



**Australian  
Competition &  
Consumer  
Commission**

Our Ref: 52382  
Contact Officer: Anna Giannakos  
Contact Number: (03) 9290 6920

GPO Box 3131  
Canberra ACT 2601

21 October 2013

23 Marcus Clarke Street  
Canberra ACT 2601

Charles Antoun  
Corporate Counsel  
The Cheesecake Shop Pty Ltd

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

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

By email: [charlesa@cheesecake.com.au](mailto:charlesa@cheesecake.com.au)

Dear Mr Antoun

### **Third line forcing notification N97020 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 3 October 2013. The notification has been placed on the ACCC's public register.

The Applicant proposes to offer The Cheesecake Shop franchises on condition that franchisees enter into a direct contractual relationship with the Commonwealth Bank of Australia for an online gateway and merchant facility for customers using the national website to order/pay for purchases online.

Legal protection conferred by the notification commenced on 17 October 2013.

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.

As with any notification, please note that the ACCC may act to remove the legal protection provided 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.

This assessment has been made on the basis that The Cheesecake Shop will disclose all relevant terms and conditions to current and prospective franchisees. In particular I note that The Cheesecake Shop 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 Anna Giannakos on (03) 9290 6920 or by email at [anna.giannakos@acc.gov.au](mailto:anna.giannakos@acc.gov.au).

Yours sincerely



Dr Richard Chadwick  
General Manager  
Adjudication Branch