



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2009/1477
Contact Officer: Gina D'Ettorre
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29 September 2009

Dear Sir/Madam

**Exclusive dealing notifications N94070 – N94082 lodged by
Essential Beauty Franchisors and Master Franchisees**

The Australian Competition and Consumer Commission (the ACCC) has received a series of exclusive dealing notifications from Essential Beauty Franchisors and Master Franchisees in relation to conditions attaching to existing and future franchise agreements. Broadly, the notified arrangements require Master Franchisees and franchisees to only acquire (and sell to customers) goods and services approved by the Franchisor from the Franchisors, Master Franchisees or Approved Suppliers. The protection from legal action conferred by each of the notifications has commenced.

Attached is a summary of the notification process, including how to make a submission. Also attached are further details about each of the notifications, along with a copy of the notifications.

The notifying parties also provided documents in support of their submission but due to their size they have not been placed on the ACCC's public register. A hard copy of the notifications and supporting documents can be obtained by contacting Gina D'Ettorre on (03) 9290 1483.

Request for submissions

To assist the ACCC in its assessment of the notifications, it would be helpful to obtain your views about the effect this conduct may have on competition, your business, and the likely public benefits and detriments arising from the conduct.

Submissions will be placed on the ACCC's public register subject to any request for exclusion ([guidelines are attached](#)).

If you intend to provide information in relation to the notifications please do so by **Monday, 19 October 2009**.

You can also forward this letter to any other party who may wish to provide information to the ACCC regarding the notifications.

If you would like to discuss any of the issues raised in this letter, please do not hesitate to contact Gina D'Ettorre on (03) 9290 1483.

A copy of this letter has been placed on the ACCC's public register.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gavin Jones', with a long horizontal flourish extending to the right.

Gavin Jones
Director
Adjudication Branch

The notified conduct

The conduct notified by Essential Beauty involves both third line forcing and exclusive dealing conduct other than third line forcing. In assessing the notifications the ACCC applies the public interest tests provided in the *Trade Practices Act*. Below is a summary of each of the three series of notifications lodged by Essential Beauty and the relevant test to be applied.

Exclusive dealing other than third line forcing notifications

Notifications N94070 to N94074

- A. Essential Beauty Franchising Pty Ltd, Essential Beauty Franchising (NSW) Pty Ltd, Essential Beauty (Qld) Pty Ltd, Essential Beauty (Vic) Pty Ltd and Essential Beauty Franchising (WA) Pty Ltd (the Franchisors) have each lodged notifications in respect of requirements that:
- (i) Master Franchisees and franchisees agree to acquire Approved Goods and Services only from the Franchisors, under the standard Master Franchise and Franchise Agreements
 - (ii) Master Franchisees only supply Approved Goods and Services, acquired from Approved Suppliers, to appointed franchisees, and
 - (iii) Franchisees only supply Approved Goods and Services, acquired directly from Franchisors or Approved Suppliers, or from the Franchisor or Approved Suppliers via the Master Franchisees (as intermediary), to consumers.

The test

The ACCC may withdraw the protection afforded by the notifications at any time if it is satisfied that the notified conduct will result in a substantial lessening of competition and the benefit arising from the conduct does not outweigh the detriment to the public.

Third line forcing notifications

Notifications N94075 to N94079

- B. Each of the Franchisors propose to offer franchise agreements to Master Franchisees and franchisees on condition that Master Franchisees and franchisees acquire Goods and Services only from Approved Suppliers.

Notifications N94080 to N94082

- C. Each of Essential Beauty Chermside Pty Ltd, Essential Beauty Victoria Pty Ltd and Pilton Holdings Pty Ltd (the Master Franchisees) propose to offer franchise agreements on condition that franchisees agree to only acquire Approved Goods and Services from the Franchisor responsible for the territory in which they operate, or Approved Suppliers.

The test

The ACCC may withdraw the protection afforded by the notifications at any time if it is satisfied that the benefit arising from the conduct does not outweigh the detriment to the public.

Letter sent to following list of interested parties

E-Beauty Dernancourt
E-Beauty Magill
Essential Beauty Adelaide Street
Essential Beauty Armadale
Essential Beauty Arndale
Essential Beauty Carousel
Essential Beauty Chadstone
Essential Beauty Chermside
Essential Beauty Colonnades
Essential Beauty Elizabeth
Essential Beauty Frankston
Essential Beauty Galleria
Essential Beauty Geelong
Essential Beauty Hay Street Mall
Essential Beauty Highpoint
Essential Beauty Hollywood Plaza
Essential Beauty Ingle Farm
Essential Beauty Innaloo
Essential Beauty Ivanhoe
Essential Beauty Joondalup
Essential Beauty Knox
Essential Beauty Marion
Essential Beauty Melbourne Central
Essential Beauty Midland
Essential Beauty Munno Para
Essential Beauty Rockingham
Essential Beauty Rundle Mall
Essential Beauty Southland
Essential Beauty Tea Tree Plaza
Essential Beauty The Foundry
Essential Beauty Unley
Essential Beauty West Lakes
The Clinic (Cosmetic Medicine)