



# Issues Paper

## PROPOSED HAULAGE CONTRACT

BETWEEN  
ALINTAGAS NETWORKS PTY LTD AND  
ALINTAGAS SALES PTY LTD

9 March 2001



# PROPOSED HAULAGE CONTRACT BETWEEN ALINTAGAS NETWORKS PTY LTD AND ALINTAGAS SALES PTY LTD

## ISSUES PAPER FOR DISCUSSION

09 March 2001

### 1 BACKGROUND

On 28 February 2001, AlintaGas Limited submitted to the Regulator a proposed contract (“**Haulage Contract**”) between AlintaGas Networks Pty Ltd (“**AlintaGas Networks**”) and AlintaGas Sales Pty Ltd (“**AlintaGas Sales**”) for access to haulage services provided by means of the Mid-West and South-West gas distribution systems.

The Haulage Contract is necessary to ensure that AlintaGas Sales has in place contractual rights to have gas delivered to existing and new consumers throughout the mid-west and south-west areas of Western Australia.

The Regulator considers that the proposed Haulage Contract constitutes an Associate Contract under section 7.1 of the National Third Party Access Code for Natural Gas Pipeline Systems (“**Code**”). Accordingly, AlintaGas Sales and AlintaGas Networks may not enter into the proposed Haulage Contract without first obtaining the approval of the Regulator.

The Regulator is required to approve the Haulage Contract unless he considers it would be likely to have the effect of substantially lessening, preventing or hindering competition in a market. For the general information of readers, an overview of the relevant provisions of the Code relating to Associate Contracts is set out in Annexure 1 to this issues paper.

Under the proposed Haulage Contract, AlintaGas Networks would supply AlintaGas Sales with services equivalent to Reference Services A, B1, B2 and B3 under its Access Arrangement for its gas distribution systems, at tariffs that may be other than the corresponding Reference Tariffs. Accordingly, under section 7.3 of the Code (discussed below), the Regulator is required to conduct public consultation.

In the course of conducting public consultation, the Regulator may, but is not obliged to, make public parts of the Haulage Contract. The Regulator has decided to release the proposed Haulage Contract but not the schedules to the contract which set out the discounted tariffs. AlintaGas has claimed that the schedules contain information of a confidential and commercially sensitive nature.

#### **Submissions**

Submissions from members of the public are invited in regard to the proposed Haulage Contract and should be addressed to:

Mr Robert Pullella  
Office of Gas Access Regulation  
6<sup>th</sup> Floor  
197 St Georges Terrace  
PERTH WA 6000

or email:

Robert\_Pullella@offgar.wa.gov.au

Submissions must be received by the Regulator no later than **5:00 PM on 3 April 2001**.

All submissions to the Regulator regarding the proposed Haulage Contract should clearly identify any issues and state reasons for any concerns. A copy of the Haulage Contract is available on the OffGAR website or may be obtained at a fee of \$20 including GST by contacting Mr Pullella on (08) 9213 1944.

In order to assist in the identification of provisions of the proposed Haulage Contract which differ from the Access Arrangement, material differences which the Regulator has identified as at the date of this issues paper are summarised in Annexure 2 of this paper. However, the summary is not intended in any way to be a substitute for any detailed review of the proposed Haulage Contract. The summary is provided for general informative purposes only. Persons wishing to make submissions should satisfy themselves as to the differences between the Access Arrangement and the proposed Haulage Contract before making any submission.

In general, all submissions from interested parties will be treated as in the public domain and placed on the OffGAR web site. The receipt and publication of any submission lodged for the purposes of the Code shall not be taken as indicating that the Regulator has formed an opinion as to whether or not any particular submission contains any information of a confidential nature.

Where an interested party wishes to make a submission in confidence, it should clearly indicate the parts of the submission in respect of which confidentiality is claimed. The Regulator will consider any claim of confidentiality in accordance with the provisions of Chapter 7 of the Code.

## **2 RELEVANT PROVISIONS OF THE CODE**

Sections 7.1 to 7.6 of the Code deal with Associate Contracts, specifying the circumstances in which the Regulator may approve or not approve an Associate Contract, the need for public consultation in assessing the Associate Contract, time limits for carrying out the assessment process and reporting requirements. A summary of the relevant provisions is set out in Annexure 1.

