

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:

N99522
N99523

Boost Juice Franchises Pty Ltd ACN 096 966 193
Boost Juice Pty Ltd ACN 092 165 681
(collectively "**Boost Juice**")

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

Boost Juice Holdings Pty Ltd ACN 102 379 591 owns the intellectual property rights related to the Boost Juice business, system and brand.

Boost Juice Holdings Pty Ltd has granted Boost Juice a licence to use, and the right to licence franchisees to use, its intellectual property for the purpose of establishing and operating Boost Juice stores, including mobile businesses.

Boost Juice is the franchisor of a network of franchisees who operate retail businesses in Australia involving:

- (i) the preparation and sale of smoothies, juices and food;
and
- (ii) sale of pre-packaged products, beverages and merchandise

under the Boost Juice system and brand.

Boost Juice also operates a number of company-owned stores.

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

Attention: Mr Ceri Clark, General Counsel
Retail Zoo Pty Ltd ACN 141 218 206
Level 1, 1341 Dandenong Road, Chadstone, Victoria, 3148

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 requirement for Boost Juice franchisees to acquire and supply or use:

1. Key ingredients that are necessary to make the products sold from the Boost Juice business ("**key ingredients**");
2. Pre-packaged products, including food and beverages, that are sold from the Boost Juice business ("**pre-packaged products**");
3. Merchandise;
4. Cups, lids, containers, trays, boxes, cartons, bags, napkins and other items of packaging used in the Boost Juice business ("**packaging**");
5. Cleaning products and supplies;
6. Uniforms;
7. Stationery supplies;
8. Marketing supplies and collateral;
9. Fitout, signage, equipment, small wares and utensils used in the conduct of the Boost Juice business ("**fitout and equipment**") including installation of the fitout and equipment;
10. Fit-out upgrade and construction services;
11. Point of sale systems, laptops, printers, modems, merchant facilities, internet and telephone services, IT support, ordering systems, mobile applications, business management and information tools, security systems and other computer hardware and software and communication systems necessary for the conduct of the Boost Juice business ("**information technology and**

communication systems") including installation of information technology and communication systems;

12. Quality assurance systems and audits;
13. Training services;
14. Equipment maintenance; and
15. Insurance,

from Boost Juice or third party suppliers who have been approved by Boost Juice ("**Approved Suppliers**"). The products and equipment set out above change from time to time and the Approved Suppliers change from time to time.

(b) Description of the conduct or proposed conduct:

Boost Juice grants franchises and supplies its services as franchisor to the Boost Juice network and Boost Juice franchisees on the condition that franchisees:

- (i) strictly adhere to the comprehensive business format prescribed by Boost Juice for the operation of the business (the Boost Juice "**system**");
- (ii) sell products specified by Boost Juice from time to time and not sell other products without receiving Boost Juice's prior written approval; and
- (iii) purchase and use key ingredients, pre-packaged products, merchandise, packaging, cleaning products and supplies, stationery, marketing collateral, uniforms, fitout and equipment, fit-out upgrade and construction services, information technology and communication systems, quality assurance systems and audits, training services, equipment maintenance services, insurance and any other goods and services listed under item 2 (a) above ("**key products**") from Approved Suppliers. Refer to Appendix A for details of current key products and Approved Suppliers. It is anticipated that these will change from time to time.

Boost Juice discloses information to franchisees and prospective franchisees in its Disclosure Document about the restrictions that apply to the goods and services a franchisee may acquire or supply in the course of its business. To satisfy its obligations under the *Franchising Code of Conduct*, Boost Juice also

discloses whether Boost Juice or an associate of Boost Juice has an ownership interest in any Approved Supplier, whether Boost Juice or an associate of Boost Juice receives a rebate or some other financial benefit from the supply of goods and services to franchisees, and whether those rebates or financial benefits are shared directly or indirectly with franchisees.

If a franchisee wishes to acquire key products from a non-approved supplier, they must submit samples and other relevant details relating to quality, supply and service standards as specified by Boost Juice to Boost Juice for its consideration and determination of whether that supplier can be approved. Any alternative supplier is required to satisfy Boost Juice's stringent quality, supply and service standards in order to be approved as a supplier to a Boost Juice franchisee.

While Boost Juice acknowledges that the notified conduct may constitute exclusive dealing within the meaning of sections 47(6)-(7) of the *Competition and Consumer Act 2010 (Cth)*, it maintains that the purpose of the notified conduct is not to substantially lessen competition within the relevant markets, and that the public benefit resulting from the conduct outweighs 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:

The conduct affects Boost Juice franchisees who operate or will be granted the right to operate Boost Juice businesses. The conduct also affects suppliers and consumers in the relevant markets.

(b) Number of those persons:

(i) At present time:

194 franchisees operate a total of 258 franchised businesses.

There are 23 Approved Suppliers.

Boost Juice estimates there are thousands of potential suppliers and millions of consumers within the relevant markets.

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

Boost Juice estimates that there will be at least 282 franchised businesses, and no change in the number of Approved Suppliers, within the next 12 months. The number of potential suppliers and consumers is also unlikely to change.

