

Our Ref: RHW:237496

5 November 2012

Mr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
Level 20
175 Pitt Street
SYDNEY NSW 2000



By hand

Dear Sir

Form G - Notification of Third Line Forcing Exclusive Dealing

We act for Hungry Jacks Australia Pty Ltd (HJA) and enclose:

- (a) Form G – Notification of Exclusive Dealing for lodgement; and
- (b) a cheque on behalf of our client in the amount of \$100 in payment of the filing fee.

By way of background, HJA is the franchisor of a network of quick service hamburger restaurants.

In order to ensure efficient and consistent financial reporting across the network, HJA franchisees may be required by HJA to obtain accounting services from suppliers nominated by HJA.

HJA's nominated suppliers are subject to regular review to ensure that nominated suppliers continue to provide franchisees with high quality accounting services at competitive prices.

In 2009, HJA notified this conduct to the ACCC, specifying Lawler Partners as the nominated supplier of accounting services (N94192). As part of its regular review referred to above, HJA has determined to appoint a new provider for accounting services. Accordingly, we have prepared the enclosed notification to enable HJA to appoint alternative nominated suppliers for the benefit of HJA franchisees and the HJA system.

If you require any further information to consider this notification, please do not hesitate to contact me.

Yours sincerely
HWL Ebsworth

A handwritten signature in blue ink, appearing to read "Richard Westmoreland".

Richard Westmoreland
Partner

Writer: Richard Westmoreland | (02) 9334 8717 |
E-mail: rwestmoreland@hwle.com.au
Postal: GPO Box 5408 Sydney, New South Wales 2001
Address: Level 14, Australia Square, 264-278 George Street, Sydney, New South Wales 2000
Facsimile: 1300 369 656 (Australia) | +61 3 8615 4301 (International)
DX: DX 129 Sydney

Brisbane
Canberra
Melbourne
Norwest
Sydney

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

1. Applicant

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

N96243 Hungry Jack's Australia Pty Ltd (ABN 83 065 643 343) (HJA).

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

HJA is the master franchisee in Australia of the network of franchised quick service hamburger restaurants which are operated using the business systems, formats, methods, procedures, standards, designs and image developed and owned by Burger King Corporation (a Florida Corporation) (BKC) under Hungry Jack's trade marks.

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

Adam Funnell
Level 1, Building A, the Garden Office Park
355 Scarborough Beach Road
Osborne Park, Western Australia 6017

2. Notified arrangement

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

Accounting Services.

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

As a condition granting licenses to franchisees to operate restaurants under the HJA name, HJA may require its franchisees to acquire accounting services from a nominated third party or class of third parties.

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)

HJA franchisees.

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

(i) **At present time:**

31 franchisees.

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

(Refer to direction 6)

Not known.

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

Refer to Annexure A.

4. Public benefit claims

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

(Refer to direction 7)

By ensuring that HJA franchisees acquire accounting services from nominated third parties, HJA is able to provide the following benefits:

- Consistency and efficiency. As all financial reports will be prepared by the nominated suppliers, there will be consistency in the formatting and preparation of financial reports prepared by franchisees which, in turn, provides for more efficient financial reporting and the ability to more closely monitor business performance between HJA and its franchised businesses. Further, as the nominated suppliers are familiar with HJA's reporting requirements, there will be a reduction in the time spent in preparing reports and by HJA in reviewing those reports;
- Enhanced ability to response to financial difficulties. As HJA will receive timely financial reporting in relation to each franchisee, HJA will be able to better respond to any financial difficulties a franchisee may be experiencing in a timely manner;
- Increased confidentiality. Ensuring that HJA franchisees only use nominated suppliers helps ensure the confidentiality of all HJAs' and the franchisees' financial information;
- Assured compliance with standards. Ensuring that HJA franchisees only use nominated suppliers will ensure that general accounting standards are adhered to by all HJA franchisees, minimising variances in reporting across HJA stores; and
- Competitive pricing. By being able to negotiate with nominated suppliers on a group basis, HJA will be able to ensure that HJA franchisees have access to competitive prices for accounting services. The prices HJA negotiates and the services supplied will be subject to regular review to ensure that they continue to be competitive.

