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Facsimile	
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Your Ref:	Our Ref: BNF:DJG
Date: 29 April 2002	File No: 1104378
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Paul

Australian Newsagents Federation Ltd - Application for Authorisation

Please see the attached amended application and submission regarding Application for Authorisation A90804.

Yours faithfully
HUNT & HUNT

David Grace
Partner

Author: Bronwyn Fursey

BNF1104378 120041v1

Form B

Commonwealth of Australia

*Trade Practices Act 1974 --- Sub-section 88(1)***AGREEMENTS AFFECTING COMPETITION
AMENDED APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that sub-section

- to make a contact or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

- (Strike out whichever is not applicable)

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of Applicant :

**Australian Newsagents' Federation Ltd ACN 008 295 038 and;
Queensland Newsagents Federation Ltd ACN 011 035 457**

(See Direction 2 on the back of this Form)

(b) Short description of business carried on by the applicant:

Industry Associations representing newsagents.

(c) Address in Australia for service of documents on the applicant:

C/- Hunt & Hunt Lawyers, Level 22, Central Plaza Two, 66 Eagle Street, Brisbane, Queensland, 4000.

2. (a) Brief description of contract, arrangement or understanding and, where already made, its date:

Collective negotiations on behalf of newsagents with suppliers of goods and services to newsagents, including publishers of newspapers and publishers and distributors of magazines regarding supply arrangements, as detailed in attached submission.**Collective boycott of publishers of newspapers and magazines as detailed in attached submission.**

(b) Names and address of other parties or proposed parties to contract, arrangement or understanding:

(See Direction 4 on the back of this Form)

3. Names and addresses (where known) of parties and other persons on whose behalf application is made:

Newsagents Association of NSW and ACT Ltd ACN 096 737 352**VANA Ltd ACN 004 238 644****The Newsagents Association of South Australia Ltd ACN 007 517 017****Western Australian Accredited Newsagents Association ACN 009 103 253****Newsagents Association of Northern Territory ABN 44 979 275 918****Tasmanian Newsagents Association Ltd ACN 009 586 985**

4. (a) Grounds for grant of authorisation: see attached submission.

(b) Facts and contentions relied upon in support of those grounds: see attached submission.

(See Notice 1 on the back of this Form)

5. This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the above mentioned contract, arrangement or understanding.

(a) Is this application to be so expressed?: No.

(b) If so, the following information is to be furnished:

(i) the names of the parties to each other contract, arrangement or understanding:

(ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application

(See Direction 5 and Notice 2 on the back of this Form)

6. (a) Does this application deal with a matter relating to a joint venture (See section 4J of the Trade Practices Act 1974): No.

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture:

(c) If so, by whom or on whose behalf are those other applications being made.

7. Name and address of person authorised by the applicant to provide additional information in relation to this application:

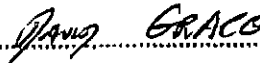
Bronwyn Fursey, Associate,
Hunt & Hunt Lawyers
GPO Box 834
Brisbane, Queensland, 4001.

Date.....29 April.....2002

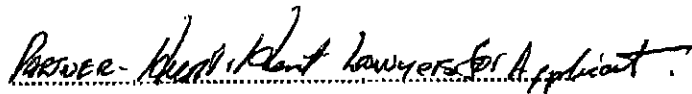
Signed by/on behalf of the applicant



(Signature)



(Full Name)



(Description)

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Furnish with the application particulars of the contract, arrangement or understanding in respect of which the authorisation is sought. Those particulars shall be furnished ---
 - (a) in so far as the particulars or any of them have been reduced to writing --- by lodging a true copy of the writing; and
 - (b) in so far as the particulars or any of them not been reduced to writing --- by lodging a memorandum containing a full and correct statement of the particulars that have not been reduced to writing.
5. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the matter in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

NOTICES

1. In relation to item 4, your attention is drawn to sub-sections 90(6) and (7) of the *Trade Practices Act 1974* which provide as follows: -

"(6) The commission shall not make a determination granting an authorisation under sub-sections 88(1), (5) or (8) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or understanding, in respect of a proposed covenant, or in respect of proposed conduct, unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed covenant, or the proposed conduct, as the case may be, would result, or be likely to result, in a benefit to the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if

(a) the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;

(b) the proposed covenant were given, and were complied with; or

(c) the proposed conduct were engaged in, as the case may be.

