



Hill's Pet Nutrition Pty Ltd
PO Box 1003
North Ryde BC NSW 1670
Tel (02) 8875 1600 Fax (02) 9888 8241
ABN 86 003 954 550

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20 June 2008

Mr David Hatfield
General Manager, Adjudication
Australian Competition & Consumer Commission
GPO Box 3131
Canberra ACT 2601

Dear Mr Hatfield

Notification of Exclusive Dealing

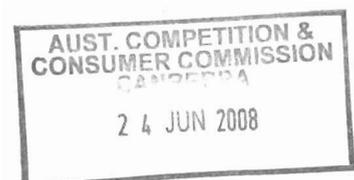
Please find enclosed a notification of exclusive dealing under section 93(1) of the Trade Practices Act 1974 (Cth) (TPA) lodged by Hill's Pet Nutrition Pty Limited ACN 003 954 550.

We also enclose a cheque in the amount of \$100 being the required lodgement fee.

In regard to the confidential material contained in Annexure A to the Form G notification entitled "List of Wholesalers and Retailers", we request pursuant to section 95(3)(b) of the TPA that this Annexure be excluded from the Public Register and not be disclosed to any person without the prior written consent of Hill's Pet Nutrition Pty Limited.

Yours sincerely

Brett Henshaw
General Manager
Hill's Pet Nutrition Pty Limited



Form G

Commonwealth of Australia
Trade Practices Act 1974 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and 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 subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

N93445 Hill's Pet Nutrition Pty Limited (ACN 003 954 550) of Level 1, 68-72 Waterloo Road, North Ryde, New South Wales, 2113 (**Hill's**).

- (b) Short description of business carried on by that person:
(Refer to direction 3)
Hill's is a manufacturer of premium and super-premium dog and cat food (**pet food**).

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

Mr Brett Henshaw
General Manager
Hill's Pet Nutrition Pty Limited
Level 1
69-72 Waterloo Road
North Ryde NSW 2113

2. Notified arrangement

(Refer to direction 4)

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

The goods or services are 'cash rebates' supplied by Hill's direct to various retailers based on sales of Hill's pet food and growth in Hill's pet food sales by each of those retailers. These retailers purchase Hill's pet food from a variety of third party wholesalers nominated by each retailer and then on-sell the Hill's pet food to members of the public.

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

The conduct involves Hill's offering to supply retailers with a percentage cash rebate proportionate to sales of Hill's pet food and the percentage

growth in Hill's pet food sales by each of those retailers. The retailers purchase Hill's pet food from various third party wholesalers nominated by each retailer and then on-sell the Hill's pet food to members of the public.

The conduct also involves Hill's refusing to supply a rebate for the reason that the retailers have not purchased a quantity of Hill's pet food to a specified minimum value from a wholesaler of Hill's pet food, such wholesaler being a wholesaler of the retailer's choice or not growing sales of Hill's pet food to a certain level.

Examples of the rebate are as follows:

- if a retailer experiences a growth in Hill's pet food sales of a certain percentage compared to the same three month period for the previous year, Hill's will give the retailer a certain percentage rebate;
- if a retailer experiences a higher growth in Hill's pet food sales compared to the same three month period for the previous year, Hill's will give the retailer a higher rebate.

To the extent that the conduct detailed above would constitute exclusive dealing within the meaning of section 47(6) or 47(7) of the Trade Practices Act 1974 (**Act**), the conduct is hereby notified under section 93 of the Act.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

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

(Refer to direction 5)

- Wholesalers who supply Hill's pet food to retailers.
- Retailers (being largely pet stores and veterinary clinics) throughout Australia which purchase or which may potentially purchase Hill's pet food from the various wholesalers.
- Members of the public who purchase, or who potentially may purchase, Hill's pet food from retailers.

(b) Number of those persons:

(i) At present time:

Wholesalers – See list of wholesalers attached at Annexure A.

Retailers – See list of retailers attached at Annexure A.

Members of the public who purchase or potentially may purchase – unknown.

(ii) Estimated within the next year:

(Refer to direction 6)

Same.

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

Please see attached at Annexure A the names and addresses of Hill's wholesalers.

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

The conduct is of benefit to the public as it:

- provides retailers with savings on Hill's pet food, which those retailers may pass onto consumers;
- makes premium and super-premium pet food more affordable for retailers and, as a result, potentially makes premium and super-premium pet food a more accessible commodity for members of the public;
- stimulates inter-brand competition for the supply of pet food, particularly premium and super-premium pet food and encourages other manufacturers to offer promotions.

The applicant believes that the benefits from the conduct outlined above outweigh any possible detriment considered to arise from the conduct.

- (b) Facts and evidence relied upon in support of these claims:
Not applicable.

5. Market definition

The markets affected by the notified conduct are:

- the wholesale markets for the supply of pet food in local or regional areas in Australia; and
- the retail markets for the supply of pet food in local or regional areas in Australia.

Hill's submits that premium and super premium pet foods manufactured by it and sold in speciality retail stores are:

- not in a separate product market to other pet foods sold in the supermarket and grocery channels; and
- supplied at the retail level in a series of regional or localised markets.

6. Public detriments
(Refer to direction 9)

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2(a) above and the prices of goods or services in other affected markets:

Hill's considers there are very few, if any, public detriments likely to arise from the conduct as:

- wholesale markets in which pet food, including premium and super premium pet food are supplied are very competitive and characterised by a large number of pet food manufacturers, some of whom are global players;
- retailers are not obliged to increase sales in order to obtain Hill's pet food; and
- retailers are not required to purchase Hill's pet food from any particular wholesaler and they are able to deal with whichever wholesaler they wish to deal with.

- (b) Facts and evidence relevant to these detriments:

A list of wholesalers and retailers that supply Hill's pet food to the public is attached at Annexure A.

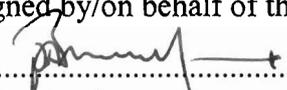
7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Mr Brett Henshaw
General Manager
Hill's Pet Nutrition Pty Limited
Level 1
69-72 Waterloo Road
North Ryde NSW 2113

Dated.....20.6.08.....

Signed by/on behalf of the applicant


.....
(Signature)

General Manager
Hill's Pet Nutrition Pty Limited

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

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. 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 section 47 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. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.