

6 September 2007

Mr Gavin Jones
Director
Adjudication Branch
Australian Competition and Consumer Commission (ACCC)
GPO Box 3131
CANBERRA ACT 2601

Dear Mr Jones

I write with regard to the submission made by West Australian Newspapers (WAN) dated 30 August 2007 in response to the Australian Newsagents Federations (ANF) collective bargaining notification CB00003.

The ANF submits the following information for consideration by the ACCC in assessing the validity of ANF's collective bargaining notification:

WAN argues that the proposed conduct ***"is likely to result in significant public detriments that will outweigh any public benefits and most importantly, is not in the interests of consumers in the state of Western Australia"***.

A performance based agreement will in fact bring about benefits to the public. These agreements are focused on increasing overall efficiencies between the parties. Increased efficiency on both sides would lead to better circulation to customers.

"WAN is concerned that the collective bargaining proposed by the ANF, which would involve a substantial number of distribution agents dispersed throughout all areas of Western Australia, seeks a return to the past regulated distribution arrangements".

Collective bargaining for performance based agreements would not lead to a return to the past regulated distribution environment. Performance based agreements are considered as progressive and productive. The newsagent industry has been deregulated now for almost ten years and the ANF and its members have no desire to return to the past regulated distribution system. A performance based style of agreement demonstrates that newsagents want to be active with their partner in ensuring that the supply of newspaper products is efficient and effective.

"WAN is concerned that such a situation would inherently result in distribution arrangements which do not address the individual circumstances of each distributor and in a more costly and inefficient distribution system, which will not be appropriate for WAN's business or conducive to the ability of WAN to efficiently service home delivery customers and consumers in general".

A performance based agreement would result in distribution arrangements that do respond to the individual circumstances of each distributor. Mutually agreed KPI's ensure that goals are

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achievable. Performance based agreements are more consultative and adaptive as opposed to the current contract which is completely inflexible. If you want to sell WAN products you have to sign their contract and if you do not like the terms and conditions then you are presented with a “take it or leave” it contract situation.

The ANF at no stage in its collective bargaining notification proposed to formulate a more costly and inefficient distribution system. In fact, through performance based agreements the focus is on reducing costs for all parties and increasing overall distribution efficiency which would in turn lead to a greater level of service to home delivery customers and consumers in general.

“The ANF’s collective bargaining proposal would appear to be primarily aimed at home delivery services and in particular increasing fees payable to distributors to the detriment of WAN subscribers and home delivery customers in general”.

The ANF collective bargaining proposal is not solely focused on home delivery services and increasing fees payable to distributors to the detriment of WAN subscribers and customers in general. The focus is on reducing costs and increasing overall efficiency which will ultimately enhance profitability for all parties. This should not impact on WAN subscribers or home delivery customers in a negative way but rather the impact of performance based agreements should be positive through increased circulation and customer service.

“Increases as the ANF proposes will, in turn, have an adverse impact on consumer welfare – that is, the loss of substantial public benefits (as recognized by the Australian Competition Tribunal) which result from low cost, efficient and broad home delivery of newspapers to the public”.

The ANF believes that a performance based agreement approach would in fact enhance and continue to deliver the existing low cost and efficient broad home delivery of newspapers to the public. As a result there would be no adverse impact on consumer welfare or the loss of substantial public benefits as WAN claims. The focus of performance based agreements is on reducing costs and increasing efficiency not increasing costs to consumers.

“As proprietor of the publication, WAN has every economic incentive to ensure an efficient and timely home delivery service to consumers. WAN’s position is focused on ensuring end costs incurred by the consumer of its publications are cost effective”.

The newspaper publishers created the newsagent system primarily as a route to market for their publications. In the Australian Competition Tribunal hearings of 1993 it was recognized that the distribution system newspaper publishers has created did not allow the opportunity for business innovation or overall efficiency.¹ Industry deregulation, it was envisaged, would provide newsagents with the opportunity to be more innovative and improve efficiency. Newspaper publishers responded to deregulation by developing individual contracts with newsagents and in doing so merely replaced the old news agency council system with individual “take it or leave it” contracts.

“WAN’s focus is upon the efficiency of its distribution system and how that impacts upon its customers – not profitability issues across the news agency industry. WAN believes the ANF’s notification is misplaced to seek to drive broader issues for its members on the basis of WAN products alone. Each newsagent instead should be

focusing on its own individual business and financial circumstances across the whole range of products it sells”.

If WAN's focus was on the efficiency of its distribution system then why does it not support a performance based style of agreement which ultimately pursues the goal of increasing efficiency and if WAN had another proposition to achieve a similar result then the ANF was open to receiving it. Profitability of the newsagency industry should be a concern for WAN because if the system is inefficient and not economically viable then ultimately newsagents cannot perform the effective distribution of WAN products which would have an adverse impact on consumers.

Newsagents provide a low cost and efficient distribution and home delivery service to consumers. If the economic viability of this service is compromised then inevitably this will have flow on effects to both WAN and consumers through decreased circulation and dissemination of information.

“WAN does not believe it is appropriate for associations to use collective bargaining processes to seek price increases to be passed on to consumers, particularly in a manner which includes a threat of collective boycott if their demands are not met”.

Collective bargaining is an arrangement under which two or more competitors in an industry come together to negotiate terms and conditions (which can include price) with a supplier or a customer. WAN clearly demonstrates a lack of understanding of the collective bargaining process. The ANF's application was focused on a performance based agreement that covers a range of issues within the industry. As stated previously, the ANF prefers pursuing an agreement that will ultimately lead to greater industry efficiency and service to the consumer.

The ANF is not seeking to obtain protection from legal action in relation to any collective boycott arrangement through the current collective notification. The ANF does however reserve the right to use the collective boycott provision in a further notification should the current collective negotiations fail.

It is instructive that this notification can be distinguished from the collective bargaining notifications lodged by a number of Queensland citrus growers, to which the ACCC did not object. In particular, this notification:

- ***Involves a significant number of distributors representing a large geographic area of Western Australia;***
- ***Was preceded by an offer by the WAN to discuss with distributors any comments and suggestions they might have on the ways in which we might improve our systems;***
- ***Concerns the renegotiation of a complex delivery structure which is integral to our business and which is quite different from a price setting mechanism for the sale of citrus fruit; and***
- ***As noted above, includes the threat of a collective boycott.***

The ANF in its original collective bargaining application tabled 150 opt-in forms from WA newsagents. There have been a further number of opt-in forms received taking the total to around 170 from all over WA. WAN has in the past offered to discuss with distributors any comments and suggestions they might have on the ways in which they might improve their systems but this has been typically ignored. As a result, WA newsagents and members of the ANF sought assistance with getting the issues across to WAN at a higher level.

WAN typically dictates change to the newsagent channel rather than work collaboratively with newsagents. The citrus growers notification is irrelevant to the ANF application for collective bargaining and we are unsure as to the relevance of WAN referring to it in its response and the issue surrounding the collective boycott have already been addressed and do not require us labouring the point any further.

“The part of the ANF’s notification which states that collective boycott offers “the only other reasonable opportunity to facilitate change” and “ANF reserves the right to use this provision should collective negotiations fail” is objectionable. WAN considers that any attempt by the ANF to seek immunity from the ACCC for such a boycott is inappropriate and highly anti-competitive, particularly given the number of newsagents which the ANF purports to represent, the geographic area which those newsagents cover, and the significant, detrimental impact that such conduct would have on competition and the consumer”.

