

**GILBERT
TOBIN**

L A W Y E R S

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27 February 2001

Mr Tim Grimwade
General Manager Adjudication
Australian Competition and Consumer Commission
470 Northbourne Ave
DICKSON ACT 2602

Dear Mr Grimwade

AGL THIRD LINE FORCING NOTIFICATIONS

We refer to our letter of 23 February 2001 enclosing three notifications by related companies of the AGL group together with supporting justification.

We now enclose a final notification in relation to the ActewAGL partnership, and a cheque for \$200 to cover one additional notice relating to third line forcing conduct in the same market as the previous notifications. If accepted by the Commission, this notification replaces notification N90809, lodged on 21 July 2000.

The confidential supporting material provided in relation to the previous notifications applies equally to this notification. We believe this confidential material to be non-controversial given the details provided elsewhere in the notification and supporting documentation but please advise if the Commission has a different view.

Please let me know if you need any additional information.

Yours sincerely

Luke Woodward

FORM G
Regulation 9

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 – Sub-section 93(1)

EXCLUSIVE DEALING

NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(6) or (7) of that Act in which the person giving notice engages or proposes to engage.

1. (a) **Name of person giving notice:**

AGL ACT Retail Investments Pty Limited and ACTEW Retail Limited, trading as "ActewAGL Retail" ABN 46 221 314 841 (ActewAGL).

(b) **Short description of business carried on by that person:**

Supply of energy products and services.

(c) **Address in Australia for service of documents on that person:**

ActewAGL House, 221-223 London Circuit, Canberra City, 2601

2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

Energy, energy appliances and financing services.

(b) **Description of the conduct or proposed conduct:**

See Attachment A.

3. (a) **Class or classes of persons to which the conduct relates:**

Residential customers and potential customers of ActewAGL who acquire, will acquire or will be offered:

- certain energy appliances from ActewAGL's approved dealers;
- energy services from ActewAGL; and
- interest-free repayment services from ActewAGL.

(b) **Number of those persons:**

- (i) **at present time:** 3,000
- (ii) **estimated within the next year:** 3,000

(c) **Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:**

Not applicable.

4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:**

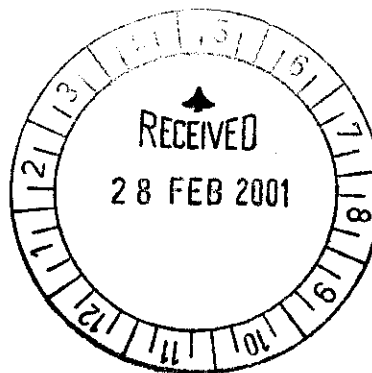
Mr Ivan Slavich, General Manager ActewAGL Retail, 221-223 London Circuit, Canberra City, 2601

Date:

Signed by/on behalf of the person giving this notice:



(Signature)
Luke Woodward
Partner
Gilbert & Tobin



ATTACHMENT A

1. CORPORATIONS INVOLVED

1.1 ACTEWAGL

ActewAGL is a partnership between subsidiaries of ACTEW Corporation Ltd and of The Australian Gas Light Company ARBN 052 167 405 (**AGL**). ACTEW Corporation is a Territory Owned Corporation of the ACT Government. AGL is an energy company supplying energy products and services including natural gas, electricity and liquid petroleum gas (**LPG**) to customers in Australia and overseas through various subsidiaries. AGL and its related bodies corporate have approximately 850,000 natural gas customers and one million electricity customers throughout Australia.

ActewAGL is authorised to supply natural gas and electricity to contestable and non-contestable customers in the ACT. The Australian Gas Light Company owns 50% of Elgas Limited, which sells LPG to 500,000 customers. ActewAGL may extend the proposed conduct to cover LPG and LPG appliances, particularly in areas where natural gas is not available.

1.2 ActewAGL Approved Dealers

ActewAGL markets and supplies its services with the assistance of approved dealers and agents. ActewAGL does not have any ownership interest in any of its approved dealers.

ActewAGL approved dealers typically sell a range of energy appliances such as hot water and heating and cooling systems, which they install and connect to natural gas and electricity supplies and may also repair and maintain.

