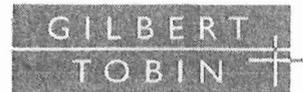


Partner Gina Cass-Gottlieb  
Contact Paula Gilardoni  
T +61 2 9263 4187  
pgilardoni@gtlaw.com.au  
Our ref GCG:PXG:1008184



LAWYERS

18 December 2009

**In person**

Mr Richard Chadwick  
General Manager  
Adjudication  
Australian Competition & Consumer Commission  
Email: adjudication@acc.gov.au

Gilbert + Tobin

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Australia

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Sydney NSW 2001

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Dear Mr Chadwick

**Third line forcing notification**

We act for Perisher Blue Pty Ltd and Australian Alpine Enterprises Pty Ltd operating together as an unincorporated joint venture.

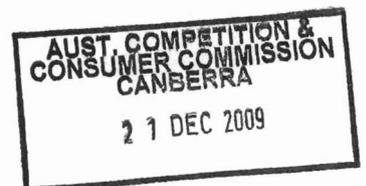
We enclose for lodgement a notification relating to third line forcing. Separate payment of \$100 has been made to cover the required lodgement fee.

Please note that this notification includes a confidential annexure, in respect of which the notifying party claims confidentiality. We believe this confidential material to be non-controversial, given the details provided elsewhere in the notification and supporting documentation, but please advise if the Commission has a different view.

Should you have any questions in relation to this notification, please do not hesitate to contact us.

Yours sincerely

**Gina Cass Gottlieb**  
Partner  
T +61 2 9263 4006  
Gcass\_gottlieb@gtlaw.com.au



# FORM G

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 93 (1)*

## NOTIFICATION OF EXCLUSIVE DEALING

(regulation 71)

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 in subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

**Please follow directions on back of this form**

### 1 Applicant

(a) Name of person giving notice:

N94396  
N94397

Perisher Blue Pty Limited Pty Ltd (**PBPL**) and Australian Alpine Enterprises Pty Ltd (**AAE**) operating together as an unincorporated joint venture (**SuperPass JV**).

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

Each of PBPL and AAE are responsible for the operation and supply of ski resort services, including:

- the provision of mountain lift facilities; and
- the marketing and supply of ski passes that enable customers to access these lifts for a specified period of time.

PBPL operates Perisher Ski Resort (**Perisher**), and AAE operates Hotham Ski Resort (**Hotham**) and Falls Creek Ski Resort (**Falls Creek**) (together, the **Resorts**).

The SuperPass JV will be responsible for the development, marketing, management and sale of a ski pass to be used at the Resorts.

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

Gina Cass-Gottlieb  
Partner, Gilbert + Tobin  
Level 37, 2 Park Street  
Sydney NSW 2000

### 2 Notified arrangement

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

Ski lift services are typically provided on purchase of a ski lift pass. The ski pass the subject of this notification (**Super Pass**) is an "early bird" pass (ie, it is a pass sold for a limited period prior to the commencement of each winter season). The Super Pass will be offered at all the Resorts and will provide unlimited access to the mountain lift facilities of the Resorts for the entire winter season in the year when the pass is purchased.

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

See Attachment A.

**3 Persons, or classes of persons, affected or likely to be affected by the notified conduct**

- (a) Class or classes of persons to which the conduct relates:

The conduct affects customers who purchase the Super Pass during the winter season each year.

- (b) Number of those persons:

(i) At present time: Greater than 50.

(ii) Estimated in subsequent years: Same as above

- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses: Not applicable.

**4 Public benefit claims**

- (a) Arguments in support of notification:

See Attachment A.

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

See Attachment A.

**Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

The relevant market is the market in which ski resort services are provided. In particular, ski lift passes for access to the mountain lift facilities of each of the Resorts.

**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:

See Attachment A.

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

See Attachment A.

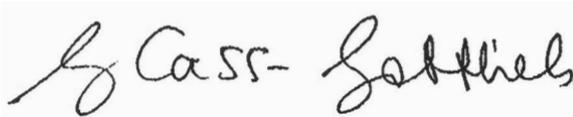
**7 Further information**

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

Gina Cass-Gottlieb  
Partner, Gilbert + Tobin  
Level 37, 2 Park Street  
Sydney NSW 2000

Dated 18 December 2009

Signed by/on behalf of the applicant

A handwritten signature in black ink that reads "Gina Cass-Gottlieb". The signature is written in a cursive style with a large initial 'G'.

Gina Cass-Gottlieb  
Gilbert + Tobin Lawyers  
Partner

## **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 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.

## ATTACHMENT A

### 1 The parties

Each of Perisher Blue Pty Limited (**PBPL**) and Australian Alpine Enterprises Pty Ltd (**AAE**) are involved in the operation of ski resorts and supply of ski resort services, including the provision of mountain lift facilities, and the marketing and supply of ski passes enabling customers to access these lifts for a specified period of time.

PBPL and AAE are planning to form an unincorporated joint venture (**SuperPass JV**) that will be responsible for the development, marketing, management and sales of a ski pass to be used at the resorts managed by PBPL and AAE.

More information on the SuperPass JV is included in the Confidential Annexure.

