



**Australian  
Competition &  
Consumer  
Commission**

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Our Ref: N95999  
Contact Officer: Tanya Hobbs  
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16 July 2012

Ramsay Andary  
Partner  
DMAW Lawyers

By email: [randary@dmawlawyers.com.au](mailto:randary@dmawlawyers.com.au); [mkuo@dmawlawyers.com.au](mailto:mkuo@dmawlawyers.com.au)

Dear Mr Andary

**Third line forcing notifications N95995 & N95996 lodged by Bing Boy Pty Ltd**

I refer to the above third line forcing notifications lodged with the Australian Competition and Consumer Commission (the ACCC) on 26 June 2012. The notifications have been placed on the ACCC's public register.

Under the notified arrangement Bing Boy Pty Ltd (Bing Boy) proposes to:

1. N95995 - offer franchise services to franchisees on condition that the franchisees acquire approved products from the following approved suppliers: Daiwa Food Corporation Pty Ltd, Le Fruit or Mighty Fresh Pty Ltd, Coca Cola Amatil (Aust) Pty Ltd, Metro Beverage Co. Adelaide Pty Ltd.
2. N95996 - offer to enter into an agreement with Daiwa Food Corporation Pty Ltd (Daiwa) under which Bing Boy franchisees will acquire approved products from Daiwa on condition that Daiwa acquires the goods used to produce the approved products from entities approved by Bing Boy.

Legal immunity conferred by the notifications commenced on 10 July 2012.

On the basis of the information that 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 Bing Boy will disclose all relevant terms and conditions to current and prospective franchisees. In particular I note that Bing Boy 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:

1. any restrictions on acquisition of goods or services by the franchisee from other sources;
2. 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
3. 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:

1. 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
2. any restrictions by a franchisor on the goods or services that a franchisee may supply and
3. 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 Tanya Hobbs on (02) 6243 1029.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Richard Chadwick', with a long horizontal stroke extending to the right.

Dr Richard Chadwick  
General Manager  
Adjudication Branch