

Randall, Kristy

From: Cope, Rebecca [Rebecca.Cope@aar.com.au]
Sent: Tuesday, 16 September 2008 12:09 PM
To: Randall, Kristy
Cc: James, Peter
Subject: FW: ENERGEX Limited - Third Line Forcing Notification

Dear Kristy,

I refer to our conversation this morning. I note that the ACCC has questioned whether the Form G Notification we lodged on behalf of our client, ENERGEX Limited, on 9 September 2008 is invalid for the reason that the proposed conduct set out in the Notification does not constitute a "supply" for the purposes of sub-sections 47(6) and 47(7) of the *Trade Practices Act 1974* (Cth) (the **Act**).

However, the Notification does relate both to "supply" and "acquisition" for the purposes of the section 47 of the Act for the reasons set out below:

(a) Proposed conduct in relation to sub-divisions (set out in paragraphs 2(a) and 2(b) of Attachment A of the Notification)

Here there would be a supply to ENERGEX of the Subdivision Network (ie goods) by the subdivision developer and an acquisition of that Subdivision Network by ENERGEX.

Also, there would be a supply by ENERGEX of a service of reviewing and assessing the proposed Subdivision Network constructed by the subdivision developer which results in ENERGEX issuing a Certificate for Electricity Supply and connecting the network to the electricity distribution network.

In the case of paragraph 2(b) of Attachment A of the Notification, there would be a refusal to acquire the new Subdivision Network and a refusal to supply the service of reviewing and assessing the proposed Subdivision Network constructed by the subdivision developer and to issue the Certificate for Electricity Supply if the conditions listed in 2(b) (i) to (iii) are not met.

(b) Proposed conduct in relation to public lighting (set out in paragraphs 2(c) and 2(d) of Attachment A)

Here there would be a supply to ENERGEX of the public lighting assets by the public bodies or developers of public lighting and an acquisition of the public lighting assets by ENERGEX.

Also, there would be a supply by ENERGEX of the opportunity for the public bodies or developers of public lighting to have ENERGEX acquire the public lighting.

In the case of paragraph 2(d) of Attachment A of the Notification, there will be a refusal to acquire (or a refusal to supply the opportunity to have ENERGEX acquire) the new public lighting if the conditions listed in 2(d)(i) to (iii) are not met.

If you wish to discuss this further have any other questions please contact me.
Kind Regards

Rebecca Cope

FW: ENERGEX Limited - Third Line Forcing Notification

Lawyer
Allens Arthur Robinson
Phone: 61 7 3334 3120

Peter CJ James
Partner

Allens Arthur Robinson online: <http://www.aar.com.au>

~~This email is confidential and may be subject to legal or other professional privilege. It is also subject to copyright. If you have received it in error, confidentiality and privilege are not waived and you must not disclose or use the information in it. Please notify the sender by return email and delete it from your system. Any personal information in this email must be handled in accordance with the Privacy Act 1988 (Cth).~~

38
17/9/08
