



Esanda Finance Corporation Limited ABN 64 004 346 034
 Legal
 Level 14, 86 Spring Street, Melbourne, Vic 3000

Telephone 03 9666 9590
 Fax 03 9666 9637

15 August 2002

Mr Tim Grimwade
 Adjudication
 Australian Competition & Consumer Commission
 470 Northbourne Avenue
 DICKSON ACT 2602

FILE No:
DOC:
MARS/PRISM:

Dear Sir

Esanda Finance Corporation Limited

I act for Esanda Finance Corporation Limited ('Esanda') and enclose:

- notification under section 93(1) of the *Trade Practices Act 1974* ('TPA'); and:
- a cheque for \$1000 as payment of the required lodgment fees.

1. Background

1.1 Esanda supplies asset financial services to consumers and businesses by way of loan contracts, leases and hire purchase agreements, generally on a secured basis. Finance is provided in respect of assets including motor vehicles, motor cycles, boats and caravans.

1.2 Consumers and businesses that obtain financial services from Esanda have the opportunity to finance insurance policies for their loan contracts, leases and hire purchase agreements. These insurance policies comprise consumer credit insurance, gap cover insurance, extended warranty insurance and comprehensive insurance ("Insurance Products"). The policies are available from any insurance provider whose underwriter is APRA approved ("Insurance Providers").

1.3 Esanda wishes to notify proposed arrangements with Insurance Providers in relation to the Insurance Products. Under these proposed arrangements, Esanda will seek to have each Insurance Provider enter into a service level agreement under which each Insurance Provider will undertake, amongst other things:

- To provide a full rebate of insurance premiums in circumstances where the finance contract between Esanda and its customer is withdrawn;
- To comply with its obligations under the Trade Practices Act 1974, applicable fair trading legislation, the Privacy Act 1988, the Privacy Amendment (Private Sector) Act 2000, the Corporations Law, the ASIC Act, the Insurance Contracts Act, the Insurance (Agents and Brokers) Act, the Uniform Consumer Credit Code and applicable hire purchase legislation;
- To comply with Esanda's Code of Ethics and Code of Conduct;

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- To ensure that its staff have and maintain the necessary expertise to perform their functions;
- To ensure that an APRA approved underwriter underwrites the insurance risk throughout the term of each relevant insurance contract;
- Not to charge premiums that are grossly excessive in terms of market offerings by competitors;
- To meet Esanda's reasonable costs in providing information to Insurers at their request; and
- To agree that start dates for policies are in line with commencement of the insured risk, eg from when the insured takes delivery of the chattel in respect of comprehensive insurance and from the commencement date of the loan in respect of CCI insurance

1.4 The proposed arrangements will not affect the terms on which a successful applicant will be supplied financial services. There is no obligation for applicants to insure the financial services that they obtain from Esanda (with the exception of comprehensive insurance).

2. Notified Conduct

2.1 The notified conduct is Esanda's refusal to supply financial services to applicants (that is the financing of insurance premiums for Insurance Products) for the reason that the Insurance Provider selected by the applicant has elected not to enter into a service level agreement with Esanda.

3. Competition Issues

3.1 I submit on behalf of Esanda 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 public benefits and no public detriment.

3.2 I do not believe that the notified conduct can have any adverse affect on competition in any of the relevant markets. I consider that the relevant markets for assessing this notification are the Australian markets for providing financial services to retail consumers, and the retail market for general insurance.

3.3 I believe these markets are highly competitive, and that neither Esanda nor any Insurer has market power in either of them. Accordingly, the conduct will not create barriers to entry or otherwise harm competition in either market. The number of consumers potentially affected by the proposed conduct is insignificant compared to the total number of consumers who purchase motor vehicles, motor cycles, boats and caravans and finance and insure such purchases. Further information in relation to these markets can be provided to the Commission if requested.

3.4 I believe the notified conduct will generate a number of public benefits:

- the corporate and commercial relationship between Esanda and each Insurer will enable all parties to offer more competitive products, and therefore foster business efficiency;
- the arrangements will allow Esanda to offer its financial services in a more efficient manner, and thereby reduce costs to consumers;
- consumers will have greater convenience in dealing with Esanda and the Insurers;
- the creation of a more competitive product will encourage competitors to offer similar value added services, and therefore promote competition in the relevant markets;
- consumers will not face grossly excessive premiums for the Insurance Products;
- Benefit to consumers in Esanda dealing with APRA approved insurers;
- Clearly defining relationship between Esanda and Insurance Providers and their mutual business operations (reducing re-work, costs etc); and
- Customers will benefit by Insurance Providers providing the appropriate training to their agents to provide the required information regarding insurances – influencing behaviour by insurers to benefit customers.

3.5 I believe the notified conduct will have little, if any, public detriment. Esanda is not restricting consumer choice. Customers remain free to deal with the insurer of their choice on the competitive terms offered by such insurer. The only possible public detriment is that some Esanda customers that do seek to finance Insurance Products may regard their choice of insurers as being limited, because they will only be able to do so with an Insurer that has entered into a service level agreement with Esanda. Nevertheless, Esanda is not restricting a consumers' genuine choice to deal with any insurer based on the competitive terms offered by those insurers.

4. Conclusion

4.1 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 outweigh any possible detriment considered to arise from the conduct.

If you have any questions in relation to this notification or require any further information, please do not hesitate to contact me.

Yours faithfully

MARK SIDDALL
PRINCIPAL LAWYER AND COMPANY SECRETARY

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:

*Esanda Finance Corporation Limited
ABN 64 004 346 043*

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

Supplying asset financial services to consumers and businesses by way of loan contracts, leases and hire purchase agreements, generally on a secured basis.

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

*Mark Siddall
Principal Lawyer and Company Secretary
Esanda Finance Corporation Limited
Level 14
85 Spring Street
MELBOURNE VIC 3000*

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

Supply of asset financial services to consumers and insurance products on those financial services on the underlying asset.

(b) Description of the conduct or proposed conduct:

The notified conduct is Esanda's refusal to supply financial services (comprising the financing of insurance premiums) to applicants for the reason that those applicants elected to acquire such insurance products (comprising one or more of Consumer Credit Insurance, Gapcover, Extended Warranty or

Comprehensive Insurance) from an insurer that has not entered into a service level agreement with Esanda

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

Consumers wishing to obtain finance for Consumer Credit Insurance, Gapcover, Extended Warranty or Comprehensive Motor Vehicle Insurance from an insurer that has not entered into a service level agreement with Esanda.

(b) Number of those persons-

(i) At present time:

nil

(ii) Estimated within the next year:

1,100

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

Not Applicable

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

*Mark Siddall
Principal Lawyer and Company Secretary
Esanda Finance Corporation Limited
Level 14
85 Spring Street
MELBOURNE VIC 3000*

DATED this day of August, 2002

SIGNED by/on behalf of Esanda
Finance Corporation Limited

.....
(Signature)

.....
Simon Ian Abbott
General Manager Sales

FORM G

COMMONWEALTH OF AUSTRALIA

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

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(b) Number of those persons-

(i) At present time:

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(ii) Estimated within the next year:

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

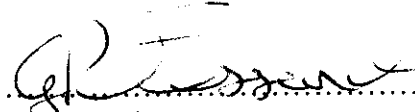
Not Applicable

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

*Mark Siddall
Principal Lawyer and Company Secretary
Esanda Finance Corporation Limited
Level 14
85 Spring Street
MELBOURNE VIC 3000*

DATED this 15th day of August, 2002

SIGNED by/on behalf of Esanda
Finance Corporation Limited


(Signature)

.....
Garry Fissenden
General Manager Operations