



23 September 2006

Australian Pipeline Trust 01R - Panel Final Orders

The Takeovers Panel advises that it has today made final orders in relation to acquisitions (**Acquisitions**) of 10.25% of the units in Australian Pipeline Trust (**APT**) by Alinta Limited (**Alinta**) in the period 16 August to 22 August (inclusive). The orders follow the Panel's decision on 20 September 2006 to make a declaration of unacceptable circumstances ([TP 06-90](#)). A copy of the orders is attached at Annexure A to this Media Release.

The Panel received applications dated 5 September 2006 and 8 September 2006 from Alinta ([TP 06-83](#)) seeking a review of the decision of the APT01 Panel's decision to make a declaration of unacceptable circumstances and final orders in relation to the Australian Pipeline Trust 01 proceedings ([TP 06-82](#), [TP 06-85](#)).

The Panel decided that the Acquisitions constituted unacceptable circumstances having regard to:

- (a) the fact that the Acquisitions constituted, or gave rise to, a contravention of section 606 of the Corporations Act, and
- (b) the effect of the Acquisitions on the control or potential control of APT.

The Panel has ordered that the units in APT which Alinta acquired under the Acquisitions (**Sale Units**) be vested in ASIC for sale by a stockbroker or investment bank selected by ASIC (**Appointed Seller**) and that the net proceeds be returned to Alinta. The Appointed Seller will be instructed to

- (a) maximise competition for , and the price of, the Sale Units;
- (b) sell the Sale Units either under a bookbuild or into a takeover bid, as long as the takeover bid is:
 - (i) for all units in APT;
 - (ii) subject at most to a prescribed occurrence defeating condition;
 - (iii) for cash, or including a cash alternative of equivalent value (which the Appointed Seller will select); and
- (c) sell the Sale Units within 6 weeks, without (in its opinion as an expert) unreasonably depressing the market price of units in APT.

Alinta and AGL (and their associates) will be prohibited from acquiring the Sale Units under a bookbuild, but may acquire them under takeover offers for all of the units in APT.

Alinta is prohibited from acquiring or disposing of units in APT (or dealing via derivative instruments) until the schemes of arrangement (**Schemes**) to merge Alinta and The Australian Gaslight Company (**AGL**) are implemented or the Merger Implementation Agreement (**MIA**) between Alinta and AGL concerning the Schemes lapses if the Schemes are not implemented.

The Panel has allowed Alinta Infrastructure Holdings (AIH) additional time to make submissions as to whether or not it should be included as an associate of Alinta in the orders. If it were included as an associate it would be subject to the same restrictions as Alinta. AIH has given the Panel undertakings restricting it dealing in units in APT prior to the Panel deciding the issue.

Under the Panel's orders, any bidder (whether Alinta or a rival) will have a reasonable time within which to bid for APT and acquire the Sale Units if it is the highest bidder. A bidder is free to make a scrip only takeover bid for all of the units in APT, however, the Appointed Seller will be instructed not to accept the Sale Units into a takeover bid without an equivalent cash alternative consideration. The Appointed Seller (under the guidance of ASIC) will determine how and to whom to sell the Sale Units. The Appointed Seller will be instructed by ASIC to seek to maximise the competition, and the price, for the Sale Units within the time initially allowed for the sale process.

The Panel considers that this will put the market for control of APT back as closely as possible as it was prior to the Acquisitions. At the time of the Acquisitions Alinta was free, under the Corporations Act, to make a takeover bid for all of the units in APT. It could have acquired the Sale Units under a full takeover bid instead of making the Acquisitions and the unitholders of APT could then have chosen to sell into an Alinta takeover bid. Under the Panel's orders that will remain the case, as will the competitive position of any person who wishes to make a rival offer for APT.

In the proceedings before the Panel Alinta submitted to the Panel that AGL was free to sell the 26% of units in APT which AGL holds (**AGL Parcel**), to the highest bidder if there were a bid for APT, and, under the terms of the MIA, Alinta was not entitled to withhold its consent unreasonably from AGL selling the AGL Parcel. The proceeds of the AGL Parcel sale would be included in the AGL Infrastructure Assets which Alinta would acquire under the Schemes.

The parties made a number of requests to the Panel as to restrictions to be placed on the sale process. The Panel's strong preference was to leave the dynamics of the sale process to the Appointed Seller and the market. Therefore, it did not include those restrictions on disposal of the Sale Units.

The Panel has expressly allowed all parties to come back to the Panel for variation of its orders if circumstances appear to require changes to the orders.

The sitting Panel in these proceedings is David Gonski AO (sitting President), Marian Micalizzi and Prof. Ian Ramsay (sitting deputy President).

The Panel will publish its reasons for its decision on its website.

