

Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — 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 *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

N

1 Applicant

- (a) **Name of person giving notice:**
(Refer to direction 2)

N96245 Michel's Patisserie System Pty Ltd ACN 132 424 947 (MPS)

- (b) **Short description of business carried on by that person:**
(Refer to direction 3)

MPS is a franchisor of the Michel's Patisserie franchise system (**Michel's**), specialising in the preparation and retail sale of specialty espresso coffee, cakes and patisserie products, pies, savouries and other associated products. As at 1 November 2012, there are 316 Michel's outlets in Australia together with additional outlets in New Zealand and Indonesia.

MPS has the right or licence to operate Michel's, use the "Michel's Patisserie" brand, and to grant a Michel's franchise to any other person or company (**Franchisee**). The Michel's system and Michel's brand incorporates a variety of valuable intellectual property including trade marks, logos and business names, copyrighted materials, and includes a distinctive image which comprises designs and colour schemes for Michel's retail stores, store concepts and plans, signs, layouts, fixtures and fittings, uniforms and badges, certain processes, methods, systems, recipes, formulas, manuals, computer software, trade secrets, know how and other procedures (collectively, the **Intellectual Property**).

The majority of Michel's retail stores are owned and operated by Franchisees (**Franchised Operations**) pursuant to a written franchise agreement (**Franchise Agreement**). Michel's Patisserie currently has 316 Franchised Operations in Australia. As at 1 November 2012, 8 retail stores were operated by, or on behalf of, MPS or its associates.

Michel's Patisserie franchised stores sell a range of food and beverage products, including specialty espresso coffee, cakes and patisserie products, pies, savouries and other associated products, predominantly to retail customers.

MPS is a related entity of Snowycold Pty Ltd (**Snowycold**) and Jonamill Pty Ltd (**Jonamill**) which own certain trade marks and intellectual property relevant to the Michel's franchise system. The ownership of, and right to use, the aforesaid intellectual property is the subject of an agreement between MPS, Snowycold and Jonamill, the terms of which are confidential.

MPS has appointed RFGA Management Pty Ltd ACN 071 765 609, trading as Retail Food Group (Australia), and Michel's Patisserie Operations Pty Ltd ACN 132 424 051 (**System Manager**), each of whom are related bodies corporate, to manage the Michel's system on its behalf.

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

c/- Andrew Rankin,
Partner, Norton Rose Australia
Level 21, ONE ONE ONE
111 Eagle Street
Brisbane QLD 4000.

2 Notified arrangement

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

Approved Products and Services

This Notification relates to the acquisition by Michel's Franchisees of products and services approved or nominated, or which may be approved or nominated, by MPS, including:

- (i) certain specialty food products that are unique and particular to the Michel's system and without which any franchise could not be granted (**Michel's Products**);.
- (ii) certain consumable and food products (eg cakes and patisserie products, pies, savouries, sandwiches, croissants, Danishes, biscuits) including pre-manufactured or pre-packaged products (**Food Products**);
- (iii) sauces, animal and dairy products, coffee and tea products, fats and oils, cake mix, bread and/or other condiments, syrups and toppings, and ingredients necessary to make the Food Products (**Ingredients**);
- (iv) beverages, such as bottled water, milk, and soft drinks for resale;
- (v) packaging, boxes, cartons, paper cups and lids, napkins, plastic cutlery, branded crockery, straws, utensils, and candle decorations, merchandise and promotional products and other items of packaging and cutlery used by Michel's Patisserie (**Packaging**);
- (vi) services for the provision of warehousing and distribution of Food Products, Ingredients, and Packaging;
- (vii) machinery, plant, equipment, fixtures, fittings and finishes (eg coffee machine, baking equipment) used in the conduct of the Franchised Operation, including the preparation or display for sale of the Michel's Products and or Food Products (**Equipment**);
- (viii) computer and point of sale systems, software, retail and business management systems, mobile or internet ordering or payment systems, loyalty or reward systems and other related information technology systems as nominated by MPS from time to time;
- (ix) training services provided by MPS or its nominated supplier;
- (x) marketing material design and ordering systems, merchandising and branding services;
- (xi) store design, shop-fitting and refurbishment services;

- (xii) certain products and services relating to the installation, fit out, maintenance, operation, cleaning and upkeep of the Franchised Operation and Equipment;
- (xiii) centralised banking facilities to facilitate customer payment processing, including EFTPOS or 'tap and go' systems;
- (xiv) uniforms; and
- (xv) a lease, sublease or licence in respect of the occupation of premises from which a Franchised Operation is, or is to be, conducted.

