

**Restriction of Publication of Part Claimed on page 2 and the entirety of Annexures A and B**

**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:**

N93727

Cartridge World Australia Pty Ltd (ACN 126 261 158) (**Cartridge World Australia**) whose registered office is C/- of Deloitte Touche Tohmatsu, Level 16, 11-25 Waymouth Street, Adelaide in the State of South Australia.

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

Cartridge World Australia operates the international 'Cartridge World' franchise network, which network retails ink refilling and laser cartridge remanufactured products in the printer cartridge industry. Cartridge World Australia has appointed 3 master franchisees in Australia, namely:

- Ink Mark Pty Ltd (ACN 115 406 703), of 39 Gilbert Street, Adelaide, South Australia, appointed as Australian master franchisee for Victoria, South Australia, Northern Territory, Tasmania and Western Australia;
- Austcart Pty Ltd (ACN 088 278 479), of 5 Torquay Road, Hervey Bay, Queensland, appointed as Australian master franchisee for Queensland; and
- Pacific Oasis Pty Ltd (ACN 115 454 165), of 118 Macquarie Street, Parramatta, New South Wales, appointed as Australian master franchisee for New South Wales and the Australian Capital Territory,

(together, the **Master Franchisees**).

The Cartridge World franchise network operated by the Master Franchisees in Australia (**Cartridge World Network**) refills empty ink cartridges and remanufactures empty toner cartridges for inkjet printers, laser printers, fax machines and photocopiers with top quality brand specific ink and toners.

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

C/- Peter Buberis  
Partner  
DLA Phillips Fox  
100 King William Street  
Adelaide SA 5000

**2 Notified arrangement**

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

The arrangement applies to the supply of franchise services to franchisees of the Cartridge World Network, including in particular admittance to the Cartridge World Network as a franchisee.

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

In the majority of cases the Cartridge World franchise arrangements are structured such that the Master Franchisees allow a person to become a franchisee of the Cartridge World Network, and to remain a franchisee of that Network, on the condition that the franchisees acquire stock and equipment only from a selection of nominated suppliers. Their conduct in so doing is the subject of separate notifications lodged on behalf of the individual Master Franchisees on the same date as the present notification (**Related Notifications**).

In some instances, Cartridge World Australia is a party to the imposition on the franchisee, as a condition of becoming and remaining a franchisee of the Cartridge World Network, of the requirement that the franchisee acquire stock and equipment only from a selection of nominated suppliers. In particular, of the 185 franchise agreements currently in force for the Cartridge World Network, Cartridge World Australia is a party to 20 of these franchise agreements, under which this requirement is imposed (the **Tripartite Agreements**). It is this conduct by Cartridge World Australia that is the subject of the present notification (**Notified Conduct**).

*Terms of the Tripartite Franchise Agreements for the Cartridge World Network*

The relevant parts of clauses 8 and 12 of the standard form Tripartite Agreement that Cartridge World Australia has historically entered into with the Master Franchisees and the franchisees of the Cartridge World Network (**Current Franchise Agreement**) provides as follows:

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Section 6 of the Cartridge World Operations Manual (**Operations Manual**) discusses the requirements with respect to the acquisition and offer for sale

of products by the franchisees. A copy of section 6 of the Operations Manual is attached in the confidential annexure marked "B".

With respect to those franchisees who are not a party to a Tripartite Agreement, Cartridge World Australia can only enforce its policy for approved suppliers and product through the relevant Master Franchisee. Cartridge World Australia does conduct all initial training for franchisees and as such could refuse a franchisee application if they do not satisfactorily complete the training course after discussions with the Master Franchisee. However, if cooling off has finished it is purely a matter for the Master Franchisee.

*Criteria and Process for Approval of Suppliers by Cartridge World Australia*

The nominated suppliers from whom the franchisees of the Cartridge World Network are required to acquire stock and equipment are those suppliers that have been approved by Cartridge World Australia. Cartridge World Australia approves only those suppliers that meet its standards and specifications for product used in or sold by the Cartridge World Network. These standards and specifications are as follows:

- the supplier is a reputable company with a proven track record in the supply of goods and services;
- the product is produced to international quality standards (ISO9000 or equivalent);
- the product is of equal quality to any original equipment manufacturer (OEM) products (where applicable);
- the supplier guarantees products unconditionally to be free of defects;
- the supplier observes any applicable industry standards and procedures in the remanufacturing of each product, which must include adequate post-testing of each remanufactured cartridge (if applicable);
- the supplier is financially stable, i.e. has no declared financial difficulties;
- the supplier complies with legal and legislative requirements;
- the supplier provides a letter of indemnity stating that its products do not infringe on any third party's patents, copyrights, trade marks or other intellectual property;
- the supplier must provide and honour an appropriate level of product warranty and these terms will be incorporated into their trading terms;
- the product is easily accessible from the supplier with no likely major supply issues;
- the supplier can provide alternative avenues of supply in the case of major product supply interruptions;
- the supplier is dedicated to customer service and its sales, customer service and technical support departments work to address customer requirements promptly before, during and after purchase;

the supplier can provide Material Safety Data Sheet (**MSDS**) which is designed to provide both workers and emergency personnel with the proper procedures for handling or working with a particular substance. MSDS's include information such as physical data (melting point, boiling point, flash point etc.), toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment, and spill/leak procedures. These are of particular use if a spill or other accident occurs for all applicable products;

- the supplier provides easily accessible online or phone support;
- the supplier has an established research and development process and certified testing procedures; and
- the supplier can display a high level of product knowledge and knowledge of industry trends.

*An approved supplier: Cartridge World Supplies*

Cartridge World Australia operates a business under the registered name 'Cartridge World Supplies' [Business Number:BN03965442] and is an approved supplier to the Cartridge World Network of particular product lines, presently: bulk ink; clips; inkjet compatibles; remanufactured laser cartridges; packaging and labels and speciality copy paper.

For all products for which Cartridge World Supplies is an approved supplier, other than clips, and packaging and labels, the franchisees of the Cartridge World Network can elect to acquire products from an alternative approved supplier.

Approximately 91% of wholesale sales of product to Cartridge World stores in Australia are acquired from approved suppliers other than Cartridge World Supplies.

Cartridge World Supplies is the sole approved supplier of clips, and packaging and labels, because these are 'Cartridge World' branded products.

As Cartridge World Supplies is a division of Cartridge World Australia, to the extent that the Tripartite Agreements require franchisees to acquire product from Cartridge World Supplies (as an approved supplier), as in the case of clips, and packaging and labels, this does not form part of the Notified Conduct.

*Alternative supplier selection*

Cartridge World Australia approves a maximum of 3 external suppliers for each approved product line.

Cartridge World Australia will consider approval of a supplier, in accordance with its Vendor Certification process, in undertaking its periodic review of its approved suppliers.

The Vendor Certification process involves the following:

- Cartridge World Australia's Director for Purchasing undertakes an initial investigation and identifies potential suppliers for the required product line.
- The Director for Purchasing asks for tenders from 3-5 of the potential suppliers.

Tenderers, competing to provide a particular approved product, are required to submit an application which contains particulars of negotiated pricing, testing of product(s), quality and certification, service capability, manufacturing capacity and other non-price terms and conditions.

- The tenders are reviewed: evaluation includes testing and feedback from Master Franchisees and franchisees.
- A recommendation is provided to the VP of Franchise Operations for approval.
- The supplier and the master franchisees and franchisees are informed of Cartridge World Australia's decision.

A franchisee of the Cartridge World Network may nominate a supplier and their product line to their Master Franchisee and, if the Master Franchisee recommends to Cartridge World Australia that it consider approval of the supplier, Cartridge World Australia will consider approval of the supplier at its next periodic review of its approved suppliers.

Cartridge World Australia reviews the suppliers it has approved annually, in December of each year. It last reviewed its approved suppliers in December 2007.

However, in circumstances where:

- a franchisee identifies a potential supplier of a new product line, and there is currently - no approved supplier for that product; and
- the Master Franchisee has made a positive recommendation to Cartridge World Australia that it consider approval of the supplier for the new product line;

the VP of Franchise Operations will immediately proceed to consider the relevant application and commence the vendor certification process - rather than postpone consideration of the application to the next annual review.

In the case of 4 approved suppliers namely Keytec, Goodson Consumables, Imagetec and Fuji Xerox, individual franchisees and/or Master Franchisees initially identified the relevant entity as a potential supplier and following consideration of an application, testing and consultation, the VP of Franchise Operations approved the supplier in respect of a particular product line.

#### *Approved Suppliers for 2008*

Cartridge World Australia publishes the list of approved suppliers and the product lines those suppliers are approved to supply to the Cartridge World Network on its extranet site. The list also includes contact details for the sales, administration and distribution / logistics departments of the approved suppliers. In addition to the posting of the list on the extranet site, each of the Master Franchisees informs all of its franchisees by email of any newly approved supplier.

The suppliers currently approved by Cartridge World Australia and the product lines they are approved to supply are set out in the following table.

With the exception of one product line (ink refill machines), franchisees may select between two or more alternative suppliers from which to acquire the relevant product. In the case of ink refill machines - only one supplier is

presently approved. This is because the product is relatively new, the approved supplier has only recently completed the vendor certification process and an additional supplier has not yet been identified.

As noted above, Cartridge World Supplies, a department of Cartridge World Australia (operating under a registered business name) is a nominated supplier in respect of a number of product lines, and insofar as that is the case, the conduct is expressly excluded from the subject of the notification:

Supplier	Bulk Ink	Clips	Inkjet Compatibles	Toner & Laser Consumables	Remanufactured Laser Cartridges	Original Equipment Manufacturer Products	Packaging & Labels	Specialty Photocopier Paper	Copy Paper	Printer Ribbons	Ink Refill Machines	Courier
Cartridge World Supplies	✓	✓	✓		✓		✓	✓				
Dynamic Supplies						✓						
Goodson Imports										✓		
Future Graphics				✓								
Keytek										✓		
Geographics								✓				
Imaging Solutions				✓								
Synnex						✓						
Jet Tec	✓		✓					✓				
RTS Imaging (Katun)				✓ Copier Toners	✓							
Phoenix Toner						✓						
Toner Warehouse						✓						
Imagetec (Paper One Brand)									✓			
Fuji Xerox									✓			
Sage Recycling Solutions											✓	
Fastway Couriers												✓
Couriers Please												✓

**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:**

The franchisees of the Cartridge World Network that are party to a Tripartite Agreement to which Cartridge World Australia is also party.

