



30 October 2013

**Adjudication Branch
Australian Competition & Consumer Commission
23 Marcus Clarke Street Canberra 2601 T**

Via email: adjudication@acc.gov.au

Dear Sir / Madam

Notification of Exclusive Dealing

Please find included in this emailed application:

- a. Form G - Notification of Exclusive Dealing for this entity and three associated entities,
- b. A copy of the report referred to in our Form G - Contribution of the Pet Care Industry to the Australian Economy 7th Edition, 2010

We have paid \$100 in fees on Monday 28th October 2013 and a further \$300 earlier today directly with your finance department.

If you have any queries, please do not hesitate to contact the writer.

Yours faithfully,
The Franchise Group Pty. Ltd.

Martin Rose
Director

The Franchise Group Pty. Ltd.
A.C.N. 007 449 587 A.B.N. 84 725 952 928
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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)

The Franchise Group Pty Ltd ACN 007 449 587

Blue Wheelers Pty Ltd (**BW**) ACN 074 300 422

Blue Wheelers DFD Pty Ltd (**DFD**) ACN 160 000 608

Dash DogWash Pty Ltd (**Dash**) ACN 050 026 269

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

The Franchise Group Pty Ltd is owner of all intellectual property used by Blue Wheelers Pty Ltd (**BW**), Blue Wheelers DFD Pty Ltd (**DFD**) and Dash DogWash Pty Ltd (**Dash**).

BW (formally known as HydroDog) - is a quality full service franchised dog washing, dog clipping and dog grooming franchise with an emphasis on training and customer service delivery.

DFD is a franchise that delivers dog food, treats, flea and other dog treatment products that also undertakes health reviews on dogs when it supplies pet food and associated products.

Dash is a franchised dog wash business focusing on the delivery of a dependable flea free wash and dry with excellent customer service.

All three franchised entities **BW**, **DFD** and **Dash** use almost all the same suppliers with all intellectual property being licenced to these entities by The Franchise Group Pty Ltd.

As at the date of application there are 187 franchisees in the three different franchise systems operating in every state and territory.

Under the franchise agreements, franchisees in all three systems are granted the right to operate a business system in a non-exclusive territory using the brands, business systems and intellectual property owned by The Franchise

Group Pty Ltd. To ensure a uniform and quality customer experience all three franchised systems offer:

- i. Initial and ongoing training and support
- ii. An integrated business information system that is computer cloud based and manages customer relationships. It provides franchisees an income and expense monitoring system and benchmarking against key performance indicators (The **CRM**)
- iii. Fully developed business systems and manuals
- iv. Access to exclusive **BW**, **DFD** and **Dash** branded high quality products
- v. National marketing and lead generation.

As a condition of joining **BW**, **DFD** and **Dash** a franchisee must agree to follow the franchise systems and maintain the uniform branding, image and quality service levels so that customers can enjoy a uniform and repeatable quality experience and thus trust us to care for their furry family member (i.e. their dog).

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

The Franchise Group Pty Ltd
Suite 14, 209 Toorak Rd South Yarra 3141.

2. Notified arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:
- i. A range of products used in the day to day operation of **BW** and **Dash** including but not limited to branded shampoos, flea treatments, sanitisers, deodorisers, cleaners, skin and coat conditioners.
 - ii. A range of branded pet food and treats; many made and packaged exclusively for **BW**, **DFD** and **Dash**.
 - iii. A range of specialised washing and grooming equipment used in the set up and day to day operation of **BW** and **Dash** including but not limited to clippers, dryers, grooming tables and grooming equipment to enable the efficient, consistent and professional operation of a **BW** and **Dash** business system.
 - iv. Specialised equipment used in the set up and day to day operation of **DFD** including but not limited to scales, food, treats, coat, skin and flea treatments and fit out and equipment to enable the efficient, consistent and professional operation of a **DFD** business system.
 - v. Standard national uniforms in our colours with logos
 - vi. Uniform national signage and branding

- vii. The fully integrated business management and information system
(The **CRM**)
- viii. A unified 1300 call centre for **BW, DFD** and **Dash** so that customers can call one phone number and have their enquiry passed on to the most appropriate franchisee.
- ix. A single payment system for the collection of franchise fees
- x. A single web based portal for web based sales of services and products to be delivered by franchisees in **BW, DFD** and **Dash**.
- xi. A national group insurance scheme.

