

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 in 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)

N99531 Muffin Break Pty Limited ACN 007 192 529 (**Muffin Break**)

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

Muffin Break owns and operates a franchise business that grants to third parties franchises known as “Muffin Break”, which are food and beverage retail stores.

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

Mark McCowan
Corrs Chambers Westgarth
Level 22, 567 Collins Street
Melbourne VIC 3000
Email: Mark.McCowan@corrs.com.au
Phone: (03) 9672 3335

2. Notified arrangement

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

This notice concerns:

- (i) the supply of Muffin Break store franchises including licences of trade marks and information necessary for its operation; and
- (ii) the acquisition of computer software, hardware and related services constituting the Task Retail Technology Point of Sale (POS) system by Muffin Break franchisees.

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

The conduct involves the grant of a Muffin Break franchise on condition that the franchisee acquire the POS system described in 2(a)(ii) above from a supplier nominated by Muffin Break. Further information is contained in the attached supporting submission.

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)

Current and future Muffin Break franchisees.

- (b) Number of those persons:

- (i) At present time:

214 franchisees.

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

Refer to attached supporting submission.

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

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Refer to attached supporting submission.

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

Refer to attached supporting submission.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 8)

The affected market is at least as broad as the market for the supply of retail point of sale systems and related services in Australia. There are many potential suppliers and acquirers of these items in Australia.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:
(Refer to direction 9)

Refer to attached supporting submission.

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

Refer to attached supporting submission.

7. Further information

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

Mark McCowan
Corrs Chambers Westgarth
Level 22, 567 Collins Street
Melbourne VIC 3000
Email: Mark.McCowan@corrs.com.au
Phone: (03) 9672 3335

Dated.....23/12/2016.....

Signed by/on behalf of the applicant, Muffin Break Pty Limited


.....
Mark McCowan
(Full Name)

Corrs Chambers Westgarth
(Organisation)

Partners
(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.

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Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

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PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

N99532 Jamaica Blue Pty Limited ACN 059 236 387 (**Jamaica Blue**)

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

Jamaica Blue owns and operates a franchise business that grants to third parties franchises known as “Jamaica Blue”, which are food and beverage retail stores.

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

Mark McCowan
Corrs Chambers Westgarth
Level 22, 567 Collins Street
Melbourne VIC 3000
Email: Mark.McCowan@corrs.com.au
Phone: (03) 9672 3335

2. Notified arrangement

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

This notice concerns:

- (i) the supply of Jamaica Blue store franchises including licences of trade marks and information necessary for its operation; and
- (ii) the acquisition of computer software, hardware and related services constituting the Task Retail Technology Point of Sale (**POS**) system by Jamaica Blue franchisees.

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

The conduct involves the grant of a Jamaica Blue franchise on condition that the franchisee acquire the POS system described in 2(a)(ii) above from a supplier nominated by Jamaica Blue. Further information is contained in the attached supporting submission.

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)

Current and future Jamaica Blue franchisees.

- (b) Number of those persons:

- (i) At present time:

127 franchisees.

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

Refer to attached supporting submission.

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

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Refer to attached supporting submission.

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(Refer to direction 8)

The affected market is at least as broad as the market for the supply of retail point of sale systems and related services in Australia. There are many potential suppliers and acquirers of these items in Australia.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:
(Refer to direction 9)

Refer to attached supporting submission.

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

Refer to attached supporting submission.

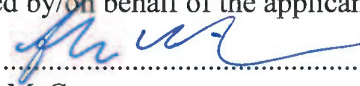
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- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Mark McCowan
Corrs Chambers Westgarth
Level 22, 567 Collins Street
Melbourne VIC 3000
Email: Mark.McCowan@corrs.com.au
Phone: (03) 9672 3335

Dated.....23/12/2016.....

Signed by/on behalf of the applicant, Jamaica Blue Pty Limited


.....
pp Mark McCowan
(Full Name)

Corrs Chambers Westgarth
(Organisation)

Partner
(Position in Organisation)

DIRECTIONS

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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.

