

Mallesons Stephen Jaques

S O L I C I T O R S

Confidential communication

Tim Grimwade
General Manager
Adjudication Branch
Australian Competition & Consumer
Commission
Level 5, Skygarden
77 Castlereagh Street
SYDNEY NSW 2000

BY URGENT COURIER

30 April 2001

D01/12732



Dear Mr Grimwade

Lease and Finance Services (Australia) Pty Limited - notification of third line forcing

We act for Lease and Finance Services (Australia) Pty Limited.

We enclose an exclusive dealing notification for lodgment together with the applicable lodgment fee of \$100.

The enclosed exclusive dealing notification contains two confidential annexures. The confidential annexures comprise a draft brochure which is being prepared for lessors and a draft letter which is being prepared for our client to send to lessees, as the agent of the lessor. In view of the fact that these documents are still in draft form and our client has not yet launched its product in Australia and does not wish to disclose its business processes to competitors, we are instructed to claim confidentiality over the letter and the brochure. Once the letter and the brochure have been finalised, we will provide the Commission with final copies and reassess the need to make a claim for confidentiality over the final copies at that time.

The proposed conduct may involve an offshore reinsurance company which has not yet been identified by our client. The offshore reinsurance company will not be engaging in third line forcing conduct, although it may benefit from third line forcing conduct if a company in the American Home Assurance Company group is required to acquire reinsurance services from it. We will provide the Commission with the name and country of incorporation of the offshore reinsurance company, once it has been identified.

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Please contact us if you have any questions.

Yours sincerely



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Email sharon.henrick@msj.com.au

Roger Featherston
Partner

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 — subsection 93(1)**EXCLUSIVE DEALING: NOTIFICATION**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in subsection 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 engages or proposes to engage.

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

Lease & Finance Services (Australia) Pty Limited (ACN 096 231 917).

(b) *Short description of business carried on by that person:*

Lease & Finance Services (Australia) Pty Limited is a newly established company which intends to provide contract administration and insurance agency services to (respectively) lessors and insurers in all jurisdictions in Australia.

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

C/- Roger Featherston
Mallesons Stephen Jaques
Level 60
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

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

Agency services, insurance services and reinsurance services.

The agency services will be offered by Lease & Finance Services (Australia) Pty Limited to lessors who lease commercial equipment such as office furniture and computers to lessees. The agency services which Lease & Finance Services (Australia) Pty Limited will offer to lessors will involve Lease & Finance Services (Australia) Pty Limited writing to lessees to enquire whether lessees have effected insurance over the leased equipment in accordance with their obligations under their lease. If a lessee has not effected insurance over the leased equipment in accordance with their obligations under their lease, Lease & Finance Services (Australia) Pty Limited will offer to effect that insurance as agent of the insurer.

A copy of a draft letter which Lease & Finance Services (Australia) Pty Limited proposes to send to lessees, as agent for the lessor, is attached at Confidential Annexure 1. A copy of a draft brochure which Lease & Finance Services (Australia) Pty Limited proposes to provide to lessees is attached at Confidential

Annexure 2. We will provide the Commission with further copies of Confidential Annexures 1 and 2, once they have been finalised.

Agency services will also be offered by Lease & Finance Services (Australia) Pty Limited to American Home Assurance Company (ABN 67 007 483 267). The agency services will involve Lease & Finance Services (Australia) Pty Limited, as agent of American Home Assurance Company, offering insurance services to lessors.

The insurance services will be offered by American Home Assurance Company to lessors who, under the terms of their lease, are entitled to an insurable interest in the equipment they lease to lessees. This is a standard term in commercial leases which invariably requires the lessee to take out the insurance for the benefit of the lessor.

The reinsurance services may be offered by an offshore reinsurance company to a company within the American Home Assurance Company group in relation to the insurance services described above. The offshore reinsurance company has not yet been identified.

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

Lease & Finance Services (Australia) Pty Limited proposes to offer agency services to lessors who lease commercial equipment such as office furniture and computers to lessees on the condition that the lessor acquires insurance services from American Home Assurance Company. Lease & Finance Services (Australia) Pty Limited will not offer agency services to lessors who do not agree to acquire insurance services from American Home Assurance Company.

