

Freehills

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY

- 4 APR 2008

FILE No:

DOC:

MARS/PRISM

Australian Competition & Consumer
Commission
Level 7
Angel Place
123 Pitt Street
SYDNEY NSW 2000

4 April 2008
Matter 80983784
By hand

Dear Sirs,

O'Brien Glass Industries Limited - Exclusive Dealing Notification

We enclose on behalf of our client, O'Brien Glass Industries Limited:

- Form G – Exclusive Dealing Notification dated 4 April 2008;
- A redacted version of our client's "Notification submission to the ACCC" dated 4 April 2008 in support of the exclusive dealing notification;
- A confidential version of the "Notification submission to the ACCC" dated 4 April 2008; and
- A cheque for \$100, being the fee payable for an exclusive dealing notification.

Section 4.2 of the Notification submission includes O'Brien Glass Industries Limited's estimate of its market share the disclosure of which will cause them damage. We therefore request that this information to be omitted from the ACCC's public register and have provided a redacted copy of the Notification submission in this regard.

We are instructed that the contract between O'Brien Glass Industries Limited and AMS Rewards Pty Limited referred to in the submissions has recently been executed and has been expressed to commence on 1 July 2007. Assuming the notice is allowed to stand, our client notes that the protection afforded by the notification will come in force at the end of 14 days from and including today.

Yours sincerely



Michael Gray
Partner
Freehills

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- 4 APR 2008

Form G

Commonwealth of Australia
Trade Practices Act 1974 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

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

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

O'Brien Glass Industries Limited (ABN: 74 000 022 275) N93363
(referred to as 'O'Brien')

- (b) Short description of business carried on by that person:
(Refer to direction 3)

O'Brien manufactures, distributes, fits and repairs automotive glass (windcreens), and supplies replacement glass products and glass fitting services for buildings.

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

**Freehills
MLC Centre
Martin Place
Sydney NSW 2000
Australia
Attention: Michael Gray**

DX 361 Sydney

Facsimile: +61 2 9322 4000

2. Notified arrangement

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

This notification relates to:

- (a) **building glass and mirror products and automotive glass, and repair and fitting services for building glass and mirror products and automotive glass ("O'Brien glass products and repair/fitting services"); and**

- (b) member benefits operating under or identified with the name Show Your Card & Save, operated by AMS Rewards Pty Limited ("Show Your Card & Save program")

- (b) Description of the conduct or proposed conduct:

O'Brien is offering a reduced price for the provision of O'Brien glass products and repair/fitting services to current members of participating automotive clubs affiliated with the Show Your Card & Save program. The conduct includes:

- (a) supplying, or offering to supply, O'Brien glass products and repair/fitting services;
- (b) supplying, or offering to supply, O'Brien glass products and repair/fitting services at a particular price; or
- (c) giving or allowing, or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply of O'Brien glass products and repair/fitting services,

on condition that the O'Brien customer acquires or will acquire a membership with a participating automotive club that is affiliated with the Show Your Card & Save program.

O'Brien may also refuse:

- (a) to supply O'Brien glass products and repair/fitting services;
- (b) to supply O'Brien glass products and repair/fitting services at a particular price; or
- (c) to give or allow, or offer to give or allow, a discount, allowance rebate or credit in relation to the supply of O'Brien glass products and repair/fitting services to a person,

for the reason that the person has not acquired or agreed to acquire membership with a participating automotive club that is affiliated with the Show Your Card & Save program.

This conduct does not prohibit O'Brien from entering into similar arrangements with other promotional programs.

The arrangement with AMS Rewards Pty Limited will be for a one year period, with successive renewals of one year periods until the arrangement is terminated by the parties.

Refer to the submission in support of the notification for further details.

(Refer to direction 4)

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

- (a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

Members of automotive clubs which are affiliated with the Show Your Card & Save program who choose to acquire O'Brien glass products and repair/fitting services.

- (b) Number of those persons:
(i) At present time:

2952

- (ii) Estimated within the next year:
(Refer to direction 6)

3000

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

Not applicable

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the submission in support of the notification for further details.

- (b) Facts and evidence relied upon in support of these claims:

Please refer to the submission in support of the notification for further details.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 8)

Please refer to the submission in support of the notification for further details.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:

(Refer to direction 9)

Please refer to the submission in support of the notification for further details.

