



Australian
Competition &
Consumer
Commission

Our Ref: C2006/1795 & C2006/1831
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9 October 2006

Peter Rosengren
Partner
Deacons
Level 17,
175 Eagle Street
Brisbane QLD 4000

Dear Mr Rosengren

**Re: Exclusive dealing notifications N50191, N50193 and N50194 lodged by
Devine Limited**

I refer to the above third line forcing notifications lodged with the Australian Competition and Consumer Commission (ACCC) by Devine Limited (Devine) on 15 September 2006, 27 September 2006 and 29 September 2006 in relation to arrangements involving James Hardie, Beaumont Tiles and Laminex (**nominated suppliers**).

Based on the information you have provided, the ACCC understands the notified conduct to be as follows:

*Devine proposes to offer builders participating in the 'Battle of the Builders' competition at the Lakeside Development a discount/allowance/rebate or credit on advertising costs **on condition** that they acquire specified building products from nominated suppliers – James Hardie, Beaumont Tiles and Laminex.*

A condition of participation in the competition is that builders contribute towards advertising costs.

The Lakeside Development is at Andrews Farm located in Adelaide, South Australia.

Can you please confirm whether this description of the notified conduct is correct?

Request for further information

The statutory test for assessing third line forcing notifications, outlined in section 93(3A) of the *Trade Practices Act 1974* (the Act), provides that the ACCC will only revoke a notification if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.



To enable the ACCC to assess the notifications, and in particular identify the public benefits likely to result, your response to the following questions is requested:

‘Battle of the Builders’ Promotion

1. Please clarify how the ‘Battle of the Builders’ promotion will work?
2. When will the ‘Battle of the Builders’ promotion commence? And over what period is the ‘Battle of the Builders’ promotion being run?
3. Are there any restrictions imposed on a person (who wishes to purchase a block at the Lakeside Development) in respect of the builder they can select to build their house or the type of house they can build? If there are restrictions, what steps have been taken to inform the purchaser of those restrictions before they acquire land in the development?
4. How many building lots is the Lakeside Development? How many of these are part of the ‘Battle of the Builders’ promotion?
5. How will the ‘Battle of the Builders’ promotion be advertised? What is the approximate advertising budget for the promotion?

Builders

6. Is it common practice that builders are required to contribute to the costs of advertising new housing developments such as the Lakeside Development?
7. What proportion of the advertising costs are participating builders required to contribute for the Lakeside Development?
8. I understand that non-participating builders are able to build at the Lakeside Development. If this is correct are there any requirements or restrictions for non-participating builders?
9. What benefits or advantages do participating builders receive from the promotion that non-participating builders do not?
10. How were builders selected to participate in the ‘Battle of the Builders’ promotion? Is there capacity for additional builders to participate in the promotion?
11. The Form G contains two different lists of builders; one list at (iii) in the public benefits section and another list at 3(c). Can you please explain the difference between the two lists? Can you clarify which group of builders will be participating in the promotion?

Nominated Suppliers

12. How were the nominated suppliers selected to participate in the ‘Battle of Builders’ promotion? Is there capacity for additional nominated suppliers to participate in the promotion?
13. What proportion of the advertising costs are the nominated suppliers contributing towards the advertising costs for the Lakeside Development?

14. What are the current supply arrangements between each of the participating builders and the nominated suppliers? Does each of the participating builders currently obtain supply of the specified building products exclusively from James Hardie, Beaumont Tiles and Laminex?
15. Would builders who have an existing exclusive, or other, supply arrangement with another supplier (that is competitive with nominated suppliers) have to break their supply arrangement to participate in the promotion?

Public Benefits

16. How will participating builders and/or Devine ensure that the construction stages will be uniform across houses so that the claimed efficiency benefit will result?
17. How will the exclusive use of nominated products from James Hardie, Beaumont Tiles and Laminex by participating builders enable the builders to achieve economies of scale?
18. How will the notified conduct provide a benefit to consumers in terms of providing a quality house at a competitive price that is in addition to the benefits to consumers from a competitive market without the notified conduct?

I would appreciate a response to these questions by **close of business on 25 October 2006**.

This letter will be placed on the ACCC's public register. Subject to a request to exclude all or some responses, the ACCC would expect to place your response on its Public Register. Guidelines in relation to requests to exclude confidential information from the Public Register are attached.

If you wish to discuss any aspect of this matter please contact Kelvin Binning on (02) 6243 1351.

Yours sincerely



Scott Gregson
General Manager
Adjudication Branch