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26 March 2004

Mr Tim Grimwade
General Manager, Adjudication
Australian Competition and Consumer Commission,
470 Northbourne Avenue
Dickson ACT 2602

Dear Mr Grimwade

FILE No:
DOC: D04/15379
MARS/PRISM: 19605.

NOTIFICATION OF EXCLUSIVE DEALING - AGL

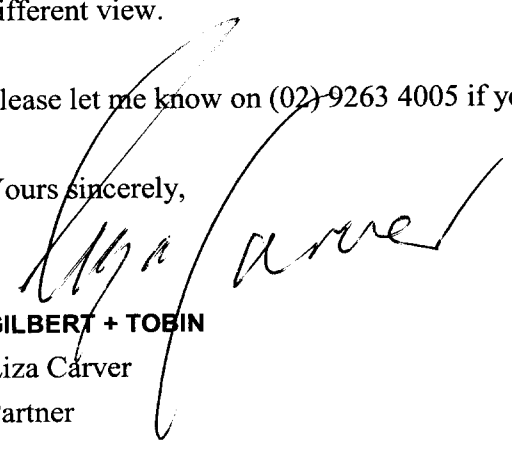
We enclose two notifications relating to third line forcing on behalf of AGL Electricity Limited ABN 82 064 651 083 and AGL Retail Energy Limited ABN 21 074 839 464.

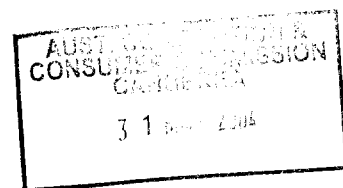
We also enclose two cheques amounting to \$2000, being the required filing fee.

Each notification includes a Confidential Annexure, in respect of which the notifying parties claim confidentiality. We believe the confidential material to be non-controversial given the details provided elsewhere in the notifications, but please advise if the Commission has a different view.

Please let me know on (02) 9263 4005 if you need any additional information.

Yours sincerely,


GILBERT + TOBIN
Liza Carver
Partner



N91372

FORM G
Regulation 9

COMMONWEALTH OF AUSTRALIA

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

NOTIFICATION OF EXCLUSIVE DEALING

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 Retail Energy Limited ABN 21 074 839 464 (**AGL Retail Energy**)

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

In conjunction with the other Notifying Party set out in Attachment A, the supply of natural gas, electricity, and ancillary energy services throughout New South Wales.

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

Liza Carver
Partner
Gilbert & Tobin
Level 37
2 Park Street
SYDNEY NSW 1042

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

Natural gas, electricity and ancillary services.

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

See Attachment A.

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

The class of persons who acquire, will acquire or will be offered any combination of:

- natural gas and ancillary services; and
- electricity and ancillary services;

by one or more of the Notifying Parties.

Ancillary services are those services which are complementary and incidental to the supply of natural gas and electricity including:

- programmed maintenance services;
- power factor services;
- environmental services; and
- energy audit services.

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

- (i) at present: 800,000;
- (ii) estimated within the next year: as in (i) above.

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

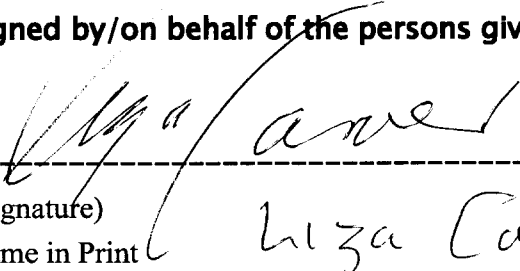
Not applicable.

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

Liza Carver
Partner
Gilbert & Tobin
Level 37
2 Park Street
SYDNEY NSW 1042

Dated:

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



(Signature)
Name in Print Liza Carver
Title

ATTACHMENT A

SUBMISSION IN SUPPORT OF NOTIFICATION

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1. BACKGROUND: MOVEMENT TOWARDS MULTI-UTILITIES

Competition to supply natural gas and electricity on a retail basis to customers has historically been precluded by State and Territory ownership and regulatory structures. Deregulation and partial privatisation commenced in the 1990s and the staggered introduction of full retail contestability in both natural gas and electricity across south-east Australia, have brought significant increased competition for all customers.

