

Allens Arthur Robinson

12 April 2011

The General Manager
Australian Competition and
Consumer Commission
Level 7, Angel Place
123 Pitt Street
Sydney NSW 2000

By Hand

D11/690777

ABN 47 702 595 758

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Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000
Australia

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DX 105 Sydney

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Dear Sir / Madam

Form G - Exclusive Dealing Notification

Please find attached a **Form G Exclusive Dealing Notification** and supporting submission in relation to potential third line forcing conduct by Advertiser Newspapers Pty Ltd, Advertiser News Weekend Publishing Company Pty Ltd, Nationwide News Pty Ltd, The Herald & Weekly Times Pty Limited, Queensland Newspapers Pty Ltd, Davies Brothers Pty Limited, News Digital Media Pty Ltd, News Magazines Pty Ltd, News Limited and Abundant Media Unit Trust under the Competition and Consumer Act 2010 (Cth) (the **Act**). We also enclose the notification filing fee of \$1000.

The applicant submits that in relation to the statutory test under section 93(3A) of the Act, no public detriment will result from the conduct but there will be clear public benefits.

If you have further questions in relation to this notification, please do not hesitate to contact the author of this letter.

Yours faithfully

Jacqueline Downes
Partner
Jacqueline.Downes@aar.com.au
T +61 2 9230 4850

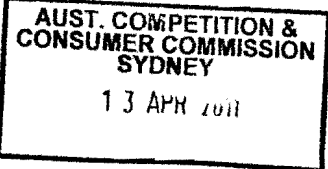
Our Ref JODS:CBCS:201290418

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Form G

Commonwealth of Australia



Competition and Consumer Act 2010 – subsection 93(1)

NOTIFICATION OF EXCLUSIVE DEALING

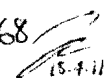
To the Australian Competition and Consumer Commission:

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 in 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.

1. Applicant

(a) Name of person giving notice:

- N95359 Advertiser Newspapers Pty Ltd (ACN 007 872 997)
 - N95360 Advertiser News Weekend Publishing Company Pty Ltd (ACN 007 562 950)
 - N95361 Nationwide News Pty Ltd (ACN 008 438 828)
 - N95362 The Herald & Weekly Times Pty Limited (ACN 004 113 937)
 - N95363 Queensland Newspapers Pty Ltd (ACN 009 661 778)
 - N95364 Davies Brothers Pty Limited (ACN 009 475 754)
 - N95365 News Digital Media Pty Ltd (ACN 000 529 457)
 - N95366 News Magazines Pty Ltd (ACN 008 923 906)
 - N95367 News Limited (ACN 007 871 178)
- (together, **News Ltd entities**)

N95368  and
Abundant Media Pty Ltd as
The trustee for Abundant Media Unit Trust (ABN 76 109 652 339).
(**Abundant Media**)

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

News Ltd entities

Supply of newspaper and media services.

Abundant Media

Supply of advertising, production and media content services.

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

c/- Ian Philip
General Counsel
2 Holt Street
Surry Hills NSW 2010
Phone: 61 2 9288 3393
Fax: 9288 3235
email: philipi@newsltd.com.au

2. Notified Arrangement

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

Abundant Media has established a new brand (the **Brand**) to be used in association with the creation and publication (including by transmission, broadcast or other media) of consumer research-supported advertisements, primarily for consumer and household goods and services (**research-based advertisements**).

This notice relates to the following goods and services to be provided in the implementation and commercialisation of the Brand and research-based advertisements:

(i) News Ltd entities

The provision of production, creative and advertising services to advertisers and advertising agencies wishing to advertise products displaying the Brand.

(ii) Abundant Media

The provision of strategic campaign development, production, creative and advertising services and intellectual property licences to advertisers and advertising agencies wishing to sell and advertise products displaying the Brand.

See Attachment A for further detail.

(b) Description of the conduct or proposed conduct:

See Attachment A.

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:

The persons or classes of persons affected or likely to be affected by the notified conduct are product advertisers who wish to license the Brand (**Advertisers**) and advertising agencies, media agencies, media content companies and media organisations whose clients wish to license the Brand (**Agencies**).

(b) Number of those Persons:

(i) At present time:

None at present

(ii) Estimated within the next year:

Substantially more than 50

- (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:

See Attachment A.

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

See Attachment A.

