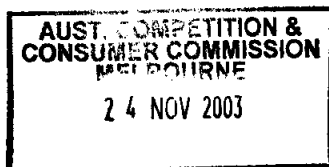


Deacons



Level 24
385 Bourke Street
Melbourne Vic 3000
Australia
GPO Box 4592
Melbourne Vic 3001
DX445 Melbourne
Tel +61 (0)3 8686 6000
Fax +61 (0)3 8686 6505
www.deacons.com.au

24 November 2003

Australian Competition and Consumer Commission
PO Box 119
DICKSON ACT 2602

Other Offices
Brisbane
Canberra
Perth
Sydney

Attention: Tim Grimwade, General Manager - Adjudication

**Independent
Affiliated Firms**
Hong Kong
Indonesia
Malaysia
People's Republic of China
Singapore
Taiwan
Thailand
Vietnam

Our Ref: 1029632/2516824

Dear Mr Grimwade

Notification – Exclusive Dealing

We act for Coffee Central Australia Pty Ltd (ACN 101 915 333).

We advise that our client intends to change its corporate name shortly to "Supanews Franchising Pty Ltd" (**Supanews**) (subject to the availability of such name).

We enclose 3 notifications under section 93(1) of the Trade Practices Act 1974 (**Act**) in relation to the proposed conduct by Supanews in Victoria, Queensland and New South Wales which may breach section 47(6) of the Act (Form G).

We also enclose a cheque for \$300, being the aggregate of the relevant fee for lodging a notification by a proprietary company in relation to conduct under section 47(6) of the Act.

Please do not hesitate to contact Stephen Giles on (03) 8686 6965 if you have any queries in relation to the notification lodged.

Yours faithfully

Stephen Giles
Partner
Deacons

Direct line: 8686 6695
Email: stephen.giles@deacons.com.au

FILE No:
DOC: D03/44908
MARS/PRISM:

Encls

Regulation 9

FORM G

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 93(1)

EXCLUSIVE DEALING

NOTIFICATION

To the Australian Competition & Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (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 proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICE AT END OF FORM)

1. (a) **Name of person giving notice**

Coffee Central Australia Pty Ltd ACN 101 915 333. However, it is intended that the name be changed to Supanews Franchising Pty Ltd, subject to the availability of the name ("**Supanews**").

(b) **Short description of business carried on by that person**

Supanews intends to operate a business as franchisor to a network of franchisees which will operate retail businesses involving the sale of newspapers, magazines, stationery, greeting cards, books, phone cards, public transport cards, cigarettes, confectionary, soft drinks and other associated products ("**Products**") to customers using the business system, image, trade marks and other intellectual property of Supanews ("**Supanews Franchise**").

(c) **Address in Australia for service of documents on that person**

c/ Stephen Giles, Deacons, Level 24, 385 Bourke Street, Melbourne, Victoria 3000

2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates**

The notification relates to:

- (i) the acquisition and sale of Products pursuant to the operation of a Supanews franchised business; and
- (ii) the sale and processing of lottery entries including instant lottery tickets ("**Lottery Products**") in licensed public gaming schemes ("**Lotteries**"), the promotion of the Lotteries and the payment of prizes to customers pursuant to the operation a lottery franchised business.

(b) Description of the conduct or proposed conduct

Background

Related entities of Supanews currently own and operate 15 Supanews stores which are all located in Queensland (**Company Owned Stores**).

Currently, each of the Company Owned Stores:

- (i) sells the Products to customers; and
- (ii) sells and processes Lottery Products in Lotteries, pays prizes to customers and promote the Lotteries pursuant to a franchise agreement with Golden Casket Lottery Corporation Limited (ABN 27 078 785 449).

The Supanews format is designed to systemise the operation of a newsagency and lottery business such that customers are provided with a consistent and relatively standard retail experience. Supanews also aims to expand its network so that members of the network can enjoy enhanced bargaining power. This is particularly important given that many of the suppliers to Supanews (ie shopping centre landlords, newspaper and publishing companies and lottery authorities) are large corporations.

