

Simmonds, Martine

From: Jones, Gavin
Sent: Monday, 23 May 2005 1:45 PM
To: Simmonds, Martine
Subject: FW: Elders notifications

From: STEVE BONETT [mailto:SAB@finlaysons.com.au]
Sent: Tuesday, 17 May 2005 3:02 PM
To: Jones, Gavin
Subject: Re: Elders notifications

Hi Gavin

Many thanks for your prompt attention.

Please do not hesitate to contact me should you require anything further.

Regards

Steve Bonett
Partner
Finlaysons
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>>> "Jones, Gavin" <gavin.jones@ACCC.GOV.AU> 17/05/2005 2:30:38 >>>

Hi Steve,

Thanks for your prompt response advising that your client is no longer seeking confidentiality in respect of parts of the Form G's submitted. The Form G's will be placed on the ACCC's public register. We will consider the request for confidentiality in respect of Annexure A and advise in due course. If confidentiality is not granted to the Annexure, your client will be provided with an opportunity to withdraw it.

I also note your request that if possible, a decision with respect of these notifications be made prior to immunity commencing so as to provide certainty for your client moving forward and will endeavour to accommodate this.

Please give me a call if you'd like to discuss.

Regards
Gavin

Gavin Jones
Director
Adjudication Branch
ACCC
PH: 03 9290 1959
Fax: 02 6243 1211

23/05/2005

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Our ref SAB:101629/213

13 May 2005

FINLAYSONS
LAWYERS

Adjudication Department
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

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Adelaide 5001
South Australia
DX152 Adelaide

BY FAX AND POST

Dear Sir

Notification under s93(1) Trade Practices Act

We act for Elders Limited and its related group companies (*Elders*).

Pursuant to s93(1) of the Trade Practices Act 1974 (*Act*) we enclose Form G Notifications in respect of proposed conduct by Elders which may constitute third-line forcing and consequently breach s47(6)(c) of the Act.

Elders is currently developing a product known as "Elders Cotton Assist". This product is aimed at cotton growers spending in excess of \$50,000 per annum on merchandise in relation to their cotton growing businesses. It contemplates the bundling of merchandise, insurance and banking products required by cotton growers and provided by Elders and its related companies.

We note that some of the information provided in the Notification is of a confidential nature. This information is primarily contained in the draft document entitled "Elders Cotton Assist" and annexed to the Notification, and in Part 2(a) and (b) of the Notification itself (in particular the section entitled "Conduct"). The "Elders Cotton Assist" document has been produced by Elders for internal use as a guide to Elders employees in the promotion and use of the "Elders Cotton Assist" product. As such, it is commercially sensitive and we seek its exclusion from the public register pursuant to s95(3)(b) of the Act. The information contained in Part 2 of the Notification also discusses the nature of the product and the rewards offered under it and has similar commercial sensitivity. Its exclusion from the public register is also sought on this basis.

The conduct being notified is proposed to be undertaken by Elders Limited, Elders Rural Bank Limited, Elders Insurance Limited and Elders Insurance Brokers Pty Ltd.

The initial \$1,000 lodgment fee will be paid to the ACCC by Elders Limited and a cheque is enclosed for this sum.

863563

ACCC
AUSTRALIAN COMPETITION & CONSUMER COMMISSION
16 MAY 2005

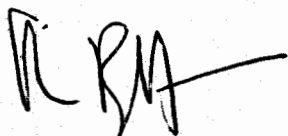
We note that a number of the other Elders group companies proposing to undertake the conduct notified are also Limited companies. In respect of these companies, we seek to take advantage of the concessional lodgment fee of \$200 for which provision is made in Schedule 2 of the Trade Practices Regulations 1974 (Cth) (*Regulations*).

As such we also enclose:

- in respect of the Notification of Elders Rural Bank Limited, a cheque for \$200;
- in respect of the Notification of Elders Insurance Limited, a cheque for \$200; and
- in respect of the Notification of Elders Insurance Brokers Pty Ltd, a cheque for \$100.

We look forward to receiving your response to these Notifications. Should you have any queries, please do not hesitate to call our office.

Yours faithfully



Steve Bonett
Partner
sab@finlaysons.com.au
+618 8235 7876

Encl

Form G

1191713

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 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:*

Elders Rural Bank Limited ABN 74 083 938 416 (*Elders*).