The ANF recently advised WA newsagents to invoke the arbitration clause within their agreement concerning recent events around the late delivery of newspapers.² The late delivery of WAN product was resulting in some newsagents working 16 hour shifts in an effort to distribute products. This presented newsagents with unacceptably high occupational health and safety (OH&S) risks. Including delivering and throwing papers during peak times when much of the public is about, driving and delivering with fatigue, not to mention significant impacts on family life.

Over 100 distribution newsagents filed notices of dispute with WAN. WAN has commenced writing to newsagents advising them that there is no dispute and that there is no need to go to arbitration.³ Those newsagents that have already met with WAN walked away with no real definitive action plan or way forward.

The ANF feels it is inappropriate for WAN to offer advice to the ACCC on how best to fulfil its regulatory obligations. If the ANF did lodge a collective boycott notification it will naturally have to satisfy the appropriate guidelines set down by the ACCC. It is uncertain the impact of what the actions of a collective boycott might mean to the consumer however, the ANF rejects WAN concerns about the detrimental impacts on the consumer. This argument might have been valid prior to digital media but newspaper circulation has been declining for sometime as people choose to read papers online as there is no cost and it is convenient.

“In summary, WAN strongly submits that the ACCC should not allow the ANF notification, particularly with the threat of a boycott, as it is not in the interests of the broader community and consumers as a whole”.

The ANF collective bargaining notification acknowledges that a collective boycott application might be considered in the future. By the ANF reserving the right to pursue it in the future does not invalidate the collective bargaining notification in anyway as both are separate processes. If WAN worked with the ANF toward realizing a productive collective negotiation then naturally any collective boycott activity would be redundant.

A collective boycott is not a course of action the ANF or newsagents wish to pursue. WAN already conducts its business in a manner that is detrimental to consumers. Consumers already complain of consistently late deliveries of WAN. This is leading to a decrease in circulation and impacts on newsagents’ businesses. The newsagent wants to deliver the

² See attachment ‘TAB A’
³ See attachment ‘TAB B’

papers but can't until WAN supplies them, but for the past 2 years they continue to receive product late from WAN.

If WAN really had the consumers' interests at heart they would have resolved their production issues by now or set a meaningful timetable to resolve them so that newsagents could deliver WAN papers to customers. The continued lack of on-time product by WAN demonstrates their lack of commitment to both the newsagent and consumer.

"There are some thresholds issues which we believe need to be brought to the attention of the ACCC. These are:

- a) The ANF has suggested in its notification that WAN is a voluntary participant in the collective bargaining process. This is incorrect. Seeking comments by a party by a certain date and taking the absence of response as voluntarily participating is unusual. The ANF lodging a notification in this manner publicly suggesting agreement is provocative and inappropriate in a regulatory matter";***

The ANF's WA Branch Manager and WA Director met with the CEO of WAN, Ken Steinke back in July. The conversation was focused on the need to re examine the current newsagent contracts and to work collaboratively towards understanding the mutual problems with a view to resolution. WAN was advised at the time that ANF would write to them clarifying the discussions and a formal invitation be extended to progress matters.⁴ WAN advised that they were uncomfortable with the lodgement of a collective bargaining notification. It was explained to them, that this approach was necessary for accountability and transparency purposes. The notification would provide protection to the parties while negotiations were taking place. WAN's reluctance to formalize arrangements with the ANF and ACCC appears to demonstrate that the indications given at previous meetings were misleading and merely were offered as pacification rather than a real genuine willingness to resolve issues. The ANF rejects WAN's assertions.

- b) "The information provided by the ANF in relation to the commissions and fees paid by WAN is incorrect and the suggestion of declining returns is also incorrect – we have sought to correct this in this letter. We also believe the ANF is taking an extremely long bow to single out one publisher and claim returns from that publisher are threatening a small business viability when in all cases the business would be selling and distributing other newspapers and magazines and, in many cases, lotto, gifts, stationery and convenience foods and soft drinks. Any analysis of costs cannot be taken in isolation".***

In WA, there are three types of newsagents, retail only, retail and distribution and distribution only. Retail newsagents stock a suite of other lines such as those outlined above, but the situation is much different for distribution newsagents. Distribution newsagents primarily deliver newspapers, and in WA, where there is only one locally published newspaper, this means predominantly WAN. Distribution newsagents also distribute a small amount of magazines, however, this is on the decline as a result of direct magazine subscription and the availability of magazines through other channels since deregulation. The loss of higher margin magazine product has made newspaper delivery in isolation much less profitable.

There is absolutely no question that the fortunes of distribution only newsagents in WA are dependent on WAN, and Member newsagents continually reinforce this message to WAN and the ANF. Unfortunately WAN to date has elected to ignore this commercial reality.

⁴ This document was forwarded to the ACCC in ANF's original collective bargaining notification.

Distribution newsagents are particularly vulnerable to cost pressures because of the nature of the business. Newsagents do not have control over either the cover price of the product they sell or the delivery fee paid. This leaves them extremely vulnerable to rising costs. Unlike other industries that can exercise some control in this area (for example airlines have elected to charge consumers a fuel surcharge in the face of rising fuel costs), newsagents are unable to recover increased costs from the end consumer.

It was envisaged by the Australian Competition Tribunal (ACT) that distribution newsagents would be a great new innovation for the industry. The hopes of the ACT have not been realized. Distribution newsagents in WA are increasingly giving up their businesses because of lost revenue, low returns and rising operational costs. Since May the ANF is aware of five (5) delivery rounds abandoned. They cite that with the continual late supply of newspapers customers are increasingly deciding not have papers delivered. Unlike other industries where in similar circumstances of non-performance the business could seek supply from elsewhere, the newsagent remains at the mercy of WAN and relies on the prompt delivery of product so they can then deliver newspapers to customers.

WAN continually argues that they have the customer's interests at heart, but the lack of improvement, the lack of consistency in deliveries and the disregard they are demonstrating towards their supply chain suggest otherwise. The ANF is not making overblown predictions of doom or exaggerating newsagents' predicament in WA – there have been five (5) delivery rounds abandoned since May and a number of other newsagents are now seriously questioning their ability to continue providing this delivery service to the people of WA. It is unconscionable for a corporation to continue to have such a blatant disregard for the consumer and their agent all the while their profit continues to increase by around 13% and the ANF would submit WAN's preoccupation is more about ensuring dividends to shareholders rather than the welfare of its agents and consumers. The ANF would argue that it is WAN that is looking at its short term profits in isolation.

“We would actually anticipate that the newspaper sales these days are a relatively small proportion of a newsagent's overall sales. We would urge the ACCC to check each applicants position on this with verifiable data as this statement by the ANF as to the central basis of the business of a news agency appears to be questionable”.

The above statement demonstrates the narrow view WAN has of the newsagent channel and only further demonstrates their limited of understanding of the importance of the supply chain and of the route to market that newspaper publishers created. The majority of the ANF's collective bargaining opt-ins (over 95%) were received by distribution newsagents, and newspapers typically constitute the majority of their business. The ANF is more than happy to provide further information to the ACCC on this matter and we would welcome their inquiry.

