

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:

N99508 Finn Mergers and Acquisitions Pty Ltd ACN 611 572 644 (hereafter referred to as "FM&A")

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

FM&A is engaged in the business of establishing, developing and granting rights to operate "Finn Mergers and Acquisitions" franchises to provide business brokerage services to Clients through Australia or Internationally, in respect of businesses with an asking price greater than \$2 million (excluding stock but including other assets, goodwill, plant and equipment). In respect of that business, FM&A has developed business procedures and systems together with a distinctive and valuable name, image and reputation, FM&A will enter into franchise agreements with franchisees.

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

4 Bayley Street, Geelong, Victoria 3220

2. Notified arrangement

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

Pursuant to the franchise agreements between FM&A and its future franchisees, the franchisees are required to exclusively use certain authorised products and services from authorised suppliers.

These authorised products and services are an integral part of FM&A's franchising system and are crucial to the success of both FM&A and its franchisees. This notice relates to six distinct authorised products and services.

(i) BOX cloud storage

Franchisees are required to use BOX. BOX is a centralised cloud-based facility where FM&A stores its operations manual and training materials. All franchisees have access to BOX via their own login and password. Using BOX has several important benefits for FM&A and its franchisees. It: (A) allows FM&A to provide all documents and materials to franchisees in a secure

environment; (B) prevents information being lost; (C) protects the intellectual property which is essential to the success of FM&A and its franchisees; and (D) creates a central environment where franchisees can securely share documents and information to help them better collaborate. The cost for franchisees to subscribe to BOX is on a par with similar offerings from competitor providers.

(ii) XERO cloud-based bookkeeping software

Franchisees are required to use XERO. XERO is cloud-based bookkeeping software where franchisees maintain their financial records. Using XERO has several important benefits for FM&A and franchisees. It: (A) ensures franchisees keep appropriate records that are in compliance with their regulatory and contractual obligations; (B) assists them in lodging accurate and timely tax filings; and (C) enables FM&A as franchisor to provide financial benchmarking reports so the franchisees can continually monitor and improve their performance and profitability using FM&A's market knowledge. The cost for franchisees to subscribe to XERO is on a par with similar offerings from competitor providers.

(iii) Virtual Support Unit

Franchisees are required to use Admin Outsourcing Pty Ltd trading as Virtual Support Unit for the provision of some marketing services and some administration services.

(iv) FORS customer relationship management software

Franchisees are required to use the FORS customer relationship management software. FORS is proprietary software developed and customised by FM&A specifically for use by franchisees. FORS keeps appropriate records on customers and also ensures statutory compliance by FM&A. The FORS system is therefore an essential part of the business. Because it is customised, there is no directly equivalent alternative software available for purchase.

(v) Finn Selling System

Franchisees are required to follow the Finn Selling System. The System is a method of selling to clients that is tailored to the industry. The System comprises several steps and processes in a specific format, and is backed by an online "Manual of Documents" and training videos. Franchisees use the system to efficiently manage clients towards successful sales achieved in a legally compliant manner. Usage of the system is essential to the success of franchisees. Because it is customised, there is no directly equivalent alternative system available for purchase.

(vi) Business Marketing Websites

Franchisees are required to pay for and use certain business marketing websites. On behalf of the franchisees, FM&A takes out a head subscription to various websites that act like online classifieds of businesses for sale. Use of these websites is essential, as more than 80% of total new customer enquiries come via these websites. FM&A is uniquely positioned by its expertise and industry oversight to monitor and decide which of these websites are most important to the businesses of the franchisees. By subscribing as a group to these various websites, there is a significant cost-saving for franchisees as

otherwise they would need to subscribe on an individual basis to receive the same level of new client enquiries. Franchisees are provided with a transparent document each month that shows each website subscribed to, the actual cost of each subscription, and the equal division of those total costs between them. FM&A facilitates these subscriptions at no direct cost and does not make a profit on the subscriptions.

(b) Description of the conduct or proposed conduct.

Pursuant to the franchise agreement between FM&A and its franchisees, the franchisees are required to exclusively use the authorised products and services listed in this notification. These authorised products and services are an integral part of FM&A's franchising system and crucial to the success of both FM&A and its franchisees. See section 2(a) for specific information on each authorised product and service and the rationale for why their exclusive use benefits franchisees and the public.

