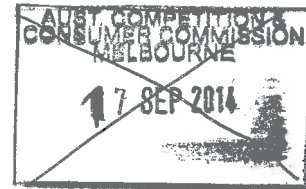


17 September 2014

BY COURIER



The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Sir/Madam

Notification of third line forcing conduct.

We act for Goodyear & Dunlop Tyres (Aust) Pty Ltd (**GDT**).

We enclose:

- a notification under section 93(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**);
- both a confidential and public register version of the supporting submission as Annexure A; and
- cheque in the amount of \$100.00 as payment of the required fees.

We are instructed that our client wishes to keep the information identified in Table 1, in respect of GDT's supporting submission, confidential for the reasons set out in Table 1.

If you have any questions in relation to the notification or the claims for confidentiality please do not hesitate to contact Geoff Carter on 03 8608 2090.

Yours faithfully
MINTER ELLISON

Geoff Carter
Partner

Contact: Mira Lutfi Direct phone: +61 3 8608 2698 Direct fax: +61 3 8608 1000
Email: mira.lutfi@minterellison.com
Partner responsible: Geoff Carter Direct phone: +61 3 8608 2090
Our reference: 1073252

enclosure

Table 1

No.	Confidential information	Reason(s)
Restriction of Part Publication Claimed		
1.	As marked in section 1.5 of Annexure A	Commercially sensitive information that should not be publicly disclosed
2.	As marked in section 1.6 of Annexure A	Commercially sensitive information that should not be publicly disclosed
3.	As marked in section 1.7 of Annexure A	Commercially sensitive information that should not be publicly disclosed
4.	As marked in section 5.9 of Annexure A	Commercially sensitive information that should not be publicly disclosed

Form G

Commonwealth of Australia

Competition and Consumer Act 2010 - sub-section 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 AT THE END OF THIS FORM

1. Applicant

(a) Name of person giving notice:

N97815 Goodyear & Dunlop Tyres (Aust) Pty Ltd (ABN 86 004 098 346) (**GDT**).

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

*The principal business of Goodyear & Dunlop Tyres (Aust) Pty Ltd (**GDT**) is the marketing, wholesaling and retailing of tyres and the provision of ancillary services relating to the retailing of tyres.*

GDT owns and operates 242 Beaurepaires stores throughout Australia, in regional and metropolitan areas. GDT also operates the Goodyear Autocare Franchise Network, as franchisor.

*GDT intends to convert part of its 65 Commercial Beaurepaires store network to franchises by selling each relevant business to a franchisee (**Franchisees**) via an Asset Sale Agreement. The Beaurepaires brand will continue to be owned by GDT and franchisees will supply customers with tyre, wheel and battery and other related products as well as tyre and wheel fitting and maintenance services.*

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

*C/- Mr Geoff Carter
Minter Ellison Lawyers
Level 23
525 Collins Street
MELBOURNE VIC 3000*

2. Notified arrangement

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

GDT:

- (a) *supplying or offering to supply; or*
- (b) *giving or allowing, or offering to give or allow, a discount, allowance, rebate or credit in connection with the supply or proposed supply of,*

contractual rights, benefits or privileges to a Franchisee under a franchise agreement granting the right to conduct a business under a brand owned by GDT, on the condition that the franchisee acquires:
- (c) *goods of the type that, under the terms of the franchise agreement, franchisees are required to acquire for the purposes of resale from a supplier(s) nominated by GDT from time to time (an 'Approved Supplier'), examples of which are described in Annexure 'A' (such goods to be collectively referred to as the 'Approved Products'); and*
- (d) *goods and services of the type that, under the terms of the franchise agreement, franchisees are required to acquire for use in the franchisees' business from a supplier(s) nominated by GDT from time to time (also an 'Approved Supplier'), examples of which are described in Annexure 'A' (such goods and services to be collectively referred to as the 'Approved Inputs').*

GDT refusing to:

- (a) *supply; or*
- (b) *give or allow a discount, allowance, rebate or credit in connection with the supply of,*

contractual rights, benefits or privileges to a franchisee under a franchise agreement granting the right to conduct a business under a brand owned by the GDT, for the reason that the Franchisee has not acquired, or has not agreed to acquire, Approved Products or Approved Inputs from Approved Suppliers.

