

Our Ref: KASL 151048  
Your Ref:  
File Principal: Ramsey Andary – (08) 8210 2229  
Contact: Seva Surmei - (08) 8210 2243  
Direct Email: ssurmei@dmawlawyers.com.au



31 August 2016

The Australian Competition & Consumer Commission  
Level 2  
19 Grenfell Street  
**ADELAIDE SA 5000**

**DMAW LAWYERS PTY LTD**

ABN 26 169 621 194  
Level 3, 80 King William Street  
Adelaide South Australia 5000

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Dear Sir

**St. Louis House of Fine Icecream and Dessert Pty Ltd Exclusive Dealing Notification - Supporting Submission**

**Introduction**

1. We act for St. Louis House of Fine Icecream and Dessert Pty Ltd (ACN 160 768 972) (**St. Louis**).
2. This submission is made in support of the enclosed "*Form G - Exclusive Dealing Notification*".

**Background**

3. It is proposed that St. Louis will enter into franchise agreements pursuant to which it will grant franchisees the right to utilise the St. Louis franchise system.
4. The St. Louis franchise system incorporates an image and technique for the marketing, preparation and sale of specialised icecream, desserts and related products through stores operating under the name "*St. Louis House of Fine Icecream and Dessert*" (**St. Louis Store**).
5. The St. Louis franchise system has been developed with the goal of providing customers with the opportunity to enjoy high quality tasting products on each and every visit to any St. Louis Store. This level of consistency extends to areas such as the design and layout of the St. Louis Stores, the style of the interior, the equipment, the provision of training, and the implementation of sales and marketing initiatives. This desired level of consistency is facilitated through controlling the origin and range of approved products and approved suppliers.

**Exclusive Dealing Notification**

6. St. Louis proposes to engage in conduct which may contravene section 47(6) of the *Competition and Consumer Act 2010* (Cth) (**the Act**), which consists of St. Louis supplying services to franchisees (namely, the grant of the franchise) on condition that they acquire goods (namely, goods used from time to time in the operation of the franchised business) from suppliers approved by St. Louis.

7. In particular, franchisees are to purchase Ingredients and Approved Products from Approved Suppliers (as those terms are defined in the franchise agreement).
8. If the franchisee wishes to obtain an ingredient from another supplier, the franchisee must first obtain written approval to do so from St. Louis. This approval will not be unreasonably withheld if the franchisee:
  - 8.1 gives St. Louis details of the nature and quantity of the ingredient or product, the name and address of the supplier and the price per unit charged by that supplier, the period that the price will be fixed and the terms and conditions of supply;
  - 8.2 deliver to St. Louis a sample of the ingredient or product;
  - 8.3 satisfy St. Louis that the proposed alternative supplier is able to maintain a continuity of supply; and
  - 8.4 satisfy St. Louis that the ingredient or product is at least equal in quality to the ingredient, product or service that it substitutes, suitable for the purpose for which it is intended and consistent with and not prejudicial to the Image or standards under the franchise agreement.
9. Accordingly, St. Louis wishes to seek immunity from legal action under the Act in relation to the exclusive dealing as described above and, for this purpose, we enclose by way of lodgment on behalf of St. Louis a Form G - Notification of Exclusive Dealing.
10. We enclose a cheque in the amount of \$100.00 payable to the ACCC in payment of the lodgement fees in this matter.

#### **Submission in support of notification**

11. We have identified below the public benefits and the public detriment resulting from the exclusive dealing conduct by St. Louis. In support of the Exclusive Dealing Notification, we submit that such public benefits will outweigh any public detriment.

#### **Public Benefits**

12. The following are the public benefits which result from exclusive dealing by St. Louis:

##### **12.1 *Unique Products***

The St. Louis franchise system allows St. Louis to provide franchisees with a unique range of products created according to unique recipes and methods and with unique ingredients. By ensuring that only approved products are included in the menu items sold to customers, St. Louis reinforces the uniqueness of the St. Louis range of products and thereby strengthens the St. Louis brand.

##### **12.2 *Identification of Ingredients***

As franchisees sell food to the general public, it is important that St. Louis is aware of, and controls, the ingredients of that food. This is because:

- 12.2.1 if food labelling is required, then St. Louis can facilitate that on behalf of franchisees; and

12.2.2 if a manufacturer issues a product recall, then St. Louis can coordinate that recall (or identify that no recall is necessary) in relation to franchisees.

### 12.3 **Consistency of Product Range**

The range of products available for consumption is consistent throughout every St. Louis Store, thereby providing a number of benefits to the customer. The customers can expect the same high quality service and products regardless of which St. Louis Store they visit. In addition, the customer has the comfort of a familiar menu allowing them to not only make their choice easily but also providing them with reassurance based on past visits that they will receive high quality products and services.

### 12.4 **Consistency in Price**

The exclusive use of approved products from approved suppliers will allow a consistent price structure to be established throughout the St. Louis franchise system. As each franchisee will expend an equivalent cost for goods used in the production of menu items, consistent prices can be set for those menu items at all St. Louis Stores. The customer has the benefit of assurance of a consistency of products available and also a consistency in the cost of those products.

### 12.5 **Lower Prices**

The proposed conduct will allow St. Louis to, in effect, negotiate for the acquisition of goods on behalf of all franchisees. This will likely allow franchisees to enjoy volume-based discounts that they would have been unable to obtain had they individually negotiated with the suppliers. This is likely to translate to lower prices for the franchisees' customers.