2. PROPOSED CONDUCT

2.1 Summary of Promotions

ActewAGL proposes to offer a range of interest-free repayment options to customers who acquire selected appliances from ActewAGL's approved dealers. The offer contemplates that:

- the customer purchases an appliance from the retailer, but either:
 - pays the retailer a deposit against the retail price of the appliance; or
 - pays nothing to the retailer;

- the retailer installs the appliance to the customer's satisfaction;
- ActewAGL pays the retailer the retail price of the appliance, less:
 - any deposit paid by the customer; and
 - a commission of up to 8% of the retail price; and
- the customer pays the balance of the retail price to ActewAGL in 12 or 24 equal monthly instalments.

ActewAGL considers the promotion an opportunity to develop the natural gas and electricity industries across Australia. The promotion will make significant purchases, such as hot water and central heating systems, affordable to a wide range of customers. This will provide customers with access to inexpensive and efficient energy sources and will stimulate demand for natural gas and electricity for the benefit of the industry.

2.2 Details of Promotions

(a) Examples

Attached to this notification are the following confidential documents that provide an example of the conduct ActewAGL proposes to engage in:

- a *2001 Appliance Campaign Conditions* agreement to be entered into between ActewAGL and each retailer, setting out the framework of the promotion;
- a *Two Year Fixed Term Plan* to be entered into between ActewAGL and the customer, setting out the details and terms and conditions of the interest-free repayment plan; and
- an information sheet entitled *ActewAGL Payment Plans: Things You Should Know*, setting out the key terms of the interest-free repayment plan to customers.

The promotions offered from time to time may vary with the appliances available and other market conditions, but will remain consistent with the points described below. Most promotions will be offered for a limited time, generally four months. ActewAGL may enter into other arrangements with other approved dealers to support the promotions, but these will not affect the terms offered to customers.

(b) Appliances

Though ActewAGL may in some cases extend the promotion to any appliance that consumes electricity or natural gas and is supplied by its retailers, ActewAGL intends to focus its promotion on major appliances such as the following:

Storage Internal Hot Water Systems	Cookers
Storage External Hot Water Systems	Wall Ovens
Continuous Internal Hot Water Systems	BBQs
Continuous External Hot Water Systems	Cooktops
Pool or Spa Heaters	Ducted Evaporative Cooling Systems
Central or Ducted Heating Systems	Ducted Refrigerative Cooling Systems
Flued Heaters or Log-look Fires	Ducted Reverse Cycle Air Conditioning Systems
Unflued Log-look Fires	Wall Mounted "Split" Air Conditioning Systems
Portable Heaters	

Some of these appliances will be available on either 12-month or 24-month interest free repayment plans, and others will only be available on certain plans. Generally speaking, more expensive items such as hot water systems and heating and cooling systems will be available on 24-month interest free repayment plans.

(b) Term

As discussed above, the term of the repayment plan will be 12 or 24 months, depending on the nature of the appliance and the particular promotions available. AGL intends to concentrate on more expensive appliances that would otherwise be less affordable to customers. These items will generally be available on 24-month interest free plans.

If sufficient demand exists, ActewAGL will also offer cheaper items on 12-month interest free plans. Where 12-month interest free plans are offered, customers will also have the option of purchasing more expensive appliances such as hot water and heating systems on a 12-month plan.

The customer always has the option of making all outstanding repayments in a single payment. That is, the customer is not "tied" to ActewAGL for any set period. As discussed below, outstanding amounts become due if the customer ceases to acquire energy from ActewAGL.

(c) Acquisition of Energy

In most cases, customers must acquire energy from ActewAGL in order to participate in the promotion. Since the promotion involves interest-free repayments, the only direct benefit of the promotion to ActewAGL is the increased consumption of energy supplied by ActewAGL.

There is an indirect benefit in the promotion of the natural gas and electricity industries generally, but this benefit is not sufficient to cover ActewAGL's costs in providing the interest-free repayment plan. All participants in the natural gas and electricity industries will receive this indirect benefit.

Customers are not required to use ActewAGL for all of their energy needs. During their participation in the ActewAGL payment plan customers must take *either* natural gas *or* electricity from ActewAGL, depending on the appliance purchased, but they are not required to take both.

