



**Australian  
Competition &  
Consumer  
Commission**

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Our Ref: C2005/870  
Contact Officer: Sarah McCarthy  
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27 June 2005

Front Page Kosher Caterers  
C/- Mr Mark Friedgut  
Senior Associate  
Freehills  
MLC Centre, Martin Place  
SYDNEY NSW 2000

Dear Mr Friedgut

**Exclusive Dealing Notification lodged by NSW Kashrut Authority Inc (N91747)**

I refer to recent correspondence between yourself and Sarah McCarthy of the ACCC with regard to the notification from the NSW Kashrut Authority Inc concerning conduct that may raise concerns under the exclusive dealing provisions of the *Trade Practices Act 1974* (the Act).

As you are aware, the NSW Kashrut Authority Inc has notified the ACCC of its proposal to provide certification to suppliers of kosher meat products for consumption at Jewish public events and kosher restaurants in New South Wales, on condition that the meat is acquired from sources supervised and/or approved by the NSW Kashrut Authority Inc. I understand that you intend to provide a submission to the ACCC, on behalf of your client, in relation to this notification.

As you have discussed with Sarah McCarthy, the ACCC is responsible for administering the Act. The competition provisions of the Act prohibit certain forms of anti-competitive conduct or arrangements. Section 47 of the Act prohibits conduct known as exclusive dealing where it has the purpose or effect of substantially lessening competition. Generally speaking, exclusive dealing involves one business trading with another, imposing restrictions on the other's freedom to choose with whom, or in what, it deals.

Sub-sections 47(6) and 47(7) of the Act specifically prohibit conduct known as 'third line forcing' which involves the supply of goods or services on condition that the customer also acquire goods or services from a third party. Third line forcing conduct is currently a per se provision, meaning that it amounts to a contravention of the Act regardless of its effect on competition. The conduct notified by the NSW Kashrut Authority Inc to the ACCC is third line forcing conduct.



### *Notification process*

While the Act prohibits certain forms of anti-competitive conduct, it does, however recognise that compliance with the competition provisions of the Act may not always be in the public interest. It therefore allows immunity to be afforded for conduct that falls under some of the provisions of the Act, in certain circumstances.

One way that businesses may obtain immunity for conduct that might be at risk of breaching the exclusive dealing provisions of the Act is to lodge a notification with the ACCC. Once a notification has been lodged with the ACCC, immunity for the notified conduct commences immediately (or in the case of third-line forcing, after 14 days).

The ACCC may proceed to revoke third line forcing immunity where it is satisfied that the likely benefit to the public from the proposed conduct will not outweigh the likely detriment to the public from the proposed conduct.

### *Third Line Forcing notification lodged by the NSW Kashrut Authority Inc*

As you are aware, on 24 May 2005, the NSW Kashrut Authority Inc lodged a third line forcing notification with the ACCC. The conduct is described in the notification as:

“Provision of certification of kosher meat products for consumption at Jewish public events and kosher restaurants in New South Wales, where the meat is approved under the religious supervision of the New South Wales Kashrut Authority Inc from sources supervised and/or approved by the NSW Kashrut Authority.”

The NSW Kashrut Authority Inc states that it will make its Supervisors and *Shochtim* (ritual slaughterers) available to prepare meat products at any abattoir, butchery or meat facility in Australia, provided that the meat facility is prepared to accommodate the Kashrut supervisors and *Shochtim*, and where such a request is within the reasonable constraints of the Kashrut Authority Inc.

New producers entering the market would be required to contribute to the normal fixed NSW Kashrut Authority Inc *Shechita* (ritual slaughter) charges.

The NSW Kashrut Authority Inc has notified the ACCC that approved sources of kosher meat products presently include:

- Eilat at Hadassah
- M&M Poultry
- M&M Meats

The NSW Kashrut Authority Inc notification and supporting submission is available on the ACCC public register and on the ACCC website at:

<http://www.accc.gov.au/content/index.phtml/itemId/687289>

The NSW Kashrut Authority Inc's view is that the proposed conduct does not breach the provisions of the Act.

*Request for Submissions*

To assist the ACCC in its consideration of this notification it would be helpful to obtain your client's views on the likely public benefits and detriments flowing from the notified conduct.

The ACCC asks for submissions to be factual and in writing so they can be made publicly available in order to ensure that parties interested in the matter (including the notifying party) have access to issues raised about the notified conduct. Submissions are placed on a public register for this purpose.

Persons lodging a submission with the Commission may request that information included in the submission be treated as confidential and not placed on the public register. If confidentiality is granted in respect of information the Commission may take it into account, even though not publicly available. Guidelines for seeking confidentiality are attached.

If you wish to lodge a submission on behalf of your client, please address your submission to:

The General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
P O Box 1199  
DICKSON ACT 2602

Submissions can also be lodged by e-mail to: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

Please ensure that your client's submission reaches the Commission by **cob 15 July 2005**.

Should you have any queries or if you wish to discuss any aspect of this matter please contact Sarah McCarthy on (02) 6243 1235.

A copy of this letter will be placed on the public register.

Yours sincerely



Isabelle Arnaud  
Director  
Adjudication Branch

## *GUIDELINES FOR CONFIDENTIALITY CLAIMS*

The process whereby the ACCC assesses applications for authorisation or notification is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the ACCC to maintain a public register in respect of authorisation and notification applications.

Applicants and interested parties can request that a submission, or a part of a submission, be excluded from the public register.

The ACCC is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or processes;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

However, even if a document does not meet these technical requirements, the ACCC may still grant confidentiality where, in the ACCC's view, it is desirable to do so.

The ACCC also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The ACCC expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the ACCC:

- (a) where the request is that a whole document be excluded, the words "**Restriction of Publication Claimed**" should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words "**Restriction of Publication of Part Claimed**" should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

Applicants, as a matter of course, should remove headers claiming "confidential communication" from all Emails and otherwise, unless they have a particular piece of information that they justify to the ACCC deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

If the ACCC denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the ACCC will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the ACCC will return the original material and destroy all associated copies. The ACCC will not consider this material when reaching its decision.

If the ACCC does not receive a response within the specified period, the original material will be placed on the public register.

**Information or documents granted confidentiality may be used by the ACCC pursuant to its powers generally under the *Trade Practices Act*.**