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

Please refer to item 4(a) above.

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):
(Refer to direction 8)

The market for the provision of business accounting services. This market may be regional or national in scope.

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)

For the following reasons, HJA does not believe that the notified conduct will give rise to any public detriments:

- HJA and its franchisees do not account for a competitively significant proportion of purchases in any relevantly defined market for accounting services. As such, the notified conduct is unlikely to be capable of generating any anti-competitive effects.
- Ensuring that HJA franchisees acquire accounting services from a supplier nominated by HJA will enable HJA to ensure consistency in the formatting and preparation of financial reports prepared by franchisees which in turn provides for more efficient financial reporting and the ability to more closely monitor business performance between HJA and its franchised businesses;
- Suppliers nominated by HJA will be subject to regular review to ensure that they continue to provide high quality services to franchisees at competitive prices.

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

Please refer to item 6(a) above.

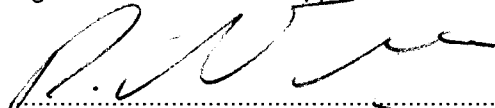
7. Further information

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

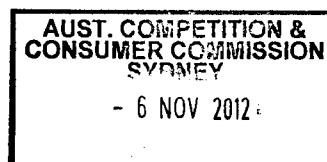
Richard Westmoreland
HWL Ebsworth
Level 14, Australia Square
264-278 George Street
Sydney NSW 2000
Phone: (02) 9334 8717
Email: rwestmoreland@hwle.com.au

Dated: 5 November 2012

Signed on behalf of the applicant



Richard Westmoreland
Partner, HWL Ebsworth



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 *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 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.

Annexure A
HJA Licensees

Victoria

Store	Name of franchisee	Business address
Bendigo	Chamdale Pty Ltd ABN 11 061 008 124	Cnr Thistle & High Streets Bendigo VIC 3550
Shepparton	HJ Operations Pty Ltd ABN 16 117 220 532	471-473 Wyndham Street Shepparton VIC 3630
Traralgon	D&T Fkiaras & Sons Pty Ltd ABN 55 094 102 940	120 Argyle Street Traralgon VIC 3844
Moe	D&T Fkiaras & Sons Pty Ltd ABN 55 094 102 940	15 Moore Street Moe VIC 3825
Tullamarine	Own Investments Pty Ltd ABN 93 477 132 601	239 Mickleham Road Tullamarine VIC 3043
Kangaroo Flat	Timic Pty Ltd ABN 40 080 543 915	Lansell Plaza Shopping Centre Calder Highway Kangaroo Flat VIC 3555
Mentone	OSJ Pty Ltd ACN 126 262 986	161 Nepean Highway Mentone Vic 3194
Sth Frankston	OSJ Pty Ltd ACN 126 262 986	Cnr Frankston / Moorooduc Hwy, South Frankston Vic 3199
Heatherton	A.C.N. 125 365 175 Pty Ltd ACN 125 365 175	Parkview Estate Corner Corporate Drive and Warrigal Road Moorabbin Vic 3189
Southland	A.C.N. 125 365 228 Pty Ltd ACN 125 365 228	Shop FC 313 Westfield Shoppingtown Southland 1239 Nepean Highway Cheltenham Vic 3192
Corio	Ryson Enterprises Pty Ltd ACN 095 665 535	Cnr School Road & Princes Highway Corio Vic 3214
Roxburgh Park	Sovereign Restaurants Pty Ltd ABN 39 088 407	Cnr Somerton Road & Reservoir Drive Roxburgh Park Vic 3064
Sunbury	Sovereign Restaurants Pty Ltd ABN 39 088 407	25 Gap Road, Sunbury Vic 3429
Melbourne International Airport	Delaware North Retail Services Pty Ltd ABN 99 001 341 073	Food Court Melbourne Airport International Terminal Melbourne Airport Vic 3045
Melbourne Domestic Airport	Delaware North Retail Services Pty Ltd ABN 99 001 341 073	Qantas Terminal Melbourne Airport Vic 3045