Supanews does not have the capital to expand its own network as quickly as it wishes. It also wishes to have motivated owner operators running Supanews businesses. Accordingly, Supanews proposes to develop a network of Supanews franchisees throughout Australia, each operating under the Supanews brand and in accordance with the Supanews format.

Supanews proposes to provide franchisees with a detailed operating format operation. Supanews will locate and secure an appropriate site, typically within a major shopping centre. Supanews will then fit out the premises, secure a lottery franchise agreement, organise initial stock and ongoing supply relationships and so forth. The franchisees will then acquire the franchise and operate the business.

It is proposed that franchisees will pay to Supanews an upfront fee of between \$30,000.00 - \$50,000.00 (if the business has been trading and has some goodwill, a higher figure may apply) upon execution of the franchise agreement in return for which they:

- (i) are granted a Supanews Franchise and receive the benefits of using the established Supanews brand and system for a term of 5 years with options for 2 proposed further terms of 5 years;
- (ii) receive access to quality Products at competitive prices from both Supanews and nominated suppliers;
- (iii) receive initial training from Supanews in relation to the operation of a Supanews franchised business; and

- (iv) receive ongoing assistance and support from Supanews in relation to the operation of a Supanews franchised business.

Proposed conduct

The conduct to which this notification specifically relates is the proposed requirement that, as a condition of the franchise with Supanews, Supanews franchisees each enter into a lottery franchise agreement with Tattersall's Sweeps Pty Ltd (ACN 081 925 662) ("**Tattersall's**") ("**Lottery Agreement**") to sell and process Lottery Products in Lotteries, pay prizes to customers and promote the Lotteries using the image and other intellectual property of Tattersalls ("**Lottery Franchise**").

The Lottery Agreement, prescribed by Tattersall's, is prepared in accordance with the *Public Lotteries Act 2000* (Vic). The Lottery Franchise is non-exclusive and does not prescribe an exclusive territory. Under the Lottery Agreement, the franchisee is required to:

- (i) comply with the systems standards prescribed by Tattersall's; and
- (ii) sell the Lottery Products to customers at prices specified by Tattersall's; and
- (iii) pay prizes to customers at such amounts specified by Tattersall's.

Although it may be legally possible for Supanews to take the Lottery Franchise from Tattersall's, the Lottery Agreement is silent as to the right to sub-licence it to the Supanews franchisee. The Supanews franchisee must for practical purposes hold the Lottery Agreement in its name.

The existence of a lottery element is a critical part of the Supanews system and format. Therefore, Supanews proposes to only grant Supanews Franchises to franchisees pursuant to a franchise agreement on the condition that they each enter into a Lottery Agreement. Further, Supanews intends to impose restrictions preventing the Supanews franchisee from transferring or dealing with the Lottery Agreement except as an integral part of the Supanews Franchise.

Supanews proposes to charge a royalty on the Supanews franchisee's income derived from the commission earned by the franchisee from the sales of items such as the Lottery Products, public transport cards and phone cards.

Trade Practices Act: Exclusive Dealing

Section 47 of the *Trade Practices Act 1974* (Cth) ("**Act**") prohibits anti-competitive dealing and outlines a number of proscribed practices which amount to exclusive dealing.

Section 47(6) prohibits third line forcing which arises when a product or service is offered on the condition that the purchaser also acquires goods or services from a specified third person or class of third persons.

The proposed conduct outlined above arguably falls within section 47(6) as Supanews is proposing to grant Supanews Franchises to franchisees on the condition that they enter into a Lottery Agreement.

However, Supanews maintains that the lottery arrangement is an integral part of the Supanews format rather than a separate business. The premises will carry Supanews branding and layout and Supanews systems will apply. Supanews also contends that the proposed conduct will have a negligible effect on competition within the relevant markets.

Section 93 of the Act deals with the procedure by which corporations are entitled to obtain statutory protection in relation to exclusive dealing conduct which may otherwise contravene the prohibition in section 47.

In order for the immunity to be revoked, the Australian Competition and Consumer Commission ("**Commission**"), the Commission must be satisfied that the likely benefit to the public will not outweigh the likely detriment to the public as specified in section 93(3A) of the Act.

