

# 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:

N99158 Treasury Wine Estates Australia Ltd (ABN 78 145 321 320) (TWE)

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

Production, sale and marketing of wine.

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

58 Queensbridge St, Southbank, VIC 3006

## 2. Notified arrangement

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

Acquisition of a discounted Vintec Wine Cellar.

(b) Description of the conduct or proposed conduct:

TWE proposes to run a promotion whereby a person can purchase either \$350 or \$500 of selected TWE wine from a range of retailers, go online to [wineestatespromos.com/serveandcellar](http://wineestatespromos.com/serveandcellar) and pay either \$450 or \$1,500 to receive either a 30 or 110 bottle (respectively) dual zone Vintec Wine Cellar (purchased from TWE).

We propose that the online payment can only be made using Visa, Mastercard or American Express credit or debit card.

Accordingly, the third line forcing conduct is TWE allowing people to purchase the discounted Vintec Wine Cellar on the condition that:

- the customer uses Visa, Mastercard or American Express; and
- the customer purchases TWE wine from selected retailers only.

## 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:

Customers who wish to purchase a discounted Vintec Wine Cellar.

(b) Number of those persons:

(i) At present time:

0

(ii) Estimated within the next year:

We anticipate that <10,000 people will take advantage of the promotion over the 10 week claim period.

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

N/A

#### 4. Public benefit claims

(a) Arguments in support of notification:

**(i) Payment by Visa, Mastercard or American Express**

We wish to collect payments online to simplify the handling of money and administration of the promotion. We understand that there are only four companies who facilitate online card transactions, and we are enabling customers to use cards whose payment is facilitated by three of those companies.

Given the limited scale of the promotion, BPAY or other online payment facilities are not feasible, so credit or debit card payments are necessary to give customers the benefit of buying a Vintec Wine Cellar at a significantly reduced price. We understand this to be very common practice in the marketplace, and see no material detriment in not allowing customers to use a Diner's Club card (which we are excluding as the merchant fees would make the promotion unfeasible).

**(ii) Purchases from selected retailers only**

We wish to allow customers to purchase participating wines at selected retailers only, including Dan Murphy's, Vintage Cellars, Costco, Qantas Epicure, Langtons, Cellarmasters, Penfolds.com and nearly 100 independent licensed liquor retailers across Australia. These retailers cover a very large geographic area and are widely accessible. We understand limiting promotions to selected retailers to be a very common practice in trade promotions, and see no material detriment in not allowing customers to purchase wines from any licensed liquor retailer in Australia in order to participate in this promotion.

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

As 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):

Customers who are not willing or able to participate in the promotion can still purchase a Vintec Wine Cellar, or equivalent products, online or in retail stores at the relevant retail price.

**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:

**(i) Payment by Visa, Mastercard or American Express**

We do not believe there would be any material public detriment.

As set out above, this is a common commercial restriction for online payment gateways. While consumers cannot enter the promotion using their Diner's Club card, we do not expect there are many people whose sole debit or credit card is a Diner's Club card and therefore see no detriment to the public in general.

**(ii) Purchases from selected retailers only**

As also set out above, this is a common commercial restriction for trade promotions. Including retailers such as Dan Murphy's, Vintage Cellars, Costco, Qantas Epicure, Langtons, Cellarmasters, Penfolds.com and nearly 100 independent licensed liquor retailers who cover a large geographical area should ensure most customers will have a participating store in their local area. Customers who do not have access to one of the participating stores in their local area can go online to purchase participating TWE wine from a number of these retailers who deliver to both metropolitan and country areas. We therefore see no detriment to the public in general.

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

N/A

**7. Further information**

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

Mimosa Rizzo

Legal Counsel

Treasury Wine Estates Australia Ltd

58 Queensbridge Street, Southbank VIC 3006

(03) 8533 3181

Dated.....16 June 2016.....

Signed by/on behalf of the applicant

  
.....

(Signature)

MIMOSA RIZZO  
.....

(Full Name)

TREASURY WINE ESTATES AUSTRALIA LTD  
.....

(Organisation)

LEGAL COUNSEL  
.....

(Position in Organisation)