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Mr Alistair Butcher  
A/Director Electricity Access  
Economic Regulation Authority  
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Dear Alistair

**DEVELOPMENT OF RINGFENCING RULES UNDER THE *ELECTRICITY NETWORKS ACCESS CODE 2004 (WA)***

Alinta is the owner and operator of two power stations in the North West of WA and is constructing a co-generation power station at Pinjarra in the South West of WA with another yet planned for construction at this site, with further power stations on the east coast of Australia and in New Zealand.

Alinta is also an emerging retailer for the WA electricity market with a number of customers scheduled for supply in mid 2005. Alinta will therefore be a considerable user of the Western Power network.

Alinta welcomes the opportunity to respond to the discussion paper issued by the Economic Regulation Authority ("Authority") on the Development of Ringfencing Rules under the *Electricity Networks Access Code 2004 (WA)*.

The Discussion Paper poses a number of questions in relation to the various aspects of Ringfencing obligations and requirements. Alinta has attempted to address its response to the particular question raised by the Authority.

*How effective are Western Power's existing ringfencing arrangements? In what areas, if any, should they be augmented?*

Current experience has shown that the ringfencing arrangements are adequate. However there are a number of areas, as discussed later in this submission, which require further improvement.

*In what ways could Western Power, or another integrated business, cross-subsidise its related businesses?*

*Is there evidence of cross-subsidisation between Western Power's Networks business unit and other businesses?*

There is little visibility to the degree of cross-subsidisation within Western Power, and therefore it is difficult to comment with any degree of certainty.

However an example of potential cross-subsidisation could arise with the amount determined for customer specific contributions to elements of the network infrastructure that are used by all. For instance, if a retailer contributed the entire cost of a substation which the customers of a related business to Western Power derived a benefit, then this would comprise a cross subsidy.

*In what ways could Western Power or another integrated service provider discriminate between Users in the provision of network services (or have in the past)?*

It has been evident to Alinta that the Ancillary Services proposed by the Networks business unit of Western Power for intermittent generation is an example of preferential treatment to its related business.

The Ancillary Services introduce a regime of punitive measures on intermittent generation. However the discriminatory action is caused by the application of these charges only to new intermittent generators entering the market, not the existent generation under the control of the related business units in Western Power. This is an example of a significant barrier to entry for renewable generators in the SWIS.

*In what ways could Western Power, or another integrated service provider, discriminate between Users in the provision of information or inappropriately use confidential customer information (or have in the past)?*

The provision of the total load data for the SWIS is an example of how Western Power discriminates against Users in the provision of information. This information would benefit all independent power producers to assist them in the management of their generation and retail requirements in the future Wholesale Electricity Market. In comparison to the National Electricity Market on the east coast, such information is readily available to all Users.

In regard the inappropriate use of confidential customer information, to Alinta's knowledge this has not previously occurred. However stricter controls are required to ensure that this continues.

*Do Western Power's marketing practices reduce competition in contestable electricity markets?*

*What types of joint marketing activities should ringfencing arrangements seek to control?*

Alinta does not believe that Western Power current marketing practices reduce competition in contestable electricity markets.

Alinta believes that the related networks and other businesses of Western Power should not share marketing staff. This allows the networks business to focus on the marketing of just its services and the generic product benefits. The marketing of retail oriented functions would remain the responsibility of the retail business.

Additionally, to promote competition in the market, Alinta would endorse the suggestion to have the networks business promote to the customer their ability to select the electricity retailer of their choice.

*What are the costs of ringfencing that the Authority should consider in developing ringfencing rules?*

As with the introduction of any new obligation there are costs associated with the establishment of the appropriate processes and controls to ensure ongoing compliance of the ringfencing obligations. This can include:

- Changes to Information Systems to protect customer information
- Relocation costs to segregate networks staff
- Communication and Training of new processes

The ongoing operational costs should be minimal for ring fencing obligations and would be restricted to:

- Training
- Reporting of compliance

*Should the Authority require ringfencing between Western Power's transmission and distribution activities?*

The benefit of further ringfencing transmission and distribution activities provides greater transparency to the market as a whole of the services and charges associated with these activities.

However Alinta recognises that this also could also introduce further cost to the market, and therefore in the interests of prudent cost management, would be happy to consider possible alternatives to achieve the required level of transparency without further separation.