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

Refer to Appendix A for names and addresses of current Approved Suppliers. In all other relevant classes, there are more than 50 persons.

4. Public benefit claims

- (a) Arguments in support of notification:

Boost Juice considers that there is significant public benefit resulting from the notified conduct and which outweighs any potential public detriment as follows:

Benefits for franchisees and end consumers

- (i) **Improved quality and consistency**

By requiring franchisees to acquire key products from Approved Suppliers, Boost Juice is better able to maintain quality and consistency throughout the network. This is important to the integrity of the Boost Juice brand and image, and means that consumers know what to expect when they visit a Boost Juice store. They do not have to investigate how the offering of an individual franchisee compares to that of a competitor, and are in a better position to make fast, informed eating decisions “on the run”.

- (ii) **Accurate and reliable nutritional information made available to consumers**

Boost Juice franchisees are required to make detailed nutritional information available to consumers, to discharge their obligations under relevant state food labelling laws. Boost Juice assists franchisees to comply

with these obligations by making information available centrally on its website, and by designing menu boards and brochures for franchisees to use. It is only possible for Boost Juice to provide accurate and reliable nutritional information if it is able to control the ingredients used in the products sold by franchisees.

(iii) Reduced food safety risks

Boost Juice requires suppliers to provide ingredients that meet strict specifications and audits their compliance with such specifications. It would not be practical or economically feasible for Boost Juice to audit and assess whether products met the standards required if franchisees were permitted to purchase from any third party they chose.

(iv) Improved bargaining power

Due to the size of its network, Boost Juice has improved bargaining power and is in a position where it can obtain volume discounts from key suppliers. Giving franchisees access to discounts and competitive prices as a result of economies of scale improves their capacity, as small business owners, to compete with larger businesses and other competitors in the market. This may have a flow-on effect to end consumers.

(v) Improved business efficiency

By relieving franchisees of the burden of sourcing suppliers, investigating their capacity to provide high quality products on a consistent basis and monitoring the suppliers' ongoing performance, Boost Juice minimises the administrative burden on its franchisees. This allows franchisees to focus on operating their business and maximising their own profitability.

(vi) Improved business performance

Boost Juice has developed systems for automatic reporting that enable it to monitor the sales performance of its franchisees and the success of various menu items and marketing initiatives implemented across the network.

Boost Juice can only support its franchisees if they use point of sale systems, ordering systems and mobile applications that integrate more generally with the systems used by Boost Juice.

Insights provided by Boost Juice to its franchisees enable them to improve profitability and compete more effectively in the marketplace.

Benefits for suppliers

Boost Juice works with its Approved Suppliers and helps them forecast the quantity of products its franchisees are likely to need from time to time (for example, ahead of seasonal promotions). This helps suppliers manage their own stock levels, and may result in cost savings if they take advantage of volume discounts, knowing they will have an opportunity to on-sell stock.

- (b) Facts and evidence relied upon in support of these claims:
Refer to item 4 (a) 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):

Boost Juice submits that the relevant markets include:

1. The wholesale market for the supply of key products to the retail food sector; and
2. The retail market for smoothies, juice and food.

Boost Juice considers the relevant markets to be characterised by a high degree of competition and by a large number of active 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:

Boost Juice considers that the public detriment resulting from the notified conduct is negligible and will not substantially lessen competition within the relevant markets as follows:

(i) Detriment to franchisees

The notified conduct prevents franchisees from selecting between suppliers on the normal commercial basis of product quality and price. While Boost Juice acknowledges that, from time to time, a specific supplier might be able to offer short-term discounts or spot prices that are lower than the rates secured through Approved Suppliers, Boost Juice is doubtful that such prices would deliver a medium or long-term saving.

(ii) Detriment to non-approved suppliers

Suppliers who are not approved by Boost Juice will be unable to supply their products or services to Boost Juice franchisees. However, Boost Juice maintains this will have a negligible effect on competition within the relevant markets, given the number of retailers and other potential customers in Australia to which suppliers may sell their products.

(iii) Detriment to end consumers

Boost Juice maintains that the notified conduct will have a negligible effect on end consumers, as it will not prohibit them from comparing prices and products. There is a large number of retailers that offer smoothies, juices and food for sale, which allows consumers to “shop around” easily.

(b) Facts and evidence relevant to these detriments:

Refer to item 6 (a) above.

Conclusion

Boost Juice maintains that the notified conduct is unlikely to substantially lessen competition in any of the relevant markets. To the extent that the notified conduct contravenes the *Competition and Consumer Act 2010* (Cth), Boost Juice contends that it should be entitled to statutory immunity as the

public benefits resulting from the conduct outweigh any potential public detriment caused.

7. Further information

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

Mr Ceri Clark
General Counsel
Retail Zoo Pty Ltd ACN 141 218 206
Level 1, 1341 Dandenong Road, Chadstone, Victoria, 3148

Dated 19/12/2016

Signed by/on behalf of the applicant


(Signature)

Ceri Clark

(Full Name) Retail Zoo, Level 1, Tower 2, Chadstone Place
1341 Dandenong Road, Chadstone VIC 3148

(Organisation) an Australian legal practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

GENERAL COUNSEL
(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.

