

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)

**N97134 JAX Quickfit Franchising Systems Pty Limited (ABN 56 160 294 001)
("JQFS")**

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

Australian and independently owned tyre and wheel retailer also engaged in automotive servicing with near 80 Franchises along the Australian Eastern Seaboard.

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

Level 3, Suite 301, 154 Pacific Highway, St Leonards NSW 2065

2. Notified arrangement

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

Waste tyre and automotive parts disposal.

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

JQFS to enter into an "End-of-Life Tyre Collection Agreement" with Tyrecycle Pty Ltd ACN 085 545 053 ("Tyrecycle") commencing 1 January 2014, under which Tyrecycle is engaged on an exclusive basis to collect, transport and dispose of End-of-Life tyres from all JQFS Franchises on a negotiated price per unit basis payable direct by the Franchisees. A Business Management System as between the parties will exist (including brand protection, marketing opportunities, reporting and inclusive pricing). Franchise documentation will be updated noting the overall arrangement.

See: www.tyrecycle.com.au

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)

JQFS' Franchisees = affected class of persons/businesses. JQFS Franchisees' customers will not be affected as free tyre disposal and recycling is included in the quoted price of a customer's new tyre service. JQFS is regularly updating all Franchisees as to its intended arrangement with Tyrecycle.

- (b) Number of those persons:

- (i) At present time:

78 Franchises including five (5) company-owned stores.

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

82 Franchises including five (5) company-owned stores.

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

N/A

4. Public benefit claims

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

The waste tyre disposal industry has been brought into question and disrepute. The following links to recent news articles show just two (2) in a number of unfortunate examples of waste tyre transport and disposal companies engaging in illegal and immoral practices:

<http://www.smh.com.au/environment/nsw-to-lead-crackdown-on-illegal-tyre-dumping-20131118-2xr9z.html>

<http://www.abc.net.au/news/2013-11-18/recycling-company-carbon-polymers-epa-tyres/5095884>

<http://www.smh.com.au/environment/tyre-fire-firm-carbon-polymers-facing-investigations-and-closing-site-20131117-2xp8d.html>

<http://www.theage.com.au/environment/stawell-dump-may-contain-9-million-tyres-20131119-2xt10.html>

Consequently, there is acceleration in activities by a highly recognised consortium that are assisting to address the problem in relation to

waste tyre disposal. This reinforces the seriousness and JQFS' need as a responsible corporate citizen, to ensure it takes affirmative action in regards to its responsible handling of this growing problem.

JQFS has recently undertaken an audit of waste tyre transport and disposal businesses collecting from its Franchises. This revealed a handful of concerns and inconsistencies among some Franchisees.

After careful consideration, JQFS, as Franchisor, has taken the decision to partner with Tyrecycle to ensure a uniform approach to the environmentally friendly and legal disposal of scrap tyres and automotive parts.

Tyrecycle commenced operations in 1992 and provide national service coverage. Strict quality control measures ensure old tyres are turned into rubber crumb for various product uses including road and sport surfaces and soft surface playgrounds. This means recycling as opposed to landfill and fulfils our moral commitment to the environment as a Group. Tyrecycle submit waste tracking data to the Environment Protection Authority where applicable. Tyrecycle advocates *"what goes around, comes around."*

The promotion of a sustainable recycling industry is very much a matter of public interest.

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

See Boomerang Alliance Publication "Australia's Toxic Trade in Tyres" advocating tyre recycling:

<http://www.boomerangalliance.org.au/images/pdfs/toxic%20tyres%20brief.pdf> ,

See: www.boomerangalliance.org.au

In sum: "Australia is heavily engaged in the toxic tyre trade, exporting over 60% of all our waste tyres to our less developed neighbours ... our toxic exports represents 11 million + tyres a year."

Further: "Apart from the visual impact, inappropriate storage of waste tyres may also result in:

- leaching of chemicals into soils and waterways;*
- dangerous fires involving thick toxic smoke and large volumes of oily sludge and contaminated water; and*
- breeding ground for mosquitoes (and indirect spread diseases), vermin and noxious weeds."* (Source: Tyrecycle, 30/09/13).

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)

Regulation of the Australian waste tyre and automotive parts disposal industry is not uniform across the States and Territories. For example, in Queensland, a Transport Licence Number is required to transport waste whereas this is not the case in New South Wales or Victoria. Some jurisdictions require an Environment Protection Authority Licence Number and others do not. As a result of this, uncertainty as to what is and is not correct practice has crept into the industry making way for “dodgy” business operations. Fines for doing the incorrect thing (albeit perhaps unknowingly) can be astronomical. For a national Franchisor, such as JQFS, this makes ensuring correct practice difficult. The intended supply arrangement with Tyrecycle will ensure systematic, standardised procedures across the franchise system in line statutory and regulatory requirements and high moral standards; also ensuring Occupational Health and Safety compliance.

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)

Owing to environmental agency crackdown on the waste tyre industry, it is perhaps foreseeable that more franchisors within the tyre industry will seek to engage the services of a company such as Tyrecycle. This conduct may force the smaller players out of the market, resulting in higher disposal pricing and a consequent flow on to the consumer for whom scrap disposal may be included in the overall price (as shown under clarity in pricing requirements) for a new set of tyres.

Having said this, Mr David West, National Policy Coordinator of the Boomerang Alliance, notes that a national recycling scheme has been on the cards for many years without firm legislation. He says that “each tyre contains 1.5kg of steel, 0.5kg of textiles and 7kg of rubber – all of which are recoverable and can be reused.”

Given a decidedly slow rate of progress by regulatory bodies it is vital that the tyre industry provides self-regulation regarding scrap tyre disposal and recycling, advocated by JQFS and Tyrecycle.

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

As this is only a foreseeable detriment, JQFS does not have any facts and evidence to support its comments at 6(a).

7. Further information

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

**Ms Shannon Van Soest, In-House Legal Counsel, C/- Level 3, Suite 301,
154 Pacific Highway, St Leonards NSW 2065; mobile 0419 963 025.**

Dated.....

27 November 2013

Signed by/on behalf of the applicant

.....
(Signature)

Jeffrey David Board

(Full Name)

JAX Quickfit Franchising Systems Pty Limited (ABN 56 160 294 001)

(Organisation)

Chief Executive Officer

(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.

Monday, 2 December 2013

Addendum

To be attached to and read in conjunction with Form G - NOTIFICATION OF EXCLUSIVE DEALING - dated 27 November 2013

In further response to question 2(b) - *Notified arrangement - Description of the conduct or proposed conduct:*

Insert after “See: www.tyrecycle.com.au” the following:

“Noting the above, JQFS, as Franchisor, intends to supply its franchise System - including services and support - on condition that JQFS’ Franchisees engage Tyrecycle’s services exclusively for the collection, transportation and disposal of all End-of-Life Waste Tyres and those automotive parts identified in the “End-of-Life Tyre Collection Agreement” between JQFS and Tyrecycle.”