



Australian
Competition &
Consumer
Commission

Our Ref: C2006/190
Contact Officer: Sharon Clancy
Contact Phone: (02) 6243 1217

Faxed 20/2/06
SC

PO Box 1199
Dickson ACT 2602
470 Northbourne Ave
Dickson ACT 2602
ph (02) 6243 1111
fax (02) 6243 1199
www.accc.gov.au

20 February 2006

Mr Anthony Calvi
Group General Counsel & Group Company Secretary
MAB Corporation Pty Ltd
Level 1, 54 St Kilda Road
St Kilda VIC 3182

By facsimile: (03) 8530 2200

Dear Mr Calvi

Third line forcing notification No. N92351 lodged by Nolan Properties Investments Pty Ltd

I refer to the above third line forcing notification lodged with the Australian Competition and Consumer Commission (the ACCC) on 27 January 2006 and to my letter to you of 31 January 2006 in which I advised that on the basis of the information that you had provided, the ACCC does not intend that further action be taken in relation to the notification at this stage.

In the notification, you described the conduct as follows:

Nolan Properties Investments Pty Ltd (Nolan) proposes to:

- 1) sell or offer for sale subdivided retail properties in the Nolan Tower of the NewQuay precinct at Melbourne Docklands (the Retail Properties) to purchasers on condition that purchasers:
 - i) comply with various covenants and other obligations relating to the terms on which purchasers lease or operate the Retail Properties;
 - ii) acquire the property management services of PMS (a company within the MAB Group) in accordance with a Property Management Agreement for a term of 7 years with a further 3 year option (the Property Management Agreement); and
 - iii) agree that they will novate the Property Management Agreement to any subsequent purchaser for the unexpired term of that agreement (if any), if they sell the property.

Nolan proposes to refuse to sell or offer for sale Retail Properties if purchasers do not comply with the above conditions.



As you would be aware, businesses may obtain immunity from legal action under the Trade Practices Act for third line forcing conduct by lodging an exclusive dealing notification. Third line forcing involves the supply of goods or services on condition that the purchaser acquire goods or services from a third party.

On reviewing the notification lodged by Nolan, it appears that aspects of the conduct described in the notification may not constitute third line forcing conduct. While on the basis of the information provided to the ACCC it is clear that condition (ii) may involve third line forcing, it is less clear that conditions (i) and (iii) may involve third line forcing.

It is important to note that the protection afforded by the notification only extends to conduct that would or might constitute third line forcing as described in the notification.

I seek your response advising whether you consider the conduct described in conditions (i) or (iii) may constitute third line forcing and if so, please provide details of the potential third line forcing conduct.

If conditions (i) and (iii) do not involve third line forcing conduct, it would appear that the immunity provided by the notification lodged by Nolan does not extend to conditions (i) and (iii).

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Sharon Clancy on (02) 6243 1217.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', with a large, sweeping flourish extending to the right.

Scott Gregson
General Manager
Adjudication Branch