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:

N99524 Cibo Espresso Australia Pty Ltd ACN 105 199 693
N99525 Cibo World Pty Ltd ACN 161 242 520
("Cibo")

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

Cibo Nominees Pty Ltd as trustee for the Cibo Espresso Intellectual Property Unit Trust (**Cibo Nominees**) owns the intellectual property rights related to the Cibo business, system and brand.

Cibo Nominees has granted Cibo a licence to use, and the right to licence franchisees to use, its intellectual property for the purpose of establishing and operating Cibo stores.

Cibo is the franchisor of a network of franchisees who operate retail café businesses in Australia involving:

- (i) the preparation and sale of coffee and café food items;
and
- (ii) sale of pre-packaged products, beverages and merchandise;

under the Cibo system and brand.

Cibo also operates a number of company-owned stores.

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

Attention: Mr Ceri Clark, General Counsel
Retail Zoo Pty Ltd ACN 141 218 206
Level 1, 1341 Dandenong Road, Chadstone, Victoria, 3148

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 requirement for Cibo franchisees to acquire and supply or use:

1. Key ingredients that are necessary to make the products sold from the Cibo business ("**key ingredients**");
2. Pre-packaged products, including food and beverages, that are sold from the Cibo business ("**pre-packaged products**");
3. Merchandise;
4. Cups, lids, containers, trays, boxes, cartons, bags, napkins, and other items of packaging used in the Cibo business ("**packaging**");
5. Cleaning products and supplies;
6. Uniforms;
7. Stationery supplies;
8. Marketing supplies and collateral;
9. Fitout, signage, equipment, small wares and utensils used in the conduct of the Cibo business ("**fitout and equipment**") including installation of the fitout and equipment;
10. Fit-out upgrade and construction services;
11. Point of sale systems, laptops, printers, modems, merchant facilities, internet and telephone services, IT support, ordering systems, mobile applications, business management and information tools, security systems and other computer hardware and software and communication systems necessary for the conduct of the Cibo business ("**information technology and**");

communication systems") including installation of information technology and communication systems;

12. Quality assurance systems and audits;
13. Training services;
14. Equipment maintenance; and
15. Insurance,

from Cibo or third party suppliers who have been approved by Cibo ("**Approved Suppliers**"). The products and equipment set out above change from time to time and the Approved Suppliers change from time to time.

(b) Description of the conduct or proposed conduct:

Cibo grants franchises and supplies its services as franchisor to the Cibo network and Cibo franchisees on the condition that franchisees:

- (i) strictly adhere to the comprehensive business format prescribed by Cibo for the operation of the business (the Cibo "**system**");
- (ii) sell products specified by Cibo from time to time and not sell other products without receiving Cibo prior written approval; and
- (iii) purchase and use key ingredients, pre-packaged products, merchandise, packaging, cleaning products and supplies, stationery, marketing collateral, uniforms, fitout and equipment, fit-out upgrade and construction services, information technology and communication systems, quality assurance systems and audits, training services, equipment maintenance, insurance and any other goods and services listed under item 2 (a) above ("**key products**") from Approved Suppliers. Refer to Appendix A for details of current key products and Approved Suppliers. It is anticipated that these will change from time to time.

Cibo discloses information to franchisees and prospective franchisees in its Disclosure Document about the restrictions that apply to the goods and services a franchisee may acquire or supply in the course of its business. To satisfy its obligations under the *Franchising Code of Conduct*, Cibo also discloses

whether Cibo or an associate of Cibo has an ownership interest in any Approved Supplier, whether Cibo or an associate of Cibo receives a rebate or some other financial benefit from the supply of goods and services to franchisees, and whether those rebates or financial benefits are shared directly or indirectly with franchisees.

If a franchisee wishes to acquire key products from a non-approved supplier, they must submit samples and other relevant details relating to quality, supply and service standards as specified by Cibo to Cibo for its consideration and determination of whether that supplier can be approved. Any alternative supplier is required to satisfy Cibo stringent quality, supply and service standards in order to be approved as a supplier to a Cibo franchisee.

While Cibo acknowledges that the notified conduct may constitute exclusive dealing within the meaning of sections 47(6)-(7) of the *Competition and Consumer Act 2010 (Cth)*, it maintains that the purpose of the notified conduct is not to substantially lessen competition within the relevant markets, and that the public benefit resulting from the conduct outweighs 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:

The conduct affects Cibo franchisees who operate or will be granted the right to operate Cibo businesses. The conduct also affects suppliers and consumers in the relevant markets.

(b) Number of those persons:

(i) At present time:

26 franchisees operate a total of 30 franchised businesses. The location of the franchised businesses are set out in Appendix B.

There are 16 Approved Suppliers.

Cibo estimates there are thousands of potential suppliers and millions of consumers within the relevant markets.

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

Cibo estimates that there will be 33 franchised businesses and no change in the number of Approved Suppliers within the next 12 months. The number of potential suppliers and consumers is also unlikely to change.

