KLIGER PARTNERS
LAWYERS

in association with
NATHAN KUPERHOLZ

11 July 2007

Contact: Darren Brown
(03) 8600 8832
dtbrown@kligers.com.au
Principal Lawyer: Rob Lewis
Matter No: DTB:RAL:71338:kzp

Australian Competition and Consumer Commission
Adjudication Branch
GPO Box 520
MELBOURNE VIC 3000

Attention: Mr. Gavin Jones

Joint Application to the ACCC for Authorisation

I act on behalf of Office Choice Ltd.

Enclosed are the following;

1. Form B Application for Authorisation;
2. A public version of the Submission in relation to the authorisation application;
3. A confidential version of the Submission in relation to the authorisation application;
4. PDF version of the Form B Application, public version and confidential version of the Submission on CD-Rom.
5. Cheque for $7,500.00;
6. Letter of authorisation from Office Products Depot; and
7. Letter of authorisation from Office National.

I request that the ACCC does not disclose the pages in the Submission marked "Restriction of Publication Claimed" pursuant to sections 89(5) and 89(5A) of the *Trade*

Practices Act 1974. I therefore request that the copy of the Submission marked "Public Copy" be placed on the ACCC's public register.

Note that my client;

1. is seeking interim authorisation; and

2. wishes to have the application considered under the streamlined collective bargaining authorisation process.

Darren Brown
KLIGER PARTNERS

#DTB_71338_6

Office National

All your business needs

ABN 68 087 656 737

Unit 1,
6 Anella Ave,
Castle Hill, NSW 2154

Tel: (02) 9659 9211
Fax: (02) 9659 9266

Monday 2nd July, 2007

Dear Supplier,

Office National Limited consents to the Application to the ACCC for Authorisation for Collective Bargaining being lodged on its behalf by Office Choice through Kliger Partners Lawyers.

Anthony Keyzer
General Manager – Merchandising & Supply

Office Products Depot

National Office
Level 1, Quadrant House,
1 Pupuke Road, Takapuna 0622
Auckland New Zealand
PO Box 102040
North Shore Mail Centre 0745
Phone 09 915 4544
Fax 09 915 4546
www.opd.co.nz

10 July 2007

Max Ritchie
Office Choice Limited
Max.ritchie@officechoice.com.au

Dear Max,

RE: APPLICATION TO THE ACCC

Office Products Depot consents to the application to the ACCC for authorisation for collective bargaining being lodged on it's behalf by Office Choice through Kliger Partners Lawyers.

Yours sincerely,

Rob MacGregor
Chief Executive Office
Office Products Depot

A91058

Form B

Commonwealth of Australia

Trade Practices Act 1974 — subsection 88 (1)

AGREEMENTS AFFECTING COMPETITION:

APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

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

- 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 FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of Applicant:
(Refer to direction 2)

Office Choice Limited (ACN 077 437 097) ("OCL") on behalf of;
(i.) its franchisees and on its own behalf;
(ii.) Office National Limited (ACN 087 656 737) ("ON") and on behalf of its franchisees;
(iii.) Office Products Depot Limited (CN 623021) ("OPD") (New Zealand Company) and on behalf if its franchisees.

Further details are contained in the supporting submission.

(b) Short description of business carried on by applicant:
(Refer to direction 3)

OCL is a franchisor which owns and operates a system and business format with a goal to advance the business interests of its franchisees in the stationery and office supplies ("office supplies") product market.

OCL's franchisees are independent retailers of office supply and stationery products.

ON and OPD carry on similar businesses to OCL. Further details are contained in the supporting submission.

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

Office Choice Limited
Level 4, 492 St Kilda Road
Melbourne, Victoria 3004

2. Contract, arrangement or understanding

(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

An arrangement for Office Choice, Office National and Office Products Depot to collectively negotiate and/or appoint a representative to collectively negotiate on their behalf the terms and conditions that office supplies are sold by Suppliers;

(i.) to themselves; and
(ii.) to their present and future franchisees and members ("Members");

(b) Description of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition:
(Refer to direction 4)

An arrangement for Office Choice, Office National and Office Products Depot to collectively negotiate and/or appoint a representative to collectively negotiate on their behalf the terms and conditions that office supplies are sold by Suppliers;

(i.) to themselves; and
(ii.) to their present and future franchisees and members ("Members");

(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

General Office supplies and stationery for sale to retail consumers and small and large businesses which includes but is not limited to pens, pencils, paper, paper products, books, lever arch files, computer accessories, labels, label printers etc.

(d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Six (6) Years

3. Parties to the proposed arrangement

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

- **Present and future suppliers of office products to Office Choice, Office National, Office Products Depot and their respective Members.**
- **Suppliers listed in Appendix C of the supporting submission.**
- **Office Choice, Office National and Office Products Depot and their respective Members listed in Appendix B of the supporting submission.**
- **Future Members of Office Choice, Office National and Office Products Depot.**
- **Business Products Group International which will be the nominated representative to negotiate with Target Suppliers.**

Further details are provided in the supporting submission.

