

# 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.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### 1. Applicant

- (a) Name of person giving notice:  
(Refer to direction 2)

N99947

Australian Pork Limited (**APL**) (ABN 83 092 783 278)

- (b) Short description of business carried on by that person:  
(Refer to direction 3)

APL is the industry service body representing the Australian pork industry. It is a producer-owned company limited by guarantee which aims to enhance the sustainable growth of the Australian pork industry, by delivering integrated marketing, research and innovation and policy services along the pork industry supply chain. APL is an industry-owned research and development corporation established under the Pig Industry Act 2001 (Cth).

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

Ms Deb Kerr  
General Manager, Policy  
Australian Pork Limited  
Level 2,  
2 Brisbane Avenue  
Barton ACT 2600

### 2. Notified arrangement

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

The provision of compliance audit services and administration supplied to Australian pig producers to enable certification under the Australian Pork Industry Quality Assurance (**APIQ**✓<sup>®</sup>) Program.

- (b) Description of the conduct or proposed conduct:  
(Refer to direction 4)

APL will supply APIQ✓<sup>®</sup> certification on the condition that pig producers who desire APIQ✓<sup>®</sup> certification will acquire the services of an auditing company as specified by APL from time-to-time (**nominated auditor**).

In order to receive APIQ✓<sup>®</sup> certification, pig producers are required to comply with industry agreed standards. Compliance is routinely verified through an external on-farm compliance audit conducted by a registered third party auditor.

The APIQ✓<sup>®</sup> program is a voluntary program, and APL does not have contractual arrangements in place with pig producers that require APIQ✓<sup>®</sup> Certification and audits. While certification is voluntary, the Department of Agriculture and Water Resources' Approved Arrangements: Meat Guidelines 2017 requires that pigs destined for export must be produced under a nationally endorsed and independently verified on farm management program. Such endorsed programs are recognised as being effective methods of managing veterinary drug and chemical residue risk in livestock. APIQ✓<sup>®</sup> is Australia's only approved quality assurance program that meets this requirement for export.

**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:  
(Refer to direction 5)

APIQ✓<sup>®</sup>, APIQ✓<sup>®</sup> Free Range and APIQ✓<sup>®</sup> Outdoor Bred, Raised Indoors on Straw Certified pig producers and pig producers seeking APIQ✓<sup>®</sup> certification.

- (b) Number of those persons:

- (i) At present time:

317 pig producing organisations, including single site and multisite organisations, are certified. These organisations represent over 90 percent of Australian pigs in production.

- (ii) Estimated within the next year:  
(Refer to direction 6)

More than 317 pig producing organisations.

- (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:  
(Refer to direction 7)

The benefits of the proposed conduct include the following:

- The integrity, credibility and robustness of APIQ✓<sup>®</sup> certification systems will increase when audits are conducted by independent third party auditors.
- Retailer, consumer, customer and regulator support for APIQ✓<sup>®</sup> will increase as audits are independent of APL and the producer, who are the owners of the program.
- APIQ✓<sup>®</sup>'s reputation against other agriculturally based QA programs will increase.
- The use of third party auditing will result in increased certainty for pig producers who are seeking APIQ✓<sup>®</sup> certification (or re-certification), due to greater availability of nominated auditors. This will maintain (and increase) the current high numbers of APIQ✓<sup>®</sup> certified pig producers. It will also lead to a greater consistency in the costs faced by pig producers when seeking certification in Australia.
- Increased APIQ✓<sup>®</sup> certification will result in an increased number of pig producers meeting high standards for management, environment, food safety, animal welfare, biosecurity, traceability and transport, which will benefit consumers.
- Increased use of APIQ✓<sup>®</sup> systems will support export opportunities being developed by industry in association with government. This will assist in securing Australia's reputation as an exporter of high standard and reliable quality pork products.
- A more robust audit system will assist Australian pig producers to demonstrate that they use safe and sustainable practices, which will allow them to substantiate particular food safety and animal welfare standards. This is of importance to many customers and consumers and increases consumer choice.
- Greater consistency in audit services and prices will ensure a level playing field for all producers.
- Transparency in audit cost structure, and a robust review and consultation process, will ensure all producers are aware of the actual costs of auditing.

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

- The APIQ✓<sup>®</sup> Management (APIQM) Team commissioned three successive and independent systems reviews of APIQ✓<sup>®</sup>. Each review concluded that independent third party auditing would be a significant improvement to the credibility of the certification system and would align APIQ✓<sup>®</sup> more closely with that of other leading

quality assurance systems.

- Using this information, APIQM identified sustainable audit options going forward and consulted heavily with producers and other industry stakeholders. Industry delegates were overwhelmingly in favour of the change.
- The existing audit system has been operating since 1995 with audits conducted by individuals who typically have multiple roles in industry, such as consultants, advisors, veterinarians, trainers and, in some cases, producers. The move to third party auditing will increase the transparency and credibility of the program.
- The Department of Agriculture and Water Resources' *Approved Arrangements: Meat Guidelines 2017* requires pigs presented for export to be produced under an approved QA program. This status is declared through the PigPass National Vendor Declaration (PigPass NVD). PigPass NVD and movement reporting is mandatory under APIQ✓<sup>®</sup> standards.

## **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):  
(Refer to direction 8)

The relevant markets that may be affected include:

- the market for the supply of audit services to the agricultural and food industry in Australia;
- the market for the supply of porcine related products in Australia;
- the market for pig producing; and
- the market for the export of porcine related products.

## **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:  
(Refer to direction 9)

There is little or no identifiable detriment to the public resulting from the proposed conduct:

- The conduct described will not decrease competition in the supply of auditing services to the agricultural and food industry in Australia.
- Audit requirements, standards, performance indicators, review processes, policies and ownership of APIQ✓<sup>®</sup> remain the same.

- The costs associated with acquiring the services of a nominated auditor are consistent with the industry standard and will be set in any agreement between the nominated auditor and APL.

(b) Facts and evidence relevant to these detriments:

- There remain a significant number of producers across all types of food products that will continue to require the services of auditors.
- APIQ<sup>✓</sup><sup>®</sup> certification remains voluntary for producers.
- Fees paid by producers for audit services will remain the same under the new APIQ<sup>✓</sup><sup>®</sup> system.

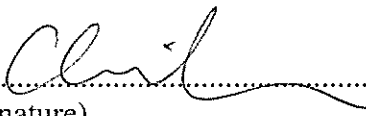
## 7. Further information

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

Nick McHugh  
Partner  
Norton Rose Fulbright Australia  
Level 18, Grosvenor Place  
225 George Street  
Sydney NSW 2000  
(02) 9330 8904

Dated.....5 October 2017.....

Signed on behalf of the applicant

.....  
(Signature)

.....CLAIRE FORSTER.....  
(Full Name)

.....Norton Rose Fulbright.....  
(Organisation)

.....Special Counsel.....  
(Position in Organisation)