

N40699

FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA

FILE No:	
DOC: D04	15155
MARS/PRISM:	

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 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 proposes to engage.

1. (a) Name of person giving notice **Landmark Operations Limited ABN 73 008 743 217**
(Landmark)
- (b) Short description of business carried on by that person **Agricultural and Financial Services**
- (c) Address in Australia for service of documents on that person **c/ - Blake Dawson Waldron, 101 Collins Street, Melbourne, 3000**
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates **Debt finance product**
- (b) Description of the conduct or proposed conduct **The "Fastrak" debt finance product, which will be offered to wheat growers by Landmark, will be supported by a commitment from wheat growers to deliver grain to related bodies corporate (as defined in section 50 of the Corporations Act 2001) of Landmark, including AWB (International) Limited (AWBI) and AWB (Australia) Limited (AWBA).**

2.

3. (a) Class or classes of persons to which the conduct relates

- **Wheat growers;**
- **Landmark;**
- **AWBI;**
- **AWBA;**
- **Other related bodies corporate of Landmark.**

(b) Number of those persons-

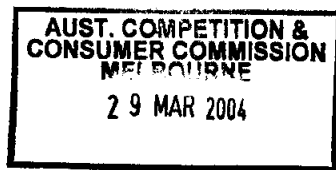
- (i) At present time **None**
- (ii) Estimated within the next year **1,250 wheat growers**

(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses **Not applicable**

4. Name and address of person authorized by the person giving this notice to provide additional information in relation to this notice **Stephen Ridgeway, Blake Dawson Waldron, 101 Collins Street, Melbourne, Victoria, 3000**

Dated 29 March 2004

Signed ~~by~~ / on behalf of the person giving this notice



SRidgeway
(Signature)

Stephen John Ridgeway
(Full Name)

Solicitor
(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), 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.

If 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 of 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.

**Submission to the Australian Competition and Consumer Commission in Support of a
Notification under Section 93(1) of the *Trade Practices Act 1974* (Cth)**

1. INTRODUCTION

This submission is in support of a notification under section 93(1) of the *Trade Practices Act 1974* (Cth) (**the TPA**) in relation to conduct which potentially falls within sub-sections 47(6) or (7) of the TPA. Accordingly, the relevant test to be applied by the Commission is set out in sub-section 93(3A) of the TPA, whereby the Commission assesses whether the public benefits associated with the relevant conduct outweigh any likely public detriment.

Landmark Operations Ltd (**Landmark**), a wholly owned subsidiary of AWB Limited, proposes to offer a debt finance service to wheat growers, known as *Landmark Fastrak Finance* (**Fastrak**) for the 2004-2005 season. The main features of Fastrak are that:

- Landmark will offer wheat growers loans of up to 35% of the value of their anticipated wheat crop (**production value**) for the season, calculated at a discounted price (to allow for the risk of lower than expected prices for wheat). The maximum value of a loan offered under Fastrak will be \$150,000.00. The grower's production value will typically be calculated from an assessment of the grower's delivery history over five years.
- Each loan will be supported by a contractual commitment from the grower to deliver 45% of the average wheat crop grown by a particular wheat grower in a season (or possibly more if 45% is insufficient to repay all amounts owing to Landmark) to certain specified related bodies corporate of Landmark (as defined in section 50 of the *Corporations Act 2001*) (**AWB Entities**)¹. The loan is not supported by "security" in the strict sense (such as a charge or lien).

¹ The main "related bodies corporate in question are AWB (International) Limited (**AWBI**) and AWB (Australia) Limited (**AWBA**). AWBI is the single desk marketer of Australian wheat exports and is responsible for the management of grain assets and maximising net returns to grain growers who deliver wheat to the National Pool. The National Pool is the pool of wheat that is exported from Australia. Growers and traders who contribute wheat to the National Pool receive their shares of net funds from the National Pool in quarterly distributions. AWBA purchases and markets grain, including non-wheat grain, for sale domestically.

- The grower will undertake not to grant security over the wheat crop, or its proceeds, to any other person.
- The grower may repay all amounts owing at any time prior to the delivery of their entire grain commitment (which will release the grower from the balance of the 45% delivery commitment).
- If no early repayment is made, the grower must repay the loan and interest charges out of the first available proceeds from grain sales to an AWB entity (if not paid out sooner). The AWB entity to which grain is delivered will arrange for payment of the funds, at the grower's direction, to repay all amounts owing (the debt, interest and other charges).

The intention of this type of loan facility is to allow growers to access a proportion of their future cash flows from sales of their wheat crop so they can purchase the necessary inputs for planting, growing and harvesting.

