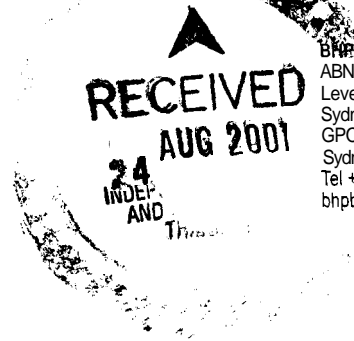


Integrated Business Development



**bhpbilliton**



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22 August 2001

Dr Tom Parry  
Chairman  
IPART  
44 Market Street  
SYDNEY NSW 2000

Dear Dr Parry

**re: Draft Associate Contract Guidelines**

Thank you for seeking comment from BHP Billiton on the Draft Associate Contract Guidelines.

BHP Billiton is pleased to see IPART take this initiative to prepare Draft Guidelines for Associate Contracts. We wish to commend IPART on the overall structure and content of the Guidelines but recommend some modifications and additions in several areas to ensure effectiveness and efficiency in their administration. It is our considered view that the Guidelines have been needed for quite some time, as demonstrated by past breaches of the Code, and that this initiative is well overdue.

### **Informal Notification**

The process of 'informal notification' should be amended to include the requirement for Service Providers to submit monthly statements to the Regulator. The statements should identify contracts, arrangements or understandings that are or may be, or have the potential to be, or result in, Associate Contracts. This will provide the Tribunal with forewarning of possible Associate Contracts, provide a basis for assessing the severity of any breach of the Code relating to Associate Contracts and assist IPART in assessing the penalty or penalties applicable to a breach of the Code.

### **Definition of a Market**

IPART should consider the likely effect on competition of a proposed Associate Contract in clearly defined markets rather than the very broad definitions included in Table 1 of the Draft Guidelines.

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which is headquartered in Australia  
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We recommend the following defined markets be adopted in the Guidelines:

- (a) the market in the west Sydney and Wollongong area for the distribution of gas to end-users. The geographic dimension of this market comprises those areas where a new lateral from the Eastern Gas Pipeline ("EGP") competes with the existing AGL(GN) gas distribution system. The zone of competition is restricted both by distance from the EGP, and by the size of the customer, as it is only economic to connect large customers (say 100+TJ/pa or clusters of smaller customer 1-100TJ/pa) who are proximate to the EGP.
- (b) the market in New South Wales for sale of gas to contestable customers, This market comprises the tranche of customers who can choose their gas supplier. It does not include gas customers who are not yet contestable, or customers who cannot switch suppliers due to the delays in the customer transfer system; nor does it include customers who are bound by long-term contracts, or customers who seek direct supply from producers; and
- (c) the market for the wholesale supply of gas in New South Wales. This market comprises gas retailers who purchase gas at the wholesale level (from gas producers or gas traders) and resell the gas at the retail level. This market has only developed since 1999, when gas became available in small quantities via the Albury-Wagga interconnect, and has expanded with the EGP coming into service in September 2000.

### **Term of Associate Contracts**

We recommend that the Guidelines deal specifically with the effect of contract term. This is on the basis that the competitive effect of the term must be measured having regard to the likely competitive effect of all other arrangements and the effect in the relevant market. If, taken as a whole, all of the arrangements would have the effect, or likely effect, of substantially lessening, hindering or preventing competition, IPART must have a defined course of action. IPART must assess whether subtracting the proposed Associate Contract from the cumulative effect on competition of all arrangements would be sufficient to prevent the remaining arrangements from having the effect, or likely effect, of substantially lessening, hindering or preventing competition in the market, and/or reviewing existing arrangements which similarly affect competition in the market.

### **Extent of Market Foreclosure**

The Guidelines must deal with the aggregate extent of market foreclosure of all associate contracts that are on foot at the time a new associate contract is brought forward. A significant aggregation of the available market by the associate could have the effect of substantially lessening competition in a relevant market. Other suppliers may be denied the opportunity to develop sufficient scale and load diversity if this is allowed and competition **will** never develop in the relevant markets.

BHP Billiton appreciates having the opportunity to comment on the Draft Associate Contract Guidelines and strongly supports the effective and timely application of the final Guidelines in the NSW Gas Market.

Please contact myself (on (02) 9234 0217) or Colin Martin (on (03) 9652 6609) should you require further clarification or have any questions in regard to our comments.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Murray Durham', written in a cursive style.

**Murray Durham**  
NSW Regional Manager  
BHP Petroleum Pty Limited