

Our reference
WAK/OFFICE-CT02

Woodside Plaza
240 St George's Terrace Perth WA 6000
GPO BOX 9925 WA 6001
Tel (08) 9460 1666
Fax (08) 9460 1667
www.corrs.com.au

**CORRS
CHAMBERS
WESTGARTH**
lawyers

Sydney
Melbourne
Brisbane
Perth
Canberra
Gold Coast

15 February 2006

By email: adjudication@accg.gov.au

The General Manager
Adjudication Branch
Australian Competition and Consumer
Commission
PO Box 1199
DICKSON ACT 2602

Contact
William Keane (08) 9460 1600
Email: william.keane@corrs.com.au

Partner
Nicholas Ellery (08) 9460 1615

Dear Mr Gregson

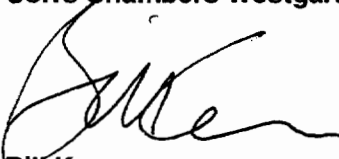
Exclusive Dealing Notification N31493 lodged by James Hardie Australia Pty Ltd

We refer to your letter dated 16 January 2006 and Bill Keane's conversation with Kelvin Binning on 31 January 2006.

As discussed, we act for Buckeridge Group of Companies and its fibre cement division BGC Fibre Cement. We are instructed to respond to your letter dated 16 January 2006 with the **enclosed** Submission. Confidential portions of the Submission have been marked accordingly.

Please contact Bill Keane if you have any questions or require further information in relation to the matter. BGC Fibre Cement would be happy to provide further information in addition to the enclosed at the Commission's request.

Yours faithfully
Corrs Chambers Westgarth



Bill Keane
Senior Associate



CORRS
CHAMBERS
WESTGARTH
lawyers

SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Lodged on behalf of BGC Fibre Cement

in relation to

Exclusive Dealing Notification N31493 (James Hardie Australia Pty Ltd)

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1 Executive Summary

The proposed exclusive dealing conduct of James Hardie as outlined in its notification form G and supporting submission would have a direct and detrimental impact upon competition in the wholesale market in Australia for the supply of fibre cement products. It would also be likely to substantially lessen competition among distributors/retailers in metropolitan and regional areas in which, as a result of the conduct, only James Hardie's fibre cement products would be available.

James Hardie is, and has always been the dominant player in the manufacture and wholesale supply of fibre cement products, with over 60% share of a market in which new entrants and small competitors face significant barriers to entry and expansion.

James Hardie's proposed exclusive dealing conduct is likely to further raise these barriers by increasing James Hardie's stranglehold upon key distribution channels. The effects on competition include:

- (a) foreclosure of substantial proportion of the distribution channels as distributors become exclusively James Hardie dealers;
- (b) higher barriers to entry, as new entrants are effectively excluded unless they can either:
 - (i) create their own distribution structure from scratch; or
 - (ii) manufacture a full range of products in competition to James Hardie at competitive prices and carry losses until efficient scale and workable brand equity is achieved;
- (c) higher barriers to expansion, as full-range production becomes a commercial necessity for James Hardie's competitors, none of whom have the scale or brand equity to profitably do so;
- (d) reduction of inter-brand competition, both nationally and in those regional areas where distributors cease to carry non-James Hardie products; and
- (e) limitation on the freedom of distributors and consumers.

[Confidential paragraph deleted]

These effects are not outweighed by the public benefits claimed in the submission, most of which could be achieved in a competitive market in the absence of restraints that are directly aimed at insulating James Hardie from competition.

In seeking immunity for its conduct, James Hardie presents broad unsubstantiated claims for public benefits, with little evidence in support. The central arguments in relation to innovation contain significant logical flaws. James Hardie suggests that, without its proposed exclusive dealing policy in Australia, it may cease much of its R&D activity but neglects to mention that 80% of its sales are made outside Australia or that product development is substantially driven by these sales. James Hardie suggests that it needs its new policy to be innovative, without recognising that it has already sunk costs into its "new technology differentiated products" and that it did so without engaging in the conduct described in the notification.

In conclusion, the ACCC should conclude that James Hardie has failed to demonstrate that the claimed public benefits outweigh the likely lessening of competition that will result from the conduct in the form of higher barriers to entry.

2 Industry Summary

2.1 Overview

Fibre cement is a material made of cement, ground sand, cellulose paper and water. Because of its versatile and water resistant properties, fibre cement products are used in a wide range of building applications, including residential, commercial, industrial and institutional construction projects.

Fibre cement products are used extensively in renovations, commercial buildings and in the construction of new homes for the purposes of external cladding, internal lining, floor underlays and walls, wet area lining (bathrooms), eaves, fire and acoustic walls, bracing, fencing and decorative elements.

One of the features of fibre cement is that, by varying the raw materials mix, the resultant finished products possess characteristic differences that make them suitable for a wide range of uses and applications. Fibre cement products requires less energy in assembly and construction than many other wall materials. Energy consumption in transportation and installation is also low.

2.2 Manufacturing process

The raw materials comprising sand, cement, cellulose paper, additives and water are mixed together in a batch process to create a slurry. This is then filtered and fed into a Hatschek machine where it produces a layer of fibre cement ranging from 4mm to 15mm in thickness. The cement-based product requires 24 hours to sit. It then enters an industrial-size pressure cooker known as an autoclave and steam is added to the autoclave until it reaches 180 degrees Celsius. At the end of the "cooking" process, steam is either transferred into another autoclave to release the pressure, or transferred to two tanks, where it is released through water. The remainder of the steam is blown out of the top of the tanks.

The fibre cement sheets are then graded for quality, finished and packed for distribution. The purpose for which the fibre cement sheets will be used depends on their thickness¹ and the subsequent finishing techniques that may be applied to the sheets..

2.3 Manufacturers

There are currently three fibre cement manufacturers in Australia. They are:

- James Hardie;
- CSR; and
- BGC.

Appendix A summarises and compares the product ranges of these competitors.

James Hardie²

James Hardie is a leading international building materials company that produces a wide range of fibre cement building products.

The company was restructured in 2001 to establish a new parent company incorporated in the Netherlands known as James Hardie Industries NV (JHINV). JHINV heads the James Hardie group of companies around the world.

¹ Source: http://www.bgc.com.au/fibreceement/pdfs/production_process.pdf

² Source: James Hardie annual report 2004/2005, James Hardie website

James Hardie is purely a fibre-cement business. It operates in markets around the world, with manufacturing operations in the United States, Australia, New Zealand, the Philippines and Chile. James Hardie is also establishing a presence in Europe. It employs over 3,000 worldwide and generates revenue of more than US\$1.2 billion a year.

In the mid 1980s, James Hardie pioneered the development of fibre cement technology in Australia, and began designing and manufacturing a wide range of fibre cement building products. Prior to 1994, James Hardie was the sole producer of fibre cement products in Australia.

The fibre cement products manufactured in Australia, New Zealand and the Philippines are sold throughout the Asia-Pacific region. In Australia, James Hardie also manufactures fibre reinforced concrete pipes for civil and commercial use, and fibre cement columns for decorative use.

James Hardie's range of fibre cement planks, pipes, columns and building boards (otherwise known as sheets) are used extensively in renovations, commercial buildings and in the construction of new homes for:

- External Cladding
- Internal Lining, floors and walls
- Wet area lining - bathroom
- Eaves, verandahs & carports
- Fire and acoustic walls
- Bracing
- Fencing
- Decorative elements

James Hardie has 10 manufacturing plants in the United States, 1 in Chile, 2 in Australia (Brisbane and Sydney), 1 in New Zealand and 1 in the Philippines.

Sales of fibre cement across the United States, the Asia Pacific region and South America can be broken down as follows:

- | | |
|--|-----|
| • United States | 78% |
| • Australia, New Zealand and Philippines | 19% |
| • South America | 3% |

Production capacity in Australia is 34M m² per year based on a 24 hour day.

James Hardie relies on its differentiated products to distinguish it from its competitors and has research and development centres in Australia and the United States. It also aims to provide fibre cement products that customers would prefer over alternatives such as masonry, concrete, wood, wood composites and vinyl.

Products are sold directly to end users and through retailers and distributors.

CSR³

CSR Limited (CSR) is one of Australia's leading manufacturing companies with operations throughout Australia as well as in Asia and New Zealand. Its three principal businesses are in building products, sugar and aluminium production and comprise:

- Bradford Insulation
- CSR Fibre Cement
- Gyprock plasterboard
- Hebel lightweight concrete products
- Monier and Wunderlich roof tiles
- PGH bricks and pavers
- CSR panel systems
- CSR sugar
- Aluminium

In 2004, the building products division comprised 39.6% of CSR's group revenue.

CSR entered the fibre cement market with the construction of a factory in Wetherill Park, Sydney, which began production in 1995.

CSR Building Products manufactures and markets a range of planks, wallboard, cladding, and compressed sheeting under the Cemintel Fibre Cement® brand. The Cemintel brand was launched in September 2005. These products are used for:

- Internal wall linings
- External linings
- Flooring including underlay and wet areas
- Decorative purposes such as lattice work

The fibre cement products are supplied Australia-wide.

CSR offers its fibre cement customers shared delivery with Gyprock® plasterboard from adjoining factories. CSR saves costs by running both operations together, sharing management, marketing and distribution channels. The manufacture of gypsum-based plasterboard products has been a basic business for CSR since it introduced the product in Australia in the 1940s.

During 2004-05 CSR invested \$4 million on process enhancements at the Wetherill Park, Sydney, fibre cement plant. The plant's production capacity is 10 million m² per year.

BGC

BGC (Australia) Pty Ltd is a Western Australian based group of companies with interests in:

- residential and commercial building
- building and construction products manufacture
- contract mining

³ Source: <http://www.csr.com.au>

- civil engineering construction and maintenance
- quarrying
- road transport
- property ownership and management
- insurance

It has operations in each of Australia's mainland states and has a distribution network in East Asia and New Zealand.

