Dear Sir

PUBLIC REGISTER VERSION

Third Line Forcing Notification - Coffee Holdings Pty Ltd and Byford Flour Mill Pty Ltd

We act for Coffee Holdings Pty Ltd (Coffee) and Byford Flour Mill Pty Ltd (BFM).

Please find enclosed a notification in respect of proposed conduct which may raise issues under the third line forcing provisions of the Trade Practices Act (1974) (Cwth) (TPA). The notification concerns proposed conduct of Coffee, BFM and Philippe Fine Foods Pty Ltd (Philippe).

We enclose:

- a completed Form G in respect of the notification; and
- a cheque for $100.00 being the fee for lodgement of the notification.

1 Background

BFM operates a flour milling business in Perth, Western Australia, and currently produces around 15,000 tonnes of flour per year, most of which is sold in Western Australia. BFM estimates that the total WA market for flour is about 110,000 tonnes per year.

The main manufacturers of flour in WA are George Weston Foods Limited (manufacturing about 45,000 tonnes per year in WA) and Allied Mills which manufactures about 35,000 tonnes per year in WA.

Coffee operates a business comprising:

(a) the sale of garlic bread and garlic butter; and
(b) the production and sale of frozen dough.

Coffee proposes to sell that part of its business as comprises (the production and sale of frozen dough (Business). Frozen dough is used to bake bread and pastry products, and is typically purchased by bakeries and other commercial food outlets.

The Business has a turnover of approximately $1 million per year, and sells frozen dough mainly to independent retail bakeries, and some independent supermarkets. Coffee employs 10-15 people, of which 3-4 are involved in the Business, and conducts its manufacturing operations from leased premises at 48 Barberry Way, Bibra Lake, Western Australia.

Family Foods (WA) Pty Ltd Family Foods WA Pty Ltd in its capacity as Trustee of The Bovells and Blue Ribbon Unit Trust (FFWA) (refer to Item 2 below) acquired the shares in Coffee as part of a deed of company arrangement when Coffee fell into financial

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difficulties. Coffee was a customer of BFM, buying flour from it, and BFM, through its associated entity FFWA bought the shares essentially to help the customer.

Coffee estimates that the share of the frozen dough market in WA held by the Business is less than 10%. There are at least 2 major frozen dough suppliers in WA, namely, Speedy Bake (a George Weston Foods Limited company) and Yarrows Family Bakers (a New Zealand company), and these have a dominant position in the market.

Our clients estimate that between them, Speedy Bake and Yarrows have in the order of 80% of the market with the remaining 10% being held by a number of smaller operators. The major purchasers of frozen dough products in WA are food service outlets, bakeries, independent bakers, supermarkets and commercial food outlets such as delicatessens.

2 Coffee, BFM and FFWA are under same control, but not related bodies corporate

Coffee, BFM and FFWA are, ultimately, all owned and controlled by the same individuals, but do not fall within the definition of 'related bodies corporate' under the TPA.

3 Proposed sale to Philippe

Coffee now proposes to enter into an agreement to sell the Business to Philippe, for a cash consideration of $.....................

Philippe operates a frozen dough/par bake manufacturing business in Queensland. Although Philippe currently imports a very small amount of frozen dough and par bake product into WA, the acquisition of the Business will enable it to compete effectively in WA with the much larger operations carried on by Speedy Bake and Yarrows. Our clients anticipate that, under the ownership of Philippe, the Business has the potential to grow substantially.

One of the conditions proposed for the sale of the Business by Coffee to Philippe is that Philippe also enter into a flour supply agreement with BFM. The key terms of the proposed flour supply agreement (FSA) would be that the FSA would be for a term of 10 years, would be for a minimum annual quantity of 300 tonnes of flour per year, that Philippe would be required to purchase all of its flour and flour related products for use in the Business from BFM, and the price would be adjusted by reference to the changes in the price of wheat, CPI movements and other relevant indices.