(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

1. **The Applicant – Office Choice (and its franchisees listed in Appendix B of the supporting submission).**
2. **Office Product Depot (and its franchisees listed in Appendix B of the supporting submission)**
1 Papuke Road, Takapuna New Zealand
3. **Office National Limited (and its franchisees listed in Appendix B of the supporting submission)**
Unit 1/6 Anella Avenue Castle Hill NSW 2154
4. **All future franchisees of the Applicant, Office Products Depot and Office National.**

Further details are contained in the supporting submission.

4. Public benefit claims

(a) Arguments in support of authorisation:
(Refer to direction 6)

- **Consumers of office products are best served by competitive and efficient markets.**

- **Smaller retailers need to be able to compete with larger retailers. This can be achieved through increased buying power resulting from collective bargaining.**

- **Smaller retailers are generally in a weaker bargaining position when negotiating terms and conditions for the acquisition of office supplies. Large companies are able to use their buying power and their respective (in some instances) worldwide resources to negotiate more favourable pricing and terms.**

- **It is anticipated that the collective bargaining process will result in an efficient and cost effective means to negotiate more favourable terms and conditions of acquisition of office supplies for its Members.**

- **It is envisaged that collective bargaining will assist Members to compete more efficiently with retailers that have more buying power and will enhance competition between Members and other retailers.**

Further details are contained in the supporting submission.

(b) Facts and evidence relied upon in support of these claims:

- **The percentage control of the office supplies market by larger retailers;**

- **Increased buying power of larger retailers.**

Further details are contained in the supporting submission.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions): *(Refer to direction 7)*

- **Members generally sell the office supplies to consumers and businesses.**

- **The estimated total size of the Australian office products market in 2005 was $6.48 billion (valued at consumer prices).***

- **When non core categories are included the market size can be valued at $9.4 billion.***

- **Office Choice's estimated share of the market in 2005 was 2.2 percent.***

- **Office National's estimated share of the market in 2005 was 6.8 percent.***

- **OPD does not sell within the Australian market.**

- **The largest share of the market was held by Officeworks at 15.7 percent, followed by Corporate Express at 11.7 percent and newsagents at 7.3 percent. 11 percent of the market was held by computer/electronic retailers.***

- **There are multiple suppliers of substitutable office products in the Australian market.**

Further details are contained in the supporting submission.

***Source** - The Australian Office Products Market, 7th edition 2006-2008, BIS Shrapnel

6. Public detriments

(a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:
(Refer to direction 8)

- **It is unlikely that Authorisation will be detrimental to consumers. It is instead likely to result in a more competitive office supplies market and reduced prices of office supplies for consumers.**

- **The Member's share of the office supplies market in the Australia is less than 10%.***

- **Authorisation if granted will not result in protection or shielding the operations of any particular business or the office supplies market from competition.**

Further details are contained in the supporting submission.

***Source** - The Australian Office Products Market, 7th edition 2006-2008, BIS Shrapnel

(b) Facts and evidence relevant to these detriments:

- **relatively small market share of members;**
- **buying power of larger retailers.**

Further details are contained in the supporting submission.

7. Contract, arrangements or understandings in similar terms

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

(a) Is this application to be so expressed?
Yes.

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

(i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:
(Refer to direction 9)

Variations will include different Suppliers, price and general trading terms.

Further details are contained in the supporting submission.

(ii) Where the parties to the similar term contract(s) are known— names, addresses and descriptions of business carried on by those other parties:

Future and anticipated Suppliers and existing Suppliers to Members.

Further details are contained in the supporting submission.

(iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Office products and stationery suppliers.

Further details are contained in the supporting submission.

8. Joint Ventures

(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?

Not applicable.

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

Not applicable.

9. Further information

(a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Darren Brown
Kliger Partners
Level 2, 280 Queen Street
Melbourne, Victoria 3000
Phone: (03) 8600 8867
Fax: (03) 8600 8899
Email: dtbrown@kligers.com.au

Dated 10 July 2007

Signed by/on behalf of the applicant

X

(Signature)

Darren Brown

(Full Name)

Lawyer for Office Choice Limited

(Position in Organisation)

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing the application for authorisation.

   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. 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. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition.

In providing these details:

(a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and

(b) to the extent that of any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.

5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.

7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.

8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.

