



**Australian  
Competition &  
Consumer  
Commission**

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3 March 2006

Mr Malcolm Hull  
Regional Manager  
Mackay and Whitsunday Region  
Master Builders Association  
PO Box 3188  
NTH MACKAY QLD 4740

Dear Mr Hull

**Exclusive Dealing Notification lodged by Morvale Developments Pty Ltd**

The Australian Competition and Consumer Commission (the ACCC) has received a notification from Morvale Property Developments Pty Ltd (Morvale) with regard to the conditions under which land at its Orchid Valley subdivision will be offered for sale to purchasers.

I am writing to you as a party who may be interested in providing a submission to the ACCC in relation to this notification. I also understand that the Master Builders Association is a peak representative body for the building and construction industry. In that role, I encourage you to pass this correspondence onto any of your members that you believe may be interested in this matter.

As you may be aware, the ACCC is responsible for administering the *Trade Practices Act 1974* (TPA). The competition provisions of the TPA prohibit certain forms of anti-competitive conduct or arrangements, including exclusive dealing.

Generally speaking, exclusive dealing involves a corporation imposing restrictions on another's freedom to choose with whom, or in what, it deals. Subsections 47(6) and (7) of the TPA prohibit exclusive dealing of the type known as third line forcing. Third line forcing occurs where a corporation supplies goods or services on condition the customer acquires other goods or services from another business or refuses to supply because the customer will not agree to that condition.



### *Notification process*

While the TPA prohibits certain forms of anti-competitive conduct, it does, however, recognise that compliance with the competition provisions of the TPA may not always be in the public interest. It therefore allows businesses wishing to engage in third line forcing conduct to apply for what is known as a 'notification'. Notification provides immunity from legal action by the ACCC and any other party for potential breaches of the exclusive dealing provisions of the TPA where the conduct is in the public interest.

Under the notification process immunity from third line forcing conduct is obtained automatically 14 days after the date of lodgement, and continues unless the ACCC issues a notice revoking the immunity.

The ACCC may revoke the immunity for third line forcing conduct if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

### *Notification lodged by Morvale*

On 15 February 2006 Morvale lodged a notification concerning the supply of land at its Orchid Valley subdivision in Marian, Queensland. In particular, Morvale proposes to offer land at the Orchid Valley subdivision on condition that purchasers enter into building contracts with one of three firms for the construction of housing on the land.

A copy of Morvale's notification and supporting submission to the ACCC are enclosed and are also available from the ACCC's website at <http://www.accc.gov.au> (by following the Public Registers and Notifications Register links).

### *Request for submissions*

As a potentially interested party you are invited to make a written submission to the ACCC regarding the likely public benefits and public detriments arising from the notified conduct.

In support of its notification Morvale submits that the conduct will result in a public benefit by providing affordable, quality housing for first home buyers in the region.

In addition, Morvale claims that the public has the option of purchasing other land within the Marian district, noting that Orchid Valley is a rather small development project compared to other land available for purchase within the region. In this regard, Morvale believes that the benefit of affordable housing exceeds any proposed disadvantage to the public in restricting them to using one of three builders in the Orchid Valley Development.

To assist the ACCC in considering this notification it would be helpful to obtain your views on Morvale's claims. Please note, the ACCC recommends that you consider Morvale's supporting statement before making a submission.

The ACCC asks for submissions to be in writing so they can be made publicly available in order to ensure that parties interested in the matter (including the notifying party) have access to issues raised about the notified conduct. Submissions are placed on a public register for this purpose. A copy of this letter will also be placed on the public register.

Persons lodging a submission with the ACCC may request that information included in the submission be treated as confidential and not placed on the public register. If confidentiality is granted in respect of information the ACCC may take it into account, even though not publicly available. Guidelines for seeking confidentiality are attached.

If you wish to lodge a submission, please address your submission to:

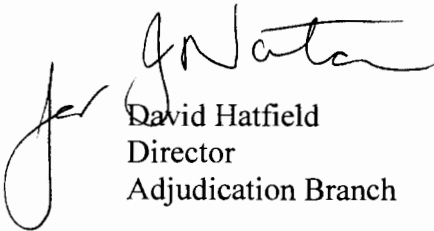
The General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

Alternatively, submissions can also be lodged by email to: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au).

It would be appreciated if you could provide your submission to the ACCC by **cob Friday, 24 March 2006**.

Should you have any queries or if you wish to discuss any aspect of this matter please contact Ms Jaime Norton on (03) 9290 1477 or at [jaime.norton@acc.gov.au](mailto:jaime.norton@acc.gov.au).

Yours sincerely

  
David Hatfield  
Director  
Adjudication Branch