BGC's main manufacturing base is located in Canningvale, 22km south of Perth. This is also the headquarters for BGC's building supplies, cement, concrete, fibre cement, insulation, plumbing, roofing, steel and window companies. The Canningvale fibre cement plant was established in 1994 and employs more than 130 people in production, engineering and support services. BGC commenced supplying fibre cement in the Eastern States of Australia in 1996.

BGC fibre cement products are manufactured for internal and external applications, wet area situations, acoustic, fire rated, structural and decorative purposes as well as flooring requirements.

Over its first decade of operation, BGC fibre cement has established sales and warehouse facilities in all mainland states of Australia and in New Zealand, and is currently exporting to Singapore, Korea and the South Pacific.

It supplies 13 per cent of the construction industry's needs Australia-wide. BGC's production capacity is 12 million m² per year.

2.4 Distributors

There are five main distribution segments or channels:

- Internal lining suppliers such as Boral, LaFarge, CSR and BGC, which supply internal lining products to builders. Typically, these suppliers sell both plasterboard and fibre cement products.
- Fibre cement specialist suppliers such as **[Confidential passage deleted]**. These suppliers tend to specialise in a specific building requirement such as flooring or cladding.
- Hardware suppliers such as Bunnings, Mitre 10, John Danks, National Builders Supply Group, HBT. These are traditional retailers or buying groups that acquire a broad range of products to supply to tradespeople, builders and the general public.
- Timber yards and other small independent businesses that supply fencing, external cladding and other general application building products.
- Frame and truss/Kit home suppliers.

BGC estimates that the internal lining segment accounts for approximately 32% of the total market. The largest part of this segment is supplied by plasterboard manufacturers (Boral and LaFarge) where they, or their distributors will only acquire fibre cement products from James Hardie. Most of the volume in this segment is made up of plasterboard sales (used for general wall lining), with a smaller proportion of sales being made in the more expensive fibre cement linings (used in wet areas). Because each of Boral and LaFarge supply plasterboard in competition with CSR and BGC, neither they,

nor their outlets acquire fibre cement products from CSR or BGC. This provides James Hardie with a high-volume exclusive channel in this segment.

James Hardie's submission suggests that BGC and CSR derive a competitive advantage from exclusive arrangements in the relevant markets. The Commission should note that it is only in the internal lining segment that any such arrangements exist and that these are a direct response to James Hardie's arrangements with Boral and LaFarge. BGC's supplies only 6% of this segment and its exclusive arrangements account for less than 2% of the fibre cement market in Australia.

The hardware segment is also very strong for James Hardie, because of James Hardie's brand leader position. In the context of modern "big-box" hardware strategy, incumbent brand leaders are at a distinct advantage because retailers such as Bunnings place a priority on acquiring and stocking the leading brand. The scale at which these retailers acquire means that the incumbent brand leader occupies an entrenched position in the market by virtue of its partnership with the leading retailer. This adds to the barriers to entry and expansion faced by competitors like BGC. To BGC's knowledge, James Hardie supplies 100% of the requirements of Bunnings and a significant share of Mitre 10, the two largest hardware retailers. **[Confidential passage deleted]**

The following diagram describes the distribution channels.

2.5 [Confidential] Figure – Distribution channel structure⁴ deleted

2.6 End-users

The end-users of fibre cement products are mainly builders, trade contractors, owner builders, plasterers and DIY users.

3 The relevant markets

3.1 Approach to market definition

An appropriate approach to market definition in relation to proposed exclusive dealing begins with a consideration of the products that are subject to the relevant restraints.

The restraints that are the subject of the notification apply to fibre cement products and make no reference to the acquisition of the other materials described in James Hardie's submissions as substitutes.

BGC has reviewed the sources of close competition for these products by considering the smallest area over which a hypothetical profit maximising monopolist could exercise market power, most commonly by imposing a small but significant non-transitory increase in price (SSNIP⁵). BGC submits that market definition should be approached purposively and with a focus upon the response of suppliers and consumers of a product to price changes in purportedly substitutable products. The fact that products perform similar functions may have some connection with such an analysis but it should not determine the assessment in itself.

⁴ Figures are BGC estimates

⁵ For an acquisition market, the relevant inquiry focuses upon a decrease in price rather than an increase.

3.2 Product market

The James Hardie submission adopts an approach to substitution possibilities that overstates the relevance of materials being used to perform the same functional role in the construction of buildings. A thorough and disciplined consideration of substitution possibilities does not simply ask whether two products may perform the same basic function.

James Hardie's approach to substitution possibilities is reminiscent of the approach that was specifically considered by the full Federal Court and the High Court in the Boral Besser Masonry case⁶. In Boral, the High Court pointed to the often quoted reasons of the Trade Practices Tribunal in re QCMA⁷ which stated:

"We take the concept of a market to be basically a very simple idea. A market is the area of close competition between firms or, putting it a little differently, the field of rivalry between them. (If there is no close competition there is of course a monopolistic market.) Within the bounds of the market there is substitution – substitution between one product and another, and between one source of supply and another, in response to changing prices. So a market is the field of actual and potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given a sufficient price incentive. Let us suppose that the price of one supplier goes up. Then on the demand side buyers may switch their patronage from this firm's product to another, or from this geographic source of supply to another. As well, on the supply side, sellers can adjust their production plans substituting one product for another in their output mix or substituting one geographic source of supply for another. Whether substitution is feasible or likely depends ultimately on customer attitudes, technology, distance and cost and price incentives."

Boral argued for a broad walling product market rather than the concrete masonry product market defined by the ACCC. Boral drew attention to the fact that a number of other building products (including tilt up panels) could be used to perform that same function as concrete masonry products. In this respect, the trial Judge observed that concrete blocks, bricks and pavers "were not distinct products generating distinct demands" and also said:

"A wall is a wall, whether it is made of concrete blocks or tilt up or concrete bricks or clay bricks. The only need of the builder is to have a wall which will perform as a wall and for the lowest possible cost. There is no suggestion in the evidence of any builders who had a particular attachment to or need for concrete blocks or bricks so as to generate the kind of product loyalty considered in Arnotts and United Brands."

The ACCC successfully argued that the Judge did not give sufficient weight to the evidence:

- of Boral's own views of an understanding of a market for the supply for concrete masonry products in Melbourne;
- of close supply-side substitutability of concrete masonry products; and
- that products other than concrete masonry products were not, either functionally or otherwise, close substitutes of CMP.

⁶ Boral Masonry Limited v ACCC [2003] 8 FCA 5

⁷ re Queensland Cooperative Milling Association Limited (1976) 2 5FLR169 at 190

The crucial issue was the closeness of substitutability between concrete masonry products and other products that could perform essentially the same function. When the evidence was re-examined by the full Federal Court and the High Court, it was apparent that, while material such as concrete masonry products and tilt-up could be regarded, in the broader sense, as substitutes for CMP, they could not be regarded as close substitutes because the evidence did not establish a sufficient link between demand for these functionally similar products and price changes in CMP.

BGC submits that James Hardie's approach to product market definition is similar to the approach taken by the trial Judge in the Boral case and rejected by the full Federal Court and High Court.

James Hardie has identified a range of products that may be regarded as substitutes from a functional perspective in that they perform similar roles to fibre cement products. James Hardie has then included all of those products within its definition of the relevant markets without presenting any evidence to support its assumption that these products are close substitutes. There is no evidence presented in the James Hardie submission pointing to the effect upon demand for one of these substitutes in response to a price change in fibre cement products. Similarly, there is no material presented in James Hardie's submission to address supply side substitutability between fibre cement products and the other substitutes said to form part of the same product market.

From the supply side, it is apparent from the description of the manufacturing process of fibre cement products that there is a significant degree of supply side substitutability within the category of fibre cement products. The manufacturing plant used to produce most categories of fibre cement products is common, with the main differences being in the additional valuation processes such as cutting, grinding and painting that may be applied to produce some specific categories of products. BGC estimates that about 70% of manufacturing costs are incurred at the "wet" stage of manufacturing, before fibre cement board is cut and finished. Clearly, a plant used to manufacture fibre cement products can not be re-tooled or configured to produce plasterboard, wooden cladding or many of the purported substitutes put forward by James Hardie's submission as forming part of the relevant product markets.

From the demand side, BGC submits that, while there is some theoretical connection between prices for fibre cement cladding, for example, and functionally substitutable products such as timber cladding, products not made from fibre cement cannot be regarded as sufficiently close substitutes to form part of the same product market. BGC encourages the ACCC to require James Hardie to produce evidence of substitution and causal price change relationships between the products asserted to be substitutes for fibre cement products.

Fibre cement products are significantly more expensive than many of the alternative materials that might be used to perform the same function (eg, plasterboard, timber). This is due to the unique properties of fibre cement (durable, water, termite and fire resistant). These properties mean that in many applications, fibre cement is the only material that is seriously considered for use by a builder. BGC encourages the ACCC to seek the views of builders on this issue, in order to address the issue of substitution from the perspective of commercial reality.

BGC submits that in a large number of applications, fibre cement products are specified without particular regard to the price at which functionally substitutes are available, due to the unique properties of fibre cement. While fibre cement and plasterboard may each be used for internal walls, BGC submits that there is no relationship between price and demand between the two products. In any event, fibre cement is generally only used for

internal walls in wet areas where its unique properties justify the significant price premium for fibre cement over plasterboard. BGC suggests that ACCC gather historical data from James Hardie concerning relative price movements between fibre cement and other functional substitutes over time. BGC is confident that the Commission will not observe any correlation between price movements of one product and price movements of another that would support a hypothesis that an increase in the price of the fibre cement product causes an increase in the demand for the functional substitute and visa versa.

BGC, when assessing the sources of competition for its own products focuses almost exclusively upon the other manufacturers of fibre cement products, CSR and James Hardie. None of BGC's marketing strategies are directed toward addressing potential substitutions from products other than those manufactured with fibre cement. BGC estimates its market share by sole reference to other fibre cement manufacturers and, from a commercial perspective regards its only close competitors as CSR and James Hardie.

