

## 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)*

N100053 Stella Rossa Franchising (AUST) Pty Ltd (ACN 144 979 368) acting in its capacity as nominee for the Partnership between Schultz Asset Holdings Pty Ltd (ACN 144 979 073) as trustee for Schultz Asset Management Trust (ABN 12 604 017 435) and Cronin Asset Holdings Pty Ltd (ACN 144 978 825) as trustee for Cronin Asset Management Trust (ABN 61 435 506 977) (SRF)

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

SRF is the Franchisor of the 'Stella Rossa' Espresso Bar franchise system, specialising in premium specialty espresso coffee, pizza, gelati, gourmet breads and fillings, pastries, cakes, full service meals, hot and cold beverages and associated products. SRF is a related entity of Stella Rossa Pty Ltd (ACN 136 355 256) (SR) which owns trade marks and intellectual property relevant to the SRF franchise system. The ownership of, and the right to use, the aforesaid intellectual property is the subject of an agreement between SRF and SR, the terms of which are confidential.

SRF has the right or licence to operate Stella Rossa, use the Stella Rossa brand and to grant franchises to any other person or company (**Franchisee**). The Stella Rossa system incorporates intellectual property, including but not limited to trade marks, logos, business names, copyrighted materials, imagery, store plans and concepts, systems, recipes, manuals, trade secrets, know-how and other procedures.

As at 6 October 2017 there are 31 SRF outlets in Australia. Each of these stores is owned and operated by Franchisee (**Franchised Operations**) under a franchise agreement (**Franchise Agreement**).

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

Unit 2, 321 Kelvin Grove Road, Kelvin Grove QLD 4059.

### 2. Notified arrangement

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

**Approved Products and Services**

This notification relates to the purchase of products and services approved or nominated, or which may be approved or nominated, by SRF, including:

- (a) certain consumable and food products (eg pastries, cakes, specialty filled gourmet breads, pizza products, including manufactured and pre-packaged products) (**Food Products**);
- (b) certain condiments, sugars, sauces, animal and dairy products, seasonings, flours and other ingredients necessary to make the Food Products (**Ingredients**);
- (c) beverages such as coffee beans, teas, drinking chocolates, chai, syrups, toppings, milk, juice, bottled waters, softdrinks and other ingredients used in the preparation of hot and cold beverage products (**Beverage Products**);
- (d) packaging, cartons, boxes, cups, lids, napkins, cutlery, utensils, merchandise and promotional products and other items of packaging and cutlery used by SRF (**Packaging**);
- (e) point of sale and computer systems, software, retail and business management software / systems, web based ordering and payment systems, loyalty or reward systems, time and attendance software, HRMS systems software, accounting software, marketing software, auditing and compliance systems and other related information technology systems as nominated by SRF from time to time (**Business Systems**);
- (f) services for the provisioning of warehouse and distribution of Beverage Products, Packaging and Ingredients;
- (g) equipment, plant, machinery, fixtures, fittings and finishes used in the operation of the Franchised Operation, including the preparation or display for sale of the Food Products and or Beverage Products (**Equipment**);
- (h) marketing material design and print ordering systems, merchandising, point of sale, branding services and associated software systems including customer loyalty;
- (i) training services provided by SRF or its nominated supplier;
- (j) centralised banking facilities to facilitate customer payment processing, including EFTPOS and or 'Tap and Go' systems;
- (k) uniforms; and

(l) a lease, sublease or licence in respect of the occupation of a premises from which a Franchised Operation is, or is to be, conducted,

(collectively, the **Approved Products and Services**) from specified third party suppliers.

### **Approved Suppliers**

SRF has identified a number of suppliers whom have been approved or nominated by SRF (**Approved Suppliers**) that can provide the Approved Products and Services identified above to the standards implemented by SRF, cost effectively and reasonably. The Approved Suppliers as at the date of this notice are listed in Appendix B (to be kept confidential). SRF believes that the Approved Products and Services best meet the requirements of the SRF network and that the nominated suppliers are best suited to provide such Approved Products and Services.

Franchisees may also be required to acquire certain Approved Products and services from SRF, or associates of SRF, or from an approved supplier in which SRF or an associate of SRF may have interest. In the future, Franchisees may also be required to obtain certain Approved Products and Services from a central manufacturing site.