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

The Franchise Group Pty Ltd through **BW, DFD** and **Dash** will supply its services, support and intellectual property to its franchisees as long as they reflect the values and the brands they represent.

We have been advised that the above conduct falls within the definition of exclusive dealing in sections 47(6) and (7) of the Competition and Consumer Act 2010 (Cth) as The Franchise Group Pty Ltd proposes to:

- (i) Supply its services on the condition that the Franchisees acquire Approved Products from the suppliers; and
- (ii) will refuse to supply its services if the Franchisees do not acquire and use Approved Products from the suppliers.

As we will detail in this application, The Franchise Group Pty Ltd believes that the public benefits resulting from this conduct outweigh any public detriment despite the conduct falling within this definition.

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)

All franchisees in **BW, DFD** and **Dash** Australia wide.

- (b) Number of those persons:

- (i) At present time:

187

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

205

- (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 4 (b) below.

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

By way of background The Franchise Group Pty Ltd operates franchise systems in the entry level of small business. For almost all of our franchisees this is their first involvement in a small business and thus they require support and business training; relying on us to guide them to success.

Overall market

According to the “Contribution of the Pet Care Industry to the Australian Economy 7th Edition, 2010” report compiled by the Animal Companion Council, (section 10.2) there are more than 2,700 pet service providers supplying dog and cat clipping and grooming. With many of these being shops with multiple employees, we fairly estimate that there are significantly more than 4,000 dog groomers. We therefore represent less than 5% of the total number of groomers. This list excludes the abundant number of back yard operations that did not advertise in the medium they surveyed to determine market size.

With such a diverse and competitive market, we try to provide a meaningful point of difference for potential and current consumers to choose us over the vast array of groomers available.

In pet food, the sources of food for consumers are so varied from pet food stores, to pet superstores, on line web based delivery companies and the plethora of supermarkets. With only two current **DFD** franchisees it would seem that we will have little impact on the market place for pet food. All we can try to do is create a perceptual difference through service and quality branded products that consumers find us an appealing alternative to what is already a widely distributed and extremely competitive product category.

Relevancy Of Products In The Respective businesses

It is only through the use of Approved Products that a **BW** or **Dash** franchisee can consistently deliver to consumers’ quality services. A brand

is trust. We submit that only through the use of specially developed Approved Products, can franchisees maintain a trusted brand for the consumers they interact with.

The Franchise Group Pty Ltd has developed a range of pet food and treats products and intends to brand them and buy them in bulk. As part of the consistent customer experience, we believe it important to keep control over the products used in our franchisees business. We contend that the bulk buying of such products should allow us to be competitive so that **BW**, **DFD** and **Dash** franchisees can provide consumers a quality product and experience; at a fair price.

In **BW**, **DFD** and **Dash** we negotiate not only core products used in the delivery of service but the purchase of quality equipment for franchisees to use in each of these business. Without bulk buy opportunities, franchisees could pay significantly more than they would otherwise. No supplier rebates are currently received or have ever been received from any equipment supplier; with all savings passed on to franchisees. Should this change at any time, we would be required to be completely transparent in accordance with the considerable obligations contained in The Franchise Code.

Competitive Prices




With such a diverse and highly competitive market in all areas we operate, we offer a measurably different product and market relative pricing (supplied across Australia) through buying core products in bulk in sufficient quantities from nominated suppliers.


Since its inception, The Franchise Group Pty Ltd and its associated entities have invested in developing supplier relationships to ensure that our franchisees and consumers are given the best quality products at market competitive prices.

Given the aggregated volume, in what is otherwise a diverse market, we believe we are in a position to negotiate lower prices on average than individual franchisees could otherwise obtain themselves.

It is only through the combination of volume purchases and long term relationships that we can maintain standards. Franchisees in **BW**, **DFD** or **Dash** do not have the time, the experience nor the contacts and ability to develop, source, produce and negotiate contracts on the products we supply. One of the main benefits of joining a **BW**, **DFD** or **Dash** franchise is the potential to access our specially developed approved products (and branding) to stand out from the very significant competition.

