

## 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)

N96926

Capercorp Pty Ltd ACN 121 441 414 (**Capercorp**)

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

Capercorp is the franchisor of the Pizza Capers Gourmet Kitchen franchise system (**Pizza Capers**), specialising in the preparation and retail sale of specialty pizzas, calzone, breads, meat, pasta, chicken, salads, desserts, hot and cold beverages and other related products nominated by Capercorp from time to time. As at 5 August 2013, there are 127 Pizza Capers outlets in Australia.

Capercorp has the right or licence to operate Pizza Capers, use the "Pizza Capers", "Pizza Capers Gourmet Kitchen" and "Pizza Capers Gourmet Pizza Cafe" brands, and to grant a Pizza Capers franchise to any other person or company (**Franchisee**). The Pizza Capers system and brands incorporate a variety of valuable intellectual property including trade marks, logos and business names, copyrighted materials, and includes a distinctive image which comprises designs and colour schemes for Pizza Capers retail stores, store concepts and plans, signs, layouts, fixtures and fittings, uniforms and badges, certain processes, methods, systems, business and marketing plans, menus, recipes, formulas, price lists, pricing scripts manuals, supplier lists, customer lists and databases, computer software, telephone and facsimile numbers, domain names, trade secrets, know how and other procedures (collectively, the **Intellectual Property**).

The majority of Pizza Capers retail stores are owned and operated by Franchisees (**Franchised Operations**) pursuant to a written franchise agreement (**Franchise Agreement**). Pizza Capers currently has 122 Franchised Operations in Australia. As at 5 August 2013, 5 retail stores were operated by, or on behalf of, Capercorp or its associates.

Pizza Capers franchised stores sell a range of food and beverage products, including pizza, calzone, breads, meat, chicken, pasta, salads, desserts, hot and cold beverages and other related products nominated by Capercorp from time to time, predominantly to retail customers.

Capercorp is a related entity of Pizza Capers Franchise Pty Ltd (**PCF**) which owns certain trade marks and Intellectual Property relevant to the Pizza Capers franchise system. The ownership of, and right to use, the aforesaid Intellectual Property is the subject of an agreement between Capercorp and PCF, the terms of which are confidential.

Capercorp has appointed RFGA Management Pty Ltd ACN 071 765 609, trading as Retail Food Group (Australia) (**System Manager**), to manage the Pizza Capers system on its behalf.

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

c/- Andrew Rankin  
Partner  
Norton Rose Fulbright Australia  
Level 21, ONE ONE ONE  
111 Eagle Street  
Brisbane QLD 4000.

**2 Notified arrangement**

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

**Approved Products and Services**

This Notification relates to the acquisition by Pizza Capers Franchisees of products and services approved or nominated, or which may be approved or nominated, by Capercorp, including:

- (i) certain consumable and food products, eg pizzas, pizza bases, calzone, breads, meat, chicken, pasta, salads, desserts and other related products including pre-manufactured or pre-packaged products (**Food Products**);
- (ii) sauces and dressings, animal and dairy products, breads and buns, fruit and fruit fillings, vegetables and herbs, syrups, fillings, creams, confectionaries, bakery ingredients, sugar and/or other condiments, and other ingredients necessary to make Food Products (**Ingredients**);
- (iii) beverages, such as bottled water and soft drinks for resale (**Beverage Products**);
- (iv) packaging, boxes, cartons, paper cups and lids, straws, napkins, paper towels, plastic cutlery, utensils, crockery, glassware, merchandise and promotional products and other items of packaging and cutlery used by Pizza Capers (**Packaging**);
- (v) services for the provision of warehousing and distribution of Food Products, Beverage Products, Ingredients, and Packaging and other services which the Franchisee is required to acquire from Pizza Capers or nominated third party service providers;
- (vi) machinery, plant, equipment (eg pizza ovens, dough makers, refrigerators), signs, fixtures, fittings and finishes used in the conduct of the Franchised Operation, including the preparation or display for sale of the Food Products and Beverage Products (**Equipment**);
- (vii) computer and point of sale systems, software, retail and business management systems, mobile or internet ordering or payment systems, telephone systems, loyalty or reward systems and other related information technology systems;
- (viii) training services provided by Capercorp or its nominated supplier;