- (b) Facts and evidence relevant to these detriments:

Please refer to the submission in support of the notification for further details.

7. **Further information**

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Michael Gray
Freehills
MLC Centre
Martin Place
Sydney NSW 2000
Australia
DX 361 Sydney

Telephone: +61 2 9225 5000
Facsimile: +61 2 9322 4000

Dated 4 April 2008

Signed ~~by~~ on behalf of the applicant

(Signature)

MICHAEL GRAY

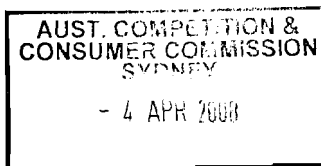
(Full Name)

FREEHILLS

(Organisation)

PARTNER

(Position in Organisation)



DIRECTIONS

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

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.

Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.

If particulars of a condition or of a reason of the type referred to in section 47 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.

Describe the business or consumers likely to be affected by the conduct.

State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.

Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.

Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

Submission

4 April 2008

Notification submission to the ACCC

PUBLIC VERSION

4 April 2008

Freehills

MLC Centre Martin Place Sydney NSW 2000 Australia
GPO Box 4227 Sydney NSW 2001 Australia
Sydney Melbourne Perth Brisbane Singapore

Telephone +61 2 9225 5000 Facsimile +61 2 9322 4000
www.freehills.com DX 361 Sydney
Correspondent offices in Hanoi Ho Chi Minh City Jakarta

1 Confidentiality

The market share information provided in the third dot point of section 4.2 below, and marked '**CONFIDENTIAL**', is subject to a claim for confidentiality.

The Australian Competition and Consumer Commission ('**the ACCC**') should not disclose this information to any third party without O'Brien's prior written consent.

2 Background

O'Brien Glass Industries Limited ('**O'Brien**') distributes, fits and repairs automotive glass (windcreens), and supplies replacement glass and glass fitting services for buildings.

O'Brien proposes to enter into arrangements with motoring associations, linking certain of O'Brien's products and services with the products and services of those organisations. At present, O'Brien has entered into an arrangement only with AMS Rewards Pty Limited ('**AMSR**'), a provider of national benefits to members of automotive organisations affiliated with AMSR and its Show Your Card & Save program.

O'Brien is offering its glass products and repair/fitting services at a discounted rate to members of automotive organisations affiliated with AMSR and its Show Your Card & Save program. This conduct may be construed as exclusive dealing (third line forcing) within the meaning of section 47(6) or 47(7) of the *Trade Practices Act 1974* ('**the Act**'). Therefore, we notify the ACCC of the conduct, under section 93 of the Act.

3 The Conduct

3.1 The customer

The conduct relates to persons who require glass products and repair/fitting services and are members of an automotive club that is affiliated with AMSR and its Show Your Card & Save program ('**the Customer**').

At present, those automobile clubs include the following:

- 1 Royal Automobile Club of Queensland Limited (ABN 72 009 660 575)
- 2 Royal Automobile Association of South Australia Incorporated (ABN 90 020 001 807)
- 3 National Roads and Motorists' Association Limited (ABN 77 000 010 506)
- 4 Royal Automobile Club of WA Inc (ABN 33 212 133 120)
- 5 Royal Automobile Club of Tasmania Limited (ABN 62 009 475 861)
- 6 The Automobile Association of Northern Territory Inc (ABN 13 431 478 529).

3.2 The conduct

O'Brien is offering to the Customer certain automotive and building glass products and repair/fitting services at a discounted price.

The arrangement between O'Brien and AMSR requires O'Brien to:

- 1 provide to the Customer the following goods and services:
 - 20% discount off over the counter sales of glass, mirrors and related products; and
 - \$25 off windscreen and automotive glass purchases and repairs,(collectively referred to as "O'Brien glass products and repair/fitting services") provided the customer presents a current and valid membership card at the time of the transaction. This arrangement excludes mobile building glass replacement services, mobile windscreen repairs or automotive rear quarter glass replacement;
- 2 ensure that all O'Brien glass products and repair/fitting services are available for purchase by the Customer at all O'Brien outlets;
- 3 provide warranties on all O'Brien glass products and repair/fitting services provided to the Customer, and ensure the goods comply with all Australian Standards capable of being applied to the goods;
- 4 provide alternative goods or services of equal or superior standard and quality where O'Brien is unable to supply glass products and repair/fitting services at a discounted price offered under the agreement with AMSR,

collectively referred to as 'the O'Brien/AMSR benefits'.