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

See submission attached as Annexure A.

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:

Persons who are manufacturers and/or importers or wholesale suppliers of goods and services of the same type as the Approved Products and/or Approved Inputs, persons who become franchisees of GDT and who are granted the right to operate a business under a brand owned by GDT pursuant to franchise agreement with GDT and customers of those franchisees.

(b) Number of those persons:

(i) At present time:

None

(ii) Estimated within the next year:

Over 20 suppliers of Approved Products and Approved Inputs

Approximately 10 franchisees (yet to be identified)

(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:

See submission attached as Annexure A.

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

See submission attached as 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):

See submission attached as 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:

See submission attached as Annexure A.

(b) Facts and evidence relevant to these detriments:

See submission attached as 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:

*Mr Geoff Carter
Minter Ellison Lawyers
Level 23
525 Collins Street
MELBOURNE VIC 3000*

DATED this 17th day of September 2014

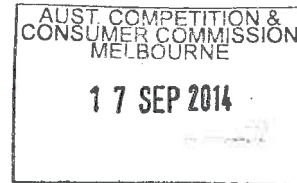
Signed by/on behalf of **Goodyear & Dunlop
Tyres (Aust) Pty Ltd**


(Signature)

Geoff Carter
(Full Name)

Minter Ellison Lawyers
(Organisation)

Partner
(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

ANNEXURE 'A' – PUBLIC REGISTER VERSION

Commonwealth of Australia
Competition and Consumer Act 2010 – subsection 93(1)

NOTIFICATION OF EXCLUSIVE DEALING

1. Background

- 1.1 The principal business of Goodyear & Dunlop Tyres (Aust) Pty Ltd (**GDT**) is the marketing, wholesaling and retailing of tyres and the provision of ancillary services relating to the retailing of tyres (**Principal Business**).
- 1.2 GDT currently owns and operates 242 Beaurepaires stores throughout Australia under the Beaurepaires brand supplying customers with tyre, wheel and battery products, as well as tyre and wheel fitting and maintenance services (**Services**). This network is divided into 2 different customer bases:
- (a) consumer retail (with a focus on passenger tyres) (**Consumer Retail Network**); and
 - (b) commercial (with a focus on truck and fleet sales with some passenger tyre sales) (**Commercial Network**).
- 1.3 Within these customer bases, there are 177 stores in the Consumer Retail Network and 65 stores in the Commercial Network. This application is in respect of the 65 Commercial Network stores only. Of these 65 Commercial Network stores, 45 are in Regional locations (**Regional Stores**) and 20 are classified as metropolitan locations (**Metropolitan Stores**).
- 1.4 GDT also operates the Goodyear Autocare Franchise Network, as franchisor and the Dunlop Super Tyres Licensee network, as licensor.
- 1.5 GDT currently enters into Service Level Agreements (**SLAs**) with fleet customers for the supply of products and services (e.g. tyre inspection, roadside assist, manage and rotate tyres). [REDACTED]
- 1.6 [REDACTED]

1.7



- 1.8 GDT intends to commence conducting a selection process to recruit prospective franchisees for a new franchise system in October 2014 with the aim of commencing the new system no earlier than November 2014. During this period, expressions of interest to become franchisees will be sought from selected parties with appropriate business skills, which may include but will not be limited to existing franchisees of Goodyear Autocare Franchise Network and the licensees of the Dunlop Super Dealer Licensee network.
- 1.9 Prospective new franchisees who lodge an expression of interest and are subsequently made an offer to become a franchisee under the new system will be provided with full details of the new franchise system in compliance with the Franchising Code of Conduct. Those documents will include:
- (a) a franchise agreement;
 - (b) disclosure document;
 - (c) the Franchising Code; and
 - (d) an Operations Manual.
- 1.10 GDT has put considerable resources into the development of the new franchise system that is complementary to its Principal Business. The purpose of developing the new franchise system is to establish a competitive, high quality, nationally consistent network of retail businesses owned and operated by Franchisees operating under Beaurepaires brand.
- 1.11 Under the new franchise system, Franchisees will:
- (a) acquire and resupply the following types of products, being the type that, under the terms of the franchise agreement, franchisees are required to acquire for the purposes of resale, including:
 - (i) tyres (including tubes and retreads);
 - (ii) wheels;
 - (iii) batteries;
 - (iv) motor vehicle spare parts, accessories, components, lubricants, valves, patches and other automotive and tyre services consumable parts and related products; and
 - (v) products of the kind to be installed as part of the Services, together with any components used in the installation, service or repair of the Approved Products or to otherwise provide the Services,