**(b) Number of those persons:**

**(i) At present time:**

There are currently 19 franchisees that are party to some 20 Tripartite Agreements to which Cartridge World Australia is also party (that is, in one case a single franchisee has more than one territory and accordingly is party to more than one Tripartite Agreement).

**(ii) Estimated within the next year:**

The use of Tripartite Agreements for the Cartridge World Network is being phased out as their respective renewal dates are reached.

It is intended that at the expiry of each Tripartite Agreement, that each Tripartite Agreement will progressively be replaced with a franchise agreement executed by the relevant franchisee and Master Franchisee (the subject of the Related Notifications).

By 31<sup>st</sup> December 2008, the renewal date for 14 of the Tripartite Agreements that remain in force will have passed. Accordingly, the number of franchisees affected by the Notified Conduct will reduce over the next year to 6 Franchisees.

**(iii) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:**

The names and addresses of the 19 franchisees that are party to one or more Tripartite Agreements that impose the requirement to acquire product only from approved suppliers are identified in a table in the confidential annexure marked "A".

**Public benefit claims**

**(a) Arguments in support of notification:**

Cartridge World Australia considers that the Notified Conduct, in combination with the conduct notified under the Related Notifications (**Related Notified Conduct**), delivers the following public benefits:

- The maintenance of the quality and consistency of the end product supplied by the franchisees of the Cartridge World Network and the maintenance of the reputation of the Cartridge World Network.
- The Notified Conduct creates buying power which:
  - delivers cost savings to franchisees of the Cartridge World Network, which will in turn deliver lower prices to consumers and promote competition in the markets in which the franchisees participate;



- increases the service provided to those franchisees; and
- ensures the more timely supply of products to franchisees in the Cartridge World Network.

The realisation of efficiencies in the administration of the Cartridge World Network, in particular in the evaluation of suppliers' suitability and the management of the significant legal risks associated with infringement of third party intellectual property rights.

The Notified Conduct, in combination with the Related Notified Conduct, is critical to the business model of Cartridge World Australia.

The business model of Cartridge World Network is crucially dependent on high quality products. A large part of the Cartridge World network business focuses on offering customers the alternative of purchasing high quality remanufactured cartridges (at around a 40% discount) in substitution for OEM products.

If the quality of remanufactured cartridges supplied by the Cartridge World Network were compromised, it may be difficult to persuade customers that presently use remanufactured cartridges, that remanufactured cartridges are a true alternative to OEM products and this would impinge on the Cartridge World Network brand.

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

*Product Quality and Consistency and Maintenance of Reputation*

The international franchise network operated by Cartridge World Australia is the world's fastest growing ink refilling and laser cartridge remanufacturing retailer. The business model adopted by Cartridge World Australia has provided it with an established reputation as a provider of remanufactured products in the printer cartridge industry of comparable quality to, but at a more affordable price than, new OEM cartridges. Cartridge World Australia estimates its share of the total printer consumables market in Australia at 2.5%. It is estimated that the percentage of customers who use remanufactured cartridges is less than 5%.

Cartridge World Australia's high quality standards are evidenced by minimal warranty claims, over 10 years of positive growth and reputation in the market place, its policy aim to meet ISO standards and its continual focus on process improvement. The approval process for products and suppliers ensure quality standards are not compromised.

The franchise business model relies on quality and consistency throughout the System for success. The System requires that licensees and sub-licensees adhere to standards and policies developed by the Company which provide for the successful and uniform operation of businesses utilising the System. We are also in the process of developing a production model for ink refilling aimed at improved quality and consistency and driving efficiencies at store level.

The toners and inks used in the System are sourced from top suppliers from around the world, and are each uniquely formulated for the many different cartridges available. Our extensive range of testing equipment is further assurance of our commitment to quality control and customer satisfaction.

Cartridge World Australia and the Master Franchisees together secure the quality and consistency benefits by means of the Notified Conduct and the Related Notified Conduct. In so doing, however, it allows its franchisees to select from the suppliers approved by Cartridge World Australia for each of the required products. This ensures that suppliers approved by Cartridge World Australia must continue to compete to supply the franchisees of the Cartridge World Network in the future with the Notified Conduct.

*Efficiencies Delivered by Enhanced Buying Power*

The running of a tender process by Cartridge World Australia to select approved suppliers achieves lower prices and increased service for franchisees of the Cartridge World Network by reason of the franchisees' increased importance to the supplier.

Those entities who wish to supply products to the Cartridge World Network must submit a negotiated price list as part of its application. The nominated prices for product distributed via Cartridge World Supplies may only be varied quarterly with prior approval of Cartridge World Australia. Other suppliers can change their prices at any time by directly notifying franchisees.

The combined buying power and resultant increased importance of the franchisees to the supplier, in particular, encourages investment by the supplier in the delivery of a higher standard of service to franchisees, ensuring continuity of supply and additional capacity to meet peak demand requirements. Any service issues are dealt with by Cartridge World Australia.

Further, given that the Master Franchisee's franchises face effective competition in the markets in which they participate (as discussed in section 5 below), any cost savings secured by those franchisees as a result of the Notified Conduct (and the Related Notified Conduct) will be passed through to consumers.

These benefits could not be achieved if the Cartridge World Australia permitted, but did not require, franchisees to acquire required products from the suppliers approved by Cartridge World Australia.

Individual supply agreements won't deliver the same benefits as the individual franchisee purchases will not have the volume in a lot of cases to deliver the same level of pricing. As product consistency is a critical element of the system, we would have a wide range of product quality if franchisees were allowed to purchase from whatever supplier they wished to. Suppliers also pay rebates in some cases. Individual franchisees will not be able to maximise potential benefits on an individual basis. Higher rebates can be obtained via consolidated purchasing.

During this process, quality is never compromised. Cartridge World Australia strives to provide the highest quality product at a competitive price (not necessarily the cheapest). Price is relevant to ensure the desired gross margins can be achieved by the franchisee otherwise they will not support the product. Quality is of utmost importance, Cartridge World Australia uses only the best quality imaging supplies and guarantees that cartridges refilled will perform as well as the original equipment manufacturers supply under similar conditions.

### *Efficiencies in Administration and Operation of Cartridge World Network*

The infringement of intellectual property rights is a significant risk for retailers of remanufactured products in the printer cartridge industry. The suppliers of new OEM cartridges possess a range of patent, copyright, trade mark and other intellectual property rights that may be infringed by retailing products remanufactured using their OEM cartridges. The management of this legal risk by individual franchisees would pose a prohibitive barrier to their retailing of remanufactured product. The Notified Conduct enables the Master Franchisee to ensure that this legal risk is effectively managed by means of the arrangements for supply of remanufactured products to the Cartridge World Network. In the absence of the Notified Conduct, the effective management of this legal risk could not be secured because individual franchisees would not be of sufficient importance to the supplier to secure indemnities from the supplier, as the party best able to manage this legal risk.

In addition, the evaluation of suppliers is costly and time-consuming, involving in particular the testing of supplier products. It takes approximately one month (depending on the complexity of a product) to approve a new supplier. As the review system was only implemented at the end of 2007 there has not yet been an annual review of the supplier agreements. It is planned that all suppliers will be notified of the review, including an outline of the required information for the review, at the commencement of November each year with all supplier reviews being completed by the end of December each year. The Notified Conduct (and the Related Notified Conduct) ensures that these costs are not incurred by each individual franchisee of the Cartridge World Network but are only instead only incurred once and shared between the franchisees of the Cartridge World Network and other Australian Cartridge World franchisees.

## **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):**

### *Definition of Relevant Markets*

There are two areas of competition of relevance to an assessment of the anti-competitive detriments of the Notified Conduct. The first is the supply of the products that are the subject of the Notified Conduct, that is the bulk ink, clips, inkjet compatibles etc. Generally, a supplier in the printer cartridge industry specialises in the supply of a specific product category. So, for example, a supplier of toner and laser consumables may enter the supply of remanufactured laser cartridges (as in the case of Cartridge World Australia's approved supplier, RTS Imaging) but this is atypical. Accordingly, there would appear to be a series of discrete product markets for the products acquired by the franchisees of the Cartridge World Network. The suppliers of these products supply goods around Australia, regardless of their physical location. Cartridge World Australia is not aware of suppliers imposing additional freight charges beyond certain geographic limits. In fact, some suppliers offer free freight where orders above a particular value are placed. Accordingly, there would appear to be a series of national markets for the supply of these products.

The second is the area of competition in which the franchisees of the Cartridge World Network compete - that is, the retail supply of printer cartridges, whether new, remanufactured / refilled or compatible printer cartridges, and printer consumables. The area of competition includes a broad range of businesses that supply these products to the end customer, from large chains (such as Officeworks, Kmart, Big W and Harvey Norman) to smaller, independent suppliers (such as computer stores, newsagents, online sellers and office suppliers like Corporate Express, Office National and Office Max). The geographic area in which competition occurs is a series of smaller, local areas, as a Cartridge World store is confined to supplying customers within reasonably close geographic proximity to the store. A consumer would typically travel approximately 3-5 kilometres to frequent a Cartridge World store. However, this distance may be longer in regional and rural areas.

Accordingly, the markets of potential relevance to the Notified Conduct include:

- a series of national markets for the wholesale supply of:
  - remanufactured laser cartridges;
  - OEM cartridges;
  - toner and laser consumables;
  - bulk ink;
  - inkjet compatibles; and
  - specialty photocopier paper;
  - copy paper;
  - printer ribbons;
  - clips (presently, a Cartridge World banded product);
  - ink refill machines;
  - packaging and labels (presently, a Cartridge World banded product); and
  - courier services,
 (together, the **National Wholesale Markets**); and
- a series of local markets for the retail supply of printer cartridges and consumables (together, the **Local Retail Markets**),

(together, the **Relevant Markets**).

