

ANZARUT & HOLM LAWYERS

Our ref: Nart001-001
Your ref:

17 September 2012

Dr. Richard Chadwick
General Manager, Adjudication
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

By email: richard.chadwick@accc.gov.au

Dear Dr Chadwick,

Narta Minimum Advertising Price – Application for Authorisation.

I act for Narta International Pty Ltd (ABN 81 003 379 486).

Narta applies for authorisation pursuant to section 88(1) of the Competition and Consumer Act 2010 (Cth) in relation to the proposed implementation of a provision of its member Code of Conduct that allows Narta to unilaterally impose a minimum advertising price on goods that have been collectively acquired by its members.

I enclose:

- Application Form B;
- a supporting submission to the ACCC made on behalf of Narta (Submission); and
- a payment report showing an EFT to the ACCC Administration Receipts Account for the filing fee of \$7,500.

Please contact me if you would like to discuss or require any further information.

Yours sincerely



Paul Holm
Director

Direct Line: (02) 9261 2702
Email: prh@anzarut.com.au

[Enc]

Form B

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of Applicant:
(Refer to direction 2)

A91335

Narta International Pty Ltd (Narta)

This application is to be read and determined together with the submission supporting this application (the Submission), which is lodged with this form.

.....
.....
.

- (b) Short description of business carried on by applicant:
(Refer to direction 3)

Narta is an independent electrical buying group. It acts as an intermediary between its members and wholesale suppliers of electrical goods and negotiates supply terms with those suppliers. It also aims to create efficiencies for those suppliers when they are dealing with Narta members. This allows Narta members,

who consist of over 30 brands in the market, to be more competitive delivering value and choice to consumers.

.....

- (c) Address in Australia for service of documents on the applicant:

c/o Anzarut & Holm Lawyers,

Level 3, 117 York Street, Sydney 2000.

.....

.....

.....

2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

(Refer to direction 4)

Authorisation is sought for Narta members entering into and giving effect to a contract, arrangement or understanding that provides for the fixing of the price at which they will advertise certain collectively acquired electrical goods.

Narta is not a competitor of its members; however its members are competitors in the Australian market for retail supply of electrical goods and home appliances. While the proposed minimum advertising price would be set unilaterally by Narta and not by agreement between members, Narta would be doing so under the auspices of its Constitution and Member Code of Conduct which, by virtue of s140 of the Corporations Act 2001, constitute a contract between members.

Narta therefore seeks authorisation of an amended clause 5.8 of the Narta Member Code of Conduct under which members would agree to abide by any minimum advertising price as set by Narta from time to time.

.....

.....

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:

(Refer to direction 4)

Clause 5.8 of the Narta Code of Conduct currently states:

‘When you take advantage of a Narta initiated collective purchase then when advertising any goods so purchased you agree to do so at the Narta minimum advertised price as set by Narta from time to time in any joint advertising or promotional activity whether initiated by Narta or by you.’

This clause is intended to provide a mechanism for setting a minimum advertising price for the joint advertising of the price of goods that have been collectively acquired by Narta members. Such conduct would be exempt from price fixing liability due to the application of section 44ZZRV of the Competition & Consumer Act 2010.

Narta proposes to amend this clause to read:

‘When advertising the price of goods purchased under a Narta initiated collective purchase for Beko branded electrical products, new release or premium electrical goods, and exclusive models of electrical goods, you agree to use only the minimum advertising price as may be specified by Narta for those goods from time to time. The selling price of those goods remains completely at the individual member’s discretion’.

This would allow Narta to set a minimum advertising price for the above mentioned goods collectively acquired by members, whether or not this price is then advertised ‘jointly’ by members.

To the extent that the proposed clause 5.8 is a provision of a contract between competitors that is ‘providing for the fixing maintaining or controlling’ of the price of the above mentioned goods supplied by Narta members it would be a cartel provision.

.....
(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

- Beko branded electrical products;
- New release or premium electrical goods; and
- Exclusive models of electrical goods as may be negotiated by Narta from time to time.

Please also refer to paragraphs 4.7 and 4.8 of the Submission.

(d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

10 years.

3. Parties to the proposed arrangement

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Please see Attachment 1 to the Submission.

.....
.....
.....

(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

(Refer to direction 5)

N/A.....
.....
.....

4. Public benefit claims

- (a) Arguments in support of authorisation:
(Refer to direction 6)

See attached Submission.

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

See attached Submission

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) 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 7)

Australian market for the retail supply of electrical goods.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:
(Refer to direction 8)

See attached Submission

.....
.....
.....
.....

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

See attached Submission

.....
.....
.....
.....

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

Yes.

.....

(b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:
(Refer to direction 9)

Narta may accept new members who must agree to comply with the Narta Code of Conduct. This application is expressed to apply to similar contracts, arrangements or understandings entered into by such new Narta members.

-
- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

n/a.....
.....
.....
.....

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Electrical retailers.

8. **Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

-
- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

n/a

-
- (c) If so, by whom or on whose behalf are those other applications being made?

n/a

9. Further information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Paul Holm

c/o Anzarut & Holm Pty Ltd

Level 3, 117 York Street,

Sydney 2000

.....
.....

