



Deacons

22 September 2006

Notifications Officer
Australian Competition and Consumer Commission
Level 3
AAMI Building
500 Queen Street
Brisbane QLD 4000

Our Ref: PAR:2595877

Dear Sir/Madam

Devine Ltd - Exclusive Dealing Notification

Please find attached Exclusive Dealing Notification in Form G as follows:-

1. Devine Limited – Laminex Industries;
2. Devine Limited – Beaumont Tiles.

Both of the Notifications are related to Notification registered number 50191 lodged with your office on 15 September 2006. In the circumstances our cheque for \$200 is attached.

We advise that Mr Lou Atkin of the ACCC is dealing with the initial Notification lodged last Friday.

Yours faithfully



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Regulation 9**FORM G****COMMONWEALTH OF AUSTRALIA***Trade Practices Act 1974 - Sub-section 93(1)***EXCLUSIVE DEALING****NOTIFICATION**

To the Australian Competition & 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 engaged or proposes to engage.

1. (a) Name of person giving notice
Devine Limited ACN 010 769 365
- (b) Short description of business carried on by that person
Devine Limited operates the business of selling house and land packages to the public, and selling green acre land to the public to be built on by independent building companies.
- (c) Address in Australia for service of documents on that person
c/- Peter Rosengren
Partner
Deacons
Level 17
175 Eagle Street
Brisbane QLD 4000
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:
The supply of Laminex products to builders of residential homes in the Adelaide area.
- (b) Description of the conduct or proposed conduct
Devine is currently developing a concept named "Battle of the Builders" to be implemented throughout Australia on new house and land developments. The "Battle of the Builders" promotion is a concept devised by Devine under which builders are invited to "compete" at a particular development site to build houses for purchasers of the land in that development. Devine as the developer of the land has asked the builders

to contribute cash to the advertising of the estate. This Notification relates to the development "Lakeside" at Andrews Farm located in Adelaide.

As a component of the "Battle of the Builders", Devine Limited is seeking sponsorship from a number of major suppliers including Laminex to assist in the payment for the advertising campaign for the Lakeside project. The financial contribution by Laminex will result in participating builders receiving a discount on the amount which would otherwise be payable by the builders towards the advertising campaign, since part of the cost of the campaign will be borne by Laminex.

In return for the advertising contribution Laminex is being promised exclusive supplier status to all participating builders. In other words all participating builders must use Laminex in construction of houses at Lakeside.

A condition of exclusivity is that Laminex must offer to supply product at prices that are competitive with what participating builders might now be paying other suppliers. Further, non participating builders are entitled to build on the site and as they are not contributing to the advertising campaign and therefore don't get the benefits of it they are not bound to use Laminex as supplier.

The structure of the "Battle of the Builders" for the Lakeside development site will increase competition amongst builders at "Lakeside", as the concept requires the competing builders to strive for the custom of potential homeowners in the Lakeside development. The requirement that the builders use the products of the 4 only sponsoring suppliers will only apply to this development, not the broader Adelaide market, leaving the participating builders free to source products from other suppliers for projects outside the Lakeside development. There are many other suppliers that Builders will need to use to complete construction of a dwelling at Lakeside. Obviously participating builders are free to use whoever they like.

Trade Practices Act: Exclusive Dealing

Section 47(6) prohibits third line forcing which arises when a product or service is offered on the condition that the purchaser also acquires goods or services from a specified third person or class of third persons.

It is arguable that the proposed conduct of Devine Limited in requiring participating builders to purchase product from Laminex to receive the benefit of the advertising campaign may constitute exclusive dealing within the meaning of either section 47(6) or 47(7) of the Act and, accordingly, would be prohibited under section 47(1) of the Act.

Section 93 of the Act deals with the procedure by which corporations are entitled to obtain statutory protection in relation to exclusive dealing conduct which may otherwise contravene the prohibition in section 47.

In order for the immunity to be revoked, the Australian Competition and Consumer Commission (the **Commission**), must be satisfied the proposal will not in any way substantially lessen competition in the market that the likely benefit to the public will not outweigh the likely detriment to the public as specified in section 93(3A) of the Act.

Identification of the market

The market can be reasonably identified as the market for the supply of tiles and tiling products to builders of residential homes in the Adelaide area.

