

21 June 2001

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Partner
Eddie Scuderi

Our reference
ECS/VP/QUEE3159-7503907

Australian Competition and Consumer Commission
10th Floor
AAMI Building
500 Queen Street
BRISBANE QLD 4000

Dear Sirs

EXCLUSIVE DEALING NOTIFICATION

We act on behalf of the Queensland Performing Arts Trust ("QPAT").

On behalf of our client, we hereby give notice in accordance with subsection 93(1) of the Trade Practices Act 1974 and the Competition Code and **enclose**:

- 1 form G – exclusive dealing notification;
- 2 submissions regarding the above third line forcing notification; and
- 3 lodgment fee of \$1,000.00.

If you have any queries in respect of this notification, please contact Eddie Scuderi on (07) 3228 9319 or in his absence Vanessa Plumpton on (07) 3228 9409.

Yours faithfully

CORRS CHAMBERS WESTGARTH

Eddie Scuderi
Partner

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COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 – Sub-section 93(1)***EXCLUSIVE DEALING****NOTIFICATION**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974* and the Competition Code, of particulars of conduct or of proposed conduct of a kind referred to in subsection 47(2), (3), (4), (5), (6), (7), or paragraph 47(8)(a), (b) or (c) or (9)(a), (b), (c) or (d) of that Act in which the person giving notice engaged or proposed to engage.

(PLEASE READ DIRECTIONS AND NOTICES AT BACK OF FORM)

1. (a) Name of person giving notice:
Queensland Performing Arts Trust as established by the Queensland Performing Arts Trust Act (Qld) 1977 ("QPAT")
- (b) Short description of business carried on by that person:
The management of the Queensland Performing Arts Centre and contribution to the development of the performing arts in Queensland.
- (c) Address in Australia for service of documents on that person:
c/- Corrs Chambers Westgarth
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
(attn: Eddie Scuderi)
2. (a) Description of the goods and services in relation to the supply or acquisition of which this notice relates:
Supplying or offering to supply the opportunity and granting a licence for the provision of catering services on certain conditions
- (b) Description of the conduct or proposed conduct:
Supplying or offering to supply the opportunity and granting a licence to provide catering services on the condition that:
 - QPAT may appoint naming right sponsors and exclusive suppliers from whom the appointed caterer may be required to purchase;
 - QPAT may allow a hirer to supply or offer its own or sponsor's products during a function and the appointed caterer agrees to obtain and supply such products and not to knowingly supply a competing product;
 - if the appointed caterer is not the incumbent caterer, the appointed caterer must purchase the liquor and food stocks of the outgoing caterer; and
 - giving effect to each of the "tied" obligations referred to above.

It is anticipated that the initial contract period will be 3 years with a further 2 years at QPAT's option, however, alternative periods are possible. The schedule outlines the Tender provisions.

- 3. (a) Class or classes of persons to which the conduct relates:
The appointed caterer and hirers and sponsors as nominated by QPAT from time to time
 - (b) Number of those persons –
 - (i) At present time:
Nil
 - (ii) Estimated within the next year:
One
 - (c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:
Unknown at this time
4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

Eddie Scuderi
 Partner
 CORRS CHAMBERS WESTGARTH
 1 Eagle Street
 BRISBANE QLD 4000

Dated 21.6. , 2001

Signed by/on behalf of the applicant giving notice

E.C. Scuderi
 (Signature)

E.C. Scuderi
 (Full Name)

PARTNER, CORRS CHAMBERS WESTGARTH
 (Description)



SCHEDULE

Queensland Performing Arts Trust Invitation to tender for Exclusive Catering Rights to the Queensland Performing Arts Centre, South Brisbane, Queensland – May 2001

Clause 2.21 – The Contract Period

Whilst it is anticipated that the initial contract period will be 3 years with a further 2 year option, with the option exercisable by the Trust based on satisfactory performance in the previous 3 years, the Trust would consider longer tenure for capital injection or where the Tender can demonstrate significant advantage to the Trust. Such Tenders should clearly indicate the primary contract period sought and tenure extension periods. Satisfactory performance will be measured by the attainment of a benchmarked level of a range of key performance indicators to be included in the Service Level Agreement. It is anticipated that the initial contract period would commence on July 1, 2001 and extend to the June 30, 2004.

