

18 NOV 2008

PERTH**Solomon Brothers**

Barristers, Solicitors, Attorneys

Level 40, Exchange Plaza, 2 The Esplanade, Perth, Western Australia. 6000
PO Box Z5360, St George's Terrace, Perth 6831 Telephone: + (618) 9282 5888 Facsimile: + (618) 9282 5855

17 November 2008

Our Ref: TJN/DHS/6189196
Enquiries: Toby Nicholls
Email: tnicholls@solbros.com.au
Direct Line: (08) 9282 5858Australian Competition and Consumer Commission
233 Adelaide Terrace
PERTH WA 6000**By hand delivery**

Dear Sir/Madam

EXCLUSIVE DEALING NOTIFICATION – FORM 4

Please find enclosed the following documents for lodgement:

1. form G – exclusive dealings notification (together with a submission to the Australian Competition and Consumer Commission); and
2. a cheque for \$100.00 made payable to the Australian Competition and Consumer Commission.

Should you have any queries please do not hesitate to contact Toby Nicholls of our office.

Yours faithfully



enc

DOC ID:

[Front of Form]

COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 - Sub-section 93(1)***EXCLUSIVE DEALING
NOTIFICATION**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or (9)(a), (b), (c), (d) of that Act in which the person giving notice engaged or proposes to engage.

1. (a) Name of person giving notice:

N93708 JR Starlight Pty Ltd (ACN 102 052 255) of care of PO Box 813, Canning Bridge, Applecross, Western Australia ("the Developer").

(b) Short description of business carried on by that person:

Property Development

(c) Address in Australia for service of documents on that person:

PO Box 813, Canning Bridge
APPLECROSS WA 6153

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates

The sale of unimproved vacant survey-strata lots ("the Lots") within the area of land known as:-

1. 18 Hedley Street, Bentley, Western Australia being more particularly known as Lot 984 on Plan 6424 being the whole of land contained in Certificate of Title Volume 1193 Folio 253;
- ii. 20 Hedley Street, Bentley, Western Australia more particularly known as Lot 983 on Plan 6424 being the whole of the land contained in Certificate of Title Volume 1195 Folio 844; and
- iii. 22 Hedley Street, Bentley, Western Australia being more particularly described as Lot 8 on Diagram 22936 being the whole of the land contained in Certificate of Title Volume 1250 Folio 580.

(together known as "the Land").

(b) Description of the conduct or proposed conduct

The Developer who is giving this notice requires all purchasers of Lots within the Land to execute a building contract with J-Corp Pty Ltd (ABN 54 009 063 076) of Unit 1, 6 Bennett Street, East Perth, Western Australia ("the Builder") contemporaneous with execution of the contract for sale of each of the Lots.

The Developer proposes to refuse to supply the Lots to proposed purchasers who do not enter into a contract with the Builder.

3. (a) Class or classes of persons to which the conduct relates:

Purchasers of a Lot on the Land

(b) Number of those persons -

8

(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses

Unknown (at this stage)

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice

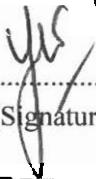
Solomon Brothers
PO Box Z5360
St George's Terrace
PERTH WA 831

Telephone: 9282 5888

Facsimile: 9282 5866

Dated 5 November, 2008.

Signed by/on behalf of JR Starlight Pty Ltd
(ACN 102 052 255)


.....
(Signature)

JEYTA MUCHSIN AFIAT
.....
(Full Name)

Director
.....
(Description)

TRADE PRACTICES REGULATIONS

[Back of Form]

DIRECTIONS

2. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
3. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
4. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
5. If particulars of a condition or of a reason of the type referred to in subsection 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
6. In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
7. In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred in subsection 47(6) or (7), or paragraph 47(8)(c) or (9)(d), of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purpose of subsection 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

SUBMISSIONS TO AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

1. PROPOSAL DETAILS

- 1.1 The Developer obtained planning consent from the Western Australian Planning Commission to survey-strata development of the Land which includes, without limitation, the amalgamation of the Land into one amalgamated lot and the subsequent subdivision the amalgamated lot into vacant survey-strata lots ("the Development"). The Development is to consist of eight (8) survey-strata lots (the "Lots") which will be sold to various purchasers. The purchaser of a Lot will be purchasing a vacant survey-strata lot in accordance with the plans for the Development. It is a condition of the Development that the Developer enters into binding contracts to sell at least four (4) of the Lots within the Development.
- 1.2 The Developer proposes to enter into a contract of sale with each purchaser of a Lot, which contract will require the purchaser to enter into and execute a building contract with the Builder, contemporaneously with the contract of sale. The building contract will provide for the Builder to carry out the construction of the proposed unit on the Lot for the price, and on the conditions, stated in the contract.
- 1.3 As the Development is a strata complex it must necessarily be constructed by the one builder because of the common property: although each lot owner is only entitled to build on their own lot, works on the common property must be carried out contemporaneously e.g. driveways, fences, infrastructure works. Therefore, it is necessary, as the Lots are being sold prior to construction of the units, to require the purchaser to use one specified builder.

