



Australian
Competition &
Consumer
Commission

Our Ref: N92189
Contact Officer: Jaime Norton
Contact Number: (03) 9290 1885

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23 November 2005

Mr Luke Dale
Senior Associate
Kelly & Co Lawyers
GPO 286
ADELAIDE SA 5001

Dear Mr Dale

**Re: Third line forcing notification No. N92189 lodged by
Bernie Lewis Home Loans Pty Ltd**

I refer to the above third line forcing notification lodged with the Australian Competition and Consumer Commission (the ACCC) on 14 November 2005. The notification has been placed on the ACCC's public register.

You have described the conduct as Bernie Lewis Home Loans Pty Ltd (Bernie Lewis) offering a franchise business on condition that franchisees acquire systems and brands and certain finance and mortgage products ('Bernie Lewis Products and Services') from specified approved suppliers via Bernie Lewis.

Legal immunity conferred by the notification will commence on 28 November 2005.

On the basis of the information that you have provided, it is not intended that further action be taken in this matter at this stage.

As with any notification, please note that the ACCC may act to remove the immunity afforded by this notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

Whilst I have decided not to take further action concerning the notified third line forcing conduct, I would like to bring to your attention an issue arising from your notification. Page 2 of the notification states that the proposed conduct 'may fall within section 47(2)(d) of the Trade Practices Act as it will be a condition of the Bernie Lewis franchise agreement that franchisees acquire the approved products and services only from approved suppliers'.



As you may be aware, the fees for lodging notifications are set out in the Trade Practices Regulations. For notifications lodged by an individual or proprietary limited company for third line forcing conduct the fee is \$100. For notifications of exclusive dealing conduct other than third line forcing the fee payable is \$2500. A concessional fee of \$500 is payable for notifications lodged for exclusive dealing conduct other than third line forcing conduct when the:

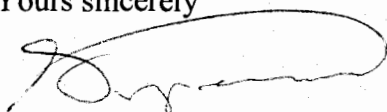
- first notice and the additional notice relate (or closely relate) to conduct in the same market
- additional notice is lodged with the ACCC within 14 days of the date of the first notice being lodged.

The ACCC received a lodgement fee of \$100 for notification N92189. To the extent that Bernie Lewis consider the conduct may constitute exclusive dealing other than third line forcing, it is my view that there is some legal doubt as to whether the immunity afforded by notification N92189 extends to that conduct.

Finally, in respect of the notified conduct, I bring to your attention the requirement under the Franchising Code of Conduct for a franchisor to disclose in the Franchise Disclosure Document any commission or rebate received through an agreement with a third party supplier.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Ms Jaime Norton on (03) 9290 1885.

Yours sincerely



Scott Gregson
General Manager
Adjudication Branch