Dated. 17 September 2012.....

Signed by/on behalf of the applicant



(Signature)

Paul Rutherford Holm.....

(Full Name)

Director.....

(Position in Organisation)

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

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

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. Where the application is made 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 application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
 8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
 9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

Application for Authorisation

**NARTA Submission to the Australian Competition &
Consumer Commission**

**Authorisation of Minimum Advertising Prices for Collectively
Acquired Electrical Equipment**

September 2012

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1 Narta

- 1.1 Narta International Pty Ltd (Narta) is a private company limited by shares. 'Narta' is an acronym for National Associated Retail Traders of Australia. It is a buying group of electrical retailers first established in 1965 and currently has 29 members across Australia, including Bing Lee, David Jones, JB Hi-Fi, Radio Rentals and Winnings Appliances. A list of Narta members is at **Attachment 1**.
- 1.2 Narta members represent approximately 25% of the market for retail supply of appliances and electrical goods in Australia. The approximate market shares of the major Australian buying groups/retailers of electrical goods are shown at **Attachment 2**.
- 1.3 Narta acts as an intermediary between its members and wholesale suppliers of electrical goods. Its primary object is to create efficiencies for suppliers of electrical goods that can be shared with Narta members in the form of supplier discounts and rebates. It is 'not for profit' in that it aims to cover its costs and return any other funds generated to members. Its operations include:
- (a) negotiating over and above \$/% terms of supply with suppliers;
 - (b) facilitating information flows between members and suppliers;
 - (c) assisting with the collation of member orders;
 - (d) assisting with acquisition of advertising space;
 - (e) assisting with retail financing for members; and
 - (f) facilitating the production of advertising catalogues, TV Commercials, Magazine and Press Advertising

2 Collective Acquisition

- 2.1 It is a feature of the Australian market for wholesale acquisition of electrical goods that many retailers collectively acquire product for retail sale. Being part of a buying group allows retailers to source products on more favourable terms, allowing them to compete more effectively in the highly competitive Australian retail market for electrical products. The major buying groups include Harvey Norman, The Good Guys, RetraVision and Camera House.
- 2.2 Electrical goods buying groups are either groups that trade under a single banner (for example Harvey Norman, RetraVision, Camera House and The Good Guys) or, like Narta, one where members retail products solely under their own names. The single banner groups commonly consist of a mix of company owned and franchise (independently owned) stores. Narta is unique in the large buying group space, in that its members are all independent retailers who trade under distinct trading names, making distinct retail offerings.
- 2.3 In addition there are a number of large corporate retailers that are able to purchase sufficient volume of products to be competitive in their own right. These large

retailers include the Woolworths Group (Masters, Big W, Dick Smith) Wesfarmers (Coles, Bunnings, Target, K-Mart) and Myer.

2.4 As the members of all electrical goods buying groups include competing retailers, most such groups place some reliance upon:

- (a) The buying group entity making unilateral decisions regarding terms of purchase and advertising (avoiding competitor members of the group entering into contracts, arrangements or understanding regarding the content of such purchasing decisions or the advertising price); and
- (b) the cartel conduct exemption for collective acquisition contained at section 44ZZRV of the Competition and Consumer Act 2010 (Exemption).

2.5 The Exemption reads as follows:

‘44ZZRV Collective acquisition of goods or services by the parties to a contract, arrangement or understanding

- (1) Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK do not apply in relation to a contract, arrangement or understanding containing a cartel provision, in so far as:
 - (a) the cartel provision has the purpose, or has or is likely to have the effect, mentioned in subsection 44ZZRD(2); and
 - (b) either:
 - (i) the cartel provision relates to the price for goods or services to be collectively acquired, whether directly or indirectly, by the parties to the contract, arrangement or understanding; or
 - (ii) the cartel provision is for the joint advertising of the price for the re-supply of goods or services so acquired.’

2.6 This provision has the effect of exempting from potential price fixing liability contracts arrangements or understandings between competitor members of a buying group regarding:

2.6.1 the price at which they will collectively acquire goods; and

2.6.2 the price at which they will jointly advertise collectively acquired goods.

2.7 The Exemption for joint advertising of the price for re-supply of collectively acquired goods operates differently, dependent upon the structure of the buying group concerned. Arguably when a buying group operates under a ‘single banner’ most advertising by its members under that single banner will be seen as ‘joint’ advertising. However where the buying group members do not trade under a single banner, but advertise separately under their own trading names, any such advertising of collectively acquired goods at an agreed price may not be seen as ‘joint advertising of the price’ and therefore potentially falls outside the scope of the Exemption.

3 Joint advertising of the price for resupply

3.1 Narta notes that there are no court precedents giving guidance on the meaning of the term ‘joint advertising of the price’ for the purposes of the Exemption. However the

ordinary meaning of the word 'joint' is 'shared, held, or made by two or more people or organisations together' while 'advertising' is any 'paid announcements in the print, broadcast or electronic media'.

