



Subway Systems Australia Pty. Ltd.
ABN 79 009 277 034

21 December, 2012

Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra, ACT 2601

Dear Sir/Madam,

Form G – Notification of Exclusive Dealing

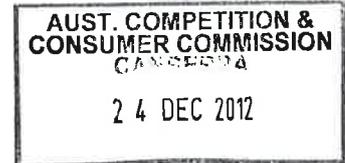
Please find enclosed:

1. Form G – Notification of Exclusive Dealing; and
2. Cheque for the amount of \$100 made payable to Australian Competition & Consumer Commission.

Yours faithfully

Melissa Denham
Paralegal
Subway Systems Australia Pty Ltd

FILE No:
DOC:
MARS/PRISM:





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)

N96512 Subway Systems Australia Pty Ltd (ABN 79 009 277 034) (**SSA**)

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

SSA has a licence from Doctor's Associates Inc (**DAI**) to:

- (i) use the SUBWAY® trade mark; and
- (ii) offer restaurant franchises,

in Australia.

SSA offers qualified purchasers the right to establish and operate, from a single location, a retail establishment preparing and selling SUBWAY FOOTLONG® and SUBWAY SIX INCH® subs and specialty sandwiches, salads and other food items. SSA is the franchisor of SUBWAY® franchisees that operate SUBWAY® restaurants.

SSA reviews and approves nominated suppliers, manufacturers, distributors and other vendors ("Suppliers") to supply the SUBWAY® franchise system in Australia according to any standards and specifications by DAI, the owner of the proprietary Subway® system, which includes business systems, methods, procedures, formats, images, design and intellectual property developed, owned and/or licensed by DAI (the "**System**").

The Independent Purchasing Company (Australasia) Limited (**IPCA**) on behalf of Subway® franchisees which comprises its membership conducts the business of negotiating supply arrangements and managing distribution (as principal and not as agent) for the benefit of SUBWAY® franchisees in, inter alia, Australia. Supply contracts are generally entered into after a tender process is run by the IPCA with suppliers being assessed on criteria such as lead times, standard of operation, continuity & conformity of product to be supplied, costs, capacity to service volume, ability to assist with product development if and when required, and previous supply experience.

IPCA in conjunction with SSA reviews the quality and pricing products and services regularly as the need of each product or service may require. Within the IPCA supply contract, reviews are ordinarily scheduled including prior to expiration of a Supply Agreement.

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

Attention: Jocelyn Saint-Fryar, Corporate Counsel
Subway Systems Australia Pty Ltd
Level 1, 42 Amelia St
Fortitude Valley, QLD 4006

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 review and approval of third party Suppliers by SSA for the benefit of SUBWAY® franchisees in Australia and acquisition by SUBWAY® franchisees of:

- (i) Certain food and beverage products to make products offered on the SUBWAY® Menu including, without limitation, bread dough, salads and vegetables, cheeses, herbs and other toppings, beverages, cookies, pastries, fresh fruit, potato chips and other snack items, meat, seafood and other fish products, condiments, pre-packed or pre-manufactured products such as yoghurts, beverage syrups, sauces, pre-made chilled products for smoothies, special limited time only product ingredients and custom made food products made to Subway® proprietary specifications;
- (ii) SUBWAY® Restaurant operational and/or restaurant associated items, including but not limited to such items as receipt printers, computer hardware including printers, registers, ovens and proofers, cold rooms and counters, microwaves, toaster ovens, beverage or post-mix dispensers, drink containers, food and packaging containers, trays, lids, straws, plastic and other carry bags, labels, stickers, table talkers, counter cards, posters, menus, signage, promotional materials and advertising products;
- (iii) Certain branded items such as cups, napkins, subwrap paper, heat insulated cups, smoothie cups, paper bags, material bags, plastic cutlery, napkins, hats, uniforms, aprons and other branded merchandise; and
- (iv) Certain products relating to the leasing, establishment, installation, fit out, cleaning, maintenance and/or upkeep of or in respect to SUBWAY® restaurant premises, such as cleaning equipment and utensils, wallpaper, tiles, furniture, umbrellas, cleaning fluids and sanitizers.