### 2 Background

Australia's geography (ie the lack of high mountain terrain) and mild winter conditions mean that snow is relatively uncommon in Australia, and the Australian ski season is comparatively short and variable. While most Australian ski seasons see good snowfall and weather conditions suitable for snow-making activities, some Australian ski seasons experience poor snow conditions. Occasionally conditions in different Australian ski resorts vary significantly as a result of localised climatic conditions.

This means skiers who purchase season ski lift passes prior to, or early in, the season often do so with a large amount of uncertainty as to future ski conditions at the resort of their choosing. Sometimes this unreliability may lead Australian consumers to decide not to purchase season passes, and instead opt to purchase single day or multi day passes. Other skiers may choose to purchase ski holidays at overseas destinations where prevailing early season snow conditions may be better (most commonly New Zealand). Australian ski resort operators commonly develop very attractive season pass pricing and inclusions to seek to compensate consumers for the associated risk. These products are commonly known as "Early Bird" season pass products, and generally require purchase of the product prior to the commencement of the winter season.

### 3 Previous notifications

In the winter season of 2009, PBPL and AAE trialed a ski pass similar to the Super Pass.<sup>1</sup> This pass was considered commercially successful and very popular with consumers. So PBPL and AAE have decided to continue offering it.

The main differences between the conduct notified earlier, and the conduct the subject of the present notification, is that PBPL and AAE are planning greater integration in relation to the design, marketing, sale and management of the ski pass. It is expected, for example, that the Super Pass will be sold at the resorts managed by each of PBPL and AAE at the same price, and be marketed jointly. This is the reason why the parties have formed the SuperPass JV.

### 4 Description of the relevant conduct

The SuperPass JV intends to offer a joint ski lift pass (**Super Pass**). The Super Pass will be a season pass enabling customers to use all of the mountain lift facilities of the following ski resorts:

- Perisher Ski Resort (**Perisher**) in New South Wales (operated by PBPL);
- Hotham Ski Resort (**Hotham**) in Victoria (operated by AAE); and

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<sup>1</sup> See Notifications 93983 and 93926.

- Falls Creek Ski Resort (**Falls Creek**) in Victoria (operated by AAE),  
(together, the **Resorts**).

The Super Pass will be sold by each of the Resorts on behalf of the SuperPass JV. It will be offered for a limited time prior to commencement of each winter season (ie, it will be an "Early Bird" pass only available until around the end of May each year) and it will be valid for the entire winter season in the year of purchase.

More information on the Super Pass is included in the Confidential Annexure.

## **5 Third line forcing risk**

The Super Pass will not be sold on condition that the purchaser acquires services from more than one Resort. That is, when PBPL sells the Super Pass, the customer will be able to enjoy an immediate benefit from the pass (ie, unlimited use of the lift facilities at Perisher) without having to go and ski at Hotham or Falls Creek. Similarly, customers who purchase the Super Pass at Hotham or Falls Creek will be able to use the lifts at these resorts without having to ski at Perisher. Therefore, a customer who acquires a Super Pass will benefit from unlimited access to the ski facilities at the Resorts regardless of whether the customer visits only one, two or all three Resorts (ie, there is no compulsion to visit more than one Resort).

However,

- (a) if a customer with a pass from a resort other than Perisher asked for a free day pass to Hotham or Falls Creek, AAE would be likely to refuse to give the free day pass on the basis that free day passes are only available to customers who have purchased season passes from Hotham or Falls Creek or who have a Super Pass; and
- (b) if a customer with a pass from a resort other than Hotham or Falls Creek asked for a free day pass to Perisher, PBPL would be likely to refuse to give the free day pass on the basis that free day passes are only available to customers who have purchased season passes from Perisher or who have a Super Pass.

It could be argued that such refusal is for the reason that the customer has not acquired a pass from the SuperPass JV, thus constituting a technical breach of the third line forcing provisions of the *Trade Practices Act (TPA)*.

## **6 Public benefits/public detriments**

### **6.1 Benefits**

The Super Pass results in a better value proposition for ski resort customers. Customers who buy a Super Pass are able to access the ski resort services of all the Resorts at a competitive price.

The Super Pass will provide ski resort customers with greater choice as to the resort they visit. The increased reliability of finding good ski conditions in at least one of the Resorts better enables all of the three participating ski resorts to compete with overseas ski resorts. As the Super Pass enables customers to visit more than one ski resort during the season at no extra cost, Super Pass holders will have an incentive to travel and visit more than one of the Resorts. This is likely to result in a greater level of economic activity in ski resorts.

### **6.2 Public detriments**

No public detriments have been identified.

Customers will not be compelled to visit more than one of the Resorts (ie, the same benefit is available regardless of whether customers wish to visit one, two or three of the Resorts).

Otherwise, the price and inclusions of passes other than the Super Pass, lift tickets and other products and services offered at each Resort will continue to be determined by each of the Resorts independently.

### **6.3 Public benefits significantly outweigh any public detriment**

For customers that tend to ski at the resort located the closest to their home address, the Super Pass is unlikely to have significant benefits or detriments. These customers are unlikely to ski in more than one resort regardless of any benefits that may be available through the Super Pass.

Skiers who are likely to visit more than one resort and who acquire the Super Pass will enjoy the benefits listed above (ie, better value, greater choice). As discussed above, these benefits are likely to be realised with no discernible detriment.

Therefore, we submit the benefits of the proposed conduct will far outweigh any potential detriment.