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**Australian  
Competition &  
Consumer  
Commission**

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**FACSIMILE TRANSMISSION**

DATE: 9.12.2002  
TO: Ayman Guirguis  
ORGANISATION: BDW  
FAX: 02 9679 3111  
FROM: Peter McDonald  
TEL: 02 6243 1051  
FAX: 02 6243 1211  
NO. OF PAGES: 3  
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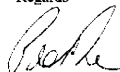
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Message:

Dear Ayman

Letter to follow.

Regards



Peter McDonald

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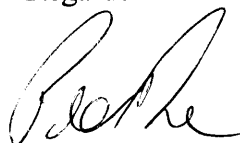
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Message:

Dear Ayman

Letter to follow.

Regards



Peter McDonald



**Australian Competition & Consumer Commission**

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Australia

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Our Ref: C2002/1387  
Contact Officer: Peter McDonald  
Contact Phone: (02) 6243 1051

9 December 2002

Ayman Guirguis  
Blake Dawson Waldron  
Level 39  
101 Collins Street  
MELBOURNE VIC 3000

**By facsimile: (03) 9679 3111**

Dear Mr Guirguis

**Notification of Exclusive Dealing lodged by AWB Ltd trading as AWB Seeds ("AWB Seeds") (N40535)**

I refer to the notification of exclusive dealing conduct lodged with the Australian Competition and Consumer Commission ("the Commission") by AWB Seeds on 3 September 2002. Legal immunity provided by the exclusive dealing notification commenced on 17 September 2002.

The notice relates to agreements entered into by AWB Seeds with Seednet distributors and retailers and growers allowing the Seednet distributors and retailers to sell certain seed varieties specified in the materials lodged with the Commission (the "seed varieties") and the growers to purchase and plant the seed varieties.

I understand that AWB Seeds proposes that Seednet distributors will only sell the seed varieties to retailers that have entered into a Marketing and Trade Agreement with AWB seeds, and to growers that enter into a Seed Sales Contract with AWB Seeds under which they agree to provide AWB Seeds with an endpoint royalty.

Similarly AWB proposes that nominated retailers will only sell the seed varieties to growers that agree to provide AWB Seeds with an end point royalty, and to other retailers that have entered into a Marketing and Trade Agreement with AWB Seeds.

On the basis of the information that you have provided, it is not intended that further action be taken in this matter at this stage.



Please note that the Commission may act to remove the immunity afforded to AWB Seeds by this notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

As you are aware, it appears that the Seednet distributors and nominated retailers may be persons engaging in the third line forcing conduct. However, in light of the decision not to take any further action at this stage in relation to the notified conduct of AWB Seeds, in my view the Commission is unlikely to take any action against the relevant Seednet distributors and nominated retailers who may be engaging in the third line forcing conduct.

Notwithstanding the above, it is possible for private parties to take legal action against the relevant Seednet distributors and nominated retailers to the extent the conduct is in breach of the exclusive dealing provisions of the Trade Practices Act. Likewise there is no legal impediment preventing the Commission from taking further action at a later time if it thinks it appropriate to do so. Should the Seednet distributors and nominated retailers wish to gain immunity from legal action for their involvement in the conduct notified by AWB Seeds, they would each need to lodge a separate notification.

This letter has been placed on the Commission's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Peter McDonald on 02 6243 1051.

Yours sincerely

A handwritten signature in black ink, appearing to read 'T Grimwade', written in a cursive style.

Tim Grimwade  
General Manager  
Adjudication Branch