Customers adopt a similar focus upon fibre cement products in their own commercial practices. In BGC's experience, requests for tender to manufacturers include only fibre cement products. No reference is made to alternative building materials that may perform similar or equivalent functions. For example:

- Mitre 10 annually approaches manufacturers to negotiate supply agreements for fibre cement products, as a discreet category;
- In 2004, APBA issued a request for tender for the supply of fibre cement to 40 distribution centres 2004
- LaFarge issued a request for tender for fibre cement products in 2005;

James Hardie's "functional equivalence" approach to product market definition is not supported by precedent from recent Australian competition law cases, nor is it reflected in the commercial reality of practices in the building industry. James Hardie's approach to market definition is vague and self serving. Such an approach enables James Hardie to adopt suggested definitions of markets for which there are no reliable market share estimates or published data. The result is a misleading impression of the extent of James Hardie's market power.

BGC submits that the relevant product dimension of the market is the market for fibre cement products.

3.3 Geographic market

BGC submits that the relevant geographic dimension of the market is national. While an argument can be made to support narrower state or regional markets in fibre cement products, BGC notes that, as the above industry summary states, each of CSR, BGC and James Hardie supply all over Australia.

BGC estimates that transport costs account for an average of approximately 15% of the landed costs of its product to distributors. While this is relatively a high proportion of cost, BGC also notes that it is able to compete effectively with Eastern State based suppliers of fibre cement products, notwithstanding that its manufacturing plant is in Perth. Similarly, James Hardie is able to compete effectively with BGC for the supply of fibre cement products in Western Australia despite the fact that its own manufacturing facilities are located in Queensland and New South Wales.

3.4 Functional level

This submission focuses upon the wholesale level at which manufacturers supply to distributors. However, the purpose and effect of the James Hardie Policy should also be examined at the distributor level because it is likely to have significant effects throughout the supply chain.

BGC estimates that end-users tend to acquire their fibre cement needs from distributors within a radius of about 50km. As the market currently stands, there are many regional areas in Australia in which there are three or less distributors, all of whom sell some proportion of James Hardie's range but at least one of whom also carries BGC or CSR core products and supplements these with James Hardie's differentiated products. James Hardie's new policy is designed to force these distributors to become exclusively James Hardie distributors, which may effectively eliminate inter brand competition in those areas.

3.5 Relevant markets

In conclusion, BGC submits that the relevant markets for considering James Hardie's notification are:

- the wholesale market in Australia for fibre cement products; and
- the various regional and metropolitan markets in Australia for the supply of fibre cement products by distributors to builders and other end users.

4 Market structure

4.1 Market concentration

As the industry summary above states, there are three Australian manufacturers of fibre cement products in Australia: James Hardie, CSR and BGC. There is no published data from which BGC derives an existing understanding of its approximate market share relative to that of its competitors. However, BGC's general market intelligence derived from:

- (a) the knowledge and experience of its employees;
- (b) contacts with customers;
- (c) knowledge of the capacity competitors manufacturing plants

forms the basis of the following estimates of market share.

4.2 [Confidential] Table - Market shares deleted

4.3 Barriers to entry

As the industry summary states, fibre cement products are manufactured using specialised plant. BGC estimates the costs of building an equivalent to its own plant in Western Australia with a capacity of approximately 12,000,000 m² per annum at approximately \$45M.

A high proportion of this cost is the cost of acquiring and commissioning a Hatschek plant. . BGC faced considerable obstacles in acquiring the necessary technology to commission and run the plant efficiently and produce quality products at reasonable cost. BGC took three years commissioning the plant and testing its products before its products were widely made available for sale in the market. Before it could commence full scale commercial production, BGC had to:

- train and hire sufficient qualified personnel;
- acquire and customise the required process control software; and
- carry out extensive product testing.

A high proportion of the plant's initial output during the first three year period was unsaleable. BGC tested its fibre cement products in its own construction business (which, as stated above, uses about 4.2% of the plant's capacity).

The strength of James Hardie brands are a further obstacle to entry and expansion. Several of James Hardie's brands, such as Hardieflex and Villaboard have attained "Hoover" status of brand recognition and usage. In the construction industry, where builder specification is crucial, such an advantage is valuable. When combined with the new James Hardie policy, such an advantage is decisive. Against this background, it is notable to observe the substantial investment being made in the brands of the new technology differentiated products. Linea products are being advertised on television, an occurrence that is relatively unusual in marketing building products.

Given the high fixed costs of production, economies of scale are significant, particularly as they affect the capacity of new entrants to invest in product development and advertising. With over 60% of the market, James Hardie's scale advantage is significant.

With competitors having now invested in the necessary plant and know-how to enter the market supplying non-differentiated products, James Hardie now seeks to leverage from its scale and scope advantage by serving an ultimatum on distributors. At such a scale disadvantage, it is difficult for CSR or BGC to respond by immediately producing competitive lines in the period during which distributors must choose to become 100% James Hardie. James Hardie's new policy effectively requires its competitors to match its product development and advertising costs with no likelihood of securing any additional market share. The policy will be even more starkly felt by potential new entrants, which will have to enter is a single, comprehensive step offering a full range, in the hope that James Hardie distributors will be prepared to support their unknown and untested products at the risk of their existing James Hardie relationship.

A significant issue for new entrants in Australia is obtaining access to the market through distribution channels. As the diagram and commentary on the distribution level of the market in the industry summary makes clear, a high proportion of the existing distribution channels for fibre cement products is controlled by James Hardie.

[Confidential paragraphs deleted]

BGC does not object to James Hardie paying discounts or rebates for volume supply but notes that in its submission James Hardie omits any reference to its own practices, while suggesting that 'BGC and CSR's practices are undesirable in a competitive market.

As stated above, in the internal linings distribution segment, the major distributors of Boral and LaFarge will not acquire fibre cement from BGC or CSR because each of BGC and CSR also supply plasterboard in competition with those companies affiliated entities. For this reason, that proportion of the distribution network is exclusively available to James Hardie.

Finally, BGC submits that James Hardie's entrenched position in the market and high market share provides it with the capacity to invest a substantial sum in advertising and marketing in order to defend its market position. A relatively new entrant such as BGC to match this expenditure is limited in the current market structure.

4.4 Imports

BGC estimates that James Hardie imports approximately 10% of its output from its plant located in the Philippines otherwise, imports of fibre cement products account for less than 2% of sales in the market as a whole.

4.5 Countervailing power

BGC is not aware of any major customer having given serious consideration to either importing its own requirements of fibre cement products or conducting its own manufacturing. While large customers account for a significant proportion of the distribution channel, BGC considers that the capacity of these customers to independently affect price in the absence of viable alternative supplies in Australia for substitutable products is limited.

4.6 Dynamics

BGC considers that the fibre cement market is relatively mature, with some growth occurring. The market is obviously driven by the pace of construction in Australia, which is flattening in Eastern Australia but still growing in Western Australia and the NT.

The James Hardie submission emphasises the role of differentiation and innovation in its corporate strategy. While there is a level of innovative activity in the market, the types of innovations highlighted in the James Hardie submission are difficult to

categorize as highly innovative or novel . Rather, the innovations in question are achieved by changing the thickness of products and/or applying a different finishing technique to the products. The core of the manufacturing process (manufacturing the wet fibre cement sheet) is essentially the same and involves approximately 70% of manufacturing costs. BGC submits that it is in the advertising and marketing of the "new technology differentiated products" that James Hardie places the majority of its effort and expenditure.

5 Purpose and effect of James Hardie's proposed conduct

5.1 Purpose of the strategy

BGC submits that a substantial purpose of James Hardie's proposed distribution strategy is to prevent or restrict its competitors from effectively entering or expanding in the market for fibre cement products. This strategy is designed to force distributors to choose James Hardie as their exclusive supplier and in doing so, foreclose competitors' access to distributors and raise barriers to entry and expansion. This is apparent from James Hardie's communications with its distributors to date. Annexure 1 is a letter from James Hardie to distributors, which announces and attaches the terms of the updated policy in advance.

BGC believes that James Hardie's strategy has been carefully constructed so as to convey a pro-competitive purpose when examined at face value. However, closer examination of the James Hardie submission provides a basis for inferring that the real purpose behind the strategy is to lock James Hardie's competitors out of the distribution level and protect James Hardie's leading position in the market.

James Hardie's submission suggests that its new policy is a necessary and proportionate response to so called bundling practices of its vertically integrated competitors. BGC submits that this justification is based upon a misleading presentation of the facts. The impression is misleading in the following ways:

- James Hardie's submission suggests that BGC's construction business provides it with a competitive advantage. While it is correct that the BGC Group operates a substantial construction business in Western Australia, BGC's sales to its own construction operation account for approximately 500,000 m² per annum out of BGC's total capacity of 12,000,000 m² or approximately 4.2% of BGC's capacity;
- BGC's exclusive and franchise distributors are only present in the internal lining segment of the distribution channel, and BGC's sales through those arrangements represent less than 2% of the total market;
- The supposed "bundling" that BGC and CSR are alleged to engage in occurs only in the internal lining of the channel, in which both CSR and BGC supply plasterboard as well as fibre cement internal linings. By contrast, the majority of sales in this channel are accounted for by James Hardie, which exclusively supplies through Boral and LaFarge outlets.
- The type of bundling practices engaged in by BGC differ in substantial respects from the conduct proposed by James Hardie. BGC does offer price incentives to customers that acquire both plasterboard and fibre cement products for internal lining purposes from BGC. However, the amount of these pricing incentives reflects the economies of scale and scope achieved by BGC in relation to those supplies. By contrast, James Hardie proposes to engage the practise referred to in American Antitrust Law as "tying" by creating an absolute obligation upon parties wishing to acquire the new technology differentiated products to acquire 100% of their fibre cement requirements from James Hardie.