Briefly, the Regulator may not refuse to approve an Associate Contract unless he considers that it would have or would be likely to have the effect of substantially lessening, preventing or hindering competition in a market. Unless services are to be provided at the relevant Reference Tariff, the Regulator must conduct such public consultation as he considers appropriate before forming a view.

Where public consultation is conducted, the Associate Contract is deemed to have been approved if the Regulator does not report otherwise within 49 days after the Associate Contract is submitted. The time taken to answer any request made by the Regulator to the Service Provider for additional information required to assess the Associate Contract will add to the 49-day period.

In assessing the proposed Haulage Contract, the Regulator is conducting public consultation as the proposed Haulage Contract provides for the supply of services at tariffs other than the Reference Tariffs.

### **3 DIFFERENCES IN THE HAULAGE CONTRACT**

#### **3.1 NON-TARIFF ISSUES**

The proposed Haulage Contract differs in a number of respects from the provisions of the Access Arrangement and the General Terms and Conditions for Reference Services. Differences regarding terms and conditions which the Regulator has noted are set out in Annexure 2 to this issues paper. The Regulator notes that many of the differences appear to be minor.

Comment is sought on the following issues:

- would the differences in any particular clauses give AlintaGas Sales a material competitive advantage over other users of the AlintaGas gas distribution systems?; and
- would the differences taken as a whole give AlintaGas Sales such an advantage?

Submissions should identify those clauses of the proposed Haulage Contract that are of concern.

#### **3.2 TARIFF ISSUES**

##### **AlintaGas Proposal**

Under clause 15 of the proposed Haulage Contract, AlintaGas Sales may pay AlintaGas Networks either the Reference Tariff for the relevant service or a different tariff. The Haulage Contract does not specify circumstances in which a tariff different to the Reference Tariff may be applied.

Registers of delivery points attached as schedules to the Haulage Contract will specify the tariffs applying to all current contracts held between AlintaGas Sales and other parties for the sale of gas.

AlintaGas Ltd has claimed confidentiality under section 7.11 of the Code in respect of the information contained in the registers forming schedules to the Haulage Contract. The Regulator has not yet reached a conclusion in respect of whether disclosure of the information the subject of the claim would unduly harm AlintaGas Networks or AlintaGas Sales legitimate business interests. However, it is presently considered appropriate to at least

disclose that the registers indicate, as AlintaGas Ltd has confirmed in separate correspondence to the Regulator, that AlintaGas Sales would pay a tariff less than the relevant Reference Tariff for 15 delivery points to which Reference Service A applies and 9 delivery points to which Reference Service B1 applies. The differences are in some cases substantial.

In correspondence to the Regulator separate from the proposed Haulage Contract, AlintaGas Ltd has advised that the discounted haulage tariffs will be applied to the delivery points where the contracted retail price of gas sold by AlintaGas Sales to consumers is too low to accommodate the relevant Reference Tariff. The contracts at issue were purportedly entered into prior to the Regulator's approval of the Access Arrangement.

AlintaGas Ltd has also indicated, in correspondence to the Regulator separate from the proposed Haulage Contract, an intention to either discontinue the tariff discount at the end of the term of the current contracts<sup>1</sup> or to continue to offer the discount. In the latter case, AlintaGas Ltd has indicated that the same discount would be offered by AlintaGas Networks to any User, other than AlintaGas Sales, which supplied the relevant consumer. However, it is not clear how those Users would be able to determine what that discount is if the schedules or relevant parts thereof are not disclosed to the relevant Users in some way.

#### *Tariff Considerations in Assessment of the Haulage Contract*

In assessing the Haulage Contract, the Regulator will consider whether AlintaGas Sales may obtain some competitive advantage in the retail sale of gas, through its ability to pay tariffs less than the Reference Tariffs for distribution services.

An important matter in carrying out the assessment will be definition of the relevant market for the purposes of section 7.1 of the Code. As a preliminary view, the Regulator considers that the market is likely to be the market for the retail sale of natural gas in Western Australia.

Comment is sought on whether the relevant market for the purposes of the Regulator's assessment should be defined as:

- the market for the retail sale of natural gas in Western Australia;
- the market for the retail sale of natural gas in Australia;
- the market for the retail and/or wholesale sale of natural gas in Western Australia;
- the market for the retail and/or wholesale sale of energy in Western Australia;
- the market for the retail and/or wholesale sale of energy in Australia; or
- some other market.

To assist in the preparation of any comments regarding the tariffs AlintaGas Sales may pay, the Regulator considers it is appropriate to set out some background observations in this issues paper.

