

Mr Tim Grimwade  
General Manager  
ACCC Adjudications Branch  
PO Box 1199  
Dickson ACT 2602

04 November 2004

Dear Mr Grimwade

FILE No:
DOC: <b>04/54 315</b>
MARSIPRISM

**Notification of third line forcing conduct by AGL ACT Retail Investments Pty Ltd, ACTEW Retail Ltd and TransACT Capital Communications Pty Ltd**

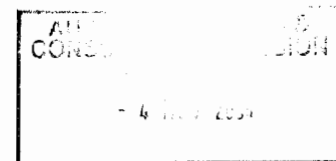
I attach a notification on behalf of ActewAGL Retail, and TransACT Capital Communications in respect of the bundling of ActewAGL services and the services of TransACT.

The proposed offer is available to residential customers in the ACT, and replaces the earlier offer notified to the ACCC by ActewAGL (N91338) and TransACT (N91339).

ActewAGL and TransACT would be happy to answer any questions in relation to the notification.

Yours sincerely

Peter Ernst-Russell  
Legal Adviser  
ActewAGL



**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*, or 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:**

TransACT Capital Communications Pty Ltd  
ABN 23 093 966 888

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

The business currently conducted by TransACT (and its related companies) includes the provision of:

- fixed line telephone services to customers within the footprint of the TransACT network within the ACT;
- subscription television services to customers within the footprint of the TransACT network within the ACT;
- network access to a range of internet service providers who provide services to customers within the footprint of the TransACT network within the ACT;
- pre-select telephony services to all residents within the Australian Capital Territory and surrounding regions.

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

TransACT Capital Communications Pty Ltd  
3<sup>rd</sup> floor, TransACT House  
470 Northbourne Avenue  
Dickson ACT 2602

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

See Attachment A.

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

See Attachment A.

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

Existing and potential residential customers of TransACT in the Australian Capital Territory.

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

**(i) at present time:**

Nil, this bundled product has not yet been released to market.

**(ii) estimated within the next year:**

The number of persons to which the proposed conduct will relate within the next year is not known, but it is likely to substantially exceed 50.

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

Not applicable.

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

Dianne O'Hara  
Company Secretary  
TransACT Capital Communications Pty Ltd  
PO Box 1006  
Civic Square ACT 2608

Date: 4 November 2004

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



Dianne O'Hara  
Company Secretary

## ATTACHMENT A

### 1. EXECUTIVE SUMMARY

TransACT Capital Communications Pty Ltd (TransACT) and ActewAGL intend to enter into an agreement under which the parties will co-operate to contribute one or more of the services they supply to retail customers throughout the Australian Capital Territory. Customers may select various combinations of available services and will receive a discount on the pricing applicable to the particular services.

TransACT and ActewAGL are seeking statutory immunity under section 93 of the *Trade Practices Act 1974* for the proposed conduct. ActewAGL has also lodged a notification with the Commission to this effect.

### 2. CORPORATIONS INVOLVED

#### 2.1 TransACT Capital Communications Pty Ltd

TransACT Capital Communications Pty Ltd (ABN 23 093 966 888) is a wholly owned subsidiary of TransACT Communications Pty Limited (ABN 32 091 752 297).

TransACT Communications Pty Ltd is jointly owned by ACTEW Corporation Limited, TVG TransAct Holdings SCA, AGL TransACT Pty Limited, Marconi Corporation plc, Australian Capital Ventures Limited, Commonwealth Bank of Australia, MTAA Superannuation Fund (TransACT) Utilities Pty Ltd and Westscheme Pty Ltd.

TransACT Capital Communications Pty Ltd owns and operates a broadband communications network in the Australian Capital Territory, which is capable of delivering voice, data and video (including subscription television).

