

WHEN REPLYING **44164**  
PLEASE QUOTE

OUR REF:

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19 August 2014

Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

AUST. COMPETITION &  
CONSUMER COMMISSION

28 AUG 2014

CANBERRA

Dear Sirs

**Form G – Notification of Exclusive Dealing**

We act for Pastacup Australia Pty Ltd in relation to the above matter.

Please find **enclosed** Form G – Notification of Exclusive Dealing together with a cheque for \$100 for the lodgement fee.

If you have any queries regarding this matter, please don't hesitate to contact us.

Yours sincerely

  
**Tamra Seaton**  
Associate Director  
MDS LEGAL

DIRECTORS  
Ross McCallum  
Paul Donovan  
Fiona Stanton  
Ashley Mackney  
Anthony Prime  
Tamra Seaton

SENIOR ASSOCIATES  
Sylvia Simmons  
Jenny McKenzie  
Carolyn Moss  
Greg Milner  
Joseph Burke



## 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.

#### 1. Applicant

(a) Name of person giving notice:

N97717 Pastacup Australia Pty Ltd ABN 73 150 392 340 of 50A Angove Street, North Perth, Western Australia (**Pastacup**).

(b) Sort of business carried on by that person:

Pastacup is in the business of operating casual dine in and takeaway food outlets and granting Pastacup franchisees the right to operate a Pastacup business (**Franchised Business**) on the terms set out in the franchise agreement between the parties. The Franchised Business involves the retail sale of pasta and other related products nominated by Pastacup from time to time (**Products**).

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

C/- Mr Stuart Bernstein, Pastacup Australia Pty Ltd, 50A Angove Street, North Perth, Western Australia, 6006

#### 2. Notified Arrangement

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

The notification relates to:

- Products sold in the Franchised Business;
- ingredients used in making the Products sold in the Franchised Business (**Ingredients**);
- boxes, cartons, containers, napkins and other items of packaging used in the Franchised Business (**Packaging**);
- stationery used in the conduct of the Franchised Business including business cards, forms, invoice and receipt books, labels and advertising and marketing literature (**Stationery**);

- uniforms used in the conduct of the Franchised Business (**Uniforms**);
- equipment used in the conduct of the Franchised Business including plant, equipment, fixtures, fittings, signage, communications equipment, computer hardware and software including point of sale system software and all related information technology equipment (**Equipment**);
- services for the provision of the Products, Ingredients, Packaging, Stationery, Uniforms and Equipment supplied by third party service providers (**Services**),

that Pastacup directs its Pastacup franchisees must acquire and supply or use in their Franchised Business;

(b) Description of the conduct or proposed conduct:

See Annexure "A" (parts 1 & 2).

**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

(a) Class or classes of person to which the conduct relates:

Persons who are franchisees or will become franchisees of Pastacup and who are granted the right to operate a Franchised Business on the terms set out in the franchise agreement between the parties.

(b) Number of those persons:

- (i) At present time: 14
- (ii) Estimated within the next year: 20

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

Store	Address	Franchisee
Tuart Hill	Shop 5, 207 Wanneroo Road, Tuart Hill, Western Australia 6060	Gert Christiaan Geldenhuys and Elana Geldenhuys
Rockingham	Shop T214, Rockingham Shopping Centre, Council Avenue, Rockingham, Western Australia 6168	PC Rockingham Pty Ltd as trustee for the Shaun Hogarth Family Trust
Canning Vale	Shop 4, Ranford Shopping Centre, Canning Vale, Western Australia 6155	Arlion Pty Ltd as trustee for the Tandean Family Trust
Melville	Unit 3, Melville Commercial Centre, 369 Canning Highway, Palmyra, Western Australia 6157	Pawandeep Singh
Jindalee	Unit 7, Jindalee Commercial Centre, Jindalee, Western Australia 6036	Lalani Brothers Pty Ltd

