

Notification of Exclusive Dealing

under section 93(1) of the Competition and Consumer Act 2010 (Cth)

Notifying party

1. **Provide details of the notifying party, including:**

1.1 **name, address (registered office), telephone number, and ACN;**

Doughnut Time Franchising Pty Ltd ACN 657 806 409 ATF
Doughnut Time Franchising Trust
Unit 1/12 Zamia Street, Sunnybank, QLD 4109
Phone: [REDACTED]

1.2 **contact person's name, telephone number, and email address;**

Yasmeen Seedat
Phone: [REDACTED]
Email: [REDACTED]

1.3 **a description of business activities;**

Doughnut Time Franchising Pty Ltd ACN 657 806 409 ATF Doughnut Time Franchising Trust (Doughnut Time) administers and manages (in the capacity of franchisor) a retail franchise known as "Doughnut Time" which specialises in the sale of glazed doughnuts. A related entity of also operates a retail store for the sale of such goods.

1.4 **email address for service of documents in Australia.**

Yasmeen Seedat – [REDACTED]

Details of the notified conduct

2. **Indicate whether the notified conduct is for:**

2.1 **exclusive dealing (s. 47 of the Competition and Consumer Act 2010 (Cth) (the Act));**

2.2 **resale price maintenance (s. 48); or**

2.3 **collective bargaining (s. 93AB). If the notified conduct is for collective bargaining, whether the notified conduct includes a collective boycott.**

This notified conduct is exclusive dealing.

3. **Provide details of the notified conduct including:**

3.1 **a description of the notified conduct;**

Doughnut Time proposes to grant franchises to franchisees, under which each franchisee is entitled to establish and operate one or more retail stores trading under the name "Doughnut Time" and other identifiers (including trade marks) associated with that name.

As a condition of granting a franchise, each franchisee must establish and operate one or more physical retail stores or carts meeting certain specifications and standards of presentation and offer a core range of goods and services from those locations. To achieve those outcomes, each franchisee will be contractually obliged to only purchase stock, merchandise, and dough which is necessary for the establishment and day-to-day operation of a franchise store from Doughnut Time, or third party suppliers first approved by Doughnut Time.

The third party suppliers from whom each franchisee is obliged to purchase goods or services may change over time and may include associates and related entities of Doughnut Time.

3.2 any relevant documents detailing the terms of the notified conduct;

Refer to Annexure 1.

3.3 the rationale for the notified conduct;

The rationale for engaging in the notified conduct is as follows:

- (a) to establish and maintain the reputation and goodwill of the “Doughnut Time” brand in the marketplace, it is necessary to ensure that all franchise stores and carts operated by franchisees:
 - (i) have a consistent external and internal appearance, layout, and standard of presentation; and
 - (ii) offer a consistent range of goods and services with consistent quality and meeting certain standards and specifications associated with the “Doughnut Time” brand;
- (b) where stock, merchandise, and plant and equipment are purchased from Doughnut Time, its associates, or third party suppliers first approved by Doughnut Time, Doughnut Time may:
 - (i) on behalf of members of the franchise network, negotiate favourable commercial terms from the relevant manufacturers and wholesale suppliers, including but not limited to, lower prices, longer credit terms, improved product warranties, and improved defect handling and product return procedures;
 - (ii) ensure that all defective products and product warranty claims are dealt with in an efficient and effective manner through established communication channels directly with manufacturers and/or major distributors; and
 - (iii) ensure that all stock and other goods purchased by franchisees for sale in franchise stores are genuine goods produced by the relevant manufacturers, and not unauthorised replicas which are of lower quality and potentially pose a health and safety risk to customers.

3.4 **any time period relevant to the notified conduct.**

Doughnut Time proposes to carry out the notified conduct on an ongoing basis for all new franchises granted within its franchise network.

4. **Provide documents submitted to the notifying party's board or prepared by or for the notifying party's senior management for purposes of assessing or making a decision in relation to the notified conduct and any minutes or record of the decision made.**

There are no documents which were submitted to Doughnut Time's board or prepared by or for the notifying party's senior management in relation to the notified conduct, nor any minutes or record of decision made.

5. **Provide the names and/or a description of the persons or classes of persons who may be directly impacted by the notified conduct (including targets in collective bargaining or boycott conduct) and detail how or why they might be impacted.**

The following classes of persons may be directly impacted by the notified conduct:

- (a) Existing and potential customers of "Doughnut Time" stores - There is unlikely to be any impact upon customers. However, some of the benefit of the favourable commercial terms offered by relevant manufacturers and wholesale suppliers to franchisees may be passed onto customers, such as lower prices, improved recipes, improved product warranties, and improved defect handling; and
- (b) Persons who supply goods or services of a similar kind or nature to those required to be purchased by franchisees from Doughnut Time, or its approved third party suppliers (**Similar Suppliers**) - Similar Suppliers may be impacted due to a loss of business which they might otherwise have an opportunity to win from franchisees of Doughnut Time. The extent of the impact is likely to be correlated with the size of the franchise network. Importantly, the vast majority of manufacturers and suppliers of popular products proposed to be sold through franchise stores are located outside Australia. It is submitted that until such time as the franchise network grows considerably, the impact on Similar Suppliers as a class of persons is unlikely to be significant.