- c) The information lodged by the ANF indicates a fundamental misunderstanding of the contractual relationship and distribution structure between WAN and its distributors. In particular it is important to understand the nature of the home delivery customer relationship is between WAN and the customer (particularly taking into account the prevalence of subscriptions) and not between the agent and the customer. The assessment of benefits and detriments are quite different when these facts are taken into consideration. The issue of public benefit should be determined by reference to the cost to the customer, not whether a newsagents business is viable; and***

The ANF rejects WAN's claim that the relationship is merely between them and the customer and the agent has no role the play other than distribution of the product. There is no disputing

that the primary role of the newsagent is to distribute product via home delivery to customers. However, if the customer has a problem with a delivery the customer's view of the relationship is very different. If a problem occurs, the customer inevitably sees the newsagent as the source and means of redress not WAN. If the customer has a problem and was to call WAN, WAN directs the customer back to the newsagent.

The relationship is not as convenient as WAN represents. WAN controls the supply of product to the newsagent. The newsagent depends on the on time delivery of WAN products by WAN in an effort to service home deliveries to the customer. If WAN breaches this responsibility then the newsagent and ultimately the consumer suffers through not receiving their paper on time or through reduced circulation. If WAN was truly considerate of its important role of disseminating information to the public then it would be working toward ensuring the newsagent receives product on time so that it can fulfil this obligation. It is not the newsagents' actions that are leading to detriments to the customer but rather the inefficiencies and inability of WAN to meet its contracted obligations to deliver product at a time that enables the newsagent to meet its contractual obligations.

d) "The collective bargaining arrangements described in the Form GA are uncertain in scope, with the result that it is not possible for WAN to determine in scope, with the result that it is not possible for WAN to determine, with a sufficient degree of specificity, the arrangements in respect of which the ANF is seeking immunity."

The ANF's collective bargaining notification was clear in its intentions. Performance based agreements are not a new commercial principle and are well accepted in other industries. If WAN was not acquainted with the principle it would not have taken too much research to realize that they are productive agreements that drive overall industry efficiency and reduce costs from the supply chain enhancing overall profitability of the parties.

The ANF suggested performance based agreements as an option and should this not have been feasible for the industry would have welcomed WAN feedback on an alternative model. It is disappointing that WAN has not offered a solution yet they have been highly critical of the suggested approach of the ANF. The ANF is somewhat surprised by the approach of WAN to attack the merits of a performance based agreements system.

"Irrespective of WAN's view that the collective bargaining conduct proposed by the ANF is likely to result in significant public detriments that will outweigh any public benefits [and will have a significant and detrimental impact on competition], the threshold issues set out above also appear to undermine the validity of the ANF's notification".

The ANF rejects WAN's assertion that the proposed conduct would result in significant public detriments that will outweigh any public benefits and lead to a detrimental impact on competition. WAN has not made a compelling case outlining how the proposed conduct would be detrimental to the public or lessen competition.

The proposed conduct outlined by the ANF through the use of performance based agreements would in fact result in public benefits. Increasing efficiencies would result in better serviceability across geographic locations which will ultimately flow on to the consumer through greater dissemination of information and customer service. It would also mean that customers would get their paper on time for a change and WAN would finally resolve "teething issues" that have been ongoing for a number of years.

The ANF would argue that the current contracts that WAN have actually lessened the opportunity for competition. WAN through locking newsagents into take it or leave it contracts (with no end date or scope for review), created a distribution system that is low cost and efficient for them that in all likelihood would not stand the market test. If WAN was truly preoccupied with competition issues then it would be an interesting test to see if their route to market would stand the commercial test with other distribution outlets.

“On a conceptual basis, WAN also believes this collective bargaining proposal is misplaced. We are rapidly bringing on stream our new printing presses to deliver a superior product to our customers. To the extent the process has involved some teething issues with the new plant, these are being addressed and we are in the process of contacting distribution agents individually to discuss any concerns. While we welcome any suggestions that our distributors may have regarding the performance of our distribution arrangements and will take any comments onboard, we prefer to deal with individual distributors flexibly, on an individual basis. We consider that this flexible approach – as opposed to a “one size fits all” approach - continues to be appropriate in this situation where there are differences on an individual basis, depending on individual circumstances. For example, the existing arrangement with our distributors accommodates the payment of additional allowances to those distributors who have difficult territories to service. It is our preferred approach to review matters individually, with a view to seeking the most efficient outcome for the benefit end consumers”.

The ANF has been working with WAN for sometime and for the past couple of years newsagents have been told that things would get better as new printing presses and processes come online. The teething issues WAN refers to have not improved and it seems clear that they are either unwilling or incapable of resolving their “teething issues”.

The ANF is offering WAN the opportunity to work with them collaboratively to improve and resolve issues. The ANF notes that WAN prefers to deal with distributors on an individual level with regard to issues and we accept this approach in theory. However, newsagents have tried raising problems and concerns at that level directly with WAN for a significant amount of time without any real progress or response. It was at this point, that newsagents asked the ANF for assistance at elevating concerns to the senior management of the WAN. The ANF has found the response from WAN at a CEO level to be typical of the response at the individual newsagent level – that is pacification and no real resolution.

The ANF does not accept WAN's suggestion that they are accommodating to problems. As recently as August, WAN experienced printing problems which forced the late delivery of product to newsagents. Newsagents as a result had to work in unsafe conditions to ensure that customers received their home delivery. Individual newsagents approached WAN for an allowance to cover the extra cost of employees working longer hours. WAN responded the following day to distributors that although they had production issues they were not willing to pay any additional allowances to compensate them for the late delivery of their product.⁵ The continual production delays and late deliveries by WAN of newspapers to newsagents is hardly an efficient outcome that is of benefit to the end consumer.

“Naturally in these circumstances, particularly given the nature of the relationship, the home delivery fee is not set by the distributor”.



⁵ See attachment ‘TAB C’

ANF does not dispute that it is appropriate for WAN to determine the home delivery fee payable by the end customer. Indeed, ANF's position is that these fees should have no bearing on the income stream from WAN to newsagents. WAN should, or otherwise should be compelled, to pay a fair and reasonable fee for the process of distributing their products to the end consumer. How they elect to treat this cost of doing business, whether by passing it on to the end consumer or absorbing within its business operations, is quite rightly a commercial decision for WAN.

“WAN has concerns with a Notification which has as a fundamental basis an increase in price to consumers”.

This concern is repeated throughout its response. WAN's continuing assertion that ANF's focus is to increase the cost to the consumer is clearly wrong. The way in which WAN chooses to deal with any potential increase in fees payable to newsagents is entirely up to WAN. To paraphrase from their statement on page 6, and to adopt the commercial attitude WAN espouses to newsagents, 'The impact on business' costs should be taken as a whole and not in isolation relating to one cost of doing business'.

In 2006-07 WAN reports a 13% increase in both revenue and EBITDA⁶ suggesting great scope for it to absorb any increase in costs it feels may have an adverse affect on the end consumer. Making the continual assertion that an increase in newsagents' income will increase costs to consumers must be taken to mean that WAN places a higher value on shareholder returns than its customers.

Page 7, WAN submission paragraph 1

WAN includes discussion on the split delivery fee on page 7, noting the difficulties experienced by newsagents in managing the distribution of split publications. WAN takes the opportunity to note that the two sections of the publication are now of equal size making them easier for the newsagent to manage. Not unsurprisingly, WAN has failed to mention the impact of its recent changes on newsagents' delivery timetables.

