

**BY EXPRESS POST
PRIVATE AND CONFIDENTIAL**
The Australian Competition and Consumer
Commission
PO Box 12241
George Street Post Shop
BRISBANE QLD 4003

12 November 2013

FILE No:
DOC:
MARS/PRISM:

Our ref
MMW:ANH:87282
Contact
Andrea Hetherington
Tel
(07) 3014 6539
Fax
(07) 3221 0479
Email
ahetherington
Principal
Mark Woolley

Dear Sir/Madam

**EXCLUSIVE DEALING NOTIFICATION FOR THIRD LINE FORCING | NEW YORK
SLICE FRANCHISING PTY LTD**

We act for New York Slice Franchising Pty Ltd.

Our client operates the New York Slice Pizzeria Franchise Network. As part of the network operation, our client intends to require its franchisee's to purchase the franchise products from a third party supplier.

Please find **enclosed** a Form G – Notification of Exclusive Dealing completed pursuant to subsection 93(1) of the *Competition and Consumer Act 2010* (Cth) with respect to this proposed conduct.

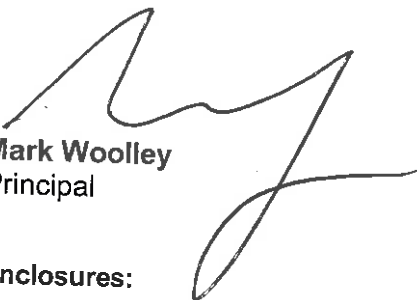
Accompanying this form is a cheque for \$100 in payment of the required fee.

Should you require any additional information, please do not hesitate to contact Andrea Hetherington of this office on (07) 3014 6539 or Mark Woolley on (07) 3231 0653.

Yours faithfully
McInnes Wilson Lawyers

Paul Tuily
John Hamilton
Matthew Lyons
Mylon Burns
Allison Langford
Scott Falvey
Patrick McGrath
Terry McCormick
Chris McManus
Christopher Davis
David Jesser
Glenn Caligaris
Brian Schech
Fred Smith
Mark Woolley
Paul McCowan
Alicia Hill
Emma Chapman
Neal Dallas
Jacqui Eager
Carl Moseling
Trevor Gallienne
Andrew Mewing
Michael Batch




Mark Woolley
Principal

Enclosures:

1. Form G – Notification of Exclusive Dealing;
2. Cheque

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)

N97091

New York Slice Franchising Pty Ltd ACN 151 954 433 (NYS)

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

NYS is the Franchisor of the New York Slice chain of take away pizza restaurants situated in Queensland.

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

C/- McInnes Wilson Lawyers

Attn: Mark Woolley

GPO Box 1089

Brisbane QLD 4001

2. Notified arrangement

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

This notice relates to the pizzas and other food ingredients and products (**Products**) to be sold in the course of operating NYS Franchises.

- (b) Description of the conduct or proposed conduct:

As a condition of granting the Franchise, NYS requires its franchisees to acquire the Products from the supplier approved by NYS from time to time.

(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)

The conduct will affect NYS Franchisees who operate or will be granted the right to operate a NYS Franchise.

- (b) Number of those persons:

- (i) At present time:

3

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

Not known.

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

Franchisee: New York Slice Fortitude Valley Pty Ltd

Attention: Mr Todd McGregor

Address: 360 Brunswick Street, Fortitude Valley QLD 4006

Franchisee: New York Slice Albert Street Pty Ltd

Attention: Mr Todd McGregor

Address: Shop 4/136 Queen Street, Brisbane QLD 4000

Franchisee: West End New York Slice Pty Ltd

Attention: Mr Brock Mudge

Address: 1/149-151 Boundary Street, West End QLD 4101

4. Public benefit claims

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

NYS has developed a franchise system involving a range of pizzas whose recipes have been developed by NYS and which are manufactured by the approved supplier to the standard required by NYS and at a reasonable cost.

NYS maintains that the public benefit resulting from the notified conduct will outweigh any public detriment. NYS is able to negotiate competitive prices with the approved supplier in relation to the Products.

The specification of Products and suppliers ensures that customers are provided with a consistent retail experience and consistent tasting products of high quality across the entire franchise system.

The purpose of the notified conduct is not to substantially lessen competition, but rather to:

1. Ensure consistent quality in goods and a consistent customer experience throughout the NYS Franchise network;

In order for NYS to be able to promote a consistent menu across the NYS Franchise System and ensure that the products consumers receive are consistent in taste and quality, it is necessary for NYS to be able to mandate the use of particular menu items, including where necessary food and drink ingredients from approved suppliers. A consistent customer experience benefits franchisees as part of the Franchise Network as a whole, by ensuring consistency in the reputation of the Franchise among consumers.

2. Promote business efficiency

NYS is able to procure high levels of service from its approved supplier and ensure the approved supplier meets NYS's stringent service levels.

NYS Franchisees do not need to be concerned with managing the relationship with approved suppliers, as NYS will take on this responsibility. This will allow NYS Franchisees to focus on operating their business, and allows them to receive the benefits of NYS's negotiating power.

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

Competitive Prices

By virtue of its size and experience in comparison to its individual franchisees, NYS has greater bargaining power than that of its individual franchisees. NYS has a direct relationship with the Product supplier and which allows it to negotiate better prices than those which would be available to individual NYS Franchisees.

As NYS is able to negotiate prices to be offered to the NYS Franchise network as a whole, it has access to bulk discounts that suppliers are only willing to offer if the volume of supply can be guaranteed.

NYS Franchisees would be unable to use bulk-buying power as leverage in the same way.

Consistent Quality in Products and Customer Experience

Please refer to the comments at Item 1 at 4(a) above.

Promoting Business Efficiency

Please refer to the comments at Item 2 at 4(a) above.

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)

NYS submits that the relevant markets include:

1. The wholesale market for the supply of ready made pizza products to the fast food service restaurant sector; and
2. the retail market for ready made and take away pizzas.

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)

NYS believes that the public detriment resulting from the notified conduct is negligible. The affected markets and the detriments which may be experienced in those markets are identified as follows:

NYS Franchisees

1. NYS Franchisees will be unable to choose between suppliers for their food products.

Non-Approved Suppliers

2. Suppliers of ready-made pizza's who are not approved suppliers of the NYS Franchise Network will be unable to supply their goods or services to NYS franchisees.

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

NYS submits that there is little or no public detriment resulting from the notified conduct, and in any case, that the benefits of the notified conduct outweigh any public detriment.

NYS Franchisees will benefit from the terms negotiated between NYS and the approved supplier, including enjoying competitive prices and assurance of consistency and quality in products and equipment.

Further, NYS franchisees will be able to focus on operating their NYS Franchise businesses rather than investing time and money in negotiating directly with suppliers.

The notified conduct is unlikely to substantially lessen competition, particularly in relation to other suppliers, as the market for suppliers to pizza retailers in the fast food sector is highly competitive and in any case, NYS is a relatively small franchisor which does not have a substantial degree of power in the relevant market.

NYS does not believe that there will be a public detriment to consumers, who will be largely unaffected by the notified conduct except to receive the benefits of the notified conduct by being able to expect and enjoy consistency of experience and a high degree of quality across the whole NYS Franchising Network.

7. Further information

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

Mark Woolley

McInnes Wilson Lawyers

GPO Box 1089

Brisbane QLD 4001

Dated..... 8-10-2013

Signed by/on behalf of the applicant

.....
(Signature)



..... PAUL BARANAT

(Full Name)

.....

(Organisation)

..... DIRECTOR

(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 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.