

AUST. COMPETITION &  
CONSUMER COMMISSION

28 SEP 2005

N31465

phillips  
fox

Our ref: PRH 0388691 AKD

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Mr Scott Gregson  
Acting General Manager - Adjudication  
Adjudications Branch  
Australian Competition and Consumer Commission  
Level 7  
Angel Place  
123 Pitt Street  
SYDNEY NSW 2000  
**By hand**

Dear Scott

### Third Line Forcing Notification - Solahart Industries Pty Limited

We enclose the following:

- 1 A Form G Notification of conduct referred to in subsections 47(6) and (7) of the *Trade Practices Act 1974*, lodged on behalf of Solahart Industries Pty Limited (**Solahart**);
- 2 A submission in support of the Notification; and
- 3 A cheque for \$200 for lodgement fee.

Please note that related Notifications were lodged on behalf of Rheem Australia Pty Limited (**Rheem**) and Integral Energy Australia (**Integral Energy**) on 1 April 2005 for the similar conduct. Solahart is wholly owned subsidiary of Rheem, however, as it is a separate legal entity a separate notification is required.

If you have any queries, please do not hesitate to contact the undersigned.

Yours sincerely



**Alexis Dyson**  
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Encl



**Paul Holm**  
Partner

28 SEP 2008

## FORM G

COMMONWEALTH OF AUSTRALIA

*Trade practices Act 1974 – Sub-section 93(1)*

## EXCLUSIVE DEALING:

## NOTIFICATION

N31465

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-sections 47(6) and (7) of that Act in which the person giving notice engages or proposes to engage.

1 (a) **Name of Person Giving Notice:**

Solahart Industries Pty Limited (**Solahart**)

ABN 45 064 945 848

Address: 1 Alan Street, Rydalmere NSW 2116

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

Solahart supplies and installs solar hot water heaters for domestic and commercial users.

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

c/- Paul Holm  
Partner  
Phillips Fox  
201 Elizabeth Street  
SYDNEY NSW 2000

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

Supply and installation of discounted solar hot water heaters.

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

A marketing promotion in which Solahart will offer discounted solar water heaters and installation to Integral Energy residential customers residing in Solahart servicing areas.

Solahart plans to run a joint marketing campaign with Integral Energy to promote the offer.

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

The offer will be extended to Integral Energy residential customers residing in the Solahart servicing areas.

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

**(i) at the present time:**

Integral Energy has approximately 475,000 residential customers residing in the Solahart servicing areas.

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

Approximately 475,000.

**(c) Where the 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:**

Paul Holm, Phillips Fox, 201 Elizabeth Street, Sydney NSW 2000

DATED: *28<sup>th</sup>* September 2005

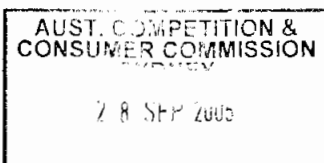
Signed on behalf of the person giving this notice

*[Handwritten Signature]*  
.....

Paul Holm

Partner

Phillips Fox



*N 31465*

**Submission in support of the Notification lodged on behalf of Solahart Industries Limited  
(Solahart)**

- 1 The Notification concerns a promotion that Integral Energy and Solahart are planning to run in NSW.

**Relevant Conduct**

- 2 The conduct comprises the refusal by Solahart to give or allow a discount in relation to the purchase and installation of a Solahart water heater, for the reason that the acquirer or would-be acquirer is not a customer of Integral Energy.
- 3 Solahart is lodging this Notification because, on one reading of section 47(7) of the TPA, it could be argued that Solahart is not offering to give this particular discount to all potential customers, for the reason that not all customers are residential customers of Integral Energy.

**Details of the Offer**

- 4 Solahart will offer discounted Solahart solar hot water heaters and installation to Integral Energy customers who reside in the Solahart servicing area.
- 5 At this stage, it is proposed that there will be a discounted promotional recommended retail price on specified solar hot water systems and a discounted fixed fee installation charge.
- 6 Integral Energy and Solahart plan to run marketing campaigns via a Residential Newsletter; Statement Inserts; Customer Service/Call Centre referrals; and the Integral Energy website. There may be other aspects to the marketing campaign.

**No anti-competitive detriment**

- 7 The promotion will not result in any anti-competitive detriment:
- (a) The joint promotion represents a competitive marketing initiative by Integral Energy and Solahart, who both face significant competition in their respective industries. There is significant competition among suppliers of water heaters in NSW, a fact recognised by the Commission in its recent decision to not oppose Rheem Australia Pty Limited's acquisition of Edwards Hot Water in December 2004. Competition in NSW among electricity retailers for the right to supply residential customers is similarly strong, with Energy Australia, Country Energy and AGL among the main competitors to Integral Energy.
  - (b) Customers will still have a genuine choice about whether to subscribe to the offer – the promotion is a value-add initiative purely for customer loyalty purposes, providing a benefit to Integral Energy residential customers. Customers will not be forced or coerced to buy any product from Solahart.
  - (c) The conduct will not diminish competition in any market. It is anticipated that while 475,000 Integral Energy residential customers will be eligible to take up the offer, only a small number of those customers with a broken or insufficient existing water heater are likely to take up the offer.
  - (d) Recipients of the offer will be fully informed about the benefits available to them by taking up the offer and any relevant limitations on the offer.

### **The promotion will result in public benefit**

- 8 Solahart submits that there are significant public benefits arising from this promotion.
- (a) The promotion will permit residential customers to make a saving on their hot water heater purchases.
  - (b) Integral Energy believes that the proposed arrangements will enhance its ability to compete and deliver value to its residential customers.
  - (c) Solahart will benefit by being able to offer better service and discounts to the public, and appearing more proactive in support of the public's needs and interests.
  - (d) Solahart is of the view that promotions of this kind are a commonly used marketing tool that deliver real benefits to consumers. The promotion accordingly provides significant benefits to the public in terms of competition and consumer welfare.
  - (e) Solahart is of the view that reduced carbon dioxide emissions from Integral Energy customer's replacing existing electric hot water heaters with solar hot water heaters will be a public benefit.

### **Conclusion**

- 9 In view of these public benefits and the absence of any anti-competitive detriments, the public benefits will outweigh any anti-competitive detriment. Solahart submits that the Commission should therefore allow the notification to stand.