9. 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 manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2

Public Copy (Restriction of Publication (of Part) Claimed)

Submission in Support of Authorisation

by Office Choice Limited

KLIGER PARTNERS
LAWYERS

Level 2
280 Queen Street
MELBOURNE VIC 3000

Ausdoc: DX 343 Melbourne

Tel: (03) 8600 8888
Fax: (03) 8600 8899
email: answers@kligers.com.au

DTB:RAL:71338:ppk
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1. Introduction

1.1 This submission is in support of Office Choice Limited's ("OCL") Application for Authorisation for Collective Bargaining pursuant to Section 88(1) of the Trade Practices Act 1974.

1.2 The purpose of OCL's application for authorisation is to allow OCL to collectively bargain with Office Products Depot ("OPD") and Office National Limited ("ON") for the benefit of their respective franchisees, via an appointed representative.

1.3 The Suppliers of office supplies to OCL, ON and OPD franchisees will be the Targets of the collective bargaining.

2. Background

2.1 OCL is a Franchisor of a chain of independently owned franchisees that operate in the retail office supplies market. There are more than 80 franchisees nationally.

2.2 ON is a Franchisor of a chain of independently owned franchisees that operate in the retail office supplies market. It also licences the use of the Office Product Depot branding and intellectual property from OPD for use in Australia by some of its franchisees.

2.3 ON is a competitor of OCL.

2.4 OPD is a Franchisor of a chain of independently owned franchisees in the New Zealand office supplies market. It's franchisees are independently owned.

2.5 OPD does not directly compete in the Australian market (save for the licence arrangement above) but it's franchisees do source office products from Australian suppliers.

3. Target Suppliers

3.1 The target suppliers that OCL, ON and OPD ("the Collective") wish to collectively bargain with are:

(a) Companies listed in Appendix C. These are the current major Suppliers to the Collective's respective franchisees; and

(b) Future Suppliers that are new entrants to the Australian market (if any) that the Collective's respective franchisees may wish to collectively bargain with in the future.

4. Proposed Conduct

4.1 The Collective seek to engage Business Products Groups International (an Indiana Limited Liability Company based in Washington, DC USA) ("BPGI") to negotiate on behalf of the Collective and their respective current and future franchisees.

4.2 The conduct for which Authorisation is sought is to allow the Collective to negotiate with Suppliers via BPGI on behalf of the Collective and it's respective franchisees. Whilst BGPI is appointed to negotiate with Suppliers, ON, OCL and OPD may also be actively involved in these negotiations from time to time.

4.3 Negotiations will concentrate on the following areas;

(a) Price for the acquisition of stock by the Collective's respective franchisees;

(b) The Terms and Conditions of supply (i.e. payment terms); and

(c) Level of rebates and discounts to be provided by Suppliers.

4.4 A diagrammatical representation of the proposed conduct is contained in Appendix A.

4.5 The aim is to negotiate more favourable Terms, Prices and Rebates for the Collective's franchisees to purchase office products than if they negotiated alone. This in turn would assist them to compete with other retailers that through their larger market share are in a stronger position to negotiate with Suppliers.

4.6 The Collective do not intend to jointly centralize purchasing from a particular Supplier. The nature of the market itself requires the Collective's franchisees to purchase from multiple Suppliers and purchase like products from competing Suppliers to make sure that Consumers are presented with acquisition choices. Choice for consumers has growing importance due to the vast choice offered by larger retailers.

4.7 The lack of buying power of individual independently owned retailers has generally meant that they have been unable to negotiate more favourable Terms, Prices and Rebates with large stationery and office product Suppliers. It is envisaged that negotiating as a collective and with the strength of numbers of their combined franchisees, they will be better positioned to negotiate with Suppliers.

4.8 The process for negotiation will vary between different target suppliers. Essentially the appointed representative of the Collective would generally contact the Supplier and negotiations would commence from there.

4.9 Authorisation is not sought for collective boycott activities. Entering into negotiations and agreements will be voluntary for both the members of the Collective and Suppliers. Each member of the Collective and their individual franchisees will be free to individually contract with that Supplier if an agreement between the Collective and the Supplier cannot be reached. Similarly individual members of the Collective and their franchises will remain free to negotiate individually with the Supplier even if a collective agreement is reached.

5. Market

5.1 The office products market covers products that would generally be used in the functioning and running of offices.

5.2 Office products is a generic term that refers to all supplies regularly used in offices by businesses and other organizations, from private citizens to governments, who works with the collection, refinement, and output of information (colloquially referred to as "paper work"). The term includes small, expendable, daily use items such as paper clips, staples, hole punches, binders and laminators, writing utensils and paper, but also encompasses higher-cost equipment like computers, printers, fax machines, photocopiers and cash registers, as well as office furniture such as cubicles or armoire desks.[1]

5.3 Typically a retailer may provide up to 10,000 different products for sale to consumers.[2]

Market Size and Growth

5.4 The estimated total size of the Australian office products market in 2005 was $6.48 billion (valued at consumer prices). When non core categories are included, the market size can be valued at $9.4 billion.[3]

