SEPARATION REQUIREMENTS
FOR COVERED PIPELINE AND RELATED BUSINESSES

Overview of separation requirements

The National Gas Law and Rules impose obligations on Covered Pipeline owners and operators intended to ensure that the pipeliner does not use its market power to unfairly advantage a Related Business (being one that produces, buys or sells gas). These obligations are set out in the ring fencing and associate contract provisions of the Law.

In addition, the pipeliner may often have possession of third party confidential information. The pipeliner must keep such information confidential as a matter of common law even absent an express confidentiality agreement.

APA Group owns and operates Covered Pipelines as well as a number of Related Businesses. This paper provides an overview of the business separation obligations which must be complied with by all APA personnel.

Consequences of breach

A breach of the ring-fencing and associate contract provisions can result in penalties for a company of up to $20,000 and for individuals (including directors and officers) of up to $4,000 per occurrence. In addition, third parties (such as competitors of the Related Business) are able to take civil action against the pipeliner to recover damages associated with the competitive harm caused by the breach.

Similarly, the sharing or inappropriate use of confidential information will entitle the provider of the information to claim for damages in respect of loss suffered.

Breach will also result in reputational damage in the business community as well as with the regulator.

APA is required to report to the regulator on its compliance with the provisions of the National Gas Law and Rules every 6 months. APA requires absolute compliance with the Law. To do otherwise would be inconsistent with APA's business ethics and the way we do business. The obligations set out in this paper and related protocols, must be complied with by all APA Group personnel.

Ring-fencing obligations

The ring-fencing provisions in the National Gas Law require the separation of *Covered Pipeline* businesses from *Related Businesses*.

A Covered Pipeline is one that is "covered" for the purposes of economic regulation under the National Gas Law irrespective of whether it is a light or full regulation pipeline. A list of APA's Covered Pipelines is set out in Schedule 1.

A Related Business is defined as being one that is in the business of producing, buying and selling natural or processable gas. This does not include Covered

Pipelines that buy and sell gas required for operational purposes (including balancing services, compressor fuel, line pack etc). Schedule 2 lists APA's current Related Businesses.

The purpose of the ring-fencing provisions is to ensure that Related Businesses do not gain a competitive advantage by virtue of their common ownership and/or operation with Covered Pipelines. By virtue of their coverage, such pipelines are considered to have market power. The ring-fencing provisions are intended to stop the leveraging of this market power into related markets.

What separation is required?

Compliance with the ring-fencing provisions essentially requires three broad measures:

- *Separation of entities* – Covered Pipeline service providers must not carry on a Related Business;
- *People separation* – personnel engaged in marketing Covered Pipeline services cannot market services or act as agent for a Related Business and vice versa.
- *Information separation* – The confidential information of a Covered Pipeline business must be kept separate and confidential from the Related Businesses.

1. Separation of entities

An entity that controls, owns or operates a Covered Pipeline (referred to as a "*Covered Pipeline service provider*") must not carry on a *Related Business* (ie. the business of producing, buying and selling gas).

A list of APA entities that are "Covered Pipeline service providers" is set out in Schedule 1. This includes APA entities that own Covered Pipelines as well as entities that operate third party Covered Pipelines (eg. the Envestra network assets). These entities are prohibited from buying and selling gas.

Examples:

- APA GasNet Australia (Operations) Pty Limited, as owner of the VTS must not be involved in buying and selling gas.
- APT O&M Services Pty Ltd, as operator of the Vic and SA Envestra networks must not buy and sell gas.
- APA Facilities Management Pty Limited can buy and sell gas.

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2. Separation of marketing staff

The "*marketing staff*" of a Covered Pipeline service provider cannot be officers, employees, consultants, independent contractors or agents of an "*associate*" of the Covered Pipeline service provider where the associate takes part in a Related Business.

Conversely, officers, employees, consultants, independent contractors or agents of a Covered Pipeline service provider must not be “marketing staff” of an associate that takes part in a Related Business.

Who are “marketing staff”?

“Marketing staff” are those directly involved in the sale, marketing or advertising of pipeline services. The Gas Law does not specify what being “directly involved” means but does state that a person is not “marketing staff” if the person’s function:
- is only to provide technical, administrative, legal and accounting services; <u>or</u>
- the sale, marketing or advertising of pipeline services is only an incidental part of the person’s function (eg. CEO, CFO).

All APA staff that sell and market services on the Covered Pipelines will fall into the definition of “marketing staff” regardless of the specific employing or contracting APA entity. In selling and marketing services, the staff would most likely be acting as agents of the Covered Pipeline service provider.

Who is an “associate”?

An “associate” is defined broadly to include related bodies corporate as well as other entities depending upon the commercial arrangements. An “associate” will also include a person with whom APA:
- is acting or proposes to act in concert;
- is, or proposes to become, formally or informally associated in any way;
- has entered into a transaction or done an act, or proposes to do so, in order to become associated with that person.