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<sup>1</sup> Current contracts to which discounts are to apply have expiry dates that range from March 2001 to June 2005.

It is noted that payment by AlintaGas Sales of discounted distribution tariffs may not in itself provide AlintaGas Sales with a competitive advantage in the retail gas market. For a given retail price, a discount to a distribution tariff would have the effect of transferring revenue from AlintaGas Networks to AlintaGas Sales. The total revenue to the two corporations taken as a whole should remain the same. Total profit for the two corporations should also remain the same unless there is some advantage to be gained from the transfer of revenue, such as reduction of total taxation liabilities. In the absence of any such or other advantage, the payment by AlintaGas Sales of a discounted distribution tariff would not alter AlintaGas Sales' ability to offer a lower retail price of gas while maintaining a given level of group profitability.

However, a potential advantage to AlintaGas Sales of discounted tariffs may arise as a result of an increase in AlintaGas Sales' ability to reduce its retail prices to a level equal to or below the costs faced by competitors without obviously reducing costs below its avoidable cost of supplying gas. This may enable undercutting of the prices of other gas retailers in order to secure market share, albeit at a temporary sacrifice of profit. As has recently been demonstrated,<sup>2</sup> in some circumstances price cutting may contravene the *Trade Practices Act 1974* (Commonwealth) ("TPA").

Conduct of this sort may potentially affect competition if competitors of AlintaGas Sales are unable to match AlintaGas Sales' reduced prices, which may occur if they do not have access to substantial group resources.

Comment is sought on whether:

- there is any real potential for AlintaGas Sales to engage in conduct in relation to pricing which may potentially substantially lessen competition; and
- whether any such potential should be considered by the Regulator.

The Regulator notes AlintaGas Ltd has represented that future tariff discounts offered by AlintaGas Networks to AlintaGas Sales (that is, after expiry of the existing contracts) would also be offered to other Users of the AlintaGas gas distribution systems.<sup>3</sup> If this representation is binding upon AlintaGas Networks, then this may eliminate any concern regarding any increased ability of AlintaGas Sales to offer discounts on the retail price of gas without being engaged in actions that may be construed as potentially anti-competitive conduct.

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<sup>2</sup> *Australian Competition and Consumer Commission v Boral Limited* [2001] FCA 30.

<sup>3</sup> Transmittal letter for the proposed haulage contract, 27 February 2001.

In view of the above, the Regulator will consider matters including the following in relation to the provision in the Haulage Contract for AlintaGas Networks to provide services to AlintaGas Sales at tariffs other than the Reference Tariffs.

Comment is sought on the following issues:

- are there advantages to AlintaGas Ltd through use of discounted distribution tariffs to transfer revenue from AlintaGas Networks to AlintaGas Sales?;
- would any such advantages lessen, prevent or hinder competition in the market, however that is defined?;
- could representations made by AlintaGas Ltd to the Regulator that discounted distribution tariffs would be available to Users other than AlintaGas Sales be binding upon AlintaGas Networks?;
- should discounted distribution tariffs be made public?;
- if representations made by AlintaGas Ltd to the Regulator that discounted distribution tariffs would be available to Users other than AlintaGas Sales are not binding upon AlintaGas Networks, then is there any material advantage to AlintaGas Sales through an increased ability to offer discounts on the retail price of gas, which might not be possible for competitors?; and
- could any such advantage have the effect of substantially lessening, preventing or hindering competition in the market, however that is defined?

# ALINTAGAS NETWORKS PTY LTD/ALINTAGAS SALES PTY LTD

## PROPOSED HAULAGE CONTRACT

### ANNEXURE 1

#### Assessment and Approval of Associate Contacts

##### What is an associate contract?

Section 7.1 of the Code provides that a Service Provider must not enter into an Associate Contract without first obtaining the approval of the Relevant Regulator. The Code defines an Associate Contract as:

- (a) a contract, arrangement or understanding between the Service Provider and an Associate in connection with the provision of a Service; or
- (b) a contract, arrangement or understanding between the Service Provider and any person in connection with the provision of a Service which provides a direct or indirect benefit to an Associate and which is not an arm's length transaction.

An Associate Contract under the Code includes contracts, arrangements and understandings. This is a very broad classification. It includes variations to contracts, as well as those arrangements and understandings which are not in writing or executed as a formal agreement.

