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**BLAKE DAWSON WALDRON**

L A W Y E R S

Our reference  
AAG MAJP 03 1393 2111

**Date** 21 February 2006

**From** Maddi Palser  
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**To** Ms Jaime Norton  
Australian Competition & Consumer  
Commission  
Fax: (02) 6243 1211

**Mecu Limited: Exclusive Dealing Notification N40958**

Please see attached.

**Number of pages including this cover sheet 5**

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*M. Palser*

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Our reference

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Your reference

N40958

21 February 2006

Mr Scott Gregson  
Acting General Manager, Adjudication  
Australian Competition & Consumer Commission  
C/- Level 35, The Tower  
360 Elizabeth Street  
MELBOURNE VIC 3000

Attn: Ms Jaime Norton

Dear Mr Gregson

**mecu Limited (mecu): Exclusive Dealing Notification N40958 (the Notification)**

We refer to your letter dated 8 February 2006. We set out below mecu's response to the queries raised in your letter. Please note that terms used in this letter have the same meaning as in the Notification.

Further information about the manufacturers/suppliers and installers who are eligible to participate in the Ecosaver Proposal is outlined below. In relation to consumers, we confirm that all Melbourne metropolitan customers of City West Water, South East Water and Yarra Valley Water are eligible to participate in the pilot phase (provided they satisfy the other criteria identified in the Notification). If the pilot is successful, the intention is for the Proposal to be extended more broadly.

1. *Could you please advise whether there will be multiple manufacturers and installers for each product in the Ecosaver Pack? If so, has savewater!® selected these nominated manufacturers and installers?*

(a) Manufacturers/Suppliers

savewater!® has no restriction on the number of manufacturers or suppliers that can enter their products into the savewater!® product library. There are currently multiple suppliers for most types of product included in the library.

Any manufacturer or supplier can include its products in the library, provided that:

- (i) such products pass energy and water saving criteria as assessed by an independent third party such as Swinburn University, Melbourne University or equivalent body; and

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- (ii) the manufacturer/supplier pays a \$500 fee for acceptance into the *savewater!*® product library and a \$500 annual product library site rental fee.

Initially, all manufacturers and suppliers of products that are in the *savewater!*® product library will be invited to participate in the Ecosaver Proposal. If they wish to participate, they must pay *savewater!*® the marketing fee referred to in the Notification. This fee is payable each time the manufacturer/supplier's product is ordered and subsequently installed by the installers in accordance with the Ecosaver Proposal.

The take up of products will be monitored, and products that have little or no take up from the consumers may be deleted from the Ecosaver Proposal (after a minimum of 12 months) to make way for newer and/or more efficient products. The intention is to continually improve and update the shopping list so as to offer consumers the best choice of water and energy saving products.

Currently the Ecosaver Proposal has attracted around 40 companies, supplying approximately 150 products and award gifts. By the end of the pilot period, the aim is to have around 80 companies and 300 products represented.

(b) Installers

Any organisation is eligible to become an Ecosaver installer, provided that it:

- (i) is appropriately accredited - for the purpose of the pilot phase, installers will need to demonstrate that they are technically competent in installing the relevant water and energy saving devices, and provide all plumbing compliance certification as required by the PIC or relevant body or State Authority. If the pilot phase is successful, the intention is to implement a *savewater!*® accredited plumbers program and training process which installers will need to pass to participate in the Ecosaver Proposal. There will be transparent, objective criteria for passing this program, although these have not yet been developed;
- (ii) has a retail showroom;
- (iii) is incorporated with eligible trading accounts with suppliers of products included in the Ecosaver Proposal (although during the pilot phase, transactions may occur on a cash account basis); and
- (iv) have access to a secure warehouse for job batching, and access to the Ecosaver online ordering system.

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Provided that the organisation satisfies these criteria, it will then need to be selected as one of the successful tenderers for the region in which the Ecosaver Proposal is being implemented.

For the pilot phase, six organisations with whom *savewater!*® has dealt with in the past (each of which satisfies the above criteria) were invited to participate in the Ecosaver Proposal. Of these, four organisations have agreed to act Ecosaver installers for the Melbourne metropolitan area (which is the region being targeted during the pilot phase) - Priority Plumbing, Blue Scope Water, Green Taps and Water Pros. If the pilot is successful, installers for the Melbourne metropolitan area, and other regions, will be selected via a tender process.

The Ecosaver Proposal will not be implemented in a region unless there is a minimum of two tenderers who can satisfy the selection criteria. There is no specified maximum number of installers - rather, the number of installers selected will depend on population and anticipated demand in each particular region.

Regions will be re-tendered every 5 years. However, during the 5 year term, each installer will be subject to an annual performance review. Any installer that cannot meet its required performance standards may lose its entitlement to participate in the Ecosaver Proposal (although it will be free to participate in the next tender for that (or another) region. These performance standards will be developed during the pilot phase.

2. *Could you please explain who sets the maximum charge out hourly labour rate and how this rate will be determined?*

This rate will be determined by *savewater!*®. It will comprise a single hourly rate for installation of all products included in the Ecosaver Proposal.

For the pilot phase, the maximum rate that has been determined by *savewater!*® is \$75 per hour. In determining this rate, *savewater!*® took into account:

- the normal average labour charge out rate of participating installers (as determined by *savewater!*® in independent consultation with the installers);
- the cost of setting up and/or maintaining the infrastructure and undertaking the training necessary to be eligible as a Ecosaver installer; and
- the fact that installers will not be making a profit on the products they install (which as plumbers they would ordinarily do).

The rate will be indexed to CPI and can be reviewed by *savewater!*® at the end of the pilot phase and otherwise in extreme circumstances at the request of an

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installer or on *savewater!*'s own initiative (for example, if there is a substantial increase in fuel costs).

3. *Is it expected that installers will compete on price under this price cap*

Yes, although ultimately it is up to each installer to determine its own price, in light of its costs etc.

We trust that we have now answered all of your queries in relation to the Notification. However, please contact Ayman Guirguis on 9679 3778 or Maddi Palser on 9679 3058 if you have any further queries.

Yours sincerely



**Ayman Guirguis**  
Partner

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