

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)

The BMD Group of companies including:

BMD CONSTRUCTIONS PTY LTD ABN 59 010 126 100

BMD URBAN PTY LTD ABN 65 158 035 539

JMAC CONSTRUCTIONS PTY LTD ABN 81 065 374 414

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

CIVIL CONSTRUCTION

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

PO BOX 197

WYNNUM QLD 4178

2. Notified arrangement

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

PLANT ASSESSOR is a cloud-based software application for recording, tracking and managing the completion and storage of risk assessments, pre-start safety checks and other compulsory safety data for heavy plant and construction machinery.

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

We propose to use Plant Assessor as a tool for tracking safety compliance (notably the completion and storage of risk assessments and pre-start safety checks) of third party providers of plant and heavy

construction machinery on our job sites. We intend to insist that these providers engage Plant Assessor to facilitate this.

(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)

Third party providers of plant and heavy machinery hire services to BMD companies

- (b) Number of those persons:

- (i) At present time:

320

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

300-350

- (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)

The adoption of Plant Assessor will replace an existing paper-based system that is unnecessarily repetitive and obscure. The Plant Assessor app will allow us to quickly and transparently undertake instant checks as to the safety compliance of any given piece of plant or construction machinery. This will have a beneficial effect upon safety compliance on site, and will contribute to a safer workplace for our personnel and third party operators alike. It will also prove a quicker and more efficient system which will facilitate improved work rate and productivity.

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

The BMD Business Systems team has assessed the Plant Assessor application based upon demonstrations and testing. We are satisfied that this solution will mark a significant improvement to our processes

and address our existing concerns around a lack of transparency, and an inability to easily audit compulsory risk assessments and daily pre-start safety checks.

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)

While there are industry experts supplying risk assessment services, these feed into existing sub-optimal paper-based systems. BMD representatives have been unable to identify a suitable substitute product to Plant Assessor that can provide the same or similar services. (i.e. cloud-based software application and platform)

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)

Our latest information is that much of the Plant Assessor offering we will be asking our suppliers to engage with will be free, with some elements (namely expert risk assessment services) coming at a cost in the order of \$150 - \$200 per machine.

The added cost of the Plant Assessor services to third party suppliers might be passed on to principal contractors or direct clients such as BMD and others.

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

BMD's commitment to Plant Assessor is such that unreasonable price hikes will prompt us to abandon the service, and to abandon our mandates of its use by our suppliers.

BMD's use of the platform is based upon it being a cost-effective way to increase safety compliance, accountability and transparency.

7. Further information

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

Dare Power, Group Administration Manager

Ph: 07 3893 7060

BMD

PO Box 197

Wynnum QLD 4179

Dated..... *19 FEBRUARY 2016*

Signed by/on behalf of the applicant

.....
(Signature)

DARE POWER
.....
(Full Name)

BMD GROUP
.....
(Organisation)

GROUP ADMINISTRATION MANAGER
.....
(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.