



**Australian  
Competition &  
Consumer  
Commission**

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Our Ref: C2007/2209  
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9 January 2008

Ms Julia Smith  
Senior Associate  
Robert James Lawyers  
GPO Box 761  
MELBOURNE VIC 3001

Dear Ms Smith

**Pantaleo Investments Pty Ltd and F & A Nania Pty Ltd – third line forcing notifications N93228 and N93229**

I refer to the above third line forcing notifications lodged by Pantaleo Investments Pty Ltd and F & A Nania Pty Ltd (together, La Porchetta) with the Australian Competition and Consumer Commission (the ACCC) on 26 November 2007. I also refer to your letter to the ACCC dated 7 January 2008 regarding the notifications.

La Porchetta proposes to grant La Porchetta franchises to La Porchetta franchisees on condition that the franchisees agree to:

- use certain services, including but not limited to, food safety consultancy services, industrial relations consultancy services and IT services (the Services) in the conduct of the franchised business as required by La Porchetta; and
- acquire the Services from service providers who have been approved by La Porchetta (Approved Suppliers).

Legal immunity conferred by the notifications came into force on 10 December 2007.

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 the notifications 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.

## **Additional information**

In its letter to you dated 4 December 2007, the ACCC requested additional information regarding the manner in which La Porchetta intends to apply the notified arrangements to existing franchisees. In response, you advised that all La Porchetta franchise agreements contain provisions under which La Porchetta may require franchisees to acquire certain Services from Approved Suppliers.

While the ACCC understands that La Porchetta may require existing franchisees to obtain the Services from Approved Suppliers in accordance with the franchise agreement, it is unclear whether any existing franchisees are currently obtaining the Services from non-Approved Suppliers.

If existing franchisees are currently obtaining the Services from non-Approved Suppliers, please advise the ACCC as to the arrangements which La Porchetta will put in place to govern the existing franchisees' transition from non-Approved Suppliers to Approved Suppliers. I would appreciate it if you could provide this information by **21 January 2008**.

## **Franchising Code of Conduct**

I note that in promoting the La Porchetta franchises, franchisees should be made aware of the notified conduct, and should be provided with all relevant disclosure documents under the Franchising Code of Conduct (the Code).

In particular, I note that it is a requirement of the Code for franchisors to disclose any commission or rebate received through an agreement with a third party supplier.

## **Conduct not covered by the notifications**

You have advised the ACCC that La Porchetta may require certain Services to be acquired from La Porchetta itself. This conduct would not appear to constitute third line forcing under subsections 47(6) and (7) of the *Trade Practices Act 1974* (the Act).

As notifications N93228 and N93229 were lodged in respect of the third line forcing provisions of the Act, the requirement for franchisees to acquire certain Services from La Porchetta would not appear to be covered by the notifications.

A copy of 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 Sarah Chubb on (02) 6243 1088.

Yours sincerely



Isabelle Arnaud  
A/g General Manager  
Adjudication Branch