

## 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)

N96652 CGP Systems Pty Ltd ACN 159 979 469 (**CGP**)

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

CGP is the franchisor of the Crust Gourmet Pizza Bars franchise system (**Crust**), specialising in the preparation and sale of specialty pizzas, calzone, meat, pasta, chicken, salads, desserts, hot and cold beverages (including alcohol) and other related products nominated by CGP from time to time. As at 28 February 2013, there are 127 Crust outlets in Australia together with additional outlets in New Zealand, Singapore and the United States of America.

CGP has the right or licence to operate Crust, use the "Crust Gourmet Pizza Bars" brand, and to grant a Crust franchise to any other person or company (**Franchisee**). The Crust system and Crust brand incorporates a variety of valuable intellectual property including trade marks, logos and business names, copyrighted materials, and includes a distinctive image which comprises designs and colour schemes for Crust retail stores, store concepts and plans, signs, layouts, fixtures and fittings, uniforms and badges, certain processes, methods, systems, business and marketing plans, menus, recipes, product formulations, price lists, pricing scripts, manuals, supplier lists, customer lists and databases, computer software, telephone and facsimile numbers, domain names, trade secrets, know how and other procedures (collectively, the **Intellectual Property**).

Crust retail stores are generally owned and operated by Franchisees (**Franchised Operations**) pursuant to a written franchise agreement (**Franchise Agreement**). Crust currently has 127 Franchised Operations in Australia. As at 28 February 2013, no Crust retail stores were operated by, or on behalf of, CGP or its associates.

Crust franchised stores sell a range of food and beverage products, including pizza, calzone, meat, chicken, pasta, salads, desserts, hot and cold beverages (including alcohol), and other related products nominated by CGP from time to time, predominantly to retail customers. Crust franchised stores also provide pizza delivery services to retail customers.

CGP is a related entity of Crust IP Pty Ltd ACN 159 221 904 (**CIP**) which owns certain trade marks and Intellectual Property relevant to the Crust franchise system. The ownership of, and right to use, the aforesaid Intellectual Property is the subject of an agreement between CGP and CIP, the terms of which are confidential.

CGP has appointed RFGA Management Pty Ltd ACN 071 765 609, trading as Retail Food Group (Australia) (**System Manager**), to manage the Crust system on its behalf.

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

c/- Andrew Rankin  
Partner  
Norton Rose Australia  
Level 21, ONE ONE ONE  
111 Eagle Street  
Brisbane QLD 4000.

**2 Notified arrangement**

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

**Approved Products and Services**

This Notification relates to the acquisition by Crust Franchisees of products and services approved or nominated, or which may be approved or nominated from time to time, by CGP, including:

- (i) certain consumable and food products eg pizzas, pizza bases, calzone, meat, chicken, pasta, salads, desserts and other related products, including pre-manufactured or pre-packaged products, and other related products (**Food Products**);
- (ii) sauces and dressings, animal and dairy products, breads and buns, fruit and fruit fillings, vegetables, syrups, beverage pre-mixes, fillings, creams, confectionaries, bakery ingredients, sugar and/or other condiments and other ingredients necessary to make Food Products (**Ingredients**);
- (iii) beverages, such as bottled water, soft drinks and alcoholic beverages for resale (**Beverage Products**);
- (iv) packaging, boxes, cartons, paper cups and lids, straws, napkins, paper towels, plastic cutlery, utensils, crockery, glassware, merchandise and promotional products and other items of packaging and cutlery used by Crust (**Packaging**);
- (v) services for the provision of warehousing and distribution of Food Products, Beverage Products, Ingredients and Packaging and other services which the Franchisee is required to acquire from CGP or nominated third party service providers;
- (vi) machinery, plant, equipment (eg pizza ovens, dough makers, refrigerators), signs, fixtures, fittings and finishes used in the conduct of the Franchised Operation, including the preparation or display for sale of the Food Products and Beverage Products (**Equipment**);
- (vii) computer and point of sale systems, software, retail and business management systems, mobile or internet ordering or payment systems, telephone systems, loyalty or reward systems and other related information technology systems;
- (viii) training services provided by CGP or its nominated supplier;

- (ix) marketing material design and ordering systems, merchandising and branding services;
- (x) store design, shop-fitting and refurbishment services;
- (xi) certain products and services relating to the installation, fit out, maintenance, operation, cleaning and upkeep of the Franchised Operation and Equipment;
- (xii) centralised banking facilities to facilitate customer payment processing, including EFTPOS or 'tap and go' systems;
- (xiii) insurance;
- (xiv) uniforms; and
- (xv) a lease, sublease or licence in respect of the occupation of premises from which a Franchised Operation is, or is to be, conducted.

