



**Australian
Competition &
Consumer
Commission**

Our Ref: C2006/71
Contact Officer: Kelvin Binning
Contact Phone: 02 6243 1351

PO Box 1199
Dickson ACT 2602
470 Northbourne Ave
Dickson ACT 2602
ph (02) 6243 1111
fax (02) 6243 1199
www.accc.gov.au

21 April 2006

<<Name>>

Dear <<Salutation>>

**Re: James Hardie Australia Pty Ltd (James Hardie) N31496
- PRE-DECISION CONFERENCE**

James Hardie has requested that the Australian Competition & Consumer Commission (the ACCC) convene a conference in relation to the draft notice issued by the ACCC on 5 April 2006 proposing to revoke the above notification.

The draft notice follows the lodgement by James Hardie of a notification in respect of a proposed new distribution policy for the supply and re-supply of fibre cement products. The ACCC concluded in its draft notice that the new distribution policy the subject of the notification has, or would have, the effect of substantially lessening competition in the market for the manufacture and supply of fibre cement products in Australia. Further, the ACCC was not satisfied that the public benefits claimed by James Hardie will outweigh the likely detriment to the public constituted by the lessening of competition that is likely to result. A copy of the notification and draft notice can be found on the ACCC's website <www.accc.gov.au>.

A pre-decision conference provides a valuable opportunity for the notifying party and interested parties to make oral submissions to the ACCC about the draft notice.

The ACCC will hold the conference on Monday **15 May 2006**, at the ACCC's offices in Sydney: Level 7, Angel Place, 123 Pitt St. The conference will commence at 2pm.

The *Trade Practices Act 1974* (the Act) provides that the conference may be attended by the notifying party and other interested parties. If you wish to attend, you must advise the ACCC of your intention by **cob Tuesday 9 May 2006** and briefly indicate why you or your company or organisation has an interest in the matter. Expressions of interest in attending must be made in writing and addressed to:



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

You can also advise the ACCC by e-mail to: adjudication@acc.gov.au or by facsimile on 02 6243 1211.

You should provide details of a contact name, telephone number, mailing address and, if possible, a facsimile number or e-mail address so that you can be advised of any late changes to conference arrangements.

If you represent a company or organisation you should also provide a list of attendees and their position titles, and indicate who will be the chief spokesperson.

I would also note that, while conference participants may bring outside legal or other professional advisers to assist them, the Act prohibits these advisers from participating in conference discussions.

Attached for your information are procedures usually followed at pre-decision conferences.

A copy of this letter has been placed on the ACCC's public register. If you require any further information in regard to the conference or wish to clarify whether you may be considered an 'interested person' within the terms of the Act, please do not hesitate to contact Hew Atkin on 02 6243 1235 or Kelvin Binning on 02 6243 1351.

Yours sincerely



For
Joanne Palisi
Director
Adjudication Branch

AN OUTLINE OF THE PROCEDURES
USUALLY FOLLOWED AT PRE-DECISION CONFERENCES

The Australian Competition and Consumer Commission (the ACCC) tries to conduct such conferences as informally, flexibly and speedily as possible. Where necessary a conference may be adjourned and reconvened at a later time.

An interested party attending a conference may have the assistance of outside legal or other professional advisers. Although such persons may attend the conference to assist; they are not entitled to participate in the discussion.

The conference will serve a useful purpose in that it gives the ACCC and all interested parties the opportunity to meet face-to-face to discuss the operation and effect of the applicant's conduct and the ACCC's draft notice to revoke. The applicant and/or interested persons has/have the opportunity to persuade the ACCC to accept their view. The ACCC benefits from direct contact with the parties, and its perceptions of public benefit and anti-competitive detriments are tested in a forum of interested parties where points are often quickly and forcefully made.

1. Preliminary procedures

- (a) When you arrive at the conference you will find that a seating plan may be available. You should identify yourself to the ACCC staff before the conference begins and indicate clearly if you expect messages to be left for you during the conference. Further, please complete the attendance book when arriving at the conference. This assists ACCC staff to identify attendees for the purpose of recording the discussion.
- (b) The Chair (a Commissioner) will open the conference by welcoming those present and outlining the requirements of the *Trade Practices Act* (the Act) and the manner in which the conference will be conducted. An agenda may be circulated.
- (c) If you intend to present a written comment (and you are encouraged to do so), it is helpful if the ACCC receives it before the conference date. It can then be copied and distributed at the conference. In this way, both the ACCC and other parties present are assisted, and your submission also forms part of the conference record. If you cannot complete the written submission earlier, it is helpful if you come to the conference with extra copies which can be distributed.
- (d) If you intend to present a submission at the conference and you wish it (or certain details in it) to remain confidential, you should make your confidentiality request to the Chair at the time of presenting the document, and you should state in general terms the reason for your request. The Chair may request other parties present to leave the conference for a short period, so that you may be given the opportunity, if necessary to expand on your reasons.

If your request for the document (or parts of it) to remain confidential is denied you may ask for the document (or parts of it) to be returned to you. Any material returned to you will ordinarily not be taken into consideration by the ACCC in making its final decision (unless, of course, it was supplied from another source).

Any document you present without making any request for confidentiality will be placed on the ACCC's public register, and the information it contains may be used by the ACCC in making its decision. Where confidentiality is granted, the confidential information may also be taken into account, although such material will not be placed on the public register.

2. General procedures

- (a) The conference has been convened to discuss the draft notice, to canvass points of view and to assist the ACCC's weighing of issues and its interpretation of the information given to it.
- (b) The procedure is discretionary. The Chair controls the order of discussion, and may take particular topics separately, so that all the discussion, on any given topic may be heard at the one time.
- (c) The conference is not a court, and there is no right of cross-examination. You may request the Chair to ask questions of other parties present, but the Chair retains the discretion as to whether your questions will be put. The Chair, of course, may also directly question the parties at the conference, and they have discretion whether or not to answer.
- (d) ACCC staff present will make a record of the discussion. This will be in minute form, not a verbatim record. The conference record is placed on the public register, and all who attend the conference will receive a copy.
- (e) When the Chair believes that all present have been given a reasonable opportunity to express their views, he/she may terminate the conference.
- (f) The Chair (and any other Commissioner at the conference) cannot give a final decision at the close of the conference. Each Commissioner is only a representative of the ACCC and is required to report back to the ACCC, which will make the final decision.

3. Other matters

- (a) Following the pre-decision conference, the ACCC will review its draft notice in the light of discussion and further submissions made at the conference (or within a set period of time after the conference), and will decide whether or not to publish a final notice under s93(3) or 93(3A) of the Act.
-