

	ADJUDICATION MEETING MINUTES		
Date:	7 June 2007	Participants:	Seal-A-Fridge franchisees
ACCC Officers:	Scott Gregson David Hatfield Nadia Cooke	Time:	10.00 am
Subject:	Seal-A-Fridge Pty Ltd notification N50196		

On 7 June 2007 staff of the Australian Competition and Consumer Commission (ACCC) met with representatives of certain Seal-A-Fridge franchisees to discuss notification N50196 lodged by Seal-A-Fridge Pty Ltd (SAF).

Scott Gregson commenced the meeting by introducing the ACCC staff present, giving an overview of the notification process and outlining the ACCC's assessment of the Seal-A-Fridge notifications to date.

Mr Gregson noted that a note identifying the matters raised at today's meeting would be placed on the ACCC's public register.

Mr Gregson highlighted that to revoke notification N50196 the ACCC needs to be satisfied there is the purpose, effect or likely effect of substantially lessening competition in a market and that the notified conduct was not in the public interest.

The issues raised by attendees are described below:

- Some franchisees queried whether SAF only supplying goods from Patrick Products may constitute indirect third line forcing under the proposed conduct.
- Certain disclosure documents have indicated that franchisees have the freedom to purchase goods from suppliers of their choice.
- Many questioned the submissions by the franchisors in respect of market share. Many franchisees consider they have a share of the seal replacement market much higher than 10 per cent.
- Some franchisees submitted that they operate in a very specialised area and there is very little competition from other mobile seal replacement operators. Seal-A-Fridge is some 20-30 times bigger than their (mobile) competitors and they operate nationally. Seal-A-Fridge is a 'price setter'. If Seal-A-Fridge franchisees were to raise their prices, or the local Seal-A-Fridge franchise was taken out of the market, it would enable the franchise's competitors to increase prices.
- Many questioned the ability of SAF to maintain supply, particularly because the goods supplied are imported.
- Franchisees noted that the impact of the proposed conduct on Austwide Plastics Pty Ltd (**Austwide**) would be significant. Supplying SAF is a whole business in itself.

- It was submitted that Austwide currently has a very fast turn around with supply orders. If franchisees were to stop using Austwide, the company would not have on hand the profiles required by franchisees. This may be problematic if SAF runs into supply problems.
- It was noted that some profiles are not readily available - for example, the profiles required for old refrigerators and some commercial seals. The notified conduct would have a particular impact on these customers. The owners of old refrigerators are often not in a position to buy a new one. In one example, the local refrigeration mechanic would only have replaced the seal for around \$100.00 more than the local franchisee.
- Some franchisees claimed that freight prices would increase significantly as a result of the notified conduct.
- Franchisees were uncertain as to the validity of the ISO certification provided to the ACCC by SAF.
- One franchisee commented that prices charged to Seal-A-Fridge customers in its area have not increased since 2003 because of intense competition.
- Franchisees noted that while the materials cost around 10 per cent of price charged to customers in general, there are situations where the cost of materials will be much higher. For example, where a less popular or commercial seal is used.
- A number of franchisees submitted that costs will increase as a result of the conduct because the cost of doing business with SAF would be greater than their cost of doing business with current suppliers. Dealing with SAF requires increased correspondence and time.
- A large number of franchisees questioned the quality of Patrick Products' extrusion, particularly the weld strength. Any quality issues increase the operating costs of franchisees as they are required to return to the customer and replace seals more frequently. The notified conduct may reduce the willingness of Seal-A-Fridge franchisees to service outlying areas.
- The franchisors have raised fees in the past and there is no reason they will not raise the price of seals in future.

Mr Gregson made the following points:

- Notification N50196 provides protection from legal action only in respect of certain provisions of the Trade Practices. It does not afford immunity for breaches of the Act more broadly and does not impede franchisees' ability to consider any contractual rights they may have.
- The ACCC is required to consider a number of matters in looking at whether notified conduct will substantially lessen competition, including:

- Substitutability of other services and impact of the conduct on the market more generally and not just Seal-A-Fridge franchisees
- While market shares are useful in assessing the effect on competition of certain conduct, they are not in themselves determinative of whether there is likely to be a substantial lessening of competition. In response to queries, Mr Gregson advised that there is no particular level of market share which indicates whether or not a substantial lessening of competition is likely.

Mr Gregson reiterated previous advice that the ACCC could review notified conduct at any stage. He noted that submissions at the meeting had identified or emphasised areas to consider further.

Mr Gregson indicated that the ACCC would be happy to receive information from franchisees regarding the issues raised. Mr Gregson offered to provide some written guidance about the type of information that might be relevant as to whether or not the conduct is likely to result in a substantial lessening of competition. He said that the ACCC would write to franchisees early the following week.