

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)

N99496 Western Australian Sports Centre Trust trading as VenuesWest ("the Trust")

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

The Trust is a body corporate established under section 4 of the Western Australian Sports Centre Trust Act 1986 (WA) ("Trust Act"). The Trust is an agent of the Crown in right of the State of Western Australia. The Trust carries on business under the trading name VenuesWest. The functions of the Trust are set out in section 8 of the Trust Act. The Trust has the powers set out in section 9 of the Trust Act. Pursuant to section 9(2)(b), the Trust has the power "to provide or permit any other persons to provide refreshments for consumption by persons using or visiting the [Trust's venues] Centre and to apply for, hold and dispose of any licence, permit or other authority required in connection with the provision of those refreshments".

The Trust manages Western Australia's major State-owned sporting, entertainment and recreational facilities. The asset portfolio of the Trust consists of 13 facilities with a valuation in excess of \$2 billion. The Trust facilities include:

Perth Arena
HBF Arena
nib Stadium
HBF Stadium
SpeedDome
WA Athletics Stadium
Perth Motorplex
Bendat Basketball Centre
WA Rugby Centre
Champion Lakes Regatta Centre
State Netball Centre

Western Australian Institute of Sport High Performance Centre
Perth Stadium (opening in 2018)

In 2015-16 the commercial operations of the Trust included hosting a wide range of entertainment and sporting events including a number of concert performances by international performers at nib Stadium. nib Stadium is a rectangular stadium capable of hosting high quality large attendance sporting and entertainment events having a capacity of 20,299 seats for sports events and 34,000 attendees for entertainment events.

The Trust uses a number of management models across its portfolio of facilities. nib Stadium operates under a self-managed model where the Trust engages private sector suppliers to provide ticketing, catering, cleaning and security services at the venue.

- (c) *Address in Australia for service of documents on that person:*
Bradley John Prentice, Senior Assistant State Solicitor
State Solicitors Office
Level 28, David Malcolm Justice Centre
28 Barrack Street, Perth WA 6000

2. **Notified arrangement**

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

The exclusive right for a catering services provider to provide catering services at nib Stadium.

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

The exclusive right to provide catering services at nib Stadium on the condition that:

- (i) the appointed caterer must acquire and onsell beverages supplied by preferred suppliers being suppliers with whom the Trust has entered into a sponsorship agreement; and
- (ii) the appointed caterer must not supply products or services that compete with those of the Trust's preferred suppliers without first obtaining the consent of the Trust.

("notified conduct")

(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)

Persons appointed by the Trust to provide catering services at nib Stadium and sponsors nominated by the Trust from time to time.

- (b) *Number of those persons:*
- (i) At present time:
 - 1 caterer
 - 4 sponsors
 - (ii) Estimated within the next year:
(Refer to direction 6)
 - 1 caterer
 - 4 sponsors
- (c) *Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:*
- (i) *Suppliers of catering services:*
 - Spotless Facility Services Pty Ltd
 - Level 3, 350 Queen Street
 - Melbourne VIC 3000
 - (ii) *Sponsors:*
 - Schweppes Australia Pty Ltd
 - Level 5, 111 Cecil Street
 - South Melbourne VIC 3205

 - Treasury Wine Estates Australia Limited
 - 58 Queensbridge Street
 - Southbank VIC 3006

 - Lion Beer Spirits and Wine Pty Limited
 - Level 7, 68 York Street
 - Sydney NSW 2000

 - Diageo Australia Limited
 - 162 Blues Point Road
 - McMahons Point NSW 2060

4. Public benefit claims

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

The notified conduct gives rise to net public benefits.

The commercial operations of the Trust allow the direct subsidy of high performance and community sport in Western Australia.

The Trust supports high performance sport in Western Australia by providing training and competition facilities and direct subsidies to sports on venue and event costs. In 2015-16 high performance athletes trained and competed at Trust venues for over 49,818 hours.

In 2015-16 the Trust delivered \$2.8 million in direct subsidies to sporting bodies including Basketball WA, Rugby WA, Perth Wildcats, Perth Lynx, West Perth Football Club, Perth Glory Football Club, Western Australian Institute of Sport programs and WA Athletics and Little Athletics. The Trust invested more than \$13 million into the Trust's assets in the form of capital projects.