5.5 Large retailers currently control a substantial portion of the market.

5.6 Superstores and other large format retailers have grown their share of the market significantly at the expense of newsagents and small independents. This trend is expected to continue for some years.[4]

5.7 The concentration of market power amongst a small number of players has been continuing.[5]

5.8 The best positioned Office Supplies Businesses in the market will be large, system driven organizations with exceptional logistics.[6]

Market Trends

5.9 There is a strong customer trend towards centralization/rationalization of purchasing and the larger retailers (Corporate Express and Officeworks) have tapped into this. This is projected to continue.[7]

5.10 Office product retailers can be broken into three broad categories;

(a) **Contract Dealers** that deliver direct from warehouses to businesses (controlling 20 percent of the market);

(b) **Commercial Dealers** ("independent operators") (generally consisting of small independent operators) that deliver to small, medium and large business in their immediate local area (controlling 18 percent of the market); and

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[1] Office supplies. (2007, April 19). In *Wikipedia, The Free Encyclopedia*. Retrieved 22:47, June 18, 2007, from http://en.wikipedia.org/w/index.php?title=Office_supplies&oldid=124025259
[2] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page 12.
[3] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page iv of the Executive Summary.
[4] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page iv of the Executive Summary.
[5] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page xi of the Executive Summary.
[6] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page iii of the Executive Summary.
[7] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page vi of the Executive Summary.

(c) **Large Retailers** that consist of large chains such as Officeworks, Big W and Harvey Norman (controlling 49.3 percent of the market).[8]

5.11 One of the primary reasons independent operators are still well represented in the market is from the competitive advantages buying groups have provided. Without such groups it is probable that the larger operators would have a much greater market share.[9]

5.12 Strategically the independent operators are in a war with larger retailers. Whilst the independent operators appear to have been weathering the war, it is anticipated in the next few years, the advantage provided by being a member of a buying group will start to diminish and larger retailers will erode the market share held by these independent operators.[10]

2005 Individual Market Share

5.13 The largest share of the market was held by Officeworks at 15.7 percent, followed by Corporate Express at 11.7 percent and computer and electronic retailers at 11 percent. Other non defined miscellaneous retailers held 15.6 percent. Other large market share operators include mass merchandisers (e.g. Big W, K-Mart etc) at 6.8 percent, Newsagents at 7.3 percent and OfficeMax at 5.3 percent.[11]

5.14 Office Choice's estimated share of the market was 2.2 percent whilst Office Nationals was 6.8 percent.[12] Office Products Depot does not sell within the Australian market

5.15 As a collective, the Collective's combined Australian market share will remain less than 10 percent. This is still substantially less than the share held by their larger competitors.

5.16 OPD's franchisees total purchases from Australian Suppliers would be less than 1 percent of the entire Australian market.

Major Market Share Operators

5.17 Officeworks (15.7 percent of the market). Officeworks main focus is on the small business, student and household segments of the market.[13] These are typically the areas targeted by the Collective and other small independent operators meaning that to remain competitive, the Collective needs to be able to source products at a cheaper price. It is likely that such targeting by Officeworks of this area will further erode the market share held by the independents.

5.18 OfficeMax (5.3 percent market share). Previously known as Boise Cascade Office Products (Australia), OfficeMax is part of the international OfficeMax group head-quartered in the USA. Their global sales for 2005 were $9.1 billion (US). OfficeMax is the dominant office products business in New Zealand and are number three in Australia behind Officeworks and Corporate Express.[14]

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[8] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page 343
[9] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page 346
[10] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page 346
[11] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page x of The Executive Summary
[12] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page x of The Executive Summary
[13] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page 39.
[14] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page 38.

5.19 Corporate Express (11.7 percent market share). Corporate Express is Australia's largest contract supplier of office products with a strategy of being the "single source" of their client's business supplies.[15] Corporate Express is part of Burhmann from the Netherlands with office supplies sales of approximately $6.5 billion (US).

5.20 In addition to the small business, student and household segments of the market, the Collective's franchisees also target the "bottom end" of the "corporate" portion of the market where OfficeMax and Corporate Express are their key competitors.

