



FILE No:
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13 December 2012



The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Dear Sir or Madam

Notification of third -line forcing endota (No 1) and Global Beauty Group.

endota (No 1) Pty Ltd ABN 89 107 095 983 ("**endota**") has negotiated an arrangement with Global Beauty Group Pty Ltd ACN 151 467 462 ("**Global Beauty Group**"). Under this arrangement, endota franchisees offering hydrodermabrasion services will be required to purchase hydrodermabrasion machines from the Global Beauty Group.

It is arguable that this may involve a contravention of section 47 of the *Competition and Consumer Act 2010 (Cth)*. As a result we enclose for your consideration:

1. A Form G notification on behalf of endota;
2. A cheque for \$100 as payment for lodging fees; and
3. Written consent from Global Beauty Group to lodging Form G notification on Global Beauty Group's behalf.

If you have any questions in relation to this notification please feel free to contact me.

Yours,

Chris Chapman

chris.chapman@endota.com.au

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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 in 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:

N96476 endota No (1) Pty Ltd ACN 89 107 095 983 ("**endota**")

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

endota is a franchisor that owns all the intellectual property relating to the administration and running of endota spas in Australia. endota enters into franchise agreements that allow franchisees to operate endota day spas. endota or its related corporate entities also operate a number of day spas.

Franchisees have an obligation to administer the day spa in a manner that complies with the endota operations manual. Franchisees must provide particular services, use required products, and abide by the high standard of conduct in the day to day running of the business. endota requires total compliance with these obligations in order to maintain and promote the endota brand. Currently there are 72 endota franchisees and 4 day spas that are owned and operated by endota or its related corporate entities.

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

Level 1, 117 Church Street, Hawthorn, VIC, 3122

2. NOTIFIED ARRANGEMENT

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

The purchase of Hydrodermabrasion machines for the use and operation by endota day spas. endota day spas offering hydrodermabrasion services will be required to buy the endota Hydroderm Machine ("endota machine") from Global Beauty Group Pty Ltd ACN 151 467 462 ("**Global Beauty Group**"). Hydrodermabrasion is a subset of microdermabrasion a light cosmetic procedure which exfoliates the outermost layer of dead skin cells from the epidermis. Purchasing the endota machine from Global Beauty Group will include the following:

- endota machine;
- service on the endota machine; and
- leasing arrangements for the endota machine.

(b) Description of the conduct or proposed conduct:

endota will compel interested franchisees to purchase endota machines, and related products, from Global Beauty Group. Franchisees will notify endota product Pty Ltd 138 538 842 ("**endota product**"), a related entity of endota, and endota product will place an order with the Global Beauty Group.

Global Beauty Group will then arrange flexi-rent financing via a third party, Flexirent Capital Pty Ltd 064 046 046 ("**Flexirent**"), for the endota machine. Once Flexirent financing has been arranged, Global Beauty Group will order the endota machine and deliver the endota machine to franchisees. endota franchisees will be required to purchase the endota machine under the operations manual.

3. PERSONS OR CLASSES OF PERSON AFFECTED OR LIKELY TO BE AFFECTED BY THE NOTIFIED CONDUCT

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

endota spa franchisees.

(b) Number of persons:

(i) at present time

72

(ii) estimated within the next year

82

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

N/A

4. PUBLIC BENEFIT CLAIMS

(a) Arguments in support of notification:

The particular conduct will benefit the franchisees and endota in the following way:

- The provision of uniform endota machines and products ensures that there is consistency in quality of treatments across the endota franchise system; this will be beneficial for clients of endota spas.
- endota has invested a substantial amount of time and money in researching the machines that are suited to the endota franchise network. The endota machine has been specifically developed and designed for use by

franchisees to facilitate hydrodermabrasion treatments that are consistent with endota standards.