This is potentially very broad and whether APA and the person is an associate will depend on the context and the exact nature of the relationship. Entities such as Envestra, Energy Infrastructure Investments and Petronas may be associates of APA depending upon the context.

<u>The Golden Rule</u>

Any person that markets capacity on a Covered Pipeline should not market services or act as an agent for an APA business that buys and sells gas. Any person that is involved in marketing for a Related Business should not market services or act as an agent for a Covered Pipeline.

Marketing staff of the Related Business may market services on non-Covered Pipelines. There is no prohibition on such staff reporting to different managers – one in respect of their marketing activities for the Related Business, and the other in respect of the remainder of his/her activities. The first manager cannot be directly involved in the marketing of Covered Pipeline services, whereas the second manager may be.

Examples:

- Mary markets and sells services on the MSP. Mary cannot be an employee, consultant or contractor, or market services for APA’s cogeneration business.

- John is employed by APA GasNet Australia Operations Pty Limited. John cannot buy or sell gas for TradeCo, which is a gas trading company part owned by APA.
- Tony sells services as part of the APA natural gas vehicles business. Tony cannot sell capacity on the GGT. Tony can sell capacity on the Parmelia pipeline.
- Rod and Jane are both general managers. Rod is involved in marketing Covered Pipeline services whereas Jane is not. Tony can report to Rod in respect of his activities for the Parmelia pipeline and Jane in respect of his marketing activities for the NGV.

Schedule 2 identifies which APA commercial personnel are marketing staff for APA's Related Businesses. These people cannot market services on any Covered Pipeline. They can market services for non-Covered Pipelines and other APA assets. They may have dual reporting lines whereby they report to a different manager from usual in respect of the marketing of Related Business activity.

3. Information separation

The general duty to keep confidential information confidential is discussed below. In addition to this general obligation, there are further obligations on ring-fenced entities to separate and protect commercially sensitive information.

While the Rules do not expressly require a separation of commercial information between the Covered Pipeline businesses and Related Businesses, the underlying objective of the provisions is that the businesses operate as though they were completely separate with no common ownership. This would require a degree of information separation – particularly, the separation of confidential information.

The principal concern relates to confidential information being provided by the Covered Pipeline service provider to the Related Business which would give the Related Business an unfair competitive advantage over its competitors.

The information separation and protection measures that need to be implemented will vary depending upon the nature of the Related Business. The greater the prospect of the Related Business being able to use confidential information from the Covered Pipeline for competitive advantage, the stricter the information separation measures need to be.

Information separation and protection measures include:
- Physical separation and security of documents and information
- Information security measures
- Physical separation of personnel
- Ensuring discussions are discrete and information not inadvertently shared.

Guidelines as to the information separation and protection measures required to be implemented in respect of current APA Related Businesses is set out in Schedule 2.

Examples:

- Jim markets capacity on the VTS. Jim is aware of an impending system outage which may send the price of gas to VOLL. Jim cannot share that information with Jean who is a trader in APA's trading division.
- Tim markets capacity on the RBP. Tim has been approached by Transport Inc, wanting a connection to potentially build an LNG refuelling facility at a major transport hub. Tim cannot discuss the project with APA's LNG transport fuelling business.
- Joe manages the GGT commercial arrangements. The WA Transport Authority is exploring setting up a series of natural gas refuelling depots around Kalgoorlie and has asked for terms of access to the GGT. Joe must not discuss this project with any of APA's Related Businesses including its natural gas refuelling business.

Associate contracts

The National Gas Law prohibits (unless exempt by the AER) a Covered Pipeline service provider from entering into a contract for the provision of pipeline services to an associate if:

- it has the purpose or effect (or likely effect) of substantially lessening competition in a market for natural gas services; or
- it is on terms that differ to those it would offer to separate unrelated entities on an arms length basis. This is referred to as the "*parity rule*". (Note that for light regulation pipelines, there is a further prohibition on price discrimination (on a like for like basis) between shippers).

This is referred to as an "*associate contract*".

As with the ring-fencing provisions, an "associate" includes APA Group entities as well as other entities with which APA is acting in concert. This may include entities such as Petronas, Envestra and Energy Infrastructure Investments.

An associate contract must not substantially lessen competition. Whether or not a contract substantially lessens competition requires consideration of the effect of the contract on competition. If for example, the contract effectively forecloses access to the only source of gas or only pipeline by locking up all available capacity, the contract may substantially lessen competition.

Associate contracts must comply with the "parity rule". A contract will comply with this rule if the same terms would have been offered to the entity were it a completely separate unrelated entity with whom APA was dealing on an arms length basis.

