



**Australian
Competition &
Consumer
Commission**

Our Ref: C2008/928
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4 September 2008

*Sent to interested parties
SC
4/9/08*

Dear Sir / Madam

Exclusive dealing (third line forcing) notifications lodged by Brabus PA Franchising Pty Ltd and Brabus Investments Pty Ltd

The Australian Competition and Consumer Commission (ACCC) has received five notifications from Brabus PA Franchising Pty Ltd (Brabus Franchising) and Brabus Investments Pty Ltd (Brabus Investments) (together referred to as Brabus) concerning the Price Attack franchising arrangement.

You may recall that on 1 July 2008 the ACCC sought the views of interested parties about the notifications. The ACCC also sought and obtained information from Brabus in relation to the notified conduct.

The notifications and all public submissions are available on the ACCC's website www.accc.gov.au.

I am writing to inform you of the outcome of the ACCC's assessment of the notifications.

The notified conduct

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 (notifications N93347 and N93348). These notifications were lodged on 28 March 2008 and the legal protection afforded by the notifications commenced on 11 April 2008.
- acquire software and hardware related to their point of sale from Shortcuts Software Australia Pty Ltd (Shortcuts) as well as internet services from Telstra (notifications N93428 and N93429). These notifications were lodged on 6 June 2008 and the legal protection afforded by the notifications commenced 20 June 2008.
- acquire specified products including hair care products from PPS Hairwear Australia Pty Ltd (notification N93433). This notification was lodged on 11 June 2008 and the legal protection afforded by the notification commenced on 25 June 2008.

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) (notification N93434). This notification was lodged on 11 June 2008 and the legal protection afforded by the notification commenced 25 June 2008.

Issues raised by interested parties

The submissions from interested parties received by the ACCC raised concerns that:

- The rebates paid to Brabus by the suppliers nominated by Brabus are unlikely to result in lower prices for franchisees or customers because franchisees generally sell products at recommended retail prices. Additionally, the rebates create inefficiencies because they dampen competition between suppliers to supply the Price Attack franchise network and result in supply orders which do not reflect consumer demand.
- The Shortcuts computer system is subject to technical and operational problems which limit its utility and reduce any efficiency claims associated with its use.
- The requirement that franchisees obtain internet services from a single provider will not necessarily result in decreased costs and efficiencies because franchisees have different internet usage patterns which may be best serviced by different providers.

Information provided by Brabus and Shortcuts

In response to the issues raised by interested parties, Brabus and Shortcuts submitted that:

- cost savings are available to franchisees via rebates and discounts from suppliers and may be passed on to consumers because franchisees are not required to sell products at recommended retail prices
- centralisation of the Price Attack network's point of sale system will enable the collection and analysis of sales data for products and services across the network which will support group buying activities
- any technical and operational issues arising from the Shortcuts system have been solved as a matter of priority
- efficient use of the centralised point of sale system is facilitated by the franchise network using a single internet service provider
- when selecting suppliers, Brabus takes into consideration a range of factors including the quality of the goods, pricing, the ability of the supplier to supply a national network, the discounts and rebates provided by the supplier, payment conditions and education and training support provided by the supplier.

Summary of ACCC considerations

The ACCC may revoke a third line forcing notification if it is satisfied that the likely benefit to the public from the conduct does not outweigh the likely detriment to the public from the conduct.

The ACCC accepts that third line forcing notifications lodged in respect of franchise arrangements will restrict the franchisees' freedom to choose with whom, in what or where they deal. However, third line forcing in franchise situations may give rise to a number of benefits, including maintaining the quality and consistency of the end product, and delivering cost savings to franchisees.

On the basis of the information provided to the ACCC in relation to the notifications, the ACCC considers the notified conduct will result in a benefit to the public in the form of efficiencies through centralisation of the point of sale system and cost savings associated with lower priced supplies for franchisees.

The ACCC does not intend to take any further action in relation to the notifications at this stage. However, 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 wish to discuss any aspect of this matter, please do not hesitate to 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