

Our ref: RT:2201450

20 October 2023



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Dear Anthony and Penny,

Bakers Delight Holdings Limited - Application for authorisation AA1000650 – Request for information

We refer to your letter dated 17 October 2023 in relation to the interim and final authorisation application (**Application**) sought by Bakers Delight Holdings Ltd (**Bakers Delight**) with the Australian Competition and Consumer Commission (the **ACCC**).

To assist the ACCC in considering Bakers Delight's interim authorisation application, our answers are as follows:

Question 1: With respect to the table entitled 'Proposed Tiered Promotion Pricing' from the submission dated 2 October 2023, please provide the RRP for each of the corresponding individual products included in the Promotion Discounts listed in this table.

1. The RRP for a sample range of individual products in the 'Proposed Tiered Promotion Pricing' table is **enclosed** to this letter. Bakers Delight submits that more time is required to provide a complete table of each Promotion Discount. Bakers Delight wishes to claim confidentiality in relation to this table for the same reasons as Schedule 2 and 3 of the Application.
2. Tier 1 will be priced at below the RRP for Promotion Discounts and Tier 2 for Promotion Discounts will be priced at the RRP. Tiers 3, 4 and 5 will be above the RRP for Promotion Discounts, which may be above or below the price of separately purchasing the individual products at its RRP. However, we emphasise that franchisees can deviate the prices of individual products at their absolute discretion. The Proposed Conduct will not affect this discretion. Bakers Delight provides an RRP, but otherwise does not have any control or regulation over the pricing strategy of individual products by franchisees.

Question 2: Please provide further detail as to what Bakers Delight is likely to do if interim authorisation was granted but final authorisation was later denied. In particular, please detail:

- a. **what would be required to unwind or reverse any steps Bakers Delight is likely to take under any interim authorisation;**
- b. **how long would it take to unwind or reverse any steps taken, for example, system to operate without the Proposed Conduct;**
- c. **what detriments are likely to arise to Bakers Delight and other parties (including, but not limited to, Bakers Delight Franchisees) if this was to occur; and**
- d. **what steps Bakers Delight would undertake or implement to minimise or avoid those detriments to Bakers Delight Franchisees.**

If interim authorisation was granted but final authorisation was later denied:

1. Bakers Delight will not limit the Promotion Discount price selected by Bakers Delight Bakeries to the tiered pricing system. The Promotion Discount Records that were installed into the POS system as part of the Proposed Conduct will not be removed. There will not be any unwinding or undoing of the Proposed Conduct. In favour of granting an interim authorisation, Bakers Delight submits that it is more costly and time-consuming to set up the POS system and the Proposed Conduct, compared to what is required to cease engaging in conduct that is not authorised.
2. Instead, Bakers Delight will go through a process pursuant to which:
 - (a) if a franchisee wishes to deviate a Promotion Discount that differs from the five price tiers that are available, then the franchisee can request Bakers Delight's Information Technology Services Team to set up an additional price tier that will cater to their needs. This can be any price, in that it can differ from the RRP and all tiered options; and
 - (b) Bakers Delight's Information Technology Services Team will then manually set up the additional Promotion Discount Record at the new price tier and make it available as an option to select.

The process set out in paragraph 2 will not contravene section 45AD(2) and (4) of the *Competition and Consumer Act 2010* (Cth) as there is no arrangement that is likely to have the effect, of directly, fixing, controlling or maintaining the price of goods supplied by any or all of the parties to the arrangement or understanding under. To put it simply, franchisees are not bound to select one of the five proposed price tiers for each Promotion Discount so there is no fixing of prices. Franchisees will be free to independently choose their prices and request Bakers Delight Information Technology Services Team to manually enter such prices.

It is also emphasised that there is very little intra-brand competition between Company Bakeries and Franchised Bakeries. There are currently 5 Company Bakeries against 504 Franchised Bakeries. The Company Bakeries would only potentially compete with Franchised Bakeries that are proximate to the location of Company Bakeries. The 5 Company Bakeries are more than 5 kilometres away from any Franchised Bakeries.

3. It will take approximately three months to complete the process that is described in paragraph 2.
4. The costs of undertaking the process in paragraph 2 are as follows:
 - (a) Bakers Delight's Information Technology Services Team will need to prepare coding for the new Promotion Discount Records and make system changes and

developments to facilitate the process under paragraph 2. This is anticipated to cost between [CONFIDENTIAL].