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:

Franchisees of FM&A

Pilot franchisee of FM&A

(b) Number of those persons:

(i) At present time:

1 x pilot franchisee of FM&A

(ii) Estimated within the next year:

20

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

Keats Brydon
306 Mt. Alexander Rd
Ascot Vale VIC 3032

4. Public benefit claims

(a) Arguments in support of notification:

The conduct described in this notification has several broad public benefits including:

(i.) Consistency across the FM&A franchise system, which:

- A. improves the quality of service offered to the public;
- B. makes for more efficient operation and management of the FM&A franchise system because franchisees are relying on the same information and resources;
- C. increases the prospect of franchisees obtaining successful sales, which is for the benefit of clients; and

D. increases the value of the franchisees' own businesses.

- (ii.) More efficient implementation of FM&A's business systems, which are proven systems carefully designed to ensure compliance with onerous legal obligations and which leverage FM&A's substantive industry experience.
- (iii.) More efficient and effective bargaining between the group of franchisees and its suppliers, which reduces overall costs for the franchisees.
- (iv.) Cost and time savings for franchisees as the resources are designed to be franchisee-friendly and franchisees do not need to source and negotiate these resources for themselves.
- (v.) Improved training, support and connectivity for franchisees, as FM&A can directly assist franchisees in their use of the FM&A franchise system and resources. Such support would not be available were franchisees to source and negotiate their own arrangements.

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

Section 4 above contains specific rationales and benefits relevant to this notification.

FM&A has significant industry expertise and has nominated the authorised products and services listed in this notification after due consideration of alternatives and believing these suppliers and their products and services will maximise the prospects of success for it and its franchisees.

FM&A's deep industry expertise and the rationales set out in section 2 and 4(a) of this notification are intended to serve as evidence of the benefits described 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):

(i) BOX cloud storage

Market: Commercial cloud-storage available in Australia.

Substitutes: There are several competing cloud-storage products available.

Rationale: The quality and cost of BOX is on par with similar offerings from competitor providers. FM&A has nominated BOX as it is essential for franchisees to use a single system integrated with FM&A and other franchisees.

(ii) XERO cloud-based bookkeeping software

Market: Commercial cloud-based bookkeeping software in Australia.

Substitutes: There are several competing cloud-based bookkeeping software products available.

Rationale: The quality and cost of XERO is on par with similar offerings from competitor products. FM&A has nominated XERO as it is essential for franchisees to use a single system integrated with FM&A and other franchisees.

(iii) Virtual Support Unit

Market: Admin Outsourcing Pty Ltd, trading as Virtual Support Unit, provides marketing services and administration services specifically for FM&A franchisees in Australia.

Substitutes: There are several competing administration service providers available.

Rationale: The quality of services provided by Admin Outsourcing Pty Ltd, trading as Virtual Support Unit, is consistent and meets the extremely high standard of the Franchisor, thus ensuring the production of quality marketing materials and documentation for FM&A franchisees, and greatly assists the franchisee to maintain compliance with the franchise agreement, and with client confidentiality. The cost of such services is on par with similar offerings from competitor providers. The Virtual Support Unit has access to the confidential intellectual property of the Franchisor, and its staff are trained on how to efficiently execute support services for the FM&A franchisees, therefore providing a cost efficiency. The FM&A franchisee is able to perform the same services in-house, however when choosing to outsource externally, the Franchisor requires them to use this supplier for the reasons mentioned above.

(iv) FORS customer relationship management software

Market: FORS is proprietary software developed and customised by FM&A specifically for use by franchisees. For this reason, it is difficult to determine the scope of its market.

Substitutes: Because it is developed and customised for its specific purpose, there is no direct substitute for FORS. Any off-the-shelf alternative would not include the functionality built into FORS.

(v) Finn Selling System

Market: The Finn Selling System is a proprietary system developed by FM&A specifically for use by franchisees. For this reason, it is difficult to determine the scope of its market.

Substitutes: Because it is developed and customised for its specific purpose, there is no direct substitute for the Finn Selling System.

(vi) Business Marketing Website

Market: Business marketing websites in Australia.

Substitutes: FM&A subscribes to a large number of business marketing websites. FM&A regularly monitors and reassesses which business marketing websites it should subscribe to on behalf of its franchisees.

Rationale: The business marketing websites to which FM&A subscribes is a minimum which FM&A, given its expertise, considers appropriate for the success of its business system. Franchisees are free to subscribe to additional business marketing websites

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:

Any detriment to the public resulting from the conduct described in this notification is likely to be minor. By requiring franchisees to use certain authorised suppliers, products and services when substitutes exist, FM&A may be reducing competition in those markets. However, those markets are incredibly large and the impact of FM&A's conduct is very small. FM&A's conduct is extremely unlikely to affect prices or the quality or availability of other services. FM&A's conduct does prevent franchisees negotiating their own terms of service, but any minor detriment is outweighed by the benefits associated with consistency throughout the FM&A franchise system.

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

Nil

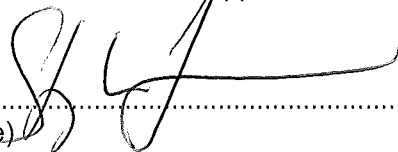
7. Further information

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

Stephen Daniel Finn
4 Bayley Street
Geelong, Victoria 3220
Tel: 0408 276 537

Dated..... 12/12/16

Signed by/on behalf of the applicant

.....
(Signature) 

Stephen Daniel Finn
(Full Name)

Finn Mergers and Acquisitions Pty Ltd ACN 611 572 644
(Organisation)

Director and Chief Executive Officer
(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.