



**Australian
Competition &
Consumer
Commission**

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Our Ref: 48903
Contact Officer: Luke Griffin
Contact Number: 02 6243 1114

12 June 2012

Mr D Meagher
Legal Counsel
The Cheesecake Shop Pty Ltd
2 Lisbon Street
Villawood
Sydney NSW 2063

Dear Mr Meagher

Third line forcing notification N95866 lodged by The Cheesecake Shop Pty Ltd

I refer to the above third line forcing notification lodged with the Australian Competition and Consumer Commission (the ACCC) on 21 May 2012. The notification has been placed on the ACCC's public register.

Under the notified arrangement The Cheesecake Shop Pty Ltd proposes to offer franchise services on condition franchisees acquire eftpos terminal services from Tyro Payments Pty Ltd.

Legal immunity conferred by the notifications commenced on 4 June 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 this 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.

This assessment has been made on the basis that The Cheesecake Shop Pty Ltd will disclose all relevant terms and conditions to current and prospective franchisees. In particular I note that The Cheesecake Shop 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.

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 Luke Griffin 02 6243 1114.

Yours sincerely



Dr Richard Chadwick
General Manager
Adjudication Branch