(collectively, the **Approved Products and Services**)

from specified third party suppliers.

#### **Approved suppliers**

CGP has identified a number of suppliers who have been approved and or nominated by CGP (**Approved Suppliers**) that can provide the Approved Products and Services identified above to the standards required by CGP, and at a reasonable cost. The Approved Suppliers are listed at Appendix B (confidential). CGP believes that the Approved Products and Services best meet the requirements of the Crust network and that the Approved Suppliers are best able to provide such Approved Products and Services.

Franchisees may also be required to acquire certain Approved Products and Services from CGP, or associates of CGP, or from an Approved Supplier in which CGP or an associate of CGP may have an ownership interest.

Where CGP, or its Approved Suppliers, elect not to supply some of the Approved Products and Services to the Franchisee, the Franchisee may acquire such Approved Products and Services from another supplier for so long as CGP, or its Approved Suppliers, continue to elect not to supply those Approved Products and Services to the Franchisee. In these circumstances, and to assist Franchisees, CGP may (at CGP's absolute discretion) provide the Franchisee with a list of CGP's preferred suppliers of those Approved Products and Services not currently being supplied by CGP, or its Approved Suppliers (**Preferred Suppliers**). Franchisees are not, however, obliged to acquire the Approved Products and Services from Preferred Suppliers.

Franchisees may also be required to enter into a lease, sublease or licence with CGP or an associate in relation to the occupation of premises from which a Franchised Operation is, or is to be, conducted.

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

#### **Crust brand and system**

The dine-in, take-away and delivery pizza industry is highly competitive and densely populated. The Crust system is designed to give Franchised Operations a competitive advantage. This is achieved by ensuring that:

- (i) all Crust outlets maintain a uniform product range which delivers Food Products and Beverage Products of the highest quality;
- (ii) all Crust outlets are operated in such a manner as to deliver a consistent customer experience, including through achieving consistency in the modes and methods of operating a Crust outlet and otherwise the nature and quality of a fit out of Franchised Operations across Australia to maximise the retail experience for both Franchisees and consumers and ensure fit out and Equipment satisfies workplace requirements; and
- (iii) the integrity in the marketplace of the Crust image and franchise system is maintained and otherwise ensuring the development and continual enhancement of the Intellectual Property.

Without ensuring that these elements are maintained and enhanced, the potential profit for Franchisees, and benefit capable of being derived from being a Crust Franchisee, is eroded and the long term value of the Crust brand is diminished.

### **Franchisees' contractual obligations**

Franchisees have obligations under their respective Franchise Agreements in relation to the Approved Products and Services they can:

- (i) purchase, acquire or make for use in their Franchised Operation; and
- (ii) market or sell from their Franchised Operation.

In addition, Franchisees have obligations in relation to the Equipment they must use in their businesses.

Depending upon the terms thereof, a lease, sublease or licence may restrict the range of products and services that the Franchisee must acquire.

Franchisees also have obligations under their respective Franchise Agreements in relation to the services they can utilise, including in relation to fitting out their premises (either as part of an initial fit out or as part of a subsequent fit out or refurbishment).

Under the Franchise Agreement, CGP may require a Franchisee to hold the lease in respect of premises from which the Franchised Operation is, or is to be, conducted. Alternatively, CGP may require that Franchisees enter into a separate licence agreement with an associated entity of CGP in respect of the occupation of premises from which the Franchised Operation is, or is to be, conducted.

The relevant clauses of the standard Franchise Agreement that relate to the notified conduct are set out in Annexure A (confidential).

### **Notified conduct**

CGP proposes to require its Franchisees to acquire the Approved Products and Services (as detailed above in section 2(a)) from Approved Suppliers.

Where CGP directly grants or renews a lease, sublease or licence to a Franchisee, CGP proposes to require the Franchisees to comply with terms and conditions of the Franchise Agreement, including as to the acquisition of the Approved Products and Services from Approved Suppliers.