- 3.2 My client is of the view that advertising by its members of collectively acquired product, where that advertising is at a price determined by Narta and is coordinated and placed by Narta acting for its members together, arguably results in 'joint advertising of the price' by those members for the purposes of the Exemption.
- 3.3 However different Narta members operate their marketing at differing levels of independence. Smaller members rely more heavily on Narta services, while larger better resourced members will rely less upon Narta services in compiling and placing advertising. This is particularly the case with member catalogue advertising. In this regard Narta members have no interest in putting out a 'joint' catalogue, as to do so would be inimical to their individual brands and retail profile.
- 3.4 For the purposes of this authorisation application Narta is therefore taking the conservative view that, unless an advertisement is expressly identified on its face as being by multiple specified Narta members, it will not involve 'joint' advertising of price for the purposes of the Exemption. As noted above, Narta members do not currently advertise in this fashion. This authorisation application therefore is expressed to cover all Narta member advertising of collectively acquired products that uses a minimum advertising price specified by Narta.

4 Narta's Proposed Minimum Advertising Price (MAP)

- 4.1 Narta proposes to impose a minimum advertising price (MAP) on a limited range of member collectively acquired goods. The setting of the MAP would be undertaken unilaterally by Narta pursuant to clause 5.8 of the Code of Conduct. The level of the MAP would be set by Narta senior management and notified to members. Individual members and suppliers would have no input to the level of the MAP.
- 4.2 Clause 5.8 of the membership Code of Conduct currently states:
- 'When you take advantage of a Narta initiated collective purchase then when advertising any goods so purchased you agree to do so at the Narta minimum advertised price as set by Narta from time to time in any joint advertising or promotional activity whether initiated by Narta or by you.'
- 4.3 Narta has never invoked this provision to impose a MAP. However, if a MAP were specified in relation to 'joint' advertising, it is Narta's position that it would be covered by the Exemption.
- 4.4 The Code of Conduct is prescribed under Narta's constitution and therefore, pursuant to section 140 of the Corporations Act 2001 (Cth), forms part of a contract between members. Therefore, even though the decision to impose a MAP and the level of the MAP would be made unilaterally by Narta, the setting of a MAP pursuant to this provision may be seen as arising from a contract arrangement or understanding between Narta members. Therefore, to avoid this potential liability, clause 5.8 is limited to 'joint' advertising covered by the Exemption.

- 4.5 Authorisation is sought for an amended clause 5.8 which is proposed to read as follows:
- ‘When advertising the price of goods purchased under a Narta initiated collective purchase, you agree to use only the minimum advertising price as may be specified by Narta for those goods from time to time. The selling price of those goods remains completely at the individual member’s discretion.’
- 4.6 This proposed amendment would allow Narta to apply a MAP to the advertising of any member collectively acquired goods and not only goods that are ‘jointly’ advertised.
- 4.7 Narta would only apply a MAP where this has been necessary in order to obtain supply of particular product, or supply on preferential terms. This will apply in relation to three categories of product:
- 4.7.1 A house brand range of product. Narta has recently negotiated an exclusive supply arrangement with a European brand of home appliances, Beko, which was not previously represented in the Australian market. Narta is of the view that retaining exclusivity of this brand in the medium to longer term will require application of a MAP;
- 4.7.2 New release or premium product. This will generally be in the electronic space, where the technology is constantly changing and would be applied for no more than 3 months from the date of first supply; and
- 4.7.3 Narta exclusives. This would be particular product models where Narta has negotiated exclusive supply. This would generally be with a major supplier who would make one or two models from its product range exclusive for the duration of a specified promotion.
- 4.8 Narta anticipates that the MAP would only apply to a maximum of 5% of member collated annual orders, which currently equates to product valued at approximately \$140 million (retail value). In a total market of \$13.5 billion (excluding car audio, mobile, gaming) this is approximately 1% of the consumer electronics market.
- 4.9 Narta does not and will not impose any limitations or restrictions upon a member’s actual selling prices and the norm in the relevant markets is for the selling price to be discounted from the advertised price at point of sale. This is illustrated in the analysis shown at **Attachment 3**, which shows that the average selling price of a representative sample of electrical goods is consistently below the average advertised price of that product. Internet stores more commonly do sell at advertised prices, but their pricing is constrained by to the ease with which customers can compare prices and, in some instances, these on-line stores also allow customers to ‘make an offer’ to purchase at less than the advertised price or encourage customers to ‘chat’ on-line with a sales person who may offer discounts.
- 4.10 In this regard it should also be noted that most retailers of electrical goods have some form of ‘price match policy’ where they will match a price offered or advertised or by a competitor. This means that a particular retailer’s advertising price may be no more relevant to the actual selling price of goods than a competitor’s advertising price of those same goods. This is becoming increasingly the case due to the comparative ease of price matching, due to internet access, both from home and on mobile devices while shopping.

- 4.11 Additionally some retailers expressly invite customers to make an offer on their own advertised prices, for example Narta member Bing Lee advertises 'Everything is Negotiable', while The Good Guys advertise 'Less for Cash'. This means that advertising prices are seen as a starting point for negotiation and not indicative of the actual selling price for the advertised goods.
- 4.12 Narta submits that there is a significant and growing disconnect between advertised prices and selling prices of electrical goods and therefore that the anti- competitive effect of Narta members agreeing a minimum advertising price for some of the collectively acquired electrical goods they sell in competition with each other will be minimal.