"(7) The Commission shall not make a determination granting an authorisation under sub-section 88(1) or (5) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a contract, arrangement or understanding, or, in respect of a covenant, unless it is satisfied in all the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision or complying with the covenant."

2. If an authorisation is granted in respect of a proposed contract, arrangement or understanding the names of the parties to which are not known at the date of this application, the authorisation shall, by sub-section 88(14) of the *Trade Practices Act 1974*, be deemed to be expressed to be subject to a condition that any party to the contract, arrangement or understanding will, when so required by the Commission, furnish to the Commission the names of all the parties to the contract, arrangement or understanding.

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Our Ref: BNF:DJG 1104378
Direct Dial: 3231 2434
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Email: bronwyn.fursey@hunt-hunt.com.au
Your Ref:

29 April 2002

Mr Paul Palisi
Director
Professions Unit
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 119
DICKSON ACT 2602

Dear Sir

Australian Newsagents Federation Ltd ACN 008 295 038

We act for the Australian Newsagents Federation Ltd. (ANF)

In accordance with the attached application, the ANF on its own behalf and on behalf of the other parties named in the application and below, seek authorisation to conduct collective negotiations, on behalf of current and future newsagent members of the ANF, with suppliers including suppliers of soft gambling products, tobacco, stationery, greeting cards, consumables (including confectionery), and in particular major and regional newspaper and magazine publishers, on matters generally covered by those including newsagent's commission and home delivery fees, insert fees, settlement discounts, late paper fees, split papers, terms of supply and rights of termination, and in the case of magazine publishers including issues such as variable commissions for shelf life, supply allocations, carrying of non-core product, subscription delivery and returns policy.

It is proposed that the ANF would have the responsibility for collective negotiations on a national basis. In regional areas or on regional issues, the ANF, with the assistance of the following State Associations would undertake negotiations on behalf of the members.

- Queensland Newsagents Federation Ltd ACN 011 035 457
- Newsagents Association of NSW and ACT Ltd ACN 096 737 352
- VANA Ltd ACN 004 238 644
- The Newsagents Association of South Australia Ltd ACN 007 517 017
- Western Australian Accredited Newsagents Association ACN 009 103 253
- Newsagents Association of Northern Territory ABN 44 979 275 918
- Tasmanian Newsagents Association Ltd ACN 009 586 985

ABN 95 591 906 639

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Director
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For convenience throughout this submission, the ANF is named as the bargaining agent.

The ANF seeks authorisation to negotiate with publishers and other suppliers in relation to matters currently not included in distribution contracts and matters currently unforeseen.

Specifically, the ANF wish to immediately commence negotiations on behalf of newsagents in relation to the following matters:

- The quantum of home delivery fees for home delivery of newspapers published by News Limited.
- Arrangements with News Limited for the distribution and retailing of the Townsville Bulletin and Cairns Post in regional areas.
- Arrangements with Australian Provincial Newspapers Ltd for the distribution and retailing of major publications in regional areas.

The negotiations contemplated specifically do not include the negotiation of common newsagent territories between publishers.

It is acknowledged that the negotiations cannot bind individual publishers or newsagents who wish to negotiate different terms and conditions.

This application also seeks authorisation for primary boycott activity in the form of a collective decision to withdraw services to publishers and distributors if negotiations break down.

The applicants do not seek authorisation for collective negotiation conditional upon the grant of authorisation for primary boycott activity, and ask that if the Commission considers it necessary, the two aspects of the application be determined separately.

Authorisation is sought for a period of five years.

The following submissions specifically relate to collective negotiations with newspaper and magazine publishers and distributors, and the application for authorisation for collective boycott activity.

Background

The ANF is a national industry association representing specialist newsagents. The ANF members are State industry associations and individual newsagent members who are also members of the State associations.

There are approximately 4500 newsagents in Australia. The ANF currently has 3272 members. The number of newsagent members by State Association is as follows:

Queensland	728 (approximately 90% of newsagencies)
NSW/ACT	1102 (approximately 85-90% of newsagencies)
Victoria	657 (approximately 70 - 75% of newsagencies)
South Australia	402 (approximately 99% of newsagencies)

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Western Australia 432 (approximately 61% of newsagencies)
Northern Territory 25 (approximately 95% of newsagencies)
Tasmania 91 (approximately 75% of newsagencies)

Throughout Australia, what may be considered a specialist newsagent may be quite different.