If an associate contract either substantially lessens competition or breaches the parity rule, the contract must get the prior approval of the AER. The AER must be notified of any associate contract (or variation to an existing associate contract) within 5 business days of the agreement being entered into. This applies to all associate contracts whether requiring prior AER approval or not.

The purpose of the prohibition is to ensure that Covered Pipeline service providers do not give related downstream (or upstream) businesses "sweet-heart" deals so as to give them a competitive advantage in those downstream (or upstream) markets.

Examples:

- APA's power generation division is considering construction of a power station using gas transported by the RBP. Any GTA entered into between the RBP and APA's power generation division must be on terms that RBP would otherwise offer to an unrelated entity on an arms length basis.

- A GTA between APA's power generation division and KKP for all of KKP's capacity would effectively mean no other power generation projects in the Kambalda region could source gas. The GTA may substantially lessen competition.

- APA owns the only pipeline to transport SE-Qld CSM to Gladstone. Petronas (which is an associate) is a CSM shipper and is given a lower tariff compared with other like shippers. The GTA would likely breach the parity rule and may also substantially lessen competition.

- APA's power generation division wants to enter into a GTA with the Parmelia pipeline. The associate contract provisions do not apply to this contract as the Parmelia pipeline is not a Covered Pipeline.

Any intention to enter into an associate contract must be referred to the Legal Department for consideration.

Confidential information

The obligation to keep third party information confidential can arise through express contractual obligations or as a matter of general common law. If information is covered by a confidentiality agreement, the terms of the agreement must be complied with. Similarly, many contracts will contain confidentiality provisions which prevent the disclosure of key contractual terms.

Even if there is no contractual obligation of confidentiality, an obligation to keep information confidential can arise as a matter of general law. Typically, the circumstances in which this general law obligation of confidentiality arises are as follows:

- The provider of the information says the information is confidential. (Although information that is in the public domain cannot be confidential, even if the provider says it is).
- The information provided, by its nature, is clearly confidential or the circumstances in which it was provided imply it is to be treated as confidential.

- The information provided is of a type that, if it were to be inappropriately revealed, would cause harm to the information owner or provider in some way.

The general law duty of confidentiality is not necessarily displaced by a contractual confidentiality undertaking. Where there are gaps or deficiencies in the contractual undertaking, the general law obligation can supplement the contractual undertaking.

As a general rule, if you consider that the provider of the information would object to your intended use or disclosure of the information provided, the information is likely to be confidential and should be treated as such.

The confidentiality of such information must be preserved. In general, this would involve:

- Only using the information for the purpose for which it was provided.
- Not providing the information to any greater number of people than otherwise need to access it for the purpose for which it was provided.
- Keep the information secure so that it cannot be accessed by those that do not otherwise need it for the purpose for which the information was provided.

Examples:

- Esso provided Ted, the operations manager at APA GasNet with confidential engineering information to enable Ted to determine a price for an interconnection to the VTS. Ted must not use that information for any other purpose without Esso's consent.

- SEAGas provided confidential information relating to shipper contracts to Steve as a director of SEAGas. Steve must keep that information confidential and not share it or make it available to his APA colleagues.

- Negotiations on a GTA with a power generation project suddenly come to an end. The project proponent confides that it is because it was unable to secure finance and that it is facing insolvency. Until such time as the information is made public, the information should not be disclosed to anyone not otherwise directly involved in the project.

- Helen is discussing the terms for haulage on the MSP with a shipper involved in a new power generation project. Helen must ensure her conversation is not overheard by Brian who works for APA's own power generation division. Helen must ensure all confidential information relating to the GTA is kept confidential and protected.

- Origin announces a new power generation project and that it has entered into a GTA with MSP. Helen can discuss the information referred to in the public announcement with Brian.

- Joe manages the VTS commercial arrangements. Origin has told Joe that it may require a connection to the VTS for a new power station. Joe must not discuss this potential connection or the fact that Origin is investigating this project with APA's power generation division.

- Joe has been approach by a retailer that is investigating the development of a power station that would connect to the VTS. Joe has explained that APA is interested in building power stations and could sign a power purchase agreement with the retailer. The retailer has stated that it would like to discuss such a proposal with APA. Joe may discuss this with APA's power generation division.