Store	Name of franchisee	Business address
Rowville	Dean International Pty Ltd (as trustee for The HJ Rowville Unit Trust) ACN 127 510 909	1175 Stud Road Rowville Vic 3178
Moorabbin	Dean International Pty Ltd (as trustee for The HJ Rowville Unit Trust) ACN 127 510 909	Unit 1, 903-911 Nepean Highway Moorabbin VIC 3175
Knox City	Ozinda Associates Pty Ltd ABN 20 078 558 175	Shop 2033, Knox City Shopping Centre Burwood Highway Wantima South Vic 3152
Pakenham	HJPK Pty Ltd (as trustee for the HJ Pakenham Trust) ACN 120 68 7916	78 Princes Highway Pakenham Vic 3810
Berwick	HJER Pty Ltd (as trustee for the HJ Berwick Trust) ACN 120 693 101	Corner Clyde & Greaves Road Berwick Vic 3806
Fountain Gate	HJFG Pty Ltd (as trustee for the HJ Fountain Gate Trust) ACN 120 688 495	Westfield Shopping Centre Corner Overland Drive & Narre Warren North Road Narre Warren Vic 3805
Fountain Gate Food Court	Go Home Happy Pty Ltd ACN 139 167 383	Shop FB7 Westfield F/C 40 Magid Drive Narre Warren Vic 3805
Chadstone	Hughie Pty Ltd as trustee for the Hughie Trust ACN 139 219 542	Shop 234 Upper Food Court Chadstone S/C 1341 Dandenong Road Chadstone VIC 314
Hallam	Palm Lakes Corporation Pty Ltd ABN 4818 3785 228 ACN 120 689 901	1-9 Belgrave/Hallam Road Hallam VIC 3803
Airside Melbourne International Airport	Airport Retail Enterprises Pty Ltd ACN 008 749 031	Airside, Melbourne International Airport

New South Wales

Store	Name of franchisee	Business address
Sydney Central Train Station	Delaware North Retail Services Pty Ltd ABN 99 001 341 073	Country Link Concourse SCTS Pitt Street Haymarket NSW 2000
Sydney Airport	Delaware North Retail Services Pty Ltd ABN 99 001 341 073	Shop 8, Qantas Domestic Terminal Airport Mascot NSW 2020
Sydney International Airport	Delaware North Retail Services Pty Ltd ABN 99 001 341 073	Terminal 1 departures Sydney International Airport Mascot NSW 2020
Circular Quay	Delaware North Retail Services Pty Ltd ABN 99 001 341 073	Shop E1, Pod 4, Alfred St Circular Quay NSW 2000
Bass Hill	Pyramid Foods Pty Ltd ABN 46 068 458 391	739 Hume Highway Bass Hill NSW 2197
Seven Hills	Pyramid Foods Pty Ltd ABN 46 068 458 391	40 Abbott Road Seven Hills NSW 2147
Auburn	Pyramid Foods Pty Ltd ABN 46 068 458 391	289 Parramatta Road Auburn NSW 2144
Parklea	Pyramid Foods Pty Ltd ABN 46 068 458 391	Shop 1,1190 Old Windsor Rd Parklea NSW 2768
Hurstville	Simand Enterprises Pty Ltd ABN 82 099 391 643	266-268 Forest Road Hurstville NSW 2220
Bankstown	Orecan Holdings Pty Ltd ACN 107 940 214	Shop 27 173-185 Canterbury Road Bankstown NSW 2200
Miranda	Orehovo Enterprises Pty Ltd ABN 53 072 338 295	Shop 1065 Westfield Miranda 600 The Kingsway Miranda NSW 2228
St Peters	Simjosh Pty Ltd ABN 64 064 065 372	400 Princes Highway St. Peters NSW 2044
Wagga Wagga	Huon Investments Pty Ltd ABN 27 107 445 134	Lot 3 Hammond Avenue Wagga Wagga NSW 2650
Albury	Huon Investments Pty Ltd ABN 27 107 445 134	464 Hume Highway Albury NSW 2640
Bondi	Bertha Two Pty Ltd ABN 53 096 819 331	152-162 Campbell Parade Bondi Beach NSW 2026
Broken Hill	Carrie's Investments Pty Ltd ABN 13 110 217 242	445 Argent Street Broken Hill NSW 2880
South Tweed Heads	Insigma Pty Ltd ACN 131 608 878	116 Minjungbal Drive South Tweed Heads NSW 2486
North Tweed Heads	Excession Pty Ltd as trustee for the Excession Trust ACN 157 859 633	105-109 Wharf Street, Tweed Heads NSW 2486