Such competition has primarily come from each of the formerly single-utility, regulated monopolies expanding into adjacent product and geographic market segments. Since energy is a commodity product, competition to attract customers has largely been driven by price. The AGL Group, Energy Australia, Energex and TXU are all examples of companies competing to supply energy types or to supply regions in former monopoly franchise areas. This has involved winning many new customers in their capacities as entrants to adjacent segments and losing many customers in their capacities as former monopolies.

The increased pressure on prices through the introduction of competition has required utilities to improve the efficiency of their business. In doing so, multi-utilities such as the ActewAGL retail partnership have recognised the substantial synergies achieved through rationalising customer relationships and transaction cost savings. Through the emerging competition, a significant

proportion of these synergies have been returned to customers through competitive pressure on prices. The synergies available through rationalising customer relationships are particularly significant for small customers because setting up, administering and closing accounts forms a higher proportion of the costs of servicing those customers when compared with buyers of large quantities of energy.

The proposed conduct will position the Notifying Parties to compete in this new dual fuel domestic and small business customer environment by offering multi-utility service packages consisting of natural gas, electricity and ancillary services.

2. NOTIFYING PARTIES

The Notifying Parties are:

- AGL Retail Energy Limited ABN 21 074 839 464 (**AGL Retail Energy**); and
- AGL Electricity Limited ABN 82 064 651 083 (**AGLE**).

Each of the Notifying Parties is a wholly owned subsidiary of The Australian Gas Light Company.

3. PROPOSED CONDUCT

The Notifying Parties propose to offer natural gas, electricity or ancillary services (**the First Service**) to customers in New South Wales at a discount, allowance, rebate or credit in relation on the condition that the customers also acquire, have acquired or will acquire one or more additional natural gas, electricity or ancillary services (**the Additional Services**).

The current notification is related to notification N90878, registered with the Commission on 26 July 2001 (Commission File Number C2001/1026). The current notification differs from notification N90878 by:

- (a) removing all references to telecommunications services;
- (b) stipulating the discount, allowance, rebate or credit in relation that customers may conditionally acquire in terms of a range of dollar amounts as opposed to a percentage; and
- (c) being geographically restricted to New South Wales.

Further details of these discounts are provided in the Confidential Annexure to this notification. The Notifying Parties propose to engage in this conduct until further notice.

4. PUBLIC BENEFIT

The proposed conduct will significantly benefit customers by providing:

- real competition with other multi-utilities;
- expanded customer choice; and
- real savings through efficiency gains,

in relation to the supply of energy services.

Even purchasers of energy services who do not elect to purchase from the Notifying Parties will benefit because competing retailers are likely to seek to match, or better, the packages offered by the Notifying Parties.

Therefore, 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.

4.1 Competitive Environment - Energy

The natural gas and electricity industries across Australia have been systematically deregulated and opened to competition. These industries have traditionally been regarded as natural monopolies and have been characterised by a single supplier in each geographic area or state. New regimes allowing access to infrastructure and some duplication of facilities are exposing industry participants to an increasing level of competition and potential competition. Each State has developed regulations to introduce contestability of customers in a staged timetable.

Electricity customers in New South Wales, the Australian Capital Territory, Victoria and South Australia are now fully contestable. Gas customers in New South Wales, the Australian Capital Territory and Victoria are fully contestable, with full contestability to be introduced in South Australia by July 2004.

The introduction of contestability into the natural gas and electricity industries has resulted in these industries becoming increasingly characterised by:

- regional suppliers expanding into national operations; 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 or region is making way for a number of national and regional energy suppliers providing both natural gas and electricity to a wide range of customers. This has already occurred in the markets for large volume natural gas and electricity customers.

AGL considers that its major competitors in energy supply include the following:

Name	Natural gas	Electricity
Country Energy	NSW, Vic	NSW, Vic
Energex	Qld, Vic	Qld, NSW
EnergyAustralia	NSW, Vic	NSW and Vic
Integral Energy	NSW	NSW, Vic
Origin Energy	NSW, Vic	NSW, Vic
TXU	NSW, Vic	NSW, Vic, Qld

Several of the Notifying Parties' competitors describe and market themselves as energy companies operating nationally with a similar suite of products and services. Many of these competitors also market combined natural gas and electricity offerings to residential and small business customers to capitalise on full retail contestability. As with previous offerings of combined services to high volume natural gas and electricity customers, the ability to offer savings and incentives to customers who choose a single energy supplier is a key component of competition in the residential and small business energy sector.