5 Narta's Reasons for the MAP

- 5.1 Narta has found itself at a competitive disadvantage to major corporate and single banner buying groups due to:
- (a) suppliers seeking a retail platform for new release or 'top of the range' products that protects their brand; and
 - (b) major corporate and single banner buying groups offering a competitively priced exclusive 'house brand' product.
- 5.2 The ability to offer consistent and coordinated marketing of product has become of increasing importance to manufacturers/suppliers of electrical goods in the current market. A key facet of this brand protection is the ability of a retail platform to offer consistent marketing of the product, including by applying a common advertised price.
- 5.3 An issue for suppliers is that, due to the tight life cycle of many electrical products, they have only a relatively short window of opportunity to recover the costs of product innovation before the product is superseded. Making such premium or innovative products generally available at retail can lead to immediate discounting to a level where retailers are not interested in stocking or actively promoting the product. Many suppliers are also seeking to recover costs and regain profitability where this has been lost.
- 5.4 The common supplier approaches to addressing these issues are:
- (a) more limited initial distribution of such key products, including providing initial product exclusivity to selected retailers who can provide a level of brand protection acceptable to the supplier;
 - (b) opening company (supplier) owned stores (e.g. Apple and Samsung); and
 - (c) selling their products through an 'agency' model, allowing suppliers to directly control the marketing and pricing of their products.
- 5.5 Narta is seeking to be able to impose a MAP on some collectively acquired product to enable it to:
- access product on similar terms to its major retailer competitors; and

- allow its members to continue to be a significant and effective competitive presence in the market.
- 5.6 The retail electrical goods market is demonstratively highly competitive and is currently characterised by reduced sales and low margins. This has had a direct impact on the viability of some retailers, with 8 specialist electrical retail chains having closed in recent years. In such a market any competitive disadvantage imposed by external circumstances is a significant issue and, to the extent that it reduces Narta member's ability to compete, directly reduces competition in this market.
- 5.7 Narta members collectively represent approximately 25% of the retail market and individually and collectively contribute significantly to the level of competition that exists in the market and the consequent consumer benefit of high quality product at the best price. Uniquely, and because Narta members operate under their respective brands, they have not been able to access some product on terms that allow them to continue and increase this role. That is the remainder of the market consists of corporate or single banner buying groups who are either:
- 5.7.1 part of a single corporate group and therefore do not have members who might be competitors for the purposes of the cartel conduct prohibition so can advertise at a single price without a risk of this constituting cartel conduct; or
 - 5.7.2 able to trade under a single banner, so that the advertising of the price of particular goods by competing member retailers is likely to be seen as 'joint' and therefore covered by the Exemption.

Limited distribution

- 5.8 Recent examples of where product has been supplied exclusively to a single banner retailer and not been available to Narta or its members for an initial launch period are:
- i. 3D Television by Sony
 - ii. Electrolux Lavazza Coffee Machines
 - iii. Kenwood K-Mix Colours
 - iv. Panasonic Plasma series
 - v. Sharp 70inch industry largest LCD TV
- 5.9 Typically this exclusivity is for a relatively short period of time, for example approximately 3 months or for the amount of time taken to sell a specified number of shipments. These first few shipments will commonly move quickly, due to the usually high release demand.

Agency Sales

- 5.10 To further assist in brand value and marketing consistency the industry is seeing an increasing trend into 'agency' sales. This model gives total control of marketing and pricing back to the supplier, as the retailer acts as the agent for the supplier and must sell at the price specified by its principal. Some recent examples of suppliers moving to an agency sales model are AEG, ASKO, Falcon, GE, Hoover, and V- Zug.

- 5.11 Narta understand that a number of other suppliers are actively considering moving to an agency sales model. In Narta's opinion the agency sales model necessarily lessens retail competition. Narta is also concerned by this trend as it creates challenges for retailers as the advertised price becomes the sell price and this removes the scope for point of sale discounting and retailer differentiation.
- 5.12 Narta being able to offer the proposed MAP may limit further movement by suppliers to the agency model, as it would assist with proving the supplier with the brand protection and stability without their needing to incur the costs of implementing the agency sales model.

Access to House Brands

- 5.13 Major competitor retailers, including single banner buying groups and major corporate retailers, are able to negotiate supply of exclusive 'house brands', in part because they can offer the suppliers a consistent marketing platform (including a uniform advertising price) for these 'exclusive' products. So, for example exclusive TV series, individual models or brands like G.V.A. (Good Guys), Ariston (Harvey Norman), DSE (Dick Smith) Sanyo (Big W) are currently only offered by these single banner groups.

