

Form G

Commonwealth of Australia
Trade Practices Act 1974 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

1. Applicant

(a) Name of person giving notice:

PANTALEO INVESTMENTS PTY LTD ACN 006 910 274 and F. & A. N93228
NANIA PTY LTD ACN 005 759 286 both of 192 Mahoneys Road, N93229
Thomastown, Victoria ("La Porchetta").

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

La Porchetta is in the business of granting La Porchetta franchisees the right to operate a La Porchetta business ("Franchised Business") on the terms set out in the franchise agreement between the parties. The Franchised Business involves the sale of pastas, pizzas, meat, chicken, seafood, deserts and hot and cold beverages and other related products ("Products") by La Porchetta franchisees to customers using the La Porchetta system, name and logo.

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

C/- Attention: Robert Alderuccio, Robert James Lawyers, Level 10,
200 Queen Street, Melbourne, Victoria 3000.

2. Notified arrangement

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

This notice relates to the provision of certain services to La Porchetta franchisees.

(b) Description of the conduct or proposed conduct:

See Annexure "A" (parts 1 & 2).

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

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

Persons who are franchisees or will become franchisees of La Porchetta and who are granted the right to operate Franchised Businesses on the terms set out in the franchise agreement between the parties.

- (b) Number of those persons:
 - (i) At present time:
80
 - (ii) Estimated within the next year:
6
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:
Not applicable.

4. Public benefit claims

- (a) Arguments in support of notification:
See Annexure "A" (part 3).
- (b) Facts and evidence relied upon in support of these claims:
See Annexure "A" (part 3).

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

See Annexure "A" (part 4).

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:
See Annexure "A" (part 5).
- (b) Facts and evidence relevant to these detriments:
See Annexure "A" (part 5).

7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Robert Alderuccio
Partner
Robert James Lawyers
Level 10
200 Queen Street
MELBOURNE VIC 3000

Dated 26 / 11 / 20 07 .

Signed by/on behalf of the applicant



.....
(Signature)

ROBERT ALDERUCCIO

.....
(Full Name)

ROBERT JAMES LAWYERS

.....
(Organisation)

PARTNER

.....
(Position in Organisation)

ANNEXURE "A"

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

1 DESCRIPTION OF THE CONDUCT OR PROPOSED CONDUCT:

(Refer to Section 2(b) of Form G)

- 1.1 The conduct to which this notice relates is the requirement for La Porchetta franchisees to acquire certain services, including but not limited to, food safety consultancy services, industrial relations consultancy services and IT services ("Services"), specified by La Porchetta from service providers who have been approved by La Porchetta ("Approved Suppliers").
- 1.2 La Porchetta franchises will be granted to La Porchetta franchisees on the condition, among other things, that they agree to:
 - 1.2.1 use certain Services in the conduct of the Franchised Business which are required by La Porchetta; and
 - 1.2.2 acquire those Services specified by La Porchetta from Approved Suppliers.
- 1.3 In addition, La Porchetta may specify that certain Services are to be acquired from La Porchetta.
- 1.4 La Porchetta franchisees may acquire any other services from the service provider(s) of their choice.
- 1.5 If at any time either La Porchetta's Approved Supplier or La Porchetta is unable to provide the Services, La Porchetta franchisees may acquire those Services from an alternative service provider until La Porchetta or La Porchetta's Approved Supplier is again able to provide the Services.
- 1.6 Details of:
 - 1.6.1 Services which are required by La Porchetta;
 - 1.6.2 those Services which La Porchetta franchisees are required to acquire from La Porchetta's Approved Suppliers; and
 - 1.6.3 the Approved Suppliers,will be set out in an operations manual to be provided by La Porchetta to La Porchetta franchisees.

2 PURPOSE OF THE CONDUCT OR PROPOSED CONDUCT:

- 2.1 The purpose of the proposed conduct referred to in clause 1.1 is not to lessen competition in the relevant market or markets but to:

- 2.1.1 ensure consistency and quality in the Services provided to the Franchised Business and that Services provided to the Franchised Business meet La Porchetta's standards. The quality of Services can vary significantly depending on the service provider;
- 2.1.2 ensure consistency in customer experience regardless of which Franchised Business they attend. This gives customers certainty;
- 2.1.3 protect the value and reputation of La Porchetta and the La Porchetta system through consistency;
- 2.1.4 do its best to ensure that La Porchetta franchisees are able to acquire the Services at competitive prices through the power of bulk buying, making La Porchetta franchisees more competitive in the market.

3 PUBLIC BENEFIT CLAIMS

(Refer to Section 4 of Form G)

- 3.1 La Porchetta submits that the proposed conduct will have considerable public benefit.
- 3.2 The La Porchetta franchisees will operate in a number of competitive retail markets. The La Porchetta franchisees' businesses will be located in metropolitan and regional areas throughout Australia. The existence of the Franchised Businesses in the market place will increase competition increasing the likelihood of lower prices for end consumers.
- 3.3 Small independent businesses do not have access to the benefits of larger organisations such as buying power, market presence, group marketing. This puts them at a significant disadvantage.
- 3.4 La Porchetta franchisees gain a number of benefits from being part of the La Porchetta system:

3.4.1 High Quality Services and Certainty of Supply

La Porchetta has considerable experience in sourcing products and Services required to operate in the food industry. La Porchetta will use that experience to source Services which meet La Porchetta's high standards. La Porchetta will also approve only those service providers who, based on La Porchetta's investigations, are able to provide the frequency of Services required by La Porchetta franchisees at competitive prices.