Store	Name of franchisee	Business address
Newcastle Airport	Marriott Airport Concessions Pty Ltd ABN 59 054 578 273	55 Slades Road Williamstown NSW 2300
Marulan North	Hungry Jacks Marulan North & South Pty Ltd ACN 154 879 053	BP Service Centre, Hume Highway Marulan NSW 2579
Gundagai	Casbriitt Pty Ltd ABN 93 477 132 601	Shell Roadhouse 99 Mount Street South Gundagai NSW 2722
St Marys	Hungry Jack's St Marys Pty Ltd ABN 83 132 717 876	115-117 Mamre Rd St Marys NSW 2760
Lismore	Hungry Jack's Lismore Pty Ltd ACN 135 000 010	48 Ballina St Lismore NSW 2480
Kotara	Dunn Burger Pty Ltd ABN 69 085 370 841	Home Improvement Centre Northcott Drive Kotara NSW 2289
Kotara Food Court	Dunn Burger Pty Ltd ABN 69 085 370 841	Shop FH1, Westfield S/C Park Avenue Kotara NSW 2289

Queensland

Store	Name of franchisee	Business address
Nerang	Tiger Enterprises Australia Pty Ltd ACN 115 288 161	Lot 24, Pappas Way Nerang QLD 4211
Australia Fair	Tiger Enterprises No. 2 Pty Ltd ACN 116 122 911	Shop 120 Australia Fair Shopping Centre Cnr Nerang & Scarborough Streets Southport QLD 4215
Robina	Tiger Enterprises No.5 Pty Ltd ACN 148 053 427	Tenancy 2042 Robina Town Centre, Robina Town Centre Drive Robina QLD 4226
Airport Cairns	Host Services Pty Ltd ABN 57 072 986 399	Tropics Food Court Domestic Terminal Airport Cairns QLD 4870
Brisbane Airport	Airport Retail Enterprises Pty Ltd ABN 16 008 749 031	Shop 40, Brisbane Domestic Terminal 1 Alpinia Drive Eagle Farm QLD 4009
Coolangatta Airport	Airport Retail Enterprises Pty Ltd ABN 16 008 749 031 ACN 008 749 031	Gold Coast Terminal Coolangatta QLD 4225
Gympie	Glasslake Pty Ltd ABN 64 010 302 388	Cnr Rose and River Streets Gympie QLD 4570
West Burleigh	Burlim Pty Ltd as trustee for the Food and Beverage Discretionary Trust ACN 151 849 026	Shop 100, Stockland Burleigh Heads 149 West Burleigh Road Burleigh Heads QLD 4220

South Australia

Store	Name of franchisee	Business address
Hawthorn	Hungry Jack's Hawthorn Pty Ltd ABN 78 128 424 859	238 Belair Road Hawthorn SA 5062
Adelaide Airport	Delaware North Retail Services Pty Ltd ABN 99 001 341 073	Delivery Point B Adelaide Airport SA 5031