Identification of the market

The markets can be reasonably identified as:

- (i) the broad retail market for the sale of newspapers, magazines, stationery, greeting cards, books, phone cards, public transport cards, cigarettes, confectionary, soft drinks and other associated products;
- (ii) the retail market for the sale of each of the above Products in isolation; and
- (ii) the retail market for the sale of Lottery Products.

Each of the above markets is characterised by a large number of participants at retail level. Importantly, the suppliers in the market are often large corporations, such as shopping centre landlords, newspaper and publishing groups, greeting card companies, lottery authorities etc). Convenience stores run by large chains and by oil companies have taken significant market share and the major supermarket chains are also active in these markets.

Public Benefit

The proposed conduct is likely to have a public benefit by fostering competition with other retailers, such as convenience store chains, supermarkets, oil companies and other newsagencies. The combination of a lottery agency combined with a newsagency is a widespread business model and the proposed conduct would allow the Supanews franchisees to compete with such entities within the relevant markets.

The proposed structure may also assist Supanews franchisees in being able to deal more effectively with the large suppliers noted above.

The proposed conduct is likely to have a further benefit to Supanews franchisees by:

- (i) providing the franchisee with an additional revenue stream;
- (ii) encouraging higher volumes of traffic flow through the store which in turn generates an increase in the sales of Products, particularly those "impulse items" which form part of the product ranges; and
- (iii) developing a mutually beneficial relationship between the Supanews and lottery franchised businesses which creates a larger and more robust investment that:
 - (A) offers a broad range of goods and services;
 - (B) is able to secure prominent premises in large shopping centres or busy locations in shopping districts; and
 - (C) is attractive to consumers.

Public Detriment

- (i) Supanews Franchisees

Supanews considers that there is no material public detriment. The restrictions that prevent the franchisee from determining whether or not to operate a lottery business and prohibit the franchisee from dealing with the Lottery Agreement other than as an integral part of the Supanews Franchise are not commercially prejudicial to the franchisee. The franchisee is provided with a business with a detailed operating format which includes the Lottery Agreement.

- (ii) Consumers

There is no public detriment to consumers as the proposed structure does not create a monopoly over the lottery agencies and the large numbers of lottery agencies throughout Victoria, even in smaller regional areas, provide consumers with the option of purchasing the Lottery Products from other lottery agents.

It is noteworthy that the Lottery Agreement does not provide a territorial restriction and therefore additional franchisees may be established within the vicinity of the franchisee's premises.

The following statistics, provided by Tattersall's on 24 September 2001, demonstrate the high volume of both newsagencies and lottery agencies and the competitive nature of the relevant markets in Victoria:

- (A) total number of lottery agencies: approx. 894

- (B) total number of lottery agencies which also operate newsagency businesses: approx. 458

Conclusion

Supanews contends that the public benefit resulting from the proposed conduct outweighs any public detriment caused by the conduct.

3. (a) Class or classes of persons to which the conduct relates

Supanews franchisees

(b) Number of those persons -

(i) At present time

There are currently no franchisees.

(ii) Estimated within the next year

15

(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and address

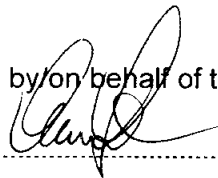
Not applicable.

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice

Stephen Giles, c/-Deacons, Level 24, 385 Bourke Street, Melbourne, Victoria 3000

Dated *November 24* 2003

Signed by/on behalf of the applicant



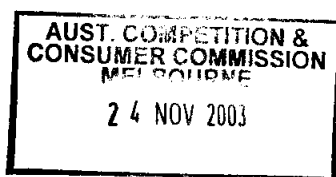
(Signature)

STEPHEN GILES

(Full name)

PARTNER - DEACONS

(Description)



DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the 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. Where particulars of a condition or of a reason of the type referred to in sub-section 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 furnished 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 engaging 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 sub-section 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 of the period prescribed for the purposes of sub-section 93(7A) of the Act (the "prescribed period") unless the Commission gives a notice under sub-section 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 sub-section 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 sub-section 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 sub-section 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.