(Approved Products); and

- (b) procure and use various other goods and services as inputs in the conduct of the franchised business, such as computer software, hardware and support services, uniforms, store fit-outs, business vehicle(s), services equipment (such as wheel balancers and hoists), and payment systems/services (**Approved Inputs**).
- 1.12 It is an integral element of the new franchise system that GDT be in a position to control:
- (a) the type and source of supply of Approved Products for acquisition and resale to customer by Franchisees; and
 - (b) the acquisition and use in their respective franchise businesses of Approved Inputs.
- 1.13 In order to achieve this objective, it is necessary to engage in the notified conduct described below.

2. **Description of the proposed conduct**

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

- 2.1 The conduct to which this notice relates is the requirement for Franchisees of GDT under its proposed new franchise system to acquire the Approved Products and Approved Inputs from suppliers approved by GDT (**Approved Suppliers**) as described in paragraph 2(a) of Form G.
- 2.2 The franchise agreement establishing the new franchise system will, inter alia, include clauses to the following effect.

Approved Products

- (a) A Franchisee will be required to purchase Approved Products for supply to its customers.
- (b) Approved Products must be purchased from suppliers specified and approved by GDT that meet product specifications and quality standards specified by GDT from time to time.
- (c) Each Franchisee consents to GDT retaining a rebate or commission on purchases of Approved Products made by the Franchisee.
- (d) A Franchisee may with the prior consent of GDT, acquire and resupply products other than Approved Products, provided that the products meet any product specification and quality standards specified by GDT

Approved Inputs

- (e) The Franchisee must obtain certain goods and services from a supplier(s) specified and approved by GDT for use as inputs in the operation of the franchise system, including goods and services of the following kinds:
 - (i) computer hardware, software and related support services;

- (ii) payment system services (such as credit card merchant services from financial institution(s));
- (iii) staff uniforms;
- (iv) vehicle(s) for use in the business;
- (v) services equipment such as wheel balancers and hoists; and
- (vi) such other business inputs as GDT may notify the Franchisee from time to time.

3. Purpose of notified conduct

3.1 The purposes for engaging in the notified conduct include:

- (a) enabling GDT franchise system to offer a consistent range of high quality products, not only within the franchise system itself, but also within the Commercial Network stores;
- (b) ensuring that the franchise system procurement processes are efficient and maximise buying power for the benefit of GDT, Franchisees and customers;
- (c) ensuring that the in-store, on-premises and on-line experience of customers is of a consistent high quality across all Commercial Network stores;
- (d) enhancing the overall quality and competitiveness of the Franchisee product and service offering, enabling the system to compete more effectively with competitors;
- (e) enhancing the efficiency of operating the franchise system; and
- (f) protecting and enhancing the value of the Beaurepaires brand.

4. Market Definition

(Refer to paragraph 5 of Form G)

4.1 The relevant market(s) can be reasonably identified as:

- (a) the market(s) for the manufacture and/or importation and wholesale supply of goods of the same type as the Approved Products and the Approved Inputs in Australia; and
- (b) the market(s) for the retail supply of the goods of the same type as the Approved Products in those geographic areas in which a Franchisee operates.

4.2 Within each of the relevant market(s) there are a very large number of competitors, including:

- (a) manufacturers specialising in one or more relevant product (eg tyres, wheels, vehicle batteries etc);

- (b) wholesale and retail distributors of one or more relevant products (eg tyres, wheels, vehicle batteries etc); and
 - (c) suppliers of one or more specialist trades used in the installation or maintenance of relevant products (eg mechanics).
- 4.3 These markets are highly competitive with many different business models being used to service some part of the demand within one or more of the relevant market(s). The proposed new franchise system is unlikely to result in any immediate increase to GDT's existing market share, given that the franchises will be granted via the sale of selected existing stores.

