

27 DEC 2012

CANBERRA

## 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)

N96511 Clark Rubber Franchising Pty Ltd ACN 065 708 723

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

Clark Rubber Franchising Pty Ltd (**Clark Rubber**) is the franchisor of the “Clark Rubber” franchise network.

Clark Rubber stores operate at a retail level and may also provide mobile pool services via service van(s) operating out of the retail store.

The range of goods sold in a Clark Rubber store include: swimming pools; spas; swimming pool and spa spare parts & equipment; swimming pool and spa chemicals, disinfectants and algacides; swimming pool and spa toys; other products associated with swimming pools and spas; foam; rubber; foam and rubber products; home furnishings such as foam sofas, futons, mattresses, pillows, cushions, and flooring; outdoor furniture; and do-it-yourself products.

Clark Rubber currently has 78 franchised stores. Each franchised store is operated by an independent operator (**Franchisee**) pursuant to a written franchise agreement (**Franchise Agreement**).

Clark Rubber does not have any corporate stores. However, 2 of the 78 franchised stores are operated by a related entity of Clark Rubber.

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

Administration Building, 254 Canterbury Road, Bayswater, Victoria 3153.

#### 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 a national electronic gift card program offered by Clark Rubber to its Franchisees. Initially the program will require that each Franchisee enter into a franchisee participation and direct debit agreement

with a third party, who will provide the electronic gift card system and administer the program on behalf of Clark Rubber.

Product

Clark Rubber, at the request of its Franchisees, established a national electronic gift card program for use throughout the Clark Rubber franchise network. Clark Rubber determined to establish one program for its network to ensure that there is consistency in the nature and quality of the gift card program offered in Clark Rubber stores and to therefore maximise the retail experience for both operators and consumers.

Clark Rubber intends to operate the program itself, however will initially require the services of a third party to provide the electronic gift card system and administration support for the program.

Approved Supplier

Clark Rubber has identified a supplier that can provide the electronic gift card system and services required to administer the gift card program to the standards required by Clark Rubber. Clark Rubber believes that the gift card program will enhance the Clark Rubber network and system and that the supplier is best able to administer the gift card program.

Both new and existing Franchisees will be required to stock the Clark Rubber gift cards and participate in the gift card program.

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

Proposed Conduct

Clark Rubber proposes to require all Franchisees to participate in the gift card program. Initially, Clark Rubber will require a third party to provide the electronic gift card system and certain administrative and technological services for the program. Franchisees will be required to enter into an agreement with the third party for these administrative and technological services.

The Franchise Agreement

Relevant clauses of Franchise Agreement (confidential)

**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)*

Clark Rubber Franchisees

The supplier of the technological and administrative services in relation to the gift card program

- (b) Number of those persons:

- (i) At present time:

Franchisees:	78
Supplier of gift card program	1

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

Franchisees:	80
Supplier of gift card program	1

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

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

At present there is 1 approved supplier of the gift card program. The details of the approved supplier are as follows:

Wright Express Prepaid Cards Australia Pty Limited ACN 085 449 529 of Milsons Point, New South Wales 2061

#### 4. Public benefit claims

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

The purpose of this arrangement is not to substantially lessen competition. Rather, the proposed arrangement will enhance the capacity of Franchisees, as small businesses, to compete with larger businesses.

The proposed arrangement will be likely to have the following benefits:

- it will allow the exchange of gift cards between franchised stores to appear seamless to customers;
- it will allow customers to buy gift cards and not be confined to the one store for its use but enable customers to enter any store in Australia to use the gift card;
- it will ensure that the Clark Rubber franchise network operates more efficiently as all Franchisees will be using the same gift card program; and
- it will ensure that Franchisees have more time to focus on providing high quality services to customers.

The provision of these services will make shopping at Clark Rubber stores easier for customers and will provide more flexible purchasing arrangements across all stores.

Benefits to the approved supplier include greater marketing of services to the business community.

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

Clark Rubber Franchisees have requested that Clark Rubber provide a national gift card program. Clark Rubber has spent time and money developing a gift card program that will be suitable for its business. Clark Rubber's intention is to operate the gift card program as an internally administered program, however, Clark Rubber requires some technological and administrative support to implement and roll out the gift card program.

Clark Rubber believes that the nominated supplier of electronic gift card technology and administrative services best meets the requirements of the Clark Rubber network and is best able to provide the services required to ensure consistency across the network and to also achieve desirable efficiencies in the gift card program for Franchisees.

**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)*

Clark Rubber considers that the markets that will be affected by the proposed arrangement are:

- national markets for the supply of gift cards;
- national markets to administer gift card programs; and
- more localised markets for the supply of gift card programs.

**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)*

Clark Rubber does not believe that there are any substantial public detriments of the proposed arrangement.

Clark Rubber contends that the proposed arrangement will have a negligible effect on competition within the relevant markets and that the public benefits resulting from the proposed conduct outweigh any public detriments caused by the conduct.

- (b) Facts and evidence relevant to these detriments:  
Not applicable

**7. Further information**

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

Stephen Giles  
Norton Rose  
Level 15, RACV Tower  
485 Bourke Street  
Melbourne Vic 3000  
(03) 8686 6000

Dated..... 24/12/12 .....

Signed by/on behalf of the applicant

.....  
(Signature)

..... STEPHEN JOHN GUY .....  
(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 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.