

10 AUG 2001

PERTH

10 August 2001

Our ref ACJ:Caroline Woo
Phone 9211 7690
Email caroline_woo@freehills.com.au
Matter no 9866006
Doc no Perth\012220275

Australian Competition & Consumer Commission
3rd Floor
East Point Plaza
233 Adelaide Terrace
PERTH WA 6000

By hand
Confidential

Dear Sir

HP JDV Limited - Notification for third line forcing

We enclose for lodgment:

- (a) notification on behalf of HP JDV Limited in respect of proposed third line forcing conduct; and
- (b) cheque in the sum of \$1,000 in payment for the lodgment fee.


We request that the information set out in Annexure A to the Notification be kept confidential pursuant to section 95(2) and (3)(b) of the *Trade Practices Act*. The information contained therein was provided to HP JDV by Suncorp-Metway Limited for the purposes of the Notification on the basis that such information be kept confidential. HP JDV would not otherwise be able to provide the information to the ACCC as part of the Notification. We understand that should the ACCC decline this request for confidentiality that HP JDV Limited shall have an opportunity to withdraw the information.

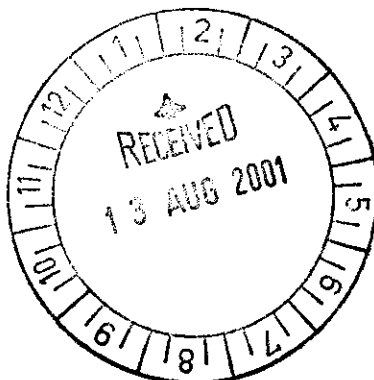
Please also note that I have signed the Notification on behalf of HP JDV Limited and that I have been authorised by HP JDV Limited to do so.



Should you have any queries regarding the Notification, please do not hesitate to contact me on 9211 7582.

Yours faithfully
Freehills


Tony Joyner
Partner



N70206

FORM G

Regulation 9

[Front of Form]

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 engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)

1. (a) Name of person giving notice:
HP JDV LIMITED ACN 009 136 029
- (b) Short description of business carried on by that person:
Securities investment and trading solutions and related services
- (c) Address in Australia for service of documents on that person:
**Level 7, 141 St Georges Terrace
Perth WA 6000**
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:
The supply of margin lending and stockbroking services (including Internet margin lending and stockbroking services).
- (b) Description of the conduct or proposed conduct:
HP JDV Limited proposes that, in connection with the provision of its stockbroking services through a website branded as "Suncorp Metway Share Trade", margin lending customers of Suncorp Metway Limited ACN 010 831 722 be offered the option of executing their share trades "online" via a facility operated by HP JDV. See attached Submission for details.

(See Direction 4 on the back of this Form)



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

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

Tony Joyner
Freehills
(Solicitors for HP JDV Limited)
Level 22, 140 St Georges Terrace
PERTH WA 6000

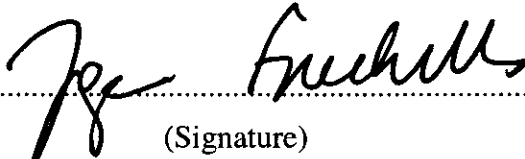
(Telephone 08 9211 7542; Facsimile 08 9211 7878)


Should the Commission wish to make any enquiries about the conduct described in this notification, the Commission is respectfully requested to contact Mr Joyner in the first instance, prior to doing so.

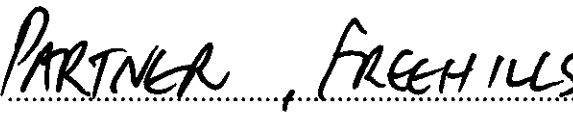
Dated 10th August, 2001

ACCC
10 AUG 2001
PERTH

Signed on behalf of HP JDV Limited by its solicitors and agents, Freehills of Level 22, 140 St George's Terrace, Perth, Western Australia.