By appointing Approved Suppliers, CGP seeks to:

- (i) leverage the Crust network for the purposes of negotiating better than market pricing for Approved Products and Services;
- (ii) maintain Crust's unique selling proposition (**USP**) vis-à-vis market competitors;
- (iii) ensure the protection of Crust's Intellectual Property (including proprietary recipes for products);
- (iv) ensure consistency in the product and service type offered to all Franchisees and by all Franchisees to the consumer;
- (v) ensure consistency in the high quality product offered to all Franchisees and by all Franchisees to consumers as a result of strict quality checks and quality control measures of Approved Suppliers;
- (vi) ensure confidence in compliance with food safety, food handling and other food or health regulations as a result of the consistency;
- (vii) ensure consistency in the delivery of Approved Products and Services and competitive pricing of Approved Products and Services;
- (viii) ensure consistency in the nature and quality of the fit out of the Franchised Operations across Australia to maximise the retail experience for both Franchisees and consumers and to ensure compliance with workplace requirements;
- (ix) ensure consistency in the services provided to customers of Franchised Operations (including the provision of information in connection with Food Products and Beverage Products, such as nutritional information); and
- (x) facilitate improved efficiencies and business efficacy at Franchisor and Franchised Operation level.

### **Competition and Consumer Act implications**

The notified conduct potentially falls within the definition of exclusive dealing in sections 47(6) and (7) of the *Competition and Consumer Act 2010* (Cth) (**CCA**), as CGP proposes to:

- (i) supply its services as franchisor/licensor on the condition that the Franchisee acquires; and
- (ii) refuse to supply its services as franchisor/licensor if the Franchisee does not acquire (or has not agreed to acquire);

the Approved Products and Services set out in section 2(a) above from the Approved Suppliers.

Additionally, in the circumstances where CGP may directly grant or renew a lease, sublease or licence in respect of the occupation of premises from which a Franchised Operation is, or is to be, conducted the notified conduct may fall within the definition of exclusive dealing in sections 47(8)(c) and (9)(d) of the CCA, as CGP, in conjunction with its associates, proposes to:

- (iii) grant or renew, or make it known that it will not exercise a power or right to terminate, a lease or licence in respect of land or a building (or a part thereof) on the condition that the Franchisee acquires the Approved Products and Services set out in 2(a) above from the Approved Supplier; and

- (iv) refuse to grant or renew, or exercise a power or right to terminate, a lease or licence in respect of land or a building (or a part thereof) if the Franchisee does not acquire (or has not agreed to acquire) the Approved Products and Services set out in 2(a) above from the Approved Supplier.

However, as outlined below, CGP maintains that the public benefits that will result from the notified conduct 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:**  
(Refer to direction 5)

Franchisees

Approved Suppliers

The broad wholesale/retail market for the sale and supply of the Approved Products and Services

- (b) **Number of those persons:**

- (i) **At present time:**

Franchisees: 127 (as at 28 February 2013)

Approved Suppliers 50 (as at 28 February 2013)

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

Franchisees: 137

Approved Suppliers 56

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

**Franchisees**

There are over 50 Crust Franchisees. Accordingly, the details of each Franchisee have not been included. Further details of each Franchisee can be provided to the ACCC upon request.

**Approved Suppliers**

There are 50 Crust Approved Suppliers (not including Preferred Suppliers, from whom Franchisees are not obliged to purchase or acquire Approved Products and Services). In any event, the details of each Approved Supplier are contained at Annexure B (confidential). CGP anticipates that it may appoint further Approved Suppliers in the future.

**Broad wholesale/retail market**

There are over 50 participants in the broad wholesale/retail market for the sale and supply of the Approved Products and Services. Accordingly, details of each participant have not been included.

#### 4 Public benefit claims

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

The purpose of the notified arrangement is not to substantially lessen competition. Rather, the notified arrangement will enhance the capacity of Franchisees, as small businesses, to compete with larger businesses and other competitors. This enhanced capacity is especially important in a market where there is intense competition, particularly from large chains and competing pizza and associated product-based franchise networks (such as Domino's Pizza, Pizza Hut, Eagle Boys Dial-a-Pizza, La Porchetta).

The notified arrangement will be likely to have the following benefits for Franchisees and end consumers:

- (i) Franchisees will have guaranteed access to Approved Products and Services at competitive prices due to the established supply relationships which allow Franchisees to offer favourable prices to the end consumer;
- (ii) the notified conduct is likely to foster business efficiency as Franchisees are:
  - (A) assured of access to a range of Approved Products and Services of a consistent standard which gives them more time to focus on operating their business;
  - (B) afforded greater certainty in connection with input costs which fosters improved business planning;
  - (C) afforded access to improved point of sale equipment incorporating increased capability/functionality which facilitates benchmarking and greater access to information, improved decision making processes (including in relation to stock ordering and wastage) and reduced risk of fraud;
- (iii) the notified conduct gives CGP more bargaining power when negotiating prices with suppliers which will have a flow-on effect to Franchisees and the end consumer;
- (iv) the notified conduct allows CGP to focus on controlling quality which ensures that end consumers are provided with Food Products and Beverage Products of a consistent standard that meet the promise of CGP and the Franchisee as to the content and quality of the Food Product and Beverage Product;
- (v) the notified conduct ensures that Franchisees and ultimately consumers are able to purchase genuine licensed products in the case where they are pre-packaged products (eg bottled Beverage Products for resale, etc);
- (vi) the notified conduct ensures that Franchisees purchase the Approved Products and Services which are licensed, including Approved Products and Services which are manufactured or supplied under licence from CGP or an associated entity, from the appropriately licensed Approved Suppliers and not from unlicensed manufacturers or suppliers;
- (vii) the notified conduct ensures that Franchisees purchase and or utilise equipment and other business requisites, and store fit out services,

from appropriately qualified and accredited Approved Suppliers and not from unapproved manufacturers, suppliers or service providers; and

- (viii) improved efficiencies for the Franchisor allowing it to apply greater resources towards improving franchise system servicing and product innovation.

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

**Franchisees and consumers**

The notified conduct is likely to have the benefits listed below for Franchisees and end consumers:

- (i) The notified conduct will ensure consistency, uniformity and end-to-end quality control, which is paramount to the integrity of the Crust brand and image, so that the Approved Products and Services:
  - (A) meet Crust's standards for design, function, performance, quality, taste, serviceability and warranty (as the case may be); and
  - (B) are manufactured, produced and or supplied by those manufacturers, producers and or suppliers specified or approved by CGP as meeting its standards and specifications.
- (ii) Franchisees will have guaranteed access to the Approved Products and Services sold or provided by Approved Suppliers at a competitive price due to the increased purchasing power of the network. This will afford certainty which fosters improved business planning and allow Franchisees to offer favourable prices to the consumer.

Where incumbent Approved Suppliers have the opportunity to requote, Crust will review the current market, including alternate suppliers of like products and services, with the purpose of ensuring that the prices that are quoted by an incumbent Approved Supplier are relevant to current market conditions and trends. CGP negotiates pricing with the aim of ensuring that the Crust system receives better than market pricing to ensure brand profitability whilst maintaining product quality and consistency. CGP regularly monitors volume demands to ensure pricing levels are relevant and meet market pricing.

- (iii) In the general retail food market, inter-brand competition is paramount. By requiring Franchisees to acquire Approved Products and Services from Approved Suppliers, CGP is able to ensure that all Franchisees maintain high standards so that the brand can compete more effectively in the retail food market.
- (iv) The notified conduct is likely to foster business efficiency as Franchisees are assured of access to Approved Products and Services from Approved Suppliers that are of a consistent standard and price, which gives them more time to focus on operating their business.
- (v) Business efficiency is further enhanced as it would be extremely inefficient if each Franchisee had to assess the ability of each of its suppliers to meet CGP's specifications. CGP draws on its knowledge and experience in the food industry to identify those suppliers that



can and will supply goods and services of a particular standard as required, removing this burden from the Franchisees.

Crust operates nationally and CGP, and its associated entities, conduct tender processes where significant business opportunities warrant a full review of the current market for particular Approved Products and Services.

- (vi) The notified conduct provides for increased quality of the Food Products and Beverage Products being offered under the Crust brand name and other Approved Products and Services as the Approved Suppliers undergo quality checks, stock and supply control standards and continuous quality control measures.
- (vii) The notified conduct not only seeks to ensure the quality of the final product produced by a Franchised Operation but also seeks to ensure the quality of the Franchised Operation itself, by ensuring that Franchisees are provided with reputable providers for services.
- (viii) It is of the upmost importance to CGP that all Franchisees comply with all food, health and safety regulations when preparing items for sale in the Franchised Operation and or offering items for sale to consumers. By requiring that Franchisees use certain Approved Products and Services, CGP can better manage Franchisee compliance with its standards.
- (ix) By requiring that Franchisees purchase certain products and services from Approved Suppliers, CGP is helping to ensure that the value of Franchises and Franchised Operations is maintained by ensuring that the Crust network as a whole provides a consistent and high quality Food Product and Beverage Product, meaning that customers will associate the Crust brand with high quality Food Products and Beverage Products and purchase these Food Products and Beverage Products from multiple Franchised Operations.
- (x) The notified conduct will also assist CGP, Crust and Franchisees to maximise the benefits derived, or to be derived, from marketing and to avoid any adverse publicity, action by third parties or relevant governmental authorities or other adverse ramifications where Franchisees do not comply with CGP's requirements for high quality and consistency of image.