Suppliers

5.21 There are several Suppliers in Australia selling competing products. Annexure D contains a list of the main Office Product Manufacturers/Suppliers in 2005 with details of their competing products and estimated sales.[16]

5.22 The largest five suppliers in dollar values in the Market are Hewlett Packard, Australian Paper, Canon, Lexmark and Epson.[17]

5.23 The best positioned Suppliers for the future will be larger players that are part of an international group who have strong brands and market leadership in one or more growing categories of office products. They will also need to have an innovative and adaptive culture to allow them to move with the market, continually develop new products, modifications and enhancements. They will also need to be close to their customers and work with them.[18]

5.24 Retailers are now using more Suppliers than they did in 2003. Over one third use more than 40 Suppliers. This is reflective of a trend of retailers expanding the range of products they stock.[19]

5.25 The most important capabilities and characteristics that Suppliers should have to compete in the future will be;

(a) Scale. Larger Suppliers will have advantages over smaller Suppliers;

(b) Belonging to a global manufacturer/supplier group;

(c) Product leadership in at least one or more growth categories;

(d) Ownership of strong brands;

(e) Ability to invest in developing and keeping brands strong;

(f) Capability to develop and move into new growth products;

(g) Customer focus;

(h) A culture of innovation;

(i) An organisation structure able to minimise costs.[20]

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[15] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page 37
[16] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page xii of The Executive Summary
[17] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page xii of The Executive Summary
[18] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page 413
[19] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page 418
[20] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page 428-429

5.26 The Suppliers that are most successful in the Market are large overseas owned manufacturers that import into Australia. They generally have a wide product range or high market share in a few strong categories and strong brands. [21]

5.27 Generally the main reasons for retailers switching Suppliers are poor customer service and a desire to reduce the number of Suppliers. Price has become a significantly less important reason for dropping Suppliers than in earlier years.[22]

5.28 It is not envisaged that proposed arrangements will have a detrimental effect on Suppliers as the percentage share of the Market the Collective will hold will still be significantly less than the share held by larger retailers such as Officeworks and Corporate Express

5.29 It is submitted that the proposed arrangement will not have a detrimental effect on Target Suppliers as;

(a) there is no intention to collectively boycott (and authorisation for such conduct is not sought) if Suppliers refuse to negotiate with the Collective;

(b) it is important for the Collective's franchisees to maintain a wide variety of product from various Suppliers;

(c) the Collective's market share will be less than that maintained by the biggest market share operators in the Market (Officeworks and Corporate Express);

(d) entering into negotiations and agreements will be voluntary for both the members of the Collective and Suppliers; and

(e) each member of the Collective and their individual franchisees will be free to individually contract with a Supplier if an agreement between the Collective and the Supplier cannot be reached.

6. Parties to proposed arrangements

6.1 The parties to proposed arrangements are present and future members of the Collective and their respective franchisees.

6.2 Pursuant to Sections 88(10) and 88(13) of the Trade Practices Act 1974, the authorisation application applies to any collective bargaining group of the Collective members (present or future) who wish to engage in the proposed arrangement.

6.3 Attached as Confidential Appendix B is a list of present franchisees of ON, OCL and OPD as at 30 May 2007.

6.4 Attached as Appendix C is a list of the main Suppliers to the Collective's franchisees.

[21] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page 429.
[22] BIS Shrapnel, The Australian Office Products Market, 7th edition 2006-2008, Page 420.

7. Interim Authorisation

7.1 The purchasing decisions for 2008 and 2009 will need to be made shortly. The Collective is seeking interim authorisation to enable it to represent its respective franchisee's interests in collective negotiations as soon as possible.

7.2 The Collective wishes to commence meaningful negotiations with Suppliers and is aware that the authorisation process is likely to take some months.

7.3 The Collective will make sure that any arrangement negotiated with Suppliers during the interim period will not be binding if the ACCC subsequently declines to grant final Authorisation.

7.4 The Collective therefore submits that granting an interim authorisation does not prevent the parties from returning to the current status quo in the event that the ACCC subsequently declines to grant Authorisation.

8. Purchasing of Stock

8.1 Whilst prices for the purchase of stock is negotiated by the franchisees Franchisor, the Collective's individual franchisees generally contract directly with individual Suppliers for the actual purchase. The Collective do not (with limited exceptions) purchase or resell office supplies to its franchisees.

Note that ON maintains some effective trading accounts with some suppliers on behalf of its franchisees. These are generally technology suppliers such as Brother and Acer. In these cases, typically franchisees place purchase orders for products from the supplier through the ON purchasing system. The supplier despatches the goods directly to the franchisee and charges ON who then charges the franchisee at invoice cost. Suppliers benefit by having one account rather than many and the financial risks of individual accounts are reduced by having the account vested in the franchisor which in turn is supported financially by all its franchisees. This is not an exclusive channel and franchisees are able to purchase these products through alternate channels or distributors. The Collective does not currently have a collective relationship with these suppliers, though it may occur in the future

8.2 Depending on volume of purchases, rebates are paid by Suppliers, generally on a monthly, quarterly or annual basis.

8.3 The rebates generally take two forms. The first being a quantity rebate based on quantity of sales. This rebate is currently paid by Suppliers to OCL, OPD and ON. It is then paid to the individual franchisees of their respective group.

8.4 The second rebate is a marketing rebate which is retained by ON, OCL or OPD based on the percentage of purchases that party's franchisees made. It is used for marketing, promotion and other like purposes.

