



Restaurants International

Yum! Restaurants Australia Pty Limited ABN 16 000 674 993
Kentucky Fried Chicken Pty Limited ABN 79 000 587 780
20 Rodborough Road (Locked Bag 522)
Frenchs Forest NSW 2086 Australia
Tel (612) 9930 3000 Fax (612) 9930 3001

FILE No:
DOC:
MARS/PRISM:

11 September 2014

Mr. Richard Chadwick
General Manager – Adjudication Branch
Australian Competition and Consumer Commission
Level 20
175 Pitt Street
Sydney NSW 2000

By Courier

Dear Sir,

Form G – Notification of Third Line Forcing Exclusive Dealing



On behalf of Kentucky Fried Chicken Pty Ltd, please find enclosed:

1. Form G – Notification of Exclusive Dealing for lodgment; and
2. Cheque in the sum of \$100 in payment of this filing fee.

If you require any further information to consider this notification, please do not hesitate to contact me.

Yours faithfully,

Sally Glover
Chief Legal & Corporate Affairs Officer
KFC, SOPAC
(email: sally.glover@yum.com)



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)

N97784 Kentucky Fried Chicken Pty Ltd (ACN 000 587 780) (“KFC”)

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

Operator and franchisor of the 'KFC' chain of quick service restaurants in Australia, including free-standing drive through outlets, in-line outlets and food court outlets.

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

Legal Department
Kentucky Fried Chicken Pty Ltd
20 Rodborough Road
Frenchs Forest NSW 2086

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:

- food and beverage ingredients and products;
- food preparation and cooking products and equipment;
- non-food products such as packaging, uniforms, cleaning supplies and chemicals;
- distribution services;
- fit out, upgrade and construction services and associated fixtures and furnishings;
- point of sale and restaurant management systems;
- sales and payment systems;
- quality assurance systems and audits;
- training services; and
- training and recruitment systems.

to be used in the operation of KFC outlets (collectively referred to as **Products**).

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

As a condition of granting a franchise, KFC may, from time to time, require its franchisees to acquire, purchase or lease Products from suppliers approved by KFC, and to order and purchase Products from distributors approved by KFC. KFC may also require parties that supply products or services to the KFC system to commit to various obligations such as external compliance audits, which are provided by third party suppliers nominated by KFC.

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)

KFC franchisees and suppliers and distributors for the KFC system in Australia

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

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

70 franchisees covering 470 franchised KFC outlets

Over 80 suppliers and 3 distributors

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

Similar to the above

- (c) **Where number of persons stated in item 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)

Through experience and research, KFC and its affiliated companies have developed a unique and comprehensive restaurant system for the retailing of a limited menu of uniform and quality food products ("**System**"). The foundation and essence of the System is the adherence by franchisees to standards and policies providing for the uniform operation of all restaurants within the System including serving designated food and beverage products, the use of prescribed equipment and building layout and designs, and strict adherence to designated food and beverage specifications and to prescribed standards of quality, service and cleanliness in restaurant operations.

Adherence to the System provides substantial benefits to franchisees, by reducing the areas of risk associated with operating a business, and providing cost and time savings and other efficiencies. The detailed specification of Products and systems also provides benefits to both consumers and franchisees by ensuring that customers are provided with a consistent retail experience and consistent tasting products of high quality across the KFC system.

By ensuring that KFC franchisees acquire, purchase or lease Products from approved suppliers, KFC is able to provide at least the following public benefits:

- Food and beverage ingredients and products

By requiring franchisees to acquire and stock specified food and beverage ingredients and products from approved suppliers, KFC is able to promote a consistent menu across all KFC outlets and ensure that consumers receive products which are consistent in taste and quality.

If non-specification ingredients were used by franchisees, not only would the finished product not have the required consistent quality, but food safety could be compromised. KFC's supply chain team works with approved suppliers to ensure they have in place the necessary processes for providing safe and high quality ingredients and products to all KFC outlets.

KFC makes available detailed nutritional information to consumers and KFC and its franchisees must also comply with a range of legislative requirements in relation to the provision of information about the nutritional and energy content of their food. KFC helps franchisees comply with these obligations by producing appropriate brochures and menu board information and by providing centralised information on its website. It is only possible to provide accurate and reliable nutritional information if KFC is able to control the ingredients used in the products sold by franchisees.

- Food preparation and cooking products and equipment

KFC develops recipes for KFC menu items in its test kitchens in Australia and overseas and then provides franchisees with processes, guidelines and standards to enable franchisees to reliably and efficiently replicate these menu items in their franchise businesses. This requires KFC to be able to mandate the use of particular food preparation products and equipment. Some of these products are not 'standard' products and are instead tailored for use in KFC outlets. For example, KFC commissions approved suppliers to produce specific items of equipment such as Collectromatic pressure fryers and Henny Penny pressure fryers.

