



No: \_\_\_\_\_

**Subway Systems Australia Pty. Ltd.**  
ABN 79 009 277 034

PRISM: \_\_\_\_\_

1 October, 2009

Mr Richard Chadwick  
General Manager  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

Dear Sir

**Notification of provisions which raise third line forcing concerns**

Please find enclosed a notification by Subway Systems Australia Pty Ltd (SSA) of potential third line forcing conduct relating to requiring suppliers to become members of iCIX; a web-based business portal allowing members to store, share and manage documentation, information and other related communication.

Enclosed is:

- (a) form G: Notification of Exclusive Dealing; and
- (b) a cheque in the amount of \$100 payable to the Australian Competition and Consumer Commission.

If you have any questions in relation to this notification or require any further information, please contact Jocelyn Saint-Fryar on (07) 3253 0249.

Yours faithfully,

Brian Tap  
Director

AUST. COMPETITION &  
CONSUMER COMMISSION

- 2 OCT 2009

## 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:

Subway Systems Australia Pty Ltd ABN 79 009 277 034 (SSA) N94197

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

SSA has a licence from Doctor's Associates Inc (DAI) to:

(i) use the SUBWAY® trade mark; and

(ii) offer restaurant franchises,

in Australia.

SSA offers qualified purchasers the right to establish and operate, from a single location, a retail establishment preparing and selling SUBWAY FOOT LONG® and SUBWAY SIX INCH® subs and specialty sandwiches, salads and other food items.

SSA reviews and approves suppliers, manufacturers, distributors and other vendors ("Suppliers") to supply the SUBWAY® franchise system in Australia according to any standards and specifications by DAI, the owner of the proprietary system (the "System"). The Independent Purchasing Company (Australasia) Limited (IPCA) conducts the business of negotiating supply arrangements (as principal and not as agent) for the benefit of SUBWAY® franchisees in, inter alia, Australia.

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

Jocelyn Saint-Fryar

Subway Systems Australia Pty Ltd

Ground Floor, Lobby 1

153 Campbell Street  
Bowen Hills  
Queensland, Australia.

**2. Notified arrangement**

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

The services to which this notice relates are:

- (a) The review and approval of Suppliers by SSA for the benefit of Subway® franchisees in Australia;
- (b) The provision of web-based business portal services for the storage, sharing, management and communication of information between Suppliers to the Subway® System in Australia, SSA, IPCA and affiliated entities, including DAI.
- (b) Description of the conduct or proposed conduct:

SSA proposes to require Suppliers of the Subway® System to become members of International Compliance Information Exchange (iCIX) Pty. Ltd. and iCIX North America, LLC (together “iCIX”) and to establish their own business site with iCIX. iCIX is a web-based business portal which allows members to store, share and manage documentation, information and other related communication.

**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:

Those likely to be impacted by the notified conduct are Subway® Franchisees in Australia who own or operate a Subway® store in Australia (indirectly), the IPCA and current or future Suppliers of goods and/or services to the Subway® System in Australia.

- (b) Number of those persons:

- (i) At present time:

There are approximately 1,151 Franchisees as of September, 2009 and approximately 160 Suppliers.

- (ii) Estimated within the next year:

1217 Franchisees and 180 Suppliers

- (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:

For the reasons set out below, the applicant submits that the notified conduct will result in benefit to the public by increasing efficiency and reducing costs for SUBWAY® franchisees and IPCA as well as providing consistent information sharing, thereby allowing the SUBWAY® system to be a more attractive and competitive participant in the food service industry.

- (a) A reduction in transaction time and costs for SSA, IPCA and the Suppliers arising from, for example, the ability to access and place documents for common use on the iCIX site. Examples include
- a. Audit reports. Suppliers are commonly obliged to obtain or facilitate (and pay for) an assessment of the same matters for multiple parties. Such matters may relate to food safety and quality assurance requirements. By placing a report on the site, reference may be made to that report by other parties, possibly avoiding the need to obtain duplicate or additional reports. Further, risk management may be enhanced by ensuring access to the most appropriate and up to date information stored on the site.
  - b. General Document Access: The iCIX system will allow access to generic documents and specifications; and
  - c. Electronic Approval and contracting: iCIX will allow SSA to streamline its Supplier approval process, which currently involves the sharing and tracking of documents through a traditional paper process across multiple offices in multiple countries; iCIX will allow SSA to manage this process electronically.

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

Please refer to the iCIX website at [www.icix.com](http://www.icix.com) for further details of the benefits flowing from use of the system.

#### **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):

The relevant markets in which the services described at 2(a) are supplied or acquired are:

- (a) the worldwide market for the supply and acquisition of procurement services; and
- (b) the worldwide market for the supply and acquisition of web-based business portal services.

At this time, the Applicant considers that there are no substitutions available for the comprehensive service available by iCIX.

**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:

The Applicant submits that there is minimal, if any, public detriment. The notified conduct is not likely to have any effect on the price of web-based portal services. The food service industry remains competitive with a large number and variety of potential users of web-based portal services and Suppliers. The use of iCIX will not affect competition in the relevant markets.

There is a minimal cost of membership of iCIX (currently \$220 p.a.) and this is likely to be recouped in the transaction and compliance cost savings which can be achieved through use of the system. There is nothing to preclude Suppliers from dealing with parties other than SSA and IPCA through other means including other web-based business-to-business portals. Also, the numbers of Suppliers and distributors participating in the notified conduct will be very small, relative to the overall size of the markets affected by the notified conduct.

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

.....N/A.....  
.....

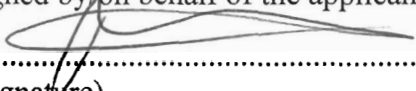
**7. Further information**

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

Jocelyn Saint-Fryar  
c/o Subway Systems Australia Pty Ltd  
Ground Floor, Lobby 1,  
153 Campbell Street  
Bowen Hills, Queensland 4006

Dated..... 1/10/09 .....

Signed by/on behalf of the applicant

  
.....  
(Signature)

BRIAN DAVID TAP  
.....  
(Full Name)

SUBWAY SYSTEMS AUSTRALIA PTY LTD  
.....  
(Organisation)

DIRECTOR  
.....  
(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.