(b) Short description of business carried on by applicant:

Elders provide banking services to agribusiness and other customers throughout Australia.

(c) Address in Australia for service of documents on the applicant:

27 Currie Street
ADELAIDE SA 5000

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

This notification relates to a product developed by Elders to be marketed as "Elders Cotton Assist" (ECA).

ECA is a package of merchandise, insurance and banking products provided to cotton growers by Elders Limited and its related companies. The product is intended to simplify the businesses of cotton growers by seeking to combine the three main requirements of each grower's operation into one package.

As encouragement to purchase a number of products from Elders and its related companies, a range of rewards are offered to those cotton growers who choose to participate in the ECA program pursuant to its terms and conditions between 1 June 2005 and 31 May 2006.

(b) Description of the conduct or proposed conduct:

Conduct

In offering ECA and its related reward scheme, Elders is proposing to engage in conduct which may constitute a breach of s47(6)(c) of the Trade Practices Act 1974 (Cth) (Act).

The receipt of a reward under the terms of ECA is conditional upon two factors:

- (a) the client spending a minimum \$50,000 on Elders merchandise between 1 June 2005 and 31 May 2006; and
- (b) the client purchasing at least one additional product from a range of banking and insurance products provided by related companies.

The rewards provided may take a number of forms including credit on further merchandise purchases, the provision of a range of agricultural services or the contribution of funds towards overseas tours or local charities. The value of the award is directly linked to the value of spending on Elders merchandise in combination with the number of related banking and insurance products purchased.

A draft internal document entitled "Elders Cotton Assist" has been produced by Elders as a guide to its employees as to the nature of the ECA product and its associated reward program. A copy of this draft document is attached as "Annexure A".

Public Benefits

It is submitted that the proposed conduct is likely to produce substantial benefit to the public. These benefits include:

- (a) assisting cotton growers to reduce the time, energy and money invested in ensuring the success of their business. The features of ECA which support these benefits are:
 - (i) the ability of growers to manage their merchandise, banking and insurance needs simultaneously through the personal Elders representative allocated to each grower;
 - (ii) reduced transaction costs associated with having merchandise, banking and insurance products provided by one group of related companies; and
 - (iii) rewards tailored to further assist cotton growers in the successful running of their businesses.
- (b) the provision of flexibility in the range and number of products cotton growers may choose to incorporate into their personal ECA package. ECA does not require cotton growers to meet all of their merchandise, banking and insurance needs with Elders or a related company, but rather leaves the level of bundling at the discretion of each cotton grower; and
- (c) the ability of Elders to discriminate between the prices charged for products by effectively offering discounts on the provision of products and services depending on whether, and the extent to which, they are purchased as part of a bundle. This

allows Elders to set prices such as to maximise profits and efficiency, with resulting benefits to its shareholders and the market generally.

It is submitted that the public benefits outlined above outweigh any public detriment which may be associated with the proposed conduct.

Public Detriment

The degree to which public detriment will be caused by the proposed conduct is limited. In particular:

- (a) ECA will only be available to a segment of the market – namely those spending in excess of \$50,000 on merchandise for their cotton growing businesses;
- (b) the proposed conduct is unlikely to significantly affect competition (if at all) in the rural banking, merchandise and insurance markets for cotton growers given the relatively small value of the rewards and taking into consideration that customers remain free to obtain such products and services from the provider of their choice; and
- (c) cotton growers are not limited in their ability to obtain individual products from Elders or its related companies without participating in any bundling arrangements contemplated by ECA. The proposed conduct merely attempts to encourage cotton growers to use multiple Elders products by offering rewards to loyal customers.

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

ECA is aimed specifically at cotton growers spending above \$50,000 per annum on merchandise for their cotton growing businesses.

(b) Number of those persons –

(i) at the present time:

63

(ii) estimated within the next year:

70

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

Not applicable

4. *Names and addresses of person authorised by the person giving this notice to provide additional information in relation to this notice:*

Steve Bonett
Finlaysons
81 Flinders Street
ADELAIDE SA 5000

Dated 13 May 2005

Signed by/on behalf of the applicant giving notice

R BA

.....
(Signature)

Steve Bonett

.....
(Full Name)

Finlaysons (Agent)

.....
(Description)

ANNEXURE A
RESTRICTION OF PUBLICATION CLAIMED
CONFIDENTIALITY GRANTED

CONFIDENTIALITY
GRANTED