



HERBERT
SMITH
FREEHILLS

FILE No:

DOC.

MARS/PRISM

Dr Richard Chadwick
General Manager, Adjudication Branch
Australian Competition & Consumer
Commission
richard.chadwick@accc.gov.au

19 August 2013

By Email

Dear Richard

~~Confidential~~

Notification lodged under section 93 of the *Competition and Consumer Act 2010* for DuluxGroup (Australia) Pty Ltd

We act for DuluxGroup (Australia) Pty Ltd (**Dulux**).

We enclose a notification in respect of conduct which may raise issues under the third line forcing provisions of the *Competition and Consumer Act 2010* (Cth).

This includes:

1. a completed Form G in respect of the notification; and
2. a cheque for \$100, being the relevant fee for lodgement of Dulux's third line forcing notification.

Please contact us if you require further information or would like to discuss this notification.

Yours sincerely

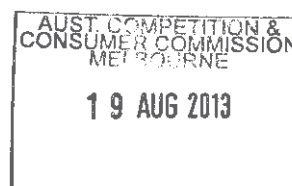
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Encl

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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.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

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

N96918

DuluxGroup (Australia) Pty Ltd (**Dulux**)

ABN 67 000 049 427

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

Provider of branded paint, coatings, adhesives, garden care and other building products to the residential home improvement, commercial and infrastructure markets across Australia, New Zealand and Papua New Guinea, with niche positions in China and South East Asia

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

Senior Legal Counsel

DuluxGroup (Australia) Pty Ltd

1956 Dandenong Road

Clayton

Victoria 3168

2. Notified arrangement

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

The supply of Dulux branded paint (**Dulux Paint**).

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

Dulux will supply a free Dulux Vintage Calendar to any person who purchases four (4) litres or more of any Dulux Paint from a retailer of Dulux

Paint in Australia during the offer period (being on or around 1 September 2013 to around 30 November 2013).

The Dulux Vintage Calendar is a calendar comprising images sourced from heritage Dulux print advertising.

It may be possible to characterise the conduct as:

- Dulux supplying, or offering to supply a Dulux Vintage Calendar to a person on the condition that such person acquires four (4) litres or more of any Dulux Paint from any retailer of Dulux Paint in Australia; and/or
- Dulux refusing to supply a Dulux Vintage Calendar to a person for the reason that such person has not or has not agreed to acquire four (4) litres or more of any Dulux Paint from a retailer of Dulux Paint in Australia.

(Refer to direction 4)

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)

Persons who acquire Dulux Paint.

- (b) Number of those persons:

- (i) At present time:

Nil.

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

The number of persons to which the proposed conduct will relate is unknown, but it is likely to exceed 50.

- (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)

Eligible persons will benefit from the proposed arrangement as they will receive a free Dulux Vintage Calendar from Dulux upon purchase of four

(4) litres or more of any Dulux Paint from a retailer of Dulux Paint in Australia.

The arrangement proposed by Dulux is also likely to increase competition. Other paint manufacturers can respond by providing alternate promotions to consumers.

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

The offer proposed by Dulux will be available to any person who purchases four (4) litres or more of any Dulux Paint from a retailer of Dulux Paint in Australia.

Consumers remain free to purchase from any retailer of their choice and also remain free to purchase other competing brands of similar products.

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 most relevant market/s are the retail market/s for the manufacture and supply of architectural and decorative (A&D) paint in Australia. Leading manufacturers include Dulux, PPG and Valspar. These products are sold through a wide range of retailers, such as Bunnings, Mitre 10, and independent specialty outlets.

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)

There will be no detriment to the public arising from the proposed conduct.

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

The Dulux Vintage Calendar will be supplied by Dulux free or charge (with any purchase of four (4) litres or more of any Dulux Paint from a retailer of Dulux Paint in Australia) for the offer period (being on or around 1 September 2013 to around 30 November 2013).

7. Further information

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

Senior Legal Counsel
DuluxGroup (Australia) Pty Ltd
1956 Dandenong Road
Clayton
Victoria 3168
T: (03) 9263 9285

Dated..... 19 August 2013

Signed by/on behalf of the applicant

.....
(Signature)

Peter McDonald
.....
(Full Name)

Herbert Smith Freehills
.....
(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.