Clause 2.24 - Naming Rights and Exclusive Suppliers

The Tenderer agrees that the Trust has the right to appoint, from time to time, Naming Right Sponsors and Exclusive Suppliers.

The Tenderer shall also agree that they will be obliged to purchase and sell these sponsors' and suppliers' products in accordance with directions from the Trust.

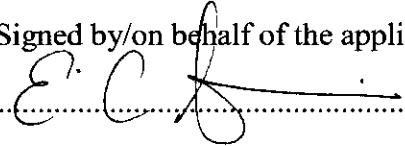
Currently there are no exclusive suppliers, however, consideration has been given to the appointment of naming right sponsors, other sponsors and exclusive suppliers for the Festivals (Brisbane Festival, Out of the Box, Stage X, River Festival and Queensland Biennial). Should the caterer be required to purchase goods or services as a result of these appointments, then they shall be at the Caterer's best national price and best terms.

Clause 3.13 – Supply of Products by Hirers or Sponsors

If the Trust has agreed that a party hiring the Centre or any part of it, or a corporate hospitality area, may supply or offer its own products or sponsor's products during a Function, the Trust must require the hirer to arrange for the supply of the agreed products to the Caterer at the Caterer's Best Price and Best Terms. The Caterer agrees to not knowingly supply a competing product in those areas provided that the Trust has entered into agreements only in respect of products which:

- (a) are leading brand products;
- (b) have strong market share;
- (c) are supported by appropriate levels of marketing and promotion; and
- (d) are, in the reasonable opinion of the Caterer, appropriate for the proposed usage.

If requested, the Caterer must provide the Trust with such documentation or other evidence that may reasonably be required by the Trust to determine the Caterer's Best Price and Best Terms for the agreed products.

Dated 21.6. , 2001 Signed by/on behalf of the applicant giving notice


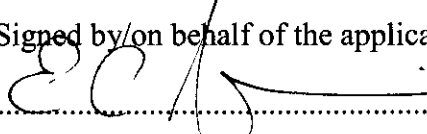
Clause 3.66 – Purchase of Outgoing Caterer Stock

In the event that a caterer other than the incumbent caterer is the successful Caterer, it is a requirement of this Tender that the Caterer purchase liquor and food stocks from the outgoing caterer. This condition will apply to items which:

- (a) are of merchandisable quality;
- (b) are not damaged;
- (c) have not exceeded the use by date encoded on the label;
- (d) have been stored and handled in accordance with the provisions of the Health Act;
- (e) are unlikely to be contaminated.

Prices charged by the outgoing caterer for such items shall not exceed the invoice price less any discounts that might apply.

Dated 21. 6. , 2001

Signed by/on behalf of the applicant giving notice

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DIRECTIONS

1. If 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 person giving this notice.
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. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in subsection 47(2), (3), (4), (5), (6), (7), (8) or (9) 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. In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaged in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in subsection 47(6) or (7), or paragraph 47(8)(c) or (9)(d), of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

