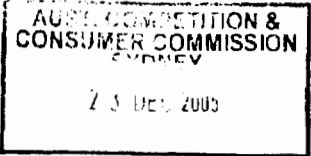


Freehills



N 31495.

23 December 2005

Phone 61 2 9322 4684
Email boris.bronfenrinker@freehills.com
Matter no 80667299
Doc no Sydney\004984010

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

FILE No:
DOC:
MARS/PRISM:

Dear Mr Gregson

Investa Developments Pty Ltd notification lodged under section 93 of the Trade Practices Act 1974

We act for Investa Developments Pty Ltd (**Investa**) and have been instructed to lodge on its behalf a notification in respect of conduct which may raise issues under the third-line forcing provisions of the *Trade Practices Act 1974*.

On 2 September 2005, Investa lodged a notification (number N31456) in respect of the same development and was subsequently advised that immunity came into effect on 16 September. The development has since been renamed Brentwood Estate (formerly it was known as Eden's Crossing Estate) and it will no longer be subject to a Community Management Scheme. Accordingly, the previous notification does not provide Investa with immunity for the conduct it now proposes.

We enclose the following:

- (a) a completed Form G in respect of the notification;
- (b) a confidential version of the submission;
- (c) a non-confidential version of the submission; and
- (d) a cheque for \$100, being the lodgement fee.

In support of the notification, we enclose a short submission which is in substance the same as the submission supporting the previous notification.

**EXCLUDED FROM
PUBLIC REGISTER**

EXCLUDED FROM
PUBLIC REGISTER

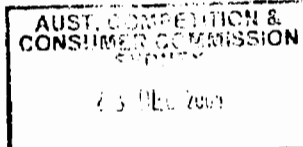
Should you wish to discuss any aspect of Investa's request for confidentiality,
please contact Boris Bronfentrinker on 9322 4684.

Yours faithfully
Freehills



Paul Hughes
Partner

encl.



FORM G

Regulation 9

[Front of Form]

N31495

COMMONWEALTH OF AUSTRALIA
Trade Practices Act 1974 - Sub-section 93(1)

**EXCLUSIVE DEALING
NOTIFICATION**

To the Australian Competition and Consumer Commission:

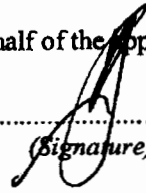
Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d), of that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice
Investa Developments Pty Limited
(See Direction 2 on the back of this Form)
- (b) Short description of business carried on by that person
Residential property development
- (c) Address in Australia for service of documents on that person
**c/- Paul Hughes
Level 32
MLC Centre
SYDNEY NSW 2000**
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
The supply of residential housing in an estate known as Brentwood (formerly known as Eden's Crossing), in Queensland.
- (b) Description of the conduct or proposed conduct
The applicant proposes to offer residential housing for purchase to consumers on condition that the lot owner use a natural gas hot water service as the primary hot water service for the dwelling. The hot water service can be either a continuous flow (instantaneous) or storage water heater. This condition will be in the Investa Developments Pty Limited sale of land contracts.
(See Direction 4 on the back of this Form)
3. (a) Class or classes of persons to which the conduct relates
Persons wishing to purchase lots at Brentwood Estate.
- (b) Number of those persons-
 - (i) At present time
None - lots have not been offered for sale at this time.
 - (ii) Estimated within the next year
90
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses
The names and addresses of purchasers of lots at Brentwood Estate are not available at this time.
4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice
**Paul Hughes
Partner
Level 32
MLC Centre
SYDNEY NSW 2000**

Dated **23 December, 2005**

Signed by/on behalf of the applicant giving notice



Paul Hughes
(Full Name)

Solicitor for the applicant
(Description)

N 31495
APPLICANT NOTIFICATION &
CONSUMER PROTECTION COMMISSION
23 Dec 2005

[Back of Form]

DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b) (ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of sub-section 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under sub-section 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in sub-section 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