6 Resale Price Maintenance

- 6.1 Narta, its members and suppliers are all fully cognisant that a wholesale supplier may not specify a minimum resale price (including advertising price) for goods. Further Narta members are opposed to RPM and have no interest in suppliers having input into the proposed MAP.
- 6.2 Any MAP that is applied would be unilaterally determined by Narta in accordance with clause 5.8 of the Code of Conduct and without reference to the supplier. This authorisation application is purely intended to allow Narta to commit to a supplier that, for particular product for a defined period of time, a consistent marketing message will be applied across its member base. It is not to provide a supplier with the ability to have input or 'specify' a minimum advertising price. Any such conduct would of course remain subject to the Act and suppliers would face the potential penalties if they were to attempt to engage in such conduct. Narta acknowledges that it would also be exposed to accessorial liability if it allowed the MAP to be used to facilitate RPM.

7 Historical Regulatory Approach to Collective Acquisition and Joint Marketing

- 7.1 The Trade Practices Commission (TPC) (as it then was) accepted in a number of authorisation determinations in the 1970s that the normal buying group is not anti-competitive and, prior to the express legislative exemption for collective acquisition, authorised a number of buying and co-operative marketing groups on the basis that:

‘the arrangements in question assist the competitive process and [the Commission] regards that as a benefit to the public.’¹

7.2 Further in Information Circular No 15 – (12 May 1976, no longer current) the Commission stated:

‘In deciding whether or not there is a significant effect on competition in a joint marketing, joint buying, joint advertising or joint promotion arrangement, including an arrangements that shows prices, the Commission considers the following elements to be relevant:

- (a) The number and size of the participants in the scheme relative to the industry as a whole;
- (b) The products involved in the scheme, and the extent to which the products are purchased advertised promoted or marketed by the participants in competition with companies, and particularly large companies, outside of the scheme;
- (c) The geographic dispersion of the participants. In particular in this regard the Commission is concerned that the arrangements not give rise to a series of local price fixing arrangements through the participation of all or most of the traders, of whatever size, in that locality.
- (d) Whether the scheme allows small outlets access to expertise and group buying, marketing and promotional or advertising facilities which facilities are commonly available only to large companies outside the scheme.
- (e) Whether the Agreement in any way affects the freedom of any individual participant if it wishes to carry lines competitive with the products subject to the scheme.’

7.3 The TPC therefore accepted that collective acquisition and associated joint marketing of products can be pro-competitive dependent, of course, upon market circumstances.

8 Relevant areas of competition

8.1 Narta considers that the relevant areas of competition relevant to this application for authorisation are:

- 8.1.1 the market for wholesale acquisition of electrical goods from manufacturer/suppliers. Narta competes for such supply (at best possible terms) with other buying groups and corporate retailers.

¹ Foodland group; Supa Valu Group; Speedy Family fare Group; Cut Price Store Group; Four Square Group; Nifty Thrifty Low Price Store Group A13925, A2267, A200262, A2265, A2236; A2238 7 December 1978.

- 8.1.2 the Australian market for retail supply of electrical goods. Narta members compete in this market with all other retailers of electrical goods.

9 Public benefits of the proposed MAP

- 9.1 The Australian Competition Tribunal (Tribunal) has defined ‘public benefit’ as “anything of value to the community generally, any contribution to the aims pursued by the society including as one of its principal elements (in the context of trade practices legislation) the achievement of the economic goals of efficiency and progress.”
- 9.2 The public benefits that we submit would flow from authorisation of the conduct described are as follows:
- 9.2.1 *Increased retail competition* - Narta members compete against each other and other major retailers in a highly competitive retail market. Narta members are currently less able to compete effectively due to being unable to access some products at launch, or to gain long term access to an exclusive ‘house brand’. The authorisation of the proposed MAP would allow Narta to negotiate such product offers and enhance its member’s competitiveness in the market for retail supply of electrical goods, to the ultimate benefit of the consumer.
- 9.2.2 *Increased consumer choice* - Narta being able to source particular models of product from suppliers or engage new suppliers will sometimes depend upon it being able to commit to its members adopting a consistent advertising message for the product concerned. Authorisation of the MAP will enable Narta to source a wider range of product, including introducing new brands and models to the market, thereby increasing competition and consumer choice. For example - Narta recently entered into an exclusive supply agreement with BEKO (a European manufacturer of electrical goods) which had not previously been represented in Australia or New Zealand. Maintaining exclusivity of this brand and adopting it as a Narta member ‘house’ brand is dependent upon the consistent marketing of these products, as well as achieving minimum sales volumes.
- 9.2.3 *Assisting to maintain the retail supply chain* – As noted above, a number of suppliers have already moved to an ‘agency’ supply model and this appears to be a growing trend. Narta being able to respond the supplier requirements for brand protection by offering a uniform advertising price for key products will assist in preserving the role of retailers in the market who have genuine point of sale price discretion.
- 9.2.4 *Assisting the competitive process and increased consumer welfare* – authorisation of the MAP would represent an extension of the accepted public benefits of collective acquisition, being that it enables retailers to obtain better terms (and price) and to pass this benefit to consumers. The ability to commit to a consistent advertised price would increase Narta’s ability to obtain a larger range of products, on better supply

terms, and ultimately to offer consumers an extended product range at competitive prices.

