



Simplot Australia Pty Limited ABN 98 070 579 609
 Chifley Business Park
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FILE No:	
DOC:	
MARS/PRISM:	

22 May 2009

General Manager
 Adjudication Branch
 Australian Competition and Consumer Commission
 PO Box 3131
 CANBERRA ACT 2601

Dear Sir or Madam

Form G Third Line Forcing Notification: Recipe for success program

Please find **enclosed** Form G Notification on behalf of Simplot Australia Pty Ltd (**Simplot**). A full description of the proposed conduct is outlined in the **enclosed** notification.

Accordingly, we **enclose** for your consideration a Form G notification on behalf of Simplot and have made payment of the required \$100 by electronic transfer.

If you have any questions in relation to this notification, please contact me on (03) 9588 3516 or 0419 813 667.

Kind regards,

Michael Robins
 Legal Counsel

**AUST. COMPETITION &
 CONSUMER COMMISSION
 CANBERRA**
 2 5 MAY 2009



Ally
 The Home
 of Australia's
 Favourite Food
 Brands

Form G

Commonwealth of Australia

Trade Practices Act 1974 — 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 *Trade Practices Act 1974*, 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)

Simplot Australia Pty Ltd (ABN 98 070 579 609) of Chifley Business Park, 2 Chifley Drive, Mentone Vic 3194 (“Simplot”) N93995

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

Simplot is a manufacturer and distributor of frozen food products for the Australian market, including for the food service industry.

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

Simplot Australia Pty Ltd, Chifley Business Park, 2 Chifley Drive, Mentone Vic 3194. Attention: Michael Robins

2. Notified arrangement

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

Fonterra Brands (Australia) Pty Ltd (ABN 80 095 181 669) of 327 Ferntree Gully Road, Mt Waverly Victoria 3149 (“Fonterra”);

Simplot Australia Pty Ltd (ABN 98 070 579 609) of Chifley Business Park, 2 Chifley Drive, Mentone Vic 3194 (“Simplot”); and

Unilever Australia Limited (ABN 66 004 050 828) of 20 Cambridge Street Epping NSW 2121 (“Unilever”)

[collectively “Program Partners”]

The Program Partners wish to conduct a reward program whereby participating distributors to the food service industry (e.g. restaurants, clubs, pubs, takeaway shops) wish to provide the sales figures of their food service industry customers (“Customers”) to the Program Partners, but only with

the permission of the Customers who wish to take part in the reward program (“Program”). Alternatively, if the Customer’s distributor does not wish to supply the sales figures, the Customer can provide their invoices directly to the Program Partners. The sales figures (or invoices where applicable) will relate to the purchases by the Customers from the distributors from products within the Program Partners’ range of food products (“Eligible Products”). In the case of Simplot this will be its range of frozen food products.

(b) Description of the conduct or proposed conduct:

Under the Program, the Program Partners wish to offer Customers the chance to participate in the reward program (“Program”). Under the Program, there will be a Spend Period. The Spend period commences on 3rd August 2009 and closes at 5.00 p.m. on 27th November 2009 (“Spend Period”).

Each Customer will be set a spend target, during the Spend Period, for each Program Partner, which will be (a) \$2,000 on Unilever products; (b) \$4,000 on Fonterra products; and (c) \$4,000 on Simplot products.

If the Customer achieves 2 out of 3 targets they will be eligible to receive their choice of the following rewards: (a) Nintendo DSi valued at the recommended retail price of \$299.00; or (b) a \$300 voucher to spend on products from their participating distributor (if their distributor decides to participate).

If the Customer achieves 3 out of 3 targets they will be eligible to receive their choice of the following rewards: (a) Nintendo Wii Game console & Wii Fit valued at the recommended retail price of \$549.90; or (b) a \$500 voucher to spend on products from their participating distributor (if their distributor decides to participate).

The Program Partners are concerned that proposed conduct requires that the Customers are required to achieve spend targets with at least two (2) or if not (3) Program Partners in order to be eligible to receive a reward (“Benefit”). Some of the Program Partners are concerned that this arguably constitutes third line forcing, insofar as the Customers will only receive the Benefit if they achieve the spend targets with 2 or more Program Partners, notwithstanding the fact that the goods are being purchased indirectly through the distributors.

(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)

Businesses in the food service industry.

- (b) Number of those persons:

- (i) At present time:

The industry often refers to there being approximately 60,000 businesses in the food service industry (although there is no hard evidence to support the size). In the Program there will be only approximately 1000 Customers who will be permitted to participate on a “first come first serve” basis. Customers will be notified by the internet whether or not the places have been filled.

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

Not applicable.

- (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 Program will only be conducted for a limited duration (note the Spend Period specified above).

The Customers will be eligible to receive guaranteed rewards if they achieve the targets.

In addition to the part of the Program outlined above, the Customers will be provided the opportunity to provide bench marking information to an independent third party analyst who will collate, review and report back to the Customers. The Program will look to provide tools, business models and other resources to up-skill the Customers. This important information will be provided free of charge.

The proposed conduct will have little or no public detriment. The Customers will simply purchasing the Eligible Products from their participating distributors as they have done in the past, although they may purchase more in order to receive a reward.

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

None other than the facts stated above.

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 proposed Program will only impact upon a small portion of Customers within the food service industry (i.e. up to 1000) in Australia.

The products within the ranges covered by the Program are generally available through different channels. For example, the products or similar products within the Program Partners' range of products, in most cases, can be purchased by members of the public through supermarkets and convenience stores.

The Program will be open to all food service distributors who choose to participate, to make it available to as wide a range of food service industry customers as possible. The only requirement being that the food service distributor will need to agree to supply sales data for their customer(s). If a distributor does not wish to provide the sales figures then the Customer will be able to fax their invoices to determine their sales figures.

There are a wide range of substitutes to the range of products which will be subject to the Program.

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 prices as the Program Partners do not dictate the prices that the Customers pay to their participating distributors.

The Program will run for a short duration of time and the Customers decide whether they wish to participate in the Program, i.e. there is no compulsion on

behalf of the Customers to participate. Further, they can still purchase the Eligible Products without participating in the Program.

(b) Facts and evidence relevant to these detriments:

None other than the facts stated above.

7. Further information

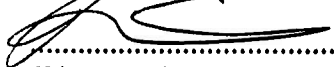
(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Attention:
Michael Robins
Legal Counsel
Simplot Australia Pty Limited
Chifley Business Park
2 Chifley Drive
MENTONE VIC 3194
Michael.Robins@simplot.com.au

P: (03) 9588 3516 M: 0419 813 667 F: (03) 9588 4121

Dated... 22 May 2009

Signed by/on behalf of the applicant



(Signature)

Michael John Robins

(Full Name)

Simplot Australia Pty Ltd

(Organisation)

Legal Counsel

(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 *Trade Practices Act 1974* 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.