- (ix) marketing material design and ordering systems, merchandising and branding services;
- (x) store design, shop-fitting and refurbishment services;
- (xi) certain products and services relating to the installation, fit out, maintenance, operation, cleaning and upkeep of the Franchised Operation and Equipment;
- (xii) centralised banking facilities to facilitate customer payment processing, including EFTPOS or 'tap and go' systems;
- (xiii) insurance;
- (xiv) uniforms; and
- (xv) a lease, sublease or licence in respect of the occupation of premises from which a Franchised Operation is, or is to be, conducted.

(collectively, the **Approved Products and Services**)

from specified third party suppliers.

#### **Approved suppliers**

Capercorp has identified a number of suppliers who have been approved or nominated by Capercorp (**Approved Suppliers**) that can provide the Approved Products and Services identified above to the standards required by Capercorp, and at a reasonable cost. The Approved Suppliers are listed at Appendix B (confidential). Capercorp believes that the Approved Products and Services best meet the requirements of the Pizza Capers network and that the Approved Suppliers are best able to provide such Approved Products and Services.

Franchisees may also be required to acquire certain Approved Products and Services from Capercorp, or associates of Capercorp, or from an Approved Supplier in which Capercorp or an associate of Capercorp may have an ownership interest.

Franchisees may also be required to enter into a lease, sublease or licence with Capercorp or an associate in relation to the occupation of premises from which a Franchised Operation is, or is to be, conducted.

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

#### **Pizza Capers brand and system**

The dine-in, takeaway and delivery pizza industry is highly competitive and densely populated. The Pizza Capers system is designed to give Franchised Operations a competitive advantage. This is achieved by ensuring that:

- (i) all Pizza Capers outlets maintain a uniform product range which delivers Food Products and Beverage Products of the highest quality;
- (ii) all Pizza Capers outlets are operated in such a manner as to deliver a consistent customer experience, including through achieving consistency in the modes and methods of operating a Pizza Capers outlet and otherwise the nature and quality of a fit out of Franchised Operations across Australia to maximise the retail experience for both

Franchisees and consumers and ensure fit out and Equipment satisfies workplace requirements; and

- (iii) the integrity in the marketplace of the Pizza Capers image and franchise system is maintained and otherwise ensuring the development and continual enhancement of the Intellectual Property.

Without ensuring that these elements are maintained and enhanced, the potential profit for Franchisees, and benefit capable of being derived from being a Pizza Capers Franchisee, is eroded and the long term value of the Pizza Capers brand is diminished.

### **Franchisees' contractual obligations**

Franchisees have obligations under their respective Franchise Agreements in relation to the Approved Products and Services they can:

- (i) purchase, acquire or make for use in their Franchised Operation; and
- (ii) market or sell from their Franchised Operation.

In addition, Franchisees have obligations in relation to the Equipment they must use in their businesses.

Depending upon the terms thereof, a lease, sublease or licence to occupy premises may also restrict the range of products and services that the Franchisee must acquire or sell.

Franchisees also have obligations under their respective Franchise Agreements in relation to the services they can utilise, including in relation to fitting out their premises (either as part of an initial fit out or as part of a subsequent fit out or refurbishment).

A Franchisee will generally hold the lease in respect of premises from which the Franchised Operation is, or is to be, conducted. In limited cases, Capercorp may require that Franchisees enter into a separate sublease or licence agreement with an associated entity of Capercorp in respect of the occupation of premises from which the Franchised Operation is, or is to be, conducted.

The relevant clauses of the standard Franchise Agreement that relate to the notified conduct are set out in Annexure A (confidential).

