



Australian Competition & Consumer Commission

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Our Ref: ^{C2002/79} C2002/102
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24 January 2002

Mr Sam Appleyard
Senior Associate
Lynch Meyer Lawyers
GPO Box 467
ADELAIDE SA 5001



By facsimile: (08) 8223 4348

Dear Mr Appleyard

**Re: Third line forcing notifications N90956 and N90967 lodged by
Delfin Holroyd (Delfin Holroyd) Pty Ltd and Delfin Realty (Delfin Realty) Pty Ltd.**

The above notifications were lodged with the Australian Competition and Consumer Commission (the Commission) on 24 December 2001 and have been placed on the Commission's public register.

You have described the notified conduct as involving the provision of property by the Holroyd City Council (the Council) to a purchaser on the assurance that the purchaser enter into a contract with one of a selection of builders to build the premises. In this arrangement Delfin Holroyd facilitates the transactions and Delfin Realty conducts the sale between the purchaser and the Council.

On the basis of the information you have provided to the Commission, I do not intend to make further inquiries concerning the notified conduct at this time. However, should the Commission become aware that the information you have provided is incorrect or incomplete, it reserves the right to re-open the matter.

Whilst I have decided not to make further inquiries concerning the notified conduct, I would like to bring to your attention an issue arising from your notifications.

As you are aware, notification has the effect of affording immunity to the person notifying the conduct. The *Trade Practices Act 1974* (the Act) does not appear to enable a person to notify on others' behalf. On the basis of the information contained in your submission of 24 December 2001, it would appear that the Council is the person actually engaging in the third line forcing conduct.



On the basis that the Council has not specifically notified under section 93 of the Act, in my view there is some legal doubt as to whether the immunity afforded by the notifications extends to the Council. The Council may therefore wish to consider whether it needs to lodge a separate notification. I would request that you advise the Council of this.

As with any notification, please note that the Commission may act to remove the immunity afforded by these notifications at a later stage if it is satisfied that the public benefit arising from the notified conduct does not outweigh the public detriment arising from the conduct.

This letter has been placed upon the Commission's public register. If you wish to discuss any aspect of this matter further, please do not hesitate to contact Brenton Philp on (02) 6243 1220.

Yours sincerely

A handwritten signature in black ink, appearing to read 'T. Grimwade', with a stylized flourish at the end.

Tim Grimwade
General Manager
Adjudication Branch