

TRADE PRACTICES ACT 1974

Undertaking to the Australian Competition and Consumer Commission (the "Commission") given for the purposes of section 87B of the Trade Practices Act 1974

By

MANILDRA STARCHES PTY LIMITED (ACN 000 295 992)

and

SHOALHAVEN STARCHES PTY LIMITED (ABN 94 000 045 045)

(Collectively "Manildra")

February 2002

Definitions

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

"Commission" means the Australian Competition and Consumer Commission.

"Control Date" means the date on which Completion occurs under the Sale of Business and Assets Agreement.

"Divestiture Assets" means the Queensland Assets and the WA Assets.

"Divestiture Dates" are the dates on which the divestiture of the WA Assets and the Queensland Assets is completed by or on behalf of Manildra pursuant to this Undertaking.

"GWF" means George Weston Foods Limited (ACN 008 429 632).

"Qualified Purchaser" means a purchaser of the Divestiture Assets who is not objected to by the Commission in accordance with clause 10.14.

"Queensland Assets" means the assets located in Queensland and purchased by Manildra from GWF under the Sale of Business and Assets Agreement.

"Sale of Business and Assets Agreement" means the agreement by that name between Manildra and GWF dated 13 December 2001.

"WA Assets" means the assets located in Western Australia and purchased by Manildra from GWF under the Sale of Business and Assets Agreement:

Background

1. Manildra, amongst other activities, produces and sells wheat products including flour, wheat gluten, wheat starches and starch sugars. It does so nationally and internationally.

2. In addition, it has wheat gluten production operations in the US. Manildra is a major international gluten supplier.
3. Manildra has agreed with George Weston Foods Limited (ACN 008 429 632) to purchase its Bioproducts Division which produces and sells wheat gluten and wheat starch and starch sugar products (“Proposed Acquisition”).
4. The Proposed Acquisition was announced publicly on 13 December 2001 immediately after the Sale of Business and Assets Agreement was executed.
5. The Commission has made extensive market enquiries and substantial material has been submitted to the Commission by the parties. The Commission enquiries were to assess whether or not the proposed acquisition was likely to be in contravention of section 50 of the Trade Practices Act 1974.
6. The Commission has expressed concerns that the Proposed Acquisition will contravene section 50 of the Trade Practices Act 1974 in the markets for starch and starch sugars in Australia.
7. Manildra does not agree with any of the concerns expressed by the Commission with respect to the proposed acquisition but has agreed (without admission) to give the undertakings contained in this document to overcome the Commission’s concerns.
8. The Commission agrees that upon implementation of this Undertaking its concerns in respect of the Proposed Acquisition will be overcome.

Commencement of Undertakings

9. This Undertaking comes into effect when:
 - a. the Undertaking is executed by Manildra; and
 - b. the Undertaking so executed is accepted by the Commission.

Undertakings

10. Manildra must divest or cause the divestiture of the Divestiture Assets:
 - a. either separately or together;
 - b. in good working order as at the relevant Divestiture Date; and
 - c. only to a Qualified Purchaser or Qualified Purchasers.

Condition of Divestiture Assets

- 10.1 Manildra must not, except in accordance with these undertakings, sell or transfer the ownership of the Queensland Assets or the WA Assets or any of the assets within either of the Queensland Assets or the WA Assets, or make any material change to the attributes or extent of the Queensland Assets or the WA Assets (including the brands and trade marks, management team, premises and operations).

- 10.2 Manildra must, from the Control Date to the Divestiture Date:
- a. take all reasonable steps to ensure that each of the Divestiture Assets is maintained in good working order and as fully operational on the Divestiture Date as it was on the Control Date in matters including, but not limited to, working capital and sources of credit, and stocks of raw materials; and
 - b. ensure that the Divestiture Assets will, to the extent practicable, be conducted separately from the operations of Manildra and any of its other related bodies corporate, including in relation to any competitively sensitive information of each of the Divestiture Assets.
- 10.3 Prior to the Divestiture Date, Manildra will perform all Sales Contracts with customers who are supplied with production from the Divestiture Assets as at the Control Date ("Sales Contracts").
- 10.4 Prior to the Divestiture Date, Manildra will use its best endeavours to ensure that existing Sales Contracts with customers who are supplied by the Divestiture Assets with production from the Divestiture Assets as at the Control Date are renewed on commercial terms no less favourable to the Divestiture Assets and that new, commercially favourable Sales Contracts are entered into where possible.
- 10.5 The terms on which each of the Divestiture Assets is to be divested must include provision for, on normal commercial terms, the option for the Purchaser or Purchasers to be assigned the right to supply the portion of product supplied by the Divestiture Assets under any of the Sales Contracts. All contracts with customers supplied in part or wholly by production from the Divestiture Assets will be included in the Information Memorandum as set out in 10.8.

