

FILE No:

DOC:

MARS/PRISM:

The Quadrant
1 William Street, Perth
Western Australia 6000

GPO Box F338, Perth
Western Australia 6841
BX 600-015

Tel +61 8 9288 6000

Fax +61 8 9288 6001

www.lavanlegal.com.au

Our ref: TPN:RJN:1125389
Contact: Ronnie Nardizzi
Direct Line: (08) 9288 6986
Email: ronnie.nardizzi@lavanlegal.com.au



19 August 2008

Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Sir

Form G – Notification of third line forcing

I *enclose* a Form G Notification together with two cheques of \$100 being the relevant lodgement fee.

Please contact me if you have any questions.

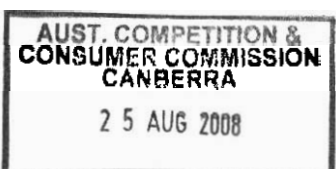
Regards

A handwritten signature in black ink, appearing to read "Ronnie Nardizzi", written in a cursive style.

Ronnie Nardizzi
Senior Associate

Encl

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FORM G
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 subsection 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or (9)(a), (b), (c) or (d), of that Act in which the person giving notice engages or proposes to engage.

1 (a) **Name of person giving notice:**

N93559 Arrow Marketing & Management Pty Ltd ACN 095 065 491 (**Arrow**) and ~~Ventura Homes Pty Ltd~~
~~ACN 093 870 618 (**Ventura**)~~ Invalid

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

Development and sale of land.

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

Peter Beekink
Lavan Legal
Level 19
1 William Street
PERTH WA 6000

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

Development and sale of land.

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

Arrow proposes to offer land to the public as part of a house and land package. Arrow will sell the land on the condition that the buyer engage a third party, Ventura or its nominated entity (**Builder**), as its builder to construct a residence on the land. Arrow will be providing buyers with a form of rebate.

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

The conduct relates to actual and potential house and land buyers, buying land from Arrow and engaging the Builder to perform building services in relation to that land.

(b) **Number of those persons?**

- (i) At present time – not applicable.
- (ii) Estimated within the next year – 10
- (iii) Estimated within the next five years – 10

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

It is not possible to provide this information at this time as the potential buyers have not been identified.

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

Peter Beekink
Lavan Legal
Level 19
1 William Street
PERTH WA 6000

Dated: 19 August 2008

Signed on behalf of the person giving this notice



Full name: Peter Cornelius Beekink
Description: Solicitor for Arrow and Ventura

DIRECTIONS

- 1 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.
- 2 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.
- 3 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.
- 4 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.
- 5 In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
- 6 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 to 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 purposes 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 IN SUPPORT OF NOTIFICATION UNDER SECTION 93(1)
OF THE TRADE PRACTICES ACT 1974**

Background

Arrow Marketing & Management Pty Ltd ACN 095 065 491 (**Arrow**) owns land in Capel, Western Australia.

Ventura Homes Pty Ltd ACN 093 870 618 (**Ventura**) is a family owned property development organization which is based in Osborne Park, Western Australia.

Arrow and Ventura share a degree of common ownership.

Arrow intends to sell subdivided vacant lots created from that land to the public.

Arrow intends to require those buyers to engage Ventura or its nominated entity (**Builder**) to build residences on those lots.

The buyers will be required to enter into 2 separate contracts: a sale contract with Arrow for the sale and purchase of the relevant vacant lot and a building contract with the Builder for construction of a residence on that land.

The sale of the land pursuant to the sale contract will be conditional on the buyer entering into the building contract with the Builder.

Arrow will be providing buyers with a form of rebate, which may take the form of a car.

Market

The market in which the proposed conduct relates is the residential real estate market in the south west region of Western Australia.

Analysis of the conduct

The conduct described in Form G is third line forcing within sections 47(6) and 47(7) of the Trade Practices Act 1974 (Cth). Arrow submits that there is no likely detriment to the public resulting from that conduct.

The proposed conduct does not have the effect of substantially lessening competition in the relevant market in that the estate represents a small proportion of residential real estate available for development in the south west region of Western Australia.

It is intended that the residences to be constructed at the estate will:

- (a) promote sustainability practices for housing development;
- (b) be built to the highest standards of craftsmanship; and
- (c) be built with the highest specifications in their respective class.

The proposed conduct offers significant benefits to buyers in that:

- (a) as the Builder does not need to apply its resources in purchasing lots in the estate, it can undertake a larger project than would otherwise be the case, resulting in superior quality control in overall project imaging and better design co-ordination of individual houses on adjoining lots under a single master plan;
- (b) buyers will have better information and certainty about the entire development as it will be under Arrow's control;
- (c) buyers will not have to bear the cost of 'double' duty as there is a single transfer of land from Arrow to the relevant buyer, avoiding an intermediate transfer to the Builder. If an intermediate transfer took place, the resulting duty would be passed on to the ultimate buyer;

- (d) as the transfer of title is effected prior to the commencement of the building services, duty is payable only on the land value; and
- (e) as a consequence, the entire development will be of superior quality and new house and land packages will be available to buyers at more affordable prices.

Conclusion

For the reasons stated above, Arrow submits that the proposed conduct provides benefits to the public and will have no anti-competitive effect and therefore no public detriment.

For these reasons and based on the information provided in these submissions and the Form G notification which supports it, it is submitted that the notified conduct should not be opposed by the Commission.

Dated: 19 August 2008

Signed by:



Full name: Peter Cornelius Beekink
Description: Solicitor for Arrow and Ventura