Further information regarding TransACT Communications Pty Limited may be obtained from [www.transact.com.au](http://www.transact.com.au)

#### 2.2 ActewAGL

ActewAGL Retail (ABN 46 221 314 841) is a partnership between ACTEW Retail Limited and AGL ACT Retail Investments Limited, subsidiaries of ACTEW Corporation Limited (ABN 86 069 381 960) (ACTEW) and the Australian Gas Light Company (ARBN 052 167 405) (AGL) respectively.

ACTEW 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 to customers in Australia and overseas through various subsidiaries.

ActewAGL provides:

- electricity to customers in the ACT, and contestable customers outside the ACT;
- natural gas to ACT, Queanbeyan and Nowra customers;
- water and sewerage billing services to ACT customers on behalf of ACTEW Corporation Ltd (network asset owner); and
- dial-up and broadband internet service products primarily to ACT customers.

ActewAGL is authorised to supply natural gas to ACT and NSW customers, and electricity to customers in the ACT, NSW, Vic and Qld.

Further information regarding ActewAGL may be obtained from [www.actewagl.com.au](http://www.actewagl.com.au)

### **2.3 Relationship of the Parties**

ACTEW Corporation Limited has a 24.86% shareholding in TransACT Communications Pty Limited.

AGL TransACT Pty Limited has a 16.05% shareholding in TransACT Communications Pty Limited. AGL TransACT Pty Limited is wholly owned by The Australian Gas Light Company.

ActewAGL is a partnership between ACTEW Corporation Limited and the Australian Gas Light Company.

## **3. DESCRIPTION OF GOODS AND SERVICES IN RELATION TO WHICH THIS NOTICE RELATES**

### **3.1 Description of the Services**

The services to be supplied by each of TransACT and ActewAGL to persons and to which this notice relates are as follows:

- TransACT service
  - Telephone - a fixed term contract allowing customers to nominate TransACT as their supplier of local, national, international calls and calls to mobile services;
- ActewAGL services
  - electricity - a fixed term ActewAGL electricity supply contract;
  - gas - a fixed term ActewAGL gas supply contract; and
  - internet - a fixed term ActewAGL contract for dial up internet services, or broadband internet services

## **4. PROPOSED CONDUCT**

### **4.1 Summary of Proposed Conduct**

TransACT and ActewAGL would invite retail customers and potential retail customers within the ACT to acquire services from each of the parties. Depending upon the specific services acquired, the retail customer would be eligible for various discounts on the price of those services.

Selection of the services is at the option of the retail customer.

The level of the discount applicable to the various combinations of available services is specified below. Each of TransACT and ActewAGL will continue to independently determine the prices at which they sell their respective products and services.

The retail customer must enter into a 24 month service agreement with each of TransACT (to acquire the TransACT service) and ActewAGL (to acquire the ActewAGL services) in order to obtain the discount. Existing payment options would apply.

The price of each of the services will be readily apparent to the retail customer. The retail customer would receive a bill from each of TransACT and ActewAGL.

The services would be jointly marketed by both parties.

#### 4.2 Discount Scheme to be Applied

The discount applicable is set out in the table:

Services	Discount (electricity)	Discount (natural gas)	Discount (telephone)	Discount (internet)
Electricity, Natural Gas, Internet	5% discount on consumption and supply charges	5% discount on supply charges	-	5% discount on monthly ActewAGL access charges
Electricity, Natural Gas, Telephone	5% discount on consumption and supply charges	5% discount on supply charges	5% discount on monthly line rental charge (5% * \$22)	-
Electricity, Internet, Telephone	5% discount on consumption and supply charges	5% discount on supply charges	5% discount on monthly line rental charge (5% * \$22)	5% discount on monthly ActewAGL access charges
Electricity, Natural Gas, Internet, Telephone	10% discount on consumption and supply charges	10% discount on supply charges	10% discount on monthly line rental charge (5% * \$22)	10% discount on monthly ActewAGL access charges

The discount for TransACT services would be payable by TransACT. The discount for ActewAGL services would be payable by ActewAGL.

The discount for ActewAGL services will be capped at \$500 per annum.

