

FORM G

Regulation 9

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COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 93(1)

D01/54191



EXCLUSIVE DEALING NOTIFICATION

To the Australian Competition and Consumer Commission:

N 70269

Notice is hereby given, in accordance with sub-section 93(1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d), of that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice ALAN SPINKS

(See Direction 2 on the back of this Form)

(b) Short description of business carried on by that person RESTAURANT OWNER

(c) Address in Australia for service of documents on that person MCDONALDS Liverpool was Cnr Euramon Dr + Macquarie St

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates RESTAURANT FOOD

(b) Description of the conduct or proposed conduct A holder of a cinema ticket issued by The Greater Union Organisation Pty Limited, which ticket features an advertisement by [notifier] may on presenting that ticket acquire the goods/services referred to above at a discount. Advertisements are placed on cinema tickets pursuant to an agreement between [notifier] and Val Morgan Cineticket Pty Limited. (Copy of the relevant advertisement is attached).

(See Direction 4 on the back of this Form)

3. (a) Class or classes of persons to which the conduct relates Purchasers of cinema tickets issued by The Greater Union Organisation Pty Limited which have [notifier]'s advertisement on the reverse.

(b) Number of those persons-

(i) At present time

N/A

(ii) Estimated within the next year

N/A

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

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice

Dated 22 NOVEMBER, 2001

Signed by/on behalf of the applicant giving notice

Alan Spinks (Signature)

ALAN SPINKS (Full Name)

RESTAURANT OWNER (Description)



# Third-Line Forcing Notification

## Supporting Submission

This submission relates to the attached Form G (Exclusive Dealing Notification) given by the person named in that form (the **Notifier**) in relation to the goods or services described in that form (the **Products**).

### 1 **Notified conduct**

Val Morgan Cineticket Pty Limited (**VMC**) is the supplier of ticket rolls to cinemas operated by The Greater Union Organisation Pty Limited (**GUO**).

The Notifier has entered into an agreement with VMC pursuant to which the Notifier's advertisements will be printed on the reverse of the cinema ticket rolls supplied to GUO. The advertisements relate to a promotion pursuant to which a person presenting a cinema ticket which has the Notifier's advertisement on the reverse will be entitled to acquire the Products from the Notifier at a discount (the **Promotion**). The discount will not be available to customers of the Notifier who do not present the advertisement.

It is submitted that the Promotion which is the subject of this notification and submission is not conduct of a kind in respect of which the Australian Competition and Consumer Commission (the Commission) would normally seek to enforce the third-line forcing provisions of the *Trade Practices Act 1974* for the following reasons:

- it is a routine advertising promotion with no impact on competition;
- it presents a real saving to customers;
- it does not significantly limit consumer choice; and
- the Promotion does not result in any public detriment.

### 2 **Routine promotion with no impact on competition**

A priority of the Commission in assessing a third-line forcing notification is to prevent anti-competitive conduct.<sup>1</sup>

The Promotion is a routine advertising promotion. In that way, it is ordinary competitive market behaviour with no anti-competitive effect.

The agreement between VMC and the Notifier does not restrict the Notifier from entering into advertising or promotional arrangements with any third party and is consistent with competitive market conduct for which immunity from court action has been obtained under the notification process.<sup>2</sup>

### 3 **Real saving to customers**

The Commission has stated that, where conduct results in consumers being able to buy the package of products A and B at a real saving on the total price of the products bought

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<sup>1</sup> Australian Competition and Consumer Commission, *Guide to authorisation and notification for third line forcing conduct*, February 1998 at page 17.

<sup>2</sup> The Commission has allowed notification immunity with respect to a number of discount offerings. It has also allowed immunity with respect to a two for one cinema ticket offering (ACCC file C2001/552).

separately in competitive markets, the conduct has positive benefits in terms of competition and consumer welfare and would not be opposed by the Commission.<sup>3</sup>

In this case, the Promotion does not force the consumer to buy two products as a package. Rather, customers who choose to purchase GUO cinema tickets will be entitled to acquire the Products at a discount, representing a public benefit and a real saving to consumers.

**4 No significant restriction on consumer choice**

The Promotion does not in any significant way limit the genuine choice of consumers to purchase the Products without also purchasing GUO cinema tickets. Indeed, a GUO cinema-goer is unlikely to be aware of the Promotion at the time of purchase of the cinema ticket.

The Commission has stated that it is likely to be concerned when purchasers of product A are forced by the supplier to also purchase product B from another supplier, thereby denying some customers the opportunity to choose, on the normal commercial basis of product quality and price, whether or not to purchase product B.<sup>4</sup>

The Promotion does not significantly limit a consumer's choice in this way. The consumer is free to purchase the Products at the normal commercially competitive price, irrespective of whether he or she chooses to purchase GUO cinema tickets.

The offer is not misleading in any way.

**5 No public detriment**

The impact of the Promotion is to provide consumers with an improved choice in price for a limited period. The Promotion would otherwise not appear to present any public detriment.

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<sup>3</sup> Australian Competition and Consumer Commission, *Guide to authorisation and notification for third line forcing conduct*, February 1998 at page 17.

<sup>4</sup> *Ibid*

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### DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice
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. In item 1(b), 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 sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b) (ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

### NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of sub-section 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under sub-section 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in sub-section 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

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Shopping Town, Liverpool West Elizabeth  
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Not to be used in conjunction with any  
other McDonald's™ offer McValue Meal  
or Happy Meals. Valid until 31.5.2002.



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