8.5 Certain rebates may be based only indirectly on sales quantity.

8.6 Part of BPGI's negotiation brief will be to maximise these rebates.

8.7 BPGI will be paid an initial and yearly fee by OCL, OPD and ON in consideration of it's services.

8.8 Regardless of the negotiations undertaken by BPGI, the individual franchisees will still be free to choose whether or not to purchase from those Suppliers from which more favourable prices have been negotiated. The ultimate purchasing decisions rest with the individual franchisee.

8.9 Each franchisee of the Collective retains the ability to decide not to be part of any shared pricing negotiated by the Collective and may reach it's own agreement with Suppliers independently and separately.

9. Other parties likely to be affected by Authorisation

9.1 Other parties likely to be affected who might have an interest in the proposed arrangement fall into the following categories:

(a) Consumers;

(b) Market competitors; and

(c) Suppliers.

9.2 Consumers of stationery and office products are best served by competitive and efficient markets. Individual independent retailers will need to be able to compete with larger retailers in relation to selling their stock. Lack of competitiveness by independent retailers may lead to their market demise and further concentration of market ownership in fewer, larger competitors like Officeworks, Corporate Express and OfficeMax.

9.3 Authorisation is sought to allow negotiation for a sound foundation for doing business for each of the Collective's franchisees, and it is not intended to protect or shield the operations of any particular business or the sector from competition. There is no readily apparent detriment to consumers in authorising the Collective to undertake the negotiation process. It is likely that by negotiating as a collective, more favourable prices for office supplies will be achieved for consumers and that independent retailers will be able to compete more effectively with larger retailers. This will result in increased competition in the market and a competitive choice for consumers to chose where to shop.

10. Public Benefits of the Proposed Arrangements

10.1 The generally accepted test for whether authorisation may be given is:

(a) Whether the proposed arrangement would result, or be likely to result in a benefit to the public; and/or

(b) Whether that benefit or benefits would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result from the proposed arrangement.

10.2 The proposed arrangement to collectively bargain is likely to result in the following benefits to the public;

(a) reduced prices for office products;

(b) increased competition between independent retailers and larger retailers.

(c) reduction in the projected decline in market share of the independent retailers to larger retailers such as Officeworks.

10.3 There is unlikely to be any detriment to the public resulting from the proposed conduct. Nor is there likely to be a lessening in competition.

10.4 Consumers are best served by competitive and efficient markets.

10.5 Small independent operators need to be able to compete with larger retailers. This can be achieved through increased buying power resulting from collective bargaining.

10.6 Small independent operators are generally in a weaker bargaining position when negotiating terms and conditions for the acquisition of office supplies. Large retailers are able to use their buying power and resources to negotiate more favourable pricing and terms.

10.7 It is anticipated that the collective bargaining process will result in an efficient and cost effective means to negotiate more favourable terms and conditions of acquisition of office supplies for the Collective's franchisees.

10.8 It is envisaged that collective bargaining will assist the Collective's franchisees to compete more efficiently with retailers that have more buying power and enhance competition between the Collective's franchisees and other retailers.

10.9 Arresting the decline of independent retailers will increase choice (and competition) for consumers in the long term in the office supplies market.

11. Anti-Competitive Detriment

11.1 It is unlikely that the activity of collectively bargaining on behalf of the Collective's franchisee will have any significant detrimental effect on consumers. On the contrary, it is likely that it will result in increased competition between the smaller independent operators and the larger retailers via reduced prices.

11.2 The Collective's combined share of the market is less than 10%. There will be no substantial lessening of competition in the market or resulting public detriment from Authorisation.

12. Term of Authorisation

12.1 Authorisation is sought for an initial period of six (6) years.

12.2 Buying decisions (i.e. types of products, brands etc) are made generally one to two years in advance. Therefore agreements collectively negotiated in 2008 would impact (actual) buying in 2009 and 2010. Six years is considered appropriate given the long lead time between planning and buying decisions.

12.3 This should not be confused with stock ordering/purchasing by the Collective's franchisees which can be made on monthly or less cycles.

