

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - subsection 93(1)

EXCLUSIVE DEALING: NOTIFICATION

[Front of Form]

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in subsection 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 proposed to engage.

(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)

1. (a) Name of person giving notice:

George Weston Foods Ltd ACN 008 429 632 ("GWF") (Western Cereals Industries Division)
(See Direction 2 on the back of this Form)
- (b) Short description of business carried on by that person:

Flour milling and distribution
- (c) Address in Australia for service of documents on that person:

C/-Michael Sarkin, Partner, Clayton Utz, Level 18, 333 Collins St, MELBOURNE VIC 3000
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

Distribution of bulk flour
- (b) Description of the conduct or proposed conduct:

Introduction of an automated flour silo system for distribution of bulk flour
(See Direction 4 on the back of this Form)
3. (a) Class or classes or persons to which the conduct relates:

Bulk flour customers of GWF's Weston Cereals Industries Division
- (b) Number of those persons:
 - (i) At present time:

Nil
 - (ii) Estimated within the next year:

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

.....

4. Name and addresses of person authorized by the person giving this notice to provide additional information in relation to this notice:

Michael Sarkin, Partner, Clayton Utz, Level 18, 333 Collins St, MELBOURNE VIC 3000 (Tel: 9286 6182)

Signed by/on behalf of person giving this notice:

.....

(Signature)

Date2002

.....

(Full name)

.....

(Description)

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), the 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 subsection 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 subsection 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 subsection 93&7A) of the Act ("the prescribed period") unless the Commission gives a notice under subsection 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.

The Commission gives a notice under subsection 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 or the Act, decides not to give a notice under subsection 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 subsection 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.

NOTIFICATION APPLICATION - SUPPORTING SUBMISSION

Submission in support of notification of exclusive dealing lodged by George Weston Foods Ltd (ACN 008 429 632) on 19 February 2003 in accordance with section 93(1) of the Trade Practices Act 1974.

This submission supports a notification of exclusive dealing lodged by George Weston Foods Limited ("GWF") with the Australian Competition and Consumer Commission ("the Commission") on 19 February 2003.

In accordance with the Commission's leaflet on authorisations and notifications (May 1999), this submission identifies the public benefits and detriment likely to result from the notified conduct. It also provides information on relevant products and markets.

1. The notified conduct

Weston Cereals Industries ("WCI"), a division of GWF, proposes to introduce a new automated distribution system for bulk flour for its customers, with particular focus upon its bakery clients. The silo system, which would usually be situated within the bakery, features a number of novel and patented innovative technical features.

Customers of WCI are free to purchase flour from any other supplier but may only use flour supplied by WCI in the silo system. Customers would not, at any time, be restricted from obtaining flour from other suppliers by way of any other system (including the current system or competing silo system)

2. Relevant products and markets

The relevant market is the bulk flour market. This market is submitted to be national in character.

3. Public benefits

The proposed conduct is a competitive response by WCI to market pressures. There are a number of public benefits which arise from the silo system including the following:

- (a) *Fostering Business Efficiency:* The automated silo system is a clear improvement in efficiency over the current system, allowing better management of flour stocks. The system should also facilitate industry cost savings in relation to at least some levels in the supply chain than would otherwise be the case;
- (b) *Assistance to Small Business:* One of the consequences of the drought is that the price of wheat has increased and therefore the cost of flour has increased. This has put pressure on the profit margins of small bakeries and may have the effect of squeezing some of the smaller bakeries out of the market. The silo system will assist small businesses to be more efficient and to remain competitive;
- (c) *Expansion of Consumer Choice:* The introduction of the automated silo system in bakeries is innovative and expands the choices available to bakeries in respect of the delivery of flour to their premises; and

- (d) *Improvement in the Quality and Safety of Goods and Services:* The silo system has distinct workplace health and safety advantages over the current system, which requires heavy lifting and creates flour dust clouds (from the opening of flour bags on the premises). In addition, it will result in reduced packaging requirements and more efficient use of fuel.

A number of key technical advantages of the silo system, critical health considerations as well as its commercial viability, make it necessary that WCI require that bakeries do not put flour other than WCI flour in the silo.

4. Detriment

There is no detriment associated with the proposed conduct. The silo system is a manifestation of competitive conduct in a highly competitive marketplace.

As such, the notified conduct is an initiative with demonstrable public benefits for consumers and the wider community.

5. Assessment

It is submitted that the proposed conduct does not result in a substantial lessening of competition, nor any anti-competitive detriment. In addition, there are distinct public benefits attaching to the silo system.

For these reasons and based on the information provided in this submission and the Form G Notification which it supports, it is submitted that the notified conduct should not be opposed by the Commission.

Michael C Sarkin

Partner
Clayton Utz

19 February 2003

Approved for publication
to be published on the Internet

YES / NO

26.3.13