

**POSSIBLE REVIEW OF
CERTAIN REGULATORY
INSTRUMENTS:
RESPONSE PAPER**

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FOREWORD

In August 2007, the Commission published an Issues Paper entitled “Possible Review of Certain Regulatory Instruments” in which the Commission advised that it had taken an *in-principle* decision to – over the next year or so – revamp the NT electricity ring-fencing code and develop some contestable pricing guidelines, notwithstanding regulatory policy developments that may impact on the NT’s electricity market over the same period.

The Issues Paper set out the Commission’s reasoning for this preferred course of action, in order to obtain stakeholder feedback *prior to* the Commission following up on this decision and related matters.

Submissions were received from:

- NT Major Energy Users Group (NTMEU);
- Power and Water Corporation (Power and Water);
- NT Treasury (NTT); and
- A private individual. (The person making this submission has been employed by various electricity entities both in the NT and other Australian jurisdictions. As this submission is being made as a private individual in the interest of promoting informed discussion, the Commission has agreed to the request that the identity of that person remains confidential.)

Following consideration of submissions from interested parties, the Commission confirms its earlier in-principle decision to revamp the NT electricity ring-fencing code. It has however decided to await developments before proceeding with the making of any contestable pricing guidelines.

This paper sets out in more detail the Commission’s reasoning for these decisions, and its proposed next steps.

CHAPTER**1****CURRENT REGULATORY DEFICIENCIES****View expressed in the Issues Paper**

1.1 In its Issues Paper, the Commission noted that current regulatory arrangements in the NT electricity supply industry fall short of the ideal in a number of respects.

System planning and control

1.2 A number of important system control and market administration functions remain within the sole supplier (Power and Water). Notably:

- the responsibilities, accountabilities and powers of the main participants with regard to system planning and reliability – the system controller, Power and Water Generation, Power and Water Networks and the Commission itself – are largely undefined; and
- there is limited recognition regarding the desirability of separating public interest responsibilities from commercial interests.

1.3 The way power system planning and reliability are managed in the NT electricity market gives rise to concerns regarding the operation, planning and reliability of the Territory power system. It may also directly discourage competition.

Retail market and customer protections

1.4 Because competition has failed to develop, customers are exposed to Power and Water's market power. Power and Water is the NT's only generator and retailer. In practice, it remains a vertically-integrated monopoly utility.

1.5 The realities of the commercial environment experienced by contestable customers are therefore far removed from the vision of the competitive market referred to in regulatory policy. These customers only have two options – either accept the terms offered by Power and Water or bypass the supply system. While the Commission is not asserting that this necessarily occurs in the case of Power and Water, customer perceptions can be as important as market realities.

Generation barriers to entry

1.6 Recent developments mean that competition in the NT generation sector is unlikely to emerge in the medium term.

1.7 From a potential generator-entrant's perspective, additional challenges include:

- the nature of the load-following requirements and the out-of-balance settlement arrangements associated with the NT's bilateral contracting framework, as well as the market for ancillary services and the requirements for adequate reserves or standby generation; and
- whether the power system control function would be exercised by Power and Water on a transparent and fair basis to all generators.

Retail barriers to entry

1.8 Currently, there are no publicly observable *de facto* contracts or service level agreements in place between Power and Water's generation and retail arms defining Retail's terms of purchasing of wholesale energy from Generation.

1.9 If a stand-alone retailer was to seek entry into the NT electricity market (or a large contestable customer seek to directly source wholesale power), they face at least two major hurdles:

- trying to understand the exact nature of the bilateral contracting framework currently in place and the equality of regulatory treatment afforded a new retailer (or customer) compared to Power and Water Retail; and
- having sufficient comfort that the ring-fencing processes in place are effective enough to ensure they obtain access to wholesale energy on competitively-neutral commercial terms from Power and Water Generation.

Views in submissions

1.10 The Commission sought views from interested parties as to whether there was any disagreement with the Commission's views regarding the nature and extent of current regulatory deficiencies and their implications for the Commission, and if so why.

1.11 The NTMEU expressed its concern about:

"...the extent and significance of the existing regulatory deficiencies identified by the Issues Paper, noting that many key critical deficiencies can only be addressed at the policy level and unless they are reformed, the issues proposed by the Utilities Commission for rectification (within the existing framework) will have less than effective impacts on the electricity market and on efficient outcomes for consumers."

