



Australian
Competition &
Consumer
Commission

GPO Box 3131
Canberra ACT 2601

23 Marcus Clarke Street
Canberra ACT 2601

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

Contact Officer: Erin Donohue
Contact Number: (02) 6243 1291

3 March 2010

Mr Adam Walker
Senior Associate
Gadens Lawyers
Level 35, 6000 Bourke Street
Melbourne VIC 3000

Dear Mr Walker

**Third line forcing notification N94458 lodged by Back In Motion
Physiotherapy Pty Ltd**

I refer to the above third line forcing notification lodged with the Australian Competition and Consumer Commission (the ACCC) on 4 February 2010. The notification has been placed on the ACCC's public register.

Back In Motion Physiotherapy Pty Ltd (BIM) proposes to require that franchisees purchase particular goods and services from suppliers approved by Back In Motion Physiotherapy Pty Ltd.

Legal immunity conferred by the notification commenced on 18 February 2010.

On the basis of the information that you have provided, it is not intended that further action be taken in this matter at this stage.

This assessment has been made on the basis that Back In Motion Physiotherapy Pty Ltd will disclose all relevant terms and conditions to current and prospective franchisees. In particular I note that Back In Motion Physiotherapy Pty Ltd is required to comply with the disclosure requirements of the Franchising Code of Conduct in relation to the notified arrangement. Among other things, these specify that a franchisor must provide information to franchisees in its disclosure document about:

- any restrictions on acquisition of goods or services by the franchisee from other sources
- whether the franchisor or an associate will receive a rebate or other financial benefit from the supply of goods or services to franchisees, including the name of the business providing the rebate or financial benefit and

- whether any such rebate or financial benefit is shared directly or indirectly with franchisees.

More generally I would note that the Franchising Code of Conduct also requires disclosure of:

- ownership by a franchisor or an associate of a franchisor of an interest in any supplier from which the franchisee may be required to acquire goods or services
- any restrictions by a franchisor on the goods or services that a franchisee may supply and
- any restrictions on the persons to whom a franchisee may supply goods or services.

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 Erin Donohue on (02) 6243 1291.

Yours sincerely

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

Dr Richard Chadwick
General Manager
Adjudication Branch