

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)

N99519 Hunky Dory Franchising Pty Ltd ACN 616 350 102 ("**Hunky Dory**").

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

Hunky Dory is in the business of granting to third parties ("**Hunky Dory Franchisees**") the right to operate a business which offers casual dining, seafood and assorted non-seafood menu options alongside a traditional fish and chip business (including dine in, take away and catering) ("**Franchised Business**") on such terms set out in a franchise agreement between the parties. The Franchised Business involves the sale of seafood and other assorted food and beverages to customers using a system, name and logo designated by the words Hunky Dory.

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

C/- Robert Alderuccio, Robert James Lawyers, Level 10, 200 Queen Street,
Melbourne, Victoria 3000.

2. Notified arrangement

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

This notice relates to the acquisition of:

- products and ingredients including fish, meat, chicken, assorted seafood, deserts, coffee, beverages, flour, sauces, vegetables, condiments and other related items, boxes, cartons, containers and other miscellaneous non-perishable items such as napkins and cutlery

used in the packaging and presentation of the products] (collectively referred to as the "**Goods**"); and

- such services as Hunky Dory Franchisees are required to acquire from third party service providers including marketing and advertising services, food safety consultancy services, industrial relations consultancy services and information technology services including point of sale system software (collectively referred to as the "**Services**").

(b) Description of the conduct or proposed conduct:

Refer to Section 1 of attached Annexure A.

(Refer to direction 4)

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)

- Persons who are franchisees or will become franchisees of Hunky Dory and who are granted the right to operate a Franchised Businesses pursuant to a franchise agreement with Hunky Dory.
- Any other person who will be granted the right to operate a business which is substantially the same as a Franchised Business under the Hunky Dory name where the nature of the relationship is not categorised as a franchise and where a franchise agreement is not required to be entered into.

(b) Number of those persons:

(i) At present time:

Nil at the present time.

(ii) Estimated within the next year:

(Refer to direction 6)

Between 7 to 10 (approximately)

(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:
(Refer to direction 7)

Refer to Section 3 of attached Annexure A.

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

Refer to Section 3 of attached Annexure A.

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)

Refer to Section 4 of attached Annexure A.

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 Section 5 of attached Annexure A.

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

Refer to Section 5 of attached Annexure A.

7. Further information

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

Robert Alderuccio
Robert James Lawyers
Level 10
200 Queen Street
MELBOURNE VIC 3000

Dated: 15 / 12 /2016

Signed by/on behalf of the applicant:



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(Signature)

ROBERT ALDERUCCIO

PARTNER

ROBERT JAMES LAWYERS

ANNEXURE "A"

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

1 DESCRIPTION OF THE CONDUCT OR PROPOSED CONDUCT:

(Refer to paragraph 2(b) of Form G)

- 1.1 The conduct to which this notice relates is the requirement for Hunky Dory Franchisees to acquire the Goods and Services described in paragraph 2(a) of Form G, from suppliers approved by Hunky Dory ("Approved Suppliers").
- 1.2 Hunky Dory Franchises will be granted to Hunky Dory Franchisees on the condition, among other things, that they agree to:
 - 1.2.1 use certain Goods and Services nominated by Hunky Dory from time to time in the conduct of the Franchised Business; and
 - 1.2.2 only acquire those Goods and Services from Approved Suppliers.
- 1.3 In addition, Hunky Dory may specify that certain Goods and/or Services are only to be acquired from Hunky Dory (or a related entity of Hunky Dory).
- 1.4 Unless Hunky Dory has specifically notified a Hunky Dory Franchisee that a particular good or service must be acquired from an Approved Supplier or from Hunky Dory, the Hunky Dory Franchisee may acquire that good or service from the supplier of its choice.
- 1.5 If a Good or Service cannot be provided by an Approved Supplier or Hunky Dory for whatever reason at any time, Hunky Dory franchisees may acquire the Good or Service from an alternative supplier of their choice until an Approved Supplier or Hunky Dory is able to provide the Good or Service.
- 1.6 Details of:
 - 1.6.1 the Goods and Services which Hunky Dory Franchisees are required to acquire from an Approved Supplier; and
 - 1.6.2 the Approved Suppliers,will be set out in an operations manual which Hunky Dory provides (together with updates from time to time) to all Hunky Dory Franchisees.

