see clause 2;
  - (ii) Gas Storage Assets, see clause 3 below;
  - (iii) Real Property, see clause 4 below;
  - (iv) Business Contracts, see clause 5 below;
  - (v) Systems, see clause 6 below;
  - (vi) Records and IP, see clause 7 below;
  - (vii) Plant and equipment, see clause 8 below;
  - (viii) statutory licences, see clause 9 below;
  - (ix) Assignable equipment warranties, see clause 10 below;
  - (x) Working capital, see clause 11 below;
  - (xi) Securities, see clause 12 below,but does not include Excluded Assets and Liabilities (see clause 13 below).
- (f) To avoid doubt, the Company must procure that it and all its Related Bodies Corporate transfer any of the Divestiture Business owned by them to the Approved Purchaser.

## 2 Pipeline Assets

- (a) The pipelines and related assets described in the following pipeline licences:
- (i) Western Australian Pipeline Licence No. 1 (relating to the Parmelia Gas Pipeline);
  - (ii) Western Australian Pipeline Licence No. 2 (relating to the Kwinana Lateral to the Parmelia Gas Pipeline);
  - (iii) Western Australian Pipeline Licence No. 3 (relating to the Parmelia Mainline (Wang), an extension of the Parmelia Gas Pipeline);
  - (iv) Western Australian Pipeline Licence No. 5 (relating to the Rockingham Lateral to the Parmelia Gas Pipeline);
  - (v) Western Australian Pipeline Licence No. 32 (relating to the Westtime Lateral to the Parmelia Gas Pipeline);
  - (vi) Western Australian Pipeline Licence No. 44 (relating to the Canningvale Lateral to the Parmelia Gas Pipeline);
  - (vii) Western Australian Pipeline Licence No. 46 (relating to the Rocla Quarry Lateral to the Parmelia Gas Pipeline);
  - (viii) Western Australian Pipeline Licence No. 52 (relating to the Chandala Lateral to the Parmelia Gas Pipeline);
  - (ix) Western Australian Pipeline Licence No. 53 (relating to the KSS Lateral to the Parmelia Gas Pipeline);
  - (x) Western Australian Pipeline Licence No. 61 (relating to the HiSmelt Lateral to the Parmelia Gas Pipeline);
  - (xi) Western Australian Pipeline Licence No. 24 (relating to the Goldfields Gas Pipeline including the Newman Lateral);
  - (xii) Western Australian Pipeline Licence No. 25 (relating to the Mt Keith Lateral to the Goldfields Gas Pipeline);
  - (xiii) Western Australian Pipeline Licence No. 26 (relating to the Leinster Lateral to the Goldfields Gas Pipeline);
  - (xiv) Western Australian Pipeline Licence No. 27 (relating to the Kalgoorlie Kambalda Pipeline, a Lateral to the Goldfields Gas Pipeline);
  - (xv) Western Australian Pipeline Licence No. 28 (relating to the Kalgoorlie Lateral to the Goldfields Gas Pipeline); and
  - (xvi) Western Australian Pipeline Licence No. 33 (relating to the Wiluna Lateral to the Goldfields Gas Pipeline).
- (b) The key pipeline assets are described below:
- (i) the Parmelia Gas Pipeline (including the main line between Dongara and Pinjarra) and associated laterals and looping as listed in clause 2(a) of this Schedule 4 (the **Parmelia Gas Pipeline**);
  - (ii) the APA Group's interest in the Goldfields Gas Pipeline (including the main line from Yarraloola to Kalgoorlie) and associated laterals and looping as listed in clause 2(a) of this Schedule 4 (the **Goldfields Gas Pipeline**);
  - (iii) associated compressor stations;
  - (iv) associated main line valve installations;

- (v) associated meter stations; and
- (vi) existing SCADA and communication systems exclusively related to:
  - (A) the Parmelia Gas Pipeline;
  - (B) the Mondarra Gas Storage Facility; and
  - (C) the Goldfields Gas Pipeline.

### **3 Gas Storage Assets**

Mondarra Gas Storage Facility connected to the Parmelia Gas Pipeline and the Dampier to Bunbury natural gas pipeline.

### **4 Real Property**

- (a) All freehold or leasehold land solely related to the ownership or operation of the Pipeline Assets and/or Gas Storage Assets, including depots.
- (b) All easements, licences or land access rights solely related to the ownership and operation of Pipeline Assets and/or Gas Storage Assets.
- (c) Rented premises in which any control centre that relates to the Pipeline Assets and/or Gas Storage Assets.
- (d) To the extent that any real property relates to both the Pipeline Assets and/or Gas Storage Assets and other pipelines owned by the Company at the Control Date other than the Pipeline Assets (**Other Company Pipeline Assets**) and that real property is required for the ownership or operation of, or to facilitate the operation of, the Pipeline Assets and/or Gas Storage Assets, then:
  - (i) if the real property primarily relates to the Pipeline Assets and/or Gas Storage Assets, the real property will form part of the Divestiture Business but the Approved Purchaser must provide the relevant access or enjoyment rights (including by way of lease or easement) to the Company in so far as it relates to the Other Company Pipeline Assets;
  - (ii) if the real property primarily relates to the Other Company Pipeline Assets, the real property will not form part of the Divestiture Business but the Company must provide the relevant access or enjoyment rights (including by way of lease or easement) to the Approved Purchaser in so far as it relates to the Pipeline Assets and/or Gas Storage Assets.