In the present environment and continuing into the future, the trends towards national expansion and diversification into full-service energy supply indicate an increasing level of competition between suppliers who may have considered themselves only loosely competitive in the past. In this environment profit margins are tightening and efficiency is increasing for the benefit of all consumers.

4.2 Competitive Environment – Emergence of Multiutilities

The proposed conduct will allow the Notifying Parties to bundle natural gas, electricity and ancillary services to customers. This will enhance the ability of the Notifying Parties to compete against other energy companies who are offering, or are proposing to offer, customers multiple services.

The move by Australian natural gas and electricity companies towards bundled energy offerings is consistent with experience in other industries as well as with energy markets overseas. A clear example of the trend in energy markets towards bundling can be seen in the United Kingdom. A wide range of suppliers bundle natural gas and electricity in the United Kingdom, either through arrangements with other suppliers, or by acquiring natural gas and electricity businesses.

Under the proposed conduct, natural gas and electricity will remain separately available to the consumer. Concerns about possible anti-competitive effects of bundling do not arise where the products bundled remain independently available because the consumer is free to select the best bargain without the need to purchase a second product. Where the products are made available separately they will be separately priced, so the consumer will be able to ascertain the true cost of either product. In the United States, the Supreme Court has established that the separate offering of separate products removes the core of the objection to bundling: the forced purchase of a second commodity.

AGL estimates that there are at least 20 energy retailers in Australia providing energy to a combined base in excess of 6.5 million customers.

Of these, the following companies have already emerged as dual fuel multi-utilities:

- **Origin Energy**, an established explorer, producer and retailer of natural gas in Australia has now entered the electricity market and is becoming a significant participant in the national electricity market as a generator, trader and retailer;
- **Energex**, one of Australia's first multi-utilities to emerge following the deregulation, retails natural gas and electricity products and services to more than 1.1 million customers; and
- **TXU** was formed in 1995 to acquire Eastern Australia Ltd, the Victorian electricity distributor and electricity and natural gas retailer, and now, through its various subsidiaries, owns diverse electricity and gas assets.

In addition, both Integral Energy and EnergyAustralia, which were traditionally electricity suppliers, have entered into arrangements to supply Bass Strait natural gas through the new Eastern gas Pipeline to New South Wales and Victoria and are commencing natural gas supply as contestability progresses.

4.3 Notifying Parties' place in the Competitive Environment

AGL's estimates of the Notifying Parties' and their competitors' customer numbers are set out in the Confidential Annexure to this submission.

The Notifying Parties will be competing against both existing suppliers with significant market shares and new entrants whose barriers to entry have been removed by market reforms.

In this environment, the efficiencies available through the sale of packaged services will enable the Notifying Parties to compete effectively with suppliers of individual services and competing packages of services and the efficiency gains will be passed on to customers through the emerging vigorous inter-regional and inter-product competition.

4.4 Consumer Protection

The proposed conduct is directed towards passing on the savings achieved by the Notifying Parties in providing natural gas, electricity and ancillary services to one customer. It is not designed to, and does not, fetter the customer's choice in the acquisition of natural gas or electricity. The customer is at all times free to acquire one service or the other at published or negotiated rates. At all times, the independent prices for natural gas, electricity and energy services will be made clear to the customer, as well as the savings available off each price in the event that the customer chooses to acquire a combination of services.

Under the proposed conduct a customer will have the following choices and be aware that the choices are available to them:

- acquire natural gas or electricity services independently at market prices;
- acquire combined natural gas and electricity services at market prices reduced by economies of scale; or
- in certain circumstances acquire natural gas or electricity services at regulated prices.

The Notifying Parties are committed to ensuring that all customers and potential customers are provided with all information relevant to the decision to purchase natural gas, electricity and energy services. The Notifying Parties each ensure that their managers and representatives 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.