### 12.6 **Consistency of Value**

The operation of a system that sees consistency in price married with consistency of product quality means that customers can be certain of a correlation between cost and quality. This allows customers to not only view their experience as a pleasant one but also to see it as one that is of value to them.

## **Public Detriment**

13. The public detriment which may result from the exclusive dealing by St. Louis is as follows:

### 13.1 **Decreased Competition**

Any exclusive dealing conduct will result in a decrease in competition in some way, shape or form. In this given instance the exclusive use of approved suppliers will affect competition in the markets within which those approved suppliers trade. St. Louis contends that any decrease in competition within these markets will be minimal, because under the Franchise Agreement a franchisee may, with authorisation from St. Louis, purchase products from a supplier who is not an approved supplier.

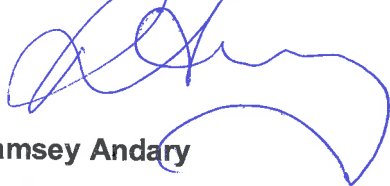
13.2 ***Freedom of Choice***

The operation of the St. Louis franchise system means that the freedom of choice of a given franchisee to choose which goods and services they purchase is decreased. Despite this, the consistency of product, services, environment, price and quality that this decrease of freedom of choice provides results in an overall benefit to the franchisee. Franchisees benefit from the commercial viability of purchasing their goods from approved suppliers and through participating in a consistent system which helps to develop and maintain a unique brand that aids the franchisees in their goals of operating successful businesses.

We look forward to receiving a favourable response to our client's notification.

If you require any further information, please do not hesitate to contact us.

Yours faithfully  
**DMAW Lawyers Pty Ltd**



**Ramsey Andary**

Enc.

RECEIVED

02 SEP 2016

AUST COMPETITION & CONSUMER  
COMMISSION - ADELAIDE

## 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.

#### 1. Applicant

(a) **Name of person giving notice:**

N99296 St. Louis House of Fine Icecream and Dessert Pty Ltd (ACN 160 768 972)  
(St. Louis)

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

Operation of a franchise system in which franchisees operate franchised businesses offering for sale specialised ice cream, desserts, and other related products through specialised stores and kiosks under the name "*St. Louis House of Fine Icecream and Dessert*".

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

Shop 4, 92 – 98 Tapleys Hill Road, Glenelg North SA 5045

#### 2. Notified arrangement

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

Please see the attached list of approved products that a franchisee must obtain for sale in their franchised business.

(b) **Description of the conduct or proposed conduct:**

Under the franchise agreements between St. Louis with franchisees, St. Louis will require franchisees to obtain the approved products 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:**

Franchisees

**(b) Number of those persons:**

**(i) At present time:**

Four (4)

**(ii) Estimated within the next year:**

Ten (10)

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

Glenelg Dessert Bar Pty Ltd - Shop 3/1 Colley Terrace, Glenelg SA 5045

Gouger Street Dessert Bar Pty Ltd – 19 Gouger Street, Adelaide SA 5000

Amit F & B Services Pty. Ltd. - Shop R1A, Westfield Tea Tree Plaza, 976 North East Road, Modbury SA 5092

D & S Co. Pty Ltd - Shops 2 and 3, 12-20 O'Connell Street, North Adelaide SA 5006

**4. Public benefit claims**

**(a) Arguments in support of notification:**

See attached cover letter.

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

See attached cover letter.

**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):**

A range of separate product markets exist for each of the different products that may be acquired by franchisees from suppliers approved by St. Louis. These markets may be regional or national in scope.

**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:**

See attached cover letter

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

See attached cover letter

7. Further information

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

Ramsey Andary  
Level 3, 80 King William Street  
Adelaide, SA 5000  
Phone: (08) 8210 2222

Dated..... 1 SEPTEMBER 2016 .....

Signed by/on behalf of the applicant

.....  
(Signature)

RAMSEY ANDARY  
.....  
(Full Name)

DMAW LAWYERS PTY LTD  
.....  
(Organisation)

PRINCIPAL  
.....  
(Position in Organisation)



## DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.



<b>Supplier</b>	<b>Product</b>
Bite Size Coffee Treats Pty Ltd	Coffee biscuits
Epicurean Essentials Pty Ltd	Chocolate garnishes
Frosty Boy Australia Pty Ltd	Waffle cones, Crepe mix, Cone mix
Pinnacle Bakery & Integrated Ingredients Pty Ltd	Cinnamon sugar
Northland Packaging Pty Ltd	All printed logo packaging (cups, boxes, bags etc)
Patio Coffee Roasters Pty Ltd	Chocolate powder, Chai spice, Coffee beans, Decaf coffee beans
Pura Milk	Milk, Cream, Skim milk
Silver Spoon	Chocolate milk, dark and white buttons, Chocolate wafer balls, Dark Chocolate Shards
Waffle King	Belgian waffles
The Ice Cream Makers Pty Ltd	Ice cream, Aprons, Balloons, Cake Tags, Coffee Cards, Cone Cooking Gloves, Cone Holders, Cone making moulds, Dulce Latte Paste, Envelopes and Gift Voucher, Ice cream tags, Scoops, St Louis stamps and stickers, Table Menus, Table Numbers, Waffles