

Our Ref: RHW:230423

12 December 2012



Mr Richard Chadwick
General Manager - Adjudication Branch
Australian Competition and Consumer Commission
Level 20
175 Pitt Street
SYDNEY NSW 2000

By hand

Dear Sir

Form G - Notification of Third Line Forcing Exclusive Dealing

We act for FBHS (Aust) Pty Ltd (**FBHS**) and enclose:

- (a) Form G – Notification of Exclusive Dealing for lodgement; and
- (b) a cheque on behalf of our client in the amount of \$100 in payment of the filing fee.

If you require any further information to consider this notification, please do not hesitate to contact me.

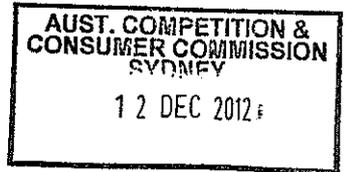
Yours sincerely
HWL Ebsworth

A handwritten signature in blue ink, appearing to read "Richard Westmoreland".

Richard Westmoreland
Partner

Writer: Melissa Hore | (02) 9334 8526 |
E-mail: mhore@hwle.com.au
Postal: GPO Box 5408 Sydney, New South Wales 2001
Address: Level 14, Australia Square, 264-278 George Street, Sydney, New South Wales 2000
Facsimile: 1300 369 656 (Australia) | +61 3 8615 4301 (International)
DX: DX 129 Sydney

Brisbane
Canberra
Melbourne
Norwest
Sydney



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)

N96477 FBHS (Aust) Pty Limited (ABN 83 126 232 504) (FBHS)

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

FBHS supplies distributors with a licence to sell pre-fabricated steel structures such as sheds and carports (**Distribution Agreement**).

Under the Distribution Agreement, FBHS also licences its distributors to use a structure design software package (**Software Package**) which enables the distributors to produce structural designs and plans quickly and economically.

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

Wendy Kong
Locked Bag 7013
Chatswood DC 2067

2. Notified arrangement

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

Engineering services and supply of prefabricated steel structures.

- (b) **Description of the conduct or proposed conduct:**
(Refer to direction 4)

FBHS proposes to provide or offer to provide its licensed services (including access to the Software Package and the right to use of a licensed trading name) on the condition that, when required, the distributor will acquire engineering services from a nominated third party or class of third parties (**Nominated Engineer/s**).

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)

FBHS distributors.

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

(i) **At present time:**

110 distributors.

(ii) **Estimated within the next year:**

(Refer to direction 6)

Not known.

(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:**

(Refer to direction 7)

FBHS has invested a large amount of effort and research to develop the Software Package. Each Nominated Engineer is carefully selected and must be well acquainted and familiar with the design parameters and assumptions built into that software.

By ensuring that FBHS distributors engage a Nominated Engineer to certify design modifications not covered by the Software Package FBHS is able to provide the following benefits:

- Increased efficiency and reduced costs. As each Nominated Engineer is already familiar with FBHS' designs and the design parameters and assumptions built into the Software Package, they will be able to more efficiently consider and evaluate the structure designs and plans used by FBHS distributors. Further, FBHS is able to negotiate competitive prices for engaging a Nominated Engineer. This enables FBHS distributors to price their structures competitively; benefiting both FBHS distributors and consumers.
- Assured compliance with safety standards. Ensuring that FBHS distributors only engage a Nominated Engineer will allow FBHS to ensure that all structures designed and built by distributors are compliant with necessary construction and safety standards.
- High quality products. As each Nominated Engineer is carefully selected, FBHS can ensure that its high standards are adhered to by all distributors, minimising variances in quality across all structures provided by distributors. This not only benefits consumers, but enables FBHS to build a stronger brand and promote distributors' businesses effectively, benefiting distributors and increasing their ability to compete effectively in the relevant market.

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

Please refer to item 4(a) above.

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 notified conduct will affect markets for consulting engineering services and relevantly defined building services markets. These markets may be regional or national in scope.

