

24 DEC 2013

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)

N97176 Nutritious Foods Franchising Pty Ltd ACN 166 034 171 (**Nutritious Foods**)

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

Nutritious Foods is in the process of developing a chain of '5 Dogs' gourmet hot dog restaurants/take away shops for which it will be the Franchisor (**5 Dogs Franchises**).

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

C/- McInnes Wilson Lawyers

Attn: Mark Woolley

GPO Box 1089

Brisbane QLD 4001

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 the hot dogs and other food and drink ingredients and products (**Products**) to be sold in the course of operating 5 Dogs Franchises.

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

As a condition of granting the Franchise, Nutritious Foods requires its franchisees to acquire the Products from the supplier approved by Nutritious Foods from time to time.

(Refer to direction 4)



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)

The conduct will affect franchisees of Nutritious Foods who operate or will be granted the right to operate a 5 Dogs Franchise (**5 Dogs Franchisees**).

- (b) Number of those persons:

- (i) At present time:

Nil.

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

Not known.

- (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)

Nutritious Foods has developed a franchise system involving a range of products, including gourmet hot dogs whose recipes have been developed by Nutritious Foods Pty Ltd (the owner of the business system for the franchise network) and licensed to Nutritious Foods.

These products are manufactured by the approved suppliers for the network to the standard required by Nutritious Foods at a reasonable cost.

Nutritious Foods maintains that the public benefit resulting from the notified conduct will outweigh any public detriment. Nutritious Foods is able to negotiate competitive prices with the approved suppliers in relation to the Products.

The specification of Products and suppliers ensures that customers are provided with a consistent retail experience and consistent tasting products of high quality across the entire franchise system.

The purpose of the notified conduct is not to substantially lessen competition, but rather to:

1. Ensure consistent quality in goods and a consistent customer experience throughout the 5 Dogs Franchise network;



In order for Nutritious Foods to be able to promote a consistent menu across the 5 Dogs Franchise System and ensure that the products consumers receive are consistent in taste and quality, it is necessary for Nutritious Foods to be able to mandate the use of particular food and drink ingredients and other products from approved suppliers. A consistent customer experience benefits franchisees as part of the Franchise Network as a whole, by ensuring consistency in the reputation of the Franchise among consumers.

2. Promote business efficiency

Nutritious Foods is able to procure high levels of service from its approved suppliers and ensure the approved suppliers meet Nutritious Food's stringent service levels.

5 Dogs Franchisees do not need to be concerned with managing the relationship with approved suppliers, as Nutritious Foods will take on this responsibility. This will allow 5 Dogs Franchisees to focus on operating their business, and allows them to receive the benefits of Nutritious Food's negotiating power.

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

Competitive Prices

By virtue of its size and experience in comparison to its individual franchisees, Nutritious Foods will have greater bargaining power than that of its individual franchisees. Nutritious Foods already has a direct relationship with the Product suppliers which allows it to negotiate better prices than those which would be available to individual 5 Dogs Franchisees.

As Nutritious Foods is able to negotiate prices to be offered to the 5 Dogs franchise network as a whole, it has access to bulk discounts that suppliers are only willing to offer if the volume of supply can be guaranteed.

5 Dogs Franchisees would be unable to use bulk-buying power as leverage in the same way.

Consistent Quality in Products and Customer Experience

Please refer to the comments at Item 1 at 4(a) above.

Promoting Business Efficiency

Please refer to the comments at Item 2 at 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)*

Nutritious Foods submits that the relevant markets include:

1. The wholesale market for the supply of gourmet hot dog products to the fast food service restaurant sector; and
2. the retail market for ready made and take away gourmet hot dogs.

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)

Nutritious Foods believes that the public detriment resulting from the notified conduct is negligible. The affected markets and the detriments which may be experienced in those markets are identified as follows:

5 Dogs Franchisees

1. 5 Dogs Franchisees will be unable to choose between suppliers for their food and drink products.

However, Franchisees may apply to Nutritious Foods for its approval to the Franchisee's use of an alternative supplier. Provided the alternative supplier meets Nutritious Foods standards, Nutritious Foods must not unreasonably withhold its approval.

Non-Approved Suppliers

1. Suppliers of gourmet hot dog ingredients and other products sold in the course of the franchises who are not suppliers of the 5 Dogs Franchise Network will be unable to supply their goods or services to 5 Dogs Franchisees.

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

Nutritious Foods submits that there is little or no public detriment resulting from the notified conduct, and in any case, that the benefits of the notified conduct outweigh any public detriment.

5 Dogs Franchisees will benefit from the terms negotiated between Nutritious Foods and the approved suppliers, including enjoying



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competitive prices and assurance of consistency and quality in products and equipment.

Further, 5 Dogs Franchisees will be able to focus on operating their 5 Dogs franchise businesses rather than investing time and money in negotiating directly with suppliers.

The notified conduct is unlikely to substantially lessen competition, particularly in relation to other suppliers, as the market for suppliers to gourmet hot dog retailers in the fast food sector is highly competitive and in any case, Nutritious Foods is a new franchisor which does not have a substantial degree of power in the relevant market.

Nutritious Foods does not believe that there will be a public detriment to consumers, who will be largely unaffected by the notified conduct except to receive the benefits of the notified conduct by being able to expect and enjoy consistency of experience and a high degree of quality across the whole 5 Dogs Franchise Network.

7. Further information

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

Mark Woolley


McInnes Wilson Lawyers

GPO Box 1089

Brisbane QLD 4001

Dated 18th December 2013

Signed by/on behalf of the applicant



(Signature)

ROBERT DOUALASS HUESTON

(Full Name)

NUTRITIOUS FOODS FRANCHISING PTY LTD

(Organisation)

DIRECTOR

(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.

