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Commonwealth of Australia  
*Competition and Consumer Act 2010* — subsection 93 (1)  
**NOTIFICATION OF EXCLUSIVE DEALING**

AUST. COMPETITION & CONSUMER  
COMMISSION — ADELAIDE

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)

N99521 Eklipe Capital Pty Ltd (ACN 141 761 257) (**Applicant**)

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

The Applicant is an Australian property development company that has or will acquire, develop and market residential property in South Australia.

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

c/o Lynch Meyer Lawyers  
Ground Floor  
190 Flinders Street  
Adelaide SA 5001

**2. Notified arrangement**

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:
- (i) The supply of residential apartments at Austin Street, Adelaide, South Australia (**Realm Adelaide**) related to a development to be carried on by the Applicant.
  - (ii) The offer of a guarantee of a minimum annual rental rate of return to purchasers who purchase residential apartments for investment purposes (**Purchasers**) on certain terms and conditions.
  - (iii) The supply of residential real estate agency services for property management.

- (b) Description of the conduct or proposed conduct:  
(Refer to direction 4)
- (i) The Applicant proposes to offer for sale apartments under development by the Applicant located in Realm Adelaide.
  - (ii) The Applicant proposes to offer a rental guarantee to such Purchasers of certain apartments in Realm Adelaide as may be determined by the Applicant. The rental guarantee agreement will guarantee that such Purchasers will receive a minimum annual rental rate of return for a set period after the purchase of the apartment, where certain conditions are met (including the purchaser must take active steps to let the apartment).
  - (iii) It is a condition of the rental guarantee agreement that such Purchaser must appoint the Applicant's nominated agent (**Nominated Agent**) to secure a tenant to rent the apartment under a Letting Agreement.
  - (iv) The rental guarantee agreement is completely optional and will only be entered into if requested by such Purchaser and agreed by the Applicant.

**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)
- Potential and actual buyers of residential apartments in Realm Adelaide who purchase for investment purposes.
- (b) Number of those persons:
- (i) At present time:  
Not known with any certainty.
  - (ii) Estimated within the next year:  
(Refer to direction 6)
- Based on the Applicant's agent's experience in prior developments, it is anticipated that approximately 20-25% of Purchasers may request a rental guarantee.
- (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)
- (i) Such Purchasers will be offered an introduction to the Nominated Agent who has appropriate expertise in marketing properties in similar developments. This is intended to provide the Applicant and relevant Purchasers with confidence that tenants will be secured for the Apartments.
  - (ii) The rental guarantee will enable such Purchasers to purchase apartments in Realm Adelaide with the certainty of receiving a minimum rental rate of return on their investment for a period of 24 months commencing shortly after settlement.
  - (iii) It is also intended to reduce costs for investors by making it easier and more efficient to engage a real estate property manager which should reduce time and cost of locating and engaging a real estate property manager. It should also reduce the cost to the investor of real estate property manager fees:
  - (iv) It is anticipated that the Nominated Agent will be appointed to market a number of the apartments within Realm Adelaide which will enable a consistent and cost effective marketing campaign.
  - (v) The conduct creates a more financial viable investment opportunity for Purchasers.
  - (vi) The conduct is intended to encourage investment in apartments in the Adelaide CBD.
  - (vii) The proposed conduct will promote competition as it may encourage competitors to provide similar guarantees and other benefits to attract investors.
- (b) Facts and evidence relied upon in support of these claims:
- (i) The Applicant's proposal to require Purchasers to engage the Nominated Agent is to facilitate and assist the Applicant to offer a rental guarantee. There is no requirement for Purchasers to engage the Nominated Agent where they do not wish to gain the benefit of a rental guarantee.
  - (ii) The Applicant has engaged the Nominated Agent because its past performance has given the Applicant confidence in the Nominated Agent's capability.

- (iii) The development of residential apartments in the Adelaide CBD is highly competitive. Key competitors of the Applicant's development include developments such as Bohem Development, Kodo, One, West Franklin and a number of other apartment developments. In addition, a number of new apartment towers are also currently in the planning stage or are to be constructed in the Adelaide CBD.

## **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)*

- (i) The relevant market affected by the proposed conduct is likely to be at least as broad as the market in Australia (and in particular the Adelaide CBD) for the supply of off-the-plan residential apartments purchased for investment purposes and the potential management of them.
- (ii) Also, the market for residential real estate property management services for properties in the Adelaide CBD.

## **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)*

- (i) The Applicant submits that the notified arrangement involves no public detriments because the Purchasers of the apartments are under no obligation to engage the Nominated Agent if they do not wish to take advantage of the rental guarantee. They can choose to let the apartment themselves or engage any agent of their choosing if they wish to do so. The rental guarantee agreement is entered into at the Purchaser's request.

- (ii) The real estate market in the Adelaide CBD is highly competitive and there are various competing residential developments.
- (b) Facts and evidence relevant to these detriments:
- (i) Refer to 6(a) above.
  - (ii) The terms and conditions of the rental guarantee agreement will be communicated clearly to potential investors.
  - (iii) Investors can choose to purchase apartments from a number of other owners and developers in Australia (including the Adelaide CBD).

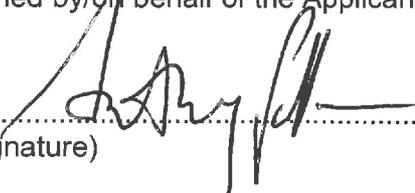
**7. Further information**

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

c/- Lisa Bielby, Partner  
 Lynch Meyer Lawyers  
 GPO Box 467, Adelaide SA 5001

Dated.....15/12/2016.....

Signed by/on behalf of the Applicant

  
 (Signature)

ANTHONY PATTINSON.  
 (Full Name)

EKLIPSE CAPITAL  
 (Organisation)

DIRECTOR  
 (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.