

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:

N100028 Naked Wines Australia Pty Ltd (ACN: 154 887 233) (NWA).

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

NWA operates an online wine sales business.

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

c/o- Surry Partners Lawyers
Level 1, 483 Riley Street
Surry Hills NSW 2010

2. Notified arrangement

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

Please refer to the submission in support of the notification.

(b) Description of the conduct or proposed conduct:

Please refer to the submission in support of the notification.

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)

Members of the public who wish to take advantage of the **NWA Discount Offer**.

(b) Number of those persons:

(i) At present time:

Nil.

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

500.

- (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)

Please refer to the submission in support of the notification.

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

Please refer to the submission in support of the notification.

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)

Please refer to the submission in support of the notification.

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)

Please refer to the submission in support of the notification.

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

Please refer to the submission in support of the notification.

7. Further information

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

Peter English
Surry Partners Lawyers
Level 1, 483 Riley Street
Surry Hills NSW 2010

Telephone: (02) 9318 6411

Fax: (02) 9318 6499

Email: peter.english@surrypartners.com.au

Dated 27 October 2017

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to read 'Peter English', written over a horizontal dotted line.

(Signature)

Peter English

(Full Name)

Surry Partners Lawyers

(Organisation)

Director

(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.

Notification of Exclusive Dealing

Competition and Consumer Act 2010 — subsection 93 (1)

Submission in Support

Naked Wines Pty Ltd

ACN: 154 887 233

c/- Surry Partners Lawyers
Level 1, 483 Riley St
Surry Hills NSW 2010

27 October 2017

1. Introduction

This submission is made in support of a Notification of Exclusive Dealing lodged by Naked Wines Australia Pty Ltd (**NWA**).

2. Background

NWA is an online retailer of wine. It provides wine (**NWA Goods**) delivery and subscription services (**NWA Services**).

Menulog Pty Ltd (**Menulog**) operates an online food and beverage ordering e-commerce platform (**Menulog Platform**). Through the Menulog Platform, Menulog provides services to consumers that facilitate the ordering and delivery of food and beverages.

NWA proposes to, for a limited time, provide discount vouchers to customers of Menulog, as an incentive for those customers to:

- (a) purchase goods and services through the Menulog Platform; and
- (b) purchase NWA Goods and NWA Services.

(**NWA Discount Offer**).

3. Conduct

3.1 Description

Through the NWA Discount Offer, NWA proposes to supply, or offer to supply NWA Goods and NWA Services with a discount on the condition that the person to whom NWA supplies or offers to supply NWA Goods or NWA Services has acquired goods or services from Menulog.

3.2 Rationale

The purpose of the NWA Discount Offer is to promote the NWA Goods and NWA Services to Menulog customers, and to attract customers to NWA who might otherwise not have become NWA customers.

Submission in support of Notification of Exclusive Dealing

Naked Wines Pty Ltd

4. Markets

4.1 Markets affected

- (a) The market for online retail sale of wine in Australia.
- (b) The market for online food delivery services.

4.2 Description of markets

The market for online retail sale of wine in Australia is highly competitive. There are numerous online wine/liquor retailers, operating under packaged liquor licences throughout Australia. Online wine retailers include NWA, Vinomofo, Craka Wines, Cellarmasters, The Wine Gallery, Secret Bottle, and Wine Direct.

Similarly, the online food delivery service market is highly competitive. Online food delivery service providers include Menulog, Deliveroo, UberEATS, EatNow, and Foodora.

5. Consumer benefits and detriment

5.1 Public effect

NWA submits that the public benefit likely to result from the NWA Discount Offer outweighs any likely detriment to the public.

5.2 Benefits

- (a) Competition

The NWA Discount Offer would have the effect of promoting competition in the relevant markets, by encouraging other providers of competing goods and services to offer similar competitive value.

NWA notes that similar discount schemes have previously been offered by NWA competitors, including by Vinomofo (providing a discount to customers of iSubscribe), and by Cellarmasters (providing a discount to customers of Citibank). The NWA Discount Offer is a commercial response to such offers in a competitive marketplace.

- (b) Consumers

The NWA Discount Offer will provide a clear benefit to consumers who are customers of Menulog. It permits Menulog customers to purchase NWA Goods and NWA Services with a discount they would not otherwise receive. There will be no obligation placed on Menulog Customers to acquire NWA Goods or NWA Services.

5.3 Detriment

The NWA Discount Offer would not result in any public detriment, including any anti-competitive detriment, for the following reasons:

Submission in support of Notification of Exclusive Dealing

Naked Wines Pty Ltd

- (a) Consumers are free to acquire NWA Goods and NWA Services without any obligation to acquire goods or services from Menulog.
- (b) Consumers are free to acquire goods and services from Menulog without any obligation to acquire NWA Goods or NWA Services.
- (c) Competitors to both NWA and Menulog are free to offer schemes similar to the NWA Discount Offer to their customers, as a commercial response in a competitive marketplace.
- (d) The online retail wine sales market is highly competitive, as is the online food and beverage ordering and delivery market. Consumers have a wide range of suppliers available to them, and can readily switch between suppliers with ease. Competition in both markets involves:
 - (i) differentiation in the usability and features of online platforms;
 - (ii) availability of information about available goods and services; and
 - (iii) customer service and support.

The provision of discount offers, such as that proposed by the NWA Discount Offer, is yet another competitive dimension of both markets.

NWA therefore submits that the conduct described in this notification would have no detrimental effect on competition in the relevant markets.