#### *Competitive Conditions in the Relevant Markets*

There are many suppliers in each of the National Wholesale Markets that have not been approved by Cartridge World Australia to supply the Network. Of these, the major non-approved suppliers for each of the product categories (other than courier services) are set out below.

<b>Bulk Ink</b>	<b>Toner &amp; Consumables</b>	<b>A4 Paper</b>	<b>OEM Products</b>	<b>Remanufactured Laser Cartridges</b>	<b>Compatible Inkjet Cartridges</b>	<b>Specialty Paper</b>	<b>Printer Ribbons</b>	<b>Ink Refill Machines</b>
Ausjet (formerly Ink Link)	Toner on Demand	Spicers	Ingram Micro	Westbury	Dynamic Suppliers (Print Rite brand)	Kodak	Pelikan Artline	TB Accessories, which is distributed in Australia by JetTec
Bizco	Copymart	Double A (Edwards Dunlop)	Tonnex	Protone	Microjet	Celcast		Overseas manufacturers
	Katun		XIT	Ecotech	Qjet	Avery		
			Dicker Data	Future Graphics				
			Compu Wholesale					
			BMS Technology					

While the precise size of a supplier's customer base will depend on the particular National Wholesale Market in which they participate, there are many potential customers in each of the National Wholesale Markets and, in some cases, over 500 such customers, with many having multiple sites that require supply. It follows that approval as a supplier to the Cartridge World Network is unnecessary in order to be an effective competitor in any of the National Wholesale Markets.

Cartridge World stores are just one example of the businesses that acquire products in the National Wholesale Markets and compete in the Local Retail Markets. Cartridge World stores face many competitors in the Local Retail Markets. These competitors include, in particular, Officeworks, Harvey Norman, Office National, Office Max, Corporate Express, Kmart, Big W, Myer, David Jones, Dick Smith, independent computer stores and newsagents, and members of the following competing franchise networks:

- Master Imaging International;
- Toner Action Western Australia;
- Cartridge Man;
- Bob's Office Inks & Toners; and
- Refills Now.
- The Ink Shop

Each of these operate in the remanufactured/refilled space. In addition, there are a large number of independent suppliers servicing different Local Retail Markets. Details of these independent suppliers can be provided upon request.

In each and every one of the Local Retail Markets in Australia, the relevant Cartridge World store would face competition from a minimum of 6 competing suppliers of printer cartridges and consumables.

The extent of competition faced by Cartridge World stores is reflected in the fact that, while there are approximately 231 Cartridge World stores distributed throughout Australia, their share of total national sales of printer cartridges and consumables is approximately 2.5%.

## **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:**

Cartridge World Australia submits that the Notified Conduct (and the Related Notified Conduct) is unlikely to result in any reduction in competition in the Relevant Markets and thus there is not likely to be any detriment to the public as a result of the Notified Conduct. In particular, the Notified Conduct does not reduce competition because it:

- does not prevent franchisees from sourcing supplies based on their views regarding quality and price, and so constraining their ability to compete in the Local Retail Markets, because, in respect of most product lines, the franchisees of the Cartridge World Network will continue to have the option to select from approximately 2-3 suppliers approved by Cartridge World Australia;
- additionally, franchisees may participate and engage in a process of identifying potential suppliers and make recommendations to their respective Master Franchisee, where the franchisee considers a supplier to be capable of supplying a product which meet strict quality requirements of the Cartridge World Network. Franchisees may also identify new product lines and potential suppliers of those products - in which case - Cartridge World Australia will immediately consider an application to supply the new product line to the Cartridge World Network;
- does not reduce the incentive for the nominated suppliers to compete on price and quality in supplying the franchisees of the Cartridge World Network, again because, in respect of most product lines, these franchisees will continue to have the option to select from approximately 2-3 suppliers approved by Cartridge World Australia; or
- does not pose any barrier to suppliers that are not approved by Cartridge World Australia to distribute their products to the end customer, as evidenced by the existence of numerous suppliers in each of the National Wholesale Markets that have not been approved by Cartridge World Australia, because there are many acquirers in each of the National Wholesale Markets other than Cartridge World franchisees.

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

As recognised by the Commission in its *Notices in respect of notifications lodged by Seal-A-Fridge Pty Ltd and others* of 13 September 2007, there are many elements of an exclusive dealing arrangement that, if present, mitigate any reduction of competition from exclusive dealing in a franchise context. Most of these mitigating elements identified by the Commission are present in respect of the Notified Conduct, including in particular:

- the suppliers nominated by the Master Franchisee are chosen through competitive means, namely a tender process, by Cartridge World Australia which includes consideration of price, quality and non-price conditions such as manufacturing capacity and supply;
- the suppliers approved by Cartridge World Australia that are nominated by the Master Franchisee for the purposes of the Notified Conduct are annually reviewed by Cartridge World Australia and in circumstances where a franchisee becomes aware of new product line that is not presently supplied by existing approved suppliers, Cartridge World Australia will promptly consider an application for approval in respect of the relevant product line;

Cartridge World Australia demonstrates an ongoing interest in maintaining the efficiency of the Master Franchisee's franchisees and therefore an interest in ensuring nominated suppliers deliver value for money. One of Cartridge World Australia's key selling points is providing an excellent quality product at a fraction of the OEM price. The product must be of high quality giving excellent print performance. Cartridge World Australia also analyses the potential franchisee margins to ensure the franchisee gets a satisfactory return. Cartridge World Australia has engaged a supply chain consulting firm, Portland Group with the objectives of:

- identifying the most appropriate supply model for the business;
  - appoint the best suppliers of highest quality products in each category;
  - ensure that Cartridge World Australia's approved suppliers benefit from the current and continuing growth in the volume of products traded through Cartridge World Australia's global network, and
  - ensure that the scale of Cartridge World Australia's business is reflected in the prices paid by the company and its franchisee stores.
- in respect of most product lines, the Master Franchisee's franchisees will continue to have the option to select from approximately 2-3 suppliers approved by Cartridge World Australia; and
  - the Australian Cartridge World franchisees, including the Master Franchisee's franchisees, comprise only a small proportion of the

acquisitions in each of the National Wholesale Markets and face significant competition in each of the Local Retail Markets.

In addition, the Master Franchisee implements the Notified Conduct in a manner that is fair and reasonable to its actual and potential franchisees, such that no public detriments arise in this regard. In particular, the Notified Conduct is consistent with the franchise agreements between the Master Franchisee and its franchisees (as discussed in section 2 above) and the Master Franchisee's franchisees are made aware of the requirement to acquire product only from the nominated suppliers approved by Cartridge World Australia prior to entering into the franchise agreements. The Code requires that the franchise agreement and disclosure document be provided to the proposed franchisee at least 14 days before they enter into the agreement or make a non-refundable payment.

## 7 Further information

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

Peter Buberis  
Partner  
DLA Phillips Fox  
100 King William Street  
Adelaide SA 5000  
Telephone: (08) 8124 1811  
Email: peter.buberis@dlaphillipsfox.com

Dated..... 8 July 2008

Signed on behalf of the applicant

(Signature)

(Full Name)

(Organisation)

(Position in Organisation)



## Restriction of Publication of Part Claimed in respect of the entirety of Annexure A

Annexure A

### New South Wales

No.	Store	Name	Address
1	Restriction of Publication of Part Claimed		
2			
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6			
7			
8			
9			

### Queensland

No.	Store	Name	Address
10	Restriction of Publication of Part Claimed		
11			
12			
13			

**Restriction of Publication of Part Claimed in respect of the entirety of Annexure  
A**

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**South Australia**

No.	Store	Name	Address
14	Restriction of Publication of Part Claimed		

**Victoria**

No.	Store	Name	Address
15	Restriction of Publication of Part Claimed		
16			
17			
18			
19			

**Western Australia**

No.	Store	Name	Address
20	Restriction of Publication of Part Claimed		

**Restriction of Publication of Part Claimed in respect of the entirety of Annexure B**

Annexure B

EXCLUDED FROM  
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## DIRECTIONS

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.

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.

Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.

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.

Describe the business or consumers likely to be affected by the conduct.

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.

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.

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.

Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

Restriction of Publication of Part Claimed on page 2 and 3 and the entirety of Annexures A

## 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:** N93728  
Pacific Oasis Pty Ltd (ACN 115 454 165) (**Pacific Oasis**) of 118 Macquarie Street, Parramatta, New South Wales.
- (b) **Short description of business carried on by that person:**  
Cartridge World Australia Pty Ltd (ACN 126 261 158) (**Cartridge World Australia**) operates the international 'Cartridge World' franchise network, which network retails ink refilling and laser cartridge remanufactured products in the printer cartridge industry.  
Pacific Oasis is the Australian master franchisee appointed by Cartridge World Australia for New South Wales and the Australian Capital Territory (**Master Franchisee**). The Cartridge World franchise network operated by the Master Franchisee in New South Wales and the Australian Capital Territory (**Cartridge World Network**) refills empty ink cartridges and remanufactures empty toner cartridges for inkjet printers, laser printers, fax machines and photocopiers with top quality brand specific ink and toners.  
Cartridge World Australia is responsible for the Cartridge World Australia franchise system. The Notified Conduct described in Section 2 of this Notification arises as a consequence of the Master Franchisee complying with its obligations under the Master Franchise Agreement between Cartridge World Australia (as franchisor) and the Master Franchisee (as master franchisee).
- (c) **Address in Australia for service of documents on that person:**  
C/- Peter Buberis  
Partner  
DLA Phillips Fox  
100 King William Street  
Adelaide SA 5000

## Notified arrangement

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

The arrangement applies to the supply by the Master Franchisee of franchise services to franchisees of the Cartridge World Network, including in particular admittance to the Cartridge World Network as a franchisee.

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

The Master Franchisee allows a person to become a franchisee of the Cartridge World Network, and to remain a franchisee of that Network, on the condition that the franchisees acquire stock and equipment only from a selection of nominated suppliers (**Notified Conduct**).

Pacific Oasis is a party to various franchise agreements with franchisees which are subject to a condition on these terms. These agreements take the form of either:

- An agreement between Pacific Oasis and the relevant franchisee (the **Franchise Agreement(s)**); or
- An agreement between Cartridge World Australia, Pacific Oasis and the relevant franchisee (the **Tripartite Agreement(s)**).

