

MASON SIER TURNBULL

LAWYERS



FILE No:
DOC:
MARS/PRISM:

Telephone +61 3 8540 0200
Facsimile +61 3 8540 0202
PO Box 858 Mt Waverley
DX 32001 Mt Waverley

315 Ferntree Gully Road
Mt Waverley
Victoria 3149 Australia
www.mst.com.au

Liselm Pty Ltd trading as Mason Sier Turnbull ABN 19 095 155 184



Cover of Excellence

Liability limited by a scheme approved
under Professional Standards Legislation

21 November 2013

Our Ref: RT:1301404

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO BOX 3131
CANBERRA ACT 2601

Dear Sir/Madam,

Notification of exclusive dealing: Sushi Sushi Franchising

I advise that I act for Sushi Sushi Franchising Pty Ltd ("my client").

On behalf of my client, I give notice that my client proposes to engage in exclusive dealing and have enclosed a Form G - Notification of Exclusive Dealing to this effect ("Notification").

In accordance with section 89(5) of the *Competition and Consumer Act 2010* (Cth), my client requests that Annexure A of the Notification (pages 10 to 16) be excluded from the public register by reason of its confidential nature, being the contact details of my client's franchisees at the time of lodging the Notification.

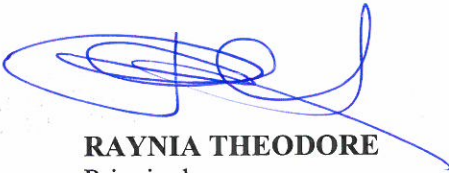
In particular, my client is concerned that its franchisees may not wish for their contact details to be disclosed on the public register and that it would be burdensome on my client to individually confirm each franchisee's consent to such disclosure.

Accordingly, in the interests of protecting its franchisees' contact details which my client considers to be confidential, and pursuant to Regulation 24 of the Competition and Consumer Regulation, I enclose the following on behalf of my client:

1. Form G - Notification of Exclusive Dealing (Public Register Version);
2. Form G - Notification of Exclusive Dealing (Restricted); and
3. Cheque in the sum of \$100.00 in payment of the applicable lodgement fee.

Should you have any queries or require to discuss this matter further please do not hesitate to contact me.

Yours sincerely,



RAYNIA THEODORE
Principal

Direct Line: +61 3 8540 0242
Email: raynia.theodore@mst.com.au
Enc

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:

N97119

Sushi Sushi Franchising Pty Ltd ACN 131 477 051 ("SSF")

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

SSF is the franchisor of the Sushi Sushi Franchise Network ("SSF Network") and pursuant to franchise agreements between SSF and franchisees ("SSF Franchisees"), SSF grants SSF Franchisees the right to operate Sushi Sushi retail stores specialising in the production, marketing and retail sale of fresh, smoked and cooked seafood and fish products, including a full range of Japanese style hand rolls, sushi and sashimi, Japanese cooked and raw condiments, assorted Japanese groceries, Japanese soups and hot and cold beverages ("SS Business") using SSF's intellectual property, including the Sushi Sushi name and trade marks.

A number of retail stores are also owned and operated by various related entities of SSF ("Company-Owned Stores").

As at the date of this notification, there are 37 franchised SS Businesses ("SSF Franchised Business") and 50 Company-Owned Stores within the SSF Network.

Sushi Sushi Warehouse Pty Ltd ("SSW"), a related entity of SSF, in conjunction with SSF, reviews and approves suppliers, manufacturers and distributors and other suppliers to the SSF Network in accordance with the SSF's standards and specifications. SSW, in conjunction with SSF, also negotiates the terms of the supply agreements with such suppliers and purchases products from such suppliers for supply to SSF Franchised Businesses and Company Owned Stores.