### **Notified conduct**

Capercorp proposes to require its Franchisees to acquire the Approved Products and Services (as detailed above in section 2(a)) from Approved Suppliers.

Where Capercorp directly grants or renews a lease, sublease or licence to a Franchisee, Capercorp proposes to require the Franchisees to comply with the terms and conditions of the Franchise Agreement, including as to the acquisition of the Approved Products and Services from Approved Suppliers.

By appointing Approved Suppliers, Capercorp seeks to:

- (i) leverage the Pizza Capers network for the purposes of negotiating better than market pricing for Approved Products and Services;
- (ii) maintain Pizza Capers' unique selling proposition (**USP**) vis-à-vis market competitors;

- (iii) ensure the protection of Pizza Capers' Intellectual Property (including proprietary recipes for products);
- (iv) ensure consistency in the product and service type offered to all Franchisees and by all Franchisees to the consumer;
- (v) ensure consistency in the high quality product offered to all Franchisees and by all Franchisees to consumers as a result of strict quality checks and quality control measures of Approved Suppliers;
- (vi) ensure confidence in compliance with food safety, food handling and other food or health regulations as a result of the consistency;
- (vii) ensure consistency in the delivery of Approved Products and Services and competitive pricing of Approved Products and Services;
- (viii) ensure consistency in the nature and quality of the fit out of the Franchised Operations across Australia to maximise the retail experience for both Franchisees and consumers and to ensure compliance with workplace requirements;
- (ix) ensure consistency in the services provided to customers of Franchised Operations (including the provision of information in connection with Food Products and Beverage Products, such as nutritional information); and
- (x) facilitate improved efficiencies and business efficacy at Franchisor and Franchised Operation level.

#### **Competition and Consumer Act implications**

The notified conduct potentially falls within the definition of exclusive dealing in sections 47(6) and (7) of the *Competition and Consumer Act 2010* (Cth) (**CCA**), as Capercorp proposes to:

- (i) supply its services as franchisor/licensor on the condition that the Franchisee acquires; and
- (ii) refuse to supply its services as franchisor/licensor if the Franchisee does not acquire (or has not agreed to acquire);

the Approved Products and Services set out in section 2(a) above from the Approved Suppliers.

Additionally, in the limited circumstances where Capercorp may directly grant or renew a lease, sublease or licence in respect of the occupation of premises from which a Franchised Operation is, or is to be, conducted the notified conduct may fall within the definition of exclusive dealing in sections 47(8)(c) and (9)(d) of the CCA, as Capercorp, in conjunction with its associates, proposes to:

- (iii) grant or renew, or make it known that it will not exercise a power or right to terminate, a lease or licence in respect of land or a building (or a part thereof) on the condition that the Franchisee acquires the Approved Products and Services set out in 2(a) above from the Approved Suppliers; and
- (iv) refuse to grant or renew, or exercise a power or right to terminate, a lease or licence in respect of land or a building (or a part thereof) if the Franchisee does not acquire (or has not agreed to acquire) the

Approved Products and Services set out in 2(a) above from the Approved Suppliers.

However, as outlined below, Capercorp maintains that the public benefits that will result from the notified conduct outweigh any public detriment.

**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)

Franchisees

Approved Suppliers

The broad wholesale/retail market for the sale and supply of the Approved Products and Services

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

(i) **At present time:**

Franchisees: 70 (as at 5 August 2013)

Approved Suppliers 63 (as at 5 August 2013)

(ii) **Estimated within the next year:**  
(Refer to direction 6)

Franchisees: 80

Approved Suppliers 73

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

**Franchisees**

There are over 50 Pizza Capers Franchisees. Accordingly, the details of each Franchisee have not been included. Further details of each Franchisee can be provided to the ACCC upon request.

**Approved Suppliers**

There are over 50 Pizza Capers Approved Suppliers. In any event, the details of each Approved Supplier are contained at Annexure B (confidential). Capercorp anticipates that it may appoint further Approved Suppliers in the future.

