

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)

N98806

The Noodle Box Pty Ltd ACN 078 757 614 (“Noodle Box”)

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

Noodle Box and Wok In A Box is the franchisor of a network of franchisees (“Franchisees”) that operate “The Noodle Box” and “Wok In A Box” restaurants in Australia. Noodle Box and Wok In A Box restaurants specialise in the sale of rice and noodle dishes, stir-fry’s, beverages and related products under the “The Noodle Box” and “Wok In A Box” brands and using Noodle Box’s and Wok In A Box’s intellectual property.

Bodies corporate related to Noodle Box operated restaurant at Devonport (Tasmania).

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

13A/663 Victoria Street, Abbotsford, Victoria 3067.

2. Notified arrangement

(Refer to direction 4)

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

This notification relates to the supply of “beverage Products” being carbonated soft drinks, water, long life and fresh juices, sports drinks, energy drinks, iced teas, long life flavoured milk, post-mix syrup, frozen carbonated beverages, mineral water, spring water, carbonated spring/mineral waters, new age beverages and any other beverages and any other beverages supplied by Schweppes Australia Pty Ltd (A.C.N 004 243 994) (“Schweppes”).

(b) Description of the conduct or proposed conduct:

Noodle Box intends to require all Franchisees to purchase and stock the Products from 1 nominated supplier, being Schweppes or other supplier nominated by Noodle Box from time to time. Schweppes will deliver the Products to the Franchisees, once an order is placed with Schweppes.

The proposed conduct falls within the definition of exclusive dealing in sections 47(6) and (7) of the *Competition and Consumer Act 2010* (Cth) as Noodle Box proposes to:

Supply its services as franchisor on the condition that Franchisees purchase; and

Refuse to supply its services as franchisor if Franchisees do not purchase (or have not agreed to purchase);

the beverage Products from Schweppes (or other supplier nominated by Noodle Box). For the reasons outlined below however, Noodle Box contends that the public benefits resulting from the proposed conduct will far outweigh any public detriment.

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)

All Franchised Business.

(b) Number of those persons:

(i) At present time: 100

(ii) Estimated within the next year: 5
(Refer to direction 6)

(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)

See paragraph 4(b) below.

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

Noodle Box considers that the proposed conduct will provide the following public benefits:

(i) Price:

By requiring all Franchisees to purchase their beverages from one supplier, Noodle Box contends that it will be able to secure competitive purchasing costs for Franchisees. This is because the volume of beverages required by the network provides Noodle Box with the bargaining power to secure competitive prices. Additionally the purchase of beverage Products from Schweppes enables Noodle Box (or other supplier nominated by Noodle Box) to bundle Franchisees' orders into commercial quantities, again consolidating the cost at which the beverage Products will be offered to Franchisees.

Noodle Box intends to periodically investigate alternate suppliers of beverage Products, to ensure that the prices and product offerings of any supplier of beverages nominated or approved by Noodle Box are competitive.

(ii) Efficiency and convenience:

The establishment of perusing and ordering of beverage Products from a supplier will provide Franchisees with an efficient and convenient way to order beverage Products.

The proposed conduct will also relieve Franchisees of the burden of investigating the standards of products produced by suppliers of beverages. That is, Franchisees will be able to order beverage Products in the knowledge that Noodle Box has already investigated the supplier's ability to deliver a high quality, cost effective product that complies with Noodle Box's standards.

(iii) Marketing and Branding:

Noodle Box strives to achieve consistency of offer to all guests being able to hold expectations as to what they can expect to be able to order at a Noodle Box restaurant. This assists to drive repeat business by meeting guest expectations. Noodle Box offering the same beverages from restaurant to restaurant will create and meet this expectation in the guests mind.

Noodle Box assists Franchisees with both National Marketing and Local Area Marketing initiatives. A consistent beverage brand and pricing structure assists with Noodle Box Franchise Support Office servicing marketing requests and initiatives on behalf of the Franchise group. If different beverages are offered, different marketing materials would be required for each restaurant – removing the consistency of the offer and not meeting guest expectations and create higher costs of producing and delivering marketing offers.

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 markets can be reasonably identified as the Australian markets for the supply of beverage Products. Such markets are highly competitive and include a large number of participants.

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)

Refer to paragraph 6(b) below.

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

The proposed conduct will prevent Franchisees from selecting their supplier of beverage Products on the usual commercial basis. However, Noodle Box considers that the efficiencies, price savings and brand protection benefits (as outlined above) far outweigh any such detriment.

Noodle Box does not consider that the proposed conduct will have any adverse effect on consumers. Noodle Box believes that the proposed conduct will enable Franchisees to obtain beverage Products at a price that is competitive, and in a manner that involves little administrative effort. The resultant cost and overhead savings will allow Franchises to operate more profitable businesses, and provide value to their customers.

Noodle Box maintains that effect of the proposed conduct on suppliers of beverage Products will be minimal. This is because the size and competitive nature of the market in which they operate (including large number of suppliers within it) and the relatively small volume of products ordered by Franchisees, means that any impact will be negligible. Noodle Box will also consider alternative suppliers periodically, to ensure that it obtains competitive prices and quality products for its Franchisees.

7. Further information

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

Kristine Pham

Legal Counsel

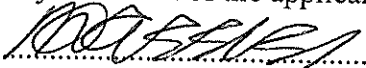
The Noodle Box Franchising (Aust) Pty Ltd

13A/663 Victoria Street

Abbotsford Victoria 3067

Dated 18 December

Signed by/on behalf of the applicant



(Signature)

Maryclare Cassisi

(Full Name)

Noodle Box

(Organisation)

Legal

(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.