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10 December 2001

Mr R F Shogren  
Commissioner  
Australian Competition and Consumer Commission  
PO Box 1199

**DICKSON ACT 2602**

**ATTENTION:** Mr David Hatfield

Dear Mr Hatfield

**RE: APPLICATION FOR WAIVER OF RINGFENCING OBLIGATIONS**

We refer to the Commission's letter of 9 November 2001 and enclose a submission by NT Gas seeking a waiver of the ringfencing obligations under sections 4.1(h) and (i) of the Code. We believe that the attached submission clearly demonstrates that the public benefit (if any) which may arise from compliance with the requirements is substantially outweighed by the costs of compliance.

The submission generally addresses the matters raised in the Commission's letter, although it addresses the test described in the Code rather than the alternate test suggested in the letter.

We would be pleased to meet with the Commission to discuss this application or to provide any further information you require to assess the application.

Please do not hesitate to contact us if you have any questions or wish to discuss this matter.

We would be obliged if you directed your inquiries in the first instance to our regulatory advisers, Agility Management (Sandra Dureau, telephone 02 9922 8513).

Yours faithfully

**Garth Borgelt**  
**GENERAL MANAGER**

Attachments:

1. Submission – public version
2. Submission containing confidential information
3. Organisation structure
4. Map of NTGD area
5. Financial information regarding NTGD (confidential)

## APPLICATION FOR WAIVER OF RINGFENCING OBLIGATIONS

### APPLICANT:

**NT GAS PTY LIMITED ACN 050 221 415** as trustee of the Amadeus Gas Trust (“**NT Gas**”).

### APPLICATION:

This application is made under section 4.16 of the National Gas Pipelines Access Code (“**Code**”).

NT Gas requests the Australian Competition and Consumer Commission to issue a notice under section 4.15(b) of the Code waiving the obligations of NT Gas under sections 4.1(h) and (i) of the Code on the basis that the administrative costs of complying with the obligations outweigh any public benefit arising from NT Gas meeting the obligations.

### A. BACKGROUND

#### *Code*

- NT Gas is the operator of the Amadeus Basin to Darwin Pipeline (“**ABDP**”). As the ABDP is a covered pipeline under Schedule A of the Code, NT Gas is a service provider under the Code and is required to comply with the ringfencing obligations set out in section 4 of the Code
- NT Gas Distribution Pty Limited ACN 071 741 618 (“**NTGD**”) owns the Darwin natural gas distribution network. NTGD operates as a bundled gas business, including selling natural gas to end-customers served from the distribution network. The purchase and sale of natural gas is a Related Business within the meaning of the Code.
- As NTGD is a wholly owned subsidiary of NT Gas, it is an Associate of NT Gas within the meaning of the Code.

Given these matters, sections 4.1(h) and (i) of the Code require that NT Gas must:

- (h) ensure that NT Gas’ Marketing Staff are not also servants, consultants, independent contractors or agents of NTGD; and
- (i) ensure that none of NT Gas’ servants, consultants, independent contractors or agents are Marketing Staff of NTGD.

NT Gas seeks a waiver of these obligations to:

- enable Marketing Staff of NT Gas to provide services to NTGD; and
- enable other staff<sup>1</sup> of NT Gas to act as Marketing Staff of NTGD.

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<sup>1</sup> Note: the term “staff” is used generically in this application to refer to servants, consultants, independent contractors or agents.

***NT Gas:***

NT Gas is the operator of the ABDP. NT Gas has a relatively small number of staff, most of whom are engaged on technical, accounting or engineering functions. A chart showing the organisational structure and resources of NT Gas is attached.

The ABDP transports gas from the Amadeus Basin to Darwin and to a number of off-take points along the route of the pipeline. The majority of gas transported through the pipeline is used for generation of electricity. NT Gas does not undertake activities other than ownership and/or operation of pipelines. In particular, NT Gas does not actively engage in the buying or selling of natural gas.

Marketing activities on behalf of NT Gas – that is, the marketing of pipeline transportation services – are generally undertaken by the General Manager NT Gas, and Manager Commercial. Accordingly, when performing these functions from time to time, these officers are acting as Marketing Staff of NT Gas within the meaning of the Code.

***NT Gas Distribution:***

NTGD owns the gas distribution network in Darwin. The distribution network extends only to the Trade Development Zone area, which is some distance from the city or suburbs of Darwin. The network consists of 19.5 km of steel main from the City Gate to Berrimah, and 6 km of plastic reticulation system. The steel main is a covered pipeline under the Code; the plastic reticulation system is not covered.

NTGD provides a bundled gas supply service to industrial customers delivering gas to their premises. NTGD also sells gas to a third party which, in turn, supplies one customer. During 2000/2001 there were seven customers of the distribution network and the total volume of gas sold to those customers was 14.7TJ. In addition, gas was also sold to the third party. NTGD has also just entered into an agreement for the supply of gas for two years to railway sleeper plants at Katherine and Tennant Creek. There are currently six customers of the distribution network with a forecast volume of 8TJ in 2001/2002.

All customers are supplied from the existing reticulation system, other than the third party which is supplied at the inlet of the ABDP, and the sleeper plants which are to be supplied through new laterals to the plants.

NTGD was established in 1995. The viability of the distribution network depended on the growth of the Trade Development Zone. The forecast growth has not eventuated.

NTGD originally had a dedicated marketing and development manager and a technical officer for the operation and maintenance of the distribution network. As the business was not financially viable with that structure, these two functions were taken up by staff of NT Gas in 1998. NTGD has never and does not presently directly employ any staff.