5.2 The effects of exclusive dealing by corporations with market power

The purpose and likely effects of this tying and bundling conduct have been the subject of extensive recent economic research. The Commission adduced expert evidence on the issue in the Baxter Healthcare case⁸. As the ACCC's expert witness in that case, Professor Barry Nalebuff has pointed out, in an oligopolistic market, a company that has market power in two goods can, by bundling them together, make it harder for a rival with only one of these goods to enter the market.⁹

With over 60% market share and strong distribution arrangements in place through Bunnings, Mitre 10, Boral and Lafarge, James Hardie's power in the fibre cement market is barely constrained by the threat of competition from BGC and CSR. CSR and BGC have each entered the market to an extent, employing a strategy of initial entry into the core range of products where it is more feasible to overcome the barrier of the James Hardie brand and its long standing relationship with key distribution customers. This is an orthodox and appropriate market entry strategy.

BGC submits that James Hardie's proposed conduct is a classic entry and expansion deterrence strategy that takes advantage of James Hardie's position as the dominant player in the fibre cement market to foreclose competitors' access to the small proportion of the distribution channel that is not already controlled by James Hardie.

James Hardie's submission raises a number of issues in relation to both the rationale and likely effect of its policy upon competition. These issues are examined in the following paragraphs.

5.3 Structural changes in the market

The most immediate effect of James Hardie's new policy will be a substantial change in the buying practices of many previously non-exclusive distributors who will become exclusive James Hardie distributors as a direct response to the James Hardie policy. This is a structural shift in the market that impacts not only the narrow interests of particular competitors but the process of competition itself.

[Confidential paragraphs deleted]

5.4 The proportion of the market affected by the conduct

James Hardie emphasises that its technology differentiated products form a small proportion of its total output. Two points should be made in response to this. Firstly, although the tying products form a small proportion of the market, the strategic position of those products and the demand for them by distributors means that the effect of the conduct will be felt throughout the market. Second, the argument focuses upon a simplistic approach to assessing the effective conduct upon competition in a market. As Smithers J stated in *Dandy Power*¹⁰:

"Although the words "substantially lessened in a market" refer generally to a market, it is the degree to which competition has been lessened which is critical, not the proportion of that lessening to the whole of the competition which exists in the total market. Thus a lessening in a significant section of the market, if a substantial lessening of otherwise active competition may, according to the circumstances, be a substantial lessening of competition in a market".

⁸ ACCC v Baxter Healthcare Pty Ltd [2000] FCA581

⁹ Nalebuff 1999 "bundling" Yale International Centre for Finance Working Paper number 99-14

¹⁰ Dandy Power Equipment Pty Ltd v Mercury Marine Pty Ltd (1982) 64 FLR 238

BGC submits that the proportion of sales of the new technology differentiated products in comparison to the total market does not convey the level of demand for the products. While distributors may acquire relatively small volumes of the products, they do so as part of an essential strategy of offering a full range to their customers.

In the building industry, it is common for architectural builders to specify particular products by reference to a brand. James Hardie's new policy places distributors in a difficult position in circumstances where a distributor's customer has mandated the use of one of the new James Hardie products. Effectively, in order to supply that customer's requirements, the distributor must then agree to exclusively supply James Hardie products. As a result, BGC expects that a large proportion of distributors will agree to the restraints imposed by James Hardie as a condition of acquiring the new products.

This has a clear effect of raising barriers to entering and expansion for competitors such as BGC and CSR, whose access to effective distribution channels is already substantially diminished due to James Hardie's strong brand position and its agreements with the largest volume suppliers such as Boral and Lafarge in the internal lining segment and Bunnings in the hardware segment.

5.5 Economies of scale and new product development

The fibre cement market is categorised by substantial economies of scale. These economies reflect a significant advantage to the incumbent firm James Hardie which is more able to derive an acceptable return on investment in the development of new products.

James Hardie's submission emphasises its need to recoup some costs in product development. There is some circularity in this argument and some of James Hardie's assertions do not appear to be credible.

Specifically, James Hardie's submission asserts that James Hardie cannot recoup its sunk costs in product development through sales of the technology differentiated products to competitors, even at retail prices. This statement is not credible because James Hardie has already incurred the sunk costs in question. BGC submits that James Hardie would be highly unlikely to incur such sunk costs if it could only recoup these costs using practices that require the approval or non-objection of the ACCC. In any event, at the scale which James Hardie operates, BGC submits that James Hardie's costs for new product development are likely to be significantly lower than those of its competitors due to James Hardie's scale advantage both in Australia and as a result of its overseas activities.

[Confidential passage deleted] It would be surprising if James Hardie was prepared to effectively gamble the claimed sunk costs in developing the new technology products on the outcome of this notification.

5.6 "Free-riding"

James Hardie's argument to the effect that its competitors are "free riding" on James Hardie's developments in new technology misconceives the distinction between free riding and competitive entry in undifferentiated products. Competitors do not free ride if they pay fair market prices to acquire differentiated products that they do not supply in order to meet customer demand for a total range of products. The manufacturer of the differentiated product achieves the same price for that product and may increase that price in the absence of competition in order to recoup its sunk costs in product development. BGC submits that, in relation to its differentiated products, James Hardie does exactly that.

When new entrants challenge dominant incumbents in markets where a range of products is supplied, they rarely do so by offering the entire range from the outset. Virgin Blue did not immediately commence operating on every Qantas route because the barriers to doing so would have been prohibitive. Similarly, CSR and BGC have entered the fibre cement market by degrees, but the structure of the fibre cement market, in which many distributors wish to offer a complete range of products means that, for entry to be feasible, either or both of the following conditions must exist:

- distributors must be able to source from more than one supplier in order to offer a full range;
- new entrant manufacturers must be able to acquire James Hardie's products for re-supply to distributors.

James Hardie's characterisation of CSR and BGC's orthodox entry strategies as "free-riding" or "cherry-picking" demonstrates the "market ownership" mindset of an ex-monopolist. It is also entirely inaccurate. Provided James Hardie's competitors or their distributors pay appropriate wholesale prices for James Hardie's products, the conduct of acquiring those products and on-selling them to customers cannot properly be regarded as free-riding. If James Hardie is capable of demanding higher prices to compensate itself for its sunk costs in product development, then it is entirely appropriate for it to do so until the point where competitive entry becomes attractive to its competitors.

Annexure 2 is a letter from James Hardie to distributors, notifying an increase in prices for some of its products. The increase applies to a high proportion of products that do not have directly competitive equivalents manufactured by CSR or BGC. BGC considers that in general, James Hardie's differentiated products attract a substantial price premium over its core products. BGC makes no criticism of James Hardie's ability to secure higher prices for its differentiated products. BGC regards this as an appropriate reward for innovation. However, BGC opposes James Hardie's new exclusive dealing policy because it raises an unwarranted and inefficient barrier for competitors seeking to engage in competitive conduct in the supply of undifferentiated products. In addition, by restricting access to distribution channels, even temporarily, James Hardie is likely to permanently impair its competitors' ability to develop new differentiated products of their own.

Some distributors may not appreciate this risk, as many of them supply a range of products of which fibre cement products represent only a small proportion. This, together with the timing of James Hardie's notification over the Christmas period, may account for a lower number of submissions being provided to the Commission than would otherwise have been the case.

5.7 Exclusive dealing

James Hardie's submission seeks to justify its new policy with the hypothesis that its exclusive dealing conduct will have the effect of breaking down the exclusive dealing conduct of its competitors. This argument is circular, confusing and incorrect.

Firstly, any exclusive dealing or bundling conduct of CSR or BGC represents a relatively minor proportion of the fibre cement market.

Second, James Hardie does not refer to its own practices in offering rebates and discounts for exclusive purchases from James Hardie.

Finally, and most fundamentally, it is difficult to understand how allowing the dominant player to engage in exclusive dealing practices could be an appropriate regulatory

response to exclusive dealing conduct engaged in by new entrants. If these practices are as problematic as James Hardie suggests, they should be examined and their effect on competition considered. BGC would welcome any ACCC review of its own marketing strategies.

5.8 Effect on competition between distributors

While this submission focuses upon the competition between manufacturers, BGC has concerns that the effect of the James Hardie policy will be felt by builders and other end users in regional areas. In many areas, there are two or three fibre cement distributors, one of which supplies James Hardie products (solely or predominantly), one of which supplies CSR and James Hardie products and one of which supplies BGC and James Hardie products.

For example, country towns and regional centres with that type of retail structure include:

- Griffith, Wagga Wagga and Nowra in NSW; and
- Bendigo, Echuca and Warnambool in Victoria.

In the new James Hardie policy succeeds, the only fibre cement products carried by distributors in these centres are likely to be James Hardie. This may even occur in larger Australian cities like Canberra, Newcastle and Wollongong.

5.9 Effect on consumers and efficiencies

The ultimate effects of the James Hardie policy are likely to be felt at the consumer level in the form of higher building material costs. James Hardie's submission asserts that its proposed strategy will enable it to pass on efficiencies in the form of lower prices to consumers. However, the submission provides no evidence or logical deduction to support the view that James Hardie will have any incentive to pass on the benefits of so called efficiency gains. BGC submits that the more likely result of the conduct will be increased pricing discretion of James Hardie once it has a broader network of captive distributors, particularly in the independent hardware segment.

5.10 Conclusions

Applying the forward "with and without test", BGC's views may be summarised as follows:

- (a) Without the conduct
- BGC, CSR and new entrants will continue to compete vigorously to supply all distributors;
 - Distributors will be able to acquire non-James Hardie products at low prices without having to wait for their James Hardie contracts to expire. CSR and BGC are therefore a direct and continuous constraint upon James Hardie;
 - All players will continue to seek to develop new and innovative products to capture market share. CSR and BGC are likely to seek to develop competitive products in response to James Hardie's "new technology differentiated products";
 - Non-James Hardie products will continue to be available in most rural and regional areas.
- (b) With the conduct

- competitors and potential new entrants must immediately be capable of supplying an entire range of products to match the range of the dominant incumbent. Effective entry must be comprehensive or not at all, which substantially raises barriers to entry;
- a significant proportion of distributors will become exclusively James Hardie suppliers, further restraining channel access opportunities for competitors and new entrants.

