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www.dibbsbarker.com

15 January 2010

Dr Richard Chadwick
General Manager, Adjudication Branch
Australian Competition & Consumer Commission
c/- Level 7
123 Pitt Street
SYDNEY NSW 2000

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY
15 JAN 2010

By Email: adjudication@accc.gov.au

FILE No:	
DOC:	
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Dear Dr Chadwick

Notifications of Exclusive Dealing – Third Line Forcing
Our Ref: LEH: 3516146

We act for Riviana Foods Pty Ltd (**Riviana**).

We **enclose** a Notification of Exclusive Dealing by Riviana Foods Pty Ltd under section 93(1) of the Trade Practices Act 1974 (**Notification**).

The Notification is lodged in respect of conduct which may constitute third line forcing as defined by sub-sections 47(6) and 47(7) of the Act.

We also **enclose** a cheque made payable to the Australian Competition & Consumer Commission in the sum of \$100 for the prescribed lodgement fee.

The proposed conduct involves Riviana offering to supply discounts, rebates, bonus stock, promotional gifts or other benefits to stores which purchase products sold by Riviana to SPAR Australia Limited

As set out in the Notification, Riviana believes that the proposed conduct will enhance competition in the markets in which our client operates because it stimulates inter-brand competition for the supply of products which compete with our client's products, encourages other suppliers of competitive products to offer similar benefits and may result in stores which purchase from SPAR being able to compete more effectively with other retailers.

Our client respectfully submits that the proposed conduct will result in a net public benefit.

Please do not hesitate to contact us should you require any further information in relation to the Notification.

14293211 v1 Sydney 11 01 10

Brisbane

T 61 7 3100 5000 F 61 7 3100 5001

Canberra

T 61 2 6201 7222 F 61 2 6257 4011

Perth

T 61 8 9265 6000 F 61 8 9265 6099

Yours sincerely
DibbsBarker

A handwritten signature in black ink that reads "Laura Hartley". The signature is written in a cursive style with a large, sweeping initial 'L'.

Laura Hartley
Partner

Email: laura.hartley@dibbsbarker.com

Direct Line: 61 2 8233 9560

Mobile: 0417 428 861

Encl.

FORM G

Commonwealth of Australia
Trade Practices Act 1974 - Sub-section 93(1)

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY

15 JAN 2010

EXCLUSIVE DEALING NOTIFICATION

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 persons giving notice (Refer to direction 2)

N94447

Riviana Foods Pty Ltd (ABN 97 061 388 092) of 8 Lakeview Drive, Scoresby VIC 3179 (**Riviana**).

(b) Short description of businesses carried on by those persons (Refer to direction 3)

Riviana distributes, markets and sells or offers for sale, products as follows:

Retail products

Pickled Vegetables, Antipasto, Savoury Biscuits and Crackers, Olive Oil, Oil Sprays, Vinegar, Canned Vegetables, Canned Fish and Cooking Needs (under the Always Fresh brand), Canned Fruit (under the Admiral brand), Canned Salmon (under the Captain brand), Rice and Popping Corn (under the Riviana Retail brand), Chutney, Relish, Sauces, Mayonnaise and Dressings (under the Kato brand), Goat Milk (under the Nanny Goat Lane brand), Vinegar and Chutney (under the Palms brand).

Food service products

Olives, Antipasto, Oil Sprays, Vinegar, Canned Vegetables, Canned Seafood, Condiments, Canned Fruit, Fruit Cups, Pasta, Rice, Asian Condiments and Sauces (under the Riviana brand), Canned Seafood and Pouch Pack Seafood (under the Ocean Supreme brand), Canned Fruit and Vegetables, Frozen Fruit and Vegetables, Condiments and Olives (under the Garden Supreme brand), Canned Tuna (under the Regal Sea brand), Rice (under the Mahatma and Tastic brands), Desserts, Vinegars, Crustini and Croutons (under the Menu Master brand), Lasagne (under the 4 Seasons brand), Canned Salmon (under the Captain brand), Vinegar and Chutney (under the Palms brand).

The above products are jointly referred to in this notification as **Products**.

(c) **Address in Australia for service of documents on those persons**

c/- Ms Laura Hartley
DibbsBarker
Level 8, 123 Pitt Street
SYDNEY NSW 2000

2. **Notified arrangement**

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

This notice relates to benefits including discounts, rebates, bonus stock, promotional gifts or other benefits (**Benefits**) that are provided by Riviana to retailers (**Stores**) that purchase Products from SPAR Australia Limited (**SPAR**).

(b) **Description of the conduct or proposed conduct** (*Refer to direction 4*)

Riviana is not privy to any arrangements that Stores may have in place with SPAR. Riviana is however aware that, in practice, Stores purchase Products primarily from SPAR.

The conduct involves Riviana offering to supply Stores with Benefits for those Stores to pass on to consumers who purchase Products from those Stores.