Cartridge World Australia's conduct insofar as it concerns the Tripartite Agreements is the subject of a Related Notification (the **Related Notification**).

### *Terms of the Franchise Agreement*

Clause 7 of the current standard form Franchise Agreement that the Master Franchisee enters into with the franchisees of the Cartridge World Network (**Current Franchise Agreement**) provides as follows:

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While a number of the Master Franchisee's franchisees are party to Franchise Agreements that are predecessors to the Current Franchise Agreement, all of the Franchise Agreements currently in force contain provisions in substantively similar terms to those extracted above.

### *Terms of the Tripartite Agreements*

The relevant parts of clauses 8 and 12 of the standard form Tripartite Agreement that Cartridge World Australia has historically entered into with the Master Franchisees and the franchisees of the Cartridge World Network provides as follows:

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#### *Operations Manual*

Section 6 of the Cartridge World Operations Manual (**Operations Manual**) discusses the requirements with respect to the acquisition and offer for sale of products by the Master Franchisee's franchisees. A copy of section 6 of the Operations Manual is attached as the confidential annexure marked "B".

#### *Criteria and Process for Approval of Suppliers by Cartridge World Australia*

The nominated suppliers that the Master Franchisee requires his franchisees to acquire stock and equipment from, are those suppliers that have been approved by Cartridge World Australia. Cartridge World Australia approves only those suppliers that meet its standards and specifications for product used in or sold by the Cartridge World Network. These standards and specifications are as follows:

- the supplier is a reputable company with a proven track record in the supply of goods and services;
- the product is of equal quality to any original equipment manufacturer (**OEM**) products (if applicable);
- the product is produced to international quality standards (ISO9000 or equivalent);
- the supplier guarantees products unconditionally to be free of defects;
- the supplier observes any applicable industry standards and procedures in the remanufacturing of each product, which must include adequate post-testing of each remanufactured cartridge (if applicable);
- the supplier is financially stable, i.e. has no declared financial difficulties;
- the supplier complies with legal and legislative requirements;
- the supplier provides a letter of indemnity stating that its products do not infringe on any third party's patents, copyrights, trade marks or other intellectual property;
- the supplier must provide and honour an appropriate level of product warranty and these terms will be incorporated into their trading terms;
- the product is easily accessible from the supplier with no likely major supply issues;
- the supplier can provide alternative avenues of supply in the case of major product supply interruptions;
- the supplier is dedicated to customer service and its sales, customer service and technical support departments work to

address customer requirements promptly before, during and after purchase;

- the supplier can provide Material Safety Data Sheet (**MSDS**) which is designed to provide both workers and emergency personnel with the proper procedures for handling or working with a particular substance. MSDS's include information such as physical data (melting point, boiling point, flash point etc.), toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment, and spill/leak procedures. These are of particular use if a spill or other accident occurs;
- the supplier provides easily accessible online or phone support;
- the supplier has an established research and development process and certified testing procedures; and
- the supplier can display a high level of product knowledge and knowledge of industry trends.

Cartridge World Australia approves a maximum of 3 suppliers for each approved product line. In some cases, Cartridge World Australia will approve Cartridge World Supplies - a division of Cartridge World Australia - as an approved supplier in respect of a particular product line.

Cartridge World Australia will consider approval of a supplier, in accordance with its Vendor Certification process, in undertaking its periodic review of its approved suppliers. The Vendor Certification process involves the following:

- Cartridge World Australia's Director for Purchasing undertakes an initial investigation and identifies 3-5 potential suppliers for the required product line.
- The Director for Purchasing asks for tenders from 3-5 of the potential suppliers.
- Tenderers, competing to provide a particular approved product, are required to submit an application which contains particulars of negotiated pricing, testing of product(s), quality and certification, service capability, manufacturing capacity and other non-price terms and conditions.
- The tenders are reviewed: evaluation includes testing and feedback from Master Franchisees and franchisees.
- A recommendation is provided to the VP of Franchise Operations of Cartridge World Australia for approval.
- The supplier and the Master Franchisees and franchisees are informed of Cartridge World Australia's decision.

A franchisee of the Cartridge World Network may nominate a supplier and their product line to the Master Franchisee and, if the Master Franchisee recommends to Cartridge World Australia that it consider approval of the supplier, Cartridge World Australia will consider approval of the supplier at its next periodic review of its approved suppliers.

Cartridge World Australia reviews the suppliers it has approved annually, in December of each year. It last reviewed its approved suppliers in December 2007.



However, where:

- a franchisee identifies a potential supplier of a new product line to its Master Franchisee, and there is currently - no approved supplier for that product; and
- the Master Franchisee makes a positive recommendation to Cartridge World Australia that it consider approval of the supplier for the new product line;

Cartridge World Australia will immediately proceed to consider the relevant application and commence the vendor certification process - rather than postpone consideration of the application to the next annual review.

In the case of the approved supplier, Goodson Consumables, Pacific Oasis initially identified the relevant entity as a potential supplier and following consideration of an application, testing and consultation, the VP of Franchise Operations approved the supplier in respect of a particular product line.

#### *Approved Suppliers for 2008*

Cartridge World Australia publishes the list of approved suppliers and the product lines those suppliers are approved to supply to the Cartridge World Network on its extranet site. The list also includes contact details for the sales, administration and distribution / logistics departments of the approved suppliers. In addition to the posting of the list on the extranet site, each of the Master Franchisees informs all of its franchisees by email of any newly approved supplier.

The suppliers currently approved by Cartridge World Australia and the product lines they are approved to supply are set out in the following table.

With the exception of one product line (ink refill machines), franchisees may select between two or more alternative suppliers from which to acquire the relevant product. In the case of ink refill machines - only one supplier is presently approved.

As noted above, Cartridge World Supplies, a department of Cartridge World Australia (operating under a registered business name) is a nominated supplier in respect of a number of product lines.

Supplier	Bulk Ink	Clips	Inkjet Compatibles	Toner & Laser Consumables	Remanufactured Laser Cartridges	Original Equipment Manufacturer Products	Packaging & Labels	Specialty Photocopier Paper	Copy Paper	Printer Ribbons	Ink Refill Machines	Courier
Cartridge World Supplies	✓	✓	✓		✓		✓	✓				
Dynamic Supplies						✓						
Goodson Imports										✓		
Future Graphics				✓								
Keytek										✓		
Geographics								✓				
Imaging Solutions				✓								
Synnex						✓						
Jet Tec	✓		✓					✓				
RTS Imaging (Katun)				✓ Copier Toners	✓							
Phoenix Toner						✓						
Toner Warehouse						✓						
Imagetec (Paper One Brand)									✓			
Fuji Xerox									✓			
Sage Recycling Solutions											✓	
Fastway Couriers												✓
Couriers Please												✓

For all products for which Cartridge World Supplies is an approved supplier, other than clips, and packaging and labels, the Master Franchisee's franchisees can elect to acquire products from one of the competing, approved suppliers also approved to supply those products.

Cartridge World Supplies is the sole approved supplier of clips, and packaging and labels, because these are 'Cartridge World' branded products.

### **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:**

Current and future franchisees party to a Franchise Agreement or a Tripartite Agreement with Pacific Oasis.

**(b) Number of those persons:**

**(i) At present time:**

Pacific Oasis currently has 42 franchisees who are party to a franchise agreement (be it a Franchise Agreement or a Tripartite Agreement), and who in total, operate 66 stores in the Cartridge World Network.

**(ii) Estimated within the next year:**

We anticipate that Pacific Oasis will sign up approximately 2 new franchisees over the next 12 months. All new franchisees will sign the current form franchise agreement on the terms the subject of this notification.

At the expiration of the next 12 month period, the renewal date for some of the affected Tripartite Agreements that remain in force will have passed. Accordingly, the number of franchisees affected by the Tripartite Agreements will have reduced over the next year, however it is expected that those same franchisees will execute a Franchise Agreement on the terms the subject of this notification. Accordingly - this is not expected to affect the number of persons affected by the notified conduct.

**(iii) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:**

The particulars of the current number of Pacific Oasis franchisees (including names and addresses) are identified in a confidential annexure marked "A" to this notification.

### **4 Public benefit claims**

**(a) Arguments in support of notification:**

The Notified Conduct, in combination with the conduct notified under the Related Notifications (**Related Notified Conduct**), delivers the following public benefits:

- The maintenance of the quality and consistency of the end product supplied by the franchisees of the Cartridge World Network and the maintenance of the reputation of the Cartridge World Network.

- The Notified Conduct creates buying power which:
  - delivers cost savings to franchisees of the Cartridge World Network, which will in turn deliver lower prices to consumers and promote competition in the markets in which the franchisees participate;
  - increases the service provided to those franchisees; and ensures the more timely supply of products to franchisees in the Cartridge World Network.
- The realisation of efficiencies in the administration of the Cartridge World Network, in particular in the evaluation of suppliers' suitability and the management of the significant legal risks associated with infringement of third party intellectual property rights.

The Notified Conduct, in combination with the Related Notified Conduct, is critical to the business model of Cartridge World Network.

The business model of Cartridge World Network is crucially dependent on high quality products. A large part of the Cartridge World Network business focuses on offering customers the alternative of purchasing high quality remanufactured cartridges (at around a 40% discount) in substitution for OEM products.

If the quality of remanufactured cartridges supplied by the Cartridge World Network were compromised, it may be difficult to persuade customers that presently use remanufactured cartridges, that remanufactured cartridges are a true alternative to OEM products and this would impinge on the Cartridge World Network brand.

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

*Product Quality and Consistency and Maintenance of Reputation*

The international franchise network operated by Cartridge World Australia is the world's fastest growing ink refilling and laser cartridge remanufacturing retailer. The business model adopted by Cartridge World Australia has provided it with an established reputation as a provider of remanufactured products in the printer cartridge industry of comparable quality to, but at a more affordable price than, new OEM cartridges. Cartridge World Australia estimates its share of the total printer consumables market in Australia at 2.5%. It is estimated that the percentage of customers who use remanufactured cartridges is less than 5%.

