



**Australian
Competition &
Consumer
Commission**

Our Ref: C2006/71
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16 January 2006

Mr Alec Brennan
Managing Director
CSR
Level 1, 9 Help St
CHATSWOOD NSW 2067

Dear Mr Brennan

Exclusive dealing notification N31498^{19/1} lodged by James Hardie Australia Pty Ltd

I am writing to you to make you aware of and to seek any comments you may wish to provide in relation to a notification lodged by James Hardie Australia Pty Ltd (James Hardie) with the Australian Competition and Consumer Commission (ACCC) on 23 December 2005 (the notification). The notification relates to the supply and re-supply of fibre cement building products manufactured by James Hardie. A copy of the notification is enclosed.

Exclusive dealing

As you may be aware, the competition provisions of the *Trade Practices Act 1974* (the Act) prohibit certain forms of anti-competitive conduct or arrangements. Section 47 of the Act prohibits conduct known as exclusive dealing where it has the purpose or effect of substantially lessening competition. Generally speaking, exclusive dealing involves one business trading with another, imposing restrictions on the other's freedom to choose with whom, or in what, it deals.

Notification process

While the Act prohibits certain forms of anti-competitive conduct, it does, however, provide processes allowing immunity from the application of many of its restrictive trade practices provisions to be afforded in certain circumstances.

Under the notification process, immunity is automatically afforded to the notified exclusive dealing conduct. The ACCC may take steps to remove the immunity afforded by a notification of exclusive dealing at any time if it is satisfied that the conduct notified has the purpose or likely effect of substantially lessening competition, and any public benefit will not outweigh the detriment constituted by the lessening of competition.



Notification lodged by James Hardie

The notification lodged by James Hardie concerns conduct contained within its new distribution policy. In particular, under the policy James Hardie will require that:

- (a) its distributors agree not to on-sell James Hardie's products, other than its Artista Columns and Accessories to:
 - (i) fibre cement manufacturers;
 - (ii) distributors owned by, or franchisees of fibre cement manufacturers; and
 - (iii) distributors who have an exclusive arrangement to acquire fibre cement products from fibre cement manufacturers that compete with James Hardie; and
- (b) those of its distributors seeking to purchase the new technology differentiated products agree:
 - (i) to acquire 100% of their fibre cement products from James Hardie; and
 - (ii) not to on-sell James Hardie's new technology differentiated products to other distributors

unless James Hardie gives prior written consent to do otherwise.

James Hardie has defined 'new technologically differentiated products' to be:

- Linea TM Weatherboard
- Linea TM Trim
- Aqua Tech TM Wet Area Flooring
- Eclipsa TM Eaves Lining
- Ezi Grid [®] Tile Underlay.

Request for submission

I understand that you are a manufacturer of fibre cement products. To assist the ACCC in its assessment of the notification it would be helpful to obtain your view on the impact on competition and the likely public benefits and public detriments arising from the notification relevant to you. In particular, I invite your response to the following:

1. Please identify your competitors in the production of fibre cement products. What is your estimation of the relative positions of Australian manufacturers of fibre cement products?
2. What substitute products are available for fibre cement products?
3. What substitute products are available for James Hardie's new technologically differentiated products?
4. What costs are likely to be involved in the development of products similar to James Hardie's new technology differentiated products for an existing manufacturer of fibre cement products?
5. Where are your company's manufacturing plants located? How are products transported from a manufacturing plant to distributors?

6. Do customers generally purchase fibre cement products within their local geographic area or is it economically viable to purchase fibre cement products from a distributor in a different city or a different state?
7. What is the level of fibre cement imports, if any, and to what extent do they compete with products manufactured domestically?
8. Please provide a brief description of your company's distribution network, including such information as the identity of your company's distributors (particularly those distributors which account for the majority of your company's sales), the ownership status of your company's distributors (are they company owned, franchisees or independent) and the location of your company's distributors (on a state basis). Do you supply fibre cement products to any customers directly?
9. Do any of your company's distributors stock your company's products exclusively? Are you aware of the proportion of your company's distributors that also stock James Hardie's products and more specifically, James Hardie's new technology differentiated products?
10. To what extent do distributors seek to carry the full range of fibre cement products? Are there advantages in stocking a full range?
11. Do distributors generally establish a full range of fibre cements products by acquiring stock from a single manufacturer or from a number of manufacturers?
12. In the event that distributors are prevented from acquiring stock from more than one manufacturer, is it possible for a manufacturer to acquire fibre cement products from a competitor for supply to its own distributors?
13. Are you aware of the extent to which your company's distributors on-sell fibre cement products?

I also invite you to provide any additional information which you believe to be relevant to the ACCC's assessment of the notification lodged by James Hardie.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on the public register for this purpose.

You may request that information you provide in a submission to the ACCC be treated as confidential and not placed on the public register. The ACCC may take into account information for which it grants confidentiality, even if that information is not publicly available. Guidelines for seeking confidentiality are attached for your information. A copy of this letter has been placed on the ACCC's public register.

If you wish to lodge a submission please address the submission to:

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

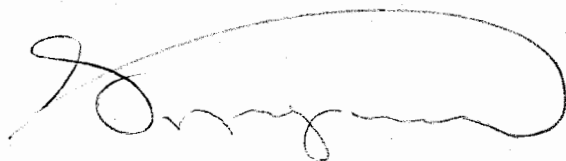
Submissions can also be lodged by e-mail to: adjudication@acc.gov.au.

I would be grateful for your response by **Monday, 30 January 2006**.

If you have any questions about the issues raised in this letter please contact Hew Atkin on (02) 6243 1235 or Kelvin Binning on (02) 6243 1351.

A copy of this letter will be placed on the ACCC's public register.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', with a large, sweeping flourish at the end.

Scott Gregson
General Manager
Adjudication Branch