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The General Manager
Adjudications Branch
Australian Competition and Consumer Commission
PO Box 199
Dickson ACT 2602

Dear Sir

Exclusive Dealing notification N31496 lodged by James Hardie Australia Pty Limited ("Application")

I refer to your letter to Mr Pearse dated 16 January. Boral Australian Gypsum Limited (**Boral**) is a wholly owned company within the Boral group and its activities include the manufacture and sale of plasterboard and other plaster based products, as well as the purchase and resale of fibre cement products and other wall and ceiling lining products.

In response to your specific questions:

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

A. There are 3 Australian manufacturers of fibre cement products and our understanding of market positions based on anecdotal evidence is that James Hardie (**JH**) has around 65% -70% share of the fibre cement market followed by CSR and then BGC in terms of relative share.

We note that the Application provides no empirical evidence on market position and shares and suggest that further enquiry is needed in this regard.

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

A. Fibre cement products are used in a number of building applications, internal and external. In our view their use tends to be driven by its specific physical properties and characteristics, such as resistance to damage by water/insects and impact. In a number of applications, fibre cement has a leading position with alternates and substitute products less accepted by customers.

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

A: The JH Application outlines substitution options for its new technology differentiated products but we note that the market definitions and list of substitutes provided tend to be quite broad in so far as they do not reflect the specific applications in which the fibre cement products are used. Further, the basis on which the application is made is that the new technology differentiated products are differentiated products and are therefore distinguishable from other products and less substitutable. The Application does not provide empirical evidence about the relative position of substitutes and we suggest further enquiry is needed in this regard.

4. *Q: 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?*

A. Boral is a large distributor and we have the capability to (and do) purchase fibre cement products from suppliers both in the same and different State, as the relevant Boral operation. Our experience is that smaller distributors and trade customers typically purchase from sources in their local geographic area.

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

A. Boral's understanding is that about 1% of fibre cement products sold in Australia are products which are imported by companies that do not also manufacture in Australia.

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

A: Boral's perception is that most fibre cement products purchased in Australia by trade and other end users are sold through distributors that are not owned by fibre cement product manufacturers. In respect to alignment, Boral currently has a strong supply relationship with JH and minor relationships with the other manufacturers. We cannot speak for other customers/distributors.

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

A. Boral is a large purchaser of fibre cement products and although we purchase from more than one manufacturer, the majority is sourced from JH. Boral cannot speak for others and cannot assist on the second question.

8. *Q: Who are the largest distributors of fibre cement products and where are they located? Do the largest distributors stock James Hardie's products? Do the*

largest distributors stock James Hardie's new technologically differentiated products?

A: As far as Boral is aware, large distributors include hardware chains such as Bunnings, John Danks, Mitre 10 and others, as well as specialty distributors such as operated by Boral (through its 48 company owned interior linings stores in Australia), CSR and others. Boral cannot assist on the second and third questions.

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

A. Whilst Boral re-sells the majority of its fibre cement products through its own stores, we also on-sell a substantial proportion to independent resellers. Boral cannot assist in relation to the selling channels used by other distributors.

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

A: Boral tends not to physically stock a complete range of fibre cement products at any one time but having access to the full range is important for us as it allows us to meet customer requirements as they may change from time to time. We would be disadvantaged if we did not have the same access we currently enjoy.

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

A: Boral has a main supplier, JH, and currently purchases smaller amounts from at least one other supplier. We cannot speak for others.

Other considerations

- JH submits that the proposed policy does not have the purpose, effect or likely effect of substantially lessening competition. Boral says that it is possible that the proposed policy, in particular paragraph b), may result in a substantial lessening of competition in view of JH's market position, subject to clarification of the matter raised in our answers to your questions 2 and 3 above.
- If applied to Boral, a possible effect of the proposed policy in sub b(i) could be to require it to discontinue its current purchase of fibre cement from other suppliers and source exclusively from JH.
- Further, the second limb of the proposed policy in sub (ii) imposes an onerous obligation on the distributor in limiting the customers to whom the new technologically differentiated products can be sold; especially where a substantial amount of fibre cement products sales is to on-sellers, as is the case with Boral. Further if this policy were to apply it would impact the way that Boral currently and has historically serviced its customers and would potentially be detrimental to our business.

- Boral's view of the alternative public benefit grounds proposed by JH is that in most instances the prime driver for continued investment in research and development tends to be the creation of new margin which the differentiated product itself brings. Hence it is questionable whether JH actually would forego this margin solely because it did not have the contractual protection it now seeks.

Yours faithfully



Murray Floyd
Corporate Lawyer