Generally, newsagents are recognised in the community as small businesses engaged in the retailing of newspapers, magazines, stationery supplies, greeting cards, confectionery and soft gambling products including lottery tickets and instant lottery tickets.

Newsagents in rural and regional areas may also operate mixed businesses.

In Eastern States, newsagents traditionally perform both retail and delivery functions.

Across Australia, "retail only" outlets exist which perform no home delivery function.

In South Australia and Western Australia there are separate "delivery only" agents who do not operate a shopfront business but undertake only the delivery of newspapers and magazines.

In Western Australia, there are 438 member newsagents. Of those operating in metropolitan areas, 234 are retail only outlets, 68 delivery newsagents and 7 combined. In country areas, there are 65 retail newsagents, 11 delivery newsagents and 53 combined. Specialist delivery newsagents in Western Australia operate from depots and deliver to homes, shops, sub-agents and other sellers. Retail agents are now obtaining supply direct from magazine publishers with sub-agents and sellers served by delivery newsagents. Some publications (Quokka Auto Trader and WA Business News) are delivered to retail outlets by distributors other than newsagents.

In South Australia, there are 117 delivery only newsagent members, 177 retail only outlets and 113 combined. The great majority of delivery only newsagents operate in metropolitan Adelaide. Some deliveries in country areas are undertaken by the publisher contractor who delivers to newsagents, but the extent of this is not known.

In NSW and ACT, less than 5% of member newsagents are delivery only newsagents.

Newsagents have traditionally provided and continue to provide an efficient and low cost home delivery service in areas where they are contracted to undertake home deliveries. Generally, home delivery of daily metropolitan newspapers is undertaken exclusively by newsagents, although in a very few areas home delivery is undertaken by publishers or other delivery contractors.

In Tasmania, all deliveries are currently undertaken by newsagents who also operate retail outlets, with the exception of four delivery runs undertaken directly by publishers.

In the ACT, some Canberra Times deliveries are undertaken by contractors other than newsagents.

In 1999/2000, pursuant to an authorisation granted to the ANF, contracts for the supply of publications were negotiated. The authorisation did not include authorisation to negotiate newsagents' commission and exclusive territories.

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In material distributed to newsagents by News Limited at the time new supply contracts were distributed, News Ltd indicated that a review of home delivery fees would take place before July 2001. News Ltd foreshadowed that *"the ANF and State associations will be asked to put their case to News Limited"*.

News Ltd did seek assistance from the ANF in making submissions for News Ltd's consideration, however the ANF was clearly constrained in its ability to negotiate on the issue.

In January 2002 News Limited offered an increase of five cents per week to newsagents, to apply only in the case of delivery customers who receive deliveries on seven days each week. The ANF does not regard this as an equitable offer, and has concerns about the ability of individual newsagents, acting independently, to adequately conduct meaningful negotiations on the issue.

Statutory Tests

Collective Bargaining

The application is made under section 88(1) of the Act in respect of a proposed arrangement which might substantially lessen competition within the meaning of section 45 of the Act. Accordingly, to grant the Authorisation sought the Commission must be satisfied that, in all the circumstances, the proposed arrangement will result, or be likely to result, in a benefit to the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result or be likely to result, from the arrangements.

It is submitted that the proposed arrangements will give rise to significant public benefit which would outweigh the anticompetitive detriment (if any).

Those public benefits are:

- Ensuring the continued viability of small business operations, particularly in rural and regional areas, thus ensuring competition in those areas;
- Fostering business efficiency generally;
- Assistance to the efficiency and competitiveness of small business, by:
 - Facilitating the availability of information on operational and pricing issues
 - Limiting transaction costs in negotiation of supply agreements
 - Freeing up small business operators to focus on increasing the competitiveness of their businesses
 - Fostering industrial harmony
 - Promotion of equitable dealings in the market;
- Providing countervailing/bargaining power to small business in dealing with large and powerful suppliers;

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- Promotion of industry cost savings, potentially resulting in contained or lower prices at all levels in the supply chain; and
- Supply of better information to suppliers to permit more informed choices in their dealings with small business.