Franchisees may also be required to enter into a lease, sublease or licence with SRF or an associate in relation to the occupation of a premise from which a Franchise Operation is, or is to be, operated.

- (b) Description of the conduct or proposed conduct:  
(Refer to direction 4)

### **SRF brand and system**

The café and specialty coffee industry in Australia is highly competitive, and new entrants, whether providing coffee products or otherwise, require an advantage in order to succeed. The franchise system operated by SRF is designed to provide such an advantage and maximise the Franchised Operations' potential in a crowded market. This is achieved through:

- (a) outlets maintaining a uniform product range which delivers Food Products and Beverage Products meeting the highest standards;
- (b) outlets being operated in such a manner so as to deliver a consistent customer experience including:
  - a. consistent operational methods; and
  - b. consistent form and quality of fit out to maximise the café experience;
- (c) sound, strategic management of the brand image and franchise system ensuring the ongoing improvement of the intellectual property; and

- (d) outlets maintaining uniform use of business systems to achieve optimal business practice.

It is essential to the long term benefit and profitability of the SRF franchise and each Franchisee's business that these elements are maintained. If not, the underlying value of the brand for all parties will slowly be lost in the minds of consumers.

### **Franchisees have contractual obligations**

All SRF Franchisees have obligations under their respective Franchise Agreements in regarding Approved Products and Services. Franchisees must purchase goods through the Approved Suppliers in order to ensure consistency and the quality of the Approved Products and Services for their Franchised Operation.

Franchisees also have obligations to:

- (a) maintain uniformity and consistently high standards in relation to all Equipment; and
- (b) install and maintain specific point of sale software and hardware; and
- (c) use approved packaging.

In exceptional circumstances where authorised by SRF, SRF may agree to lease, sublease or licence premises for the Franchised Operations directly with the Franchisee.

Franchisees may source Approved Products and Services from alternative suppliers where they are unable to source these from Approved Suppliers for various reasons, with the consent of SRF.

The relevant clauses of the standard Franchise Agreement that relate to the notified conduct are set out in Annexure A (and are to be kept confidential).

### **Notified conduct**

SRF proposes to require its Franchisees to acquire the Approved Products and Services (as detailed above in section 2(a)) from Approved Suppliers.

In exceptional cases, where SRF will directly grant or renew a lease, sublease or licence to a Franchisee, SRF proposes to require the Franchisees to comply with terms and conditions of the Franchise Agreement, including as to the acquisition of the Approved Products and Services from Approved Suppliers.

By appointing Approved Suppliers, SRF seeks to:

- (a) leverage SRF's network for the purposes of negotiating better than market pricing for Approved Products and Services;



- (b) maintain SRF's unique selling proposition as opposed to its market competitors;
- (c) ensure the protection of SRF's intellectual property (including proprietary recipes for Food Products and Beverage Products);
- (d) ensure consistency in the product and service type offered to all Franchisees and therefore by all Franchisees to the consumer;
- (e) ensure consistency in the high quality product offered to all Franchisees and therefore by all Franchisees to consumers as a result of strict quality checks and quality control measures of Approved Suppliers;
- (f) ensure confidence in compliance with food safety, food handling and other food of health regulations as a result of the consistency;
- (g) ensure consistency in the delivery of Approved Products and Services and competitive pricing of Approved Products and Services for both Franchisees and end consumers;
- (h) ensure consistency in the nature and quality of the fit out of the Franchised Operations across Australia to both maximise the retail experience for Franchisees and consumers and ensure compliance with workplace requirements;
- (i) ensure consistency in the services provided to customers of Franchised Operations (including the provision of information in connection with Food Products and Beverage Products, such as nutritional information);
- (j) facilitate improved efficiencies and business efficacy at the franchisor and Franchised Operation level; and
- (k) ensure confidence in compliance with relevant legislative requirements imposed on Australian businesses in the café industry.

***Competition and Consumer Act 2010 (Cth) implications***

The notified conduct potentially falls within the definition of exclusive dealing in sections 47(6) and (7) of the *Competition and Consumer Act 2010 (Cth) (CCA)*, as SRF proposes to:

- (a) supply its services as franchisor/licensor on the condition that the Franchisee acquires; and
- (b) refuse to supply its services as franchisor/licensor if the Franchisee does not acquire (or has not agreed to acquire),

the Approved Products and Services set out in section 2(a) above from the Approved Suppliers.



