



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2008/1992
Contact Officer: Gavin Jones
Contact Number: 03 9290 1475

9 June 2009

Dear Sir/Madam

**Third line forcing notification N93718 lodged by
PoolWerx Corporation Pty Ltd (PoolWerx)**

I refer to the above third line forcing notification lodged with the Australian Competition and Consumer Commission (the ACCC) by PoolWerx Corporation Pty Ltd (PoolWerx).

The conduct the subject of the notification involves PoolWerx requiring franchisees to purchase approved products and services from suppliers or the supplier approved by PoolWerx.

The notification process

The competition provisions of the *Trade Practices Act 1974* (the Act) prohibit certain forms of anti-competitive conduct or arrangements. Subsections 47(6) and (7) of the Act prohibit exclusive dealing of the type known as third line forcing. Third line forcing occurs where a corporation supplies goods or services on condition the customer acquires other goods or services from another business or refuses to supply because the customer will not agree to that condition. Third line forcing conduct is a *per se* provision, meaning that it amounts to a contravention of the Act regardless of its effect on competition.

Businesses wishing to engage in third line forcing conduct can 'notify' the ACCC of the conduct. Notification provides immunity from legal action by the ACCC and any other party for potential breaches of the exclusive dealing provisions of the Act where the conduct is in the public interest.

Under the notification process immunity from third line forcing conduct is obtained automatically 14 days after the date of lodgement, and continues unless the ACCC issues a notice revoking the immunity.

For third line forcing notifications, the ACCC may issue a notice revoking the immunity only if it is satisfied that the likely benefit to the public from the notified conduct would not outweigh the likely detriment to the public resulting from the

conduct. Provided it is so satisfied, the ACCC may act to remove the immunity afforded by a notification at any stage.

Summary of ACCC considerations

Having considered the notification and submissions from PoolWerx and franchisees, the ACCC does not intend to take further action in this matter at this stage on the basis that it is not apparent that the likely benefit to the public from the notified conduct would not outweigh the likely detriment to the public resulting from the conduct.

In reaching this position the ACCC accepted that as with many franchise systems there is a benefit in arrangements that promote consistency in quality of products across franchise networks. In this instance PoolWerx has sought to achieve this through its approved supplier arrangements which it considers to be a cost effective means of ensuring that standards with respect to quality and consistency are met.

The ACCC noted PoolWerx's submission that the approved supplier arrangements may facilitate relevant products being supplied more cheaply than would otherwise be the case and provide incentives for suppliers to offer greater levels of service and training. However, the ACCC also noted that rebates payable to PoolWerx by approved suppliers may result in any cost savings to franchisees not being as large as they could be absent the rebates.

Regard was also had to the ongoing competition provided by the manner in which approved suppliers are selected and reviewed, and PoolWerx's interest in approving suppliers that ensure that its franchisees are supplied on competitive terms.

As with any notification, please note that the ACCC may act to remove the immunity afforded by the notification 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 Gavin Jones on 03 9290 1475.

Yours sincerely

A handwritten signature in black ink, appearing to be 'R Chadwick', with a horizontal line extending to the right.

Dr Richard Chadwick
General Manager
Adjudication Branch