

# ANZARUT & HOLM LAWYERS

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Our ref: Narta001-PRH  
Your ref:

5 December 2012

Richard Chadwick  
General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
Canberra ACT 2601

**By email: [Richard.chadwick@acc.gov.au](mailto:Richard.chadwick@acc.gov.au)>**

Dear Richard,

## **Narta International Pty Ltd Authorisation Application A91335**

I refer to our teleconference of 27 November 2012 and my e-mail to you of 30 November 2012. This letter is to provide a response to the matters discussed.

### **Do Supplier's Place a Premium on the Consistent Marketing of their Products?**

I understand that the ACCC is seeking more evidence of the value placed by major suppliers on the consistent marketing of their products by retailers. I understand that the ACCC has had no substantive responses from suppliers on this issue and therefore considers it has insufficient evidence to support this proposition.

In our submission suppliers not commenting on the position put by Narta cannot be construed as evidence that they disagree with this position. Indeed, from Narta's own discussions with suppliers, we understand that they agree with the position as put in the authorisation application and are in fully in favour of competitive neutrality as between their wholesale customers. I am instructed that the lack of substantive responses from major suppliers is likely to be because they are reluctant to engage with the ACCC on this issue. All major suppliers are well aware that they are prohibited from providing any inducement to a retailer to adopt a specified minimum advertising price and are also reluctant to confirm any 'refusal to deal' on exclusive or new release product.

In recognition of the Commission's desire from more or better evidence on this point Narta has sent a letter to its major suppliers expressly inviting them to confirm or dispute the proposition that the ability of a retailer to offer consistent marketing of their products is an important factor for them in deciding whether or not to supply new release or exclusive product. Please note that these suppliers between them constitute approximately 60% by value of all Narta member purchases. A copy of the template of this letter is **Attachment 1**. To assist in any further enquires the Commission may wish to undertake a list of the senior Australian manager supplier contacts is at **Attachment 2**.

### **Scope of the MAP**

I understand that the Commission remains concerned at the potential for the MAP to be applied more broadly by Narta. In order to address this concern we provide the below table which gives a forecast that **exceeds** the maximum likely application of the MAP in the next 12-18 months and gives projected member sales as a percentage of member sales and of total market in each major product category. Please also note that these forecast product offers would not all exist

simultaneously and that no Narta member will range all products that have a MAP applied. The percentages given are therefore overstated, as they assume that all such products will be stocked.

<b>Products</b>	<b>% of members sales by category</b>	<b>% of total market sales by category</b>
Laundry - 11 Products	8.48%	2.4%
Refrigeration - 18 Products	9%	2.58%
Dishwasher - 13 Products	5.8%	1.6%
Cooking - 20 Products	4.78%	1.3%

We also attach as **Attachment 3** a spread sheet that forecasts possible 'new release' or exclusive product offers only (not including BEKO product), that projects the value of such sales and the percentage they would be of the total category market. Once again this exceeds likely maximum application of the MAP to such product and it is unlikely that all such offers would be ranged by any one Narta member.

As previously stated Narta has no incentive to impose a MAP, except if this is necessary in order to obtain supply of desirable products on behalf of its members. However in order to provide additional certainty regarding the future scope of the application of the MAP Narta is prepared to:

1. Limit the total number of new release models that the MAP will be applied to 5 models at any time in each major product category (Audio Visual/Whitegoods/Cooking). This number is seen as a minimum to allow for a MAP to be applied across various screen sizes of a TV at launch;
2. Limit the maximum period of application of a MAP on these new release product models to maximum of 3 months;
3. Exclude the product categories of Information Technology, Gaming, Car Audio and Software from the MAP; and
4. Provide the Commission with details of the imposition of the MAP at 3 year intervals during any period of authorisation granted, or agree to any other reasonable form of monitoring that the Commission may wish to apply.