Divestiture Terms

- 10.6 Within 60 days of the Control Date, Manildra must:
- a. invite expressions of interest to purchase separately or together the Divestiture Assets by sending a notice ("Offer Notice") to prospective purchasers identified by Manildra or advised to Manildra by the Commission;
 - b. place in a national daily newspaper and in a metropolitan daily newspaper in each of Queensland and Western Australia appropriate display advertisements seeking expressions of interest to purchase separately or together the Divestiture Assets; and
 - c. prepare a confidential Information Memorandum relating to the sale of the Divestiture Assets ("Information Memorandum") which must contain or annex a comprehensive draft Sale and Purchase agreement for the divestiture of either or both of the Divestiture Assets in accordance with these undertakings.
- 10.7 The Offer Notice and the display advertisements must inform the prospective purchasers that the Divestiture Assets will be offered for sale and request registration of expressions of interest in the purchase of either or both of the Divestiture Assets.

10.8 Not less than 14 days prior to the provision of the Information Memorandum to any prospective purchaser, Manildra must provide to the Commission a copy of the Information Memorandum, together with a certificate from the auditor for Manildra at the date hereof (Ernst & Young) ("Auditor"), certifying that:

- a. so far as is material, all of the attributes and the extent of each of the Divestiture Assets described in these undertakings (including the assets, premises, Sales Contracts and operations) are clearly represented in the Information Memorandum as being for sale pursuant to the terms of these undertakings; and
- b. the obligations of Manildra pursuant to clause 10.13 of this undertaking

are properly provided for and set out in the Information Memorandum.

10.9 At any time prior to the provision of the Information Memorandum to any prospective purchaser:

- a. Manildra will, if the Commission requests, provide information as to the attributes and extent of the businesses and assets being divested by Manildra as the Divestiture Assets;
- b. Manildra will require the Auditor to provide information to the Commission or to allow the Commission to inspect the Auditor's relevant records, as to the compliance of Manildra with these undertakings and the accuracy of the certificate given by the Auditor under clause 10.8; or
- c. at the request of either of them, Manildra and the Commission must discuss and negotiate in good faith any difference of view in relation to the inclusion into, or exclusion from, the description of the business and assets for sale in the Information Memorandum of any asset which forms part of the Divestiture Assets.

10.10 Manildra must not provide the Information Memorandum (or any part of it) to any prospective purchaser unless clause 10.9 has first been complied with.

10.11 Manildra must give prompt confidential written notice to the Commission of the names and addresses of all persons who register expressions of interest in response to the Offer Notice or the display advertisements.

10.12 Manildra must provide the Information Memorandum to any person registering an expression of interest within two weeks of the receipt by it of the registration of interest.

10.13 The terms on which each of the Divestiture Assets is to be divested must include provision for, on normal contractual terms:

- a. the assignment or transfer to the purchaser or purchasers of all assets of the business subject to normal contractual terms regarding collection of receivables by the vendor;

- b. the assignment to the purchaser or its nominee of the freehold or leasehold (as applicable) premises of the business;
- c. the purchaser to offer employment to those of the senior employees of the business which it wishes to employ, on terms which are no less favourable to those employees individually than the terms on which they are employed prior to the divestiture of the business; and
- d. Manildra not to do anything the intention or likely effect of which is to discourage any of the employees referred to in paragraph (c) from taking up employment with the purchaser, and for Manildra to take all reasonable steps to facilitate the transfer of those employees.

10.14 Upon Manildra reaching "in principle" agreement with a prospective purchaser or purchasers as to the sale of the Divestiture Assets, Manildra must give the Commission written notice (a "Proposed Purchaser Notice") that:

- a. sets out the name, address and contact details of the proposed purchaser or purchasers;
- b. attaches a copy of the proposed sale and purchase agreement with the proposed purchaser or purchasers; and
- c. includes a description of the business carried on by the proposed purchaser or purchasers.

The Commission may object to a proposed purchaser or purchasers having regard to:

- d. the adequacy of the proposed purchaser or purchasers' financial resources to purchase and conduct either or both of the Divestiture Assets;
- e. the likelihood of the proposed purchaser or purchasers being a vigorous and effective competitor in the starch products market in Australia; or
- f. the independence of the purchaser or purchasers in relation to Manildra, its related bodies corporate, directors and managers;

by giving Manildra written notice of its objection (an "Objection Notice") within 14 days of receipt by the Commission of the Proposed Purchaser Notice, or such further period as reasonably required by the Commission and notified to Manildra prior to the expiry of the 14 day period referred to herein. If an Objection Notice is not given by the Commission within that time, the proposed purchaser will be a Qualified Purchaser.