1.12 The NTMEU's submission highlighted the fact that:

"...system planning, reliability, generation reserves, loss factors and adequacy of new generation capacity are critical for the long-term sustainability of energy supplies in the Northern Territory and for the continued viability of NTMEU members' investments. In many of these areas, it is clear that an independent agency would need to be responsible for ensuring these critical elements are provided (rather than by Power and Water) and ensuring that greater transparency of the detailed implementation arrangements is implemented."

1.13 The NTMEU also noted that:

"The emergence of competition relies just as much on the appearance of competition being possible as it does on the reality that there is a competitive environment which will allow the new entrant a "level playing field".

1.14 While supporting the Commission's identification of the specific regulatory deficiencies in the Issues Paper, the NTMEU submitted that these matters need to be addressed at the policy level.

1.15 Power and Water submitted that:

"Securing long-term gas supplies and commissioning a new power station to provide sufficient capacity are considered by Power and Water to be prudent business planning and investment decisions, rather than acts to construct barriers to entry."

1.16 Power and Water also expressed the view that determining whether or not Power and Water remains a vertically integrated utility is a matter for the NT Government, as shareholder, noting that:

"...legal separation of Power and Water's generation, networks and retail businesses and its franchise and contestable retail businesses is not necessarily a pre-requisite for effective competition in the Territory electricity industry."

1.17 NTT did not specifically address the issues raised by the Commission.

1.18 The private individual agreed with the Commission's views on the nature and extent of current regulatory deficiencies.

Commission's response

1.19 Only Power and Water questioned aspects of the Commission's view regarding barriers to entry in the NT electricity market. Even so, Power and Water's comments did not challenge the extent of the identified barriers to entry, just the extent to which it should be held responsible for such barriers to entry.

1.20 NTMEU questioned whether the Commission was well placed to address any of the identified regulatory deficiencies. The Commission acknowledges that many of the identified deficiencies are outside the Commission's control. Where the best or only solution to any of these deficiencies is policy change, such a solution is a matter for the Government and not the Commission. However, the Commission maintains the view that it can play a role where either:

- the source of any particular deficiency is inadequate use of existing regulatory powers; or
- the symptoms (or impacts) of these deficiencies can be moderated by the exercise of existing regulatory powers.

CHAPTER**2****PROSPECTIVE POLICY DEVELOPMENTS****View expressed in the Issues Paper**

2.1 In its Issues Paper, the Commission noted that, over the last two years, the NT Government has been reviewing the effectiveness of the existing electricity market regulatory regime, and in doing so has identified a number of structural and regulatory barriers to private investment and competition in the NT electricity supply industry.

2.2 While advice available at that time indicated that there was a very real possibility that regulatory jurisdiction for the NT electricity market will migrate to national arrangements any time after mid-2008, the Commission has since become aware that a more extended timeframe is likely (and may be as far away as 2012).

2.3 Given the prospects of regulatory regime change, the Commission acknowledged that it should consider exercising the powers that it currently has only with respect to those current regulatory deficiencies that need to be addressed by NT-specific regulatory instruments. Such matters deserve to be addressed regardless of the regulatory reform in prospect.

2.4 The actions/initiatives that could be undertaken by the Commission to address current deficiencies in the NT electricity market that, by their nature, seem unlikely – at least in the short term – to be overtaken by the NT’s migration to the national electricity regime. These include:

- barriers to entry directly associated with Power and Water’s vertical integration in general, and the lack of legal separation between Power and Water’s networks, generation and retail businesses and between its franchise and contestable retail businesses in particular; and
- the lack of regulatory oversight in the ‘contestable’ market segments in the absence of any alternative supplier to Power and Water.

2.5 In particular, should the Government choose to join the national energy regime, some existing regulatory instruments may continue in place for a time as the NT transitions. Moreover, the national regulatory bodies are unlikely to devote time and resources to NT-specific issues in the short to medium term if existing instruments exist that can be ‘grandfathered’.

2.6 The Issues Paper noted that, in these circumstances, the Commission could be remiss if it continues to defer the exercise of its existing powers in such areas on the grounds that the NT will soon be joining the national regulatory regime.

Views in submissions

2.7 The Commission sought views from interested parties as to whether there was any disagreement with the Commission’s views regarding the nature and extent of

prospective policy developments and their implications for the Commission, and if so, why.