#### **The link between advertised price and selling price with member on-line sales.**

I understand that the Commission is concerned regarding the potential for a MAP on products sold on-line to become the sale price, due to a limited ability for the consumer to negotiate price. In response I note that:

1. The on-line advertised price is far from immune from 'point of sale' negotiation. Indeed while only Bing Lee currently offers an express opportunity to make an offer on-line, all on-line retailers provide contact details and commonly receive e-mails/blogs or telephone calls where the consumer asks whether the online advertised price is the 'best price' and seeks to negotiate a lower price. Narta members JB Hi Fi, Betta Electrical, E&S trading have confirmed that this is a common event and that discounts are commonly provided in response to such contact. If the ACCC would like to confirm this the relevant people to contact at these businesses are shown in **Attachment 4**. In this regard I also suggest that if the ACCC were to randomly call electrical retailers as a 'consumer' they would find that most such retailers are open to negotiating (discounting) an on-line advertised price.

2. The proposed MAP is a minimum price and we do not consider that the ACCC should assume that the retailer (whether on-line or bricks and mortar) would adopt the MAP as the advertised price in every instance;
3. The MAP will not prevent members from offering a range of value added offers which effectively means vigorous intra-member non-price competition will continue. These value added services include free delivery, finance, removal of old appliance, bonus product, or an extended product warranty;
4. Narta members are only some of the on line suppliers of electrical goods. The application of the MAP to Narta members will obviously not apply to the advertised price of non Narta members, so even for customers in regional areas inter retailer (on-line) competition will continue. Further any MAP applied by Narta will need to be responsive to the market, if this were not the case Narta members would not stock the product and sales would fall below committed volumes. Any MAP would therefore be subject to change to reflect market conditions.
5. In addition online marketing will only become more sophisticated and targeted, irrespective of whether or not Narta is able to apply a MAP. In particular the development of various targeted discount offers/vouchers targeting the on-line shopper based on their on-line activity will only increase in future. We submit that this is a highly dynamic market and it is highly unlikely that the *status quo* will continue to apply to on-line retailing of electrical goods.

The MAP in our view will greatly assist the long term survival of the independent retailer against the major single banner and multi-national retailers who are becoming increasingly dominant in this space. The Commission will appreciate that in the current market relatively small factors that limit a retailer's ability to compete can have a significant impact. The recent collapse of the Retravision business is illustrative of this fact.

If a further meeting would assist the Commission further my client is willing to meet to discuss.

Yours sincerely



**Paul Holm**  
Director

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

**Attachment 1**  
**(see attached) Narta template Supplier letter**



4 December 2012

[To Supplier]

Delivered by email

Dear [ ]

### **Narta Minimum Advertised Price Authorisation Application**

As you know Narta has applied to the Australian Competition and Consumer Commission (ACCC) for an 'authorisation' that would allow it to specify a minimum advertising price (MAP) to members for certain very limited range of products, including new release and/ or exclusive product. If any such arrangement were authorised by the ACCC it would of course be on the basis that the supplier has no input into the setting of the MAP and it was set unilaterally by Narta management.

The ACCC has been conducting market investigations in order to form a view on whether the proposed conduct would lessen competition and, if it does, whether this lessening of competition is outweighed by public benefit.

Narta's contention is that the ability for it to specify an MAP would assist to negotiate access to new release and/or exclusive product offerings thus:

- improving the competitiveness and adding to the long term viability of the independent retailers who are part of Narta
- offering more choice to the consumer through wider distribution and product availability
- providing a viable alternative for suppliers to launch or make available additional product to the Australian Marketplace.
- To ensure Narta and its members is a viable option to our single branded competitors, providing a coordinated approach delivering your brand requirements.

The ACCC informs us that it has received no substantive submissions from suppliers either in support of or against this proposal and therefore lacks evidence that the ability for Narta to apply a MAP would be of value to your company and assist Narta to better access new release and/or exclusive product.