- (b) Bakers Delight will need to explain and educate the franchisees about the new process. Bakers Delight will also need to obtain information from franchisees to enable it to input the data into the POS system. The Bakers Delight Information Technology Services Team will manage and install any future pricing requests into the POS system. The anticipated costs are [CONFIDENTIAL] per annum but could be more depending on how many deviations are requested.
 - (c) Significantly more data entry and Promotion Discount Records will be required if the Proposed Conduct is not authorised and the process under paragraph 2 is undertaken. We refer to paragraph 3.3(e) and (f) of the Application, and reiterate that:
 - (i) approximately 50% of Bakers Delight Bakeries deviate at least one Promotion Discount from the RRP;
 - (ii) of those Bakers Delight Bakeries that deviate Promotion Discounts, on average they deviate around 10 Promotion Discounts;
 - (iii) Promotion Discounts are deviated on average by 36 Bakers Delight Bakeries, which is 7% of all Bakers Delight Bakeries; and
 - (iv) the highest recorded number of deviations for a particular Promotion Discount is 121 deviations.
 - (d) To accommodate the deviations and based on the average of 36 deviations, at least 36 additional Promotion Discount Records will need to be created in the POS system per Promotion Discount. The performance of the POS system will degrade quickly due to the large number of Promotion Discount Records.
 - (i) Bakers Delight prioritises the performance of the POS system because it directly affects the consumer's shopping check out experience and the ability for Bakers Delight Bakeries to facilitate transactions.
 - (ii) Therefore, to ensure that the performance of the POS system is at a high standard, Bakers Delight will incur costs associated with maintaining and servicing the POS system and the purchase of additional computer capacity. These are ongoing, recurring fees that will affect the entire franchise network and will be passed on to franchisees by way of increased technology fees.
 - (iii) Bakers Delight anticipates costs associated with this paragraph 4(d) to be [CONFIDENTIAL] per annum, although this is difficult to estimate and will depend on the amount of additional capacity and bandwidth required.
5. Bakers Delight will reconcile all of the costs listed in paragraph 4 and will adjust the technology fee payable by franchisees accordingly.
6. Other detriments associated with paragraph 2 are as follows:
- (a) Technology Fees are payable by franchisees. The higher this fee, the more likely that these costs would be on-charged to consumers by way of Bakers Delight Bakeries' decision to increase BDH Products and recoup the increased supply-side costs; and
 - (b) if the performance of the POS system is unsatisfactory due to the number of Promotion Discount Records in the system, then Bakers Delight will consider

reducing the number of Promotion Discounts that are available. This would be detrimental to consumers, as the price of Promotion Discounts are cheaper than purchasing the individual products separately.

7. To minimise any detriment that is caused by undertaking the process in paragraph 2, Bakers Delight will:
 - (a) communicate and manage its relationship with the new POS system vendor to develop the solution as cost effectively as possible; and
 - (b) retain the Promotion Discount Records that have already been set up in the POS system if the Proposed Conduct is authorised on an interim basis. As explained in the Application, the proposed price tiers for the Proposed Conduct would be based on historical data of price deviations by franchisees. Therefore, franchisees are likely to set the price at a price tier that is already in the POS system, so the conduct in paragraph 2 is limited to only franchisees who wish to set the price at a price that differs from the tiers provided. Time and money can be saved as these Promotion Discount Records do not need to be set up in the POS system; and
 - (c) try and use existing feedback mechanisms to determine levels of dissatisfaction with the price tiers.

Question 3: The ACCC understands from Bakers Delight submission of 15 September 2023 that Bakers Delight anticipates that it will take 4 weeks to implement the Proposed Conduct and the new POS system, with the implementation to be undertaken in two batches (50%) of the Bakers Delight network in November 2023 and 50% of the Bakers Delight network in January and February 2024). Please clarify why interim authorisation is required before any implementation of the Proposed Conduct in January/February 2024.

8. For avoidance of doubt, we confirm that:
 - (a) the rollout of the new POS system will be completed in two batches, with 50% of the Bakers Delight network in November 2023 and prior to Christmas and the other 50% after Christmas; and
 - (b) each rollout will be staggered across four weeks to allow for Bakers Delight to resolve any issues promptly without affecting the entire franchise network.
9. Interim authorisation is required as Bakers Delight will need enough time to adapt the POS system to integrate the tiered pricing and test the Proposed Conduct across the entire Bakers Delight network.
10. The contract with the current POS system supplier is due to expire in April 2024, so Bakers Delight requires sufficient time to ensure that the transition between the current and new POS system is completed before this deadline.
11. As previously mentioned, Bakers Delight's Information Technology Services team needs to test every single Promotion Discount Record to ensure that the correct output is generated. There would not be sufficient time if the Proposed Conduct is only allowed in January/February 2024.

Question 4: Please provide any general comments on the submissions available on the ACCC's public register.

Bakers Delight will provide comments on the submissions available on the public register in a separate letter.

Please contact the writer if the ACCC would like any further information or have any further queries.

Yours sincerely



Raynia Theodore

Principal

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