QUEENSLAND PERFORMING ARTS TRUST

SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION REGARDING THIRD LINE FORCING NOTIFICATION

1 INTRODUCTION

- 1.1 The Queensland Performing Arts Trust ABN 13 967 571 128 of Queensland Performing Arts Centre, South Bank, Queensland (“QPAT”) was established by the Queensland Government in 1977. It is a statutory authority with its responsibilities set out in the Queensland Performing Arts Trust Act 1977. QPAT receives substantial funding from the State Government and is responsible to the Honourable Matt Foley MP, Minister for Employment, Training and Youth and Minister for the Arts.
- 1.2 QPAT’s mission is to:
- (a) ensure that the Queensland Performing Arts Centre is an accessible and innovative world-class cultural facility which is managed and operated at the highest industry standards; and
 - (b) assist in the development of strong and vibrant performing arts throughout Queensland while respecting and catering for the diversity of people, heritage and culture.
- 1.3 QPAT proposes to recruit the services of a quality caterer who will provide patrons of the Queensland Performing Arts Centre with menus and services which are of the highest standard and comparable with other international and interstate cultural events, at prices which are designed to encourage return patronage to the Centre and its commercial outlets. The catering operations are to demonstrate innovation in catering for theatre activity as well as initiating entertainment opportunities and themed activities for non-theatre related market segments.
- 1.4 QPAT wishes to supply or offer to supply the opportunity and grant a licence to provide such catering services on the condition that:
- QPAT may appoint naming rights sponsors and exclusive suppliers from whom the appointed caterer may be required to purchase;
 - QPAT may allow a hirer to supply or offer its own or sponsor’s products during a function and the appointed caterer agrees to obtain and supply such products and not to knowingly supply a competing product;
 - if the appointed caterer is not the incumbent caterer, the appointed caterer must purchase the liquor and food stocks of the outgoing caterer;
- 1.5 Supplying or offering to supply the opportunity and granting a licence to provide catering services on such conditions may involve QPAT engaging in conduct which contravenes the prohibition against exclusive dealing in subsections 47(6) and (7), subsection 47(8)(c) and subsection 47(9)(d) of the Trade Practices Act 1974 (“Act”).

2 PUBLIC BENEFIT

- 2.1 There is a public benefit in QPAT's activities in promoting cultural events for the community through the performing arts.
- 2.2 QPAT's ability to perform those activities is enhanced by the support of sponsors. Exclusivity of product placement is a typical factor in determining the degree of support by sponsors.
- 2.3 It is in an effort to promote festivals and corporate usage of the Centre, that QPAT wishes to retain the option of allowing sponsorship of such events. Such sponsorship reduces the cost burden of the event and contributes to its continuation as an event enjoyed by the public. A commonly required sponsorship benefit is to allow product placement during catered events. Such products will still need to be of the requisite standard.
- 2.4 As a publicly funded organisation, it is important for QPAT to maximise the use of catering services which will assist QPAT in its aim to broaden the support base and appeal of the Centre.
- 2.5 The agreement with the incumbent caterer expires on 30 June 2001. QPAT is taking this opportunity to review the range of options associated with on-site catering facilities. This review has reaffirmed that standards for quality and service in the provision of a broad range of catering services is critical to the operations of QPAT. It has also highlighted the need to consider new and innovative catering arrangements to maximise patronage from its catering areas.
- 2.6 The appointment will ensure the recruitment of the services of a quality caterer who provides patrons with catering services of the highest standard which represents value to the patrons of the Centre whilst achieving sufficient returns to QPAT to the benefit of the Queensland public.

3 PUBLIC DETRIMENT

On some occasions, patrons of the Centre will not have the right to choose between competing products. It is submitted that this detriment is clearly outweighed by the following public benefits:

- the sponsorship of festivals; and
- the sponsorship and holding of functions at the Centre, which generate additional exposure and revenue for QPAT.

4 RELEVANT MARKETS

- 4.1 It is submitted that the relevant markets in this case are:
- the market for the provision of catering services;
 - the market for the supply and acquisition of food and beverage for use by caterers at recreational venues for the general public.
- 4.2 Supplying or offering to supply the opportunity to provide catering services on these conditions would not substantially lessen competition in these markets or any other markets.

5 CONCLUSION

To avoid any risk of contravening the prohibition against third line forcing, QPAT gives notice to the Commission in accordance with sub-section 93(1) of the Act.