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

Attention: Raynia Theodore
Principal
MST Lawyers
315 Ferntree Gully Road,
Mount Waverley VIC 3149

2. Notified arrangement

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

This Notification relates to the requirement for SSF Franchisees to acquire:

1. ingredients including rice, various fish and shellfish, various meats, chicken, vegetables, nori, sauces, marinades, seasoning and other ingredients necessary to make the products that are sold from the SS Businesses ("Ingredients");
2. other food products, including frozen salads, pickled salads, assorted Japanese groceries and Japanese food products that are sold from the SS Businesses ("Food Products");
3. beverages, such as bottled water, juice, soft drinks and Japanese beverages that are sold from the SS Businesses ("Beverages");
4. boxes, bags, cartons, containers, lids, trays, napkins, chopsticks, plastic cutlery and other items of packaging, (most of which are branded with the Sushi Sushi logos and trade marks) which are used in the SS Businesses ("Packaging");
5. products used in the cleaning, maintenance and the upkeep of SS Businesses, including cleaning products and cleaning supplies and equipment ("Cleaning Products");
6. fitout, plant, machinery, equipment and utensils used in the conduct of the SS Businesses ("Fitout and Equipment");
7. computer hardware and software, in particular point of sale systems, printers, modems, merchant facilities, ordering systems, security systems and other hardware, software and information technology systems necessary for the conduct of the SS Businesses ("Information Technology");
7. internet and network communication services necessary for the conduct of the SS Businesses ("Communication Services"); and
8. Uniforms,

from SSF, SSW or third party suppliers who have been approved by SSF ("Approved Suppliers"). The products and equipment set out above change from time to time and the Approved Suppliers change from time to time.

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

SSF proposes to supply its services as franchisor to SSF Franchisees on the condition that SSF Franchisees purchase all Ingredients, Food Products, Beverages, Packaging, Cleaning Products, Fitout and Equipment, Information Technology, Communication Services and Uniforms from SSF, SSW or suppliers approved by SSF ("Approved Suppliers").

SSF proposes to incorporate provisions into its franchise agreements compelling SSF Franchisees to:

1. only:
 - (a) use the Ingredients specified by the Franchisor in the preparation of the products sold from SSF Businesses;
 - (b) offer, sell and supply in SSF Businesses products which SSF specifies and not sell any products that are not menu items (as defined in the SSF franchise agreement) without receiving SSF's prior written approval;
 - (c) use Ingredients, Food Products, Beverages, Packaging, Cleaning Products, Fitout and Equipment, Information Technology, Communication Services and Uniforms sourced from SSF or a related body corporate of SSF or from Approved Suppliers;
2. purchase Ingredients, Food Products, Beverages, Packaging, Cleaning Products, Fitout and Equipment, Information Technology, Communication Services and Uniforms from SSF, or a related body corporate of SSF or from Approved Suppliers on the terms and conditions negotiated and agreed by SSF if there is a notification in place pursuant to section 93 of the *Competition and Consumer Act 2010* (Cth), or an authorisation in place pursuant to section 88 of the *Competition and Consumer Act 2010* (Cth) (but only whilst such notification or authorisation is in place).

This conduct falls within the definition of exclusive dealing in sections 47(6) and 47(7) of the *Competition and Consumer Act 2010* (Cth) as SSF intends to:

1. supply its services as franchisor on the condition that SSF Franchisees acquire Ingredients, Food Products, Beverages, Packaging, Cleaning Products, Fitout and Equipment, Information Technology, Communication Services and Uniforms from SSF or SSW or Approved Suppliers; and
2. refuse to supply its services as franchisor if SSF Franchisees do not acquire Ingredients, Food Products, Beverages, Packaging, Cleaning Products, Fitout and Equipment, Information Technology, Communication Services and Uniforms from SSF, SSW or Approved Suppliers.

SSF maintains that the public benefit resulting from the notified conduct will 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:

The conduct will affect SSF Franchisees who operate or will be granted the right to operate SSF Businesses.

(b) Number of those persons:

(i) At present time:

29 SSF Franchisees operate a total of 37 SSF Franchised Businesses.

(ii) Estimated within the next year:

SSF estimates that there will be a total of 38 SSF Franchised Businesses and a total of 55 Company-Owned Stores in the next 12 months.

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

The details of all SSF Franchisees as at the date of this Notification have been separately provided to the ACCC.

4. Public benefit claims

(a) Arguments in support of notification:

SSF maintains that the public benefit resulting from the notified conduct will outweigh any public detriment. SSF and SSW are able to negotiate competitive prices with Approved Suppliers in relation to Ingredients, Food Products, Beverages, Packaging, Cleaning Products, Fitout and Equipment, Information Technology Communication Services and Uniforms. Further, the conduct or proposed conduct seeks to ensure consistency and quality across the SSF Network in relation to products, goods or services, which are a vital part of SSF's reputation.

