

TRADE PRACTICES ACT 1974
UNDERTAKING
TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
GIVEN UNDER SECTION 87B
BY GOODMAN FIELDER LIMITED (ACN 000 003 958)

Background

In June 1998, Bunge International Limited ("Bunge International") announced its intention to sell a range of assets including its Australian milling and baking assets held by Bunge Australia Holdings Pty Ltd (ACN 078 795 074) ("Bunge"), a wholly owned subsidiary of Bunge International. A Confidential Information Memorandum relating to the proposed sale was issued by Credit Suisse First Boston Corporation and Morgan Stanley Australia for Bunge International in July 1998.

On 25 June 1998, representatives of Goodman Fielder Limited ("Goodman Fielder") approached the Australian Competition and Consumer Commission ("the Commission") to obtain an informal clearance on a confidential basis for the acquisition of the Bunge milling and baking assets.

The Commission made enquiries as to the competition implications of the proposed acquisition by Goodman Fielder and by letter dated 19 August 1998 informed Goodman Fielder that, in its view, the proposed acquisition, if it proceeded, was likely to contravene section 50 of the *Trade Practices Act 1974* ("the Act"). The Commission formed the view that the proposed acquisition would be likely to substantially lessen competition in the supply of flour in the south east Australian flour market, the Western Australian flour market and the Queensland flour market.

Goodman Fielder expressed the view that the proposed acquisition would not contravene section 50 of the Act but, in order to address the Commission's competition concerns, and without admission, Goodman Fielder proposed that it would divest certain flour mills pursuant to an enforceable undertaking to the Commission under section 87B of the Act.

Goodman Fielder has proffered this undertaking to the Commission pursuant to section 87B of the Act and the Commission has agreed to accept the undertaking.

Definitions

"Act" means the *Trade Practices Act* 1974 (Cth).

"Advertisement Date" means 1 March 1999.

"Appointment Date" means the date on which the Approved Person is appointed under clause 2.3.

"Approved Person" means a person independent of Goodman Fielder Limited with the qualifications and experience necessary to effect the sale pursuant to clause 2.3 of such of the Assets which have not been sold pursuant to clause 2.2, and approved by the Commission in writing for that purpose.

"Assets" means:

- (a) the flour mill located at Hudson Road, Albion, Queensland; and
- (b) the flour mill located at 9 Michael Street, Byford, Western Australia; and
- (c) either:
 - (i) the flour mill located at 1 McRobert Street, Newport, Victoria; or
 - (ii) the flour mill located at 570 Young Street, Albury, New South Wales,

and includes in respect of each flour mill, all stock in trade, equipment and associated facilities currently used for the operation of the mill but does not include, in respect of the flour mill located at 570 Young Street, Albury, New South Wales, any assets used only for the purpose of milling grains other than wheat.

"Bunge" means Bunge Australia Holdings Pty Ltd (ACN 078 597 074).

"Commission" means the Australian Competition and Consumer Commission.

"Goodman Fielder" means Goodman Fielder Limited (ACN 000 003 958).

"Initial Sale Period" has the meaning assigned to it in clause 2.2.

"Qualified Purchaser" means a purchaser of the relevant mill who is approved by the Commission in advance in writing (which approval will not be unreasonably withheld) having regard to:

- (a) the adequacy of the purchaser's financial resources to effect the purchase of the mill and to conduct a viable flour milling business from the mill; and

- (b) the likelihood of the purchaser being a vigorous and effective competitor to Goodman Fielder in the relevant flour market.

"Regions" means the States of Victoria, Queensland and Western Australia.

Commencement of Undertakings

1. This undertaking comes into effect when:
 - (a) the undertaking is executed by Goodman Fielder; and
 - (b) the undertaking so executed is accepted by the Commission.

