

## Form G

Commonwealth of Australia  
*Competition and Consumer Act 2010 — subsection 93 (1)*  
**NOTIFICATION OF EXCLUSIVE DEALING**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### 1. Applicant

(a) **Name of persons giving notice:**

*(Refer to direction 2)*

N95576

Nationwide News Pty Limited (NWN)

(b) **Short description of business carried on by that person:**

NWN publishes print and digital publications called The Australian and The Weekend Australian (**Publications**).

Please refer to the submission in support of the notification for further details.

(c) **Address in Australia for service of documents on that person:**

2 Holt Street, Surry Hills, NSW, 2010, Attention: Ian Philip

### 2. Notified arrangement

(a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

1. Provision of the Publications by NWN.
2. Provision of loyalty program services by various retailers and associations (**Partners**) for their members, customers and employees. It is anticipated that the Partners will include selected financial service providers, airlines and entertainment service providers.

(b) **Description of the conduct or proposed conduct:**

*(Refer to direction 4)*

1. NWN proposes to supply, or offer to supply, subscriptions to its Publications with a discount, allowance, rebate or credit on the

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condition that the person to whom NWN supplies or offers or proposes to supply Publications has acquired membership to the loyalty program offered by a Partner (the **Offers**); and

2. NWN further proposes to refuse to make the Offers to a person for the reason that the person has not acquired, or has not agreed to acquire, membership to the loyalty program offered by a Partner.

Please refer to the submission in support of the notification.

**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

**(a) Class or classes of persons to which the conduct relates:**

*(Refer to direction 5)*

Persons who are members of the public who wish to take advantage of the Offers.

**(b) Number of those persons:**

**(i) At present time:**

Nil.

**(ii) Estimated within the next year:**

3000

**(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:**

Not applicable.

**4. Public benefit claims**

**(a) Arguments in support of notification:**

*(Refer to direction 7)*

Please refer to the submission in support of the notification.

**(b) Facts and evidence relied upon in support of these claims:**

Please refer to the submission in support of the notification.

**5. Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets**



**including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):**

*(Refer to direction 8)*

Please refer to the submission in support of the notification.

**6. Public detriments**

- (a) **Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:**

*(Refer to direction 9)*

Please refer to the submission in support of the notification.

- (b) **Facts and evidence relevant to these detriments:**

Please refer to the submission in support of the notification.

**7. Further information**


- (a) **Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:**

2 Holt Street, Surry Hills, NSW 2010,

Attention: Ian Philip 02 9288 3393

Dated 28 September 2011

Signed by/on behalf of the applicant



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## DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

# Submission

## 1 Introduction

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This submission is provided in relation to a Notification of Exclusive Dealing lodged by Nationwide News Pty Limited (NWN).

## 2 Background

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### 2.1 Publications

NWN publishes print and digital publications called The Australian and The Weekend Australian (**Publications**).

### 2.2 Offers

NWN proposes to supply, or offer to supply, subscriptions to its Publications with a discount, allowance, rebate or credit on the condition that the person to whom NWN supplies or offers or proposes to supply Publications has acquired membership to a loyalty program offered by certain retailers and associations (**Partners**) (the **Offers**).

### 2.3 Partner Services/Goods

NWN proposes to select Partners who are participants in various sectors (including financial service providers, airlines, and entertainment service providers) who provide value-added benefits to their members, customers and employees through loyalty programs so as to distinguish their goods and services from those of their competitors in the relevant sector.

### 2.4 Disclosure of Terms and Conditions

Partners will be obliged, as a condition of participation in NWN's promotion to disclose all relevant terms and conditions of the relevant Offer to prospective customers.

## 3 The conduct

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### 3.1 Description of the conduct

NWN intends to negotiate a promotional arrangement with Partners to promote Offers to each Partner's members, customers and employees through that Partner's



loyalty program. NWN will not require any category exclusivity from Partners, so Partners will be free to promote the services of NWN's competitors.

### **3.2 Rationale for the notified conduct**

NWN's rationale for engaging in the conduct is to attract consumers to its Publications who might not otherwise acquire them.

## **4 Markets**

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### **4.1 Markets**

Relevant markets include:

- the markets for the various goods or services supplied by the Partners in Australia; and
- the market or markets in which the Publications are supplied.

Each Partner offers a loyalty program in an attempt to retain its members, customers and employees. This measure demonstrates that there is vigorous competition in the various markets in which the Partners supply their goods or services.

The market or markets in which the Publications are supplied is also competitive. Suppliers of news and information services include NWN, John Fairfax Publications Pty Limited and various other print and digital publishers and distributors.

## **5 Public benefits and detriment**

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### **5.1 Introduction**

NWN submits that the benefits to the public likely to result from the notified conduct would outweigh any detriment to the public likely to result from the conduct.

### **5.2 Benefits to the public**

#### **(a) Competition**

The Offers will be included in the pre-existing loyalty programs offered by the Partners and are likely to promote competition in the relevant markets in which the Partners compete by encouraging other providers of services to offer similar or additional competitive value added benefits. The Offers could also be expected to



encourage providers of news and information services to offer value added benefits to customers.

(b) Consumers

The notified conduct would provide a clear benefit to consumers as it will allow consumers to purchase the Publications at a discount or with an allowance, rebate or credit they would not necessarily otherwise receive.

### 5.3 Detriment

The notified conduct would not result in public detriment, anti-competitive or otherwise, for the following reasons:

- (a) Members of the public would be under no obligation to accept any Offer.
- (b) The general public would be free to acquire Publications without any obligation to acquire goods or services from any Partner.
- (c) The notified conduct would have no appreciable effect on competition between the various Partners and their respective competitors. The Offers are simply being included in the pre-existing loyalty programs offered by the various Partners. Service providers who compete with the various Partners will be able to provide similar value added benefits.
- (d) The market in which NWN competes is highly competitive. Consumers have a significant number of product options available to them. Suppliers of news and information publications (including online, radio, television, newspaper and periodical publications) compete in relation to:
  - (1) subscription and cover price;
  - (2) editorial comment;
  - (3) publication format;
  - (4) distribution and branding; and
  - (5) advertising.
- (e) The notified conduct would have no appreciable effect on competition between providers of news and information services. Partners will be free to promote the services of NWN's competitors.