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)

For the following reasons, FBHS does not believe that the notified conduct will give rise to any public detriments:

- The percentage of the relevant markets for building services and consulting engineering services affected will be negligible. Accordingly, the notified conduct will not be capable of materially lessening competition in those markets.
- Ensuring that its distributors only supply structures certified by a Nominated Engineer will enable FBHS to achieve and promote consistent quality of product across all distributors, not only benefiting consumers but also allowing FBHS distributors to more effectively compete in the relevant markets.
- Each Nominated Engineer is subject to FBHS' strict requirements and high standard and is required to be well acquainted and familiar with the structure designs and plans used in the Software Package. The notified conduct will ensure the integrity and quality of FBHS structures is not compromised and is consistent across the FBHS businesses.
- FBHS is able to negotiate highly competitive prices for engaging a Nominated Engineer. This will assist FBHS distributors to price their structures more competitively; benefiting both FBHS distributors and consumers.
- Each Nominated Engineer will be subject to regular review to ensure that they continue to provide high quality services to distributors. FBHS will regularly liaise with each Nominated Engineer to ensure full compliance with the Building Code of Australia.

(b) Facts and evidence relevant to these detriments:

Please refer to item 6(a) 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:**

Richard Westmoreland
HWL Ebsworth
Level 14, Australia Square
264-278 George Street
Sydney NSW 2000
Phone: (02) 9334 8717
Email: rwestmoreland@hwle.com.au

Dated: 12 December 2012

Signed on behalf of the applicant



Richard Westmoreland
Partner, HWL Ebsworth



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.

Our Ref: RHW:230423

12 December 2012

Mr Richard Chadwick
General Manager - Adjudication Branch
Australian Competition and Consumer Commission
Level 20
175 Pitt Street
SYDNEY NSW 2000



By hand

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We act for FBHS (Aust) Pty Ltd (**FBHS**) and enclose:

- (a) Form G – Notification of Exclusive Dealing for lodgement; and
- (b) a cheque on behalf of our client in the amount of \$100 in payment of the filing fee.

If you require any further information to consider this notification, please do not hesitate to contact me.

Yours sincerely
HWL Ebsworth

A handwritten signature in blue ink, appearing to read "Richard Westmoreland".

Richard Westmoreland
Partner

Writer: Melissa Hore | (02) 9334 8526 |
E-mail: mhore@hwle.com.au
Postal: GPO Box 5408 Sydney, New South Wales 2001
Address: Level 14, Australia Square, 264-278 George Street, Sydney, New South Wales 2000
Facsimile: 1300 369 656 (Australia) | +61 3 8615 4301 (International)
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Form G

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PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) **Name of person giving notice:**
(Refer to direction 2)

N96478 FBHS (Aust) Pty Limited (ABN 83 126 232 504) (FBHS)

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

FBHS supplies distributors with a licence to sell pre-fabricated steel structures such as sheds and carports (**Distribution Agreement**).

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

Wendy Kong
Locked Bag 7013
Chatswood DC 2067
NSW

2. Notified arrangement

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

Financial membership of the Steel Shed Group, a subsidiary of the Australian Steel Institute (**ASI**).

(b) **Description of the conduct or proposed conduct:**
(Refer to direction 4)

FBHS proposes to provide or offer to provide rights under the Fair Dinkum Sheds name and other rights under the Distribution Agreement on the condition that the distributor will acquire and maintain financial membership of the SSG for the duration of the Distribution Agreement.

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)

FBHS distributors.

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

(i) **At present time:**

110 distributors.

(ii) **Estimated within the next year:**

(Refer to direction 6)

Not known.

(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:**

(Refer to direction 7)

The ASI is the peak steel industry association in Australia. It has a number of groups and committees that focus on particular parts of the steel industry. The SSG is a part of the ASI and focuses on steel shed and garage structures. It provides an independent industry forum for awareness, industry education and technical representation, presentations and seminars.