- endota has and will continue to have the responsibility of negotiating the supply of endota machines on behalf of the franchisees. This responsibility will ensure franchisees can focus on their business, and will not be required to develop a relationship with Global Beauty Group.
- endota will use its knowledge about Hydrodermabrasion treatments to ensure that the endota machines comply with quality service levels that the individual franchisees would not, independently, be able to enforce.
- The pricing structure for the endota machines benefits franchisees, as it has been negotiated for a network of operators, rather than for individual franchisees. This reduces costs for franchisees, and would reduce the cost of treatment for customers.

(b) Facts and evidence relied upon in support of this claim

endota is experienced in providing up-to-date beauty products and services for its franchisees. endota product engages with a number of different technology and product suppliers to maximise savings for both franchisees and customers. endota, keen to stay 'ahead of the curve', has undertaken substantial research and investment into determining which the best available provider of hydrodermabrasion machines in the Australian market.

Based on this research, endota product has recommended and tailored the endota machine so that it is the best suited for the endota franchise system. Product and services across the franchise network must be consistent to meet client expectations. By ensuring all franchisees providing hydrodermabrasion treatment use the endota machine, franchisees will provide uniform and reliable services to our clients

5. MARKET DEFINITION

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

The relevant market that would be impacted by the proposed conduct is the market for the sale of hydrodermabrasion machines in Australia. This market will be affected as franchisees will not be able to purchase the hydrodermabrasion machines from suppliers other than the Global Beauty Group. Purchasers of microdermabrasion machines include all beauty salons, all day spas, all cosmetic skin clinics and doctors surgeries. An estimate of the potential purchasers is not feasible given the breadth and size of the potential market.

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:

The likely effects of the conduct would be:

- Prevent franchisees from choosing other hydrodermabrasion products; and
- Prevent other suppliers of hydrodermabrasion supplying to endota.

However, given the hydrodermabrasion machine have been designed specifically for the endota franchise network, franchisees would not be able to source identical products that would comply with endota requirements from other suppliers. This proposed conduct is unlikely to have an effect on consumers in the beauty service market. The beauty market in Australia is quite large, with a variety of products and services available to consumers.

(b) Facts and evidence relevant to these detriments:

There are a number of suppliers which provide hydrodermabrasion machines in the Australian market. However, as noted above the endota machine has been customised to the endota franchise network so available products from other suppliers would not be suitable for our franchisees.

7. FURTHER INFORMATION

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

Dated: 13 - December - 2012

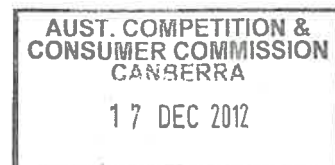
Signed by/ on behalf of the applicant

.....
(signature)

Chris Malcolm Chapman
.....
(full name)

endota No 1 Pty Ltd
.....
(organisation)

General Counsel / Corporate Secretary





TheGlobalBeautyGroup
Technology for Beautiful Business

endota (No 1) Pty Ltd
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Hawthorn,
Victoria 3122
p: 03 9230 2200
f: 03 9230 2222

Dear Chris,

Consent to notification of third line forcing – Global Beauty Group and endota (No 1) Pty Ltd

We acknowledge an arrangement between endota (No 1) Pty Ltd ABN 89 107 095 983 ("**endota**") and Global Beauty Group Pty Ltd ACN 151 467 462 ("**Global Beauty Group**") may be considered a contravention of section 47 of the *Competition and Consumer Act 2010 (Cth)*.

The arrangement requires endota franchisees offering hydrodermabrasion services to purchase hydrodermabrasion machines from the Global Beauty Group.

As a result we consent to endota lodging with the ACCC on our behalf:

- (1) A Form G notification; and
- (2) A submission made by endota on behalf of Global Beauty Group supporting the Form G notification – highlighting the public benefit associated with the proposal and absence of any misuse of market power,

in the form attached.

We also agree to endota providing a copy of this letter to the ACCC as evidence of Global Beauty Group's consent to endota lodging the Form G notification on Global Beauty Group's behalf.

Yours sincerely

Kane Hammond
Director