

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)

N98075 **Coles Supermarkets Australia Pty Ltd ABN 45 004 189 708 (“Coles”)**

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

Operation of retail supermarkets throughout Australia.

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

c/- Wesfarmers Corporate Solicitors Office
Coles Store Support Centre
Level 6, 800 Toorak Road
Hawthorn East VIC 3123

2. Notified arrangement

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

Coles will from time to time provide discounts for, or free samples of, groceries (“**Coles Discount**”) available at its supermarkets for the purposes of taste testing to selected existing or new members of taste.com.au and flybuys.

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

Coles proposes to supply or offer to supply the Coles Discount to retail customers on the condition that the customer acquires or agrees to acquire (if they have not already):

- a. flybuys membership services from Loyalty Pacific Pty Ltd (“**flybuys services**”); and
- b. taste.com.au membership services from News Limited (“**taste.com.au services**”).

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)
Retail customers of Coles supermarkets in Australia.
- (b) Number of those persons:
- (i) At present time:
Substantially more than 50
- (ii) Estimated within the next year:
(Refer to direction 6)
Substantially more than 50
- (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)
The proposed conduct is likely to result in:
- benefits to consumers being the opportunity to sample and provide feedback on groceries available from Coles for free or a reduced price. It does not compel any customers to receive or purchase groceries; and
 - increased competition in the market for the provision of groceries, arising from the benefits of customer feedback on groceries.
- (b) Facts and evidence relied upon in support of these claims:
Groceries available from Coles supermarkets are attractive and desirable to many retail customers, and the ability to acquire them at a discount or free may be a significant benefit to the individual customer.
Customers can acquire flybuys and taste.com.au services for free, and there are no ongoing fees or any other costs associated with either membership.

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)

The relevant markets are:

- the markets for the provision of groceries in Australia;
- the market for the provision of loyalty services in Australia; and
- the market for the provision of recipe related membership services.

These markets are characterised by strong competition including multiple grocery retailers, Loyalty providers, and online recipe providers.

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)

There is no known detriment to the public as a result of the proposed conduct, and significant public benefit as outlined above.

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

The proposed conduct will provide customers who are flybuys and taste.com.au members with a benefit if they choose to take advantage of the Coles Discount. The proposed conduct will not result in a public detriment because:

- (i) there are no ongoing fees or any other costs associated with flybuys or taste.com.au services;
- (ii) flybuys members are not obliged to purchase any groceries from Coles supermarkets;
- (iii) taste.com.au members are not obliged to purchase any groceries from Coles supermarkets;
- (iv) it will not affect the ability of customers to choose to acquire groceries from other grocery retailers, which there are many;
- (v) it will not affect the ability of customers to choose to acquire loyalty services from other loyalty providers;

- (vi) it will not affect the ability of customers to choose to acquire recipe related membership services from other providers;
- (vii) the general public who are not taste.com.au or flybuys members continue to have access to groceries from Coles supermarkets; and
- (viii) it is only relevant for selected customers who are interested in sampling and providing feedback on grocery products, and the Coles Discounts will be limited in number to various sample groups, and therefore is not expected to be relevant to a large percentage of the population.

7. Further information

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

c/- Brant Charman

Wesfarmers Corporate Solicitors Office

Coles Store Support Centre

800 Toorak Road

Hawthorn East VIC 3123

Telephone (03) 9829 4224

Dated: 23 December 2014

Signed by/on behalf of the applicant



.....
(Signature)

Brant Charman
(Full Name)

Wesfarmers Corporate Solicitors Office
(Organisation)

Legal Counsel
(Position in Organisation)