



**Australian  
Competition &  
Consumer  
Commission**

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1 July 2008

Dear Sir / Madam

**Exclusive dealing (third line forcing) notifications lodged by Brabus PA Franchising Pty Ltd and Brabus Investments Pty Ltd - interested party consultation**

The Australian Competition and Consumer Commission (ACCC) has received exclusive dealing (third line forcing) notifications from Brabus PA Franchising Pty Ltd (Brabus Franchising) and Brabus Investments Pty Ltd (Brabus Investments).

The notifications concern arrangements for the Price Attack franchise network under which Brabus Franchising and Brabus Investments will require franchisees to acquire certain hair care products, point of sale software and hardware and internet services from nominated suppliers. For more information about the notifications and the role of the ACCC in assessing notifications, please see Attachment A to this letter.

The ACCC is currently conducting a public consultation process regarding the notifications to enable it to determine whether the public benefit from the notified conduct outweighs the public detriment. As a potentially interested party, you are invited to comment on the issues outlined in Attachment A by **Wednesday, 23 July 2008**.

The ACCC asks for submissions to be in writing so they can be made available on its public register and website. Persons lodging a submission with the ACCC may request that information included in the submission be excluded from the public register. If you wish to request that any information in your response to this letter be excluded from the public register by reason of its confidential nature, please refer to the attached guidelines. If the ACCC decides to exclude any information from the public register, the ACCC may take it into account, even though it is not publicly available.

If you wish to lodge a submission in respect of the notifications, please address your submission to:

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

Submissions can also be lodged by email to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au) or by facsimile on (02) 6243 1211.

Please inform us if you do not wish to make a submission at this time, but would like to be informed of the progress of this matter. You may forward this letter to any other party who may wish to make a submission to the ACCC regarding these notifications.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please contact Sharon Clancy on (02) 6243 1217 or at [sharon.clancy@acc.gov.au](mailto:sharon.clancy@acc.gov.au).

Yours sincerely

A handwritten signature in cursive script that reads "Joanne Palisi". The signature is written in black ink on a light-colored background.

Joanne Palisi  
Director  
Adjudication Branch

### **Background**

The ACCC is the independent Australian government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive arrangements or conduct, thereby encouraging competition and efficiency in business resulting in a greater choice for consumers in price, quality and service.

Exclusive dealing involves one trader imposing restrictions on another trader's freedom to choose with whom, in what or where they deal. One type of exclusive dealing is known as third line forcing.

Third line forcing involves the supply of goods or services on condition that the purchaser acquires goods or services from a particular third party, or a refusal to supply because the purchaser will not agree to that condition.

However, the Act allows businesses to obtain immunity from legal action for third line forcing conduct in certain circumstances. One way in which businesses may obtain immunity is by lodging a 'notification' with the ACCC. Notifications provide immunity 14 days after the notification is validly lodged with the ACCC.

The ACCC will move to revoke a third line forcing notification 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.

### **Third line forcing and franchise arrangements**

It is not uncommon for franchisors to require franchisees to acquire stock or equipment from nominated suppliers (including themselves). By their very nature, franchise agreements will impose some restrictions on franchisees' freedom to choose with whom, in what or where they deal.

Where franchisors propose to require franchisees to acquire stock or equipment only from themselves or nominated third party suppliers, they are at risk of contravening the exclusive dealing provisions of the Act. A number of franchisors therefore seek immunity for such conduct by lodging a notification with the ACCC.

The ACCC will assess the public interest submissions made by franchisors having regard to, among other things, whether the notified conduct is likely to result in higher quality and greater consistency of end products and/or cost savings to franchisees as a result of increased buying power.

In circumstances where franchisees raise concerns in relation to notified arrangements, the ACCC will consider those concerns and may choose to consult more broadly. If widespread concern is identified, the ACCC is likely to review a notification to determine whether the public benefit test is met.

## **Notifications lodged**

The ACCC has received five notifications concerning Price Attack franchising arrangements. Under the notified conduct, Brabus Franchising and Brabus Investments propose to supply franchise services to Price Attack franchisees on condition that franchisees:

- acquire specified products and services from Cosmetic Suppliers Pty Ltd, trading as Wella Australia (N93347 and N93348)
- acquire software and hardware related to their point of sale from Shortcuts Software Australia Pty Ltd as well as internet services from Telstra (N93428 and N93429)
- acquire specified products including hair care products from PPS Hairwear Australia Pty Ltd (N93433).

Additionally, Brabus Franchising has lodged a notification concerning arrangements for the Fix franchise system under which it proposes to supply franchisees the right to operate a Fix business on the condition that they acquire specified products from Cosmetic Suppliers Pty Ltd (trading as Sebastian Professional) (N93434).

The immunity from legal action conferred by each of the notifications has commenced. The ACCC is now in the process of reviewing the notifications to determine whether the likely public benefit will outweigh the likely public detriment from the notified conduct.

Copies of the notifications are provided. Further information, as well as correspondence in relation to the matter, is available on the ACCC website [www.accc.gov.au](http://www.accc.gov.au) by following the links to 'Public registers', 'Authorisations and notifications registers' and 'Exclusive dealing notifications register'.

## **Request for submissions**

To assist the ACCC in its consideration of these notifications it would be helpful to obtain your comments on the likely public benefits, public detriments and the likely effect on competition from the proposed arrangements. In particular, the ACCC seeks your views in response to the following questions:

- Does your franchise agreement with Brabus Franchising or Brabus Investments allow for changes or additions to nominated suppliers? In what circumstances may such changes may be made?

Will the notified conduct result in lower priced supplies for franchisees due to favourable arrangements with suppliers (such as bulk or volume discounts) or as a result of rebates from suppliers?

- Will the notified conduct result in lower prices to the public as a result of lower priced supplies for franchisees?

Will the notified conduct assist in ensuring consistency of range and quality of products across all Price Attack stores?

Will the notified conduct assist in ensuring standardisation and efficiency in the operation of the Price Attack franchise network?