10.15 Manildra must permit any prospective purchasers to have reasonable access to the business records and personnel of Manildra in relation to each of the Divestiture Assets and to inspect the assets and operations of the business, subject to any confidentiality assurances which, in the opinion of the Commission, are reasonable.

Non-Compliance

10.16 If:

- a. Manildra is unable to comply with its obligations as set out in this Undertaking due solely to circumstances outside of its control; or
- b. the Commission considers that the intention of these undertakings has not been complied with,

then Manildra and the Commission must review these undertakings, and negotiate in good faith for the amendment or revocation of such undertakings, having regard to the objective that competition in relevant markets is not to be substantially lessened, prevented or hindered as a result of the proposed acquisition.

10.17 Clause 10.16 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 Manildra or the failure of Manildra to do any matter or thing.

Information Undertakings

Provision of information

11. Manildra will submit, every six months, to an independent Auditor, the following information in relation to the supply of gluten, starch and starch sugars (“the products”):
 - a. any price variations in supply arrangements/contracts with any of Manildra's gluten, starch and starch sugar customers;
 - b. a graphical representation of variations in average prices charged by Manildra over the last 3 years for the products;
 - c. any variations in any of Manildra's major input costs for gluten, starch and starch sugars and the reasons for these variations;
 - d. evidence of Manildra losing sales of the products to imports or to the purchaser or purchasers of the Divestiture Assets including the names of customers and volumes lost;

- e. Manildra's sales of the products to Australian customers and its estimates of total sales of the products to Australian customers;
- f. market developments impacting on competition including new entrants and prospective entrants, evidence of importation of the products by customers and intermediaries, any vertical integration by users of the products, expansion of capacity by Manildra's competitors, and details of Manildra's production levels, any excess capacities and export sales;
- g. Manildra will require the Auditor to report to the Commission on a six-monthly basis on the matters contained in clause 11. Such reports will be confidential to the Commission;
- h. Manildra will respond to any requests by the Commission following from the Auditor's six-monthly reports;
- i. the first report must be submitted 6 months from the Control Date and future reports will be submitted six monthly thereafter; and

Duration of Undertakings

- j. the undertakings in this clause 11 will extend for a period of 36 months from the Control Date.

Obligations to procure and notify

- 12. When the performance by Manildra of an obligation under these undertakings requires a related company of Manildra to take some action or refrain from taking some action, Manildra will procure that related company to take that action or to refrain from taking that action.
- 13. Manildra must promptly provide to the Commission (in confidence where appropriate) all information reasonably requested by the Commission which is relevant to the performance of these undertakings. Manildra will comply with such requests within 10 business days.
- 14. Manildra must within 3 business days of the Control Date, advise the Commission in writing of the date of the Control Date.

Confidentiality

Public Inspection

- 15. Subject to clause 15.1, Manildra acknowledges that the Commission will make this Undertaking available for public inspection.

- 15.1 Annexure A to this Undertaking will remain confidential until the sale of the Divestiture Business in accordance with this Undertaking.

Reference to Undertaking

16. Manildra acknowledges that the Commission will from time to time publicly refer to this Undertaking subject to clause 15.1.

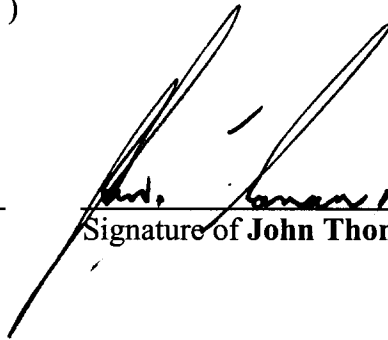
No derogation

17. Nothing in this Undertaking is intended to restrict the right of the Commission to take action under the Act for penalties or divestiture in the event that divestiture of the Divestiture Assets is not implemented in accordance with this Undertaking.
18. All costs incurred by the Auditor in either providing information to the Commission or in responding to Commission enquiries as required by this Undertaking are to be paid by Manildra.

Signed for and on behalf of)
Manildra Starches Pty Limited)
and **Shoalhaven Starches Pty**)
Limited)
by **John Thomas Honan Jr**)
in the presence of:)



Signature of witness

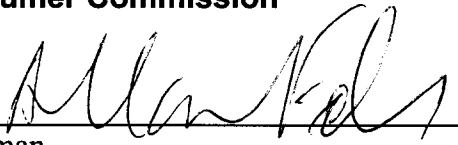


Signature of **John Thomas Honan Jr**

PETER STRETTON

Name of witness (please print)

Accepted by
The Australian Competition &
Consumer Commission



Chairman

Date: 21 February 2002