

Our ref: RT:2201450

21 February 2024



Mr. Jack Foley  
Analyst | Competition Exemptions | Mergers, Exemptions and Digital  
Australian Competition & Consumer Commission  
Level 25, 32 Turbot Street  
Brisbane QLD 4000

Dear Jack,

**Bakers Delight - AA1000650 – further submission in response to public submissions after draft determination**

1. We refer to a number of submissions on the public register which have been received after the draft determination. We note that all interested party submissions are Bakers Delight franchisees.
2. This letter addresses the concerns and issues raised in the submissions.

**Submission dated 19 January 2024**

3. We understand that this submission was made prior to Bakers Delight's response to the draft determination being published on the public register.
4. We refer to Bakers Delight's response to the draft determination which provided further details as to costs. Relevantly:
  - (a) If the authorisation is not granted, then the Information Technology Services Fee is anticipated to increase by an additional \$25 per month which is above and beyond the costs of transitioning to the new POS System; and
  - (b) The higher costs will be payable by all Franchised Bakeries, even those Franchised Bakeries who choose not to deviate prices and therefore, will not receive any reciprocal benefit from the increase in the Information Technology Services Fee.
5. The Proposed Conduct will not require Franchised Bakeries to offer discounts on Promotional Discounts. One of the price tiers proposed is above the RRP, which essentially eliminates the discount available when combining the selected products that make up the Promotional Discount rule.
6. We again reiterate that Bakers Delight Bakeries retain the unrestricted ability to deviate the price of Individual Products regardless of the outcome of the authorisation application.

**Submission dated 12 February 2024**

7. The focus of this submission relates to the inability to select pricing, particularly as Bakers

Delight Bakeries operate across different regions and locations throughout Australia.

8. For the avoidance of doubt:
  - (a) The Proposed Conduct and related price tiers will only apply to Promotional Discounts;
  - (b) Bakers Delight Bakeries are not restricted to selecting the price of Individual Products; and
  - (c) The price tiers will be based on existing data extrapolated from the current POS system, and will be consistent with approximately 80% of existing price deviations. The data indiscriminately provides information as to the pricing behaviour of Bakers Delight Bakeries regardless of location or State or Territory, and therefore the price tiers will accommodate existing prices that Franchised Bakeries have selected.
9. Bakers Delight is not required to discuss, consult or obtain feedback from Franchised Bakeries prior to changing the POS system, or otherwise in its selection of suppliers or vendors.
10. Furthermore, Bakers Delight has an exclusive dealing notification number N98304, which permits Bakers Delight to offer franchise agreements to Franchised Bakeries on the condition that Franchised Bakeries acquire and use technology (including point of sale software) from approved or nominated suppliers.
11. Bakers Delight has a robust tender process that suppliers must go through to become an approved or nominated supplier for the Franchise System. We refer to paragraph 11 of the Applicant's submission dated 20 October 2023 which details the extensive and costly process that Bakers Delight underwent before proceeding with the new POS System supplier. The new POS System is not poorly chosen and there are significant benefits of the POS System, in particular an integrated payment gateway, more secure payment options, better layout and user interface and more customer support from the supplier.
12. Accordingly all Franchised Bakeries must use the new POS System in compliance with their franchise agreement and pay the costs associated with the POS System which is included within the Information Technology Services Fee.

#### **Submission dated 14 February 2024**

13. Similar to paragraph 10 above, we refer to the exclusive dealing notification which permits Bakers Delight to require Franchised Bakeries to use the POS system and other technology as required.
14. Franchised Bakeries can query Bakers Delight about the POS System costs, but Bakers Delight has no obligation to change the Information Technology Services Fee based on feedback or questions received. Bakers Delight has extensive experience in sourcing technology, including point of sale systems, and in negotiating supply arrangements with a variety of suppliers.
15. It is noted that Bakers Delight has nonetheless been subsidising the costs associated with information technology services since July 2017.
16. This submission views the Information Technology Services Fee to be more expensive when compared to a third party supplier.
  - (a) For the avoidance of doubt, the Information Technology Services Fee encompasses all fees relating to Information Technology Services (such as cyber

security, IT infrastructure, software licensing, IT service desk support, customer loyalty program phone application) and not simply the use of the POS system.

