

Restriction of Publication of Part Claimed

20 January 2007



SEAL-A-FRIDGE

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Manufacturers & Suppliers of Refrigeration Seals

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The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
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Dickson ACT 2602

**RE: Exclusive Dealing notifications lodged by Seal-A-Fridge Pty Ltd and others
- Interested party consultation**

We write in response to your letter dated 21 December 2006, ACCC Reference: C20061981, and strongly oppose the above listed notifications for Exclusive Dealing, Third Line Forcing and Full Line Forcing by Seal-A-Fridge Pty Ltd, Nigel Rooney and Nigel and Linda Rooney (SAF and others).

We make the following observations and comments:

If the ACCC should grant Exclusive Dealing, Full line forcing or Third Line forcing approval to the franchisor it would be extremely detrimental to all Seal A Fridge franchisees, however it would be extremely advantageous to all of our competitors.

Should the ACCC lock us in to purchasing our supply product from one of the suppliers e.g. Patrick Product, who is the supplier that currently supplies the franchisor for its re-sale items to franchisees, the ACCC would be locking SAF franchisees into a fixed price while the rest of our competitors are free to purchase seals from any of the current product suppliers i.e. RBM, Austwide Plastics, Patrick Products or OEM product specific suppliers similar to Electrolux who can only supply according to the brands of refrigeration units they manufacture.

Should the SAF franchisor be able to lock SAF franchisees into purchasing items currently available from SAF Pty Ltd and purchased from Patrick Products only the ACCC may start a price war as RBM and Austwide will undoubtedly drop their prices to regain some lost market as SAF is a fairly big player in the seal manufacture market, and even if the franchisor is purchasing from all three suppliers this will most likely not result in reduced prices to franchisees or the Public as the assumption is that the franchisor will pass on these savings, which is currently does not.

Supply of goods by SAF -

The franchisor states the following, "SAF does not manufacture PVC extrusions and/or flexible magnetic products. Similar to other franchise groups such as Retravisation, Mitre 10 etc who also do not manufacture the goods they sell. By purchasing in bulk, savings are made by the franchisee who can then offer the public lower prices."

Response: *Prior to purchasing SAF West Melbourne with my husband in January 2005, I was employed as a Contract Tendering Coordinator, Purchasing Officer and Competitive Tendering Officer for the City of Brimbank, Victoria, for a period of nine years. During this time I acquired considerable Tendering and Purchasing knowledge, skill and expertise undertaking the purchase of goods or services that varied from minimal expense to that in excess of a million dollars. I feel I am somewhat qualified to suggest that SAF is very definitely not the equivalent in organisational size or structure to that of Retravisio, Mitre 10 or the like, and as such would not have the "buying power" that these organisations enjoy.*

Organisations such as Retravisio, Mitre 10 may be franchised but are not a true comparison as they purchase a gamut of entirely different products and/or merchandise to SAF. The cost of PVC Extrusion, Magnet and the odd minor refrigeration components used by SAF cannot be logically compared as there is certainly a huge variance in purchase price and volume, which certainly affects "buying power".

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SAF acquires directly or indirectly products from various businesses who either manufacture or supply products.

SAF and any of its directors are not a shareholder or shareholders, owner or director of any of the listed business's or companies.

- * 1- SAF requires that manufacturers/suppliers supply supplies that meet minimum quality standards. Some of the suppliers do not manufacture the goods they sell, they are simply the "middle man" and repackage the goods.
- * 2 - SAF requires that the original manufacturer be ISO Certified.
- * 3 - SAF must ensure that goods are supplied to SAF in a timely manner and meet minimum quality control standards.
- * 4 - SAF does not receive a rebate or other financial benefit from any business or company listed in 1A

Response: *We make the following comments:*

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Response:

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With regard to a statement made by the franchisor on Page 14 of its notification:

"In Conclusion

***A small group of SAF franchisees who oppose this conduct are intent on delaying and stalling any decision by the ACCC through preemptive submissions to the ACCC prior to SAF submitting any documentation to the ACCC regarding full line forcing or third line forcing."**

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Response:

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In addition, the franchisor states "The reason for their action is solely to delay SAF in obtaining notification, so that they may keep the prices higher as the busiest time of the year for the refrigeration door seal market is the months of December, January, February and March...."

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Response:

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In closing, by granting the franchisor Full Line Forcing and/or Third Line forcing there will be no advantage to franchisees or the Public. To most franchisees, it would actually be detrimental and could very easily cost them their businesses. We are aware of a SAF business that cost the franchisee \$80,000 to purchase, however it was not a viable business and after three years, the former SAF Hobart franchisee was forced to walk away after having paid the franchisor \$1.10 to sell his business to it, or suffer having to pay the ongoing weekly franchisee fee. The franchisor has since resold this business without providing any further remuneration to the forfeiting franchisee. This could well be the scenario for a number of franchisees if these notifications are allowed to proceed.

When we looked at purchasing our Seal-A-Fridge franchise we tried to look at every aspect of the business to make sure we could operate effectively and efficiently as we had to borrow a substantial amount of money (approximately \$200k), the repayments of which are in addition to our general operating cost. When the franchisor starts changing the goal post after you have purchased the business, it makes it extremely difficult to stay in front, and with another national "mobile" seal replacement business in operation it will certainly devalue our existing businesses.

With regard to the implementation of a national warranty program and improved responsiveness to any recalls we make the following comment:

The trade practices act protects consumers when they acquire goods or services. Seal-A-Fridge in fact already offers a national warranty program, introduced by the franchisor from its inception, and as currently listed on the franchisors Seal-A-Fridge website, www.seal.com.au

If you should have any questions whatsoever relating to this submission please do not hesitate to contact us as we would be more than happy to assist.

Yours Sincerely

ROSS AND DEBRA LAYTON
Franchisees
SAF (West Melbourne)

Attachments

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