

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.

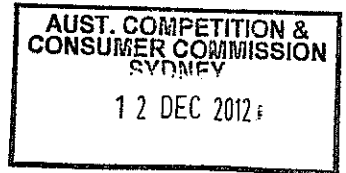
If you require any further information to consider this notification, please do not hesitate to contact me.

Yours sincerely  
**HWL Ebsworth**

**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](mailto: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

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.

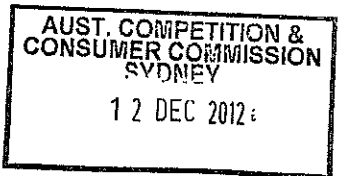
Yours sincerely  
**HWL Ebsworth**

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)*

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.

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](mailto: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

Dear Sir

**Form G - Notification of Third Line Forcing Exclusive Dealing**

We act for Morinda Australia Pty Ltd (**Morinda**) 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 "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  
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)

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](mailto: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

### Morinda Licensees

#### *Queensland*

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

#### *New South Wales*

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

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

***Victoria***

| <b>Name of franchisee</b>                          | <b>Business address</b>     | <b>Business telephone number</b> |
|--|-----------------------------|----------------------------------|
| Garage World Ballarat<br>(David & Sharyn Sonneman) | 29 Albert St,<br>Sebastapol | 03 5336 4700                     |

***South Australia***

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

***Northern Territory***

| <b>Name of franchisee</b>          | <b>Business address</b>     | <b>Business telephone number</b> |
|------------------------------------|-----------------------------|----------------------------------|
| Shed Boss Darwin<br>(Brian Lewins) | 56 Raphael Rd,<br>Winnellie | 08 89843044                      |

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 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.

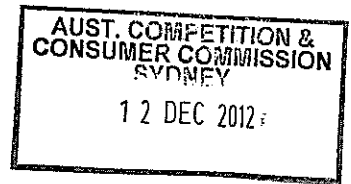
Yours sincerely  
**HWL Ebsworth**

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  
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)

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.



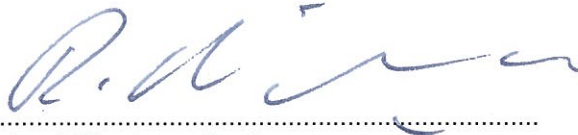
**7. Further information**

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

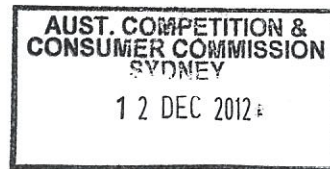
Richard Westmoreland  
HWL Ebsworth  
Level 14, Australia Square  
264-278 George Street  
Sydney NSW 2000  
Phone: (02) 9334 8717  
Email: [rwestmoreland@hwle.com.au](mailto:rwestmoreland@hwle.com.au)

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**

| <b>Name of distributor</b>   | <b>Business address</b>                        | <b>Business telephone number</b> |
|------------------------------|--|----------------------------------|
| 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**

| <b>Name of distributor</b>     | <b>Business address</b>                         | <b>Business telephone number</b> |
|--------------------------------|---|----------------------------------|
| 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                     |

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

*Victoria continued*

| <b>Name of distributor</b> | <b>Business address</b>             | <b>Business telephone number</b> |
|----------------------------|-------------------------------------|----------------------------------|
| 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                     |