This notification is being made because it is arguable that the sale by Coffee of the Business to Philippe, on condition that Philippe also enter into the FSA with BFM, is third line forcing within the meaning of section 47(6) of the TPA. We note, however, that had the ultimate owners of BFM and Coffee structured their arrangements such that those companies were 'related bodies corporate', then the proposed conduct would have the benefit of the related party exception in section 47(6), and would not even arguably be third line forcing within the meaning of that provision.

4 Benefits of the proposed conduct

As noted above, the Business is not a core business for its owners. The sale of the Business to Philippe should result in the Business providing much more effective competition for the 2 frozen dough/par bake suppliers who currently dominate the market in Western Australia. In addition to the benefits that can be expected to flow from that enhanced competition, there is also the possibility of additional employment and investment in equipment by the Business.

The proposed FSA represents part of the consideration for the sale of Coffee to Philippe. Noting that the cash consideration for the acquisition of the Business is only $................. the FSA adds value to the transaction for both parties, whilst minimising the immediate cash outlay for Philippe. Without the FSA, Coffee would wish to charge a higher price for the sale of the Business, and it is not clear whether the sale would go ahead on such basis. In the event of the sale not proceeding, consumers would not have the benefit of the enhanced competition that would be provided by the Business, under the ownership of Philippe.
Absence of anti-competitive detriment

Our client submits that the proposed arrangements are insignificant in relation to the market as a whole, and are for that reason not capable of causing any anti-competitive detriment. As noted above, the WA market for flour is currently in the order of 110,000 tonnes per year, of which Byford has only about 15,000 tonnes. The proposed FSA would be for a minimum annual quantity of only 300 tonnes of flour per year; acquisitions of many times that amount would still be insignificant in the context of the overall market for supply of flour in Western Australia. That is, the vast majority of potential customers for flour in Western Australia will remain available to flour suppliers.

Please feel free to contact Steven Standing on 9211 7801 or David Germain on 9211 7760 should you require further information or wish to discuss this matter.

Yours sincerely

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Attached
1 Form G
2 Cheque
FORM G

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 sub-section 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.

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice
Coffee Holdings Pty Ltd (Coffee) and Byford Flour Mill Pty Ltd (Byford) (See Direction 2 on the back of this Form)
(b) Short description of business carried on by that person
Flour Milling (Byford) and manufacture of frozen dough products (Coffee)
(c) Address in Australia for service of documents on that person
c/- David Germain and Steven Standing
Freehills
QV1 Building
250 St Georges Terrace
Perth WA 6000

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
Sale by Coffee Holdings of its frozen dough business to Philippe Fine Foods Pty Ltd (Philippe), on condition that Philippe also enter into a flour supply agreement with Byford. The flour supply agreement would be for a period of 10 years and would be an all requirements contract with a minimum annual purchase of 300 tonnes. Although Byford and Coffee are ultimately owned by the same individuals, they do not fall within the definition of related bodies corporate and the conduct therefore does not have the benefit of the related party exception in section 47(6) of the TPA.

3. (a) Class or classes of persons to which the conduct relates
Other flour suppliers who might wish to supply flour to Philippe in WA.
(b) Number of those persons
Four persons.
(c) Where number of persons stated in item 3 (b)(i) is less than 50, their names and addresses
George Weston Foods Ltd
174 Hamilton Road
Spearwood WA 6163
4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice**

   David Germain or Steven Standing  
   Freehills  
   QV1 Building  
   250 St Georges Terrace  
   Perth WA 6000

Dated 27 August 2008

Signed on behalf of the applicant giving notice

(Signature)

(Full Name)

(Description)
[Back of Form]

**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 provided 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 Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of sub-section 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 sub-section 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 sub-section 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.
NOTE FOR FILE

COFFEE HOLDINGS PTY LTD – EXCLUSIVE DEALING NOTIFICATION N93564

On 27 August 2008 the Australian Competition and Consumer Commission (ACCC) received an exclusive dealing notification purported to be lodged by Coffee Holdings Pty Ltd and Byford Mill Pty Ltd (Byford Mill) – see attached.

On 2 September 2008 the ACCC was informed that Byford Mill would not be lodging a separate notification for its involvement in conduct that is the subject of a valid notification.