6 Public benefits

6.1 Public benefits are not established

Public benefits claimed in relation to a notification should:

- (a) be established with evidence or, at least, theory that demonstrates that the benefit claimed is likely to arise;
- (b) clearly result from the conduct that is the subject of the notification.

James Hardie's notification is deficient in both these respects. James Hardie provides no evidence in support of its claimed public benefits. In addition, the benefits claimed have little or no causal connection to the conduct that is the subject of the notification.

6.2 Incentive to develop new products

There is no evidence to support the view that James Hardie's rate of introduction of new technologies would increase as a result of the introduction of a new policy. Rather, BGC submits that the high barriers to entry that would result from introduction of the policy would make the implementation of innovation less likely to occur.

There are at least two obvious logical flaws in James Hardie's speculative argument on innovation.

Firstly, James Hardie's own conduct demonstrates that it does not need the policy to engage in R&D. James Hardie developed its "new technology differentiated products" prior to the implementation of its new policy. That it now seeks to argue that it needs to engage in exclusive dealing conduct that may contravene the TPA in order to innovate seems to put the cart before the horse. It is more likely that James Hardie's innovation to date is a direct result of the growing competitive constraint provided by the newer entrants, BGC and CSR. The James Hardie policy seeks to substantially reduce the impact of that constraint.

Second, James Hardie's submission makes no reference to its substantial overseas sales of fibre cement products. BGC estimates that over 80% of James Hardie's fibre cement revenue is derived outside Australia. In these circumstances, it strains credibility for James Hardie to suggest that a marketing and distribution strategy in Australia is required to ensure that its research and development activities will continue.

James Hardie has significant research and development facilities in the United States¹¹. BGC assumes that James Hardie is not suggesting to the Commission that it would close those research and development facilities if it were not permitted to engage in its proposed conduct in Australia.

James Hardie asserts that the incentive for its competitors to invest in research and develop new products is low and will remain low or possibly decrease if it is unable to implement its policy. The reverse is likely to be the case. As James Hardie seeks to develop differentiated products, its competitors will naturally examine the feasibility of developing their own innovative products in response. BGC conducts this assessment with reference to the likely return on the investment in developing the new product. James Hardie's new policy is likely to decrease the attractiveness of developing new products because it will substantially diminish the available distribution channels for any such products. At lower scale, James Hardie's competitors are less likely to consider

¹¹ James Hardie Annual Report 2005

that their investment in the development of new products will be capable of being recouped.

7 Conclusion

The James Hardie policy will raise barriers to entry and expansion in a market that is already dominated by James Hardie. This should cause the ACCC to have serious competition concerns in relation to the conduct proposed by James Hardie. A significant element of James Hardie's argument is the characterisation of its competitors' legitimate market entry as "free riding" and "cherry picking"¹². Most surprisingly, James Hardie's key justification of its new policy suggests that its exclusive dealing conduct will have the effect of breaking down the exclusive dealing conduct of its competitors. This argument is circular, confusing and incorrect.

In seeking immunity for its conduct, James Hardie presents broad unsubstantiated claims for public benefits. The central arguments in relation to innovation contain significant logical flaws and neglect to mention to fact that James Hardie's international sales represent the lions share of its business and that product development is substantially driven by these sales. James Hardie's submission to the ACCC is misleading, both in its treatment of the relevant facts and its conclusions regarding competition and public benefit. Appendix B is a table summarising some of these matters.

As a result, the ACCC should conclude that James Hardie has failed to demonstrate that the claimed public benefits outweigh the likely lessening of competition that will result from the conduct in the form of higher barriers to entry.

¹² BGC's responses to this argument are set out in paragraph 5.5 because the issues raised are more relevant to competition than public benefits.

8 Specific answers to ACCC questions

- Q 1: Please identify your competitors in the production of fibre cement products. What is the estimation of the relative positions of Australian manufacturers of fibre cement products?
- A 1: BGC's competitors in the production of fibre cement products are James Hardie and CSR. Table 1 above estimates the relative market shares.
- Q 2: What substitute products are available for fibre cement products?
- A 2: The products that may be regarded, in a broader sense, as substitutes for fibre cement products depend on the specific applications these products are used. These functional substitutes are listed in the James Hardie submission but there is no information presented to support the view that these constrain fibre cement manufacturers in any real sense. BGC does not consider that any of these products could be regarded as close substitutes for fibre cement products.
- Q 3: What substitute products are available for James Hardie's new technology differentiated products?
- A 3: The differentiated products have a few imperfect substitutes in the fibre cement product market, viewed from the demand side. These products are referred to in the following table, which also estimates the costs involved for existing fibre cement manufacturers to develop comparable products (in answer to Q4). **[Confidential table deleted]**
- Q 4: What costs are likely to be involved in the development of products similar to James Hardie's new technology differentiated products for an existing manufacturer of fibre cement products?
- A 4: These are estimated in the above confidential table.
- Q 5: Where are your company's manufacturing plants located? How are products transported from manufacturing plant to distributors?
- A 5: BGC's fibre cement plant is located in Canningvale, Western Australia. Products are transported from the plant to distributors throughout Australia by combination of road and rail transport.
- Q 6: 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 a different state?
- A 6: Yes, BGC considers that most customers acquire from a distributor within a 50km radius from their business.
- Q 7: What is the level of fibre cement imports, if any, and to what extent do they compete with products manufactured domestically?
- A 7: BGC estimates that James Hardie imports approximately 10% of its domestic sales from its plant in the Philippines. A very small volume of products manufactured by other parties is imported into Australia. BGC estimates this as less than 2%.
- Q 8: Please provide a brief description of your company's distribution network.
- A 8: Please see the Industry Summary at paragraph 2.4.

Q 9: Do any of your company's distributors stock your company's products exclusively? Are you aware of the proportion of your company's distributors that also stock James Hardie's products and more specifically, James Hardie's new technology differentiated products?

A9: **[Confidential paragraph deleted]**

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

A 10: Most distributors consider it important, if not essential to carry a complete range because their customers, builders prefer to acquire from a "1 stop shop". An incomplete range may result in losing not only the sales of the products not stocked but the entire business of a builder. The likely effect of James Hardie's proposed policy should be viewed in this context.

Q 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?

A 11: James Hardie manufactures the broadest range of products of any of the suppliers of fibre cement products. This means that distributors can only stock a full range from one manufacturer if they acquire a proportion of their range from James Hardie.

Q 12: In the event that distributors are prevented from acquiring stock from more than one manufacturer, is it possible for a manufacturer to acquire fibre cement products from a competitor for supply to its own distributors?

A 12: No, James Hardie's policy restricts sales of its products to competitors. As neither CSR nor BGC supplies a full range, the James Hardie policy has the effect of requiring its competitors to match its range without the benefit of James Hardie's scale or distribution network.

Q 13: Are you aware of the extent to which your company's distributors on-sell fibre cement products?

A 13: On-selling by distributors to other distributors or manufacturers is relatively common and enables distributors to stock a full and flexible range. The James Hardie policy seeks to eliminate this practice at the same time as it prevents distributors from acquiring products from more than one manufacturer.



Re: James Hardie Distribution Policy

As you are aware, James Hardie invests substantial resources to develop and commercialise technology differentiated products. This enables us to continually introduce new and innovative products, such as Linea™ Weatherboard and AquaTec™ Flooring, and helps us distinguish our business from our direct competitors. It is through the introduction of these new products that we will grow the fibre cement category and hence help to grow the businesses of those distributors who support James Hardie.

To protect our investment and ensure we continue to deliver value to those distributors that align themselves with James Hardie, we will be making our most recent technology differentiated products (current range includes: Linea™ Weatherboard, Linea™ Trim, AquaTec™ Flooring, Eclipsa™ Eaves Lining and Ezi-Grid® Tile Underlay) exclusively available to those distributors that sell and promote only James Hardie fibre cement products. This will come into effect on April 1st 2006.

We believe this change will benefit distributors that support James Hardie and will further promote sales growth of our products by allowing us to compete more effectively with the bundling practices and vertically integrated distribution channels of our competitors.

We have become aware that some distributors sell our technology differentiated products to other fibre cement manufacturers who then bundle the products with materials supplied by those competitors. This obviously undermines our investment in technology differentiated products and the benefits enjoyed by those distributors who sell the full range of our products.

As such it is important that all distributors who hold an account with James Hardie do not on-sell James Hardie products (other than Artista™ Columns and accessories) to other fibre cement manufacturers and certain distributors described in our updated policy included in Attachment 1.

Distributors who do not wish to sell the technology differentiated products specified above can still acquire all other James Hardie products provided they do not on-sell those products to other fibre cement manufacturers and certain distributors described in the updated policy. As stated above, distributors can on-sell Artista™ Columns and accessories to any customer.

With effect from April 1st 2006, the terms of the updated policy in Attachment 1 will also form part of James Hardie's Terms and Conditions of Sale and Business Development Agreement and therefore will apply to any order placed by you after that date. Should you not wish to accept these changes, we recognise your right to terminate your Business Development Agreement with James Hardie.

We believe this strategy fully complies with the Trade Practices Act. We have adopted an open and transparent approach to implementing it by notifying the ACCC of our distribution strategy under section 93 of the Trade Practices Act. The ACCC may contact you in relation to this notification as part of its regular review process.

If you have any questions in relation to the distribution policy or anything else in relation to your James Hardie account, we would appreciate the opportunity to discuss these directly with you. Please contact your James Hardie Account Manager or call 13 11 03 to arrange a discussion with the appropriate people.

For more information on any of James Hardie's building products, please Ask James Hardie™ on 13 11 03 or info@jameshardie.com.au

We thank you for your continued support and look forward to working together to grow sales in 2006 and beyond.

