



Australian Competition & Consumer Commission

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30 April 2003

Mr Peter Morrison
Partner
Roberts Nehmer McKee
PO Box 5374
TOWNSVILLE QLD 4810

By facsimile: 07 4721 1548 (2 pages)

Dear Mr Morrison

Third line forcing notification lodged by James Cook University (N90962)

I refer to the above notification lodged by your client with the Australian Competition and Consumer Commission (the Commission) on 27 December 2001. The Commission has considered whether to issue a final notice revoking the immunity afforded by the above notification.

As you are aware, if the Commission is satisfied that the notified conduct results, or is likely to result, in public detriment that outweighs any public benefit arising from the notified conduct, it may issue a notice revoking the immunity afforded by the notification.

On 26 October 2002, the Commission issued a Draft Notice proposing to revoke the immunity afforded by the notification lodged by James Cook University (JCU). A pre-decision conference in relation to the Commission's Draft Notice was held in Townsville on 16 December 2002 where a number of interested parties made submissions and provided additional information to the Commission in relation to its consideration of the notification. Much of this information related to the likely situation in the future without the notified conduct and the benefits associated with continuing JCU's current enrolment policy.

In light of the additional information provided to it, the Commission has decided to allow the notification lodged by JCU to stand.



In making this decision, the Commission notes JCU's submission that it may not be able to maintain the current level of service and facilities provided to students if it was required to restructure the current arrangements so as to avoid a breach of the *Trade Practices Act 1974*, particularly in relation to academic and welfare services. The Commission also considers that there is a benefit in relation to maintaining the current level of independent representation provided by the JCU Student Association. Further, the Commission notes the public benefit argument in avoiding the uncertainty associated with any restructure of the current arrangements and avoiding the potential for an increase in the fee that students must pay.

Accordingly, the Commission does not propose to issue a final notice revoking the immunity afforded by notification N90962 at this time.

In this regard, I also note JCU's submission to the Commission dated 28 January 2003. In this submission, JCU suggested that it would be willing to provide an undertaking to make conscientious objection provisions more prominent prior to the commencement of the 2004 academic year. The Commission encourages JCU to put in place arrangements in order make opt-out provisions more prominent and ameliorate some of the detriment associated with the notified conduct.

Please note that the Commission may act to remove the immunity afforded by this notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

If you would like to discuss any aspect of this matter further, please do not hesitate to contact Amanda Dadd on 02 6243 1391.

Yours sincerely



Tim Grimwade
General Manager
Adjudication Branch