Undertakings

2. **Sale Of Assets**
 - 2.1 Goodman Fielder will, on or before the Advertisement Date, invite offers to purchase its interests in the Assets, either separately or together by:
 - (a) placing appropriate display advertisements in a national daily newspaper and in a metropolitan daily newspaper in each of the Regions; and
 - (b) sending notices to prospective purchasers identified by Goodman Fielder, notifying prospective purchasers that the Assets will be offered for sale and requesting registration of expressions of interest in any or all of the Assets within six weeks of the Advertisement Date.
 - 2.2 Goodman Fielder will use all reasonable efforts to sell the Assets, either separately or together, as a going concern, or as going concerns, to a Qualified Purchaser or Qualified Purchasers within six months of the Advertisement Date or any longer period approved in writing by the Commission (the "Initial Sale Period").
 - 2.3 If on the expiration of the Initial Sale Period, all of the mills comprising the Assets have not been sold, Goodman Fielder shall within three weeks of the expiration of the Initial Sale Period, appoint an Approved Person to sell to a Qualified Purchaser or Qualified Purchasers at the earliest opportunity such of the Assets that have not been sold ("the Appointment Date").
 - 2.4 The Approved Person appointed pursuant to clause 2.3 shall be appointed on terms which require the Approved Person:
 - (a) To use their best endeavours to effect the sale of the Assets that have not been sold to a Qualified Purchaser or Qualified Purchasers, irrespective of the price obtained, within three months of the Appointment Date;
 - (b) To use their best endeavours to ensure that Goodman Fielder's obligations as set out in clause 2 are complied with.

- 2.5 Nothing in this clause 2 obliges Goodman Fielder to undertake expenditure in relation to, the Assets except:
- (a) in relation to the segregation of the retained business from the Assets; and
 - (b) in conducting repair and maintenance of the Assets in the normal course of business.
- 2.6 After any sale, Goodman Fielder will not impede or interfere with the operation of the Assets.
- 2.7 If Goodman Fielder is unable to comply with its obligations under this clause due solely to circumstances outside of its control then Goodman Fielder and the Commission shall review the undertakings contained in this clause, and negotiate in good faith the amendment or revocation of all or any of such undertakings as may be necessary or consistent with the need to ensure effective competition in the relevant flour milling market. Goodman Fielder's obligations under these undertakings, except the obligations under clauses 2.5 and 3, will be suspended while the Commission conducts any review and negotiation under this clause.

This clause 2.7 shall not apply in respect of circumstances:

- (a) that exist at the date of these undertakings;
- (b) that are reasonably foreseeable; or
- (c) that arise, whether directly or indirectly, by virtue of any act matter or thing done by or on behalf of Goodman Fielder or the failure of Goodman Fielder to do any act matter or thing.

3. Conduct of Businesses

3.1 Goodman Fielder:

- (a) will not, except in accordance with this undertaking, transfer the ownership of the Assets;
- (b) will ensure that the Assets shall be conducted separately from Goodman Fielder's and Bunge's existing operations; and
- (c) will take all reasonable steps to ensure that the Assets are preserved as going concerns in good working order so that the sale of the Assets pursuant to clause 2. can take place as expeditiously and effectively as possible.

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Confidential

Confidential

3A.2 The Commission will keep the terms of this clause confidential.

4. Obligations to procure and notify

4.1 Goodman Fielder will procure the performance by its subsidiaries of any obligations under these undertakings required to be discharged by those subsidiaries.

4.2 Goodman Fielder shall give prompt written notice to the Commission by post, courier, or facsimile transmission (in confidence) of:

- (a) the names and addresses of all persons who register expressions of interest in accordance with clause 2.1;
- (b) all other information required to be provided to the Commission under these Undertakings.

4.3 Goodman Fielder shall promptly provide to the Commission (in confidence) all information reasonably requested by the Commission which is relevant to the performance of these Undertakings.

5. Confidentiality

5.1 Goodman Fielder gives these undertakings on the express advice of the Commission that save for the purpose of enforcement action under section 87B of the Act or otherwise as required by law it shall not publish or disclose the contents or effect of these undertakings, except with the prior written consent of Goodman Fielder which Goodman Fielder will not withhold unreasonably.

5.2 Nothing in this clause shall limit the Commission's ability to publish or disclose the fact that Goodman Fielder has given an undertaking to cause or procure the disposal of the Assets.

5.3 The restrictions contained in this clause 5 shall cease to have effect on completion of the sale of the Assets in accordance with this Undertaking.

DATED: 18 December 1998

SIGNED for GOODMAN FIELDER LIMITED under power of attorney in the presence of:

S Kelly

Signature of witness

Nigel Roger Poole

Nigel Roger Poole

SARAH KELLY

Name of witness

17 December 1998

Date of power of attorney

ACCEPTED by THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION

Allen Ash

Deputy Chairman

Date: 18th December 1998