



**Australian  
Competition &  
Consumer  
Commission**

Our Ref: C2006/71  
Contact Officer: Hew Atkin  
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2 May 2006

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

Dear Ms Crosbie

**Re: Exclusive dealing notification N31496 – James Hardie Australia Pty Ltd**

I refer to your email of 24 April 2006 and the information provided by James Hardie Australia Pty Ltd (James Hardie) by email on 19 April 2006 in response to my letter of 7 March 2006.

You advise that James Hardie consents to its response to question 2 of the ACCC's information request, provided in your email of 19 April 2006, being placed on the ACCC's public register.

I have reproduced the relevant section of the response below:

2. ***Part (a)(iii) of the proposed distribution policy provides that distributors must agree not to on-sell to other distributors who have an 'exclusive arrangement' with fibre cement manufacturers that compete with James Hardie. Please provide clarification of what is meant by 'exclusive arrangement' with respect to the proposed distribution policy and how James Hardie will determine which distributors have an 'exclusive arrangement' with competing fibre cement manufacturers.***

*The concept of an exclusive arrangement is intended to capture any arrangement, contractual or otherwise, that a distributor may have with a particular fibre cement manufacturer that results in the distributor purchasing fibre cement products exclusively from the particular fibre cement manufacturer. Where a distributor stocks only a competitor's product, James Hardie will consider it to have an exclusive arrangement with a competitor.*



*In relation to this, we do not understand the last sentence in the Commission's draft notice in paragraph 1.8. Suffice to say that (a)(iii) of the proposed distribution policy does not include distributors who acquire any quantity of fibre cement product from a manufacturer that competes with James Hardie. It only includes those distributors who have an exclusive arrangement to do so.*

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

Should you wish to discuss any aspect of this matter, please do not hesitate to contact Hew Atkin on (02) 6243 1235 or Joanne Palisi on (02) 6243 1323.

Yours sincerely,

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

Scott Gregson  
General Manager  
Adjudication Branch