

FILE No:
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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 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)

N95759 DAX (Aust) Pty Ltd trading as La Pesa Trattoria (ABN 24 152 207 399)
 (Venue).

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

The Venue provides restaurant services in Sydney, Australia.

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

C/- DoubleStep Pty Ltd trading as Topple
 61 Rofe St
 LEICHHARDT NSW 2040



2. Notified arrangement

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

Restaurant services in Sydney, Australia.

(b) Description of the conduct or proposed conduct:

See Attachment A.

(Refer to direction 4)

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)

Customers, or prospective customers, of the restaurant services provided by the Venue.

(b) Number of those persons:

(i) At present time:

Unknown.

(ii) Estimated within the next year:

(Refer to direction 6)

Unknown.

(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:

(Refer to direction 7)

See Attachment A.

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

See Attachment A.

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 relevant market is the provision of restaurant services in Sydney, Australia. Competition in that market is fierce. There are a large number of competitors in that market which provide substitutes to the goods and services provided by the Venue.

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)

See Attachment A.

(b) Facts and evidence relevant to these detriments:

See Attachment A.

7. Further information

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

C/- E Kelly
Director
DoubleStep Pty Ltd trading as Topple
61 Rofe St
LEICHHARDT NSW 2040
(02) 8060 4841

Dated 13 March 2012

Signed on behalf of the applicants



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E Kelly
Director
DoubleStep Pty Ltd trading as Topple

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 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. Description of the conduct or proposed conduct

- 1.1 DoubleStep Pty Ltd trading as Topple (ABN 49 143 153 262) (**Topple**) provides an online platform to hospitality providers that gives them the ability to market, promote and sell offers to members of the public. Topple acts as the disclosed agent of the relevant hospitality provider in relation to the marketing, promotion and sale of such offers. Any member of the public can purchase such offers by visiting the Topple website, creating a free login and paying the relevant price or booking fee for the offer to Topple.
- 1.2 The Venue proposes to offer to give or give a discount in relation to the supply of goods or services on the condition that a person acquires the services of its disclosed agent Topple.
- 1.3 By way of an example, the Venue proposes to initially give a discount of approximately 25% on the total bill of a table of people who book that table through its disclosed agent Topple and pay a booking fee to Topple. Such discount bookings will generally be made available at particular times that the Venue has excess capacity.
- 1.4 Using the language of sections 47(6) and 47(7) of the *Competition and Consumer Act 2010*, this conduct may arguably (although the Venue and Topple do not agree with this characterisation) be regarded as:
 - (a) the Venue giving or allowing, or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services by the Venue; on the condition that a person will acquire the goods or services of Topple; and/ or
 - (b) the Venue refusing to give or allow a discount, allowance, rebate or credit in relation to the supply of goods or services to a person; for the reason that a person has not agreed to acquire, goods or services from Topple.
- 1.5 Out of an abundance of caution, and in order to eliminate any risk of contravention of sections 47(6) and (7), the Venue wishes to notify the proposed conduct.

2. Public benefits

- 2.1 The proposed conduct will be of benefit to the public because:
 - (a) it will allow people who book through Topple to obtain goods or services of the Venue at a discount;
 - (b) it will promote competition in the relevant market by encouraging competitors of the Venue to make similar offers; and
 - (c) it will promote competition in the relevant markets by helping to ensure the continued existence of the Venue in the relevant market by increasing the number of customers that acquire the goods and services of the Venue generally, and more specifically, at particular times when the Venue has excess capacity.

3. Public detriments

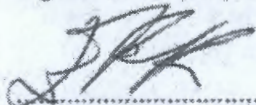
- 3.1 The proposed conduct will not result in any lessening of competition in the relevant market nor result in any conceivable public detriment because:
- (a) there are a large number of competitors in the relevant market which provide substitutes to the goods and services provided by the Venue;
 - (b) competition in the relevant market is fierce;
 - (c) a person may still acquire the goods and services of the Venue at the usual price without acquiring the goods and services of Topple;
 - (d) any person can purchase such offers by visiting the Topple website, creating a free login and paying the booking fee for the offer;
 - (e) the Venue is free to make similar offers outside of the Topple online platform; and
 - (f) the number of people affected by the conduct is negligible (ie. customers, and prospective customers, of the restaurant services provided by the Venue) when compared to the number of people in the relevant market (ie. customers, and prospective customers, of the restaurant services provided by competitors of the Venue).

4. Authority to lodge notification

- 4.1 Topple has express authority to lodge this notification on behalf of the Venue. Please see the attached letter.

Dated 13 March 2012

Signed on behalf of the applicants



E Kelly
Director
DoubleStep Pty Ltd trading as Topple

DAX (Aust) Pty Ltd trading as La Pesa Trattoria
174 Liverpool St
Darlinghurst
NSW 2010

1 March 2012

DoubleStep Pty Ltd trading as Topple
61 Rofe St
Leichhardt
NSW 2040

Consent to lodge Form G notification with ACCC

We consent to DoubleStep Pty Ltd trading as Topple (ABN 49 143 153 262)
(**Topple**):

- lodging a Form G notification with the Australian Competition & Consumer Commission (ACCC) on behalf of DAX (Aust) Pty Ltd trading as La Pesa Trattoria (ABN 24 152 207 399) (**La Pesa**) in relation to proposed arrangements between Topple and La Pesa;
- dealing with the ACCC or otherwise communicating or accepting service on behalf of La Pesa in relation to the Form G notification; and
- providing a copy of this letter to the ACCC as evidence of consent to the above.

Yours sincerely,

Marketa Dackiw
Director
DAX (Aust) Pty Ltd trading as La Pesa Trattoria