**Broad wholesale/retail market**

There are over 50 participants in the broad wholesale/retail market for the sale and supply of the Approved Products and Services. Accordingly, details of each participant have not been included.

#### 4 Public benefit claims

(a) **Arguments in support of notification:**  
(Refer to direction 7)

The purpose of the notified arrangement is not to substantially lessen competition. Rather, the notified arrangement will enhance the capacity of Franchisees, as small businesses, to compete with larger businesses and other competitors. This enhanced capacity is especially important in a market where there is intense competition, particularly from large chains and competing pizza and associated product-based franchise networks (such as Domino's Pizza, Pizza Hut, Eagle Boys Dial-a-Pizza and La Porchetta).

The notified arrangement will be likely to have the following benefits for Franchisees and end consumers:

- (i) Franchisees will have guaranteed access to Approved Products and Services at competitive prices due to the established supply relationships which allow Franchisees to offer favourable prices to the end consumer;
- (ii) the notified conduct is likely to foster business efficiency as Franchisees are:
  - (A) assured of access to a range of Approved Products and Services of a consistent standard which gives them more time to focus on operating their business;
  - (B) afforded greater certainty in connection with input costs which fosters improved business planning;
  - (C) afforded access to improved point of sale equipment incorporating capacity for increased capability/functionality which facilitates benchmarking and greater access to information, improved decision making processes (including in relation to stock ordering and wastage) and reduced risk of fraud;
- (iii) the notified conduct gives Capercorp more bargaining power when negotiating prices with suppliers which will have a flow-on effect to Franchisees and the end consumer;
- (iv) the notified conduct allows Capercorp to focus on controlling quality which ensures that end consumers are provided with Food Products and Beverage Products of a consistent standard that meet the promise of Pizza Capers and the Franchisee as to the content and quality of the Food Product and Beverage Product;
- (v) the notified conduct ensures that Franchisees and ultimately consumers are able to purchase genuine licensed products in the case when they are pre-packaged products (eg bottled Beverage Products for resale, etc);
- (vi) the notified conduct ensures that Franchisees purchase the Approved Products and Services which are licensed, including Approved Products and Services which are manufactured or supplied under licence from Capercorp or an associated entity, from the appropriately licensed Approved Suppliers and not from unlicensed manufacturers or suppliers;

- (vii) the notified conduct ensures that Franchisees purchase and or utilise equipment and other business requisites, and store fit out services, from appropriately qualified and accredited Approved Suppliers and not from unapproved manufacturers, suppliers or service providers; and
- (viii) improved efficiencies for the Franchisor allowing it to apply greater resources towards improving franchise system servicing and product innovation.

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

**Franchisees and consumers**

The notified conduct is likely to have the benefits listed below for Franchisees and end consumers:

- (i) The notified conduct will ensure consistency, uniformity and end-to-end quality control, which is paramount to the integrity of the Pizza Capers brand and image, so that the Approved Products and Services:
  - (A) meet Pizza Capers' standards for design, function, performance, quality, taste, serviceability and warranty (as the case may be); and
  - (B) are manufactured, produced and or supplied by those manufacturers, producers and or suppliers specified or approved by Capercorp as meeting its standards and specifications for, without limitation and as the case may be, technical support, training, reporting, reputation, equipment provision, production and delivery methods, scale, labelling and or information disclosure (necessary to satisfy obligations arising under the Food Standards Code or other legislation), service capacity and back up support.
- (ii) Franchisees will have guaranteed access to the Approved Products and Services sold or provided by Approved Suppliers at a competitive price due to the increased purchasing power of the network. This will afford certainty which fosters improved business planning and allows Franchisees to offer favourable prices to the consumer.

Where incumbent Approved Suppliers have the opportunity to requote, Capercorp will review the current market, including alternate suppliers of like products and services, with the purpose of ensuring that the prices that are quoted by an incumbent Approved Supplier are relevant to current market conditions and trends. Capercorp negotiates pricing with the aim of ensuring that the Pizza Capers system receives better than market pricing to ensure brand profitability whilst maintaining product quality and consistency. Capercorp regularly monitors volume demands to ensure pricing levels are relevant and meet market pricing.