##### Code requirements

Sections 7.1 to 7.6 of the Code deal specifically with the approval of Associate Contracts.

Section 7.1 provides:

*“A Service Provider must not enter into an Associate Contract without first obtaining the approval of the Relevant Regulator. The Relevant Regulator must not refuse to approve a 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.”*

Section 7.2 provides:

*“If an Associate Contract provides for the supply of Services at the Reference Tariff the Relevant Regulator may make a decision under section 7.1 without conducting public consultation.”*

Section 7.3 provides:

*“In all other cases, the Relevant Regulator must, prior to making a decision under section 7.1, conduct such public consultations as it considers appropriate ...”*

Section 7.2 gives the Regulator discretion as to whether to conduct public consultation where supply of Services is at the Reference Tariff. In all other cases, under section 7.3 the

Regulator must conduct such public consultation as it considers appropriate before making its decision.

Section 7.4 provides:

*“The Relevant Regulator is deemed to have approved an Associate Contract if it does not notify the Service Provider that it does not approve the Contract within:*

- (a) 21 days after the day on which the Service Provider’s application to enter into the Associate Contract was received by the Relevant Regulator; or*
- (b) if, within that 21 day period, the Relevant Regulator notifies the Service Provider that it requires additional information from the Service Provider to consider the application – the period of 21 days after the day on which the Service Provider’s application to enter into the Associate Contract was received by the Relevant Regulator plus the number of days in the period commencing on the day on which the Relevant Regulator gave notice to the Service Provider and ending on the day on which the Relevant Regulator receives the additional information from the Service Provider.”*

Section 7.5 provides:

*“If the Relevant Regulator conducts a public consultation in relation to an Associate Contract the references in clause 7.4 to 21 days shall be read as references to 49 days.”*

In essence, the Regulator initially has 21 days in which to make its decision. This period is extended where it requires additional information from the Service Provider (section 7.4). Similarly, the time period is extended where the Regulator conducts public consultation (section 7.5). A request for additional information under section 7.4 adds to the time extension under section 7.5 – that is, where there is public consultation and a request for additional information, the time period allowed for the Regulator is 49 days *plus* the number of days the Service Provider takes to supply the requested information.

Section 7.6 provides:

*“A decision by the Relevant Regulator not to approve an Associate Contract is subject to review by the Relevant Appeals Body under the Gas Pipelines Access Law.”*

### **Substantial lessening of competition**

Under section 7.1 of the Code, the Regulator cannot refuse to approve a proposed Associate Contract unless he 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.

Notwithstanding the need to define the relevant market (or markets) affected by the Associate Contract, the Regulator is required to assess whether a *substantial* lessening, preventing or hindering of competition would be caused through the Associate Contract.

A key reason for being concerned with Associate Contracts is that they have the potential to confer competitive advantages to the entities involved. This may be the flow-on effect of stifling competition in a market. For example, if the gas retailing arm of a service provider

were to always receive discounted transportation tariffs on the service provider's distribution system, then competition from other non associate retailers may be stifled if they too do not have access to the discounted tariffs.

However, it is well recognised that vertical integration between firms may yield significant benefits to consumers through economies of scale or scope. Hence, a prohibition on all such arrangements and Associate Contracts would be inappropriate. Only those Associate Contracts that would have the effect, or would be likely to have the effect, of **substantially** lessening, preventing or hindering competition are prohibited.

The meaning of the word "substantial" has received considerable attention in the context of the *Trade Practices Act 1974* and mergers between companies. Section 50 of the *Trade Practices Act* prohibits acquisitions of shares or assets which would have the effect or would be likely to have the effect, of substantially lessening competition in a substantial market in Australia, in a State or Territory.<sup>4</sup>

Considerations under the *Trade Practices Act* give the Regulator the basis for interpreting the term "substantially" in the phrase "substantially lessening, preventing or hindering competition in a market."

The word substantial can be the subject of differing interpretations in different contexts and in relation to other sections of the TPA. In the past, it has been interpreted as meaning "real or of substance" and sometimes as "large or weighty". The Explanatory Memorandum to the *Trade Practices Legislation Amendment Bill 1992* clarifies this issue by stating:<sup>5</sup>

*The term "substantial lessening of competition" is used widely through the Principal Act. It is here intended to mean an effect on competition which is real or of substance, not one which must be large or weighty.*

This was further clarified by the Government during the Bill's passage through the Senate:<sup>6</sup>

*In signifying its intention that that word as now proposed to be used in s. 50 should bear the meaning "real or of substance", the Government intends that the test should apply to effects on competition which are not merely discernible but which are material in a relative sense in the impact they may have upon effective competition in the market place.*

Hence, the threshold in section 7.1 of the Code when referring to a substantial lessening of competition, would appear to be a relative one.

