

MELBOURNE 2006 COMMONWEALTH GAMES

FILE No:
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MARS/PRISM:



Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
470 Northbourne Ave
Dickson
ACT 2602

29 September 2005

Dear Scott,

Form G Notification

I refer to the draft Form G notification sent to you on 26 September 2005 on behalf of Melbourne 2006 by Allens Arthur Robinson.

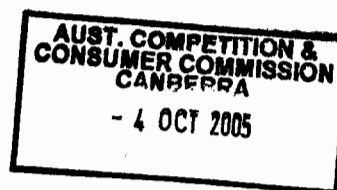
I understand that you have informed Allens Arthur Robinson that the Commission has no queries regarding the draft Form G notification and as such I now enclose the notification in final form. I also enclose a cheque for \$1200 which, as advised by Gavin Jones of the Commission, is the total amount payable in respect of the two courses of conduct referred to in the notification.

Please note that the information contained in Attachment A is regarded as highly confidential and sensitive, and is not to be publicly released. I have attached a version of the notification in Attachment B that has omitted confidential information. This version is able to be publicly released.

Please let me know should you have any queries.

Yours sincerely,

Christine Harman
General Counsel



MELBOURNE 2006
COMMONWEALTH GAMES CORPORATION
ABN 22 088 659 705

WORLD TRADE CENTRE
CONCOURSE LEVEL
SIDDELEY STREET
MELBOURNE 3000

LOCKED BAG 2006
SOUTH MELBOURNE 3205
VICTORIA AUSTRALIA

TELEPHONE +61 3 9613 2006
FACSIMILE +61 3 9613 2000
m2006@melbourne2006.com.au
www.melbourne2006.com.au



N92145
N92149

Regulation 9

FORM G

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - subsection 93(1)

EXCLUSIVE DEALING NOTIFICATION

To the Australian Competition & Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in subsection 47(2), (3), (4), (5), (6) or 47(7) or paragraph 47(8)(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:**
Melbourne 2006 Commonwealth Games Corporation (*M2006*).
- (b) **Short description of business carried on by that person:**
M2006 is the organising committee for the Melbourne 2006 Commonwealth Games.
- (c) **Address in Australia for service of documents on that person:**
World Trade Centre
Concourse Level
Siddleley Street
Melbourne VIC 3000
2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**
See Attachments A and B.
- (b) **Description of the conduct or proposed conduct:**
See Attachments A and B.
3. (a) **Class or classes of persons to which the conduct relates:**
 - (i) Official Concessionaires of the Melbourne 2006 Commonwealth Games (*Games*) (*Concessionaires*).
 - (ii) Official Sponsors of the Games (*Sponsors*).
- (b) **Number of those persons:**
 - (i) At present, M2006 is negotiating to appoint one Concessionaire to sell official M2006 licensed merchandise (*Official Merchandise*) at Games

Regulation 9

venues. Up to 3 other Concessionaires may be appointed to sell Official Merchandise outside these venues.

(ii) There are 29 Official Sponsors who have entered into Sponsorship Agreements to date. M2006 anticipates entering into a number of additional sponsorship agreements.

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

See attached list.

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

Christine Harman
Melbourne 2006 Commonwealth Games Corporation
World Trade Centre
Concourse Level
Siddeley Street
Melbourne VIC 3000

Dated: 29 September 2005

Signed on behalf of the person giving this notice:



Christine Harman
General Counsel
Melbourne 2006 Commonwealth Games Corporation

**EXCLUDED FROM
PUBLIC REGISTER**

ATTACHMENT A

**EXCLUDED FROM
PUBLIC REGISTER**

ATTACHMENT B - Non-Confidential Description

Background

The Commonwealth Games are held every four years. The privilege of hosting the Games is awarded by the Commonwealth Games Federation to a Commonwealth Games Association of a member country. The Games have not been hosted by an Australian city since 1982 (Brisbane). The 2006 Commonwealth Games will be held in Melbourne on the 12 days between 15 March 2006 and 26 March 2006 (the Games).