NTGD acquires gas from the Mereenie producers under a gas purchase agreement, which was negotiated when NTGD was established. NTGD acquires transportation from NT Gas under a transportation agreement also negotiated at that time. Accordingly, it is not expected that NTGD will need to undertake detailed negotiation for the acquisition of gas or pipeline transportation services in the foreseeable future.

Other than the existing arrangement for sale of gas to the third party, NTGD only buys and sells natural gas for the purposes of supplying customers from its distribution network.

**B. SERVICES SOUGHT TO BE PROVIDED TO NTGD BY STAFF OF NT GAS****(i) Provision of services to NTGD by NT Gas Marketing Staff**

Generally, the only staff of NT Gas who will be Marketing Staff under the Code will be the General Manager and the Manager Commercial. From time to time, other staff of NT Gas may fall within the definition of Marketing Staff of NT Gas.

NT Gas wishes to be able to provide the services of its Marketing Staff to provide a suite of commercial, management and marketing services to NTGD. These services would be performed for NTGD on an “as-needed” basis.

Given the size of both companies, it is also desirable that the same person fulfils the functions of General Manager NT Gas and General Manager NTGD. In fulfilling those functions, that person will report separately to, and be accountable to, the boards of NT Gas and NTGD respectively.

NT Gas seeks a waiver of the obligations under section 4.1(h) of the Code to enable staff who are Marketing Staff of NT Gas to provide the commercial, management and marketing services to NTGD, and to enable the General Manager NT Gas to fulfil the functions of General Manager NTGD.

**(ii) Provision of Marketing Staff to NTGD**

In relation to the marketing of NTGD, the services sought to be provided by NT Gas are responding to customer requests, negotiating gas sales contracts with the customer and managing the ongoing contractual arrangements with customers. These services would be performed for NTGD on an “as-needed” basis.

Generally, marketing services for NTGD would be provided by the General Manager NT Gas and the Manager Commercial (see paragraph (i) above). From time to time, it may also be desirable or convenient for all or some of these services to be provided by other staff of NT Gas.

NT Gas seeks a waiver of the obligations under section 4.1(i) of the Code to enable staff of NT Gas to provide marketing services to NTGD on an “as required” basis.

**(iii) Other**

The technical and accounting functions of NT Gas Distribution are performed by staff of NT Gas. It is considered that provision of these services does not breach the ringfencing obligations under the Code as:

- the functions are not provided by Marketing Staff of NT Gas (hence section 4.1(h) is not breached); and
- in providing these services, the staff of NT Gas are not acting as Marketing Staff of NTGD (hence section 4.1(i) is not breached).

## **C. GROUNDS FOR WAIVER OF RINGFENCING OBLIGATIONS**

### *Requirements of Code*

The Code provides that the Commission may waive any of NT Gas' obligations under sections 4.1(h) and (i) where the (Commission) "is satisfied that the administrative costs to (NT Gas) and its Associates (NTGD) of complying with that obligation outweigh any public benefit arising from (NT Gas) meeting the obligation"<sup>2</sup>.

For the reasons set out below, NT Gas believes that the costs of compliance outweigh any benefits which might arise from compliance.

### *Public benefit of compliance*

NTGD currently has no competitors in the sale of natural gas to customers served from the distribution network and no party who acquires transportation services from NT Gas is, or is expected to be, a competitor of NTGD for the sale of natural gas to end-use customers. While the steel main from the City Gate to Berrimah is a covered pipeline under the Code, NT Gas is unaware of any current intention to introduce retail competition to the distribution network.

NT Gas understands that the intent of the ringfencing requirements under the Code is to assist in the development of a competitive retail market. In this context, the purpose of sections 4.1(h) and (i) is to ensure that retail associates of a service provider do not gain a competitive advantage over their competitors by virtue of their relationship with the service provider.

Where the retail associate competes with other retailers who acquire transportation services from the service provider, these and other ringfencing obligations will contribute to the development of a "level playing field" for all retailers which, in turn, will assist in the development of a competitive retail market. However, the obligations appear to be of little if any meaning where it is not intended to introduce competition in the market in which the retail associate operates.

NT Gas submits that given the circumstances outlined in this submission, the benefit intended to arise through the application of sections 4.1(h) and (i) will not be realised and compliance with the obligations will not produce any identifiable public benefit.

### *Costs of compliance*

In the absence of a waiver of the obligations, it will be necessary for NTGD to obtain commercial, management and marketing services from an external source.

NTGD expects that its revenues will not be sufficient to return a profit if NTGD is required to bear the costs of obtaining ongoing commercial, management and marketing services from external sources.

The costs of NTGD obtaining such services will also represent an indirect cost to NT Gas as it will further reduce any potential amount available for distribution as profit to NT Gas in its capacity as shareholder of NTGD.

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<sup>2</sup> Code, section 4.15(b).

If a waiver is granted, NTGD will be able to acquire these services from NT Gas at much lower cost. This is because NT Gas has staff, employed locally, with the required suite of skills, who can be utilised “as and when needed” to support the actual workload of NTGD at any point in time.

#### **D. CONFIDENTIAL INFORMATION**

In the course of providing services to NTGD, certain staff of NT Gas will obtain confidential information regarding customers of NTGD. Any staff who may have access to such information are required to maintain the confidentiality of the information and to sign a confidentiality deed with NT Gas and NTGD.

In addition, the staff of NT Gas who are most likely to obtain such information are the General Manager NT Gas and the Manager Commercial. Those officers are aware of the need to protect such information and, in particular, are aware of the ringfencing requirements under the Code. NT Gas has provided ringfencing training to staff who are likely to obtain confidential information.