

28 October 2008

Contact Richard Ottley
Partner
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Mr Richard Chadwick
General Manager - Adjudication
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

File ref RBO:281241

FILE No:	
DOC:	
MARS/PRISM:	

Dear Mr Chadwick

Notification of Third Line Forcing - PureProtect Pty Limited

We act for PureProtect Pty Limited (ACN 132 626 334) (**PureProtect**).

PureProtect has been established as a franchisor with respect to a franchise system involving the intended supply of sanitisation services and products which use a zoonocidal antimicrobial active ingredient. Under its proposed arrangements with its franchisees it wishes to require them to use a CRM and accounting and business management system which is supplied by "myworkspace".


It is considered that the proposed conduct would involve a contravention of Section 47 of *Trade Practices Act* (unless the subject of an authorisation or notification).

As a consequence, we **attach** for your consideration:

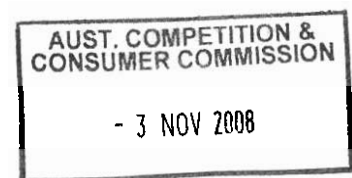
- 1 Form G on behalf of PureProtect.
- 2 Submission on behalf of PureProtect.
- 3 Cheque for \$100 lodgement fees.

Please contact the writer Richard Ottley if you have any questions or require any further information.

Yours sincerely
Swaab Attorneys



Richard Ottley
Partner
Enc



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PLEASE NOTE
Send all mail to: GPO Box 35, Sydney NSW 2001

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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.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of person giving notice:

N93641 *PureProtect Pty Limited (ACN 132 626 334) (PureProtect)*

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

PureProtect was established in August 2008. As franchisor, it proposes to operate a franchise system in Australia, involving the sale and application of PureProtect products. Under the proposed system, PureProtect operator franchisees will offer domestic households and designated commercial businesses, sanitisation services using PureProtect products. Such products use a zoonocide antimicrobial active ingredient to destroy germs. Certain PureProtect products will also be available for sale to the public.

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

*C/- Swaab Attorneys
Level 1
20 Hunter Street
Sydney NSW 2000
DX 522 Sydney NSW
Ref: RBO*

2. Notified arrangement

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

The goods and services concern a web based software system known as "myworkspace" (www.myworkspace.com) which is an online customer relationship management (CRM) system and accounting business management system. It is a subscription based programme that enables businesses with remote offices and people, to manage their customer databases, customer marketing strategies, product ordering programs, and accounting and financial functions, simply.

- (b) Description of the conduct or proposed conduct:

PureProtect proposes to have arrangements with its area franchisees and operator franchisees pursuant to which PureProtect will:

- (i) *Supply or offer to supply a franchise agreement and services pursuant to such franchise agreement on condition that the prospective franchisee acquires the "myworkspace" CRM and accounting and business management system approved by PureProtect (the franchisor), in writing and such other CRM and business management and communication system as the franchisor may from time to time lawfully designate.*
- (ii) *Not supply a franchise agreement or services pursuant to a franchise agreement unless a prospective franchisee acquires the "myworkspace" CRM and accounting and business management system approved by PureProtect (the franchisor) in writing, and such other CRM and business management and communication system as the franchisor may from time to time lawfully designate.*

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:

All prospective PureProtect franchisees.

- (b) Number of those persons:

- (i) At present time:

None.

- (ii) Estimated within the next year:

Up to 50 persons in New South Wales and possibly some in other states. Much will depend upon the current economic climate and market forces.

- (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:

*Please see **attached** covering letter and submission dated 28 October 2008 on behalf of PureProtect.*

- (b) Facts and evidence relied upon in support of these claims:

*Please see **attached** covering letter and submission dated 28 October 2008 on behalf of PureProtect.*

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):

*Please see **attached** covering letter and submission dated 28 October 2008 on behalf of PureProtect.*

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:

*It is not considered that the notified conduct would cause any identifiable detriment to the public. Please see **attached** covering letter and submission dated 28 October 2008 on behalf of PureProtect.*

- (b) Facts and evidence relevant to these detriments:

Not applicable.

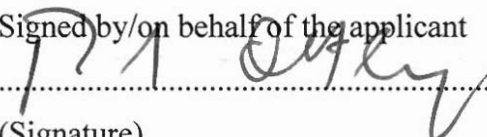
7. Further information

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

*C/- Swaab Attorneys
Level 1
20 Hunter Street
Sydney NSW 2000
DX 522 Sydney NSW
Ref: RBO
Tel: 9233 5544*

Dated **28** October 2008

Signed by/on behalf of the applicant


.....

(Signature)

Richard Bruce Melrose Ottley

(Full Name)

Swaab Attorneys

(Organisation)

Partner

(Position in Organisation)

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

Submission by PureProtect Pty Limited (ACN 132 626 334) ("PureProtect")

In support of notification under Section 93 of the *Trade Practices Act 1974*

This submission is made on behalf of PureProtect and in support of the Form G Notification to which it is ***attached***.