Further, customers are not obliged to take ActewAGL energy for any minimum period. Customers may cease to acquire energy from ActewAGL at any time, provided that they pay any outstanding amounts due under the repayment plan within 14 days. The repayment of outstanding amounts simply reflects the termination of the customer relationship, and no interest or any other penalty is charged for early termination.

The association between the repayment plan and the customer taking an ActewAGL energy supply is not intended to lock the customer in to ActewAGL but is simply intended to secure the benefit of the repayment plan for ActewAGL and protect ActewAGL from unreasonable credit risk. ActewAGL's credit risk is unreasonably increased if a customer ceases to acquire energy from ActewAGL, either through switching to a new retailer or relocating premises, and ActewAGL no longer has a reliable relationship with that customer.

When residential customers become contestable and wish to acquire energy from another provider, the repayment plan does not present a significant barrier to this choice. The customer can either make the outstanding repayments directly or refinance the appliance with credit from another source. ActewAGL envisages that the new energy provider may wish to take over the repayment plan in order to attract customers and receive the same benefits as the proposed promotion will deliver to ActewAGL.

Importantly, no matter what the circumstances in which the customer disconnects from ActewAGL energy, the customer has received a significant benefit in the interest-free deferral of payment until the time of disconnection.

(d) Payment Methods

Payment systems available under the repayment plans currently include:

- direct debit;
- direct charge; and

- ActewAGL's EasyPay/EasyWay payment systems.

Customers must use the same payment method (including the same debit account or credit card) to pay the interest-free repayments *and* the customer's ActewAGL energy account.

ActewAGL EasyPay/EasyWay is a direct debit payment system that estimates bill payments based on previous energy consumption and spreads these out into equal fortnightly or monthly payments over 12 or 24 months. Interest-free repayments on appliances can be combined with this system.

Direct debit is generally available to all customers with a bank account in Australia, apart from passbook and investment accounts. Direct charge is available to all customers with a credit card or associated debit card.

These payment methods impose no direct additional cost on customers, since bank and transaction fees are absorbed by ActewAGL and are generally cheaper than other payment methods. Direct payment methods are convenient and reliable and are critical in ensuring that repayments are not accidentally neglected or delayed. ActewAGL is not in the credit business and does not charge interest on overdue payments. Direct payment methods are its best means available to secure payment, maintain a consistent cashflow and ensure the viability of the promotion.

It is equally important for the reduction of administrative and transaction costs for customers to make repayments and pay their energy bills using the same payment method, including the same debit account or credit card. All payment methods involve a charge per transaction, although some also increase with value billed. Combining transactions significantly reduces costs, allowing ActewAGL to pass through savings to customers.

Customers on direct payment methods receive a bill as usual and are advised that the amount of the bill will be automatically paid by them on the bill's due date. Customers who wish to query any aspect of a bill may do so in the intervening period to avoid or adjust the payment. If a bill is queried after the payment is processed, the payment can be reversed or any overpaid amount credited to the customer's ActewAGL account.

Of the payment methods offered, direct debit is the cheapest and most efficient. Transaction fees payable by ActewAGL for direct debit payments are lower than those for credit card payments and are charged at a flat rate per transaction, rather than a scale based on value. Transaction fees for various payment methods in New South Wales and Victoria include the following:

Method	NSW Fee	Vic Fee
Independent gas agent	\$2.00	N/A
Credit card phone payment	\$2.00	\$0.75
Australia Post	\$1.18	\$1.04
Bank counter	\$1.00	\$0.92 or \$1.25
Bpay	\$0.70	\$0.55
Mail (locked bag)	\$0.52	\$0.36
Direct charge	\$0.14 + 1% of value	\$0.25 + 1% of value
Direct debit	\$0.14	\$0.10

Direct debit fees in the Australian Capital Territory are also \$0.10 per transaction.

Depending on customer acceptance, ActewAGL may choose to limit the payment options to direct debit on certain promotions now or in the future. This would significantly reduce ActewAGL's costs in providing the promotion and allow more flexibility in other areas of the promotion, such as the appliances covered and the times during which promotions are available.

