

Contact

Partner

16 June 2008

Ms Sharon Clancy
Australian Competition & Consumer Protection
GPO Box 3131
CANBERRA ACT 2601

Dear Madam

Third line forcing notifications lodged by Brabus PA Franchising Pty Ltd and Brabus Investments Pty Ltd – Reference 32502

We refer to your letter dated 11 June 2008 and respond to your questions as follows.

1. **How were Shortcuts and Telstra selected to be the nominated suppliers? For example, were they selected through a tender process?**

Shortcuts

Our client, Brabus PA Franchising Pty Ltd (**Brabus Franchising**) acquired the Price Attack group from Australian Pharmaceuticals Industries Pty Ltd (**API**) in November 2007.

The process for selecting the supplier of the point of sale system (**POS system**) for the Price Attack network predates the ownership of the Price Attack franchise network by Brabus Franchising. Shortcuts was already installed as a pilot program in a number of Price Attack locations by November 2007.

Brabus Franchising understands that a number of suppliers of POS systems were investigated by the previous owner of the Price Attack network and Shortcuts was apparently chosen on the basis of a number of factors including Shortcuts':

- (a) expertise in industries aligned to the hair and salon industry;
- (b) quality of their POS system and capacity to tailor it to the specific needs of a Price Attack business;
- (c) ability to provide high quality service;
- (d) pricing; and
- (e) expertise in rolling out the POS system to a national network.

Although the selection process for the supplier of the POS system predates Brabus Franchising's ownership of the Price Attack group, Brabus Franchising has carried out substantial due diligence in relation to Shortcuts and is satisfied that Shortcuts is the appropriate supplier to supply the POS system, based on the factors set out above.

Brabus Investments Pty Ltd (**Brabus Investments**) is the master franchisee of the Price Attack group in South Australia and the Northern Territory and its directors are in common with the directors of Brabus Franchising. Brabus Investments supports the views of Brabus Franchising.

Telstra

As with Shortcuts, the process for selecting the supplier of internet services predates Brabus Franchising's ownership of the Price Attack group. However, Brabus Franchising has considered a number of factors before agreeing to continue to support Telstra as the appropriate supplier, including:

- (a) Telstra's coverage around the country;
- (b) Telstra's service level;
- (c) the ability to "piggy back" on the arrangements negotiated based on the previous owner's (a listed company) substantial bargaining position.

2. Is there a process in place to review the goods/services provided by Shortcuts and Telstra to ensure that the claimed public benefits continue to be generated?

Brabus Franchising employs 1 member of staff whose main role is to specifically implement the POS rollout. The same employee will regularly review Shortcuts as the provider of the POS system and Telstra as the internet service provider to ensure that Shortcuts and Telstra will continue to provide:

- (a) the Price Attack franchisees with competitive advantages;
- (b) efficiencies in the management of the Price Attack franchise network; and
- (c) cost savings to the franchisees' businesses,

thereby ensuring that the public benefits continue to be generated.

3. Do Brabus PA Franchising Pty Ltd and/or Brabus Investments Pty Ltd receive a rebate or fee from Shortcuts and/or Telstra? If yes, how much is the rebate and what do Brabus PA Franchising Pty Ltd and/or Brabus Investments Pty Ltd do with the rebate? Have franchisees been informed about the rebate?

Brabus Franchising and Brabus Investments do not receive any rebate from Shortcuts or Telstra.

Further, Brabus Franchising subsidises part of the cost of the POS system for all current franchisees (including the franchisees of Brabus Investments).

4. **Is the requirement to purchase goods/services from Shortcuts and Telstra an existing or new requirement or existing franchisees? If it is a new requirement, how will the requirement be implemented and are there any transitional arrangements or existing franchisees?**

Brabus Franchising instructs us that API announced to all franchisees at the Price Attack conference in August 2006 that Shortcuts would likely be the provider of the POS system and Telstra would likely be the internet service provider. Accordingly, the requirement to implement a new POS system has been known by all franchisees for nearly 2 years. Brabus Franchising understands that part of this early announcement was to enable existing franchisees to budget for the expenditure.

Under current Price Attack franchise agreements, the franchisee must at its cost install and use the POS system specified by the franchisor (Brabus Franchising or Brabus Investments as the context requires).

To ensure the smooth transition to the Shortcuts POS system, Shortcuts have developed a 5 phase strategy which includes planning, implementing, rolling out, closure and support.

Brabus Franchising understands that after the announcement in August 2006, there was a testing period through pilot stores to ensure that Shortcuts' POS system is the right system for the Price Attack group. That testing period is now complete and the POS system will now be rolled out to all Price Attack stores at the rate of approximately 5 stores per week.

It is key to the success of the new POS system and in achieving the public benefits that all Price Attack stores use a POS system with common functionality and information capture capabilities.

If you have any questions or require further information please do not hesitate to contact Warren Scott on 03 9605 0984 or wscott@millsOakley.com.au.

Yours faithfully



WARREN SCOTT
MILLS OAKLEY LAWYERS