

Our Ref: BXS:2012605

29 April 2015

Australian Competition and Consumer Commission
GPO Box 3648
Sydney NSW 2001

By Express Post

Dear Sir/Madam,

FORM G NOTIFICATION – SSJM FRANCHISE GROUP PTY LTD

We refer to the above matter and confirm that we act for SSJM Franchise Group Pty Ltd (A.C.N. 143 592 081) trading as "The Jolly Miller Café" ("**Jolly Miller**").

1. FORM G & ANNEXURE

We **enclose** the following by way of lodgement:

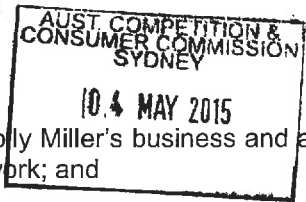
- (a) Form G;
- (b) Annexure to Form G (**Annexure**), including **confidential annexures**; and
- (c) Cheque in the amount of **\$100.00** made payable to the Australian Competition and Consumer Commission for the lodgement fee.

2. REQUEST FOR CONFIDENTIALITY

We note that the enclosed Annexure contains a number of schedules which our client requests be excluded from the public register.

(a) **Approved Suppliers**

- (i) Jolly Miller franchisees will gain access to the Approved Supplier list provided in Schedule 1 to the Annexure.
- (ii) The Approved Suppliers are the only suppliers that Jolly Miller forces its franchisees to use. The reasons for this conduct are more fully set out in the Annexure.
- (iii) Jolly Miller strongly requests that the Approved Suppliers be excluded from the public register on the following basis:
 - (A) the fact of, and details in relation to, the relationships between Jolly Miller and the Approved Suppliers are essential for the commercial viability and success of Jolly Miller and its franchise network;
 - (B) disclosure of the above relationship to the public may provide Jolly Miller's competitors with an insight into the Jolly Miller System, procedures and



business model, thus detrimentally affecting Jolly Miller's business and as a consequence the efficacy of the franchise network; and

- (C) prospective franchisees will be provided with details in relation to the Approved Suppliers upon execution of the Franchise Agreement, after which point they have the benefit of a seven (7) day statutory cooling off period, pursuant to the Franchising Code of Conduct, during which time they can assess Jolly Miller Approved Supplier relationships.

(b) **Franchise Agreement**

- (i) The Franchise Agreement constitutes a significantly valuable element of Jolly Miller's intellectual property and as such should be excluded from the public register.
- (ii) Public dissemination of this document will severely damage Jolly Miller's business and commercial viability on the following basis:
- (A) loss of intellectual property;
- (B) loss of trade secrets;
- (C) use of intellectual property and trade secrets by competitors of Jolly Miller; and
- (D) brand atrophy through misuse and reuse of the intellectual property.
- (iii) The damage to Jolly Miller's business and its franchise network significantly outweigh the benefit of providing these documents to the public.
- (iv) Prospective franchisees of Jolly Miller are provided with copies of the Franchise Agreement and Disclosure Document during the recruitment process, in relation to which process prospective franchisees are afforded various protections via the Franchising Code of Conduct.

Please do not hesitate to contact us if you have any queries about this matter.

Yours faithfully

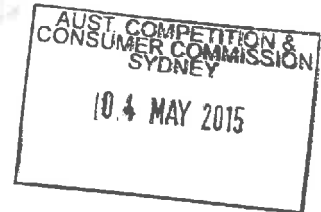
BAYBRIDGE LAWYERS

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Bianca Sevastos

Partner

bianca.sevastos@baybridge.com.au



Form G

Commonwealth of Australia
Competition and Consumer Act 2010 ---- Sub-section 93(1)

**EXCLUSIVE DEALING
NOTIFICATION**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Competition and Consumer Act 2010*, of particulars of conduct of a kind referred to in sub-section 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)

N98255 **SSJM FRANCHISE GROUP PTY LTD (ACN 143 592 081)**

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

The operation of a bakery and café and the retail sale of breads, cakes, pastries, pies and other products to customers in conjunction with the The Jolly Miller Café name, trade mark and certain specified products and services as directed by SSJM Franchise Group Pty Ltd (ACN 143 592 081).