2.8 The NTMEU agreed with the Commission that:

“...there will need to be NT-specific transitional issues that are unlikely to be dealt with by likely changes in the regulatory policy environment (simply by joining the National Electricity Market) or will need to continue in place for a time. That being said the NTMEU agrees with the Commission that it cannot continue to defer the exercise of its existing powers in such areas on grounds that the NT will soon be joining the national regulatory regime. It is noted that the Commission has, hitherto, adopted a ‘light handed’ regulatory approach, which in NTMEU’s view, is inappropriate given the lack of a competitive industry structure and market.”

2.9 The NTMEU submission emphasized the strong belief that the vertically integrated nature of Power and Water’s three businesses of generation, network service provider and retailer must be addressed sooner rather than later. The NTMEU is of the view that the three businesses should be legally separated, with the network service provider physically separated as well, but having the system planning and operation retained within the network business.

2.10 Other key issues that the NTMEU submitted should be addressed include:

- accounting separation (not only necessary but essential) with accounting principles introduced to deal with key issues such as cost allocations between the regulated network and system operation functions and notionally unregulated retail and generation activities;
- provision to enable the Commission to pierce any corporate veils in order to establish that related party or other transactions are established at arms-length, with transparency being of critical importance;
- the need for an effective compliance regime, including specific provisions to engender behaviour changes;
- regulatory oversight over the contestable segments of the industry (generation and retail), in the absence of alternative suppliers to the Power and Water, including regulatory oversight over maximum tariffs and service standards;
- greater transparency of the contestable segments which might include price, service, reliability and other performance information that could be suitably benchmarked against Australian and World Best Practice; and
- clear demarcation of the relationships between the functions of generation and retail within the Power and Water structure with the prices offered by Power and Water Generation to Power and Water Retail being transparent and subject to Commission review.

2.11 Power and Water submitted that:

“...in investigating a possible transition to the national regulatory regime, including modifications required to accommodate Territory-specific circumstances, it is important that all parties’ efforts are coordinated in order to minimise the cost of regulatory reform, administration and compliance, while maximising the reform objectives of competition and efficiency.”

2.12 NTT did not specifically address the issues raised by the Commission, but advised that:

“Treasury is currently examining the merits of adopting the national regulatory regime in the Territory, as the culmination of a major review of the existing electricity supply industry regulatory framework.

The findings are scheduled to be reported to Government in the first quarter of 2008, at which time a decision will be made to commence either incremental reform of the existing regulatory regime, or transition to the national regulatory regime.”

2.13 NTT put forward the view that:

“While the Commission notes that changes could be made to the existing ring fencing arrangements and contestable pricing principles in the short term, with minimal prospect of being overtaken by any transition to the national regime, Treasury contends that consideration of ring-fencing arrangements and contestable pricing principles are integral to the development and implementation of the broader reform program.”

...On this basis, Treasury considers that there may be potential risks and costs associated with the Commission examining specific aspects of the regulatory regime in isolation of the broader reform program.”

2.14 The private individual submitted that:

“I feel it would be remiss of the Commission if it continues to defer the exercise of any of its existing powers in such areas on the grounds that the NT may soon be joining the national regulatory regime under uncertain exemptions.

I feel that the Commission has an obligation to act within the full scope of its powers in all areas of its responsibilities until any other regulatory regime supersedes it and acknowledges that it has acted with too light a hand with the result that competition in the NT Electricity market is nonexistent.

Implementation of a fairer market structure, even if some measures are only interim until a national structure is implemented, will lessen the impact of those changes and if done correctly the market may require no further adjustment.”

Commission’s response

2.15 Only NTT question the wisdom of the Commission embarking on a process of reviewing regulatory instruments “in isolation of the broader reform program”.

2.16 The Commission notes that while there is a prospect that the NT Government could ultimately adopt a broader reform program, there is currently no certainty about this or as to the likely timing of the introduction of changed regulatory arrangements. The Commission further takes into account that issues about possible changes to the broader regulatory arrangements in the NT electricity supply industry have already been under consideration by the NT Government for a number of years without resolution.

2.17 The Commission reiterates its view that addressing some aspects of current regulatory deficiencies in the NT electricity market is likely to be of benefit and is unlikely to be dealt with, or overtaken, by wider regulatory changes in the Territory for the foreseeable future. Moreover, it is appropriate for the Commission to play a role where either the source of any particular deficiency is inadequate use of existing regulatory powers or the symptoms (or impacts) of these deficiencies can be moderated by the exercise of existing regulatory powers.