In addition, in developing its recipes and training materials for franchisees, KFC needs to be able to assume the use of consistent cooking equipment (such as ovens, pressure fryers and grill trays) to ensure consistency across all KFC outlets. The use of prescribed cooking products and equipment not only ensures consistency of products across the franchise system, it also enhances food safety and the safety of restaurant staff as KFC's processes detail how to safely and correctly operate the equipment.

- Non-food products such as packaging, uniforms, cleaning supplies and chemicals

Menu items sold by KFC franchisees are delivered in packaging that is designed to have a consistent look and feel across the System and which may be designed to meet specific requirements to enhance the quality of the product; for example the iconic KFC Bucket. By nominating approved suppliers of packaging, KFC is better able to ensure that packaging used by KFC franchisees meets these specifications and is appropriate for its menu products, while also meeting KFC's high food safety and quality standards.

The consistent look and feel across all KFC outlets is also established by KFC specifying a specific uniform and uniform supplier, ensuring that all uniforms meet KFC's specifications and quality requirements and standards.

KFC also requires consistent and high standards of cleaning in its outlets and approves the use of certain cleaning supplies and chemicals that best fit the conditions in KFC outlets to promote food safety and sanitation.

- Distribution Services

KFC appoints approved distributors from whom franchisees purchase the majority of their requirements of particular ingredients and products. The approved distributors are responsible for purchasing the ingredients and products from KFC approved suppliers and for delivering the orders to KFC outlets. The prices paid by the approved distributors to the approved suppliers are negotiated and agreed between KFC and the approved suppliers.

By negotiating distribution services with a limited number of approved distributors, KFC is able to negotiate competitive prices for franchisees and the distributors are able to realise operational efficiencies that would not be possible if franchisees' distribution needs were serviced by multiple distributors operating in parallel. KFC is also able to negotiate improved non-price terms that approved distributors must comply with, such as service levels and quality assurance requirements, resulting in increased control over food safety and quality.

- Fit out, upgrade and construction services and associated fixtures and furnishings

KFC may require franchisees to acquire, purchase or lease various items of approved equipment, fixtures and fittings; for example signage and digital menu boards (together with associated menu board development services), from approved suppliers. In addition, KFC nominates approved contractors, architects, materials and products to be used in the design, fit out, upgrade and construction of KFC outlets. This enables KFC to ensure a consistent customer experience and common look and feel for all KFC outlets. Since approved contractors and materials are reviewed by KFC on an ongoing basis, this also helps ensure that franchisees obtain a high quality fit out from reliable contractors at a reasonable price.

- Point of sale and restaurant management systems

As part of the KFC franchise system, KFC has developed systems for automatic reporting of franchisee sales and other measures of business performance. This simplifies franchisee reporting and enables KFC to better monitor and improve the performance of the franchise system, including by monitoring the success of various menu items, promotions and marketing initiatives as they are implemented across the System.

KFC's systems also integrate closely with franchisees' point of sale systems. This provides a range of benefits including enabling KFC to support franchisees by uploading to franchisees' point of sale systems details of KFC menu items, promotions and special menu items as they are amended from time to time.

KFC can only efficiently support its franchisees if it is able to ensure that franchisees are using consistent point of sale and restaurant management systems that will integrate properly with KFC systems more generally. In

order to use KFC's support services, franchisees are required to acquire and use the KFC nominated point of sale system (currently Advanced Restaurants) and associated hardware and the KFC nominated restaurant management system (currently Macromatix).

- Sales and Payment systems

In order to assist its franchisees to compete effectively in a market in which sales are increasingly made through the use of new technologies, KFC is investing in alternative sales systems. These include the ordering and payment system offered through the KFC Xpress mobile ordering application ('App'). In order to make such App work in a consistent, customer friendly way whilst also efficiently facilitating the automatic processing of payments for orders to franchisees, it is necessary for franchisees to use payment systems nominated by KFC that integrate with KFC's ordering systems. For example, KFC requires franchisees to use a KFC nominated payment gateway system and may require franchisees to accept 'PayPal' or other specific online payment methods for online payments.

- Quality Assurance Systems and Audits

In order to ensure that high quality service, food preparation and safety standards are maintained throughout the System for the benefit of franchisees and consumers, KFC requires its franchisees to participate in various quality assurance and audit programs, some of which are provided by third party suppliers nominated by KFC. Examples of such programs include:

- Programs that assess the performance of a KFC outlet against KFC's operating standards, health and safety and food safety standards, such as the CHAMPS Excellence Review (CER) program and Food Standards Consultation (FSC) audits;
- Customer experience monitoring and measurement programs, such as CHAMPSCheck and Guest Experience Survey (GES);
- Food Safety Audits, which involve an assessment of a KFC outlet against the requirements of the BSI HACCP Criteria and against KFC's internal food safety standards and Australian Food Safety Standards; and
- Employee surveys designed to obtain team member feedback.

