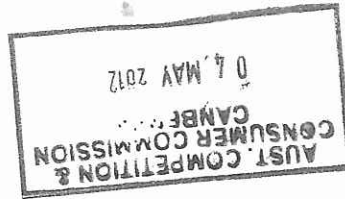


2 May 2012



Your ref:
Our ref: FXM/WAS/5190299

All correspondence to:
PO Box 453
Collins Street West
MELBOURNE VIC 8007

Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Contact
Fiona McFadden +61 3 9605 0904
Email: fmcfadden@millssoakley.com.au

Partner
Warren Scott +61 3 9605 0984
Email: wscott@millssoakley.com.au

Attention: The General Manager

Dear Sir/Madam

Brabus PA Franchising Pty Ltd – Third Line Forcing Notification

We act for Brabus PA Franchising Pty Ltd (ACN 128 193 359).

We enclose the following:

- Exclusive Dealing Notification Form G, for lodgement on behalf of our client; and
- cheque in the sum of \$100.00 being payment for the lodgement fee.

The franchisee list labelled *Annexure A - Details of Current Franchisees*, which is attached the Exclusive Dealing Notification, is a confidential document, and we request that Annexure A not be published on the ACCC website.

If you have any questions or require further information please do not hesitate to contact Fiona McFadden on +61 3 9605 0904 or fmcfadden@millssoakley.com.au.

Yours faithfully


**WARREN SCOTT
PARTNER**

Enc

FILE No:
DOC:
MARS/PRISM:

Form G
Commonwealth of Australia
Competition and Consumer Act 2010 – sub-section 93(1)

EXCLUSIVE DEALING NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

1. Applicant

(a) **Name of person giving notice**

N95848 Brabus PA Franchising Pty Ltd (ACN 128 193 359) as trustee for the Brabus Franchising Trust ("***the Applicant***").

(b) **Short description of business carried on by that person**

The Applicant, acting as franchisor, operates a franchise network of businesses trading as Price Attack, that specialise in the retail sale of hair care products, cosmetics, beauty products, accessories and related services.

(c) **Address in Australia for service of documents on that person**

c/- Warren Scott
Mills Oakley Lawyers
Level 6, 530 Collins Street
MELBOURNE VIC 3000

2. Notified arrangement

(a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates**

This notification relates to the acquisition by the Applicant's franchisees of retail goods and products including but not limited to hair care products, cosmetics, beauty products, accessories ("**Products**").

(b) Description of the conduct or proposed conduct

- (i) The Applicant will require all franchisees in accordance with the franchise agreement terms, and future franchisees, to acquire the Products only from the specified third party supplier PA Distribution Pty Ltd. (“**PA Distribution**”) (ACN 158 090 012).
- (ii) PA Distribution is a sister company to the Applicant. PA Distribution is not a subsidiary to the Applicant, or in a holding company arrangement.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

(a) Class or classes of persons to which the conduct relates

All franchisees of the Applicant that are a party to a franchise agreement which enables the Applicant to require the franchisee acquire certain products from the specified third party supplier PA Distribution, and all future franchisees.

(b) Number of those persons

- (i) At present time
There are 109 of franchisees. The proposed conduct may not be permitted by all franchise agreements.
- (ii) Estimated within the next year
This is not known. It is expected that a further 2 franchisees could be established within the next year.

(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses

Please see attached document labelled Annexure A which lists all current franchisees.

4. Public benefits claims

(a) Arguments in support of notification; and

(b) Facts and evidence relied upon in support of these claims:

The proposed conduct will provide the following public benefits:

- Will eliminate the requirement for franchisees to have to source and negotiate with suppliers on individual terms which will allow franchisees to focus on operating their businesses and delivering high quality service to their customers.
- Franchisees will have access to products at a competitive price due to the increased purchasing power of PA Distribution, which may result in lower prices being passed on to the consumers.

- The Applicant will be in a position to enable all franchisees to stock a consistent range of products and ensure that there is an appropriate product mix in each store which will result in a better customer experience.
- Franchisees will be able to compete with competitors outside the Price Attack network.

5. Market definition

Provide a description of the market(s) in which the goods or services described in 2(a) are supplied or acquired and other affected markets including: significant supplier and acquires; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services:

The market that may be affected by the proposed conduct includes the market for the wholesale supply of hair care and beauty products that are on sold to consumers.

6. Public detriments

- Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2(a) above and the prices of goods or services in other affected markets; and**
- Facts and evidence related to these detriments:**

Franchisees

The proposed conduct will remove the opportunity for franchisees to choose which supplier they purchase certain Products from. However, franchisees will benefit from the proposed price conduct as they will have access to the Products at a competitive price, and will not have to negotiate with suppliers individually.

Consumers

The proposed conduct will have an insignificant effect on consumers, as consumers can purchase the Products from any supplier or retailer they choose. Further, the proposed conduct may result in consumers having access to products at a more competitive price due to the savings passed on to the franchisees by PA Distribution.

Suppliers

The proposed conduct will not allow other suppliers to compete for the business of the Applicant's franchisees. However, the effect on wholesale suppliers of the Products will be minimal given the number of other competitors operating businesses similar to the Applicant's franchisees.

7. Further information

Name, postal address and telephone details of the person authorised to provide additional information in relation to this notification:

c/- Warren Scott
Mills Oakley Lawyers
Level 6,530 Collins Street
MELBOURNE VIC 3000

Telephone: 03 9605 0984

Facsimile: 03 9670 9111

Email: wscott@millsOakley.com.au

Dated: 2 May 2012,

Signed by the applicant giving notice

A handwritten signature in black ink, appearing to be 'W. Scott', is written over a horizontal line.

Warren Scott
Mills Oakley Lawyers
For the Applicant