The ASI has introduced an industry benchmark for steel sheds called ShedSafe. The ShedSafe accreditation is a key component of the SSG and requires members to ensure that their design standards are in accordance with the Building Code of Australia.

By requiring FBHS distributors to acquire and maintain financial membership of the SSG, FBHS is able to provide the following benefits:

- Compliance with safety standards. As membership of the SSG requires compliance with the ShedSafe accreditation, FBHS will be able to ensure that all structures designed and built by distributors are compliant with necessary construction and safety standards, including the Building Code of Australia.
- Accreditation. As members of the SSG, FBHS distributors will be ShedSafe accredited and be entitled to bear the ShedSafe logo. If FBHS is able to promote that Fairdinkum Sheds sheds all carry this accreditation, it will be better able to promote the brand and distributors' businesses. This not only benefits consumers, but enables FBHS to build a stronger brand and promote distributors' businesses more effectively, benefiting distributors and increasing their ability to compete effectively in the relevant market.
- Continuing training and access to leading edge developments. As members of the SSG, FBHS distributors will have access to leading edge industry developments and the latest training, education and information. This not only benefits consumers, but enables FBHS to build a stronger brand and promote distributors' businesses effectively, benefiting distributors and increasing their ability to compete effectively in the relevant market.

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

Please refer to item 4(a) above.

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 notified conduct will affect markets for industry association membership and accreditation services in the steel industry and relevantly defined building services markets.

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)

For the following reasons, FBHS does not believe that the notified conduct will give rise to any public detriments:

- The percentage of the relevant markets for building services and industry association membership services affected will be small. FBHS distributors represent a small percentage of the total market for building services. Accordingly, the notified conduct will not be capable of materially lessening competition in those markets.
- FBHS will be able to ensure that all structures designed and built by distributors are compliant with necessary construction and safety standards, including the Building Code of Australia.
- As members of the SSG, FBHS distributors will have access to leading edge developments and information in the building and shed industry. This not only benefits consumers, but enables FBHS to build a stronger brand and promote distributors' businesses effectively, benefiting distributors and increasing their ability to compete effectively in the relevant market.
- FBHS will periodically renew the benefits provided by the SSG to ensure that distributors continue to receive high quality services and benefits.
- FBHS is not currently aware of any other industry body that provides the training and accreditation services provided by SSG.

(b) Facts and evidence relevant to these detriments:

Please refer to item 6(a) above.

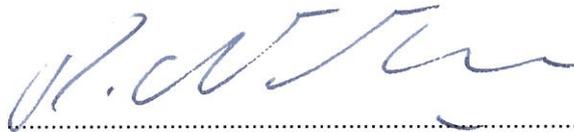
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Richard Westmoreland
HWL Ebsworth
Level 14, Australia Square
264-278 George Street
Sydney NSW 2000
Phone: (02) 9334 8717
Email: rwestmoreland@hwle.com.au

Dated: 12 December 2012

Signed on behalf of the applicant



Richard Westmoreland
Partner, HWL Ebsworth



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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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Dear Sir

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We act for Morinda Australia Pty Ltd (**Morinda**) and enclose:

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- (b) a cheque on behalf of our client in the amount of \$100 in payment of the filing fee.

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Yours sincerely
HWL Ebsworth

A handwritten signature in blue ink, appearing to read "R. Westmoreland".

Richard Westmoreland
Partner

Writer: Richard Westmoreland | (02) 9334 8717 |
E-mail: rwestmoreland@hwle.com.au
Postal: GPO Box 5408 Sydney, New South Wales 2001
Address: Level 14, Australia Square, 264-278 George Street, Sydney, New South Wales 2000
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Form G

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PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) **Name of person giving notice:**
(Refer to direction 2)

N96479 Morinda Australia Pty Ltd (ACN 082 051 287) (**Morinda**)

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

Morinda supplies licensees with a licence to sell pre-fabricated steel structures such as garages, barns, farm sheds, industrial buildings and carports (**Licence Agreement**).