Regulation 9

FORM G

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 93(1)

EXCLUSIVE DEALING

NOTIFICATION

To the Australian Competition & Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (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 proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICE AT END OF FORM)

1. (a) Name of person giving notice

Coffee Central Australia Pty Ltd ACN 101 915 333. However, it is intended that the name be changed to Supanews Franchising Pty Ltd, subject to the availability of the name ("**Supanews**").

(b) Short description of business carried on by that person

Supanews intends to operate a business as franchisor to a network of franchisees which will operate retail businesses involving the sale of newspapers, magazines, stationery, greeting cards, books, phone cards, public transport cards, cigarettes, confectionary, soft drinks and other associated products ("**Products**") to customers using the business system, image, trade marks and other intellectual property of Supanews ("**Supanews Franchise**").

(c) Address in Australia for service of documents on that person

c/ Stephen Giles, Deacons, Level 24, 385 Bourke Street, Melbourne, Victoria 3000

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates

The notification relates to:

- (i) the acquisition and sale of Products pursuant to the operation of a Supanews franchised business; and
- (ii) the sale and processing of lottery entries including instant lottery tickets ("**Lottery Products**") in licensed public gaming schemes ("**Lotteries**"), the promotion of the Lotteries and the payment of prizes to customers pursuant to the operation a lottery franchised business.

(b) Description of the conduct or proposed conduct

Background

Related entities of Supanews currently own and operate 15 Supanews stores which are all located in Queensland (**Company Owned Stores**).

Currently, each of the Company Owned Stores:

- (i) sells the Products to customers; and
- (ii) sells and processes Lottery Products in Lotteries, pays prizes to customers and promote the Lotteries pursuant to a franchise agreement with Golden Casket Lottery Corporation Limited (ABN 27 078 785 449).

The Supanews format is designed to systemise the operation of a newsagency and lottery business such that customers are provided with a consistent and relatively standard retail experience. Supanews also aims to expand its network so that members of the network can enjoy enhanced bargaining power. This is particularly important given that many of the suppliers to Supanews (ie shopping centre landlords, newspaper and publishing companies and lottery authorities) are large corporations.

Supanews does not have the capital to expand its own network as quickly as it wishes. It also wishes to have motivated owner operators running Supanews businesses. Accordingly, Supanews proposes to develop a network of Supanews franchisees throughout Australia, each operating under the Supanews brand and in accordance with the Supanews format.

Supanews proposes to provide franchisees with a detailed operating format operation. Supanews will locate and secure an appropriate site, typically within a major shopping centre. Supanews will then fit out the premises, secure a lottery franchise agreement, organise initial stock and ongoing supply relationships and so forth. The franchisees will then acquire the franchise and operate the business.

It is proposed that franchisees will pay to Supanews an upfront fee of between \$30,000.00 - \$50,000.00 (if the business has been trading and has some goodwill, a higher figure may apply) upon execution of the franchise agreement in return for which they:

- (i) are granted a Supanews Franchise and receive the benefits of using the established Supanews brand and system for a term of 5 years with options for 2 proposed further terms of 5 years;
- (ii) receive access to quality Products at competitive prices from both Supanews and nominated suppliers;
- (iii) receive initial training from Supanews in relation to the operation of a Supanews franchised business; and

- (iv) receive ongoing assistance and support from Supanews in relation to the operation of a Supanews franchised business.

Proposed conduct

The conduct to which this notification specifically relates is the proposed requirement that, as a condition of the franchise with Supanews, Supanews franchisees each enter into a lottery agency agreement with New South Wales Lotteries Corporation (ABN 27 410 374 474) ("**NSW Lotteries**") ("**Lottery Agreement**") to sell and process Lottery Products in Lotteries, pay prizes to customers and promote the Lotteries using the image and other intellectual property of NSW Lotteries ("**Lottery Agency**").

The Lottery Agreement, prescribed by NSW Lotteries, is prepared in accordance with the *Public Lotteries Act 1996* (NSW) and the *Public Lotteries Regulation 2002* (NSW). The Lottery Agency is non-exclusive and does not prescribe an exclusive territory. Under the Lottery Agreement, the franchisee is required to:

- (i) comply with the standards prescribed by NSW Lotteries; and
- (ii) sell the Lottery Products to customers at prices specified by NSW Lotteries; and
- (iii) pay prizes to customers at such amounts specified by NSW Lotteries.