2 PURPOSE OF THE CONDUCT OR PROPOSED CONDUCT:

- 2.1 The purpose of the proposed conduct referred to in clause 1.1 is not to lessen competition in the relevant market or markets but to:

- 2.1.1 ensure consistency in the Goods and Services provided to Hunky Dory Franchisees which in turn ensures consistency in customer experience regardless of which Franchised Business they attend;
- 2.1.2 ensure a certain standard of quality of the Goods and Services provided to Hunky Dory Franchisees;
- 2.1.3 ensure that Goods and Services provided to Hunky Dory Franchisees meet Hunky Dory's standards and specifications;
- 2.1.4 protect the value and reputation of Hunky Dory and the Hunky Dory system through consistency and quality;
- 2.1.5 ensure that Hunky Dory Franchisees are able to acquire the Goods and Services at competitive prices through the power of bulk buying, making Hunky Dory Franchisees more competitive in the market.

3 PUBLIC BENEFIT CLAIMS

(Refer to paragraph 4 of Form G)

- 3.1 Hunky Dory submits that the proposed conduct will have considerable public benefit.
- 3.2 The Hunky Dory Franchisees will operate in a number of competitive retail markets. The Franchised Businesses are located in metropolitan and suburban areas throughout Victoria. The existence of the Franchised Businesses in the market place will increase competition increasing the likelihood of lower prices for end consumers.
- 3.3 Small independent businesses do not have access to the benefits of larger organisations such as buying power, market presence and group marketing. This puts them at a significant disadvantage.
- 3.4 Hunky Dory Franchisees gain a number of benefits from being part of the Hunky Dory system:
 - 3.4.1 High Quality Services and Certainty of Supply

Hunky Dory has considerable experience in sourcing the Goods and Services required to operate successfully in the food industry. Hunky Dory will use that experience to source Goods and Services which meet its high standards. Hunky Dory will also approve only those suppliers who, based on Hunky Dory's investigations, are able to provide the consistency of supply of the Goods and Services required by Hunky Dory Franchisees at competitive prices.

3.4.2 Better Buying Power

Hunky Dory Franchisees by themselves would have little or no ability to negotiate with Approved Suppliers the types of prices for Goods and Services which Hunky Dory is able to negotiate. If Hunky Dory Franchisees negotiated independently with any of the Approved Suppliers, they would in all likelihood have to pay a higher price for the Goods and Services. In some cases, Hunky Dory Franchisees may not be able to acquire Goods and Services at all from a particular supplier if they were to approach them independently.

3.4.3 Increased Sales

By being part of the Hunky Dory system, Hunky Dory Franchisees have market presence and group marketing power which they would otherwise not have. By all branding their businesses using Hunky Dory's name and logo, the Hunky Dory Franchisees increase customer awareness of the Goods Hunky Dory businesses provide. In addition, Hunky Dory undertakes marketing and promotional activities on behalf of the Hunky Dory group, increasing the profile of Hunky Dory businesses within the relevant markets. By pooling funds, Hunky Dory is able to undertake professional advertising, marketing and promotional campaigns at a fraction of the comparative (often prohibitive) cost of individual business initiatives. The branding of the businesses and the group marketing will draw more customers to Hunky Dory businesses than if they were independents, resulting in increased sales.

3.4.4 Increased Profitability

By being part of the Hunky Dory system, Hunky Dory Franchisees will be able to acquire Goods and Services at more competitive prices than if they were independents. This improves the profitability of their businesses and helps them achieve the economies of scale normally associated with larger organisations.