Sincerely,



Andy Spoel
Sales Director
James Hardie

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**James Hardie**

Dear Valued Customer

Price List Changes

You are probably aware that, other than the recent changes on Artista® Columnne and Hardifence® Sheets, James Hardie last increased prices across our product range in January 2003. Since then there have been significant increases in raw material and transport costs across the market. To date we have managed to absorb these increased costs but a recent review of our operations has highlighted the necessity to make the following changes early next year.

Effective from 1 March 2006, James Hardie will be:


- increasing the list price on some of our products as per Attachment 1;
- retaining the list price of ExoTec® Facade Panel 9mm but will offer a 10% discount on pack purchases (pack size 16) in order to provide a consistent competitive offer across the ExoTec Facade Panel range; and
- to keep in line with market trends, deleting the products listed in Attachment 2 from our product range.

Prior to 1 March 2006, we will send you an updated price list for your reference. The revised price list will also be available in electronic form on a Microsoft Excel file.

For more information on these changes or any of James Hardie's building products, please ask James Hardie™ on 15 11 09 or info@jameshardie.com.au

James Hardie would like to take this opportunity to thank you for your continued support. We look forward to working with you to grow the market for our products in the coming year.

Sincerely,


Andy Spoel
Sales Director
James Hardie

Attachment 1

Prices of the following products will increase by the percentage listed from 1 March 2006

Product Description		% Increase
Exotec® Facade Panel	6mm	10.0%
Exotec® Facade Panel	12mm	10.0%
* - HardiBrace® Sheet Bracing		10.0%
* - HardiPlank® Shingled Siding		10.0%
* - PrimeLine® Newport Weatherboard		7.5%
* - HardiGroove® Lining		5.0%
HardiPanel® Compressed Sheets	18mm	5.0%
HardiPanel® Compressed Sheets	24mm	5.0%
* - HardiPlank® Old Style Weatherboard		5.0%
* - HardiPlank® Rough Cut Weatherboard (WA only)		5.0%
HardiPlank® Rusticated Weatherboard		5.0%
* - Mine Stopping Sheet		5.0%
* - PanelClad® Stucco Sheet		5.0%
* - PanelClad® Texturefine Sheet		5.0%
Vinyl & Cork Underlay		5.0%
HardiScreen® Lattice		5.0%
* - FineRidge® Lining		5.0%
VertiLok® Wall & Ceiling Lining (QLD & WA)	9mm	5.0%
Viteboard® Lining	9mm	5.0%
Viteboard® Lining	12mm	5.0%
* - D3 Comtex® Facade Panel		5.0%
* - PrimeLine® Chamfer Weatherboard		3.5%
* - PrimeLine® Heritage Weatherboard		3.5%
* - PrimeLine® Summit Weatherboard		3.5%
* - ExoTec® Gasket Snap Strip		75.0%
All Other Accessories (excl Linea™ Weatherboard accessories)		7.5%

List prices on all other products are unchanged (however, the previously advised changes on Artists® Columns and Hardifences® Sheets will come into effect on December 1 2005).

Non BGC manufactured products *

ie 17 of 27.

Appendix A – Product comparison

PRODUCT	BGC	CFC	JAMES HARDIE
<p>CERAMIC TILE UNDERLAY</p>	<p>BGC Ceramic Tile Floor Underlay</p> <ul style="list-style-type: none"> * Designed to provide a stable substrate for slate and ceramic floor tiles. * Can be installed over new or existing timber floorboards, plywood or particleboard flooring. * In dry areas, tiling may be applied directly to the BGC Ceramic Tile Floor Underlay to form an impervious, easily cleaned surface. * For wet areas, and areas subject to accidental flooding or water splash, the installation of a waterproof membrane between the BGC Ceramic Tile Floor Underlay and the tiling is required. * It is classified as a Type B Category 2 sheet and is suitable for internal use. 	<p>Cemintel Fibre Cement Ceramic Tile Underlay</p> <ul style="list-style-type: none"> * An autoclaved, cellulose fibre reinforced cement sheet. * Has a smooth sanded finish that provides a suitable base for laying ceramic tiles over a timber floor * Immune to permanent water damage, and will not rot. * Fire resistant. * Termite resistant. * Simple and quick to install. * Includes a nailing pattern printed on the face of the sheet to make installation even easier. 	<p>Ceramic Tile Underlay</p> <ul style="list-style-type: none"> * A sealed substrate board for installation over timber, particle board, or plywood floors, that can be used in wet or dry areas to minimise movement and prevent tiles cracking. * Larger board size is ideal for bigger bathrooms and large floor areas being tiled. * Can be used in wet and dry areas * Durable and reliable
<p>COLUMNS</p>			<p>Artista™ Columns</p> <ul style="list-style-type: none"> * Can be used with a variety of capitals, bases and rings, and can be easily painted, rendered, applied with stucco, or tiled to create a wide variety of looks. * They can also be filled with concrete to become a load-bearing structure. * Can be used to support lightweight roof structures, often without any further reinforcement required. * Available in classic and tapered profiles * Tough, strong and durable
<p>COMPRESSED SHEETING</p>	<p>BGC Compressed Fibre Cement</p> <ul style="list-style-type: none"> * High density fibre cement sheet ideally suited as the substrate for floors in wet areas of framed constructions; including upper stories and 	<p>Cemintel Fibre Cement Compressed Sheet</p> <ul style="list-style-type: none"> * Provides a solid substrate for external decking, both upper and lower storey 	<p>HardiPanel® Compressed Sheet</p> <ul style="list-style-type: none"> * A square-edged, dense, compressed flooring substrate that provides an excellent base for floors

	<p>transportable buildings.</p> <ul style="list-style-type: none"> * It is equally suited for use in the cladding of external decks. * Immune to permanent damage from water. It is impact resistant, immune to termite attack, non-combustible and easy to work. 	<p>verandas, and non saltwater pool surrounds in residential buildings.</p> <ul style="list-style-type: none"> * Tough durable substrate. * Immune to permanent water damage, termite attack. * Will not rot, warp or burn. * A suitable substrate for all forms of finishing. * A number of systems are available for different applications, surface finishes and drainage conditions. <p>ExpressPanel™</p> <ul style="list-style-type: none"> * 9mm compressed fibre cement sheet for use in building facades. * It is supplied sealed on all surfaces, ready to accept a wide range of finishes. * It is the main component in the CEMINTEL Fibre Cement Commercial ExpressWall™ System which provides a versatile and durable façade for commercial, industrial and residential buildings. * Can be used on steel girt framing, precast concrete or stud walls to produce a façade with excellent resistance to water penetration and high wind loads 	<p>and bathrooms constructed on ground and second storey buildings as well as external decking, verandahs, balconies, commercial floors, laundries, kitchens, bathrooms and living areas flooring or decking.</p> <ul style="list-style-type: none"> * Extremely dense, hard-wearing and long lasting sub-floor for any finish * <p>Provides a tough, non-combustible surface</p>
<p>EAVES LINING SHEETS</p>	<p>BGC Durasheet™</p> <ul style="list-style-type: none"> * General-purpose fibre cement sheet * Recommended for the cladding of gable ends, eaves, carport and verandah linings of timber or steel framed buildings. * Durasheet™ is a smooth flat square edged sheet and is manufactured in nominal thickness of 4.5 mm and 6.0 mm. 	<p>Cemintel Fibre Cement Cladding Sheet and Cemintel Fibre Cement Eaves Lining Sheet</p> <ul style="list-style-type: none"> * The perfect solution to combining the look you want, with the comfort living temperatures you require. * Can be incorporated in an array of design concepts that preserve the strength, 	<p>Eclipsa™ Eaves Lining</p> <ul style="list-style-type: none"> * Pre-painted in a versatile natural white, * Colour-matched fasteners and pvc joining strips, creates a professional finish without the need for on-site painting. * Protected by a removable adhesive slip-sheet to prevent marks on paint

		<p>protection and comfort attributed to these products.</p> <ul style="list-style-type: none"> * Performance, strength and versatility in all cladding applications * Improves the aesthetics and comfort levels through your personalised house design * Shields windows, doors and other valuables inside the home through protection from external light * Fire Resistant product 	<p>during shipping and handling</p> <p>Hardiflex Eaves Lining</p> <ul style="list-style-type: none"> * Durable, low maintenance * Produced in special widths, making it easier to incorporate eaves into home designs. * Usually joined with a PVC joining strip * Economical. * Deemed to be non-combustible by the Building Code of Australia.
<p>EXTERNAL CLADDING SHEETS</p>	<p>BGC Durasheet™</p> <ul style="list-style-type: none"> * General-purpose fibre cement sheet * Recommended for the cladding of gable ends, eaves, carport and verandah linings of timber or steel framed buildings. * Durasheet™ is a smooth flat square edged sheet and is manufactured in nominal thickness of 4.5 mm and 6.0 mm. 	<p>Cemintel Texture Based Sheet</p> <ul style="list-style-type: none"> * Its light blue easily identifies its colour and provides the strength and versatility demanded by the market. * Designed for a coating system to be applied, providing a seamless finish that is weatherproof, strong and durable and can be tailored to the exact colour or texture that will complete the visual desires of any new development. * Manufactured to accept a large range of texture coatings and shades 	<p>HardiFlex® Sheets</p> <ul style="list-style-type: none"> * Offer a smooth paneled look that can be used for straight or curved walls and eave or soffit linings, in just about any application. * Suitable for use in extensions, second storey additions, gable ends and can also be used to line porch, verandah and carport soffits and eaves.
<p>EXTERNAL CLADDING SYSTEMS</p>	<p>BGC Durasheet™</p> <ul style="list-style-type: none"> * General-purpose fibre cement sheet * Recommended for the cladding of gable ends, eaves, carport and verandah linings of timber or steel framed buildings. * Durasheet™ is a smooth flat square edged sheet and is manufactured in nominal thickness of 4.5 mm and 6.0 mm. 	<p>Cemintel RendaLine™ System</p> <ul style="list-style-type: none"> * A complete external cladding system designed as an attractive and cost effective alternative to masonry cladding systems. * Incorporates all of the advantages of a lightweight construction system whilst producing a rendered masonry-style, including recessed window and door openings and raked windowsills. * Utilises a standard timber or steel structural frame with a proprietary bracket and batten system which is fixed to the 	<p>HardiTex® System.</p> <ul style="list-style-type: none"> * Achieve a stylish, practical monolithic finish * Ideal for optimising internal space and for second storey additions. * Cost effective product allowing flexible lightweight construction. * Ideal for upper storey additions and recladding * Range of different rendered looks can be created * No visible sheeting joints other than

