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20 January 2009

Darrell Channing
Director – Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke St
CANBERRA ACT 2601

Dear Mr Channing

I write to you with regard to the application for collective bargaining authorisation A91117 lodged by the Queensland Newsagents' Federation Ltd (QNF).

The Western Australian Newsagents Association Inc (WANA) currently is the only newsagent peak body in Western Australia representing approximately 360 newsagents. Under an agreement with the Australian Newsagents Federation (ANF), WANA and its members receive representation, membership and commercial services in addition to secretarial support.

A number of our members have expressed concerns relating to certain elements of the proposed authorisation application A91117. Page three of attachment A of the application outlines requests seeking to include newsagents or groups of newsagents who may not be members of any association (party to A91117 or otherwise) and a "voluntary" proposed collective bargaining process requiring members to opt-out.

WANA believes that the current application may potentially allow a number of newsagents to become included in the collective bargaining negotiation by default rather than by active choice.

In its determination of collective bargaining authorisation A90804, the Commission stated within the context of assessing anti-competitiveness that:

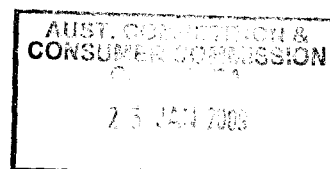
"the Commission agrees that collective bargaining negotiations are less likely to be anti-competitive where they are voluntary, and that the voluntary nature of such negotiations is best preserved by the use of the opt-in rather than opt-out provisions, ensuring that no party is involved in negotiations without their express and deliberate consent."

WANA and its members through the ANF are currently engaged with the majority of the target entities named in A91117 in the scoping and discussion of a national Code of Conduct for the terms of supply of magazines.

It is the understanding of WANA that it is the preference of each of the named target entities to effect industry self regulation through the current national Code of Conduct process rather than undertake numerous state based negotiations.

Authorisation of A91117 in its current format may potentially dilute the value of the Code of Conduct process through abuse of the proposed opt-out provisions in conjunction with the concession from having to publish participating newsagent details.

¹ ACCC: Final Determination A90804, Paragraph 6.86, 28 April 2004, p 40.



The combined effect of these two provisions may allow the QNF to negotiate on behalf of the industry at large rather than utilising the truly voluntary opt-in mechanism characteristic of the Code of Conduct process.

WANA doubts the ability and validity of each of the associations party to A91117 to effectively represent the interests of newsagents not domiciled in their respective states.

WANA lacks confidence in the processes proposed by the QNF and parties related to application A91117.

Specifically, WANA is concerned that newsagents not located in the jurisdiction of any of the parties to A91117 would be unable to provide effective input into the collective negotiation process

It is also held by WANA that interstate newsagents may be prevented from being appropriately serviced by each association due to constitutional constraints.

It is likely that the target entities will not support nor participate in the process outlined in A91117, obliging the QNF to pursue other remedies including an application for authorisation to collectively boycott.

WANA acknowledges that s88(10) of the TPA allows that an authorisation may be expressed so as to apply to or in relation to another person who becomes a party to the proposed arrangement in the future.

It is WANA's contention that offering coverage under the proposed collective bargaining process to association non-member newsagents through s88(10) of the TPA would dilute the value of association membership of all other newsagent associations in Australia.

The provision of collective bargaining negotiations to association non-members, would effectively undermine the ability of newsagent associations to compete in the provision of advocacy products and services.

If association non-member newsagents placed an economic value on the collective representation services offered through association membership, including but not limited to collective bargaining, non-member newsagents would make the active decision to purchase their respective association membership subscription.

Questions of fairness are raised by allowing access to the proposed collective bargaining process to association non-member newsagents.

The proposed authorisation process effectively shifts the economic burden in preparing authorisation application A91117 and carrying out the collective negotiation process from non-paying association non-member newsagents to paying association members.

The above arguments were reflected in application for authorisation A90804 where the Commission articulated its view that,

"....the application was expressed as applying to current and future members of the relevant associations."²,

and that negotiations would be conducted on behalf of members,

*"Collective negotiations are to be conducted on behalf of members of the associations named above."*³

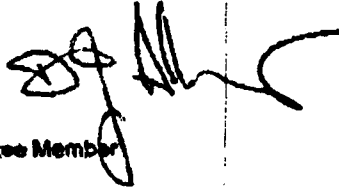
² ACCC: Final Determination A90804, Paragraph 5.3, 28 April 2004, p 28.

³ ACCC: Final Determination A90804, Paragraph 6.191 Condition C2 28 April 2004, p 55.

WANA wishes to remain informed of the progress of the application throughout the draft and final determination stages.

We would like to nominate Neville Roadiger as our contact person for all future correspondence. Neville can be contacted by email on neville@anf.nat.au or by telephone on 08 9362 5455.

Yours sincerely



Douglas Shaw
WANA Committee Member
WANA Inc.