



**Australian  
Competition &  
Consumer  
Commission**

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Our Ref: C2008/1198  
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8 August 2008

Mr Anthony Calvi  
Group General Counsel & Group Company Secretary  
MAB Corporation Pty Ltd  
PO Box 7657  
St Kilda Road VIC 8004

*Via email:* [acalvi@mabcorp.com.au](mailto:acalvi@mabcorp.com.au)

Dear Mr Calvi

**Third line forcing notification N93521 lodged by Harbour One Tower Pty Ltd**

I refer to the above third line forcing notification lodged with the Australian Competition and Consumer Commission (the ACCC) on 23 July 2008.

In the notification, you described the conduct as follows:

Harbour One Tower Pty Ltd (Harbour One) proposes to:

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

(2) refuse to sell or offer for sale the retail properties for the reason that the purchaser:

- (i) has not agreed to comply with the covenants and other obligations relating to the terms on which a purchaser leases or operates the retail properties
- (ii) has not acquired or has not agreed to acquire the property management services of PMS in accordance with the PMA
- (iii) has not agreed to novate the PMA to any subsequent purchaser for the unexpired term.

As subsequently clarified with you, the ACCC has identified conditions (1)(ii) and (2)(ii) as being conduct of a kind as described in section 47 of the *Trade Practices Act 1974* (the Act).

Legal immunity conferred by the notification commenced on 6 August 2008.


On the basis of the information provided it is not intended that further action be taken in relation to this matter at this stage. This assessment has been made on the basis that all potential purchasers of the retail property are made aware of the terms and conditions, prior to sale.

Please note that the ACCC may act to remove the immunity afforded by this notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

I note that under the conduct described in (1)(iii) and (2)(iii), Harbour One will require the first purchaser of a retail property to impose upon any subsequent purchaser the requirement that the subsequent purchaser acquire the property management services of PMS. In this case it would appear that the first purchaser, rather than Harbour One, may be the party at risk of engaging in third line forcing conduct in the context of this condition. You have indicated that prospective purchasers will be informed that they may be at risk of engaging in conduct of a kind as described in section 47 of the Act and that they should consider whether they wish to lodge a notification with the ACCC.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Kristy Randall on (02) 6243 1061.

Yours sincerely



Dr Richard Chadwick  
General Manager  
Adjudication Branch