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

**C/- BAYBRIDGE LAWYERS
SUITE 106, LEVEL 1
109 PITT STREET
SYDNEY NSW 2000**

2. Notified arrangement

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

SEE THE ANNEXURE TO FORM G

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

SEE THE ANNEXURE TO FORM G

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)

FRANCHISEES

- (b) Number of those persons;

(i) At present time:

Three (3)

(ii) Estimated within the next year:

(Refer to direction 6)

SSJM FRANCHISE GROUP PTY LTD (ACN 143 592 081) ESTIMATES THAT ALL FRANCHISEES WILL BE AFFECTED BY THE NOTIFIED CONDUCT WITHIN THE NEXT YEAR

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

Trading name of Franchisee	Business address	Business phone number
The Jolly Miller Sunbury	Shop 1-2/2 Brook Street, Sunbury, Vic 3429	03 97463300
The Jolly Miller Fountain Gate Shopping Centre	Kiosk K110, 352 Princess Hwy, Narre Warren, Vic 3805	03 97040014
The Jolly Miller Epping Plaza	Kiosk K34, 571-573 High Street, Epping, Vic 3076	03 84013826

4. Public benefit claims

(a) Arguments in support of notification:
(Refer to direction 7)

SEE THE ANNEXURE TO FORM G

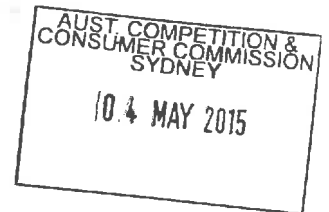
(b) Facts and evidence relied upon in support of these claims:

SEE THE ANNEXURE TO FORM G

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)

SEE THE ANNEXURE TO FORM G



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)

SEE THE ANNEXURE TO FORM G

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

SEE THE ANNEXURE TO FORM G

7. **Further information**

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

**BIANCA SEVASTOS
BAYBRIDGE LAWYERS
106, LEVEL 1
109 PITT STREET
SYDNEY NSW 2000**

**TEL: 02 8413 3682
FAX: 02 9223 4655**

Dated 30/3/15

Signed by/on behalf of the applicant


(Signature)

EDWARD BARBAR
(Full Name)

THE JALY MILLER
(Organisation)

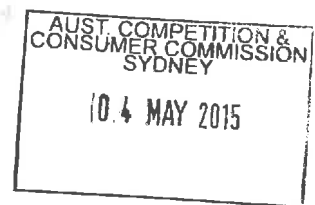
DIRECTOR
(Position in Organisation)

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 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.



Annexure to Form G

Exclusive Dealing Notification - Third Line Forcing

SSJM FRANCHISE GROUP PTY LTD (A.C.N. 143 592 081)

1. INTRODUCTION

SSJM FRANCHISE GROUP PTY LTD (ACN 143 592 081) ("**SSJM**") operates a franchise system ("**Jolly Miller**") involving the operation of a café and bakery and the retail sale of breads, cakes, pastries, pies and other products to customers.

2. BACKGROUND

There are currently approximately four (4) Jolly Miller franchisees in Victoria, Australia.

SSJM will grant its prospective franchisees a non-exclusive licence to operate the Jolly Miller franchise in Australia using Jolly Miller Name, Jolly Miller Trade Mark, Jolly Miller System and other Intellectual Property in accordance with the terms of Jolly Miller franchise agreement ("**Franchise Agreement**"), a draft copy of which is attached to this Annexure as **Confidential Schedule 2**. All relevant terms are defined in **clause 1.1** of the Franchise Agreement.

The Franchise Agreement confers on the franchisee the right to supply a range of Approved Products, to use the Business Name, and to provide the services associated with Jolly Miller System. These include the Intellectual Property and the method and image of conducting Jolly Miller Business. Also included (but not limited to) are manuals, services, products, know-how, experience, expertise, techniques, promotional and management systems owned by SSJM.

3. MARKET DEFINITION

The relevant market likely to be affected by the proposed conduct (see below) is the market for the provision of Jolly Miller products and associated products at the retail level (the "**Market**"). The key direct competitors to Jolly Miller in the Market include:

- Muffin Break;
- Coffee Club;
- Gloria Jeans;
- Starbucks;
- Fergusson Plarre;
- Michel's Patisseries;
- Jamaica Blue;
- BB's café; and
- Degani.

