



**Australian
Competition &
Consumer
Commission**

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Our Ref: N50196-N50199 and N92676
Contact Officer: Nadia Cooke
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17 November 2006

Nigel Rooney
PO Box 12029
George Street
BRISBANE QLD 4003

Dear Mr Rooney

Exclusive dealing notifications N50196-N50199 and N92676

I refer to the above exclusive dealing notifications lodged with the Australian Competition and Consumer Commission (ACCC) by Seal-A-Fridge (SAF), Nigel Rooney and Nigel and Linda Rooney. The notifications have been placed on the ACCC's public register and website.

You have described the third line forcing conduct in notifications N50197, N50198, N50199 and N92676 as:

requirement for Franchisees to purchase supplies from nominated approved suppliers.

You have described the exclusive dealing conduct other than third line forcing in N50196 as:

requirement for Franchisees to purchase supplies from the Franchisor (Seal-A-Fridge Pty Ltd).

The 'supplies' the subject of the notifications are defined as goods for the manufacture of refrigeration door seals, those being PVC extrusion and flexible magnet products.



Background

As you are aware, lodging an exclusive dealing notification with the ACCC provides the notifying party with immunity from legal action under the *Trade Practices Act 1974*.

The ACCC may act to remove the immunity afforded by exclusive dealing notifications in certain circumstances.

The ACCC will move to revoke a *third line forcing* notification if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

The ACCC will move to revoke a notification for *exclusive dealing other than third line forcing* if it is satisfied that:

in all the circumstances the conduct would, or would be likely to, result in a substantial lessening of competition

the conduct has not resulted or is not likely to result in a benefit to the public or the benefit to the public would not outweigh the detriment to the public constituted by any lessening of competition resulting from the conduct.

To assist the ACCC in assessing the above notifications, we require further information in respect of the notified conduct. It would be appreciated if you could provide the following information by **Friday 1 December 2006**.

Information requested

Under the notified conduct, it is proposed that PVC extrusion and flexible magnet products used for the manufacture of refrigeration door seals may only be obtained by franchisees from SAF or nominated approved suppliers.

Supply of goods by SAF

1. Please indicate whether SAF manufactures PVC extrusion and/or flexible magnet products.
 - a. If SAF does not manufacture these products, please identify the company or companies from which SAF acquires the relevant products.
2. Please outline the nature of any supply arrangements between SAF and any company or companies listed in question 1a.
3. Please identify the location or locations from which SAF supplies PVC extrusion and flexible magnet products.
4. Please comment on the costs of transporting the relevant goods on franchisees established outside the area or areas in which SAF operates.

Nominated approved suppliers

The businesses currently approved as suppliers are not named in the notifications. The identity of the approved suppliers is an important aspect of third line forcing conduct.

5. Please provide a list of current nominated approved suppliers of:
 - a. PVC extrusion
 - b. flexible magnet products.
6. Please identify the location of each nominated approved supplier.
7. Please comment on the costs of transporting the relevant goods on franchisees established outside the area or areas in which nominated approved suppliers operate.

Your submissions in support of the notifications state that you have set minimum quality standards for products used in the manufacture of refrigeration door seals.

8. Please identify the minimum quality standards that must be met for a supplier to be a nominated approved supplier of PVC extrusion and flexible magnetic products.
9. Please explain any processes that are in place for suppliers seeking to become a nominated approved supplier.

Impact of the arrangements

You also state in your supporting submissions that the notified conduct will result in lower priced, higher quality products for franchisees.

10. Please provide any available evidence regarding this claimed benefit to the public, including:
 - a. any available price comparisons between the products from:
 - i. SAF and other suppliers
 - ii. the nominated approved suppliers and other suppliers
 - b. any available quality comparisons between the products from:
 - i. SAF and other suppliers
 - ii. the nominated approved suppliers and other suppliers.

You have indicated that in the event SAF or nominated approved suppliers are unable to provide supplies to franchisees, the franchisor will provide written consent to enable franchisees to purchase supplies from other suppliers.

11. Please estimate what proportion of all PVC extrusion and flexible magnet products required by franchisees has been, and will be, available from:
 - a. SAF
 - b. current nominated approved suppliers.

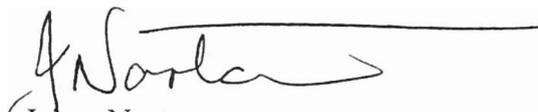
12. Please explain the process by which franchisees may obtain written consent to source the products the subject of the notification from suppliers other than SAF or the nominated approved suppliers.
13. To the extent possible, please list the major wholesale suppliers of PVC extrusion and flexible magnet products in Australia.
14. Please outline any procedures followed if a franchisee fails to purchase PVC extrusion or flexible magnet products from SAF or the nominated approved suppliers.
15. To the extent that franchisees have not been required to deal exclusively with SAF or nominated approved suppliers in acquiring PVC extrusion and flexible magnet products in the past, please explain:
 - a. why this requirement was introduced
 - b. how and when franchisees were notified of this requirement.