10 Anti-competitive detriments to the public

10.1 While Narta acknowledges that there is a potential for the fixing of advertising prices to dampen competition, it submits that in the applicable markets this potential would not be realised. This is because of the highly competitive nature of the retail market for electrical goods and the following features of this market:

- 10.1.1 *Selling prices are significantly divorced from advertising prices.* The retail market for electrical goods is highly competitive with large numbers of buyers and sellers. Many retailers, including many Narta members, operate 'price matching' and invitations to negotiate prices as standard policies. In all cases retailers of electrical goods are open to negotiating the final selling price and therefore the advertised price is genuinely seen as no more than an opening offer to sell. As the actual selling price is then negotiated between the retailer and the individual consumer, that selling price will not be either 'fixed, maintained or controlled' by Narta members adopting a uniform advertising price for a particular product.
- 10.1.2 *Advertising prices are compared on-line.* Customers increasingly seek pricing information on-line, whether or not they make an on-line purchase. Narta member's advertised prices will therefore be compared to competitor pricing of like or substitutable goods and the imposition of a MAP by Narta members will not therefore lessen overall retail competition.
- 10.1.3 *Narta will only apply the MAP to a small proportion of goods.* Narta members represent approximate 25% of the market for retail supply of appliances and electronic goods in Australia. Narta estimates that the products for which it is likely to negotiate a supply arrangement including a MAP would constitute approximately 1% of the Australian appliance market. In all instances the products that would be subject to the MAP would have a large number of directly substitutable products available from both Narta members and other retailers, which would not be subject to a MAP. An example of a potential product to which a MAP may be applied would be Samsung LED television consisting of 3 screen sizes. A bulk buy and the ability to provide consistent brand value and execution may provide 3 additional models of choice to the consumer. While these 3 'MAP' models would be exclusive to participating Narta members, they would be additional to the over 20 Samsung television models and all other brands of television available to the Australia consumer. The application of a MAP to one model in a large range of substitutable product would not reduce price competition in the market for supply of such products. In fact it generally would add another model to the range available in Australia, so will both increase consumer choice and competitive pressure on prices.

- 10.1.4 *Narta members will not be required to stock products.* Products subject to a MAP (or indeed any collectively acquired products) are not forced on members. Members do not acquire the products under a Narta collective acquisition arrangement unless they consider them to be a competitive selling proposition.
- 10.1.5 *Need to respond to increased concentration in the electrical supplier market.* Due to the level of competition in the markets for supply of electrical goods globally there has been a reduction in the number of manufacturers of some electrical goods. For example where there were over 36 manufacturers of flat screen panels in 2009, there are now less than half this number, with the following major suppliers having ceased manufacture: Hitachi, Pioneer, Akai, Konica, and Philips. Narta's ability to negotiate with suppliers is reduced as the pool of actual and potential suppliers of particular product shrinks. The ability to apply a MAP to certain goods enhances Narta's ability to negotiate best possible terms with suppliers, but will also assist such a supplier to differentiate itself and remain competitive in the upstream manufacturing/wholesaling market.
- 10.1.6 *Joint advertising of the price for collectively acquired goods is exempt from 'price fixing' liability under s 44ZZRV of the CCA.* Narta members are currently able to jointly advertise the price of goods that they have collectively acquired without being exposed to cartel conduct (price fixing) liability. The anti-competitive detriment that attaches to Narta members independently advertising that same product at the MAP (which arguably may not be exempt 'joint advertising of the price') is negligible.

11 Alternative Scenario (With or without)

- 11.1 If this authorisation is not granted Narta would abandon the concept of the MAP as:
- (a) its members are not prepared to engage in expressly 'joint' advertising with their competitor members; and
 - (b) the risk of potential cartel conduct liability associated with separate member advertising using a MAP is unacceptable to both Narta and its members.
- 11.2 If the conduct is not authorised Narta considers that it would continue to suffer a level of competitive disadvantage *vis a vis* its competitors and therefore be a less effective competitive force in the wholesale acquisition markets. In this highly competitive environment relatively minor competitive disadvantages have become a significant issue and therefore achieving a 'level playing field' with single banner and large corporate group electrical buyers is now more important than ever.
- 11.3 In the absence of an authorisation being granted Narta considers that the ability of its members to compete will continue to be compromised and ultimately some member businesses may fail. Narta members are already under competitive pressure given the current market conditions and former members, like Clive Peeters, have failed in

recent times. If other members were to fail competition in the Australian retail market for electrical goods would be reduced.

12 Conclusion

12.1 Narta submits that any contract arrangement or understanding between its members regarding setting a minimum advertising price of some collectively acquired electrical goods would:

- (a) result, or be likely to result, in benefits to the public, and
- (b) that those benefits would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, from the proposed contract, arrangement or understanding or the proposed provision.



