

2 November 2012

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

BY EMAIL TO: adjudication@accc.gov.au

Dear Sir,

FILE No:
DOC:
MARS/PRISM:



Notification of Proposed Third Line Forcing Conduct

HomeStart Finance is statutory corporation established under the *Housing and Urban Development (Administrative Arrangements) Act 1995 (SA) (HomeStart)*.

HomeStart proposes to participate in a residential apartment project with the Corporation of the City of Adelaide (**ACC**), which will have the objective of making available high-quality affordable housing to eligible low-income applicants (**Project**). HomeStart's contribution to the Project will involve offering, at HomeStart's discretion, secured loan finance for the apartments (**Finance Product**) to approved applicants (**Borrowers**). HomeStart will require, as a condition of providing the Finance Product to a Borrower, that the Borrower enters (and completes their obligations under) a contract to purchase an apartment from the ACC.

HomeStart recognises that this conduct may contravene section 47(1) of the *Competition and Consumer Act 2010 (Act)*, given sections 47(6) and 47(7) of the Act. Accordingly, HomeStart wishes to notify particulars of the conduct to the Australian Competition and Consumer Commission (**ACCC**) as provided under section 93(1) of the Act. We enclose a "Form G" exclusive dealing notification regarding HomeStart's proposed "third line forcing" conduct.

We submit that the likely benefit to the public from the proposed conduct will outweigh any likely detriment, and that accordingly the ACCC ought not issue a notice under section 93(3A) of the Act in response to this notification. The likely benefits and detriments are outlined in the enclosed Form G.

In view of the ACC's involvement in the Project, the ACC also seeks to obtain the benefit of the exemption available under section 93 of the Act. We therefore enclose a Form G exclusive dealing notification on behalf of the ACC, with the ACC's consent.

We do not claim any confidentiality in relation to this notification. We enclose a cheque for \$200 in payment of the combined lodgement fees.

If you have any queries, please do not hesitate to contact the writer.

We look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'David Adams', written over a horizontal line.

David Adams
Product Manager

HOMESTART FINANCE

6 NOV 2012

Form G

Commonwealth of Australia

*Competition and Consumer Act 2010 — 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 *Competition and Consumer Act 2010*, 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)

N96248

HomeStart Finance ABN 82 829 169 885, a statutory corporation established under the *Housing and Urban Development (Administrative Arrangements) Act 1995* (**HomeStart**).

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

HomeStart is a State Government statutory authority established in 1989 to facilitate affordable home ownership for South Australians, particularly low to moderate income earners, by the provision of home loan finance.

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

153 Flinders Street, Adelaide South Australia 5000.

2. Notified arrangement

(Refer to direction 4)

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

This notification relates to a residential apartment project proposed to be jointly conducted by HomeStart and the Corporation of the City of Adelaide (a South Australian local council) (**ACC**), which will have the objective of making available high-quality affordable housing to eligible applicants (**Project**). The Project is anticipated to deliver new residential apartment dwellings (**Apartments**) with significantly lower monthly loan repayment costs, facilitating home ownership by

lower income applicants who might otherwise be unable to afford to purchase a dwelling. HomeStart's contribution to the Project will involve offering, at HomeStart's discretion, secured loan finance for the apartments (**Finance Product**) to approved applicants (**Borrowers**). Under the proposed arrangements, payment by Borrowers of a portion of the total purchase price will be deferred until the sale of the apartment.

The nominated builder is Hindmarsh Constructions.

The eligibility requirements for the Finance Product will include that the Borrowers:

- (i) must be first home buyers;
- (ii) must own and occupy the Homes;
- (iii) must have an annual income that does not exceed the maximum household incomes as set down by the South Australian Government Affordable Homes Program; and
- (iv) must meet HomeStart's other loan eligibility criteria;

ACC is a body corporate established under the South Australian *Local Government Act 1999*. A separate notification will be lodged on behalf the ACC in relation to its participation in the Project.

(b) Description of the conduct or proposed conduct:

Relevantly for the purposes of exclusive dealing, the proposed conduct may be described as:

- (i) HomeStart supplying, or offering to supply, the Finance Product to Borrowers on the condition that the Borrowers enter into (and complete their obligations under) a contract to purchase an apartment from the ACC; or

- (ii) HomeStart refusing to supply the Finance Product to Borrowers for the reason that they have not complied with the requirements described in paragraph (i) above.

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)

Borrowers seeking to acquire the Finance Product pursuant to the Project.

- (b) Number of those persons:

- (i) At present time:

Nil.

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

Anticipated to be 52 – a total of 184 apartments are allocated to this project.

