

5 May 2003

AURORA PLACE 88 PHILLIP STREET SYDNEY
GPO BOX 521 SYDNEY NSW 2001 AUSTRALIA
DX 117 SYDNEY www.minterellison.com
TELEPHONE +61 2 9921 8888 FACSIMILE +61 2 9921 8123

BY COURIER

Joanne Palisi
Australian Competition and Consumer Commission
470 Northbourne Avenue
Dickson ACT 2602

FILE No:
DOC:
MARS/PRISM:

Dear Joanne

Exclusive Dealing Notification - Westpac Banking Corporation

We refer to our letter of 27 March 2003 and our telephone discussions and enclose a final Form G, together with a Submission and a confidential version of the submission.

These documents replace the original notification which was received by you on 28 March 2003. We understand that no further application fee is required. We acknowledge that the original date of lodgement has lapsed, and accept that the statutory time period will run from the date of receipt by you of this letter. We should be grateful if you could acknowledge receipt.

No confidentiality is claimed in respect of the Form G or the open submission. However, the confidential Submission contains confidential material. The Applicant claims confidentiality on the basis that the additional information provided is commercially sensitive.

If you have any further questions please feel free to contact me on (02) 9921 4599 or Vijaya Ratnam-Raman on (2) 9921 4549.

Many thanks for your assistance.

Yours faithfully
MINTER ELLISON



Paul Schoff
Partner

Contact: Vijaya Ratnam-Raman Direct phone: +61 2 9921 4549 Direct fax: +61 2 9921 8283
E.mail: vijaya.ratnam-raman@minterellison.com
Partner responsible: Paul Schoff Direct phone: +61 2 9921 4599
Our reference: VRR:PMS 20-3986496



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Form G

Commonwealth of Australia

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

EXCLUSIVE DEALING:

NOTIFICATION

To the Australian Competition and Consumer Commission:

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 engaged or proposes to engage.

1. (a) Name of person giving notice:
Westpac Banking Corporation ABN 33 007 457 141 (**Westpac**)
- (b) Short description of business carried on by that person:
Westpac is a financial institution that provides, amongst other things, financial accommodation and deposit taking facilities to its customers.
- (c) Address in Australia for service of documents on that person:
Level 13
60 Martin Place
Sydney NSW 2000
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:
Westpac proposes to offer financial accommodation to those customers described in paragraph 3(a).
- (b) Description of the conduct or proposed conduct:
Westpac Banking Corporation ABN 33 007 457 141 (**Westpac**) intends to enter into a Master Facility Agreement (**Master Facility Agreement**) with various borrowers (**Borrowers**) and their agent (**Agent**).

The Master Facility Agreement sets out the terms on which Westpac agrees to provide a banking facility to the Borrowers (**Facility**). Each Borrower enters into the Master Facility Agreement by executing an Assumption and Facility Agreement.

As a condition of the provision of the Facility at a discounted rate, each Borrower is required to appoint the Agent to perform certain functions in connection with its Facility, including document execution, receipt and distribution of drawings and payment collection functions.
3. (a) Class or classes of persons to which the conduct relates:
Individual retail pharmacists.

(b) Number of those persons:

Approximately seventy.

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

N/A

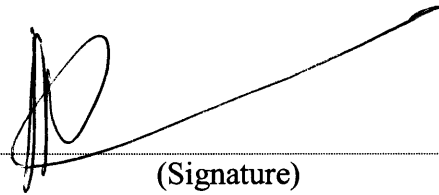
4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

Paul Schoff
Minter Ellison Lawyers
88 Phillip Street
Sydney NSW 2000

DATED

5 May, 2003

SIGNED by/on behalf of the applicant



(Signature)

Ross Henry Patterson

(Full Name)

Solicitor for Westpac

(Description)

SUBMISSION BY
WESTPAC BANKING CORPORATION
IN SUPPORT OF A NOTIFICATION
UNDER SECTION 93(1)
OF THE TRADE PRACTICES ACT 1974

1. Background

- 1.1 Westpac is a financial institution.
- 1.2 Westpac proposes to enter into a Master Facility Agreement (**Master Facility Agreement**) with various Borrowers and their Agent (**Agent**). The Master Facility Agreement sets out the terms on which Westpac agrees to provide a facility to the Borrowers (**Facility**). Each Borrower enters into the Master Facility Agreement by executing an Assumption and Facility Agreement.
- 1.3 The Borrowers include approximately 70 individual retail pharmacists most of whom trade under a particular retail banner. The Agent is a leader in the retail pharmacy services sector and is involved in the wholesale distribution of pharmaceutical and healthcare products to community pharmacies in Australia.
- 1.4 In order to minimise administrative costs in the provision of the Facility to the large number of individual Borrowers, Westpac is prepared to provide the Facility at a discount rate on the condition that a Borrower agrees to appoint the Agent in connection with the Facility.

2. Market

- 2.1 The market which the proposed offer relates to is the lending and financial services market in Australia.

3. Analysis of the Conduct

- 3.1 If the conduct described in Form G is exclusive dealing within section 47(6) of the *Trade Practices Act*, Westpac submits that there is no possible detriment to the public resulting from the conduct.
- 3.2 The Borrowers are pharmacies in the pharmaceutical retail industry. They can acquire financial accommodation from a number of entities in the market, all of which compete vigorously for the provision of these services.
- 3.3 The Borrowers currently receive financial accommodation from Westpac under the terms of a facility agreement introduced in 1997. Westpac is now prepared to offer the financial accommodation at a discount if the Borrowers agree to appoint the Agent. This is to the benefit of the Borrowers who receive a discount, and to Westpac, which reduces administrative costs by ensuring a single point of contact for many day-to-day aspects of the lender/borrower relationship. The conduct reduces the cost of obtaining financial accommodation for Borrowers who may be otherwise unable to negotiate discounts or benefits on their own behalf, assists Westpac and the Borrower to achieve

greater efficiencies in relation to the financial accommodation and provides Borrowers with greater convenience in dealing with Westpac.

- 3.4 The arrangements will have no detrimental effect on competition in any market.
- 3.5 For the reasons stated above, Westpac submits that the agency arrangements will have no anti-competitive effect and therefore no public detriment and that the likely benefits to the public from the conduct will outweigh any possible detriment to the public resulting from the conduct.