Warwick	Shop 74A Centro Warwick, Corner of Beach Road and Erindale Road, Warwick, Western Australia 6024	Neelkanth WA Pty Ltd
Cockburn Central	Shop 7C, Plaza 817, 817 Beeliar Drive, Cockburn Central, Western Australia 6164	Arlion Pty Ltd as trustee for the Tandean Family Trust
Waterford	Shop 26, Waterford Shopping Centre, Corner Manning Road and Kent Street, Karawara, Western Australia 6060	Dhanjals Pty Ltd as trustee for the JS Trading Trust
Currambine	Shop T23C, Currambine Marketplace Shopping Centre, Corner Marmion Avenue and Shenton Avenue, Currambine, Western Australia 6028	RST Venture Pty Ltd
Busselton	Shop 5, 67 Kent Street Busselton, Western Australia 6280	M & J McDonnell Pty Ltd
Belmont	Shop 5, Belmont Central 268 Belmont Avenue, Cloverdale, Western Australia 6105	SMJ Group Pty Ltd
North Perth	5-7 Scarborough Beach Rd, North Perth, Western Australia 6210	PretzXpress Pty Ltd as trustee for the MAA Unit Trust
Haynes	Shop 6, Haynes Shopping Centre, Lot 700 Eighth Road, Armadale, Western Australia 6112	Dhanjals Pty Ltd as trustee for the J S Dhanjal Trading Trust
Morley	273a Walter Rd Morley, Western Australia 6062	Kaler & Chahal Pty Ltd

#### 4. Public Benefit Claims

(a) Arguments in support of notification:

See Annexure "A" (part 3).

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

See Annexure "A" (part 3).

#### 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):

See Annexure "A" (part 4).

**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:

See Annexure "A" (part 5).

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

See Annexure "A" (part 5).

**7. Further Information**

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

Tamra Seaton  
Director  
MDS Legal  
Level 2, Irwin Chambers  
16 Irwin Street  
PERTH WA 6000

Dated: 19 August 2014

Signed by/on behalf of the applicant



\_\_\_\_\_  
(Signature)

Tamra Seaton

\_\_\_\_\_  
(Full Name)

MDS Legal

\_\_\_\_\_  
(Organisation)

Director

\_\_\_\_\_  
(Position in Organisation)

## ANNEXURE "A"

### SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION REGARDING THIRD LINE FORCING NOTIFICATION

#### 1. DESCRIPTION OF THE CONDUCT OR PROPOSED CONDUCT

*(Refer to Section 2(b) of Form G)*

##### 1.1. The conduct to which this notification relates is the requirement for Pastacup franchisees to acquire and supply or use:

- (1) Products;
- (2) Ingredients;
- (3) Packaging;
- (4) Stationery;
- (5) Uniforms;
- (6) Equipment; and
- (7) Services,

from third party suppliers who have been approved by Pastacup (**Approved Suppliers**).

##### 1.2. Pastacup franchises are granted to Pastacup franchisees on the condition, among other things, that they agree to:

- (1) only sell Products in the Franchised Business which have been authorised by Pastacup;
- (2) only use Ingredients, Packaging, Stationery, Uniforms, Equipment and Services in the Franchised Business which have been specified by Pastacup;
- (3) acquire those Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and Services specified by Pastacup from Approved Suppliers.

##### 1.3. Pastacup shall not unreasonably withhold its approval of a supplier nominated by a Pastacup franchisee to be appointed an Approved Supplier. In making its decision Pastacup may request the franchisee to submit samples from the proposed supplier and is entitled to consider whether the proposed supplier has the capacity and facilities to supply the franchisee's needs in the required quantities and with the reliability necessary for the efficient conduct of the Franchised Business. Pastacup must notify the franchisee of its decision within a reasonable time and agrees to act reasonably when deciding whether to grant approval. Pastacup may withdraw its approval of a supplier if in the reasonable opinion of Pastacup the quality of the products or services supplied by that supplier do not meet the specifications and/or standards specified in the Pastacup Operations Manual.

