

14 JUN 2012

14 June 2012

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BY HAND

Dr Richard Chadwick
General Manager – Adjudication Branch
Australian Competition & Consumer Commission
c/- Level 35, The Tower, 360 Elizabeth Street
Melbourne Central
Melbourne Vic 3000

Dear Dr Chadwick

Notification of third line forcing conduct

We act on behalf of La Trobe University.

We enclose:

- a confidential notification and supporting submission under section 93(1) of the *Competition and Consumer Act 2010* (Cth) (CCA);
- a redacted version of the notification and supporting submission for the public register; and
- a cheque in the amount of \$100 as payment of the required fees.

FILE No:

DOC:

MARS/PRISM

La Trobe has redacted the personal details of the three minors for the publication of the notification on the ACCC's public register. La Trobe is concerned about publicising the identity and address details of the international students concerned, who are under 18 years of age. Publication of this type of information, in La Trobe's view, raises privacy and potentially security issues. Please contact us if you have any concerns in respect of the redaction.

In order to minimise the risk of contravening sections 47(6) and (7), and out of an abundance of caution, our client wishes to notify conduct under section 93(1) of the CCA. The conduct is set out in the attached Form G.

If you have any questions in relation to this notification or require any further information, please do not hesitate to contact Celesti Harmse of our office.

Yours faithfully

MINTER ELLISON


R D Murphy
Partner

Contact: Celesti Harmse Direct phone: +61 3 8608 2474 Direct fax: +61 3 8608 1257
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Partner responsible: Richard Murphy Direct phone: +61 3 8608 2705
Our reference: SDC RDM 30-6297414

enclosures

MINTER ELLISON OFFICES

ADELAIDE AUCKLAND BEIJING BRISBANE CANBERRA DARWIN GOLD COAST HONG KONG
LONDON MELBOURNE PERTH SHANGHAI SYDNEY ULAANBAATAR WELLINGTON

Restriction of publication of part claimed

Form G

Commonwealth of Australia

Competition and Consumer Act 2010 - sub-section 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.

1. Applicant

(a) Name of person giving notice:

N95949 *La Trobe University (La Trobe)*.

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

La Trobe is a multi-campus, higher education services provider based in Victoria, Australia.

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

*C/- Richard Murphy
Minter Ellison Lawyers
525 Collins Street
MELBOURNE VIC 3000*

2. Notified arrangement

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

The supply and acquisition of higher education services and the supply and acquisition of accommodation services to international students under 18 years of age.

(b) Description of the conduct or proposed conduct:

*La Trobe will supply or offer to supply higher education services to international students under 18 years of age (**Students**) on the condition that the Students obtain accommodation services from a nominated provider.*

This conduct can be characterised as La Trobe:

- *supplying or offering to supply higher education services to Students on the condition that the Student will acquire accommodation services from the nominated service provider; or*
- *refusing to supply higher education services to Students for the reason that the Student has not acquired or not agreed to acquire accommodation services from the nominated provider.*

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:

International students under 18 years of age enrolled at La Trobe.

- (b) Number of those persons:

- (i) At present time:

Currently three students.

- (ii) Estimated within the next year:

Approximately 20 students next year.

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

Please refer to Annexure 1.

4. Public benefit claims

- (a) Arguments in support of notification:

We believe the notified conduct will generate a number of public benefits. These are set out in more detail in Annexure 1.

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

Please refer to Annexure 1.

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):

Please refer to Annexure 1.

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:

We do not believe that the notified conduct causes any identifiable detriment to the public. Please refer to Annexure 1.

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

Please refer to Annexure 1.

