



**Australian
Competition &
Consumer
Commission**

Our Ref: C2008/928
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4 September 2008

Mr Warren Scott
Mills Oakley Lawyers
PO Box 453
Collins Street West
Melbourne VIC 8007

By facsimile: (03) 9605 0933

Dear Mr Scott

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

I refer to the exclusive dealing (third line forcing) notifications lodged by Brabus PA Franchising Pty Ltd (Brabus Franchising) and Brabus Investments Pty Ltd (Brabus Investments).

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 (Shortcuts) 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.

As you know, the ACCC undertook a public consultation process regarding the notifications to enable it to determine whether the public benefit from the notified conduct outweighs the public detriment. Information was received from Price Attack franchisees, an alternative supplier, Shortcuts, Brabus PA and Brabus Franchising.

On the basis of the information provided to the ACCC, I wish to advise you that the ACCC does not intend to take any further action in relation to the notifications at this stage. Please find attached, for your information, a copy of the letter to be sent to interested parties regarding this matter.

This assessment has been made on the basis that Brabus PA and Brabus Franchising will disclose all relevant terms and conditions to franchisees. I draw to your attention the requirements under the Franchising Code of Conduct and in particular, the requirement for a franchisor to disclose in the Franchise Disclosure Document any commission or rebate received through an agreement with a third party supplier.

Please note that, as with any notification, 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.

A copy of this letter has been placed on the ACCC's public register. If you have any questions in relation to this matter, please contact Sharon Clancy on (02) 6243 1217.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Hatfield', written in a cursive style.

David Hatfield
A/g General Manager
Adjudication Branch