

Attachment B

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TRADE PRACTICES ACT 1974
UNDERTAKING TO THE TRADE PRACTICES
COMMISSION GIVEN FOR THE PURPOSES OF
SECTION 87B

BY

JAMES HARDIE & COY PTY LIMITED

ACN 000 035 512

UNDERTAKINGS

Background

- A. James Hardie & Coy Pty Limited (ACN 000 035 512) of Level 9, 65 York Street, Sydney in the State of New South Wales manufactures and supplies fibre cement products to distributors/resellers in all States and Territories of Australia.
- B. James Hardie & Coy Pty Limited gave to the Trade Practices Commission a notice on 13 February 1995 under section 93(1) of the Trade Practices Act 1974.
- C. The conduct or proposed conduct, the subject of the notice under section 93(1), relates to James Hardie Coy Pty Limited supplying or refusing to supply fibre cement products to CSR Limited on condition or for the reason that CSR Limited will not re-supply or has not agreed not to re-supply fibre cement products to distributors/resellers in any State or Territory in Australia except Western Australia and the Northern Territory.




- D. The Trade Practices Commission made certain enquiries and on 19 April 1995 published a draft notice under section 93(3) of the Trade Practices Act 1974.
- E. The Trade Practices Commission indicated in its draft notice that, amongst other things, it had concerns about the ability of CSR Limited to source fibre cement products from alternative suppliers to James Hardie & Coy Pty Limited in the period prior to CSR Limited commencing production of fibre cement products itself.
- F. The Trade Practices Commission also indicated concerns about future supply by James Hardie & Coy Pty Limited to outlets aligned with but not owned by CSR Limited.
- G. James Hardie & Coy Pty Limited has stated that it is not its intention nor will it in the future attempt to prevent supply of fibre cement products to CSR Limited from any third party neither will it discriminate against outlets aligned with CSR Limited and it now gives those undertakings pursuant to section 87B of the Trade Practices Act 1974.

Undertakings

1. Until the earlier of two (2) years from the date of these undertakings and the day on which the Trade Practices Commission gives a notice under section 93(3) of the Trade Practices Act 1974 James Hardie & Coy Pty Limited will not:
 - (a) prevent, limit or restrict supply of fibre cement products to any party for the reason that that party does or intends to supply CSR Limited with fibre cement products;
 - (b) induce any party to prevent, limit or restrict supply of fibre cement products to CSR Limited or to any other party who does or intends to supply CSR Limited with fibre cement products;
 - (c) treat any party any less favourably than any other party of the same distributor category or similar purchase requirements in relation to the supply of fibre cement products for the reason that that party does or intends to supply CSR Limited with fibre cement products;
 - (d) make it known to any party that any adverse consequences of any kind will follow for that party if it supplies fibre cement products to CSR Limited; nor
 - (e) treat any outlet currently being supplied by it and aligned with but not owned by CSR Limited in a way materially different to other outlets of the same distributor category or similar purchase requirements in relation to the supply of fibre cement products.



2. James Hardie & Coy Pty Limited will, on or prior to 25 May 1995, write to those customers who are or would be potential suppliers of fibre cement products to CSR Limited and to whom James Hardie & Coy Pty Limited wrote (or otherwise contacted) on 13 February 1995 informing those customers of the general effect of the matters contained in sub paragraphs (a) to (c) of paragraph 1 and sub paragraph (b) of paragraph 4 of this document. The form of that letter is attached to this document and marked "A".
3. In this document the day on which the Trade Practices Commission gives a notice under section 93(3) of the Trade Practices Act 1974 has the extended meaning given in section 93(9) of that Act.
4. (a) Subject to paragraph 4(b) nothing in this document prevents James Hardie & Coy Pty Limited from giving effect in the ordinary course of its business to credit risk assessments and to its Distribution Policy and Procedures dated July 1993 as amended from time to time.

(b) James Hardie & Coy Pty Limited will not downgrade or refuse to upgrade a credit risk assessment for the reason, unconnected with credit risk, that a customer or potential customer does or intends to supply CSR Limited with fibre cement products nor will James Hardie & Coy Pty Limited amend its Distribution Policy and Procedures to:
 - (i) prevent, limit or restrict supply of fibre cement products to any party for the reason that that party does or intends to supply CSR Limited with fibre cement products;
 - (ii) induce any party to prevent, limit or restrict supply of fibre cement products to CSR Limited or to any other party who does or intends to supply CSR Limited with fibre cement products;
 - (iii) make it known to any party that any adverse consequences of any kind will follow for that party if it supplies fibre cement products to CSR Limited; nor
 - (iv) treat any outlet currently being supplied by it and aligned with but not owned by CSR Limited in a way materially different to other outlets of the same distributor category or similar purchase requirements in relation to the supply of fibre cement products.



IN WITNESS of these undertakings and its agreement the common seal of James Hardie & Coy Pty Limited ACN 000 035 512 was hereunto affixed in accordance with its articles of association:

Secretary/Director



A handwritten signature in cursive script, appearing to read "J. Hardie".

Director

This 18th day of May 1995

ACCEPTED BY THE TRADE PRACTICES COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974

A handwritten signature in cursive script, appearing to read "John Broome".

Mr John Broome
Acting Chairman

This 19th day of May 1995