(collectively, the **Approved Products and Services**)

from specified third party suppliers.

Approved suppliers

MPS has identified a number of suppliers who have been approved or nominated by MPS (**Approved Suppliers**) that can provide the Approved Products and Services identified above to the standards required by MPS, and at a reasonable cost. The Approved Suppliers are listed at Appendix B. MPS believes that the Approved Products and Services best meet the requirements of the Michel's network and that the Approved Suppliers are best able to provide such Approved Products and Services.

Franchisees may also be required to acquire certain Approved Products and Services from MPS, or associates of MPS, or from an Approved Supplier in which MPS or an associate of MPS may have an ownership interest.

Franchisees may also be required to enter into a lease, sublease or licence with MPS or an associate in relation to the occupation of premises from which a Franchised Operation is, or is to be, conducted.

- (b) **Description of the conduct or proposed conduct:**
(Refer to direction 4)

Michel's Patisserie brand and system

The patisserie food and café industry is highly competitive and densely populated. The Michel's system is designed to give Franchised Operations a competitive advantage, including through the retail sale of the Michel's Products. This is achieved by ensuring that:

- (i) all Michel's outlets maintain a uniform product range (including the Michel's Products) which delivers Michel's Products and Food Products of the highest quality;
- (ii) all Michel's outlets are operated in such a manner as to deliver a consistent customer experience, including through achieving consistency in the modes and methods of operating a Michel's outlet and otherwise the nature and quality of a fit out of Franchised Operations across Australia to maximise the retail experience for both Franchisees and consumers and ensure fit out and Equipment satisfies workplace requirements; and
- (iii) the integrity in the marketplace of the Michel's image and franchise system is maintained and otherwise ensuring the development and continual enhancement of the Intellectual Property.

Without ensuring that these elements are maintained and enhanced, the potential profit for Franchisees, and benefit capable of being derived from being a Michel's Franchisee, is eroded and the long term value of the Michel's brand is diminished.

Franchisees' contractual obligations

Franchisees have obligations under their respective Franchise Agreements in relation to the Approved Products and Services they can:

- (i) purchase, acquire or make for use in their Franchised Operation; and
- (ii) market or sell from their Franchised Operation.

Special terms are applicable to the purchase of the Michel's Products.

In addition, Franchisees have obligations in relation to the Equipment they must use in their businesses. The terms of a lease, sublease or licence may restrict the range of products and services that the Franchisee must acquire. Franchisees must present a core range of products. It is not compulsory that they carry the full range. However, all promotional products are compulsory.

Franchisees also have obligations under their respective Franchise Agreements in relation to the services they can utilise, including in relation to fitting out their premises (either as part of an initial fit out or as part of a subsequent fit out or refurbishment).

Under the Franchise Agreement, Franchisees are generally required to enter into a separate licence agreement with an associated entity of MPS in respect of the occupation of premises from which the Franchised Operation is, or is to be, conducted. In exceptional circumstances where authorised by MPS, MPS may agree to lease, sublease or licence the premises directly with the Franchisee.

The relevant clauses of the standard Franchise Agreement that relate to the notified conduct are set out in Annexure A (confidential).

Notified conduct

MPS proposes to require its Franchisees to acquire the Approved Products and Services (as detailed above in section 2(a)) from Approved Suppliers.

In exceptional cases, where MPS will directly grant or renew a lease, sublease or licence to a Franchisee, MPS proposes to require the Franchisees to comply with terms and conditions of the Franchise Agreement, including as to the acquisition of the Approved Products and Services from Approved Suppliers.

By appointing Approved Suppliers, MPS seeks to:

- (i) leverage the Michel's network for the purposes of negotiating better than market pricing for Approved Products and Services;
- (ii) maintain Michel's unique selling proposition (**USP**) vis-à-vis market competitors;
- (iii) ensure the protection of Michel's Intellectual Property (including proprietary recipes for Food Products);
- (iv) consistency in the product and service type offered to all Franchisees and by all Franchisees to the consumer;

- (v) ensure consistency in the high quality product offered to all Franchisees and by all Franchisees to consumers as a result of strict quality checks and quality control measures of Approved Suppliers;
- (vi) ensure confidence in compliance with food safety, food handling and other food or health regulations as a result of the consistency;
- (vii) ensure consistency in the delivery of Approved Products and Services and competitive pricing of Approved Products and Services;
- (viii) ensure consistency in the nature and quality of the fit out of the Franchised Operations across Australia to maximise the retail experience for both Franchisees and consumers and to ensure compliance with workplace requirements;
- (ix) ensure consistency in the services provided to customers of Franchised Operations (including the provision of information in connection with Food Products, such as nutritional information); and
- (x) facilitate improved efficiencies and business efficacy at Franchisor and Franchised Operation level.