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 foods or services (for example geographic or legal restrictions):

See Attachment A.

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 service described at 2(a) above and the prices of goods or services in other affected markets:

See Attachment A.

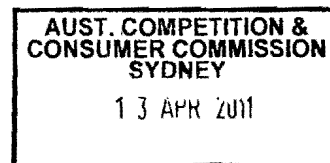
- (b) Facts and evidence relevant to these detriments:

See Attachment A.

7. Further Information

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

c/- Ian Philip
General Counsel
2 Holt Street
Surry Hills NSW 2010
Phone: 61 2 9288 3393
Fax: 9288 3235
email: philipi@newsltd.com.au



Dated 12/4/11

Signed by/on behalf of the applicant

Signature *Jacqueline Danner*

Full Name JACQUELINE DANNER

Organisation ALLEN & ARTHUR ROBINSON

Position PARTNER

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 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 effected 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.

Attachment A

Description of the proposed conduct

The News Ltd entities and Abundant Media (the **Parties**) propose to sell to Advertisers and Agencies a bundle of goods and services in relation to the Brand and research-based advertisements. That bundle would include, regardless of which of the Parties makes the sale or submits the proposal to an Advertiser or Agency:

- (i) Abundant Media providing media services, production services, strategic and creative campaign development services and intellectual property licences for a fee or fees to the Advertiser (**Abundant Media's Services**); and
- (ii) the News Limited entities providing multi-platform advertising services and print advertising creative services for a fee or fees to the Advertiser (**News Ltd entities' Services**). Multi-platform advertising services would involve the News Ltd entities supplying advertising space in online, digital and print media.

In addition to the conduct outlined in (i) – (ii) above:

- (iii) Abundant Media may refuse to supply Abundant Media's Services unless the Advertiser agrees to acquire News Ltd entities' Services; and
- (iv) the News Ltd entities may refuse to supply News Ltd entities' Services unless the Advertiser agrees to acquire Abundant Media's Services.

The conduct described in (i) – (iv) above is the proposed conduct to which this notification relates (**proposed conduct**).

The proposed conduct only relates to products and research-based advertisements utilising the Brand.

The proposed conduct may contravene sections 47(6)(a) and 47 (7)(a) of the *Competition and Consumer Act 2010* as:

- Abundant Media will be supplying or offering to supply Abundant Media's Services on the condition that the Advertiser acquires News Ltd entities' Services;
- The News Ltd entities will be supplying or offering to supply News Ltd entities' Services on the condition that the Advertiser acquires Abundant Media's Services;
- Abundant Media will be refusing to supply Abundant Media's Services to the Advertiser for the reason that the Advertiser has not acquired, or has not agreed to acquire, News Ltd entities' Services; and
- The News Ltd entities will be refusing to supply News Ltd entities' Services to the Advertiser for the reason that the Advertiser has not acquired, or has not agreed to acquire, Abundant Media's Services.

The proposed conduct would occur for an initial 12 month period, with the possibility of two additional 12 month periods.

Research-based advertising involves using a particular brand to encourage peer opinion of a particular product, Brand Power being an example of such a brand. Certain products are promoted through a review system, whereby customers review certain products through an online voting system, expressing their satisfaction or dissatisfaction with those products. If the results of the

customer review process are positive, the results can then be used to influence consumer choice of that product's brand, through its affiliation with the research-based advertiser's brand.

The Parties' rationale for the proposed conduct is to promote the Brand to increase the quantity of research-based advertisements, increase competition in the provision of advertising services in relation to research-based advertisements and increase the quantity of research-based advertisements which appear in print media as opposed to the more commonly used (for this type of advertising) broadcast media.

Public benefits and detriment

The Parties submit that the benefit to the public likely to result from the notified conduct would likely outweigh any detriment.

The markets potentially affected by the proposed conduct are:

- the markets for supply of advertising creative, consulting and productive services (the ***market for supply of advertising services***); and
- the markets for supply of advertising media including print, online and broadcast (the ***market for supply of advertising media***).

The Parties submit that the supply of services relating to research-based advertisements is a subset of the market for supply of advertising services and the supply of advertising media space for research-based advertisements is part of the broader market for supply of advertising media.

Detriment

The proposed arrangement relates only to research-based advertising campaigns displaying the Brand.

Advertisers and Agencies are not prevented from advertising in the News Ltd entities' media for products which are not displaying the Brand.