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

Refer to Appendix A for names and addresses of current Approved Suppliers. Refer to Appendix B for names and addresses of current franchisees. In all other relevant classes, there are more than 50 persons.

4. Public benefit claims

- (a) Arguments in support of notification:

Cibo considers that there is significant public benefit resulting from the notified conduct and which outweighs any potential public detriment as follows:

Benefits for franchisees and end consumers

(i) Improved quality and consistency

By requiring franchisees to acquire key products from Approved Suppliers, Cibo is better able to maintain quality and consistency throughout the network. This is important to the integrity of the Cibo brand and image, and means that consumers know what to expect when they visit a Cibo store. They do not have to investigate how the offering of an individual franchisee compares to that of a competitor, and are in a better position to make fast, informed eating decisions “on the run”.

(ii) Accurate and reliable nutritional information made available to consumers

Cibo franchisees are required to make detailed nutritional information available to consumers, to discharge their obligations under relevant state food labelling laws. Cibo assists franchisees to comply with these obligations by making information available centrally on its website, and

by designing menu boards and brochures for franchisees to use. It is only possible for Cibo to provide accurate and reliable nutritional information if it is able to control the ingredients used in the products sold by franchisees.

(iii) Reduced food safety risks

Cibo requires suppliers to provide ingredients that meet strict specifications and audits their compliance with such specifications. It would not be practical or economically feasible for Cibo to audit and assess whether products met the standards required if franchisees were permitted to purchase from any third party they chose.

(iv) Improved bargaining power

Due to the size of its network, Cibo has improved bargaining power and is in a position where it can obtain volume discounts from key suppliers. Giving franchisees access to discounts and competitive prices as a result of economies of scale improves their capacity, as small business owners, to compete with larger businesses and other competitors in the market. This may have a flow-on effect to end consumers.

(v) Improved business efficiency

By relieving franchisees of the burden of sourcing suppliers, investigating their capacity to provide high quality products on a consistent basis and monitoring the suppliers' ongoing performance, Cibo minimises the administrative burden on its franchisees. This allows franchisees to focus on operating their business and maximising their own profitability.

(vi) Improved business performance

Cibo has developed systems for automatic reporting that enable it to monitor the sales performance of its franchisees and the success of various menu items and marketing initiatives implemented across the network.

Cibo can only support its franchisees if they use point of sale systems, ordering systems and mobile applications that integrate more generally with the systems used by Cibo.

Insights provided by Cibo to its franchisees enable them to improve profitability and compete more effectively in the marketplace.

Benefits for suppliers

Cibo works with its Approved Suppliers and helps them forecast the quantity of products its franchisees are likely to need from time to time (for example, ahead of seasonal promotions). This helps suppliers manage their own stock levels, and may result in cost savings if they take advantage of volume discounts, knowing they will have an opportunity to on-sell stock.

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

Refer to item 4 (a) 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):

Cibo submits that the relevant markets include:

1. The wholesale market for the supply of key products to the retail food sector; and
2. The retail market for cafes and coffee shops.

Cibo considers the relevant markets to be characterised by a high degree of competition and by a large number of active 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:

Cibo considers that the public detriment resulting from the notified conduct is negligible and will not substantially lessen competition within the relevant markets as follows:

(i) **Detriment to franchisees**

The notified conduct prevents franchisees from selecting between suppliers on the normal commercial basis of product quality and price. While Cibo acknowledges that, from time to time, a specific supplier might be able to offer short-term discounts or spot prices that are lower than the rates secured through Approved Suppliers, Cibo is doubtful that such prices would deliver a medium or long-term saving.

(ii) **Detriment to non-approved suppliers**

Suppliers who are not approved by Cibo will be unable to supply their products or services to Cibo franchisees. However, Cibo maintains this will have a negligible effect on competition within the relevant markets, given the number of retailers and other potential customers in Australia to which suppliers may sell their products.

(iii) **Detriment to end consumers**

Cibo maintains that the notified conduct will have a negligible effect on end consumers, as it will not prohibit them from comparing prices and products. There is a large number of retailers that offer coffee and café products for sale, which allows consumers to “shop around” easily.

(b) Facts and evidence relevant to these detriments:

Refer to item 6 (a) above.

Conclusion

Cibo maintains that the notified conduct is unlikely to substantially lessen competition in any of the relevant markets. To the extent that the notified conduct contravenes the *Competition and Consumer Act 2010* (Cth), Cibo contends that it should be entitled to statutory immunity as the public benefits resulting from the conduct outweigh any potential public detriment caused.


7. Further information

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

Mr Ceri Clark
General Counsel
Retail Zoo Pty Ltd ACN 141 218 206
Level 1, 1341 Dandenong Road, Chadstone, Victoria, 3148

Dated.....19/12/2016.....

Signed by/on behalf of the applicant

.....
(Signature)

Ceri Clark

.....Retail Zoo, Level 1, Tower 2, Chadstone Place
(Full Name) 1341 Dandenong Road, Chadstone VIC 3148

.....an Australian legal practitioner
(Organisation) within the meaning of the
Legal Profession Uniform Law (Victoria)

.....GENERAL COUNSEL
(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.

