



**Australian  
Competition &  
Consumer  
Commission**

Our Ref: N96512  
Contact Officer: Tanya Hobbs  
Contact Number: 02 6243 1029

29 January 2013

Dear Sir/Madam

**Third line forcing notification N96512 lodged by  
Subway Systems Australia Pty Ltd**

GPO Box 3131  
Canberra ACT 2601  
23 Marcus Clarke Street  
Canberra ACT 2601  
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**The notification**

The above third line forcing notification was lodged with the Australian Competition and Consumer Commission (the ACCC) on 24 December 2012. The notification has been placed on the ACCC's public register. The purpose of this letter is to invite you to comment on the notification and provide you with information regarding the notification process, additional information on the notification and a description of how to make a submission to the ACCC.

The ACCC understands that as part of the notified conduct, Subway Systems Australia Pty Ltd (Subway) will offer Subway franchises and franchise services to franchisees on condition they acquire goods and services from approved suppliers. Approved suppliers and the goods and services that franchisees are required to obtain from approved suppliers may change from time to time.

I note that Subway's notification states that:

Franchisees are informed via SSA's [Subway's] Franchise Agreement (clause 5.b (ii)) and SSA's Disclosure Document (Clauses 9 and 10) that SSA may require the Franchisee to acquire all required goods and services used in a Subway® Restaurant exclusively from an approved distribution center or another approved source, including SSA or an affiliate of SSA or a designee of SSA.

Subway's notification indicates that much of the responsibility for tendering and negotiating supply arrangements with approved suppliers is undertaken by Independent Purchasing Company (Australasia) Limited (IPCA) and that Subway franchisees are all members of IPCA.

**The notification process**

Notifications provide legal protection automatically 14 days after the notification is validly lodged with the ACCC. Any decision to revoke the notification would remove the legal protection for the entire franchise system.

The ACCC can only remove the legal protection provided by an exclusive dealing notification if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct. Therefore, all submissions commenting on the notification should focus on the likely public benefits claimed by Subway and any public detriments that are likely to arise due to the notified conduct.

## Franchising related notifications

It is not uncommon for franchisors to require franchisees to acquire stock or equipment from nominated suppliers. By their very nature, franchise agreements will impose some restrictions on franchisees' freedom to choose with whom, in what, or where they deal. Such conduct is often a legitimate and common part of franchising networks and can deliver benefits, including maintaining the quality and consistency of the end product, and delivering overall cost savings to franchisees.

Where franchisors propose to require franchisees to acquire stock or equipment from nominated third party suppliers, they are at risk of contravening the exclusive dealing provisions of the *Competition and Consumer Act 2010* (the Act). A number of franchisors therefore seek legal protection for such conduct by lodging a notification with the ACCC.

The ACCC considers the use of nominated suppliers in franchise systems can enable the negotiation of a cheaper overall price for the relevant goods. Further, the use of nominated suppliers can maintain consistency and quality of the end product across the franchise network and provide an efficient ordering system. Subway has claimed these benefits, amongst others, in relation to its notification.

## Request for submissions

To assist the ACCC in its review of the notification, the ACCC invites you to make a submission on the likely public benefits and effect on competition, or any other public detriment, from the notified conduct. If you intend to provide a submission in relation to the notification, it would be appreciated if you could do so by **22 February 2013**.

Submissions may be emailed to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au) or mailed to GPO Box 313, Canberra, ACT 2601.

Please note that any submissions received will be placed on the ACCC's public register, subject to any request for exclusion (guidelines attached).

You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding the notification.

A copy of this letter has been placed on the ACCC's public register and sent to Subway franchisees. If you wish to discuss any aspect of this matter, please do not hesitate to contact Tanya Hobbs on 02 6243 1029.

Yours sincerely



Richard Fleming  
Acting General Manager  
Adjudication Branch