- (iii) In the general retail food market, inter-brand competition is paramount. By requiring Franchisees to acquire Approved Products and Services from Approved Suppliers, Capercorp is able to ensure that all Franchisees maintain high standards so that the brand can compete more effectively in the retail food market.
- (iv) The notified conduct is likely to foster business efficiency as Franchisees are assured of access to Approved Products and



Services from Approved Suppliers that are of a consistent standard and price, which gives them more time to focus on operating their business.

- (v) Business efficiency is further enhanced as it would be extremely inefficient if each Franchisee had to assess the ability of each of its suppliers to meet Capercorp's specifications. Capercorp draws on its knowledge and experience in the food industry to identify those suppliers that can and will supply goods and services of a particular standard as required, removing this burden from the Franchisees.

Pizza Capers operates nationally and Capercorp, and its associated entities, conduct tender processes where significant business opportunities warrant a full review of the current market for particular Approved Products and Services.

- (vi) The notified conduct provides for increased quality of the Food Products and Beverage Products being offered under the Pizza Capers brand name and other Approved Products and Services as the Approved Suppliers undergo quality checks, stock and supply control standards and continuous quality control measures.
- (vii) The notified conduct not only seeks to ensure the quality of the final product produced by a Franchised Operation but also seeks to ensure the quality of the Franchised Operation itself, by ensuring that Franchisees are provided with reputable providers for services.
- (viii) It is of the utmost importance to Capercorp that all Franchisees comply with all food, health and safety regulations when preparing items for sale in the Franchised Operation and or offering items for sale to consumers. By requiring that Franchisees use certain Approved Products and Services, Capercorp can better manage Franchisees compliance with its standards.
- (ix) By requiring that Franchisees purchase certain products and services from Approved Suppliers, Capercorp is helping to ensure that the value of Franchisees' businesses and Franchised Operations is maintained by ensuring that the Pizza Capers network as a whole provides a consistent and high quality Food Product and Beverage Product, meaning that customers will associate the Pizza Capers brand with high quality Food Products and Beverage Products and purchase these Food Products and Beverage Products from multiple Franchised Operations.
- (x) The notified conduct will also assist Capercorp, Pizza Capers and Franchisees to maximise the benefits derived, or to be derived, from marketing and to avoid any adverse publicity, action by third parties or relevant governmental authorities or other adverse ramifications where Franchisees do not comply with Capercorp's requirements for high quality and consistency of image.

### **Fees and benefits**

Capercorp negotiates and receives fees and benefits (including the benefit of wholesale supply prices, volume incentives, financial benefits, reimbursements of costs, manufacturer's margin in connection with Approved Products and Services supplied by Capercorp, licence fees and rebates) from the Approved Suppliers in relation to Approved Products and Services supplied to Franchisees. The nature and amount of the fees and benefits vary depending on the commercial arrangements between Capercorp and the Approved Suppliers. The fees and benefits are an important source of

funding for the Pizza Capers network. Although not directly shared with Franchisees, the benefits are used by Capercorp to cover a range of costs, which ultimately benefit Pizza Capers and Franchisees. The benefits can be used:

- (i) to fund infrastructure growth and to cover operational costs associated with Pizza Capers which benefit the Pizza Capers network as a whole;
- (ii) to offset the financial liability incurred by Franchisees in relation to the hire of equipment, purchase of products or receipt of services;
- (iii) by Capercorp for the benefit, promotion or service of Pizza Capers generally (including through deposit into the marketing fund);
- (iv) for the purpose of sponsoring Pizza Capers events, promotions or rewarding Franchisees (such as conferences, special promotions and prizes);
- (v) for research and development purposes, including to pay for testing and product development; and
- (vi) for the purposes of training Franchisees in the modes and methods of operating a Pizza Capers Franchised Operation.