Market information and concentration

6. **Describe the products and/or services, and the geographic areas, supplied by the notifying parties. Identify all products and services in which two or more parties to the notified conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).**

Franchisees will be contractually obliged to purchase all recipes and dough, formulas, merchandise bearing "Doughnut Time" branding, and other plant and equipment, from Doughnut Time, or its approved third party suppliers.

Doughnut Time, or its approved third party suppliers, will have a vertical relationship with each franchisee within the franchise network. As Doughnut Time, or its approved suppliers, generally supply goods on a wholesale basis, there will be no overlap with franchisees who re-supply goods on a retail basis to the public.

Approximately 90% of the core range of goods required to be purchased by franchisees and offered for sale in franchise stores and carts are produced in Australia. There may be a small number of goods that are manufactured overseas.

It is noted that an associate of Doughnut Time's Burleigh Waters store is used to produce all dough which must be purchased by the franchisees.

7. **Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.**

The boutique doughnut retail sector is a small and unique industry in Australia. The wholesale market comprises primarily of medium and large food distribution companies.

There are a comparatively small number of local Australian companies that provide this retail experience. The retail market is reliant upon physical retail stores and carts.

Locally manufactured stock is generally purchased directly from local manufacturers.

8. **In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.**

Not available

9. **In assessing a notification, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:**

9.1 **existing competitors**

There are a small number of major competing retailers, some of which have retail stores across Australia. Competition in the current market is fierce, with significant downward pressure on retail prices.

There are a small but growing number of competing wholesalers, however, our main products are made in Australia. Glazes and doughnut blanks are made in Australia and are of a high quality.

9.2 **likely entry by new competitors**

The likelihood of new wholesale and retail competitors entering the market is a medium risk, given the Global Pandemic and its effects on the small to medium retail sector.

In saying that, new competitors have very few barriers to entry. It remains financially viable for Australian retailers to open a competitive retail store or cart selling boutique doughnuts such as gluten-free doughnuts. The Australian Government has released several financial incentives for start-up enterprises.

9.3 **any countervailing power of customers and/or suppliers**

Not currently identified.

9.4 **any other relevant factors.**

Doughnut Time, or its approved third party suppliers, may determine or vary their prices at any time, and from time to time. It is in the interest of Doughnut Time and its franchise network as a whole for stock and other goods to be available for purchase by franchisees at lower than market rates. Due to having a lower cost of goods sold, franchisees will have a greater capacity to compete in the market.

Doughnut Time retains the right, under the terms of its franchise agreement, to determine or vary the core range of goods which its franchisees will be required to offer for sale in franchise stores and carts. There is no incentive for Doughnut Time to reduce quality or choice, reduce innovation, or coordinate with its franchisees, as that would inhibit the growth and performance of the franchise network.

Public benefit

10. **Describe the benefits to the public that are likely to result from the notified conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.**

The notified conduct is likely to result in the following public benefits:

- (a) due to the favourable commercial terms which Doughnut Time will be able to negotiate for, and on behalf of, its franchise network:
 - (i) increased business efficiency for Doughnut Time and each of its franchisees; and
 - (ii) improved quality and consistency of the goods and services offered by franchisees to customers;
- (iii) increased exposure sites to purchase Doughnut Time products.
- (b) promotion of competition within the boutique doughnut industry due to franchisees being able to offers goods and services to customers:
 - (i) at a consistently high standard of presentation, quality and value; and
 - (ii) at competitive prices; and
- (c) promotion of competition within the boutique doughnut industry due to increased availability of products as the franchise network expands.

Public detriment (including likely competitive effects)

11. **Describe any detriments to the public that are likely to result from the notified conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.**

The notified conduct may result in the following public detriments (although for the reasons given above, this is highly unlikely):

- (a) a reduction in the variety of goods and services available to the market, due to each franchise store offering the same core range of goods and services, resulting in a lessening of competition in the retail market; and
- (b) an increased saturation of "Doughnut Time" franchise stores and carts within the geographical areas covered by Doughnut Time's franchise network may result in a lessening of competition in the markets affected by the notified conduct.

Contact details of relevant market participants

12. **Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties, such as actual or potential competitors, customers and suppliers, trade or industry associations and regulators.**

The following are the major Australian-based wholesalers and distributors of boutique doughnuts:

- (a) Krispy Kreme;
- (b) G.Free Donuts;
- (c) Donut King;
- (d) Brooklyn Doughnuts.

Any other information

13. **Provide any other information you consider relevant to the ACCC's assessment of the notified conduct.**

Nil.

Declaration by notifying party

Authorised persons of the notifying party must complete the following declaration.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

Director

Office held

Yasmeen Seedat

(Print) Name of authorised person

This 4th day of April 2022

Note: If the Notifying Party is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Notifying Party, this fact must be stated.

Restriction of Publication of Part Claimed - Public Register Version

Annexure 1 Pro Forma Franchise Agreement

A copy of Doughnut Time pro forma franchise agreement setting out the terms of the notified conduct is attached.