

# Form G

Commonwealth of Australia  
*Trade Practices Act 1974 — 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 *Trade Practices Act 1974*, 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:

N94446 Battery World Australia Pty Ltd ACN 050 399 605 (BWA)

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

Battery World is a Queensland-based national franchise business. BWA operates as a franchisor to a network of Battery World franchisees. The franchisees operate a Battery World business on the terms set out in the franchise agreement between the parties. The Battery World business involves the sale of goods including batteries and a wide range of other portable power source products and associated lines (**Products**) by the franchisees to consumers using the Battery World system, name and logo.

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

C/- Eddie Scuderi  
Corrs Chambers Westgarth  
Waterfront Place  
1 Eagle Street  
BRISBANE QLD 4000

Telephone: (07) 3228 9319  
Facsimile: (07) 3228 9444  
Email: eddie.scuderi@corrs.com.au

### 2. Notified arrangement

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

The benefits of being a Battery World franchisee (including licences to BWA intellectual property).

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

BWA proposes to supply services to Battery World franchisees (namely the benefits of being a Battery World franchisee) on the condition that they acquire goods of a particular kind or description (namely Products) from suppliers approved by Battery World (**Approved Suppliers**).

BWA proposes to refuse to supply services to Battery World franchisees (namely the benefits of being a Battery World franchisee, including licences to BWA intellectual property) for the reason that the Battery World franchisee has not acquired goods of a particular kind or description (namely 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:

Battery World franchisees.

- (b) Number of those persons:

- (i) At present time:

80

- (ii) Estimated within the next year:

80

- (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:

BWA submits that the proposed conduct is likely to have the following benefits for Battery World franchisees and consumers.

1 *Support of Battery World network.* As part of deciding on which suppliers are Approved Suppliers, BWA is likely to be able to negotiate for Approved Suppliers to provide benefits to the Battery World network (for example, contributions towards annual franchisee conferences).

2 *Consistency.* Battery World franchises exist nationally. Requiring certain products to be sold at Battery World franchises allows Battery World to have a consistent national presence. Battery World customers will be able to know they can acquire Products from any Battery World store. It also means that staff at any Battery World store are likely to be familiar with, and potentially provide support for, Products, even if bought at another Battery World store.

3 *Buying power.* BWA will be able to use the buying power of all Battery World franchisees when negotiating with Approved Suppliers.

This may allow Battery World franchisees to enjoy more favourable supply terms (price and non-price).

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

BWA relies on the arguments set out in item 4(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):

The market in which the goods or services described in item 2(a) are supplied is a market for franchised businesses. BWA submits that this market is national (many franchisors franchise businesses Australia-wide).

## 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:

BWA submits that there is likely to be minimal public detriment for the following reasons.

- 1 The market for the supply of franchised businesses is highly regulated. Franchisors are subject to the *Franchising Code of Conduct*, and franchisees have the protections given by the *Franchising Code of Conduct*.
- 2 BWA intends to allow Battery World franchisees to have input into the selection of Approved Suppliers. This will include franchisees being able to suggest proposed Approved Suppliers (though the decision about whether a supplier is an Approved Supplier remains BWA's).
- 3 The conduct is unlikely to affect the markets for the supply of Products, as the conduct only applies to Battery World franchisees.
- 4 BWA retains the ability to consent, on a case-by-case basis, to Battery World franchisees supplying products from suppliers who are not Approved Suppliers.

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

BWA relies on the arguments set out in item 6(a).

**7. Further information**

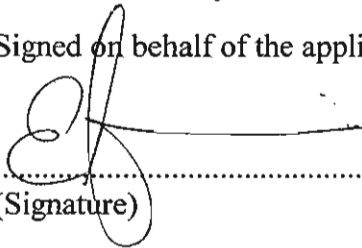
- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Eddie Scuderi  
Partner  
Corrs Chambers Westgarth  
GPO Box 9925  
BRISBANE QLD 4001

Telephone: (07) 3228 9319  
Facsimile: (07) 3228 9444  
Email: eddie.scuderi@corrs.com.au

Dated 19 January 2010

Signed on behalf of the applicant

A handwritten signature in black ink, appearing to be 'Eddie Scuderi', written over a horizontal dotted line. The signature is stylized with a large loop at the beginning.

(Signature)

Eddie Scuderi  
Corrs Chambers Westgarth  
Partner

## **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 *Trade Practices Act 1974* 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.