

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)

N98940

Waratahs Rugby Pty Ltd ACN 141 172 287 (**Waratahs**).

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

(Refer to direction 3)

Waratahs are a provincial Australian rugby union body, which represent the majority of New South Wales in the rugby competition known as the Super Rugby.

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

Volvo Centre, Allianz Stadium, Driver Avenue, Moore Park NSW 2021.

2. Notified arrangement

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

This notification relates to the competition to be run by the Waratahs known as the "Waratahs Catch to Win and Give Competition" (permit number LTPS/16/01420) (**Competition**).

The Competition will be run at the Waratahs' Super Rugby home games (**Home Games**). To win the Competition, a spectator must:

- (i) be wearing a Waratah's branded t-shirt purchased from a charity at a Home Game; and
- (ii) catch a rugby ball after it has been kicked.

Spectators will be given prizes for winning the Competition. Entry into the Competition is completely voluntary.

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

To enter the Competition, spectators will be required to purchase a Waratahs branded t-shirt (**T-Shirt**) from various charities who have partnered with the Waratahs (**Charities**) at Home Games.

The above conduct falls within the definition of exclusive dealing in sections 47(6) and (7) of the *Competition and Consumer Act 2010* (Cth), as the Waratahs propose to:

- (i) supply its services to permit entry into the Competition by spectators on the condition that spectators acquire the T-Shirts from the Charities; and

- (ii) refuse to provide its services to permit entry into the Competition if spectators do not acquire T-Shirts from the Charities.

However, as outlined below, Waratahs maintains that the public benefits resulting from this conduct outweigh any public detriment.
(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)

Spectators at Home Games.

- (b) **Number of those persons:**

- (i) **At present time:**

In 2015, the average weekly attendance at Home Games was 16,956 spectators.

- (ii) **Estimated within the next year:**

(Refer to direction 6)

In 2015, the average weekly attendance at Home Games was 16,956. There are six Home Games at which the T-Shirts will be sold, with T-Shirts being given away at the first Home Game. Based on this average, the number of affected persons could be greater than 100,000.

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

Not applicable, there are more than 50 spectators.

4. Public benefit claims

- (a) **Arguments in support of notification:**

(Refer to direction 7)

Refer to paragraph 4(b)

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

The purpose of the notified conduct is not to substantially lessen competition in any market. Rather, the notified conduct will provide benefits to spectators and to Charities, as set out below.

Benefits to Individuals

Attendees of the Home Game will be given an opportunity to enter the Competition by purchasing a T-Shirt from a Charity. Cash prizes are available to the winners of the Competition.

At each Home Game, the first winner of the Competition will receive \$500, and the second winner will receive \$1,000 (although there may be instances where there are no winners). At the final Home Game, the winners from each previous Home Games will compete in a play-off (**Play-Off**) for a chance to win a cash prize of \$10,000. The Play-Off will be comprised of rounds of elimination, in which each winner must, when indicated by Waratahs, catch a rugby football on the full that is thrown, launched or kicked by either a machine or person.

Benefits to Charities

The Charities will be entitled to retain part of the proceeds of the sale of the T-Shirts. At this stage, the Waratahs' expect that:

- (i) the T-Shirts will be sold to spectators at Home Games by Charities for \$15.00; and
- (i) of the \$15.00 total consideration for each T-Shirt, \$10.00 will go to the charity and \$5.00 will go to the Waratahs and/or Daikin (a sponsor of the Waratahs) to cover some of the Waratahs' and Daikin's costs in connection with the T-Shirts and running the Competition.

The above amounts are subject to change, but have been listed for the purpose of giving an indicative breakdown of the allocation of the proceeds between the Waratahs and the Charities.

Each prize to be distributed to winners of the Competition at each Home Game, that is, \$500 and \$1000 respectively, will be matched by a corresponding contribution from the Waratahs to a Charity nominated by the respective winner. At the Play-Off, the Waratahs will give \$5,000 to the Play-Off winner's nominated Charity.

Charities in aggregate stand to receive up to \$15,500 from the Competition, plus proceeds received from the sale of the T-Shirts.

Benefits to other service and goods providers

Further, the Competition will foster a good atmosphere at Home Games and will encourage individuals to attend Home Games in person, which in turn benefits other service and goods providers at Home Games, such as food and beverage stores.

Benefits to Competition

Competitors of the Waratahs may be encouraged to offer similar trade promotions, fostering innovation and competition in service offerings and benefits to other charities.

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 most relevant markets for the notified conduct are:

- i. the market of sports spectators;
- ii. the market of people who may wish to enter the Competition;
- iii. the charity market;
- iv. t-shirt suppliers.

Competition in the market for sports spectators in Australia is vigorous, with consumers free to elect another sports team to support if they so choose. The Waratahs compete with a number of other suppliers for sports competitions across various disciplines of sports, including Sydney FC in the A-League; the Sydney Swifts in the Netball Championship; the NSW Blues in the Sheffield Shield and the Sydney Kings in the NBL, among many others.

The Competition is restricted to entrants who have purchased a T-Shirt and who are present at a Home Game.

The T-Shirts will be sold by Charities who have partnered with the Waratahs. These Charities are:

- (i) Beyond Blue;
- (ii) the Australian Indigenous Mentoring Experience;
- (iii) Starlight Children's Foundation;
- (iv) Hearts in Rugby Foundation Australia;
- (v) White Ribbon Australia; and
- (vi) The Australian Rhino Project.

The market for charities in Australia is national and characterised by a high degree of competition and a large number of active participants.

The Waratahs selected the Charities:

- (a) from a list of charities which either approached Waratahs directly or were referred to Waratahs;
- (b) based on those charities which Waratahs' considered would best represent and reflect Waratahs community goals; and
- (c) based on those charities which would suit the theme at each Home Game.

The market for the supply of t-shirts in Australia is also national and characterised by a high degree of competition. The Waratahs submit that the effect of the Competition on competition in the t-shirt market would be negligible, if anything at all.

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).

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

The Waratahs submit that the notified conduct would not result in public detriment, anti-competitive or otherwise, for the following reasons:

- (i) spectators who attend the Home Games are under no obligation to purchase T-Shirts or enter the Competition; and
- (ii) spectators are free to acquire t-shirts or other paraphernalia from other suppliers.

7. Further information

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

Greg Hipwell, Partner, Maddocks
140 William Street, Melbourne Victoria 3000
Phone: (03) 9258 3354
Email: Greg.Hipwell@maddocks.com.au

Dated 1 March 2016

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to read 'Greg Hipwell', with a horizontal line extending to the right from the end of the signature.

Greg Hipwell
Partner
Maddocks

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.