The proposed conduct would not prevent competitors from offering the same or similar types of services to Advertisers and Agencies, which the notifying parties submit could occur with little or no barriers to entry.

Advertisers and Agencies are also not prevented from purchasing competing advertising services (including other researched-based advertising services) from a multitude of other providers in the markets for supply of advertising services, or from placing advertisements with other media suppliers.

The market for supply of advertising services and the market for supply of advertising media are highly competitive markets. The following advertising agencies, media agencies and media content companies are strong and vigorous competitors in these markets:

- the market for supply of advertising services: Adcorp, Clemenger BBDO, IPMG, Mitchell Communication Group; Photon Group, STW Group, SapientNitro, TMP Worldwide, Added Value, Plunge Creative and many others.
- the market for supply of advertising media including print, online and broadcast: Fairfax Media Limited, ACP Magazines, Pacific Magazines, Seven Media Group, Nine Network, Ten Network, Google, Yahoo7! and many others.

Even in the subset of research-based advertisements there are currently two major participants, The Buchanan Group (which owns the "Brand Power" brand) and SMG Red (a subsidiary of Seven Media Group). The proposed conduct would allow for the creation of a new competitor in the market for supply of services relating to research-based advertisements.

In the market for research-based advertisements, broadcast television is the most commonly used form of media. The proposed conduct would also lead to the increased use of print media to distribute research-based advertisements, thereby increasing competition with broadcast television in this area.

Benefits

Due to the increased use of research-based advertisements through the introduction of a new competitor, and the expansion of the advertising space beyond broadcast media into print media, the proposed conduct may result in other media organisations choosing to supply services relating to research-based advertisements. The Parties submit that entry barriers are relatively low and other media organisations may enter relatively easily to compete.

The Parties submit that research-based advertisements provide consumers with greater information and knowledge about products. For Advertisers to qualify to use the Brand they must comply with research-based criteria, namely:

- (i) a minimum positive review score (minimum three and a half out of five stars); and
- (ii) a minimum number of reviews (no less than 15 reviews).

These two criteria are determined independently of the Parties, through an online platform where consumers may vote on products proposing to qualify to use the Brand. The provision of research-based advertisements provide households and consumers with greater knowledge and transparency around the quality, reputation, value and service of everyday consumer goods.

An expanded market for providing services relating to research-based advertisements may also lead to reduced costs incurred by advertisers for the production, creative, licensing and placing of research-based advertising campaigns.


~~Confidential~~

We Like This Campaign

Attention: Andrew McNally
Integration Sales Director
News Ltd
2 Holt Street Surry Hills NSW 2010
Fax 02 9288 3285 AND 02 9778 7417

In relation to our confirmation to participate in the We Like This campaign we understand that News Ltd will be notifying the Australian Competition and Consumer Commission (ACCC) on behalf of Abundant Media to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the We Like This campaign and Abundant Media's participation in it is subject to gaining immunity from prosecution for third line forcing.

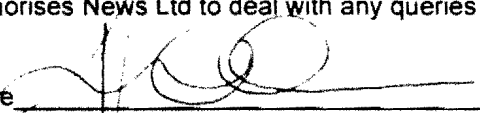
As part of the submission to the ACCC for this purpose, we confirm the following details:

Business Details:
Abundant Media Pty Ltd
Level 4, 543-549 Bridge Road
Richmond VIC 3121
ABN 76 109 652 339

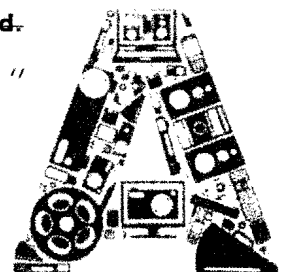
Proposed conduct: *Discounted and bundled goods and services related to the use of social media in advertising campaigns*

Coverage: NSW, ACT, VIC, QLD, SA, WA, NT (excludes TAS)

Abundant Media authorises News Ltd to lodge a notification with the ACCC on behalf of Abundant Media in respect of the We Like This campaign as it pertains to Abundant Media and authorises News Ltd to deal with any queries from the ACCC on its behalf.

Signature 
As an authorised representative for and on behalf of **Abundant Media Pty Ltd**
Name PAUL WALDRON
Title DIRECTOR
Date 1st April 2011

~~The content of this document is confidential and legally privileged.~~



AbundantMedia