The Notifying Parties hold 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. AGL provides a trade practices compliance guide to employees emphasising these issues and has developed an electronic trade practices compliance program that conforms to AS3806 – Compliance Programs (1998).

4.5 Public Benefit

In its February 1998 Guide to Authorisation and Notification for Third Line Forcing Conduct, the ACCC considers that:

“In the absence of misleading information about prices—and provided purchasers are not in fact forced to purchase both products and have enough information to make an informed decision on the supplier’s offer—the conduct would have little anti-competitive effect...

Moreover, there is inherent public benefit in the conduct when customers can buy the package of products A and B at a genuine saving on the total price of the products bought separately in competitive markets. In such circumstances, the conduct would result in lower prices for customers and would serve to increase competition in the markets for both products and immunity under the authorisation or notification process would likely be obtained.”

The Notifying Parties’ proposed conduct falls within the category described by the ACCC. The customers will have a genuine choice about the services they will acquire. Pricing structures will be transparent and will allow informed decisions to be made. Given this, the proposed conduct shall provide a tangible benefit, and no detriment, to the consumer. It further causes no detriment to any competitor of the Notifying Parties beyond legitimate competitive conduct.

In the United States, concerns about the possible anti-competitive effects of bundling do not arise where both the tied and tying products are independently available: that is, “...where the buyer is free to take either product by itself there is no tying problem” (*Northern Pacific Railway* 356 US at 6 n 4). The legal position under sections 47(6) and (7) of the *Trade Practices Act 1974* is clearly different from the position in the United States, since it prescribes a per se rule rather than applying the competition test. However, the US antitrust law indicates the situations in which such conduct will constitute a public detriment and when it may provide a public benefit, and as such are useful in the context of a notification.

The proposed conduct will allow the Notifying Parties to pass on to customers the economies of scale and scope they derive from offering a combination of natural gas, electricity and energy services to customers who may have diverse needs. These economies are achieved through

various aspects of the proposed conduct including rationalised administration, reduced billing and credit costs, reduced customer relationship costs and simple economies of scale.

Where permitted by regulation, customers may also wish to enter into combined dual fuel contracts with the Notifying Parties, while still being given the option to enter into separate contracts at standard prices. Combined contracts would reduce overheads for the Notifying Parties and its customers and result in improved customer convenience and savings.

Passing these savings on to the customer will have clear financial benefits for the individual customer and may also reduce the customer's administration costs and inconvenience by providing a single bill and single point of contact for that customer's energy services.

The proposed conduct both reflects and can be expected to impel further competitive responses from other suppliers of natural gas and/or electricity. These responses would take the form of lower prices and increased levels of service and convenience. The increasing number of suppliers who provide both natural gas and electricity can be expected to respond with a similar opportunity to pass on the savings achieved by a combined supply.

Some of these competing suppliers may be entirely integrated such that the one corporate entity holds both natural gas authorisations and electricity supply licences. In these cases, the supplier will be free to provide discounts on combined offerings without notifying conduct to which sections 47(6) or (7) of the *Trade Practices Act 1974* applies.

In this case the discounting of Additional Services is pro-competitive. It is likely to drive down prices, allow the Notifying Parties to compete with structurally integrated energy suppliers, and provide an opportunity for the Notifying Parties to compete with other suppliers of energy services across Australia.

Confidentiality granted for Annexure

FORM G
Regulation 9

COMMONWEALTH OF AUSTRALIA

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

NOTIFICATION OF EXCLUSIVE DEALING

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 Electricity Limited ABN 82 064 651 083 (AGLE)

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

In conjunction with the other Notifying Party set out in Attachment A, the supply of natural gas, electricity and ancillary energy services throughout New South Wales.

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

Liza Carver
Partner
Gilbert & Tobin
Level 37
2 Park Street
SYDNEY NSW 1042

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

Natural gas, electricity and ancillary services.

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

See Attachment A.

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

The class of persons who acquire, will acquire or will be offered any combination of:

- natural gas and ancillary services; and
- electricity and ancillary services;

by one or more of the Notifying Parties.

