

From: Sami Sara
To: [Wilson, Louisa](#); [Robert Alderuccio](#)
Cc: [Staltari, Danielle](#); [Pound, Anna](#)
Subject: RE: CB10000472 - TSG Franchise Management - Interested party submissions [SEC=UNCLASSIFIED]
Date: Thursday, 12 December 2019 3:28:01 PM

Dear Louisa,

Thank you for the below emails. Our client's responses are as follows:

- 1 While TSG has in the past negotiated network wide terms with its suppliers, there is an important distinction which has prompted it to seek the immunity.

In the past, TSG was acting on its own account as a franchisor of a franchise network when negotiating favourable supply terms. In undertaking those negotiations, it was not acting *on behalf* of its franchisees. TSG was simply seeking to strike the best deal with its suppliers, with the benefits flowing to all franchisees within the network once they also entered into identical supply terms with BATA (and others).

This is different to the current state of affairs. Due to the absence of a network wide deal with BATA, TSG is seeking to negotiate *on behalf* of the franchisees due to fears that they individually do not have the bargaining power to resist BATA's terms. TSG has sought the immunity because the franchisees are competitors with one another, as is TSG where it operates a company owned store.

The public benefit is ensuring that TSG franchisees can continue to stock and supply the broadest range of goods from all wholesale suppliers and offer promotions from all those suppliers, thereby reducing the price paid for the goods by the public.

We understand that from BATA's point of view the above may appear to be a distinction without a difference. However, our client is keen to avoid any accusation levelled at it that it is not acting in compliance with competition laws, particularly where it considers the conduct of BATA to be anti-competitive.

- 2 As far as TSG is aware, it has the support of its franchisees in seeking to negotiate a deal for the whole network. While some individual franchisees have entered into supply agreements with BATA, it is our client's understanding that they have done so out of frustration or impatience at the lack of TSG wide supply agreement, and not necessarily because they don't want to participate in the collective bargaining process.

Note that BATA has only offered individual franchisees supply terms which operate until TSG and BATA reach an agreement between themselves. The conclusion to be drawn is that BATA and the franchisees expect TSG to continue to negotiate for the whole network. This is also supported by the fact that BATA has not objected to our client's application in the response that it has filed.

- 3 As mentioned in the initial application, our client has not prevented TSG franchisees from selling BATA's goods in their businesses notwithstanding the lack of agreed supply terms.

We look forward to hearing from you.

Kind regards,

Sami Sara
Senior Associate

Robert James Lawyers

Direct Line: [REDACTED]

e-mail: [REDACTED]

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From: Wilson, Louisa [mailto:louisa.wilson@acc.gov.au]
Sent: Wednesday, 11 December 2019 12:44 PM
To: Sami Sara [REDACTED]; Robert Alderuccio [REDACTED]
Cc: Staltari, Danielle <Danielle.Staltari@acc.gov.au>; Pound, Anna <anna.pound@acc.gov.au>
Subject: RE: CB10000472 - TSG Franchise Management - Interested party submissions
[SEC=UNCLASSIFIED]

Dear Sami and Robert,

Could you also please advise, in addition to the below:

- if the collective bargaining is voluntary for franchisees, and
- if it is voluntary, the extent to which franchisees will be able to individually negotiate terms and conditions of the supply agreement with BATA if they choose not to participate in the bargaining?

If you have any queries please do not hesitate to contact myself or Anna (03 9290 6920).

Kind regards,

Louisa

Louisa Wilson

Analyst | Adjudication | Merger and Authorisation Review Division

Australian Competition & Consumer Commission

Level 17 | 2 Lonsdale Street Melbourne 3000

T: 03 9290 1474

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The ACCC acknowledges the traditional custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

From: Wilson, Louisa
Sent: Tuesday, 10 December 2019 5:19 PM
To: Sami Sara [REDACTED]; Robert Alderuccio [REDACTED]
Cc: Staltari, Danielle <Danielle.Staltari@acc.gov.au>; Pound, Anna <anna.pound@acc.gov.au>
Subject: RE: CB10000472 - TSG Franchise Management - Interested party submissions
[SEC=UNCLASSIFIED]

Dear Sami and Robert,

Further to my email below, one issue that we would ask you to address is how TSG's proposed collective bargaining conduct of would be different to the conduct of TSG negotiating with BATA without the notification.

In particular, BATA notes on page 3 of its submission that notification will not result in any public benefit because TSG is already effectively negotiating on behalf of its franchisees now. For example, is it because TSG has company retail outlet stores and is a competitor to franchisees that it needs immunity under the Competition and Consumer Act to engage in the collective bargaining conduct?

Kind regards,

Louisa

Louisa Wilson

Analyst | Adjudication | Merger and Authorisation Review Division

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From: Wilson, Louisa

Sent: Tuesday, 10 December 2019 4:36 PM

To: Sami Sara [REDACTED]; Robert Alderuccio [REDACTED]

Cc: Staltari, Danielle <Danielle.Staltari@acc.gov.au>; Pound, Anna <anna.pound@acc.gov.au>

Subject: CB10000472 - TSG Franchise Management - Interested party submissions

[SEC=UNCLASSIFIED]

Dear Sami and Robert

Please see attached three public submission received by the ACCC with respect to your client's collective bargaining notification. Submissions have been received by BATA, Cignall and Philip Morris.

If your client wishes to provide any further submission or information in response to these interested party submissions, please do so by COB Thursday 12 December 2019.

Please contact me on (03) 9290 1474 or Anna on (03) 9290 6920 if you have any questions.

Kind regards,

Louisa

Louisa Wilson

Analyst | Adjudication | Merger and Authorisation Review Division

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