

13 November 2000

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Mr John O'Neill  
Senior Assistant Commissioner  
Australian Competition & Consumer Commission  
470 Northbourne Avenue  
DICKSON ACT

FILE No
DOC:

Dear Sir

## J B Were Group - Notification

We act for Were Stockbroking Limited (which trades under the name of 'J B Were & Son') and J B Were Group Holdings Pty Ltd and their respective subsidiaries (both companies and their respective subsidiaries are referred to in this letter as '**J B Were Group**').

In a range of different circumstances, the J B Were Group wishes to offer its services (described below), or offer its services at a particular price, on the condition that its clients also acquire one or more other services offered by the J B Were Group.

As this may result in a contravention of section 47(6) and (7) of the *Trade Practices Act 1974* (Cth) ('TPA'), the J B Were Group lodges the attached notification under section 93(1) of the TPA.

We enclose a cheque for \$1000 as payment of the required fees.

### 1. Background

- 1.1 J B Were & Son provides a full range of stockbroking services throughout Australia.
- 1.2 J B Were Group Holdings and its subsidiaries have developed a range of investment services in addition to the stockbroking services provided by J B Were & Son. The investment services include the following:
  - (a) cash management services, including the Were Securities Cash Trust and J B Were Deposit Notes;
  - (b) custodian and administration services which facilitate compliance and reporting to customers and the settlement of transactions;
  - (c) equity finance services including margin lending facilities and protected lending facilities;
  - (d) investment in managed funds; and



- (e) managed superannuation services.

These investment products and services are offered by different subsidiaries of J B Were Group Holdings.

- 1.3 The J B Were Group therefore provides a range of stockbroking, investment, superannuation, custodian and administration services.
- 1.4 The supply of different services by different companies within the J B Were Group is largely dictated by regulatory considerations. For example, only a limited number of entities in the J B Were Group are required to hold a Dealer's Licence or be members of (and therefore be regulated by) the Australian Stock Exchange and the Sydney Futures Exchange. Accordingly, the regulatory restrictions and compliance issues relevant to each entity will depend upon the nature of business it operates.
- 1.5 Companies within the J B Were Group have previously lodged notifications in respect of individual conduct which may contravene the third line forcing provisions contained in sections 47(6) and (7) of the TPA. To achieve administrative efficiency and to minimise the risk of contravening sections 47(6) and (7), the J B Were Group wishes to notify the conduct described below under section 93(1).

## **2. Notified Conduct**

The offer, or offer at a particular price, of stockbroking, investment, superannuation, custodian and related services by a company within the J B Were Group on the condition that the client also acquires one or more other stockbroking, investment, superannuation, custodian or related services from another J B Were Group company.

## **3. Competition Issues**

- 3.1 We submit on behalf of our client that the Commission should not serve a notice under section 93(3A) of the TPA because:
  - (a) the conduct in question will not adversely affect competition in any relevant market; and
  - (b) the conduct in question will result in significant public benefits and no public detriment.
- 3.2 We do not believe that the notified conduct can have any adverse affect on competition in any of the relevant markets. We consider the relevant markets for assessing this notification are the markets for providing financial, custodial, stockbroking and investment services.
- 3.3 We believe all these markets are highly competitive and that the J B Were Group does not have a significant market share in any of these markets. All markets are characterised by low levels of market concentration and diverse services. The level of competition for all the relevant markets is likely to remain highly competitive for the foreseeable future. Further information in relation to these markets can be provided to the Commission if requested.
- 3.4 As these markets are characterised by aggressive competition and continuing innovation in product development we do not believe the notified conduct will foreclose opportunities in any of the relevant markets in any material way.

3.5 We believe the notified conduct will generate a number of public benefits. The J B Were Group wishes to engage in the conduct described above for the following reasons:

- (a) there are significant cost efficiencies resulting from shared overheads if clients use a range of J B Were Group products and services which will be passed on to clients;
- (b) the J B Were Group will be able to offer innovative grouped services to clients and diversify the range of seamless services currently provided;
- (c) the J B Were Group will be able to promote new and innovative products and services; and
- (d) the J B Were Group will be able to establish efficient interfaces between each of the J B Were Group companies to provide seamless service to the client.

