

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:

N97843

Quickflix Limited ACN 102 459 352 (**Quickflix**)

N97844

Lumo Energy Australia Pty Ltd ACN 100 528 327 (**Lumo**)

(together the '**Free Trial Partners**').

(b) Short description of business carried on by that person:

Quickflix

Quickflix provides a national home entertainment content delivery service, primarily DVD rental by mail and movie streaming.

Lumo

Lumo is a retail seller of energy in Victoria, South Australia, New South Wales and Queensland to residential and small-to-medium enterprises.

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

Quickflix

c/o – Chris Booth
Principal
Bennett + Co
Ground Floor, BGC Centre,
28 The Esplanade,
Perth, WA 6000

Lumo

c/o – Christopher Naylor
General Counsel
Lumo Energy Australia Pty Ltd
Level 3, 565 Bourke Street,
Melbourne, Victoria 3000

2. Notified arrangement

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

The Free Trial Partners offer the goods and services described in 1(b) above.

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

- Quickflix proposes to do the following:
 - give or allow, or offer to give or allow, a six (6) week free or eight (8) week free trial of Quickflix services and products to Lumo customers who:
 - renew their account with Lumo;
 - sign up with Lumo for the first time; or
 - pass a certain time of contract length (ie been with Lumo more than 2 years).
 - refuse to give or allow, or offer to give or allow, a six (6) week free or eight (8) week free trial of Quickflix services and products to Quickflix customers for the reason that they are not a customer of Lumo or who have tried Quickfix previously; and
 - refuse to give or allow, or offer to give or allow, a six (6) week free or eight (8) week free trial of Quickflix services and products to Quickflix customers who are customers of Lumo for the reason that they do not agree to renew their account with Lumo do not sign up with Lumo or have not passed a certain period of contract time (ie been with Lumo more than 2 years).
- The 6 and 8 week free trials of Quickflix services and products will continued to be offered at various times going forward, independent of each other, meaning that there may be 6 week free trials offered in a retention campaign, at the same time 8 week free trials are being offered as part of a re-contracting or acquisition campaign.
- The 6 and 8 week free trials of Quickflix services and products will be non-exclusive to Lumo customers and may be offered by Quickflix to its own customers and new customers of Quickflix directly or indirectly through other free trial partners independently of Lumo.

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:

New customers of Quickflix who are customers of Lumo.

(b) Number of those persons:

(i) At present time:

534

(ii) Estimated within the next year:

1,000 – 3,000

(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 proposed conduct will be of benefit to the public as it will:

- Promote competition amongst energy and home entertainment providers;
- Prompt competitors of the Free Trial Partners to provide pro-competitive value added benefits to their customers;
- Promote competition and downward pressure on pricing for service and products provided by the competitors of the Free Trial Partners;
- Enable Quickflix to increase its potential subscriber numbers allowing Quickflix to offer more competitive goods and services which will ultimately benefit consumers;
- Enable Lumo to increase energy retailer participation and competition in electricity and gas retailing, promoting the long terms interests of consumers; and
- Provide tangible public benefits and increase competition and innovation in the relevant markets and add value for consumers wishing to trial and use the relevant products and services which outweighs any public detriment considered to arise from the conduct.

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

The proposed conduct will not lessen competition in the market nor limit genuine choice of customers as:

- It does not compel customers of Lumo to trial or use Quickflix products;

- It does not compel customers of Quickflix to become customers of Lumo;
- Customers of Lumo are able to transfer away from Quickflix; and
- Each of Lumo and Quickflix can continue to make attractive offers to the broader market to attract new customers.

5. Market definition

- (a) 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):

Quickflix

The relevant markets are as follows:

- The market for pay television services including services that allow digital streaming and download of movies and TV in Australia, including by transactional and subscription video on demand, pay per view, over the internet or cable; and
- FOXTEL is the overwhelmingly dominant leader in this market together with iTunes and Google Play, in addition to smaller service providers such as Quickflix, Presto and Fetch also competing and providing promotions that offer customers additional value.

Lumo

The current market is already highly competitive and Lumo is a smaller participant in the retail market for electricity and gas supply to residential and small-to-medium 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:

The Free Trial Partners foresee no materially adverse public detriment likely to arise from the proposed conduct.

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

The proposed conduct will not lessen competition due to the following:

- Any potential customer of a Free Trial Partner can use the product and/or services of that Free Trial Partner without participating in the free trial offer;
- Customers of Quickflix are not obliged to become customers of Lumo;

- Customers of Lumo are not obliged to become customers of Quickflix;
- Customers of Quickflix are free to acquire similar services to those offered by Lumo from other competitors;
- Customers of Lumo are free to acquire similar products and services to those offered by Quickflix from other competitors;
- Customers of Lumo are able to transfer away from Quickflix;
- Customers of the Free Trial Partners are free to continue to make normal purchasing decisions based on price and their service requirements;
- There are other suppliers or potential suppliers who offer similar discounts and offers;
- Competition in Quickflix's market is vigorous with other suppliers that also offer similar discounts and promotions; and
- Competition in Lumo's market is vigorous with other suppliers that also offer similar discounts and promotions. At any given time, there are a large range of product offers and options available to the public from retailers including, but not limited to:
 - preferential rates for group membership;
 - renewable energy;
 - magazine subscriptions;
 - movie tickets;
 - LCD televisions;
 - discounted energy;
 - reward programs;
 - pay-on-time discounts;
 - rate-freeze plans;
 - bill smoothing options;
 - online vs telephone account managements facilities;
 - energy monitoring tools;
 - waiver of termination fees;
 - paper vs electronic billing;
 - billing frequency;
 - prepaid vs postpaid billing;
 - waiver of merchant fee charges; and

- sign up bonuses and rebates.

The Free Trial Partners believe that the benefits of the proposed conduct to the public interest will outweigh any possible detriment considered to arise from the proposed conduct.

7. Further information

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

Quickflix

c/o – Chris Booth

Principal

Bennett + Co

Ground Floor, BGC Centre, 28 The Esplanade, Perth, WA 6000

Telephone: (08) 6316 2268

Lumo

Christopher Naylor

General Counsel

Lumo Energy Australia Pty Ltd

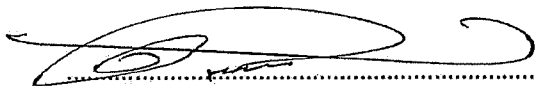
Level 3, 565 Bourke Street, Melbourne, Victoria 3000

Telephone: (03) 8680 8065

EXECUTION

Date: *25 September* 2014

Signed by



Christopher Booth
For and on behalf of Quickflix Limited
Lawyer



Christopher Naylor
Lumo Energy Australia Pty Ltd
General Counsel

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 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.