

Robert James Lawyers

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AUST. COMPETITION &
CONSUMER COMMISSION
MELBOURNE
- 5 DEC 2007

4 December 2007

Our Ref: CXV:ACP:SM:106514-46

Australian Competition & Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Dear Sir/Madam,

Souvlaki Hut Pty Ltd
ACCC Notification

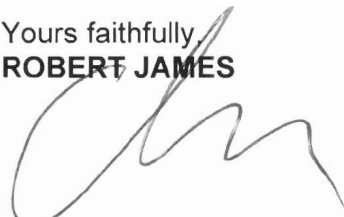
We act for the Franchisor, Souvlaki Hut Pty Ltd.

We now enclose Form G Notification of Exclusive Dealing pursuant to *Trade Practices Act 1974* duly executed together with our cheque in the sum of \$100.00 being lodging fee.

Accordingly, we look forward to receipt of confirmation that the Form has been lodged with ACCC.

Should you have any enquiries do not hesitate to contact the writer.

Yours faithfully,
ROBERT JAMES



Chris Verebes
Lawyer

Direct line: (03) 8628-2033
Email: chris@robertjames.com.au

Encl:

SM-106514-46-14-V1

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:

SOUVLAKI HUT PTY LTD ACN 113 046 932 of 19 Lambeck Drive,
Tullamarine, Victoria ("Souvlakihut") **N93238**

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

Souvlakihut is in the business of granting Souvlakihut franchisees the right to operate a Souvlakihut business ("Franchised Business") on the terms set out in the franchise agreement between the parties. The Franchised Business involves the sale of salads, meatballs, dips, chips, hot and cold beverages, meat products, meat products wrapped in pita bread with salads and/or other fillings, burgers and other related products nominated by Souvlakihut from time to time ("Products") and the provision of delivery services by the Souvlakihut franchisees to customers using the Souvlakihut system, name and logo.

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

C/- Attention: Andrea Pane, 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:

The notification relates to the acquisition of:

- Products;
- sauces, meat and meat products, pita breads, vegetables and other ingredients used in making the Products ("Ingredients")
- boxes, cartons, containers, napkins, plastic cutlery and other items of packaging and cutlery used in the Franchised Business ("Packaging"),

- such services which the Souvlakihut franchisee is required to acquire from third party service providers including computer and point of sale system software and information technology related services (“Services”), and
- machinery and equipment used in the conduct of the Franchised Business including computer hardware (“Equipment”),

by Souvlakihut franchisees for use in the Franchised Business and/or supply to customers of the Franchised Business.

(b) Description of the conduct or proposed conduct:

See Annexure “A” (parts 1 & 2).

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 Souvlakihut 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:

8

(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 addresses:

Franchisee	Address
Souvlakihut - Hillside Malliaris Corporation Pty Ltd	Shop 10, 49-69 Royal Crescent, Hillside, Victoria
Souvlakihut - Reservoir N & E Enterprises Pty Ltd	765 Gilbert Road, Reservoir, Victoria
Souvlakihut – Taylors Lakes BNM Jalloul Corp Pty Ltd	900A (Part) Old Calder Highway, Taylors Lakes, Victoria
Souvlakihut – Newport Carrington Investment Group Pty Ltd	306-308 Melbourne Road, Newport, Victoria

Souvlakihut - Templestowe ABAK Enterprises	420 Thompsons Rd, Templestowe, Victoria
Souvlakihut – Glenroy Malliaris Corporation Pty Ltd	Shop 1/830 Pascoe Vale Rd, Glenroy, Victoria
Souvlakihut – St Albans BNM Jalloul Corp Pty Ltd	31 Taylors Rd, St Albans, Victoria
Souvlakihut – Avondale Heights Carol Kantzidis and Bill Kantzidis	Shop 33A Milleara Mall Shopping Centre, Cnr Milleara Rd & Buckley Street, East Keilor, Victoria

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).

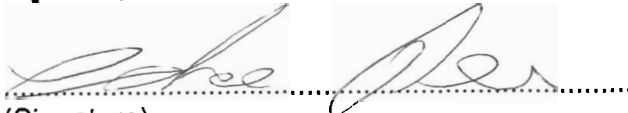
7. Further information


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

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


Dated 30 / 11 / 2007.

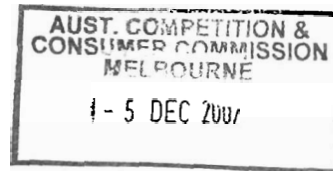
Signed by/on behalf of the applicant


.....
(Signature)


.....
(Full Name)


.....
(Organisation)


.....
(Position in Organisation)



ANNEXURE "A"

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

1 DESCRIPTION OF THE PROPOSED CONDUCT

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

1.1 The conduct to which this notification relates is the requirement for Souvlakihut franchisees to acquire:

- Products;
- sauces, meat and meat products, pita breads, vegetables and other ingredients used in making the Products ("Ingredients")
- boxes, cartons, containers, napkins, plastic cutlery and other items of packaging and cutlery used in the Franchised Business ("Packaging"),
- such services which the Souvlakihut franchisee is required to acquire from third party service providers including computer and point of sale system software and information technology related services ("Services"), and
- machinery and equipment used in the conduct of the Franchised Business including computer hardware ("Equipment"),

from third party suppliers who have been approved by Souvlakihut ("Nominated Suppliers").