Ancillary services are those services which are complementary and incidental to the supply of natural gas and electricity including:

- programmed maintenance services;
- power factor services;
- environmental services; and
- energy audit services.

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

- (i) at present: up to 800,000;
- (ii) estimated within the next year: as in (i) above.

(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:**

Liza Carver
Partner
Gilbert & Tobin
Level 37
2 Park Street
SYDNEY NSW 1042

Dated:

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

(Signature)

Name in Print

Title



Liza Carver

ATTACHMENT A

SUBMISSION IN SUPPORT OF NOTIFICATION

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1. BACKGROUND: MOVEMENT TOWARDS MULTI-UTILITIES

Competition to supply natural gas and electricity on a retail basis to customers has historically been precluded by State and Territory ownership and regulatory structures. Deregulation and partial privatisation commenced in the 1990s and the staggered introduction of full retail contestability in both natural gas and electricity across south east Australia have brought significant increased competition for all customers.

Such competition has primarily come from the expansion of each of the formerly single-utility, regulated monopolies into adjacent product and geographic market segments. Since energy is a commodity product, competition to attract customers has largely been driven by price. The AGL Group, Energy Australia, Energex, TXU and Country Energy are all examples of companies competing to supply energy types or to supply regions in former monopoly franchise areas. This has involved winning many new customers in their capacities as entrants to adjacent segments and losing many customers in their capacities as former monopolies.

The increased pressure on prices through the introduction of competition has required utilities to improve the efficiency of their business. In doing so, multi-utilities such as the ActewAGL retail partnership have recognised the substantial synergies achieved through rationalising customer

relationships and transaction cost savings. Through the emerging competition, a significant proportion of these synergies have been returned to customers through competitive pressure on prices. The synergies available through rationalising customer relationships are particularly significant for small customers because setting up, administering and closing accounts forms a higher proportion of the costs of servicing those customers when compared with buyers of large quantities of energy.

The proposed conduct will position the Notifying Parties to compete in this new dual fuel domestic and small business customer environment by offering multi-utility service packages consisting of natural gas, electricity and ancillary services.

2. NOTIFYING PARTIES

The Notifying Parties are:

- AGL Retail Energy Limited ABN 21 074 839 464 (**AGL Retail Energy**); and
- AGL Electricity Limited ABN 82 064 651 083 (**AGLE**).

Each of the Notifying Parties is a wholly owned subsidiary of The Australian Gas Light Company.

3. PROPOSED CONDUCT

The Notifying Parties propose to offer natural gas, electricity or ancillary services (**the First Service**) to customers in New South Wales at a discount, allowance, rebate or credit in relation on the condition that the customers also acquire, have acquired or will acquire one or more additional natural gas, electricity or ancillary services (**the Additional Services**).

The current notification is related to notification N90878, registered with the Commission on 26 July 2001 (Commission File Number C2001/1026). The current notification differs from notification N90878 by:

- (a) removing all references to telecommunications services;
- (b) stipulating the discount, allowance, rebate or credit in relation that customers may conditionally acquire in terms of a range of dollar amounts as opposed to a percentage; and
- (c) being geographically restricted to New South Wales.

Further details of these discounts are provided in the Confidential Annexure to this notification. The Notifying Parties propose to engage in this conduct until further notice.

4. PUBLIC BENEFIT

The proposed conduct will significantly benefit customers by providing:

- real competition with other multi-utilities;
- expanded customer choice; and
- real savings through efficiency gains,

in relation to the supply of energy services.

Even purchasers of energy services who do not elect to purchase from the Notifying Parties will benefit because competing retailers are likely to seek to match, or better, the packages offered by the Notifying Parties.

Therefore, 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.

4.1 Competitive Environment - Energy

The natural gas and electricity industries across Australia have been systematically deregulated and opened to competition. These industries have traditionally been regarded as natural monopolies and have been characterised by a single supplier in each geographic area or state. New regimes allowing access to infrastructure and some duplication of facilities are exposing industry participants to an increasing level of competition and potential competition. Each State has developed regulations to introduce contestability of customers in a staged timetable.

Electricity customers in New South Wales, the Australian Capital Territory, Victoria and South Australia are now fully contestable. Gas customers in New South Wales, the Australian Capital Territory and Victoria are fully contestable, with full contestability to be introduced in South Australia by July 2004.

