

28 January 2009

Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
Canberra ACT 2601

Attention: Darrell Channing, Director, Adjudication Branch

Dear Sirs

**Queensland Newsagents Federation – application for authorisation  
A91117**

We refer to your letters of 7 January 2009 to Messrs David Kirk and Brian McCarthy of Fairfax Media Limited.

We set out below our submission in relation to the above application (**QNF Application**).

**1. Introduction**

The purpose of this letter is to briefly outline Fairfax's current position in relation to the QNF Application. To the extent relevant to the subject matter of the QNF Application, Fairfax incorporates by reference the submissions made by Fairfax in November 2003 (**2003 submissions**) in relation to the prior application by the Australian Newsagents Federation (**ANF**) and the Queensland Newsagents Federation (**QNF**). A copy of these submissions is attached for reference.

While the subject matter of the QNF Application is substantially similar to the subject of the prior application Fairfax emphasises that in today's commercial environment Fairfax needs the ability to service its customers in an efficient way given the increasingly diverse ways that consumers can source media content. Fairfax would have significant concerns if the QNF Application operated to prevent Fairfax from being customer-focused.

In summary Fairfax submits that:

- We have a concern that the QNF Application seeks to create rigidities and an inflexible distribution system, which does not put the customer first; and
- Given the differences between the State Associations and the ANF (with whom Fairfax has good relations), Fairfax sees limited public benefits arising from the QNF Application and instead believes that the Application has the potential for increased inefficiencies and burdens on our business rather than benefits.

In addition, as highlighted in the 2003 submissions, and equally applicable in relation to the current QNF Application:

- the proposed authorisation would take the newspaper retail and distribution industry a step backwards in the de-regulation process;
- the authorisation application is too imprecise and broad in scope; and
- Fairfax questions QNF's claim that the authorisation would generate a public benefit by enabling it to negotiate higher fees and commissions on behalf of newsagents.

Fairfax also reiterates that it strongly opposes collective boycotts, which have the potential to cause significant detriment to consumers.

## **2. The QNF Application will lead to an inflexible system to the detriment of competition**

The QNF application ignores the fundamental business proposition that Fairfax is a publisher of news and magazines and we must be able to distribute to customers in an efficient and cost effective manner. The QNF Application focuses upon protecting the position of newsagents, who are distributors. While this is understandable from the Association's perspective, Fairfax must be able to operate in a way that gives customers what they need, and where customers are dissatisfied with the service they are obtaining from an individual newsagent distributor, the system should be flexible enough to respond to this.

The QNF Application's description of the position of distributors - and therefore the need for authorisation - is also somewhat misstated. For example, while the QNF Application argues that "supermarkets have greater bargaining power than newsagents and are able to extract more favourable terms from the publishers", newsagents in fact receive approximately 50% of a supermarket's commission when a Fairfax publication is sold in the territory secured by a newsagent distributor. In addition, payment structures between Fairfax (and other publishers) and newsagents can vary to some extent based on performance.

## **3. Inefficiencies arising from dealing with ANF and State based associations**

The current Applicants are QNF, the Newsagents Association of New South Wales (NANA) and the Victorian Newsagents Association (VANA). ANF is not a party to the Application.

In the 2003 submissions, we highlighted the fact that Fairfax already engages in active consultation with the ANF. Fairfax continues to consider consultation with a national body to be a healthy and effective process and plans to continue its current practice of consulting with the ANF.

In its press release of 16 January 2009, the ANF suggested the current application, in its exclusion of the ANF, was potentially damaging to the industry.

This industrial instability clearly has the potential to erode any perceived public benefit obtaining from the Application and must be weighed against it.

#### 4. Backward step in deregulation process

Fairfax continues to believe that the new Application, if authorised, would take the newspaper retail and distribution industry a step backwards in the de-regulation process, by reintroducing anti-competitive elements of the pre-existing, authorised newsagency system which were identified by the Australian Competition Tribunal (Tribunal) in the 7 Eleven decision. See section 3.3 of the 2003 submissions.

#### 5. Application too broad in scope

In the 2003 submissions, we pointed out that the authorisation application was too imprecise and broad in scope (particularly as it may encourage newsagents to engage in collective conduct outside the boundaries of the authorisation in the breach of the TPA).

The new Application is even broader in scope with regards to newspaper publishers than the prior Authorisation. Table 1, below, sets out the categories of negotiation over which the existing Authorisation applies, and those which the current Application seeks.

**Table 1: Scope of applications**

<i>Newspaper Publishers</i>	
<b>Existing Authorisation</b>	<b>New Application</b>
<ul style="list-style-type: none"> <li>- Newsagent commission</li> <li>- Home Delivery Fees</li> <li>- Settlement Discounts</li> <li>- Late paper fees</li> <li>- Split papers</li> <li>- Terms of supply and rights of termination</li> </ul>	<ul style="list-style-type: none"> <li>- Newsagents commission</li> <li>- Home Delivery Fees</li> <li>- Insert fees</li> <li>- Settlement discounts</li> <li>- Late Paper fees</li> <li>- Split Papers</li> <li>- Terms of supply and rights of termination</li> <li>- Codes of conduct</li> <li>- Dispute resolution</li> <li>- Matters incidental to the above</li> </ul>
<i>Magazine Publishers</i>	
<b>Existing Authorisation</b>	<b>New Application</b>
<ul style="list-style-type: none"> <li>- variable commission for shelf life</li> <li>- supply allocations</li> <li>- carriage of non-core products</li> <li>- subscription delivery</li> </ul>	<ul style="list-style-type: none"> <li>- variable commission for shelf life</li> <li>- supply allocations</li> <li>- carriage of non-core products</li> <li>- subscription delivery</li> </ul>

- returns policy	- returns policy
- terms of supply and rights of termination	- terms of supply and rights of termination

**6. No public benefit through increases in delivery fees and commission rates**

In the 2003 submissions, we questioned the ANF's claim that the authorisation would generate a public benefit by enabling it to negotiate higher fees and commissions on behalf of newsagents. This was because, given that Fairfax would be likely to need to increase the cover prices of its publications as a result of the proposed increases, the authorisation would be more likely to cause a detriment to consumers through increased home delivery fees.

Again, this issue remains relevant in the context of the current Application.

**7. Areas not addressed in the Application**

The Application expressly excludes the negotiation of newsagent territories with publishers. In this and other respects, the Application asks for authorisation to negotiate on a wide range of issues of perceived benefit to the newsagency industry, without any recognition of areas identified by publishers as necessary for the rationalisation and long-term viability of the industry.

**8. Collective boycotts**

The Application states that the Applicants are "keeping [their] options [sic] on any application or notification in relation to collective boycotts of all or some of the targets". Fairfax submits that any ability by the Applicants, their members or others to collectively boycott would be grossly anti-competitive without any proportionate public benefit. Boycott activity would harm consumers as it ultimately may lead to higher prices for newspapers/magazines.

**9. Conclusion**

As detailed above, and in the attached 2003 submissions, Fairfax does not consider that QNF have discharged the onus of establishing that the public benefit of a collective bargaining authorisation would outweigh the likely detriment to competition - particularly if applied with a threat of collective boycott. We also see the QNF Application as a retrograde step in seeking to enshrine the position of newsagents rather than recognising the need to satisfy the expectations of our readers.

If you would like to discuss this matter further, please do not hesitate to contact me.

Yours faithfully

GAIL HAMBLBY