This is an existing requirement to maintain consistency and quality across the Subway® system since the brand commenced in Australia in 1988. The third party Suppliers and the Products/Goods/Services required will change from time to time based on the products to be offered on the Subway® menu, décor, supplier performance and operational requirements for Subway® restaurants. Attached as annexure "A" is a current listing of the range of products for which SSA has suppliers, manufacturers and distributors.

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

SUBWAY® franchisees are required to purchase certain products and services of the kind referred to in paragraph 2(a) above from suppliers, manufacturers and distributors approved by SSA ("Approved Suppliers").

Approved Suppliers are either located within Australia or where located overseas are able to promptly provide their products and/or services to SUBWAY® franchisees within Australia. At this time, SSA does not sell as principal the products and/or services to franchisees. Franchisees sometimes purchase the Supplier's goods and services through nominated distributors, who in turn are supplied by the Suppliers.

Franchisees are informed via SSA's Franchise Agreement (clause 5.b (ii)) and SSA's Disclosure Document (Clauses 9 and 10) that SSA may require the Franchisee to acquire all required goods and services used in a Subway® Restaurant exclusively from an approved distribution center or another approved source, including SSA or an affiliate of SSA or a designee of SSA. Franchisees agree under SSA's Franchise Agreement to adhere to the quality and control standards prescribed by the System.

By having SSA provide certain services or products and/or nominating Approved Suppliers, SSA seeks to ensure:

- (i) Consistency in the SUBWAY® system, for all overall benefit of the brand, all SUBWAY® Restaurants and customers of the brand;
- (ii) Consistency in the product type(s) offered to SUBWAY® Restaurants;

- (iii) Consistency in the product type offered and the services provided to customers of SUBWAY® Restaurants;
- (iv) Consistency in the high quality product offered to all SUBWAY® Restaurants and by all SUBWAY® Restaurants to customers. This is assisted by having Approved Suppliers who are to have strict quality checks and quality control measures and food safety systems;
- (v) Confidence in compliance with food safety, food handling and other health regulations by SUBWAY® Restaurants, and seeking to increase customers' comfort and loyalty to SUBWAY® Restaurants and the SUBWAY® brand; and
- (vi) Increased ability to deliver consistent products and competitive pricing for SUBWAY® Restaurants and customers for products and services.

(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)

Those likely to be impacted by the notified conduct are Subway® Franchisees in Australia who own or operate a Subway® store in Australia, the IPCA and current or future Suppliers of goods and/or services to the Subway® system in Australia.

- (b) Number of those persons:

- (i) At present time:

There are approximately 1043 Franchisees as of November 2012 and 110 Suppliers.

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

1100 Franchisees and 125 Suppliers

- (c) Where number of persons stated in term 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)

For the reasons set out below, SSA submits that the notified conduct will result in benefit to the public by increasing efficiency and reducing costs for Subway® franchisees and IPCA as well as providing consistent delivery of service with quality control thereby allowing the Subway® System to be an attractive and competitive participant in the food service industry:

- Assist Subway® Restaurants to satisfy and meet the expectations and demands of customers consistently in relation to the Subway® brand throughout Australia;
- Assist Subway® Restaurants to provide high quality products and consistent service to customers throughout Australia;
- Ensure customers get a uniform and consistent experience across all Subway® Restaurants throughout Australia;
- Minimise the risk that unsafe, defective, and/or deficient products are used in or sold by Subway® Restaurants throughout Australia;
- Reduce and improve management of any potential product risks by having approved suppliers HACCP Australia Food Safety accredited, so that at every stage of the production chain the necessary steps are in place to ensure food safety is not breached;

