



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2006/1981
Contact Officer: Nadia Cooke
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13 September 2007

By e-mail

Dear Sir/Madam

**Exclusive dealing notifications lodged by Seal-A-Fridge Pty Ltd and others
- notices in respect of notifications N50197, N50198, N50199 and N92676**

The Australian Competition and Consumer Commission (ACCC) has concluded its consideration of the above third line forcing notifications. Pursuant to subsection 93(3A) of the *Trade Practices Act 1974* (the Act), the ACCC may revoke third line forcing notifications if it is satisfied that the likely benefit to the public from the notified conduct will not outweigh the likely detriment. Based on an assessment of all the information currently before it, the ACCC is satisfied that each of the above notifications is likely to result in a net detriment.

Accordingly, the ACCC has issued notices under subsection 93(3A) of the Act revoking third line forcing notifications N50197, N50198, N50199 and N92676 lodged by the Seal-A-Fridge franchisors in October 2006.

The ACCC's reasons are set out in the attached document. A copy of the document will also be made available at the ACCC website www.accc.gov.au under the links 'Public registers', 'Authorisations and notifications registers' and 'Exclusive dealing notifications register'.

These notifications will cease to be in force on **15 October 2007**.

Application for review

Pursuant to section 101A of the Act, a person dissatisfied with any one of these notices may apply to the Australian Competition Tribunal for its review. An application for review must be made within 21 days of the date of the notice; that is, on or before **4 October 2007**.

An application for review of any of the notices should be lodged directly with the Australian Competition Tribunal. The Australian Competition Tribunal is a separate body from the ACCC and is located within the Federal Court of Australia.

For further information about the process involved in reviewing decisions in the Australian Competition Tribunal please refer to the tribunal's website located at <http://www.competitiontribunal.gov.au>.

Notification N50196

Also in October 2006, Seal-A-Fridge Pty Ltd lodged a fifth notification, N50196, for exclusive dealing other than third line forcing. The statutory test to revoke such a notification is different to that for third line forcing. It requires the ACCC to be satisfied that the purpose, effect or likely effect of the notified conduct is to substantially lessen competition in a relevant market, and that the conduct is not likely to result in a benefit to the public or the likely benefit to the public from the conduct would not outweigh the likely detriment to the public.

At the time draft notices were issued in respect of the third line forcing notifications, the ACCC indicated it did not have before it evidence to be satisfied that the purpose, effect or likely effect of the conduct in notification N50196 was to substantially lessen competition in a relevant market. The ACCC indicated it would not take any further action in respect of the notification at that time.

The ACCC has reviewed notification N50196 in light of further submissions from interested parties. While the ACCC is concerned that the conduct could, in some circumstances, increase franchisee costs and is not in the public interest, it is not satisfied that a purpose, effect or likely effect of the conduct is to substantially lessen competition in a relevant market. The ACCC's reasons are set out in section 8 of the attached document.

Accordingly, the ACCC does not propose to take any further action in respect of the notification at this time.

As with any notification of exclusive dealing other than third line forcing, please note that the ACCC may act to remove the immunity afforded by the notification at a later stage if it is satisfied that the conduct has the purpose, effect or likely effect of substantially lessening competition in a relevant market, and the conduct is not likely to result in a benefit to the public or the likely benefit to the public from the conduct does not outweigh the likely detriment to the public from the conduct.

This letter has been placed on the ACCC's public register and website. If you wish to discuss any aspect of this matter or you wish to request a hard copy of the notices, please contact Nadia Cooke on (03) 9290 1478 or at nadia.cooke@accg.gov.au.

Yours sincerely



Scott Gregson
General Manager
Adjudication Branch

**Exclusive dealing notifications lodged by Seal-A-Fridge Pty Ltd and others -
interested parties**

Seal-A-Fridge franchisees
Austwide Plastics Pty Ltd
RBM Plastic Extrusions Pty Ltd
Patrick Products