3.4.2 Better Buying Power

La Porchetta franchisees by themselves would have little or no ability to negotiate with Approved Suppliers the types of prices for Services which La Porchetta is able to negotiate. If La Porchetta franchisees negotiated independently with any of the Approved Suppliers, they

would in all likelihood have to pay a higher price for the Services. In some cases, La Porchetta franchisees may not even have the opportunity to acquire Services at all from a particular service provider if they were to approach them independently.

3.4.3 Increased Sales

By being part of the La Porchetta system, La Porchetta franchisees have market presence and group marketing power which they would otherwise not have. By La Porchetta franchisees all branding their businesses using La Porchetta's name and logo, they increase customer awareness of the products that La Porchetta businesses provide. In addition, La Porchetta will undertake marketing and promotional activities on behalf of the La Porchetta group, increasing the profile of La Porchetta businesses within the relevant markets. By pooling funds, La Porchetta will be able to undertake professional advertising, marketing and promotional campaigns at a fraction of the comparative (often prohibitive) cost of individual business initiatives. The branding of the businesses and the group marketing will draw more customers to La Porchetta franchisees' businesses than if they were independents, resulting in increased sales.

3.4.4 Increased Profitability

By being part of the La Porchetta system, La Porchetta franchisees will be able to acquire Services at much more competitive prices than if they were independents. This improves the profitability of La Porchetta franchisees' businesses and helps them achieve the economies of scale normally associated with larger organisations.

3.4.5 Improved Management and Operating Skills

La Porchetta has considerable experience in the retail food industry. By sharing its experience with La Porchetta franchisees and providing them with systems and operating procedures to follow, La Porchetta provides La Porchetta franchisees with significant advantages normally associated with big business management and operating techniques. This encourages more efficient retail practices within La Porchetta franchisees' businesses, increasing their competitiveness within the relevant markets.

3.4.6 Improved Productivity through Reduction in Business Administration

La Porchetta will provide La Porchetta franchisees with advice and guidance on the conduct of the Franchised Business, including administrative and general operating procedures for the proper conduct of the Franchised Business. This encourages more efficient practices within La Porchetta franchisees' businesses, increasing productivity.

3.5 La Porchetta submits that, as a consequence of the benefits provided by La

Porchetta to La Porchetta franchisees and the benefits of the proposed conduct, consumers in the relevant retail markets will benefit.

- 3.6 The increased competitiveness and viability of La Porchetta franchisees enables them to compete with larger businesses, resulting in greater competition at the retail level and better prices and increased service levels for end consumers. If independent businesses such as those operated by La Porchetta franchisees were to be pushed out of the marketplace the major competitors would have greater market share enabling them to increase the prices of products to the public.
- 3.7 There is also evidence to suggest that the majority of profits earned by La Porchetta franchisees are spent locally, resulting in greater demand for products and services in the areas in which La Porchetta franchisees operate and increasing competition in those areas. This is particularly important in regional areas.
- 3.8 There are also a number of benefits to be gained by the Approved Suppliers from the proposed conduct. By being appointed as an Approved Supplier, the supplier will have some degree of certainty as to frequency of Services La Porchetta franchisees will require. This will give them a greater ability to plan for their businesses and may encourage them to invest in their businesses. The increased volumes will also result in greater economies of scale and efficiencies within the Approved Suppliers' businesses. This in turn enables the Approved Suppliers to provide the Services to La Porchetta franchisees at more competitive prices, increasing competition and resulting in lower prices to end consumers.

4 MARKET DEFINITION

(Refer to Section 5 of Form G)

- 4.1 La Porchetta submits that the relevant market is the market for the provision of the Services in Australia.
- 4.2 Based on investigations made by La Porchetta, this market is highly competitive and there are many suppliers and recipients of the Services in the relevant market.
- 4.3 La Porchetta submits that there are no restrictions including of a geographical or legal nature that affect the provision of the Services within the relevant market.

5 PUBLIC DETRIMENTS

(Refer to Section 6 of Form G)

- 5.1 La Porchetta submits that there is no public detriment that results from the proposed conduct.
- 5.2 La Porchetta submits that the proposed conduct will not lessen competition in the services market.

- 5.3 The proposed conduct will not prevent La Porchetta franchisees from dealing with other service providers:
 - 5.3.1 La Porchetta franchisees are independent operators and except for those Services which La Porchetta specifies must be acquired from either La Porchetta or its Approved Suppliers, La Porchetta franchisees may acquire Services from the service provider(s) of their choice;
 - 5.3.2 La Porchetta may appoint different service providers as Approved Suppliers from time to time. In determining whether to appoint a service provider as an Approved Supplier, La Porchetta will consider such things as quality of Services, ability to provide the frequency of Services required and price.
- 5.4 Approved Suppliers will be able to contract with competitors of La Porchetta franchisees.
- 5.5 La Porchetta will not be limited in its dealings with competitors of the Approved Suppliers.
- 5.6 To the extent that the proposed conduct contravenes section 47 of the Act, La Porchetta submits that the public benefits resulting from the proposed conduct outweigh any public detriment caused by the proposed conduct.