.....
(Signature)


.....
(Full Name)


.....
(Description)

**(RESTRICTION OF PUBLICATION CLAIMED
FOR BEING THE WHOLE OF ANNEXURE A ON THE
GROUNDS OF CONFIDENTIALITY)**

**SUBMISSION BY HP JDV LIMITED TO THE AUSTRALIAN
COMPETITION AND CONSUMER COMMISSION IN SUPPORT OF A
NOTIFICATION BY HP JDV LIMITED UNDER SECTION 93(1) OF THE
TRADE PRACTICES ACT**

1 INTRODUCTION & BACKGROUND

This submission is provided in support of a notification made under s93(1) of the Trade Practices Act by HP JDV Limited ("**HP JDV**"). This notification deals with proposed conduct by HP JDV which potentially falls within sections 47(6) or (7) of the Trade Practices Act.

HP JDV is a Participating Organisation of the Australian Stock Exchange Limited and provides stockbroking services over the internet, that is, online stockbroking services, as well as by traditional means, that is, offline stockbroking services. HP JDV provides internet based stockbroking services to customers throughout Australia through linking its custom built websites to the websites of other organisations. An example is seen at the website of Quicken (www.quicken.com.au).

The Suncorp Metway Group comprises Suncorp-Metway Limited ACN 010 831 722 ("**SML**") and its related bodies corporate ("**Suncorp Metway Group**"). Suncorp-Metway Limited is a Queensland-based company that offers customers a wide range of banking, financial and insurance products, including margin lending facilities by which a customer can borrow money to buy shares based on the value of their share portfolio at any time ("**SML Margin Lending Facility**").

HP JDV provides stockbroking services to persons accessing the Suncorp Metway Group's Internet website ("**Website**") at www.suncorpmetway.com.au. The Website is linked to HP JDV's custom built website ("**Broker's Website**") which is branded as "Suncorp Metway Share Trade" under licence from SML but with disclosure to customers that in respect of these stockbroking services, the same are being provided by HP JDV ("**Share Trade Services**").

As part of the Share Trade Services, HP JDV proposes to provide, to customers of Suncorp-Metway Limited who have utilised an SML Margin Lending Facility, the option of executing trades (that is, placement of buy/sell orders) and settling those trades using their Margin Lending Facility (typically, the share trading to which the SML Margin Lending Facility relates) ("**Margin Lending Brokerage Service**"). The Margin Lending Brokerage Service will allow for the execution of trades, using HP JDV's ASX participant identity number, to occur online or offline and the online settlement of trades using the Margin Lending Facility. Settlement (that is, the exchange of funds and securities following execution of the trade) will be carried out using SML's ASX participant identity number.

Consumers who do not have an SML Margin Lending Facility and who choose not to get an SML Margin Lending Facility, will still be entitled to obtain the Share Trade Services, other than the Margin Lending Brokerage Service, from HP JDV through the Website. Those services will include online execution and settlement of share trading from the customer's nominated bank account. It is only where an SML Margin Lending Facility is utilised for settlement, and



the customer wishes to execute the associated share trades online, that the Margin Lending Brokerage Service must be used.

2 THE PROPOSED CONDUCT

2.1 HP JDV proposes to:

- (a) provide the Margin Lending Brokerage Service on the condition that the person to whom HP JDV provides the Margin Lending Brokerage Service has an SML Margin Lending Facility; and
- (b) refuse to provide the Margin Lending Brokerage Service for the reason that the person does not have an SML Margin Lending Facility.

2.2 HP JDV proposes to enter into an arrangement with Suncorp-Metway Limited in which Suncorp-Metway Limited proposes to:

- (a) supply the SML Margin Lending Facility on the condition that if the person to whom Suncorp-Metway Limited provides the SML Margin Lending Facility intends to carry out the associated share trades online, that person must acquire the Share Trade Services, including the Margin Lending Brokerage Service, from HP JDV to do so; and
- (b) refuse to permit the carrying out of share trades online using the SML Margin Lending Facility for the reason that the person has not agreed to acquire the Share Trade Services, including the Margin Lending Brokerage Service from HP JDV.

3 MARKET AND PRODUCT INFORMATION

3.1 The Relevant Markets

The current Australian stockbroking market is highly competitive and is becoming increasingly competitive over time. Consumers are able to choose from a large number of brokerage firms and licensed financial institutions offering a wide range of broking services and associated facilities, featuring varied settlement options. Likewise, margin lending is simply one of many financial products offered by a very large range of lenders across Australia. Both the stockbroking and financial markets are national markets.


