

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:*

Dippin' Dots Franchising Australia Pty Ltd ACN 612 044 407 ("the Franchisor").

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

The Franchisor owns or licenses all the intellectual property relating to the conduct of Dippin' Dots franchised businesses which supply Dippin' Dots proprietary ice cream and other products to consumers on a retail basis and/or on a wholesale basis for the purpose of resale.

The Franchisor will grant franchises to franchisees to operate Dippin' Dots franchised business ("Franchised Businesses").

Dippin' Dots franchisees ("Dippin' Dots Franchisees") will be required to operate their Franchised Businesses in accordance with the systems, methods, procedures and controls specified by the Franchisor ("the System"). Compliance with the System will be essential to protect the integrity of the Dippin' Dots franchise networks and brand and to ensure high quality products and services are supplied by Dippin' Dots Franchisees to consumers.

As at the date of this Notification, there are no Dippin' Dots Franchised Businesses currently operating in Australia.

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

c/- Louise Wolf, MST Lawyers, 315 Ferntree Gully Road, Mount Waverley, Victoria, 3149.

2. Notified arrangement

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

The acquisition by Dippin' Dots Franchisees of certain products to be used by them in the operation of their Franchised Businesses, including:

- Approved Products which primarily consist of Dippin' Dots proprietary ice cream products and other Dippin' Dots branded products ("Dippin' Dots Products")

Dots Goods"). Dippin' Dots Goods, in particular the ice cream products, were invented by a related entity of the Franchisor based in the USA.

(b) Description of the conduct or proposed conduct:

The Franchisor enters into Franchise Agreements on the condition that Dippin' Dots Franchisees purchase Dippin' Dots Goods from a supplier that has been approved by the Franchisor. The approved supplier is a related entity (but not a related body corporate of the Franchisor) who sources the Dippin' Dots Goods from Dippin' Dots in the USA.

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:

All Dippin' Dots Franchisees that will operate Franchised Businesses in Australia in accordance with the terms of the Dippin' Dots Franchise Agreement.

(b) Number of those persons:

(i) At the present time -

There are no current Franchised Businesses

(ii) Estimated within the next year -

22 Franchised Businesses

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

Not applicable.

4. Public benefit claims

(a) Arguments in support of notification:

The notified conduct will benefit Dippin' Dots Franchisees and the public in the following manner:

- (i)* The Franchisor will be able to ensure that all Dippin' Dots Franchisees will have genuine Dippin' Dots Goods, preserving the unique nature and high quality Dippin' Dots Goods;
- (ii)* Dippin' Dots Franchisees will offer a consistent range of Dippin' Dots Goods which will ensure that consumers will receive a consistent experience in any Dippin' Dots Franchised Business they attend. This will lead to a better consumer experience; and
- (iii)* having an approved supplier in Australia enables economies of scale that would be lost if Franchisees were each dealing with the USA supplier separately. This will assist in keeping the cost of Dippin' Dots Goods, the costs of freight and so on as competitive as possible, which is likely to have cost benefits for franchisees and consumers alike.

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

The Franchisor has, through its related entities, access to particular experience in the manufacture, storage, transportation and delivery of speciality ice cream products by virtue of its operation of its business in USA and other countries and its multiple dealerships in Australia.

The proposed conduct will enable Dippin' Dots Franchisees to deliver quality products to consumers by relieving Dippin' Dots Franchisees of the responsibility of negotiating supply arrangements with the approved suppliers, and the burden of testing quality, making it easier to focus on service to customers, which will, in turn, benefit the public.

The public benefits listed above will also allow Dippin' Dots Franchisees to be more competitive in the industry, which will in turn increase competition in the industry and ultimately benefit consumers.

Based on its experience, the Franchisor submits that Dippin' Dots Franchisees and the public will benefit from the notified conduct.

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):

The Franchisor has not undertaken an extensive market analysis. However, it would be appropriate to consider the proposed conduct in the context of the following markets:

- the market for franchised businesses in Australia;
- the market for franchised/speciality ice cream suppliers;
- the market for ice cream generally.

("the Markets").

Each of these Markets are characterised by strong competition, with numerous competitors, including:

- in relation to the market for franchised businesses: the Franchise Council of Australia survey in 2010, estimated there were in excess of 1000 franchise systems available in Australia;
- in relation to the market for franchised ice cream chains, competitors included, Cold Rock, Dairy Bell, Wendys, Ben & Jerry's, Baskin Robbins, Everest Foods, Haagen Daaz and Mini Melts;
- in relation to the market for ice cream generally, competitors include Nestle, Peters, Bulla, Streets, Unilever, Weis Australia, Cadbury.

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:*

The Franchisor submits that there will be very little or no public detriments resulting from the proposed conduct.

The likely effect of the proposed conduct will be:

- (i) it will prevent Dippin' Dots Franchisees from being able to engage their own manufacturers of Dippin' Dots Goods; and
- (ii) it will prevent other suppliers from being able to supply to Dippin' Dots Franchisees, but only in relation to the Dippin' Dots proprietary ice cream products and other branded goods.

There is no impact on end consumers as they can choose from the numerous suppliers of specialty ice cream that are available.

Consumers are likely to benefit as Dippin' Dots Franchisees will be able to provide higher quality and unique ice cream product, more efficient and better service standards. This can lead to better consumer experience and may also lead to decreased prices and increased competition for the specialty ice cream products.

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

The proposed conduct will not lessen competition in the Market because:

- (i) the Markets are highly competitive; and
- (ii) The Franchisor does not have a substantial degree of power or significant market share in any of the relevant Markets. This is true even in the narrowest market, being the market for specialty ice cream, as there are many competitors in Australia from which consumers can purchase specialty ice cream products.

The Franchisor submits that the benefits of the proposed conduct will outweigh any possible detriment arising from the proposed conduct.

Any detrimental impact will be far outweighed by the overall benefits to Dippin' Dots Franchisees and customers.

7. Further information

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

Louise Wolf
Senior Associate
MST Lawyers
315 Ferntree Gully Road
Mount Waverley, Victoria, 3149
T: (03) 8540 0264

Dated: 29 June 2017

Signed by Louise Wolf on behalf of the applicant:



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(Signature)

Louise Wolf
Senior Associate, MST Lawyers
315 Ferntree Gully Road
Mount Waverley, Victoria, 3149
T: (03) 8540 0273
E: louise.wolf@mst.com.au