Competition and Consumer Act implications

The notified conduct potentially falls within the definition of exclusive dealing in sections 47(6) and (7) of the *Competition and Consumer Act 2010* (Cth) (CCA), as MPS proposes to:

- (i) supply its services as franchisor/licensor on the condition that the Franchisee acquires; and
- (ii) refuse to supply its services as franchisor/licensor if the Franchisee does not acquire (or has not agreed to acquire);

the Approved Products and Services set out in section 2(a) above from the Approved Suppliers.

Additionally, in the limited circumstances where MPS may directly grant or renew a lease, sublease or licence in respect of the occupation of premises from which a Franchised Operation is, or is to be, conducted the notified conduct may fall within the definition of exclusive dealing in sections 47(8)(c) and (9)(d) of the CCA, as MPS, in conjunction with its associates, proposes to:

- (i) grant or renew, or make it known that it will not exercise a power or right to terminate, a lease or licence in respect of land or a building (or a part thereof) on the condition that the Franchisee acquires the Approved Products and Services set out in 2(a) above from the Approved Supplier; and
- (ii) refuse to grant or renew, or exercise a power or right to terminate, a lease or licence in respect of land or a building (or a part thereof) if the Franchisee does not acquire (or has not agreed to acquire) the Approved Products and Services set out in 2(a) above from the Approved Supplier.

However, as outlined below, MPS maintains that the public benefits that will result from the notified conduct outweigh any public detriment.

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:**
(Refer to direction 5)

Franchisees

Approved Suppliers

The broad wholesale/retail market for the sale and supply of the Approved Products and Services

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

(i) **At present time:**

Franchisees: 290 (as at 1 November 2012)

Approved Suppliers 71 (as at 1 November 2012)

(ii) **Estimated within the next year:**
(Refer to direction 6)

Franchisees: 300

Approved Suppliers 80

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

Franchisees

There are over 50 Michel's Patisserie Franchisees. Accordingly, the details of each Franchisee have not been included. Further details of each Franchisee can be provided to the ACCC upon request.

Approved Suppliers

There are over 50 Michel's Patisserie Approved Suppliers. In any event, the details of each Approved Supplier are contained at Annexure B (confidential). MPS anticipates that it may appoint further Approved Suppliers in the future.

Broad wholesale/retail market

There are over 50 participants in the broad wholesale/retail market for the sale and supply of the Approved Products and Services. Accordingly, details of each participant have not been included.

4 Public benefit claims

(a) **Arguments in support of notification:**
(Refer to direction 7)

The purpose of the notified arrangement is not to substantially lessen competition. Rather, the notified arrangement will enhance the capacity of Franchisees, as small businesses, to compete with larger businesses and other competitors. This enhanced capacity is especially important in a market where there is intense competition, particularly from large cafe chains and competing specialty espresso coffee, cake and patisserie product-based

franchise networks (such as McCafe, The Cheesecake Shop, Muffin Break, Gloria Jeans, The Coffee Club and Ferguson Plarre).

The notified arrangement will be likely to have the following benefits for Franchisees and end consumers:

- (i) Franchisees will have guaranteed access to Approved Products and Services at competitive prices due to the established supply relationships which allow Franchisees to offer favourable prices to the end consumer;
- (ii) the notified conduct is likely to foster business efficiency as Franchisees are:
 - (A) assured of access to a range of Approved Products and Services of a consistent standard which gives them more time to focus on operating their business;
 - (B) afforded greater certainty in connection with input costs which fosters improved business planning;
 - (C) afforded access to improved point of sale equipment incorporating increased capability/functionality which facilitates benchmarking and greater access to information, improved decision making processes (including in relation to stock ordering and wastage) and reduced risk of fraud;
- (iii) the notified conduct gives MPS more bargaining power when negotiating prices with suppliers which will have a flow-on effect to Franchisees and the end consumer;
- (iv) the notified conduct allows MPS to focus on controlling quality which ensures that end consumers are provided with Michel's Products and or Food Products of a consistent standard that meet the promise of MPS and the Franchisee as to the content and quality of the Michel's Products and or Food Products;
- (v) the notified conduct ensures that Franchisees and ultimately consumers are able to purchase genuine licensed products in the case when they are pre-packaged products (eg bottled beverages for resale, etc);
- (vi) the notified conduct ensures that Franchisees purchase the Approved Products and Services which are licensed, including Approved Products and Services which are manufactured or supplied under licence from MPS or an associated entity, from the appropriately licensed Approved Suppliers and not from unlicensed manufacturers or suppliers;
- (vii) the notified conduct ensures that Franchisees purchase and or utilise equipment and other business requisites, and store fit out services, from appropriately qualified and accredited Approved Suppliers and not from unapproved manufacturers, suppliers or service providers; and
- (viii) improved efficiencies for the Franchisor allowing it to apply greater resources towards improving franchise system servicing and product innovation.