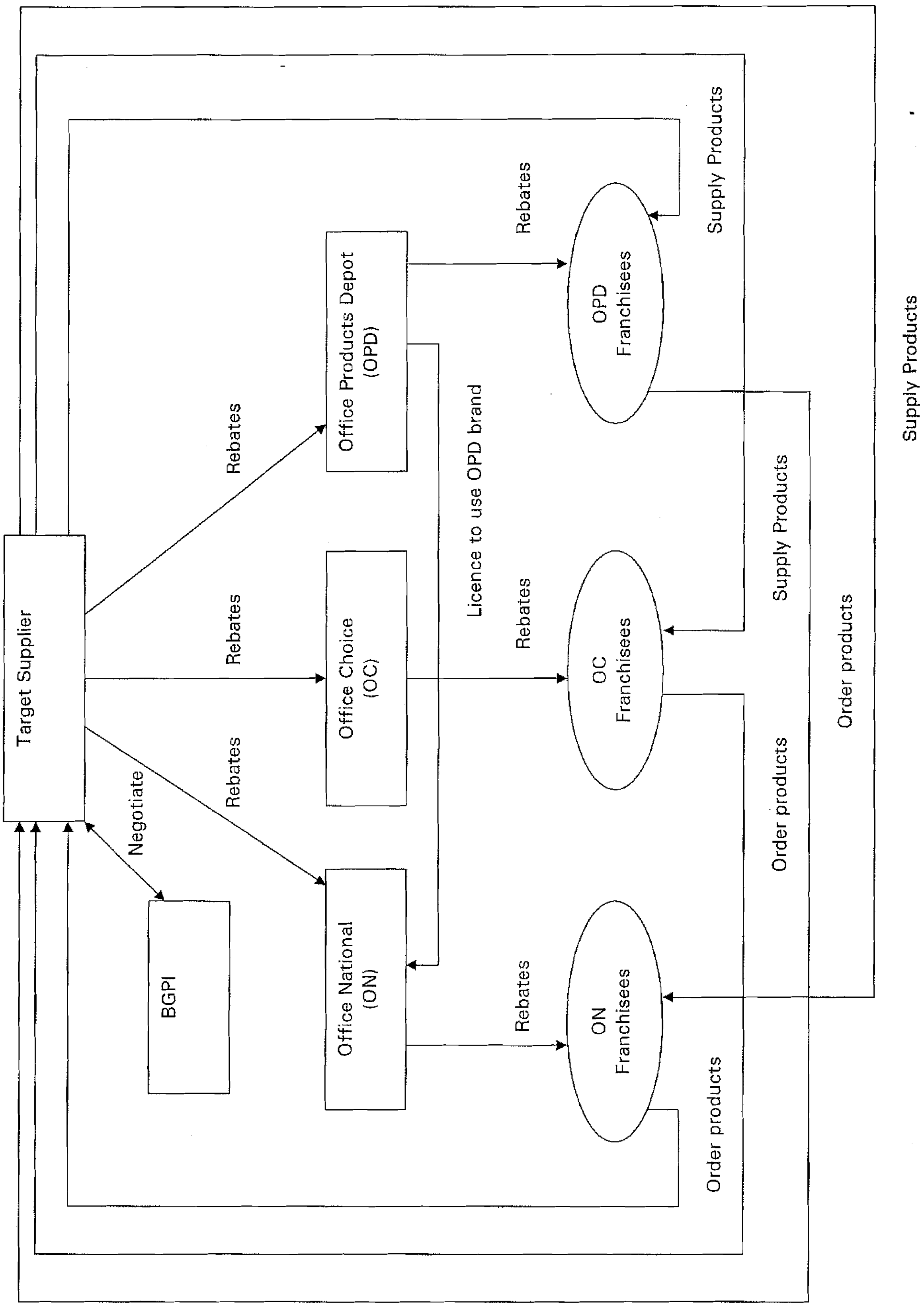
13. Summary

13.1 It is anticipated that the market will continue to be dominated by large power retailers with a decline in share of the independent operators from competitors such as Officeworks, Corporate Express and OfficeMax. Unless the decline in market share can be arrested, it is anticipated that fewer independent retailers will control a smaller portion of the market. This will result in even more difficult conditions for independent retailers to remain competitive.

13.2 Officeworks, the largest operator by market share is anticipated to take away market share from the traditional portion of the market independent operators largely operate in. This will result in reduced competition as Officeworks (and other larger players) control a bigger share of the market.

13.3 To hold or reverse the decline, independent operators need to purchase products at prices competitive with the larger retailers. By joining together as a larger buying group, independent operators may be able to compete with the larger retailers more effectively.

Appendix A
(Chart of Proposed Conduct)



Restriction of Publication Claimed

Appendix B

(Current franchisees of ON, OCL and OPD as at 30 May 2007)

Restriction of Publication Claimed

Appendix C
(List of Main Suppliers to the Collective's franchisees)

[redacted]

