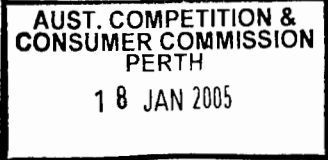


# Freehills



17 January 2005

Phone +61 8 9211 7544  
Mobile 0407 711 857  
Email Erica.Lampard@freehills.com  
Matter no 80725259  
Doc no Perth\003844319

The Regional Director  
Australian Competition & Consumer Commission  
3rd Floor Eastpoint Plaza  
223 Adelaide Terrace  
PERTH WA 6000

By courier

Dear Sir

## **Notification - Western Power Corporation - West Kimberley PPA**

We refer to our letter of 26 July 2004, and to the letter of 15 September 2004 received from Mr Tim Grimwade of your Canberra Office with respect to the lodgement by Western Power Corporation (WPC) of a notification with respect to the abovementioned document.

In light of the matters set out in Mr Grimwade's letter, WPC has instructed us to prepare a further notification in relation to the Power Purchase Agreement being subject to and conditional upon the Supplier entering into the LNG Supply and Delivery Agreement in a form and substance which has first been approved by WPC (clause 3.2(a) of the Power Purchase Agreement).

In this regard, whilst our client notes the view expressed by Mr Grimwade that it is doubtful that the above conduct would constitute third line forcing, our client nonetheless considers it prudent, for the avoidance of doubt, to lodge a further notification in relation to that conduct. That notification is attached together with our cheque for \$1,000.

As submitted in our letter of 26 July 2004, there is in our view no public detriment at all to clause 3.2(a) of the Power Purchase Agreement, and an overriding public benefit, in that it enables WPC to be satisfied that the Supplier has arrangements in place that would ensure adequate supply and delivery of LNG to ensure the reliable supply of electricity to customers in the West Kimberley region.

Also, the other party to the LNG Supply and Delivery Agreement (EDL LNG (WA) Pty Ltd) is a company related to the Supplier. It was originally proposed that the Supplier would carry out the functions of EDL LNG (WA) Pty Ltd and build, own and operate both the power station and the LNG plant and transport fleet. In the result, however, the LNG plant and transport fleet were separated out from the power station so as to be held in a separate entity from the Supplier, at

the request of the Supplier and for its own corporate and financing reasons. In other words, a third party is involved only as a matter of form, rather than substance.

The above is only a brief summary of our client's position in this matter. However, please do not hesitate to contact us if you take the view that more detailed submissions, at this stage, would be of assistance.

Yours faithfully  
Freehills  
per:



Erica Lampard  
Senior Associate

Jason Ricketts  
Partner

# FORM G

Regulation 9

[Front of Form]

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(2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d), of that Act in which the person giving notice engages or proposes to engage.

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

Western Power Corporation (“WPC”)  
363 Wellington Street, Perth WA 6000

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

WPC is a statutory corporation under the Electricity Corporation Act 1994 (WA), and owns and operates electricity supply, generation and transmission facilities.

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

c/- Freehills  
Level 36  
QV1 Building  
250 St Georges Terrace  
PERTH WA 6000  
Attention: Erica Lampard

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

The supply by EDL NGD (WA) Pty Ltd (the “Supplier”) of electricity to WPC in the West Kimberley region of Western Australia, from generation facilities to be constructed, owned and operated by the Supplier, and the supply of LNG to the Supplier.

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

*Entry into LNG Supply and Delivery Agreement*

The Power Purchase Agreement is subject to and conditional upon the Supplier entering into the LNG Supply and Delivery Agreement the form and substance of which has been first approved by WPC (clause 3.2(a)(3) of the Power Purchase Agreement), such that, if the Supplier does not enter into the LNG Supply and Delivery Agreement, WPC would be entitled to rely upon the condition precedent to refuse to proceed with the PPA.

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

The Supplier

(b) **Number of those persons**

One

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

EDL NLD (WA) Pty Ltd

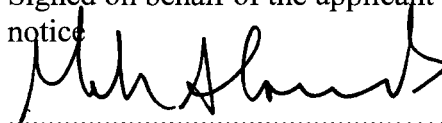
848 Boundary Road, Richlands, Queensland  
4077

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

**Freehills  
Level 36  
QV1 Building  
250 St Georges Terrace  
PERTH WA 6000  
Attention: Erica Lampard**

Dated..... *13 January* ....., 2004*5*

Signed on behalf of the applicant giving notice



.....  
(Signature)

Mark Hands



General Counsel duly authorised to sign this notice for and on behalf of Western Power Corporation

## DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act* 1974 have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b) (ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

## NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practices Act* 1974 ("the Act"), it comes into force at the end of the period prescribed for the purposes of sub-section 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under sub-section 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in sub-section 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

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