

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)

N97302 Agfarm Pty Ltd ACN 106 819 167 as trustee for the Agfarm Unit Trust
(Agfarm).

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

Agfarm is a grain broker, a manager of grain marketing products and provider of advisory services in connection with the sale and purchase of grain.

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

The Legal Department
Ruralco Holdings Limited
2 Collins Street
HOBART TASMANIA 7000

2. Notified arrangement

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

A limited range of agricultural products used in connection with the planning and maintenance of a wheat, barley, canola, sorghum or corn crop such as seed, fertiliser, pesticides and herbicides (**Crop Inputs**) and commercial finance.

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

Agfarm giving, allowing or offering approved grain growers financial accommodation for the sole purpose of purchasing Crop Inputs on the

condition that the grain grower acquires those Crop Inputs from retail outlets owned by certain subsidiaries of Ruralco Holdings Limited ACN 009 660 879 (**Ruralco**).

Agfarm refusing to give or allow grain growers financial accommodation for the sole purpose of acquiring Crop Inputs for the reason that the grain growers have not acquired or not agreed to acquire the Crop Inputs from retail outlets owned by certain subsidiaries of Ruralco.

Ruralco is an ASX listed company which sells various agriculture related goods and services including farm merchandise, fertiliser, wool, livestock, real estate, finance and insurance. Ruralco beneficially owns 50% of the issued shares and units of Agfarm.

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)

Customers and potential customers of Ruralco and Agfarm.

- (b) Number of those persons:

- (i) At present time:

Nil.

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

Approximately 240.

- (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)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

Please refer to the attached submission.

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

Please refer to the attached submission.

7. Further information

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

Ms Alice Fielding
Legal Counsel, Ruralco Holdings Limited
2 Collins Street, Hobart Tasmania 7000
Telephone: 03 6235 1441
Facsimile: 03 6235 1341
Email: afielding@ruralco.com.au

Dated... 3 March 2014

Signed by/on behalf of the applicant

.....
(Signature)

.....
(Full Name)

.....
(Organisation)

.....
(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.

Submission

The Proposed Conduct

1. Agfarm Pty Ltd ACN 106 819 167 as trustee for the Agfarm Unit Trust (**Agfarm**) proposes to pilot test a new product for the 2014/2015 Australian grain growing season whereby it will lend money on commercial terms to a pilot group of approximately 240 grain growers in various states and regions on the following conditions:
 - (a) the monies lent may only be used to purchase a limited range of agricultural products used in connection with the planning and maintenance of a wheat, barley, canola, sorghum or corn crop such as seed, fertiliser, pesticides and herbicides (**Crop Inputs**);
 - (b) the grain grower may only purchase the Crop Inputs from retail outlets which are owned by certain subsidiaries of Ruralco Holdings Limited ACN 009 660 879 (**Ruralco**);
 - (c) no specific discount, rebate or concession will be offered by Ruralco in connection with the Crop Inputs sold to growers by virtue of their participation in the pilot;
 - (d) the Crop Inputs may only be used by the grower for the planting and maintenance of the 2014/15 season crop on a specifically identified portion of the grower's farm;
 - (e) the loan must be repaid by the grower delivering to Agfarm the volume of grain harvested from that crop equal in value to the principal amount of the loan and accrued interest (save to the extent the volume of grain harvested is insufficient to discharge this condition).
2. The proposed conduct fundamentally preserves consumer choice and is not inherently anti-competitive. The proposed conduct would not preclude any consumer in the normal course from:
 - (a) purchasing goods or services from any Ruralco outlet at a price or on other terms less favourable to the consumer than those made available to participating growers under the pilot;

- (b) purchasing goods or services from any Ruralco outlet in accordance with Ruralco's normal credit policies and procedures and/or with the benefit of financial accommodation provided by a person other than Agfarm or Ruralco;
- (c) selling grain to Agfarm, participating in one of its grain marketing programs and/or or using Agfarm as a broker or advisor.

Market Analysis

3. Agfarm submits that relevant markets for assessing this notification are:

- (a) the national market for the retail supply of farm finance, which includes dedicated crop finance but extends to whole of enterprise credit facilities; and
- (b) the regional markets for farm inputs.

Each of these markets is highly competitive and will remain so in the foreseeable future.

- 4. The market for farm finance is clearly dominated by large banks and other financial institutions. Agfarm does not presently compete in this market.
- 5. In the market for the retail supply of farm inputs Ruralco competes with large corporate retail suppliers Landmark and Elders, and, as the ACCC noted (in connection with the proposed acquisition of Elders by Ruralco), a number of independent retailers such as CRT and Town & Country and strong independent wholesale banner groups such as AgLink and AIRR. As the ACCC has also noted, independent retailers of agri-products are able to source supply from independent wholesalers on terms which enables them to compete strongly.
- 6. Further, Crop Inputs (as opposed to farm inputs more generally) can in many instances be purchased directly from the manufacturer or distributor rather than through traditional stock and station agency businesses.
- 7. For the reasons set out above Agfarm submits that the proposed conduct:

- (a) will benefit the public by offering grain growers a convenient, affordable, new alternative means of financing the cultivation of their crop; and
- (b) will not adversely affect competition or cause any identifiable public detriment.