In terms of scale, the Commonwealth Games is one of the world's most significant international sporting events. The Games will be the largest sporting and community event in Victoria's history, featuring 4500 athletes from 71 nations, representing one third of the world's population.

The Commonwealth Games occupy a unique place in the Australian sporting and cultural psyche and generate massive local and international interest. The success of a major sporting event is not only determined by the sporting success of the event alone. It is also measured by the impact of the event on the economic health of the host city and host nation.

Melbourne 2006 Commonwealth Games Corporation (M2006)

The commercial viability of the 2006 Commonwealth Games requires an extensive revenue program. Income for major international events of this kind is primarily generated from corporate sponsorship (cash and in-kind), licensing programs including sales of Official Merchandise, the sale of television rights and ticket sales. M2006, the Organising Committee for the Games, must seek to maximise revenue opportunities through the exploitation of commercial rights associated with the Games to offset the cost of the Games.

M2006 is the custodian of high value and highly marketable commercial rights until after the Games. During this period of exclusivity, M2006 must:

- offset the cost of hosting the Games by maximising every available revenue opportunity through a managed marketing strategy;
- build further value in the underlying intellectual property, to ensure its marketability for future Commonwealth Games organising bodies; and
- not do anything, or permit anything to be done, which might adversely impact on the reputation of the Commonwealth Games or its viability as a commercial undertaking in the future.

Venues

The currently established competition and village venues for the Games are as follows:

Docklands Precinct

Melbourne Cricket Ground

Melbourne Exhibition Centre

Melbourne Gun Club (Lilydale)

Melbourne International Shooting Club
Melbourne Sports & Aquatic Centre
Multi-Purpose Venue – Melbourne Park
Basketball Regional Venues – Geelong , Ballarat, Bendigo & Traralgon
Rod Laver Arena – Melbourne Park
Royal Botanic Gardens
State Lawn Bowls Centre
State Mountain Bike Course (Lysterfield Park)
State Netball & Hockey Centre
St Kilda Foreshore
Telstra Dome
Wellsford Rifle Range (Bendigo)
The Athletes Village is being built at Parkville currently.

Official Merchandise

As noted above, one of the primary means by which M2006 will derive revenue from the Games is through royalties paid under licensing arrangements and the sale of licensed merchandise. M2006 anticipates that there will be approximately 40 Official Licensees all of whom are licensed to manufacture Official Merchandise.

Concessionaires

M2006 intends to enter into agreements with one or more Concessionaires appointing them to sell Official Merchandise at each of the Games venues and other nominated public areas to customer groups including: Games spectators; athletes and their families; members of the Games Family; Official Sponsors and the general public.

In selecting the parties to be appointed as Concessionaires, it is the aim of M2006 to select Concessionaires who will provide high quality services in an efficient and organised manner.

Another priority for M2006 is to ensure that the merchandise bearing M2006 logos and trade marks which is sold at Games venues and at other approved outlets is of high quality and available at a reasonable price.

For these reasons, M2006 proposes to allow the Concessionaires to sell only Official Merchandise. Official Merchandise may only be obtained from Official Licensees, who are in turn subject to strict quality, pricing and other controls.

Official Sponsors

Another primary means by which M2006 will derive revenue from the Games is through sponsorship arrangements.

Most Official Sponsors will wish to obtain Official Merchandise which is co-branded with their own logos. Sponsors may purchase merchandise with M2006 branding from Official Licensees or may have co-branded merchandise manufactured by another supplier if approved by M2006. However,

if a Sponsor has co-branded merchandise manufactured by a company other than an Official Licensee, it will be required to pay a premium royalty to M2006.

