



**Australian
Competition &
Consumer
Commission**

Our Ref: C2006/71
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16 January 2006

Ms Fiona Crosbie
Partner
Allens Arthur Robinson
Level 17, Chifley Tower
2 Chifley Square
Sydney NSW 2000

Dear Ms Crosbie

Exclusive dealing notification N31496 – James Hardie Australia Pty Ltd

I refer to the exclusive dealing notification N31496 lodged with the Australian Competition and Consumer Commission (ACCC) by your client, James Hardie Australia Pty Ltd (James Hardie), on 23 December 2005 (the notification).

The notified conduct

From the information provided to date, I understand that the notification concerns conduct contained within James Hardie's 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 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.



I understand that part (a) of the notified conduct will apply to all James Hardie products, other than its Artista Columns and Accessories, while part (b) of the notified conduct will apply to James Hardie's Linea Weatherboard, Linea Trim, AquaTec Wet Area Flooring, Eclipsa Eaves Lining and Ezi-Grid Tile Underlay products (known as the new technology differentiated products).

Request for further information

To further assist the ACCC in its assessment of the notification, I request your response to the following:

1. Please provide a list of James Hardie's distributors, their location (on a state basis) and the proportion of James Hardie's sales they account for. Please advise if any of James Hardie's distributors currently stock James Hardie products exclusively. What proportion of James Hardie's distributors currently stock the new technology differentiated products? What proportion of James Hardie's sales do the distributors which currently stock the new technology differentiated products represent?
2. Please provide a list of James Hardie's manufacturing plants, their location and an explanation of how products are transported from these plants to distributors.
3. On the basis of the information contained within the notification and particularly paragraph 1.2 of Attachment A, I understand that it is likely that part (a) of the notified conduct will apply to distributors which currently account for less than 5% of James Hardie's total sales. Is this correct?
4. I note that part (a)(i) of the notified conduct, concerns fibre cement manufacturers. Please identify all relevant fibre cement manufacturers and provide their market shares.
5. What percentage of James Hardie's total sales concern core products (as defined in Attachment A to the notification)?
6. What percentage of James Hardie's total sales concern technology differentiated products (as defined in Attachment A to the notification)?
7. What percentage of James Hardie's total sales concern the new technology differentiated products?
8. I note that under the notified conduct, James Hardie may provide a distributor with written consent to on-sell James Hardie products and/or to purchase the new technology differentiated products without acquiring 100% of their fibre cement products from James Hardie. Under what circumstances would James Hardie provide such written consent?
9. I understand that under its former distribution policy, James Hardie could also provide distributors with written consent to engage in activities in contradiction to the policy. Did James Hardie receive any requests from distributors for such written consent? If so, how many such requests and what number of requests were granted or denied? In what circumstances were such requests granted or denied?

10. I note that paragraph 4.1 of Attachment A to the notification suggests that there are no significant technical, legal, or financial impediments to creating technology differentiated products and paragraph 5.1(a) describes the cost of research and development in fibre cement products as relatively modest. However, paragraph 5.1(c) of Attachment A suggests that the development of technology differentiated products involves considerable sunk development costs. Please clarify the situation with respect to the barriers to entry to manufacturing technology differentiated products, providing supporting information where possible.

I would appreciate a response to these queries by **Monday, 30 January 2006**.

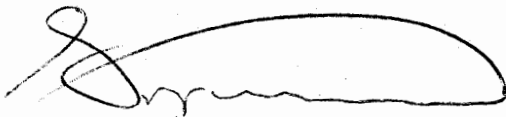
Consultation with interested parties

To assist the ACCC in its assessment of the notification, letters have been sent to interested parties inviting submissions in response to the notification. For your information I have attached copies of these letters and a list of parties to whom the letters were sent. The closing date for submissions is 30 January 2006.

This letter will be placed on the ACCC's public register.

Should you wish to discuss any other aspect of this matter, please do not hesitate to contact Hew Atkin on (02) 6243 1235.

Yours sincerely



Scott Gregson
General Manager
Adjudication Branch