Cartridge World Australia's high quality standards are evidenced by minimal warranty claims, over 10 years of positive growth and reputation in the market place, its policy aim to meet ISO standards and its continual focus on process improvement. The approval process for products and suppliers ensure quality standards are not compromised.

The franchise business model relies on quality and consistency throughout the System for success. The System requires that licensees and sub-licensees adhere to standards and policies developed by the Company which provide for the successful and uniform operation of businesses utilising the System. We are also in the process of developing a production model for ink refilling aimed at improved quality and consistency and driving efficiencies at store level.

The toners and inks used in the System are sourced from top suppliers from around the world, and are each uniquely formulated for the many different cartridges available. Our extensive range of testing equipment is further assurance of our commitment to quality control and customer satisfaction.

Pacific Oasis together with the other Master Franchisees, and Cartridge World Australia, secure the quality and consistency benefits by means of the Notified Conduct and the Related Notified Conduct. In so doing, however, it allows its franchisees to select from the suppliers approved by Cartridge World Australia for each of the required products. This ensures that suppliers approved by Cartridge World Australia must continue to compete to supply the franchisees of the Cartridge World Network in the future.

#### *Efficiencies Delivered by Enhanced Buying Power*

The running of a tender process by Cartridge World Australia to select approved suppliers achieves lower prices and increased service for franchisees of the Cartridge World Network by reason of the franchisees' increased importance to the supplier.

Those entities who wish to supply products to the Cartridge World Network must submit a negotiated price list as part of its application. The nominated prices for product distributed via Cartridge World Supplies may only be varied quarterly with prior approval of Cartridge World Australia. Other suppliers can change their prices at any time by directly notifying franchisees.

The combined buying power and resultant increased importance of the franchisees to the supplier, in particular, encourages investment by the supplier in the delivery of a higher standard of service to franchisees, ensuring continuity of supply and additional capacity to meet peak demand requirements. Any service issues are dealt with by Cartridge World Australia.

Further, given that the Master Franchisee's franchises face effective competition in the markets in which they participate (as discussed in section 5 below), any cost savings secured by those franchisees as a result of the Notified Conduct (and the Related Notified Conduct) will be passed through to consumers.

These benefits could not be achieved if the Cartridge World Australia permitted, but did not require, franchisees to acquire required products from the suppliers approved by Cartridge World Australia.

During this process, quality is never compromised. Cartridge World Australia strives to provide the highest quality product at a competitive price (not necessarily the cheapest). Price is relevant to ensure the desired gross margins can be achieved by the franchisee otherwise they will not support the product. Quality is of utmost importance, Cartridge World Australia uses only the best quality imaging supplies and guarantees that cartridges refilled will perform as well as the original equipment manufacturers supply under similar conditions.

#### *Efficiencies in Administration and Operation of Cartridge World Network*

The infringement of intellectual property rights is a significant risk for retailers of remanufactured products in the printer cartridge industry. The suppliers of new OEM cartridges possess a range of patent, copyright, trade mark and other intellectual property rights that may be infringed by retailing products

remanufactured using their OEM cartridges. The management of this legal risk by individual franchisees would pose a prohibitive barrier to their retailing of remanufactured product. The Notified Conduct enables the Master Franchisee to ensure that this legal risk is effectively managed by means of the arrangements for supply of remanufactured products to the Cartridge World Network. In the absence of the Notified Conduct, the effective management of this legal risk could not be secured because individual franchisees would not be of sufficient importance to the supplier to secure indemnities from the supplier, as the party best able to manage this legal risk.

In addition, the evaluation of suppliers is costly and time-consuming, involving in particular the testing of supplier products. It takes approximately one month (depending on the complexity of a product) to approve a new supplier. As the review system was only implemented at the end of 2007 there has not yet been an annual review of the supplier agreements. It is planned that all suppliers will be notified of the review, including an outline of the required information for the review, at the commencement of November each year with all supplier reviews being completed by the end of December each year. The Notified Conduct (and the Related Notified Conduct) ensures that these costs are not incurred by each individual franchisee of the Cartridge World Network but are only instead only incurred once and shared between the franchisees of the Cartridge World Network and other Australian Cartridge World franchisees.

The Notified Conduct (and the Related Notified Conduct) ensures that these costs are not incurred by each individual franchisee of the Cartridge World Network but are only instead only incurred once and shared between the franchisees of the Cartridge World Network and other Australian Cartridge World franchisees.

## **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):**

### *Definition of Relevant Markets*

There are two areas of competition of relevance to an assessment of the anti-competitive detriments of the Notified Conduct. The first is the supply of the products that are the subject of the Notified Conduct, that is the bulk ink, clips, inkjet compatibles etc. Generally, a supplier in the printer cartridge industry specialises in the supply of a specific product category. So, for example, a supplier of toner and laser consumables may enter the supply of remanufactured laser cartridges (as in the case of Cartridge World Australia's approved supplier, RTS Imaging) but this is atypical. Accordingly, there would appear to be a series of discrete product markets for the products acquired by the franchisees of the Cartridge World Network. The suppliers of these products supply goods around Australia, regardless of their physical location. Accordingly, there would appear to be a series of national markets for the supply of these products. Cartridge World Australia is not aware of suppliers imposing additional freight charges beyond certain geographic limits. In fact, some suppliers offer free freight where orders above a particular value are placed.

The second is the area of competition in which the franchisees of the Cartridge World Network compete - that is, the retail supply of printer cartridges, whether new, remanufactured / refilled or compatible printer cartridges, and printer consumables. The area of competition includes a broad range of businesses that supply these products to the end customer, from large chains (such as Officeworks, Kmart, Big W and Harvey Norman) to smaller, independent suppliers (such as computer stores, newsagents, online sellers and office suppliers like Corporate Express, Office National and Office Max). The geographic area in which competition occurs is a series of smaller, local areas, as a Cartridge World store is confined to supplying customers within reasonably close geographic proximity to the store. A consumer would typically travel approximately 3-5 kilometres to frequent a Cartridge World store. However, this distance may be longer in regional and rural areas.

Accordingly, the markets of potential relevance to the Notified Conduct include:

- a series of national markets for the wholesale supply of:
  - remanufactured laser cartridges;
  - OEM cartridges;
  - toner and laser consumables;
  - bulk ink;
  - inkjet compatibles; and
  - specialty photocopier paper;
  - copy paper;
  - printer ribbons;
  - clips (presently, a Cartridge World banded product);
  - ink refill machines;
  - packaging and labels (presently, a Cartridge World banded product); and
  - courier services,
 (together, the **National Wholesale Markets**); and
- a series of local markets for the retail supply of printer cartridges and consumables (together, the **Local Retail Markets**),

(together, the **Relevant Markets**).

#### *Competitive Conditions in the Relevant Markets*

There are many suppliers in each of the National Wholesale Markets that have not been approved by Cartridge World Australia to supply the Network. Of these, the major non-approved suppliers for each of the product categories (other than courier services) are set out below.

Bulk Ink	Toner & Consumables	A4 Paper	OEM Products	Remanufactured Laser Cartridges	Compatible Inkjet Cartridges	Specialty Paper	Printer Ribbons	Ink Refill Machines
Ausjet (formerly Ink Link)	Toner on Demand	Spicers	Ingram Micro	Westbury	Dynamic Suppliers (Print Rite brand)	Kodak	Pelikan Artline	TB Accessories, which is distributed in Australia by JetTec
Bizco	Copymart	Double A (Edwards Dunlop)	Tonnex	Protone	Microjet	Celcast		Overseas manufacturers
	Katun		XIT	Ecotech	Qjet	Avery		
			Dicker Data	Future Graphics				
			Compu Wholesale					
			BMS Technology					

While the precise size of a supplier's customer base will depend on the particular National Wholesale Market in which they participate, there are many potential customers in each of the National Wholesale Markets and, in some cases, over 500 such customers, with many having multiple sites that require supply. It follows that approval as a supplier to the Cartridge World Network is unnecessary in order to be an effective competitor in any of the National Wholesale Markets.

Cartridge World stores are just one example of the businesses that acquire products in the National Wholesale Markets and compete in the Local Retail Markets. Cartridge World stores face many competitors in the Local Retail Markets. These competitors include, in particular, Officeworks, Harvey Norman, Office National, Office Max, Corporate Express, Kmart, Big W, Myer, David Jones, Dick Smith, independent computer stores and newsagents, and members of the following competing franchise networks:

- Master Imaging International;
- Toner Action Western Australia;
- Cartridge Man;
- Bob's Office Inks & Toners; and
- Refills Now.
- The Ink Shop

Each of these operate in the remanufactured/refilled space. In addition, there are a large number of independent suppliers servicing different Local Retail Markets. Details of these independent suppliers can be provided upon request.



In each and every one of the Local Retail Markets in Australia, the relevant Cartridge World store would face competition from a minimum of 6 competing suppliers of printer cartridges and consumables.

The extent of competition faced by Cartridge World stores is reflected in the fact that, while there are approximately 231 Cartridge World stores distributed throughout the Australian network, their share of total national sales of printer cartridges and consumables is approximately 2.5%.

## 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:**

Pacific Oasis submits that the Notified Conduct (and the Related Notified Conduct) is unlikely to result in any reduction in competition in the Relevant Markets and thus there is not likely to be any detriment to the public as a result of that conduct. In particular, the conduct does not reduce competition because it:

- does not prevent franchisees from sourcing supplies based on their views regarding quality and price, and so constraining their ability to compete in the Local Retail Markets, because, in respect of most product lines, the franchisees of the Cartridge World Network will continue to have the option to select from approximately 2-3 suppliers approved by Cartridge World Australia;
- additionally, franchisees may participate and engage in a process of identifying potential suppliers and make recommendations to their respective Master Franchisee, where the franchisee considers a supplier to be capable of supplying a product which meet strict quality requirements of the Cartridge World Network. Franchisees may also identify new product lines and potential suppliers of those products - in which case - it is the practice of Cartridge World Australia to immediately consider an application to supply the new product line to the Cartridge World Network;
- does not reduce the incentive for the nominated suppliers to compete on price and quality in supplying the franchisees of the Cartridge World Network, again because, in respect of most product lines, these franchisees will continue to have the option to select from approximately 2-3 suppliers approved by Cartridge World Australia; or
- does not pose any barrier to suppliers that are not approved by Cartridge World Australia to distribute their products to the end customer, as evidenced by the existence of numerous suppliers in each of the National Wholesale Markets that have not been approved by Cartridge World Australia, because there are many acquirers in each of the National Wholesale Markets other than Cartridge World franchisees.

