

26 October 2004

Melbourne | Sydney

Our reference
BMIR.MDEA.

By Courier

Tim Grimwade
General Manager, Adjudication
Australian Competition and Consumer Commission
470 Northbourne Avenue
Dickson ACT 2602

FILE No:
DOC:
MARS/PRISM:

Dear Mr Grimwade

Sealcorp Holdings Company Limited - Notification of Third Line Forcing Exclusive Dealing

We act for Sealcorp Holdings Company Limited (**Sealcorp**), which is a subsidiary of St.George Bank Limited.

On behalf of Sealcorp, we enclose for lodgement with the Australian Competition and Consumer Commission (the **Commission**), an exclusive dealing notification under section 93(1) of the *Trade Practices Act 1974* (Cth) (the **Act**). We also enclose a cheque for \$1,000 (AUD) in payment of the applicable lodgement fee.

Sealcorp is proposing to enter into an agreement under which Sealcorp will provide financial assistance and support to facilitate the establishment of a financial advisory business by an entity known by the project name 'Discovery' which will commence operations under a new Australian Financial Services Licence. In consideration for this assistance and support, Discovery agrees to acquire certain "back end" dealer support services from Securitor Financial Group Limited (**Securitor**), a subsidiary of Sealcorp. The imposition of the obligation on the part of Discovery to acquire these services from Securitor is the subject of the notification.

We set out below the relevant background circumstances, further details of the transaction and our analysis as to why the Commission should be satisfied that the likely benefit to the public arising from the conduct will outweigh any supposed detriment arising from the relevant third line forcing condition.

AUST. COMPETITION &
CONSUMER COMMISSION
CANBERRA
27 OCT 2004

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1. Background

Financial advisory and wealth management services involve the management of a customer's financial position (including estate, insurance, cashflow/debt and investment related services). While financial advisers can be self-employed, most financial advisers work for 'dealer groups'. Dealer groups, amongst providing other services, handle back office and administrative duties associated with the monitoring, management, and reporting of investment funds. This allows financial advisers to concentrate on meeting client needs, building up their client base and maintaining their financial advisory skills. The type of financial institutions which support dealer groups include insurance, banking and other smaller general financial institutions, broking houses, consulting groups and super funds.

Securitor is a supplier of dealer group services operating under its own Australian Financial Services (**AFS**) Licence. As you would be aware, to provide financial services, or advice in relation to financial products, financial advisers must operate under the financial services licensing regime of the *Corporations Act 2001* (Cth).

2. The Transaction

Discovery is to create a financial services and advisory business under a new AFS Licence which will be operated by itself and through approximately 20 financial advisers (or their nominated entities) who will be appointed as 'Authorised Representatives' of Discovery. Sealcorp will provide the financial assistance and support in order to establish Discovery as a new holder of an AFS Licence on terms which include the condition that Discovery will use certain 'back-end' dealer support services of Securitor, such as research, financial planning tools, technical support, practice development, and Securitor publications and presentations.

In consideration for the funding support and assistance being provided by Sealcorp to Discovery, Discovery is willing to acquire these dealer support services from Securitor, as they will greatly assist Discovery to establish itself as a financial services business, being Discovery's ultimate commercial goal.

The relevant condition is a good example of the type of 'technical' third line forcing conditions that have resulted in proposed recommendations by the Dawson Committee to amend the current *per se* third line forcing prohibitions under the Act. Further, it is worth noting that if Sealcorp and Securitor were considered to be part of the same company (Sealcorp being the holding company of Securitor), the relevant condition would not be subject to the *per se* third line forcing prohibition. Again, this is an area of reform canvassed in the Dawson Committee report.

3. Financial Advisory and Wealth Management Sector

Currently, there are nearly 16,000 financial advisers operating in Australia through 643 dealer groups¹. Some of the larger dealer groups include AMP Financial Planning Pty Limited, Professional Investment Services Pty Limited, Count Wealth Accountants, Commonwealth

¹ *Rainmaker Advantage*, Report for the March quarter 2004

Financial Planners, Westpac Financial Planning & Advice, AXA Financial Planning Limited and Garvan Financial Planning. Most dealer groups are supported by larger financial institutions including the six 'big pillars', namely AMP, AXA, ANZ/ING, Commbank, National and Westpac. The six big pillars account for nearly 40% of financial advisers operating in Australia.