Customers are not obliged to deal with O'Brien; Customers choose whether to avail themselves of the O'Brien/AMSR benefits. O'Brien is free to enter into similar arrangements with other motoring associations or automotive clubs.

4 Public benefits and detriment

O'Brien provides the following information in support of its notification to satisfy the ACCC that the likely benefit to the public from the conduct will outweigh any detriment to the public from the conduct.

4.1 Benefits to the public

The benefits to the public as a result of the conduct accrue to Customers.

Benefits associated with Customers

The public benefit for Customers can be summarised as being a convenient and easily accessible means by which the Customer can obtain the O'Brien/AMSR benefits. The specific elements of this benefit are as follows:

- 1 **Search costs:** If the Customer elects to acquire O'Brien glass products and repair/fitting services, they significantly reduce their search costs. That is, they reduce the time and associated costs with finding an alternative.
- 2 **Informed decision making:** The Customer will be provided with information regarding the O'Brien/AMSR benefits, which allows the Customer to make an informed decision.
- 3 **More favourable terms:** The Customer is able to take advantage of AMSR's superior bargaining power in obtaining favourable terms from O'Brien;

favourable terms which the Customer would be unable or unlikely to obtain through their own endeavours.

- 4 **Cost savings passed downstream:** The Customer is able to take advantage of discounted products/services which are the result of a negotiated agreement between knowledgeable and informed parties, whose business it is to acquire and supply glass products and repair/fitting services. This agreement realises costs savings, as compared to the Customer independently acquiring glass products and repair/fitting services from a third party. These cost savings are passed downstream for the Customer to take advantage of, if they choose to do so, and provides the Customer with greater value for money for being a member of a club that is affiliated with the AMSR.
- 5 **Increased service:** By offering the O'Brien/AMSR benefits, the AMSR is increasing the level of services it offers to members of its affiliated clubs and to potential members of its affiliated clubs.

4.2 Market definition

The relevant markets in this transaction are:

- the retail sale of building glass, mirror products and automotive glass repair or replacement, in a national market;
- the facilitation, promotion and management of membership services for associated bodies or clubs, in a national market;
- the provision of reward services and benefits for members of motoring bodies or clubs, in state level markets.

4.3 Public detriment

As described in section 3.2, Customers are free to choose whether or not they acquire O'Brien glass products and repair/fitting services. And, O'Brien is free to enter into similar arrangements with other motoring associations or automotive clubs.

The conduct will result in minimal public detriment for the following reasons.

- There is no restraint on either the Customer or O'Brien;
- O'Brien has numerous competitors in the building glass and mirror products industry. The major players in particular include Capital Glass, Express Glass together with a large number of regional businesses. O'Brien also has numerous competitors in the automotive glass repair or replacement industry. The major players in particular include Novus, Instant Windscreen, Club Assist National Windscreen and NWG.
- Whilst AMSR is restrained from seeking the participation of a retailer in the building glass, mirror products and automotive glass repair or replacement industry, the degree of public detriment is minimal. The duration of the arrangement between O'Brien and AMSR is expected to be one year, with successive renewals of one-year periods until the arrangement is terminated by the parties. This means that another competitor may provide or negotiate a more favourable arrangement to AMSR, which would result in AMSR terminating the agreement with O'Brien at the expiration date of the arrangement and entering in a new agreement with O'Brien's competitor. Alternatively, AMSR may seek to renegotiate a more competitive arrangement with O'Brien for the next term of the arrangement;
- The scope of effect or impact of the conduct on Australian consumers of glass products and repair/fitting services generally is minimal. In Australia, O'Brien currently supplies [REDACTED] of building glass products and repair/fitting services and [REDACTED] of automotive glass products and repair/fitting

EXCLUDED FROM
PUBLIC REGISTER

services. However, this conduct relates to only the members of automotive organisations affiliated with AMSR and its Show Your Card & Save program.

5 Summary

The ACCC ought to be satisfied on the information provided above that the likely benefit to the public from the proposed conduct outweighs the likely detriment to the public. Therefore, the notification ought to be allowed to stand.