

1 May, 2008

Jaime Martin
Australian Competition & Consumer Commission
GPO Box 520
Melbourne 3001

Via email: Jaime.martin@accc.gov.au

Dear Jamie

**EASTERN SUBURBS NEWSPAPERS (WENTWORTH COURIER) EXCLUSIVE
DEALING NOTIFICATION N90330 – SUBMISSION FROM NEWS LIMITED**

I refer to David Hatfield's letter to me dated 7 March 2008. Thank you for the opportunity to respond to some of the issues raised in the News Limited submission dated 12 February 2008 in respect of the Wentworth Courier Contracts ("Courier Contracts").

Following are our responses to the particular questions set out in David's letter.

1. In 2005, following the launch of a gloss real estate section in the St George and Southern Shire Leader (the "Leader") the Leader offered discount advertising rates to real estate agent clients if the agent agreed to an annual dollar amount or volume total spend in the Leader. In some cases the offer required agents to commit to a fixed dollar amount, in other cases, a percentage dollar spend (of the agents total advertising dollar spend) in the Leader over a 12 month period or, in some cases, a minimum number of pages of advertising over the year. *[Commercial in confidence]* All of those contracts were entered into in 2005 and all terminated in or before 2007.

There are very important differences between the Leader contracts (in any case now discontinued) and the Courier Contracts. The most important are as follows:

- (a) Unlike the Courier Contracts, the Leader contracts did not require agents to commit to a minimum percentage volume of advertising (e.g. 75% of all column centimetres of advertising placed by a vendor) to qualify for the discount. In return for discount advertising rates the Leader asked for a commitment to either a minimum volume (e.g. number of pages) or, more usually, dollar spend (e.g. \$200,000 per annum from the real estate agent). An agent was not excluded by the Leader contracts from taking as much advertising as they liked in a competitor publication. If the requirement was a minimum percentage of total dollar spend then, depending on the advertising rate a competitor publication was prepared to offer, there was no restriction on the page volume of advertising which could be placed with a competitor. Part of the evil of the Wentworth Courier contracts was that the commitment to a minimum percentage volume per vendor means that a publishing competitor, even with very cheap rates could not get more than 25% of the relevant advertiser's advertising volume.
- (b) The Leader contracts measured the minimum commitment over a year and across the aggregate of all the real estate advertising placed by the agent rather than per individual vendor client of the agent. The Courier Contracts required the commitment in respect of each vendor client.

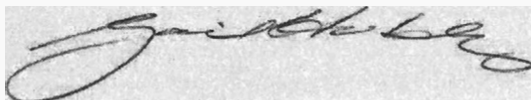
- (c) The Courier Contracts prohibited the agent from recommending or inducing any client to take real estate advertising outside of the Courier. There was no such restriction in the Leader contracts.
- (d) The Courier Contracts seek not only to make the contracting real estate agency liable for performance of the contract but also to make the directors of the relevant agency personally liable. That and the very strong legal provisions in the contract are in our view very intimidating and designed to ensure absolute compliance. In contrast the consequence of failing to deliver the contracted commitment in the Leader contracts meant that for the following year the discount was adjusted but there was no requirement to repay any discounts from the past year.

Across the Fairfax group of community newspapers there are some currently existing examples of volume discount contracts where the agent gets a discount rate in return for committing to placing a minimum amount of advertising with the publications but these discount arrangements do not restrict advertisers from advertising in other publications.

- 2. *[Commercial in confidence]* While those [the Courier] Contracts exist we believe no other publication will be able to establish itself as a substitute to the Courier.
- 3. The Sydney Morning Herald has conducted 3 letter box delivery promotions for the Domain East section. These were for the issue of 29 September 2004 which was the launch issue of the section, 30 August 2006 and on 25 April 2007. These promotions were conducted as a marketing tool to introduce the section to residents who are not subscribers to the Sydney Morning Herald. *[Commercial in confidence]* While we will continue to use marketing and promotional activities in the area we fail to see how this counteracts the anti-competitive effects of the Courier Contracts.

We hope the following is of some assistance to your considerations. We would be happy to provide further information if required.

Yours sincerely



GAIL HAMBLY