

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:

N94275 Phillip Island Nature Park Board of Management Inc (**PINP**).

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

PINP manages the Phillip Island Nature Parks and is responsible for the care, control and management of the lands scheduled under the *Crown Land (Reserves) Act 1978*. PINP operates a number of leading Victorian tourist attractions located in the Phillip Island Nature Parks.

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

Operations Manager
Phillip Island Nature Parks
1019 Ventnor Road
Summerlands VIC 3922

2 Notified arrangement

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

The proposed arrangement relates beverages, confectionary, ice cream and other such foods as are offered for sale from time to time at facilities and venues in the Phillip Island Nature Parks.

(b) Description of the conduct or proposed conduct:

PINP proposes to offer the right to provide catering services in facilities and venues in the Phillip Island Nature Parks on condition that the caterers acquire goods or services from third party suppliers who have entered into exclusive supply agreements with PINP or Phillip Island Nature Park Committee of Management Inc (**PINP Committee**).

A current draft of the relevant clause proposed by PINP for inclusion in such a contract is included in confidential Annexure A.

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:
Persons engaged by PINP from time to time to supply catering services at facilities and venues in the Phillip Island Nature Parks.
- (b) Number of those persons:
(i) At present time: 0
(ii) Estimated within the next year: 1
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:
N/A

4 Public benefit claims

- (a) Arguments in support of notification:
The notified conduct would allow PINP and the PINP Committee to offer improved services to consumers by allowing them:
- to engage persons with expertise in the supply of catering services to perform this role at facilities and venues in the Phillip Island Nature Parks; and
 - at the same time, to benefit from the improved terms and conditions offered by suppliers of foods (such as icecreams, beverages and confectionary) under exclusive supply arrangements.
- (b) Facts and evidence relied upon in support of these claims:
Wholesale suppliers of icecream, beverages and confectionary often offer their customers improved terms and conditions if customers agree to acquire their goods on an exclusive basis.
For example, PINP and the PINP Committee have entered into a contractual arrangement with a third party supplier of ice cream for the exclusive supply of icecream and ice confection products and a separate contractual arrangement with a third party supplier beverages and confectionary for the exclusive supply of beverages and confectionary on terms and conditions that are more favourable than would have been the case if no exclusivity was agreed to by PINP and the PINP Committee. The details of the currently appointed suppliers are set out in the proposed contractual terms in confidential Annexure A.
The notified conduct would ensure that PINP and the PINP Committee will not risk breaching these existing arrangements, and would allow PINP and the PINP Committee to negotiate additional arrangements for the exclusive supply of goods and services from time to time in future.

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 markets potentially affected by the notified conduct are:

- the national market for the wholesale supply of icecream, beverages and confectionary and other similar foods; and
- more localised markets for the retail supply of icecream, beverages and confectionary and other similar foods.

The national market for the wholesale supply of icecream, beverages and confectionary and other similar foods is dominated by a small number of significant suppliers, such as Mars Snackfoods Australia, Cadbury Schweppes, Coca-Cola Amatil, Unilever Australia, Campbells Wholesale, Nestle Australia and Smiths Snack Food Co.

There are a large number of retailers of these goods in nearby in close proximity to the facilities and venues in the Phillip Island Nature Parks, including supermarkets, cafes, convenience stores and various other types of venues and facilities attended by consumers.

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:

PINP submits there will be no detriment to the public as a result of the notified conduct.

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

There a large number of other retailers to whom the wholesale suppliers of the goods and services the subject of this notification can supply, and from whom consumers can acquire these goods and services.

PINP and the PINP Committee will also review, from time to time, their supply arrangements to ensure that the terms and conditions on which goods or services are supplied remain beneficial.

7 Further information

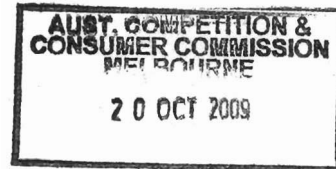
- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Operations Manager
Phillip Island Nature Parks
1019 Ventnor Road
Summerlands VIC 3922

Dated.....17/10/2009.....

Signed on behalf of the applicant

.....
Gerard Bean
DLA Phillips Fox



GERARD BEAN
DLA Phillips Fox
140 William Street, Melbourne
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

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.