Lease & Finance Services (Australia) Pty Limited proposes to offer agency services to American Home Assurance Company on the condition that a company within the American Home Assurance Company group agrees, if so requested, to acquire reinsurance services in respect of the insurance services supplied to lessors from a particular offshore reinsurance company. Lease & Finance Services (Australia) Pty Limited may not offer agency services to American Home Assurance Company if a company within the American Home Assurance Company group does not agree to acquire reinsurance services from the, as yet unidentified, offshore reinsurance company.

The proposed conduct will be of benefit to the public because it will:

- (i) provide lessors who lease commercial equipment such as office furniture and computers to lessees with a single point of contact for the purposes of arranging insurance for the leased equipment. This will decrease transaction costs for lessors who otherwise might have to arrange the insurance themselves;
- (ii) provide a single point of contact for lessees who lease commercial equipment such as office furniture and computers from lessors and who are required under the terms of their lease to provide insurance cover in respect of the equipment for the benefit of the lessor. This will decrease transaction costs for lessees who otherwise might have to arrange the insurance themselves and make it simpler for lessees to meet their obligations under their lease agreements;

- (iii) provide an attractive and competitive form of insurance for leased commercial equipment such as office furniture and computers which, to the best of our knowledge, is not currently available in Australia. The insurance will be broad and comprehensive and it:
 - (A) will not include an excess component (which would normally be payable by the lessee) even though it will cover all property risks;
 - (B) will include a replacement policy which results in equipment being replaced rather than the insured receiving cash and then having to go to the trouble of sourcing their own replacement equipment and arranging for that equipment to be delivered to the lessee;
 - (C) will allow telephone processing of claims;
 - (D) will allow equipment to normally be approved for repair or replacement within 24 hours of a claim being lodged; and
 - (E) will include a new for old replacement policy so that even where a lessee is several years into their lease and their leased equipment is lost, the insurance cover will result in the old equipment being replaced with the same, or equivalent, new equipment.

The proposed conduct will not lessen competition because:

- (i) alternative insurance over the equipment can be taken out at any time without the lessee suffering any penalty. The alternative insurance can be taken out from an insurer of the lessee's choice;
- (ii) Lease & Finance Services (Australia) Pty Limited is a new entrant in Australia and will be offering a service which is not currently available in Australia. The proposed conduct will, therefore, improve choice and promote competition;
- (iii) neither Lease & Finance Services (Australia) Pty Limited nor American Home Assurance Company has a substantial degree of market power in any market in Australia involving property insurance; and
- (iv) there are a significant number of competitors in markets in Australia which involve the provision of property insurance and related services.

The benefits of the proposed conduct will outweigh any possible detriment considered to arise from the proposed conduct.

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

Lessors, insurers and reinsurers.

- (b) *Number of those persons:*

- (i) *At present time:*

Nil.

(ii) *Estimated within the next year:*

Approximately 5 lessors.

One insurer.

One reinsurer.

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

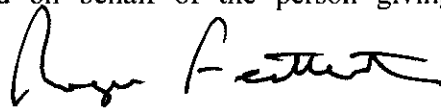
Not applicable.

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

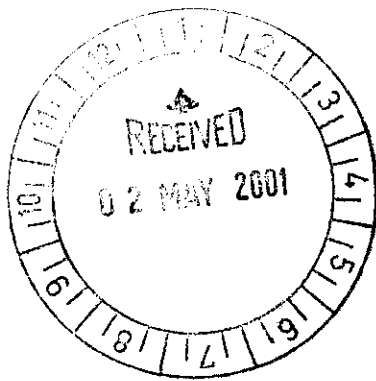
Roger Graeme Featherston
Mallesons Stephen Jaques
Level 60
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

Dated 30 April 2001

Signed on behalf of the person giving this notice



Roger Graeme Featherston
Partner, Mallesons Stephen Jaques



DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
2. If this 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. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in subsection 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in subsection 47(6) or (7), or paragraph 47(8)(c) or (9)(d), of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.