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

As recognised by the Commission in its *Notices in respect of notifications lodged by Seal-A-Fridge Pty Ltd and others* of 13 September 2007, there are many elements of an exclusive dealing arrangement that, if present, mitigate any reduction of competition from exclusive dealing in a franchise context. Most of these mitigating elements identified by the Commission are present in respect of the Notified Conduct and the Related Notified Conduct, including in particular:

- the suppliers nominated by Pacific Oasis and the other Master Franchisees are chosen through competitive means, namely a tender process, by Cartridge World Australia which includes consideration of price, quality and non-price conditions such as manufacturing capacity and supply;
- the suppliers approved by Cartridge World Australia that are nominated by the Master Franchisee are annually reviewed by Cartridge World Australia and in circumstances where a franchisee becomes aware of new product line that is not presently supplied by existing approved suppliers, Cartridge World Australia will promptly consider an application for approval in respect of the relevant product line;
- Cartridge World Australia demonstrates an ongoing interest in maintaining the efficiency of the Master Franchisee's franchisees and therefore an interest in ensuring nominated suppliers deliver value for money. One of Cartridge World Australia's key selling points is providing an excellent quality product at a fraction of the OEM price. The product must be of high quality giving excellent print performance. Cartridge World Australia also analyses the potential franchisee margins to ensure the franchisee gets a satisfactory return. Cartridge World Australia has engaged a supply chain consulting firm, Portland Group with the objectives of:
  - identifying the most appropriate supply model for the business
  - appoint the best suppliers of highest quality products in each category,
  - ensure that Cartridge World Australia's approved suppliers benefit from the current and continuing growth in the volume of products traded through Cartridge World Australia's global network, and
  - ensure that the scale of Cartridge World Australia's business is reflected in the prices paid by the company and its franchisee stores.
- in respect of most product lines, the Master Franchisee's franchisees will continue to have the option to select from approximately 2-3 suppliers approved by Cartridge World Australia; and

- the Australian Cartridge World franchisees, including the Master Franchisee's franchisees, comprise only a small proportion of the acquisitions in each of the National Wholesale Markets and face significant competition in each of the Local Retail Markets.

In addition, Pacific Oasis implements the Notified Conduct in a manner that is fair and reasonable to its actual and potential franchisees, such that no public detriments arise in this regard. In particular, the Notified Conduct is consistent with the franchise agreements between the Master Franchisee and its franchisees (as discussed in section 2 above) and the Master Franchisee's franchisees are made aware of the requirement to acquire product only from the nominated suppliers approved by Cartridge World Australia prior to entering into the franchise agreements. The Code requires that the franchise agreement and disclosure document are provided to the proposed franchisee at least 14 days before they enter into the agreement or make a non-refundable payment.

## 7 Further information

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

Peter Buberis  
Partner  
DLA Phillips Fox  
100 King William Street  
Adelaide SA 5000  
Telephone: (08) 8124 1811  
Email: peter.buberis@dlaphillipsfox.com

Dated..... 13th OCTOBER 2008 .....

Signed on behalf of the applicant



(Signature)

DAVID ALLAN CAMPBELL

(Full Name)

PACIFIC OASIS INVESTMENTS PTY LTD

(Organisation)

DIRECTOR

(Position in Organisation)

Restriction of Publication of Part Claimed in respect of the entirety of Annexure A

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PUBLIC REGISTER

Annexure A

No.	Name	Address	Suburb	State	PC	Business Name	Additional store in Territory
Restriction of Publication of Part Claimed							

## 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.

Restriction of Publication of Part Claimed on page 2 and <sup>3</sup>the entirety of  
Annexures A ~~and B~~

## 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:**

Austcart Pty Ltd (ACN 088 278 479) (**Austcart**) of <sup>63</sup> Torquay Road, Hervey Bay, Queensland. N93729

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

Cartridge World Australia Pty Ltd (ACN 126 261 158) (**Cartridge World Australia**) operates the international 'Cartridge World' franchise network, which network retails ink refilling and laser cartridge remanufactured products in the printer cartridge industry.

Austcart is the Australian master franchisee appointed by Cartridge World Australia for Queensland (**Master Franchisee**). The Cartridge World franchise network operated by the Master Franchisee in Queensland (the **Cartridge World Network**) refills empty ink cartridges and remanufactures empty toner cartridges for inkjet printers, laser printers, fax machines and photocopiers with top quality brand specific ink and toners.

Cartridge World Australia is responsible for the Cartridge World Australia franchise system. The Notified Conduct described in Section 2 of this Notification arises as a consequence of the Master Franchisee complying with its obligations under the Master Franchise Agreement between Cartridge World Australia (as franchisor) and the Master Franchisee (as master franchisee).

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

C/- Peter Buberis  
Partner  
DLA Phillips Fox  
100 King William Street  
Adelaide SA 5000

## Notified arrangement

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

The arrangement applies to the supply by the Master Franchisee of franchise services to franchisees of the Cartridge World Network, including in particular admittance to the Cartridge World Network as a franchisee.

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

The Master Franchisee allows a person to become a franchisee of the Cartridge World Network, and to remain a franchisee of that Network, on the condition that the franchisees acquire stock and equipment only from a selection of nominated suppliers (**Notified Conduct**).

Austcart is a party to various franchise agreements with franchisees which are subject to a condition on these terms. These agreements take the form of either:

- An agreement between Austcart and the relevant franchisee (the **Franchise Agreement(s)**); or
- An agreement between Cartridge World Australia, Austcart and the relevant franchisee (the **Tripartite Agreement(s)**).

Cartridge World Australia's conduct insofar as it concerns the Tripartite Agreements is the subject of a Related Notification (the **Related Notification**).

*Terms of the Franchise Agreement*

Clause 7 of the current standard form Franchise Agreement that the Master Franchisee enters into with the franchisees of the Cartridge World Network (**Current Franchise Agreement**) provides as follows:

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**EXCLUDED FROM  
PUBLIC REGISTER**

While a number of the Master Franchisee's franchisees are party to Franchisee Agreements that are predecessors to the Current Franchise Agreement, all of the Franchise Agreements currently in force contain provisions in substantively similar terms to those extracted above.

*Terms of the Tripartite Agreements*

The relevant parts of clauses 8 and 12 of the standard form Tripartite Agreement that Cartridge World Australia has historically entered into with the Master Franchisees and the franchisees of the Cartridge World Network provides as follows:

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**EXCLUDED FROM  
PUBLIC REGISTER**

### *Operations Manual*

Section 6 of the Cartridge World Operations Manual (**Operations Manual**) discusses the requirements with respect to the acquisition and offer for sale of products by the Master Franchisee's franchisees. A copy of section 6 of the Operations Manual is attached in the confidential annexure marked "B".

### *Criteria and Process for Approval of Suppliers by Cartridge World Australia*

The nominated suppliers that the Master Franchisee requires his franchisees to acquire stock and equipment from, are those suppliers that have been approved by Cartridge World Australia. Cartridge World Australia approves only those suppliers that meet its standards and specifications for product used in or sold by the Cartridge World Network. These standards and specifications are as follows:

- the supplier is a reputable company with a proven track record in the supply of goods and services;
- the product is of equal quality to any original equipment manufacturer (**OEM**) products (if applicable);
- the product is produced to international quality standards (ISO9000 or equivalent);
- the supplier guarantees products unconditionally to be free of defects;
- the supplier observes any applicable industry standards and procedures in the remanufacturing of each product, which must include adequate post-testing of each remanufactured cartridge (if applicable);
- the supplier is financially stable, i.e. has no declared financial difficulties;
- the supplier complies with legal and legislative requirements;
- the supplier provides a letter of indemnity stating that its products do not infringe on any third party's patents, copyrights, trade marks or other intellectual property;
- the supplier must provide and honour an appropriate level of product warranty and these terms will be incorporated into their trading terms;
- the product is easily accessible from the supplier with no likely major supply issues;
- the supplier can provide alternative avenues of supply in the case of major product supply interruptions;
- the supplier is dedicated to customer service and its sales, customer service and technical support departments work to



address customer requirements promptly before, during and after purchase;

- the supplier can provide Material Safety Data Sheet (**MSDS**) which is designed to provide both workers and emergency personnel with the proper procedures for handling or working with a particular substance. MSDS's include information such as physical data (melting point, boiling point, flash point etc.), toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment, and spill/leak procedures. These are of particular use if a spill or other accident occurs;
- the supplier provides easily accessible online or phone support;
- the supplier has an established research and development process and certified testing procedures; and
- the supplier can display a high level of product knowledge and knowledge of industry trends.

Cartridge World Australia approves a maximum of 3 suppliers for each approved product line. In some cases, Cartridge World Australia will approve Cartridge World Supplies - a division of Cartridge World Australia - as an approved supplier in respect of a particular product line.

Cartridge World Australia will consider approval of a supplier, in accordance with its Vendor Certification process, in undertaking its periodic review of its approved suppliers. The Vendor Certification process involves the following:

- Cartridge World Australia's Director for Purchasing undertakes an initial investigation and identifies 3-5 potential suppliers for the required product line.
- The Director for Purchasing asks for tenders from 3-5 of the potential suppliers.
- Tenderers, competing to provide a particular approved product, are required to submit an application which contains particulars of negotiated pricing, testing of product(s), quality and certification, service capability, manufacturing capacity and other non-price terms and conditions.
- The tenders are reviewed: evaluation includes testing and feedback from Master Franchisees and franchisees.
- A recommendation is provided to the VP of Franchise Operations of Cartridge World Australia for approval.
- The supplier and the Master Franchisees and franchisees are informed of Cartridge World Australia's decision.

A franchisee of the Cartridge World Network may nominate a supplier and their product line to the Master Franchisee and, if the Master Franchisee recommends to Cartridge World Australia that it consider approval of the supplier, Cartridge World Australia will consider approval of the supplier at its next periodic review of its approved suppliers.

