



**Australian
Competition &
Consumer
Commission**

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28 June 2007

Mr James Hutton
Pelican Media
Unit 1/377A Clovelly Road
CLOVELLY NSW 2031

Dear Mr Hutton

Exclusive dealing notification N90330 lodged by Eastern Suburbs Newspapers

On 12 November 1993 General Newspapers Pty Limited, Double Bay Newspapers Limited and Brehmer Fairfax Limited, trading as Eastern Suburbs Newspapers (ESN), lodged notification N90330 with the Trade Practices Commission (TPC). The TPC is now the Australian Competition and Consumer Commission (the ACCC).

The notification concerns real estate agents contracting with ESN for the provision of real estate display advertising in respect of property located in the eastern suburbs of Sydney. The contracts require that real estate agents agree to place 75 % of their total advertising centimetre volume, in respect of real estate display advertising for property located in the eastern suburbs of Sydney, with the Wentworth Courier (the 75% requirement).

The ACCC is undertaking a review of the notification. I am writing to you as a party who may be interested in providing a submission to the ACCC in relation to the review.

Background

The ACCC is the independent Australian government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive conduct and to encourage competition and efficiency in business resulting in a greater choice for consumers in price, quality and service.

The competition provisions of the Act prohibit certain forms of anti-competitive conduct or arrangements, including conduct known as exclusive dealing. Exclusive dealing involves one trader imposing restrictions on another's freedom to choose with



whom, in what or where they deal. Exclusive dealing may be characterised in two ways; third line forcing and exclusive dealing other than third line forcing.

Third line forcing involves the supply of goods or services on condition that the purchaser acquires goods or services from a particular third party, or a refusal to supply because the purchaser will not agree to that condition.

Exclusive dealing other than third line forcing involves the supply of goods or services on condition that the purchaser will not acquire, or will limit the acquisition of goods or services from a competitor of the supplier.

In some cases, exclusive dealing is prohibited outright (for example, third line forcing), in other cases, it is prohibited only where it substantially lessens competition.

The notification lodged by ESN concerns conduct that may be exclusive dealing other than third line forcing.

The notification process

While the Act prohibits certain forms of anti-competitive conduct, it also recognises that conduct which may breach the competition provisions of the Act may, in certain circumstances, deliver a benefit to the public. Consequently, the Act allows parties to obtain immunity from legal action for exclusive dealing in certain circumstances.

One way in which a party may obtain protection from legal action for exclusive dealing conduct is by lodging a notification with the ACCC.

The ACCC may revoke an exclusive dealing (other than third line forcing) notification at any time if it is satisfied that conduct will substantially lessen competition and the public benefits will not outweigh the anti-competitive detriments resulting from the substantial lessening of competition. Revocation of a notification removes the protection from legal action afforded to the notified conduct.

Notification N90330 lodged by ESN

As indicated above, ESN lodged exclusive dealing (other than third line forcing) notification N90330 with the TPC on 12 November 1993. The TPC did not take any action in respect of the notification at that time.

ESN has recently advised that it continues to enter into advertising contracts on substantially the same terms as notified in 1993, and continues to rely on the protection afforded by the notified conduct in doing so.

Review of notification

As noted, the ACCC may review an exclusive dealing notification at any time. Triggers for review may be complaints from persons affected by the exclusive dealing conduct, a change in market conditions or further information coming to light.

Recently concerns have been raised with the ACCC regarding the conduct notified by ESN. Having considered the concerns raised the ACCC has decided to review the notification. As noted, the ACCC may revoke the notification if following its review, it is satisfied that the conduct will substantially lessen competition and the public benefits will not outweigh the anti-competitive detriments resulting from the substantial lessening of competition.

To assist the ACCC's review of the notified conduct I would appreciate your comments to the questions below in respect of display advertising for eastern suburban Sydney real estate. As explained in greater detail in the attached *Guidelines for excluding information from the public register*, you may request that information you provide to us be excluded from the public register.

1. The ACCC understands that Pelican Media publishes a monthly publication, the Beast, which is distributed in the eastern suburbs of Sydney. Does the Beast carry real estate display advertising? If the Beast does carry real estate display advertising, how important is real estate display advertising to the publication? If the Beast does not carry real estate display advertising, for what reasons is such advertising not accepted by the Beast, and/or for what reasons do you consider that real estate agents chose not to advertise in the Beast.
2. What, if any, constraint do you consider that the 75% requirement places on your, or any other publications, ability to compete to supply real estate display advertising in respect of properties in the eastern suburbs of Sydney?
3. What, if any, constraint do you consider that the 75% requirement places on you, or any other publishers, ability to establish rival community based newspapers to the Wentworth Courier in the eastern suburbs of Sydney?
4. To what extent do you believe that advertisers would consider real estate display advertising of properties in Sydney's eastern suburbs placed with daily newspapers to be a substitute for advertising in the Wentworth Courier?
5. To what extent do you believe that advertisers would consider real estate display advertising of properties in Sydney's eastern suburbs placed in other mediums, such as on real estate websites, to be a substitute for advertising in the Wentworth Courier?
6. If applicable, details of any complaints or concerns raised with you by real estate agents regarding the Wentworth Courier's 75% requirement.
7. If applicable, details of advertising rates for real estate display advertising in the Beast.
8. Any other comments you wish to provide in relation to whether you consider that the notified conduct substantially lessens competition and the public benefits and anti-competitive detriments resulting from the notified conduct.

Request for submissions

To assist the ACCC in its consideration of the notification, it would be helpful to obtain a submission from you regarding your views on the issues outlined above.

The ACCC asks for submissions to be made in writing, so that they can be placed on the ACCC's public register. This ensures that parties interested in the matter have access to the issues raised in relation to the notified conduct. A copy of this letter will also be placed on the public register.

Submissions can be sent to:

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Alternatively, submissions can be faxed to (02) 6243 1211, or emailed to adjudication@accc.gov.au.

As noted parties who lodge a submission with the ACCC may request that confidential information included in their submission be excluded from the public register.

If you intend to provide the ACCC with a submission, it would be appreciated if you could do so by **18 July 2007**.

Please advise if you do not wish to provide a submission at this stage but would like to be kept informed of the progress of this matter. If possible, please provide your email address for future correspondence. Also, please forward this letter to any other party you believe may be interested in this matter.

Please note that if the ACCC does not hear from you, you will be removed from the ACCC's list of interested parties for this matter.

If you have any questions or wish to discuss any aspect of this matter, please contact Gina D'Ettorre on 03 9290 1483.

Yours faithfully



Gavin Jones
Director
Adjudication Branch