

6.0 MARKETING, DISTRIBUTION, AND PROMOTION

6.1 Market characteristics

Franchising and direct marketing

1. Franchising

The Australian franchise sector is both large and mature. Franchising is well established in Australia with more franchising outlets per capita than any country in the world, and three times more per capita than in the U.S. The total turnover of the franchising sector, not including the motor vehicle and automotive fuel retail industries, is US\$23 billion. Including the motor vehicle and automotive fuel retail industries, the total turnover is US\$50 billion.

In 1988, there were 184 business-format franchised companies in Australia. Today, there are approximately 747. Australia is one of the most franchised countries in the world, and franchised businesses are 2.5 times more likely to be successful than non-franchised business.

Franchising is continuing to experience growth in Australia and has spread into virtually every area of commercial activity. Sectors as diverse as home building, carpet cleaning, repair systems, waste management, and financial planning are enjoying high growth. Household and food services have emerged as the two fastest growing areas of domestic spending and a key area for business growth. Most of the growth in franchising has been experienced in the service sector. According to industry sources, the retail franchise market, however, is reaching saturation, and is experiencing incremental rather than exponential growth.

Australia is a highly sophisticated and competitive market; 80 percent of Australian franchise systems are home grown. To be successful, competitors systems must be flexible enough to "Australianize" their systems in order to suit the local market. Further, this relatively lower rate of the Australian dollar (at US\$0.56 = A\$1) should be taken into account when entering into discussions with potential Australian investors.

2. Direct Marketing

Direct marketing has been enjoying an unprecedented expansion in Australia, with volumes rising significantly. The amount of money that Australian organizations spend on direct marketing communications is currently US\$8.7 billion and is growing at seven to eight percent a year.

A recently released study in Australia indicates that consumers still prefer to receive marketing and promotional information as well as general information via direct mail. The study, entitled *Marketing Media in Australia*, conducted by ResponseAbility and sponsored by Australia Post in February 2002, is the first in a tracking study designed to look at the trends in marketing media in Australia over time. The consumer research examined how consumers view the various media, their preference for receiving information, and which media had the greatest influence over their purchasing decision.

Key findings to emerge from the study were:

Consumers Who Enjoy Receiving Various Media (in percentage terms)

Solicited personalized mail	74
Newspaper and magazine advertising	55
Unsolicited personal mail – prior relationship	37
Unaddressed advertising mail	33

Consumers Who Purchase as a Result of Receiving Media (in percentage terms)

Solicited personalized mail	61
Newspaper and magazine advertising	55
Unaddressed mail	55
Television	50

Notably, a significant percentage of consumers (63 percent) said they open and read unaddressed advertising mail. The medium is popular, according to those interviewed, because it provides useful local information about specials, cuts down on shopping time by allowing comparative analysis, and is considered less intrusive than other media. Direct mail was also the preferred method of receiving marketing and promotional information and general information.

6.2 Distribution and sales channels

Distribution channels in Australia tend to be more generalized. This is primarily due to Australia's relatively small population and industrial base. In most cases, Australia's distribution and sales channels are comparable to those in other industrialized countries. **Importers, distributors, agents, wholesalers and manufacturers' representatives are commonly used by exporters.**

Foreign companies also export directly to end-users and this method is often observed where equipment is manufactured on a one-off basis. Many large retail chains, including department stores and supermarkets, can purchase in bulk rather than using traditional wholesale channels. However, these retail chains tend not to import and prefer to deal with local firms.

Use of agents and distributors

Businesses marketing their products in Australia usually establish relationships with sales agents, distributors, franchisees, and licensees.

1. Sales Agents

Sales agents or representatives solicit business for the foreign company, and serve as a conduit for purchase agreements. In most cases, a sales agent does not have the power to negotiate terms, or to finalize the sales contract. Instead, the sales representative forwards the contract to the foreign company, which either accepts, rejects, or proposes modifications. The sales representative, nonetheless, is considered to be an agent of the foreign corporation, and under the general laws of agency, the foreign corporation may be bound by the actions of its agent.

Agents assume a number of duties and obligations once a representation contract with a foreign company is finalized, including adherence to the principal's instructions, good faith in the interests of the principal, and maintenance of proper accounts. The agent retains the right to remuneration and the right to an indemnity for liabilities or for losses incurred due to improper termination. However, there is no precedent for required indemnity payments in Australian law.

Parties may stipulate specific causes for termination in the agreement. Either party may terminate the agreement upon receipt of reasonable notice of termination. Although no specific time period exists which defines a reasonable notice period, courts may take into consideration the nature and length of the contract when determining whether reasonable notice was given.

2. Distributors

A distributor acts as an independent contractor, purchasing products from the foreign corporation and distributing them to wholesale buyers or, on occasion, to retailers. Generally, the foreign corporation cannot restrain the distributor from selling competitors' products. However, because the distributor is not considered to be an agent of the foreign corporation, the foreign company is not bound by the acts of the distributor. Australian distributors often ask for exclusive geographic rights to market a foreign corporation's products. Because of the size of the market, these rights often cover several states or are nationwide.

Parties are free to choose between Australian and foreign law governing the contract when drafting an agreement. However, the choice of foreign law does not preclude application of mandatory provisions of Australian law. Without a stipulation of law, Australian courts will apply the law of the jurisdiction where the agent or distributor works, that is, Australian federal law and appropriate state and local law. Therefore, notification of agent/distributor appointments should be submitted in writing to satisfy various state jurisdictional laws, especially when they last for more than one year or include terms for commissioning the agent. Either fixed or indefinite-term contracts may be employed. However, repeated renewal of fixed-term contracts will not cause the contract to achieve indefinite-term status.