

ALDI Stores

(A Limited Partnership)
ABN 90 196 565 019

1 Sargents Road, Minchinbury, NSW 2770 AUSTRALIA

CORPORATE

Locked Bag 56
St Marys Delivery Centre
NSW 2760

Telephone: (02) 9675 9000
Facsimile: (02) 9675 9399

Buying Department
Facsimile: (02) 9675 9299

Mr Tom Leuner
By Email: Tom.Leuner@accc.gov.au

And to

Mr Gavin Jones
By Email: gavin.jones@accc.gov.au

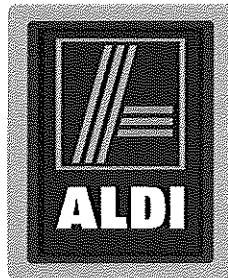
Addendum to ALDI's Public Submission to the ACCC Grocery Inquiry

Please find enclosed some additional information in relation to restrictive covenants, which can be viewed as an addendum to our initial submission, sent to you in March 2008.

Yours faithfully

A handwritten signature in black ink, appearing to be 'MB' or similar, written over a horizontal line.

Matthew Barnes
Managing Director Buying



An Addendum to ALDI's

Public Submission to the ACCC Grocery Inquiry

Made by
ALDI Stores
7 July 2008

It has been some time since our submission was received by the ACCC at the beginning of March, and we understand that in the interim the ACCC have been incredibly busy with conducting the Public Hearings. We have been very impressed with the thoroughness and detail with which the Hearings have been conducted, and have read with great interest the Minutes from the Hearings.

We do however, have some concerns at the potential misinterpretation or misunderstanding of a number of facts that are, in our view, key to the ACCC investigation into competition in the grocery market. Our areas of concern are with regard to restrictive covenants.

The issue surrounding the use of restrictive covenants has been raised in the ACCC Hearings with Stockland, Colonial First State and Westfield as major landlords with numerous MSC's leases in these centres. The landlords have indicated that they rarely, if ever, agree to restrictive covenants. In the rare case they do have such a clause in one of their leases it is usually as a result of the centre being purchased from another party and the lease containing such a clause already being in place.

We do have some concerns that the evidence given by large landlords such as Westfield, Stockland and Colonial First State to the ACCC does not highlight the main issues hindering companies like ALDI to get better access to Shopping Centres. We do appreciate the current stance of the mentioned big landlords on restrictive covenants and the treatment of ALDI, and there is no disagreement with what's been said. However it needs to be pointed out that:

- a) The above companies are major corporations with numerous shopping centres under their control. Smaller landlords are far more dependent upon the major retailers and hence more under pressure to accept demands to implement covenants even in new leases. We've attached another few examples over and above our previously submitted examples for reference.
- b) Whilst Stockland's, Colonial's and Westfield's current stance is fairly supportive, there are still hundreds of covenants in place as has been discussed before the ACCC enquiry, restricting ALDI's access to many Shopping Centres.

The ACCC have posed a number of hypothetical scenarios to both Colonial First State and Westfield in relation to restrictive covenants. The first of these is to gauge what impact, if any, the removal of existing restrictive covenants or the banning of new covenants would have. Both Colonial First State and Westfield state that they would have no issue with such a decision.

We believe that the result of a decision to abolish restrictive covenants would in fact open up the opportunity for a large number of smaller landlords to negotiate with other potential supermarket tenants in their Centres. There are hundreds of centres with restrictive covenants that ALDI would be interested to look at, with a view to moving in.

In our opinion, restrictive covenants have been used by major MSC's to reduce competition and protect incumbents. Whilst restrictive covenants are not commonly used with the above major landlords anymore, there are however existing clauses in place. In addition there are clear examples where smaller landlords in particular have had these clauses included in their leases and where it has prevented ALDI from opening stores. We believe the ACCC should declare all existing restrictive covenants anti-competitive and also prevent future leases from containing such clauses. This in turn would increase the chance of competition in these areas.

Example 1

One such example is Stafford City Shopping Centre owned by Yu Feng. This centre is located approximately 5km north of the Brisbane CBD and contains a Woolworths supermarket and a Super IGA (which was formally an Action). In 2003 we were negotiating with the landlord to take over the Mitre 10 hardware tenancy within the shopping centre. Mitre 10 wished to get out of their lease due to a new Bunning's opening further down the road. During our discussion with the landlord we pointed

out that there was a restrictive covenant in the Woolworths lease preventing a third supermarket over 200m² in the centre. Once the landlord became aware of this clause they informed us that they would no longer be in a position to accommodate us because of the penalty associated with adding a third supermarket.

Example 2

Another example of a small landlord being impacted by a restrictive covenant is at the Great Western Super Centre in Keperra located 12km northwest of the Brisbane CBD. In this example we were once again in discussions with the landlord (at the time Indigo) about taking over a space which an existing tenant was vacating. Both the landlord and ourselves were working on layouts for the ALDI store when we were informed by the landlord that due to a restrictive covenant from Woolworths they were no longer able to consider ALDI as a tenant.

Example 3

A third example is at Noosa Civic. This is a new centre which opened in late 2006 and is anchored by Woolworths and Big W. Not only is there a restrictive covenant preventing the entry of another supermarket but there is also an obligation under the Woolworths lease for the landlord to object to any developments that would compete with the centre within the primary catchment area. When we lodged our DA for our Noosaville store (which fell within this area defined within the Woolworths lease) the landlord, Mirose Pty Ltd, lodged an objection to our development.

Example 4

It is worth noting that whilst major landlords are largely immune from this type of pressure from major supermarket chains in at least one example this was not the case. In our confidential submission to the ACCC, we highlighted the case of Stockland Burleigh Heads whereby we had agreed terms with Stockland to be part of the redevelopment of that Centre. The redevelopment was dependent upon an existing Big W relocating to another part of the Centre to make room for ALDI and some other retailers. We had spent significant time and money negotiating the deal and had received an Agreement for Lease and Lease from Stockland which we were due to sign.

The day prior to signing those documents we were informed by Stockland that they could no longer accommodate us in the Centre. We had no forewarning of this change and there had never been any indication from Stockland that the deal was conditional in any way. Stockland refused to elaborate on their change of heart at the eleventh hour and we effectively lost the opportunity to open a store to service the Burleigh area.

It subsequently came to our attention that Woolworths had told Stockland that they would not agree to relocating their Big W store if Stockland allowed an ALDI store within the Burleigh Centre. The redevelopment of the Centre was dependent upon the relocation of the Big W and therefore Stockland had little choice but to inform us that they were no longer able to accommodate an ALDI store.

Example 5

A fifth and final example of a small landlord being prevented from adding an ALDI to their centre is the Green Groups extension of Station Square Shopping Centre in Maryborough. The attached letter from the Green Group to ourselves is self explanatory.