Prefix	Company	Address	Suburb	State	Pcode	1800 - 1300 Phone Number
ACO	Acco Aust	Level 2 Building 8, 8 Lord Street	BOTANY	NSW	2019	1300 366 376
AVD	Avery Dennison	Moonee Ponds Business Centre Level 1 5 Everage Street	Moonee Ponds	VIC	3039	1300 365 777
BAN	Bantex Pty Ltd	20 Huntingwood Drive	HUNTINGWOOD	NSW	2148	1300 655 667
BIC	BIC Australia Pty Ltd	Popes Road	KEYSBOROUGH	VIC	3173	
DAL	Dalton Packaging Pty Ltd (Pilot)	15 Rocco Drive	SCORESBY	VIC	3179	1300 651 113
DUR	Proctor and Gamble (Duracell)	Level 4, 1 Innovation Road	MACQUARIE PARK	NSW	2113	1800 819 761
ESS	Esselte Australia Pty Ltd	Level 1, 82 Waterloo Road	NORTH RYDE	NSW	2113	1800 625 521
FEL	Fellowes Manufacturing P/L	10 Fellowes Court	TULLAMARINE	VIC	3043	1800 331 177
IMA	Imation	Level 2, 21 Solent Circuit	BAULKHAM HILLS	NSW	2153	1800 225 013
JAD	Mitsubishi Pencil Australia	624 Lorimer Street	PORT MELBOURNE	VIC	3207	1800 807 464
JAS	Jasco P/L (Rapid)	118-122 Bowden St	MEADOWBANK	NSW	2114	1800 676 155
PAR	Pelikan Artline (GBC/Quartet)	2 Coronation Avenue	KINGS PARK	NSW	2148	1300 278 5463
PEN	Pentel Australia	Unit 4, 7-9 Orion Rd	LANE COVE	NSW	2066	
SAN	Sanford Aust	1-11 Keysborough Ave	KEYSBOROUGH	VIC	3173	1800 727 537
SPC	PaperlinX Office (Durable)	133 Vanessa Street	KINGSGROVE	NSW	2208	1800 804 378
STD	Staedtler Pty Ltd	1 Inman Road	DEE WHY	NSW	2099	1800 366 555
THM	3M Australia Pty Limited	950 Pacific Highway	PYMBLE	NSW	2073	1300 363 585

Additional suppliers include Acer, Brother, Doro, Kyocera, OKI and Sharp.

Annexure D

(Main Office Product Manufacturers/Suppliers in 2005 with details of their competing products) (reproduced from Page xii of The Executive Summary of The Australian Office Products Market, 7th edition 2006-2008, BIS Shrapnel)

Suppliers

The largest five suppliers are (in $ value): HP, Australian Paper, Canon, Lexmark and Epson.

Office Product Manufacturers/Suppliers Overview, 2005

Supplier/manufacturer	*Est. 2005 sales ($m)**	*Product Categories Supplied*								
		Writing products	*Paper and labels*	*Pads, books, en-velopes*	*Comp-uter consum-ables*	*Comp-uter access-ories*	*Filing and storage products*	*Present-ation products*	*General office supplies*	*Office machines*
3M	62			✓		✓	✓	✓	✓	
Acco	160	✓	✓	✓	✓	✓	✓	✓	✓	✓
Australian Envelopes	100			✓						
Australian Paper	340		✓							
Avery Dennison	60		✓			✓	✓	✓	✓	
Bantex	40	✓		✓		✓	✓	✓	✓	✓
Bic	37	✓								
Brother	112				✓			✓		✓
Camerons	25			✓						
Canon	315		✓		✓					✓
Colby	7						✓	✓		
Collins Debden	25			✓						
Cumberland Stationery	12			✓			✓	✓		
Dalton Packaging	13	✓		✓					✓	
DATS	14	✓		✓			✓			
Epson	165		✓		✓					✓
Esselte	50	✓	✓	✓		✓	✓	✓	✓	
Faber Castell	13	✓								
Fellowes	30		✓			✓	✓	✓		✓
Fuji Xerox	20		✓		✓			✓	✓	
Fuji Xerox Printers	50				✓					✓
HP (Hewlett Packard)	510		✓		✓					✓
Hunter Leisure	14	✓	✓	✓	✓		✓	✓	✓	
Imation	58				✓	✓				
Jasco	35	✓	✓						✓	✓
Kyocera Mita	50				✓					✓
Lexmark	205				✓					✓
Moore Business Systems	26		✓	✓						
Notepad Manufacturers	10			✓						
Pelikan Quartet	140	✓	✓	✓	✓	✓	✓	✓	✓	✓
Penline Mon Ami	20	✓								
Pentel	9	✓								
Quill Stationery Manuf.	15			✓					✓	
RTS Imaging	22				✓					
Sanford	40	✓								✓
Tudor /Spicers Stationery	102		✓	✓			✓		✓	
Staedtler	24	✓								
Statman	10			✓						
Wholesale/distributors who import direct	780	✓	✓	✓	✓	✓	✓	✓	✓	✓
Others	608									
Total	4,328	214	758	226	1,492	221	313	123	217	764

*These are BIS Shrapnel estimates based on published financial statements and our knowledge and contact with industry players. *Values are at manufacturers/suppliers selling prices (excluding GST). They exclude sales of non-office products.*