5. Public benefit claims

(Refer to paragraph 4 of Form G)

Introduction

- 5.1 GDT submits that the proposed conduct will have considerable public benefits in relevant markets particularly located in regional areas in Australia.
- 5.2 The main categories of public benefits associated with the notified conduct include the following:
- (a) quality control;
 - (b) reduced transaction costs and maximisation of buying power;
 - (c) enhanced customer service;
 - (d) enhanced marketing and promotional capacity; and
 - (e) enhanced operational efficiencies.

Quality control

- 5.3 The types of Approved Products that will be acquired and re-supplied by Franchisees are described in paragraph 1.11 above. Many of the Approved Products are relatively high value vehicle parts used to meet basic consumer needs. The overall cost to the consumer associated with the decision to purchase these types of items may include:
- (a) purchase price of the product;
 - (b) cost of associated installation service; and
 - (c) cost of maintaining the product during its lifetime.
- 5.4 Poor quality control in relation to the selection of products, the quality of the product, product maintenance costs and the quality of the installation services can be associated with a range of potential consumer detriments. Those detriments range from high lifetime maintenance costs to unexpected expenses in repairing or replacing faulty products.

- 5.5 It is a central part of GDT's proposed franchise system that its Franchisees continue to offer a consistent range of carefully selected products from reputable suppliers that meet quality standards that seek to take into account, and where possible maximise, anticipated lifetime quality, cost, safety and lifetime maintenance cost benefits to consumers. Under the new GDT franchise system, this is achieved in part by GDT maintaining its existing responsibility for on-going quality control in product selection as part of its procurement practices.
- 5.6 Guiding principles that GDT has currently implemented in its approach to procurement include:
- (a) a focus on higher quality products, including manufacturer's reputation and track record;
 - (b) availability of appropriate product support networks, including:
 - (i) warranties; and
 - (ii) back up service and support;
 - (c) manufacturer provision of support through availability of training and advice to:
 - (i) Franchisees; and
 - (ii) consumers;
 - (d) innovative designs, features and benefits in products;
 - (e) availability and continuity of supply across all Commercial Network Stores;
 - (f) compliance with particular product specifications (if any) determined by GDT;
 - (g) access to products that are usually only available through specialist dealer networks;
 - (h) price assurance for fixed periods;
 - (i) overall value for money/favourable trading terms for all stakeholders, including:
 - (i) GDT;
 - (ii) Franchisees; and
 - (iii) consumers.

Reduced transaction costs and maximisation of buying power

- 5.7 Approved Products, Approved Inputs and Approved Suppliers will ordinarily be selected on the basis of the guiding principles described above. Franchisees will have an opportunity to provide input into the type and range of Approved Products and Approved Inputs as well as an opportunity to provide information and views on the performance of Approved Suppliers.

- 5.8 GDT as franchisor will aggregate expected Franchisee volumes of Approved Products and/or Approved Inputs and negotiate existing and new SLAs or equivalent arrangements with prospective suppliers. Approved Suppliers will then be obliged to supply the relevant Approved Products and/or Approved Inputs to Franchisees on prices, terms and conditions no less favourable than those established under the SLAs. GDT's procurement system for the franchise system will involve continuing the existing processes for the procurement of Approved Products and/or Approved Inputs in most cases. For any particular type of Approved Product or Approved Input, this process may be conducted on an annual basis or more frequently as is considered desirable. GDT will undertake collective acquisition activities for both its own Commercial Network stores and Franchises, which will only further enhance buying power.
- 5.9 Approved Suppliers will typically be asked to provide a rebate to GDT [REDACTED] [REDACTED] as a condition of appointment as an Approved Supplier. The projected revenue from these franchisor rebates forms an integral part of the overall GDT franchise business financial model. Revenue from this source will form part of the overall revenue base from which GDT will fund the franchise system, as well as earn a return on its investment as franchisor. The intention to fund operations, in part, through Approved Supplier rebates will be fully disclosed in the Franchise Agreement.
- 5.10 The procurement process is designed to:
- (a) minimise transaction costs that would otherwise be involved if Franchisees were to individually negotiate supply arrangements for Approved Products and Approved Inputs (thereby freeing up the time and resources of Franchisees to focus on their core responsibility for retail supply of Services and Approved Products);
 - (b) maximise the buying power of the collective acquisition service operated by GDT for both its own Commercial Network stores and Franchises (and the likelihood in any particular case of the Franchisees receiving the best available overall value for money) by:
 - (i) enabling GDT to offer 'firm' aggregate sales volumes to potential suppliers;
 - (ii) utilising procurement processes operated by a centralised and experienced procurement team; and
 - (iii) offering the further enhancement of buying power through the involvement of GDT's own Commercial Network stores in the collective acquisition of the products;
 - (c) enhance the potential for efficiency (and possibly economies of scale in certain functions) within Approved Suppliers businesses by:
 - (i) reducing transaction costs in having to negotiate only once with GDT in order to supply GDT's own Commercial Network stores and Franchises; and
 - (ii) providing certainty as to the volume and frequency of supply of Approved Products and/or Approved Inputs; and

