

6 September 2008

The Chairman,

Parliamentary Joint Committee on Corporations and Financial Services  
Department of the Senate  
PO Box 6100 Parliament House  
Canberra ACT 2600

Mr Chairman,

RE:- Federal Franchise Inquiry

I submit this as a private individual, not as an employee of Competitive Foods.

The organisation that I work for, Competitive Foods Australia PTY LTD is in conflict with one of its Franchisors, [REDACTED]. They are in the process of closing down the KFC Stores in the Western Australian market. This began with the non renewal of the KFC Rockingham franchise agreement and will continue until the Franchising Code is changed or all stores are closed.

My interest in this subject pertains to my continued employment with the organisation. If [REDACTED] is permitted to continue closing stores there will be little need for the role I play within the company as an Area Manager. This submission proposes that the Federal Government implement 'Good Faith' provisions into the Franchising Code.

## **1. COMPANY OVERVIEW**

Competitive Foods Australia PTY LTD (CFAL) is one of the larger franchisees in Australia; we employ over 15,000 employees in over 300 hundred outlets which are KFC & Hungry Jacks Restaurants. CFAL have been the sole franchisee for KFC in the Western Australian market since 1969 when we opened the first restaurant in Melville, we currently have 45 stores in Western Australia and another 4 in the Northern Territory.

At this time our Rockingham store is closed and has been since November 2007 and in December of this year another three stores will close. These closures are due to the non renewal of the franchise agreement. The main reason for this appears to be 'Franchisor Opportunism'.

## **2. COMPANY HISTORY**

I had an opportunity to 'interview' Jack Cowin our company owner a few years back where he shared with me his humble beginnings with KFC in Australia.

On arrival back into Sydney with the money required to purchase the KFC Franchise, Jack was told that his earlier franchise agreement was still valid but he had been given the Perth Western Australian market instead of the original Sydney NSW market. At this time the market for Western Australia projected a maximum of ten stores and that's all the original agreement was made for. The Sydney market was growing quickly and \$3,000 a week in sales were all that was needed to break even and at this time they were reaching up to \$6000; I believe it was [REDACTED] (operating as [REDACTED]) idea at the time to give him an area they didn't think would be very successful, they wanted to keep the NSW market profits for themselves. I remember Jack saying "sometimes in adversity there is opportunity" and I think he proved that, by building the Western Australian KFC multimillion dollar market into what it is today.

Another example of [REDACTED] (then called [REDACTED]) underhanded tactics back in 1999, when CFAL were told that only 12 of its franchises would be

renewed unless they either agreed to disassociate from its interest in [REDACTED] or to sell all of its KFC restaurants to a [REDACTED] approved third party. This was due to [REDACTED] owning the [REDACTED] brand and [REDACTED] being a direct competitor. [REDACTED] were content with CFAL still having Hungry Jacks as they were not taking market share from their [REDACTED] businesses. Had there been regulations in the Franchising Code in 1999, CFAL would still have a vested interest in [REDACTED]. I believe the problems we are having now with [REDACTED] are just another example of the opportunism they displayed in the early years.

### **3. FRANCHISOR OPPORTUNISM**

There are many advantages to franchising, the early training and support that comes with this sort of business is instrumental in the initial success of the business and this is paid back in healthy royalties. However with the support also comes the uncertainty of how long you are going to be permitted to run the business you have successfully built. This became apparent when [REDACTED] used a loop-hole in the franchise agreement and closed down KFC Rockingham. I believe [REDACTED] are clearly using 'Franchisor Opportunism' in this particular case. Thus meaning they intend to set up their own stores in our existing sites or close by, thus profiting from the good will built up by our organisation over the years. This has been proven as they have tried vigorously to gain council approval to open another site close to the existing KFC Rockingham store and have already secured a position in the local Rockingham City Shopping complex<sup>1</sup>.

This means little to the consumer who is more than happy that their local KFC has reopened in a new location nearby and they will not have as far to travel again to purchase their meals. They are unsuspecting of the hardship involved with the initial closure and the jobs that were lost.