1 Description of the Proposed Conduct

- 1.1 PureProtect has been established to operate a franchise system in Australia involving the supply of sanitisation services and products which use a zoonocide antimicrobial active ingredient. The active ingredient is a mechanical molecular device which destroys microbial cells by stabbing through the cell membrane and electrocuting the organism.
- 1.2 The sanitisation services will be delivered by operator franchisees to domestic households and some designated commercial businesses. Use of the product has a dramatic effect in reducing and eliminating microbial cells, providing better hygiene and helping eliminate unpleasant odours. Under the proposed franchise system, the franchisor will monitor the activities of its operator franchisees and provide support and advice to them as and when necessary. It also proposes to communicate regularly with customers of PureProtect services and products using a dedicated CRM system.
- 1.3 PureProtect has selected **myworkspace** (www.myworkspace.com) as the most appropriate CRM and accounting and business management system, to be utilised in conjunction with the PureProtect franchise business. PureProtect proposes to insist that each prospective franchisee utilise the **myworkspace** software as the means by which the franchisor will supply bookings and sales leads to the PureProtect franchise network and to monitor the profitability of each franchisee. As stated above, it will also use the CRM function for communicating regularly with customers of PureProtect services and products.

2 Why select myworkspace.com?

- 2.1 For the franchise network to operate efficiently, is necessary for there to be only one CRM and accounting and business management system in use. The **myworkspace** product was considered the most appropriate software for PureProtect's business although it was recognised that there were excellent alternative products in the marketplace. The specific criteria which each supplier had to meet was as follows:
 - The system must be web based.
 - The system must be available in a format suitable for use with "*Personal Digital Assistant*" (PDA device) being a phone or other device that is capable of receiving and transmitting data.
 - The system must be fit for the purpose of working with the operational strategy of PureProtect - central call centre sending and receiving work/bookings to a mobile franchisee team.
 - The system must be cost effective.
 - The system must be scaleable.

- The system must enable common measurement of efficiency and profitability of franchisees.
- The system must be able to manage customer relationships where the owner of the customer is reliant on a third party to deliver the service.
- The system must provide CRM and accounting software in the one system.
- The system must be able to be customised with the specific terminology used in the PureProtect business.
- The system must contain SMS functionality so that bookings with customers can be sent via SMS.

2.2 Consideration of various alternative systems was made, however **myworkspace** met all of PureProtect's requirements. No other system was found to meet PureProtect's requirements as specifically as **myworkspace** (including cost, performance, scale and fitness for purpose). **myworkspace** was also considered the lowest cost option for franchisees (which met PureProtect's requirements).

3 **Public Benefit Claims**

3.1 The proposed conduct is regarded as having the following public benefits:

- (a) Having a uniform and dedicated CRM and accounting and business management system will make the PureProtect franchise network efficient. It will facilitate rapid and precise customer referrals to the franchisee located nearest to the prospective customer. It will therefore improve the quality of the service that is delivered to the public generally (and enhance competition).
- (b) The **myworkspace** CRM system will enable PureProtect to better manage customer relationships with members of the public and deliver up to date information to its customer base in an efficient and universal manner.

3.2 It is anticipated that having a **myworkspace** system, apart from enhancing the efficiency of the franchise system and the quality of the service it provides, will also enhance PureProtect's ability to compete in the market place against any organisations providing services which are the same as or similar to those of PureProtect.

3.3 It is also considered that the universal implementation of a **myworkspace** CRM and accounting and business management system will provide gains to all franchisees as it will assist PureProtect to support and help them in their businesses, and in the marketing and delivery of services to members of the public.

4 **Market Definition**

4.1 It is submitted that the market in which **myworkspace** competes, is vast. **myworkspace** provides accounting and CRM solutions to thousands of businesses in Australia who are looking for an online solution to manage their accounting requirements, financial report and customer relation management systems, including managing existing and potential customers.

4.2 Five major competitors of **myworkspace** have been identified (Microsoft, Sage Software, Salesforce, SupportCentre and ACT). It is submitted that requiring PureProtect franchisees to use only **myworkspace** products, will make no or no discernable impact upon the businesses of these or other competitors of **myworkspace**, who no doubt have many thousands of business to whom they can supply their products.

5 **Public Detriments**

- 5.1 It is submitted that the proposed conduct will have no or no discernable detrimental effect on competition. The proposed conduct will **not** materially affect in any way the businesses of competitors of **myworkspace**. The proposed conduct will however assist PureProtect franchisees to compete and will provide a low cost solution for the franchisees in relation to their CRM and business management system needs.

6 **Conclusion**

- 6.1 For the above reasons it is respectfully submitted that the Commission should not serve a notice under Section 93(3A) of the *Trade Practices Act* because:
- (a) The notified conduct will not adversely affect competition in any relevant market.
 - (b) The notified conduct will in fact result in public benefit and no discernable public detriment.

28 October 2008