

Our Ref: 59377
Contact Officer: Michael Drake
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**Australian
Competition &
Consumer
Commission**

2 March 2016

Lisa Huett
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By email: Lisa.Huett@au.kwm.com

Dear Ms Huett,

United Energy Distribution Pty Ltd N98928 – implementation of conduct

I refer to the above mentioned exclusive dealing notification lodged with the Australian Competition and Consumer Commission (the **ACCC**) on 22 February 2016 by your client United Energy Distribution Pty Ltd (**United Energy**) (**the Notification**). This letter reiterates the ACCC's request for certain outstanding information and requests United Energy consider delaying the implementation of the notified conduct until the ACCC has completed its assessment of the Notification.

I note your email of 1 March 2016 in which you indicate that you are seeking instructions on providing the outstanding information requested by the ACCC in a telephone discussion on 23 February 2016.

The ACCC considers that the contracts that underpin the proposed conduct, not just a summary of the contracts, will be important to assess the likely public benefits. Without such information, it is difficult to see how the notified conduct would give rise to the public benefits claimed in the Notification.

The ACCC also requires further detail on the identity of the target group of customers for these contracts and how United Energy proposes to identify the customers or class of customers to receive the offers and the means by which those offers will be made by United Energy to assist in the assessment.

Although the ACCC has not formed any view at this stage, if the ACCC is satisfied that the likely benefit to the public from the proposed conduct will not outweigh the likely detriment to the public from the proposed conduct, it may issue a draft notice, and after consultation, issue a final notice under section 93(3A) of the *Competition and Consumer Act 2010* revoking the notification. Should the ACCC issue such a notice, any protection conferred by the Notification would cease after 30 days. The ACCC has the power to issue a notice under section 93(3A) at any time after notification of the proposed conduct.

If the ACCC prepares a draft notice, United Energy and other interested parties would be given the opportunity to participate in a conference in relation to the draft notice.

While it is a matter for United Energy whether to implement the conduct once 14 days have elapsed since the date of the Notification, the ACCC may have significant concerns with the

notified conduct (see for example the ACCC's Statement of Reasons regarding the Jasmin Solar notification¹). Therefore the ACCC requests United Energy consider delaying the implementation of this conduct until the ACCC has received and reviewed the outstanding information (including the relevant contracts) and conducted its assessment.

Please provide the requested information as soon as possible. If a final version of the contracts is not available at this time, please provide the latest draft of the contracts now and provide the final version when they become available.

In the absence of such information, the ACCC may proceed to issue a draft notice revoking the notification.

Should you have any queries in relation to this matter, please do not hesitate to contact Michael Drake on (03) 9658 6517 or Lyn Camilleri on (03) 9290 1973.

Yours sincerely



Baethan Mullen
Acting General Manager
Adjudication Branch

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Available at:
<http://registers.accc.gov.au/content/trimFile.phtml?trimFileTitle=D13+122897.pdf&trimFileFromVersionId=1126462&trimFileName=D13+122897.pdf>