

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)

N99626 Australian Fitness Management Pty Ltd ACN 126 140 181 (“Plus Fitness”)

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

Plus Fitness is the franchisor of the Plus Fitness franchise network (“Plus Fitness Network”) and will grant franchisees a right to operate a Plus Fitness business pursuant to a franchise agreement. The business is a 24/7 fitness studio. As at the date of this notification, there are approximately 150 Plus Fitness franchises.

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

c/o Marianne Marchesi, Legalite, PO Box 3096, Richmond VIC 3121

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 Plus Fitness franchisees to acquire:

1. Fixtures, fittings, health/fitness equipment and machinery and accessories (“Equipment”);
2. Project Management and Building Services;
3. Maintenance, electrical and repair services (“Maintenance Services”);
4. Computer hardware and software, applications, printers, point of sale systems, club management software, billing software, including direct debit facilities, access control systems and exercise/class hardware and software (“Computer Hardware and Software”);

5. Financial and accounting software or systems (“Accounting Software”);
 6. Communication systems, including Internet access, mobile telephone handsets, mobile telephone services and fixed line telephone services (“Communication Systems”);
 7. Training materials and programs (“Training”);
 8. Other products, merchandise, including Plus Fitness branded merchandise and products, clothing, accessories and consumables to be stocked, sold or used in the Plus Fitness business (“Other Products”);
 9. HR Services; and
 10. Print and Marketing Services,
- from third party suppliers who have been approved by Plus Fitness (“Approved Suppliers”).

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

Plus Fitness proposes to supply its services as franchisor to Plus Fitness franchisees on the condition that the Plus Fitness franchisees purchase all Equipment, Project Management and Building Services, Maintenance Services, Computer Hardware and Software, Accounting Software, Communications Systems, Training, Other Products, HR Services and Print and Marketing Services from Approved Suppliers.

Plus Fitness proposes to incorporate provisions into its franchise agreements compelling Plus Fitness franchisees to:

1. Only use and sell in their Plus Fitness business the Equipment, Project Management and Building Services, Maintenance Services, Computer Hardware and Software, Accounting Software, Communications Systems, Training, Other Products, HR Services and Print and Marketing Services which Plus Fitness specifies and not any others not authorised by Plus Fitness without Plus Fitness’ prior written approval;
2. Purchase Equipment, Project Management and Building Services, Maintenance Services, Computer Hardware and Software, Accounting Software, Communications Systems, Training, Other Products, HR Services and Print and Marketing Services from Approved Suppliers on terms negotiated between Plus Fitness and the Approved Suppliers if there is a notification in place pursuant to section 93 of the *Competition and Consumer Act 2010* (Cth) or an authorisation in place pursuant to section 88 of the *Competition and Consumer Act 2010* (Cth) (but only whilst such notification or authorisation is in place).

This conduct falls within the definition of exclusive dealing in sections 47(6) and 47(7) of the *Competition and Consumer Act 2010* (Cth) as Plus Fitness intends to:

1. Supply its services as franchisor on the condition that franchisees acquire Equipment, Project Management and Building Services, Maintenance Services, Computer Hardware and Software, Accounting Software, Communications Systems, Training, Other Products, HR Services and Print and Marketing Services from Approved Suppliers;
2. Refuse to supply its services as franchisor if franchisees do not acquire Equipment, Project Management and Building Services, Maintenance Services, Computer Hardware and Software, Accounting Software, Communications Systems, Training, Other Products, HR Services and Print and Marketing Services from Approved Suppliers.

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)

The conduct will affect Plus Fitness franchisees who operate or will be granted the right to operate a Plus Fitness franchised business.

- (b) Number of those persons:

- (i) At present time:

Approximately 150

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

Plus Fitness estimates that there will be an additional 75 franchisees within the next year.

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

Not applicable – there are more than 50 Plus Fitness franchisees.

4. Public benefit claims

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

Plus Fitness submits that the public benefit resulting from the notified conduct will outweigh any public detriment. Plus Fitness is able to negotiate competitive prices with Approved Suppliers in relation to Equipment, Project Management and Building Services, Maintenance Services, Computer Hardware and Software, Accounting Software, Communications

Systems, Training, Other Products, HR Services and Print and Marketing Services. Further, the conduct or proposed conduct seeks to ensure consistency and quality across the Plus Fitness Network in relation to the Equipment, Project Management and Building Services, Maintenance Services, Computer Hardware and Software, Accounting Software, Communications Systems, Training, Other Products, HR Services and Print and Marketing Services.

The purpose of the notified conduct is not to substantially lessen competition, but rather, to:

1. Enhance competition by giving Plus Fitness franchisees access to competitive prices

Plus Fitness is able to negotiate competitive prices by virtue of being the franchisor of the Plus Fitness Network. This will allow Plus Fitness franchisees to focus on operating their franchised businesses, rather than negotiating prices, thereby maximising their profitability.

2. Ensure consistent quality

Consistent quality is vital to the Plus Fitness brand and image. As a franchise, it is important that clients expect the same quality from all Plus Fitness businesses.