Cartridge World Australia reviews the suppliers it has approved annually, in December of each year. It last reviewed its approved suppliers in December 2007.

However, where:

- a franchisee identifies a potential supplier of a new product line to its Master Franchisee, and there is currently - no approved supplier for that product; and
- the Master Franchisee makes a positive recommendation to Cartridge World Australia that it consider approval of the supplier for the new product line;

Cartridge World Australia will immediately proceed to consider the relevant application and commence the vendor certification process - rather than postpone consideration of the application to the next annual review.

In the case of the approved supplier, Fuji Xerox, an individual franchisee of Austcart initially identified the relevant entity as a potential supplier and following consideration of an application, testing and consultation, the VP of Franchise Operations approved the supplier in respect of a particular product line.

#### *Approved Suppliers for 2008*

Cartridge World Australia publishes the list of approved suppliers and the product lines those suppliers are approved to supply to the Cartridge World Network on its extranet site. The list also includes contact details for the sales, administration and distribution / logistics departments of the approved suppliers. In addition to the posting of the list on the extranet site, each of the Master Franchisees informs all of its franchisees by email of any newly approved supplier.

The suppliers currently approved by Cartridge World Australia and the product lines they are approved to supply are set out in the following table.

With the exception of one product line (ink refill machines), franchisees may select between two or more alternative suppliers from which to acquire the relevant product. In the case of ink refill machines - only one supplier is presently approved.

As noted above, Cartridge World Supplies, a department of Cartridge World Australia (operating under a registered business name) is a nominated supplier in respect of a number of product lines.

Supplier	Bulk Ink	Clips	Inkjet Compatibles	Toner & Laser Consumables	Remanufactured Laser Cartridges	Original Equipment Manufacturer Products	Packaging & Labels	Specialty Photocopier Paper	Copy Paper	Printer Ribbons	Ink Refill Machines	Courier
Cartridge World Supplies	✓	✓	✓		✓		✓	✓				
Dynamic Supplies						✓						
Goodson Imports										✓		
Future Graphics				✓								
Keytek										✓		
Geographics								✓				
Imaging Solutions				✓								
Synnex						✓						
Jet Tec	✓		✓					✓				
RTS Imaging (Katun)				✓ Copier Toners	✓							
Phoenix Toner						✓						
Toner Warehouse						✓						
Imagetec (Paper One Brand)									✓			
Fuji Xerox									✓			
Sage Recycling Solutions											✓	
Fastway Couriers												✓
Couriers Please												✓

For all products for which Cartridge World Supplies is an approved supplier, other than clips, and packaging and labels, the Master Franchisee's franchisees can elect to acquire products from one of the competing, approved suppliers also approved to supply those products.

Cartridge World Supplies is the sole approved supplier of clips, and packaging and labels, because these are 'Cartridge World' branded products.

**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:**

Current and future franchisees party to a Franchise Agreement or a Tripartite Agreement with Austcart.

**(b) Number of those persons:**

**(i) At present time:**

Austcart currently has 29 franchisees who are party to a franchise agreement (be it a Franchise Agreement or a Tripartite Agreement), and who in total, between them operate 56 stores in Queensland.

**(ii) Estimated within the next year:**

We anticipate that Austcart will sign up approximately 2 new franchisees over the next 12 months. All new franchisees will sign the current form franchise agreement on the terms the subject of this notification.

At the expiration of the next 12 month period, the renewal date for some of the affected Tripartite Agreements that remain in force will have passed. Accordingly, the number of franchisees affected by the Tripartite Agreements will have reduced over the next year, however it is expected that those same franchisees will execute a Franchise Agreement on the terms the subject of this notification. Accordingly - this is not expected to affect the number of persons affected by the notified conduct

**(iii) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:**

The particulars of the current number of Austcart franchisees (including names and addresses) are identified in a confidential annexure marked "A" to this notification.

**4 Public benefit claims**

**(a) Arguments in support of notification:**

The Notified Conduct, in combination with the conduct notified under the Related Notifications (**Related Notified Conduct**), delivers the following public benefits:

- The maintenance of the quality and consistency of the end product supplied by the franchisees of the Cartridge World Network and the maintenance of the reputation of the Cartridge World Network.

- The Notified Conduct creates buying power which:
  - delivers cost savings to franchisees of the Cartridge World Network, which will in turn deliver lower prices to consumers and promote competition in the markets in which the franchisees participate;
  - increases the service provided to those franchisees; and
  - ensures the more timely supply of products to franchisees in the Cartridge World Network.
- The realisation of efficiencies in the administration of the Cartridge World Network, in particular in the evaluation of suppliers' suitability and the management of the significant legal risks associated with infringement of third party intellectual property rights.

The Notified Conduct, in combination with the Related Notified Conduct, is critical to the business model of Cartridge World Network.

The business model of Cartridge World Network is crucially dependent on high quality products. A large part of the Cartridge World Network business focuses on offering customers the alternative of purchasing high quality remanufactured cartridges (at around a 40% discount) in substitution for OEM products.

If the quality of remanufactured cartridges supplied by the Cartridge World Network were compromised, it may be difficult to persuade customers that presently use remanufactured cartridges, that remanufactured cartridges are a true alternative to OEM products and this would impinge on the Cartridge World Network brand.

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

*Product Quality and Consistency and Maintenance of Reputation*

The international franchise network operated by Cartridge World Australia is the world's fastest growing ink refilling and laser cartridge remanufacturing retailer. The business model adopted by Cartridge World Australia has provided it with an established reputation as a provider of remanufactured products in the printer cartridge industry of comparable quality to, but at a more affordable price than, new OEM cartridges. Cartridge World Australia estimates its share of the total printer consumables market in Australia at 2.5%. It is estimated that the percentage of customers who use remanufactured cartridges is less than 5%.

Cartridge World Australia's high quality standards are evidenced by minimal warranty claims, over 10 years of positive growth and reputation in the market place, its policy aim to meet ISO standards and its continual focus on process improvement. The approval process for products and suppliers ensure quality standards are not compromised.

The franchise business model relies on quality and consistency throughout the System for success. The System requires that licensees and sub-licensees adhere to standards and policies developed by the Company which provide for the successful and uniform operation of businesses utilising the System. We are also in the process of developing a production model for ink refilling aimed at improved quality and consistency and driving efficiencies at store level.

The toners and inks used in the System are sourced from top suppliers from around the world, and are each uniquely formulated for the many different cartridges available. Our extensive range of testing equipment is further assurance of our commitment to quality control and customer satisfaction.

Austcart together with the other Master Franchisees, and Cartridge World Australia, secure the quality and consistency benefits by means of the Notified Conduct and the Related Notified Conduct. In so doing, however, it allows its franchisees to select from the suppliers approved by Cartridge World Australia for each of the required products. This ensures that suppliers approved by Cartridge World Australia must continue to compete to supply the franchisees of the Cartridge World Network in the future.

#### *Efficiencies Delivered by Enhanced Buying Power*

The running of a tender process by Cartridge World Australia to select approved suppliers achieves lower prices and increased service for franchisees of the Cartridge World Network by reason of the franchisees' increased importance to the supplier.

Those entities who wish to supply products to the Cartridge World Network must submit a negotiated price list as part of its application. The nominated prices for product distributed via Cartridge World Supplies may only be varied quarterly with prior approval of Cartridge World Australia. Other suppliers can change their prices at any time by directly notifying franchisees.

The combined buying power and resultant increased importance of the franchisees to the supplier, in particular, encourages investment by the supplier in the delivery of a higher standard of service to franchisees, ensuring continuity of supply and additional capacity to meet peak demand requirements. Any service issues are dealt with by Cartridge World Australia.

Further, given that the Master Franchisee's franchises face effective competition in the markets in which they participate (as discussed in section 5 below), any cost savings secured by those franchisees as a result of the Notified Conduct (and the Related Notified Conduct) will be passed through to consumers.

These benefits could not be achieved if the Cartridge World Australia permitted, but did not require, franchisees to acquire required products from the suppliers approved by Cartridge World Australia. Individual supply agreements won't deliver the same benefits as the individual franchisee purchases will not have the volume in a lot of cases to deliver the same level of pricing. As product consistency is a critical element of the system, we would have a wide range of product quality if franchisees were allowed to purchase from whatever supplier they wished to. Suppliers also pay rebates in some cases. Individual franchisees will not be able to maximise potential benefits on an individual basis. Higher rebates can be obtained via consolidated purchasing.

During this process, quality is never compromised. Cartridge World Australia strives to provide the highest quality product at a competitive price (not necessarily the cheapest). Price is relevant to ensure the desired gross margins can be achieved by the franchisee otherwise they will not support the product. Quality is of utmost importance, Cartridge World Australia uses only

the best quality imaging supplies and guarantees that cartridges refilled will perform as well as the original equipment manufacturers supply under similar conditions.

#### *Efficiencies in Administration and Operation of Cartridge World Network*

The infringement of intellectual property rights is a significant risk for retailers of remanufactured products in the printer cartridge industry. The suppliers of new OEM cartridges possess a range of patent, copyright, trade mark and other intellectual property rights that may be infringed by retailing products remanufactured using their OEM cartridges. The management of this legal risk by individual franchisees would pose a prohibitive barrier to their retailing of remanufactured product. The Notified Conduct enables the Master Franchisee to ensure that this legal risk is effectively managed by means of the arrangements for supply of remanufactured products to the Cartridge World Network. In the absence of the Notified Conduct, the effective management of this legal risk could not be secured because individual franchisees would not be of sufficient importance to the supplier to secure indemnities from the supplier, as the party best able to manage this legal risk.

In addition, the evaluation of suppliers is costly and time-consuming, involving in particular the testing of supplier products. It takes approximately one month (depending on the complexity of a product) to approve a new supplier. As the review system was only implemented at the end of 2007 there has not yet been an annual review of the supplier agreements. It is planned that all suppliers will be notified of the review, including an outline of the required information for the review, at the commencement of November each year with all supplier reviews being completed by the end of December each year. The Notified Conduct (and the Related Notified Conduct) ensures that these costs are not incurred by each individual franchisee of the Cartridge World Network but are only instead only incurred once and shared between the franchisees of the Cartridge World Network and other Australian Cartridge World franchisees.