By enabling Franchisees to acquire Approved Products at competitive rates franchisees can:

-  Maximise their profitability opportunity; and
-  Provide a point of difference for consumers; and
-  Provide value for money to their customers; and

 Concentrate on running their own businesses.

Product Supply - Unique Products

It is unlikely that a manufacturer would make specially branded and formulated products for an individual operator in **BW**, **DFD** or **Dash**.

Consumers benefit by having quality products and services available to them at would otherwise be higher prices – if available at all.

Brand Protection

Franchisees buy not only the support that a franchise affords; they buy the marketing support and brand recognition that comes with a national brand.

It is only through the ability to supply consistent high quality product, branding and marketing to our franchisees and customers that **BW**, **DFD** and **Dash** can have a perceptual difference in their markets but also the way they can maintain this differentiation and brand reputation.

We provide national branding and have contractors in place for all signage, uniforms and marketing materials, to ensure that the brands are presented in an identical way in all areas we operate. Whilst there are many vehicle and fibreglass signage providers in the market, even when provided with the same design, they are usually unable to provide the exact same imaging. This is because the use of different inks, printing substrates and wide format ink printers leads to colour variation.

Consequently different suppliers provide a different quality of end product. For example, the crispness of lines in the printing and the quality of the background that is applied to the vehicle or trailer, all vary. Some contractors have been willing to place updated signage on faded and poorly presented trailers when the trailer was in need of new paint. This leads to signs peeling off and additional costs when it has to be stripped off and re-done. Different providers apply our branding differently for different models of trailers and vehicles. All these changes reduce the impact of the branding, resulting in inconsistent brand representation. By restricting the availability of our graphics files, we are also better able to control the ownership and use of our registered designs and Trademarks.

Technology and The Franchise Group Pty Ltd

All franchisees should pay their fortnightly service fees via a single supplier gateway. It is very expensive and time consuming for us to manage a large quantity of direct debits; such costs being able to be passed on to franchisees. The cost to a franchisee of \$1.95 (as at the date of this communication) per fortnight is significantly less than doing this ‘in house’.

Through outsourcing franchisees have lower costs and can afford to be more competitive for consumers.

With a proposed upgrade to our web site we would like to provide franchisees with a payment gateway so that they can receive non cash payments for services and goods supplied to consumers. Given the small size of each individual franchisees business and the low average non cash income each franchisee receives on a monthly basis, it would be doubtful if an individual franchisee to obtain the same costs per transaction as compared to the accumulation of all franchisees transactions in a single gateway. Lower EFPOS fees should be the result.

Almost every Australian serviced based franchise system uses a national 1300 or 1800 phone number and call centre. It is a foundation of lead generation for franchisees. Usually marketing is undertaken Australia wide to direct calls to a centralised call centre. Calls are routed via a local 'POP' in each State / Territory via an internet 'Voice Over Internet Protocol' (**VOIP**) telephone line to our call centre.

Without a connection to this lead generation system franchisees would miss out on significant new business. An individual franchisee would be challenged to replace this infrastructure and lead generation. It is only through the collective buying power of a franchise system the costs can be negotiated and consumers can find one point of contact for **BW**, **DFD** and **Dash**.

We are in the final stages of introducing The **CRM**; a cloud based software product that has been specially developed for The Franchise Group Pty Ltd over the past two years. Given the significant investment made to date we doubt a franchisee could afford to develop their own system. It will better facilitate business management for franchisees in their business and assist us to provide them support.

We would like to link it into the payment gateway noted above so that franchisees can accept non cash payment for goods and services. Income and expenditure would appear within their businesses accounts. This could only occur when a single payment gateway was in place.

Customers will have better and more efficient products and services offered and receive better communication from their local operator. Each local operator will be able to offer last minute specials to fill their diaries during quiet periods and newsletters of valuable information.

Insurance

We advertise that all our franchisees are “Fully Trained Certified and Insured”. It is also stated in signage displayed on our franchisees trailers. Consumers have a right to expect that such a statement is not misleading and deceptive. Further, consumers expect a national brand and thus their local operator would have such insurance in place for their protection.