As a direct result of WAN's operational changes which have resulted in the late delivery of newspapers to newsagents, newsagents are now often forced to make a second delivery to customers. A second delivery run has numerous negative implications for newsagents within a shortened timeframe, including financial, operational, occupational health and safety and lifestyle. The manner in which WAN has approached this current challenge, and the lack of regard they have demonstrated towards a key business partner during a period of duress of WAN's making, does little to support WAN's claim of working constructively with distributors.

Ultimately it must be recognized that if the current contractual arrangements between newsagents and WAN are an example of equitable business arrangements at work, it is surprising that over 90% of WA distribution only newsagents have 'opted-in' to the collective negotiation process.

“...the collective bargaining arrangements contemplated by the ANF will lack the flexibility inherent in the current distribution arrangements which in turn, have resulted in significant public benefits in the form of low cost, efficient and timely home delivery systems”.

ANF simply does not understand this statement on two levels:

1. Under the current arrangement WAN provides newsagents with a standard agreement and there is very little, if any, difference between these agreements. Any flexibility is limited to changes instigated by WAN and rarely does this occur to the benefit of the newsagent. ANF challenges WAN to provide evidence to the contrary; and
2. ANF is proposing a performance based agreement style contract to drive overall efficiency across the newsagency industry. It is not the ANF's intention to suggest, let alone negotiate, a 'one size fits all' agreement for newsagents. In contrast, it is ANF's intention that both parties to any resulting agreement be subject to certain KPI's that are negotiated between the parties and may vary from newsagent to newsagent.

It is likely that collective negotiation will result in increased flexibility than under the current arrangement. In addition, in line with the objectives of the TPA, it is likely that collective negotiation will apportion this flexibility more equitably between the newsagent and WAN.

“Ultimately, it is our objective to deliver our publication to our customers in a manner which, in our view, is the most timely and efficient and which minimises costs to the end consumer”.

The ANF would highlight that WAN's objective fundamentally ignores the supply chain (the newsagent) as a major component of newspaper distribution system. The newsagent has a closer relationship with the subscribing public than WAN ever has. The agent is, in the customer's mind, the responsible entity for the timely and efficient delivery to them - the end consumer – not WAN.

“We believe that the return which we offer to our distributors and shop distributors is fair and commensurate with the effort they expend and the job that they do”.

It is important to recognize that the lodging of ANF's Notification and the subsequent assessment of the Notification by the ACCC are not designed for the ACCC to assess whether newsagents are appropriately remunerated by WAN. In contrast, the review of the Notification by the ACCC is designed to determine whether ANF should be afforded a legal framework by which it can seek to negotiate alternative arrangements on behalf of its consenting Member newsagents with WAN. Discussions on fees would form one part of this negotiation.

“It seems to us to be inherently anti-competitive for a third party association to seek to impose a news distribution structure on a publisher”.

ANF does not and will never have the ability to 'impose' conditions on a publisher and this statement demonstrates a lack of understanding of the collective negotiation process. ANF is seeking approval from the ACCC to engage in legal negotiations on behalf of its consenting Member newsagents. These negotiations will hopefully result in new, improved and mutually agreed arrangements by which newsagents deliver WAN's products to customers. It is WAN that currently has the ability to make unilateral decisions that affect the commercial returns, operating conditions and even the lifestyle of newsagents.

This current one-sided arrangement is even acknowledged by WAN in its statement that:

“Whilst we are confident that efficiencies will improve, it may well be that the requirements placed upon our distributors will change in consequence of our changing production methods”. [emphasis added]

“To this end, we have invited our distributors to suggest ways in which the current distribution arrangements could be improved and we are happy to engage in a constructive dialogue on those points”.

The current survey WAN has initiated (as of Monday 27 August)⁷ purely reflects sales data and gives no indication of the demands managed by a newsagent in conducting a home delivery service. WAN's survey is hardly a 'constructive dialogue' as it neither addresses pressing issues identified by agents such as late deliveries; nor any one of the many concerns continuously raised by agents.

“WAN strongly objects to any suggestion by the ANF that it would use a collective boycott as a reasonable opportunity to facilitate change should collective negotiations fail”.

Predictably WAN has objected to the ANF's inclusion of collective boycott in its Notification. ANF's intention in its Notification to collectively negotiate is to achieve greater industry efficiencies and a more equitable partnership between newsagents and WAN. The ANF advised WAN in advance of its intention to submit a Notification to provide the ANF with a legal framework for the informal discussions already initiated between ANF and WAN. The ANF is disappointed that WAN has perceived the ANF's Notification as an adversarial action when this was not the intention of the ANF.

The ANF recognizes that the relationship between newsagents and WAN is entirely symbiotic and the on-going success of WAN is absolutely vital to the future of newsagents in WA. As a member driven organization, ANF is merely the vehicle by its Members are seeking to negotiate positive and mutually beneficial change that have proven to be impossible at an individual level.

The ACCC would be aware that ANF has merely reserved its right to consider an application to collectively boycott in the event that negotiations between the ANF and WAN fail. Any subsequent boycott would need to be approved by ACCC on the basis that there are justifiable competitive reasons to warrant it. This position simply does not equate to the “threat” referred to by WAN.

Further, the ANF finds it interesting that WAN objects to a collective boycott on the basis of the public detriment caused, presumably, by the absence of home delivery facilities for its customers. At the same time, WAN notes that a newsagent's business viability, and its subsequent ability to continue providing a home delivery service to customers, is of no concern in this regard.

“The determination of the newsagent home delivery fee that can be passed on to customers has been made by WAN on an ad hoc and sporadic basis. The inconsistency of this approach has disadvantaged newsagents by not allowing customer fee increases to follow the increases in associated costs for providing the delivery service. As the control of costs is crucial to the achievement of a pleasing personal income for the newsagent, relying on WAN as a third party to make these decisions leaves the newsagent out of control of their business.’ The above paragraph would appear to be at the heart of the ANF's Notification”.

⁷ See attachment 'TAB D'

The ANF believes WAN to have taken the comment on home delivery fees out of context and highlighted this one concern above the range of others proposed for collective negotiation. The ANF's notification does not concentrate on an increase in home delivery fees but rather emphasises Performance based agreements as being 'at the heart' of our proposals and as the main facilitator of real change for the industry as a whole.

The ANF is unsure as to why WAN has incorporated a summary of the TPA's prohibitions 2(a) and (b) regarding anti-competitive conduct in their submission. Conversely, the ANF has identified the following point of that summary as representative of the WAN's current contracts:

(2) A corporation shall not:

(a) make a contract or arrangement, or arrive at an understanding, if:

(ii) a provision of the proposed contract, arrangement or understanding has the purpose, or would have to be likely to have the effect, of substantially lessening competition;

The ANF would argue that WAN's contractual agreements are anti-competitive as they disregard an essential rollover or review provision binding newsagents indefinitely to the terms specified by WAN. Newsagents have no effective form of redress or dispute resolution, the only alternative being to walk away from their business – often sacrificing their investment and livelihood.

“Here what is being sought to be negotiated by the ANF is prices for the home delivery of newspapers and an attempt to have those prices increased to home delivery customers of one publication across the State of Western Australia. This is quite a serious matter and such price increases inherently would appear to have a significant impact on competition”.