KFC also requires the majority of suppliers and distributors to the KFC system (including suppliers that franchisees wish to use) to undergo quality assurance and food safety audits and environmental audits conducted in accordance with the specifications contained in KFC's Supplier Tracking, Assessment and Recognition (STAR) system. The STAR audits are required to be carried out by KFC's approved auditors (currently National Food Safety Consultants). In addition, KFC may require suppliers and distributors to subscribe to its Supplier Management Website, which assists suppliers in obtaining KFC's audit standards and serves as a communication tool between KFC and its suppliers.

These quality assurance and auditing programs are fundamental to KFC's ability to control the quality, consistency, food safety and other standards making up the System.

- Training services.

It is important for new franchisees, consumers and for the KFC system generally that new franchisees receive proper training in the operation of a KFC outlet. KFC is a national franchise system with franchised stores around Australia. KFC does not always have the ability to conveniently offer new franchisees in store training in a company owned facility. KFC has therefore certified a number of experienced franchisees to be able to provide necessary training to new franchisees.

- Training and Recruitment systems

KFC uses an on-line training platform known as Learning Zone which houses a large number of training modules in relation to the operation of KFC outlets and product and hygiene standards. Franchisees are required to acquire appropriate computer equipment to allow them to connect to the Learning Zone website and access the standards and training materials. KFC requires all franchisees to acquire and use this training system as this helps KFC maintain consistency in standards and quality throughout the franchise system for the benefit of franchisees and consumers.

KFC has also established an online recruitment site known as e-Recruitment through which franchisees recruit team members and management staff for their outlets. Use by franchisees of this centralised website has shown to reduce turnover and lead to improved operations results as it helps franchisees target employees that are appropriate for the KFC system.

More generally:

- By mandating the use of key Products in the KFC franchise system, KFC is better able to ensure a consistent customer experience and common look and feel at all KFC outlets. This not only benefits consumers, but strengthens the KFC brand, allowing it to be operated and managed more efficiently and increasing the ability of KFC franchisees to compete effectively in the highly competitive quick service restaurant sector.
- KFC's system of approved Products also ensures that KFC franchisees have access to high quality Products at competitive prices for the Products by negotiating on a group basis. These prices and Products are subject to regular review for competitiveness as each contract comes up for renewal, as described in more detail in section 6 below.

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

Please refer to item 4(a) above.

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)

It is likely that a range of separate product markets will exist for each of the different Products that may be acquired from suppliers approved by KFC. These markets may be regional or national 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)

For the following reasons, KFC does not believe that the notified conduct will give rise to any public detriments:

- KFC uses its bulk purchasing power and reviews all of the purchasing arrangements that are negotiated for Products on an ongoing basis, including through competitive tenders, to ensure that those arrangements provide KFC franchisees with high quality Products at competitive prices. By negotiating on a group basis KFC is also able to negotiate improved non-price terms for franchisees, such as service levels and delivery methods.
- KFC has established a Supply Chain Council (**Council**), which is a body consisting of representatives from KFC together with 3 or 4 representatives from the franchise community. The Council provides input and direction to KFC's supply chain management department to ensure that purchasing services are performed and delivered in the most efficient, productive and beneficial manner for the franchise system. The objective of the Council is to facilitate two way communication between KFC and franchisees regarding purchasing services so that thoughts, wishes and ideas from different parts of the franchise system can be captured and considered.
- KFC has established a separate advertising and marketing company that is jointly controlled by KFC directors and directors elected by KFC franchisees specifically to represent franchisees' interests. This company is consulted broadly in relation to decisions regarding new products and required to approve most marketing plans and expenditures.
- There is a high level of communication and transparency with franchisees concerning KFC's supply chain arrangements, including regular presentations at national and state franchise meetings. There is further disclosure about KFC's supply chain arrangements in the Disclosure Document which KFC is required to prepare and provide to franchisees in accordance with the Franchising Code of Conduct.
- KFC and its franchisees do not account for such a proportion of purchases in any of the various markets for Products that the notified conduct would be capable of generating anti-competitive effects.
- Where KFC receives a rebate or financial benefit from the supply by third parties of goods and services to franchisees, such rebate or financial benefit is shared with franchisees either directly or indirectly.
- Products supplied by KFC's approved suppliers are subject to KFC's strict requirements relating to food quality, quantity, preparation and storage. Ensuring that KFC franchisees acquire Products from suppliers approved by KFC better enables KFC to achieve and promote consistent customer experience at KFC outlets, benefiting not only consumers but also assisting KFC franchisees to compete more effectively in the highly competitive quick service restaurant sector.
- Although KFC nominates approved suppliers, it has also established processes by which a KFC franchisee who wishes to use an alternative supplier can apply for that supplier to be approved. Where it can be shown

that the alternative supplier will meet KFC's required standards and audit requirements and where it is logistically practical to do so, KFC will approve such alternative suppliers.

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

Please refer to item 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:**

Sally Glover
Chief Legal Officer
Kentucky Fried Chicken Pty Ltd
20 Rodborough Road
Frenchs Forest NSW 2086
sally.glover@yum.com
Tel: (02) 9930 3089

Dated: 11 September 2014

Signed on behalf of the applicant



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Sally Glover
Chief Legal Officer, KFC

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 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.