Customers will benefit from the proposed arrangement as they will have the security that all **BW**, **DFD** and **Dash** franchisees have insurance in place when using our services. Currently, franchisees have the right to insure wherever they chose but have the obligation to supply a copy of their suitable policy to The Franchise Group Pty Ltd and its associated entities. As a consequence of recent insurance history we have concerns that we are not being made aware of any franchisees that may cancel an insurance policy or have it cancelled on them (if they do not pay the monthly premium). This leaves a high level of risk exposure for the public, the franchisee and the reputation of every other franchisee Australia wide. A national group insurance policy will better enable us to comply with the advertising provisions of the Competition and Consumer Act 2010.

Franchisees should benefit from the proposed arrangement as The Franchise Group Pty Ltd should be able to obtain a lower price or a better insurance policy as compared to a single standalone policy.

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)

Shampoos and pet equipment are mostly supplied by local or state based small concerns. Pet treats, uniform suppliers and signage suppliers are a similarly fragmented small suppliers and manufacturers. An individual operator would not have any ‘purchasing power’.

Branded pet food comes from mostly one of four key manufacturers. Three huge international corporations; Nestle, Mars and Procter and Gamble. There is only one local producer of any size - VIP. All four companies have traditionally dealt via wholesalers but are beginning to dismantle this supply channel and deal direct to improve their margins. Unless you are a major supermarket or a chain of pet superstores you have no ability whatsoever to negotiate prices. The only way we can assist our franchisees to purchase products at competitive prices is through group buying.

Technology, insurance and signage suppliers are varied and widely available. However, pricing is constantly based on volume, thus an individual operator is unlikely to have any 'purchasing power'.

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)

(i) Franchisees

As a consequence of the notified conduct, Franchisees will be unable to choose the supplier they obtain their requirement of Approved Products.

As noted herein, in some cases they could not obtain products or if they could obtain products then they would likely be at higher prices. On occasions, franchisees may not be able to buy the cheapest product. We do not consider this to be a significant issue as we quite simply do not want franchisees to be buying the cheapest products. By way of example, our treats are locally made, not imported from Asia and irradiated to kill all manner of insects / diseases that could harm our ecosystem. Australian made products cost more but do not need to be treated with radiation. We consider this to be a defining benefit to our consumers, their pets and our local economy. Similar our shampoos are tried, tested and approved as being safe on the pets we care for each month. The correct use of our products ensures a quality result for the franchisee and the end consumer.

Our broad range of expertise and experience is what franchisees rely upon when buying into a franchise system.

As all but two of our franchisees are owner operators, they do not have the time or resources to be purchasing officers. It is one of the reasons they join a franchise. Suppliers nominated by The Franchise Group Pty Ltd will be subject to regular review to ensure that they continue to provide high quality products to franchisees at competitive prices.

(ii) Consumers

The Franchise Group Pty Ltd believes that there is minimal, if any, public detriment from the proposed arrangements. None of the issues we have raised in this notification are likely to have any effect on the price of the goods and services in a highly diversified and competitive market. The pet industry (save for branded food manufacture) remains competitive with a large number and variety of suppliers and potential users of the goods and services.

As previously detailed, a brand is trust and consumers trust us with their furry family member. This nexus of trust would be broken if franchisees were not required to use uniform products in their businesses; such products being an essential part of a franchise model. It is no different in application to the "Special Sauce" in a Big Mac.

Consumers are easily able to compare prices and products. We believe our proposal will ensure that consumers are better served by our ability to offer continued competitive prices. Further, only through the use of Approved Products are we able to deliver to consumers' product and service consistency. Therefore, the anti-competitive effect on the end consumer is negligible – if anything at all.

The benefits to consumers of certainty on insurance are significant.

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

Detailed above.

7. Further information

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

Martin Rose
Director
The Franchise Group Pty Ltd
Suite 14 / 209 Toorak Road South Yarra 3141
(03) 9826 5266

Dated 30th October 2013

Signed by/on behalf of the applicants

 (Signature)

Martin Rose
(Full Name)

The Franchise Group Pty Ltd
Blue Wheelers Pty Ltd
Blue Wheelers DFD Pty Ltd
Dash DogWash Pty Ltd
(Organisations)

Director
(Position in Organisations)

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.