



~~Confidential~~

FILE No:	
DOC:	
MARS/PRISM:	

100 King William Street
Adelaide SA 5000
Australia
DX 511 Adelaide
Tel +61 8 8124 1811
Fax +61 8 8231 0014
www.dlaphillipsfox.com

Our ref: JPD:FMS:0424827

22 November 2007

Mr Scott Gregson
General Manager - Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Mr Gregson

Notification of Provisions which Raise Third Line Forcing Concerns

We act on behalf of Power Franchise Pty Ltd.

Enclosed are:ⁱ

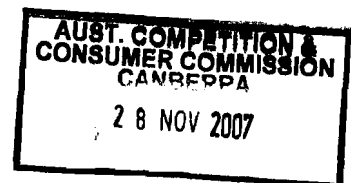
- 1 Form G Notification of Exclusive Dealing in respect of certain provisions of our client's franchise agreement which raise third line forcing concerns.
- 2 Submission in support of the notification; and
- 3 Cheque in the amount of \$100 payable to the Australian Competition and Consumer Commission.

If you have any questions in relation to this notification or require any further information please contact Mr Peter Buberis whose details appear at paragraph 4 of the Form G.

Yours sincerely

Fiona Stevens
Senior Associate
Direct +61 8 8124 1914
Fiona.Stevens@dlaphillipsfox.com

Joseph DeRuvo
Partner



ⁱ As above

FORM G
COMMONWEALTH OF AUSTRALIA
Trade Practices Act 1974 - Sub-section 93(1)
EXCLUSIVE DEALING:
NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or 9(a), (b), (c) or (d) of that Act in which the person giving notice engages or proposes to engage.

1. (a) **Name of person giving notice:** N93226
Power Franchise Pty Ltd (Power Franchise)
- (b) **Short description of business carried on by that person:**
Power Franchise is a franchisor which is licensed to commercialise the Power Loan franchised system pursuant to the Franchise Code of Conduct. The Power Loan franchised system enables the franchisee to provide for the financial needs of customers through the processing and referring of residential mortgage or non-residential mortgage finance applications, and commercial, personal and vehicle financial applications to lenders.
- (c) **Address in Australia for service of documents on that person:**
Fiona Stevens
DLA Phillips Fox
14th Floor
100 King William Street
ADELAIDE SA 5000
2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**
The appointment by Power Franchise of franchisees to process and refer home loans and associated financial products under the Power Loan brand.
- (b) **Description of the conduct or proposed conduct:**
Please see the supporting submission contained in Attachment 1. Power Franchise proposes to require that its franchisees join a nationally recognised mortgage and finance Association in Australia which has a

code of conduct and a dispute resolution procedure and the Credit Ombudsman Service Limited.

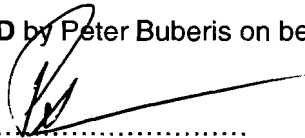
3. (a) **Class or classes of persons to which the conduct relates:**
- Power Franchise franchisees who operate Power Loan franchises throughout Australia, in accordance with the terms of the Power Franchise franchise agreement.
- (b) **Number of those persons:**
- (i) At the present time approximately 100 franchisees.
- (ii) Estimated within the next year - all Power Franchise franchisees, and any new persons granted a Power Franchise franchise. There are approximately 100 Power Franchise franchises operating throughout Australia.
- (c) **Where the number of persons stated in item 3(b)(i) is less than 50, their names and addresses:**
- Not applicable.

4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:**

Peter Buberis
Partner, DLA Phillips Fox
14th floor/100 King William Street, Adelaide SA 5000

DATED 22 November, 2007

SIGNED by Peter Buberis on behalf of the applicant



.....

(signature)

Peter Buberis
Partner, DLA Phillips Fox
14th Floor/100 King William Street, Adelaide SA 5000
Phone (08) 8124 1856
Email: peter.buberis@dlaphillipsfox.com

DIRECTIONS

- 1 If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
- 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 In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
- 4 Where particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act* 1974 have been reduced in whole or in part to writing, a copy of the writing is to be furnished with the notice.
- 5 In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
- 6 In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9) of the *Trade Practices Act* (**the Act**) it comes into force at the end of the period prescribed for the purposes of sub-section 93(7A) of the Act (**the prescribed period**) unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act decides not to give a notice under sub-section 93A(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in sub-section 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c) of the Act, it comes into force when it is given.