The ANF is not seeking a price increase for customers. ANF's notification has proposed negotiations over the delivery fee for newsagents. Given that the State of Western Australia is presided over by one main newspaper – The West Australian - it is not apparent as to how a negotiated fee for newsagents would affect competitive elements of the delivery service in WA.

“Suggesting that distribution costs of one publisher have such a dramatic impact on the financial viability of individual newsagents is difficult to accept. If this occurs in relation to particular distributors who are facing difficulties, this is something which we are happy to discuss on an individual basis”.

WA newspaper distribution exists in a monopoly system controlled by WAN. For example Hillarys News Round generates 98% of their business turnover from The West Australian publication. This is typical of delivery only newsagents across the State. The Notification lodged by the ANF specifically addresses WAN's monopoly as the means by which a newsagents' viability is largely dictated by the company and its efficiency.

The ANF is aware of various agents' attempt at communicating to WAN these difficulties faced and the lack of recourse available to them as a result of their take it or leave it contracts. The ACCC is aware of the overwhelming dissatisfaction felt across both retail and distribution only newsagents in WA and has received in excess of 100 opt-in forms supporting ANF's collective negotiation proposals.

As is the nature of the ACCC bargaining process, discussions with distributors who are 'facing difficulties' and searching for remedies are best done collectively. If WAN would genuinely prefer to discuss issues on an individual basis, they would be doing so more than 100 times over.

On the other hand, if WAN's process of discussing with agents on an 'individual basis' takes the form of the recent arbitration 'dispute' handling⁸ then the WAN is effectively leaving agents with no form of redress. The ANF would be interested to know how WAN would suggest their distributors effectively seek a durable solution to remedy the inefficiencies of the WA newspaper distribution system.

"We are happy to consider discussions with the ANF on cost pressures for home delivery, but we do not believe that overall price negotiation in the manner suggested by the ANF is good for consumers".

It is true that a delivery newsagent's viability benefits consumers. If the delivery agents providing this service to the public fall bankrupt or continue to walk away from their businesses as a result of continually running at a loss, the delivery service will diminish and this method of dissemination of information will cease - this does affect the consumer. If the delivery service continues to function inefficiently (as the evidence in WA suggests) and customers are consistently dissatisfied with their service as a result of newsagents' incapacity to perform deliveries efficiently, customers too will walk away from the service to WAN and newsagents' collective detriment. The only party under the current arrangements with the capacity to remedy this threat and iron out these inefficiencies is WAN.

The ANF acknowledges the Distributors Handling Fees vs Consumer Price Index graphs for the West Australian supplied by WAN in their submission. The ANF provides evidence to refute this information and attaches it as subsequent appendices. In addition, the ANF has in its possession 2 completed reports by external specialist consultants in the fields of OH&S and logistics to substantiate our industry position. Both reports can be made available to the ACCC if they deem it beneficial to this inquiry.

SUMMARY

The ANF's collective bargaining notification is not solely focussed on price as WAN suggests. The ANF is attempting to examine supply chain as a whole in an effort to increase business efficiency for all parties and reduce costs. The overall effect of this approach is beneficial to business and the end consumer. Performance based agreements are just one solution offered by the ANF to WAN to achieve this aim yet while they have been highly critical of this approach they have not offered an alternative option in moving forward. The ANF is open to considering another approach but ultimately feel that the concept of performance based agreements is well accepted in the modern day corporate environment. These types of agreements do increase individual flexibility and productivity.

WAN's track record to date clearly demonstrates that their current individual approach is not working for their agents and ultimately the end consumer. Over 170 opt-in agreements further illustrates that an individual remedy is not available to newsagents and a collective approach is more appropriate in an effort to improve business for all parties. The performance based style of agreement proposed by the ANF is a holistic approach to the industry ensuring an efficient and viable distribution channel. The focus, is not as WAN suggests, merely on price or an increase in cover price for the consumer. In addition, the collective boycott argument



⁸ Refer to 'TAB B'

relied on by WAN is nothing more than a poor attempt to divert the focus away from the real supply chain issues, and on that basis should be ignored whilst at the same time it demonstrates WAN's lack of understanding of the collective boycott process.

The ANF respectfully requests that the ACCC gives favourable consideration to the ANF's collective bargaining notification.

Should you have any further enquiries regarding this matter please telephone Don MacAskill, National Policy Manager on telephone (02) 8425 9600.

Yours sincerely

Rayma Creswell
Chief Executive Officer
Australian Newsagents' Federation Limited

Appendices:

Appendix 1 – Consumer Price Index All groups

Appendix 2 – The West Australian (Monday – Friday edition) Relative Price & Size (table)

Appendix 3 - The West Australian (Monday – Friday edition) Relative Price & Size (graph)

Appendix 4 – The West Australian (Saturday edition) Relative Price & Size (table)

Appendix 5 - The West Australian (Saturday edition) Relative Price & Size (graph)

Appendix 6 – The West Australian (Monday – Friday) Real Cover Price & Delivery Fee (table)

Appendix 7 - The West Australian (Monday – Friday) Real Cover Price & Delivery Fee (graph)

Appendix 8 – The West Australian (Saturday edition) Real Price & Delivery Fee (table)

Appendix 9 – The West Australian (Saturday edition) Real Price & Delivery Fee (graph)

27 August 2007

The Circulation Manager
West Australian Newspapers Limited
50 Hasler Road
OSBORNE PARK WA 6017

Dear Sir/Madam

Notice of Dispute

We refer to our below detailed Distribution Agreement with you.

On about 10 August 2007, West Australian News commenced a revised and significantly later 'drop-off' schedule for sections of the weekend paper to be distributed by us.

Further, since we initially entered into the Distribution Agreement, the time by which we receive the weekend paper for distribution has gradually become ever later.

We have not consented to a variation to the drop-off times originally contemplated under the Agreement. It follows that these later drop-off times now make it impossible for us to complete our distribution rounds within the originally contemplated time frames, a consequence of which is that hard won customers are cancelling subscriptions. Moreover, operating under a distribution window which is much later in the morning has the result that we are unable to safely perform our obligations under the Agreement.

Accordingly, pursuant to the clause in the Agreement headed "Arbitration" we give notice of a dispute in relation to this matter. We note this provision requires the parties to meet within 7 days with a view to discussing and resolving the dispute. Please contact us so that we can arrange this meeting. We further note if the dispute is not resolved, the matter is to be referred to arbitration.

Finally, as a member of the Australian Newsagents Federation, we authorize the ANF to communicate with you, participate in meetings and to otherwise provide assistance on our behalf in order to resolve this dispute.

Yours faithfully

(Sign)

(Please print name.)

(Position)

Distribution Agreement Date _____

Newsagency Name _____

Company Name _____

Address

Telephone Number

Mobile Number

The West Australian

West Australian Newspapers Limited

A.C.N. 008 667 632

29 August 2007

Dear Mr. [REDACTED]

Notice of Dispute

I refer to your letter dated 27 August 2007.

Pursuant to the terms of our Distribution Agreement with you, we have appointed you as a distributor within a defined territory to distribute our publications and to act as our agent for the purpose of contracting with customers who wish to purchase the publications.

Pursuant to the terms of the Distribution Agreement you are obliged to accept delivery of the publications and to deliver them in the manner in which we instruct you from time to time.