The Notified Conduct (and the Related Notified Conduct) ensures that these costs are not incurred by each individual franchisee of the Cartridge World Network but are only instead only incurred once and shared between the franchisees of the Cartridge World Network and other Australian Cartridge World franchisees.

## **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):**

#### *Definition of Relevant Markets*

There are two areas of competition of relevance to an assessment of the anti-competitive detriments of the Notified Conduct. The first is the supply of the products that are the subject of the Notified Conduct, that is the bulk ink, clips, inkjet compatibles etc. Generally, a supplier in the printer cartridge industry specialises in the supply of a specific product category. So, for example, a supplier of toner and laser consumables

may enter the supply of remanufactured laser cartridges (as in the case of Cartridge World Australia's approved supplier, RTS Imaging) but this is atypical. Accordingly, there would appear to be a series of discrete product markets for the products acquired by the franchisees of the Cartridge World Network. The suppliers of these products supply goods around Australia, regardless of their physical location. Accordingly, there would appear to be a series of national markets for the supply of these products. Cartridge World Australia is not aware of suppliers imposing additional freight charges beyond certain geographic limits. In fact, some suppliers offer free freight where orders above a particular value are placed.

The second is the area of competition in which the franchisees of the Cartridge World Network compete - that is, the retail supply of printer cartridges, whether new, remanufactured / refilled or compatible printer cartridges, and printer consumables. The area of competition includes a broad range of businesses that supply these products to the end customer, from large chains (such as Officeworks, Kmart, Big W and Harvey Norman) to smaller, independent suppliers (such as computer stores, newsagents, online sellers and office suppliers like Corporate Express, Office National and Office Max). The geographic area in which competition occurs is a series of smaller, local areas, as a Cartridge World store is confined to supplying customers within reasonably close geographic proximity to the store. A consumer would typically travel approximately 3-5 kilometres to frequent a Cartridge World store. However, this distance may be longer in regional and rural areas.

Accordingly, the markets of potential relevance to the Notified Conduct include:

- a series of national markets for the wholesale supply of:
  - remanufactured laser cartridges;
  - OEM cartridges;
  - toner and laser consumables;
  - bulk ink;
  - inkjet compatibles; and
  - specialty photocopier paper;
  - copy paper;
  - printer ribbons;
  - clips (presently, a Cartridge World banded product);
  - ink refill machines;
  - packaging and labels (presently, a Cartridge World banded product); and
  - courier services,(together, the **National Wholesale Markets**); and
- a series of local markets for the retail supply of printer cartridges and consumables (together, the **Local Retail Markets**),

(together, the **Relevant Markets**).

#### *Competitive Conditions in the Relevant Markets*

There are many suppliers in each of the National Wholesale Markets that have not been approved by Cartridge World Australia to supply the Network. Of these, the major



non-approved suppliers for each of the product categories (other than courier services) are set out below.

Bulk Ink	Toner & Consumables	A4 Paper	OEM Products	Remanufactured Laser Cartridges	Compatible Inkjet Cartridges	Specialty Paper	Printer Ribbons	Ink Refill Machines
Ausjet (formerly Ink Link)	Toner on Demand	Spicers	Ingram Micro	Westbury	Dynamic Suppliers (Print Rite brand)	Kodak	Pelikan Artline	TB Accessories, which is distributed in Australia by JetTec
Bizco	Copymart	Double A (Edwards Dunlop)	Tonnex	Protone	Microjet	Celcast		Overseas manufacturers
	Katun		XIT	Ecotech	Qjet	Avery		
			Dicker Data	Future Graphics				
			Compu Wholesale					
			BMS Technology					

While the precise size of a supplier's customer base will depend on the particular National Wholesale Market in which they participate, there are many potential customers in each of the National Wholesale Markets and, in some cases, over 500 such customers, with many having multiple sites that require supply. It follows that approval as a supplier to the Cartridge World Network is unnecessary in order to be an effective competitor in any of the National Wholesale Markets.

Cartridge World stores are just one example of the businesses that acquire products in the National Wholesale Markets and compete in the Local Retail Markets. Cartridge World stores face many competitors in the Local Retail Markets. These competitors include, in particular, Officeworks, Harvey Norman, Office National, Office Max, Corporate Express, Kmart, Big W, Myer, David Jones, Dick Smith, independent computer stores and newsagents, and members of the following competing franchise networks:

- Master Imaging International;
- Toner Action Western Australia;
- Cartridge Man;
- Bob's Office Inks & Toners; and
- Refills Now.
- The Ink Shop

Each of these operate in the remanufactured/refilled space. In addition, there are a large number of independent suppliers servicing different Local Retail Markets. Details of these independent suppliers can be provided upon request.

In each and every one of the Local Retail Markets in Australia, the relevant Cartridge World store would face competition from a minimum of 6 competing suppliers of printer cartridges and consumables.

The extent of competition faced by Cartridge World stores is reflected in the fact that, while there are approximately 231 Cartridge World stores distributed throughout the Australian network, their share of total national sales of printer cartridges and consumables is approximately 2.5%.

## **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:**

Austcart submits that the Notified Conduct (and the Related Notified Conduct) is unlikely to result in any reduction in competition in the Relevant Markets and thus there is not likely to be any detriment to the public as a result of that conduct. In particular, the conduct does not reduce competition because it:

- does not prevent franchisees from sourcing supplies based on their views regarding quality and price, and so constraining their ability to compete in the Local Retail Markets, because, in respect of most product lines, the franchisees of the Cartridge World Network will continue to have the option to select from approximately 2-3 suppliers approved by Cartridge World Australia;
- additionally, franchisees may participate and engage in a process of identifying potential suppliers and make recommendations to their respective Master Franchisee, where the franchisee considers a supplier to be capable of supplying a product which meet strict quality requirements of the Cartridge World Network. Franchisees may also identify new product lines and potential suppliers of those products - in which case - it is the practice of Cartridge World Australia to immediately consider an application to supply the new product line to the Cartridge World Network;
- does not reduce the incentive for the nominated suppliers to compete on price and quality in supplying the franchisees of the Cartridge World Network, again because, in respect of most product lines, these franchisees will continue to have the option to select from approximately 2-3 suppliers approved by Cartridge World Australia; or
- does not pose any barrier to suppliers that are not approved by Cartridge World Australia to distribute their products to the end customer, as evidenced by the existence of numerous suppliers in each of the National Wholesale Markets that have not been approved by Cartridge World Australia, because there are many acquirers in each of the National Wholesale Markets other than Cartridge World franchisees.

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

As recognised by the Commission in its *Notices in respect of notifications lodged by Seal-A-Fridge Pty Ltd and others* of 13 September 2007, there are many elements of an exclusive dealing arrangement that, if present, mitigate any reduction of competition from exclusive dealing in a franchise context. Most of these mitigating elements identified by the Commission are present in respect of the Notified Conduct and the Related Notified Conduct, including in particular:

- the suppliers nominated by Austcart and the other Master Franchisees are chosen through competitive means, namely a tender process, by Cartridge World Australia which includes consideration of price, quality and non-price conditions such as manufacturing capacity and supply;
- the suppliers approved by Cartridge World Australia that are nominated by the Master Franchisee are annually reviewed by Cartridge World Australia and in circumstances where a franchisee becomes aware of new product line that is not presently supplied by existing approved suppliers, Cartridge World Australia will promptly consider an application for approval in respect of the relevant product line;
- Cartridge World Australia demonstrates an ongoing interest in maintaining the efficiency of the Master Franchisee's franchisees and therefore an interest in ensuring nominated suppliers deliver value for money. One of Cartridge World Australia's key selling points is providing an excellent quality product at a fraction of the OEM price. The product must be of high quality giving excellent print performance. Cartridge World Australia also analyses the potential franchisee margins to ensure the franchisee gets a satisfactory return. Cartridge World Australia has engaged a supply chain consulting firm, Portland Group with the objectives of:
  - identifying the most appropriate supply model for the business;
  - appoint the best suppliers of highest quality products in each category;
  - ensure that Cartridge World Australia's approved suppliers benefit from the current and continuing growth in the volume of products traded through Cartridge World Australia's global network; and
  - ensure that the scale of Cartridge World Australia's business is reflected in the prices paid by the company and its franchisee stores.
- in respect of most product lines, the Master Franchisee's franchisees will continue to have the option to select from approximately 2-3 suppliers approved by Cartridge World Australia; and

- the Australian Cartridge World franchisees, including the Master Franchisee's franchisees, comprise only a small proportion of the acquisitions in each of the National Wholesale Markets and face significant competition in each of the Local Retail Markets.

In addition, Austcart implements the Notified Conduct in a manner that is fair and reasonable to its actual and potential franchisees, such that no public detriments arise in this regard. In particular, the Notified Conduct is consistent with the franchise agreements between the Master Franchisee and its franchisees (as discussed in section 2 above) and the Master Franchisee's franchisees are made aware of the requirement to acquire product only from the nominated suppliers approved by Cartridge World Australia prior to entering into the franchise agreements. The Code requires that the franchise agreement and disclosure document are provided to the proposed franchisee at least 14 days before they enter into the agreement or make a non-refundable payment.

## 7 Further information

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

Peter Buberis  
Partner  
DLA Phillips Fox  
100 King William Street  
Adelaide SA 5000  
Telephone: (08) 8124 1811  
Email: peter.buberis@dlaphillipsfox.com

Dated...13 - OCT - 08.....

Signed on behalf of the applicant



(Signature)

DAVID ALAN CHARLES SMITH

(Full Name)

AUSTCART PTY LTD.

(Organisation)

DIRECTOR

(Position in Organisation)

Restriction of Publication of Part Claimed in respect of the entirety of Annexure A

Annexure A

EXCLUDED FROM  
PUBLIC REGISTER

No.	Name	Address	Suburb	State	PC	Business Name	Additional store in Territory
	Restriction of Publication of Part Claimed						

**Restriction of Publication of Part Claimed in respect of the entirety of Annexure  
B**

**Annexure B**

**EXCLUDED FROM  
PUBLIC REGISTER**

## DIRECTIONS

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.

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.

Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.

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.

Describe the business or consumers likely to be affected by the conduct.

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.

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.

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.

Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.