While I understand that you might not wish to take a public position on this question, if you agree with the proposition:

*that Narta having the ability to offer consistent marketing of new release and/or exclusive product across its member base would be of benefit to your company and a factor that would increase the likelihood of your offering Narta supply of new release and/or exclusive product offerings on an exclusive basis and a consequent benefit to the end consumer*

I am inviting you to respond directly to me, or the ACCC if you would prefer, and indicate your support of this proposal together with any further comments you may wish to make.

I look forward to receiving any comment you may be able to provide.

Yours sincerely

A handwritten signature in black ink that reads "K Spencer". The letter "K" is large and stylized, with a loop at the top. The name "Spencer" is written in a cursive, lowercase style.

**Kay Spencer**  
Executive Chairman

**Attachment 2****Senior Australian manager supplier contacts**

John Brown  
Managing Director  
Electrolux Home Products  
0417 462 128

Mike Church  
Chief Operating Officer  
Fisher & Paykel  
0418 446 003

Mark Tragear  
National Sales Manager  
Bosch Siemens Home Appliances  
0411021173

Andrew Cronin  
General Manager  
Smeg Australia  
0449 613 913

Steve Rust  
Managing Director  
Panasonic Australia  
0400 413 007

Carl Rose  
Managing Director  
Sony Australia Ltd  
0406 404 879

Michael Doyle  
General Manager – Retail  
LG Electronics  
0412 252 890

Michael Richardson  
Vice President Retail Sales & Marketing  
Samsung Electronics  
0412 413 101

Jack Lord  
Acting CEO  
Breville  
0400 454 846

Tom Mitchell  
General Manager Sales & Marketing  
DeLonghi  
0411 866 641

**Attachment 3**  
**(See attached) Spread sheet**

	Category	Models*	Average Sell **	Potential Sales^		Australian Market		
AV Market	Panel TV	3 x Samsung	\$ 1,400.00	2500 \$ 3,500,000.00	\$ 9,850,000	AV Market	\$ 2,864,511,431	0.34%
		2 x LG	\$ 950.00	2000 \$ 1,900,000.00				
		3 x Panasonic	\$ 1,180.00	2500 \$ 2,950,000.00				
	Audio	1 x Panasonic	\$ 1,000.00	1500 \$ 1,500,000.00				
	Refridgeration	2 x Fisher & Paykel	\$ 1,240.00	1800 \$ 2,232,000.00				
2 x Samsung		\$ 1,100.00	1000 \$ 1,100,000.00					
Whitegoods Market	Dishwasher	1 x Bosch	\$ 799.00	2000 \$ 1,598,000.00	\$ 9,715,500.00	Whitegoods Market	\$ 2,232,547,815.54	0.44%
		1 x Smeg	\$ 1,900.00	600 \$ 1,140,000.00				
		1 x LG	\$ 899.00	1000 \$ 899,000.00				
	Front Load Washer	1 x Bosch	\$ 899.00	1500 \$ 1,348,500.00				
1 x Fisher & Paykel		\$ 699.00	2000 \$ 1,398,000.00					
Cooking Market	Cooking Package	1 x Bosch	\$ 2,500.00	600 \$ 1,500,000.00	\$ 3,806,400.00	Cooking Market	\$ 741,042,484.92	0.51%
		1 x Smeg	\$ 3,000.00	500 \$ 1,500,000.00				
	Ovens	3 x Smeg	\$ 1,680.00	480 \$ 806,400.00				

\* Suggested potential exclusive opportunities that could be developed over the next 12-24 months

\*\* Aver Sell Price based on current average sale as well as forecasted positioning in the market

^ - potential sales are based on expectation of unit sales for exclusive opportunities and/or estimates of what capacity Narta has to support these opportunities

**Attachment 4**

**Contact Persons to Discuss Prevalence of On-line Sales Negotiation**

Cameron Trainor  
Merchandise Director  
JB HiFi  
0438 460 038

Mike Sinclair  
Managing Director  
E & S Trading  
0417 561 161

Graeme Cunningham  
CEO  
Betta Stores (BSR Australia Ltd)  
0419 283 545