Anzarut & Holm

17 September 2012

Attachment 1



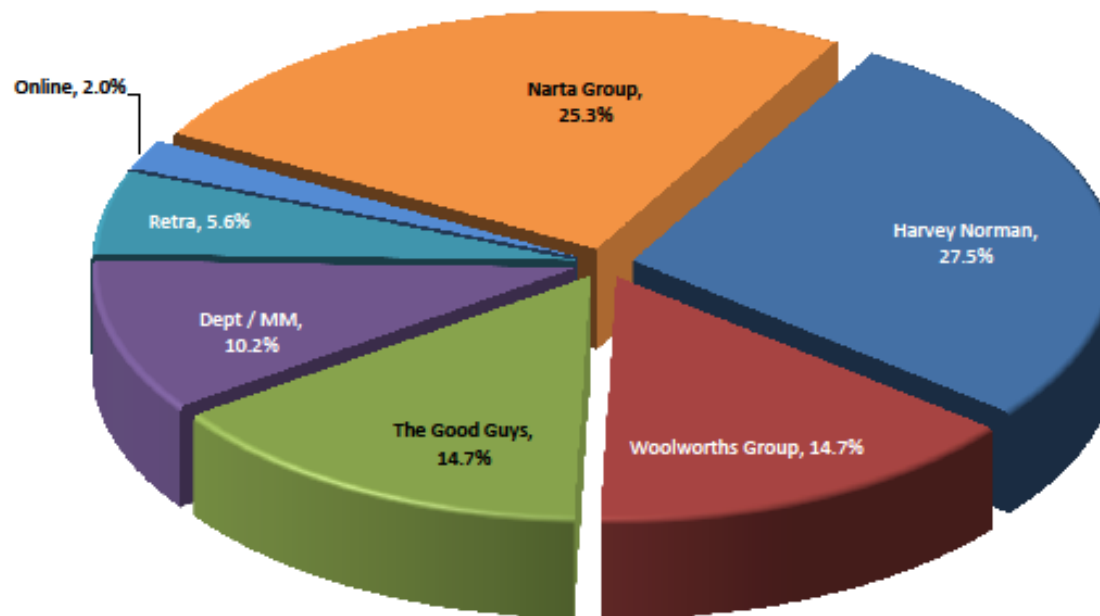
Narta Principals List as at 1 July 2012

Company	Principal	Address	Phone	Fax
1. 2nds World	Peter Hammerman	Support Office Level 2, 237 Military Rd Cremorne NSW 2090	(02) 9909-0100	(02) 9909-0183
2. AIMIA	Edgar Traverso	Level 2, 33 Saunders Street Pyrmont NSW 2009	(02) 9921-5000	(02) 9921-5065
3. Bing Lee	Lionel Lee	PO Box 171 Fairfield NSW 1860	(02) 9728-2000	(02) 9726-6427
4. Bi-Rite Electrical	Abdul Sacur	2936 Logan Road (On Big Gun Strip) Underwood QLD 4119	(07) 3341-9786	(07) 3841-2290
5. BSR Franchising Pty Ltd	Graeme Cunningham	Unit 18/56 Lavarack Avenue EAGLE FARM QLD 4009	(07) 3414 8700	(07) 3414 8799
6. Camberwell Electrics	Hans Vanderstadt	1110 Toorak Road Camberwell VIC 3124	(03) 9809-2222	(03) 9889-4108
7. Coogans Stores	Jon Austin	GPO Box 364D Hobart TAS 7001	(03) 6233-1877	(03) 6233-1886
8. David Jones	Gary Neville	86-108 Castlereagh Street Sydney NSW 2000	(02) 9266-5544	(02) 9267-3895
9. Diamonds Camera Video and Digital	Nicholas Diamantis	165-171 Rundle Street Adelaide, SA 5000	(08) 8224-0665	(08) 8224-0335
10. E & S Trading	Rob Sinclair	234 High Street Ashburton VIC 3147	(03) 9885-6432	(03) 9885-5500
11. Electrical Discounters	Tom Antonio	136 McDouall Stuart Avenue Whyalla SA 5608	(08) 8644-0333	(08) 8644-0375
12. Elite Appliances Hobart	Mark Banovich	133 Bathurst St Hobart TAS 7000	(03) 6231 6633	(03) 6231 6663
13. JB Hi-Fi	Terry Smart Cameron Trainor	Level 4, Office Tower 2, Chadstone Shopping Centre, 1341 Dandenong Road Chadstone VIC 3148	(03) 8530-7303	(03) 9596-0990

