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9 May 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

FILE No:
DOC:
MARS/PRISM:

We enclose a notification relating to third line forcing on behalf of AGL Victoria Pty Limited, ABN 88 090 538 337.

We also enclose a cheque for \$100, 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
 Liza Carver

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 Victoria Pty Limited, ABN 88 090 538 337 (AGL Victoria).

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

Supply of energy products and services.

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

In conjunction with the Notifying Parties as set out in Attachment A, the supply of energy appliances, ancillary services, 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:**

Customers in Victoria who acquire, will acquire or will be offered an energy appliance (being a heating, cooling, cooking or hot water appliance of any brand) or one or more ancillary services from an AGL Retail Partner (as defined in Attachment A), or who acquire, will acquire or will be offered natural gas or electricity or both from AGL Victoria Pty Ltd and/or AGL Electricity Limited.

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

(i) **At present time:** approximately 1,500 per annum

(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.

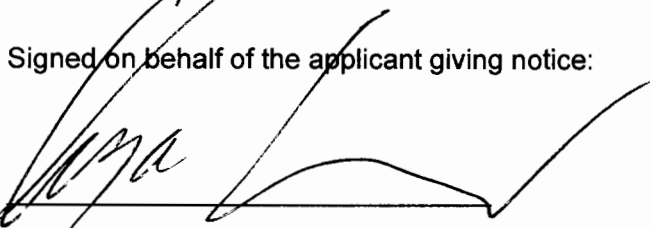
4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:**

Liza Carver
Partner, Gilbert + Tobin,
Level 37, 2 Park Street
Sydney, NSW 1042.

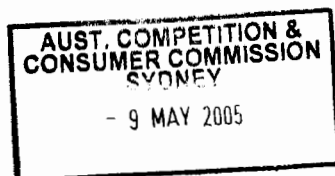
Date:

9/5/08

Signed on behalf of the applicant giving notice:



Liza Carver
Partner
Gilbert + Tobin



ATTACHMENT A

1. NOTIFYING PARTIES

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

AGL Victoria Pty Ltd (**AGL Victoria**) is also 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 Victoria is authorised to supply natural gas to customers in Victoria.

1.2 AGL Electricity (ABN 82 064 651 083)

AGL Electricity is a wholly-owned subsidiary of AGL. AGL Electricity has been licensed to retail electricity in Victoria since 1994.

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

AGL Retail Energy Limited is a wholly-owned subsidiary of AGL. AGL Retail Energy provides energy products and services to residential and small business customers through third party dealers and agents.

1.4 AGL Retail Partners

AGL Victoria and AGL Electricity market and supply their services in Victoria with the assistance of AGL Retail Energy and retail partners and agents, and other independent licensed retailers (collectively, **AGL Retail Partners**). The AGL Retail Partners operate as agents of AGL Retail Energy.

From time to time the identity of the AGL Retail Partners varies as the businesses are bought or sold or AGL determines that its network would be better served by additions or consolidations. AGL Electricity, AGL Victoria and AGL Retail Energy do not have ownership interests in any AGL Retail Partners. AGL Retail Partners typically sell a range of energy appliances, and may provide ancillary services such as installation and connection of appliances to gas and electricity supplies; repairs and maintenance.

In Victoria, there are Elgas stores in Apollo Bay, Bairnsdale, Ballarat, Bendigo, Echuca, Hamilton, Horsham, Mildura, Shepparton, Wangaratta, Warrnambool, and Wodonga.

2. PROPOSED CONDUCT

2.1 Summary of promotions

AGL Victoria and AGL Electricity propose to offer a discount, allowance, rebate or credit (**Benefit**) off the total amount payable by customers who:

- purchase an energy appliance, with or without ancillary services, from one of the AGL Retail Partners, and
- enter into or propose to enter into a contract for the supply of electricity or natural gas or both, with or without ancillary services, with AGL Electricity and/or AGL Victoria (**Energy Plan**).

The Benefit offered may take the form of a specific monetary discount, or may involve the provision of a non-monetary benefit, as detailed in the Confidential Annexure.

2.2 Details of promotions

(a) Variation in AGL Retail Partners

AGL Victoria and AGL Electricity may enter into other arrangements with other Retail Partners to support the promotions, but this will not affect the terms offered to customers.

(b) Energy appliances and ancillary services

The Benefit may be offered during the sale process whereby the customer enters into an Energy Plan with AGL Electricity and/or AGL Victoria, or at the time the customer purchases the energy appliance or an ancillary service from an AGL Retailer Partner.

AGL Electricity and/or AGL Victoria, in conjunction with the other notifying parties, propose to offer the Benefit in relation to certain selected Energy Plans or energy appliances and ancillary services from time to time.

(c) Fixed term contracts

The Benefit may be, but will not necessarily be, based on the customer entering into a fixed term contract for up to three years for natural gas or electricity, or both (under a Dual Fuel contract). The customer can terminate any fixed term contract they enter into as part of the promotions, prior to the end of the fixed term. The customer will only have to pay a set fee (currently proposed to be in the range of \$50.00 - \$150.00; the precise

amount of the fee may vary but will not be substantially higher than this amount) upon termination. The customer is then free to enter into a new contract to acquire natural gas, electricity or both from AGL Electricity and/or AGL Victoria, or from any of AGL's competitors.