The West Australian and South Australian state governments have both conducted inquiries into the franchise sector and are pressing for changes to the Franchising Code

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<sup>1</sup> Author unknown; Rockingham Centre. Shopping Centre News Magazine, Volume 26, 3 2008.

of Conduct<sup>2</sup>. As publicity grows more Franchisors may use the 'loop-hole' within the Franchising Code of Conduct and stop renewing agreements.

#### **4. CHANGING THE FRANCHISING LAW**

My interpretation of the current Franchising Code, which I understand is enforceable under the Trades Practises Act, shows it's to be ineffective as it fails to make any provision in the franchise renewal agreement. I believe one of the solutions to our problem would be to incorporate a "good faith" obligation into the agreements.

This was recommended in the "Matthews Committee Report" but excluded in the Franchising Code amendment. The Government at the time felt that any problems identified by the committee in these areas were either covered by existing law (such as unconscionable conduct of the implied duty of good faith and fair dealing) or better addressed via educational initiatives<sup>3</sup>. It is apparent that the existing laws and highly educated individuals were not able to help save KFC Rockingham therefore it is highly doubtful the same laws or educational initiatives will save the three other stores in December.

The fact is there is a void in the regulations that enables the franchisor to behave opportunistically. This small amendment would protect all franchisees from the immoral conduct of franchisors who take advantage of them by 'Franchisor Opportunism'. I have been following the issue closely and from what I have learnt I believe a slight change in the Franchising Code and at a state level through the Fair Trading Act would cause little

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<sup>2</sup> <http://www.insideretailing.com.au/articles-page.aspx?articleType=ArticleView&articleId=3037>; The Incredible Disappearing Retail Franchises. June 16<sup>th</sup>, 2008.

<sup>3</sup> <http://www.deacons.com.au/legal-services/business-advisory/legal-updates/legal-update.cfm?objid=5924>; S. Giles, Legal update: Franchising code amendment announcement. February 6<sup>th</sup>, 2007

disruption to existing practises in the industry. As a result I strongly support the following changes:

- I. Amendments to the Franchise Code of Conduct to include a provision requiring a franchisor to renew the franchise agreement on expiry, unless the franchisor had a good faith reason not to do so, and to include a provision requiring a franchisor to renew the franchise agreement on expiry, unless the franchisor had a good faith reason not to do so.
  
- II. Changes to the Franchise Code of Conduct and the relevant State-based Fair Trading Act that ensures that a franchisee could take legal action to stop a franchisor from misusing its superior bargaining position and require a franchisor to act reasonably and in good faith in negotiating a renewal of a franchise agreement; and
  
- III. Provisions in either the Franchise Code or the Trade Practices Act and the Fair Trading Act to require a franchisor to compensate a franchisee for the value of the franchise business if the franchise is not renewed.

## **5. HUMAN COSTS**

The human costs in this battle are a critical concern, with the three stores due to close in December 2008 there will be jobs lost. A great percentage of our Team Members are young teenagers many of which do not have driver's licences and live only a short distance from their work place. Yes we can offer these young people positions in other stores but they will not be as close to home as their original place of employment. In today's society our lives can be incredibly hectic with many parents working trying to make ends meet, whether that means two jobs or extended working hours, are they going to be there to drive their child to his or her new work place in the next suburb? Having worked in the industry for 24 years I can tell you from experience parents are

supportive of their children having jobs and earning an income but it can be very time consuming picking children up and dropping them off all over town.

The youth are not the only ones that need to be considered, as mentioned I have worked for KFC for 24 years, my entire working life; I started with them as a young school girl and have worked hard to reach my current position, Area Manager. As stores close down the need for Managers and Area Managers will decrease, we have mortgages that need to be paid and the thought of moving into another field of work is quite daunting. Most of the Upper Management Leadership Team has worked for the company an average of 25 to 30 years, some are close to retirement age and the anxiety this is causing them is immense. A simple yet affective change in the Franchise Code would give these people the job security they deserve.

I would just like to thank you for taking the time to read my submission, I trust that serious consideration will be taken and the provisions made, in the Franchise Code or the Trade Practices Act and Fair Trading Act so that the thousands of Franchisees and their employees have some future job security. I would also ask you to consider reporting back prior to the December deadline in the hopes that the 150 employees at the 3 KFC stores will have an opportunity to keep their jobs and the stores stay open.

Yours Sincerely

Pauline Williams