



**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](http://www.accc.gov.au)

Our Ref: C2010/963  
Contact Officer: Gina D'Ettorre  
Contact Number: 03 9290 1483

23 November 2010

Mr Alex Rhydderch  
Senior Associate  
Colin Biggers & Paisley  
GPO Box 214  
SYDNEY NSW 2001

Dear Mr Rhydderch

**Exclusive dealing notifications N95072 & N95073 lodged by  
Go Vita Distributors Limited**

I refer to the above exclusive dealing notifications lodged with the Australian Competition and Consumer Commission (the ACCC) on 22 October 2010. The notifications have been placed on the ACCC's public register.

Go Vita Distributors Limited (Go Vita) lodged two notifications - one notification involving third line forcing (N95072) and one involving exclusive dealing other than third line forcing (n95073). Under the notified arrangements Go Vita proposes to:

- A. supply franchise rights to existing and future franchisees on condition that the franchisee agrees to acquire central mailing house services from a supplier nominated by Go Vita, and
- B. supply franchise rights to existing and future franchisees on condition that the franchisee agrees to:
  - i. acquire all vitamin and health supplement stock from Go Vita and not deal directly with any other third party suppliers except in limited circumstances, and
  - ii. accept the allocation of certain stock by Go Vita on a store category basis, commit to stocking a minimum percentage of a range of Go Vita's own brand stock and maintain a specified minimum shelf space for Go Vita stock.

Legal immunity conferred by the notifications commenced on 5 November 2010.

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

As with any notification, please note that the ACCC may act to remove the immunity afforded by these 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.

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

- there are any restrictions on the acquisition of goods or services by the franchisee from other sources
- 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
- 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.

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 Gina D'Ettorre on 03 9290 1483.

Yours sincerely



Dr Richard Chadwick  
General Manager  
Adjudication Branch