- (d) maximise the overall competitiveness of GDT franchise system's retail offering through these efficient procurement practices.

5.11 GDT submits that these constitute significant public benefits.

Enhanced customer service

- 5.12 Careful selection and control over the range of Approved Products to be sold through GDT Franchisee system will enhance the ability of the system to provide a high level of customer service, consistent with existing Beaurepaires stores.
- 5.13 The overall cost/benefit to the consumer of buying a particular product depends on a number of factors in addition to the initial purchase price of the product. For example, quality, safety standards, maintenance costs and likely useful product life are all factors that will impact on the lifetime cost of the product to the consumer. Other product features may also have a non-price impact on the utility of a particular product to an individual consumer.
- 5.14 The ability to ensure that consistent high standards of customer service are provided by Franchisee staff is critical to ensure that customer benefits are maximised. Continuing to provide customers with detailed and accurate information about the above issues empowers them to make educated and informed purchasing decisions in their own best interest.
- 5.15 Continuing to select a limited range of competitively sourced high quality products for sale will enable GDT to consistently enhance the level of customer service across the franchise system because it facilitates:
 - (a) the cost effective training of Franchisee staff to achieve detailed in depth knowledge of the specific features and benefits of the Approved Products;
 - (b) consistent ranging, display and availability of a full range of selected Approved Products;
 - (c) a consistent high quality customer experience in-store, on-premises and on-line;
 - (d) the efficient development of standardised high quality product information and reference materials about the Approved Products and any ancillary services; and
 - (e) the use of efficient, standardised processes for interfacing with Approved Suppliers of Approved Products in relation to:
 - (i) referral and resolution of technical questions and issues; and
 - (ii) warranty claims and repair/replacement of faulty products.

Enhanced marketing and promotional capacity

- 5.16 Selecting and exercising control over product ranging in the franchise system also enables GDT to efficiently develop and undertake Franchisor led marketing initiatives and promotions to support the franchise system.

- 5.17 Having the same range of Approved Products available for sale in a relevant region will ensure that GDT has the flexibility and capacity to develop marketing and promotional campaigns on behalf of the franchise system in the knowledge that individual Franchisees will be able to honour those promotions. Without this control, the ability to engage in consistent regional, state or national marketing campaigns would be significantly reduced.
- 5.18 For example, by engaging in the notified conduct, GDT:
- (a) can develop marketing and promotional campaigns in a standard format for all stores in a particular region, state or national basis (as appropriate);
 - (b) can have confidence that all Approved Products referred to in marketing and promotional material will be available in relevant franchise territories and in sufficient quantities to meet likely sales volumes; and
 - (c) can, when developing price based promotional offerings, ensure that any maximum or recommended retail price set by GDT is competitive with other retail offerings and is sufficient to provide Franchisees with the opportunity to obtain a reasonable margin above the cost at which relevant Approved Products are acquired by Franchisees.

Enhanced operational efficiencies

- 5.19 Overall, the notified conduct will provide GDT with the ability to maximise the efficiency of its franchise system in a number of different ways. In competitive retail market(s), it is to be expected that these efficiency benefits will ultimately be shared with Franchisees and customers, and will enable Franchisees to compete more effectively with their retail competitors.
- 5.20 In summary, the types of operational efficiencies that GDT considers will be associated with the notified conduct include efficiencies within its operations in:
- (a) quality control of Approved Products and provision of associated Services;
 - (b) procurement of Approved Products and Approved Inputs;
 - (c) training of Franchisees and their staff; and
 - (d) promotion and marketing functions for the franchise system.