PUBLIC REGISTER VERSION

Muffin Break Pty Limited

Jamaica Blue Pty Limited

Exclusive dealing notification: Supporting submission

This submission is lodged in support of the exclusive dealing notifications dated 23 December 2016 given to the Australian Competition and Consumer Commission (**ACCC**) by Muffin Break Pty Limited (ACN 007 192 529) (**Muffin Break**) and Jamaica Blue Pty Limited (ACN 059 236 387) (**Jamaica Blue**) (each a **Franchisor**).

1 Confidentiality

This public version of the supporting submission excludes information provided to the ACCC on a confidential basis.

2 Background

2.1 Muffin Break

Muffin Break has a retail business with 214 franchisees nationally. There will be an additional estimated [CONFIDENTIAL] franchisees likely to be affected by the notified conduct within the next 12 months. Franchisees of Muffin Break operate independent businesses but accept requirements imposed by the Muffin Break as franchisor in return for the benefits obtained from being part of the Muffin Break chain.

Under standard franchising arrangements, Muffin Break franchisees are required to adhere to certain Muffin Break operational standards, methods, procedures and policies. These requirements ensure a level of standardisation between store products and store service, and are essential for the maintenance and success of Muffin Break stores.

Muffin Break franchisees produce and sell products such as hot and cold beverages, cookies, muffins, scones, biscuits, assorted pastries, cakes, savoury rolls and fillos, sandwiches and salads.

2.2 Jamaica Blue

Jamaica Blue is a retail business with 127 franchisees located in a number of states. There will be an additional estimated [CONFIDENTIAL] franchisees likely to be affected by the notified conduct within the next 12 months. Like Muffin Break franchisees, each Jamaica Blue franchisee owns and operates an independent business but accepts certain requirements imposed by Jamaica Blue.

Jamaica Blue franchisees are also required to adhere to certain Jamaica Blue operational standards, methods, procedures and policies. These requirements ensure a level of standardisation between store products and store service and are essential to maintain the “Jamaica Blue” brand name and ensure the success of Jamaica Blue stores.

Jamaica Blue has a distinctive selection of gourmet quality coffee that is the signature of each Jamaica Blue store. Each store has a Jamaica Blue layout, colour scheme, and a variety of food products available for purchase by consumers.

2.3 Foodco Group Pty Limited

Both Muffin Break and Jamaica Blue are wholly owned subsidiaries of Foodco Group Pty Ltd (ACN 007 145 057) (**Foodco**).

Foodco develops, implements and oversees certain mandatory specifications, standards and procedures which uphold the Franchisors' reputation and high standards. These specifications, standards and procedures relate to (amongst other things):

- the quality, freshness and appearance of products;
- the safety, maintenance, cleanliness and appearance of franchise shops and equipment;
- the general appearance and demeanour of employees;
- the use of intellectual property including trade marks and recipes;
- the use of signs, posters, displays and similar items;
- the use of standard forms;
- display of advertising materials; and
- shop operating hours.

3 Task Retail Technology

Task Retail Technology provides computer software, hardware and related services constituting point of sale systems (**POS systems**) specifically for the hospitality industry. Task Retail Technology POS systems are intended to be used in all Muffin Break and Jamaica Blue stores. These POS systems will improve on existing POS systems for franchisees, enable online ordering and greater interaction with customers. The Task Retail Technology POS systems will also improve customer engagement with a platform that supports customer rewards programs and other benefits for customers who choose to become loyalty members of Muffin Break or Jamaica Blue stores.

The Task Retail Technology POS system also includes comprehensive back-end reporting to improve the measurement of performance across Muffin Break and Jamaica Blue franchisees. This will assist Foodco to support Muffin Break and Jamaica Blue store networks and improve store operations.