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

Wendy Kong
Locked Bag 7013
Chatswood DC 2067
NSW

2. Notified arrangement

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

Financial membership of the Steel Shed Group (**SSG**), a subsidiary of the Australian Steel Institute (**ASI**).

- (b) **Description of the conduct or proposed conduct:**
(Refer to direction 4)

Morinda proposes to provide or offer to provide rights to trade under the ShedBoss name and other rights under the Licence Agreement on the condition that the licensee will acquire and maintain financial membership of the SSG for the duration of the Licence Agreement.

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)

Morinda licensees.

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

(i) **At present time:**

26 licensees.

(ii) **Estimated within the next year:**

(Refer to direction 6)

Not known.

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

Refer to Annexure A.

4. Public benefit claims

(a) **Arguments in support of notification:**

(Refer to direction 7)

The ASI is the peak steel industry association in Australia. It has a number of groups and committees that focus on particular parts of the steel industry. The SSG is a part of the ASI and focuses on steel shed and garage structures. It provides an independent industry forum for awareness, industry education and technical representation, presentations and seminars.

The ASI has introduced an industry benchmark for steel sheds called ShedSafe. The ShedSafe accreditation is a key component of the SSG and requires members to ensure that their design standards are in accordance with the Building Code of Australia.

By requiring Morinda licensees to acquire and maintain financial membership of the SSG, Morinda is able to provide the following benefits:

- Compliance with safety standards. As membership of the SSG requires compliance with the ShedSafe accreditation, Morinda will be able to ensure that all structures designed and built by licensees are compliant with necessary construction and safety standards, including the Building Code of Australia.
- Accreditation. As members of the SSG, Morinda licensees will be ShedSafe accredited and be entitled to bear the ShedSafe logo. If Morinda is able to promote that ShedBoss sheds all carry this accreditation, it will be better able to promote the brand and licensees' businesses. This not only benefits consumers, but enables Morinda to build a stronger brand and promote licensees' businesses more effectively, benefiting licensees and increasing their ability to compete effectively in the relevant market.
- Continuing training and access to leading edge developments. As members of the SSG, Morinda licensees will have access to leading edge industry developments and the latest training, education and information. This not only benefits consumers, but enables Morinda to build a stronger brand and promote licensees' businesses effectively, benefiting licensees and increasing their ability to compete effectively in the relevant market.

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

Please refer to item 4(a) above.

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 notified conduct will affect markets for industry association membership and accreditation services in the steel industry and relevantly defined building services markets.

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)

For the following reasons, Morinda does not believe that the notified conduct will give rise to any public detriments:

- The percentage of the relevant markets for building services and industry association membership services affected will be small. Morinda licensees represent a small percentage of the total market for building services. Accordingly, the notified conduct will not be capable of materially lessening competition in those markets.
- The membership fee is an annual fee of \$495 (inc GST) which, by comparison to a licensee's average turnover, is not a substantial imposition.
- Morinda will be able to ensure that all structures designed and built by licensees are compliant with necessary construction and safety standards, including the Building Code of Australia.
- As members of the SSG, Morinda licensees will have access to leading edge developments and information in the building and shed industry. This not only benefits consumers, but enables Morinda to build a stronger brand and promote licensees' businesses effectively, benefiting licensees and increasing their ability to compete effectively in the relevant market.
- Morinda will periodically renew the benefits provided by the SSG to ensure that licensees continue to receive high quality services and benefits.
- Morinda is not currently aware of any other industry body that provides the training and accreditation services provided by SSG.

(b) Facts and evidence relevant to these detriments:

Please refer to item 6(a) 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:

Richard Westmoreland
HWL Ebsworth
Level 14, Australia Square
264-278 George Street
Sydney NSW 2000
Phone: (02) 9334 8717
Email: rwestmoreland@hwle.com.au

Dated: 12 December 2012

Signed on behalf of the applicant



Richard Westmoreland
Partner, HWL Ebsworth



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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.
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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.