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

Franchisees and consumers

The notified conduct is likely to have the benefits listed below for Franchisees and end consumers.

- (i) The notified conduct will ensure consistency, uniformity and end-to-end quality control, which is paramount to the integrity of the Michel's brand and image, so that the Approved Products and Services:
 - (A) meet Michel's standards for design, function, performance, quality, taste, serviceability and warranty (as the case may be); and
 - (B) are manufactured, produced and or supplied by those manufacturers, producers and or suppliers specified or approved by MPS as meeting its standards for technical support, training, reporting, reputation, equipment provision, production and delivery methods, scale, labelling and or information disclosure (necessary to satisfy obligations arising under the Food Standards Code or other legislation), service capacity and back up support (as the case may be).
- (ii) Franchisees will have guaranteed access to the Approved Products and Services sold or provided by Approved Suppliers at a competitive price due to the increased purchasing power of the network. This will afford certainty which fosters improved business planning and allow Franchisees to offer favourable prices to the consumer.

Where incumbent Approved Suppliers have the opportunity to requote, Michel's will review the current market, including alternate suppliers of like products and services, with the purpose of ensuring that the prices that are quoted by an incumbent Approved Supplier are relevant to current market conditions and trends. MPS at all times negotiates pricing with the aim of ensuring that the Michel's system receives better than market pricing to ensure brand profitability whilst maintaining product quality and consistency. MPS regularly monitors volume demands to ensure pricing levels are relevant and meet market pricing.

- (iii) In the general retail food market, inter-brand competition is paramount. By requiring Franchisees to acquire Approved Products and Services from Approved Suppliers, MPS is able to ensure that all Franchisees maintain high standards so that the brand can compete more effectively in the retail food market.
- (iv) The notified conduct is likely to foster business efficiency as Franchisees are assured of access to Approved Products and Services from Approved Suppliers that are of a consistent standard and price, which gives them more time to focus on operating their business.
- (v) Business efficiency is further enhanced as it would be extremely inefficient if each Franchisee had to assess the ability of each of its suppliers to meet MPS's specifications. MPS draws on its knowledge and experience in the food industry to identify those suppliers that can and will supply goods and services of a particular standard as required, removing this burden from the Franchisees.

Michel's Patisserie operates nationally and MPS, and its associated entities, regularly conduct tender processes where significant business opportunities warrant a full review of the current market for particular Approved Products and Services.

- (vi) The notified conduct provides for increased quality of the Food Products being offered under the Michel's brand name and other Approved Products and Services as the Approved Suppliers undergo quality checks, health inspections, stock and supply control standards and continuous quality control measures.
- (vii) The notified conduct not only seeks to ensure the quality of the final product produced by a Franchised Operation but also seeks to ensure the quality of the Franchised Operation itself, by ensuring that Franchisees are provided with reputable providers for services.
- (viii) It is of the upmost importance to MPS that all Franchisees comply with all food, health and safety regulations when preparing items for sale in the Franchised Operation and or offering items for sale to consumers. By requiring that Franchisees use certain Approved Products and Services, MPS can better manage Franchisees compliance with its standards.
- (ix) By requiring that Franchisees purchase certain products and services from Approved Suppliers, MPS is helping to ensure that the value of Franchisees' and Franchised Operations is maintained by ensuring that the Michel's network as a whole provides a consistent and high quality Food Product, meaning that customers will associate the Michel's brand with high quality Food Products and purchase these Food Products from multiple Franchised Operations.
- (x) The notified conduct will also assist MPS, Michel's and Franchisees to maximise the benefits derived, or to be derived, from marketing and to avoid any adverse publicity, action by third parties or relevant governmental authorities or other adverse ramifications where Franchisees do not comply with MPS's requirements for high quality and consistency of image.