In addition, customers will be eligible for the following:

- Free Privileges Card from ActewAGL, valid for 2 years (retail price \$195.80);
- Waiver of internet account establishment fee (\$20), (fee is only payable by new ActewAGL internet customers);
- Waiver of TransACT network connection fee (valued at either \$150 (phase 2 standard charge) or \$249 (phase 1 standard charge));
- Waiver of natural gas establishment fee (\$299), (fee is only payable by new ActewAGL gas customers).

ActewAGL and TransACT may also choose to offer the following additional options to customers selecting one of the bundle combinations above:

- 2 tickets to local sporting events eg Raiders or Kangaroos match (valued at around \$50);
- an optical (cordless) mouse and keyboard (valued at around \$99);
- an extra 2 months free ActewAGL Net Connect internet access, available on one dial-up plan, and one broadband plan (valued at \$49.90 for dial-up, and \$39.90 for broadband);
- an ActewAGL cap, shirt, and golf ball pack (value less than \$50);
- 2 months free TransACT phone line rental (value \$44), available to customers in a TransACT enabled area;
- free TransACT broadband connection upgrade from 256kbps to 512kbps (value \$360 based on \$15 per month for 24 months), available to customers in a TransACT enabled area.

The above table represents the current intentions of TransACT, however TransACT may seek to alter the discount, cap the number of retail customers eligible for the discount, or cap the dollar value to be received by the retail customer under the discount due to commercial considerations.

#### **4.3 Operation of the discounts**

The telephone discount will be credited to a customer's TransACT phone account. The discount will apply for services supplied to the customer from the contract start date.

The electricity discount will be credited to a customer's ActewAGL electricity account. The discount will apply for services supplied to the customer from the contract start date.

The natural gas discount will be credited to a customer's ActewAGL natural gas account. The discount will apply from the customer's next meter reading date after the contract start date.

The internet discount will be credited to a customer's ActewAGL internet account. The discount will be available on five of ActewAGL's six dial-up plans and five of ActewAGL's six broadband plans. The discount will apply for services supplied to the customer from the contract start date. The discount will not apply to any overrun charges (relevant for dial-up plans only).

#### **4.4 Privileges Card**

The Privileges Card offers a variety of benefits and savings to card holders at over 200 leisure and entertainment venues in the Canberra region, (as well as Sydney and Melbourne), including half price entry to major tourist attractions, savings of 20% to 50% at over 90 popular restaurants and cafes, low cost movie tickets at Canberra movie theatres, and other benefits arranged by Privileges Card Pty Ltd as published at [www.privileges.com.au/canberra/index.html](http://www.privileges.com.au/canberra/index.html).

Customers signing on to a two year bundle contract will be entitled to a two year Privileges Card. These cards will be purchased by ActewAGL from Privileges Card Pty Ltd. A Privileges Card will be issued by ActewAGL to eligible customers. The Privileges Card will remain the property of the customer whilst the contract between TransACT and the customer remains active.

The Privileges Card will display the TransACT and ActewAGL logo. However the available benefits will be identical to the existing Privileges Card publicly issued by Privileges Card Pty Ltd.

#### **4.5 Compulsory Requirement of TransACT Service**

Customers will enter into a 24 month TransACT telephony agreement in order to qualify for a discount on their telephony account.

TransACT currently sources its national and international telephony services from other providers on the basis of least cost routing. The application of a fixed term contract for its telephony customers enables TransACT to more accurately predict the number of minutes of the services that it requires and to gain the most competitive available rate from other telephony service providers.

#### **4.6 Compulsory Requirement of ActewAGL Service**

In order to qualify for the various discounts on ActewAGL services, a customer is also required to enter into an ActewAGL 24 month contract.