## **2. THE PURPOSE OF THE CONDUCT OR PROPOSED CONDUCT**

2.1 The purpose of the conduct or proposed conduct referred to in item 1.1 is not to lessen competition in the relevant market or markets but to:

- (a) Ensure consistency and quality in the Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and Services supplied or used in the Franchised Business and to ensure that the Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and Services supplied or used in the Franchised Business meet Pastacup's standards. The quality of Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and Services can vary significantly depending on the source. It is important to the image of the Pastacup system that the Products and Packaging supplied by Pastacup franchisees to customers meet Pastacup's standards;
- (b) Ensure consistency and certainty in customer experience regardless of which Franchised Business customers buy the Products from;
- (c) Protect the value and reputation of Pastacup and the Pastacup system through the use and sale of Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and Services in the Franchised Business which are consistent with Pastacup's image and position in the relevant market or markets;
- (d) Ensure that Pastacup franchisees are able to acquire the Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and Services at competitive prices through the power of bulk buying making the Pastacup franchisees more competitive in the market;
- (e) ensure uniformity of the type, quality, compatibility and reliability of the Equipment and Services used by Pastacup franchisees;
- (f) ensure uniformity of the Services provided to Pastacup franchisees; and
- (g) ensure uniformity and full compliance with food and safety standards.

## **3. PUBLIC BENEFIT CLAIMS**

*(Refer to Section 4 of Form G)*

3.1 Pastacup submits that the conduct or proposed conduct has considerable public benefit by increasing efficiency and reducing costs for Pastacup franchisees thereby allowing Pastacup to be a more attractive and competitive participant in the food service industry as follows:

- (1) Pastacup franchisees operate in a number of competitive retail markets. The existence of Franchised Businesses in the marketplace will increase competition increasing the likelihood of lower prices for end consumers;
- (2) Pastacup franchisees gain a number of benefits from being part of the Pastacup system:
  - (a) Pastacup has considerable experience in sourcing Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and Services and uses that experience to source Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and Services which meet Pastacup's high standards. Pastacup will also approve only

those suppliers which, based on Pastacup's investigations are able to supply the volume of Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and level of Services required by Pastacup franchisees at competitive prices. Pastacup will also use its experience to ensure that the quality of all Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and Services are of a high standard and quality.

- (b) Small independent businesses do not have access to the benefits of larger organisations such as buying power, market presence and group marketing and this puts them at a significant disadvantage:
- (i) Pastacup franchisees by themselves would have little or no ability to negotiate with Approved Suppliers the types of prices for Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and Services which Pastacup is able to negotiate. If the Pastacup franchisees negotiated independently with the Approved Suppliers, they would in all likelihood have to pay a higher price as a result of purchasing low volumes with that particular supplier. In some cases, Pastacup franchisees may not even have the opportunity to be supplied at all by that particular supplier if they were to approach them independently.
  - (ii) By being part of the Pastacup system, the Pastacup franchisees have market presence and group marketing power which they would otherwise not have. By the Pastacup franchisees all branding their businesses using the Pastacup name and logo, they increase customer awareness of the Products that the Pastacup businesses sell. In addition, Pastacup will undertake marketing and promotional activities on behalf of the Pastacup group, increasing the profile of the Pastacup businesses within the relevant markets. The branding of the businesses and the group marketing will draw more customers to the Pastacup franchisees' businesses than if they were independents, resulting in increased sales.
  - (iii) By being part of the Pastacup system, the Pastacup franchisees will be able to acquire Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and Services at much more competitive prices than if they were independent business operators. This improves the profitability of Pastacup franchisees' businesses and helps them achieve the economies of scale normally associated with larger organisations.
  - (iv) Pastacup has considerable experience in operating retail businesses. By sharing its experience with the Pastacup franchisees and providing them with systems and operating procedures to follow, Pastacup provides the Pastacup franchisees with significant advantages normally associated with big business management and operating techniques. This encourages more efficient retail practices within the Pastacup franchisees' businesses, increasing their competitiveness within the relevant markets.