3.4.5 Improved Management and Operating Skills

Hunky Dory has considerable experience in the retail food industry. By sharing its experience with Hunky Dory Franchisees and providing them with systems and operating procedures to follow, Hunky Dory provides Hunky Dory Franchisees with significant advantages normally associated with big business management and operating techniques. This encourages more efficient retail practices within the franchised businesses, increasing their competitiveness within the relevant markets.

3.4.6 Improved Productivity through Reduction in Business Administration

Hunky Dory will provide Hunky Dory Franchisees with advice and guidance on the conduct of the Franchised Business, including administrative and general operating procedures for the proper conduct of the Franchised Business. This encourages more efficient business practices, increasing Productivity.

- 3.5 Hunky Dory submits that, as a consequence of the benefits provided by Hunky Dory to Hunky Dory Franchisees and the benefits of the proposed conduct, consumers in the relevant retail markets will benefit.
- 3.6 The increased competitiveness and viability of Hunky Dory Franchisees enables them to compete with larger businesses, resulting in greater competition at the retail level and better prices and increased service levels for end consumers. If independent businesses such as those operated by Hunky Dory franchisees were to be pushed out of the marketplace the major competitors would have greater market share enabling them to increase the prices of goods to the public.
- 3.7 There is a high probability that the profits earned by Hunky Dory Franchisees are spent locally, resulting in greater demand for goods and services in the areas in which Hunky Dory Franchisees operate and increasing competition in those areas. This is particularly important in regional areas.
- 3.8 There are also a number of benefits to be gained by the Approved Suppliers from the proposed conduct. By being appointed as an Approved Supplier, the supplier will have some degree of certainty as to frequency of supply of Goods and Services required by Hunky Dory Franchisees. This will give them a greater ability to plan for their businesses and may encourage them to invest in their businesses. The increased volumes will also result in greater economies of scale and efficiencies within the Approved Suppliers' businesses. This in turn enables the Approved Suppliers to provide Goods and Services to Hunky Dory Franchisees at more competitive prices, increasing competition and resulting in lower prices to end consumers.

4 MARKET DEFINITION

(Refer to paragraph 5 of Form G)

- 4.1 Hunky Dory submits that the relevant markets are the wholesale market for the provision of the Goods and Services and the retail market for the sale of the Goods in Australia.
- 4.2 Based on investigations made by Hunky Dory, this market is highly competitive and there are many suppliers and recipients of the Goods and Services in the relevant market.
- 4.3 There are no restrictions including of a geographical or legal nature that affect the provision of the Goods and Services within the relevant market.

5 PUBLIC DETRIMENTS

(Refer to paragraph 6 of Form G)

- 5.1 Hunky Dory submits that there is no public detriment that results from the proposed conduct.
- 5.2 Hunky Dory submits that the proposed conduct will not lessen competition in the market.
- 5.3 The proposed conduct will not prevent Hunky Dory franchisees from dealing with other suppliers of the Goods and Services:
 - 5.3.1 Hunky Dory franchisees are independent operators and except for those Goods and Services which Hunky Dory specifies must be acquired from either Hunky Dory or its Approved Suppliers, Hunky Dory franchisees may acquire all other Goods and Services from the suppliers of their choice;
 - 5.3.2 Hunky Dory may appoint different suppliers as Approved Suppliers from time to time. In determining whether to appoint a supplier as an Approved Supplier, Hunky Dory will consider such things as quality of Goods and Services, ability to provide the frequency of supply of Goods and Services and price.
- 5.4 Approved Suppliers will be able to contract with competitors of Hunky Dory franchisees.
- 5.5 Hunky Dory will not be limited in its dealings with competitors of the Approved Suppliers.
- 5.6 To the extent that the proposed conduct contravenes section 47 of the Act, Hunky Dory submits that the public benefits resulting from the proposed conduct outweigh any public detriment caused by the proposed conduct.