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MARKETING

13<sup>th</sup> Feb 2006.

Mr Scott Gregson  
General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
470 Northbourne Ave  
DICKSON ACT 2602

*5. Pages*

*Previously Faxed* ~~ⓧ~~

By Facsimile: (02) 6243 1199

Dear Sir

**EXCLUSIVE DEALING NOTIFICATION N31496  
JAMES HARDIE AUSTRALIA PTY LTD (JAMES HARDIE)**

We refer to your letter of 16 January 2006 seeking comments from Bunnings Group Limited (**Bunnings**) in relation to Australian Competition and Consumer Commission (**ACCC**) review of the notification lodged by James Hardie on 23 December 2005 (**Notification**).

**Background**

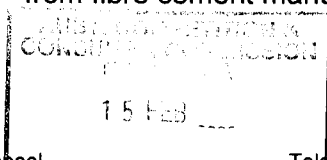
Bunnings is a leading retailer of home and garden improvement products and building materials in Australia. We operate a chain of warehouse superstores and traditional stores in Australia and New Zealand, catering predominately for do-it-yourself customers, as well as builders and contractors.

Bunnings sells a wide range of fibre cement products that are manufactured and supplied by James Hardie. While James Hardie is the largest supplier of fibre cement products to Bunnings, Bunnings also sells fibre cement products manufactured and supplied by CSR Limited (**CSR**) and the Buckeridge Group of Companies (**BGC**).

**Distribution Policy**

The distribution policy proposed by James Hardie in the Notification (**Distribution Policy**) comprises 2 elements:

1. a restraint on the ability of distributors to on-sell James Hardie products (other than Artista Columns and Accessories) to:
  - (a) fibre cement manufacturers;
  - (b) distributors owned by, or franchisees of fibre cement manufacturers; and
  - (c) distributors who have an exclusive arrangement to acquire fibre cement products from fibre cement manufacturers that compete with James Hardie; and



2. those of its distributors seeking to purchase the "new technologically differentiated products" (as described in the Notification) agree:
  - (a) to acquire 100% of their fibre cement products from James Hardie; and
  - (b) not to on-sell James Hardie new technology differentiated products to other distributors.

### **Restrictions on resale**

While Bunnings will attempt to comply with the components of the Distribution Policy that impose restrictions on resale in relation to large trade sales where the purchaser is known to Bunnings to be associated with a James Hardie competitor, it is not practical for Bunnings to enforce the policy throughout its store network, particularly in relation to smaller trade and retail sales.

When Bunnings sells a product to a customer, it does not enquire whether the customer is an end use customer or whether the customer is purchasing the product for the purpose of re-supply or re-sale. In many cases, particularly for small trade and retail sales, Bunnings does not even enquire who the customer is.

Large retailers, such as Bunnings, service a variety of customers through a significant store or branch network. Restrictions on the type of customer a retailer can or cannot sell to are not capable of being implemented at a practical level. It would require Bunnings to check the name, associations and intention of every customer through a Bunnings register or trade sale. Given the millions of customers through Bunnings store each year, the cost of this exercise alone would be prohibitive.

### **Requirement to acquire 100% of cement fibre products from James Hardie**

Bunnings objects to the requirement in the Distribution Policy to acquire 100% of fibre cement products from James Hardie if specified "new technologically different products" from James Hardie are stocked.

Bunnings currently purchases cement fibre products and some of the products defined as "new technologically differentiated products" from James Hardie, and on-sells those products to its customers. Bunnings also purchases cement fibre products from CSR and BGC.

Accordingly, the requirement in the Distribution Policy to acquire 100% of cement fibre products from James Hardie, if accepted by Bunnings, would require Bunnings to cease stocking the cement fibre products of CSR and BGC, and prevent Bunnings from stocking the cement fibre products of any other supplier in the future.

Bunnings is not prepared to agree to this restriction, as:

1. it will impact on the choice of cement fibre products that are currently available to Bunnings customers, with some customers specifically requesting products from CSR or BGC; and
2. it may potentially insulate the James Hardie cement fibre products from price competition.

## **Request for submissions**

The ACCC has indicated that submissions should address a number of specific issues.

- 1. How many different manufacturers of fibre cement products operate in Australia? What are their relative positions?**

Bunnings is aware of the following manufacturers of fibre cement products operating within Australia, and, subject to the comments below, understand that their relative position in the market is:

1. James Hardie;
2. CSR; and
3. BGC.

Bunnings participates as a retailer of fibre cement products and its views are based on that sector. It is unable to comment on the overall market position of the manufacturers including their total sales (eg direct to major builders and construction companies as well as to retailers).