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Annexure A

**Corporations Act
Section 657D
Final Orders**

In the matter of Australian Pipeline Trust

Pursuant to section 657D of the Corporations Act 2001 (**Act**) and pursuant to a declaration of unacceptable circumstances made by the Panel on 20 September 2006, the Takeovers Panel HEREBY ORDERS:

Divestment order

- (1) that the Sale Units vest in the Australian Securities and Investments Commission (**ASIC**) to be held by ASIC on a trust, for ASIC to:
 - (a) sell the Sale Units; and
 - (b) subject to any requirement arising under a Tax Law, account to the persons or their nominee who, immediately before the making of this order, were the registered holders of the relevant Sale Units for the proceeds of sale and any distributions on the Sale Units received by ASIC, net of the costs, fees and expenses of the sale and any costs, fees and expenses incurred by ASIC, or which ASIC reasonably incurs, or estimates it will incur, in complying with these orders (even where those costs, fees or expenses are incurred in relation to any earlier unsuccessful attempt to sell the Sale Units). If ASIC considers there to be a reasonable doubt as to whether a requirement has arisen under a Tax Law, ASIC is not required to so account for that proportion of the proceeds relating to the apparent requirement until it has determined whether a requirement has, in fact, arisen;
- (2) that Alinta and its agents do all things necessary to give effect to the transfer under order (1) within 4 business days of the date of these Orders;
- (3) that ASIC retain an investment bank or licensed stock broker (**Appointed Seller**) which:
 - (a) ASIC considers to be appropriately licensed to conduct the sale; and
 - (b) provides to ASIC a statutory declaration that, having made proper inquiries, the Appointed Seller is not aware of any interest, past, present,

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or prospective which could conflict with the proper performance of the Appointed Seller's functions in relation to the disposal of the Sale Units;

- (4) that ASIC will instruct the Appointed Seller:
 - (a) to sell the Sale Units for a cash sum by:
 - (i) a bookbuild; or
 - (ii) into a takeover bid (which offers cash as bid consideration (or an equivalent cash amount as one of the alternatives of bid consideration)) for all units in APT that is (at that date) freed from conditions (other than prescribed occurrences) (**Unconditional Bid**);
 - (b) to seek to maximise the competition for, and the sale price of, the Sale Units;
 - (c) that none of the Parties may acquire or buy any of the Sale Units other than pursuant to an acceptance by the Appointed Seller into an Unconditional Bid;
 - (d) that unless the Appointed Seller sells Sale Units by accepting into an Unconditional Bid, it must obtain from any purchaser of Sale Units, prior to the sale, a statutory declaration or statement in accordance with rule 7.1(c) of the Panel's Rules for Proceedings that it is not associated with any of the Parties;
- (5) without limiting ASIC's ability to seek further orders, that ASIC seek further orders from the Panel if the Appointed Seller is unable to dispose of all of the Sale Units within 6 weeks from the date of engagement of the Appointed Seller, without, in its reasonable opinion acting as expert, unduly depressing the market price of APT units;

Creep order

- (6) that Alinta may not take into account any relevant interest or voting power that Alinta or its associates had, or have had, in the Sale Units, when calculating the voting power referred to in Item 9(b) of section 611, of a person six months before an acquisition exempted under Item 9 of section 611;

Acquiring, disposing and voting restriction orders

- (7) Alinta not to:
 - (a) acquire any relevant interest in any further units in APT;

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- (b) purchase any units in APT;
- (c) dispose of any relevant interest in any Sale Units, other than in a manner approved by the Panel;
- (d) enter into, buy, dispose of, terminate or otherwise deal with any cash settled equity swap or other synthetic, economic or derivative transaction connected or relating to any units in APT or the price of units in APT;
- (e) exercise any rights attaching to any Sale Unit, including voting any of those Sale Units at a general or extraordinary meeting of APT unitholders;
- (f) agree or give any right to require it to do anything referred to in paragraphs (7)(a) to (e) above;

prior to the implementation of the Schemes, or the expiry of the MIA,

- (8) that each Party, APT and ASIC have the liberty to apply for further orders in relation to the matters covered by orders (1), (2), (3), (4), (5), (6) and (7);

Nothing in these orders (including order 7) prevents Alinta making a takeover bid for all APT units.

Dated 24 September 2006

David Gonski AO

President of the Sitting Panel

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Schedule 1 - Glossary

Act means Corporation Act 2001 (Cth).

Alinta means Alinta Limited, its related bodies corporate and its associates.

AGL means the Australian Gas Light Company.

APT means Australian Pipeline Trust.

associate has the meaning given to that term by sections 12, 15 and 16 of the Act with the modification that in sub-paragraph 12(2)(a)(ii) the expression “a body corporate” is replaced by the expression “an entity” and “entity” has the meaning given in section 64A of the Act.

MIA means the Merger Implementation Agreement dated 22 June 2006 between Alinta, AGL, AGL Energy Limited and Alinta Mergeco Limited.

Parties means Alinta and AGL and their associates.

prescribed occurrences means the occurrences set out in section 652C of the Act.

Sale Units means Alinta's 10.25% holding in APT acquired on and between 16 and 22 August 2006 (inclusive), and units in APT acquired by Alinta under the placement bookbuild conducted by APT on 31 August 2006 and 1 September 2006.

Schemes means proposed schemes of arrangement between Alinta Limited and AGL.

Tax Law means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) or any other law of the Commonwealth relating to taxation law.