There is no dispute between us in relation to the matters raised by you. There is no need for us to obtain your consent to a variation in our distribution requirements. The Distribution Agreement which we have with you entitles us to vary our delivery instructions from time to time if we believe it to be in the best interests of our business and that of our customers.

Given that there is no dispute between us, the arbitration clause in the Distribution Agreement does not apply and there is no need for us to meet with you.

We are obviously aware of the changes that have taken place in our distribution requirements. In the main, these have been driven by the advent of the new printing presses which should ultimately operate for our mutual benefit.

We are currently conducting a thorough review of our distribution arrangements. In the course of that review we will take into account the comments made by you and a number of your colleagues who have addressed identical letters to us.

We will also be in touch with you to understand more thoroughly the difficulties which you might experience at an individual level within your business.

The Australian Newsagents Federation is not a party to our agreement with you. We do not intend to communicate with them or to discuss with them any matter pertaining to our contractual arrangements with you.

Yours sincerely



BERNARD YATES
COMPANY SECRETARY

Newspaper House, 50 Hasler Road,
Osborne Park, Western Australia, 6017
Postal Address: GPO Box D162, Perth 6840
Fax: (08) 9482 8080 Telephone: (08) 9482 3111
www.thewest.com.au

Aug 21 2007 19:29:31 Fax Msg To: ->

DELIVERY ROW Page 001 OF 001

The West Australian

August 21, 2007

Dear Distributor,

I wish to give you a brief update on the progress of the new configuration of our Saturday edition

As you are probably aware, the change has been widely welcomed by readers and advertisers. It has resulted in a more appealing product, sensibly divided and presented.

However, we are also aware that the new configuration has resulted in later deliveries to you on the last two Fridays than was initially expected. I appreciate your efforts to overcome these problems, and apologise for any communication difficulties, particularly those that occurred in the first week. I assure you that everybody at WAN is working just as hard as you to minimise any difficulties.

The split deliveries will now continue in this form for the foreseeable future. You would be aware that WAN does provide an extra payment for this delivery. You will also be aware that for many distributors, WAN also delivers some Saturday issues directly to major shops, but passes on the full sales handling fee to the distributors regardless. We are also open to discuss particular short-term issues caused by our lateness or other problems.

The needs of our readers must come first for both the company and for distributors, and we believe the new format is the best result for readers. It also achieves the objective raised by many distributors directly with us that two roughly equal sections are preferable to one large and one small section for distribution purposes which is the format that has been in place since last September.

If we can help with run schedules, please feel free to contact us with suggestions. I will keep you up-to-date with developments in coming weeks.

Again, thank you for your efforts.

Yours sincerely,

Ken Steinko
Managing Director

Daily home deliveries

Mon	
Tue	
Wed	
Thu	
Fri	
Sat	

No. of Shops

Total shop supplies

Mon	
Tue	
Wed	
Thu	
Fri	
Sat	

Total Km's M-F

Total Km's Sat

Additional staff used

	Rolling	Throwing	Shop deliveries
Mon	0	0	0
Tue	0	0	0
Wed	0	0	0
Thu	0	0	0
Fri	0	0	0
Sat	0	0	0