2. PUBLIC BENEFIT

- 2.1 The concept of public benefit was considered in *Re QCMA* (1976) 25 FLR 169, where it was observed at p182:

"(W)e would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements (in the context of trade practices legislation) the achievement of economic goals of efficiency and progress."
- 2.2 As stated at 1.3 above, a strata development must necessarily be constructed by the one builder. To approve the condition in the contract of sale will accordingly have the public benefit of allowing strata developments to be sold "off-the-plan" and for the purchaser to buy a "unit and land" package. Without the condition, the Development could not proceed.
- 2.3 Also, the Developer considers that a number of additional benefits arise out of the proposed conduct.
- 2.4 Due to the number of lots on which a unit will be built, the Developer has been able to negotiate better prices for the cost of construction of the units. The Builder will benefit because of economies of scale which will reduce the cost of construction. As a result each purchaser will benefit from lower building costs.
- 2.5 The proposed conduct will also benefit purchasers as each unit is specifically designed for each Lot. That is, the Builder will design specific buildings for each Lot which are suitable for the Lot given its size and the land type. The design will then be approved by the Developer to ensure the quality of construction and thereby improving the quality of the Development. This will also benefit purchasers due to the fact that it will reduce the cost of the purchasers having to design appropriate buildings for each Lot, thereby reducing the transaction costs for the purchasers who might otherwise have to spend time and money assessing alternative individual proposals from various builders.

- 2.6 The design will be available prior to entry into the contract by the purchasers, thereby allowing the purchasers to carefully appraise and consider the building design before they commit to purchase the Lot and the proposed building.
- 2.7 The proposed conduct will also provide a degree of comfort to other purchasers in that each Lot in the Development will be developed using an architectural style that is complementary to the architectural style of each other Lot in the Development.
- 2.8 The proposed conduct will allow the purchasers to have the services of a reputable builder who will have expertise in building units on the type of Lots offered for sale by the Developer. Also, the cost of the buildings is only one factor which the Developer will consider in choosing a builder. The Developer also considers a wide range of other qualitative factors such as demonstrated ability to construct quality buildings, evidence that the builder has capacity to construct the number of units required for the Development plus necessary common property works, strong financial performance, clear understanding of best practices regarding residential design principles and evidence that the design principles have been incorporated into their building designs.
- 2.9 The cost of construction and the prices of the units are highly competitive in comparison to the rest of the housing market. This will place pressure upon other developers to be competitive which will give rise to a net benefit to the public.

3. PUBLIC DETRIMENT

There is no apparent public detriment.

4. PUBLIC BENEFIT / PUBLIC DETRIMENT

Accordingly, the public benefits outlined above will outweigh any possible public detriment.

Tan, Jasmine

From: Toby Nicholls [tnicholls@solbros.com.au]
Sent: Tuesday, 25 November 2008 2:59 PM
To: Tan, Jasmine
Subject: RE: JR Starlight notification - request for market definition

Dear Jasmine,

As discussed, the market relevant to our client's notification is the market for building services in Perth, Western Australia. By entering into the building contract, the purchaser has agreed to use a particular builder who will carry out the construction of the residential unit. It is likely that the builder will use its own suppliers of building materials, products and other services incidental to the construction of the residential units. Accordingly, the market for building materials, products and other services may also be indirectly affected.

We agree to this response being placed on the public register.

Regards

Toby Nicholls
Associate

TJN/DHS/6189196
Solomon Brothers
Level 40
Exchange Plaza
2 The Esplanade
Perth, Western Australia 6000

PO Box Z5360
St George's Terrace
PERTH WA 6831

Telephone: +61 8 9282 5888
Facsimile: +61 8 9282 5855

SOLOMON BROTHERS

~~This email, including any attachments, is intended only for the named addressee(s). The substance of this email is confidential and may contain information that is the subject of legal professional privilege and/or copyright, or is otherwise immune, exempt or prohibited from disclosure by law.~~

~~If you are not the named addressee, you must not disclose, use or otherwise rely upon the information contained in this email. If you have received this email in error, please notify us immediately by return email and delete this email.~~

~~Solomon Brothers disclaims any responsibility or liability in connection with computer viruses, data corruption, delay, interruption, unauthorised access or unauthorised amendments to emails or to any person other than the named addressee(s) who uses or relies on this email without the prior written consent of Solomon Brothers.~~

BB. 25/11/08

-----Original Message-----

From: Tan, Jasmine [mailto:Jasmine.Tan@acc.gov.au]
Sent: Wednesday, 19 November 2008 2:44 PM
To: tnicholls@solbros.com.au
Cc: Hatfield, David
Subject: JR Starlight notification - request for market definition

Classification: UNCLASSIFIED

Hi Toby,

As discussed in our recent phone conversation, the exclusive dealing notification recently lodged by JR Starlight Pty Ltd has been notified on an outdated Form G. As such, it is currently invalid.

Please find attached a copy of the ACCC's most recent Form G. This form is also available from the ACCC website at <http://www.accc.gov.au/content/index.phtml/itemId/776331>.

Point 5 (Direction 8) of the current Form G requires the applicant to provide the ACCC with a definition of the market(s) that the notification relates to.

Once this information has been provided to the ACCC, the notification would be considered to substantially comply with the validity requirements.

I would appreciate if you could provide the requested definition by way of return email as soon as possible so that the ACCC may proceed with assessment of the matter. Please also indicate your consent for your response to be placed on the ACCC's public register.

If you have any questions regarding this matter, please do not hesitate to contact me.

Kind regards,

Jasmine Tan

Australian Competition and Consumer Commission

23 Marcus Clarke St
Canberra ACT 2601

Ph: (02) 6243 1363

<<Form G - Notification of exclusive dealing.pdf>> ---

IMPORTANT: This email from the Australian Competition and Consumer Commission (ACCC), and any attachments to it, contain information that is confidential and may also be the subject of legal, professional or other privilege. If you are not the intended recipient, you must not review, copy, disseminate, disclose to others or take action in reliance of, any material contained within this email. If you have received this email in error, please let the ACCC know by reply email to the sender informing them of the mistake and delete all copies from your computer system. For the purposes of the Spam Act 2003, this email is authorised by the ACCC www.accc.gov.au