In granting an authorisation, the Commission may be concerned that there will be associated anti-competitive detriment. One approach which would be acceptable to the ANF would be that any individual newsagent could opt out of the collective bargaining if for personal reasons he or she thought it appropriate to do so.

Withdrawal of Services

This aspect of the application is made under section 88(1) of the Act in respect of a proposed contract, arrangement or understanding which might be an exclusionary provision within the meaning of section 45 of the Act. Accordingly, to grant the Authorisation sought the Commission must be satisfied that, in all the circumstances, the proposed contract, arrangement or understanding will result, or be likely to result, in such a benefit to the public that the proposed conduct, arrangement or understanding should be allowed to be made.

Newsagents seek the right to determine, collectively, that they should refuse to supply services to or acquire goods or services from, newspaper or magazine publishers.

In support of that aspect of the application, the applicants rely on the submissions made below, which apply equally here.

If newsagents have no effective right of redress where they are unable to overcome the imbalance in bargaining power with publishers to obtain appropriate commercial terms, then the public benefits outlined above will be lost.

An individual newsagent who exercised a unilateral choice to refuse to deal with a publisher is likely to suffer significant commercial consequences, and unlikely to be in a position to negotiate a re-commencement of services. Newsagents are only in a position to address the imbalance of power held by publishers where they can make a collective decision which might give rise to a willingness to negotiate on the part of the publishers.

It is suggested that authorisation for withdrawal of services would recognise the right of individual members to refuse to take part in the withdrawal of services if he or she so wishes.

The applicants' detailed submissions in relation to public benefit are as follows.

1. National Negotiation for a National System

(a) It is the general practice of major publishers to adopt standard contracts n across the industry although commission rates may vary from State to State.

(b) Many of these standard contracts are the subject of Notification to the Commission.

(c) Indeed, in conversations with Commission staff following the Queensland Newsagents Federation's (QNF) application for interim authorisation to conduct collective negotiations, a representative for News Ltd

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noted that News Ltd is attempting to establish a consistent national approach to its dealings with newsagents and distributors.

(d) The national approach adopted by publishers clearly demonstrates two points:

- that there are increased business efficiencies arising from a consistent approach; and
- that publishers are not disposed to negotiate individually with a number of State Associations and a large number of small businesses.

(e) Obviously, for regional publications the same principle applies, but on a regional rather than a national level.

(f) It is inequitable for a small business in the position of newsagents to be faced with circumstances where only one party to the transaction can negotiate on that wider basis.

(g) If a national approach is to be adopted, then it is appropriate and efficient for a national representative of newsagents to be in a position to negotiate on an equal footing with publishers.

2. Maintenance of an efficient and low cost home delivery system

(a) As discussed in a submission on behalf of Queensland Newsagents Federation Ltd for interim authorisation of collective negotiation on delivery fees, the Australian Competition Tribunal has recognised that the system of home delivery of newspapers by newsagents resulted in:

*"knowledgeable ordering by directly supplied retailers bound by contract; close matching of print runs to predicted demand; and systematic and reliable distribution, directly by the publisher and secondarily by the authorised newsagent, in good time to satisfy consumer demand."*¹

(b) The fact that this system largely persists despite the dismantling of the authorised newsagency system proves the correctness of these statements.

(c) Industry research by the ANF indicates that the viability of the home delivery system for newsagents is decreasing. The ability of publishers to make "take it or leave it" offers for increases to delivery fees will contribute to the situation where newsagents will consider whether to continue undertaking home delivery.

(d) This is particularly relevant in the States of Western Australia and South Australia, where 196 ANF members operate as "delivery only" newsagents. The ANF submits that this has proved to be an efficient system and that the maintenance of this system is of benefit to the public.

(e) Even if it can be argued that there may be adequate alternative systems, we submit that delivery only newsagents in those States who have devoted time

¹ *7-Eleven Stores Pty Ltd, Independent Newsagents Association Australasian Association of Convenience Stores Inc [1998] AcompT 3 (18 November 1998)*

and resources to the development of their small businesses should not be put in a position where those businesses are instantly devalued, because of their inability to negotiate effectively with dominant suppliers.

3. Promotion of Equitable Dealings in the Market – Countervailing Power

(a) Notwithstanding the dismantling of the authorised newsagency system, and the fact that publishers are increasingly independent of newsagents for the distribution of their publications (although this is not widespread), newsagents are still subject to close publisher control in relation to home delivery of newspapers.

