

Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — 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 *Competition and Consumer Act 2010*, 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: Adam Tesoriero
(Refer to direction 2)

N96281 SolarSwitch Pty Ltd (ACN 126 647 069)

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

The supply of solar (photovoltaic) systems (**Solar Systems**) and the provision of Solar System installation services to residential customers in all States (other than WA & NT)

- (c) Address in Australia for service of documents on that person:
67 Cawarra Road, Caringbah, NSW, 2229

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 supply of Solar Systems and the provision of Solar System installation services to new residential customers in all States (other than WA & NT)

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

SolarSwitch Pty Ltd proposes to give or allow, or offer to give or allow, to residential purchasers of new Solar Systems a payment or credit based on the amount of electricity generated by that Solar System that is then fed back into the electricity distribution network, on the condition that the customer signs up to, or agrees to sign up to, a Retail Electricity Supply Agreement and a Feed-in Agreement with Diamond Energy Pty Ltd (ABN 97 107 516 334). This proposed conduct is very similar to the conduct the ACCC allowed to stand in October 2011, see Energy Matter Pty Ltd reference number N95594.

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)

Residential customers in all States (other than WA & NT) who purchase a new Solar System of a size up to 100 kilowatts.

Existing customers will not be eligible

- (b) Number of those persons:

- (i) At present time:

Unknown

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

Unknown

- (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 obtain a payment or credit based on the amount of electricity generated by their Solar System which is fed back into the electrical distribution network. This will allow the customer to recover the initial cost of their Solar System within a shorter time frame than would otherwise be the case.

There are numerous other companies supplying and installing Solar Systems and SolarSwitch Pty Ltd considers that the market for Solar Systems is very competitive. As a result, competitors in the market may consider offering similar incentives in order to attract customers to buy their Solar Systems. Therefore, the proposed arrangement will facilitate competition in the market for Solar Systems, as it may encourage other competitors in this market to offer similar incentives to customers.

The proposed conduct will have little or no public detriment. There is nothing to prevent customers from purchasing a Solar System from another Solar System provider. Furthermore, customers can chose to buy a Solar System from Energy Matters without signing up a Retail Electricity Supply

Agreement and a Feed-in Agreement with Diamond Energy Pty Ltd and so chose not to receive the offered payment or credit.

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

An internet search of the terms “solar”, “solar energy” and the like returns a large number of “hits” showing that the market for supplying and installing “Solar Systems” is very competitive in the relevant geographic areas

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 likely to be affected by the proposed conduct is the market for the supply and installation of Solar Systems. The suppliers in this market include:

- large electrical retailers, such as Origin, Energy Australia (formerly Tru Energy) and AGL, who supply a range of products and services including the supply and installation of Solar Systems
- specialist retailers who supply a range renewable energy products including Solar Systems
- specialist retailers who only supply Solar Systems

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)

SolarSwitch Pty Ltd considers that limited public detriment results from the proposed conduct as:

- Customers are not forced to sign up to a Retail Electricity Supply Agreement and a Feed-in Agreement with Diamond Energy Pty Ltd in order to purchase a Solar System from SolarSwitch Pty Ltd
- There are a number of alternative suppliers in the market from which consumers can choose to purchase a Solar System

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

A viewing of SolarSwitch Pty Ltd's website www.solarswitch.com.au shows the large range of products that residential customers may choose to purchase, none of which are conditional upon the customer signing up to a Retail Electricity Supply Agreement and a Feed-in Agreement with Diamond Energy Pty Ltd.

An internet search of the terms "solar", "solar energy" and the like returns a large number of "hits" showing that the market for supplying and installing "Solar Systems" is very competitive in the relevant geographic areas.

7. Further information

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

Adam Tesoriero
67 Cawarra Road
Caringbah
NSW
2229

Dated 15/11/12

Signed by/on behalf of the applicant



(Signature)

ADAM TESORIERO

(Full Name)

SOLAR SWITCH PTY LTD

(Organisation)

DIRECTOR

(Position in 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 *Competition and Consumer Act 2010* 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.