

28 NOV 2016

## 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)*

N99461 Aeris Environmental Ltd ABN 19 093 977 336 (Aeris)

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

Aeris provides specialist and bespoke solutions in heating, ventilation, air-conditioning and refrigeration systems (HVAC Systems) in Australia, and elsewhere in the world. Among other things, Aeris works with existing HVAC Systems to make them operate more efficiently, economically and provide cleaner air.

Aeris also manufactures products specifically designed to coat and protect the HVAC Systems which are applied in-situ using certified equipment and by specialist certified persons.

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

c/- DibbsBarker, GPO Box 983 Sydney NSW 2001: Ref : SRS

### 2. Notified arrangement

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

The goods or services to which this notification relates is a 5 year extended warranty (5 Year Warranty) product intended to be offered by Aeris to purchasers of AerisGuard Corrosion Protection Plus (Product);

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

Aeris proposes to offer the 5 Year Warranty for the benefit of purchasers of the Product.

Under the 5 Year Warranty, Aeris will warrant that the Product will remain free from defects for a period of 5 years, provided that, among other things, the Product is applied in accordance with the 5 Year Warranty.

To obtain the benefit of the 5 Year Warranty, it will be a condition that Aeris' customers also enter into a contract with approved applicators of the Product (as specified from time to time) (**Platinum Partners**) to have the Product applied to their HVAC Systems by those Platinum Partners.

Platinum Partners will be appointed by Aeris in each of the various Australian States (depending upon need) on the basis of their agreement to:

- undertake training;
- commit to further annual training;
- use of specified equipment and application techniques; and
- undertake business development and promotion activities in conjunction with Aeris.

*(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 classes of persons likely to be affected by the proposed arrangement are:

- (a) purchasers of the Product, who will also wish to obtain the benefit of the 5 Year Warranty;
- (b) applicators of the Product

- (b) Number of those persons:

- (i) At present time:

- (a) Nil (the warranty has not yet been offered)
- (b) Total unknown, but more than 50

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

It is estimated that there will be more than 50 purchasers who will wish to obtain the benefit of the 5 Year Warranty, and more than 50 applicators of the Product.

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

N/A

**4. Public benefit claims**

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

- (i) One of the main reasons for issues which arise for customers' in relation to their experience with coatings type products (such as the Product), is the manner in which it is applied (i.e. not the quality of the product itself). This can be due to the inexperience of the applicators, lack of training or lack of suitably trained or qualified staff. Application of the Product by a trained and certified Platinum Partner will mean:
- a. customers are likely to receive a superior job finish;
  - b. jobs are likely to be finished more efficiently without compromising on quality of finish;
  - c. issues associated with application of the Product are less likely to arise for customers;
  - d. by reducing the issues associated with application of the Product, the 5 Year Warranty is more likely to respond in the event of a warranty claim (assuming that the purchaser has not done anything to otherwise void the benefit of the 5 Year Warranty), providing greater certainty for the purchaser of the Product in the event that a defect in the Product becomes manifest within 5 years from the date of the application of the Product to the customer's HVAC System;
- (ii) The market for the Product in Australia is currently dominated by competitor products, and the introduction of the features of the proposed 5 Year Warranty will increase the competitiveness of the Product in the market, and increase competition in the market generally;
- (iii) Purchasers of the Product will have the comfort of knowing that the Platinum Providers are quality assured and specialist trained prior to having the Product applied to their HVAC System;
- (iv) Applicators, by becoming Platinum Partners, will be able to demonstrate the benefit of their investment in training and certification to customers by virtue of enabling access to the extended 5 Year Warranty;
- (v) By appointing a number of Platinum Partners in a various geographical markets, utilising a Platinum Partner to apply the Product to HVAC

Systems will provide an attractive substitute for the current dominant existing competitor products to the Product for purchasers who are considering making such a purchase.

- (b) Facts and evidence relied upon in support of these claims:
- (i) Aeris' experience with its product range has been that in the isolated incidents where negative results have been reported with its by customers, the quality of application of the relevant product has been identified as the cause;
  - (ii) If the Product is properly applied then the Product is more likely to perform to expectations;
  - (iii) Platinum Partners will be required to commit to annual training, utilisation of specialist equipment and application techniques, and to demonstrate a capacity to properly apply the Product to HVAC Systems;
  - (iv) Platinum Providers will be quality assured and specialist trained in the application of the Product to HVAC Systems;
  - (v) The Product currently has an estimated 5% share of the relevant market in Australia;
  - (vi) There are a number of substitute products (including the dominant competitor product);
  - (vii) Applicators which choose not to become Platinum Partners can still apply the Product and any of the competitor products;
  - (viii) Platinum Providers which choose to will not be restricted from applying competitor products;
  - (ix) Customers are not required to acquire the 5 Year Warranty when purchasing the Product;
  - (x) Customers do not pay Aeris any additional consideration for the benefit of the 5 Year Warranty;
  - (xi) Platinum Providers will not pay Aeris any commission for application of the Product to a customer's HVAC System.

## 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 for the proposed arrangement is of specialist products used to coat and protect HVAC Systems in Australia. Aeris' current market share is estimated at approximately 5%, with the other known significant supplier in the market for products similar to or substitutable for the Product being Blygold Australia.

There are no legal or geographical restrictions in the market between competitors and no known significant barriers to entry into the market.

## **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)*

Aeris considers that there will be a negligible public detriment arising from the proposed conduct in the relevant market.

- (b) Facts and evidence relevant to these detriments:
- (i) There will be no substantial lessening of competition in the event that proposed arrangement proceeds.
  - (ii) If a customer acquires the Product, it is not obligated to also qualify for the benefit of the 5 Year Warranty. It can purchase the Product, but choose not to use a Platinum Partner to apply the Product.
  - (iii) If a customer acquires the Product, but does not qualify for the benefit of the 5 Year Warranty by virtue of choosing not to use a Platinum Partner to apply the Product, the customer will still have the benefit of a shorter (1 year) extended warranty product offered by Aeris, which does not require the Product to be applied to its HVAC System by a Platinum Partner.
  - (iv) the arrangement between Aeris and its Platinum Providers will not seek to restrict or limit the Platinum Providers from also using competitor products;
  - (v) the proposed arrangement will not affect the genuine choice of consumers, as customers can elect to purchase the Product and have it applied without also acquiring the 5 Year Warranty, or elect to purchase competitor products without any requirement for use of Platinum Partners.

**7. Further information**

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

Scott Sloan

DibbsBarker

GPO Box 983

Sydney NSW 2001

Dated..... 25 November 2016

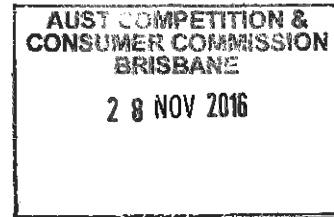
Signed by/on behalf of the applicant  
.....

(Signature)

Scott Sloan  
(Full Name)

DibbsBarker  
(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 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.