



**Australian  
Competition &  
Consumer  
Commission**

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Our Ref: C2006/1981  
Contact Officer: Nadia Cooke  
Contact Phone: (03) 9290 1478

5 February 2007

Mr Nigel Rooney  
PO Box 12029  
George Street  
Brisbane QLD 4003

Dear Mr Rooney

**Exclusive dealing notifications N50196-N50199 and N92676  
- interested party submissions and request for further information**

I refer to the above exclusive dealing notifications lodged by Seal-A-Fridge Pty Ltd (SAF) and others with the Australian Competition and Consumer Commission (ACCC) in October 2006.

**Interested party submissions**

As you are aware, on 21 December 2006 the ACCC wrote to interested parties seeking submissions in relation to the notifications.

A copy of each of the public submissions received by the ACCC is attached. These submissions are also available from the ACCC website, [www.accc.gov.au](http://www.accc.gov.au).

**Request for further information**

In addition to commenting on any issues raised in interested party submissions, it would be appreciated if you could provide a written response to the following questions by **Friday 23 February 2007**.



### *SAF products*

Your submission to the ACCC dated 11 December (page 1) indicates that SAF currently acquires PVC extrusion and flexible magnet products from Patrick Products, RBM Plastic Extrusions Pty Ltd (RBM), Austwide Plastic Pty Ltd (Austwide) and Electrolux. Document 6 attached to your submission sets out the profile code and price list of products currently available from SAF.

1. Please identify for each profile listed in Document 6 the supplier from which the product is currently sourced by SAF.
  - a. Does SAF propose to continue to source products from these suppliers under the notified conduct?
2. Does SAF expect to acquire the products listed in Document 6 from any other suppliers under the notified conduct?
  - a. If yes, please identify the likely supplier or suppliers of the products.
3. In addition to those listed in Document 6, please identify any products that SAF expects to require franchisees to purchase from it under the notified conduct.
  - a. For each of these products, please identify the likely supplier or suppliers of the product.
4. For each product identified in response to questions 1, 2 and 3, please identify:
  - a. which company franchisees will place purchase orders with;
  - b. which company or companies franchisees will be invoiced by; and
  - c. which company or companies will receive payment for the goods from the franchisees.
5. Please advise whether title of these products will pass to SAF and then to the franchisees or whether it will pass direct to the franchisees.
6. Please advise whether SAF intends to apply GST to the supply of these products to franchisees.

### *Freight of SAF products*

You indicated in your response (page 2) that SAF distributes supplies from Burleigh Heads on the Gold Coast Queensland.

7. Please provide the address from which SAF distributes supplies.
8. Does SAF own or have control over this address?

Your submission of 11 December 2006 (page 3) identifies that SAF has negotiated transportation rates with NQX.

9. Under the proposed arrangements, who will be responsible for arranging transportation of goods, SAF or individual franchisees?

I note your submission (page 2) indicates that franchisees bear the costs of cartage, freight and insurance involved in the delivery of supplies.

10. Will franchisees be invoiced for transportation by NQX or SAF?
11. Will franchisees be able to arrange transportation with companies other than NQX?

*Contractual arrangements*

12. Please provide details of, and where available copies of, the current or proposed contractual arrangements between:
  - a. SAF and the suppliers referred to in response to questions 1, 2 and 3; and
  - b. SAF and NQX.

*Other nominated approved suppliers*

In your submission of 11 December 2006 (page 5), you indicate that any nominated approved supplier would be required to provide products that meet or exceed the minimum quality control standards. Details of these standards are included in Document 1 attached to the submission. Your correspondence to Seal-A-Fridge franchisees dated 13 April 2006 (provided as Document 8) indicates that SAF products meet the minimum quality standards, while Austwide Plastics' and RBM Plastic Extrusion's products do not.

13. How were SAF's minimum quality standards developed?
14. Do SAF's minimum quality standards differ from those required in Australia generally?
  - a. If yes, please explain why SAF has adopted different standards.
15. Please outline the procedures by which other suppliers may apply to become nominated approved suppliers, including:
  - a. how potential suppliers may approach SAF;
  - b. how potential suppliers prove their products meet the minimum quality standards; and
  - c. who is responsible for assessing the products against the minimum quality standards.
16. If suppliers other than SAF meet the minimum quality standards, will franchisees be able to purchase products directly from these suppliers?
17. How and when will SAF notify franchisees of any changes in nominated approved suppliers?

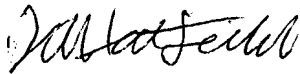
I note in your submissions in support of notifications N50196 and N50197 (received by the ACCC on 6 October 2006), you state that of the 30 franchise agreements to which the notifications apply, every franchise agreement has slight variations.

18. Do the clauses 1F, 2B, 4A, 4C, 6B and 6C appear in every franchise agreement as they appear in the Seal-A-Fridge Franchise Agreement attached to notifications N50196 and N50197?

- a. Please identify which franchises are not subject to these clauses and provide details of any variations.

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

Yours sincerely



David Hatfield  
Director  
Adjudication Branch