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27 April 2005

Mr Scott Gregson
 Acting General Manager, Adjudication
 Australian Competition and Consumer Commission
 470 Northbourne Ave
 DICKSON ACT 2602

Dear Mr Gregson

NOTIFICATION OF EXCLUSIVE DEALING


We enclose a notification relating to third line forcing on behalf of AGL Electricity Limited, ABN 82 064 651 083.

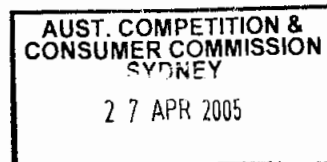
We also enclose a cheque for \$1,000, being the required filing fee.

This notification includes material indicated as confidential, in respect of which the notifying party claims confidentiality. We believe this confidential material to be non-controversial, given the details provided elsewhere in the notification and supporting documentation, but please advise if the Commission has a different view.

Please let me know if you need any additional information.

Yours sincerely


GILBERT + TOBIN
 Simon Snow



FILE No:
DOC:
MARS/PRISM:

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 Electricity Limited, ABN 82 064 651 083 (**AGL Electricity**)

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

The supply of energy products and services.

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

Simon Snow
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 supply of natural gas and electricity.

(b) Description of the conduct or proposed conduct:

See Attachment A.

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

Persons in Victoria who are members of CityLink Melbourne Limited's PLUS Program.

(b) Number of those persons:

(i) At present time: 650,000 (estimated number of CityLink account holders in Victoria)

(ii) Estimated within the next year: Same as (i)

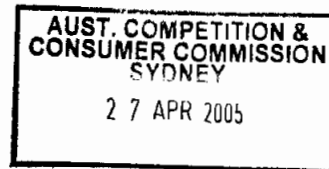
4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

Simon Snow
Partner, Gilbert + Tobin
Level 37, 2 Park Street
Sydney, NSW, 1042.

Date:

Signed on behalf of the applicant giving notice:

Simon Snow
Partner



.....
Simon Snow
Partner
Gilbert + Tobin

ATTACHMENT A

1. NOTIFYING PARTIES

1.1 AGL Electricity Limited (ABN 82 064 651 083)

AGL Electricity Limited (**AGL Electricity**) is a wholly-owned subsidiary of The Australian Gas Light Company ABN 95 052 167 405 (**AGL**), an energy company supplying energy products and services including natural gas and electricity and liquid petroleum gas (**LPG**) to customers in Australia and overseas through various subsidiaries and joint ventures. AGL Electricity has been licensed to retail electricity in Victoria since 1994.

1.2 AGL Victoria Pty Ltd (ABN 21 074 839 464)

AGL Victoria Pty Ltd (**AGL Victoria**) is a wholly-owned subsidiary of The Australian Gas Light Company ABN 95 052 167 405. AGL Victoria is authorised to supply natural gas to customers in Victoria.

(AGL Victoria and AGL Electricity together, **AGL entities**)

2. PROPOSED CONDUCT

2.1 Background

AGL Electricity proposes to enter into an agreement with CityLink Melbourne Ltd ABN 65 070 810 678 (**CityLink**) whereby AGL Electricity agrees to pay a fee to CityLink, and offer members of CityLink's PLUS Program (**PLUS**) a unique offer of goods and/or services.

All CityLink account holders are automatically members of PLUS, which allows them to receive special offers for goods and services supplied by AGL Electricity and other program partners that have entered into a similar agreement with CityLink.

2.2 Summary of promotions

AGL Electricity proposes to offer a discount, allowance, rebate and/or credit (**Member Benefit**) to persons in Victoria who are members of PLUS, on the condition that the person enters into a contract for the supply of:

- (a) electricity; or

(b) both natural gas and electricity (**Dual Fuel contract**);

with the AGL entities.

The amount and precise description of the proposed Member Benefit are set out in the Confidential Annexure to this notification.

The Notifying Parties propose to engage in this conduct until further notice.

3. PUBLIC BENEFIT/PUBLIC DETRIMENT

3.1 Consumer choice

As noted in previous notifications (see, for example, notification no. 91395), customers in Victoria can choose whom to buy energy from. Deregulation of the natural gas and electricity industries in Victoria has stimulated a competitive climate in the industry, and there are a number of suppliers licensed to sell electricity and natural gas at a retail level.

3.2 Competitive responses

The proposed conduct in providing a reduction in the cost of energy services can be expected to encourage competitive responses from other suppliers of natural gas and electricity. These responses would take the form of lower prices and increased levels of service and convenience. In this sense the proposed conduct is pro-competitive. Even customers who elect to purchase energy from another supplier will benefit from these promotions because competitive retailers are likely to seek to match or better the promotions offered by AGL Electricity.

3.3 No lessening of competition in energy supply or retail sale of energy services

The proposed conduct is not designed to, and does not, fetter the customer's choice in the acquisition of energy. 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. Under the terms of the proposed conduct, the customer is at all times free to acquire energy from the AGL entities at published or negotiated rates. The customer is also free to and choose another supplier for their energy needs.

At all times the independent prices for natural gas and electricity will be made clear to the customer, as well as the Member Benefit available if the customer chooses to acquire energy under the terms of the promotion.

AGL Electricity simply wants to offer members of PLUS the opportunity to benefit from a reduction in the cost of energy services if they choose to enter into a Dual Fuel contract or a contract for the supply of electricity with AGL. Customers may cease to acquire energy from AGL at any time during the fixed term period, provided that, in the case of a fixed-term contract, they pay the early termination fee. There is no termination fee for a contract with no fixed term.

AGL Electricity's proposed conduct provides a tangible benefit, and no detriment, to the consumer. It further causes no detriment to any competitor of AGL Electricity beyond legitimate competitive conduct.

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 authorization or notification process would likely be obtained."

As explained above, the proposed conduct falls within the category described by the ACCC. Customers will have a genuine choice about the services they will acquire, and the pricing structures of both AGL Electricity and AGL Victoria will be transparent and allow customers to make informed decisions.

3.4 AGL is dedicated to customer protection

AGL is committed to ensuring that all customers and potential customers are provided with all information relevant to the decision to purchase energy. AGL 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. AGL considers this commitment is particularly important in a climate that is newly open to competition.

The AGL entities hold regular trade practices training sessions for their 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. The AGL entities

also provide a trade practices compliance guide to employees emphasising these issues and have developed an electronic trade practices compliance program that conforms to *AS3806 – Compliance Programs* (1998).

CONFIDENTIAL ANNEXURE

CONFIDENTIALITY
GRANTED