#### **4.7 Fixed Term Supply Agreement**

The supply of services to a customer is subject to a 24 month term. This lowers the running costs of providing available services by reducing overheads associated with customer management (eg: customers who terminate services). In order to meet associated administrative costs, an early contract termination fee will be payable by a customer who terminates a service contract during the term. At the discretion of TransACT, this fee may be waived in respect of TransACT services where a customer moves to an area where not all of the contracted services are available.

#### **4.8 Provision of Information to Customers**

The discount available to TransACT customers and ActewAGL customers will be communicated through radio advertisements, local newspapers, brochures, TransACT and ActewAGL call centres, press campaigns, the parties' respective websites and other means. TransACT will ensure its customers are aware of:

- the discount if the customer elects to acquire services from TransACT and ActewAGL; and
- any limits to the offer.

Customers will therefore be in full possession of all material relevant to a purchase decision prior to purchasing any services.

### **5. PUBLIC BENEFITS**



The impact of the proposed conduct is not such that, under the test laid down in section 93(3A)(b) of the *Trade Practices Act 1974*, the likely benefit to the public will be outweighed by the likely detriment to the public.

The proposed conduct would result in the following major public benefits:

- discounts applied to essential services;
- encouragement of significant investment in advanced, local broadband communications infrastructure; and
- facilitation of competition within the telecommunications industry.

### **5.1 Discounts applied to Essential Services**

Persons who elect to purchase the available services will benefit from the application of discounts, as specified at paragraph 4.2. The specific discount to be applied to the available services depends upon the combination of services selected by the retail customer.

The proposed conduct will benefit customers of electricity, gas and telephony services by providing them with discounted services.

The electricity, gas, telephony and other telecommunications services will continue to be available to customers separately from both TransACT and ActewAGL and through other service providers.

### **5.2 Investment in Advanced, Local Communications Infrastructure**

TransACT is currently deploying an advanced, fibre to the curb access network which is capable of providing a comprehensive range of narrowband and broadband telecommunications services.

The major services currently offered by TransACT to its customers throughout the ACT include:

- telephony services including basic access, local calls, long distance, fixed to mobiles and international calls;
- data services including dark fibre, leased lines, virtual private networks and high speed internet access; and
- video services to support the broadcast of free to air television, subscription television and video on demand.

TransACT is now seeking to further extend the reach of specified services to customers within the regions surrounding the ACT.

TransACT is one of a small number of telecommunications enterprises that is making significant investment in the construction and deployment of advanced telecommunications infrastructure. Retail customers within the ACT and the surrounding region will continue to extract benefit from the provision of leading edge telecommunications facilities and services.

TransACT operates under an 'open access' principle in respect of third party products and services. Essentially, TransACT provides an advanced full service platform through which other service providers are eligible to supply services to their customers. For example, TransACT customers are currently eligible to obtain internet connection services through as many as eight separate providers through the TransACT network.

### **5.3 Competition within the Telecommunications Industry**

Consistent with the stated policy objectives of the Federal Government, the proposed conduct will promote the long term interests of telecommunications users by increasing competition in the telecommunications industry and promoting investment in advanced broadband communications infrastructure.

The proposed conduct will also encourage competition in the various markets in which other components of the services are supplied. Depending upon the combination of services selected by the retail customer, customers could qualify for discounts and continue to have other services supplied by other energy providers or telecommunications companies.

The proposed conduct therefore does not reduce the choice available to retail customers as it allows them to construct packages of telecommunications services and energy services from a range of providers.

## **6. PUBLIC DETRIMENT**

It is TransACT's view that there will be very little, if any, detriment to the public arising from the proposed conduct. The markets affected by the proposed conduct are those of telecommunications, internet services, electricity and gas.

### **6.1 No Lessening of Competition in the Telecommunications Market**

TransACT competes with many other telecommunications providers operating in the ACT. Similar services are offered by a range of other companies including but not limited to Telstra (telephony; dial up and broadband internet services; subscription TV), Optus and AAPT.

These companies currently offer bundled services which enable their customers who select a number of services to qualify for discounts.

