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Australian Competition & Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

Your Ref: C2006/71  
Contact Officer Kelvin Binning

24<sup>th</sup> January 2006

Dear Sir

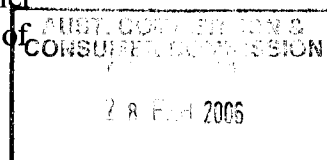
**Exclusive dealing notification N31496 lodged by James Hardie Australia Pty Ltd**

I refer to the above notification. I own and operate a timber, hardware and roof truss fabrication business in the South East region of Melbourne.

I was a customer of James Hardie for 15 years in my current business and for 13 years in my previous business. In 2005, I decided to switch my fibre cement purchases to CSR. We made this decision partly because of the asbestos issue which led to pressure from some of our customers, and partly because we had joined the Hardware and Building Traders buying group. At the time, Hardies were not a supplier to this group.

Following the change to CSR, we were contacted regularly by representatives of James Hardie to see if they could regain our business. They then released the Linea and Aquatec products and commenced a major marketing effort to builders and specifiers. We had requests from our customers for these products from some of our customers but we were unable to purchase them from James Hardie unless we agreed to leave CSR and place all of our fibre cement business with them. We were told that James Hardie were "rewarding those who had been loyal to them" with access to these new products.

Initially, we managed to obtain supplies of Linea from other sources, including CSR. We had to onsell this to our customers at little or no margin to meet the sort of prices that competitors who were dealing direct with James Hardie could offer. The Notification that James Hardie are now attempting to put in place will prevent us from obtaining these products from any supplier other than James Hardie, and this in turn will require that we place 100% of our fibre cement business with James Hardie.



## **BUILDERS REBATE ARRANGEMENTS**

The problem that we face is that James Hardie also enter into arrangements with some of our builder customers which entitle them to rebates from James Hardie if they use Hardie's products in their buildings. (I assume that the ACCC is aware of these rebate arrangements and approves of them). If Hardie's new policy is approved, and our customers are unable to obtain products like Linea and AquaTech from us to meet their obligations to James Hardie, they are likely to consider obtaining all of their requirements including timber, hardware and trusses from a Hardie stockist, as they prefer to buy from a single source.

As a worst case scenario, the combination of ACCC approval of Hardie's notification, and our largest customers entering into a rebate agreement with James Hardie, could put us at risk of losing a substantial portion of our total business unless we switched back to James Hardie for our fibre cement purchases.

## **BUNDLING**

We are surprised at Hardie's claim that they are disadvantaged by 'bundling' of fibre cement products with plasterboard. In the Victorian market, fibre cement is sold largely through the timber merchant and building supplies channels. Plaster suppliers tend to only stock plaster. This is because large amounts of fibre cement are used in external claddings and are installed by carpenters. Plastering is done internally by plasterers after the house is at 'lock-up' stage. There is no logical connection between the two products or the two trades. We understand that Hardie has already attempted their own form of bundling by selling their Villaboard product under another name and at a lower price through plaster outlets.

## **MARKET DOMINANCE**

James Hardie is the dominant force in the Australian fibre cement market. It is ingenuous of them to claim to be the underdog by comparing their turnover in fibre cement with that of companies which operate in many other markets. CSR and BGC are the other significant local suppliers, and there is some product imported from Malaysia and South Africa. I suspect that their combined turnover is less than that of James Hardie.

## **ENHANCED INNOVATION**

Under this heading, James Hardie claims that their proposed policy will encourage their competitors to conduct "their own research and development in fibre cement products" thus increasing competition. "The costs of doing so are relatively modest". Yet under Free-riding, they argue that "the

development of technology differentiated products involves considerable sunk development costs which James Hardie seeks to recover through sales volumes” and that they can only do this by restricting competition.

### SUMMARY

If James Hardie is so convinced of the worth of their new products, they should be happy to let the market decide how these products will be purchased and distributed, rather than putting restrictive measures in place. As a purchaser, we would be happy to discuss purchasing both new and old technology products from James Hardie but we would be most unhappy about being forced to buy all of our fibre cement products from one source. Such arrangements do not apply with any other suppliers of the wide range of building products which we purchase.

Some time ago, James Hardie had a policy of restricting the number of outlets that they would supply. For example, they encouraged smaller building supplier outlets in our geographic area to buy Hardie’s product from larger distributors like ourselves. They now wish to reverse this policy.

We believe that if this notification is approved, it will reduce competition in the fibre cement market. It will reduce flexibility in the market place by preventing purchasers from deciding their source of supply. There is no mention in the Hardie submission of how purchasers will be able to obtain the best possible price on the old technology products if they are bound to an exclusive deal with Hardies. We believe that the Notification should be rejected.

A handwritten signature in black ink, appearing to read 'Barrie O'Shea', with a long horizontal flourish extending to the right.

Barrie O'Shea  
Director  
24<sup>th</sup> February 2006