	<p>outside of the framing.</p> <ul style="list-style-type: none"> * Cemintel RendaLine™ Preformed Reveals, Window Sills and Corners are installed to form traditional style window and door openings, and corners. * Cemintel RendaLine™ Sheets are then fixed to the battens to complete the cladding process. * Proprietary jointing and coating system can be applied to provide a seamless finish that is weatherproof, strong, durable and attractive. <p>New Cemintel External Jointing and Texture Coating System</p> <ul style="list-style-type: none"> * A complete, three part Cemintel Fibre Cement Jointing and Coating System designed specifically for use over Cemintel Texture Base Sheet & Cemintel RendaLine. * This new system is easy to use, quality assured and warranted from sheet to coating. 	<p>control joints for construction purposes</p> <ul style="list-style-type: none"> * Resistant to moisture, rotting, termites and fire when installed and maintained as directed. <p>The James Hardie D3-ComTex™ Facade System</p> <ul style="list-style-type: none"> * A seamless facade for an uninterrupted look on commercial exteriors. * Panels are rebated on two sides, allowing the panels to be joined together. * Joint is then covered with reinforcing tape and quick drying jointing compound before the texture coat is applied to create the appearance of a huge seamless panel, measuring 3m by 6m. <p>ExoTec® Facade Panel And Fixing System</p> <ul style="list-style-type: none"> * An emerging design trend is the "express panel" look - originally used on commercial buildings it is also becoming very popular on commercial and residential buildings. * The first fibre composite panel to be designed exclusively for building facades. * Impact resistance of the panel has been increased by 20%, * Pre-sealed on all six sides means it's weather resistant * Manufactured from high-density
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			<p>cement reinforced with cellulose fibre</p> <ul style="list-style-type: none"> * Strong and rigid with a smooth, dense sheet surface * Faster to install. No need for priming of board * Accepts a wide variety of applied finishes, including site-applied textures and factory finishes.
FENCING			<p>HardiFence® System</p> <ul style="list-style-type: none"> * Made of interlocking corrugated HardiFence Sheets, and the unique Easilock® capping system which lock the sheets into place. * Creates a secure, good-looking fence without posts, or rails that looks identical on both sides. * Strong, will not dent. * Looks the same on both sides. There's no right or wrong side, no posts or rails * You can choose to paint it in the best colours to suit your home. * The sheets are designed to be buried 600mm deep - * Won't rust, rot, warp, burn, or get eaten by termites.
FLOORING		<p>BGC Compressed Fibre Cement</p> <ul style="list-style-type: none"> * High density fibre cement sheet ideally suited as the substrate for floors in wet areas of framed constructions; including upper stories and transportable buildings. * It is equally suited for use in the cladding of external decks. * Immune to permanent damage from water. It is 	<p>Cemintel Fibre Cement Compressed Sheet</p> <ul style="list-style-type: none"> * Provides a solid substrate for external decking, both upper and lower storey verandas, and non saltwater pool surrounds in residential buildings. * Tough durable substrate. * Immune to permanent water damage,
			<p>AquaTec wet area flooring</p> <ul style="list-style-type: none"> * An internal structural flooring substrate in domestic applications for ceramic tile finishes over timber or lightweight steel floor joists. * A 19mm thick alternative product to timber, particle board or plywood flooring and is an excellent substrate

	<p>impact resistant, immune to termite attack, non combustible and easy to work.</p>	<p>termite attack. * Will not rot, warp or burn. * A suitable substrate for all forms of finishing. * A number of systems are available for different applications, surface finishes and drainage conditions.</p>	<p>for ceramic tiles in wet and dry areas. * Nail by gun or hand without pre-drilling * Resistant to moisture damage, shrinkage, swelling and cracking when installed and maintained correctly * Around 20% lighter than 15mm HardiPanel Compressed Sheets</p>
<p>GENERAL PURPOSE BUILDING BOARD</p>	<p>Duraliner™ * General-purpose fibre cement building board intended for flush jointing. It has been specially formulated and prepared for use in Wet Areas, Internal Linings, Ceilings, a Substrate for Ceramic Wall Tiles and Fire & Acoustically Rated Internal Walls. * Can also be used on external applications, such as soffits, where it will not be subject to the direct actions of the weather. * Manufactured from Portland cement, finely ground silica, cellulose fibres and water. It is cured in a high-pressure steam autoclave to create a durable, dimensionally stable product.</p> <p>Duralux™ * General-purpose fibre cement building board specially formulated and prepared for many demanding applications including: Internal Lining, Domestic & Commercial Soffit Linings, Exposed beam ceilings, Wet Areas, A Substrate for Ceramic Wall Tiles * It is cured in a high-pressure steam autoclave to create a durable, dimensionally stable product. * It is classified as a Type B Category 2 product for use in applications where it will be sheltered</p>	<p>Cemintel Wallboard * When lining walls in kitchens, bathrooms, laundries, and other "wet areas," the performance of Wallboard is exceptional. * Immune to water damage and will not rot. * Has a recess on both long edges so that sheets may be taped and set with CSR Gyprock plasterboard jointing materials. Once jointed, may be tiled, painted or wall papered as desired.</p>	

LATTICE	<p>from direct weathering.</p> <p>BGC Duralattice™ A cellulose fibre reinforced, cement sheet. It combines the charm and appeal of traditional lattice with the practicality and inherent durability of fibre cement. *Manufactured as a single unit without joints,</p>	<p>Cemintel Fibre Cement Lattice * Combines the appeal of traditional lattice with the practicality and durability of fibre cement. *Available in two distinctive patterns, square and diamond, * Cemintel Fibre Cement Lattice is a manufactured flat sheet making it versatile, adaptable and easy to install. *Easily painted,</p>	<p>HardiScreen® Lattice * Ideal for screening and decorative panels, * Ideal for creating dappled shade and privacy around pools, patios and decks. * Available in square or diamond pattern. * No nails or staples to rust or stain. * Not effected by splashes of water containing salt or pool chemicals</p>
LININGS	<p>Duraliner™ * General-purpose fibre cement building board intended for flush jointing. It has been specially formulated and prepared for use in Wet Areas, Internal Linings, Ceilings, a Substrate for Ceramic Wall Tiles and Fire & Acoustically Rated Internal Walls. * Can also be used on external applications, such as soffits, where it will not be subject to the direct actions of the weather. * Manufactured from Portland cement, finely ground silica, cellulose fibres and water. It is cured in a high-pressure steam autoclave to create a durable, dimensionally stable product.</p> <p>Duralux™ * General-purpose fibre cement building board specially formulated and prepared for many demanding applications including: Internal Lining, Domestic & Commercial Soffit Linings, Exposed beam ceilings, Wet Areas, A Substrate for Ceramic Wall Tiles * It is cured in a high-pressure steam autoclave</p>	<p>Versilux® Lining * A premium square-edged sheet that butts together to achieve a smooth, blemish-free finish ideal for use in exposed beam ceilings and soffits. * Smooth sanded sheet finish –easy to paint * Several thicknesses to allow design and application flexibility</p> <p>Villaboard® Lining i * A smooth-sanded sheet ideal for lining eaves. * With recessed edges it allows a seamless flush-jointed finish without the needs for PVC joining strips.</p> <p>HardiGroove® Lining * Creates an authentic tongue and groove look that can be used as an internal wall-lining to create a traditional look – especially where fixed to dado height in hallways, bathrooms and bedrooms.</p>	

<p>PANEL SHEETS</p>	<p>to create a durable, dimensionally stable product. * It is classified as a Type B Category 2 product for use in applications where it will be sheltered from direct weathering.</p>		<ul style="list-style-type: none"> * Can also be used as a ceiling lining. * Can be painted in darker colours without loss of paint or product life, thus it is particularly suitable for contemporary designs. * Wall linings – bathrooms (not in shower recess area), laundries, bedrooms and all other family rooms in the home
<p>PANEL SHEETS</p>	<p>BGC Duratex™</p> <ul style="list-style-type: none"> * Fibre cement sheet that provides a solid substrate for applied decorative finishes. * When combined with proprietary jointing and coating systems provides a tough, durable, waterproof wall cladding system that is immune to water damage, is fire resistant and is ideal for lightweight construction. It accepts a wide range of textured coatings and colours. * Incorporating high-density polystyrene profiles bonded to the Duratex™ can further enhance the architectural effect. 	<p>Cemintel Stucco Panel</p> <ul style="list-style-type: none"> * Just the thing for the external cladding of gable ends and infill panels. * Blends beautifully to existing structures and can be easily trowelled for a rendered finish. * This tough and durable 6mm thick product is easily fixed to both timber and steel framing and is manufactured to standard lengths of 2440mm and 3000mm and a width of 1198mm 	<p>PanelClad® Sheet</p> <ul style="list-style-type: none"> * Available in two surface textures, * Can be used inside and out to add interest. <p>Can be used to provide contrast with other wall colours and textures.</p> <ul style="list-style-type: none"> * PanelClad® Stucco Sheets - A hand trowelled, cement-rendered finish reminiscent of Mediterranean style. * PanelClad® Textureline Sheets - The rough-hewn board and batten surface gives the effect of band-sawn timber. Use to create whole walls of interest or emphasise design features
<p>PARTITIONING SYSTEMS</p>			<p>HardiColor® Washroom Partition System</p> <ul style="list-style-type: none"> * Designed specifically for heavy duty performance, * Manufactured by Cukuna Commercial Fabrications using quality James Hardie fibre cement products. * Resistant to moisture and has superior durability when compared to wood alternatives when installed and maintained correctly.