The introduction of contestability into the natural gas and electricity industries, has resulted in these industries are becoming increasingly characterised by:

- regional suppliers expanding into national operations; 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 or region is making way for a number of national and regional energy suppliers providing both natural gas and electricity to a wide range of customers.

AGL considers that its major competitors in energy supply include the following:

Name	Natural Gas	Electricity
Country Energy	NSW, Vic	NSW, Vic
Energex	Qld, Vic	Qld, NSW
EnergyAustralia	NSW, Vic	NSW and Vic
Integral Energy	NSW	NSW, Vic
Origin Energy	NSW, Vic	NSW, Vic
TXU	NSW, Vic	NSW, Vic, Qld

Several of the Notifying Parties' competitors describe and market themselves as energy companies operating nationally with a similar suite of products and services. Many of these competitors also market combined natural gas and electricity offerings to residential and small business customers to capitalise on full retail contestability. As with previous offerings of combined services to high volume natural gas and electricity customers, the ability to offer savings and incentives to customers who choose a single energy supplier is a key component of competition in the residential and small business energy sector.

In the present environment and continuing into the future, the trends towards national expansion and diversification into full-service energy supply indicate an increasing level of competition between suppliers who may have considered themselves only loosely competitive in the past. In this environment profit margins are tightening and efficiency is increasing for the benefit of all consumers.

4.2 Competitive Environment – Emergence of Multiutilities

The proposed conduct will allow the Notifying Parties to bundle natural gas, electricity and ancillary services to customers. This will enhance the ability of the Notifying Parties to compete against other energy companies who are offering, or are proposing to offer, customers multiple services.

The move by Australian natural gas and electricity companies towards bundled energy offerings is consistent with experience in other industries as well as with energy markets overseas. A clear example of the trend in energy markets towards bundling can be seen in the United Kingdom. A wide range of suppliers bundle natural gas and electricity in the United Kingdom, either through arrangements with other suppliers, or by acquiring natural gas and electricity businesses.

Under the proposed conduct, natural gas and electricity will remain separately available to the consumer. Concerns about possible anti-competitive effects of bundling do not arise where the products bundled remain independently available because the consumer is free to select the best bargain without the need to purchase a second product. Where the products are made available separately they will be separately priced, so the consumer will be able to ascertain the true cost of either product. In the United States, the Supreme Court has established that the separate offering of separate products removes the core of the objection to bundling: the forced purchase of a second commodity.

AGL estimates that there are at least 20 energy retailers in Australia providing energy to a combined base in excess of 6.5 million customers.

Of these, the following companies have already emerged as dual fuel multi-utilities:

- **Origin Energy**, an established explorer, producer and retailer of natural gas in Australia has now entered the electricity market and is becoming a significant participant in the national electricity market as a generator, trader and retailer;
- **Energex**, one of Australia's first multi-utilities to emerge following the deregulation, retails natural gas and electricity products and services to more than 1.1 million customers; and
- **TXU** was formed in 1995 to acquire Eastern Australia Ltd, the Victorian electricity distributor and electricity and natural gas retailer and now, through its various subsidiaries, owns diverse electricity and natural gas assets.

In addition, both Integral Energy and EnergyAustralia, which were traditionally electricity suppliers, have entered into arrangements to supply Bass Strait natural gas through the Eastern Natural gas Pipeline to New South Wales and Victoria and also engage in supply of natural gas: natural gas

4.3 Notifying Parties' place in the Competitive Environment

AGL's estimates of the Notifying Parties' and their competitors' customer numbers are set out in the Confidential Annexure to this submission.

The Notifying Parties will be competing against both existing suppliers with significant market shares and new entrants whose barriers to entry have been removed by market reforms.

In this environment, the efficiencies available through the sale of packaged services will enable the Notifying Parties to compete effectively with suppliers of individual services and competing packages of services and the efficiency gains will be passed on to customers through the emerging vigorous inter-regional and inter-product competition.

