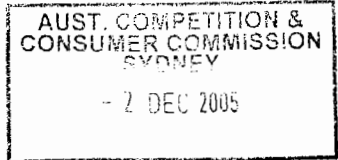


# MALLESONS STEPHEN JAQUES



FILE No.
DOC:
MARS/PRISM:

Mr Scott Gregson  
General Manager, Adjudication  
Australian Competition & Consumer Commission  
470 Northbourne Avenue  
Dickson ACT 2602

2 December 2005

Dear Mr Gregson

## Nestlé Australia Ltd - Exclusive Dealing Notification

### 1 Introduction

We act for Nestlé Australia Ltd (“Nestlé Australia”).

We enclose a notification in respect of conduct which may raise issues under the exclusive dealing provisions of the *Trade Practices Act 1974 (Cth)*.

### 2 Background

ALDI Stores (a limited partnership) (ABN 90 196 565 019) (“ALDI”) is currently importing into Australia “NESCAFÉ Classic Deluxe” and “NESCAFÉ Matinal” branded coffee (“Overseas Nescafé Brands”) manufactured in Indonesia and Brazil respectively. ALDI purchases NESCAFÉ BLEND 43 branded coffee, which is manufactured in Australia, from Nestlé Australia.

The Overseas Nescafé Brands are displayed next to NESCAFÉ BLEND 43 coffee in ALDI stores in certain States, being NESCAFÉ Classic Deluxe in New South Wales and Queensland, and NESCAFÉ Matinal in Victoria.

NESCAFÉ BLEND 43 coffee is a unique coffee that is sourced, blended and roasted in a specific way to meet the sophisticated taste of the Australian market and is distinctly different from the Overseas Nescafé Brands with respect to the source, blend and taste.

Nestlé Australia has requested that ALDI takes a number of steps that Nestlé Australia considers reasonably necessary, with respect to the marketing and sale of the Overseas Nescafé Brands, with the aim of:

- enabling consumers to differentiate between NESCAFÉ BLEND 43 branded coffee and the Overseas Nescafé Brands at the point of sale; and
- protecting the value and goodwill of the NESCAFÉ BLEND 43 brand.

However, ALDI has indicated to Nestlé Australia that it is not prepared to take those steps.

Accordingly, for the reasons set out above, Nestlé Australia is seeking to supply ALDI with NESCAFÉ BLEND 43 coffee and other Nestlé Australia products, as Nestlé Australia considers appropriate, on condition that ALDI appropriately differentiates NESCAFÉ BLEND 43 from the Overseas Nescafé Brands.

### 3 The Notification

We enclose the following:

- completed Form G in respect of the notification; and
- cheque for \$2,500.00, being the relevant fee for lodgement of the notification.

We note that confidentiality is claimed for the Confidential Annexure A to the Form G on the grounds that the information is commercially confidential. It details areas where Nestlé Australia is seeking ALDI to provide greater description for consumers of the Overseas Nescafé Brands so that they do not have any misconceptions as to the differences between those products and NESCAFÉ BLEND 43. It is provided to the Commission to provide context to the notification. Confidential Annexure A also provides details on products supplied by Nestlé Australia to ALDI demonstrating that the competition impact is *de minimis*.

We request that Confidential Annexure A be excluded from the public register.

Please contact me if you wish to discuss this letter.

Yours sincerely



Dave Poddar  
Partner  
Direct line +61 2 9296 2281  
Direct fax +61 2 9296 3961  
Email [dave.poddar@malleasons.com](mailto:dave.poddar@malleasons.com)

Commonwealth of Australia

*Trade Practices Act 1974 - sub-section 93(1)***EXCLUSIVE DEALING: NOTIFICATION**

To the Australian Competition &amp; 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 proposes to engage.

**1. (a) Name of person giving notice:**

Nestlé Australia Ltd ABN 77 000 011 316 ("Nestlé Australia")

**(b) Short description of business carried on by that person:**

Nestlé Australia is a wholly owned subsidiary of the Swiss-based, global food and beverages company, Nestlé S.A. Nestlé S.A. was founded in 1867 and is today the world's largest food and beverage company. Nestlé Australia produces foods and beverages, confectionery, ice-cream, chilled dairy products, sports nutrition products, pet foods and pet care products.

Further information on Nestlé Australia is available at [www.nestle.com.au](http://www.nestle.com.au).

**(c) Address in Australia for service of documents on that person:**

c/- Dave Poddar  
Partner  
Mallesons Stephen Jaques  
Level 60, Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000

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

Soluble coffee products and other Nestlé Australia products which may be provided to ALDI Stores (a limited partnership) (ABN 90 196 565 019)("ALDI") or any related body corporate of ALDI from time to time. Details of such additional products are set out in Confidential Annexure A.