ATTACHMENT 1

SUBMISSION BY POWER FRANCHISE IN SUPPORT OF A NOTIFICATION UNDER SECTION 93(1) OF THE TRADE PRACTICES ACT 1974

Background

- 1 National Finance and Trading Group Pty Ltd (**NF&TG**) operates as a mortgage broker and mortgage manager. Its business is selling home loans, but activities also include sale of commercial and motor vehicle loans for certain lenders on its panel.
- 2 Power Franchise Pty Ltd (**Power Franchise**) appoints franchisees to sell and manage loans under the Power Loan brand and that of its panel lenders. They are independent contracting corporate entities and their representatives are titled Power Loan Branch Leaders and Power Loan Franchisees Service Managers. Power Franchise franchisees generate their own business (but may receive some referrals from Power Loan) and report to Power Loan's head office.
- 3 Power Franchise has a rigorous process to ensure that franchisees, operating under its brand, in selling financial products to consumers, are fit and proper persons to act in this capacity. Power Franchise's success in the market place is dependent on being recognised as a highly ethical and responsible organisation and for this reason it applies strict criteria to any person wishing to become a Power Loan franchisee.
- 4 As part of this policy Power Franchise requires all Power Franchise franchisees to be members of the Mortgage & Finance Association of Australia (MFAA) or the Finance Brokers Association of Australia (FBAA), and the Credit Ombudsman Service Limited (COSL). It has been drawn to Power Franchise's attention that this requirement may amount to third line forcing. Power Franchise has accordingly changed its policy to make MFAA or FBAA, and COSL membership optional (but highly recommended) rather than mandatory, while it lodges this notification.
- 5 Power Franchise wishes to make it mandatory that Power Franchise franchisees, service managers and account managers join the MFAA or the FBAA, and COSL.

The Associations

- 6 The MFAA was established in 1982 and is one of the peak industry bodies for mortgage brokers, finance brokers, mortgage managers, mortgage lenders and originators. It has strict membership criteria, a disciplinary process which is independently reviewed, and high quality CPD programs.
- 7 The FBAA commenced in 1992. The FBAA is run by an elected Board of Directors supported by a National Executive comprising all State Presidents and a secretariat. It was formed in the belief that the establishment of measurable standards of proper professional practice in sourcing domestic and commercial funding was in the best interests of its customers/consumers and vital to the integrity and future well being of

the finance/mortgage broking industry. Published within an industry recognised Code of Practice, these standards have been adopted by an increasing number of industry professionals who offer domestic finance, commercial finance, lease and motor vehicle finance, business and debtor finance, as finance/mortgage brokers. The FBAA has established complaints and disciplinary procedures and an Internal disputes Resolution Process. The Association also exists to safeguard both its Members and their clients/consumers against restrictive practices within the industry. In the interests of members and their clients, the FBAA monitors legislation and makes representations to Ministers and Members of Parliament. It provides access to education and training for its members and their employees.

- 8 The Credit Ombudsman Service is an external dispute resolution scheme established by COSL and approved by the Australian Securities & Investments Commission (ASIC). The Credit Ombudsman Service provides consumers and members with an alternative to legal proceedings for resolving their disputes.

The broad aim of the Credit Ombudsman Service is to provide independent and prompt resolution of disputes in accordance with:

- relevant legal requirements
- the MFAA Code of Practice and other recognised Codes of Practice
- good practice in the credit industry
- fairness in all the circumstances.

Individuals who refer their complaint to the Credit Ombudsman Service can have their complaint determined by the Credit Ombudsman. The Ombudsman's decision is binding on a Member only if the consumer accepts the Ombudsman's decision.

The Industry

- 9 There is minimal regulation of the mortgage broking industry. Western Australia and the Australian Capital Territory are the only jurisdictions which require mortgage brokers to be licensed in order to conduct business. Power Franchise regards this as unsatisfactory. Power Franchise wishes to adopt a self regulatory model by insisting that its Power Franchise franchisees join the MFAA or the FBAA, and COSL.
- 10 Power Franchise endorses the membership criteria, continuing education requirements and regulatory and disciplinary processes of both the MFAA and the FBAA. NF&TG trading as Power Loan has been a member of the MFAA since 2003 when it commenced business as a mortgage broker. It has been a member of the FBAA since 2005 and a member of COSL since 2003

- 11 Power Franchise believes it is important for the mortgage broking industry to have at least one strong professional organisation which can act against misconduct by its members.

Public Benefit

- 12 Power Franchise submits the public benefit of this requirement is overwhelming. In a situation where the industry itself is not nationally regulated, MFAA or FBAA and COSL membership provides Power Franchise with a degree of assurance that its Power Franchise franchisees will conduct themselves professionally and ethically when representing Power Franchise.
- 13 The lack of proper national regulation of the industry could mean that consumers will ultimately suffer if a professional organisation does not set an appropriate benchmark for its members. Power Franchise's requirement that Power Franchise franchisees join the MFAA or the FBAA, and COSL and abide by their membership criteria provides that benchmark and reduces the risk consumers will be exposed to unscrupulous conduct.
- 14 MFAA or FBAA membership requires satisfactory police and credit checks, educational requirements, and Continuing Professional Development , all of which ensure that professional standards are likely to be maintained.

Public Detriment

- 15 Power Franchise submits public detriment is either non existent or insignificant.
- 16 There are approximately 15,000 mortgage brokers operating in Australia. Power Franchise franchisees comprise less than 0.7% of the total. A prospective franchisee or an account manager or service manager who does not accept the MFAA or FBAA, and COSL condition is free to operate as a mortgage broker for other companies which do not set the same standards as Power Franchise.
- 17 Other financial services industry bodies are considered to be inadequately tailored to the mortgage broking industry.