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Our ref: PRH 0394665 AKD

15 November 2005

Mr Scott Gregson
Acting General Manager - Adjudication
Adjudications Branch
Australian Competition and Consumer Commission
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Angel Place
123 Pitt Street
SYDNEY NSW 2000
By hand

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Adelaide
Brisbane
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Ho Chi Minh City

Dear Scott

Third Line Forcing Notification - Solahart Industries Pty Limited

We enclose the following:

- 1 A Form G Notification of conduct referred to in subsections 47(6) and (7) of the *Trade Practices Act 1974*, lodged on behalf of Solahart Industries Pty Limited (**Solahart**);
- 2 A submission in support of the Notification; and
- 3 A cheque in the sum of \$100 for lodgement fee.

If you have any queries, please do not hesitate to contact the undersigned.

Yours sincerely

Alexis Dyson
Paralegal
Direct + 61 2 9286 8095
Email alexis.dyson@phillipsfox.com
Encl

Paul Holm
Partner

15 NOV 2005

FORM G

N31485

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-sections 47(6) and (7) of that Act in which the person giving notice engages or proposes to engage.

1 (a) Name of Person Giving Notice:

Solahart Industries Pty Limited (**Solahart**)

ABN 45 064 945 848

Address: 1 Alan Street, Rydalmere NSW 2116

(b) Short description of business carried on by that person:

Solahart manufactures, supplies and installs solar hot water heaters for domestic and commercial users.

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

c/- Paul Holm
Partner
Phillips Fox
201 Elizabeth Street
SYDNEY NSW 2000

2 (a) Description of the goods or services in relation to the supply or acquisition of which this Notice relates:

The supply and installation of solar hot water heaters on a discounted basis.

(b) Description of the conduct or proposed conduct:

Solahart will offer specified solar water heaters and installation on a discounted basis to current and potential retail customers who acquire a particular finance package offered by Fundcorp Pty Limited (**Fundcorp**) for the purchase and installation of the solar water heater.

Solahart plans to run a joint marketing campaign with Fundcorp to promote the offer.

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

The offer will be extended to current and potential retail customers of Fundcorp located in the Solahart servicing areas in South East Queensland.

(b) Number of those persons:

(i) at the present time:

70,000

(ii) within the next year:

Nil

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

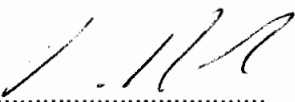
Not applicable

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

Paul Holm, Phillips Fox, 201 Elizabeth Street, Sydney NSW 2000

DATED: 15 November 2005

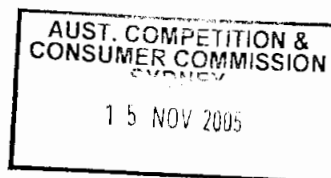
Signed on behalf of the person giving this notice


.....

Paul Holm

Partner

Phillips Fox



**Submission in support of the Notification lodged on behalf of Solahart Industries Limited
(Solahart)**

- 1 The Notification concerns a promotion that Fundcorp and Solahart are planning to run in Queensland.

Relevant Conduct

- 2 The conduct comprises the offer by Solahart to give or allow a discount in relation to the purchase and installation of specified Solahart water heaters, for the reason that the acquirer or would-be acquirer is a retail customer of Fundcorp and on condition that the acquirer or would-be acquirer also acquires a particular finance package from Fundcorp for the purchase and installation of the water heater.
- 3 The conduct also comprises the refusal by Solahart to give or allow a discount in relation to the purchase and installation of a Solahart water heater, for the reason that the acquirer or would-be acquirer is not a retail customer of Fundcorp and/or does not acquire a particular finance package from Fundcorp for the purchase and installation of the water heater.

Details of the Offer

- 4 Solahart will offer specified Solahart solar hot water heaters and installation on a discounted basis to Fundcorp retail customers who are located in the Solahart servicing areas in South East Queensland and who agree to use a particular finance package offered by Fundcorp.
- 5 At this stage, it is proposed that there will be a discount of \$300 off the recommended retail price on specified solar hot water systems.
- 6 Fundcorp and Solahart plan to run a marketing campaign via a bulk mail drop to those customers between the periods of 21 November 2005 to 31 December 2005.

No anti-competitive detriment

- 7 The promotion will not result in any anti-competitive detriment:
- (a) Fundcorp and Solahart face significant competition in their respective markets. There is significant competition among suppliers of water heaters in Queensland, a fact recognised by the Commission in its recent decision to not oppose Rheem Australia Pty Limited's acquisition of Edwards Hot Water on 15 December 2004. Competition in Queensland among financiers for the right to supply finance packages is similarly strong, with GE Credit, all of the major credit card facilities (MasterCard, VISA, AMEX, Diners etc), and HSBC among the main competitors to Fundcorp.
 - (b) Customers will still have a genuine choice about whether to subscribe to the offer – the promotion is a value-add initiative purely for customer loyalty purposes, providing a benefit to Fundcorp retail customers. Customers will not be forced or coerced to buy any product from Solahart.
 - (c) The conduct will not diminish competition in any market. It is anticipated that while a substantial amount of Fundcorp's retail customers will be eligible to take up the offer, only a small number of those customers with a broken or insufficient existing water heater are likely to take up the offer.

- (d) Recipients of the offer will be fully informed about the benefits available to them by taking up the offer and any relevant limitations on the offer.

The promotion will result in public benefit

8 Solahart submits that there are significant public benefits arising from this promotion.

- (a) The promotion will permit residential customers to make a saving on solar hot water heater purchases. As noted by the ACCC in its assessment of the acquisition of Edwards Hot Water Pty Ltd by Rheem Australia Pty Ltd, there is a significant up-front price differential between solar hot water systems and other types of water heating. However, there are also planning and environmental policies that encourage the use of solar heaters, and some consumer preference for solar heating due to these environmental concerns. This type of promotion facilitates such acquisitions at less cost and therefore enhances consumer welfare.
- (b) Solahart is of the view that reduced carbon dioxide emissions from Fundcorp's customers replacing existing electric hot water heaters with solar hot water heaters will be a public benefit.
- (c) Fundcorp believes that the proposed arrangements will enhance its ability to compete and deliver value to its retail customers.
- (d) Solahart will benefit from being able to make increased sales in response to public needs and interests.
- (e) Promotions of this kind are a commonly used marketing tool that delivers real benefits to consumers. The promotion accordingly provides significant benefits to the public in terms of competition and consumer welfare.

Conclusion

9 In view of these public benefits and the absence of any anti-competitive detriments, the public benefits outweigh any anti-competitive detriment.