



Australian
Competition &
Consumer
Commission

Our Ref: N96232
Contact Officer: Tanya Hobbs
Contact Number: 02 6243 1029

GPO Box 3131
Canberra ACT 2601

23 Marcus Clarke Street
Canberra ACT 2601

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

23 January 2012

Dr Matthew Starr
Managing Director
Jasmin Solar

By email: info@jasminsolar.com

Dear Dr Starr

Third line forcing notification N96232 lodged by Jasmin Solar

Purpose

I refer to the above third line forcing notification lodged with the Australian Competition and Consumer Commission (the ACCC) on 30 October 2012 (the **notification**) and your response to the ACCC's request for information, received by the ACCC on 16 November 2012 (**Information Response**).

The purpose of this letter is to provide you with an update on our assessment of the notification to date and to seek further information from you.

Background

As part of its consideration of the notification, the ACCC is consulting with interested parties and conducting its own investigations. At this stage of its consideration, the ACCC has identified a number of concerns regarding the notified conduct, specifically in relation to a number of the benefits claimed by Jasmin Solar, and the claim that the conduct involves little to no potential detriments. The ACCC is also concerned about the potential consumer harm that may arise, given the class of potential customers identified in the notification.

Issues identified to date

Based on the information available to it, the ACCC has identified the following concerns arising from the notified conduct:

1. The potentially vulnerable nature of the consumers targeted by the notified conduct, namely low income consumers and old age pensioners, and the lengthy term of the agreements consumers must enter into with Diamond Energy and Jasmin Solar may result in those customers suffering loss or other detriment due to a fundamental imbalance in bargaining power. In particular, the ACCC is concerned that the agreement between Jasmin Solar and its customers provided to the ACCC by Jasmin Solar (**Customer Agreement**) potentially raises

concerns under the Australian Consumer Law. I note that an exclusive dealing notification does not provide protection against a breach of the other competition provisions of the *Competition and Consumer Act 2010*.

2. It is unclear from the information provided in the notification and Customer Agreement that the Jasmin Solar solar systems installed on a customer's property will reduce the amount of electricity consumed by customers from the grid to the extent claimed by Jasmin Solar, given the amount (compared to the 3-5kW rating of the system) and pattern of typical electricity consumption. At this stage of its investigation and having regard to the terms of the Customer Agreement; the ACCC is concerned that the claim made by Jasmin Solar that the notified conduct may reduce customers energy consumption by up to 80% is unlikely to be realised by most customers.
3. Based on the terms of the Customer Agreement, it appears that the Jasmin Solar solar systems may actually decrease the value and/or saleability of houses upon which they are mounted. This view is based on the terms of the contract that require a customer to ensure a potential purchaser sign up to the arrangements under the notified conduct.
4. It appears that Diamond Energy's decision to apply tariff 11 to electricity consumed from the grid by Jasmin Solar customers may be discretionary (depending on the terms of the contract between Diamond Energy and Jasmin Solar's customers). This has the potential to increase the uncertainty of any claimed reduction in cost of electricity by customers who enter into the Customer Agreement with Jasmin Solar and any contract with Diamond Energy. It may also potentially mislead customers as to the likely savings they can make from having the solar system installed.
5. It appears from the information available to the ACCC, that the electricity prices set by tariff 11 may remain higher than the prices available from electricity suppliers through market agreements or under other tariffs. If this is the case, any agreement entered into by Diamond Energy and Jasmin Solar's customers is likely to result in loss and increased costs for those customers as compared to the cost of obtaining electricity in the absence of the notified conduct.
6. Given the particular characteristics of the consumers targeted by the notified conduct, the customers targeted who sign a Customer Agreement with Jasmin Energy may not be have had regard to whether: the roof of their dwelling is structurally capable of supporting the solar system; the dwelling may require future repairs which would be significantly complicated by the presence of the solar system; or whether the requirements under the Customer Agreement would breach a mortgage covenant.
7. On the basis of the obligation in clause 10 of the Customer Agreement which requires customers to maintain and service the solar system, customers appear to be subject to an unquantified liability for maintenance and servicing.