CHAPTER

3

AVAILABLE REGULATORY POWERS

View expressed in the Issues Paper

3.1 In the Issue Paper, the Commission considered whether it has the capacity to address these NT-specific regulatory deficiencies given its existing powers and functions.

3.2 The main powers available to the Commission are:

- the ring-fencing code, authorised under section 24 of the *Utilities Commission Act* and regulation 2 of the *Utilities Commission Regulations*, which authorises the Commission to make a code relating to ring fencing in a regulated industry; and
- the guidelines-making powers of section 7 of the *Utilities Commission Act* which authorises the Commission to publish guidelines (and statements and reports) relating to the performance of its functions.

3.3 Where any current regulatory deficiencies relate to market conduct discouraging entry by other service providers, the main instrument available to the Commission is its ring-fencing code making powers. On the other hand, where any current regulatory deficiencies relate to market conduct towards end-users in 'contestable' sectors, the main instrument available to the Commission is its guideline-making powers in conjunction with its investigatory powers.

3.4 Hence:

- deficiencies arising because of inadequate operational separation between Power and Water's monopoly and contestable business units could be addressed by strengthening and fine-tuning the ring-fencing code; and
- deficiencies arising because the activities of Power and Water's deregulated 'contestable' businesses still operate with considerable market power could be addressed by exercise of the Commission's guideline-making powers in conjunction with its investigatory powers.

Views in submissions

3.5 The Commission sought views from interested parties as to whether there was any disagreement with the Commission's proposal to undertake a major review of the NT electricity ring-fencing code and to develop certain contestable pricing guidelines, and if so why.

3.6 The NTMEU noted that:

"The Commission's capacity to address the NT specific regulatory deficiencies depends not only on its existing powers and functions, but more importantly, dependent on the policy decisions that are to be taken with respect to the government's approach to transitional issues, the duration they will remain, sunset arrangements, and so on. The

NTMEU notes that the Commission is also constrained to a degree by the government decisions with regard to prices.

3.7 However, the NTMEU agreed with the Commission's proposal to review the ring-fencing code, noting that the issue of 'separate operation' (as opposed to legal separation) needs to be more fully explored.

3.8 With respect to the Commission's power to investigate complaints about conduct contrary to the competition and efficiency objectives of the *Electricity Reform Act*, the NTMEU submitted that:

"Unfortunately, Power and Water is not apparently bound to comply with the outcome of any such investigation, and as it is still the monopoly provider, it can retain its initial position regardless of any negotiation undertaken."

3.9 The preferred option proposed by the NTMEU is that:

"...the Commission should seek powers to allow it to be involved in such negotiations (as a dispute resolution body) so that it can provide an independent assessment of the issues and if needed to act as an arbitrator."

3.10 However, in the absence of such power, the NTMEU agreed that contestable pricing guidelines should be developed and that these should address both generation and retail pricing guidelines and include requirements in regard to pass through of network service costs and establishment of generation prices based on cost reflectivity.

3.11 Power and Water supported, in principle, the Commission's proposal to review the ring-fencing code, but submitted that:

"...any changes to the ring-fencing code should not increase the complexity or costs of regulatory compliance as this could potentially provide as much of a disincentive for competitors as the size and characteristics of the Territory's electricity market itself. These costs could potentially be further increased if any major review was undertaken without consideration of the broader reform program."

3.12 With respect to the development of contestable pricing guidelines, Power and Water:

"...considers the Commission to be well-placed to provide advice on, inter alia, the electricity ring-fencing arrangements and contestable pricing guidelines, however these efforts should be integrated into the development of the broader NT energy reform agenda."

3.13 The NTT's comments focused on concerns about timing issues regarding the Commission's proposed review, noting:

"It is likely that the Commission's proposed exercise would be finalized prior to the development of broader market reform options, which could pre-empt the outcomes of that process. Alternatively, implementation of the findings of the Commission's review could be deferred until transition to the new regulatory regime, by which time the changes could be redundant."

3.14 The private individual agreed with the Commission's view.

Commission's response

3.15 Only NTT questioned whether the Commission should proceed at this stage with a revamp of the ring-fencing code.

3.16 To a certain extent the Commission has, to date, refrained from exercising its existing powers in relation to ring-fencing in the electricity supply industry (among other powers) in view of the prospect that broader regulatory changes may be introduced by the NT Government. The Commission however is mindful of its duty (under section 24(9) of the *Utilities Commission Act*) to 'keep the contents and operation of codes and rules under review with a view to ensuring their continued relevance and effectiveness'. The Commission considers that this must be the primary consideration which guides how,

and when, the Commission should proceed in relation to its review of the regulatory instruments under its charge.