3.2 Substitute Products

There are a large number of other stockbroking firms and licensed financial institutions in Australia presently offering services similar to the Share Trade Services and the Margin Lending Brokerage Service offered by HP JDV. Many of these competing services are available through Internet and/or telephone call centre channels. A sample list of competing firms and institutions offering substitute services is provided in item 3.3 below. Similarly, margin lending is only one of many financial products which can be used to finance share trading activities.

3.3 Market Share

As at 30 June 2000, HP JDV had 1.37% of the overall Australian stockbroking market (approximately 0.1% relates to internet stockbroking services).

Of the many participants in the overall stockbroking market, those (additional to HP JDV) currently offering internet based stockbroking services include:



- HSBC Invest Direct
- Comsec
- Sanford Securities
- Westpac Online
- Webstock
- E*trade
- St Georges QuickTrade
- National Online
- William Noall
- Todd Partners
- Macquarie DirecTrade
- Dicksons Limited
- Austock Brokers
- Andrew West & Co

See Annexure A for details of SML's estimated share of the Australian margin lending market. Other operators currently offering online margin lending services include:

- ANZ Margin Lending Online (through E*trade);
- TD Waterhouse Margin Lending Facility (through E*trade and BT Margin Lending);
- BT Margin Lending Online (through E*trade);
- HSBC.

Accordingly, HP JDV submits that there is a range of options available to the public in terms of share trading and the financing of that trading, both online, offline, separately and in conjunction with each other. Amongst those options are a range of existing internet based stockbroking services which permit online settlement in conjunction with a margin lending facility. However, internet-based services are only one of the many, substitutable options available for share trading.

4 NET PUBLIC BENEFIT

HP JDV submits that the proposed conduct will provide significant and immediate benefits to the public and will have minimal or no public detriment.

4.1 Public Benefits

The proposed conduct will provide significant and immediate benefits to the public for the following reasons:

(a) Increased Consumer Choice and Increased Competition

The provision of the online Margin Lending Brokerage Service (in conjunction with online settlement through SML) will increase consumer choice in respect of features available in stockbroking and margin lending services (that is, increased choice in relation to the means by which consumers may execute and settle their trades).



At present, HP JDV, and various competitors, offer online execution and settlement facilities for direct trades. SML chooses HP JDV to provide branded online stockbroking services because it does not itself have available such services.

The proposed conduct, through the use of the linked facilities, will enable HP JDV and SML to provide to customers of SML the ability to conduct their share trading (and associated borrowing activities) in a quick and efficient manner, online, on a "one stop" basis. Customers will have their choice of either executing and settling the transaction, online, with their own cash, or with margin lending. The increased choice is likely to increase competition by creating a "one stop" internet broking facility for consumers to choose from in the already highly competitive markets for broking and lending services. Until recently, margin lenders were unable to compete in the online world. The technology to be used in the proposed conduct will open up the margin lending and broking industries and provide enhanced competition in both areas. The linking of lending and broking facilities online means that competition in online broking will extend beyond price to the range of options available with the service.

(b) High quality services and products

Consumers who utilise the linked SML and HP JDV facilities would enjoy a service with market leading qualities and features. Customers who previously had to settle their trading offline (where settlement was via margin lending) now have the flexibility to execute and settle the trade, and lending, online.

(c) Linking of Facilities

There is inherent public benefit in the conduct as it would permit customers to use internet broking and margin lending online as part of the one unified facility. In these circumstances, the linking of broking services and margin lending products online is an example of how modern internet technology can enhance efficiency in the conduct of business transactions.

(d) Increased efficiency

At present, HP JDV offers online execution and settlement facilities for direct trades, however customers are not able to execute and settle trades made in conjunction with a margin lending facility online. This is largely because margin lenders generally need to validate and verify the sufficiency of the customer's cleared funds prior to providing credit. Currently, trades made in conjunction with margin lending facilities settled by HP JDV have to be executed and settled offline. This offline settlement procedure tends to be slow, inconvenient and cumbersome. Further, in the event the settlement cannot proceed, the customer may be charged a fee in respect of the failed transaction.