Further, in relation to the Equipment, Plus Fitness has used the Equipment in the Plus Fitness Network business for approximately 4 to 6 years and therefore is confident of the durability and quality of the Equipment. As the Equipment is one of the primary features of the business, being a fitness studio, it is vital that it is of high quality.

3. Promote business efficiency

Plus Fitness has selected Computer Hardware and Software, Accounting Software and Communications Systems that are compatible with other software and technology used in the Plus Fitness business (such as point of sale systems), thus delivering consistency and predictability to Plus Fitness franchisees.

Further, the Equipment, Computer Hardware and Software, Accounting Software and Communications Systems meet Plus Fitness' strict quality standards and as such, it is expected that the incidence of malfunctions or errors will be reduced. Plus Fitness is better equipped than its franchisees to monitor any malfunctions or

errors, thereby allowing its franchisees to continue to operate their businesses without interruption.

Plus Fitness franchisees do not need to be concerned with managing the relationships with Approved Suppliers, thereby allowing them to focus on their businesses and reap the benefits of Plus Fitness' technical expertise and negotiating power.

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

1. Enhance competition by giving Plus Fitness franchisees access to competitive prices

By virtue of its position as franchisor, experience, and resources, Plus Fitness has greater bargaining power than that of an individual franchisee. Plus Fitness has direct relationships with suppliers which allows it to negotiate better prices than those which would be available to individual franchisees.

As Plus Fitness is able to negotiate prices to be offered to the Plus Fitness Network as a whole, it has access to bulk discounts that suppliers are only willing to offer if volume of supply can be guaranteed. Plus Fitness franchisees would be unable to use bulk-buying power in the same way. These bulk discounts are passed on to Plus Fitness franchisees, allowing them to benefit from costs savings, compete more effectively in the market and provide their clients with more value for money.

Plus Fitness has experience in selecting its suppliers and goes through a stringent process to select its suppliers to ensure that terms favourable to Plus Fitness franchisees and the Plus Fitness Network are negotiated. In selecting and approving suppliers, Plus Fitness considers, amongst other things:

- a) Price;
- b) Reputation of the supplier;
- c) Logistics;
- d) Quality.

2. Ensure consistent quality

It is vital to the Plus Fitness brand that the quality of the Equipment, Project Management and Building Services, Maintenance Services, Computer Hardware and Software, Accounting Software, Communications Systems, Training, Other Products, HR Services and Print and Marketing Services are uniform and consistent. With

strong competitors in the fitness industry, this uniformity and consistency is paramount to the Plus Fitness Network.

The notified conduct allows Plus Fitness to focus on maintaining consistent quality for the Plus Fitness Network whilst franchisees can focus on operating their businesses and providing strong customer service to supplement the high quality of the Equipment, Project Management and Building Services, Maintenance Services, Computer Hardware and Software, Accounting Software, Communications Systems, Training, Other Products, HR Services and Print and Marketing Services. The Training in particular ensures that franchisees are all trained to the same high standard.

Consistent quality is also important in ensuring that clients can expect the same service, quality and results irrespective of which Plus Fitness they visit.

3. Promote business efficiency

Again, by virtue of Plus Fitness' position as franchisor, experience and resources, it is able to insist on high levels of service from its Approved Suppliers. Plus Fitness is placed at an advantage to its franchisees in terms of negotiating arrangements with Approved Suppliers. It would be impractical and inefficient for Plus Fitness franchisees to separately assess the ability of suppliers to meet Plus Fitness' standards and specifications.

Plus Fitness also has greater bargaining power than the individual franchisee to enable it to negotiate and insist on high levels of service and also to enforce such service levels.

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 relevant market is the fitness industry in Australia. Another affected market is the market for the supply of gym and fitness equipment.

Both these markets are characterised by a high degree of competition.

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)

Plus Fitness submits that there is little or no public detriment resulting from the notified conduct.

Plus Fitness franchisees will benefit from the terms negotiated between Plus Fitness and Approved Suppliers by way of competitive prices, assurance of consistent quality and business efficiency. Further, Plus Fitness franchisees will be able to focus on operating their businesses rather than investing time and resources in negotiating directly with suppliers.

The notified conduct is unlikely to substantially lessen competition, particularly in relation to other (non-approved) suppliers, as the market for the supply of gym and fitness equipment is highly competitive and, in any case, Plus Fitness does not have a substantial degree of power in the relevant market.

Further, the Plus Fitness franchise agreement allows Plus Fitness to approve other suppliers who are not currently Approved Suppliers by assessing them against Plus Fitness' standards.

Clients of Plus Fitness businesses will also not suffer a detriment as they will reap the benefits of the notified conduct by being able to expect and enjoy consistency and high levels of quality and service.

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

See paragraph 6(a) above.

7. Further information

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

Marianne Marchesi

Legalite

PO Box 3096

Richmond VIC 3121

Ph: 0402 212 954

Dated: 3 April 2017

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to read 'Marianne Marchesi', written in a cursive style.

(Signature)

Marianne Marchesi
(Full Name)

Legalite
(Organisation)

Principal
(Position in Organisation)