3.17 Moreover, the Commission has received legal advice regarding the scope of the Commission's power to make and amend the ring-fencing code. This advice is summarised at Appendix A. The advice was clear that:

- the Commission is authorised by Regulation 2 to vary the existing ring-fencing code by including additional ring fencing requirements of the general type indicated by the Commission as being under its consideration;
- those matters either fall within the core concept of 'ring fencing' of the 'separate operation of related or associated businesses of a licensed entity' or are matters 'relating to' ring fencing including incidental matters; and
- those measures would be regarded as being reasonably adapted to the purposes for which the code making power is conferred on the Commission.

3.18 While the NTMEU was enthusiastic about the Commission taking a more aggressive approach on the contestable pricing issue than just the proposed guidelines, NTT appeared particularly concerned about the potential conflict between any initiative by the Commission regarding contestable pricing and the reforms currently under consideration by the NT Government.

3.19 On reflection, the Commission accepts that it may be appropriate to await policy developments, with the NT Government (with advice from NTT) in the process of considering ways of addressing regulatory deficiencies in the contestable pricing area.

CHAPTER**4****COMMISSION'S DECISION**

4.1 Following consideration of the submissions received and its own further analysis, the Commission has decided:

- to confirm its earlier in-principle decision to undertake a revamp the NT electricity ring-fencing code; but
- to defer development of any contestable pricing guidelines.

Decision to revamp the NT electricity ring-fencing code

4.2 The Commission reiterates its view that addressing some aspects of current regulatory deficiencies in the NT electricity market through review of the ring-fencing code is likely to be of benefit and is unlikely to be dealt with, or overtaken, by wider regulatory changes in the Territory for the foreseeable future.

4.3 The Commission also reiterates its view that it is appropriate for the Commission to play a role where either the source of any particular deficiency is inadequate use of existing regulatory powers or the symptoms (or impacts) of these deficiencies can be moderated by the exercise of existing regulatory powers.

4.4 Having regard to the considerations that, first, the ring-fencing code has been in operation for over six and a half years without detailed review, and, secondly, there have been considerable regulatory developments in relation to ring-fencing and other forms of regulatory structuring in the electricity supply industry (and other industries) elsewhere in Australia in that period, the Commission is of the view that further delay by the Commission in deciding whether to make changes to the ring-fencing code is not warranted.

4.5 The Commission has therefore decided against deferring taking further steps towards revamping the ring-fencing code until after the reviews referred to by NTT are completed, and the NT Government has made any policy decisions it wishes to make in response to the Treasury review.

4.6 Accordingly, the Commission will shortly publish a paper proposing variations to the ring-fencing code. In doing so, it will release a draft of a proposed third version of the Northern Territory Electricity Ring-Fencing Code – the Draft Code.

Decision to defer consideration of any contestable pricing guidelines

4.7 The Commission has decided not to commence development of any contestable pricing guidelines at this time.

4.8 First, the Commission considers that it is best if it awaits the outcome of current policy development processes before embarking on the development of any contestable pricing guidelines.

4.9 Secondly, the Commission is mindful that the amendments it has in mind for the NT ring-fencing code are likely to impact on Power and Water's contestable pricing conduct. Moreover, some of the guidelines that may be necessary under an amended ring-fencing code may also impact on contestable pricing. These possibilities provide another set of reasons why it is appropriate for the Commission to await developments on the ring-fencing front before deciding whether it is necessary to embark on the separate development of contestable pricing guidelines.