4.4 Consumer Protection

The proposed conduct is directed towards passing on the savings achieved by the Notifying Parties in providing natural gas, electricity and ancillary services to one customer. It is not designed to, and does not, fetter the customer's choice in the acquisition of natural gas or electricity. The customer is at all times free to acquire one service or the other at published or negotiated rates. At all times, the independent prices for natural gas, electricity and energy services will be made clear to the customer, as well as the savings available off each price in the event that the customer chooses to acquire a combination of services.

Under the proposed conduct, a customer will have the following choices and will be aware that the choices are available to them:

- acquire natural gas or electricity services independently at market prices;
- acquire combined natural gas and electricity services at market prices reduced by economies of scale; or
- in certain circumstances, acquire natural gas or electricity services at regulated prices.

The Notifying Parties are committed to ensuring that all customers and potential customers are provided with all information relevant to the decision to purchase natural gas, electricity and energy services. The Notifying Parties each ensure that their managers and representatives 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.

The Notifying Parties hold 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. AGL provides a trade practices compliance guide to employees emphasising these issues and has developed an electronic trade practices compliance program that conforms to AS3806 – Compliance Programs (1998).

4.5 Public Benefit

In its February 1998 Guide to Authorisation and Notification for Third Line Forcing Conduct, the ACCC considers that:

“In the absence of misleading information about prices—and provided purchasers are not in fact forced to purchase both products and have enough information to make an informed decision on the supplier’s offer—the conduct would have little anti-competitive effect...

Moreover, there is inherent public benefit in the conduct when customers can buy the package of products A and B at a genuine saving on the total price of the products bought separately in competitive markets. In such circumstances, the conduct would result in lower prices for customers and would serve to increase competition in the markets for both products and immunity under the authorisation or notification process would likely be obtained.”

The Notifying Parties’ proposed conduct falls within the category described by the ACCC. The customers will have a genuine choice about the services they will acquire. Pricing structures will be transparent and will allow informed decisions to be made. Given this, the proposed conduct shall provide a tangible benefit, and no detriment, to the consumer. It further causes no detriment to any competitor of the Notifying Parties beyond legitimate competitive conduct.

In the United States, concerns about the possible anti-competitive effects of bundling do not arise where both the tied and tying products are independently available: that is, “...where the buyer is free to take either product by itself there is no tying problem” (*Northern Pacific Railway* 356 US at 6 n 4). The legal position under sections 47(6) and (7) of the *Trade Practices Act 1974* is clearly different from the position in the United States, since it prescribes a per se rule rather than applying the competition test. However, the US antitrust law indicates the situations in which such conduct will constitute a public detriment and when it may provide a public benefit, and as such are useful in the context of a notification.

The proposed conduct will allow the Notifying Parties to pass on to customers the economies of scale and scope they derive from offering a combination of natural gas, electricity and energy services to customers who may have diverse needs. These economies are achieved through various aspects of the proposed conduct including rationalised administration, reduced billing and credit costs, reduced customer relationship costs and simple economies of scale.

Where permitted by regulation, customers may also wish to enter into combined dual fuel contracts with the Notifying Parties, while still being given the option to enter into separate

contracts at standard prices. Combined contracts would reduce overheads for the Notifying Parties and its customers and result in improved customer convenience and savings.

Passing these savings on to the customer will have clear financial benefits for the individual customer and may also reduce the customer's administration costs and inconvenience by providing a single bill and single point of contact for that customer's energy services.

The proposed conduct both reflects and can be expected to impel further competitive responses from other suppliers of natural gas and/or electricity. These responses would take the form of lower prices and increased levels of service and convenience. The increasing number of suppliers who provide both natural gas and electricity can be expected to respond with a similar opportunity to pass on the savings achieved by a combined supply.

Some of these competing suppliers may be entirely integrated such that the one corporate entity holds both natural gas authorisations and electricity supply licences. In these cases, the supplier will be free to provide discounts on combined offerings without notifying conduct to which sections 47(6) or (7) of the *Trade Practices Act 1974* applies.

In this case, the discounting of Additional Services is pro-competitive. It is likely to drive down prices, allow the Notifying Parties to compete with structurally integrated energy suppliers, and provide an opportunity for the Notifying Parties to compete with other suppliers of energy services across Australia.

Confidentiality granted for Annexure