*Should ringfencing rules be drafted to be general in scope but to have the provision for specific rules?*

Alinta endorses the approach for the ERA to draft general principles for ringfencing with the ability to have specific rules for particular circumstances.

*Who are Western Power's network business' "associates" for the purposes of Chapter 13 of the Access Code?*

Alinta concurs with the Authority's assessment of the associate businesses.

*What matters should the Authority have regard to in considering whether to extend ringfencing arrangements to an "associate"?*

*Which of Western Power's network business' "associates" should be subject to some or all of the ringfencing arrangements?*

The Authority should consider the relationship between the Service Provider and any associate business against the overall impact that relationship would have on the market. This will provide a level of pre-emptive protection. Further the Authority could also respond to complaints from market participants on potential problems with the interaction between the Service Provider and the relevant associate business.

All of the associate businesses identified by the Authority have the ability to discriminate against other Users through their close relationship with the networks business. It is therefore appropriate that they all would be subjected to the ringfencing arrangements.

*What is an appropriate separation of the network and other activities of an integrated service provider?*

The responsibility of network service provider is the management and maintenance of the network for all users. The activities that are directly linked to this responsibility should be undertaken by the networks business. These would include:

- Customer Fault Calls;
- Enquiries or complaints regarding the network;
- Connection, disconnection and reconnection;
- Metering;
- Customer Transfers (the initiation of the transfer would still be performed by the Incoming User).
- Managing information relating to the above.

However it is would be feasible given potential volumes the Networks business could utilise the associate retail business to perform the following on its behalf:

- Enquiries or complaints regarding the network'
- Connection, disconnection and reconnection;
- Managing information relating to the above.

*Should an integrated service provider be required to have separate management teams for its monopoly network business and its other businesses?*

*What are the consequences if an integrated service provider were not required to establish separate management teams?*

There are advantages to the establishment of separate management teams for the Networks business at an operational level. However given that the single legal entity will remain, there is scope for a common strategic level management team that is removed from the operational detail to continue.

If separate management teams are not established then the ability of officers of the integrated entity to obtain information relating to a competitor is simplified.

*Should Western Power or another integrated service provider be required to have separate offices for its monopoly network business and its other businesses?*

*What are the consequences if an integrated service provider were not required to establish separate office locations?*

Alinta does not see the benefit, given the additional cost, of requiring its network business to maintain separate offices. However it would expect that there would be sufficient segregation within the existing premises to allow a “virtual” separation. That is the staff of the networks business would be grouped together and located at either one end a shared office or on a separate floor of a building.

Whilst separate locations are not required, failure to establish “virtual” separation readily allows officers of the integrated entity to obtain information relating to a competitor.

*Are the ringfencing rules above appropriate to introduce to separate an integrated service provider’s personnel?*

The ringfencing rules identified by the Authority are appropriate.

*Are ringfencing rules necessary to provide for the separate branding and marketing of an integrated service provider’s businesses?*

*In what ways do separate branding and marketing rules enhance competition in upstream and downstream markets?*

It is not necessary to impose ring fencing rules that provide for the separate branding and marketing of an integrated service provider’s businesses.

*Are ringfencing rules necessary to provide for the separation of an integrated service provider’s information systems for its different businesses?*

*What specific rules should be introduced to ensure that information systems are not inappropriately accessed?*

It is essential that information systems be separated for transactions containing commercially sensitive information for a User. This would include information that relates to contestable customers, however it would not extend to information from support systems such as Payroll or Purchasing.

*Are ringfencing rules required to provide for the separation of any other matters relating to an integrated service provider’s businesses?*

The areas identified by the Authority addresses the principle areas of concern such as separation of cross subsidisation costs and the separation of information. Imposition of further ring fencing rules is possible though it is questionable what benefit would be delivered to the market given the costs associated with implementation of additional rules.

*Are the ringfencing rules and principles specified above appropriate to provide for non-discrimination in the provision of goods and services by an integrated service provider?*

The ringfencing rules identified by the Authority provide for solid foundation. Alinta concurs with the following additional propositions by the Authority:

- That the rules require a Service Provider supply it with current deemed access contracts and associate contracts. Whilst Alinta recognises the advantages of the Service Provider seeking the approval of new or amended deemed access or associate contracts, we would be concerned if this process introduced delays to the overall process.
- That the rules require a Service Provider to provide services to its associates or “other businesses” as per the provisions of the relevant deemed access or associate contracts.
- That the Authority considers the introduction of ringfencing rules that specify the treatment of confidentiality of deemed access or associate contracts.