It is expected that about 1,250 wheat growers around Australia will take advantage of Fastrak.

2. **Third Line Force**

The proposed offer of Fastrak by Landmark may (unless properly notified) contravene section 47 of the TPA, on the basis that loans supplied by Landmark, through Fastrak, will be secured by a commitment from the grower to deliver to an AWB Entity 45% of the grower's wheat crop, or such greater amount as is sufficient to repay all amounts owing to Landmark.

This arrangement is nevertheless pro-competitive and there are clear public benefits arising from this conduct which will outweigh any possible public detriment.

3. **Pubic Benefit and Lack of Public Detriment**

The relevant conduct will have little or no public detriment. Indeed, it is in fact likely to increase competition in the provision of general debt finance/working capital finance products being offered to growers.

3.1 Public detriment

Substitutable products

Wheat growers are under no obligation to use Fastrak. Most growers already operate an overdraft or line of credit. There are many substitutable finance or working capital management products which are substitutable for Fastrak and which are available to growers. These include, seasonal loans, overdrafts, lines of credits or debt finance, offered by a wide variety of entities. (Some of these substitutable products are set out in the table below). These products include Landmark – Seasonal Finance, which does not include a commitment to deliver grain to an AWB Entity.

Table – Substitutable Rural Finance Products

	Seasonal	Overdraft	Line of Credit	Interest Only
Adelaide		x		
ANZ		x	x	X
CBA	X	x	x	X
Elders	X			X
NAB		x	x	X
PIBA		x	x	X
Suncorp		x	x	X
Westpac		x	x	X
Landmark	X		x	

Limited delivery commitment

Growers who use Fastrak do not have to deliver all of their grain to an AWB Entity. Firstly, they can repay all of the amounts owing prior to delivery of their entire grain commitment, whereupon they will be released from the balance of their delivery commitment. Secondly, at harvest, they only have to deliver 45% of their grain, or

sufficient grain to repay the amounts owing to Landmark. Growers will be free to deliver the remainder of their wheat crop to alternative traders or marketers. This means that, given it is likely that Fastrak will constitute a small proportion of working capital finance products, only a very small proportion of wheat in Australia will be committed for delivery to an AWB Entity as a result of Fastrak loan arrangements.

It is, of course, an important feature of the Fastrak product that amounts owing may be repaid by grain deliveries. This means that the growers will have a reduced administrative burden as the amount owing is automatically repaid upon grain deliveries of sufficient volume.

Marketing options

It is also important to note that, if growers do choose to use Fastrak, they will still have a wide variety of marketing options for the grain that is committed to an AWB Entity; including:

- Grain acquisition contracts offered by various AWB Entities pursuant to the AWB National Pool Payment Terms and Conditions published by AWB from time to time including a harvest loan agreement, an advanced payment agreement, a deferred payment agreement, a flexible drawdown loan agreement and a National Pool distributions agreement;
- Multi V contracts which offer forward sales contracts at agreed cash prices with the grower paid shortly after delivery of the wheat. The contract allows some flexibility as to the variety or grade of wheat to be delivered.
- Fixed Grade contracts which are also forward contracts but under these the grade or variety of grain is specified.
- Cash at silo contracts where wheat is acquired from growers at a fixed cash price per tonne at harvest.

3.2 Public benefit

Landmark submits that offering Fastrak will provide substantial public benefit for the following reasons:

- Fastrak will increase the number of working capital finance products being offered to growers, and provide a product where repayment can be effected by grain delivery – this will enhance competition and product choice amongst providers of these products;
- Growers may find it difficult to access working capital finance for the 2004/2005 season as financial institutions are likely to be cautious in their lending policies following the continued drought in some parts of eastern Australia in 2003/2004. Therefore, it is important that there are as many working capital finance products available to growers as possible so they are able to purchase the necessary inputs to allow them to plant and harvest their wheat crop.
- Fastrak is an innovative product in that it will allow growers to access working capital quickly and easily with the grain being secured by a commitment to deliver, rather than through traditional legally enforceable securities, such as crop liens, many of which carry with them greater administrative burdens. This is likely to further enhance competition as competitors of Landmark may seek to develop products that are similar to Fastrak.
- Fastrak is complementary to seasonal and overdraft lending products offered by other providers. Growers can utilise Fastrak to 'top-up' their access to credit when their overdraft facility nears or reaches its credit limit. This can be achieved with a minimal charge, and without the requirement of the registration of any additional securities, in a timely manner to suit the needs of the grower. This is likely to save the grower substantial money in overdraft extension fees and also remove the administrative burden, and delay, of the extension request process that is required with most overdraft facilities.

29 March 2004