Public Benefits

(i) Consumers

The proposed conduct is likely to have the benefits listed below for end consumers:

- (A) Participating builders will have access to tiling products at a competitive price due to the agreement between Laminex and Devine Limited whereby Laminex is obliged to provide its products to the participating builders at a price that is comparable to the price which builders are currently paying for comparable products.. This will allow builders to offer favourable prices to the end consumer and establish a competitive advantage.
- (B) The proposed conduct is likely to foster business efficiency, and decrease construction time, by encouraging builders in the Lakeside development to use the same products. This will increase the economies of scale, since the participating builders will be assured to have access to the relevant products at the development site, and also because deliveries of larger quantities will decrease the need for multiple deliveries. The products will be of a consistent standard, giving the participating builders more time to focus on efficiency in building the houses in the Lakeside development.
- (C) The proposed conduct will allow participating builders to obtain a quality product at a competitive price, with increased economies of scale and reduced administrative constraints. This will ensure that end consumers are provided with quality homes of a consistent standard.

(ii) Suppliers

The proposed conduct will provide Laminex with greater certainty of supply and quantities of supply to participating builders, which may result in:

- (A) cost savings in the management of their business; and

(B) increased business efficiency.

(iii) Participating Builders

The proposed conduct will provide the participating builders with the benefit of having the cost of advertising their participation in the "Battle of the Builders" sponsored, which will cause the builders' costs to be reduced. This benefit can then be passed on to the end consumer.

The Participating Builders are AV Jennings, CIP Constructions, Devine Homes, Distinctive Homes, Homestead Homes, Ian Wood Homes and Nu Steel Homes

Public Detriment

(i) Consumers

The anti-competitive effect on the end consumer will be negligible, as the proposed arrangement will not prohibit consumers from comparing prices between the participating builders. This is because:

(A) participating builders who offer to build homes on the Lakeside development site, will not be exclusively tied to build on that site, and likewise there are a number of builders that are building on other development sites in the Adelaide area. Of the 4,750 homes built in Adelaide each year, the Lakeside development will represent only approximately 4% of the relevant market. This means that consumers will still be able to "shop around" easily, as consumers are not forced to buy land in the Lakeside development site; and

(B) a high level of competition between the participating builders will remain, as each will be vying for the custom of the purchasers of the land at the Lakeside development site. This will lead to added value to the public in a highly competitive market.

(ii) Suppliers

Other suppliers that supply substitutable products will have extended resources to service the greater Adelaide market. The anti-competitive effect on these suppliers will be insignificant given the size of the Lakeside development site in comparison to the size of the greater Adelaide market, and the growing construction industry both in Adelaide and Australia as a whole.

(iii) Participating builders

The proposed conduct may limit participating builders from selecting between tiling suppliers on the normal commercial

basis of product quality and price, and whether to purchase another product which is not a Laminex product. However, as noted above, Laminex will be obliged to provide the products at a price which is competitive with the price that the participating builders are currently sourcing comparable products.

Conclusion

To the extent that the proposed conduct contravenes section 47 of the Act, Devine Limited contends that it is entitled to statutory immunity provided by section 93 of the Act as there is no prospect of the proposal to substantially lessen competition in the market and the public benefits resulting from the proposed conduct outweighs any public detriments caused by the conduct.

3. (a) Class or classes of persons to which the conduct relates

Builders of homes in the Adelaide area, suppliers of building products in the Adelaide area, and purchasers of homes in the Adelaide area.

(b) Number of those persons -

(i) At present time

- 11 builders
- Laminex suppliers as indicated in attached list

(ii) Estimated within the next year – as above.

(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and address

Builders:

- Fairmont Homes Group Pty Ltd – 21-24 North Tce, Adelaide, 5000
- Sterling Homes – 110-114 Grange Rd, Allenby Gardens, 5009
- Weeks Peacock Homes – 712 – 714 South Rod, Glandore, 5037
- McCracken Homes – 113 Regency Rd, Croyden Park, 5008
- Rivergum Homes – 90 Henley Beach Rd, Mile End, 5031
- Homestead Homes Pty Ltd – 928 North East Rd, Modbury, 5092
- Distinctive Homes – 127 Marion Rd, Richmond, 5033
- Sarah Homes - 9 East Terrace, Mile End, 5031

- Marshall Thompson Homes – 2a Portrush Road, Payneham, 5070
- Oakford Homes – PO Box 219, Glenside 5065

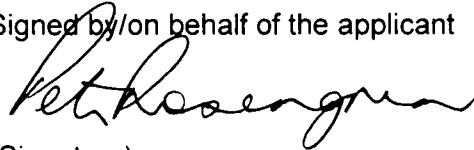
Laminex suppliers:

- As per attached list

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice

Dated *26 Sept* 2006

Signed by/on behalf of the applicant



(Signature)

PETER ANTONY ROSENGREN

(Full name)

Solitary - Leases 2ms

(Description)