In analysing whether a merger would be likely to have the effect of substantially lessening competition in a substantial market, sub-section 50(3) of the *Trade Practices Act* requires regard to be had to a non-exhaustive list of factors. Some of these factors may be relevant to the consideration of the effect of a proposed Associate Contract on competition:

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<sup>4</sup> A key difference between section 7.1 of the Code and section 50 of the Act is the latter focuses on a "substantial lessening of competition in a **substantial** market". Consideration for Associate Contracts is on a "substantial lessening of competition in a market".

<sup>5</sup> Trade Practices Legislation Amendment Bill 1992: Explanatory Memorandum, para 12, p 4.

<sup>6</sup> Hansard, 10 December 1992, p 4776.

- the height of barriers to entry to the market;
- the level of concentration in the market;
- the degree of countervailing power in the market;
- the likelihood that the Associate Contract would result in the associate being able to significantly and sustainably increase profit margins;
- the extent to which substitutes are available in the market, or are likely to be available in the market;
- the dynamic characteristics of the market, including growth, innovation and product differentiation; and
- the nature and extent of vertical integration in the market.

### **Market definition**

Section 7.1 of the Code requires that the assessment of a substantial lessening, preventing or hindering of competition be applied to “a market”. Properly defining the particular market in question also serves the purpose of focussing the analysis of competitive effects.

The Code does not set out a definition of a market, nor does it establish how the dimensions of a particular market are to be established. Experience under the TPA may be useful here.

It is generally accepted that a market has four dimensions:

- product;
- geographic;
- functional; and
- time.

Applying these concepts to natural gas, the product market may be: the retailing of gas to end customers, the transportation of gas through regional pipelines (i.e. competition between regional pipelines) and/or the wholesale market in Western Australia. These markets can then be defined in terms of their geographic dimension – that is, what is the area or areas that the product is supplied to and to which consumers can practically turn.

Consideration of the functional market requires identification of the vertical states of production and/or distribution which comprise the relevant area of competition. An issue for the Regulator is whether the Service Provider and Associate operate in different functional markets, such as network operator and retailer.

The Australian Competition and Consumer Commission (“ACCC”) has indicated in its Merger Guidelines that where there are overwhelming efficiencies of vertical integration between two or more stages, it would be inappropriate to define separate functional markets.<sup>7</sup>

The ACCC has also indicated that the time dimension of the market refers to the period over which substitution possibilities should be considered. This is in the context of mergers between companies. The ACCC considers substitution possibilities over the longer term (though still in the foreseeable future) that will effectively constrain the exercise of significant market power by the merged firm.<sup>8</sup>

If this approach were adopted, the assessment of the competitive effects of an Associate Contract would be in the context of the “market” having the opportunity to “settle/adjust” to the contract.

### **Submissions to the Regulator**

This attachment has provided background information on Code requirements for Associate Contracts. It is intended that this background information should assist those who choose to make a submission to the Regulator on the proposed Associate Contract. The Regulator’s obligations under section 7.1 of the Code have been specified and this has introduced issues that the Regulator will consider in assessing any proposed Associate Contract.

Similarly, the background information has also interpreted particular terms in section 7.1 of the Code. Again, this should assist those who make submissions to the Regulator as it provides an indication of the Regulator’s obligations.

Submissions to the Regulator should attempt to address the matters discussed above, plus others that may be considered relevant.

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<sup>7</sup> Australian Competition and Consumer Commission, *Merger Guidelines*, June 1999, p 38.

<sup>8</sup> Australian Competition and Consumer Commission, *Merger Guidelines*, June 1999, p 40.