1.2 Souvlakihut franchises are granted to Souvlakihut franchisees on the condition, among other things, that they agree to:

1.2.1 only use and sell Products and provide the delivery and other services in the Franchised Business which have been approved by Souvlakihut; and

1.2.2 acquire those Products, Ingredients, Packaging, Equipment and Services specified by Souvlakihut from Nominated Suppliers.

1.3 In addition, Souvlakihut may specify that certain Products, Ingredients, Packaging, Equipment and/or Services are to be acquired from Souvlakihut.

1.4 Other than those items referred to at items 2.2 and 2.3 above, Souvlakihut franchisees may buy any other Products, Ingredients, Packaging, Equipment and Services from the supplier(s) of their choice.

- 1.5 If at any time either Souvlakihut's Nominated Supplier or Souvlakihut is unable to supply the Products, Ingredients, Packaging, Equipment and/or Services, the Souvlakihut franchisees may acquire those Products, Ingredients, Packaging, Equipment and/or Services from an alternative supplier until Souvlakihut or Souvlakihut's Nominated Supplier is again able to supply the Products, Ingredients, Packaging, Equipment and/or Services.
- 1.6 Details of:
 - 1.6.1 Products, Ingredients, Packaging, Equipment and Services which have been approved by Souvlakihut;
 - 1.6.2 those Products, Ingredients, Packaging, Equipment and Services which the Souvlakihut franchisees are required to acquire from Souvlakihut or Souvlakihut's Nominated Suppliers; and
 - 1.6.3 the Nominated Suppliers,are set out in the operations manual provided by Souvlakihut to the Souvlakihut franchisees.

2 THE PURPOSE OF THE CONDUCT OR PROPOSED CONDUCT

- 2.1 The purpose of the proposed conduct referred to in item 1.1 is not to lessen competition in the relevant market or markets but to:
 - 2.1.1 ensure consistency and quality in the Products, Ingredients, Packaging, Equipment and Services used and/or sold in the Franchised Business and to ensure that the Products, Ingredients, Packaging, Equipment and Services used and/or sold in the Franchised Business meet Souvlakihut's standards. The quality of Products, Ingredients, Packaging, Equipment and Services can vary significantly depending on the source. It is important to the image of the Souvlakihut system that the Products and Packaging supplied by Souvlakihut franchisees to customers meet Souvlakihut's standards;
 - 2.1.2 ensure consistency in customer experience regardless of which Franchised Business they buy the Products from. This gives customers certainty;
 - 2.1.3 protect the value and reputation of Souvlakihut and the Souvlakihut system through the use and sale of Products, Ingredients, Packaging, Equipment and Services in the Franchised Business which are consistent with Souvlakihut's image and position in the relevant market or markets;

- 2.1.4 do its best to ensure that Souvlakihut franchisees are able to acquire the Products, Ingredients, Packaging, Equipment and Services at competitive prices through the power of bulk buying, making the Souvlakihut franchisees more competitive in the market;
- 2.1.5 ensure uniformity of the type, quality, compatibility and reliability of the Equipment used by Souvlakihut franchisees; and
- 2.1.6 ensure uniformity of the Services provided to Souvlakihut franchisees and compatibility of the computer and point of sale system software and information technology used by Souvlakihut franchisees.

3 PUBLIC BENEFIT CLAIMS

(Refer to Section 4 of Form G)

- 3.1 Souvlakihut submits that the proposed conduct has considerable public benefit.
- 3.2 Souvlakihut franchisees will operate in a number of competitive retail markets. The Souvlakihut franchisees' businesses will be found 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 Souvlakihut franchisees gain a number of benefits from being part of the Souvlakihut system:

- 3.4.1 High Quality Products, Ingredients, Packaging, Equipment and Services and Certainty of Supply

Souvlakihut has considerable experience in sourcing Products, Ingredients, Packaging, Equipment and Services. Souvlakihut will use that experience to source Products, Ingredients, Packaging, Equipment and Services which meet Souvlakihut's high standards. Souvlakihut will also nominate only those suppliers which, based on Souvlakihut's investigations, are able to supply the volume of Products, Ingredients, Packaging, Equipment and level of Services required by Souvlakihut franchisees at competitive prices.

- 3.4.2 Better Buying Power

Souvlakihut franchisees by themselves would have little or no ability to negotiate with Nominated Suppliers the types of prices for Products, Ingredients, Packaging, Equipment and Services which Souvlakihut is able to negotiate. If the Souvlakihut franchisees negotiated independently with any of the Nominated Suppliers, they would in all

likelihood have to pay a higher price as a result of purchasing low volumes with that particular supplier. In some cases, Souvlakihut franchisees may not even have the opportunity to be supplied at all by that particular supplier if they were to approach them independently.

