

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)

- Arnott's Biscuits Ltd ABN 44 008 435 729 (**Arnott's**); and
- Campbell Australasia Pty Ltd 28 004 456 937 (**Campbell**).

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

Arnott's and Campbell manufacture and sell packaged food and beverage products. Specifically, Arnott's manufactures and supplies both sweet and savoury biscuits and Campbell manufactures and supplies canned soups and sauces, bottled juices and stock.

Arnott's and Campbell are related companies and are both wholly-owned subsidiaries of their ultimate parent company, the Campbell Soup Company, a US corporation.

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

Mr Mark McCowan
Partner
Corrs Chambers Westgarth
8 Chifley
8-12 Chifley Square
Sydney NSW 2000

FILE No:
DOC:
MARS/PRISM:

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2. Notified arrangement

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

The notified arrangement relates to:

- the acquisition by Arnott's and Campbell in the course of their operations in Australia of goods and services from various suppliers, other than suppliers of food and beverage ingredients and packaging (**Suppliers**). Suppliers of food and beverage ingredients and packaging generally transact with Arnott's and Campbell more frequently and for higher volumes than other suppliers and it is proposed that they will transact through an alternative system. Examples of relevant goods and services to which the notified arrangement relates may include media buying services and marketing agency services; and
- the supply by Ariba Inc or its related companies (**Ariba**) of automated "procure-to-pay" process services (**Services**), which allow businesses to transact electronically.

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

Ariba is a software and information technology services company that is headquartered in California, USA and owned by SAP. Its software and services enable companies to use the internet to facilitate the procurement process in order to achieve cost savings and business process efficiency.

Arnott's and Campbell propose to require their Suppliers to subscribe to receive the Services from Ariba, so that business between them can be transacted electronically. For logistical reasons, it is not practicable for Arnott's and Campbell to allow Suppliers to use their preferred supplier of the Services as this would require Arnott's and Campbell to implement multiple different systems.

Transactions on Ariba's network may include, but are not limited to, a Supplier's electronic receipt of orders, change orders, and advance ship notices and its electronic transmission of order confirmations, invoices and credit memos. Suppliers will be responsible for any costs or fees associated with their subscription to, or use of, the Services from Ariba.

The Campbell Soup Company is implementing the Services, and has selected Ariba as its provider, on a global basis.

Arnott's and Campbell do not admit that the notified conduct falls within sections 47(6) or (7) of the *Competition and Consumer Act 2010* (Cth), and considers that it is properly characterised as:

- Arnott's and Campbell acquiring, or offering to acquire, goods or services from Suppliers on the condition that the Suppliers will acquire the Services from Ariba; and
- Arnott's and Campbell refusing to acquire goods or services from Suppliers that do not acquire, or do not agree to acquire, the Services from Ariba.

However, based on the reasoning of the Full Court of the Federal Court in *Queensland Aggregates Pty Ltd & Anor v TPC* (1981) ATPR 40-236, the notified conduct could potentially be characterised as:

- Arnott's and Campbell supplying, or offering to supply, a service to its Suppliers (that is, the opportunity to earn revenues from supplying Arnott's and Campbell) on the condition that the Suppliers acquire the Services from Ariba; and
- Arnott's and Campbell refusing to supply a service to its Suppliers (that is, the opportunity to earn revenues from supplying Arnott's and Campbell) that do not acquire, or do not agree to acquire, the Services from Ariba.

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)

Current and prospective Suppliers of goods and services to Arnott's and Campbell, other than suppliers of food and beverage ingredients and packaging.

- (b) Number of those persons:

- (i) At present time:

Arnott's and Campbell currently have more than 1000 Suppliers.

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

More than 1000.

- (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 notified conduct will give rise to the following public benefits.

- The conduct is likely to generate business process efficiencies and cost savings for Arnott's, Campbell and their Suppliers that would be unlikely to be achieved in the absence of the Suppliers acquiring the Services from Ariba. Anticipated efficiencies include:
 - the ability to conduct real-time purchase orders and invoice delivery for quicker fulfillment, identification of discrepancies, and on-time payment to Suppliers by Arnott's and Campbell;
 - the ability for Arnott's, Campbell and Suppliers to easily check invoice status and payment details;
 - the elimination of paper invoice entry, and scanning of invoices and supporting documentation; and
 - the reduction in administrative business expenses for Arnott's, Campbell and Suppliers for items such as postage, printing, mailroom handling and error resolution.
- Each Supplier will be in an improved position to focus on its core business of supplying its relevant goods and services, rather than the back office tasks of managing records and invoices.
- Because the Services will allow Suppliers to create on-line catalogues to provide an enhanced buying experience, Arnott's and Campbell will have increased visibility of, and exposure to, the goods and services offered by Suppliers, giving rise to potential new business opportunities for Suppliers.

Ariba has been selected as the supplier of the Services to the Campbell Soup Company Group, following a competitive tender process, on the basis of its pricing, the functionality of the Services and the company's reputation for quality of service.

The public benefits outlined above outweigh the detriment (if any) arising from the notified conduct.

- (b) Facts and evidence relied upon in support of these claims:
See paragraph (a) above.

For more information about Ariba, visit:
<http://www.ariba.com/solutions/buy>.

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)

Arnott's and Campbell have not reached a concluded view on the relevant markets.

However, for the purpose of this notification, Arnott's and Campbell consider that the relevant markets can be defined at least as broadly as:

- the separate markets for the supply of the various goods and services inputs referred to in paragraph 2(a) above; and
- the market for the supply of automated "procure-to-pay" process services in Australia.

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)

The notified conduct will not result in any material public detriment.

In particular:

- For many, if not all, Suppliers, Arnott's and Campbell represent a relatively small proportion of their business. The relevant goods and services supplied by Suppliers are not specific to Arnott's or Campbell (and, in many cases, are not specific to food and beverage manufacturing) and are generally supplied into deep and highly competitive markets.
- Acquiring the Services does not require the Suppliers to expend substantial costs. Ariba's current fee structure is available at: http://www.ariba.com/assets/uploads/documents/Datasheets/SMP_Regional_Pricing.pdf. Briefly, Ariba's supplier subscription fees vary depending on the total value of transactions conducted with all customers through the Ariba network and subscribers automatically

receive a free standard subscription unless they transact five or more documents or over AU\$45,000 annually through Ariba's network.

- For many Suppliers, the notified conduct will not require any change to their existing practices. More than half of Arnott's and Campbell's existing Suppliers already subscribe to and use the Services from Ariba.
- Suppliers will be able to use the Services acquired from Ariba in respect of their other customers.
- There are many other suppliers of other automated "procure-to-pay" process services operating in the market.

(b) Facts and evidence relevant to these detriments:

See paragraph (a) above.

Examples of other suppliers of automated "procure-to-pay" process services operating in the market include Oracle Corporation, Emptoris Inc and Perfect Commerce LLC.


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 Mark McCowan
Partner
Corrs Chambers Westgarth
8 Chifley
8-12 Chifley Square
Sydney NSW 2000

Dated 22 DECEMBER 2014

Signed by/on behalf of the applicant


.....
(Signature)

Mr Mark McCowan
(Full Name)

Corrs Chambers Westgarth
(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.