- Assist Subway® Restaurants to safely offer and promote products that may be of a competitive advantage by working with Suppliers on special product formulations for the Australian market;
- Assist Subway® Restaurants to safely provide and promote nationally nutritional and allergen information on Subway® menu products to customers and the public, which benefits existing and potential customers and the public to make informed decisions and choices on dietary requirements;
- Aid in valuing and improving the reputation of Subway® Restaurants by maintaining the store premises and ensuring the products and services provided by Subway® Franchisees are consistent with standards and the image of the Subway® System and SUBWAY® brand;
- Ensure that the market positioning of the System continues to grow;
- Enable Subway® franchisees to be able to purchase products and/or services at competitive prices through the IPCA so that Subway® franchisees can increase their own business efficiencies and reduce their initial and ongoing expenses to help Subway® franchisees be more competitive in the market and flow on price benefits to consumers;
- Reduce average transaction costs for franchisees by having a starting point of approved suppliers and also foster business efficiencies which allows more time to focus on business operations;
- Promote consistency between Subway® Restaurants to give similar “look” and “feel” which offers a consistent uniform customer experience, ensuring consumer awareness of and confidence in the brand is maintained;
- Ensure SSA can effectively monitor the quality of products used or sold so that the reputation of Subway® Restaurants is preserved for the benefit of its customers, staff, franchisees and SSA, IPCA and its affiliates;
- Reduce average costs and improve the quality and consistency of ingredients and other products sold or used so that they may receive the optimum benefit from the SUBWAY® brand and, therefore, be more competitive in their respective markets;
- Maintain the quality of the store, products and services by ensuring franchisees and their staff are provided with reputable suppliers for certain products and services and to ensure clean, neat and tidy store premises and staff attire. This in addition to ensuring brand integrity and presenting customers with a consistent and positive view of the Subway® brand also minimises the likelihood of food contamination and/or other health and safety issues; and
- Provide approved suppliers with ability to negotiate with IPCA for certainty of supply to Subway® Restaurants which further may result in cost savings in the management of the supplier’s business and increased business efficiency.

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

It is submitted that the claims as to benefits set out in this Notice are supported by:

- (i) Basic business, marketing, and food hygiene & safety principles.
- (ii) Principles and guidance provided by HACCP Australia, a leading project management company which designs, implements and manages food safety programmes (FSPs) for organisations in the food and food related industries.

HACCP Australia Food Safety Accreditation provides a recognised endorsement of food safety excellence. This endorsement offers assurance to the industry a product’s suitability for use within a HACCP-based food safety programme;

- (iii) Basic principles underlying a franchise network, how it is to operate and the benefits of being a part of or having franchise systems. (Reference should be made to general business materials on this topic, Franchise Council of Australia’s website, and studies conducted into the franchising industry, including those published studies completed by Griffith University).

Further, it should also be noted that the market for the retail sale of café restaurant, food and beverage products is a highly competitive market with a large number of participants including brands such as Gloria Jeans, McDonald’s, Hungry Jack’s, The Coffee Club, Jamaican Blue and Donut King. Details of the number of competing businesses can be

confirmed via review of registered business operations with each of the relevant states and/or territories. The competitiveness of the market is submitted as further evidence of the necessity for the proposed conduct so as to achieve the benefits previously detailed in this Notice.

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 restrictions on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 8)

SSA submits that the relevant markets are the wholesale and retail markets for the supply of restaurant and café products, goods and services including ingredients and equipment. The markets could vary from being worldwide to national and regional in scope.

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 Franchisor submits that there is minimal, if any, public detriment of the proposed arrangement. The notified conduct is not likely to have any effect on the price of the goods and services in the relevant market. The food service industry remains competitive with a large number and variety of potential users of the goods and services and Suppliers.

Ingredients and Supplied Products produced by nominated Suppliers (whether nominated by SSA or by SSA's franchisees with approval of SSA) are subject to the Subway® system's strict requirements relating to quality, quantity, preparation and storage. This ensures that the integrity and quality of the ingredients and menu products are not compromised and are consistent across the franchised businesses.

Suppliers nominated by SSA will be subject to regular review in conjunction with the IPCA to ensure that they continue to provide high quality products to franchisees at competitive prices.

Franchisees are not prevented from using a product from another supplier if the product or ingredient meets the specifications and standards of the SUBWAY® system and the franchisee has obtained prior approval in writing from SSA. Consequently, the detriment to franchisees will be minimal.

Consumers are not prohibited from comparing prices and products, and the above conduct may indeed enable a more competitive price to be offered. Therefore, the anti-competitive effect on the end consumer is negligible. There are numerous retailers of coffee, café, restaurant services and products in the relevant retail markets in Australia which allow consumers to have a large offering in which they can easily "shop around".

Any anti-competitive effect on suppliers who do not have access to Subway® franchisees should be minimal, given the number of retailers in Australia that suppliers may sell their products and/or services to. Furthermore, suppliers have the ability to approach SSA to be added on to the approved supplier list. A franchisee may also approach SSA for a supplier to be added onto the approved supplier list upon the supplier meeting any specification criteria which may exist. Each request would be dealt with separately and would be dependent on the supplier meeting any specification requirements of SSA for that product.

