

**N.T. GAS****Pty. Limited**

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G467/8974

Ms Kanwaljit Kaur
General Manager
Regulatory Affairs – Gas
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Ms Kaur

RE: APPLICATION FOR WAIVER OF RINGFENCING OBLIGATIONS

We refer to the Commission's Issues Paper released on 21 December 2001 in relation to the application by NT Gas for waiver of certain ringfencing obligations under the Code.

NT Gas' response to the Issues Paper is set out in the attached paper.

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

Attachment:

1. Submission



**APPLICATION FOR WAIVER OF RINGFENCING OBLIGATIONS
RESPONSE TO ISSUES PAPER RELEASED 21 DECEMBER 2001**

1. Costs of complying

The application by NT Gas seeks a waiver of two obligations – the prohibition on NT Gas providing marketing services to NT Gas Distribution (NTGD), and the prohibition on marketing staff of NT Gas providing any services to NTGD. It is important that consideration of the application does not focus only on the costs of NTGD obtaining marketing services elsewhere – the costs are those of obtaining marketing services, and of obtaining the full suite of commercial and management services. However, the costs to NTGD of obtaining the full suite of commercial and management services do not appear to be considered in the Issues Paper which instead appears to consider only the costs of obtaining marketing services.

In terms of the costs of NTGD obtaining marketing services elsewhere, the Issues Paper suggests that because NTGD's distribution business is smaller than NT Gas' pipeline business, the marketing costs of NTGD would be less than those of NT Gas. However, this is not necessarily the case and it is possible that, because of the nature of a distribution business rather than a pipeline business, the marketing costs for NTGD would be higher than those for NT Gas.

It is difficult to develop a relevant benchmark for the assessment of NTGD's marketing costs if it is unable to utilise the services of NT Gas – for any benchmark to be meaningful, it would have to relate to a similar sized business, in a similar environment (commercial, cultural and climatic). Accordingly, the costs of marketing for an established distribution network in NSW do not of themselves provide more than an indication of the costs of obtaining marketing services for a distribution business in Darwin.

The options available for compliance by NT Gas with the obligations in the Code are relatively straightforward. If NT Gas is prohibited from providing marketing services to NTGD, and if it is prohibited from permitting its marketing staff to provide any services to NTGD, NT Gas will have to withdraw the provision of those services to NTGD.

While NT Gas withdrawing from provision of the services would enable it to comply with the obligations in the Code, NTGD would have to obtain those services elsewhere. It is unclear if NTGD would; however, be able to do so, as its revenues may not be sufficient to return a profit if it is required to bear those costs. Accordingly, withdrawal of services by NT Gas may result in NTGD being unable to attend to necessary commercial and management activities and marketing activities.

2. Public benefit of complying

The Issues Paper states that: "NT Gas submits that neither it nor NT Gas Distribution currently face any competitors or potential competitors and as a result, complying with ringfencing obligations would not produce any public benefit".

NT Gas does not agree that this is an accurate paraphrase of NT Gas' application and reasoning. The application states: "NTGD currently has no competitors in the sale of natural gas to customers served from the distribution network and no [user of the Amadeus Basin to Darwin Pipeline] is, or is expected to be, a competitor of NTGD for the sale of natural gas to end-use customers. NT Gas is unaware of any current intention to introduce retail competition

to the distribution network". It is in these circumstances that NT Gas has submitted that it does not believe any public benefit will be achieved through requiring separation of marketing staff.

The Issues Paper questions whether requiring compliance with the obligations will have an effect on potential barriers to entry – that is, entry of other firms to compete as suppliers of natural gas from the distribution network.

NT Gas submits that there are no grounds to conclude that such a benefit will arise through requiring compliance with the obligations. The existing and potential market for reticulated natural gas in Darwin is extremely limited due to the size of the city, the small industrial/commercial base, the climatic conditions, and the availability of alternate fuels. NT Gas considers that the result of these factors is that there is no likelihood of the development of a significant customer base for reticulated natural gas. In turn, without the development (or potential for development) of a significant customer base, NT Gas submits that there is no real prospect of the development of a competitive market for supply of natural gas in Darwin. In this circumstance, the requirement for separate marketing staff will not have any meaningful impact on the entry of other firms into that possible market.

3. General

The Issues Paper notes that the Commission sought from NT Gas reasons for NT Gas' classifying the estimated costs of compliance as confidential. The Issues Paper incorrectly asserts that NT Gas had not responded to this request prior to the release of the Issues Paper.

The Commission requested the information on 18 December and NT Gas provided its response on 20 December – that is, prior to the publication of the Issues Paper (which occurred on 21 December).

We would be concerned if readers of the Issues Paper interpreted this as suggesting that NT Gas has failed or refused to respond to the Commission's request.