



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2010/1094
Contact Officer: Clare McGinness
Contact Number: 02 6243 1049

23 December 2010

Ms Danielle Arnfield
Corporate Solicitor
Venergy Pty Ltd
701 Port Road
Woodville Park SA 5011

sent via email: danielle.arnfield@slicees.com.au

Dear Ms Arnfield

Third line forcing notification N95205 lodged by Venergy Pty Ltd

I refer to the above third line forcing notification lodged with the Australian Competition and Consumer Commission (the ACCC) on 6 December 2010. The notification has been placed on the ACCC's public register.

Under the notified arrangement Venergy proposes to, from time to time, require its franchisees to acquire franchise related goods and services from preferred suppliers. Specifically, Venergy proposes to require its franchisees to:

- 1) purchase solar and other energy related products from one of its approved suppliers; and/or
- 2) acquire installation services from one of its qualified and approved suppliers in the event that Venergy or its related entities are unable to install the solar systems and other energy related systems.

Legal immunity conferred by the notifications commenced on 20 December 2010.

On the basis of the information that you have provided, it is not intended that further action be taken in relation to the notifications at this stage.

As with any notification, please note that the ACCC may act to remove the immunity afforded by this notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

This assessment has been made on the basis that Venergy will disclose all relevant terms and conditions to current and prospective franchisees. In particular I note that Venergy is required to comply with the disclosure requirements of the Franchising Code of Conduct in relation to the notified arrangement. Among other things, these specify that a franchisor must provide information to franchisees in its disclosure document about:

- any restrictions on acquisition of goods or services by the franchisee from other sources
- whether the franchisor or an associate will receive a rebate or other financial benefit from the supply of goods or services to franchisees, including the name of the business providing the rebate or financial benefit and
- whether any such rebate or financial benefit is shared directly or indirectly with franchisees.

I note that under clause 1.1(2) of the Venergy Franchise Deed (Annexure B), the franchisor can amend the operations manual at any time by written notice. This ability to effectively unilaterally vary the franchise agreement should be disclosed to prospective franchisees under item 17A.3 of Annexure 1 of the Franchising Code.

More generally I would note that the Franchising Code of Conduct also requires disclosure of:

- ownership by a franchisor or an associate of a franchisor of an interest in any supplier from which the franchisee may be required to acquire goods or services
- any restrictions by a franchisor on the goods or services that a franchisee may supply and
- any restrictions on the persons to whom a franchisee may supply goods or services.

A copy of this letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Clare McGinness on (02) 6243 1049.

Yours sincerely



Dr Richard Chadwick
General Manager
Adjudication Branch