(b) **Description of the conduct or proposed conduct:**

***Outline of proposed conduct***

Nestlé Australia proposes to enter into arrangements with ALDI whereby:

- Nestlé Australia will supply NESCAFÉ BLEND 43 coffee and other Nestlé Australia products, as Nestlé Australia considers appropriate, to ALDI;
- on the condition that;
- ALDI does not obtain from New Imports Pty Ltd or any other importer, distributor or wholesaler which competes with Nestlé Australia for the supply of soluble coffee products, “NESCAFÉ Classic Deluxe” or “NESCAFÉ Matinal” branded coffee, or similar types of coffee which Nestlé Australia considers to be of similar appearance and get-up as Nestlé Australia’s NESCAFÉ BLEND 43, without ALDI taking all reasonable steps to ensure that all promotions, advertising, marketing, point of sale, packaging or other such material in relation to those products expressly advises consumers that NESCAFÉ BLEND 43 is a unique coffee that is sourced, blended and roasted in a specific way to meet the sophisticated taste of the Australian market and is distinctly different from the “NESCAFÉ Classic Deluxe” and the “NESCAFÉ Matinal” branded coffee (“**Overseas Nescafé Brands**”) manufactured in Indonesia and Brazil respectively, such that Nestlé Australia customers are not under any misapprehension in relation to the product they are purchasing.

***Proposed conduct will deliver public benefit by alleviating consumer confusion***

The Overseas Nescafé Brands have similar labelling and overall get-up as NESCAFÉ BLEND 43, notwithstanding that these products are different from NESCAFÉ BLEND 43, including with respect to the source, blend and taste. As such, by requiring the Overseas Nescafé Brands to be sufficiently differentiated in appearance from the NESCAFÉ BLEND 43 brand, Nestlé Australia considers that the proposed conduct will be of benefit to the public because it will alleviate any potential for consumers to be confused with respect to the source, blend and taste of the NESCAFÉ BLEND 43 product as compared to the Overseas Nescafé Brands.

Nestlé Australia also believes that the proposed conduct set out in paragraph 2(b) will ensure that soluble coffee consumers are adequately informed about their products at the point of purchase. In particular, Nestlé Australia believes that the proposed conduct will ensure that consumers of soluble coffee are aware that the Overseas Nescafé Brands are not supplied or endorsed by Nestlé Australia.

***Proposed conduct should have no adverse impact on competition and will promote consumer information and disclosure***

The proposed conduct will not lessen competition in any relevant market as:

- the proposed conduct is reasonable and will neither restrict nor prevent the supply of overseas soluble coffee products to ALDI or the importation of such coffee products, with the consequence that the proposed conduct does not give rise to any detriment;
- NESCAFÉ BLEND 43 coffee is widely available in a large number of retail outlets which compete with ALDI. Accordingly, the proposed conduct should not have any adverse impact on the availability of those products, or on consumer choice; and
- the proposed conduct will promote consumer awareness, as differentiation between NESCAFÉ BLEND 43 and competing soluble coffee products will ensure that consumers are appraised of differences between brands, particularly with regard to the source, blend and taste.

In addition, as set out in Confidential Annexure A, the sales of the products supplied by Nestlé Australia to ALDI are limited.

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

ALDI stores throughout Australia.

**(b) Number of those persons -**

- (i) **At present time:** One - trading through approximately 101 stores.
- (ii) **Estimated within the next year:** Not known.

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

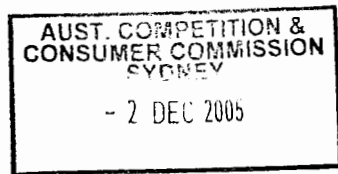
ALDI Stores (a limited partnership)  
1 Sargents Road  
Minchinbury NSW 2770

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

c/- Dave Poddar  
Partner  
Mallesons Stephen Jaques  
Level 60, Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000

Dated **2 December 2005**

Signed on behalf of the person giving this notice



A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a horizontal line and a small flourish. Below the signature is a horizontal dotted line.

Dave Poddar, Solicitor

## 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 sub-section 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 furnished 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 sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practice 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 sub-section 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 sub-section 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.

# everyday permanently low prices



## CLASSIC TASTE INCREDIBLY LOW PRICE

To ensure consistent supply and a great price ALDI have sourced another superb Nescafé blend: Classic Deluxe 200g import. We believe it tastes just as good as Blend 43 and at a more competitive price, offers satisfaction or your money back.

**LOCATIONS:** Arndell Park • Bankstown Airport • Bankstown Central • Bateau Bay • Batemans Bay • Bathurst • Baulkham Hills • Blair Athol • Bonnyrigg • Bowral • Brookvale • Canterbury • Cessnock • Dapto • Emu Plains • Fairfield Central • Fairfield West • Fairy Meadow • Glendale • Goulburn • Hamilton • Hornsby • Hurstville • Lithgow • Liverpool • Manty Wharf • Marrickville Metro • Menai • Minto • Miranda • Mount Annan



• Mount Druitt • North Strathfield • North Sydney • Nowra • Orange • Penrith • Quakers Hill • Queanbeyan • Richmond • Round Corner, Dural • Rouse Hill • Shellharbour • St Marys • Tuggerah • Tuggeranong • Ulladulla • Villawood • Wallsend • Wollongong • Wyoming

**OPENING HOURS:** See local store or [www.aldi.com.au](http://www.aldi.com.au) for details. Prices are correct at time of printing and are subject to change. While stocks last. These prices only apply to the stores listed above. \*Excluding stores not yet open when product previously offered.

**ALDI accepts**



**A 1% surcharge will apply to all credit transactions made with VISA, MasterCard or Bankcard to cover additional costs.**