



Our ref: N10000475 & N10000477
Contact officer: Robert Janissen
Contact phone: (02) 6243 1387

23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

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

adjudication@acc.gov.au

www.acc.gov.au

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Annoushka Scharnberg
Finlaysons Lawyers
Level 7, 81 Flinders Street
Adelaide SA 5000

By email: annoushka.scharnberg@finlaysons.com.au

Dear Ms Scharnberg,

N10000475 & N10000477 – Urban Renewal Authority and Peet Tonsley Apartments Pty Ltd – no further action

I refer to the exclusive dealing notifications lodged with the Australian Competition and Consumer Commission (the **ACCC**) by Urban Renewal Authority (**Renewal SA**, N10000477) and Peet Tonsley Apartments Pty Ltd (**Peet**, N10000475).

Commencement of legal protection

Protection from legal action provided by these notifications commenced automatically when they were validly lodged with the ACCC on 20 March 2019.

While the legal protection is in force, Renewal SA and Peet may engage in the conduct as described in the notifications without the risk of breaching the exclusive dealing provisions of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

The notified conduct

450 apartments and 400 townhouse allotments are being developed for sale at the Tonsley Precinct in South Australia, which has committed to a 6 Star Green Star Community Rating (and been awarded this rating by the Green Building Council of Australia). Each of these allotments will require a natural gas and recycled water connection. Peet and Renewal SA have each entered an agreement with Enwave Tonsley Pty Ltd (**Enwave**) through which Enwave will develop, operate and maintain a recycled water network and embedded natural gas network to service the entire Tonsley Precinct.

Notifications N10000475 and N10000477 allow Peet and Renewal SA to require each purchaser of an allotment at the Tonsley Precinct to connect to the Enwave recycled water and gas networks, pay a connection fee and purchase natural gas and recycled water from Enwave on terms to be agreed with Enwave.

Peet and Renewal SA say the notified conduct will assist the economic and environmental sustainability of the development and result in cost efficiencies that will be passed on to consumers.

You have advised that protection to engage in these activities is sought for the period of the development, but in any event not to exceed 15 years.

ACCC assessment

The ACCC can only remove the protection provided by a notification if it is satisfied that the notified conduct:

- has the purpose, effect or likely effect of substantially lessening competition, and
- in all the circumstances, will not be likely to result in a benefit to the public which would outweigh the likely detriment to the public.

On the basis of the information provided, the ACCC considers that the notified conduct is not likely to have the purpose, effect or likely effect of substantially lessening competition. In particular:

- the notified conduct only applies to apartments and townhouses located in the Tonsley Precinct (850 dwellings, only 95 of which are likely to be sold by March 2019) and details of the requirement are stated in the relevant sales contracts for purchasers to review and obtain legal advice on before deciding to purchase a dwelling in the Tonsley Precinct;
- Enwave is willing and able to provide third party access to its embedded gas network and, in any event, will be subject to regulation by the Essential Services Commission of South Australia which can impose licence conditions, regulate prices and mandate third party access to Enwave's recycled water and embedded natural gas networks; and
- agreements between Enwave and Peet require gas to be provided at a discount compared to the average standard residential tariff of the top three gas retailers in South Australia, calculated by an external body. Further, recycled water is to be provided at a discounted rate compared to SA Water's current inclining block¹ tariff rates.

As such, the ACCC has decided to take no further action at this time. This means the legal protection provided by the notifications continue unless or until the ACCC revokes the notifications or Renewal SA and/or Peet withdraw their notification(s).

If circumstances change, or the ACCC receives further information, such that it is satisfied that the notified conduct has the purpose, effect or likely effect of substantially lessening competition and that the public benefits from the notified conduct do not outweigh the public detriments, the ACCC may take steps to remove the legal protection by revoking the notifications.

The notifications and a copy of this letter will be placed on the ACCC's [exclusive dealing notifications register](#).

Please contact Robert Janissen on (02) 6243 1387 or by email to adjudication@acc.gov.au if you have any questions about this matter.

Yours sincerely,



Joanne Palisi
General Manager
Adjudication

¹ 'Inclining block tariff' refers to a \$ per kL water charge that increases as the volume of water consumed increases.