

N 31500

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY
6 JAN 2006

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6 January 2006

BY HAND

Scott Gregson
A/g General Manager, Adjudication Branch
Australian Competition & Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602

Dear Mr Gregson


NOTIFICATION OF EXCLUSIVE DEALING

We enclose a notification relating to third line forcing on behalf of AGL Retail Energy Ltd, ABN 21 074 839 464 (**AGL Retail**). A cheque for \$1,000 is also enclosed, being the required filing fee for a non-proprietary company.

This notification includes information that is strictly confidential to AGL Retail. We believe this confidential information to be non-controversial given details provided elsewhere in the notification. Please advise if the Commission has a different view.

Please let me know if 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(s) giving notice:

AGL Retail Energy Ltd, ABN 21 074 839 464 (**AGL Retail**)

(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 2000.

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

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:

Persons in New South Wales who acquire, will acquire or will be offered an energy appliance, or one or more ancillary services from an energy retailer, and

who acquire, will acquire or will be offered natural gas and electricity or both from AGL Electricity Limited (**AGL Electricity**) and/or AGL Retail.

(b) Number of those persons:

- (i) At present time: Less than 16,000 (estimated no. of potential customers)
- (ii) Estimated within the next year: as in (i) above

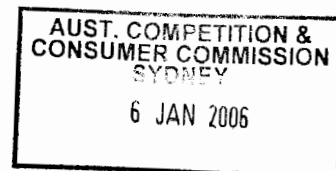
4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

Liza Carver
Partner, Gilbert + Tobin
Level 37, 2 Park Street
Sydney, NSW 2000

Date:

Signed on behalf of the applicant giving notice:

.....
Liza Carver
Partner
Gilbert + Tobin



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ATTACHMENT A

1. NOTIFYING PARTY

1.1 AGL Retail (ABN 21 074 839 464)

AGL Retail 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 Retail is authorised to supply natural gas to customers in New South Wales.

2. PROPOSED CONDUCT

AGL Retail is proposing to offer a discount (**Discount**) off the applicable fee for a standard natural gas connection (**Standard Connection Fee**) to customers who meet the conditions of the promotion (**Promotion**).

2.1 Conditions of the Promotion

Under the Promotion, AGL Retail will offer the Discount for a natural gas connection to customers who meet the following conditions:

- (i) the customer acquires a natural gas connection; and
- (ii) the customer:
 - A. enters into an energy plan for the supply of natural gas and electricity with AGL Electricity and/or AGL Retail (**Energy Plan**); and/or
 - B. purchases and installs a gas appliance (eg, a gas hot water system or a flued or central heating system) (**Appliance**); and
- (iii) the customer's premises must allow for a standard connection to natural gas.

Details in relation to the amount of the Discount are provided in the Confidential Annexure.

2.2 Details of promotions

(a) Timing

The Discount under the Promotion may be offered during the sale process whereby the customer enters into an Energy Plan with AGL Electricity and/or AGL Retail, or at the time the customer purchases the Appliance.

(b) Appliance

Customers who wish to accept the offer under the Promotion may choose the retailer from which to purchase the Appliance.

If the Appliance is purchased at, and installed by, an AGL retail partner, AGL will automatically give the customer the Discount (provided that the customer satisfies all the other conditions of the Promotion).

If the customer purchases the Appliance from a retailer that is unaffiliated with AGL, AGL may request up-front payment of the Standard Connection Fee. AGL will then refund the customer the Discount once the customer provides AGL with proof of purchase of the Appliance and the Certificate of Compliance in respect of the installation of the Appliance.

(c) Energy Plan

Initially, the Promotion will be offered with a three-year dual fuel contract for the supply of both electricity and natural gas with AGL Electricity and/or AGL Retail. The Promotion may also be offered with other types of energy contracts (not all of which will necessarily be for a fixed term plan).

3. PUBLIC BENEFIT/PUBLIC DETRIMENT

For the reasons noted below, 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.

3.1 Public benefits for customers, potential customers and the industry

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 (see Confidential Annexure). Customers will benefit directly from these cost savings.

3.2 Competition

(a) Consumer choice

Consumers in New South Wales 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 New South Wales 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 New South Wales, and customers have a wide range of energy appliances from which to choose to purchase.

So, customers will not be restricted in choice because customers will be able to:

- purchase an Appliance from any retailer without being compelled to use either AGL Electricity or AGL Retail for their natural gas or electricity needs;
- purchase natural gas or electricity from AGL, without being compelled to purchase an Appliance;
- choose which retailer to purchase an Appliance from, or not purchase an Appliance at all; and
- purchase an Appliance and service from a retailer while choosing another provider for natural gas and/or electricity.

(b) 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 the Promotion because competitive retailers are likely to seek to match or better the Discount offered by AGL Retail.

3.3 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 natural gas and/or electricity at published or negotiated rates. The customer is also free to choose the retailer from which to acquire an energy appliance.

For customers who accept the offer under the Promotion, the primary difference between purchasing the Appliance from an AGL retail partner and a retailer unaffiliated with AGL is the timing of the receipt of the Discount under the Promotion. Customers who purchase an Appliance from one of AGL's retail partners will not otherwise receive more favourable treatment than those customers that acquire an Appliance from other retailers.

The Discount under the Promotion is applicable to all Appliances. Customers are not required to purchase any specific brand of Appliance and the Appliance does not have to be of any particular value.

The independent prices for natural gas, electricity and energy appliances and services will be made clear to the customer at all times, 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's proposed conduct provides a tangible benefit, and no detriment, to the consumer. It further causes no detriment to any competitor of AGL beyond legitimate competitive conduct.

**EXCLUDED FROM
PUBLIC REGISTER**

CONFIDENTIAL ANNEXURE

**EXCLUDED FROM
PUBLIC REGISTER**