Notified Conduct

M2006 proposes that:

- the Concessionaire Agreements between M2006 and each Concessionaire will include a provision that each Concessionaire must sell only Official Merchandise, which is manufactured by Official Licensees, at the Games venues and at other locations where M2006 authorises outlets to be set up by Concessionaires;
- the Sponsorship Agreements between M2006 and Sponsors will include a provision that Sponsors may purchase Official Merchandise from Official Licensees or, if they choose to have co-branded merchandise manufactured by a third party supplier, must pay M2006 a higher percentage royalty than if they had obtained the merchandise from an Official Licensee.

These arrangements may constitute conduct of the kind described in sections 47(6) or 47(7) of the Trade Practices Act 1974 (*TPA*). M2006 submits that this notification should be allowed to remain in force and the notified conduct be afforded the statutory protection provided by section 93 of the TPA, in order to achieve commercial certainty and in view of the considerable public benefits outlined below.

Public Benefits

The proposed arrangements will result in significant public benefits, as set out below.

1. Direct reduction in the cost to Australian taxpayers of staging the Games

The financial viability of conducting large public sporting events depends largely on revenue from commercial partners. The costs of staging a large sporting event are very high. This is especially the case in respect of a major international event like the Games, which involves a wide variety of different sporting events staged at multiple locations over a 12 day period. The cost of staging the Games is expected to be approximately \$1.1 billion.

The very significant costs of staging the Games will be recouped in part through ticket sales, broadcast and sponsorship. The revenue that M2006 receives from royalties payable on all Official Merchandise sold will contribute directly towards the costs of staging the Games, thereby leading to a lower cost to the Victorian and Australian taxpayers.

The proposed arrangements with Concessionaires and Official Sponsors requiring them to obtain Official Merchandise from Official Licensees are essential to the ability of M2006 to derive revenue from the sale of Official Merchandise. There is a direct correlation between the value of a licensing arrangement to a licensee and the degree of exclusivity provided to that licensee. The greater the degree of exclusivity for the licensee, the greater value that licensees will place on obtaining licensing rights. In order to maximise the value of licensing arrangements to both Official Licensees and M2006, it is essential for M2006 to be able to guarantee to Official Licensees in certain fields that their products will be used either exclusively, or with limited other exceptions. Official Licensees are willing to accept strict quality controls in relation to Official Merchandise and to sell the Official Merchandise at an agreed rate for sale to Concessionaires and Official Sponsors, in return for a

guarantee from M2006 that Official Merchandise will be sold exclusively at Games venues and other authorised outlets. M2006 notes that similar exclusive licensing arrangements are common at major sporting events, including the Sydney 2000 Olympics and the Rugby World Cup in 2003.

2. Quality and value control

The proposed arrangements with Concessionaires and Sponsors will allow M2006 to ensure that the Official Merchandise sold to the public, to corporate sponsors and to the athletes, officials, M2006 staff and members of the Games Family are of a high standard and represent good value.

In addition, M2006 will be able to ensure that there is a consistent standard and availability of Official Merchandise at a wide range of events at numerous locations, and also to ensure that Concessionaires and Official Sponsors deal with reliable, committed suppliers.

3. Protecting Valuable Intellectual Property

As the Games is a short-term event, it is essential to protect the authenticity and value of all M2006 intellectual property which will, in turn, maximise licensing revenue and reduce the amount of Government funding required.

The Victorian and Commonwealth Parliaments have enacted specific legislation to assist M2006 to protect Games related intellectual property (see the *Melbourne Commonwealth Games (Indicia and Images) Protection Act 2005 (Cth)* and the *Commonwealth Games Arrangements Act 2001 (Vic)*). These Acts provide protection against ambush marketing and unauthorised use of Games indicia and images, and thereby maximise the opportunities for M2006 to control the use of the intellectual property and maximise revenue from granting exclusive rights to third parties such as Concessionaires, Official Licensees and Official Sponsors. It is an offence to use Games-related intellectual property without M2006 consent (with some limited exceptions).

In order to protect the valuable trade marks and other intellectual property rights granted under this legislation, it is vital that M2006 is able to determine in its discretion the organisations it considers to be best qualified to apply the M2006 marks to Official Merchandise.