Although it may be legally possible for Supanews to take the Lottery Agency from NSW Lotteries, the Lottery Agreement is silent as to the right to sub-licence it to the Supanews franchisee. The Supanews franchisee must for practical purposes hold the Lottery Agreement in its name.

The existence of a lottery element is a critical part of the Supanews system and format. Therefore, Supanews proposes to only grant Supanews Franchises to franchisees pursuant to a franchise agreement on the condition that they each enter into a Lottery Agreement. Further, Supanews intends to impose restrictions preventing the Supanews franchisee from transferring or dealing with the Lottery Agreement except as an integral part of the Supanews Franchise.

Supanews proposes to charge a royalty on the Supanews franchisee's income derived from the commission earned by the franchisee from the sales of items such as the Lottery Products, public transport cards and phone cards.

Trade Practices Act: Exclusive Dealing

Section 47 of the *Trade Practices Act 1974* (Cth) ("**Act**") prohibits anti-competitive dealing and outlines a number of proscribed practices which amount to exclusive dealing.

Section 47(6) prohibits third line forcing which arises when a product or service is offered on the condition that the purchaser also acquires goods or services from a specified third person or class of third persons.

The proposed conduct outlined above arguably falls within section 47(6) as Supanews is proposing to grant Supanews Franchises to franchisees on the condition that they enter into a Lottery Agreement.

However, Supanews maintains that the lottery arrangement is an integral part of the Supanews format rather than a separate business. The premises will carry Supanews branding and layout and Supanews systems will apply. Supanews also contends that the proposed conduct will have a negligible effect on competition within the relevant markets.

Section 93 of the Act deals with the procedure by which corporations are entitled to obtain statutory protection in relation to exclusive dealing conduct which may otherwise contravene the prohibition in section 47.

In order for the immunity to be revoked, the Australian Competition and Consumer Commission ("**Commission**"), the Commission must be satisfied that the likely benefit to the public will not outweigh the likely detriment to the public as specified in section 93(3A) of the Act.

Identification of the market

The markets can be reasonably identified as:

- (i) the broad retail market for the sale of newspapers, magazines, stationery, greeting cards, books, phone cards, public transport cards, cigarettes, confectionary, soft drinks and other associated products;
- (ii) the retail market for the sale of each of the above Products in isolation; and
- (ii) the retail market for the sale of Lottery Products.

Each of the above markets is characterised by a large number of participants at retail level. Importantly, the suppliers in the market are often large corporations, such as shopping centre landlords, newspaper and publishing groups, greeting card companies, lottery authorities etc). Convenience stores run by large chains and by oil companies have taken significant market share and the major supermarket chains are also active in these markets.

Public Benefit

The proposed conduct is likely to have a public benefit by fostering competition with other retailers, such as convenience store chains,

supermarkets, oil companies and other newsagencies. The combination of a lottery agency combined with a newsagency is a widespread business model and the proposed conduct would allow the Supanews franchisees to compete with such entities within the relevant markets.

The proposed structure may also assist Supanews franchisees in being able to deal more effectively with the large suppliers noted above.

The proposed conduct is likely to have a further benefit to Supanews franchisees by:

- (i) providing the franchisee with an additional revenue stream;
- (ii) encouraging higher volumes of traffic flow through the store which in turn generates an increase in the sales of Products, particularly those "impulse items" which form part of the product ranges; and
- (iii) developing a mutually beneficial relationship between the Supanews and lottery franchised businesses which creates a larger and more robust investment that:
 - (A) offers a broad range of goods and services;
 - (B) is able to secure prominent premises in large shopping centres or busy locations in shopping districts; and
 - (C) is attractive to consumers.

Public Detriment

(i) **Supanews Franchisees**

Supanews considers that there is no material public detriment. The restrictions that prevent the franchisee from determining whether or not to operate a lottery business and prohibit the franchisee from dealing with the Lottery Agreement other than as an integral part of the Supanews Franchise are not commercially prejudicial to the franchisee. The franchisee is provided with a business with a detailed operating format which includes the Lottery Agreement.