West Australian Newspapers Group

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Consumer Price Index

All groups, Brisbane and Australia

1948-49 to 2006-07

Financial
Year

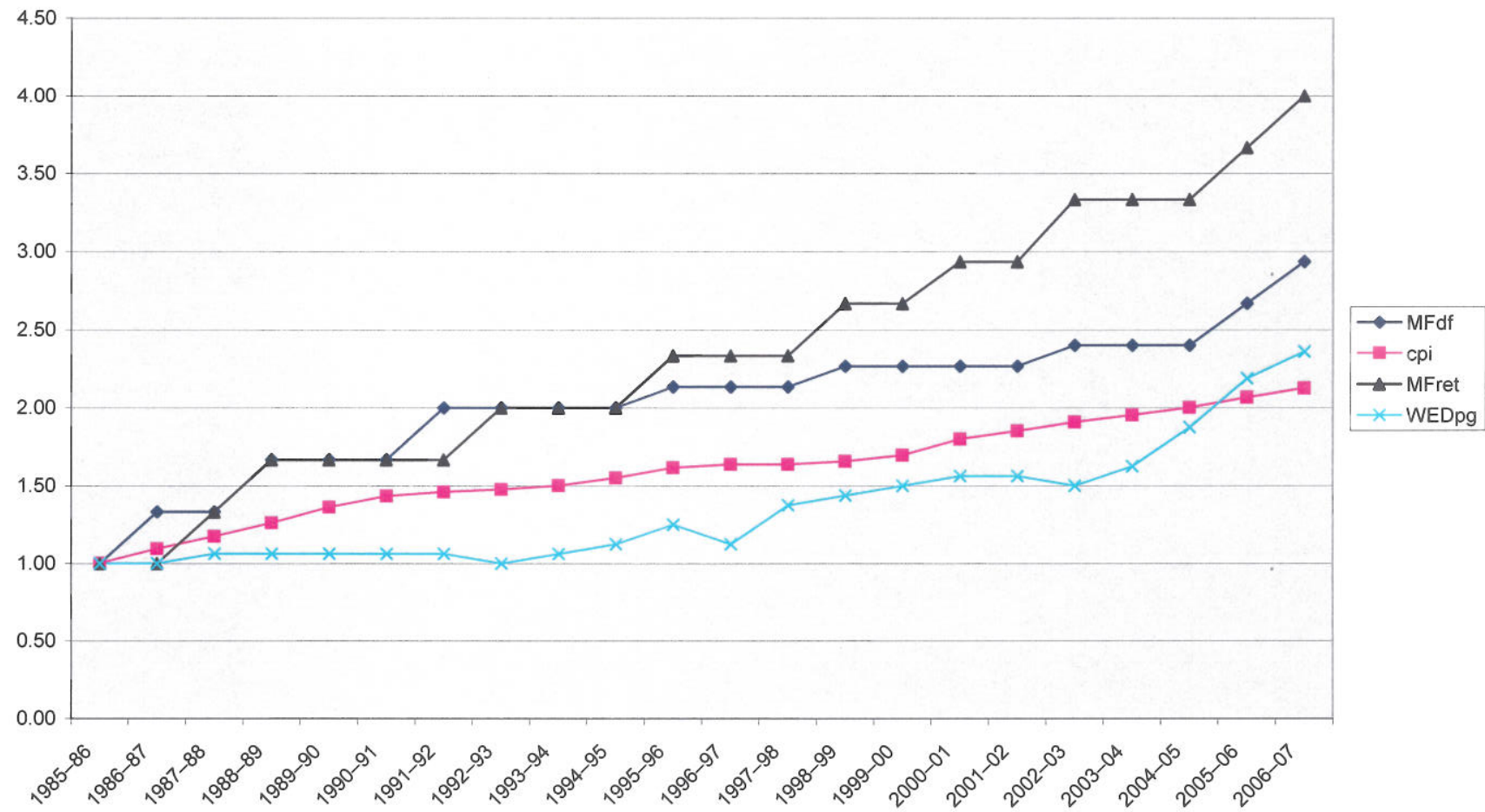
Weighted Average of Eight Capitals

raw cpi	year	cpi	mfd	satd	mfr	satr	wedpg	satpg
73.50	1985-86	1.00	0.08	0.10	\$0.30	\$0.40	128	192
80.30	1986-87	1.09	0.10	0.12	\$0.30	\$0.40	128	220
86.20	1987-88	1.17	0.10	0.12	\$0.40	\$0.50	136	244
92.60	1988-89	1.26	0.13	0.15	\$0.50	\$0.60	136	300
100.00	1989-90	1.36	0.13	0.17	\$0.50	\$0.70	136	356
105.30	1990-91	1.43	0.13	0.20	\$0.50	\$0.80	136	350
107.30	1991-92	1.46	0.15	0.20	\$0.50	\$0.80	136	332
108.40	1992-93	1.47	0.15	0.22	\$0.60	\$0.80	128	364
110.30	1993-94	1.50	0.15	0.22	\$0.60	\$0.90	136	352
113.90	1994-95	1.55	0.15	0.22	\$0.60	\$1.00	144	396
118.70	1995-96	1.61	0.16	0.26	\$0.70	\$1.20	160	424
120.30	1996-97	1.64	0.16	0.27	\$0.70	\$1.30	144	420
120.30	1997-98	1.64	0.16	0.28	\$0.70	\$1.40	176	424
121.80	1998-99	1.66	0.17	0.29	\$0.80	\$1.50	184	432
124.70	1999-00	1.70	0.17	0.30	\$0.80	\$1.60	192	428
132.20	2000-01	1.80	0.17	0.30	\$0.88	\$1.75	200	392
136.00	2001-02	1.85	0.17	0.30	\$0.88	\$1.75	200	408
140.20	2002-03	1.91	0.18	0.30	\$1.00	\$1.80	192	450
143.50	2003-04	1.95	0.18	0.32	\$1.00	\$2.00	208	472
147.00	2004-05	2.00	0.18	0.32	\$1.00	\$2.00	240	500
151.70	2005-06	2.06	0.20	0.33	\$1.10	\$2.00	280	520
156.10	2006-07	2.12	0.22	0.36	\$1.20	\$2.20	302	560

M-F West Australian - Relative Price & Size

Year	MFdf	cpi	MFret	WEDpg
1985-86	1.00	1.00	1.00	1.00
1986-87	1.33	1.09	1.00	1.00
1987-88	1.33	1.17	1.33	1.06
1988-89	1.67	1.26	1.67	1.06
1989-90	1.67	1.36	1.67	1.06
1990-91	1.67	1.43	1.67	1.06
1991-92	2.00	1.46	1.67	1.06
1992-93	2.00	1.47	2.00	1.00
1993-94	2.00	1.50	2.00	1.06
1994-95	2.00	1.55	2.00	1.13
1995-96	2.13	1.61	2.33	1.25
1996-97	2.13	1.64	2.33	1.13
1997-98	2.13	1.64	2.33	1.38
1998-99	2.27	1.66	2.67	1.44
1999-00	2.27	1.70	2.67	1.50
2000-01	2.27	1.80	2.93	1.56
2001-02	2.27	1.85	2.93	1.56
2002-03	2.40	1.91	3.33	1.50
2003-04	2.40	1.95	3.33	1.63
2004-05	2.40	2.00	3.33	1.88
2005-06	2.67	2.06	3.67	2.19
2006-07	2.93	2.12	4.00	2.36

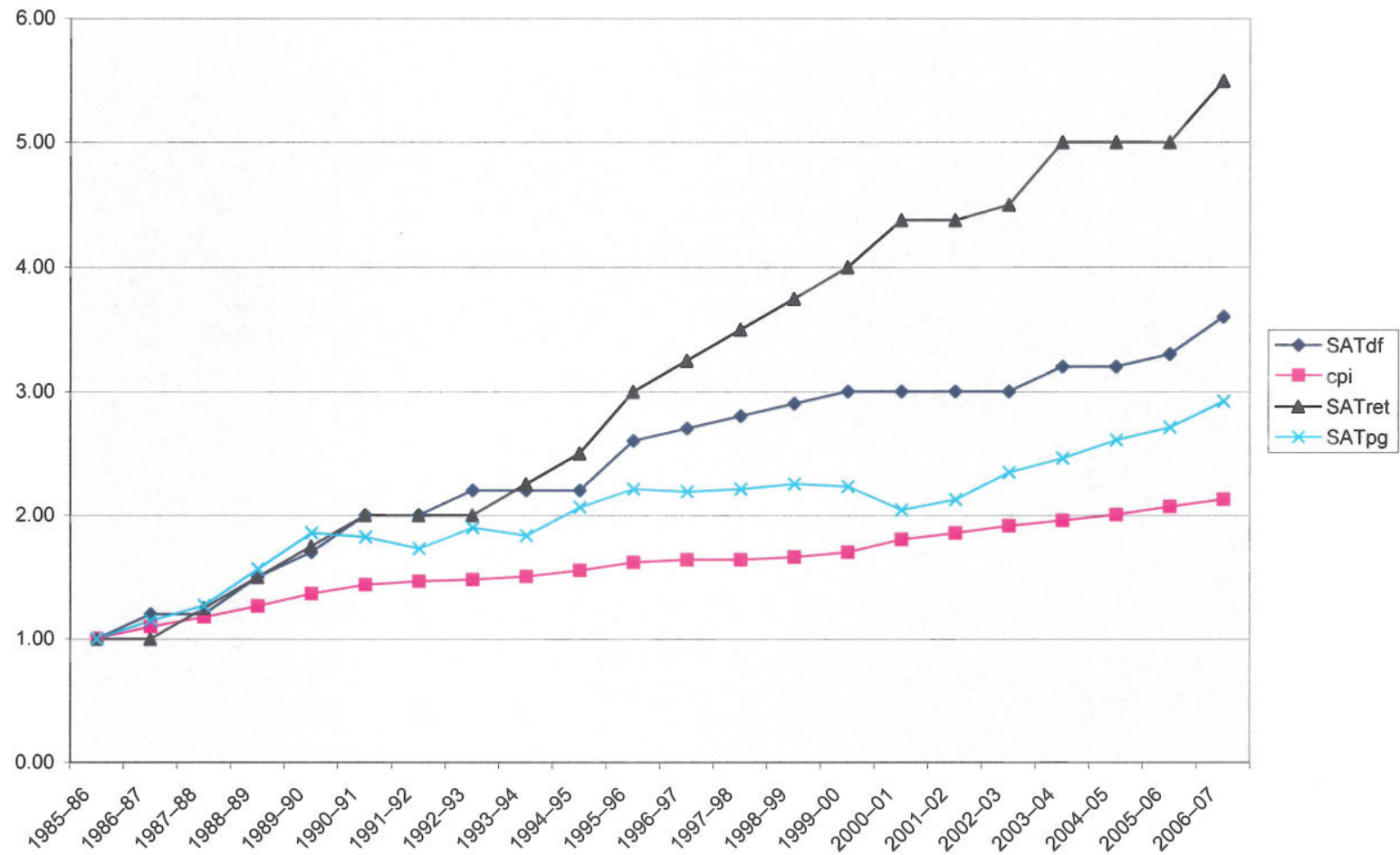
M-F West Australian - Relative Price & Size



