



MEYER VANDENBERG
LAWYERS

FILE No:	
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8 April 2010

Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Dear Sir/Madam,

Form G – Notification of Exclusive Dealing

Please find enclosed:

1. executed Form G – Notification of Exclusive Dealing; and
2. a cheque payable to the 'Australian Competition and Consumer Commission' for \$100.00.

If you require any further information, please call me.

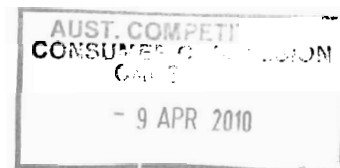
Yours faithfully,
Meyer Vandenberg

Stephanie Lynch
Senior Associate
Direct Line: (02) 6279 4398
Email: Stephanie.Lynch@MeyerVandenberg.com.au
Supervising Partner: Archie Tsirimokos

Encl.

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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:

N94647

Commissioner for Social Housing for the Australian Capital Territory ('Commissioner'), which is a corporation constituted by the *Housing Assistance Act 2007* (ACT).

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

The Commissioner provides housing assistance to people, such as those on a low income or who have difficulty finding appropriate accommodation by administering, on behalf of the Australian Capital Territory, programmes and funding arrangements for delivering housing assistance.

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

Attention: Peter Johns

Locked Bag 3000

BELCONNEN ACT 2617

2. Notified arrangement

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

The supply of property and financing services.

(b) Description of the conduct or proposed conduct:

In accordance with the ACT Government's Affordable Housing Action Plan 2007, the Commissioner proposes an arrangement called the 'Shared Equity Scheme' which provides eligible public housing tenants ('Public Housing Tenants') with the opportunity to purchase the property that they are renting from the Commissioner for a price determined by an independent valuation ('the Price').

The purpose of the Shared Equity Scheme is to move Public Housing Tenants into private home ownership. To implement the Shared Equity Scheme the Commissioner will enter into an agreement with IMB Limited ('IMB') to allow the sale of the property to be packaged as follows:

title to the property will be transferred from the Commissioner to the Public Housing Tenant;

- the Public Housing Tenant will pay the Commissioner a minimum of 70% of the Price upon transfer of title to the property to the Public Housing Tenant with the remaining equity (maximum of 30%) payable over approximately 15 years;

IMB will provide finance to the Public Housing Tenant for 70% of the Price secured by a first registered mortgage over the property;

the Commissioner will secure the remaining equity share (maximum of 30%) of the Price by a second registered mortgage over the property; and

- the Commissioner and the IMB will enter into a Deed of Priority with respect to their mortgages.

See Attachment A for more details of the Scheme.

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:

Public Housing Tenants in the Australian Capital Territory.

(b) Number of those persons:

(i) At present time: See Attachment A.

(ii) Estimated within the next year: See Attachment A.

(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:

See Attachment A.

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

See Attachment A.

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):

The goods or services are supplied in the market for the acquisition of public housing and financial services under the Shared Equity Scheme by Public Housing Tenants in the Australian Capital Territory.

See Attachment A for further information.

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:

See Attachment A.

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

See Attachment A.

7. Further information

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

Stephanie Lynch
Meyer Vandenberg Lawyers
GPO Box 764
Canberra City ACT 2601
Tel: 6279 4398

Dated.....16 March 2010.....

Signed ~~by~~ on behalf of the applicant


.....
(Signature)

Stephanie Lynch
.....
(Full Name)

Meyer Vandenberg Lawyers
.....
(Organisation)

Senior Associate
.....
(Position in Organisation)

DIRECTIONS

1. 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.

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. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. 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.
5. Describe the business or consumers likely to be affected by the conduct.
6. 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.
7. 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.
8. 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.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

ATTACHMENT A

1. Introduction

- 1.1 The Commissioner for Social Housing for the Australian Capital Territory ('Commissioner') is a corporation constituted by the *Housing Assistance Act 2007* (ACT).
- 1.2 The Commissioner provides housing assistance to people, such as those on low incomes or who have difficulty finding appropriate accommodation) by administering, on behalf of the Australian Capital Territory, programmes and funding arrangements for delivering housing assistance.
- 1.3 The Commissioner is the registered proprietor of a number of properties located in the Australian Capital Territory utilised by Public Housing Tenants.
- 1.4 The Commissioner proposes to implement a Shared Equity Scheme to assist Public Housing Tenants with moving into private home ownership.
- 1.5 On 28 February 2009, the Commissioner released a Request for Expression of Interest in relation for the provision of first mortgage financier to provide first mortgage finance to Public Housing Tenants under the Shared Equity Scheme. Four financiers responded and were selected to proceed to the next stage of the selection process.
- 1.6 On 30 May 2009 the Commissioner released a Request for Tender for the provision of first mortgage financier to provide first mortgage finance to Public Housing Tenants under the Shared Equity Scheme to the four financier's who responded. Only two other tenderers, apart from IMB, responded to the RFT. IMB was selected as the preferred tenderer and is now the sole financier for the Shared Equity Scheme.
- 1.7 To implement the Shared Equity Scheme the Commissioner has entered into an agreement with IMB to provide a package of financial services to the Public Housing Tenant as follows:
 - (a) title to the property will be transferred from the Commissioner to the Public Housing Tenant;
 - (b) the Public Housing Tenant will pay the Commissioner a minimum of 70% of the Price upon transfer of title to the property to the Public Housing Tenant with the remaining 30% payable over approximately 15 years;

- (c) IMB will provide finance to the Public Housing Tenant for 70% of the Price secured by a first registered mortgage over the property;
- (d) the Commissioner will secure the remaining 30% of the Price by a second registered mortgage over the property; and
- (e) the Commissioner and the IMB will enter into a Deed of Priority with respect to their mortgages.

