

Our ref: RT:2201450

5 September 2023



Anthony Hilton
Director | Competition Exemptions | Mergers, Exemptions & Digital
Australian Competition & Consumer Commission
Level 25, 32 Turbot Street
Brisbane QLD 4000
Penny.Bigham@accc.gov.au
anthony.hilton@accc.gov.au
exemptions@accc.gov.au

Dear Anthony,

Application for authorisation submitted by Bakers Delight Holdings Ltd – Request for urgent clarification

We refer to your letter dated 4 September 2023 requesting further information about the authorisation application sought to be lodged by Bakers Delight Holdings Ltd (**Bakers Delight**) with the Australian Competition and Consumer Commission (the **ACCC**).

We advise as follows:

1. The definition of the Proposed Conduct is intended to cover future changes to:
 - (a) the rationale for setting individual price tiers. In the initial implementation of the new POS system, Bakers Delight will set the individual price tiers to reflect existing pricing patterns for Promotion Discounts;
 - (b) the number of price tiers, being five price tiers;
 - (c) the spread of the price tiers, which will be:
 - (i) the Recommended Retail Price (**RRP**) as one price tier;
 - (ii) one price tier below the RRP; and
 - (iii) three price tiers above the RRP.

The spread of the price tiers will be standard price increments from the RRP. Larger increments apply where the RRP for a product is higher. For example, if the RRP is \$10.00 then the price increments may be set at \$1.00 increments below and above the RRP, and for a product with a RRP of \$4.00 the price increments may be \$0.25 below and above the RRP.

- (d) Promotion Discounts that are not currently listed in Schedule 3 of the authorisation application. Many Promotion Discounts are seasonal and available only during select times of the year. Therefore, the Promotion Discounts available constantly fluctuates. Bakers Delight will apply the same rationale for setting individual price

tiers per paragraph 1(a) for any combination of BDH Products that Bakers Delight later determines to constitute as a Promotion Discount.

If Bakers Delight introduces new Promotion Discounts for which there is no existing pricing patterns by Bakers Delight Bakeries, then Bakers Delight will set the price tiers based standard price deviation increments from the RRP, as described in paragraph 1(c).

- (e) the percentage of Promotion Discounts that Bakers Delight Bakeries will be mandated to sell under the relevant Franchise Agreements will remain at approximately [CONFIDENTIAL]% of range of Promotion Discounts. For the remaining [CONFIDENTIAL]%, BDH and Franchisees can choose which Promotion Discounts to offer for sale in their Bakers Delight Bakery.
2. Bakers Delight intends to exercise its contractual rights under the relevant Franchise Agreements with Franchisees to implement changes to the point of sale (**POS**) system with the Franchised Bakeries.

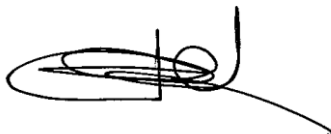
Under the relevant Franchise Agreements, Bakers Delight specifies:

- (a) [CONFIDENTIAL];
- (b) [CONFIDENTIAL];
- (c) [CONFIDENTIAL];
- (d) [CONFIDENTIAL]; and
- (e) [CONFIDENTIAL].

Therefore, Bakers Delight proposes to require Franchisees to acquire and install the new POS system and implement the use the new POS system and engage in the Proposed Conduct relying on the above provisions of the Franchise Agreement and noting the Exclusive Dealing Notification number N98304 available on the ACCC Exclusive Dealings Notification Register. In June 2015 the Franchisor notified the ACCC of the requirement for franchisees to acquire technology, including point of sale software and hardware from approved suppliers.

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

Yours sincerely



Raynia Theodore

Principal

Direct Line: +61 3 8540 0242

Email: raynia.theodore@mst.com.au