

Our Ref: 284130



15 August 2012

REGISTERED MAIL

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

FILE No:
DOC:
MARS/PRISM:

Dear Sir/Madam

Notification of Third Line Forcing - San Remo Macaroni Company Pty Ltd (ABN 43 000 228 713)

San Remo Macaroni Company Pty Ltd proposes to conduct a competition to be conducted in participating Foodland supermarkets in South Australia.

Please find enclosed the following:

1. Form G Notification under section 93(1) of the *Competition and Consumer Act 2010* in relation to potential third line forcing conduct proposed to be engaged in by our client ("Notification"); and
2. Cheque in the amount of \$100.00, being in payment of the fee for lodging the Notification.

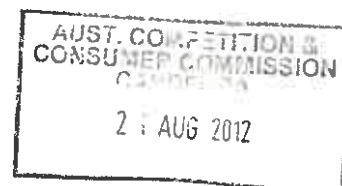
Please do not hesitate to contact the writer should you have any queries in relation to the enclosed notification.

Yours faithfully
KELLY & CO.

per:

Peter Campbell
Partner
Direct Telephone: 61 8 8205 0836
Direct Facsimile: 61 8 8205 0805
Email: pcampbell@kellyco.com.au

Enc. Form G Notification
Cheque.



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Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — 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 *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to 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.

1. Applicant

(a) Name of person giving notice:

N96070 San Remo Macaroni Company Pty Ltd (**San Remo**) ABN 43 000 228 713.

(b) Short description of business carried on by that person:

San Remo is a food manufacturer and distributor.

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

C/- Peter Campbell, Partner, Kelly & Co. Lawyers, Level 21 Westpac House, 91 King William Street, Adelaide, South Australia 5000.

2. Notified arrangement

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

San Remo food products including dry and fresh pasta and pasta sauce products.

(b) Description of the conduct or proposed conduct:

Section 47 of the *Competition and Consumer Act 2010* (**Act**) prohibits anti-competitive dealing, and outlines a number of proscribed practices which amount to exclusive dealing.

Sections 47(6) prohibits exclusive dealing which arises when goods or services are supplied to a purchaser on the condition that the purchaser will acquire goods or services of a particular kind or description directly or indirectly from another person not being a body corporate related to the supplier.

The proposed conduct outlined below may fall within these provisions of the Act. San Remo wish to conduct a competition aimed at South Australian residents aged 18 years or over. It is a condition of entry to the competition that customers acquire any five San Remo products from participating Foodland stores in South Australia during the promotional period of the competition.

However, San Remo maintains, as outlined below in section 4, that the proposed conduct will have a negligible effect on competition within the relevant markets.

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:

Consumers who purchase San Remo products at participating Foodland stores in South Australia.

(b) Number of those persons:

(i) At present time:

Based on previous promotions, San Remo calculates that there will be approximately 3,000 entrants who will enter the competition.

(ii) Estimated within the next year:

Not applicable.

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

Not applicable.

4. Public benefit claims

(a) Arguments in support of notification:

The competition will be conducted for a limited duration. It will be conducted for one month from September 2012 to October 2012. The competition will be restricted to South Australia.

The eligible customers can enter the competition for the chance to win a prize provided they make the relevant purchase at Foodland stores.

The proposed conduct will have little or no public detriment. The customers will simply be purchasing San Remo products from participating Foodland supermarkets. There is nothing preventing customers from purchasing San Remo products from other retailers, although they will not be able to enter the competition.

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

As above.

5. Market definition

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 products are supplied by numerous supermarkets throughout South Australia including, but not limited to, Coles and Woolworths. There are many substitute products available in the market, including but not limited to Vetta, Barilla dry pasta, Latina and Leggos fresh pasta and sauces.

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:**

There will be no public detriment.

San Remo does not set retail prices. Prices are set by each retailer of San Remo products. The competition described in section 2 above is not intended to and will not affect the price of San Remo products.

The proposed conduct will not affect the availability of San Remo products. Nothing in the conduct outlined in section 2 will prevent consumers from purchasing San Remo products from retailers other than Foodland, except that they will not be able to enter the competition. Consumers are not obliged to enter the competition.

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

As above.

7. Further information

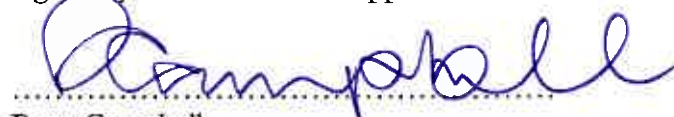
- (a) **Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:**

Mr Peter Campbell
Kelly & Co. Lawyers
Level 21 Westpac House
91 King William Street
Adelaide SA 5000
Ph: (08) 8205 0836

Dated:

15 August 2012

Signed by/on behalf of the applicants



Peter Campbell
Partner
Kelly & Co. Lawyers