Contained at Annexure C (to be kept confidential)

### **Approved Suppliers**

The details of each Approved Supplier are contained at Annexure B (to be kept confidential). SRF anticipates that it may appoint further Approved Suppliers in the future.

### **Broad wholesale/retail market**

There are more than 50 participants in the broad wholesale/retail market for the sale and supply of the Approved Products and Services. Accordingly, details of each participant have not been included.

## **4. Public benefit claims**

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

*(Refer to direction 7)*

The purpose of the notified conduct is not to substantially lessen competition. Rather, the notified conduct will enhance the capacity of Franchisees, as small businesses, to compete with larger business and other competitors. This enhanced capacity is especially important in a market where there is intense competition, particularly from large coffee chains and competing specialty café based franchise networks (such as Gloria Jeans, McCafe, The Coffee Club, Hudsons, Jamaica Blue, Muffin Break and Starbucks).

The notified arrangement will be likely to have the following benefits for Franchisees and end consumers:

- (a) Franchisees will have access to Approved Products and Services at competitive prices due to the established supply relationships which allow Franchisees to offer favourable prices to the end consumer;
- (b) the notified conduct is likely to foster business efficiency as Franchisees are:
  - (i) assured of access to a range of Approved Products and Services of a consistent standard which gives them more time to focus on operating their business;
  - (ii) afforded greater certainty in connection with input costs which fosters improved business planning;
  - (iii) afforded access to improved point of sale equipment incorporating increased capability/functionality which facilitates benchmarking and greater access to information, improved decision making processes (including in relation to stock ordering and wastage) and reduced risk of fraud;
- (c) the notified conduct gives SRF more bargaining power when negotiating prices with suppliers which will have a flow-on effect to Franchisees and the end consumer;
- (d) the notified conduct allows SRF to focus on controlling quality which ensures that end consumers are provided with Food Products and Beverage Products of a consistent standard that meet the promise of







- (h) The notified conduct not only seeks to ensure the quality of the final product produced by a Franchised Operation but also seeks to ensure the quality of the Franchised Operation itself, by ensuring that Franchisees are provided with reputable providers for goods and services.
- (i) It is of the utmost importance to SRF that all Franchisees comply with all food, health and safety regulations when preparing food items for sale in the Franchised Operation. By requiring that Franchisees use certain Approved Products and Services, SRF can better manage Franchisees compliance with its stringent standards.
- (j) By requiring that Franchisees purchase certain products and services from Approved Suppliers, SRF is helping to ensure that the value of Franchisees and Franchised Operations is maintained by ensuring that the SRF's network as a whole provides a consistent and high quality Food Product and Beverage Product. This means that customers will associate the SRF's brand with high quality Food Products and Beverage Products and purchase these Food Products and Beverage Products from multiple Franchised Operations.
- (k) The notified conduct will also assist SRF and Franchisees to maximise the benefits derived, or to be derived, from marketing. It will help to avoid any adverse publicity, action by third parties or relevant governmental authorities or other adverse ramifications where Franchisees do not comply with SRF's requirements for high quality and consistency of image.

#### **Fees and benefits**

SRF negotiates and SRF and/or Franchisees are entitled to or may become entitled to receive receives fees and benefits (including the benefit of wholesale supply prices, volume incentives, and financial benefits, reimbursements of costs, licence fees and rebates and/or the use of plant and equipment) from the Approved Suppliers in relation to Approved Products and Services supplied to Franchisees. The nature and amount of the fees and benefits vary depending on the commercial arrangements between SRF and the Approved Suppliers. The fees and benefits are not an important source of funding for the SRF's franchise network. Although not directly shared with Franchisees, the benefits are used by SRF to cover a range of costs, which ultimately benefit SRF and its Franchisees. The benefits can be used:

- (a) to fund infrastructure growth, IT improvements and to cover operational costs associated with SRF which benefit the SRF franchise network as a whole;



- (a) cost savings in the management of the Approved Supplier's business; and
- (b) increased business efficiency which gives them more time to focus on running their businesses, planning future production and innovative strategies; and
- (c) promoting competition among Approved Suppliers.