Annexure A

Morinda Licensees

Queensland

Name of franchisee	Business address	Business telephone number
Garage World Cairns (John Hickerton & Terry Barnes)	196 Spence St, Cairns	07 4031 2966
Garage World Innisfail (John & Gabrielle Hickerton)	21 Palmerston Dr, Innisfail	07 4061 7444
Garage World Tablelands (Terry Barnes)	20 Tolga Rd, Atherton 317 Byrnes Street, Mareeba	07 4091 3322 07 4092 5777
Garage World Townsville (Paul & Amanda Lewis)	16 Carroll Street Mt Louisa	07 4721 6555
Garage World Rockhampton (Terry Horsley)	23 Albert St, Rockhampton	07 4921 3622
Garage World Mackay (Mark & Julie McGowan)	31 Evans Ave, North Mackay	07 4951 2261
Garage World Sunshine Coast (Clinton & Melissa Patterson)	141 Mark Rd, Caloundra	07 5437 2222
Garage World Brisbane North (Ian & Trish Watt)	557 Gympie Rd, Lawnton	07 3881 2465
Garage World Brisbane South (Geoff & Wendy Livings)	3472 Pacific Hwy, Springwood	07 3808 7111
Garage World Ipswich (Paul & Lea McLucas)	52 Brisbane Rd, Ebbwvale	07 3816 0066
Garage World Gympie (Larry Johansen)	Cnr Pine & Bruce Hwy, Gympie	07 5482 8990
Garage World Gladstone (Brett & Angela Dare)	74 Toolooa St, Gladstone	07 4972 2055
Garage World Whitsundays Grant Rogers	Site: 6a McIntosh Drive, Cannonvale	07 4948 0305
Garage World Maryborough (Larry Johansen)	870 Saltwater Creek Road Maryborough	07 4123 2111

New South Wales

Name of franchisee	Business address	Business telephone number
Garage World Albury (Max & Andrea Grimmond)	380 Wagga Rd, Lavington	02 6040 6555
Shed Boss Armidale (Phil McFarlane)	16 Webb Place , Armidale	02 6771 1135
Shed Boss Central Coast Chris Chappell)	27 Gavenlock Road, Tuggerah	0410 644 524
Garage World Central West (Adam Gershbach)	4618 Mitchell Highway Lucknow	02 6365 5000

Name of franchisee	Business address	Business telephone number
Garage World Hunter (Don & Chris Folbigg)	Cnr Masonite Road & Archibald Pl Heatherbrae	02 4987 5111
Shed Boss Mid North Coast (Mark Humpheries & Dan Edwards)		02 6557 5599
Garage World Queanbeyan (Tony Ryan)	3 Cooper Place, Queanbeyan	02 6299 6932

Victoria

Name of franchisee	Business address	Business telephone number
Garage World Ballarat (David & Sharyn Sonneman)	29 Albert St, Sebastapol	03 5336 4700

South Australia

Name of franchisee	Business address	Business telephone number
Shed Boss Barossa Valley (Mark & Linda Dahlitz)	41 Tanunda Road Nuriootpa	08 8562 2629
Shed Boss Mid North (Mark & Christine Redden)	Block 102, White Yarcowrie Road Jamestown	08 8664 0660
Shed Boss Fleurieu (David & Susanne Schubert)	2 Lincoln Park Drive, Victor Harbor	08 8552 9092

Northern Territory

Name of franchisee	Business address	Business telephone number
Shed Boss Darwin (Brian Lewins)	56 Raphael Rd, Winnellie	08 89843044

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12 December 2012

Mr Richard Chadwick
General Manager - Adjudication Branch
Australian Competition and Consumer Commission
Level 20
175 Pitt Street
SYDNEY NSW 2000



By hand

Dear Sir

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We act for FBSOL Pty Limited (**FBSOL**) and enclose:

- (a) Form G – Notification of Exclusive Dealing for lodgement; and
- (b) a cheque on behalf of our client in the amount of \$100 in payment of the filing fee.

If you require any further information to consider this notification, please do not hesitate to contact me.