As a proportion of the total retail café and bakery industry, SSJM's market share would be insignificant and, obviously, its share of the general impact on the overall retail café and bakery industry market would even be smaller still.

The expected growth in its small franchised network is not expected to significantly affect this market share in the foreseeable future.

4. DESCRIPTION OF THE CONDUCT OR PROPOSED CONDUCT

(a) The Nominated Suppliers

- (i) In accordance with the Jolly Miller System and **clauses 11.1 to 11.3** of the Franchise Agreement (a copy of which section is attached to this Annexure as **Confidential Schedule 2**), SSJM requires franchisees to use only the suppliers referred to in **Confidential Schedule 1 ("Nominated Suppliers")** for the provision of the products and/or services listed therein.
- (ii) The Nominated Suppliers are in the business of supplying goods and services which are of a quality, consistency and type that SSJM considers essential to the successful operation of a Jolly Miller franchise, as well as the proper maintenance of Jolly Miller brand (refer to **paragraph 5**). SSJM may vary, add or delete any and all Nominated Suppliers from time to time.

(b) The Conduct

Franchisees are required to purchase the approved products ("**Approved Products**") and use approved services ("**Approved Services**") from the Nominated Suppliers only ("**Conduct**").

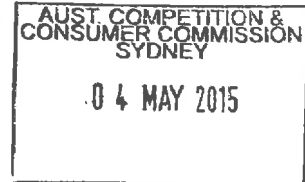
5. PUBLIC BENEFIT AND DETRIMENT

The provision of Jolly Miller products and services is a competitive market with a large number of participants at the retail level. SSJM considers that the requirement to purchase the Approved Products from the Nominated Suppliers and provide the Approved Services is essential to the successful operation of the franchise network, for reasons that include the quality and consistency of the Approved Products and Approved Services, the uniformity of Jolly Miller offering to the market, public safety and café and bakery industry market reputation and brand value.

(a) Public Benefit

SSJM considers that the public benefit to be derived from the Conduct outweighs any public detriment, for the following reasons:

- (i) consistency of the quality and safety of the Approved Products and Approved Services being sold to the public, particularly given the consumable nature of the products;
- (ii) control over the suppliers used for the relevant Approved Products and Approved Services assists SSJM to:
 - (A) secure group buying deals with the Nominated Suppliers, resulting in significantly lower purchase prices for Franchisees, who in turn can supply the Approved Products and the Approved Services to the public at a lower and more competitive price; and
 - (B) control and manage the supply chain to ensure assurance regarding accurate and timely delivery times, quality of products and services and supplier accountability, and
- (iii) uniformity over product and service ranges allows the Jolly Miller franchisees to advertise products and services as a group, thereby avoiding an inconsistent market presence and consumer uncertainty as to the type and quality of Jolly Miller's offering.



(b) Public Detriment

We see no public detriment arising from the Conduct. Prices for both franchisees and customers will be lower with the Conduct than without. If a particular prospective franchisee was in any way concerned about the "restriction" on purchase of supply, there are many other franchise opportunities in the Market that are available to the prospective franchisee, ensuring that this Conduct must remain fair and reasonable if franchisees are to be recruited in this space.

A handwritten signature in blue ink, appearing to read "Eddie".

Director
SSJM Franchising Group Pty Ltd (ACN 143 592 081)
30 March 2015

Schedule 1
Nominated Suppliers

SSJM requires franchisees to use only the Nominated Suppliers referred to in the Operations Manual used in the Jolly Miller franchise network. SSJM may vary, add or delete any and all Nominated Suppliers listed in the Operations Manual from time to time.

As at the date of this Exclusive Dealing Notification – Third Line Forcing application, SSJM has the following Nominated Suppliers for the provision of the products and/or services listed:

Item (Description)	Nominated Supplier
Food services	
Small goods & eggs	
Bottled beverages	
Chicken	
Milk & cream	
Packaging	
Chemicals	
Grease trap	
Rubbish waste	
All display cabinets and stainless steel	
Refrigerated equipment breakdowns	
Pest control	
Printer roll	
It support	
Food safety lables	
Coffee cups & crockery	
Bakery products	