**ALINTAGAS NETWORKS PTY LTD/ALINTAGAS SALES PTY LTD**

**PROPOSED HAULAGE CONTRACT**

**ANNEXURE 2**

**Differences Between the Proposed Haulage Contract and the Access Arrangement  
General Terms and Conditions for Provision of Reference Services**

<b>Haulage Contract Provision</b>	<b>Access Arrangement Provision</b>	<b>Comments</b>
Clause 3	Clause 1 of Schedules 4, 5 and 6	<p>Under the Clause 1 of Schedules 4, 5 and 6 of the Access Arrangement, a haulage contract will be of a duration of one year or more.</p> <p>Clause 3 of the Haulage Contract relates to the duration of the contract. The Haulage Contract between AlintaGas Networks and AlintaGas Sales is not for any defined period and may therefore be terminated after a period of less than one year, or may be continued indefinitely.</p>
Clause 4		<p>Under the Haulage Contract, AlintaGas Networks would provide distribution services to particular delivery points for a period commencing on a designated <i>start date</i> and ending on a designated <i>end date</i>.</p> <p>Clause 4 of the Haulage Contract provides a mechanism for bringing forward the end date for the distribution service to a particular delivery point. There is no similar clause in the Access Arrangement.</p>

<b>Haulage Contract Provision</b>	<b>Access Arrangement Provision</b>	<b>Comments</b>
Clause 6		<p>The Haulage Contract specifies a mechanism for keeping a register of delivery points. The register constitutes a schedule (or schedules) to the Haulage Contract and specifies information for each delivery point including:</p> <ul style="list-style-type: none"> <li>• the Reference Service that applies to the delivery point;</li> <li>• the physical location of the delivery point;</li> <li>• the receipt point or points at which gas is delivered into the relevant sub-network for transportation to the delivery point;</li> <li>• the start date for the service;</li> <li>• the end date for the service; and</li> <li>• other relevant parameters of the particular Reference Service being provided.</li> </ul> <p>The register also includes a specification of the tariff for the service, if the tariff differs from the Reference Tariff.</p> <p>There is no similar provision for the keeping of a register in the Access Arrangement.</p>
Paragraph 6(4)(h)	Sub-paragraphs 21(3)(a)(iv) and 22(3)(a)(iii)	<p>Paragraph 6(4)(h) of the Haulage Contract specifies that, for Reference Services A and B1, the register of delivery points must include specification of the period over which any user-specific delivery facilities are amortised. In a letter of transmittal for the proposed haulage contract, AlintaGas indicated that the period of amortisation would typically be set at 20 years.</p> <p>The Access Arrangement provides for amortisation over the lesser of the duration of the haulage contract and the economic life of the User Specific Delivery Facilities, which may be other than twenty years.</p>

<b>Haulage Contract Provision</b>	<b>Access Arrangement Provision</b>	<b>Comments</b>
Clause 7	Clauses 17 and 19 and Chapter 6	<p>Clause 7 of the Haulage Contract sets out a mechanism for dealing with any request by AlintaGas Sales to increase the contracted peak rate for a delivery point to which Reference Service A or B1 applies and to extend the end date for a delivery point for any Reference Service. It is subject to the provisions of clauses 17, 19 and the whole of chapter 6 (Queuing Policy) of the Access Arrangement.</p> <p>Under the Access Arrangement, AlintaGas Sales will be required to submit an application in the same way as other Users and will be subject to the Queuing Policy.</p>
Clause 8	Clause 10	<p>Clause 8 of the Haulage Contract sets out detailed provisions regarding interconnection of the distribution system and an interconnected pipeline.</p> <p>Clause 10 of the Access Arrangement merely states what an interconnection service is. The notes that follow clause 10 of the Access Arrangement set out the types of matters with which an interconnection contract might be expected to deal. The provisions of clause 8 of the Haulage Contract appear to comply with the note following clause 10. It should be noted that any right to reimbursement of AlintaGas Networks by AlintaGas Sales under clause 8 (where AlintaGas Networks is liable for any penalty or charge as a result of the actions of AlintaGas Sales) is subject to AlintaGas Networks acting as a prudent pipeline operator.</p> <p>AlintaGas claims the need for increased detail in the Haulage Contract became apparent during negotiations for interconnection with the Parmelia Pipeline.</p>
Sub-clause 13(4)	Clause 3 of schedule 6	<p>Sub-clause 13(4) of the Haulage Contract provides for agreement between the parties to a delivery point pressure different to 7 kPa for Services B2 and B3. Clause 3 of schedule 6 of the Access Arrangement provides for delivery of gas at standard nominal pressures not exceeding 7kPa. Thus, under the Haulage Contract, AlintaGas Networks and AlintaGas Sales may agree to a pressure in excess of 7 kPa.</p>