Capercorp discloses to its Franchisees in its Disclosure Document that Capercorp may from time to time receive fees or benefits in connection with the supply of products by Approved Suppliers to Franchisees. Franchisees are not specifically informed of the level of fees and benefits received by Capercorp in relation to the Approved Products and Services that Franchisees are required to purchase from Approved Suppliers. This is common in franchise networks and disclosure of the amount of the financial benefit or rebate is not required under the *Franchising Code of Conduct*. The additional information disclosed to Franchisees by Capercorp in relation to rebates and financial benefits is the information required to be disclosed in its Disclosure Document pursuant to clause 9.1(j) of Annexure 1 of the *Franchising Code of Conduct*.

Under the Franchise Agreement, Franchisees agree that Capercorp shall be entitled to negotiate and receive a fee or other benefits from Approved Suppliers.

### **Suppliers**

The notified conduct provides the Approved Suppliers with certainty of supply and quantities of supply to Franchisees which may result in:

- (i) cost savings in the management of the Approved Supplier's business; and
- (ii) increased business efficiency which gives them more time to focus on running their businesses, planning future production and innovative strategies; and
- (iii) promoting competition among Approved Suppliers.

## **5 Market definition**

- (a) **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)*

However the relevant markets are defined, Capercorp submits that they are characterised by a high degree of competition and a large number of active and meaningful participants.

The markets can reasonably be identified as:

- (i) the broad retail and wholesale markets for the sale of the Approved Products and Services in Australia; and
- (ii) the retail and wholesale markets for the sale of each of the above Approved Products and Services in isolation in Australia.

Each of the above markets is characterised by a relatively large number of participants at the relevant wholesale and retail levels. In some cases, the competitors in the market may often be large corporations or franchise chains such as Domino's Pizza, Pizza Hut, Eagle Boys Dial-A-Pizza and La Porchetta.

Franchisees may apply for consent to acquire products or services from suppliers other than the Approved Suppliers, provided they meet Capercorp's specifications.

## **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)*

The notified conduct may have the following detrimental effect:

- (i) the notified conduct prevents Franchisees from selecting between suppliers on the normal commercial basis of product or service price and quality; and
- (ii) suppliers that are not nominated, approved or licensed will not have access to Pizza Capers Franchisees.

However, the notified conduct is unlikely to have any detrimental effect on end consumers as they will not be restricted in the products they can purchase from Pizza Capers Franchisees.

Capercorp does not believe that there are any substantial public detriments of the notified arrangement. Any anti-competitive effects on suppliers of the Approved Products and Services will be minimal due to the number of potential purchasers of their products and services. Further, the Franchise Agreement provides scope for a Franchisee to request that products or suppliers that are not part of the Approved Products and Services or Approved Suppliers be approved by Capercorp for use in the Franchisee's business.

The anti-competitive effect of this arrangement on the end consumer is negligible, as it will have little to no impact on the consumer.

Capercorp contends that the notified arrangements will have a negligible effect on competition within the relevant markets and that the public benefits resulting from the notified conduct outweigh any public detriments caused by the conduct.

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

The public detriments that may flow from the notified conduct are discussed below. However, Capercorp contends that any detriment is negligible, and is far outweighed by the public benefits outlined above.

**Franchisees**

The notified conduct may prevent Franchisees from selecting between suppliers on the normal commercial basis of product quality and price. Franchisees may also be required to acquire Approved Products and Services from Capercorp, its associates or from a supplier in which Capercorp or an associate of Capercorp may have an ownership interest.