Public register

As you are aware, the ACCC is generally required to place documents provided to it in relation to a notification on the ACCC's public register. If you wish to request that any information in your response to this letter be excluded from the public register by reason of its confidential nature, please refer to the attached guidelines.

This letter has been placed upon the ACCC's public register and website. If you wish to discuss any aspect of this matter further, please contact Nadia Cooke on (03) 9290 1478 or at nadia.cooke@acc.gov.au.

Yours sincerely



Jaime Norton
A/g Director
Adjudication Branch



Australian
Competition &
Consumer
Commission

GUIDELINES FOR CONFIDENTIALITY CLAIMS for authorisation and notification processes

Public process

The Australian Competition and Consumer Commission is responsible for assessing authorisation and notification applications. Successful applicants are protected from legal action under specific competition provisions of the *Trade Practices Act 1974*. The provision of such legal protection is not taken lightly. The ACCC's assessment of authorisation and notification applications is therefore conducted openly and transparently with extensive consultation.

Under the Trade Practices Act the ACCC must maintain public registers of information provided in authorisation and notification processes. The ACCC may place information from its public registers on the ACCC website.

Can information be excluded from the public registers?

The Trade Practices Act allows for applicants and interested parties providing information in relation to an authorisation or notification application to ask that the information, or parts of it, be excluded from the relevant public register.

Under the Trade Practices Act, when a claim for confidentiality is made, the ACCC must exclude information from the public registers if the information contains the details of:

- a secret formula or process
- the cash consideration offered for the acquisition of shares or assets
- the current manufacturing, producing or marketing costs of goods or services.

The ACCC also has the discretion, under the Trade Practices Act, to exclude material from the public registers if it is satisfied that it is desirable to do so, either because of the confidential nature of the material or for other reasons, such as the ACCC deciding there may be certain sensitivities.

How to claim confidentiality

The Trade Practices Regulations outline what parties need to do if they want information provided to be treated confidentially.

The regulations state that if a request for confidentiality is made for a whole document or parts of a document, the words 'Restriction of Publication Claimed' should appear in red writing near the top of each page. If a request is made for confidentiality for part of the document the regulations state that the words 'Restriction of Publication of Part claimed' should appear in red near the top of the first page and the part of the document for which confidentiality is claimed should also be clearly marked in red. If the confidentiality claim is for a document longer than five pages, a description of the whereabouts of the parts for which confidentiality is claimed should be provided.

The ACCC asks that you provide a confidential copy of the document, and a non-confidential version with confidential material omitted.

You should remove headers claiming 'confidential communication' from documents (for example, emails and facsimiles) unless they contain information that you want excluded from the public register. If confidentiality is not requested and the header cannot be removed, parties should clearly state at the beginning of correspondence provided to the ACCC that confidentiality is not requested.

Applicants and interested parties requesting confidentiality must do so when they submit the information to the ACCC. Reasons must be provided in support of the request for confidentiality.

How does the ACCC assess confidentiality claims?

Information for which confidentiality is claimed will be excluded from the public register while the ACCC assesses the request.

The ACCC will try to respond to confidentiality claims within three to five business days. The ACCC is generally able to respond much faster if confidentiality claims are limited to information that is genuinely confidential, if confidential information is clearly marked and if claims are accompanied by a detailed explanation of why confidentiality is being sought.

When the ACCC grants a request for confidentiality the information will be excluded from the relevant public register. Although information for which confidentiality is granted will not be placed on the public register, it may still be used by the ACCC under its powers under the Trade Practices Act. Information withheld from the public register may still be accessed through other legal processes such as under the *Freedom of Information Act 1982*.

If the ACCC denies a confidentiality request because the claim is not accompanied by sufficient justification or because it considers that the information is not confidential in nature, the ACCC will inform the party making the claim of its decision. If the ACCC denies a confidentiality request, the information for which confidentiality was claimed will be considered as withdrawn from the ACCC's consideration—unless the party advises the ACCC that it wishes to withdraw or amend the confidentiality claim. As a general rule, the ACCC will allow the party one to two business days to respond.

If a party chooses to withdraw the information subject to a confidentiality claim, the ACCC will not use the information in its decision-making processes.

Applicants should be aware that the ACCC will not accept confidentiality claims from applicants for information that is necessary to identify the conduct or arrangements for which protection is sought.

Checklist for confidentiality claims

- Have you identified the specific sections of the document to which the claim relates?
- Have you outlined reasons for requesting confidentiality?
- Have you provided a copy of the whole document with the confidential sections identified?
- Have you provided a non-confidential version of the document with the confidential information omitted?
- Are you aware that the confidentiality claim must be submitted at the time the information is provided to the ACCC?