**5. Market definition**

- (a) **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)*

SRF submits that the relevant markets are characterised by a high degree of competition and by a large number of active and meaningful participants.

The markets can reasonably be identified as:

- (a) the broad retail and wholesale markets for the sale of the Approved Products and Services in Australia; and
- (b) the retail and wholesale markets for the sale of each of the above Approved Products and Services in isolation in Australia.

Each of the above markets is characterised by a relatively large number of participants at the relevant wholesale and retail levels. In some cases, the competitors in the market may often be large corporations or large franchise chains, such as Gloria Jeans, McCafe, The Coffee Club, Hudsons, Jamaica Blue, Muffin Break and Starbucks. In addition to this, there are independently owned coffee stores supported by Roasters.

Franchisees may apply for consent to acquire products or services from alternative suppliers to the Approved Suppliers, provided they meet the SRF's specifications and such products or services are unavailable from the Approved Suppliers.

**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)*

The notified conduct may have the following detrimental effect:



- (a) the notified conduct prevents Franchisees from selecting between suppliers on the normal commercial basis of product or service price and quality; and
- (b) suppliers that are not nominated, approved or licensed by SRF will not have access to SRF's Franchisees as customers.

However, the notified conduct is unlikely to have any detrimental effect on end consumers as they will not be restricted in the products they can purchase from SRF's Franchisees. The core menu for the Franchised Operations would likely remain the same despite the chosen Approved Suppliers.

SRF does not believe that there is any substantial public detriment due to the the notified conduct. Any anti-competitive effects on suppliers of the Approved Products and Services will be minimal due to the number of potential purchasers of their products and services, as the number of cafés and takeaway outlets, whether franchises, corporate stores or independently owned is immense. Further, the Franchise Agreement provides scope for a Franchisee to request that products or suppliers that are not part of the Approved Products and Services or Approved Suppliers be approved by SRF for use in the Franchisee's business, if so needed.

The anti-competitive effect of this arrangement on the end consumer is negligible, as it will have little to no impact on the consumer.

SRF contends that the notified conduct will have a negligible effect on competition within the relevant markets and that the public benefits resulting from the notified conduct outweigh any public detriments caused by the conduct.

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

The public detriments that may flow from the notified conduct are discussed below. However, SRF contends that any detriment is negligible, and is far outweighed by the public benefits outlined above.

**Franchisees**

The notified conduct may prevent Franchisees from selecting between suppliers on the normal commercial basis of product quality and price. Franchisees may also be required to acquire Approved Products and Services from SRF, its associates or from a supplier in which SRF or an associate of SRF may have an ownership interest.

However, as specified in Annexure A (to be kept confidential), the Franchise Agreement provides a mechanism for Franchisees to seek



range of similar Food Products and Beverage Products in the relevant retail markets (e.g. cafes, coffee shops and other hot & cold food or beverage outlets etc.).

### **Suppliers**

The wholesale suppliers that are not Approved Suppliers will not have access to Franchisees, unless they are nominated by a particular Franchisee to provide non-approved products and meet the specifications outlined by SRF.

However, the anti-competitive effect on suppliers who do not have access to Franchisees will be insignificant given the number of cafés, restaurants and takeaway outlets in Australia to which such suppliers may sell their products. In any event, SRF's regularly monitors and benchmarks Approved Supplier pricing and undertakes tender processes where significant business opportunities are available, i.e. SRF adds to and changes its Approved Suppliers, so suppliers who are not currently on the list may be in the future, depending on whether they meet SRF's standards and specifications.

The notified conduct should only further promote competition between suppliers as they compete for approved supplier status and improve standards among industry suppliers generally.

## **7. Further information**

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

Darren Schultz

Director

Stella Rossa Franchising Pty Ltd

Unit 2, 321 Kelvin Grove Road, Kelvin Grove QLD 4059 Telephone: (07) 3106 5810

Email: [darren@stellarossahq.com.au](mailto:darren@stellarossahq.com.au)

Dated 9.10.2017

Signed by/on behalf of the applicant

(Signature)

DARREN JOHN SCHULTZ

(Full Name)

STELLAROSSA FRANCHISING (AUST) PTY LTD

(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 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.