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

1. Enhance competition

By giving SSF Franchisees access to competitive prices competition in the relevant market will improve. It is important that SSF Franchisees are on a level-playing field in the market, particularly in relation to competing brands, by having access to the same competitive prices that larger businesses and other competing chains (such as Sushi Train) are able to negotiate. With SSF and related entities having operated SS Businesses since 1998, SSF and SSW are able to negotiate competitive prices. By having access to these competitive prices, SSF Franchisees are able to focus on operating their SSF Franchised Businesses and maximising their profitability.

2. Ensure Consistency and Quality

SSF will only source high quality Ingredients, Food Products, Beverages, Packaging, Cleaning Products, Fitout and Equipment, Information Technology Communication Services and Uniforms for the Network.

Insofar as the notified conduct relates to Ingredients, Food Products, Beverages and Packaging, the notified conduct allows SSF to ensure consistent quality in products throughout the SSF Network. The products sold from each SSF Business or presented to consumers meet SSF's high standards for quality. Consumers can, therefore, expect the same quality from every SSF Business, ensuring consistent quality throughout the SSF Network. Consistent quality is also important to the integrity of the SSF brand and image, as well as ensuring SSF Franchisees can effectively compete in the market, particularly within the sushi and Asian food market.

3. Ensure Certainty of Supply

SSF, in conjunction with SSW, will negotiate arrangements with Approved Suppliers to ensure certainty of supply.

4. Reduce the risks of food safety

Insofar as the notified conduct relates to Ingredients, Food Products, Beverages and Packaging, SSF will ensure that Approved Suppliers comply with relevant food safety standards thereby reducing potential product risks (food contamination and/or other health and safety issues) for SSF Franchisees. All Suppliers of Ingredients and Food Products are HACCP Australia Food Safety Accredited.

5. Promote business efficiency

By virtue of its size and experience, SSF and SSW are able to procure high levels of service from its Approved Suppliers and ensure the Approved Suppliers meet SSF's stringent service levels.

Insofar as Information Technology and Communication Services are concerned, SSF has selected Information Technology and Communication Services that are compatible with other software and technology used in the SSF Network (such as point of sale systems), thus delivering consistency and predictability to SSF Franchisees.

As the Equipment, Information Technology and Communication Services must meet SSF's strict standards, it is expected that the incidence of malfunctions or errors will be reduced. Further, SSF and SSW are better equipped than SSF Franchisees to proactively monitor and address any malfunctions or errors in the Equipment, Information Technology and Communication Services with the Suppliers, thereby allowing SSF Franchisees to continue to operate their SSF Franchised Businesses without interruption.

SSF Franchisees do not need to be concerned with managing the relationship with the Approved Suppliers as SSF, in conjunction with SSW, will take on this responsibility. Aside from allowing SSF Franchisees to focus on operating their businesses, this also allows SSF Franchisees to reap the benefits of SSF's and SSW's technical expertise and negotiating power.

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

1. Competitive Prices

By virtue of its size, experience and resources, SSF has greater bargaining power than individual SSF Franchisees. SSF and SSW have direct relationships with Approved Suppliers, which allow them to negotiate better prices than the prices which would be available to individual SSF Franchisees.

As SSF and SSW are able to negotiate prices to be offered to the SSF Network as a whole, they have access to bulk discounts that Approved Suppliers are only willing to offer if volume of supply can be guaranteed. Individual SSF Franchisees would not be able to use bulk-buying power as leverage in the same way. These bulk discounts are passed on to SSF Franchisees allowing them to benefit from the costs savings, compete more effectively in the market and provide their customers with value for money.

SSF and SSW have experience in selecting suppliers and go through a stringent process to select its Approved Suppliers to ensure that terms favourable to SSF Franchisees and the SSF Network as a whole are negotiated. In selecting and approving suppliers, SSF considers, amongst other things:

1. Price;
2. References and reputation of the supplier;
3. Logistics; and
4. Product quality;
5. Delivery guarantees.

2. Consistent Quality

It is imperative to the SSF brand that quality of products and services offered throughout the SSF Network is uniform and consistent. With strong competitors in the sushi and Asian food market, product quality is of paramount importance to SSF and to the success of all SSF Franchisees.

SSF Franchisees have often made considerable investment in time and money to operate their SSF Franchised Businesses, and accordingly, are entitled to expect that products are of high quality. The notified conduct allows SSF to focus on attaining such high quality products for SSF Franchisees, whilst SSF Franchisees can focus on operating their SSF

Franchised Businesses and providing strong customer service to compliment the high quality products.