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

N/A except from comments made at 4 above.

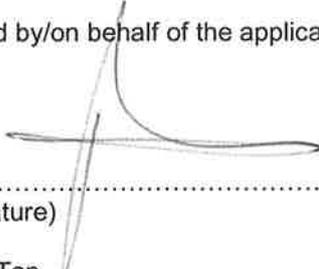
7. Further Information

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

Jocelyn Saint-Fryar
Corporate Counsel
Subway Systems Australia Pty Ltd
PO Box 313
Fortitude Valley, QLD 4006
Telephone: (07) 3216 0665

Dated 21 December, 2012

Signed by/on behalf of the applicant



.....
(Signature)

Brian Tap
(Full name)

Subway Systems Australia Pty Ltd
(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 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 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.

Annexure A

Approved Products

Food & Beverages Products

Chicken *(including but not limited to: chicken breast, chicken strips and chicken schnitzel)*

Meatballs

Pepperoni

Bacon

Roast Beef

Salami

Seafood

Beef Steak

Tuna

Turkey

Ham

Veggie Patty

Egg products *(including but not limited to: omelette and poached egg)*

Bread *(including but not limited to: bread dough to make white, wheat and multi grain) and bread toppings*

Wrap

Cookies

Bakery items *(including but not limited to: muffins, scrolls and baked bars)*

Cheese

Yogurt

Sauces and relishes

Salads, vegetables and toppings *(including but not limited to: avocado, olives, jalapenos, pickles, capsicum, carrot, cucumber, lettuce, tomato, onion, pineapple and beetroot)*

Fruit *(including but not limited to: apples)*

Snack items *(including but not limited to: packaged potato chips)*

Condiments *(including but not limited to: salt, pepper and mayonnaise)*

Hot beverage ingredients *(including but not limited to: coffee beans, hot chocolate and tea)*

Cold beverages *(including but not limited to: juice, water, energy drinks, soft drinks and smoothies)*

Packaging

Platter trays

Drink trays

Cups for hot and cold beverages

Cup lids

Paper bags

Deli style paper and sub paper

knife and fork set

Napkins

Plastic carry bags

Salad bowls and lids

Veltone trays

Straws

Catering boxes

Cleaning products and equipment

Cleaning equipment (*including but not limited to: panliners, wipes, garbage liner, gloves, food safety labels & other labels, paper rolls & towels, glad wrap, spray bottles, broom, mop, bucket, hand brush, dustpan and wet floor sign*)

Chemical cleaning products (*including but not limited to: Glass cleaner, multi-purpose cleaner, Multi-surface cleaner, stainless steel cleaner & polish, sink detergent, oven cleaner, sink sanitiser & detergent, degreaser, soap, floor cleaner and dish washer detergent*)

Décor and operational equipment

Décor equipment (*including but not limited to: wall coverings, wall art, please order here sign, clock, chairs, stools, lights, tables, benches, menu boards, floor stands, tiles, door buzzer, hot water system, phone, fax machine, fire extinguisher, work tables, sink, front counters, cabinets, beverage counter, back counters, beverage dispenser & other dispensers and shelving*)

Oven (*including but not limited to: baking oven, proofer, speed oven, retarder, microwave oven and associated equipment such as baskets and bread forms*)

Dishwasher

Coffee Machine

Smallwares (*including but not limited to: baking sheet, can opener, measuring jug, cookie display, cutlery holder, first aid kit, garbage bin, napkin holder, sauce bottles, food utensils, step ladder, knives & tongs, serving trays, food pans, drain shelf, pan covers, scales, thermometers & timers, cutting boards, blender*)

Open air trolley and other trolleys

Slicer

Cool room

Freezer room

POS Hardware (*including but not limited to: printer, terminals, printer ribbon, thermal printer, rolls*)

Cleaning tools and accessories (*including but not limited to: floor broom, mop, hook, bottle brush, hand brush, dustpan and scrubbing brush*)

Signage (*including but not limited to: outdoor signs, under awning sign and LED signage*)

Uniforms (*including but not limited to: name badges, cap, visor, apron, shirts and pants*)