

# 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:  
*(Refer to direction 2)*

N97388 Wesfarmers Kleenheat Gas Pty Ltd ABN 40 008 679 543 (“**Kleenheat Gas**”).

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

Kleenheat Gas is a retailer of natural gas in Western Australia.

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

c/- Wesfarmers Corporate Solicitors Office  
11<sup>th</sup> Floor  
40 The Esplanade  
PERTH WA 6000

Attention: David Clayton

## 2. Notified arrangement

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

This notice relates to the supply of natural gas by Kleenheat Gas to residential natural gas customers in Western Australia.

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

Kleenheat Gas proposes to give a credit to Western Australian residents who sign up with Kleenheat Gas as their residential natural gas provider (“**Eligible Customers**”) on condition that they are members of (or become a member of) the flybuys scheme offered by Loyalty Pacific Pty Ltd. The credit is a one off amount that will be applied to the customer’s new residential natural gas account with Kleenheat Gas. The amount of the credit that Kleenheat Gas proposes to offer is \$50, but this amount may change in the future.

**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)

Western Australian residents who sign up with Kleenheat Gas as their residential natural gas provider.

- (b) Number of those persons:

- (i) At present time:

Unknown but significantly greater than 50.

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

Unknown but significantly greater than 50.

- (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)

Kleenheat Gas considers that the proposed conduct will provide the following benefits to the public:

- Eligible Customers who are flybuys members will receive the benefit of a credit on their new residential natural gas account with Kleenheat Gas;
- Eligible Customers who are flybuys members will also be able to earn additional flybuys points on their purchases of natural gas from Kleenheat Gas;
- other natural gas suppliers will be encouraged to develop similar offerings that compete with the offering from Kleenheat Gas.

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

To a large extent, the benefits described above are self-evident. It should also be noted that, at the present time, there is no cost involved in enrolling in the flybuys scheme.

**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 is the retail market for the supply of natural gas in Western Australia. Kleenheat Gas would characterise this market as very competitive.

## 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)

Kleenheat Gas considers that the proposed conduct will not give rise to any public detriments.

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

Kleenheat Gas submits that the proposed conduct will not result in any detriments to the public because:

- Kleenheat Gas' arrangement with Eligible Customers will not be an exclusive arrangement conditional upon acquisition of services from Loyalty Pacific Pty Ltd. Instead, Eligible Customers will be free to purchase natural gas from Kleenheat Gas on standard terms without acquiring services from Loyalty Pacific Pty Ltd;
- customers are free to enter into an arrangement with another residential natural gas supplier that competes with Kleenheat Gas;
- there is potentially a significant number of existing flybuys scheme members amongst the persons affected by this conduct and therefore no additional action would be required on their behalf in order to be eligible to receive the credit from Kleenheat Gas.


**7. Further information**

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

David Clayton  
c/- Wesfarmers Corporate Solicitors Office  
11<sup>th</sup> Floor  
40 The Esplanade  
PERTH WA 6000  
  
Telephone: 08 9327 4261  
Email: [dclayton@wesfarmers.com.au](mailto:dclayton@wesfarmers.com.au)

Dated... 30 April 2014 .....

Signed by/on behalf of the applicant

  
.....

(Signature)

David Murray Clayton  
(Full Name)

Wesfarmers Limited  
(Organisation)

Legal Counsel  
(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.