In furtherance of the SSF brand, consistent quality is also important in ensuring customers can expect the same service, quality and taste irrespective of which SSF Business they visit.

SSF has also developed exclusive recipes and by using the same Ingredients, in particular sauces and marinades, SSF Franchisees should be able to achieve consistent taste in the products sold at each store.

3. Business Efficiency

Again, by virtue of SSF's size, experience and resources, SSF is able to insist on high levels of service from its Approved Suppliers, particularly in relation to the Equipment, Information Technology and Communication Services. SSF, in conjunction with SSW, has experience in procurement, delivery and supply as well as technical expertise that places it at a significant advantage in negotiating arrangements with Approved Suppliers. It would be impractical and inefficient for SSF Franchisees to separately assess the ability of suppliers to meet SSF's standards and specifications. SSF also has greater bargaining power than the individual SSF Franchisees to enable it to not only negotiate and insist on high levels of service, but to enforce the provision of such service levels, thereby reducing downtime for SSF Franchisees. Uniformity of service providers across the SSF Network also allows SSF to easily monitor the efficiency of these providers, allowing SSF Franchisees to focus on operating their SSF Franchised Businesses.

Lastly, some Approved Suppliers are licensed to use SSF's intellectual property in the supply of certain products and services, including for the provision of Packaging and Information Technology. The notified conduct allows SSF to control the use of its intellectual property by Approved Suppliers, ensuring that any such use is authorised and lawful. The administrative burden of monitoring or granting licences to multiple non-approved third party suppliers would be too great if SSF Franchisees were to use non-approved third party suppliers. Further, SSF would be unable to otherwise ensure that all suppliers meet SSF's strict service levels.

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):

SSF submits that the relevant markets include:

1. the wholesale market for the supply of Ingredients, Food Products, Beverages, Packaging, Equipment, Information Technology,

Communication Services and Uniforms to the quick service restaurant sector; and

2. the retail market for sushi, other Asian food products and other fast food/take-away food products.

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:*

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

1. SSF Franchisees:

SSF Franchisees will be unable to choose between suppliers to obtain the Ingredients, Food Products, Beverages, Packaging, Equipment, Information Technology, Communication Services and Uniforms.

2. Other (non-approved) suppliers:

Suppliers who are not approved by SSF will be unable to supply their products or services to SSF Franchisees.

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

SSF 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.

SSF Franchisees will benefit from the terms negotiated and agreed by SSF, SSW and the Approved Suppliers, including enjoying competitive prices and assurance of consistency and quality in products and services. Further, SSF Franchisees will be able to focus on operating their SSF Franchised 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 (non-approved) suppliers, as the market for suppliers to the sushi and Asian food market and the broader fast food/take-away food sector is highly competitive and, in any case, SSF does not have a substantial degree of power in the relevant market.

Further, the SSF franchise agreement allows SSF to assess and approve other suppliers who are not currently Approved Suppliers. In doing so, SSF will consider whether the supplier meets SSF's standards. SSF is always open to considering proposals from non-approved suppliers and reviews its arrangements at the end of each contract period with each of the Approved Suppliers to ensure that competitive prices are still being offered and that quality and consistency in the products and services is maintained.

SSF does not believe that there will be a public detriment to consumers, who will be largely unaffected by the notified conduct, except to reap the benefits of the notified conduct by being able to expect and enjoy consistency and high levels of product and service, taste, cost savings, and consistent consumer experience across the whole SSF Network. Consumers are free to purchase goods and services from other retailers or suppliers.

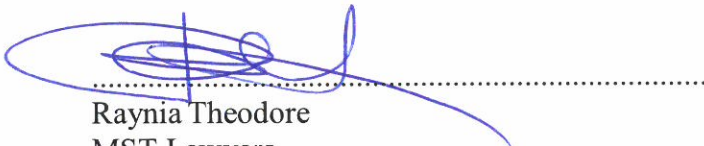
7. Further information

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

Raynia Theodore
Principal, MST Lawyers
315 Ferntree Gully Road
Mount Waverley VIC 3149
03 8540 0264

Dated: 21 November 2013

Signed on behalf of the Applicant



Raynia Theodore
MST Lawyers
Principal