The fee payable on early termination of a fixed term contract is likely to be less than the Benefit offered in most cases. This is because it is an administration fee and not intended as a repayment of the Benefit or a penalty for terminating the fixed term contract.

(d) Customer is not restricted in choice

The promotions are designed for customers to benefit from a reduction in the total cost of energy, an energy appliance and ancillary services with AGL Electricity and/or AGL Victoria and its Retail Partners.

Customers will not be restricted in choice because customers:

- will be free to purchase an energy appliance and/or ancillary services from an AGL Retail Partner without being compelled to use either AGL Electricity or AGL Victoria for their natural gas or electricity needs; and
- will be free to purchase natural gas or electricity from AGL Electricity or AGL Victoria, without being compelled to purchase an appliance from one of AGL's Retail Partners.

In addition, Customers are at all times free to purchase an energy appliance or ancillary services from another retailer; or not purchase an energy appliance at all; and are free to purchase an energy appliance and service from an AGL Retail Partner while choosing another provider for natural gas and/or electricity.

AGL simply wants to offer its customers the opportunity to benefit from a reduction in the cost of energy, energy appliances and ancillary services if they choose AGL Electricity and/or AGL Victoria for natural gas and/or electricity. Customers may cease to acquire natural gas or electricity from AGL Electricity and/or AGL Victoria at any time during the fixed term period, provided they pay the early termination fee.

3. PUBLIC BENEFIT/PUBLIC DETRIMENT

3.1 Summary

The proposed conduct will significantly benefit consumers and the industry generally as well as the customers of AGL Electricity, AGL Victoria and the AGL Retail Partners specifically.

The Benefit is likely to stimulate a response from other competitors who, through the deregulation of these industries, are able to offer similar services and reductions. The proposed conduct is pro-competitive and therefore will promote the natural gas and electricity industries generally; and this is a benefit that will be realised by all participants in the industry.

In summary, 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.

3.2 Public benefits for customers, potential customers and the industry

(a) Reduction of costs to consumers

The most significant direct public benefit associated with the proposed conduct is the reduction in the cost of energy, energy appliances and ancillary services to customers. Customers will benefit directly from these cost savings.

(b) Efficient energy consumption

Encouraging consumers to buy energy appliances will stimulate the energy market and promote the efficient use of natural resources. Innovations in heating, cooling and hot water systems have resulted in the development of new appliances that are much more energy efficient than their predecessors. Customers are becoming aware of the economic and environmental savings of these new appliances, particularly through energy efficiency rating systems and advertising campaigns. Promoting the use of efficient energy appliances is a benefit that will be realised by the community and the industry as a whole.

3.3 Competition

(a) Consumer choice

As noted in previous notifications (see, for example, notification no. 91395), customers in Victoria can choose whom to buy electricity from, and can choose whether and from whom to buy natural gas. 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.

In addition, there are numerous competing retail outlets offering energy appliances and ancillary services for sale in Victoria, and customers have a wide range of energy appliances from which to choose to purchase.

(b) AGL Electricity's place in the competitive environment

AGL Victoria and AGL Electricity provides in the Confidential Annexure figures showing the number of customers they have lost since deregulation in the Victoria electricity and gas market, and estimated customer numbers of its primary competitors in retail gas and electricity in Victoria.

(c) Competitive responses

The proposed conduct in providing a reduction in the cost of energy, energy appliances and ancillary services can be expected to impel competitive responses from other suppliers of natural gas, electricity, or energy appliances and services. 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 appliances or 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, AGL Victoria and the AGL Retail Partners.

(d) No lessening of competition in energy supply or retail sale of energy appliances and services

The proposed conduct is not designed to, and does not, fetter the customer's choice in the acquisition of either natural gas or electricity, or energy appliances and ancillary services. 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 from AGL Electricity and/or

AGL Victoria natural gas and/or electricity at published or negotiated rates; and to purchase an energy appliance or service from an AGL Retail Partner at an advertised or negotiated price. The customer is also free to acquire an energy appliance or service from an AGL retailer and choose another supplier for their natural gas and electricity. At all times the independent prices for natural gas, electricity and energy appliances and services will be made clear to the customer, as well as the Benefit available if the customer chooses to acquire energy and an energy appliance or service under the terms of the promotion.

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, AGL Victoria or the AGL Retail Partners 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 of AGL Electricity, AGL Victoria and the AGL Retail Partners will have a genuine choice about the services they will acquire, and the pricing structures of both AGL Electricity, AGL Victoria and the AGL Retail Partners will be transparent and allow customers to make informed decisions.

(e) 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 natural gas, electricity and energy appliances. AGL Victoria and AGL Electricity ensure that their managers, representatives and Retail Partners 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.

AGL Victoria and AGL Electricity hold regular trade practices training sessions for their staff, and also for retail energy shop franchisees, 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 Victoria and AGL Electricity 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