(ii) **Consumers**

There is no public detriment to consumers as the proposed structure does not create a monopoly over the lottery agencies and the large numbers of lottery agencies throughout New South Wales, even in smaller regional areas, provide consumers with the option of purchasing the Lottery Products from other lottery agents.

It is noteworthy that the Lottery Agreement does not provide a territorial restriction and therefore additional franchisees may be established within the vicinity of the franchisee's premises.

The following statistics, provided by NSW Lotteries to Supanews on 18 November 2003, demonstrate the high volume of both

newsagencies and lottery agencies and the competitive nature of the relevant markets in New South Wales:

- (A) total number of lottery agencies: approx. 1600
- (B) total number of lottery agencies which also operate newsagency businesses: approx. 1200

Conclusion

Supanews contends that the public benefit resulting from the proposed conduct outweighs any public detriment caused by the conduct.

3. (a) Class or classes of persons to which the conduct relates

Supanews franchisees

(b) Number of those persons -

(i) At present time

There are currently no franchisees.

(ii) Estimated within the next year

15

(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and address

Not applicable.

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice

Stephen Giles, c/-Deacons, Level 24, 385 Bourke Street, Melbourne, Victoria 3000

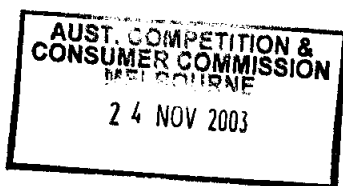
Dated *November 24* 2003

Signed by/on behalf of the applicant

.....
(Signature)

.....
(Full name)

.....
(Description)



DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the 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. Where particulars of a condition or of a reason of the type referred to in sub-section 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 furnished 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 engaging 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 sub-section 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 of the period prescribed for the purposes of sub-section 93(7A) of the Act (the "prescribed period") unless the Commission gives a notice under sub-section 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 sub-section 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 sub-section 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 sub-section 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.

Regulation 9

FORM G

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 93(1)

EXCLUSIVE DEALING

NOTIFICATION

To the Australian Competition & Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (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 proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICE AT END OF FORM)

1. (a) Name of person giving notice

Coffee Central Australia Pty Ltd ACN 101 915 333. However, it is intended that the name be changed to Supanews Franchising Pty Ltd, subject to the availability of the name ("**Supanews**").

(b) Short description of business carried on by that person

Supanews intends to operate a business as franchisor to a network of franchisees which will operate retail businesses involving the sale of newspapers, magazines, stationery, greeting cards, books, phone cards, public transport cards, cigarettes, confectionary, soft drinks and other associated products ("**Products**") to customers using the business system, image, trade marks and other intellectual property of Supanews ("**Supanews Franchise**").

(c) Address in Australia for service of documents on that person

c/ Stephen Giles, Deacons, Level 24, 385 Bourke Street, Melbourne, Victoria 3000

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates

The notification relates to:

- (i) the acquisition and sale of Products pursuant to the operation of a Supanews franchised business; and
- (ii) the sale and processing of lottery entries including instant lottery tickets ("**Lottery Products**") in licensed public gaming schemes ("**Lotteries**"), the promotion of the Lotteries and the payment prizes to customers pursuant to the operation a lottery franchised business.

(b) Description of the conduct or proposed conduct

Background

Related entities of Supanews currently own and operate 15 Supanews stores which are all located in Queensland (**Company Owned Stores**).

Currently, each of the Company Owned Stores:

- (i) sells the Products to customers; and
- (ii) sells and processes Lottery Products in Lotteries, pays prizes to customers and promote the Lotteries pursuant to a franchise agreement with Golden Casket Lottery Corporation Limited (ABN 27 078 785 449) ("**Golden Casket**").

The Supanews format is designed to systemise the operation of a newsagency and lottery business such that customers are provided with a consistent and relatively standard retail experience. Supanews also aims to expand its network so that members of the network can enjoy enhanced bargaining power. This is particularly important given that many of the suppliers to Supanews (ie shopping centre landlords, newspaper and publishing companies and lottery authorities) are large corporations.

