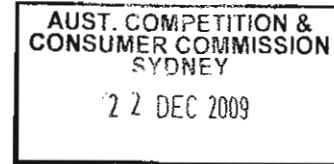


Our reference
MM/BPAU7602-9066891

Governor Phillip Tower
1 Farrer Place Sydney NSW 2000
GPO Box 9925 NSW 2001
Tel (02) 9210 6500
Fax (02) 9210 6611
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**CORRS
CHAMBERS
WESTGARTH**
lawyers

Sydney
Melbourne
Brisbane
Perth



22 December 2009

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer
Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

Contact
Mark McCowan (02) 9210 6080
Email: mark.mccowan@corrs.com.au

FILE No.	
DOC.	
MARS/PRISM:	

Dear Dr Chadwick

BP Solar Pty Limited - Third-line Forcing Notification

We act for BP Solar Pty Limited.

Please find **attached** a Form G Third-line Forcing Notification pursuant to section 93(1) of the *Trade Practices Act 1974 (TPA)*.

We enclose a lodgement fee of \$100 in respect of that notification.

Yours faithfully
Corrs Chambers Westgarth

Mark McCowan
Senior Associate

attachments

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)

N94394 BP Solar Pty Ltd ABN 52094827531 ("**BP Solar**")

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

BP Solar is a leading manufacturer and supplier of solar photovoltaic ("**PV**") products. BP Solar also provides services in solar power system design, supply, installation, commission and maintenance.

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

2 Australia Avenue
Sydney Olympic Park
NSW 2127

2. Notified arrangement

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

BP Solar 1.5kW solar PV system ("**Solar Product**").

Certain goods and services supplied by Origin Energy Limited and its related bodies corporate ("**Origin Energy**") being retail electricity services and associated metering services.

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

BP Solar and Origin Energy are participants in the Federal Government's Solar Cities Programme. The Solar Cities Programme is a \$75 million funded project to set up several solar cities around Australia with the aim of trialling new sustainable models for electricity supply through the use of distributed solar technologies, energy efficiency, load management, smart meters and cost-reflective pricing.

As part of the Adelaide Solar City project, property owners in eligible areas will be offered a discount on the Solar Product from BP on condition that they purchase retail electricity from Origin Energy.

As explained in section 4(a) below, Origin Energy has the necessary systems to allow the capture of data that is required to comply with contractual obligations imposed by the Federal Government as part of the Solar Cities Programme.

This condition applicable to the Solar Product does not apply to other discounted solar products offered by BP Solar as part of the Solar Cities Programme.

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)

Property owners in selected suburbs in the Adelaide area who elect to purchase the Solar Product.

- (b) Number of those persons:

- (i) At present time:

Nil.

- (ii) Estimated within the next year:

The Solar Cities Programme commenced in 2007 and concludes in 2013. During the remaining time, the offer described in section 2(b) above is expected to be available to approximately 700 property owners in selected suburbs in Adelaide.

- (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:

The Solar Cities Programme is a \$75 million funding package offered by the Federal Government – through the Department of Energy, Water, Heritage and Arts – as part of its long-term greenhouse response in the energy sector to move towards integrated use of low-emission supply technologies, distributed generation, significantly enhanced energy efficiency and markets that deliver responsive and reflective price signals. The Adelaide Solar City project will be closely monitored, analysed and

reported over its duration. The data collected from the Programme will be used by the Federal Government to understand consumer behaviours and applied to inform future greenhouse and energy market policy.

As part of the Adelaide Solar City project, BP Solar is required to provide the following data to the Federal Government in respect of the Solar Product:

- gross energy generation per participating household; and
- gross energy consumption per participating household.

BP Solar is not itself an electricity retailer and current metering and billing systems in use by most electricity retailers in South Australia do not allow for capturing the necessary gross data. Origin Energy, as the lead proponent of the Adelaide Solar City project, has developed and introduced electronic interval meters and associated systems for the Adelaide Solar City trials, which capture data in the form required to be provided to the Federal Government.

BP Solar will (using certified installers) install the following equipment in participating property owners' properties:

- an electronic revenue interval meter for the purposes of billing and capturing gross electricity generation and consumption data; and
- an in-home display that interfaces directly to the interval meter.

These systems interface with Origin Energy's billing and data recording systems to allow BP Solar to capture the data required to be provided to the Federal Government. The costs of this equipment and the related installation costs will be covered by BP Solar.

The notified conduct will benefit the public as it will:

- provide consumers with substantial discounts off the ordinary retail prices of the Solar Product; and
- enable the gathering of valuable data to be used by the Federal Government to inform future greenhouse and energy market policy.

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

Information about the Solar Cities Programme (including Programme Guidelines which outline the objectives of the Programme) can be found at: <http://www.environment.gov.au/settlements/solarcities/index.html>.

The discount on the Solar Product available from BP as part of the notified conduct will be approximately 30% of the recommended retail price.

Origin Energy has experience and expertise in this area having already installed over 800 electronic interval meters for the following Adelaide Solar City trials:

- Residential Solar PV;
- Time of Use Pricing; and
- Critical Peak Pricing.

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)

BP Solar has not undertaken the comprehensive analysis of the relevant goods and services and substitute goods and services required to conclusively state the precise definition of the relevant market for the purposes of the *Trade Practices Act*.

However, for the purpose of this notification, BP Solar considers that the relevant markets should be defined at least as broadly as:

- the market in Australia for solar panels; and
- the South Australian market for the retail supply of electricity to residential customers.

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)

The proposed conduct will not result in a detriment to the public as:

- consumers remain free to purchase BP Solar products without any obligation to acquire goods or services from Origin or any other retail electricity provider;
- consumers are free to acquire electricity from any retail electricity retailer without acquiring goods or services from BP Solar; and
- consumers may acquire all relevant products and services from a range of other suppliers.

Having regard to the objectives of the Solar Cities Programme and BP Solar's obligations to the Solar Cities Programme, BP Solar considers that the public benefit arising from the conduct will outweigh any potential detriment considered to arise from the conduct.

(b) Facts and evidence relevant to these detriments:

The Solar Cities Programme Guidelines are available at: <http://www.environment.gov.au/settlements/solarcities/index.html>

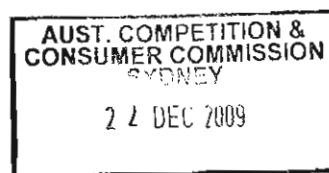
According to the ACCC's *State of the Energy Market* report of 8 December 2009 (pages 196-197):

- South Australia has 16 licensed electricity retailers, of which 11 are active in the small customer market;
- Origin Energy's share of the domestic electricity retail market is 14.3%;
- There are 687,072 domestic electricity customers in South Australia (with the result that the notified conduct affects approximately 0.1% of the retail market).

7. Further information

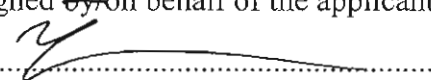
(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Mark McCowan
Corrs Chambers Westgarth
Level 32, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Ph: (02) 9210 6080
Email: mark.mccowan@corrs.com.au



Dated... 22 DECEMBER 2009

Signed by/on behalf of the applicant


.....
(Signature)

MARK J. MCCOWAN

(Full Name)

CORRS CHAMBERS WESTGARTH

(Organisation)

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.