The proposed conduct will not be detrimental to competition given the size and number of telecommunication operators, and the highly competitive nature of the telecommunications retail market to which the bundled services relate.

### **6.2 No Lessening of Competition in the Internet Services Market**

ActewAGL only has a small share of the dial-up internet market, with its dial up products being launched in July 2002, and its broadband products being launched in May 2003. ActewAGL competes with numerous local (Netspeed, Apex, Cyber One, Broadband Unlimited, Interact Broadband) and national internet service providers (Telstra, Optus).

The offer of free broadband connection upgrade from 256kbps to 512kbps is only available to customers in a TransACT enabled suburb. These suburbs comprise around half of all suburbs in the ACT.

The bundled services will not be detrimental to competition given the large number of other internet service providers, and the highly competitive nature of this retail market.

### **6.3 Conduct Voluntary**

It should be noted that the proposed conduct would be voluntary on the part of the retail customer. The services will be available separately from TransACT and ActewAGL and separately from other service providers.

**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:**

- electricity and natural gas utility based in the ACT;
- supplier of electricity to customers in the ACT, and contestable customers outside the ACT;
- supplier of natural gas to ACT, Queanbeyan and Nowra and Capital Region customers (including Boorowa, Goulburn, Yass and Young shires);
- supplier of water and sewerage billing services to ACT customers on behalf of ACTEW Corporation Ltd (network asset owner);
- provider of dial up and broadband internet service products primarily to ACT customers.

**(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:**

See Attachment A

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

See Attachment A.

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

Existing and potential residential customers of ActewAGL in the Australian Capital Territory.

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

(i) **at present time:**

Nil, this bundled product offering has not yet been released to market.

(ii) **estimated within the next year:**

The estimated number of customers with whom ActewAGL is likely to deal in the course of conduct over the next year is unknown but is likely to substantially exceed 50.

(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 Peter Ernst-Russell, Legal Adviser, ActewAGL, 221-223 London Circuit,  
Canberra City, 2601

Date: 04/11/04

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

  
(Signature)

Mr Peter Ernst-Russell  
Legal Adviser  
ActewAGL

## **ATTACHMENT A**

### **1. CORPORATIONS INVOLVED**

#### **1.1 ACTEWAGL**

ActewAGL is a partnership between subsidiaries of ACTEW Corporation Ltd ABN 86 069 381 960 ("ACTEW") and of The Australian Gas Light Company ABN 95 052 167 405 ("AGL"). ACTEW 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 to customers in Australia and overseas through various subsidiaries.

ActewAGL is authorised to supply natural gas to ACT and NSW customers, and electricity to customers in the ACT, NSW, Vic and Qld.

#### **1.2 TransACT**

TransACT Capital Communications Pty Ltd ABN 23 093 966 888 ("TransACT") is a wholly owned subsidiary of TransACT Communications Pty Limited ABN 32 091 752 297.

TransACT Communications Pty Ltd is jointly owned by ACTEW Corporation Limited, TVG TransAct Holdings SCA, AGL TransACT Pty Limited, Marconi Corporation plc, Australian Capital Ventures Limited, Commonwealth Bank of Australia, MTAA Superannuation Fund TransACT Utilities Pty Ltd and Westscheme Pty Ltd.

TransACT owns and operates a telecommunications network in the ACT and is a provider of telephony services (local, STD, long distance, mobile) and digital television services (including video on demand).

ACTEW has a 24.86% shareholding interest in TransACT, and AGL has a 16.05% shareholding interest in TransACT.

### **2. PROPOSED CONDUCT**

#### **2.1 Summary of Promotion**

The following services are to be offered by ActewAGL and TransACT to persons to whom this notice relates:

- (a) ActewAGL services

- electricity - a fixed term ActewAGL electricity supply contract;
- gas - a fixed term ActewAGL gas supply contract;
- internet - a fixed term ActewAGL contract for dial-up or broadband services.