### **5 Business Contracts**

- (a) All gas transportation and other agreements under which the Company or its Related Bodies Corporate provides services on the Pipeline Assets and/or Gas Storage Assets as at the Control Date.
- (b) All connection agreements regulating connection of customers to the Pipeline Assets.
- (c) Operation and Maintenance (O&M) agreements in relation to Pipeline Assets and/or Gas Storage Assets.
- (d) Any other contracts which relate solely to the ownership or operation of the Pipeline Assets and/or Gas Storage Assets, including consulting contracts, equipment leases, services and supply contracts and procurement contracts.

- (e) To the extent that any contract relates to both the Pipeline Assets and/or Gas Storage Assets and Other Company Pipeline Assets and the goods or services provided under that contract is required for the ownership or operation of, or to facilitate the operation of, the Pipeline Assets and/or Gas Storage Assets, then:
  - (i) if the contract primarily relates to the Pipeline Assets and/or Gas Storage Assets, the contract will be a Business Contract but the Approved Purchaser will pass through the benefit and burden of the contract to the Company in so far as it relates to the Other Company Pipeline Assets;
  - (ii) if the contract primarily relates to Other Company Pipeline Assets, the contract will not be a Business Contract but the Company will pass through the benefit and burden of the contract to the Approved Purchaser in so far as it relates to the Pipeline Assets and/or Gas Storage Assets.

## **6 Systems**

- (a) The existing IT and/or communication systems within any control centre related to Pipeline Assets and/or Gas Storage Assets required to conduct, or to facilitate the operation of those assets.
- (b) Any IT and/or communication systems and servers solely related to the ownership or operation of the Pipeline Assets and/or Gas Storage Assets and related equipment including computers, printers, and telephones.
- (c) Databases related to the Pipeline Assets and/or Gas Storage Assets.
- (d) To the extent that any IT and/or communication systems or servers relate to both the Pipeline Assets and/or Gas Storage Assets and Other Company Pipeline Assets, the Company must either provide duplicate IT systems or servers or agree transitional services arrangements with the Approved Purchaser under an Approved Transitional Supply Agreement.

## **7 Records and IP**

- (a) All business records (including books, files, reports, records, correspondence, documents and other material) and intellectual property primarily related to, or required for, the ownership and operation of, or required to facilitate the operation of the Divestiture Business or the Pipeline Assets and/or Gas Storage Assets, including:
  - (i) accounting information and records;
  - (ii) direct and indirect tax records;
  - (iii) business plans and forecasts;
  - (iv) customer information and data;
  - (v) operating and equipment manuals and procedures;
  - (vi) environmental legislation compliance records;
  - (vii) gas safety cases;
  - (viii) disaster recovery plans;
  - (ix) emergency response manual and other safety and risk management plans;
  - (x) easement land owner easement and history; and
  - (xi) maintenance information and records.

- (b) All records are to be originals to the extent possible.
- (c) To the extent that any records relate to both the Divestiture Business and Other Company Pipeline Assets, then the Company will provide copies of those records to the extent they relate to the Divestiture Business to the Approved Purchaser.
- (d) To the extent that any intellectual property is required for both the Pipeline Assets and/or Gas Storage Assets and Other Company Pipeline Assets, then the Company will grant the Approved Purchaser an irrevocable, royalty free and perpetual licence to use that intellectual property.

## **8 Plant and equipment**

At the option of the Approved Purchaser, spare parts, inventory, plant and equipment, vehicles and office equipment and furniture (desks, tables, chairs, shelves, etc) primarily related to the Pipeline Assets and/or Gas Storage Assets, excluding any such assets that are solely related to Other Company Pipeline Assets.

## **9 Statutory licences**

All licences, approvals, consents, rights, registrations, permits, certificates and other authorisations relating to the Divestiture Business or the Pipeline Assets and/or Gas Storage Assets issued or given by any government authority.

## **10 Assignable equipment warranties**

Any warranty, performance guarantee or similar right enjoyed by the Company in relation to the Divestiture Business or the Pipeline Assets and/or Gas Storage Assets to the extent assignable to the Approved Purchaser and if not assignable, the Company must procure the pass through of the benefit of the equipment warranty to the extent reasonably possible.

## **11 Working capital**

Trade and other receivables and debts and amounts owing in relation to the Divestiture Business or the Pipeline Assets and/or Gas Storage Assets at the time of completion of the divestiture

## **12 Securities**

Any bonds, bank guarantees, letters of credit or similar credit support instruments in favour of the Divestiture Business and which are provided under a Business Contract (as set out in section 5 of this Schedule).

## **13 Excluded Assets and Liabilities**

- (a) Cash on hand.
- (b) Subject to the terms of this Undertaking, assets owned by third parties.
- (c) Records not relating to, or required by, the Divestiture Business.
- (d) Insurance policies.
- (e) Bank debt.
- (f) The pipeline the subject of Western Australian Pipeline Licence No. 76 (relating to the Gwalia Gas Lateral to the Murrin Murrin Lateral).

**Confidential Schedule 5 – Initial Sale Period**