

# INDEPENDENT PRICING AND REGULATORY TRIBUNAL OF NEW SOUTH WALES

## Statement of Reasons for Decision

Matter: Alinta AGN Associate Contract

Application for Approval of Associate Contract under clause 7.1  
of the National Third Party Access Code for Natural Gas Pipeline Systems

### Details of Decision

**Members:** Mr James Cox, Mr Eric Groom

**Decision date:** Thursday 6 March 2008

**Decision:** The Associate Contract is approved

### Reasons for Decision

#### Background

On 25 January 2008, Alinta AGN (**Alinta**) submitted an application seeking approval of an Associate Contract with an associate company (the **Application**).

The Application was made under clause 7.1 of the *National Third Party Access Code for Natural Gas Pipeline Systems* (the **Code**).

#### Nature of the Application

Much of the Application was commercial-in-confidence. Alinta provided grounds to IPART for treating the Associate Contract in this manner. IPART considered that these grounds were reasonable. Alinta also provided a public version of the Application to IPART for the purpose of public consultation.

The public version of the application revealed that Alinta is to build, own and operate a Delivery Station that is to connect an Alinta pipeline located in eastern Australia to a lateral pipeline to be constructed by the associate company. The lateral pipeline will in turn supply gas to a power station.

These obligations are set out in a contract called the Interconnection Agreement, the terms of which were originally negotiated between Alinta and the gas end-user (the owner of the power station). The Associate Contract arises by the novation of the Interconnection Agreement by a Side Deed (to be executed by Alinta, the associate company and the gas end-user). Under the Side Deed, the associate company assumes most of the gas end-user's rights and obligations under the Interconnection Agreement.

## **Public Submissions under Part 7 of the Code**

As the proposed Associate Contract is not for the supply of Services at the Reference Tariff (as these terms are defined under the Code), IPART resolved to invite public submissions on the proposed Associate Contract under section 7.3 of the Code. IPART made the public version of the Application available for the purposes of public submissions. However, no public submissions were received.

### **Alinta's Submissions**

Alinta made a number of arguments in its public submission in support of its contention that approval of the Associate Contract would not result in any lessening of competition. These arguments included:

- (a) To the extent that IPART views the relevant market as the market for natural gas distribution services:
  - (1) regardless of IPART's preferred characterization of the geographic market, the boundaries of the market will not be relevant to IPART's evaluation of the proposed Associate Contract.
  - (2) this is because natural gas distribution services (including interconnection agreements) constitute a natural monopoly service with the result that covered pipelines are subject to IPART's regulatory supervision. Analysis of any actual or likely substantial lessening of competition is therefore redundant.
  - (3) consequently, even on the narrowest possible geographic dimension, the effect of the proposed Associate Contract will not be to substantially lessen competition in a market for the distribution of natural gas.
- (b) To the extent that IPART views the relevant market as the market for an interconnection service to the connecting pipeline in the vicinity of the location, then:
  - (1) the Delivery Station will be purpose-built for the pipeline and thus it would not be feasible to allow other parties access.
  - (2) nevertheless, it is open to any party to seek an alternative interconnection to the connecting pipeline and Alinta would offer the same general terms to a similar embedded network.
  - (3) there is no arrangement or understanding between Alinta and its associate company. Rather negotiations for the Interconnection Agreement were between Alinta and the gas end-user.
  - (4) there has been no third line forcing.

### **Consideration of the Associate Contract under section 7.1 of the Code**

Section 7.1 of the Code provides that IPART must not refuse to approve the proposed associate contract unless it considers that the contract would have the effect, or would be likely to have the effect, of substantially lessening, preventing or hindering competition in a market.

In applying this test IPART considered the relevant markets for the Associate Contract and the effect of the Associate Contract on competition in those markets.

### *Defining the relevant market(s)*

Alinta commented on the market definition in greater detail (for example, in relation to the location of the proposed pipeline and Delivery Station) in the confidential version of the Application. Based on IPART's own analysis, and consistent with its recent decisions made under section 7.1 of the Code, IPART defined the relevant market for the purposes of this Application. In the broadest possible terms, the definition adopted by IPART was the distribution of natural gas within NSW. To disclose a more narrow definition of the market in these reasons would compromise confidentiality.

### *Assessing the likely impact on competition*

Alinta submitted in its Application that the Associate Contract will not have, or be likely to have, the effect of substantially lessening, preventing or hindering competition on the ground, among others, that the terms and conditions of supply were offered to at least one other possible non-associate supplier of the service.

In assessing the competitive impact of the proposed Associate Contract, IPART considered the Application and followed an approach consistent with that outlined in IPART's *Associate Contract Guidelines* (the **Guidelines**).<sup>1</sup> IPART assessed the likely effect on competition by considering:

- (a) the likely future state of competition in any relevant markets in the event that the associate contract is entered into,  
*in comparison with*
- (b) the likely future state of competition in any such markets if the associate contract is not entered into.

In examining the market 'with and without' the proposed Associate Contract, IPART notes that:

- (a) Alinta has submitted that it would offer terms consistent with the proposed Associate Contract to non-associates (see public version of Alinta's application, Annexure D, para 5(b)(iii)); and
- (a) the proposed Associate Contract arises as a result of the novation of an earlier contract between the gas end-user and Alinta, resulting in a contractual nexus between Alinta and the associate company. Therefore Alinta had already agreed to the terms of the Associate Contract with an unrelated party (ie. the gas end-user).

### **Conclusion**

Having applied the test in section 7.1 of the Code, IPART is satisfied that the proposed associate contract would not have the effect, or be likely to have the effect, of substantially lessening, preventing or hindering competition in the relevant market.

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<sup>1</sup> IPART *Associate Contract Guidelines*, October 2001.

Accordingly, IPART approves the Application.

6 March 2008