4. Encouragement of Victorian Businesses

By requiring Concessionaires to sell Official Merchandise obtained from Official Licensees and encouraging Official Sponsors to purchase co-branded merchandise from Official Licensees, M2006 will be supporting the businesses of Official Licensees, who in turn are committed to support Victorian business opportunities and growth.

The Licensing Agreements between M2006 and Official Licensees encourages all Official Licensees to use Victorian products, staff and business. Official Licensees must specify the level of local value added, expressed as a percentage of the overall contract price. The Licensing Agreements also oblige the Official Licensees to provide details of actual new employment opportunities (existing or new positions) to be created in Australia as a result of the contract, and to identify opportunities for increasing the skills of Victorians and Australians and the potential to undertake the innovation, research and development of technology.

5. Increased promotion of the Games

Official Merchandise is a central part of the Commonwealth Games, and the Licensing Program was amongst the first publicly launched Games programmes. Official Merchandise branding and M2006 logos will continue to play an integral part in the promotion of the Games. The quality and integrity of the Official Merchandise is essential to the public perception of M2006 and the Games, and to M2006 delivering a successful and vibrant Games.

6. Economic growth and national reputation

The availability of a consistent range of quality Official Merchandise at Games events is a significant factor in the enjoyment of spectators and participants in the Games. More importantly, maximising revenue from royalty and sales arrangements will contribute to the hosting of a safe, enjoyable and successful Games. The Australian public as a whole will benefit from the economic growth and enhanced national reputation and pride that flow from the staging of a well run, highly publicised and successful international event.

No anti-competitive detriment

M2006 submits that there is no significant anti-competitive detriment associated with the notified conduct for the reasons set out below:

- The proposed arrangements will not lead to any increase in prices for Official Merchandise sold to Official Sponsors or to the public:
 - (1) Official Sponsors may purchase merchandise from alternative suppliers, to be approved by M2006, if Official Licensees do not meet the requirements of the sponsor for reasons of price, quality, timeliness or quantity, subject to the payment of an increased royalty to M2006 if a third party supplier is used. This gives Official Sponsors considerable negotiating power when dealing with Official Licensees.
 - (2) Similarly, if a Concessionaire can establish to the satisfaction of M2006 that an Official Licensee will not agree to supply merchandise at reasonably commercial prices or cannot supply the product, M2006 may appoint another licensee to manufacture the merchandise. In addition, the agreements between M2006 and Concessionaires will provide that M2006 shall approve the price that Concessionaires are able to charge for Official Merchandise, and will not unreasonably withhold approval where the proposed price is competitive with other major events and comparative major events retail environments. M2006's objective is to ensure that the public can acquire good value merchandise both at Games venues and other outlets. The pricing and quality of Official Merchandise sold at Games venues and other outlets will be the subject of considerable public scrutiny, and the Victorian Government and M2006 have made a public commitment to ensuring that the Games will be affordable for all.
- The proposed arrangements will not lead to any substantial lessening in competition in any relevant market, since they simply reflect the Licensing Agreements entered into between M2006 and the Official Licensees for the manufacture of Official Merchandise. These Licensing Agreements do not constitute third line forcing conduct and do not have the purpose or effect or likely effect of substantially lessening competition in any relevant

market. They are an efficient and accepted means of ensuring appropriate quality and other controls over the use of trademarks on merchandise being sold as "Official Merchandise".

- Parties negotiating with M2006 to become Concessionaires are informed well in advance of M2006's requirement that they sell only Official Merchandise at Games venues and to the public. Similarly, Official Sponsors are made aware in advance of the requirement to purchase from Official Licensees or to pay increased royalties for merchandise obtained from other suppliers.

Conclusion

M2006 submits that the proposed arrangements with Concessionaires and Official Sponsors do not give rise to any significant anti-competitive detriment, and will result in considerable public benefit. Accordingly, M2006 submits that the Commission ought to allow this notification to stand.