(b) Newsagents remain to a large extent commercially dependent upon continued supply by publishers with the sale by newsagents of their products accounting for significant proportions of their revenues.

(c) However, commercially, newsagents have no choice but to continue to stock newspaper products, largely in order to attract customers who will also make incidental purchases. A survey conducted by Survey Marketing & Research Associates in 1998, commissioned by Gordon and Gotch found that 36% of Australian consumers claim that newspapers are their main reason for visiting a newsagency.

(d) Newsagents have similar concerns in relation to magazine titles. The MRA survey noted above found that 34% of Australian consumers claim that magazines are their main reason for visiting a newsagency. The survey found that 78% of Australians would have bought a special interest magazine in the previous three months. Importantly, 61% of consumers said they would go to another newsagency if the range of titles within their category of interest was too small. A significant proportion (58%) of customers said they would definitely or probably increase the number of magazines they bought from supermarkets if newsagencies decreased their range and supermarkets increased theirs. This is particularly important for newsagents who are forced to carry magazine titles with low sales volumes, to continue to attract customers to their stores. This clearly places newsagents in a particularly weak bargaining position as compared to powerful newspaper and magazine publishers who have the power to make or break their businesses through refusal to supply, or supply on unfair terms.

(e) The fact is that individual newsagents are not in a position to negotiate effectively with publishers. Many newsagents continue to feel disempowered, following the 1998 Tribunal decision. The individual newsagent's lack of confidence in dealing with major publishers must impact negatively on their bargaining position and hence on the prospective outcome of such a process.

(f) It is the practice of publishers to present a standard form contract to all newsagents. The ANF is unaware of any case where an individual newsagent has successfully sought amendment to a standard publisher contract.

(g) Permitting collective negotiation has the public benefit of providing countervailing bargaining power to small business in negotiations with large and powerful publishers.

(h) The imbalance in negotiating power is further demonstrated by the fact that publishers are seeking increased control over the operation of a newsagent's business. Publishers themselves identify newspapers as the "core business" of a

newsagency, and are increasingly strict in relation to display requirements. For example, the Queensland Newspapers "Newspaper Display Requirements" requires the installation of a corporate Image Display stand, in compliance with Queensland Newspaper's specifications. Queensland Newspapers will not approve prospective purchasers of a newsagency business under its distribution agreements unless the vendor's display unit complies with Queensland Newspapers' specifications, or a prospective purchaser provides evidence of an order for such a unit, or an undertaking to install the unit within three months of purchasing. What this means in practice is that a newsagent is unable to sell its business (a major part of which is publisher supply contracts) unless either it or the prospective purchaser meets requirements imposed by Queensland Newspapers.

- (i) These restrictions clearly have the potential to impact upon the value of a newsagent's business.
- (j) Providing newsagents with the opportunity to have negotiations conducted by a national industry body will (both in reality and in the view of the small business operators concerned) "level the playing field" by, to some extent, balancing the market power of the publishers.
- (k) The newsagents' inability to collectively negotiate, through their industry body, places them in an inadequate position in a marketplace dominated by large publishers.
- (l) Changes in the industry mean that newsagents are competing with large supermarket and franchise chains which, by the nature of their corporate structure, are able to conduct negotiations from a central point, although they conduct business from a number of points. The ability to negotiate collectively with publishers will not have an anticompetitive effect by putting newsagents in an advantageous position, but will simply 'level the playing field' so that newsagents are in a position to compete effectively. If the Commission thought that there was an anticompetitive effect, we submit that it is clear that it is more than outweighed by the public benefits that flow set out above.
- (m) The Commission may have a concern that negotiation will result in an increase in commission rates to newsagents. While this may be the case, this does not necessarily mean that the price to the consumer will increase. The competitive influence of the supermarket chains, on both the supply and demand sides, is likely to minimise retail price rises.

4. Small Business Efficiency/Viability

- (a) Newsagents are widely acknowledged as an important small business sector in Australia. The MRA survey discussed above showed that 83% of Australians visit a newsagency at least once a week. This also indicates the importance of maintaining a structure for the distribution of materials to the public which a very significant percentage of the public uses on a regular basis.
- (b) Facilitating the conduct of joint negotiations on delivery fees and other issues will assist in small business efficiency by increasing the availability to newsagents of information, including information about income trends and operating expenses, which will give them an improved understanding of the effect of wider trends upon their businesses, and improve their ability to make better business decisions.