(b) TransACT service

- Telephone - a fixed term contract allowing customers to nominate TransACT as their supplier of local, national, international calls and calls to mobile services.

The supply of each service would be subject to the customer entering a 24 month contract with ActewAGL and a separate 24 month contract with TransACT (where a TransACT service is supplied).

**2.2 Discount scheme to be applied**

The discount applicable is set out in the table:

Services	Discount (electricity)	Discount (natural gas)	Discount (telephone)	Discount (internet)
Electricity, Natural Gas, Internet	5% discount on consumption and supply charges	5% discount on supply charges	-	5% discount on monthly ActewAGL access charges
Electricity, Natural Gas, Telephone	5% discount on consumption and supply charges	5% discount on supply charges	5% discount on monthly line rental charge (5% * \$22)	-
Electricity, Internet, Telephone	5% discount on consumption and supply charges	5% discount on supply charges	5% discount on monthly line rental charge (5% * \$22)	5% discount on monthly ActewAGL access charges
Electricity, Natural Gas, Internet, Telephone	10% discount on consumption and supply charges	10% discount on supply charges	10% discount on monthly line rental charge (5% * \$22)	10% discount on monthly ActewAGL access charges

The discount for ActewAGL services would be payable by ActewAGL. The discount for TransACT services would be payable by TransACT.

The discount for ActewAGL services will be capped at \$500 per annum.

In addition, customers will be eligible for the following:

- Free Privileges Card from ActewAGL, valid for 2 years (retail price \$195.80);
- Waiver of internet account establishment fee (\$20), (fee is only payable by new ActewAGL internet customers);
- Waiver of TransACT network connection fee (valued at either \$150 (phase 2 standard charge) or \$249 (phase 1 standard charge));
- Waiver of natural gas establishment fee (\$299), (fee is only payable by new ActewAGL gas customers).

ActewAGL and TransACT may also choose to offer the following additional options to customers selecting one of the bundle combinations above:

- 2 tickets to local sporting events eg Raiders or Kangaroos match (valued around \$50);
- an optical (cordless) mouse and keyboard (valued around \$99);
- an extra 2 months free ActewAGL Net Connect internet access, available on one dial-up plan, and one broadband plan, (valued at \$49.90 for dial-up, and \$39.90 for broadband);
- an ActewAGL cap, shirt, and golf ball pack (valued less than \$50);
- 2 months free TransACT phone line rental (valued at \$44), (applicable to customers in a TransACT enabled area);
- free TransACT broadband connection upgrade from 256kbps to 512kbps (valued at \$360 over two years, based on \$15 per month for 24 months), applicable to customers in a TransACT enabled area.

The above discounts represent the current intentions of ActewAGL, however ActewAGL may seek to reduce the discount; cap the number of customers eligible for the discount; or cap the dollar value to be received by the customer under the discount due to commercial considerations.

### **2.3 Operation of the discounts**

The electricity discount will be credited to a customer's ActewAGL electricity account. The discount will apply for services supplied to the customer from the contract start date.

The natural gas discount will be credited to a customer's ActewAGL natural gas account. The discount will apply from the customer's next meter reading date after the contract start date.

The telephone discount will be credited to a customer's TransACT phone account. The discount will apply for services supplied to the customer from the contract start date.

The internet discount will be credited to a customer's ActewAGL internet account. The discount will be available on five of ActewAGL's six dial-up plans and five of ActewAGL's six broadband plans. The discount will apply for services supplied to the customer from the contract start date. The discount will not apply to any overrun charges (relevant for dial-up plans only).

#### **2.4 Privileges Card**

The Privileges Card offers a variety of benefits and savings to recipients at over 200 leisure and entertainment venues in the Canberra region, (as well as Sydney and Melbourne), including half price entry to major tourist attractions, savings of 20% to 50% at over 90 popular restaurants and cafes, low cost movie tickets at Canberra movie theatres, and other benefits arranged by Privileges Card Pty Ltd as published at [www.privileges.com.au/canberra/index.html](http://www.privileges.com.au/canberra/index.html).