APPENDIX A: LEGAL ADVICE OBTAINED BY THE COMMISSION



Scope of the Commission's power to make a code relating to ring fencing

Executive summary

1. Under section 24(1) of the *Utilities Commission Act* (NT) ("UCA"), the Commission may make a code relating to the conduct or operations of a regulated industry or a licensed entity. However, it may only do so if authorised to do so by a relevant industry regulation Act or by regulations made under the UCA.
2. The only authorisation currently given to the Commission to make a code is that granted by Regulation 2 of the *Utilities Commission Regulations* ("UCR"). Under Regulation 2, the Commission is authorised to make a code relating to ring fencing in a regulated industry.
3. 'Ring fencing' means the separate operation of related or associated businesses of a licensed entity in a regulated industry.
4. The 'electricity supply industry' is a regulated industry. The term 'electricity supply industry' is fairly widely defined in the *Electricity Reform Act* (NT) ("ERA"). It covers at least those parts of the electricity industry which the Commission intends to regulate under an amended Ring Fencing Code.
5. Licensed entities are those entities holding a licence under the ERA.
6. A code made by the Commission under the UCA is a type of delegated legislation. In our view, a code is more likely to be legislative rather than administrative in nature.
7. The scope of the code making authorisation given by Regulation 2 is therefore to be judged by reference to the principles which apply generally to the grant of a power to make delegated legislation.
8. Generally those principles require the delegated legislation making power to be classified as either purposive or non-purposive.
9. Purposive powers are those conferred in order to achieve a discernible outcome, objective or purpose.

10. A power to make delegated legislation which is conferred in purposive terms must be exercised in a manner which is reasonably proportional to the attainment of the purpose for which the power is conferred. In other words, delegated legislation made under such a power must be capable of being reasonably considered to be appropriate and adapted to achieve the purpose for which the power to make delegated legislation is given.
11. A power to make delegated legislation which is conferred simply by reference to a nominated subject matter or topic would generally be classified as non-purposive.
12. If the power to make delegated legislation is non-purposive the question is whether there is a real and substantial connection between the delegated legislation and the subject matter of the grant of power to make that delegated legislation.
13. Here the Commission is authorised to make a code 'relating to' ring fencing. The term 'relating to' widens the scope of the code making power given to the Commission because it loosens the degree of connection required between the code and the subject of 'ring fencing'.
14. The term 'relating to' is a very wide term. Its exact meaning will depend on the particular statutory context in which it is used. However, in this case we believe that it would be sufficient for a 'ring fencing code' to be valid if there was merely some connection or association between the content of that code and the topic of 'ring fencing' (i.e. without that connection being required to be direct or immediate).
15. The authorisation given to the Commission by Regulation 2 to make a code relating to ring fencing is likely to be construed as a purposive power.
16. The interpretation given to the scope of the code making power conferred by Regulation 2 will be influenced by a number of features.
17. The Interpretation Act requires that an interpretation be given to the regulation which promotes the purpose or object underlying the UCA and UCR. Those purposes are likely to be promoted by giving a wider interpretation to the code making authorisation.
18. The object of the UCA is stated in wide terms in section 2. The code making authorisation should therefore be given a wider interpretation because both the power to make regulations under which Regulation 2 was enacted, and the power to make codes granted by Regulation 2 are ultimately conferred for the purposes of achieving the objects of the UCA.
19. The code making power should also be given a wider interpretation because section 6(2) of the UCA requires the Commission to perform its functions (which include the making of codes) having regard to the need to achieve certain widely stated policy outcomes. The code making function is therefore to be exercised having regard to the need to achieve those widely stated ends. It is therefore likely that the code making power is intended to have a wide ambit in order to allow that to be achieved.
20. Generally where legislation does not specify in detail how a policy outcome is to be achieved but establishes the machinery by which that is to occur, and leaves the detail to be determined by those means, a power to make delegated legislation will have a wider ambit. That is the structure of the UCA and UCR.
21. We consider that the authorisation granted to the Commission by Regulation 2 to make a code relating to ring fencing indicates an intention that the Commission is to exercise its discretion to determine the content of any code relating to that subject matter. The authorisation to make a code relating to ring fencing will therefore have a wide ambit.

22. We consider that the Commission is authorised by Regulation 2 to vary the existing Ring Fencing Code by including additional ring fencing requirements of the general type indicated by the Commission as being under its consideration.
23. We consider that those matters either fall within the core concept of 'ring fencing' of the 'separate operation of related or associated businesses of a licensed entity' or are matters 'relating to' ring fencing. This later concept would include incidental matters.
24. This view is supported by the fact that one of the purposes of making a code relating to ring fencing is to give effect to the object of the UCA that in the absence of a competitive market an economic regulatory framework should be established that promotes the simulation of competitive market conduct.
25. We think that those measures would be regarded as being reasonably adapted to the purposes for which the code making power is conferred on the Commission.

{signed}

Clay Wohling
Partner
4 January 2008