- (v) Pastacup will provide the Pastacup franchisees with advice and guidance on the conduct of the Franchised Business, including administrative and general operating procedures for the proper conduct of the Franchised Business. This encourages more efficient practices within the Pastacup franchisees' businesses, increasing productivity.
- (vi) Pastacup has considerable experience with food and safety standards. By designating Approved Suppliers, Pastacup can ensure that Pastacup franchisees fully comply with all relevant food and safety standards relating to the packaging and distribution of the Products and Ingredients (including but not limited to requirements as to labelling and food handling).

Pastacup submits that, as a consequence of the benefits provided by Pastacup to Pastacup franchisees and the benefits of the conduct or proposed conduct, consumers in the relevant retail markets will benefit.

- (3) The increased competitiveness and viability of the Pastacup franchisees enables them to compete with and promote competition amongst larger businesses, resulting in greater competition at the retail level and better prices and increased service levels for end consumers. If independent businesses such as those operated by the Pastacup franchisees were to be pushed out of the marketplace, the major competitors would have greater market share enabling them to increase the prices of products and services to the public.
- (4) There are also a number of benefits to be gained by the Approved Suppliers from the conduct or proposed conduct. By being appointed as an Approved Supplier, the supplier will have some degree of certainty as to volumes which Pastacup franchisees will require. This will give them a greater ability to plan for their business and may encourage them to invest in their business. The increased volumes will also result in greater economies of scale and efficiencies within the Approved Supplier's business. This in turn enables the Approved Supplier to supply the Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and Services to Pastacup franchisees at more competitive prices, increasing competition and resulting in lower prices to end consumers.

**4. MARKET DEFINITION**  
(Refer to Section 5 of Form G)

4.1 Pastacup submits that the relevant market is:

- (1) the wholesale market for the supply of Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and Services; and
- (2) the casual dine in and takeaway food outlets market and the retail market for the supply of the Products in Australia.

4.2 Based on investigations made by Pastacup, these markets are highly competitive and there are a large number of participants in each of them.

**5. PUBLIC DETRIMENTS**  
(Refer to Section 6 of Form G)

5.1 Pastacup submits that there is no public detriment that results from the conduct or proposed conduct.

- 5.2 Pastacup submits that the conduct or proposed conduct will not lessen competition in either the wholesale or retail markets.
- 5.3 At a wholesale level:
- (1) the conduct or proposed conduct will not prevent Pastacup franchisees from dealing with other suppliers:
    - (a) Pastacup franchisees are independent operators and except for those Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and Services which Pastacup specifies must be acquired from either Pastacup or Approved Suppliers, Pastacup franchisees may acquire Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and Services for sale and use in the Franchised Business from the supplier(s) of their choice provided that the Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and Services are authorised for supply or use in the Franchised Business; and
    - (b) The agreements to be entered into by Pastacup and Approved Suppliers will not grant exclusive rights to those suppliers for the ongoing supply of Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and Services to Pastacup franchisees. Pastacup may appoint different suppliers as Approved Suppliers from time to time. In determining whether to appoint a supplier as an Approved Supplier, Pastacup will consider such things as quality of Products, Ingredients, Packaging, Stationery, Uniforms, Equipment and Services, ability to supply, the volume required and price; and
  - (2) Pastacup will not be limited in its dealings with competitors of the Approved Suppliers.
- 5.4 At a retail level:
- (1) consumers may acquire the Products from any number of businesses, not just Pastacup franchisees; and
  - (2) Pastacup submits that the conduct or proposed conduct will result in better quality Products and delivery services being supplied to customers in the relevant market and better prices for those Products.
- 5.5 As a result, Pastacup submits that the conduct or proposed conduct will increase competition in the wholesale market and retail markets and result in a number of benefits to the public.
- 5.6 To the extent that the conduct or proposed conduct contravenes section 47 of the Act, Pastacup submits that the public benefits resulting from the conduct or proposed conduct outweigh any public detriment caused by the conduct or proposed conduct.