Riviana offers Benefits to Stores based on their purchases of relevant Products from SPAR. The conduct also involves Riviana refusing to supply Stores with a Benefit because those Stores have not, in the particular instance, purchased Products or a certain quantity of Products from SPAR and/or those Stores have refused to pass those Benefits onto consumers.

Riviana does not require Stores to purchase the Products from SPAR and the Stores have their own arrangements for purchase of the Products in place.

To the extent that the conduct detailed above could constitute exclusive dealing within the meaning of section 47(6) or 47(7) of the Trade Practices 1974 Act (**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*)

- SPAR, which supplies Stores with Products and other suppliers from which Stores may potentially buy the Products, being Metcash Limited, Coles and Woolworths;
- Those Stores which purchase or which may potentially purchase Products from SPAR and to which Riviana agrees to provide Benefits; and

- Consumers, who purchase or who may potentially purchase, Products from Stores.

(b) Number of those persons

(i) At present time

SPAR, Metcash Limited, Coles, Woolworths – 4

Stores – 180

Consumers – substantially in excess of 50

(ii) Estimated within the next year (Refer to direction 6)

As above

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

SPAR Australia Limited:

Fox Road

Acacia Ridge QLD 4110

Metcash: Metcash Limited

50 Waterloo Road

Macquarie Park NSW 2113

Coles: Coles Supermarkets Pty Ltd

800 Toorak Road

Tooronga VIC 3146

Woolworths: Woolworths Ltd

1 Woolworths Way

Bella Vista NSW 2153

Stores: N/A

Consumers: N/A

4. Public benefit claims

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

The conduct is beneficial to the public for the following reasons:

- The conduct may result in SPAR being able to compete more effectively with other entities which may supply the Stores and other wholesalers of the Products;
- The conduct may result in Stores which purchase from SPAR being able to compete more effectively with other retailers of the Products;
- The conduct stimulates inter-brand competition for the supply of products which compete with the Products and encourages other suppliers of products which compete with the Products to offer Benefits that can be passed on to consumers.

The benefits provided by the conduct outweigh any possible detriment as set out in answer to question 6 potentially arising from the conduct.

(b) Facts and evidence relied upon in support of these claims

See above.

5. Market definition (*Refer to direction 8*)

Provide a description of the market(s) in which the goods or services described at 2(a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions)

The markets that may be affected by the notified conduct are:

A. The markets in Australia for the acquisition by retailers from wholesalers of the product types in each of the following categories:

- i. Rice;
- ii. Savoury Biscuits and Snacks;
- iii. Antipasto Products;
- iv. Condiments;
- v. Fats for domestic use;
- vi. Seafood; and
- vii. Fruit or Tinned Fruit.

Riviana submits that each of the product types specified above are acquired by retailers from wholesalers in an Australia-wide market.

Each of the markets set out above face strong competitive constraints. At any given time there are a number of competitive suppliers of substitutable products in each of the categories listed above which may be acquired by retailers from wholesalers. There are also readily available imports in the markets set out above. Furthermore, the notified conduct may promote competition at the wholesale level of the market.

B. The markets in Australia for the retail supply to consumers of the product types in each of the following categories:

- i. Rice;
- ii. Savoury Biscuits and Snacks;
- iii. Antipasto Products;
- iv. Condiments;
- v. Fats for domestic use;
- vi. Seafood;
- vii. Fruit or Tinned Fruit.

Riviana submits that each of the products specified above are supplied at the retail level to consumers in a series of regional or localised markets.

Each of the markets set out above are highly competitive. At any given time there are a number of competitive suppliers of substitutable products in each of the categories listed above which may be supplied by retailers to consumers.

Riviana is not aware of any significant restrictions on the supply or acquisition of any of the Products.

6. Public Detriments

- (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 (Refer to direction 9)**

Riviana considers that there are few, if any, public detriments likely to arise from the conduct for the following reasons:

- The conduct described in this notification arises out of Riviana's understanding of the way in which SPAR and the Stores operate.
- The relevant markets are competitive and are characterised by a large number of participants.
- Riviana's competitors are free and able to conduct promotions similar to the notified conduct and indeed do so.

The conduct is, therefore, unlikely to have any significant effect on competition in the relevant markets in a negative sense.

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

As above.

7. Further information

- (a) **Name and address of persons authorised by the person giving this notice to provide additional information in relation to this notice**

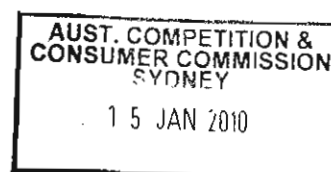
c/-Ms Laura Hartley
DibbsBarker
Level 8, 123 Pitt Street
SYDNEY NSW 2000

Signed by/on-behalf of the applicant

Laura Hartley
.....
(Signature)

Laura Elizabeth Hartley
.....
(Full Name)

Dated: 15 January 2010



DIBBSBARKER.....

(Organisation)

PARTNER.....

(Position in Organisation)

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 the 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.