The ACCC is continuing to investigate the likely effects of the notified conduct and this summary should not be regarded as representing the ACCC's concluded view, or an exhaustive list, of the potential concerns that the ACCC has identified.

Next steps

The ACCC is considering the notification and is consulting further regarding the potential benefits and detriments claimed. Accordingly, the ACCC requests that

Jasmin Solar provides an undertaking not to enforce the terms of any Customer Agreements under which a customer is required to enter into an agreement with Diamond Energy, until the ACCC concludes its assessment of the notification.

To assist the ACCC's assessment of this notification, I seek the additional information set out in the information request at **Annexure A**. Please provide this information and any other information you consider the ACCC should take into account in its assessment by **31 January 2013**.

Jasmin Solar may also wish to provide a submission which addresses the ACCC's concerns noted above, including any relevant documentation required to support its claims.

If you wish to discuss any aspect of this matter, please do not hesitate to contact Tanya Hobbs on (02) 6243 1029.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Richard Fleming', with a stylized flourish at the end.

Richard Fleming
Acting General Manager
Adjudication Branch

Information request to Jasmin Solar

1. Details of reasons why Jasmin Solar's offer as outlined in the notification targets low income households, seniors and pensioners rather than consumers at large.
2. Any information you may have relating to the impact of a Jasmin Solar solar system on the ability of an owner of a premises on which it is installed to mortgage, sell or transfer their property.
3. Details of the assessment process undertaken by Jasmin Solar to determine, in relation to installation of a solar system:
 - a. the suitability of a particular premises for installation,
 - b. any benefits to the owner of the premises,
 - c. the commercial viability of such an installation for Jasmine Solar.
4. All information and documents that are provided to prospective customers or to customers after they enter into an arrangement with Jasmine Solar to install a system.
5. A copy of your business plan and the information that underpins the benefits claimed in your notification and Information Response.
6. Information about the rate of tariff that Jasmin Solar anticipates it will earn from Diamond Energy on behalf of the additional customers identified as signing up to the Customer Agreement in the coming 12 months (item 3(b(ii) of the notification).
7. In Jasmin Solar's covering letter of 29 October 2012 (Covering Letter) it states that "Diamond Energy is the only company that will pay out funds to Jasmin for the QLD government feed-in-tariff rebate on a quarterly basis..." In paragraph 14 of the Information Response, however, you indicate that there are other companies who have indicated they are willing to pay Jasmin Solar cash payments, although on an annual basis. Provide the names and contact details for these companies.
8. In Jasmin Solar's Covering Letter, it indicates that it will take 2-3 years for Jasmin Solar to earn back the money it is outlaying upfront in installing the solar systems. However, in the Information Response, Jasmin Solar states that it will take Jasmin Solar 5 years to recover the costs of capital investment. How long does Jasmin Solar estimate it will take, on average, for it to recover its costs associated with installing each solar system?
9. Information in support of the claim that customers can receive up to 80% reduction in electricity bills under the notified conduct. In responding, indicate the proportion of Jasmin Solar customers that Jasmin Solar estimates will achieve the 80% reduction.

10. A customer list, including an update for each customer as to whether the customer has already entered into any energy supply agreement with Diamond Energy or had a solar system installed under a Customer Agreement with Jasmin Solar.
11. A copy of any agreement(s) between Jasmin Solar and Diamond Energy which relates to the notified conduct.
12. Further information about who is responsible for maintenance and repair of the Jasmin Solar solar system, including a copy of the Solar Systems Component Manufacturers' Instructions and an estimated average cost of complying with these instructions.
13. Details of any complaints raised by customers who have already purchased a solar system from Jasmin Solar.

Please provide this information and any other information you consider the ACCC should take into account in its assessment by **31 January 2013**.