

**AUST. COMPETITION &  
CONSUMER COMMISSION  
SYDNEY**

30 APR 2012

Our ref: RZ\TYB\02 3000 3889  
Partner: Ross Zaurrini  
Direct line: +61 2 9258 6840  
Email: ross.zaurrini@ashurst.com  
Contact: Tihana Berak, Senior Associate  
Direct line: +61 2 9258 6343  
Email: tihana.berak@ashurst.com

Ashurst Australia  
Level 36, Grosvenor Place  
225 George Street  
Sydney NSW 2000  
Australia

GPO Box 9938  
Sydney NSW 2001  
Australia

Tel +61 2 9258 6000  
Fax +61 2 9258 6999  
DX 388 Sydney  
www.ashurst.com

30 April 2012

**BY HAND**

Richard Chadwick  
General Manager  
Adjudication  
Australian Competition & Consumer Commission

FILE No:

DOC:

MARS/PRISM:

**ashurst**

Dear Mr Chadwick

**Third line forcing notification**

We act for Coca-Cola Amatil (Aust) Pty Limited.

We **enclose** for lodgement a notification relating to third line forcing.

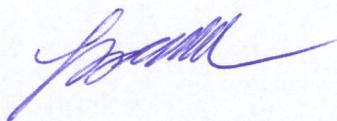
We also **enclose** a cheque for \$100, to cover the required lodgement fee.

If you have any questions in relation to this notification, please do not hesitate to contact us.

Yours faithfully



**Ross Zaurrini**  
Partner



**Tihana Berak**  
Senior Associate

AUSTRALIA BELGIUM CHINA FRANCE GERMANY HONG KONG SAR INDONESIA (ASSOCIATED OFFICE) ITALY JAPAN  
PAPUA NEW GUINEA SINGAPORE SPAIN SWEDEN UNITED ARAB EMIRATES UNITED KINGDOM UNITED STATES OF AMERICA

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220200993.01

## 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.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### 1. Applicant

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

Coca-Cola Amatil (Aust) Pty Ltd ABN 68 076 594 119 ("CCA")

- (b) Short description of business carried on by that person:  
*(Refer to direction 3)*

CCA is a manufacturer and distributor of beverages under a range of trade marks.

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

C/- Ross Zaurrini  
Partner  
Ashurst Australia  
Level 36, Grosvenor Place  
225 George 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:

The arrangement relates to the supply of "Coca-Cola" product free of charge to existing small business customers of CCA who enter into a contract to acquire electricity from Origin Energy Electricity Limited ("**Origin**") during the promotional period (described below).

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

## **Background**

CCA and Origin propose to make a combined promotional offer to a group of existing small business customers of CCA (the group of eligible customers will be selected by CCA, and is referred to in this notification as the "**SME Customers**") during the promotional period (the "**Promotional Offer**").

As part of the Promotional Offer:

- Origin will offer to supply electricity to the SME Customers on terms which provide benefits (such as discounts and rebates) more favourable to those customers than to the same size customers who are not also SME Customers (the "**Origin Offer**"); and
- CCA will offer to supply three cases of 600ml Coca-Cola free of charge to SME Customers who enter into a contract with Origin to acquire electricity from Origin pursuant to the Origin Offer (the "**CCA Offer**").

The promotional period for the Promotional Offer is proposed to run from the date this notification comes into force until 31 March 2013.

CCA notes that Origin has lodged a third line forcing notification with respect to the Origin Offer (N95729, submitted on 21 February 2012), which the Commission has allowed to stand.

This notification relates to the CCA Offer.

## **Proposed conduct**

As part of the Promotional Offer, CCA will offer three cases of 600ml Coca-Cola free of charge to SME Customers who acquire electricity from Origin by taking up the Origin Offer.

The CCA Offer may constitute third line forcing pursuant to section 47(6) and/or s47(7) of the *Competition and Consumer Act 2010* (Cth). This is because it may be argued that the CCA Offer is conditional on the customer acquiring electricity from Origin pursuant to the Origin Offer. It may also be argued that CCA will refuse to supply Coca-Cola free of charge to customers, for the reason that they have not acquired electricity from Origin pursuant to the Origin Offer.

**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)

SME Customers who are made the Origin Offer.

- (b) Number of those persons:  
(i) At present time:

Nil. The CCA Offer will not be available unless and until this notification comes into force.

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

Unknown. (However, there are approximately 4,460 SME Customers who will be eligible for the Promotional Offer. Accordingly, the maximum number of persons that could be affected by the CCA Offer is approximately 4,460 small businesses.)

- (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:  
(Refer to direction 7)

The public benefits of the proposed conduct are that:

- i) SME Customers who enter into a contract to acquire electricity from Origin pursuant to the Origin Offer will be entitled to receive three cases of 600ml Coca-Cola free of charge; and
- ii) SME Customers will be entitled to acquire electricity from Origin at a discount and/or subject to a rebate compared to Origin's standard rates.

The proposed conduct will result in lower prices for SME Customers, and will increase competition in the retail market for electricity supply within the National Electricity Market and will contribute to the strong price and non-price competition which already characterises the that market and the national market for the supply of carbonated soft drinks ("CSDs").

The proposed conduct will also enhance competition by encouraging innovative offers by Origin's competitors in the retail market for electricity supply and CCA's competitors in the market for CSDs.

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

Not applicable.

## 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):  
*(Refer to direction 8)*

The relevant markets likely to be affected by the proposed conduct are:

- the national market for the supply of CSDs; and
- the retail market for electricity supply within the National Electricity Market.

## 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)*

CCA considers that no detriment to the public will result from the proposed conduct.

CCA notes that:

- i) SME Customers are not compelled to take up the CCA Offer;
- ii) CCA will continue to supply its products and services to SME Customers who choose not to take up the Origin Offer;
- iii) SME Customers will continue to be able to acquire electricity from a range of alternative suppliers besides Origin; and
- iv) the national market for the supply of CSDs and the retail market for electricity supply within the National Electricity Market are each highly competitive and characterised by strong price and non-price competition.

(b) Facts and evidence relevant to these detriments:

Not applicable.

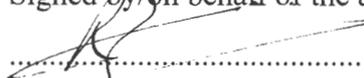
**7. Further information**

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

Ross Zaurrini  
Partner  
Ashurst Australia  
Level 36, Grosvenor Place  
225 George Street  
Sydney NSW 2000  
Phone: (02) 9258 6840

Dated..... 30 April 2012 .....

Signed by/on behalf of the applicant

  
.....  
(Signature)

ROSSANO ZAURRINI  
.....  
(Full Name)

ASHURST AUSTRALIA  
.....  
(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 *Competition and Consumer Act 2010* 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.