Customers signing on to a two year bundle contract will be entitled to a two year Privileges Card. These cards will be purchased by ActewAGL from Privileges Card Pty Ltd. A Privileges Card will be issued by ActewAGL to eligible customers. The Privileges Card will remain the property of the customer whilst the contract between ActewAGL and the customer remains active.

The Privileges Card will display the ActewAGL and TransACT logo. However the available benefits will be identical to the existing Privileges Card publicly issued by Privileges Card Pty Ltd.

#### **2.5 Compulsory requirement of ActewAGL service**

In order to qualify for a discount, a customer is required to include an ActewAGL electricity supply contract.

The requirement for a fixed term electricity agreement stems from a need for ActewAGL to have a degree of stability in its customer base when purchasing wholesale electricity. ActewAGL needs to ensure there is symmetry between its available electricity supply capacity and projected customer demand, otherwise ActewAGL may be left with spare electricity capacity that it is unable to sell, or demand that it cannot meet.



ActewAGL purchases electricity at fixed prices to protect against price fluctuations in the wholesale electricity market. However where customer demand outstrips ActewAGL's fixed priced electricity purchases, ActewAGL is forced to go to the market to rectify this imbalance.

By increasing the number of fixed term supply agreements, ActewAGL is better able to manage its wholesale electricity purchases, which in turn mean competitive prices can be offered to ActewAGL customers.

## **2.6 Fixed term supply agreement**

The supply of services to a customer is subject to a 24 month term. This lowers the running costs of providing bundled services by reducing overheads associated with customer management eg customers who terminate services.

An early contract termination fee will be payable by a customer who terminates a service contract during the term. At the discretion of ActewAGL this fee may be waived in respect of ActewAGL services where a customer moves to an area where not all of the contracted services are available.

## **2.7 Provision of bundling services information to customers**

The promotion will be communicated through promotional flyers; ActewAGL call centres; press campaigns; the parties' respective websites; direct mail-outs; and other means. ActewAGL will ensure its customers are aware of:

- (a) the discount if the customer elects to acquire qualifying services from ActewAGL and TransACT;
- (b) the time period in which the discount will be available to customers;
- (c) any limits to the offer, including early termination charges.

Customers will therefore be in full possession of all material relevant to a purchase decision prior to purchasing any services.

## **3. PUBLIC BENEFITS**

ActewAGL believes that the public benefit from the proposed third line forcing conduct will exceed any detriment that may arise.

ActewAGL and TransACT have each lodged earlier notifications relating to the bundling of products in the ACT and NSW. Details of ActewAGL's current bundle offer for ACT customers are contained in (ActewAGL N91338 and TransACT N91339). It is proposed that the offer contained in the attached notification will replace ActewAGL's offer contained in notification N91338, which will be withdrawn from the marketplace in the event the attached notification obtains ACCC approval.

### **3.1 Costs savings to customers**

The bundling of an electricity supply contract with services of TransACT will create a degree of stability in ActewAGL's electricity customer supply base. This provides greater scope for ActewAGL to secure competitive electricity pricing for these customers.

### **3.2 Increased competition in the markets in which the ActewAGL services are supplied**

ActewAGL believes the proposed conduct may provide customers with an opportunity of acquiring services from ActewAGL at a lower price than the price currently charged by other competitors. This should in turn stimulate competition in the supply of energy in the ACT area.

## **4. COMPETITION ANALYSIS**

The markets affected by the proposed conduct are the supply of electricity, gas, telecommunication services, and internet services.

