

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:

N98178 SOTE pty ltd ACN 163 185 064

- (b) Short description of business carried on by that person:

SOTE pty ltd is the franchisor for the brand/system Salts of the Earth. The Salts of the Earth system provides salt therapy rooms where clients come to sit and breathe in salt air. Clients have the option to pay casually or join up to management plans, which allow them unlimited access 7 days a week. SOTE, the franchisor provides to its franchisee's use of intellectual property (including copyright, trademarks and designs) as well as certain methods, procedures, standards and other protocol.

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

David Lindsay
CEO
Salts of the Earth
89 Victoria Ave
Albert Park, VIC 3206

2. Notified arrangement

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

This notice concerns:

- I. The supply to Salts of the Earth franchisees with SOTE intellectual property and information necessary for the operation of the franchise by the franchisees; and
- II. The subscription by Salts of the Earth franchisees to particular software and equipment that have been authorised, and from suppliers that have been approved by SOTE pty ltd.

(b) Description of the conduct or proposed conduct:

The conduct specifically involves the grant of Salts of the Earth franchises to franchisees on the condition that the franchisees purchase equipment and subscribe to software;

- I. That have been authorised by SOTE;
- II. For use in Salts of the Earth centres in Australia; and
- III. From a supplier or suppliers that have been approved by SOTE.

The relevant requirements of the franchisees are set out in the Salts of the Earth franchise agreement.

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:

- Salts of the Earth Franchisees.
- The approved suppliers of software and equipment.

(b) Number of those persons:

(i) At present time:

- 10 franchise Salts of the Earth centres.
- Three authorised suppliers.

(ii) Estimated within the next year:

- 18 franchised Salts of the Earth centres.
- Three authorised suppliers.

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

Franchisees

- 1) Del Sowden, 592 Albany Hwy, Victoria Park WA 6100
- 2) Robyn Garcia, 16 Seymour Street, Traralgon VIC 3844
- 3) Melissa Hadaway, 62 Jackson Crt, Doncaster East VIC 3109
- 4) Andrew Davey, 5/43-45 Treloar Lane, Pakenham VIC 3810
- 5) Sean Ewinger, 277 Glenferrie Rd, Malvern VIC 3144
- 6) Kari McCormack, 473 Hampton St, Hampton, VIC 3188
- 7) Kenneth Kong, 241a Beach St, Frankston VIC 3199
- 8) Colleen Balfour, 1/469 Olive St, Albury NSW 2640
- 9) Jacqueline Cameron, 56 - 58 Watton Street, Werribee, VIC 3030
- 10) David Lindsay Suite 4 767 Mount Alexander Rd, Moonee Ponds, VIC 3039

Suppliers

- 1) Mindbody online appointment software

- 2) Xero online accounting software
- 3) Halomed UAB, Savanoriu pr. 176, LT-03154 Vilnius, Lithuania
 - a. Model - Halo prima 02M

4. **Public benefit claims**

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

There are a number of benefits to franchisees and to the consumers arising from the notified conduct:

Consistency of Approach: Becoming a client at a Salts of the Earth centre allows that client access to all Salts of the Earth centres throughout Australia. In this context it is important that the clients experience in one centre is consistent with and duplicated in all other centres. The approved software and equipment will satisfy the standards required to deliver a controlled therapy ensuring safety for the client.

Software: SOTE have integrated their appointment and point of sale software (MindBody online) with the company's website allowing clients to book appointments online, enquire about management plans and make general enquiries. The clients details are automatically added to the franchisees database reducing administration.

With the use of Xero accounting software, the franchisor expects to build a KPI dashboard in the near future which integrates both Xero and MindBody online to one reporting dashboard further reducing the administration of the franchisee and enabling live reports of the performance of each franchised centre.

Equipment: As Salts of the Earth provide a health related therapy, we need to ensure that franchisees adhere to the correct parameters of which the therapy is provided, ensuring the safety of our clients. The branded Salts of the Earth Halo generators from Halomed have been altered, and customised to suit our business model while operating under the correct parameters.

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):

The market in which the goods and services described are supplied is the market for the supply of accounting software, point of sale and appointment software, and the equipment that supplies salt therapy to our clients.

There are a number of suppliers that provide such software and equipment to salt therapy centres but the approved suppliers are the only suppliers who have been assessed as satisfying the standards and have the ability to customise their software and machines for the Salts of the Earth business model.

While other suppliers do supply substitute software and equipment, SOTE Pty Ltd believes these other suppliers will be only marginally impacted (if impacted at all) by the notified conduct. Salt therapy is a relatively new industry in Australia. There are a number of single owned small businesses practising salt therapy that can be targeted by other suppliers. Market share is unknown yet due to the age of the market.

Some current other salt therapy providers;

- Salt City
- Salt Sanctuary
- Salt Rooms
- Salt Cave
- Salt Haven
- Salt Therapy NQ
- Illawarra Salt Rooms
- Saltuary
- The Salt Spot

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

Franchisees: The notified conduct will remove some choice away from Salts of the Earth franchisees with respect to their choice of software suppliers and equipment supplier, in that they will only be able to purchase the authorised software and equipment from the approved suppliers. Despite this, SOTE submits that the above noted benefits will significantly outweigh any disadvantage. In addition, franchisees do not have to enter into a franchise agreement with SOTE; they may operate their own independent business.

Consumers: SOTE does not consider that consumers will be detrimentally affected by the notified conduct.

Other suppliers: The notified conduct will not allow non-approved software and equipment suppliers to compete for the business of franchisees in the supply of software and equipment for Salts of the Earth centres, however, detrimental impact on suppliers will be minimal given the number of competitors operating salt therapy businesses. Suppliers of software and equipment also have a large number of other markets within which they operate.

7. Further information

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

Name: David Lindsay


E mail: david@saltsoftheearth.com.au

Phone: (03) 9078 5634

Address: 89 Victoria Ave, Albert Park, VIC 3206

Dated: 17/03/15

Signed by/on behalf of the applicant


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(Signature)

David Lindsay

SOTE pty ltd
CEO

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.