<b>Haulage Contract Provision</b>	<b>Access Arrangement Provision</b>	<b>Comments</b>
Sub-clause 14(1)	Clause 5 schedule 4	<p>Sub-clause 14(1) of the Haulage Contract specifies AlintaGas Networks' obligations with regard to reporting of information for deliveries under Reference Service A. AlintaGas Networks must report particular types of information (relating to gas quantity, flow rates, quality and pressure) to AlintaGas Sales at least 12 times yearly, at 30-day intervals. Clause 5 of schedule 4 of the Access Arrangement does not make provision for reporting of information. The Haulage Contract thus provides for more reporting of information to AlintaGas Sales than applies to a User of Reference Service A under the Access Arrangement.</p> <p>Under the Access Arrangement, ancillary services may be acquired under clauses 13 and 14, which may be subject to an additional charge, unlike under the Haulage Contract.</p> <p>AlintaGas Ltd states that additional requirements for reporting of information are a result of discussions with AlintaGas Sales regarding its requirements.</p>
Sub-clause 14(2)	Clause 5 of schedule 5	<p>Sub-clause 14(2) of the Haulage Contract specifies AlintaGas Networks' obligations with regard to reporting of information for deliveries under Reference Service B1. AlintaGas Networks must report particular types of information (relating to gas quantity, flow rates, quality and pressure) to AlintaGas Sales at least 12 times yearly, at 30-day intervals. Clause 5 of schedule 5 of the Access Arrangement does not describe the metering information that must be reported to the User, although it does provide for a reporting interval of approximately every 35 days.</p> <p>AlintaGas Ltd states that the additional requirements for reporting of information are a result of discussions with AlintaGas Sales regarding its requirements, and that the different reporting frequency is merely a refinement of the Access Arrangement.</p>

<b>Haulage Contract Provision</b>	<b>Access Arrangement Provision</b>	<b>Comments</b>
Sub-clause 14(3)	Clause 4 of schedule 6	<p>Sub-clause 14(2) of the Haulage Contract specifies AlintaGas Networks' obligations with regard to reporting of information for deliveries under Reference Services B2 and B3. AlintaGas Networks must report particular types of information (relating to gas quantity and quality) to AlintaGas Sales every 90 days. Clause 4 of schedule 6 of the Access Arrangement provides only that AlintaGas Networks must provide information on the quantity of gas to Users approximately 4 times each year at intervals of approximately 100 days</p> <p>AlintaGas Ltd states that the additional requirements for reporting of information are a result of discussions with AlintaGas Sales regarding its requirements, and that the different reporting frequency is merely a refinement of the Access Arrangement.</p>
Clause 15	Schedules 4, 5 and 6	<p>Clause 15 of the Haulage Contract provides that the tariffs at which AlintaGas Networks will supply the services to AlintaGas Sales may vary from the Reference Tariffs that apply under the Access Arrangement to the corresponding Reference Services.</p>
Clause 19	Clause 11 of schedule 7	<p>Clause 19 of the Haulage Contract provides for AlintaGas Networks to supply metering data to AlintaGas Sales within one business day of the meter reading where the meter is read by means of telemetry, and within three days of the meter reading where the meter is not read by means of telemetry. Clause 11 of schedule 7 of the Access Arrangement merely provides for data to be provided to a User within 5 business days of the meter reading regardless of how the meter is read.</p>
Clause 20	Clause 12 of schedule 7	<p>Clause 20 of the Haulage Contract sets out detailed provisions for dealing with metering uncertainty. Sub-clause 20(1) is essentially the same as clause 12 of schedule 7 of the Access Arrangement. Sub-clauses 20(2) – (10) are new and specify in detail the actions to be taken in the event of inaccurate meter readings, including the calculation or estimation of delivered quantities of gas and the remedy of underpayments or overpayments. The Access Arrangement does not contain similar provisions.</p> <p>AlintaGas Ltd claims these merely reflect common practice in the industry.</p>