#### **Fees and benefits**

CGP negotiates and receives fees and benefits (including the benefit of wholesale supply prices, volume incentives, financial benefits, reimbursements of costs, manufacturer's margin in connection with Approved Products and Services supplied by CGP, licence fees and rebates) from the Approved Suppliers in relation to Approved Products and Services supplied to Franchisees. The nature and amount of the fees and benefits vary depending on the commercial arrangements between CGP and the Approved Suppliers. The fees and benefits are an important source of funding for the Crust network. Although not directly shared with Franchisees, the benefits are used by CGP to cover a range of costs, which ultimately benefit Crust and Franchisees. The benefits can be used:

- (i) to fund infrastructure growth and to cover operational costs associated with Crust which benefit the Crust network as a whole;
- (ii) to offset the financial liability incurred by Franchisees in relation to the hire of equipment, purchase of products or receipt of services;

- (iii) by CGP for the benefit, promotion or service of Crust generally (including through deposit into the marketing fund);
- (iv) for the purpose of sponsoring Crust events, promotions or rewarding Franchisees (such as conferences, special promotions and prizes);
- (v) for research and development purposes, including to pay for testing and product development; and
- (vi) for the purposes of training Franchisees in the modes and methods of operating a Crust Franchised Operation.

CGP discloses to its Franchisees in its Disclosure Document that CGP may from time to time receive fees or benefits in connection with the supply of products by Approved Suppliers to Franchisees. Franchisees are not specifically informed of the level of fees and benefits received by CGP in relation to the Approved Products and Services that Franchisees are required to purchase from Approved Suppliers. This is common in franchise networks and disclosure of the amount of the financial benefit or rebate is not required under the *Franchising Code of Conduct*. The additional information disclosed to Franchisees by CGP in relation to rebates and financial benefits is the information required to be disclosed in its Disclosure Document pursuant to clause 9.1(j) of Annexure 1 of the *Franchising Code of Conduct*.

Under the Franchise Agreement, Franchisees acknowledge that CGP may receive payments from suppliers (including Approved Suppliers).

### **Suppliers**

The notified conduct provides the Approved Suppliers with certainty of supply and quantities of supply to Franchisees which may result in:

- (i) cost savings in the management of the Approved Supplier's business; and
- (ii) increased business efficiency which gives them more time to focus on running their businesses, planning future production and innovative strategies; and
- (iii) promoting competition among Approved Suppliers and Preferred Suppliers.

## **5 Market definition**

- (a) **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)

However the relevant markets are defined, CGP submits that they are characterised by a high degree of competition and a large number of active and meaningful participants.

The markets can reasonably be identified as:

- (i) the broad retail and wholesale markets for the sale of the Approved Products and Services in Australia; and

- (ii) the retail and wholesale markets for the sale of each of the above Approved Products and Services in isolation in Australia.

Each of the above markets is characterised by a relatively large number of participants at the relevant wholesale and retail levels. In some cases, the competitors in the market may often be large corporations or franchise chains such as Domino's Pizza, Pizza Hut, Eagle Boys Dial-A-Pizza and La Porchetta.

Where CGP has not nominated an Approved Supplier in respect to the supply of Approved Products and Services, Franchisees are entitled to acquire Approved Products and Services from suppliers of their choosing provided they are approved as meeting Crust's standards. In order to assist Franchisees, CGP may in its absolute discretion compile and provide Franchisees a list of Preferred Suppliers in respect to such Approved Products and Services. Franchisees are not obliged to acquire Approved Products and Services from Preferred Suppliers.

## 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 notified conduct may have the following detrimental effect:

- (i) the notified conduct may prevent Franchisees from selecting between suppliers on the normal commercial basis of product or service price and quality; and
- (ii) suppliers that are not nominated or licensed may not have access to Crust Franchisees.

However, the notified conduct is unlikely to have any detrimental effect on end consumers as they will not be restricted in the products they can purchase from Crust Franchisees.

CGP does not believe that there are any substantial public detriments of the notified arrangement. Any anti-competitive effects on suppliers of the Approved Products and Services will be minimal due to the number of potential purchasers of their products and services. Further, the Franchise Agreement provides scope for a Franchisee to acquire Approved Products and Services from their own suppliers (or from CGP's list of Preferred Suppliers) where CGP has not appointed Approved Suppliers to provide a particular Approved Product or Service.