(e) ActewAGL Responsibility for Appliances

The appliance is in all cases sold by the retailer to the customer, and ActewAGL does not obtain title to the appliance at any time. Since there is no agreement of sale between ActewAGL and the customer, ActewAGL is not a party to any agreement in which terms are implied by Part V Division 2 of the *Trade Practices Act*. ActewAGL makes this clear to the customer in the terms and conditions and in the information sheet shown to customers at the point of sale.

ActewAGL does not consider that it falls within the "linked credit provider" provisions of the *Trade Practices Act*. Even if ActewAGL were considered to be a linked credit provider, it would fall under the exceptions set out in section 73(3). ActewAGL selects its approved dealers carefully on the basis of strict requirements as to financial standing and business reputation. It maintains a close relationship with these dealers to monitor their continuing solvency and to inform them of their obligations to customers.

However, ActewAGL wishes to keep its customers informed of their legal rights. The attached information sheet and customer terms and conditions therefore draw attention to the possibility that customers may have rights against ActewAGL under section 73 of the *Trade Practices Act* in some possible circumstances.

3. PUBLIC BENEFITS

The proposed conduct will significantly benefit consumers generally as well as ActewAGL customers specifically. The impact of the proposed conduct is not such that, under the test laid down in section 93(3A)(b) of the Act, the likely benefit to the public will be outweighed by the likely detriment to the public.

(a) Increased Ability to Afford Appliances

The most significant public benefit associated with the proposed conduct is the increased ability of consumers to afford electrical and natural gas appliances through the offering of interest-free repayment terms over 12 or 24 months.

Hot water and heating and cooling systems are major appliances and can cost from \$650 to more than \$10,000 plus installation as follows:

Appliance	Approximate Cost
Hot water system	\$650 to \$3,000
Central/flued heating system	\$2,500 to \$10,000+
Air conditioning system	\$2,000 to \$10,000+
Pool heating	\$2,000 to \$5,000

ActewAGL also offers interest-free repayment terms on smaller appliances such as cookers, wall ovens, cooktops, BBQs and portable heaters. These appliances range in price from \$600 to \$3,000.

Paying these amounts as a lump sum represents a considerable outlay and a deterrent to many people who would benefit from new natural gas or electrical appliances.

(b) Increased Competition from Specialist Outlets

Interest-free repayment terms are offered by major chains such as Bing Lee and Harvey Norman under arrangements with independent finance companies. Department stores may also provide interest-free periods in conjunction with internal credit arrangements. Individual retail outlets generally do not have the financial backing to offer interest-free repayment terms without assistance.

The retail outlets currently providing interest-free repayment terms are generalist outlets offering a wide range of household and other goods without any particular expertise in natural gas or electricity. ActewAGL's approved dealers are selected for their knowledge and expertise in supplying and installing natural gas and electricity appliances, and many of them are expert plumbers, gasfitters and electricians.

(c) Public Safety

For reasons of public safety, it is preferable for these retailers to supply and install these appliances. These retailers improve the safety and reliability of ActewAGL's gas and electricity supply and reduce the risk of malfunction arising from faulty selection and installation. These retailers are also well placed to assist customers in their purchasing decisions and can help customers select the most appropriate and efficient appliances for their needs.

The proposed conduct will allow skilled and knowledgeable retailers to compete with large generalist chains and department stores by providing competitive prices and repayment terms. The increased availability of expert advice and installation coupled with interest-free repayment terms is a considerable public benefit.

(d) Efficient Energy Consumption

The availability of interest-free repayment terms will also stimulate the markets for natural gas and electricity and will promote the efficient use of natural resources. Innovations in heating, cooling and hot water systems have resulted in the development of new appliances that are much more energy efficient than their predecessors. Customers are becoming aware of the economic and environmental savings of these new appliances, particularly through energy efficiency rating systems and advertising campaigns. However, the cost of replacing inefficient appliances with new appliances is a deterrent.

ActewAGL's interest-free repayment plans allow customers to replace their inefficient appliances without lump sum payments and to spread their repayments over 12 or 24 months. During this time, these payments are effectively offset by the savings resulting from more efficient energy use. This has an individual benefit for the customer and also a broader public benefit in reducing energy consumption in line with domestic and international guidelines.

