

# 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)*

N99437 True Value Solar Pty Ltd (ABN 11 143 232 482) (**True Value Solar**).

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

Retail and commercial sale and installation of Photovoltaic ('PV') solar systems in Australia

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

8/170-180 Rooks Road, Vermont, Victoria 3131.

.....

### 2. Notified arrangement

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

The sale and installation of PV solar systems agreed to between Simply Energy and True Value Solar under the Agreement referred to in paragraph 2(b) (each an **approved PV solar system**) by True Value Solar to residential consumers in Victoria, South Australia, New South Wales and Queensland. This is on the condition that the customer agrees to purchase its electricity and natural gas (if applicable) from Simply Energy (ABN 67 269 241 237), a partnership comprising IPower Pty Ltd (ACN 111 267 228) and IPower 2 Pty Ltd (ACN 070 374 293) (**Simply Energy**).

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

True Value Solar intends to offer to sell and install an approved PV solar system to residential consumers in Victoria, South Australia, New South Wales and Queensland. This is on the condition that the customer agrees to purchase its electricity and natural gas (where applicable) with discounts off usage charges to, and solar feed bought by, Simply Energy. This is part of a pilot program between Simply Energy and True Value Solar reflected in a formal agreement between the parties (the **Agreement**), which is anticipated to run for approximately six months. The Agreement has a condition precedent which provides that the Agreement does not become binding on the parties until such time as the ACCC has cleared, or is deemed to have cleared, the proposed conduct. Consumers are still able to purchase PV solar systems from True Value Solar without entering into an agreement to purchase electricity and natural gas (where applicable) from Simply Energy. However, these PV solar systems will not be an approved PV solar system.

.....  
(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)

Residential consumers of PV solar systems in South Australia, Queensland, New South Wales and Victoria who wish to acquire approved PV solar systems from True Value Solar and electricity and natural gas (if applicable) from Simply Energy.

- .....  
(b) Number of those persons:

- (i) At present time:  
None.

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

300.  
.....

- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Not applicable.

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**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*, the likely benefit will be outweighed by the likely detriment to the public.

The proposed arrangement will likely:

- a) enhance the ability of True Value Solar to compete in the provision of PV solar systems, and raise the profile of True Value Solar’s retail capabilities, product offerings and solutions;
- b) enable consumers to purchase electricity and natural gas (if applicable) with discounts off usage charges and be paid for the excess electricity generation that they don’t consume at their household and is fed back into the electricity distribution network; and
- c) encourage other retailers to respond competitively with similar offers and benefits.

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

Promotions of this kind deliver real benefits to consumers. Accordingly, the promotion provides significant benefits to the public in terms of competition and public awareness of competitive retail electricity and natural gas (where applicable) offers and solar energy solutions. Further, this promotion enables consumers to obtain a premium solar feed-in tariff for the electricity generated from the consumer’s approved PV solar system which will be fed back into the electricity distribution network.

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**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 markets are:

- the market for the provision of electricity and natural gas to residential consumers in Queensland, New South Wales, South Australia and Victoria;
- the market for the provision of solar PV systems to residential consumers in Queensland, New South Wales, South Australia and Victoria.

Both of these markets are highly competitive.

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## 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 a discount to consumers on their electricity and natural gas (if applicable) usage charges and payment for the excess generation from their approved PV solar system that they don't consume at their household;
- c) potential consumers will be fully informed about the full terms and conditions of the offer before taking up the offer;
- d) potential consumers will still have genuine choice about whether to purchase an approved PV solar system;
- e) potential consumers will still have a genuine choice about whether to enter into the contracts for electricity and natural gas (if applicable) in conjunction with an approved solar PV system;
- f) if potential consumers do not wish to purchase an approved PV solar system (for any reason), they may purchase other PV solar systems if they wish; and

g) the proposed conduct does not hinder the ability of either True Value Solar's competitors, or Simply Energy's competitors, to offer similar promotions.

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(b) Facts and evidence relevant to these detriments:

Product innovation and differentiation is an important factor in increasing competition in the retail energy and energy solutions markets.

Potential consumers of True Value Solar will still have a genuine choice about whether to enter into a contract to purchase an approved PV solar system. Further, potential consumers of True Value Solar may still acquire another solar PV system without entering into a residential electricity and natural gas (where applicable) contracts with Simply Energy.

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**7. Further information**


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

Tanya Fryc  
General Counsel,  
8/170-180 Rooks Road,  
Vermont, Victoria 3131  
Tel: 03 9006 7106  
Email: t.fryc@truevaluesolar.com.au

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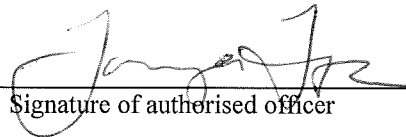
Dated..... 17 November 2016

Signed by/on behalf of the applicant:

  
\_\_\_\_\_  
Signature of witness

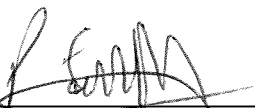
Pat Southwell  
\_\_\_\_\_  
Name of witness (print)

Technical Manager  
\_\_\_\_\_  
Office held

  
\_\_\_\_\_  
Signature of authorised officer


Tanya Fyfe  
\_\_\_\_\_  
Name of authorised officer (print)

General Counsel  
\_\_\_\_\_  
Office held

  
\_\_\_\_\_  
Signature of witness

Pat Southwell  
\_\_\_\_\_  
Name of witness (print)

Technical Manager  
\_\_\_\_\_  
Office held

  
\_\_\_\_\_  
Signature of authorised officer

Rob Luccan  
\_\_\_\_\_  
Name of authorised officer (print)

GM - supply chain  
\_\_\_\_\_  
Office held

## 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.