- 2. What substitute products are available for fibre cement products?**

Bunnings agrees with the comments in Part 1 of Attachment B of the Notification. However, with any alternative product, there are different characteristics that will be relevant to differing degrees, such as the durability, finish, ability to shape etc. Accordingly, few of the alternate products specified are direct substitutes.

- 3. What substitute products are available for James Hardie's new technologically differentiated products?**

Bunnings agrees with the comments in Part 2 of Attachment B of the Notification. However, with any alternative product, there are different characteristics that will be relevant to differing degrees, such as the durability, finish, ability to shape etc. Accordingly, few of the alternate products specified are direct substitutes.

- 4. Do customers generally purchase fibre cement products within their local geographic area or is it economically viable to purchase fibre cement products from a distributor in a different city or different State?**

Most Bunnings customers would generally purchase fibre cement products within their local geographic area, largely due to the customers being retail and small to medium trade, meaning that convenience and the cost of transport are both factors. However, Bunning's view is that the market for the manufacturing and distribution of fibre cement products is a national market.

- 5. What is the level of fibre cement imports, if any, and to what extent do they compete with products manufactured domestically?**

Bunnings is not aware of large scale imports of fibre cement products into Australia, although Bunnings is aware of some isolated instances of wholesalers importing a few "core product" lines.

6. **Are distributors of fibre cement products generally owned or otherwise aligned with manufacturers?**

Bunnings distributes fibre cement products for each of James Hardie, CSR and BGC, and is not owned by, or otherwise aligned with any of these companies, except through its supply agreements. Bunnings is unable to comment on other distributors.

7. **What proportion of distributors stock products from a number of manufacturers? What proportion of distributors stock James Hardie products and more specifically, James Hardie's new technologically differentiated products?**

As indicated above, Bunnings stocks products from James Hardie, CSR and BGC, including James Hardie's new technologically differentiated products. Bunnings is unable to comment on other distributors.

8. **Who are the largest distributors of fibre cement products and where are they located? Do the largest distributors stock products from a number of manufacturers? Do the largest distributors stock James Hardie products? Do the largest distributors stock James Hardie's new technologically differentiated products?**

Bunnings considers that it is a large distributor of fibre cement products. As indicated above, Bunnings stocks products from James Hardie, CSR and BGC, including James Hardie's new technologically differentiated products. Bunnings is unable to comment on other distributors.

9. **To what extent do distributors on-sell fibre cement products? Do any of the largest distributors engage in on-selling?**

As indicated above, Bunnings does not generally enquire whether its customers intend to on-sell products. However, while a large portion of Bunnings business is retail, and therefore expected to be to end users, Bunnings is aware of instances in which product purchased from Bunnings is on-sold.

Bunnings is unable to comment on other distributors.

10. **To what extent do distributors seek to carry the full range of fibre cement products? Are there advantages in stocking a full range?**

Bunnings is aware of anecdotal evidence that customers who require a number of products are more likely to visit outlets that stock an extensive range of products. In many cases the "one-stop" shop is more convenient and attractive from a customer perspective. Accordingly, retailers generally seek to stock a full range of products to ensure that they are able to service the customer's needs.

There are obvious exceptions to the general rule. For example, specialist outlets tend to focus on a particular product category, and stock the full range within that category.

There are also potential benefits to the distributor in terms of volume discounts and stock servicing through stocking the full range (provided that competition is maintained amongst suppliers to drive these benefits).

11. **Do distributors generally establish a full range of fibre cement products by acquiring stock from a single manufacturer or from a number of manufacturers?**

As indicated above, James Hardie is the largest supplier of fibre cement products to Bunnings, and supplies a full range of James Hardie products. However, Bunnings also sells fibre cement products manufactured and supplied by CSR and BGC. Bunnings is unable to comment on other distributors.

Bunnings is not aware of any public benefit that would flow from the restrictions that James Hardie is seeking to impose on its distributors through the Distribution Policy. Bunnings suggests that the ACCC should view sceptically any claims that benefits, such as increased innovation in fibre cement products and increased competition, will, in effect, be achieved only if James Hardie is free to require distributors to acquire only James Hardie products.

As indicated above, at a practical level Bunnings is unable to fully comply with the restriction on resale, and Bunnings will not agree to the requirement to source 100% of fibre cement products from James Hardie.

We would be pleased to provide further information to the ACCC if required. I can be contacted on 08 9365 1501.

Yours faithfully



Dominic Antennuci  
Company Secretary/Compliance Manager