Public benefits not achievable through other means

- 5.21 While it is conceivable that some part of the above public benefits could potentially also be achieved through business models that did not involve the notified conduct, GDT submits that the full range and extent of the public benefits identified can only be achieved through the notified conduct. The less control that GDT has in relation to specification of Approved Products and/or Approved Inputs from the more difficult it will be to achieve the identified public benefits and the more likely that the operational efficiencies identified above will be reduced in scope or will not be achieved.

6. Public Detriment

(Refer to paragraph 6 of Form G)

- 6.1 GDT submits that there is little, if any, public detriment that flows from the notified conduct. If any detriment does arise it is far outweighed by the public benefits outlined above.
- 6.2 The proposed conduct will not lessen competition in any relevant markets.

Impact on Franchisees

- 6.3 The proposed conduct does restrict Franchisees from individually selecting a supplier of products other than Approved Products without the consent of GDT. However:
- (a) this restriction is fundamental to the franchise system and the achievement of the public benefits discussed above;
 - (b) GDT will, during the term of the Franchise Agreements, provide Franchisees with the opportunity to provide feedback on the types of Approved Products and the performance of Approved Suppliers;
 - (c) GDT will generally use tender processes to select Approved Suppliers, conduct that will ensure competitive tension in the procurement function for the franchise system; and
 - (d) GDT intends to implement guiding principles (as discussed above) in its procurement processes that have appropriate regard for the interest of all stakeholders, including Franchisees and customers of the franchise system.
- 6.4 Accordingly, it can reasonably be expected that Approved Products and Approved Inputs will be procured on a basis that maximises the likelihood of the franchise system obtaining value for money for all stakeholders and a selection of products that will represent a strong competitive offering in the retail markets in which the Franchisees operate. While no procurement process can 'guarantee' the cheapest available price for any particular product, the design of GDT procurement model means that it is unlikely that any Franchisee would be able to consistently achieve better overall value for money if they acted independently (even if other associated benefits and efficiencies identified above for the franchise system as a whole were ignored).
- 6.5 More generally, GDT has carefully developed its new franchise model with the intention of continuing to provide an integrated, high quality retail offering under the Beaurepaires brand. The restrictions imposed upon Franchisees are considered necessary and proportionate to achieve this objective and deliver the public benefits identified above. Importantly, prospective Franchisees will know of these restrictions in advance of any decision to enter into a Franchise Agreement and will necessarily make a fully informed and voluntary decision about whether to accept the overall package of rights and obligations (including the obligations giving rise to the notified conduct) that is being proposed. The notified conduct can therefore be clearly distinguished from a situation in which a franchisor seeks to unreasonably impose or restrict a freedom during the term of an existing franchise agreement to the detriment of a franchisee.

Impact on suppliers

- 6.6 In theory, there is a potential public detriment associated with the implicit foreclosure of opportunities for suppliers of Approved Products and Approved Inputs (other than the Approved Suppliers) to supply Franchisees. However, any anti-competitive effect of the conduct on such entities is immaterial given the competitive nature of the market in which they operate (including the large number of suppliers within it), and the relatively small volume of overall demand that the distribution channel comprising the franchise system will account for.
- 6.7 In any event, there is effectively competition to supply GDT (for both its own Commercial Network stores and Franchises) on a periodic basis due to the fact that GDT will regularly consider alternative suppliers through tender processes. Any foreclosure for opportunities for suppliers is therefore relatively transitory.

Impact on consumers

- 6.8 GDT does not consider that the proposed conduct will have any adverse effect on consumers. The entire design of the franchise system is intended to continue to providing customers with a high quality, value for money, retail offering under the Beaurepaires brand. In any event, customers will continue to have a wide range of competitive options available to choose from if they do not wish to acquire Approved Products or Services from a Franchisee.

7. Net Public Benefit

- 7.1 To the extent that the proposed conduct contravenes section 47(6) or (7) of the Act, for the reasons outlined above GDT submits that the public benefits resulting from the proposed conduct outweigh any public detriment caused.