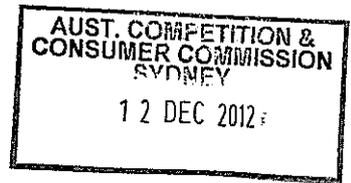
Yours sincerely
HWL Ebsworth

A handwritten signature in blue ink, appearing to read "Richard Westmoreland".

Richard Westmoreland
Partner

Writer: Melissa Hore | (02) 9334 8526 |
E-mail: mhore@hwle.com.au
Postal: GPO Box 5408 Sydney, New South Wales 2001
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DX: DX 129 Sydney

Brisbane
Canberra
Melbourne
Norwest
Sydney



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)

N96480 FBSOL Pty Limited (ABN 75 147 653 825) (**FBSOL**).

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

FBSOL supplies distributors with a licence to sell pre-fabricated steel based structures to be attached to existing buildings, including awnings, pergolas and verandas (**Distribution Agreement**).

Under the Distribution Agreement, FBSOL also licences its distributors to use a structure design software package (**Software Package**) which enables the distributors to produce structural designs and plans quickly and economically.

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

Wendy Kong
Locked Bag 7013
Chatswood DC 2067

2. Notified arrangement

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

Engineering services and supply of prefabricated steel structures.

(b) **Description of the conduct or proposed conduct:**
(Refer to direction 4)

FBSOL proposes to provide or offer to provide its licensed services (including access to the Software Package and the right to use of a licensed trading name) on the condition that, when required, the distributor will acquire engineering services from a nominated third party or class of third parties (**Nominated Engineer/s**).

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)

FBSOL distributors.

(b) Number of those persons:

(i) At present time:

24 distributors.

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

Not known.

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

Refer to Annexure A.

4. Public benefit claims

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

FBSOL has invested a large amount of effort and research to develop the Software Package. Each Nominated Engineer is carefully selected and must be well acquainted and familiar with the design parameters and assumptions built into that software.

By ensuring that FBSOL distributors engage a Nominated Engineer to certify design modifications not covered by the Software Package FBSOL is able to provide the following benefits:

- Increased efficiency and reduced costs. As each Nominated Engineer is already familiar with FBSOL's designs and the design parameters and assumptions built into the Software Package, they will be able to more efficiently consider and evaluate the structure designs and plans used by FBSOL distributors. Further, FBSOL is able to negotiate competitive prices for engaging a Nominated Engineer. This enables FBSOL distributors to price their structures competitively; benefiting both FBSOL distributors and consumers.
- Assured compliance with safety standards. Ensuring that FBSOL distributors only engage a Nominated Engineer will allow FBSOL to ensure that all structures designed and built by distributors are compliant with necessary construction and safety standards.
- High quality products. As each Nominated Engineer is carefully selected, FBSOL can ensure that its high standards are adhered to by all distributors, minimising variances in quality across all structures provided by distributors. This not only benefits consumers, but enables FBSOL to build a stronger brand and promote distributors' businesses effectively, benefiting distributors and increasing their ability to compete effectively in the relevant market.

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

Please refer to item 4(a) above.

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 notified conduct will affect markets for consulting engineering services and relevantly defined building services markets. These markets may be regional or national in scope.

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)

For the following reasons, FBSOL does not believe that the notified conduct will give rise to any public detriments:

- The percentage of the relevant markets for building services and consulting engineering services affected will be negligible. Accordingly, the notified conduct will not be capable of materially lessening competition in those markets.
- Ensuring that its distributors only supply structures certified by a Nominated Engineer will enable FBSOL to achieve and promote consistent quality of product across all distributors, not only benefiting consumers but also allowing FBSOL distributors to more effectively compete in the relevant markets.
- Each Nominated Engineer is subject to FBSOL's strict requirements and high standard and is required to be well acquainted and familiar with the structure designs and plans used in the Software Package. The notified conduct will ensure the integrity and quality of FBSOL structures is not compromised and is consistent across the FBSOL businesses.
- FBSOL is able to negotiate highly competitive prices for engaging a Nominated Engineer. This will assist FBSOL distributors to price their structures more competitively; benefiting both FBSOL distributors and consumers.
- Each Nominated Engineer will be subject to regular review to ensure that they continue to provide high quality services to distributors. FBSOL will regularly liaise with each Nominated Engineer to ensure full compliance with the Building Code of Australia.