7. Further information

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

*C/- Richard Murphy
Minter Ellison Lawyers
525 Collins Street
MELBOURNE VIC 3000*

Dated 14 June 2012

Signed by/on behalf of the applicant

(Signature)

Richard Murphy

(Full Name)

Minter Ellison Lawyers

(Organisation)

Partner

(Position in Organisation)



DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible

Annexure 1 - Supporting submission

1. Background

- 1.1 La Trobe provides higher education services to more than 30,000 students including approximately 7,600 international students from over 90 countries. La Trobe has a network of campuses in Melbourne, Albury-Wodonga, Bendigo, Mildura, and Shepparton.
- 1.2 As a higher education provider La Trobe is required to comply with the requirements prescribed in the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (Code)*. The Code is established under the *Education Services for Overseas Students Act 2000 (Cth)*.
- 1.3 The Code prescribes specific requirements regarding the support and general welfare arrangements for international students under 18 years of age (**Students**). Under Standard 5 of the Code, where Students are not being cared for in Australia by a parent or suitable nominated relative, registered providers, such as La Trobe are required to ensure that there are arrangements made to protect the personal safety and social well-being of those Students. It is also a requirement under a Student's visa condition (condition 8532¹) that the Student maintains suitable accommodation, support and general welfare arrangements for the period that the student will be under 18 while in Australia.
- 1.4 In recognition of the importance of this duty La Trobe has selected an appropriately qualified accommodation service provider Australian Homestay Network Pty Limited (ABN 52 124 610 313) (**AHN**).
- 1.5 Students enrolling in a La Trobe course (who are not residing in Australia with a parent or suitable nominated relative) will be required to acquire accommodation services from AHN.
- 1.6 A Student whose accommodation arrangements are through AHN will not be permitted to travel into Australia until the commencement date of the accommodation arrangements.
- 1.7 AHN provides accommodation placement services for overseas visitors in family homes.
- 1.8 The services AHN will provide to Students include:
 - (a) ensuring the accommodation for Students meets standards prescribed by La Trobe;
 - (b) liaise between La Trobe and the Student's guardian if it becomes aware that there are significant changes to the Student's welfare, health, safety or other behavioural issues of concern including, but not limited to the Student staying away from his or her accommodation overnight without permission;
 - (c) inform La Trobe about any concerns a Student has in respect of their accommodation;

¹ See (http://www.fahcsia.gov.au/guides_acts/ssg/ssguide-9/ssguide-9.3/ssguide-9.3.5/ssguide-8532.html) (Accessed 4 June 2012).

- (d) notify La Trobe about any serious incidents such as serious injury involving the health and welfare of Students within 48 hours; and
 - (e) report to the Student's parents regarding aspects of their Student's arrival such as an overview of their host family, how to contact the Student and general information on the Student's welfare, university, transport to and from La Trobe and how the Student is settling in; and
 - (f) maintaining regular contact with the Student in accordance with a timeframe specified by La Trobe.
- 1.9 The accommodation services are provided at a cost to Students. There is no financial relationship between La Trobe and the Student in respect of these services, or between La Trobe and AN.
- 1.10 Whilst a Student is required to acquire accommodation services from AHN a Student is able to switch host families at the end of the term for which the Student has paid and signed their contract. A Student can also switch families at anytime before then by contacting AHN and seeking approval from their guardian and La Trobe.
- 1.11 A Student's engagement of AHN ceases to be a condition of the Student's enrolment at La Trobe on the date of the Student's 18th birthday.

2. Notified Conduct

- 2.1 This conduct can be characterised as La Trobe:
- (a) supplying or offering to supply higher education services to Students on the condition that the Student will acquire accommodation services from AHN; or
 - (b) refusing to supply higher education services to Students for the reason that the Student has not acquired or not agreed to acquire accommodation services from AHN.
- 2.2 La Trobe appreciates that the conduct described in paragraph 2.1 may be construed as falling within the prohibitions contained in section 47(6) and 47(7) of the CCA. Accordingly, it wishes to notify the conduct under section 93(1) of the CCA.

Restriction of publication of part claimed

3. Persons affected or likely to be affected by the notified conduct

Confidential – restriction of part publication claimed / [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
Confidential – restriction of part publication claimed

4. Competition Issues

4.1 We submit on behalf of our client that the Commission should not serve a notice under section 93(3A) of the CCA because the conduct in question:

- (a) will not adversely affect competition in any relevant market; and
- (b) will result in public benefits and no identifiable public detriment.

