

FORM G  
Regulation 9

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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 (AGL Electricity)

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

In conjunction with the other Notifying Parties set out in Attachment A, the supply of electricity, gas and services ancillary to the same.

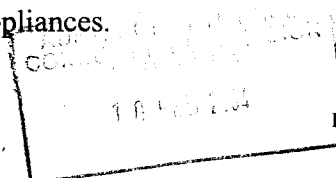
(c) **Address in Australia for service of documents for that person:**

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:**

The retail supply of natural gas, electricity, ancillary services and energy appliances in relation to the same.

For the purposes of this Notification, "ancillary services" are those services which are complementary and incidental to the supply of natural gas and electricity and include energy appliance installation and repair, and "energy appliances" are any brand of heating, cooling, cooking or hot water appliances.



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

See Attachment A.

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

The relevant class of persons in Victoria who acquire, will acquire or will be offered:

- natural gas and/or electricity by the Notifying Parties; and
- a combination of natural gas and/or electricity, ancillary services and energy appliances in relation to their supply.

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

- (i) presently 15,000 (no. of estimated potential customers); and
- (ii) estimated within the next year: as in (b)(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)

Liza Carver  
Partner, Gilbert + Tobin

## ATTACHMENT A

### SUBMISSION IN SUPPORT OF NOTIFICATION

#### 1. BACKGROUND AND COMPETITIVE ENVIRONMENT

Full retail competition was introduced in January 2002 for electricity and in October 2002 for natural gas. Energy retailers in Victoria, as well as in other jurisdictions, have offered contestable customers the opportunity to purchase natural gas and electricity through “dual fuel” contract arrangements for some time. Dual fuel contracts, involving the supply of both gas and electricity under a single contract, have now become a significant feature of retail contestability in Victoria.

There are quantifiable competitive benefits to consumers who elect to acquire energy under an AGL Electricity/AGL Victoria dual fuel contract for the supply of gas and electricity. Previous notifications submitted by various AGL entities have detailed the benefits of dual fuel contracts. These include providing consumers with efficient delivery of their energy needs, at more efficient prices. The immunity in respect of those notifications has not been revoked.

AGL’s previous notifications have also detailed the manner in which dual fuel contracting will assist it to compete more effectively with other dual fuel competitors in the evolving Victorian retail energy market. In addition to AGL Electricity and AGL Victoria, TXU Pty Ltd and Origin Energy Retail Ltd, who are significant retail competitors in the Victorian energy services market, both actively promote and sell dual fuel supply contracts to residential consumers in Victoria.

More recently, AGL entities have submitted notifications in respect of conduct involving dual fuel contracting and energy appliance purchases. Those purchases are relevantly made from AGL’s Retail Partners, as defined in those notifications. Again, the immunity in respect of those notifications has not been revoked. Full retail contestability has therefore been characterised by:

- customer savings through efficiencies, realised through dual fuel contracts;
- customer benefits through a combination of dual fuel contracts and energy appliance purchases; and
- innovation and competition to meet existing customers’ energy requirements, as well as anticipating future requirements.

The substance of this third feature is the basis of this present notification. That is, energy retailers have the opportunity through retail contestability to enhance their relationships with consumers by becoming “full service” energy providers: the energy itself, the energy appliance which utilises that energy, and repairs and service to that appliance.

The linkage between dual fuel savings and appliance installation and maintenance is a logical one which will deliver substantial consumer benefits. These benefits are unlikely to be outweighed by any public detriment.

## **2. NOTIFYING PARTIES**

The Notifying Parties are:

- (i) AGL Victoria Pty Limited, ABN 88 090 538 337 (**AGL Victoria**);
- (ii) AGL Electricity Limited, ABN 82 064 651 083 (**AGL Electricity**); and
- (iii) Servco Pty Ltd, ABN 39 100 936 454 (**Servco**).

## **3. PROPOSED CONDUCT**

The Notifying Parties propose to offer:

- (a) ancillary services and/or energy appliances to residential customers at certain discounts, allowances, rebates or credits on the condition that customers acquire both natural gas and/or electricity from AGL Victoria and/or AGL Electricity; and
- (b) certain discounts, allowances, rebates or credits on the cost of ancillary services or energy appliances on the condition that customers acquire energy from AGL Victoria and/or AGL Electricity.

In summary, the proposed conduct comprises two scenarios. Customers will be offered a rebate on their energy supply costs in return for entering into a gas and/or electricity contract at the time of being provided with ancillary services or energy appliance from Servco; and a discount on the cost of an ancillary service or energy appliance acquired from Servco if the customer enters into an energy supply contract.

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

Both Servco and AGL Victoria have submitted notifications in the same terms as this notification, as they will be offering discounts on the costs of their respective ancillary services, energy appliances and energy (as relevantly set out in those notifications).

#### **4. PUBLIC BENEFIT**

The proposed conduct will significantly benefit customers specifically by providing:

- real competition to other multi-utilities;
- expanded customer choice;
- real savings through efficiency gains; and
- enhanced customer service in the supply of their “full service” energy needs.

In addition, purchasers of energy services who do not elect to purchase from the Notifying Parties will benefit because competing retailers regularly seek to better, or match, the services and packages offered by other retailers in the market place.

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*, the likely benefit to the public will be outweighed by any likely detriment to the public. The conduct the subject of this notification does not give rise to any risk of lessening competition for the retail supply of gas, electricity or ancillary services in Victoria. There is no likely detriment to the public as a consequence of the Notifying Parties engaging in the proposed conduct.

##### **4.1 Consumer Protection**

The proposed conduct is directed towards passing on the savings achieved by the Notifying Parties in providing natural gas, electricity, ancillary services and energy appliances to customers. It is not designed to, and does not, fetter the customer’s choice in the acquisition of natural gas or electricity, nor any ancillary services or energy appliances. The customer is at all times free to acquire one service or the other at published or negotiated rates. The customer is also free to acquire ancillary services from any other source, or not at all. 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.

Importantly, any energy customer in Victoria is able to access ServCo, regardless of whether or not they are an existing AGL natural gas or electricity customer. The proposed relevant conduct under this notification relates to the potential discount which may be offered to an existing (or future) customer. In other words, the use of ServCo services and the purchase of energy appliances is not dependant on an individual being an AGL customer.

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

- acquire gas or electricity services independently at market prices;
- acquire combined gas and electricity services at market prices;
- in certain circumstances acquire gas or electricity services at regulated prices; or
- acquire ancillary services and energy appliances under the prevailing or discounted rates (or not at all).

The Notifying Parties are committed to ensuring that all customers and potential customers are provided with all information relevant to the decision to purchase energy services, appliances and ancillary 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* and their obligations to protect both the competitive process and the interests of consumers.

The Notifying Parties recognise that this commitment is particularly important with full retail contestability for gas and electricity, especially with regard to residential and small business customers.

#### **4.2 Public Benefit**

In its February 1998 *Guide to Authorisation and Notification for Third Line Forcing Conduct*, the Commission considered 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 Commission. The customers will have a genuine choice about the goods and services they will acquire. Pricing

structures will be transparent and 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.

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 services, energy appliances and ancillary 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.

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 is also expected to impel further competitive responses from other suppliers of natural gas and electricity. These responses would essentially take the form of lower prices and increased levels of service and convenience, providing similar opportunities to pass on the savings achieved by their combined supply to customers.

**Confidentiality granted for Confidential Annexure**