<b>Haulage Contract Provision</b>	<b>Access Arrangement Provision</b>	<b>Comments</b>
Sub -clauses 21(2) to 21(4)	Clause 13 of schedule 7	<p>Sub-clauses 21(2) to 21(4) of the Haulage contract make provision for AlintaGas Networks to determine the higher heating value of gas delivered to a delivery point, where that delivery point is located in a sub-network with more than one gas receipt point.</p> <p>There are no similar provisions in the Access Arrangement. A User would presumably be bound by clause 13 of schedule 7 of the Access Arrangement, which provides for AlintaGas Networks to use gas quality data from equipment at one or more other locations to estimate gas quality at a delivery point in order to calculate energy flow rates for and quantities of gas delivered to a delivery point. In the absence of manifest error, the rates and quantities so calculated bind both parties to a Haulage Contract.</p> <p>AlintaGas Ltd claims the provisions are necessary due to the likelihood of interconnection with the Parmelia Pipeline and the potential for blending of gases within the gas distribution systems.</p>
Clause 23	Clause 15 of schedule 7	<p>Under clause 23 of the Haulage Contract, invoices will be provided from AlintaGas Networks to AlintaGas Sales at intervals of approximately 30 days. Under clause 15 of schedule 7 of the Access Arrangement, invoices will be provided to Users at intervals of approximately 35 days.</p> <p>AlintaGas Ltd claims that the difference in timing of invoicing is a refinement of the Access Arrangement provision.</p>
Clause 27	Clause 19 of schedule 7	<p>Under clause 27 of the Haulage Contract, there is a mechanism to determine the price payable at a delivery point where the price is a Reference Tariff and the Haulage Contract continues past the current Access Arrangement Period. The mechanism is the same as applies under the clause 19 of schedule 7 of the Access Arrangement. However, no mechanism is specified to address the situation where the price payable under the Haulage contract is not the Reference Tariff.</p>
Clause 28	Clause 20 of schedule 7	<p>Clause 20 of schedule 7 of the Access Arrangement provides that a haulage contract for a Reference Service must specify certain matters in respect of interruptibility. Clause 28 of the Haulage Contract appears to be merely an implementation of the requirements under clause 20. Clause 28 does not appear unduly favourable to either AlintaGas Networks or AlintaGas Sales.</p>

<b>Haulage Contract Provision</b>	<b>Access Arrangement Provision</b>	<b>Comments</b>
Clauses 59 and 60	Clause 48 of schedule 7	<p>Under clause 59 of the Haulage Contract, AlintaGas Sales is prevented from assigning any right, interest or obligation. Clause 60 of the Haulage Contract deals with assignment by AlintaGas Networks. AlintaGas Networks may sign all or part of its rights or obligations with the prior written consent of AlintaGas Sales. AlintaGas Sales may only withhold its consent on reasonable commercial or technical grounds.</p> <p>Under clause 48 of schedule 7 of the Access Arrangement, neither party to a haulage contract may assign any right, interest or obligation.</p>
Clauses 61 and 62	Clause 49 schedule 7	<p>Clause 49 of schedule 7 of the Access Arrangement states that the haulage contract must specify the representations and warranties which the User and AlintaGas Networks make to each other in entering into the haulage contract. Clauses 61 and 62 set out the representations and warranties made by AlintaGas Sales and AlintaGas Networks respectively.</p> <p>The representations and warranties made by each party mirror those made by the other, except that AlintaGas Networks warrants that it controls the AlintaGas gas distribution systems and that it has in place all necessary licences, leases and easements to construct, operate and maintain delivery points and other facilities for which it is responsible under the Haulage Contract. The other representations and warranties are what may be expected in any commercial agreement, dealing with matters including compliance with applicable laws, necessary authorisations, outstanding court actions and agency/trustee status. These do not appear unduly favourable to either AlintaGas Networks or AlintaGas Sales with respect to each other or third parties.</p>
Clause 64	Clause 51 schedule 7	<p>Clause 51 of schedule 7 of the Access Arrangement states that the haulage contract must specify the procedure and means for delivery of all notices. Clause 64 of the Haulage Contract specifies this information.</p>
Clause 66	Clause 53	<p>Clause 53 of schedule 7 of the Access Arrangement permits that additional terms and conditions may be attached to a haulage contract for a Reference Service. Clause 66 of the Haulage Contract sets out additional terms and conditions. The additional general terms and conditions set out in clause 66 appear reasonable, relating to matters such as waiver and delay, applicable law, stamp duty, severance and so on.</p>

<b>Haulage Contract Provision</b>	<b>Access Arrangement Provision</b>	<b>Comments</b>
Clause 67		Clause 67 of the Haulage Contract relates to interpretation and definitions. It should be noted that the definitions of “direct damage”, “force majeure”, “indirect damage” and “prescribed interest rate”, which have the potential to be significant in terms of any anticompetitive effects of the haulage contract, are the same as in the Access Arrangement.