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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.

Appendix B - Details of existing franchises

1.	Santiago Holdings Pty Ltd Kiosk 101 Burnside Village 447 Portrush Road Glenside, SA 5066
2.	Majorway Pty Ltd 41a Gouger Street Adelaide, SA 5000
3.	Princepessa Management Pty Ltd Shop 112A Rundle Mall Rundle Street Adelaide, SA 5000
4.	Delaware North Retail Services Pty Ltd Tenancy 19 Adelaide Airport 1 James Schofield Drive Adelaide, SA 5950
5.	Monardi Pty Ltd Shop 3 124 Prospect Road Prospect, SA 5082
6.	CPP Nominees Pty Ltd 97 Pirie Street Adelaide, SA 5000
7.	C J Bourn Pty Ltd Kiosk 115 Level 1 Westfield Marion 297 Diagonal Road Oaklands Park, SA 5046
8.	Rodomco Pty Ltd Kiosk 6 Level 2 Westfield Tea Tree Plaza Modbury, SA 5092
9.	The San Nicola Partnership 251 The Esplanade Henley Beach, SA 5022

10.	Banco Coffee Pty Ltd Shop 7 82 King William Street Adelaide, SA 5000
11.	North Adelaide Investments (SA) Pty Ltd Shop 3 57—59 O'Connell Street North Adelaide, SA 5006
12.	Majorway 3 Pty Ltd Shop 1 The Avenues Shopping Centre 114 Payneham Road Stepney, SA 5069
13.	AIOS Pty Ltd Shop K46 Westfield West Lakes 111 West Lakes Boulevard West Lakes, SA 5021
14.	Waymouth Special Investments Pty Ltd 34 Waymouth Street Adelaide, SA 5000
15.	Hot Sip Pty Ltd Shop S015 Elizabeth Shopping Centre 50 Elizabeth Way Elizabeth, SA 5112
16.	St. Morris Enterprises Pty Ltd Shops 8 & 9 Stirling Mall 28 Mount Barker Road Stirling, SA 5152
17.	PR Nominees Pty Ltd Shop 1 Murray St Walk 81 Murray Street Gawler, SA 5118
18.	Cibiamo Uno Pty Ltd Shop T32 Brickworks Marketplace 36 South Road Torrensville, SA 5031

19.	KAMZY Pty Ltd Shop 4 Kurralta Central 153 Anzac Highway Kurralta Park, SA 5037
20.	Beans and Cream Pty Ltd Kiosk 94 Munno Para Shopping City 600 Main North Road Smithfield, SA 5114
21.	Hollick Hospitality Pty Ltd 172 Henley Beach Road Torrensville, SA 5031
22.	Jars of Goodness Pty Ltd Shop 7 161—169 The Parade Norwood Place Shopping Centre Norwood, SA 5067
23.	Mosely Square Pty Ltd 15 Moseley Square Glenelg, SA 5045
24.	Banco Coffee Pty Ltd Shop 7 168 Melbourne Street North Adelaide, SA 5006
25.	Sasil Pty Ltd SP219 Colonnades Shopping Centre Beach Road Norlunga, SA 5168
26.	Ceilpro Pty Ltd 115 West Terrace Adelaide, SA 2015
27.	Ceilpro Pty Ltd Shop 1 48—50 Hindley Street Adelaide, SA 5000
28.	Spotless Facility Services Pty Ltd New Royal Adelaide Hospital Port Road Adelaide, SA 5000

29.	Three S'S and J Pty Ltd Chadstone Shop 247B Chadstone Shopping Centre 1341 Dandenong Road Chadstone, VIC 3148
30.	Spotless Facility Services Pty Ltd Terminal Building, Newcastle Airport 1 Williamstown Drive Williamstown NSW 2318

Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

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PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of person giving notice:

N99526	Salsas Pty Ltd ACN 129 061 543
N99527	Salsas Franchises Pty Ltd ACN 129 061 561
	(collectively " Salsa's ")

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

Salsa's Holdings Pty Ltd owns the intellectual property rights related to the Salsa's business, system and brand.

Salsa's Holdings Pty Ltd has granted Salsa's a licence to use, and the right to licence franchisees to use, its intellectual property for the purpose of establishing and operating Salsa's stores.

Salsa's is the franchisor of a network of franchisees who operate retail businesses in Australia involving:

- (i) the preparation and sale of Mexican fast food; and
- (ii) sale of pre-packaged products, beverages and merchandise;

under the Salsa's system and brand.

Salsa's also operates a number of company-owned stores.

