



MAB Delivery Pty Ltd

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12th April 2006

Scott Gregson
General Manager
Adjudication Branch
Australian Competition &
Consumer Commission
470 Northbourne Avenue
Dickson ACT 2602

FILE No:
DOC:
MARS/PRISM:

Dear Mr Gregson

Third line forcing notification No N92351 lodged by Nolan Properties Investments Pty Ltd ("Notification")

We refer to your letter dated 20 February 2006.

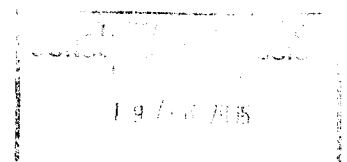
You have indicated that aspects of the notified conduct may not constitute third line forcing, and that the immunity provided by the Notification may therefore not extend to these aspects of the conduct. For the reasons set out below, we consider that all aspects of the described conduct involve potential third line forcing and for this reason, we consider that it is appropriate for immunity to extend to the conduct in its entirety.

Notified conduct

As you are aware, we described the proposed conduct in the Notification in the following terms:

Nolan Properties Investments Pty Ltd (Nolan) proposes to

- 1) sell or offer for sale the subdivided retail properties in the Nolan Tower of the NewQuay precinct at Melbourne Docklands (the Retail Properties) to purchasers on condition that purchasers:
 - (i) comply with various covenants and other obligations relating to the terms on which purchasers lease or operate the Retail Properties;
 - (ii) acquire the property management services of PMS in accordance with a Property Management Agreement for a term of 7 years with a further 3 year option (the Property Management Agreement); and
 - (iii) agree that they will novate the Property Management Agreement to any subsequent purchaser for the unexpired term of that agreement (if any), if they sell the Property.



Potential third line forcing

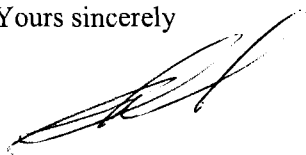
You have indicated that the ACCC accepts that condition (ii) may involve third line forcing, but that the position is less clear in respect of conditions (i) and (iii).

Briefly, we note that condition (i) requires purchasers to comply with various covenants and obligations regarding the terms on which they may lease or operate the properties. These covenants are imposed on purchasers under the contracts of sale or lease (as applicable) between the purchaser and Nolan. However, as outlined in the Notification, PMS will be the entity responsible for enforcing these covenants and obligations, and in fulfilling this role, we consider that PMS may provide management and administrative services to purchasers separate to and beyond those set out in the Property Management Agreement. In our view, this may be a case of purchasers being required to indirectly acquire services from PMS and as such carries a risk that it involves third line forcing.

In respect of condition (iii), we consider that the described conduct is a continuation or extension of the third line forcing conduct described in condition (ii) to subsequent purchasers (namely, the sale by Nolan of Retail Properties to purchasers on the condition that they acquire management services from PMS). In essence, Nolan requires the first purchaser to impose upon the subsequent purchaser the same requirement described in condition (ii), that is, that they too become a party to the Property Management Agreement and acquire management and other services from PMS.

If you could please confirm in writing that we have satisfactorily addressed your concerns. Please do not hesitate to call me on (03) 8530 2222 to discuss this matter further.

Yours sincerely



Anthony Calvi
Group General Counsel &
Group Company Secretary
MAB Corporation Pty Limited