Fees and benefits

MPS negotiates and receives fees and benefits (including the benefit of wholesale supply prices, volume incentives, financial benefits, reimbursements of costs, licence fees and rebates) from the Approved Suppliers in relation to Approved Products and Services supplied to Franchisees. The nature and amount of the fees and benefits vary depending on the commercial arrangements between MPS and the Approved Suppliers. The fees and benefits are an important source of funding for the Michel's network. Although not directly shared with Franchisees, the benefits are used by MPS to cover a range of costs, which ultimately benefit Michel's and Franchisees. The benefits can be used:

- (i) to fund infrastructure growth and to cover operational costs associated with Michel's which benefit the Michel's network as a whole;
- (ii) to offset the financial liability incurred by Franchisees in relation to the hire of equipment, purchase of products or receipt of services;
- (iii) by MPS for the benefit, promotion or service of Michel's generally (including through deposit into the marketing fund);

- (iv) for the purpose of sponsoring Michel's events, promotions or rewarding Franchisees (such as conferences, special promotions and prizes);
- (v) for research and development purposes, including to pay for testing and product development; and
- (vi) for the purposes of training Franchisees in the modes and methods of operating a Michel's Franchised Operation.

MPS discloses to its Franchisees in its Disclosure Document that MPS may from time to time receive fees or benefits in connection with the supply of products by Approved Suppliers to Franchisees. Franchisees are not specifically informed of the level of fees and benefits received by MPS in relation to the Approved Products and Services that Franchisees are required to purchase from Approved Suppliers. This is common in franchise networks and disclosure of the amount of the financial benefit or rebate is not required under the *Franchising Code of Conduct*. The additional information disclosed to Franchisees by MPS in relation to rebates and financial benefits is the information required to be disclosed in its Disclosure Document pursuant to clause 9.1(j) of Annexure 1 of the *Franchising Code of Conduct*.

MPS also indirectly receives benefits that are provided directly to Franchisees (including free and discounted Approved Products and Services, sample products, promotional products, training supplies, Equipment servicing or support, etc).

Under the Franchise Agreement, Franchisees agree that MPS shall be entitled to negotiate and receive a fee or other benefits from Approved Suppliers.

Suppliers

The notified conduct provides the Approved Suppliers with certainty of supply and quantities of supply to Franchisees which may result in:

- (i) cost savings in the management of the Approved Supplier's business; and
- (ii) increased business efficiency which gives them more time to focus on running their businesses, planning future production and innovative strategies; and
- (iii) promoting competition among Approved Suppliers.

5 Market definition

- (a) **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):**
(Refer to direction 8)

However the relevant markets are defined, MPS submits that they are characterised by a high degree of competition and a large number of active and meaningful participants.

The markets can reasonably be identified as:

- (i) the broad retail and wholesale markets for the sale of the Approved Products and Services in Australia; and
- (ii) the retail and wholesale markets for the sale of each of the above Approved Products and Services in isolation in Australia.

Each of the above markets is characterised by a relatively large number of participants at the relevant wholesale and retail levels. In some cases, the competitors in the market may often be franchise chains, such as McCafe, The Cheesecake Shop, Muffin Break, Gloria Jeans, The Coffee Club and Ferguson Plarre .

Franchisees may apply for consent to acquire products or services from suppliers other than the Approved Suppliers, provided they meet MPS's specifications.

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:**
(Refer to direction 9)

The notified conduct may have the following detrimental effect:

- (i) the notified conduct prevents Franchisees from selecting between suppliers on the normal commercial basis of product or service price and quality; and
- (ii) suppliers that are not nominated, approved or licensed will not have access to Michel's Franchisees.

However, the notified conduct is unlikely to have any detrimental effect on end consumers as they will not be restricted in the products they can purchase from Michel's Franchisees.

MPS does not believe that there are any substantial public detriments of the notified arrangement. Any anti-competitive effects on suppliers of the Approved Products and Services will be minimal due to the number of potential purchasers of their products and services. Further, the Franchise Agreement provides scope for a Franchisee to request that products or suppliers that are not part of the Approved Products and Services or Approved Suppliers be approved by MPS for use in the Franchisee's business.

The anti-competitive effect of this arrangement on the end consumer is negligible, as it will have little to no impact on the consumer.

MPS contends that the notified arrangements will have a negligible effect on competition within the relevant markets and that the public benefits resulting from the notified conduct outweigh any public detriments caused by the conduct.

