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AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY
- 4 MAY 2012

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3 May 2012

Australian Competition and Consumer Commission
GPO Box 3648
SYDNEY NSW 2001

Dear Sirs

MOOCHI OPERATIONS PTY LIMITED

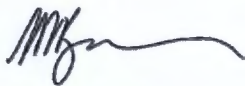
We act for Moochi Operations Pty Limited.

We enclose:

1. Form G – Notification of Exclusive Dealing; and
2. Our cheque in the sum of \$100 in relation to the lodgement fee.

Please acknowledge receipt and let us know if you require any further information or submissions in relation to the Notification.

Yours sincerely



Michael Bradley
Managing Partner

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.

1. Applicant

(a) Name of person giving notice:

N95855 *Moochi Operations Pty Limited (Moochi)*
ACN 156 137 727

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

Moochi operates a franchise system involving franchises that specialise in the retail sale of frozen yoghurt and other food and beverages under the Moochi brand.

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

44/378 Parramatta Road, Homebush West, NSW 2140

2. Notified arrangement

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

Refer to Annexure A (part 1, clause 1.1–1.3).

(b) Description of the conduct or proposed conduct:

Refer to Annexure A (part 1, clause 1.4).

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:

All Moochi franchisees.

(b) Number of those persons:

(i) At present time:

0

(ii) Estimated within the next year:

15

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

N/A

4. Public benefit claims

(a) Arguments in support of notification:

Refer to Annexure A (part 2).

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

Refer to Annexure A (part 2.)

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 Annexure A (part 3).

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 Annexure A (part 4).

(b) Facts and evidence relevant to these detriments:

Refer to Annexure A (part 4).

7. Further information

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

*Michael Bradley
Marque Lawyers
Level 4, 343 George Street
Sydney NSW 2000*

Dated..... *3 May 2012*

Signed by/on behalf of the applicant

(Signature)

(Full Name)

(Organisation)

(Position in Organisation)



ANNEXURE "A"

SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION REGARDING THIRD LINE FORCING NOTIFICATION

1. Notified Arrangement

(Refer to Section 2(a) and (b) of Form G)

- 1.1 Moochi franchises are granted to franchisees on the condition, among other things, that the Moochi franchisees are required to offer for sale at the franchises the entire range of approved products which comprise the following products: yoghurt, yoghurt powder, yoghurt paste, frozen fruits, crumble toppings, churros mix, frozen fruits, coffee and teas (**Approved Products**) from suppliers approved by Moochi.
- 1.2 The Approved Products are used to prepare the frozen yoghurts or are products sold directly to the general public.
- 1.3 From time to time, Moochi may designate a product as an Approved Product or designate a product as no longer having the status of an Approved Product.
- 1.4 Moochi franchisees are required to purchase the Approved Products from either Moochi, an associate of Moochi or from suppliers nominated by Moochi (**Approved Suppliers**).

2. Public Benefit Claims

(Refer to Section 4 of Form G)

- 2.1 Moochi submits that the conduct or proposed conduct will have a benefit to the public for the reasons set out below.
- 2.2 By requiring franchisees to purchase the Approved Products from Approved Suppliers:
 - (a) Moochi will be able to preserve and maintain the consistency and high quality of the goods supplied by Moochi franchises;
 - (b) Moochi will be able to ensure consistency and certainty in customer experience regardless of which Moochi business a customer buys the Approved Products from;
 - (c) members of the public who purchase products from Moochi franchises will be confident that the products purchased will be the same quality irrespective of which Moochi store the product is purchased from;
 - (d) as the Moochi franchises will be a new entrant into a competitive marketplace, this will increase competition and market choice and increase the likelihood of lower prices for end consumers; and
 - (e) by designating Approved Suppliers, Moochi can ensure that Moochi and its franchisees fully comply with all applicable food and safety standards relating to the Approved Products.

3. Market Definition

(Refer to Section 5 of Form G)

3.1 The relevant market could be identified as the Australian markets for the:

- (a) retail supply of frozen yoghurt, yoghurt, yoghurt powder and yoghurt paste;
- (b) retail supply of tea, coffees and other beverages;
- (c) wholesale supply of frozen yoghurt, yoghurt, yoghurt powder and yoghurt paste; and
- (d) wholesale supply of tea, coffees and other beverages.

3.2 The markets are highly competitive and there are a large number of active participants in these markets.

4. **Public Detriments**

(Refer to Section 6 of Form G)

4.1 Moochi does not believe that there is any public detriment that results from the conduct or proposed conduct.

4.2 Moochi submits that the conduct or proposed conduct will not lessen competition in the market place. Both the relevant wholesale and retail markets are highly competitive, with many participants and very low barriers to entry. All products which Moochi franchises will be supplying to consumers have close substitutes in the market. Both suppliers to Moochi and consumers buying from Moochi have plentiful available alternatives for their custom.

4.3 The proposed conduct will not prevent Moochi franchisees from dealing with other suppliers of Approved Products from time to time.

4.4 Additionally, Moochi may appoint different suppliers as Approved Suppliers from time to time. In assessing whether to appoint a supplier as an Approved Supplier, Moochi can consider factors like the quality of products, consistency of supply and pricing.

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