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Dr Thomas G Parry  
Chairman  
Independent Pricing and Regulatory Tribunal  
Of New South Wales  
PO Box Q290  
QVB Post Office  
SYDNEY NSW 1230

Dear Dr Parry

### **Draft Associate Contract Guidelines**

The Energy Markets Reform Forum (EMRF) welcomes the opportunity to comment on IPART's Draft Associate Contract Guidelines, in relation to the National Third Party Access Code for Natural Gas Pipeline Systems. It is a pity that the pro-competitive objectives of these associate contract guidelines were not embraced by IPART during its recent review of AGLGN's associate contracts.

The EMRF's general principles in relation to access regulatory reviews are for maximum information disclosures to stakeholders, opportunities for public consultations to maximise stakeholders input, and a public regulatory process that is transparent, accountable and credible. We believe that these principles should apply in consideration of IPART's draft associate contract guidelines.

IPART's guidelines in relation to information to be provided by the service provider (Section 5 and 6) are generally satisfactory. However, we have concerns if claims of confidentiality (of the information) by the service provider cannot be challenged or assessed by stakeholders other than the regulator. We strongly believe that stakeholders should be given the opportunity to assess the bona fides of such claims. We consider competitive outcomes are more likely, the greater the transparency and public disclosure of available information, as the service provider has every incentive to be opaque with its business activities. That view is supported by our experience during the 22 months AGLGN access review and IPART's review of AGLGN's associate contracts, which were submitted for approval after IPART had made its final decision in relation to AGLGN's access arrangements.

In regard to public consultation involving applications for approval of associate contracts (Section 5.7) the EMRF would like to ensure that the Tribunal, as a matter of routine, notifies interested parties directly and more widely through newspaper announcements that such reviews are in-train. Selective notification is not sufficient to ensure all interested parties can participate. The EMRF recalls that the consideration by the

Tribunal of AGLGN's associate contracts did not measure up to this basic requirement. Nor were submissions and additional information posted on the Tribunal's website (Section 5.8). In this regard, the EMRF supports the Tribunal's draft Section 5.8, with the proviso that the information on the public record "will be available" rather than "will generally be available" (as presently drafted) on the Tribunal's website.

In relation to the factors to be considered by the Tribunal in its analysis of associate contracts (Section 10.8), we would like to see examples included in the guidelines, to help illustrate the considerations to be given by the Tribunal. For example, under Section 10.9 (Barriers to entry), an example would be insufficient time provided to customers by a vertically integrated service provider to agree to gas contracts so as to minimise potential competition from alternative retailers. We are again reminded of the recent AGLGN associate contracts issue where many gas customers were given little notice to consider contracts.

Again drawing on recent experience, the draft guidelines do not provide stakeholders with any comfort that a review process could be triggered by them upon presentation of information to the Tribunal that associate contracts may have taken place absent any formal notification or application from a service provider. The EMRF strongly supports that the current guidelines should incorporate such a trigger mechanism and review process.

Finally, the EMRF is glad to see that there is no provision for retrospective approval of associate contracts and that penalties are explicitly provided for non-compliance with the Tribunal's associate contract guidelines.

The EMRF recommends that the associate contract guidelines include the following:-

- \* stakeholders to be given the opportunity to assess the bona fides of claims of confidentiality in relation to information provision;
- the Tribunal must notify interested parties directly and more widely through newspaper announcements, of any review that it is conducting;
- all submissions and related information on the public record concerning the review will be posted on the Tribunal's website;
- examples be provided to illustrate the factors to be considered by the Tribunal in assessing whether to approve associate contracts; and
- stakeholders to be able to trigger a process for investigation by the Tribunal of associate contracts having taken place absent any formal notification or application by a service provider.

Yours sincerely,



Warren Martin  
Chairman, Energy Markets Reform Forum and  
Company Secretary, Tomago Aluminium Ltd.