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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:
(Refer to direction 2)

N95726 Simply Energy (ABN 67 269 241 237), a partnership comprising IPower 2
 N95727 Pty Ltd (ACN 070 374 293) and IPower Pty Limited (ACN 111 267 228)
 ("Simply Energy")

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

Retail supply of electricity and natural gas in Victoria, South Australia,
 Queensland and New South Wales

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

Level 14, 644 Chapel Street, South Yarra, Victoria 3141

2. Notified arrangement

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

The retail supply of electricity and natural gas to residential customers in South Australia by Simply Energy and the acquisition by Simply Energy of electricity generated by the customer's solar photovoltaic system ("solar panels") and fed into the electricity distribution network.



(b) Description of the conduct or proposed conduct:

Simply Energy and Disbury Holdings Pty Ltd ACN 055 995 590 ("Disbury") intend to enter into an agreement whereby Simply Energy will offer to supply electricity and/or electricity and natural gas to residential customers in South Australia with a 7% discount off consumption charges for electricity and a 60cent/KWh feed-in tariff to be credited by Simply Energy to the customer for electricity generated by the customer's solar panels and not used by the customer and fed into the electricity distribution network on the condition that the customer has purchased or will purchase the solar panels from Disbury. Customers are still able to purchase the solar panels from Disbury without entering into an agreement to purchase electricity or electricity and natural gas 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 of electricity or electricity and natural gas in South Australia who enter into or will be offered an electricity contract or electricity and natural gas contracts to supply electricity or electricity and natural gas to a residential premises in South Australia from Simply Energy.

Residential electricity customers and residential gas customers in South Australia and that have purchased or will purchase the solar panels from Disbury.

(b) Number of those persons:

(i) At present time:

There are approximately 737,367 residential electricity customers and 388,045 residential gas customers in South Australia (estimated).

(ii) Estimated within the next year:

(Refer to direction 6)

There are approximately 737,367 residential electricity customers and 388,045 residential gas customers in South Australia (estimated).

(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)

The proposed conduct will benefit consumers generally and the impact of the proposed conduct is not such that, under the test laid down in section 93(3A)(b) of the Competition and Consumer Act 2010 ("Act"), the likely benefit to the public will be outweighed by the likely detriment to the public.

The proposed arrangement will likely:

- (a) enhance the ability of Simply Energy to compete in the provision of retail electricity and natural gas supply and raise the profile of Simply Energy's retail capabilities;
 - (b) enable customers to purchase electricity or electricity and natural gas with the benefit of a 7% pay on time discount off electricity consumption charges;
 - (c) enable customers to receive a credit of 60cents/KWh for electricity that is generated by their solar panels and that they do not use and that is fed back into the electricity distribution network; and
 - (d) encourage other retailers to respond competitively with similar offers and benefits.
- (b) Facts and evidence relied upon in support of these claims:

Promotions of this kind are a commonly used marketing tool that delivers real benefits to consumers. Accordingly, the joint promotion provides significant benefits to the public in terms of competition and public awareness of competitive retail electricity and natural gas offers. Further, this promotion enables customers to obtain a greater credit for the electricity that is generated by their solar panels and fed back into the electricity distribution network than the minimum credit retailers are required to provide for feed-in electricity under South Australian legislation.

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 promotion between Simply Energy and Disbury involves residential consumers of electricity or electricity and natural gas in South Australia.

There are approximately 737,367 residential electricity customers and 388,045 residential gas customers in South Australia (estimated).

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 promotion will not result in any public detriment or anti-competitive detriment for the following reasons:

- (a) it is a demonstration of product innovation in competition between energy retailers;
 - (b) it provides an overall benefit to consumers on the combined cost of electricity or electricity and natural gas and solar panels;
 - (c) potential customers will be fully informed about the full terms and conditions of the offer before taking up the offer;
 - (d) potential customers will still have a genuine choice about whether to purchase solar panels; and
 - (e) potential customers will still have a genuine choice about whether to enter into the electricity contract or the electricity and natural gas contracts.
- (b) Facts and evidence relevant to these detriments:

Energy supply is a homogeneous service which is treated as a relatively low involvement commodity by most energy consumers, especially by residential consumers, rather than a high value, differentiated product that justifies extensive market search and analysis. As a result, product innovation and differentiation is an important factor in increasing competition in the retail energy market, especially in relation to residential consumers.

Potential customers of Simply Energy will still have a genuine choice about whether to enter into the electricity contract or the electricity and natural gas contracts and may still accept other competitive electricity and natural gas residential offers from Simply Energy without purchasing solar panels from Disbury albeit without a feed-in tariff of 60cents/KWH. Further, potential customers of Disbury may still acquire solar panels from Disbury without entering into a residential electricity contract or a residential electricity contract and residential natural gas contract with Simply Energy.

7. Further information

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

Peter Gunn, Simply Energy, Level 14, 644 Chapel Street, South Yarra, Victoria 3141, Ph. (03) 8807 1140

Dated 14 February 2012

Signed by/on behalf of the applicant

(Signature)

(Full Name)

(Organisation)

(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.