



HERBERT
SMITH
FREEHILLS

General Manager
Adjudication Branch
Australian Competition & Consumer
Commission
GPO Box 3131
Canberra ACT 2601

FILE No:
DOC:
MARS/PRISM:

30 October 2012
Matter 82055923
By registered post



Dear Sir

Confidential

Notification lodged under section 93 of the *Competition and Consumer Act 2010* for Tennyson Nominees Pty Ltd and ABN Developments Pty Ltd

We enclose a notification in respect of conduct which may raise issues under the third line forcing provisions of the *Competition and Consumer Act 2010* (Cth). The notification concerns proposed conduct of Tennyson Nominees Pty Ltd in its capacity as trustee of the Baldvis Unit Trust (**Tennyson**) and ABN Realty Pty Ltd (**ABN Realty**) (together, the **Seller**).

We enclose:

- 1 a completed Form G in respect of the notification; and
- 2 a cheque for \$200, being the total relevant fee for lodgement of the notification.

More detailed information regarding the notification is provided below.

Background to notification

Tennyson is the registered proprietor and seller and ABN Realty is the sales agent of the land that is the subject of these notifications. Tennyson is developing a residential development known as Baldvis Quarter in Baldvis, south of Perth, Western Australia (**Development**). The Development will comprise of approximately 262 lots.

The Development has been carefully designed to attract discerning prospective purchasers, with an emphasis on quality design and lifestyle benefits. The Seller has prepared design guidelines and covenants applicable to every lot to ensure residential properties will meet a high standard for quality. The Development will also incorporate a high proportion of lots with open space frontage with four parks even spaced within the development.

The Seller will be selling particular lots in the Development as 'house and land' packages. Consumers will only be able to purchase these lots if they also enter into a contract with a builder nominated by the Seller to construct a house on the lot.

Benefits of proposed conduct

The Seller operates in highly competitive residential property markets. The Seller believes the overall attractiveness and competitiveness of the Development will be enhanced by offering certain lots as 'house and land' packages. Anticipated benefits and efficiencies likely to result from the arrangement, when compared to a situation where no land in the Development is offered as a 'house and land' package, include:

- (a) increased choice for purchasers. The Seller believes the 'house and land' package option will be attractive to some purchasers. It has the advantage of

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saving the purchaser time and cost in searching for an appropriate builder and gives them confidence that compliance with the design guidelines will be achieved;

- (b) the Seller will be better able to ensure the quality of the building workmanship on these lots through an ongoing relationship with the nominated builder. A consistent high quality of workmanship benefits not only the individual purchasers, but the entire Development;
- (c) the nominated builder will be able to take advantage of volume discounts on materials and will be able to reduce overall labour costs through the consolidation of work. The relevant markets are highly competitive and to some extent reduced building costs are likely to be passed on to consumers;
- (d) the nominated builder will have a detailed knowledge of the building guidelines and other requirements specific to the Development. This will result in additional efficiencies and will reduce the possibility of disputes arising regarding compliance with design guidelines and/or covenants.

The combination of increased choice, improved quality, reduced costs and increased efficiency for the builder and purchasers achieved by the arrangement will enhance the overall attractiveness and competitiveness of the Development. The arrangement is designed to give consumers an option that they may find attractive at a competitive price. We submit that the arrangement will result in no anti-competitive detriment to individual purchasers in the Development or to purchasers of residential property more generally.

Please contact us if you wish to discuss this.

Yours sincerely

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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 in 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)

N96250

Tennyson Nominees Pty Ltd as trustee for the Baldvis Unit Trust and ~~ABN Realty Pty Ltd~~ (Seller)

Invalid

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

Property development

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

c/o Frank Poeta/David Rowan
Herbert Smith Freehills
Level 36 QV.1 Building
250 St Georges Terrace
Perth WA 6000

2. Notified arrangement

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

This notice concerns the sale of 'house and land' packages in a residential development known as Baldvis Quarter in Baldvis, Western Australia (**Development**). This includes:

- the supply of land; and
- the supply of building and related services.

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

The proposed conduct involves the Seller proposing to offer for sale residential lots in the Development on condition that purchasers will enter into a contract with a builder nominated by the Seller to construct a house on the lots.

Note: the enclosed covering letter and submission contains additional information regarding the relevant conduct.

(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)

Persons wishing to acquire 'house and land' packages in the Development.

Builder/s nominated by the Seller. At the present time, nominated builders include:

- (i) Homebuyers Centre;
- (ii) Celebration Homes;
- (iii) Dale Alcock Homes;
- (iv) APG;
- (v) Boutique Homes;
- (vi) Webb & Brown-Neaves; and
- (vii) TR Homes.

The Development will comprise approximately 262 lots in total. All of these lots will be sold as House and Land packages through the participating builders.

- (b) Number of those persons:

- (i) At present time:

N/A

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

60 (sixty)

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

The names and addresses of purchasers of 'house and land' packages at the Development are not available at this time.

4. Public benefit claims

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

Please see the enclosed covering letter.

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

Please see enclosed covering letter.

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 conduct occurs in the context of residential property market/s in Western Australia. The precise definition of the relevant market/s would not affect the assessment of these notifications.

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)

The applicants do not consider that any detriment is likely to arise from the conduct.

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

There are many lots available for purchase in the Western Australian property market that are not the subject of 'house and land' packages. Similarly, the Baldivis locality is well supplied with lots that are not the subject of 'house and land' packages.

7. Further information

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

c/o Frank Poeta/David Rowan
Herbert Smith Freehills
Level 36 QV.1 Building
250 St Georges Terrace
Perth WA 6000

Dated.....29/10/12.....

Signed on behalf of the applicant

.....
(Signature)

Frank Poeta
(Full Name)

Herbert Smith Freehills
(Organisation)

Partner
(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 *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.