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18 August 2006

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

Our Ref: 445112-v1VAJCIGMF

By email:  
scott.gregson@accc.gov.au**Europe & Middle East**  
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Dear Mr Gregson,

**Nestle Australia Ltd exclusive dealing notification**

We refer to the letter from Mallesons Stephen Jaques to the Commission dated 9 August 2006 which has been posted on the public register and request that this letter also be posted.

In that letter Mallesons Stephen Jaques, on behalf of Nestle Australia Limited (**Nestle**), seek to reiterate various allegations concerning ALDI's sale of the imported Nescafe blends. ALDI refutes those allegations for the reasons set out in prior submissions. Whilst ALDI does not propose to repeat those reasons here, it wishes to note a few important matters:

1. The imported Nescafe blends are genuine Nescafe products manufactured by a subsidiary of Nestle SA.
2. As recognised by the Commission, ALDI has taken adequate steps to differentiate these Nescafe blends from Nescafe Blend 43.
3. The imported Nescafe blends offer Australian consumers additional choice and better value and accordingly represent a significant competitive threat to Nestle's own products.
4. Notwithstanding Nestle's assertions to the contrary, Nestle's true purpose has been to stop ALDI selling the imported Nescafe blends. This purpose is clearly evidenced by Nestle's own documents.

In the Mallesons letter, Nestle has, for the first time, provided some limited details concerning complaints it has allegedly received from a small number of consumers. As ALDI is not privy to the details of those complaints it is unable to comment on the accuracy of the allegations made by Nestle in respect of the complaints. However, Nestle also alleges that this small number of complaints "indicate a wide level of confusion". There is, however, no evidence to support this allegation. In fact, the evidence is to the contrary.

The imported Nescafe blends have now been available in ALDI Stores for over seven months. In that time, there has been very strong consumer demand for these products.

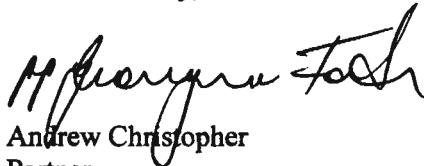
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That demand is continuing to grow. The complaints identified by Nestle represent an insignificant proportion of ALDI's total sales of the imported Nescafe blends.

It is also clear from ALDI's sales of the imported Nescafe blends, that there is repeat business for these products. Nestle's assertion that there are many disaffected customers who will "simply cease to purchase the product" is without foundation and clearly contradicted by the available evidence.

ALDI continues to promote its satisfaction or money back guarantee in relation to the imported Nescafe blends (a guarantee that it offers for all products it sells). This offer enables customers who are dissatisfied with the Nescafe imported blends for any reason to receive their money back. However, to date, not a single customer has taken up this offer.

Yours sincerely,



Andrew Christopher  
Partner

+612 9225 1508

[andrew.christopher@bakernet.com](mailto:andrew.christopher@bakernet.com)

cc: David Hatfield  
Australian Competition & Consumer Commission  
cc: Tim Scott  
Australian Competition & Consumer Commission

Other Contact:  
Georgina Foster  
Partner  
+612 9225 0329  
[georgina.foster@bakernet.com](mailto:georgina.foster@bakernet.com)