Schedule 1
APA Group Covered Pipelines

Name of Asset	APA Entity	Owner or Operator
Victorian Transmission System	APA GasNet Australia (Operations) Pty Limited	Owner
Roma to Brisbane Pipeline	APT Petroleum Pipelines Pty Limited	Owner
Goldfields Gas Pipeline	Southern Cross Pipelines Australia Pty Limited (62.7%) Southern Cross Pipelines (NPL) Australia Pty Limited (25.5%) APT Pipelines (WA) Pty Limited	Owner Owner Operator
Kalgoorlie to Kambalda	Southern Cross Pipelines Australia Pty Limited	Owner
Central Ranges Pipeline and Distribution Network	Central Ranges Pipeline Pty Limited	Owner
Central West Pipeline	APT Pipelines (NSW) Pty Limited	Owner
Amadeus Basin to Darwin Pipeline	Amadeus Gas Trust (96%) NT Gas Pty Limited	Owner Operator
Moomba to Sydney Pipeline	East Australian Pipeline Pty Limited	Owner
Carpentaria Gas Pipeline	APT Pipelines (Qld) Pty Limited (30%) Roverton Pty Limited (70%)	Owner
Allgas network	APT Allgas Energy Pty Limited APT Allgas Toowoomba Pty Limited	Owner
Envestra networks	APT O&M Services Pty Ltd ABN 13 112 358 586 (For Vic and SA networks) APT O&M Services (QLD) Pty Ltd ABN 11 112 358 595 (for Qld network)	Operator

Schedule 2
Business separation requirements for APA existing and potential Related Businesses and Power Generation business

Related Business	Description	Entity owning the business[1]	Responsible "marketing staff" for business[2]	Information separation measures either under the ring-fencing provisions or general obligations of confidentiality	Associate contract issues
Natural Gas Vehicles	APA provides natural gas bus refuelling services to public transport authorities in WA and SA. APA owns and operates the facilities. APA buys gas from Synergy in WA. Straight pass through of gas cost to customer. No financial exposure for APA to gas cost.	APT Facility Management Pty Limited ABN 91 124 754 365	Paul Wheeldon	Information sensitivity – **Low** • Separate files (hard and electronic) for Related Business matters. • Require that Covered Pipeline marketing staff and Related Business staff do not share confidential information relating to marketing activities.	n/a
Cogeneration	APA owns and operates cogen plant. Installed at 2 hospitals (Geelong, Toowoomba). APA supplies electricity, steam and chilled and hot water to the customer. APA buys gas from Origin under contracts in place prior to acquisition of business.	APT Facility Management Pty Limited ABN 91 124 754 365	Paul Wheeldon	Information sensitivity – **Low** Measures as above for NGV business.	n/a
LNG storage and supply for vehicles	APA buys gas for BOC to liquefy. APA procures liquefaction services from	APA Facilities Management Pty Limited ACN 140	Paul Wheeldon	Information sensitivity – **Low**[3] Measures as above for NGV business.	n/a

[1] These entities cannot be entities that own or operate a Covered Pipeline.
[2] The people listed cannot be officers, employees, consultants, independent contractors or agents of a Covered Pipeline service provider ie. one of the entities listed in Schedule 1. The people listed cannot involve a Manager that is directly involved in the marketing of Covered Pipeline services (incl. Rob Wheals and Rod Johannesen) in his/her Related Business marketing activities.
[3] Note that market spot prices are transparent. The VTS haulage tariff is regulated and applied by AEMO to all customers on an equal basis.

(Dandenong)	BOC. APA then supplies (sells) LNG at the loader to Wesfarmers and BOC for use in vehicles.	898 424			
Power Generation	APA to deliver electricity to customers. APA to own and operate power generation asset but may also buy gas and sell electrons.	APA Power Holdings Pty Limited (ACN 149 762 121) (for non-project finance projects) APA Power Pty Limited (ACN 149 762 130) (for project finance projects)	David Jones	Information sensitivity – **High** (vertical integration in power generation) <u>Document separation and protection</u> • PowerGen personnel must not have access to Covered Pipeline confidential information. • Covered Pipeline staff to ensure confidential information is kept secure and not left lying around on printers etc where it may be accessed by PowerGen staff. Files to be clearly marked as confidential. <u>Personnel</u> • Avoid where possible having PowerGen and Covered Pipeline marketing staff proximate to each other. • Where they are proximate, ensure Covered Pipeline confidential discussions including marketing discussions are discreet and cannot be overheard by PowerGen personnel (close office doors etc). **Guiding principal is that only that information which would be shared with a separate unrelated entity can be shared between PowerGen and the Covered Pipeline business.**	Associate contract between PowerGen and Covered Pipeline for haulage. GTA to be: • Negotiated on "arms length" basis; • on same terms offered to other shippers; and • not substantially lessen competition in power generation (refer to Legal). AER to be notified within 5 business days of execution.
Gas Trading	APA to trade physical gas	APA Facilities	Brad Evans	Information sensitivity – **High** (vertical	Associate contract

(TradeCo) (Potential business – currently in trial in WA market)	based on a specific location. Would involve buying and selling gas and potentially haulage. Use of storage facilities to facilitate effective arbitrage.	Management Pty Limited ACN 140 898 424 (to be used in the interim)		integration in trading) Information and people separation protocols as above for PowerGen.	between TradeCo and Covered Pipeline for haulage. Protocols as above for PowerGen.