The proposed conduct, through the use of the linked facilities, allows the verification procedure to occur electronically concurrently with execution and settlement. As a result, execution and settlement times are significantly reduced. In the event that the trade cannot occur due to failure to obtain credit from SML, the customer is notified quickly, thus affording the customer an opportunity to make alternative funds available. The proposed conduct therefore is more convenient and less cumbersome for the customer. Further, it is expected that the risks of errors occurring due to the use of electronic verification will be reduced, resulting in lower settlement fail rates.

(e) Lower fees and charges

HP JDV expects that, in the future, it is likely that the combined use of the Margin Lending Facility, the Margin Lending Brokerage Service and online settlement service will result in



greater economies of scale and lower operating costs, which should in turn reduce both broking and margin lending fees to customers.

(f) Availability of information

The proposed conduct, through the use of linked facilities, allows for real time verification to occur. That is, the customer is able to receive immediate confirmation that their transaction is approved for settlement by SML. Due to the increased efficiency and speed of the transactions, customers are able to take advantage of market opportunities more readily. Customers will also be able to keep track of their accounts in "real time".

(g) Encouraging investment in Australian equity markets

This margin lending conduct should ultimately encourage investment in Australian equity markets, because investment in these markets be easier and more flexible. Margin lending has, according to the Reserve Bank, grown by about \$4.7 billion since September 1996, and current margin lending balances in Australia stand at about \$6.8 billion. The linked facilities should encourage further lending to the ultimate benefit of Australian capital markets.

4.2 Lack of Public Detriment

The proposed conduct will have little or no public detriment for the following reasons:

(a) Market share in the stockbroking market

As at 30 June 2000, HP JDV has an estimated share of only 1.37% (approximately) of the overall Australian stockbroking market, of which approximately 1.27% is accounted for by HP JDV's full service stockbroking division (which operates under the business name of Hartley Poynton) and the remaining 0.1% is accounted for by HP JDV's internet stockbroking services. SML's estimated market share of the margin lending market is set out in annexure A.

Clearly, HP JDV and SML do not have a substantial market share in their respective highly competitive markets. The proposed conduct will do no more than to improve the parties' ability to compete in a highly competitive market by providing a product which customers will find enhances the efficiency and use of their share trading/borrowing activities.

(c) Competitive market - proliferation of substitute stockbroking services

HP JDV, through its websites linked to the websites of other organisations, will continue to offer stockbroking services in competition with the Share Trade Services.

Competing substitute services are also provided by a large number of other stockbrokers and financial institutions, some of which offer stockbroking services linked to margin lending facilities. Consumers have and will continue to have, the choice of stockbroking services and margin lending services from a very large number of providers.

(d) No distortion of market for tied goods/services

The proposed conduct will not involve any distortion of the demand for, and supply of, margin lending services or stockbroking services. The market in which the parties operate are highly competitive, and customers will have no difficulty in obtaining margin lending services or stockbroking services from elsewhere.

(e) No precondition to supply generally

Consumers who do not wish to use the Share Trade Services in conjunction with a margin lending facility will still be able to utilise the Share Trade Services to execute and settle their trades online or offline.



Likewise, consumers with an SML Margin Lending Facility may choose to execute and settle their trades offline, through their nominated broker. That is, they are not required to execute their trades through HP JDV.

(f) Existing product 'bundling' Notifications


The Suncorp Metway Group has standing Notifications 50099 and N90660 to N90676 to the ACCC relating to product 'bundling' by members of the Suncorp Metway Group. The Share Trade Services and the Margin Lending Settlement Service are essentially a product bundling arrangement, with "Suncorp Metway" branded broking services being bundled with the SML Margin Lending Facility.

4.3 Conclusion

HP JDV submits that the proposed conduct relates to only a very minor part of the overall relevant markets, will (for the same reasons) cause little or no public detriment. The major important of the conduct will be the enhancement of competition in the relevant markets. For those reasons, the conduct will result in a net benefit to the public. HP JDV therefore requests that the Commission allow this notification to stand.

Dated 2001

SIGNED on behalf of HP JDV Limited by its solicitors and agents, Freehills of Level 22, 140 St George's Terrace, Perth, Western Australia:



ANTHONY COLIN JOYNER
Name

PARTNER FREEHILLS
Position