**INVESTA DEVELOPMENTS PTY LTD –
SUBMISSION IN SUPPORT OF NOTIFICATION**

Background and sale of lots in the Brentwood Estate

- 1 Investa is the owner of the land that is the subject of this notification. Investa is developing a residential development known as “Brentwood Estate” (formerly known as Eden’s Crossing) in the Springfield region, 28 kilometres southwest of Brisbane, Queensland (**Brentwood development**). The Brentwood development is located adjacent to the proposed 350 hectare Springfield Town Centre.
- 2 The Brentwood development will be an integrated community consisting of approximately 1500 lots with some medium density building.
- 3 The Brentwood development is being developed by Investa in a manner that preserves the unique natural assets of the site and there will be eco-recreation opportunities such as integrated walking trails linking the conservation areas to the community and preservation of significant natural features.
- 4 Investa has commenced development of the first phase of the Brentwood development. It plans to have certificates of title for the first 90 lots issued by January 2006.
- 5 It is proposed that the sale of land contracts will require lot owners to use a natural gas hot water service as their primary hot water service for their dwelling (**the proposed condition**). As a consequence of the proposed condition, at the time that customers purchase a lot from Investa they would accept the obligation to obtain natural gas hot water heating services as their primary hot water service.
- 6 The proposal to require lot owners to use a natural gas for their primary hot water heating service, has been developed taking into account the following:
 - (a) the Brentwood development is located some distance from the existing natural gas network;
 - (b) Investa has been in discussions with OEAM Ltd (**OEAM**), which manages and operates the natural gas networks owned by Envestra Ltd about laying an in-ground gas reticulation system at the Brentwood development. OEAM has advised Investa that, for the installation be economically justified, OEAM needs

to be satisfied that at least 90% of purchasers will acquire natural gas hot water heating services. If Investa cannot satisfy OEAM that there will be at least a 90% take-up, Investa will need to pay [REDACTED] in order for the reticulation system to be installed. Investa does not believe that it can commercially justify paying this amount;

- (c) OEAM has advised Investa that data from Energex (the Queensland Government owned gas supplier) indicates that, when given a choice of energy providers, approximately 50% to 80% of purchasers chose natural gas;
- (d) the requirement is limited to hot water heating. OEAM has informed Investa that, if all purchasers use natural gas for hot water heating, OEAM believes that the installation would be economically justified. Purchasers are free to use electricity for their other household energy requirements;
- (e) gas hot water heaters, both instantaneous and storage, are cheaper to buy and install than solar heaters with either electric or gas boost, and electric heat pumps;
- (f) for all new home plans approved from 1 March 2006, meaning this will apply to most if not all purchasers, the Queensland government requires the use of greenhouse efficient hot water systems – that is, gas, solar or electric heat pump. Under the new regulations, standard electric hot water systems will be banned; and
- (g) Investa believes that, by offering purchasers the ability to access natural gas for use in their dwellings it will improve the attractiveness and competitiveness of the Brentwood development.

Public benefits

7 Investa operates in highly competitive residential property markets. The Queensland residential property market is particularly competitive.

8 Investa anticipates the benefits likely to result from the sale of lots with the condition, when compared to a situation where no natural gas is offered within the Brentwood development, include:

- (a) improved choice of energy suppliers for purchasers. If there is no requirement to take up natural gas hot water heating, the Brentwood development will not have natural gas. Given that most, if not all dwellings, will need to comply with the

new Queensland government regulation banning the use of traditional electric hot water heaters, purchasers will be limited to electric heat pumps or electric boosted solar for water heating, while for cooking they will only be able to use electricity. By contrast, the proposed condition will see purchasers have a choice of either natural gas or gas boosted solar for water heating, and for cooking they will have the choice of natural gas in addition to electricity. While purchasers lose the option of an electric heat pump for water heating, they gain the option of natural gas for both water heating and cooking. Investa considers that most purchasers will prefer the ability to use natural gas for cooking. With or without the condition, purchasers will have the option of solar water heating, the only difference being whether the solar heater is gas or electric boosted;

- (b) the improved choice will come at no significant financial impact for purchasers. While purchasers will not be able to use solar electricity boosted water heaters, which are cheaper than natural gas heaters, purchasers will have options with similar installation and running costs to those of solar electricity boosted water heaters; and
- (c) greater safety for all residents and increased enjoyment of the development. Natural gas is safer than bottled gas, which poses a significantly higher safety risk due to the greater potential for gas leaks and explosions. Further, gas bottles detract from the aesthetic appeal of the development, particularly given Investa's desire to develop the Brentwood development in a way which is sympathetic to the natural assets of the site and will appeal to environmentally conscious purchasers. The use of bottled gas also necessitates large trucks coming on to the development every few months to replace the gas bottles. It is for these reasons that Investa, through another by-law, will prohibit the use of bottled gas on the development.

Public detriments

- 9 In the region in which the Brentwood development is located, there is considerable choice of residential developments for consumers. It is a highly competitive environment for developers, builders and energy providers. For these reasons, Investa considers there will be little or no material detrimental impact resulting from the proposed requirement.

Conclusion

- 10 Overall, Investa believes that the benefits to be achieved from a requirement of the kind contained in the condition far outweigh any conceivable detriment. The combination of greater choice, financial savings and the increased safety and enjoyment of the development achieved by requiring purchasers to use gas hot water heating will enhance the overall attractiveness and competitiveness of the Brentwood development.