

14 MAR 2013

Form GCommonwealth 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)

N96662

Nerac Pty Ltd ACN 010 196 817 ("Nerac").

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

Nerac carries on the business of developing residential land situated in Providence Estate at Greenvale, Victoria ("**Providence**").

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

c/- Cooper Grace Ward Lawyers

Attention: Marcus Ford

GPO Box 834

BRISBANE QLD 4001

2. Notified arrangement

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

The goods to which this notice relates is the proposed sale of residential home and land packages at Providence.

The development at Providence commenced in May, 2010, and to date approximately 362 lots have been sold.

Upon completion, Providence will comprise 550 residential lots. Providence will be developed in stages and it is expected that Providence will be completed by June, 2015.

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

Nerac is the registered owner of land in Providence.

Nerac proposes to enter into an agreement with Carlisle Homes Pty Ltd ACN 106 263 209 ("**Carlisle**") in which it intends to give Carlisle the exclusive right to construct residential homes on specified residential lots which form part of Providence ("**proposed arrangement**").

Under the proposed arrangement, a purchaser entering into a contract to purchase particular lots will do so on the basis that the purchaser also enters into a building contract with Carlisle to construct their home on that lot.

(Refer to direction 4)

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

- (a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

The class of persons likely to be affected by the proposed arrangement are consumers seeking to purchase residential land in Providence from the date of the date of authorisation by the ACCC until all specified lots are sold.

- (b) Number of those persons:

- (i) At present time:

Unknown. Lots in Providence are available to the general public.

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

It is estimated that up to 110 persons will acquire lots at Providence within the next year.

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

Unknown at this stage.

4. Public benefit claims

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

- Purchasers of specified lots will:
 - receive the benefit of obtaining a new home in a residential estate for a fixed price;
 - will not be required to expend further time or costs in obtaining separate services for design and construction of a residential dwelling;

- Carlisle will not be required to pay duty on the purchase of the residential lot, and as such, this cost will not be passed onto the purchaser.
 - By offering the proposed lots for sale as a house and land package, there are significant duty savings for purchasers.
 - The proposed arrangement will provide Carlisle with certainty of volume of work providing it with the opportunity to decrease its supply costs.
- (b) Facts and evidence relied upon in support of these claims:
- There is no obligation on the purchaser to purchase land from Nerac, nor to use Carlisle for the construction of a home outside of specific lots within Providence.
 - The proposed arrangement will not decrease competition in the relevant market as there are several other developers offering house and land packages in the relevant market.
 - The Victorian Government offers duty concessions to purchasers who purchase house and land packages.

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 market likely to be effected by the proposed arrangement is the market for residential homes in Greenvale, Victoria.

There are a number of suppliers in the market referred, with a number of developers and builders operating in Greenvale, Victoria. The other suppliers in this market offer strong competition to Providence regarding the supply of residential house and land packages.

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)

Nerac considers that there would be a negligible public detriment resulting from the proposed arrangement in the relevant market.

Nerac does not consider that the proposed arrangement will have any negative effect on the prices of home and land packages in the notified market.

(b) Facts and evidence relevant to these detriments:

- Carlisle is a registered and licensed builder in the state of Victoria.
- The proposed arrangement will have a negligible effect on competition because consumers will only be required to use Carlisle to build their home at Providence in relation to specified lots. Not all lots in Providence will be sold on the condition that the purchaser uses Carlisle.
- The proposed arrangement in no way limits the genuine choice of consumers as there are many other suppliers in the market from which consumers can choose to obtain building services for the building of their home at Providence.
- Purchasers of the specified lots will avoid the uncertainty of overall costs for the construction of a home on their lot through the purchase of a house and land package.

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/- Marcus Ford

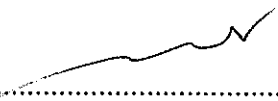
Cooper Grace Ward Lawyers

Level 21 400 George Street,

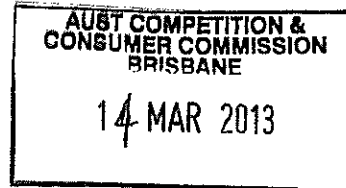
Brisbane QLD 4000

Dated..... 14 / 3 / 13

Signed by/on behalf of the applicant

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(Signature) Marcus Ford
Partner, Cooper Grace Ward Lawyers



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.