### **4.1 No lessening of competition in energy supply**

The electricity and natural gas markets in the ACT are already fully contestable. There are 11 other authorised suppliers of electricity in the ACT (AGL Electricity Ltd, AGL Victoria Pty Ltd, Country Energy, ENERGEX Retail Pty Ltd, Energy Australia, Ergon Energy (Vic) Pty Ltd, Ferrier Hodgson Electricity Pty Ltd, Integral Energy Australia, Origin Energy Electricity Ltd, TXU Electricity Ltd, Yallourn Energy Pty Ltd ACN 065 325 224 trading as "Auspower"), and 3 other suppliers of natural gas (Energy Australia, ENERGEX Gas Retail Pty Ltd, Country Energy).

The natural gas and electricity markets in NSW are already fully contestable. There are no fewer than 16 authorised suppliers of gas in NSW, and at least 19 authorised suppliers of electricity in NSW. (Source: <http://www.energy.nsw.gov.au>; and [http://www.energy.nsw.gov.au/licensing/electricity/licence\\_holders.htm](http://www.energy.nsw.gov.au/licensing/electricity/licence_holders.htm))

Relative to ActewAGL, the greater customer base of competitors enables these retailers to spread customer acquisition costs over a larger base. This can include the adoption of margin pricing, where in order to secure market share in a new market, energy retailers offer near or below cost pricing and then spread these costs across the full customer base.

Although the proposed conduct will (most likely) reduce the rate of churn away from ActewAGL, it is legitimate for ActewAGL to strive to retain its existing customers and in light of the changing competitive landscape, this is an objective, commercial response.

ActewAGL believes there will be no lessening of competition given the sizable number of utilities licensed in the ACT and NSW; the large customer base of many of these retailers; and that full retail contestability has already occurred in the ACT and NSW with these retailers being seasoned operators within a contestable environment.

It is open to other energy retailers to offer a similar bundling of services with other telecommunication and/ or internet service providers within the energy market of the ACT and surrounding areas.

#### **4.2 No lessening of competition in telecommunications supply**

TransACT competes with many other telecommunications providers operating in the ACT. Similar services are offered by a range of other companies including but not limited to Telstra (telephony; dial up and broadband internet services; Pay TV); Optus and AAPT.

Telstra is one of Australia's largest companies. Its underlying sales revenue for the financial year to 30 June 2004 was \$20.7 billion, including \$7983 million generated from telecommunications services (basic access, local calls, national calls, fixed line calls to mobiles, and international calls) (Source: <http://www.telstra.com.au>).

Optus provides a broad range of communications services, including mobile, national and long distance services, local telephony, international telephony, business network services, internet and satellite services and subscription television. It provides communications services to 5 million users everyday. (Source: <http://www.optus.com.au>)

AAPT is one of Australia's three largest telecommunications carriers. It offers a range of voice, mobile, data and internet services to more than 750,000 businesses, government and residents throughout Australia. (Source: <http://www.aapt.com.au>)

ActewAGL believes the conduct will not be detrimental to competition given the size and number of telecommunication operators, and the highly competitive nature of the telecommunication retail market to which the bundled services relate.

#### **4.3 No lessening of competition in supply of internet services**

ActewAGL has only a small share of the internet market, with its dial up products being launched in July 2002, and its broadband products being launched in May 2003. ActewAGL competes with numerous local (Webone, Netspeed, Apex, Cyber One, Broadband Unlimited, Interact Broadband) and national carriers (Telstra, Optus, Ozemail).

Telstra is one of Australia's largest internet providers. In its 2004 Annual Report, Telstra stated that it had over 1.6 million dial-up and broadband subscribers. (Source: <http://www.telstra.com.au>)

The bundling of telecommunications services is already offered by Telstra in respect of mobile, internet and Foxtel services.

ActewAGL believes that the bundled products will not be detrimental to competition given the large number of other internet service providers, and the highly competitive nature of this retail market.

#### **4.4 ActewAGL is dedicated to customer protection**

ActewAGL is committed to ensuring that all customers and potential customers are provided with ample information relevant to the decision to purchase electricity and natural gas.

ActewAGL strives to ensure 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.

#### **4.4 Conduct Voluntary**

It should be noted that the proposed conduct would be voluntary on the part of the retail customer.