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

Please refer to item 6(a) above.

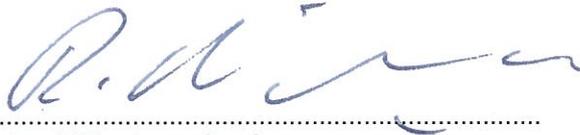
7. Further information

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

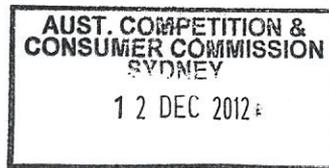
Richard Westmoreland
HWL Ebsworth
Level 14, Australia Square
264-278 George Street
Sydney NSW 2000
Phone: (02) 9334 8717
Email: rwestmoreland@hwle.com.au

Dated: 12 December 2012

Signed on behalf of the applicant



Richard Westmoreland
Partner, HWL Ebsworth



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.

Annexure A
FBSOL Distributors

NSW/ACT

Name of distributor	Business address	Business telephone number
Ricmatt Buildings	42 Dacre Street, Mitchell ACT 2911	02 6241 8544
Topline Garages	6 Caledonia St, Kearsley NSW 2325	02 4991 2977
Warrumbungle Steel Buildings	45 John St, Coonabarabran NSW 2357	02 6842 5787
Weel Australia	40 Francis Street, Narrabri NSW 2390	02 6792 4687
Compass Sheds	1 Groongal St, Mayfield West NSW 2304	02 4960 9500
Great Value Garages	6 Kable Ave, Tamworth NSW 2340	02 6766 4522
MA Steel (Young)	3285 Moppitty Road, Young NSW 2594	02 6382 4387
MA Steel (Yass)	71 Laidlaw St, Yass NSW 2582	02 6226 4377
Geoff Reynolds Roofing	2/97 Montague St, North Wollongong NSW 2500	02 4231 5040
Clarence Valley Sheds	2 Federation Street, South Grafton NSW 2460	02 6643 2742
Connect Building Systems	17 Drapers Road, Mittagong NSW 2575	02 4872 1200
Outback Concreting and Sheds	43-45 Wheelers Lane, Dubbo NSW 2830	02 6882 3363
Sydney Sheds and Garages	14/46-48 Jedda Road, Prestons NSW 2170	02 8783 8177
M&D Sheds North Coast	253 Diamond Beach Road, Diamond Beach NSW 2430	0409 577 601

Victoria

Name of distributor	Business address	Business telephone number
Riviera Barns and Garages	48 Forge Creek Road, Bairnsdale VIC 3875	03 5153 1455
Smartline Garages	502 Howitt St, Ballarat VIC 3350	03 5332 3211
Bendigo Garages	4 Russell St, Bendigo VIC 3550	03 5444 0523
Geelong Sheds and Storage	196 Torquay Road, Grovedale VIC 3220	03 5244 5514
Melbourne Garages	2006 Frankston Flinders Road, Hastings VIC 3915	03 5979 3677
Aussie Made Garages – Lilydale	459 Maroondah Highway, Lilydale VIC 3140	03 9739 6999

Name of distributor	Business address	Business telephone number
Aussie Made Garages - Thomastown	292 Mahoneys Road, Thomastown VIC 3074	03 9359 9905

Victoria continued

Name of distributor	Business address	Business telephone number
South West Sheds and Homes	27 Walsh Road, Warrnambool VIC 3280	03 5561 1438
Shanes Sheds	12 Acacia Road, Yarrawonga VIC 3730	03 5744 1111
All spaces garages	11 Purton St, Pakenham VIC 3810	02 5941 9019