Supanews does not have the capital to expand its own network as quickly as it wishes. It also wishes to have motivated owner operators running Supanews businesses. Accordingly, Supanews proposes to develop a network of Supanews franchisees throughout Australia, each operating under the Supanews brand and in accordance with the Supanews format.

Supanews proposes to provide franchisees with a detailed operating format. Supanews will locate and secure an appropriate site, typically within a major shopping centre. Supanews will then fit out the premises, secure a lottery franchise agreement, organise initial stock and ongoing supply relationships and so forth. The franchisees will then acquire the franchise and operate the business.

It is proposed that franchisees will pay to Supanews an upfront fee of between \$30,000.00 - \$50,000.00 (if the business has been trading and has some goodwill, a higher figure may apply) upon execution of the franchise agreement in return for which they:

- (i) are granted a Supanews Franchise and receive the benefits of using the established Supanews brand and system for a term of 5 years with options for 2 proposed further terms of 5 years;
- (ii) receive access to quality Products at competitive prices from both Supanews and nominated suppliers;
- (iii) receive initial training from Supanews in relation to the operation of a Supanews franchised business; and

- (iv) receive ongoing assistance and support from Supanews in relation to the operation of a Supanews franchised business.

Proposed conduct

The conduct to which this notification specifically relates is the proposed requirement that, as a condition of the franchise with Supanews, Supanews franchisees each enter into a lottery franchise agreement with Golden Casket ("**Lottery Agreement**") to sell and process Lottery Products in Lotteries, pay prizes to customers and promote the Lotteries using the system, image and other intellectual property of Golden Casket ("**Lottery Franchise**").

The Lottery Agreement, prescribed by Golden Casket, is prepared in accordance with the *Lotteries Act 1997* (Qld) and the *Lotteries Regulation 1997* (Qld). The Lottery Franchise is non-exclusive and does not prescribe an exclusive territory. Under the Lottery Agreement, the franchisee is required to:

- (i) comply with the systems and standards prescribed by Golden Casket; and
- (ii) sell the Lottery Products to customers at prices specified by Golden Casket; and
- (iii) pay prizes to customers at such amounts specified by Golden Casket.

It is not legally possible for Supanews to take the Lottery Franchise from Golden Casket and sub-franchise it to the Supanews franchisee. The Supanews franchisee must for legal and practical purposes hold the Lottery Agreement in its name.

The existence of a lottery element is a critical part of the Supanews system and format. Therefore, Supanews proposes to only grant Supanews Franchises to franchisees pursuant to a franchise agreement on the condition that they each enter into a Lottery Agreement. Further, Supanews intends to impose restrictions preventing the Supanews franchisee from transferring or dealing with the Lottery Agreement except as an integral part of the Supanews Franchise.

Supanews proposes to charge a royalty on the Supanews franchisee's income derived from the commission earned by the franchisee from the sales of items such as the Lottery Products, public transport cards and phone cards.

Trade Practices Act: Exclusive Dealing

Section 47 of the *Trade Practices Act 1974* (Cth) ("**Act**") prohibits anti-competitive dealing and outlines a number of proscribed practices which amount to exclusive dealing.

Section 47(6) prohibits third line forcing which arises when a product or service is offered on the condition that the purchaser also acquires goods or services from a specified third person or class of third persons.

The proposed conduct outlined above arguably falls within section 47(6) as Supanews is proposing to grant Supanews Franchises to franchisees on the condition that they enter into a Lottery Agreement.

However, Supanews maintains that the lottery arrangement is an integral part of the Supanews format rather than a separate business. The premises will carry Supanews branding and layout and Supanews systems will apply. Supanews also contends that the proposed conduct will have a negligible effect on competition within the relevant markets.

Section 93 of the Act deals with the procedure by which corporations are entitled to obtain statutory protection in relation to exclusive dealing conduct which may otherwise contravene the prohibition in section 47.

In order for the immunity to be revoked, the Australian Competition and Consumer Commission ("**Commission**"), the Commission must be satisfied that the likely benefit to the public will not outweigh the likely detriment to the public as specified in section 93(3A) of the Act.