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

The public detriments that may flow from the notified conduct are discussed below. However, MPS contends that any detriment is negligible, and is far outweighed by the public benefits outlined above.

Franchisees

The notified conduct may prevent Franchisees from selecting between suppliers on the normal commercial basis of product quality and price. Franchisees may also be required to acquire Approved Products and Services from MPS, its associates or from a supplier in which MPS or an associate of MPS may have an ownership interest.

However, as specified in Annexure A (confidential), the Franchise Agreement provides a mechanism for Franchisees to seek approval of products (including the Approved Products and Services), ingredients, business requisites or supplies, plant, equipment, fixtures and fittings which they propose to acquire from sources which are not nominated or approved by MPS. MPS may consent to a Franchisee's request to use a product from another supplier if the product conforms to certain standards and the Franchisee satisfies certain conditions. MPS may consider samples, submitted by the Franchisee, and determine if the sample meets MPS's requirements for design, function, performance, warranty, quality, reliability, serviceability and product control (as the case may be). MPS will also consider whether the proposed supplier is financially sound and able to reliably meet its commitments with respect of supply and is capable of fulfilling MPS's requirements in relation to technical support, training, reporting, reputation, equipment provision, production and delivery methods, scale, labelling and or information disclosure and back up assistance (as the case may be).

MPS may also allow individual Franchisees to stock product lines which are not ordinarily permitted or sold within the Franchised Operation or other Franchised Operations. MPS may allow this where it is in the best interests of Michel's or a particular Franchisee to do so.

Franchisees are also entitled to source their own quotes for shop-fitting and refurbishment services, subject to MPS approval and the application of the Franchise Agreement.

In addition, MPS, and its associated entities, undertake regular monitoring and benchmarking of prices to ensure that the prices offered by Approved Suppliers are consistent with current market conditions and trends.

On this basis, the detriment to Franchisees will be minimal.

Consumers

The anti-competitive effect on the end consumer is negligible, as it will not ultimately prohibit consumers from comparing prices and products for the following reasons:

- (i) retailers which offer or provide the Food Products in the relevant retail markets are numerous in Australia which allows consumers to "shop around" easily; and
- (ii) there is arguably no barrier to entry at retail level because of the volume of retailers in Australia, which offer a range of similar Food Products in the relevant retail markets (eg specialty coffee, cake and or patisserie outlets and other hot and cold food or beverage outlets).

Suppliers

The wholesale suppliers that are not Approved Suppliers will not have access to Franchisees, unless they are nominated by a particular Franchisee to provide non-approved products and meet the specification outlined by MPS.

However, the anti-competitive effect on suppliers who do not have access to Franchisees will be insignificant given the number of retailers in Australia to which suppliers may sell their products. In any event, Michel's regularly monitors and benchmarks Approved Supplier pricing and undertakes tender processes where significant business opportunities are available.

The notified conduct should only further promote competition between suppliers as they compete for approved supplier status.

7 Further information

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

Andrew Rankin
Partner
Norton Rose Australia
Level 21, ONE ONE ONE
111 Eagle Street
Brisbane, Queensland 4000
Telephone: (07) 3414 2850
Email: andrew.rankin@nortonrose.com

Dated.....5 November 2012.....

Signed by/on behalf of the applicant


.....
(Signature)

RM Andrew William Rankin.....
(Full Name)

Norton Rose Australia.....
(Organisation)

Partner.....
(Position in Organisation)

DIRECTIONS

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

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

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* 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 notified 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 notified conduct including quantification of those detriments where possible.

Annexure A

SUBMISSION BY MICHEL'S PATISSERIE SYSTEM PTY LTD IN SUPPORT OF NOTIFICATION UNDER SECTION 93(1) OF THE *COMPETITION AND CONSUMER ACT 2010* (CTH)

Introduction

The purpose of this submission is to assist the ACCC in its consideration of the facts set out in the Notification of Exclusive Dealing (**Notification**) given by MPS in relation to the Michel's franchise system.

Franchise Agreement

The arrangement described in this Notification is given effect through the terms of the Franchise Agreement between MPS and Michel's Franchisees. The relevant clauses of the Michel's Franchise Agreement have been extracted below.

[Excluded from the public register.]

Annexure B – Approved Suppliers

At present there are 71 Approved Suppliers of products and services for Michel's. The details of each of these Approved Suppliers are listed in the following table.

It is anticipated that other suppliers will be added as "Approved Suppliers" in the future.

[Excluded from the public register.]