



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2008/1992
Contact Officer: Tess Macrae
Contact Number: 03 9290 1835

24 December 2008

Phillip Hourigan
Deacons
GPO Box 407
BRISBANE QLD 4001

Dear Mr Hourigan

Third line forcing notification N93718 lodged by PoolWerx Corporation Pty Ltd

I refer to the above third line forcing notification lodged with the Australian Competition and Consumer Commission (the ACCC) on 8 December 2008. The notification has been placed on the ACCC's public register.

PoolWerx proposes to require franchisees to purchase all approved products and services, of the kind referred to below, from suppliers or the supplier approved by PoolWerx.

Approved products include: pool cleaning products; equipment; inflatable and plastic toys; accessories; fitting equipment; service vans; van signage; and telecommunications, printing, insurance, water testing and calibration equipment and work uniforms.

Further information in respect of the notified conduct

In order to assist the ACCC in its consideration of the notification please provide the following additional information.

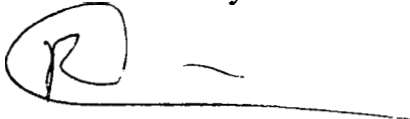
1. Please provide full details of the rebates received, or proposed to be received, by PoolWerx from each approved supplier.
2. Does PoolWerx provide information to franchisees about rebates received beyond the acknowledgement in Clause 11 of its Franchise Agreement? Specifically, are franchisees informed of the level of rebates received by PoolWerx in relation to specific products franchisees are required to purchase from approved suppliers?

3. PoolWerx has provided details of the range of factors it has regard to in selecting approved suppliers. Please provide further details of the process by which approved suppliers are selected. For example, does PoolWerx identify and approach suppliers it considers may be appropriate, and are opportunities to become an approved supplier made known to a range of potential suppliers such as through a tender process?
4. Please advise how the level of rebates payable by suppliers is determined. For example are higher levels of rebates paid where a supplier is appointed as the exclusive supplier of a good or service?
5. I note that approved suppliers could potentially increase the price of relevant products to PoolWerx franchisees to recover, in part or full, the cost of the rebate. Does PoolWerx have a view on the effect of requiring approved suppliers to pay a rebate to PoolWerx on the cost at which relevant products are supplied to franchisees?
6. PoolWerx states that it reviews all approved supplier arrangements on a national basis quarterly and on a state basis monthly. Please advise whether the price at which products are supplied to franchisees, compared, for example, to the prices available for equivalent products from alternative suppliers, is considered as part of these reviews.
7. Please confirm whether the vehicle requirement will apply to existing franchisees that must use a vehicle in connection with their franchise business, when they renew their agreement. If the vehicle requirement does apply to existing franchisees renewing their agreements, how and when are existing franchisees made aware of this requirement, and what consideration is given to franchisees' existing vehicle arrangements in enforcing this requirement? For example, would a franchisee that has recently purchased a new vehicle that is not of the make and model specified by PoolWerx, either because they were not aware of the requirement to purchase the specified vehicle on renewal of their agreement at the time of purchase, or because a different make and model of vehicle, or no make or model of vehicle, was specified at the time of the purchase, still be required to purchase the specified vehicle?

Please provide the requested information by **21 January 2009**.

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 Tess Macrae on (03) 9290 1835.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized capital letter 'R' followed by a horizontal line extending to the right.

Dr Richard Chadwick
General Manager
Adjudication Branch