This brief snapshot of facts and figures is illustrative of the dynamic and competitive environments currently operating in the financial advisory and wealth management sector. Discovery's use of Securitor's services will not result in a lessening of competition as each segment of the market (financial advisers, dealer groups and organizations which provide support for dealer groups) contain numerous players, including several large operators, that actively compete with each other and serve as significant competitive constraints upon the conduct of the parties. The relevant condition only affects around 20 financial advisers, which stands in sharp contrast to the nearly 16,000 financial advisers currently operating in Australia, and will therefore have very little impact on competition. The relevant third line forcing conduct will not affect the ability of the parties, or other players in the financial advisory and wealth management sector, to behave competitively.

Further, the implementation of the Securitor condition will secure the funding and support required to establish a dealer group operating under a new AFS Licence in the Australian market place. The establishment of this new group may create an opportunity for a broader range of financial services to be offered to consumers. The establishment of a new financial advisory business will also enhance competition in the financial advisory and wealth management sector. With the benefit of Securitor's dealer services, Sealcorp's financial and other assistance, the group will be able to operate independently of the larger institutional players while at the same time offering high quality service to its customers from its inception. This has benefits not only for the individual dealer's existing customer base but for other consumer investors seeking access to advice going forward.

4. Benefit to the Public

The proposed conduct will not lessen competition in the financial advisory and wealth management sector (or relevant segments) as:

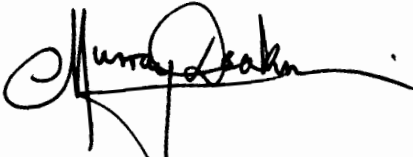
- (a) competition in the segments/sector is dynamic as a result of numerous players, including several larger players, that act as a competitive constraint to smaller players like the parties;
- (b) barriers to entry are low as alliances with sponsoring financial institutions are common with many such institutions offering such financial and other support services;
- (c) the number of financial advisers supposedly affected by the proposed condition is insignificant compared to the total number of financial planners in the market; and
- (d) the party imposing the relevant condition is a holding company to the supposed 'third party'.

The proposed conduct will be of benefit to the public as:

- (a) the relevant condition will facilitate the required funding and support to establish a dealer group operating under a new AFS Licence; and
- (b) the new dealer group is likely to create an opportunity for a broader range of financial services to be offered to consumers in the financial advisory and wealth management sector in Australia.

We would be happy to answer any queries you may have in relation to this notification. To this end, please do not hesitate to contact myself or Brija Mira.

Yours sincerely



Murray Deakin
Partner

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 engages or proposes to engage.

1. (a) **Name of person giving notice**

Sealcorp Holdings Company Limited ABN 28 009 143 597 (*Sealcorp*).

2. (b) **Short description of business carried on by that person**

Sealcorp is a holding company. Sealcorp's subsidiaries are Securitor Financial Group Limited (*Securitor*) which, provides financial advisory and wealth management services, and Asgard Capital Management Limited (*Asgard*), which is a financial product issuer and operator.

(c) **Address in Australia for service of documents on that person**

C/- Murray Deakin
Middletons Lawyers
GPO Box 4763
Sydney NSW 2001

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

Financial advisory and wealth management services in Australia.

(b) **Description of the conduct or proposed conduct**

Sealcorp is proposing to enter into an agreement under which Sealcorp will provide financial assistance and support to establish a company known by the project name Discovery. In consideration for this assistance and support, Discovery will agree to acquire from Securitor certain ongoing dealer support services for itself and its Authorised Representatives. The imposition of the obligation on the part of Discovery to acquire these services from Securitor is the subject of this notification.

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

Discovery and its Authorised Representatives are to conduct a financial services and advisory business operating under an Australian Financial Services Licence.

(b) **Number of those persons---**

(i) **At present time**

One

(ii) **Estimated within the next year**

One

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

Discovery (address not yet finalised)

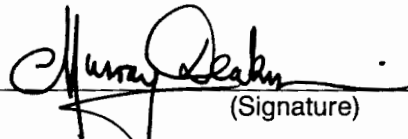
4. Names and addresses of person authorised by the person giving this notice to provide additional information in relation to this notice

Murray Deakin
Middletons Lawyers
Postal GPO Box 4763
Sydney NSW 2001

PH: (02) 9513 2335
E-mail: murray.deakin@middletons.com.au

Dated: 26 October 2004

Signed on behalf of the applicant giving notice



(Signature)

MURRAY CHARLES DEAKIN
(Full Name)

Solicitor
(Description)