	<p>* A hard-wearing polyurethane coating provides a tough surface. * The system is the choice of many major developers for shopping centres, schools, sports facilities, hospitals and a wide range of other applications. * Non standard design allows flexible layouts. * Aesthetically pleasing - any solid colours found in colour charts, tiles, laminates or powder coats can be matched.</p>		
<p>HardiPlank® Cladding * Has five different ship-lapped profiles to enable a wide range of modern and traditional looks to be achieved. * Ideal for extensions and upper storey additions and to add areas of interest, like bay windows, gables and window surrounds. * HardiPlank® Old Style Cladding - For an elegant, traditional finish. * HardiPlank® Smooth Cladding - Uses straight, modern lines to their fullest effect. * HardiPlank® Woodgrain Cladding - The style and surface pattern of traditional wood planking. * HardiPlank® Rusticated Cladding - For a warmer, aged appearance. Its subtle timber grain texture and slim profile is pre-primed to save time on site. * HardiPlank® Shingled Siding -</p>	<p>Cemintel Cladding Plank * Available in a traditional smooth or wood grain textured finish * An autoclaved, cellulose fibre reinforced cement product. * Once installed, Cemintel Cladding Plank can be easily coated with an exterior-grade paint to provide a durable, long lasting finish.</p>	<p>BGC Duraplank™ * General-purpose fibre cement cladding for external applications. * Manufactured as a plank, which is reminiscent of traditional weatherboards both in appearance and installation methods. Unlike weatherboards, is not subject to timber rot, decay, or white ant damage. *Will not support combustion. The result is a safer, more durable cladding that requires minimum maintenance.</p>	

PLANKS

	<p>Creates the authentic look of notched band-sawn timber shingles.</p> <p>Ezi-Grid® Tile Underlay</p> <ul style="list-style-type: none"> * Designed for installation over internal timber, particle board or plywood floors as a substrate for tiles. * Used in wet and dry areas Ezi-Grid Tile Underlay helps create the perfect tiled floor. * Easy to install – nailing is fast and easy with recessed nailing pattern * Easy to cut – just follow the grid line with a score and snap knife * Easy to handle – small sheet size, easy to carry and fits in the back of a car * Keeps nails flush – counter sunk nailing pattern keeps nails flush with underlay <p>HardGlaze® Tile Sheets</p> <ul style="list-style-type: none"> * Create an easy-clean tile look on bathrooms walls, laundries, or other wet areas. * 150mm square tile pattern is embossed into a hard-wearing high-gloss polyurethane coating. * Can be combined with HardiGroove® Lining and with listellos and tile borders to create unique and authentic bathroom tile effects. * For internal walls in wet, semi-wet and dry areas, including shower recesses, laundries, bathrooms, kitchen splash-backs * Range of commercial applications
TILING PRODUCTS	

VINYL AND CORK UNDERLAY	<p>BGC Vinyl and Cork Underlay sheets</p> <ul style="list-style-type: none"> * Designed, tested and manufactured to provide a smooth, durable and completely termite and rodent proof surface on which to lay vinyl and cork tiles. * Immune to water damage and will not swell. * Can also be used under parquetry floor tiles. 		such as shop linings, commercial kitchens, bathroom and change room facilities
WEATHER BOARDS			<p>Vinyl & Cork Underlay</p> <ul style="list-style-type: none"> * Used over existing or new timber strip, plywood or particle board floors to provide a smooth base for either vinyl or cork to help achieve the perfect look. * Clear nail markings for easy installation <p>Linea™ weatherboard</p> <ul style="list-style-type: none"> * Designed to capture the deep shadow lines of traditional weatherboards. * Ideal for authentically replicating, re-cladding, or renovating older style homes. * Can be painted in today's popular darker colours with no loss of product and paint life, making it particularly suitable for contemporary designs. * External cladding ideal for new homes and renovations. * New low density fibre cement technology means that Linea weatherboard is lighter, stronger and more durable. * Resistant to moisture, rotting, termites and fire when installed and maintained in accordance with our current literature <p>Primeline® Weatherboards</p> <ul style="list-style-type: none"> * Have milled surfaces to create

			<p>stylish profiles with fine lines and shadowline effects.</p> <ul style="list-style-type: none"> * Available in four different profiles to help achieve a wide variety of looks, * PrimeLine® Chamfer Weatherboard – reminiscent of a classic weatherboard look. Double board width gives faster coverage. * PrimeLine® Heritage Weatherboard – elegant milled weatherboards with fine lines. Double board width gives faster coverage. * PrimeLine® Newport Weatherboard – smooth surface with a distinctive recessed edge that provides the look of a classic 5-inch weatherboard. * PrimeLine® Summit Weatherboard – in the style of a traditional weatherboard, with a slender, beaded edge, strong spline and smooth face.
<p>WOODGRAIN PANELS</p>		<p>Cemintel Woodgrain Panel</p> <ul style="list-style-type: none"> * Has a mass of approximately 10kg/m², and is available in the following range of sizes: * Natural timber look that sets the tone for any room * High impact resistant and robustness coupled with the strength of contemporary fibre cement sheeting * Low level maintenance * Ability to be transformed to any colour or shade * May be fixed to timber framing using nails or to steel needlepoint screws. The sheets should be fixed vertically and jointed with H- 	<p>PineRidge® Lining</p> <ul style="list-style-type: none"> * Creates a robust timber-panelled look finish – with an authentic timber-grain ‘board and batten’ style finish, ready for staining or painting. <p>Especially popular for use in garages and workshop areas, and is also used in rumpus rooms.</p> <ul style="list-style-type: none"> * Timber look with the easy installation and low maintenance of fibre cement. * Impact resistance makes it ideal for high-use areas. * Easy to join – butt joint, no compound or tape required

		moulds. * Cemintel Fibre Cement is easily cut on site using a tungsten-tipped score and snap knife, a hand guillotine or hand saw.	* Ability for off-stud joining
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Appendix B – Responses to assertions in James Hardie’s submission

Paragraph of James Hardie Submission	Statement	BGC Comment
1.2	<i>“Unlike its principal competitors, James Hardie does not own or control a distribution network, nor does it franchise retail outlets.”</i>	[Confidential passage deleted] James Hardie’s submission creates a misleading impression as to the extent that its competitors own or control parts of the distribution channel
1.3	<i>In Australia, James Hardie is much smaller than CSR and BGC.</i>	BGC submits that economic size is not necessarily relevant to market power. In any event, BGC notes that the James Hardie submission makes no reference to James Hardie’s substantial overseas operations nor its high share of the fibre cement market in Australia.
1.3	<i>The internal linings of an average house in Australia are 77% plasterboard and 8% fibre cement, with the remainder largely made up of rendered brick.</i>	This statement suggests that plasterboard, fibre cement and rendered brick are direct and close substitutes. That is not the case. Fibre cement is only used in internal linings in wet areas and is not a close substitute for plasterboard due to its higher price. James Hardie’s submission provides no evidence of actual substitution between plasterboard and fibre cement in response to price changes.
1.4	<i>“CSR has a vertically integrated distribution channel in that it owns or franchises to distributors to red-sheds.”</i>	These distributors only operate within the specialised internal lining distribution channel which represents only a part of the total distribution picture.
1.4	<i>“CSR and BGC “bundle” fibre cement products with plasterboard.”</i>	[Confidential passage deleted] This contrasts with James Hardie’s proposed conduct that is the subject of the notification. James Hardie seeks to engage in bundling conduct within the fibre

		cement market.
4	James Hardie market definition	James Hardie has adopted an approach to market definition that assumes that products performing a roughly equivalent function are substitutable for the purpose of Part IV of the TPA. That assumption is not supported by any information addressing the relationship between changes in price in one product and levels of demand in another. The approach to market definition is so self serving that it taints the credibility of the submission.
4.3	<i>"Hence they seek to destroy James Hardie's competitive edge in this regard by obtaining particular James Hardie products – usually its innovative, technology differentiated products – for themselves and on-selling them as part of their own product range."</i>	To the extent that BGC or CSR acquire James Hardie's products, James Hardie receives fair market price for these products. It is not clear how this destroys its competitive edge.
4.3 (paragraph (a) of the policy)	<i>"In short, it may lead to a breakdown of the exclusive dealing arrangements engaged in by its competitors which foreclose opportunities for the sale of James Hardie products".</i>	The exclusive dealing arrangements referred to represent a small proportion of the overall distribution stream. James Hardie appears to be asserting that by allowing it to engage in exclusive dealing practices, the Commission could promote the breakdown of exclusive dealing practices by others. The logic of this proposition is puzzling.
4.3 (b)	<i>"Once they become available any competitive advantage offered by these products will have dissipated. Hence the window of opportunity afforded by their availability is now transient."</i>	That might be the case if it were not for the fact that James Hardie is seeking to lock distributors into exclusive deals as a condition of access to the new products.
5	<i>"James Hardie's incentive to develop new products will decrease, and it will consider whether to discontinue its research and development business strategy in Australia which currently involves significant investment in product</i>	James Hardie makes no reference to its overseas sales which account for more than 80% of its sales revenue from fibre cement. James Hardie has substantial research and development facilities in the

	<i>innovation”.</i>	United States. BGC also notes that James Hardie also developed the current new technology differentiated products in the absence of the restraints it now seeks to impose.
5.1 (c)	<i>“The relevant product markets described at paragraph 4 (a) above are very competitive, which means that James Hardie cannot recoup these sunk costs through sales of technology differentiated products to competitors, even at retail prices”.</i>	BGC would like to understand the basis this assertion. Firstly, supplying wholesale products at retail prices would, in most industries, easily account for research and development costs. However, more fundamentally, BGC questions whether James Hardie would have invested in developing these products if it could only recoup its costs by engaging in marketing practices that require the approval of the ACCC.