

13 December 2012

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MINTER ELLISON - GOLD COAST

PRIVATE & CONFIDENTIAL

BY EXPRESS POST

Australian Competition and Consumer Commission
Level 7, 123 Pitt Street
SYDNEY, NSW 2000

Dear Sir/Madam

Form G Notification – Shoebox Australia Pty Ltd

We refer to the above matter and confirm that we act for Shoebox Australia Pty Ltd (ACN 159 197 163) (“**Shoebox**”).

We have been instructed to notify the Australian Competition and Consumer Commission in accordance with subsection 93(1) of the *Competition and Consumer Act 2010* (Cth) that Shoebox proposes to engage in conduct of a kind referred to in section 47(6) of that Act.

Accordingly, we enclose the following:

- (a) Form G Notification of Exclusive Dealings; and
- (b) Cheque for \$100 made payable to the Australian Competition and Consumer Commission in payment of the lodgement fee.

We note that the enclosed Form G Notification includes a **Confidential Annexure** containing a sample copy of the Shoebox standard franchise agreement. This document is a valuable component of Shoebox’s intellectual property and is not made available to any person/s until that person/s has signed a confidentiality deed. We therefore request that the sample franchise agreement be excluded from the public register on the basis that its inclusion would be severely detrimental to Shoebox and its network of franchisees and that its dissemination to the general public, and more specifically Shoebox’s competitors, would serve little if any public benefit.

If you have any questions or require further information please contact our office.

Yours faithfully

MINTER ELLISON – GOLD COAST

Contact: Paula Robinson Direct phone: 07 5553 9466
Email: paula.robinson@minterellison.com
Partner responsible: Steve Latham
Our reference: SJL PMR HXJ 296177

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:

N96491 Shoebox Australia Pty Ltd ACN 159 197 163 (**Shoebox**)

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

Shoebox is a Queensland based company which intends to operate as franchisor to a network of franchisees in the bookkeeping industry across Australia. Shoebox franchisees provide bookkeeping services on terms set out in a franchise agreement between Shoebox and each franchisee.

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

C/- Minter Ellison Lawyers
165 Varsity Parade
Varsity Lakes, QLD 4227

2. Notified arrangement

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

The right to operate a Shoebox franchise (including the use of the business procedures, systems and intellectual property developed by Shoebox as the franchisor) within a specific territory for a specific term on terms and conditions set out in a franchise agreement between the franchisor and the franchisee.

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

Shoebox proposes to supply services to Shoebox franchisees (namely the right to operate a Shoebox franchise) on the condition that the franchisees acquire goods or services of a particular kind or description (**Goods and Services**) from suppliers approved or nominated by Shoebox in the franchise agreement or in other franchise documents such as the franchise operations manual (**Preferred Suppliers**).

The obligation on franchisees to do this is contained in the franchise agreement which is entered into by the franchisor and each franchisee. The franchise agreement entered into by each franchisee will be the same or substantially similar to the franchise agreement provided in **Confidential Annexure 1**.

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:

Franchisees

- (b) Number of those persons:

- (i) At present time:

0

- (ii) Estimated within the next year:

10-20

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

The names and addresses of prospective franchisees are unknown.

4. Public benefit claims

(a) Arguments in support of notification:

Shoebox submits that the proposed conduct is likely to have the following benefits:

- (i) *System Focus*: with any franchise system, each franchisee is concerned with the success of its own franchise. The franchisor is responsible for the success of the system as a whole which in turn enhances the success of the individual franchises. Often when selecting suppliers there are factors to consider which are important to ensure the smooth operation, consistency of service delivery and success of the entire franchise network. Individual franchisees may not be aware of these factors and may make decisions which benefit the franchisee individually but detract from the success of the network as a whole. Shoebox being able to approve or nominate suppliers ensures that the success of the entire franchise network is able to be considered.
- (ii) *Consistency*: Shoebox intends to expand its franchising network across Australia. It is essential that consumers experience the same quality of services by one franchisee as they would by any other franchisee. The ability of Shoebox to nominate or approve suppliers will help to ensure this.
- (iii) *Buying Power*: Shoebox will be able to use the buying power of all Shoebox franchisees when negotiating with Preferred Suppliers. This is likely to result in franchisees being able to obtain products and/or services at more competitive prices than if they were to negotiate on their own behalf.
- (iv) *Quality*: By nominating or approving suppliers, Shoebox is able to control to a greater extent the condition and quality of the services made available to clients.
- (v) *Reputation and intellectual property*: by approving or nominating suppliers, Shoebox is able to protect its reputation and intellectual property, both of which are important for the success of Shoebox and its franchisees.
- (vi) *Business Efficiency*: particularly in relation to computer hardware and software, payment system, and mobile network, it is important for Shoebox to be able to approve or nominate suppliers so that communication and reporting between Shoebox and its franchise network is as efficient as possible. By nominating or approving suppliers of payment systems, Shoebox is assisting its franchisees to minimise credit risk as well as enhancing financial reporting capabilities between Shoebox and franchisees.
- (vii) *Franchisee focus*: With Shoebox negotiating with suppliers on behalf of franchisees the franchisees will be able to spend more time managing the day to day operation of their businesses.

- (viii) *Franchisee Support*: being able to approve or nominate suppliers means that franchisees will have access to faster and more tailored support services.
- (ix) *Improved Competition*: all of the above benefits result in Shoebox franchisees being more competitive and viable in the market place. This enables them to compete with other bookkeeping providers and place downward pressure on prices in the industry. The result is better deals for clients including increased levels of quality and service.

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

Shoebox started bookkeeping operations in 2007 and its director has over 15 years experience in the bookkeeping industry. Over this time Shoebox's corporate knowledge has developed to a point where it is able to consistently source quality goods and services for its franchisees at competitive prices.

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):

The market in which the goods or services described in 2(a) are supplied is the market for franchised businesses. This market is a national market with hundreds of franchise systems available for purchase in each state and territory.

The market for franchised businesses includes a market for the supply of bookkeeping franchises. There are at least ten (10) competitors in this market including TaxSmart Accountants, MAS Tax Accountants, Award Bookkeeping Company, First Class Accountants, Small Business Accounting, Ledgers Bookkeeping, EzyAccounts, Busy Bookkeeping, Miss Efficiency, and Jim's Bookkeeping.

Another market affected by the conduct in this notice is the retail market for the supply of bookkeeping services. The main suppliers in this market include franchisees within the franchise systems mentioned above as well as suppliers such as Australia Wide Bookkeeping and KYBC Bookkeeping.

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:

Shoebox submits that there are no public detriments which will result from the proposed conduct. The Franchise Council of Australia reports that there are at least 1180 franchise systems operating in Australian this year. If a person is averse to Shoebox's proposed conduct in relation to the selection of suppliers then they have numerous alternatives to choose from in both the broader franchise market and the bookkeeping services franchise market.

The strength of competition in the franchise business market will ensure that the conduct notified herein will remain fair and in the interests of the franchise network as a whole if Shoebox is to continue to recruit franchisees.

Prices for consumers of bookkeeping services are also likely to be reduced as a result of the notified conduct.

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

See comments in 6(a) 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:

C/- Minter Ellison Lawyers Gold Coast
165 Varsity Parade
Varsity Lakes, QLD 4227

Dated..... 11-12-12

Signed on behalf of the Shoebox Australia Pty Ltd (ACN 159 197 163):

..... Menzies

(Signature)

..... Sandie Rae Menzies

(Full Name)

..... Director

(Position in Organisation)