1.8 It is proposed that any loans between IMB and the Tenant will be arranged between the parties and the terms of the loan will be on IMB's usual terms and conditions. The Tenant will be subject to IMB's usual eligibility criteria for the loan.

2 Notified Conduct

2.1 The above outlined proposed Scheme may breach sections 47(6) and 47(7) of the Trade Practices Act 1974 (the 'Act') as one of the features of the Scheme is that the Commissioner will agree to sell the property to the Tenant under the Shared Equity Scheme provided that the Tenant obtains finance from IMB.

3 Persons, or classes of persons, affected or likely to be affected

3.1 As at 30 June 2009 there were 11,586 Public Housing dwellings in the Australian Capital Territory.

3.2 The Commissioner sells dwellings to Public Housing Tenants by the Sale to Tenant Scheme, under which Public Housing Tenants pay 100% of the Price for the property when the title is transferred.

3.3 In 2006/2007 41 dwellings and in 2007/2008, 47 dwellings were sold to Public Housing Tenants. Where an application for the sale of a dwelling does not proceed, the most common reason for the cancellation of the process is the Public Housing Tenant's inability to obtain finance.

3.4 The Shared Equity Scheme will be part of the Sale to Tenant scheme. Consequently, the Commissioner expects the number of applications (and completions) for the Sales to Tenant Scheme each year to be higher as it will widen the market for eligible Public Housing Tenants.

4 Public benefit and public detriment claims

4.1 The ACT Government has recognised the importance of housing affordability to the ACT community's economic and social well being. In response to this, the ACT Government released the Affordable Housing Action Plan in 2007 to address housing affordability in the ACT and to help all Canberrans on the

accommodation spectrum, from home buyers to private renters. The Shared Equity Scheme is one of the initiatives of the ACT Government's Affordable Housing Action Plan.

- 4.2 One of the methods by which the Commissioner currently provides housing assistance is to offer public rental housing to people with low income low income households or to those people who are unable to find appropriate accommodation in the private rental market. The rental payable by the public housing tenants is determined by reference to the income of the tenants and the market.
- 4.3 The public benefit flowing from the Shared Equity Scheme is the increased opportunity for many Public Housing Tenants to be able to move into home ownership. Without the Shared Equity Scheme, those Public Housing Tenants may not otherwise be able to afford to buy a house and will continue to rely on public housing.
- 4.4 The Shared Equity Scheme is to be offered to Public Housing Tenants as a package of services and products mentioned above. That is, the transfer of title in the residential property is associated with specific financial arrangements to facilitate the transaction, which is to be supplied by different and unrelated entities. The elements of the Shared Equity Scheme are integrated together and for the scheme to operate effectively, the different parties involved need to co-operate with each other.
- 4.5 As mentioned above, under the Shared Equity Scheme, the Public Housing Tenant will only need to finance a minimum of 70% of the Price at the time of the purchase which will be secured by a first registered mortgage by IMB.
- 4.6 The "Commissioner's Equity Share" will be secured by a second registered mortgage over the property.
- 4.7 The Commissioner's Equity Share at the time of sale of the Property will be the percentage of the Property for which the Commissioner has not received the full market value at the time of sale from the Commissioner to the eligible Public Housing Tenant ("Eligible Scheme Participant") (which will be a maximum of 30%). The Equity Loan Agreement between the Commissioner and the Eligible Scheme Participant will provide capacity for the Eligible Scheme Participant to pay the Commissioner by way of instalments for the Commissioner's Equity Share over time (with the amount of payment to be determined by the then market value attributable to that percentage share of the property to be paid for).

- 4.8 The terms of any loans between IMB and the Tenant are to be determined solely between the parties. There is no agreement between the Commissioner and IMB as to the interest rate, term of the loan, repayment arrangements, or any other feature of the loan that is to be offered to the Tenant. It is anticipated that IMB will offer any loans to the Tenants on its usual terms and conditions.
- 4.9 At the time of the purchase, there is transparency of pricing. The property is to be valued by an independent valuer to determine the Price for the Public Housing Tenant.
- 4.10 The Public Housing Tenants have a genuine choice as to whether to participate in the Shared Equity Scheme. The alternative if they decide not to participate in the Shared Equity Scheme, is they need to fund 100% of the Price of the property upfront. In which case, they are open to use any financier in the market.
- 4.11 The only potential detriment of the proposed Shared Equity Scheme is that the Tenants would be unable to use any other financier. The possible public detriment will be, if any, minimal and is outweighed by the public benefit of the proposed Scheme, namely the opportunity for Tenants to purchase affordable housing.