(e) Reduction in Transaction Costs

Finally, the rationalisation of payment methods to direct payment systems (and particularly direct debit) has a public benefit in reducing overheads associated with transaction fees, debt recovery and the interest cost of late payment. As discussed above, direct debit is the cheapest and most reliable payment system available. Encouraging more customers to pay with cheaper and more reliable systems reduces free riding by customers using more expensive systems whose cost is absorbed by ActewAGL. It allows ActewAGL to reduce energy prices and offer further benefits through promotions such as the ActewAGL payment plans.

3.4 No Public Detriment

(a) No Lessening of Competition in Energy Supply

The proposed conduct will not result in the lessening of competition in any market. As discussed above, customers are not locked in to taking gas or electricity supply from ActewAGL and remain free to move to other retailers on repayment of outstanding amounts. ActewAGL envisages that new retailers will wish to take over their new customers' outstanding payments in order to attract customers and facilitate transfer. Other retailers are of course free to offer similar repayment terms at any time, as many outlets already do.

As the natural gas and electricity industries across Australia are systematically deregulated, these industries are becoming increasingly characterised by:

- regional suppliers expanding into national operators; and
- specialised natural gas or electricity suppliers diversifying into general energy suppliers.

As a result, the historical landscape involving one monopoly electricity supplier and one monopoly natural gas provider in each State is making way for a number of national energy suppliers providing both natural gas and electricity to an increasingly wide range of customers.

Most of ActewAGL's competitors now describe and market themselves as energy companies operating nationally with a similar suite of products and services. These competitors include Origin Energy, TXU, EnergyAustralia and Great Southern Energy.

ActewAGL's competitors sell energy to the following numbers of residential customers:

Competitor	Customers
Origin Energy	517,000 gas in Victoria 330,000 gas in SA 76,000 gas in Queensland 17,000 in Albury and Alice Springs
Pulse	560,000 electricity in Victoria 520,000 gas in Victoria
TXU	511,000 electricity in Victoria 410,000 gas in Victoria
Energex	1,000,000 electricity in Queensland 90,000 gas in Queensland
EnergyAustralia	1,300,000 electricity in NSW

Integral Energy	775,000 electricity in NSW
CitiPower	250,000 electricity in Victoria

As contestability progresses, any customer who wishes to cease acquiring natural gas or electricity from ActewAGL will be able to switch to these or other new retailers. In order to protect ActewAGL from unreasonable credit risk, these customers will have to repay any outstanding amounts.

(b) No Detriment in Selecting ActewAGL Approved Dealers

ActewAGL does not consider that requiring customers who wish to take advantage of interest-free terms to purchase appliances from particular retailers provides a public detriment. ActewAGL has a wide range of approved dealers in many locations. All of these retailers are selected for their knowledge and expertise in supplying and installing gas and electricity appliances. All of these retailers compete with each other, ensuring that customers can take advantage of competitive prices and quality service. ActewAGL does not select these retailers on the basis of territorial exclusivity and will accredit any qualifying retailer where it is commercially desirable to do so.

(c) No Detriment in Specified Payment Methods

The requirement that customers make all ActewAGL payments using one payment method, being a direct payment method or particularly a direct debit method, does not constitute a significant public detriment. Bills are issued in the same manner and at the same time as traditional payment methods, and payments are processed on the due date as always. Customers have ample time to challenge any bill or request an extension in the case of financial hardship. Once made, payments can always be reversed or credited to the customer's account if necessary.

(d) ActewAGL is Dedicated to Customer Protection

ActewAGL is committed to ensuring that all customers and potential customers are provided with all information relevant to the decision to purchase natural gas, electricity and associated appliances. ActewAGL ensures that its managers, representatives and approved dealers are aware of their responsibilities under Part IV and Part V of the *Trade Practices Act 1974* and their obligations to protect both the competitive process and the interests of consumers.

ActewAGL holds regular trade practices training sessions for its staff at which issues of consumer protection, particularly the prevention of misleading or deceptive conduct and the resolution of third-line forcing issues, are paramount. ActewAGL also provides a trade practices compliance guide to employees emphasising these issues and will have access to the electronic

trade practices compliance program that conforms to *AS3806 – Compliance Programs* (1998) developed by AGL.