However Alinta disagrees with the following proposals by the Authority to extend the scope of the ring fencing rules to include:

- The relationship between the Service Provider and the end customer. Though it does acknowledge that the concern of the Authority is valid, and Alinta would not want to see its customers disadvantaged to an associate of the Service Provider in the connection process. To accommodate the concern Alinta suggests that perhaps a reactive mechanism may be simpler to manage. Rather than the review of any service contract with the end customer, the Authority would receive and respond to complaints in this area from customers thus reducing the overall effort.
- Whether restrictions are imposed on the marketing with an associated business. Alinta is not convinced that this is required given other ring fencing provisions. For example offering special tariffs would not be possible given that the Authority is in a position to review the contracts between the Service Provider and the associate businesses.

*Is this approach for developing regulatory accounting and cost allocation procedures appropriate?*

Whilst Alinta appreciates that the Authority is relatively new to the regulation of the Electricity Industry, this was also the case for other regulators from other jurisdictions. Alinta is of the belief that the Authority should utilise the experience from these jurisdictions in the establishment of the regulatory accounting and cost allocation procedures.

Furthermore this procedure provides a level of certainty to the Service Provider in the adoption of procedures that have already been implemented by other businesses and regulators, thus reducing the overall effort required in its implementation, and provides certainty to other Users that the costs have been allocated in a robust fashion. This will facilitate the entry for other Users and assist the development of a competitive electricity market for WA.

*Do the accounting principles above provide an appropriate basis for developing the accounting procedures?*

*What additional principles, if any, should be included?*

The principles listed by the Authority provide a relatively sound starting point, however Alinta reiterates the previous point that the Authority should consider the adoption of the principles employed by other jurisdictions that have implemented regulatory accounting procedures.

*Do the cost allocation principles above provide an appropriate basis for developing the cost allocation procedures?*

*What additional principles, if any, should be included?*

The principles listed by the Authority provide a relatively sound starting point, however Alinta reiterates the previous point that the Authority should consider the adoption of the principles employed by other jurisdictions that have implemented regulatory accounting procedures.

*Is this approach for developing information procedures appropriate?*

The development of appropriate information procedures is a task that the Authority should undertake. There is no restriction on the Authority from drawing on procedures that have been developed in other jurisdictions. Indeed, it is likely participants from those jurisdictions that have interests in the WA market would provide support of such an approach. The Authority is in a position to select a set of information procedures that best matches the principles it intends the Service Provider to adhere to. This approach provides surety to the market that the procedures are equitable.

*Do the information principles above provide an appropriate basis for developing the information management procedures?*

*What additional principles, if any, should be included?*

*Should these information principles be extended to Western Power, in light of sections 2.2(1) and (2) of the Electricity Industry Customer Transfer Code 2004?*

Alinta believes that the principles outlined by the Authority provide an appropriate basis, and that they should be extended to Western Power. The sections of Electricity Industry Customer Transfer Code 2004 referred above are not as comprehensive as the principles proposed by the Authority.

*Do the compliance monitoring and reporting principles above provide an appropriate basis for developing the compliance monitoring and reporting procedures?*

*What additional principles, if any, should be included?*

Alinta recognises the need to have sufficient compliance monitoring processes established, though these processes should avoid any substantive imposition on the Service Provider that is then detrimental to Users as a whole. The compliance monitoring principles proposed by the Authority have the potential to for the implementation of procedures that add significant overhead to the market. Alinta would expect that the Authority would balance this issue in the development of the compliance processes.



*Are the principles above necessary to ensure that breaches of the ringfencing arrangements are appropriately managed?*

*What additional principles should be introduced?*

The principles identified by the Authority are necessary to ensure Users that the ringfencing arrangements are performing satisfactorily. Additional principles should not be required at this stage, though could be reviewed at a later date.

*What matters should the Authority consider in deciding whether particular rules should commence immediately, within 3 months of being placed on the public register or at some other specified date?*

A contestable market is current in operation with over 12,000 customers. To provide customers and competitors sufficient comfort that the networks business is managing confidential and commercially sensitive information and not discriminating to its associate businesses, the immediate implementation of the ringfencing rules is required. There is no benefit to the further delay of this protection mechanism for new entrant retailers.

Should you require any further information on this submission, I can be contacted on 08 9486 3222.

Regards



**Donald Mackenzie**  
**GENERAL MANAGER**