Identification of the market

The markets can be reasonably identified as:

- (i) the broad retail market for the sale of newspapers, magazines, stationery, greeting cards, books, phone cards, public transport cards, cigarettes, confectionary, soft drinks and other associated products;
- (ii) the retail market for the sale of each of the above Products in isolation; and
- (ii) the retail market for the sale of Lottery Products.

Each of the above markets is characterised by a large number of participants at retail level. Importantly, the suppliers in the market are often large corporations, such as shopping centre landlords, newspaper and publishing groups, greeting card companies, lottery authorities etc). Convenience stores run by large chains and by oil companies have taken significant market share and the major supermarket chains are also active in these markets.

Public Benefit

The proposed conduct is likely to have a public benefit by fostering competition with other retailers, such as convenience store chains, supermarkets, oil companies and other newsagencies. The combination of a lottery agency combined with a newsagency is a widespread business model and the proposed conduct would allow the Supanews franchisees to compete with such entities within the relevant markets.

The proposed structure may also assist Supanews franchisees in being able to deal more effectively with the large suppliers noted above.

The proposed conduct is likely to have a further benefit to Supanews franchisees by:

- (i) providing the franchisee with an additional revenue stream;
- (ii) encouraging higher volumes of traffic flow through the store which in turn generates an increase in the sales of Products, particularly those "impulse items" which form part of the product ranges; and
- (iii) developing a mutually beneficial relationship between the Supanews and lottery franchised businesses which creates a larger and more robust investment that:
 - (A) offers a broad range of goods and services;
 - (B) is able to secure prominent premises in large shopping centres or busy locations in shopping districts; and
 - (C) is attractive to consumers.

Public Detriment

- (i) Supanews Franchisees

Supanews considers that there is no material public detriment. The restrictions that prevent the franchisee from determining whether or not to operate a lottery business and prohibit the franchisee from dealing with the Lottery Agreement other than as an integral part of the Supanews Franchise are not commercially prejudicial to the franchisee. The franchisee is provided with a business with a detailed operating format which includes the Lottery Agreement.

- (ii) Consumers

There is no public detriment to consumers as the proposed structure does not create a monopoly over the lottery agencies and the large numbers of lottery agencies throughout Queensland, even in smaller regional areas, provide consumers with the option of purchasing the Lottery Products from other lottery agents.

It is noteworthy that the Lottery Agreement does not provide a territorial restriction and therefore additional franchisees may be established within the vicinity of the franchisee's premises.

The following statistics, provided by Golden Casket in its disclosure document for franchisees or prospective franchisees dated 29 October 2002 (as required by the Franchising Code of Conduct), demonstrate the high volume of both newsagencies and lottery agencies and the competitive nature of the relevant markets in Queensland:

- (A) total number of lottery agencies: approx. 1070
- (B) total number of lottery agencies which also operate newsagency businesses: approx. 947

Conclusion

Supanews contends that the public benefit resulting from the proposed conduct outweighs any public detriment caused by the conduct.

3. (a) Class or classes of persons to which the conduct relates

Supanews franchisees

(b) Number of those persons -

(i) At present time

There are currently no franchisees.

(ii) Estimated within the next year

15

(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and address

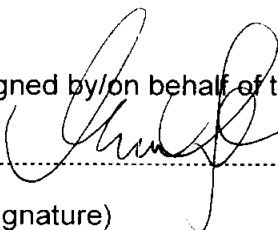
Not applicable.

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice

Stephen Giles, c/-Deacons, Level 24, 385 Bourke Street, Melbourne, Victoria 3000

Dated *November 24*, 2003

Signed by/on behalf of the applicant



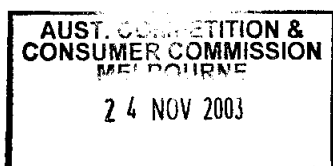
(Signature)

STEPHEN GILES

(Full name)

PARTNER - DEACONS

(Description)



DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the 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. Where particulars of a condition or of a reason of the type referred to in sub-section 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 furnished 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 engaging 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 sub-section 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 of the period prescribed for the purposes of sub-section 93(7A) of the Act (the "prescribed period") unless the Commission gives a notice under sub-section 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 sub-section 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 sub-section 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 sub-section 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.