3.6 In general, J B Were Group's ability to:

- (a) develop new and innovative products and services;
- (b) achieve administrative efficiencies; and
- (c) provide better customer convenience,

will enhance consumer welfare and competition within the various markets in which the J B Were Group competes. As there is no risk that the notified conduct will create or increase market power, the improvement in competition should be regarded as a public benefit.

3.7 We believe the notified conduct will have little, if any, public detriment. The only possible public detriment is that some potential clients may regard their choice as being limited because they are required to accept certain other J B Were Group services. As consumers are able to access investment, stockbroking, superannuation or custodian services from a wide range of entities on various terms, the choice available to potential clients is limited only by the extent and the range of other services and products available in the market.

3.8 Finally, we note that conduct falling within the description above would not need to be notified to the Commission if the range of services offered by the J B Were Group were offered by a single corporate entity. For many commercial and regulatory reasons, J B Were conducts its business through separate companies. We believe it would be unfortunate if the J B Were Group's competitive activities and innovations were restricted while another organisation with an alternative corporate structure were free to engage in the same activities.

#### 4. Conclusion

For the reasons set out above, we do not believe the Commission should serve a notice under section 93(3A) of the TPA in respect of this notification. This is because the notified conduct will cause little, if any, detriment and will generate significant public benefits.

If you have any questions in relation to this notification or require any further information, please do not hesitate to contact Michael O'Bryan or Jill McBain of our office.

Yours faithfully

**MINTER ELLISON**

A handwritten signature in black ink, appearing to read "Michael O'Bryan", written over the printed name "MINTER ELLISON". The signature is fluid and cursive, with a long horizontal stroke at the end.

Contact: Jill McBain (03) 9229 2531 [jill.mcbain@minters.com.au](mailto:jill.mcbain@minters.com.au)  
Partner responsible: Michael O'Bryan (03) 9229 2944  
Our reference: JCM MHOB 1353197

FORM G

COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 - Sub-section 93(1)*

EXCLUSIVE DEALING  
NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given in accordance with sub-section 93(1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or 9(a), (b), (c) or (d) of that Act in which the person giving notice engaged or proposes to engage.

**1. (a) Name of person giving notice:**

*Were Stockbroking Limited and J B Were Group Holdings and their respective subsidiaries (collectively referred to as 'J B Were Group')*

**(b) Short description of business carried on by those persons:**

*Provision of stockbroking, investment, superannuation, custodian and administration services*

**(c) Address in Australia for service of documents on those persons:**

*C/- Jill McBain  
Minter Ellison Lawyers  
525 Collins Street  
MELBOURNE VIC 3000*

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

*Stockbroking, investment, superannuation, custodian and administration services.*

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

*The offer, or offer at a particular price, of stockbroking, investment, superannuation, custodian and related services by a company within the J B Were Group on the condition that the client also acquires one or more other stockbroking, investment, superannuation, custodian, or related services from another company within the J B Were Group.*

3. (a) **Class or classes of persons to which the conduct relates:**

*Individuals and companies wishing to acquire stockbroking, investment, superannuation, custodian and administration services from a company within the J B Were Group*

(b) **Number of those persons-**

(1) At present time:

*None*

(2) Estimated within the next year:

*Present and future clients of J B Were Group. It is not possible to estimate this number.*

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

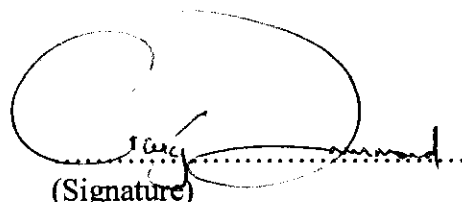
*Not applicable.*

4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:**

*Jill McBain  
Minter Ellison Lawyers  
Level 23  
525 Collins Street  
MELBOURNE VIC 3000*

**DATED** this 13<sup>th</sup> day of November, 2000

**SIGNED** by/on behalf of Were Stockbroking Limited and J B Were Group Holdings and their respective subsidiaries



(Signature)

*CRAIG MILTON DRUMMOND*  
.....  
(Full Name)

*MANAGING DIRECTOR - STOCKBROKING*  
.....  
(Description)