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

There are currently no Borrowers as the apartments have not been offered to the public at the present time. It is anticipated that these apartments will be offered in mid November 2012.

4. Public benefit claims

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

The proposed conduct is likely to have the following benefits:

- (i) Borrowers, who will be lower income households, will be able to afford to purchase high-quality new apartments on favourable terms. These Borrowers may otherwise be unable to secure finance to purchase an apartment or other suitable dwellings (either at all, or of the quality proposed to be constructed as part of the Project). The proposed arrangements are expected to result in an approximately 30% reduction in monthly loan instalments when compared to a loan for the full principal amount on standard principal-plus-interest repayment terms. It is anticipated that the collaborative nature of the proposed relationship between HomeStart and the ACC will provide an

innovative method of combining affordable housing supply with significantly reduced loan repayments;

- (ii) these arrangements may encourage other parties to offer consumers more favourable terms (given the lower costs to consumers that will be achieved). The Project may also enhance competition by encouraging other parties to devise other incentives to attract purchasers;
- (iii) ACC and HomeStart will be in a position to ensure that the Project will achieve an optimal mix of household outcomes through a range of apartment types (1 Bedroom and 2 bedroom apartments) whilst considering environmental and community needs, and also ensure that suitable and high-quality dwellings are constructed. ACC has commissioned a study which has made recommendations regarding the optimal design of the apartments to suit different household types;
- (iv) The longer term strategy of ACC is to re-invest funds received after subsequent sale of apartments into other affordable apartment programs;
- (v) The Project may demonstrate (to other local governments, holders of surplus land and land developers) a supply and funding model that facilitates home ownership for lower income individuals by deferring payment of part of the total cost. It is anticipated that the Project will generate significant interest and may encourage other projects of a similar kind both in South Australia and interstate, potentially creating benefits for further members of the public in future.

It should be noted that this project is similar to a project conducted jointly between HomeStart and the City of Salisbury in 2010, for which the relevant parties provided notification on the 17th March 2009.

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

The lending criteria and South Australian Government Affordable Homes eligibility criteria will ensure that the Project will benefit lower income earners. The annual income benchmark will be based on criteria set by the Affordable Housing Innovations Unit of the Department for Families and Communities, South Australian Government.

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)

The markets may be defined as:

- (i) the market for the sale of residential apartments in South Australia (or more narrowly, the city of Adelaide);
- (ii) the market for residential home loans in South Australia (or more narrowly, the city of Adelaide); and/or
- (iii) the market for the construction of residential apartments in South Australia (or more narrowly, the city of Adelaide).

Each of these markets involves a significant number of participants.

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)

Individuals will be unable to acquire an apartment unless they agree to acquire home loan finance from HomeStart. In order for the ACC to offer a deferment of the purchase price of the Land as proposed, the ACC must enter into specific arrangements with HomeStart (including risk sharing and security priority arrangements). Clearly, persons seeking to acquire an apartment may do so from any of a substantial number of other vendors and apartment developers without such conditions.

We consider that the detriments to the public of the Project are negligible and are outweighed by its likely benefits

- (b) Facts and evidence relevant to these detriments:
Nil additional to those stated above.

7. Further information

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

David Adams, Product Manager HomeStart Finance,

153 Flinders Street, Adelaide SA 5000

Phone: (08) 82771950

Email: dadams@homestart.com.au

Dated.....2/11/12.....

Signed by/on behalf of the applicant

.....
(Signature)

.....DAVID ADAMS.....
(Full Name)

.....HOMESTART FINANCE.....
(Organisation)

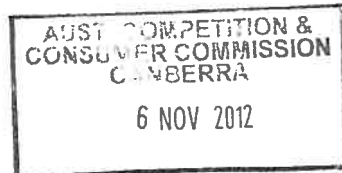
.....PRODUCT MANAGER.....
(Position in Organisation)

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 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 *Competition and Consumer Act 2010* 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.



Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — 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 *Competition and Consumer Act 2010*, 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)

N96249

The Corporation of the City of Adelaide a body corporate incorporated under the *Local Government Act 1999* (SA) (**ACC**).

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

The ACC is a South Australian local council that owns land in the suburb of Adelaide of which part is proposed to be used for the purposes of the proposed initiative.

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

25 Pirie Street, Adelaide South Australia 5000

2. Notified arrangement (Refer to direction 4)

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

This notification relates to a residential apartment housing project proposed to be jointly conducted by the ACC and HomeStart Finance (a South Australian statutory lending authority) (**HomeStart**), which will have the objective of making available high-quality affordable housing to eligible applicants (**Project**). The Project is anticipated to deliver new residential apartment dwellings (**Apartments**) with significantly lower monthly loan repayment costs, facilitating home ownership by lower income residents and workers within the ACC Local Government area who might otherwise be unable to afford to purchase an apartment. The ACC's contribution to the Project will involve providing land on which 3 apartment blocks will be constructed of which 52 apartments will be made available to

approved applicants who fulfil the eligibility requirements of the South Australian Government Affordable Homes Program. Under the proposed arrangements, payment by the Purchasers of a portion of the purchase price of the apartment will be deferred until the future sale of the apartment.