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(c) To conduct negotiations individually, newsagents would be required to obtain financial and accounting advice to formulate the necessary submissions about income and operating expenses, and legal advice to assist in conducting negotiations. Obtaining this advice separately will lead to increased transaction costs for individual small business newsagents, which is likely to be beyond the capacity of many newsagents.

(d) Individual newsagents are not in a position to obtain or provide detailed data to support their claim for an increase in home delivery fees. Generally, individual newsagents will lack the knowledge and sophistication to articulate those factors which impact on the viability of home deliveries. Further, collective negotiation on these issues facilitates a mechanism for gathering and collating information relating to income trends and operating expenses, which would otherwise not be available.

(e) In undertaking collective bargaining, the ANF would be in a position to obtain legal, accounting and financial advice with regard to contractual provisions including delivery fees, which would minimise costs to individual newsagents.

(f) This process also would assist individual newsagents in identifying areas where efficiencies and cost savings could be obtained.

(g) Perhaps the most important public benefit to flow from the authorisation applied for is the opportunity to increase efficient small business, in this case newsagencies. Approximately X per cent of the ANF's membership operate in rural and regional areas, and the public benefit of promoting efficiency of small business in those areas is clear.

(h) As a national body, the ANF has the benefit of national information, and also has the ability to access regional information from its associated State associations, and may delegate to State associations to undertake negotiations in regional areas where necessary. This ensures that the special interests of small businesses operating in regional areas are taken into account.

(i) It must be recognised that, increasingly since the Tribunal's decision in 1998 resulted in 'deregulation' of the industry, individual newsagents have been faced with a new and completely unfamiliar environment. Newsagent small business operators are competing with larger franchised operations, and with large supermarkets in the supply of newspapers. Collective negotiation will increase the ability of newsagents to focus their efforts on competitive activity, and contribute to the industry's ongoing adaptation to new arrangements. Notwithstanding the criticism by the Tribunal in the 1998 decision, the fact remains that individual newsagents continue to struggle with the demands of individual negotiation with powerful publishers. However, the difficulties faced by small business operators in negotiating with large powerful suppliers are not faced by newsagents alone, and the fact that the process of change has been ongoing should not of itself influence the Commission against granting the authorisation sought.

5. Supplier Efficiency

(a) It is not only newsagents which will benefit from the increased efficiency of a collective bargaining process.

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(b) Publishers will also be assisted by the provision of industry wide information to provide guidance on realistic home delivery pricing. This improved supply of information will assist in increasing supplier efficiency by permitting informed decisions on the issue of delivery fees. The fact that News Limited has in fact sought the input of industry organisations is illustrative of its recognition of this principle. Fairfax Publications have also sought input from the ANF.

(c) As it is the practice of publishers to seek ANF input, and to offer standard contracts and fees to all newsagents, it is inequitable to restrict the ANF from making submissions in support of the information it puts forward.

(d) Collective representation will also remove the need for publishers to allocate significant resources to conducting individual negotiations, particularly in regional areas. Collective negotiations will increase the amount and quality of information available to both publishers and newsagents, allowing them to make more informed choices about their business arrangements. The provision of information by the ANF about operating costs of distribution will assist publishers to identify a sustainable price, particularly in regional areas.

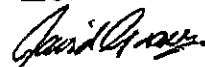
(e) The grant of authorisation for negotiations by the ANF would obviously be of assistance to publishers in their expressed wish to adopt a national approach to their dealings with newsagents.

6. Further public benefit issues

(a) In 1998 the Federal government amended the Trade Practices Act to specifically prohibit unconscionable conduct in small business transactions. This is predominantly assessed on the relative weight of negotiating power between the parties as well as the ability of parties to obtain proper adequate legal representation on the issues governing intended relations between the parties. On a policy basis it is contended that just as the Commission saw the merit in providing assistance to dairy producers in granting an authorisation, the granting of one in this case is an appropriate case to make the relations between the parties more equitable and conscionable and hence produce an outcome more likely to be in the interests of the parties themselves and of the public.

If you require any further information, please contact David Grace or Bronwyn Fursey.

Yours faithfully
HUNT & HUNT



David Grace
Partner

Author: Bronwyn Fursey

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