3.4.3 Increased Sales

By being part of the Souvlakihut system, the Souvlakihut franchisees have market presence and group marketing power which they would otherwise not have. By the Souvlakihut franchisees all branding their businesses using the Souvlakihut name and logo, they increase customer awareness of the Products that the Souvlakihut businesses sell. In addition, Souvlakihut will undertake marketing and promotional activities on behalf of the Souvlakihut group, increasing the profile of the Souvlakihut businesses within the relevant markets. By pooling funds, Souvlakihut 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 the Souvlakihut franchisees' businesses than if they were independents, resulting in increased sales.

3.4.4 Increased Profitability

By being part of the Souvlakihut system, the Souvlakihut franchisees will be able to acquire Products, Ingredients, Packaging, Equipment and Services at much more competitive prices than if they were independent business operators. This improves the profitability of Souvlakihut franchisees' businesses and helps them achieve the economies of scale normally associated with larger organisations.

3.4.5 Improved Management and Operating Skills

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

3.4.6 Improved Productivity through Reduction in Business Administration

Souvlakihut will provide the Souvlakihut 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 the Souvlakihut franchisees businesses, increasing productivity.

- 3.5 Souvlakihut submits that, as a consequence of the benefits provided by Souvlakihut to Souvlakihut franchisees and the benefits of the proposed conduct, consumers in the relevant retail markets will benefit.
- 3.6 The increased competitiveness and viability of the Souvlakihut 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 the Souvlakihut 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 and services to the public.
- 3.7 There is also evidence to suggest that the majority of profits earned by Souvlakihut franchisees are spent locally, resulting in greater demand for products and services in the areas in which the Souvlakihut 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 Nominated Suppliers from the proposed conduct. By being appointed as a Nominated Supplier, the supplier will have some degree of certainty as to volumes which Souvlakihut franchisees will require. This will give them a greater ability to plan for their business and may encourage them to invest in their business. The increased volumes will also result in greater economies of scale and efficiencies within the Nominated Supplier's business. This in turn enables the Nominated Supplier to supply the Products, Ingredients, Packaging, Equipment and Services to Souvlakihut 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 Souvlakihut submits that the relevant market is:
 - 4.1.1 the wholesale market for the supply of Products, Ingredients, Packaging, Equipment and Services; and
 - 4.1.2 the fast food/ quick service restaurant market and the retail market for the supply of the Products in Australia.
- 4.2 Based on investigations made by Souvlakihut, these markets are highly competitive and there are a number of participants in each of the wholesale and retail markets.

5 PUBLIC DETRIMENTS

(Refer to Section 6 of Form G)

- 5.1 Souvlakihut submits that there is no public detriment that results from the proposed conduct.

5.2 Souvlakihut submits that the proposed conduct will not lessen competition in either the wholesale or retail markets.

5.3 At a wholesale level:

5.3.1 the proposed conduct will not prevent Souvlakihut franchisees from dealing with other suppliers:

(1) Souvlakihut franchisees are independent operators and except for those Products, Ingredients, Packaging, Equipment and Services which Souvlakihut specifies must be acquired from either Souvlakihut or its Nominated Suppliers, Souvlakihut franchisees may acquire Products, Ingredients, Packaging, Equipment and Services for sale and use in the Franchised Business from the supplier(s) of their choice provided that the Products, Ingredients, Packaging, Equipment and Services are within the range authorized for use in the Franchised Business;

(2) The agreements to be entered into by Souvlakihut and Nominated Suppliers will not grant exclusive rights to those suppliers for the ongoing supply of Products, Ingredients, Packaging, Equipment and Services to Souvlakihut franchisees. Souvlakihut may appoint different suppliers as Nominated Suppliers from time to time. In determining whether to appoint a supplier as a Nominated Supplier, Souvlakihut will consider such things as quality of Products, Ingredients, Packaging, Equipment and Services, ability to supply, the volume required and price;

5.3.2 the Nominated Suppliers will be able to contract with competitors of the Souvlakihut franchisees;

5.3.3 Souvlakihut will not be limited in its dealings with competitors of the Nominated Suppliers.

5.4 At a retail level:

5.4.1 consumers may acquire the Products from any number of businesses, not just Souvlakihut franchisees;

5.4.2 Souvlakihut submits that the proposed conduct will result in better quality Products and delivery services being supplied to customers in the relevant market and better prices for those Products.

5.5 As a result, Souvlakihut submits that the proposed conduct will increase competition in the wholesale market and retail markets and result in a number of benefits to the public.

- 5.6 To the extent that the proposed conduct contravenes section 47 of the Act, Souvlakihut submits that the public benefits resulting from the proposed conduct outweigh any public detriment caused by the proposed conduct.