4.2 The conduct notified by La Trobe is consistent with the requirements prescribed in respect of the care and welfare of Students under the Code. Students may change host families. The Students' commitment to a provider ceases to be a condition of enrolment at La Trobe on the Student attaining 18 years of age.

4.3 Additionally, the selection by La Trobe of a suitably qualified accommodation placement provider assists the provision of suitable services to Students.

4.4 Set out below is a competition analysis of the conduct on the relevant markets.

Relevant markets

4.5 Adopting a conservative approach to market definition for the purposes only of this notification, we consider the relevant markets to be for the supply of tertiary education services in Australia and the market for accommodation placement services in Australia. We consider the effect of the notified conduct on competition in each of these markets in turn.

Effect of competition in the relevant markets

4.6 The market for tertiary education services is characterised by a high degree of competition between many providers across Australian states and territories.

4.7 With respect of the market for guardianship and support services AHN is the only national network of home stay providers in Australia. There are approximately 20 home stay providers in Victoria and 60 providers throughout Australia.

- 4.8 La Trobe has selected AHN as it offers the largest trained home stay pool in Australia. AHN, in La Trobe's view, has extensive experience providing accommodation placement services with suitable families to underage students in the tertiary sector.
- 4.9 La Trobe considers AHN to be the most appropriately qualified accommodation service provider available to provide accommodation placement services to these Students. AHN has a national team of experienced and dedicated people using a unique home stay website communication system for managing home stay placements throughout Australia. This support system can provide services to Student's at La Trobe's Melbourne campuses, but also Student's at La Trobe's other regional campuses. AHN has, in La Trobe's view, also demonstrated an important willingness to work collaboratively with the welfare agencies nominated by La Trobe who provide welfare and guardianship services to Students (please refer to notification N95746).
- 4.10 The maximum impact of the conduct in relation to Students should be considered in relation to La Trobe's proportional share of the market for the supply of tertiary education services. On the basis of last year's enrolment figures, La Trobe had 6,418 international students enrolled out of a total of 218,965 nationally. Accordingly, we do not consider that the conduct will create barriers to entry or otherwise harm competition in the relevant markets. Further information in relation to these markets can be provided to the Commission, if requested.

Public benefits

- 4.11 Moreover, the notified conduct will generate a number of public benefits, including the following:
- (a) providing high quality, specialised accommodation placement services to a vulnerable class of persons (children from overseas);
 - (b) ensuring that there is accountability for the wellbeing of Students; and
 - (c) the notified conduct is consistent with the statutory requirements prescribed by the Code in respect of Students and the Student's visa requirements.
- 4.12 Furthermore, to ensure the public benefits:
- (a) AHN will be required to adhere to minimum performance standards in an agreement between La Trobe and AHN;
 - (b) La Trobe will monitor the reports AHN provides about the Students; and
 - (c) AHN will have contractual obligations in its agreement with La Trobe to monitor the accommodation services provided to the Students by its home stay families.

Public detriment

- 4.13 La Trobe considers that the notified conduct causes little, if any, identifiable detriment to the public. The opportunity foreclosed to competitors of AHN are small given the number of Students involved. There are many other clients and potential clients of competitive providers, such that the proposed restriction will have no material impact on their viability or the economics of the accommodation services industry generally.

- 4.14 The notified conduct ensures that Students are provided with a suitable accommodation placement with a host family.
- 4.15 Overall, the effect of the conduct, discussed above, in relevant markets is insignificant and is outweighed by benefits.
- 4.16 We submit that the notified conduct should be viewed as conferring quality assurance in respect of the provision of accommodation services to Students.

5. Conclusion

- 5.1 For the reasons set out above, we do not believe the Commission should serve a notice under section 93(3A) of the CCA in respect of the attached notifications. This is because the notified conduct will cause little, if any, identifiable detriment and will generate public benefits.