



Our ref: N10000465
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Dear Mr Ko

**Exclusive dealing notification N10000465 – Doutmost Pty Ltd t/a Oliver Brown –
no further action**

I refer to the notification lodged with the Australian Competition and Consumer Commission (the **ACCC**) by Doutmost Pty Ltd t/a Oliver Brown (Oliver Brown). It has been allocated the registration number N10000465.

Commencement of legal protection

The protection from legal action provided by this notification commenced automatically when it was validly lodged with the ACCC on 8 November 2018.

While the legal protection is in force, you may engage in the conduct as described in the notification without the risk of breaching the exclusive dealing provisions of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

The notified conduct

Under the notified conduct, Oliver Brown franchisees are required to purchase certain products and services from the franchisor or its approved suppliers as stated in the Franchise Agreement. The franchisees must not, during the term of the Franchise Agreement, sell or advertise for sale or give away at the franchised business any coffee, beverage and foods other than coffee, beverage and foods approved in writing by the franchisor.

In particular, franchisees are required to purchase the following items from the franchisor or approved suppliers:

- Food and beverage products including but not limited to coffee beans, beverages, tea, biscuits, muffins, cakes, chocolate, syrups, pastries, savouries, meat and fish products, pre-packed or pre-manufactured products, sauces, beverage flavour powders, etc.
- Point of Sale (POS) display material and computing software and audio systems.
- Oliver Brown operational and/or associated items (in accordance with Oliver Brown System) such as cups, heat insulation cups, glass, paper bags, carry bags, cutlery, napkins, menu, posters, stickers promotional materials and products, food containers, drink containers, lids, uniforms, aprons, etc.
- Certain products in respect of leasing, fit out, operation and maintenance of Oliver Brown franchised business.

ACCC assessment

The ACCC can only remove the protection provided by a notification if it is satisfied that the notified conduct:

- has the purpose, effect or likely effect of substantially lessening competition, and
- in all the circumstances, will not result in likely public benefit which would outweigh the likely public detriment.

On the basis of the information that you have provided, the ACCC considers that the notified conduct is not likely to have the purpose, effect or likely effect of substantially lessening competition because:

- Oliver Brown represents a very small portion of cafes nationally – there is significant remaining competition in the markets in which Oliver Brown franchisees operate and the markets in which suppliers of the relevant goods and services (food and beverages, point of sale software, packaging and food containers) to the franchisees compete; and
- Oliver Brown advises that it will not unreasonably refuse the franchisee's use of products from another supplier, provided that the franchisor should be satisfied with such products.

As such, the ACCC has decided to take no further action at the current time, which allows the legal protection provided by the notification to continue unless or until the ACCC revokes the notification or you withdraw the notification.

You have advised that the requirement for the franchisees to purchase certain products and services from the franchisor or its approved suppliers is already included in Oliver Brown's franchise arrangements. The ACCC's assessment in this matter and decision not to revoke the notification at this time is not an endorsement of Oliver Brown's franchising arrangements, including these requirements, which are a matter for the franchisor and franchisees to determine between themselves.

This assessment has also been made on the basis that Oliver Brown will disclose all relevant terms and conditions to current and prospective franchisees. In particular I note that Oliver Brown is required to comply with the disclosure requirements of the Franchising Code of Conduct in relation to the notified arrangement.

If at any time circumstances change, or the ACCC receives further information, such that it is satisfied that the notified conduct has the purpose, effect or likely effect of substantially lessening competition and that the public benefits from the third line forcing conduct do not outweigh the public detriments, the ACCC may take steps to remove the legal protection by revoking the notification.

The notification and this email will be placed on the ACCC's [Exclusive Dealing Notifications Public Register](#).

Please contact Jaime Martin on 03 9290 1906 or by email to adjudication@acc.gov.au if you have any questions about this matter.

Yours sincerely



David Jones
General Manager
Adjudication