SATURDAY - West Australian Relative Price & Size

Year	SATdf	cpi	SATret	SATpg
1985-86	1.00	1.00	1.00	1.00
1986-87	1.20	1.09	1.00	1.15
1987-88	1.20	1.17	1.25	1.27
1988-89	1.50	1.26	1.50	1.56
1989-90	1.70	1.36	1.75	1.85
1990-91	2.00	1.43	2.00	1.82
1991-92	2.00	1.46	2.00	1.73
1992-93	2.20	1.47	2.00	1.90
1993-94	2.20	1.50	2.25	1.83
1994-95	2.20	1.55	2.50	2.06
1995-96	2.60	1.61	3.00	2.21
1996-97	2.70	1.64	3.25	2.19
1997-98	2.80	1.64	3.50	2.21
1998-99	2.90	1.66	3.75	2.25
1999-00	3.00	1.70	4.00	2.23
2000-01	3.00	1.80	4.38	2.04
2001-02	3.00	1.85	4.38	2.13
2002-03	3.00	1.91	4.50	2.34
2003-04	3.20	1.95	5.00	2.46
2004-05	3.20	2.00	5.00	2.60
2005-06	3.30	2.06	5.00	2.71
2006-07	3.60	2.12	5.50	2.92

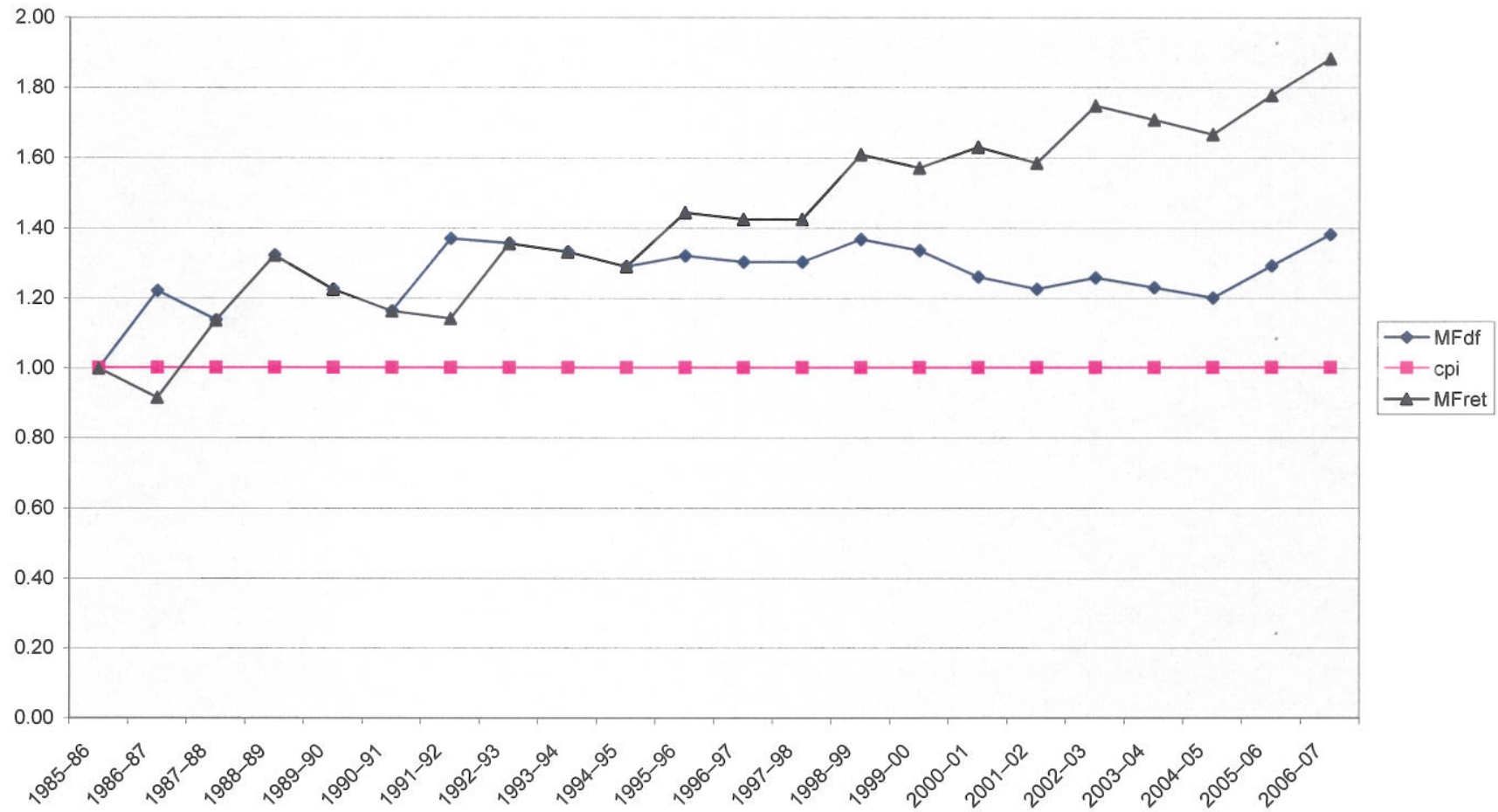
SAT West Australian - Relative Price & Size



MONDAY - FRIDAY West Australian Real Cover Price and Delivery Fee

Year	MFdf	cpi	MFret
1985-86	1.00	1.00	1.00
1986-87	1.22	1.00	0.92
1987-88	1.14	1.00	1.14
1988-89	1.32	1.00	1.32
1989-90	1.23	1.00	1.23
1990-91	1.16	1.00	1.16
1991-92	1.37	1.00	1.14
1992-93	1.36	1.00	1.36
1993-94	1.33	1.00	1.33
1994-95	1.29	1.00	1.29
1995-96	1.32	1.00	1.44
1996-97	1.30	1.00	1.43
1997-98	1.30	1.00	1.43
1998-99	1.37	1.00	1.61
1999-00	1.34	1.00	1.57
2000-01	1.26	1.00	1.63
2001-02	1.23	1.00	1.59
2002-03	1.26	1.00	1.75
2003-04	1.23	1.00	1.71
2004-05	1.20	1.00	1.67
2005-06	1.29	1.00	1.78
2006-07	1.38	1.00	1.88

M-F West Australian - Real Cover Price & D/Fee



SATURDAY West Australian Real Cover Price and Delivery Fee

Year	SATdf	cpi	SATret
1985-86	1.00	1.00	1.00
1986-87	1.10	1.00	0.92
1987-88	1.02	1.00	1.07
1988-89	1.19	1.00	1.19
1989-90	1.25	1.00	1.29
1990-91	1.40	1.00	1.40
1991-92	1.37	1.00	1.37
1992-93	1.49	1.00	1.36
1993-94	1.47	1.00	1.50
1994-95	1.42	1.00	1.61
1995-96	1.61	1.00	1.86
1996-97	1.65	1.00	1.99
1997-98	1.71	1.00	2.14
1998-99	1.75	1.00	2.26
1999-00	1.77	1.00	2.36
2000-01	1.67	1.00	2.43
2001-02	1.62	1.00	2.36
2002-03	1.57	1.00	2.36
2003-04	1.64	1.00	2.56
2004-05	1.60	1.00	2.50
2005-06	1.60	1.00	2.42
2006-07	1.70	1.00	2.59

SAT West Australian - Real Cover Price & D/Fee

