



Prime Infrastructure Holdings Limited  
ABN 61 100 364 234  
Level 26, 135 King Street  
Sydney NSW 2000  
Tel: +61 2 9692 2800  
Fax: +61 2 9692 2899  
[www.primeinfrastructure.com](http://www.primeinfrastructure.com)

23 April 2010

Paul Darby  
Regulatory Finance Team  
Ofgem  
9 Millbank  
LONDON  
SW1 3GE

Dear Mr Darby

#### **Response to: Review of the 'Ring Fence' Conditions in Network Operator Licences**

Prime Infrastructure Holdings Limited ("Prime Infrastructure") is the sole owner of the International Energy Group ("IEG"), which in turn owns GTC and its licensed IGT and IDNO businesses, GTC Pipelines Limited ("GPL") and The Electricity Network Company Limited ("ENC").

I am writing to voice our concern with the proposal raised in Ofgem's discussion document to introduce a requirement for a majority of independent directors on the board of a licensee.

If introduced, this requirement would place a significant additional financial burden on GPL and ENC and, in our opinion, would not meaningfully contribute to strengthening governance over these licensed entities nor provide any benefit to consumers.

The discussion document states that:

*This measure would help guard against possible conflicts of interest in respect of the fiduciary and other duties of directors where they sit on the board of both the NWO and related parties within its ownership group. Such conflicts might be precipitated or aggravated by a climate of financial distress.*

This statement fails to recognise one of the fundamental elements enshrined in company law. Directors owe a fiduciary duty to the company they serve and must always act in the best interests of the company. Conflicts of interest must be disclosed and dealt with in accordance with the principles set out in statute and common law. Conflicts arise from time to time for all directors (including those regarded as independent) and the ability to effectively manage conflicts without compromising their fiduciary duties is an essential part of any director's capabilities.



As a listed company good corporate governance is paramount to Prime Infrastructure. Four out of the eight members of our own board are independent, including the chair. The value of a healthy proportion of independent directors on the boards of listed companies is beyond doubt. However, the value of appointing independent directors to the boards of wholly owned subsidiary companies is questionable, as we doubt whether such directors can be viewed as truly independent, in circumstances where all directors of wholly owned subsidiaries are appointed, and can be removed, by the parent company, without reference to any other party.

Prime Infrastructure and IEG take great care over the appointment and guidance of nominee directors on the boards of our subsidiary companies. It is vitally important to us that directors have the necessary skills and experience to properly fulfil their duties to the companies they serve. Directors are provided with guidance, including formal directors' training, on acting independently and resolving conflicts of interest.

We do not accept that governance or the interests of consumers would be enhanced by a requirement for directors who are appointed by Prime Infrastructure to be sourced from outside of the Prime Infrastructure Group. Such a requirement would impose a significant cost burden without any material benefit.

We hope that you will agree that the imposition of a requirement for independent directors on the boards of licensees such as GPL and ENC would be inappropriate and unnecessary.

Yours sincerely

A handwritten signature in black ink, appearing to be "BK" with a large, stylized flourish at the bottom.

Brian Kingston  
Chief Executive and Managing Director