The nominated builder is Hindmarsh Constructions.

In addition to the provision of land for this project ACC have received a Federal Housing Affordability Fund Grant of \$2.78M which will also be apportioned across the subject apartments, further reducing the monthly loan repayment costs.

HomeStart is a statutory corporation established under the *Housing and Urban Development (Administrative Arrangements) Act 1995* (SA). HomeStart intends to lodge a separate notification relating to its participation in the Project.

(b) Description of the conduct or proposed conduct:

Relevantly for the purposes of exclusive dealing, the proposed conduct may be described as:

- (i) ACC supplying, or offering to supply, the apartment to Purchasers on the condition that the Purchasers acquire finance from HomeStart and enter into a loan contract; or
- (ii) ACC refusing to supply the apartment to Purchasers for the reason that they have not complied with the requirements described in paragraph (i) above.

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)

Purchasers seeking to acquire an apartment pursuant to the Project.

(b) Number of those persons:

(i) At present time:

NIL

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

Anticipated to be 52 of a total of 184 apartments allocated to this project.

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

There are currently no purchasers as the apartments have not been offered to the public at the present time. It is anticipated that these apartments will be offered in mid November 2012.

4. Public benefit claims

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

The proposed conduct is likely to have the following benefits:

- (i) Purchasers, who will be lower income households, will be able to afford to purchase high-quality new apartments on favourable terms. These Purchasers may otherwise be unable to secure finance to purchase an apartment or other suitable dwellings (either at all, or of the quality proposed to be constructed as part of the Project). The proposed arrangements are expected to result in an approximately 30% reduction in monthly loan instalments when compared to a loan for the full principal amount on standard principal-plus-interest repayment terms. It is anticipated that the collaborative nature of the proposed relationship between HomeStart and the ACC will provide an innovative method of combining affordable housing supply with significantly reduced loan repayments;
- (ii) These arrangements may encourage other parties to offer consumers more favourable terms (given the lower costs to consumers that will be achieved). The Project may also enhance competition by encouraging other parties to devise other incentives to attract purchasers;
- (iii) ACC and HomeStart will be in a position to ensure that the Project will achieve an optimal mix of household outcomes through a range of apartment types (1 Bedroom and 2 bedroom apartments) whilst considering environmental and community needs, and also ensure that suitable and high-quality dwellings are constructed. ACC has commissioned a study which has made recommendations regarding the optimal design of the apartments to suit different household types;

- (iv) The longer term strategy of ACC is to re-invest funds received after subsequent sale of apartments into other affordable apartment programs;
- (v) The Project may demonstrate (to other local governments, holders of surplus land and land developers) a supply and funding model that facilitates home ownership for lower income individuals by deferring payment of part of the total cost. It is anticipated that the Project will generate significant interest and may encourage other projects of a similar kind both in South Australia and interstate, potentially creating benefits for further members of the public in future.

It should be noted that this project is similar to a project conducted jointly between HomeStart and the City of Salisbury in 2010, for which the relevant parties provided notification on the 17th March 2009.

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

The lending criteria and South Australian Government Affordable Homes eligibility criteria will ensure that the Project will benefit lower income earners. The annual income benchmark will be based on criteria set by the Affordable Housing Innovations Unit of the Department for Families and Communities, South Australian Government.

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):
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Each of these markets involves a significant number of participants.

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)

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We consider that the detriments to the public of the Project are negligible and are outweighed by its likely benefits.

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

Nil additional to those stated above.

7. Further information

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

David Adams, Product Manager HomeStart Finance,

153 Flinders Street, Adelaide SA 5000

Phone: (08) 82771950

Email: dadams@homestart.com.au

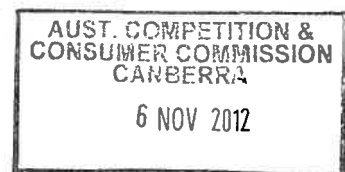
Dated.....2/11/12.....

Signed by/on behalf of the applicant

DAVID ADAMS
(Signature)

DAVID ADAMS
(Full Name)

HOME START FINANCE
(Organisation)



.....PRODUCT MANAGER.....
(Position in Organisation)

DIRECTIONS

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4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* 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.
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