Franchisees of Muffin Break and Jamaica Blue will acquire, either directly or indirectly (through Foodco), the POS systems and any related services from Task Retail Technology. [CONFIDENTIAL]

4 Notified conduct

The following conduct is notified under section 93 of the *Competition and Consumer Act 2010 (Act)* to the extent that it would constitute exclusive dealing in breach of section 47 the Act:

- (a) An obligation on Muffin Break and Jamaica Blue franchisees to acquire:

- (i) POS systems and related computer software and hardware to support those systems from Task Retail Technology; and
- (ii) ongoing technology (including software and hardware) support and maintenance services in relation to the POS systems described in 4(a)(i), from Task Retail Technology.

5 Public benefits of notified conduct

There are a number of benefits to franchisees and consumers arising from the notified conduct.

(i) Cost reductions

Neither new nor experienced franchisees are likely to have extensive experience in negotiating agreements for the supply and support of software and hardware systems, given the non-recurrent nature of the purchase. Therefore, Foodco is better placed than individual franchisees to negotiate the combined supply and support requirements of Muffin Break and Jamaica Blue franchisees with Foodco's nominated supplier. Foodco may also be able to secure lower prices by aggregating franchisee volumes than franchisees would be able to obtain independently.

By maximising the number of franchisees acquiring the POS system by including both the Muffin Break and Jamaica Blue chains, Foodco has been able to negotiate favourable prices. This is important in the context of a highly competitive market that faces declining retail spending and increasing rental and equipment costs.

Collective procurement also assists franchisees by reducing the time and cost they spend in obtaining quotes from different suppliers, assessing the quality and value of proposed arrangements and negotiating supply terms with different POS system suppliers. These efficiencies will enable stores to be competitive on price and free up franchisees to concentrate on running a smooth and efficient operation that meets the standards of quality, presentation and service expected of Muffin Break and Jamaica Blue stores.

(ii) Training

The notified conduct will allow training and training materials to be standardised across each franchise group. Each Franchisor currently provides initial training for new franchisees, and use of the same POS system across all stores will streamline the training process by requiring trainers to become familiar with, and prepare training materials for, only one POS system. The cost savings of this increased efficiency can be passed on to customers.

(iii) IT support

Unification of the POS system across each business will enable Foodco to provide a high level of technological support. Foodco's IT department has finite resources, and would be unable to provide high service level IT support for

multiple systems used across the country. The maintenance requirements for the upkeep of a number of separate systems would also place a drain on IT resources and are minimised by removing the need to maintain more than one system. There is potential for significant efficiency improvements through the introduction of a single system used across the franchise businesses.

(iv) Unified offerings

Implementation of a single POS system across all stores will enable each company to provide a high level of functionality on its POS system to all franchisees, which they can only do when the one platform is in use across the country. Use of a single system nationally will avoid programming duplications and any weakening of the system caused by the inability of one or more systems to support a particular functionality. This will enhance Muffin Break's and Jamaica Blue's respective offerings to customers. For example, it will allow the introduction of a customer loyalty program where a customer can use an electronic loyalty card across multiple stores.

(v) Integration with new technology

Use of a single system will give Foodco the ability to innovate and develop novel technological offerings. These benefits will all lead to increased efficiency, reduced costs and enhanced service levels across each franchise business. In the absence of the notified conduct, franchisees would be likely to face higher prices for vital equipment and higher costs of negotiating agreements for hardware purchases and ongoing IT support, which would ultimately lead to higher costs for consumers.

6 No public detriment

Muffin Break and Jamaica Blue submit that the notified conduct does not result in any public detriment. Franchisees will be made fully aware of the restrictions on purchasing alternative systems from other suppliers in the franchise disclosure statement. Muffin Break and Jamaica Blue are also confident that the selected POS system and services are of a high quality and have been sourced at a competitive cost.

The notified conduct will take place in the highly competitive market for the supply of retail equipment. The conduct is not likely to have any detrimental impact on competition in that market, and the benefits arising from the conduct will enable Muffin Break and Jamaica Blue franchisees to compete more vigorously in the food and beverage retail market.

7 Conclusion

Muffin Break and Jamaica Blue submit that there is a significant net public benefit from the notified conduct, particularly in the form of efficiencies, cost savings and service enhancements.