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

Attention: Mr Ceri Clark
General Counsel
Retail Zoo Pty Ltd ACN 141 218 206
Level 1, 1341 Dandenong Road, Chadstone, Victoria, 3148

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 requirement for Salsa's franchisees to acquire and supply or use:

1. Key ingredients that are necessary to make the products sold from the Salsa's business ("**key ingredients**");
2. Pre-packaged products, including food and beverages, that are sold from the Salsa's business ("**pre-packaged products**");
3. Merchandise;
4. containers, trays, boxes, cartons, bags, napkins, cups, lids and other items of packaging used in the Salsa's business ("**packaging**");
5. Cleaning products and supplies;
6. Uniforms;
7. Stationery supplies;
8. Marketing supplies and collateral;
9. Fitout, signage, equipment, small wares and utensils used in the conduct of the Salsa's business ("**fitout and equipment**") including installation of the fitout and equipment;
10. Fit-out upgrade and construction services;
11. Point of sale systems, laptops, printers, modems, merchant facilities, internet and telephone services, IT support, ordering systems, mobile applications, business management and information tools, security systems and other computer hardware and software and communication systems necessary for the conduct of the

Salsa's business ("**information technology and communication systems**") including installation of information technology and communication systems;

12. Quality assurance systems and audits;
13. Training services;
14. Equipment maintenance; and
15. Insurance,

from Salsa's or third party suppliers who have been approved by Salsa's ("**Approved Suppliers**"). The products and equipment set out above change from time to time and the Approved Suppliers change from time to time.

(b) Description of the conduct or proposed conduct:

Salsa's grants franchises and supplies its services as franchisor to the Salsa's network and Salsa's franchisees on the condition that franchisees:

- (i) strictly adhere to the comprehensive business format prescribed by Salsa's for the operation of the business (the Salsa's "**system**");
- (ii) sell products specified by Salsa's from time to time and not sell other products without receiving Salsa's prior written approval; and
- (iii) purchase and use key ingredients, pre-packaged products, merchandise, packaging, cleaning products and supplies, stationery, marketing collateral, uniforms, fitout and equipment, fit-out upgrade and construction services, information technology and communication systems, quality assurance systems and audits, training services, equipment maintenance services, insurance and any other goods and services listed under item 2 (a) above ("**key products**") from Approved Suppliers. Refer to Appendix A for details of current key products and Approved Suppliers. It is anticipated that these will change from time to time.

Salsa's discloses information to franchisees and prospective franchisees in its Disclosure Document about the restrictions that apply to the goods and services a franchisee may acquire or supply in the course of its business. To satisfy its obligations

under the *Franchising Code of Conduct*, Salsa's also discloses whether Salsa's or an associate of Salsa's has an ownership interest in any Approved Supplier, whether Salsa's or an associate of Salsa's receives a rebate or some other financial benefit from the supply of goods and services to franchisees, and whether those rebates or financial benefits are shared directly or indirectly with franchisees.

If a franchisee wishes to acquire key products from a non-approved supplier, they must submit samples and other relevant details relating to quality, supply and service standards as specified by Salsa's to Salsa's for its consideration and determination of whether that supplier can be approved. Any alternative supplier is required to satisfy Salsa's stringent quality, supply and service standards in order to be approved as a supplier to a Salsa's franchisee.

While Salsa's acknowledges that the notified conduct may constitute exclusive dealing within the meaning of sections 47(6)-(7) of the *Competition and Consumer Act 2010 (Cth)*, it maintains that the purpose of the notified conduct is not to substantially lessen competition within the relevant markets, and that the public benefit resulting from the conduct outweighs 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:

The conduct affects Salsa's franchisees who operate or will be granted the right to operate Salsa's businesses. The conduct also affects suppliers and consumers in the relevant markets.

(b) Number of those persons:

(i) At present time:

32 franchisees operate a total of 39 franchised businesses. The location of the franchised businesses are set out in Appendix B.

There are 20 Approved Suppliers.

Salsa's estimates there are thousands of potential suppliers and millions of consumers within the relevant markets.

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

Salsa's estimates that there will be 39 franchised businesses and no change in the number of Approved Suppliers within the next 12 months. The number of potential suppliers and consumers is also unlikely to change.

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

Refer to Appendix A for names and addresses of current Approved Suppliers. Refer to Appendix B for names and addresses of current franchisees. In all other relevant classes, there are more than 50 persons.

4. Public benefit claims

- (a) Arguments in support of notification:

Salsa's considers that there is significant public benefit resulting from the notified conduct and which outweighs any potential public detriment as follows:

Benefits for franchisees and end consumers

- (i) **Improved quality and consistency**

By requiring franchisees to acquire key products from Approved Suppliers, Salsa's is better able to maintain quality and consistency throughout the network. This is important to the integrity of the Salsa's brand and image, and means that consumers know what to expect when they visit a Salsa's store. They do not have to investigate how the offering of an individual franchisee compares to that of a competitor, and are in a better position to make fast, informed eating decisions "on the run".

- (ii) **Accurate and reliable nutritional information made available to consumers**

Salsa's franchisees are required to make detailed nutritional information available to consumers, to discharge their obligations under relevant state food labelling laws. Salsa's assists franchisees to comply with these obligations by making information available centrally on its website, and by designing menu boards and brochures for franchisees to use. It is only possible for Salsa's to provide accurate and reliable nutritional information if it is able to control the ingredients used in the products sold by franchisees.

