



Australian
Competition &
Consumer
Commission

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5 December 2013

Ms Anne-Marie Allgrove
Partner
Baker & McKenzie

By email: anne-marie.allgrove@bakermckenzie.com

Dear Ms Allgrove

Third line forcing notifications N97109 – N97113 lodged by AAPC Australia Pty Limited & Ors

I refer to the above third line forcing notifications lodged with the Australian Competition and Consumer Commission (the **ACCC**) on 20 November 2013. The notifications have been placed on the ACCC's public register.

AAPC Limited (**Accor**) and its subsidiaries (including the below subsidiaries), are engaged in the ownership, management and operation of the Accor group of hotels under the SOFITEL, PULLMAN, MGALLERY, GRAND MECURE, THE SEBEL, NOVOTEL, MERCURE, IBIS, IBIS STYLES, IBIS BUDGET and FORMULE 1 brands in Australia (**Accor Hotels**). Accor subsidiaries enter into management agreements with owners of hotels to manage and operate those hotels as Accor Hotels. Accor-owned hotels, Accor-managed hotels and Accor-franchised hotels comprise the network of Accor Hotels (**Accor Hotel Network**).

In Touch Data Pty Ltd (**In Touch**) develops and implements software applications to assist hotels in managing and analysing data relating to their guests. Accor has entered into an agreement with In Touch to provide a range of guest and data and database management services to participating Accor Hotels, including data extraction, cleaning and reporting and exporting. Accor and its subsidiaries wish to use In Touch's services for the Accor Hotel Network in order to ensure compliance with the requirements of the *Do Not Call Register Act 2006 (Cth)* and the *Spam Act 2003 (Cth)*, and to ensure consistency of the handling of guest data across the Accor Hotel Network.

N97109, N97111, N97112, N97113: Each of AAPC Australia Pty Limited (**Accor Australia**), AAPC Properties (F1) Pty Limited (**Accor Properties F1**), Accor Australia & New Zealand Hospitality Pty Limited (**Accor ANZ**) and AAPC Properties Pty Limited (**Accor Properties**) propose to offer management agreements on condition that owners acquire the guest data and database management services from In Touch.

N97110: Accor Properties proposes to offer franchise agreements on the condition that franchisees acquire the guest data and database management services from In Touch.

Legal protection conferred by the notifications commenced on 4 December 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 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.

The assessments regarding N97109 and N97111-N97113 have been made on the basis that the relevant notifying parties and In Touch will disclose all relevant terms and conditions to prospective customers.

The assessment regarding N97110 lodged by Accor Properties has been made on the basis that Accor Properties will disclose all relevant terms and conditions to current and prospective franchisees. In particular I note that Accor Properties 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 Megan Cunningham on (03) 9290 1856.

Yours sincerely



Dr Richard Chadwick
General Manager
Adjudication Branch