Company	Principal	Address	Phone	Fax
14. Kambo's Homemaker Superstore	Peter Kambouris	738 Marshall Road, Malaga WA 6090	(08) 9208 7555	(08) 9208 7500
15. Keith Bowden Electrical	Graeme Bowden	PO Box 65 Melrose Park SA 5039	(08) 8277-2656	(08) 8276-1495
16. Kitchen HQ	Rick Hart	22 King Edward Rd Osborne Park WA 6017	(08) 9205 3000	(08) 9205-3090
17. Michaels Cameras	Peter Michael	269 Elizabeth Street Cnr Lonsdale Street Melbourne VIC 3000	(03) 9672-2222	(03) 9642-0046
18. Mitchell & Brown	Bernard Brown Steve Nanninga	PO Box 201 Geraldton WA 6531	(08) 9965-9965	(08) 9965-9966
19. Nuance Group	Raelene Johnson	17 O'Riordan Street Alexandria NSW 2015	(02) 9384-4662	(02) 9310-2737
20. Radio Rentals Group (SA)	Gavin Hancock	PO Box 87 Prospect SA 5082	(08) 8269-0429	(08) 8269-0328
21. Spartan Electrical	Peter Tsoutouras	PO Box 284 Campbelltown SA 5074	(08) 8365-3555	(08) 8365-0023
22. Status Plus	Ashley Balderson	51 Anderson Street Manunda, Cairns QLD 4870	(07) 4031-2676	(07) 4031-2735
23. Ted's Cameras	James Blythe Nic Peasley	387 City Street South Melbourne VIC 3000	(03) 8779 5651	(03) 9645 5083
24. Thorn Australia	James Marshall Steve Urquhart	PO Box 205 Regents Park NSW 2143	(02) 9423-3079	(02) 9423-3033
25. Videopro	Shane Leaney	37 Eagleview Place, Eagle Farm QLD 4009	(07) 3250-0015	(07) 3325-0010
26. Warehouse Sales	John Wipfli	PO Box 98 Carnegie VIC 3163	(03) 9563-2255	(03) 9563-1240
27. Whitfords of Five Dock	Andrew Whitford	165 Great North Road Five Dock NSW 2046	02 9713 9314	02 9712 3079
28. Wills The Quadrant	Frank Tedeschi	7-11 The Quadrant Mall Launceston TAS 7250	(03) 6331-5688	(03) 6331-2623
29. Winning Appliances	John Winning	PO Box 6829, Silverwater BC 1811	(02) 8767-2300	(02) 9698-4872

Attachment 2

Total Market Retail Value Shares June MAT (FY 11/12)



Source: Narta, Annual Reports,

Attachment 3 – Average advertised price versus average sell price

Category	MODEL	BRAND	Average Advertised	Average Sell	Variance
Side by Side	GCP 197DPSL	LG	\$ 1,501	\$ 1,453.00	-3.2%
Side by Side	WSE 6100WA	Westinghouse	\$ 1,211	\$ 1,165.00	-3.8%
Side by Side	SRS 585HDIS	Samsung	\$ 1,546	\$ 1,393.00	-9.9%
Side by Side	WSE 6100SF	Westinghouse	\$ 1,584	\$ 1,484.00	-6.3%
Side by Side	WSE 6100SA	Westinghouse	\$ 1,598	\$ 1,443.00	-9.7%
French Door	SRF639GDSS	Samsung	\$ 2,554	\$ 2,277.00	-10.8%
French Door	RF610ADUX2	F&P	\$ 2,693	\$ 2,518.00	-6.5%
French Door	SRF579DLS	Samsung	\$ 1,829	\$ 1,687.00	-7.8%
French Door	EHE5107SA	Electrolux	\$ 2,182	\$ 2,063.00	-5.4%
French Door	WHE5100SA	Westinghouse	\$ 1,987	\$ 1,844.00	-7.2%
2 Door Fridge	WTM4200WB	Westinghouse	\$ 875	\$ 861.00	-1.6%
2 Door Fridge	SR215MW	Samsung	\$ 457	\$ 443.00	-3.1%
2 Door Fridge	GN422FW	LG	\$ 747	\$ 735.00	-1.6%
2 Door Fridge	KTM4200WB	Kelvinator	\$ 790	\$ 762.00	-3.5%
2 Door Fridge	WTM2800WB	Westinghouse	\$ 600	\$ 585.00	-2.6%
Front Load Washer	EWF1074	Electrolux	\$ 588	\$ 565.00	-3.8%
Front Load Washer	WAE20262AU	Bosch	\$ 606	\$ 603.00	-0.5%
Front Load Washer	WF8750LSW/1	Samsung	\$ 564	\$ 533.00	-5.5%
Front Load Washer	WD11020D1	LG	\$ 701	\$ 667.00	-4.9%
Front Load Washer	WD13020D	LG	\$ 879	\$ 832.00	-5.3%
Compact Cameras	VR-310 / D-720	Olympus	\$ 149	\$ 125.00	-16.1%
Compact Cameras	CYBER-SHOT DSC-W610	Sony	\$ 134	\$ 126.11	-5.9%
Compact Cameras	ES80	Samsung	\$ 78	\$ 67.20	-13.8%
Compact Cameras	IXUS 220 HS / IXY 410F / POWERSHOT ELPH 300 HS	Canon	\$ 201	\$ 184.80	-8.1%
Compact Cameras	COOLPIX S3300	Nikon	\$ 130	\$ 109.00	-16.1%

Panel TV	KDL40EX720	SONY	\$ 819	\$ 785.63	-4.1%
Panel TV	KDL55EX720	SONY	\$ 1,606	\$ 1,517.75	-5.5%
Panel TV	UA40D6000	SAMSUNG	\$ 797	\$ 748.82	-6.1%
Panel TV	32LV3300	LG	\$ 429	\$ 402.48	-6.2%
Panel TV	THL32C30A	PANASONIC	\$ 410	\$ 394.70	-3.7%
Panel TV	LC60LE630X	SHARP	\$ 1,897	\$ 1,745.63	-8.0%
Panel TV	60PM6700	LG	\$ 1,896	\$ 1,816.18	-4.2%
Panel TV	50PM6700	LG	\$ 1,176	\$ 1,103.27	-6.2%

* Source: As published by April GFK & Commercially Retail Report April 2012