However, as specified in Annexure A (confidential), the Franchise Agreement provides a mechanism for Franchisees to seek approval of products (including the Approved Products and Services), ingredients, business requisites or supplies which they propose to acquire from sources which are not nominated or approved by Capercorp. Capercorp may consent to a Franchisee's request to use a product from another supplier if the product conforms to certain standards and the Franchisee satisfies certain conditions. Capercorp may consider samples, submitted by the Franchisee, and determine if the sample meets Capercorp's requirements for design, function, performance, warranty, taste, quality, reliability, serviceability and product control (as the case may be). Capercorp will also consider whether the proposed supplier is financially sound and able to reliably meet its commitments with respect of supply and is capable of fulfilling Capercorp's requirements in relation to technical support, training, reporting, reputation, equipment provision, production and delivery methods, scale, labelling and or information disclosure and back up assistance (as the case may be).

Capercorp may also allow individual Franchisees to stock product lines which are not ordinarily permitted or sold within the Franchised Operation or other Franchised Operations. Capercorp may allow this where it is in the best interests of Pizza Capers or a particular Franchisee to do so.

Franchisees are also entitled to source their own quotes for shop-fitting and refurbishment services, subject to Capercorp approval and the application of the Franchise Agreement.

In addition, Capercorp, and its associated entities, undertake regular monitoring and benchmarking of prices to ensure that the prices offered by Approved Suppliers are consistent with current market conditions and trends.

On this basis, the detriment to Franchisees will be minimal.

**Consumers**

The anti-competitive effect on the end consumer is negligible, as it will not ultimately prohibit consumers from comparing prices and products for the following reasons:

- (i) retailers which offer or provide the Food Products and Beverage Products in the relevant retail markets are numerous in Australia which allows consumers to "shop around" easily; and

- (ii) there is arguably no barrier to entry at retail level because of the volume of retailers in Australia, which offer a range of similar Food Products and Beverage Products in the relevant retail markets (eg dine-in, take-away and delivered pizza outlets).

### Suppliers

The wholesale suppliers that are not Approved Suppliers will not have access to Franchisees, unless they are nominated by a particular Franchisee to provide non-approved products and meet the specifications outlined by Capercorp.

However, the anti-competitive effect on suppliers who do not have access to Franchisees will be insignificant given the number of retailers in Australia to which suppliers may sell their products. In any event, Pizza Capers regularly monitors and benchmarks Approved Supplier pricing and undertakes tender processes where significant business opportunities are available.

The notified conduct should only further promote competition between suppliers as they compete for approved supplier status.

### 7 Further information

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

Andrew Rankin  
Partner  
Norton Rose Fulbright Australia  
Level 21, ONE ONE ONE  
111 Eagle Street  
Brisbane, Queensland 4000  
Telephone: (07) 3414 2850  
Email: andrew.rankin@nortonrosefulbright.com

Dated.....23/08/2013.....

Signed by/on behalf of the applicant

.....*AW Rankin*.....  
(Signature)

.....ANDREW WILLIAM RANKIN.....  
(Full Name)

.....NORTON ROSE FULBRIGHT.....  
(Organisation)

.....PARTNER.....  
(Position in Organisation)

## 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 notified 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 notified conduct including quantification of those detriments where possible.

## **Annexure A**

### **SUBMISSION BY CAPERCORP PTY LTD IN SUPPORT OF NOTIFICATION UNDER SECTION 93(1) OF THE *COMPETITION AND CONSUMER ACT 2010* (CTH)**

#### **Introduction**

The purpose of this submission is to assist the ACCC in its consideration of the facts set out in the Notification of Exclusive Dealing (**Notification**) given by Capercorp in relation to the Pizza Capers franchise system.

#### **Franchise Agreement**

The arrangement described in this Notification is given effect through the terms of the Franchise Agreement between Capercorp and Pizza Capers Franchisees. The relevant clauses of the Pizza Capers Franchise Agreement have been extracted below.

*[Excluded from the public register.]*

## **Annexure B – Approved Suppliers**

At present there are 63 Approved Suppliers of products and services for Pizza Capers. The details of each of these Approved Suppliers are listed in the following table.

It is anticipated that other suppliers will be added as “Approved Suppliers” in the future.

***[Excluded from the public register.]***