



27<sup>th</sup> August 2007

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra  
ACT 2601

Dear Sir or Madam

**Collective bargaining notification CB00003 lodged by the Australian Newsagents Federation (ANF)**

The Australasian Association of Convenience Stores (AACCS) represents convenience store operators throughout Australia and New Zealand. In total our members operate in excess of 3500 stores.

Many of the convenience stores are operated by family businesses. They usually open extended hours, many are open 24 hours a day 7 days a week, and often are located adjacent to a petrol retail facility. Off street parking for the public and pedestrian access are essential features of a convenience store. They provide a broad range of products and services to their local communities.

AACCS submits that the application should be rejected as it is anti-competitive in nature in that it preserves arrangements which the Australian Competition Tribunal has found to be "anachronistic" and "severely anti -competitive" in proceedings brought by AACCS in 1994 and 1998.

What was reviewed by the tribunal was the system which:

1. Categorised a convenience store as a "sub agent" of a newsagent in whose territory the convenience store was located;
2. Prohibition on other newsagents supplying product to a convenience store in whose territory the convenience store was located;
3. Refusal by publishers to supply directly to convenience stores in competition with a newsagent;
4. Deliberate practices of newsagents to reduce or restrict competition created by the convenience store. These practices include:
  - a. Late or short supply of newspapers and magazines;
  - b. Refusal to supply the range of titles and publications requested by the convenience store operator;
  - c. Inefficient invoicing, receipting and returns procedures;
  - d. The convenience store operator was forced to share sales commission with the newsagent who, as outlined above, often engages in practices that harm the profitability of the convenience store.

In short, anti competitive practices based and dependent on newsagent territorial monopolies

5. In 1999 at the request of the ANF, Mr Hockey as a Minister of the federal Government, arranged for the ACCC to allow newsagents and publishers to negotiate a new system.
6. The "new" system retains the worst anti-competitive and monopolistic features of the old supply system
7. Under the present system, and under which the application CB00003 is couched:
  - a. Newsagents have retained their territorial monopolies;
  - b. Convenience store operators cannot obtain direct supply from publishers which, in turn, prevents newsagent-convenience store competition. Convenience store operators are forced to deal with the newsagents in whose territory they are located;
  - c. Convenience store operators are forced to "share" commission on sales with the newsagent in whose territory they are located;
  - d. The inefficient and restrictive pre – Tribunal practices of newsagents continue to undermine the profitability and competitiveness of convenience stores;
  - e. The new system and the application are in defiance of the Tribunal's rulings.
  - f. The convenience store industry is still outside of the negotiation process

A more competitive system should see the public making full use of the 24 hours a day 7 days a week service being offered by most convenience stores. There is demand from the public for newspaper and magazine supply around the clock and not to be able to provide products due to the control of the local newsagency in the ordering and sales process is clearly not in the public's interest.

Individual store operators simply do not have the commercial scale to take on the ANF and publishers in court.

In examining the application in detail AACCS wishes to comment on the following parts of the application specifically:

### **Section C – public detriments**

The newsagent

There is an alternative to newsagents controlling territorial distribution.

The newsagent's day starts at around 3.30- 4.00 am and finishes at 6.00 – 6.15 pm. Convenience stores, as has already been stated, operate 24 hours a day 7 days a week, thereby providing local communities with non stop shopping opportunities and also being in a position to receive deliveries at any time of day or night.

Direct delivery to homes is not something that convenience stores seek to offer and this is something in which the newsagents have genuine expertise.

The statement that sales made through sub agents are on the basis that commission is split 50/50 between the newsagent and the sub agent is anti-competitive. The convenience store operator should not be forced into the position of sub-agent and should be able to negotiate directly with any supplier of the newspapers and other publications.

## Subagents

To say in the application that territorial monopoly has remained central to the newsagency market structure is an attempt to further institutionalise this anachronistic and anti-competitive process. AACCS requests strongly that the ACCC, as the competition watchdog, should reject this statement out of hand. There are alternatives that increase competition for newsagents and publishers which are not being allowed as long as these current arrangements remain in place.

## The supplier

The fact that Western Australian Newspapers (WAN) is the only major newspaper publisher in Western Australia is irrelevant. Other publishers may wish to distribute newspapers in Western Australia too but arrangements such as the one to which the application relates effectively removes those organisations from a chance at negotiating with other parties in an attempt to bring their products to market.

## Unlikelihood of future collective bargaining

The statement that Newsagents' viability is essential to WAN business ignores the fact that there are other players who could, if allowed, provide new sales opportunities and energy that would enhance WAN's business by unknown but significant volumes. The statement contained in the application that "There is a strong resolve among newsagents to redress the inequities of past agreements and they are reassured of an amicable outcome by WAN's support of the collective bargaining process" reeks of anti-competitive arrangements designed to favour the newsagents to the exclusion of all other retailers.

## Section D – public benefits

### Subagents

The application acknowledges that the ACCC has had concerns about the issues concerning sub-agents in the past. It goes on to offer that the introduction of some "KPI's" would assist in the management of the relationship between sub-agents and newsagents. The sub-agents are not however party to these arrangements so one can only assume that the KPI's will be imposed on the sub-agents without the right of negotiation. AACCS submits that this attempt to "whitewash" the past poor performance of the newsagents (upon which AACCS has surveyed its members) will not improve the relationship between sub-agents and newsagents. It is a unilateral approach designed to protect newsagents.

### Efficiencies

#### Fees:

Whilst the application proposes an increase in the Western Australian Newsagents' commission to 25% from a purported 18-19%, no mention is made of increasing the amount of commission paid to the sub-agents who actually make the sales, service the customer and operate longer hours than the newsagents. AACCS submits again that this arrangement should be subject of open market negotiation between **any** retailer and the publishers. If a convenience store operator can deliver sales growth through his or her skill and facility then why should they not be allowed to negotiate directly with the publisher? Not to allow this is anti-competitive and should be rejected by the ACCC.

Market Dynamics

Business Viability:

The concerns expressed in the application regarding the opportunities to maintain viable retail businesses by newsagents apply to other retailers too. AACS considers it be ingenuous of the ANF to submit that their members need protection in the form of the collective bargaining agreement to remain viable when others in a position to compete cannot compete fairly. Convenience store operators too feel the pressures of the modern market place as they fight with supermarket chains whose practices (eg fuel discounting/cross subsidy schemes) reduce their ability to remain viable. It is vital to convenience store operators that all channels to the customer remain open and that they have the right to compete for the supply of products and services in their local communities, including newspapers.

AACS objects to the application for a collective bargaining agreement in the strongest possible terms. Despite expending many thousands of dollars in successful representation before the Australian Competition Tribunal on this same issue the ANF and the newspaper publishers have been seemingly immune from ACCC action in the past. AACS believes that the ACCC should reject this and any future applications of this sort from the ANF as grossly uncompetitive in nature and detrimental to the interests of the Australian consumer.

Yours faithfully



**David Killeen**  
**Executive Director**