(iii) Reduced food safety risks

Salsa's requires suppliers to provide ingredients that meet strict specifications and audits their compliance with such specifications. It would not be practical or economically feasible for Salsa's to audit and assess whether products met the standards required if franchisees were permitted to purchase from any third party they chose.

(iv) Improved bargaining power

Due to the size of its network, Salsa's has improved bargaining power and is in a position where it can obtain volume discounts from key suppliers. Giving franchisees access to discounts and competitive prices as a result of economies of scale improves their capacity, as small business owners, to compete with larger businesses and other competitors in the market. This may have a flow-on effect to end consumers.

(v) Improved business efficiency

By relieving franchisees of the burden of sourcing suppliers, investigating their capacity to provide high quality products on a consistent basis and monitoring the suppliers' ongoing performance, Salsa's minimises the administrative burden on its franchisees. This allows franchisees to focus on operating their business and maximising their own profitability.

(vi) Improved business performance

Salsa's has developed systems for automatic reporting that enable it to monitor the sales performance of its

franchisees and the success of various menu items and marketing initiatives implemented across the network.

Salsa's can only support its franchisees if they use point of sale systems, ordering systems and mobile applications that integrate more generally with the systems used by Salsa's.

Insights provided by Salsa's to its franchisees enable them to improve profitability and compete more effectively in the marketplace.

Benefits for suppliers

Salsa's works with its Approved Suppliers and helps them forecast the quantity of products its franchisees are likely to need from time to time (for example, ahead of seasonal promotions). This helps suppliers manage their own stock levels, and may result in cost savings if they take advantage of volume discounts, knowing they will have an opportunity to on-sell stock.

- (b) Facts and evidence relied upon in support of these claims:
Refer to item 4 (a) 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):

Salsa's submits that the relevant markets include:

1. The wholesale market for the supply of key products to the retail food sector; and
2. The retail market for Mexican fast food and also other fast food.

Salsa's considers the relevant markets to be characterised by a high degree of competition and by a large number of active 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:

Salsa's considers that the public detriment resulting from the notified conduct is negligible and will not substantially lessen competition within the relevant markets as follows:

(i) **Detriment to franchisees**

The notified conduct prevents franchisees from selecting between suppliers on the normal commercial basis of product quality and price. While Salsa's acknowledges that, from time to time, a specific supplier might be able to offer short-term discounts or spot prices that are lower than the rates secured through Approved Suppliers, Salsa's is doubtful that such prices would deliver a medium or long-term saving.

(ii) **Detriment to non-approved suppliers**

Suppliers who are not approved by Salsa's will be unable to supply their products or services to Salsa's franchisees. However, Salsa's maintains this will have a negligible effect on competition within the relevant markets, given the number of retailers and other potential customers in Australia to which suppliers may sell their products.

(iii) **Detriment to end consumers**

Salsa's maintains that the notified conduct will have a negligible effect on end consumers, as it will not prohibit them from comparing prices and products. There is a reasonably large number of retailers that offer Mexican fast food and a large number of retailers that offer other kinds of fast food for sale, which allows consumers to "shop around" easily.

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

Refer to item 6 (a) above.

Conclusion

Salsa's maintains that the notified conduct is unlikely to substantially lessen competition in any of the relevant markets.

To the extent that the notified conduct contravenes the *Competition and Consumer Act 2010* (Cth), Salsa's contends that it should be entitled to statutory immunity as the public benefits resulting from the conduct outweigh any potential public detriment caused.

7. Further information

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

Mr Ceri Clark
General Counsel
Retail Zoo Pty Ltd ACN 141 218 206
Level 1, 1341 Dandenong Road, Chadstone, Victoria, 3148

Dated.....19/12/2016.....

Signed by/on behalf of the applicant

.....
(Signature)

Ceri Clark

.....
(Full Name) ~~Retail Zoo, Level 1, Tower 2, Chadstone Place~~
1341 Dandenong Road, Chadstone VIC 3148
an Australian legal practitioner

.....
(Organisation) ~~within the meaning of the~~
Legal Profession Uniform Law (Victoria)

.....
(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.

Appendix B - Details of existing franchises

1.	Smooth Fusion Pty Ltd Fountain Gate Shop FC1 Westfield Fountain Gate 352 Princes Highway Fountain Gate, VIC 3805
2.	Mavericks Retail Pty Ltd Doncaster FC11 Westfield Doncaster 619 Doncaster Road Doncaster, VIC 3108
3.	Smooth Fusion Investments Pty Ltd Eastland Shop G06 Eastland Shopping Centre 171—175 Maroondah Highway Ringwood, VIC 3134
4.	Mavericks Business Pty Ltd Northland Shop K033 Northland Shopping Centre 50 Murray Road East Preston, VIC 3072
5.	Ear & Te Pty Ltd Southgate Shop G01 Southgate Plaza 3 Southgate Avenue Southbank, VIC 3006
6.	NET.DB Systems Pty Ltd Collins Square Shop 22 Collins Square 717 Collins Street Docklands, VIC 3008
7.	Soza Pty Ltd Epping Plaza Shop R6 Epping Plaza 571—583 High Street Epping, VIC 3076