The anti-competitive effect of this arrangement on the end consumer is negligible, as it will have little to no impact on the consumer.

CGP contends that the notified arrangements will have a negligible effect on competition within the relevant markets and that the public benefits resulting from the notified conduct outweigh any public detriments caused by the conduct.

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

The public detriments that may flow from the notified conduct are discussed below. However, CGP contends that any detriment is negligible, and is far outweighed by the public benefits outlined above.

## **Franchisees**

The notified conduct may prevent Franchisees from selecting between suppliers on the normal commercial basis of product quality and price. Franchisees may also be required to acquire Approved Products and Services from CGP, its associates or from a supplier in which CGP or an associate of CGP may have an ownership interest.

However, as specified in Annexure A (confidential), the Franchise Agreement allows Franchisees to choose their own suppliers (or suppliers from CGP's list of Preferred Suppliers) where CGP has not specified an Approved Supplier in respect of Approved Products and Services.

CGP may also allow individual Franchisees to stock product lines which are not ordinarily permitted or sold within the Franchised Operation or other Franchised Operations. CGP may allow this where it is in the best interests of Crust or a particular Franchisee to do so.

Where CGP elects to allow a Franchisee to construct or re-model a premises for use as a Crust Franchised Operation, Franchisees are entitled to source their own quotes for shop-fitting and refurbishment services.

In addition, CGP, and its associated entities, undertake regular monitoring and benchmarking of prices to ensure that the prices offered by Approved Suppliers are consistent with current market conditions and trends.

On this basis, the detriment to Franchisees will be minimal.

## **Consumers**

The anti-competitive effect on the end consumer is negligible, as it will not ultimately prohibit consumers from comparing prices and products for the following reasons:

- (i) retailers which offer or provide the Food Products and Beverage Products in the relevant retail markets are numerous in Australia which allows consumers to "shop around" easily; and
- (ii) there is arguably no barrier to entry at retail level because of the volume of retailers in Australia, which offer a range of similar Food Products and Beverage Products in the relevant retail markets (eg dine-in, take-away and delivered pizza outlets).

## **Suppliers**

The wholesale suppliers that are not Approved Suppliers will not have access to Franchisees unless they are nominated by a particular Franchisee where:

- a) CGP, or its associates, do not supply an Approved Product or Service; or
- b) CGP has not nominated an Approved Supplier to supply an Approved Product or Service.

However, the anti-competitive effect on suppliers who do not have access to Franchisees will be insignificant given the number of retailers in Australia to which suppliers may sell their products. In any event, Crust regularly monitors and benchmarks Approved Supplier pricing and undertakes tender processes where significant business opportunities are available.

The notified conduct should only further promote competition between suppliers as they compete for approved supplier status.

**7 Further information**

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

Andrew Rankin  
Partner  
Norton Rose Australia  
Level 21, ONE ONE ONE  
111 Eagle Street  
Brisbane, Queensland 4000  
Telephone: (07) 3414 2850  
Email: andrew.rankin@nortonrose.com

Dated.....11 March 2013.....

Signed by/on behalf of the applicant

.....*Aw Rankin*.....  
(Signature)

.....ANDREW WILLIAM RANKIN.....  
(Full Name)

.....Norton Rose Australia.....  
(Organisation)

.....Partner.....  
(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 notified 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 notified conduct including quantification of those detriments where possible.

## **Annexure A**

### **SUBMISSION BY CGP SYSTEMS PTY LTD IN SUPPORT OF NOTIFICATION UNDER SECTION 93(1) OF THE *COMPETITION AND CONSUMER ACT 2010* (CTH)**

#### **Introduction**

The purpose of this submission is to assist the ACCC in its consideration of the facts set out in the Notification of Exclusive Dealing (**Notification**) given by CGP in relation to the Crust franchise system.

#### **Franchise Agreement**

The arrangement described in this Notification is given effect through the terms of the Franchise Agreement between CGP and Crust Franchisees. The relevant clauses of the Crust Franchise Agreement have been extracted below.

***[Excluded from the public register.]***

## **Annexure B – Approved Suppliers**

At present there are 50 Approved Suppliers of products and services for Crust. The details of each of these Approved Suppliers are listed in the following table.

It is anticipated that other suppliers will be added as “Approved Suppliers” in the future. This list does not include suppliers who are on CGP’s list of Preferred Suppliers as Franchisees are not obliged to acquire Approved Products and Services from Preferred Suppliers.

***[Excluded from the public register.]***