

## Form G

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 93 (1)*

### NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

#### 1. Applicant

- (a) Name of person giving notice:  
(Refer to direction 2)

N93391

Sales Marketing and Real Technologies – SMART Pty Ltd ACN 094 805  
295 (SMART)

- (b) Short description of business carried on by that person:  
(Refer to direction 3)

SMART operates a direct marketing business specializing in telemarketing and door to door sales. It has offices in Queensland, Victoria, New South Wales and South Australia.

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

Level 3, 554 Church Street, Richmond, Victoria, 3121

#### 2. Notified arrangement

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

The proposed arrangement relates to the offer of a Loyalty Card (SMART Loyalty Card) which enables customers to obtain discounts at various national and Victorian businesses which have agreed to participate in the loyalty card program when they obtain residential electricity from Simply Energy.

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

Pursuant to the proposed arrangement SMART will supply the SMART Loyalty Card to customers on the condition that the customer obtain residential electricity from Simply Energy.

(Refer to direction 4)

**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

- (a) Class or classes of persons to which the conduct relates:  
(Refer to direction 5)

Consumers who wish to obtain a SMART loyalty card or purchase electricity from Simply Energy.

- (b) Number of those persons:

- (i) At present time:

Unknown

- (ii) Estimated within the next year:  
(Refer to direction 6)

Within the next year it is expect that approximately 30,000 – 35,000 customers will be affected by the notified conduct. This estimate is based on the expected number of loyalty cards which SMART has to offer to consumers and the number which will take up the offer of the loyalty card. .

- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Not applicable.

**4. Public benefit claims**

- (a) Arguments in support of notification:  
(Refer to direction 7)

Customers will benefit from the proposed arrangement as they will not only obtain a lower price for their electricity usage but they will also obtain products and services at a discounted rate from the various businesses and retailers who participate in the loyalty card program. Some examples include:

- 5% discount on Coles gift card;
- 10% off Sanity gift vouchers; and
- 10% off Sportsgirl gift vouchers.

There are several suppliers of electricity to the domestic market. Given the substantial increases in the cost of providing this electricity over the last 12 months many suppliers have been offering discounts in order to attract customers. Offering the loyalty card to consumers who obtain electricity from Simply Energy will not only facilitate competition in the market for supply of residential electricity but will also encourage competitors of those participants in the loyalty card program to offer similar or other discounts.

As the loyalty card has a large variety of program partners, the proposed arrangement will facilitate increased competition in a number of markets.

(b) Facts and evidence relied upon in support of these claims:

Attached is a list of electricity providers (refer Attachment A). Also attached is a list of a number of the participants in the SMART loyalty card program as well as a list of the key competitors of each participant (refer Attachment B).

**5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

*(Refer to direction 8)*

The relevant market most likely to be affected by the proposed conduct is the market for the provision of electricity to domestic market. There are many suppliers in this market including Red Energy, Simply Energy, Origin Energy, AGL, Australian Power and Gas, Victorian Electricity and TruEnergy.

Other markets which may be affected by the proposed conduct, by virtue of the involvement of the various program partners of the SMART Loyalty Card include:

- Grocery (participants include Coles);
- Entertainment (participants include Hoyts, Village Cinemas, Red Balloon);
- Fashion (participants include Aquila, Esprit, Ojay); and
- Household Goods (participants include Villa & Hut, Kitchen Discounts, Jim's Antennas).

## 6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:

*(Refer to direction 9)*

SMART considers that limited public detriment will be caused by the proposed arrangement as:

- Consumers are not forced to obtain electricity from Simply Energy or to obtain the Loyalty Card from SMART;
- Consumers can obtain electricity from a variety of other suppliers at standard or discounted prices;
- Consumers can obtain a loyalty card from other suppliers or there are various other avenues available by which consumers can obtain discounts of the kind offered by the Loyalty Card participants. For example, there are various loyalty card programs are offered through health insurance providers, credit card providers and other retailers. Additionally, consumers are offered product and services discounts through variety of other avenues including through shop-a-docket schemes, grocery-petroleum partnering schemes and employer operated schemes.
- There is no minimum spend requirement for participants of the SMART Loyalty Card;
- There is no fixed term contract applicable to consumers who apply for the SMART Loyalty Card or who obtain electricity from Simply Energy so consumers can choose not to participate at any time without penalty.

- (b) Facts and evidence relevant to these detriments:

Refer also to the attached list of each participant in the SMART loyalty card program as well as a list of the key competitors of each participant (refer Attachment B).

**7. Further information**

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Kate Palethorpe  
Corporate Lawyer  
Sales Marketing and Real Technologies – SMART Pty Ltd  
Level 3, 554 Church Street  
Richmond, Victoria, 3121  
Phone: (03) 8420 9999

Dated..14 April 2008.....

Signed by/on behalf of the applicant

.....  
(Signature)

Jordan Kendall Muir.....  
(Full Name)

Sales Marketing and Real Technologies – SMART Pty Ltd.....  
(Organisation)

Chief Executive Officer.....  
(Position in Organisation)

## **ATTACHMENT A – RESIDENTIAL ELECTRICITY PROVIDERS**

Origin Energy  
AGL  
Australian Power & Gas  
Simply Energy  
Powerdirect  
Victoria Electricity  
Queensland Electricity  
Truenergy  
Aurora Energy  
Click Energy  
Country Energy  
Energy One  
Ergon Energy  
Integral Energy  
Momentum Energy  
Red Energy

**ATTACHMENT B – SMART LOYALTY CARD – PROGRAM PARTICIPANTS AND KEY COMPETITORS**

<b>Program Participant</b>	<b>Discount offered</b>	<b>Key competitors</b>
Coles	5% off Coles Gift Card - Groceries	Safeway, IGA
Sanity	10% off Sanity Gift vouchers	JB Hi Fi, Department stores,
Sportsgirl	10% off Sportsgirl Gift vouchers	Department stores, Esprit, Portmans, Witchery, Country Road,
Rivers	10% off Rivers Gift vouchers	Colorado, Mathers, Department Stores
Aquila	20% off listed prices	Department stores, Milu,
Guess	15% off listed prices	Department stores,
Chelsea	10% off listed prices	Department Stores, Sussan, Table Eight
Villa & hut	17.5% off listed prices	Matchbox, Wheel & Barrow
Ojay	15% of full priced merchandise	Department stores, Sportsgirl, Sussan, Country Road
Sportsco	10% off listed prices	Amart All sports, Rebel Sport, Department stores
Babyco Direct	10% off listed prices	
Teds Camera House	5% off listed prices	Department stores, JB Hi Fi, Retravisio, The Good Guys
Zamels	10% off all jewellery and watches	Diva, Micheal Hill Jewellers, Goldmark, Brevilles
Hairhouse Warehouse	12% off listed prices	Priceline, Price Attack,
Merringtons Optometrists	2 pairs of the same prescription glasses for the price of one	OPSM
Hoyts Cinemas	35% off cinema tickets	Village Cinemas, Greater Union,
Greater Union	35% cinema tickets	Village Cinemas, Hoyts
Village Cinemas	35% cinema tickets	Greater Union, Hoyts
Roses only	10% off a dozen or more signature boxed	Fastflowers
isubscribe	10% of current price of subscription	Magshop
Absolutely Gorgeous	10% off listed prices	StrawberryNet, Perfume Connection