8.	Sarah Mee Holdings Pty Ltd Greensborough L03 351 Greensborough Plaza 25 Main Street Greensborough, VIC 3088
9.	Shadsamtia Pty Ltd Bayside Shop F014 Bayside Shopping Centre 28 Bay Street Frankston, VIC 3199
10.	2 Amigos Mex Grill Pty Ltd Jam Factory Shop 5 Jam Factory 500 Chapel Street South Yarra, VIC 3141
11.	NET.DB Systems Pty Ltd Melbourne Central Shop LG07 Melbourne Central 300 Lonsdale Street Melbourne, VIC 3000
12.	Mark & Kaye Pty Ltd Plenty Valley Shop FC4 Westfield Plenty Valley 415 McDonalds Road Mill Park, VIC 3082
13.	Loader Kouts Pty Ltd Highpoint Shop L02 2100 Highpoint Shopping Centre 120–200 Rosamond Road Maribyrnong, VIC 3032
14.	Shivom Pty Ltd Broadmeadows Shop G022 Broadmeadows Shopping Centre 1099—1169 Pascoe Vale Road Broadmeadows, VIC 3047

15.	NJ Group Pty Ltd Melbourne Airport Shop FB5 Terminal 4, Tullamarine Airport Terminal Drive Tullamarine, VIC 3043
16.	Quinn Consulting Pty Ltd Carousel Westfield Carousel Shop FC101 1382 Albany Highway Cannington, WA 6107
17.	Michael Stuart Couch as trustee for The Kimike Trust Galleria Shop 2418 Centro Galleria cnr of Collier Road and Walter Road Morley, WA 6062
18.	Mizko Pty Ltd Booragoon Shop 100 Garden City Shopping Centre Riseley Street Booragoon, WA 6154
19.	Michael Stuart Couch as trustee for The Kimike Trust Carillon City Shop 26 Carillon City 207 Murray Street Perth, WA 6000
20.	Jenners Consortium Pty Ltd Midland Gate Shop T094 Midland Gate Shopping Centre 247 Great Eastern Highway Midland, WA 6056
21.	Michael Stuart Couch as trustee for The Kimike Trust Belmont Shop FC002 Belmont Forum Shopping Centre 227 Belmont Avenue Cloverdale, WA 6105

22.	Rybelle Consulting Pty Ltd Cockburn Gateway Shop FC002 Cockburn-Gateway Shopping City 816 Beeliar Drive Success, WA 6164
23.	Salsaloco Pty Ltd Innaloo Shop 1011 Westfield Innaloo Ellen Stirling Boulevard Innaloo, WA 6018
24.	CDMNP Pty Ltd Rockingham Shop 200, Rockingham Shopping Centre 1 Council Avenue Rockingham, WA 6168
25.	Fresh Formula Pty Ltd Hornsby Shop FC10 Westfield Hornsby 236 Pacific Highway Hornsby, NSW 2077
26.	The Kookee Group Pty Ltd Park Beach Plaza Shop 15, Park Beach Plaza, 253 Pacific Highway Coffs Harbour, NSW 2450
27.	Chopra International Pty Ltd Burwood Shop FC 09 Westfield Burwood 100 Burwood Road Burwood, NSW 2134
28.	Aashrey Investments Pty Ltd Parramatta Shop 5062 Westfield Parramatta 159-175 Church Street Parramatta, NSW 2150
29.	Foodie Fresh Pty Ltd Liverpool Shop 252B 25 George Street Liverpool, NSW 2170

30.	Abadell Pty Ltd Robina Shop No. 1003 Robina Town Centre Robina Town Centre Drive Robina, QLD 4239
31.	Ash Partners Pty Ltd Indooroopilly Shop FC09 Indooroopilly Shopping Centre 318 Moggill Rd Indooroopilly, QLD 4068
32.	Ash Partners Pty Ltd Chermside Shop 14 Westfield Chermside cnr Gympie Road and Hamilton Road Chermside, QLD 4032
33.	Sallack Pty Ltd Gasworks Tenancy Anex B, Gasometer 1 Building E 76 Skyring Terrace Newstead, QLD 4006
34.	NO.02 Pty Ltd Carindale Shop F18 Westfield Carindale 1151 Creek Road Carindale, QLD 4152
35.	Abadell Pty Ltd Pacific Fair Shop 363C Pacific Fair Shopping Centre Hooker Boulevard Broadbeach, QLD 4218
36.	R.T.B.C Pty Ltd Marion Shop FC3 Westfield Marion 297 Diagonal Road Oaklands Park, SA 5046
37.	R.T.B.C Pty Ltd Glenelg 16 Jetty Road Glenelg, SA 5045

38.	R.T.B.C Pty Ltd Rundle Place Shop LG06 Rundle Place 77—91 Rundle Mall Adelaide, SA 5000
39.	Atoms United Pty Ltd Casuarina Shop GD, 134-135, Casuarina Square Trower Rd Casuarina, NT 0810