- (b) Without details of the third party supplier referenced by the franchisee, Bakers Delight cannot compare and assess whether the POS systems are “like for like”.

17. We note that the Bakers Delight Network will transition to the new POS system in due course, regardless of the outcome of this authorisation application. This application is only relevant to the Proposed Conduct and price tiers of Promotional Discounts.

#### **Further submission from Bakers Delight in relation to monthly IT Fees and Costs paid by Bakers Delight Franchisees**

18. Information Technology Services Fee payable by Franchised Bakeries are reviewed annually and changes to this fee (if any) will take effect at the beginning of each financial year.

- (a) On 1 January 2023, the Information Technology Services Fee was \$[confidential] per month (excluding GST).
- (b) The Information Technology Services Fee was increased to \$[confidential] per month (excluding GST) as of 1 July 2023.
- (c) Bakers Delight has been heavily subsidising the costs of information technology services in the Bakers Delight Franchise System for a number of years. The subsidy is approximately [confidential]% of actual costs, or \$[confidential] per month. Details of the subsidy arrangement are per **Attachment A** of this submission.
- (d) The Information Technology Services Fee was increased so that Bakers Delight could reduce the subsidy that was being provided to Franchised Bakeries and to redirect such funding towards maintaining and increasing the range of information technology services being provided to the Franchise System.
- (e) Bakers Delight flagged to Franchised Bakeries that there would be an increase in the Information Technology Services Fee in November 2022 as part of the 2022 Bakers Delight annual conference. No amount was specifically provided at this time as Bakers Delight had not yet finalised this figure. On 15 June 2023, Bakers Delight informed Franchised Bakeries of the new Information Technology Services Fee for FY2023 in the weekly Bakers Delight extranet newsletter per **Attachment B** of this submission.

19. For the period that authorisation is sought, Bakers Delight intends to review the Information Technology Services Fee payable by Franchised Bakeries annually with changes to this fee (if any) to take effect at the beginning of each financial year. Bakers Delight cannot anticipate the increases to the Information Technology Services Fee for the period of authorisation sought. Any increases will depend on circumstances such as:

- (a) changes to costs charged by third party suppliers who provide the various component parts that make up the information technology services;
- (b) inflation;
- (c) failure to meet Bakery Growth targets; and
- (d) changes to the digital economy and technology that require Bakers Delight to provide solutions to remain competitive.

20. In relation to the new POS System, Franchised Bakeries must make one-off purchases of EFTPOS pinpads.
- (a) The EFTPOS pinpad costs approximately \$[confidential] (excluding GST) per device. One pinpad is required per point of sale device.
  - (b) Furthermore, Franchised Bakeries must make a monthly warranty payment of \$[confidential] per month, per pinpad device.
  - (c) At present, Franchised Bakeries rent EFTPOS pinpads for a fee of \$[confidential] per month from National Australia Bank, or \$[confidential] per month from Commonwealth Bank of Australia.
  - (d) The new arrangements will be a net saving to Franchised Bakeries over the expected lifetime of the pinpad device.

For the reasons above, it is Bakers Delight's view that the submissions referred to do not provide compelling reasons to disapprove of the Authorisation Application.

We note in the two other submissions dated 9 February 2024 and submission dated 12 February 2024, Franchised Bakeries expressed their approval of the Proposed Conduct. One submission specifically states that the \$25 per month increase in the Information Technology Services Fee will be more detrimental to their business if the Proposed Conduct is not authorised.


Please contact the writer if any further information is required or if you have any further queries.

Yours sincerely



**Raynia Theodore**

Principal

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**Attachment A**  
**Graph of Information Technology Services Fee subsidy from FY2018 – FY2024**

**[confidential]**

**Attachment B**  
**'Crumbs' article detailing changes to Information Technology Services Fee**

**[confidential]**