In 2015-16 the Trust serviced over 3.76 million customers at its 12 operational venues with 57.2% of users of the venues being community users.

The Trust's 2016-21 Strategic Plan provides that the intention for the Trust is to maximise the benefits to the State in order to position Perth as a vibrant and contemporary capital city, a necessary part of which is the provision of entertainment and sporting facilities to enable delivery of world class sporting and entertainment experiences to the Western Australian public.

The operations of the Trust are funded from a number of sources including revenue from commercial operations, charges for the use of community facilities by the public and funding from Government. Revenue from the commercial operations of the Trust includes revenue from sponsorships. The revenue received from sponsors goes towards maintaining the level of subsidy that can be provided to community and sporting groups using the facilities of the Trust and reduces the cost burden on Western Australian taxpayers who would otherwise be required to meet the cost of the subsidy.

The revenue received from sponsors also goes toward the costs of maintaining and operating the Trust's facilities. Any part of funding that cannot be generated through sponsorship will be required to be met by postponing improvements in facilities, increased entry prices to venues and events, increased lease and licence costs for tenants and licensees at the venues or increased government funding. The sponsorship arrangements have a direct effect of reducing the cost at which the Western Australian public can enjoy the facilities managed by the Trust. That benefit is a substantial benefit.

The arrangements also benefit the public by assisting the Trust to ensure that beverages served at nib Stadium are of particular quality and standard and represent good value for money ensuring consistently high standards of quality and service.

To maximise the values of sponsorship arrangements to both the Trust and its sponsors, it is important for the Trust to be able to guarantee to sponsors that their products are used exclusively at the Trust's facilities.

Exclusive sponsorship arrangements are common for major sporting and entertainment facilities. The Trust is aware of a number of arrangements similar to those proposed in this notification which are currently in place.

The Trust is subject to the control and direction of the Western Australian Minister for Sport and Recreation. This ensures that the Trust continues to operate to benefit the public in delivering world class sporting and entertainment experiences to the Western Australian public.

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

The Trust relies on its submissions set out in 1 (b) and 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)

The relevant markets in this case are the market for the provision of catering services and the market for the supply of beverages to caterers.

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)

The notified conduct could be viewed as having the effect of limiting the choice of beverage brands that patrons can purchase at nib Stadium. However, if the Trust did not enter into exclusive preferred supplier arrangements at nib Stadium, it is highly likely that the caterer would enter into similar exclusive supply arrangements with beverage suppliers such that the caterer would appoint a single provider for each type of beverage (ie beer, wine and soft drinks). This would result in the same limiting in choice of beverage brands for patrons at nib Stadium. It would also mean that any sponsorship fees would be for the direct benefit of the caterer, not the Western Australian public. Therefore there is unlikely to be any detriment to the public resulting from the notification.

The exclusivity of each sponsor's right is qualified to the extent that the caterer need only purchase products from the sponsor to the extent that the products are supplied under trading terms and conditions which are competitive.

It is submitted that the proposed conduct will not lead to any increase in prices for beverages for persons attending nib Stadium nor are they likely to result in any loss of consumer choice.

The Trust's objective in the notified conduct is to ensure that the public acquires high quality and good value beverages at all events at nib Stadium.

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

See above.

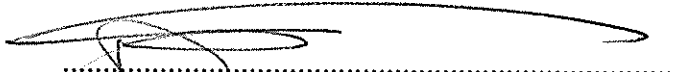
7. **Further information**

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

Bradley John Prentice, Senior Assistant State Solicitor
State Solicitors Office
Level 28, David Malcolm Justice Centre
28 Barrack Street, Perth WA 6000

Dated..... 9 December 2016

Signed by/on behalf of the applicant


.....
(Signature)

BRADLEY JOHN PRENTICE

(Full Name)

STATE SOLICITORS OFFICE (WA)

(Organisation)

SENIOR ASSISTANT STATE SOLICITOR

(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.
2. 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.
3. 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.
4. Describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
5. 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.
6. Describe the business or consumers likely to be affected by the conduct.
7. 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.
8. 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.
9. 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.
10. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.