

Dr Michael Schaper  
Deputy Chairman  
Australian Competition and Consumer Commission

27<sup>th</sup> February 2013

Dear Dr Michael

**NARTA International Pty Ltd Authorisation Application A91335**

I refer to the ACCC's recent draft determination in relation to the application by NARTA to allow it to set a minimum advertising price for certain premium or exclusive products that are collectively acquired by its members.

The Australian Retailers Association (ARA) supports the authorisation application made by NARTA and submits that the ACCC should approve this application in its final decision.

**Reasons for supporting NARTA's Application**

**The importance of a level playing field**

NARTA is a major buying group in the consumer electrical markets and supports a large range of Australian retailers, including a number of smaller electrical goods retailers. The Australian market for retail sale of consumer electrical goods is possibly the most competitive retail market, and ensuring access to products on competitive wholesale terms is therefore critical to the viability of an electrical goods retailer. NARTA performs a crucial role in allowing its member base to access product on comparable wholesale terms to the large corporate retailers such as Wesfarmers, Woolworths as well as single banner buying groups like Harvey Norman and The Good Guys).

ARA understands that in the current wholesale market NARTA is no longer able to source some premium product lines and exclusive products that are being supplied to NARTA member's major retail competitors. NARTA members being limited in their product offering in comparison to their competitors in this market is a significant competitive detriment. Consumers are looking for the new and innovative models and if they consistently do not find these as part of the range offered by members of NARTA, they will then look elsewhere. This can drive a long term loss of 'foot traffic' that can be disastrous for a retailer, particularly smaller retailers already struggling to compete against the majors retailers.

ARA believes that the primary reason for NARTA being unable to access the same range of products that are now being made available to the large corporate and single banner buying groups is that these other retailers enjoy an exemption under s. 44ZZRV of the Competition and Consumer Act for the 'joint advertising' of collectively acquired goods. NARTA members (who trade and advertise separately) fall outside the scope of this exemption. This exemption allows the corporate and major buying groups to guarantee to suppliers that their product will be advertised and marketed consistently, including at a common advertised price set by that retail group.

NARTA is unable to similarly offer suppliers a consistent advertising price and therefore is placed at a significant competitive disadvantage; purely due to the wording of a legislative exemption that I believe was intended to benefit all collective buying groups equally.

#### Lack of competitive detriment

The ARA notes the concerns expressed in the Draft Determination that the authorisation may reduce the competition in retail sale of products to which NARTA applies a minimum advertising price as between:

- electrical goods retailers generally; and
- NARTA member retailers :

As previously noted electrical goods retailing in Australia is a highly competitive market and it is usual for the actual selling price to be the outcome of negotiations between the retailer and customer. Unlike some other retail markets, advertising price does not determine selling price. While the advertising price may be a 'reference price' in any negotiation the selling price will be determined by the retailer's willingness to discount (this in itself is dependent upon various factors specific to that retailer) along with how hard a consumer negotiates.

The ARA considers that the ACCC is assessing the competitive effects of this proposal too narrowly by focusing only on the products to which NARTA will be applying a minimum advertising price. Electrical goods are generally broadly functionally substitutable across a range of models and, even at the premium end of the scale, different brands are substantially substitutable.

By way of example a \$35 DVD player performs the same basic functions as a \$400 Blu Ray DVD player and a \$400 front load washing machine performs the same basic functions as a \$4,000 machine.

It is just the actual and perceived additional features of the product that differ. Any consumer is highly unlikely to be shopping only for a model of a product stocked by a NARTA member that is subject to a minimum advertising price. They will be shopping for the very best deal on a range of product that meets their performance and budgetary requirements. Competition between electrical retailers generally is therefore very unlikely to be effected by NARTA's application of a minimum advertising price to a limited range of high end products, as these will only be one option out of the many that any consumer is likely to be considering.

Similarly I consider that NARTA member retailers will be no less motivated to make a sale and (if necessary) to discount a product, whether or not it is subject to a minimum advertising price. Ultimately whether such a NARTA member retailer loses a sale to another NARTA member retailer, or to a non NARTA member retailer, is of no difference to that retailer. In both cases they have lost the sale and its financial failure or success to their business.

I consider that the ACCC should also consider that, even in a market that for many years has been characterized by uniform price advertising by all corporate and single banner retailers, competition is alive and well. Uniform advertising prices in this market are not static and move in response to market conditions, as do actual selling prices. In the opinion of the ARA as well as my personal opinion competition in this market will not lessen and will continue at a higher level if NARTA and its members are assured of a level playing field in which to continue to operate.

In closing you will remember that I advised you on the phone about a product that I purchased last year from a NARTA member (Bing Lee) I have attached a copy of the invoice for that product a Beko Drying machine the advertised and ticketed price in store on that product was \$1,699, it should be noted that when I asked the price without me asking for any discount, the sales person offered to sell me the machine for \$1,500. It also should be noted that I paid cash for the machine, although I don't believe that the price was dependant on a cash sale. Michael please feel free to call me and discuss any aspect of this matter.

Yours sincerely



Russell Zimmerman

# BING LEE

Sunday  
**CARLINGFORD**

June 17, 2012

10:18 AM  
**CC4FJJ**

Carlingford Court Shop 95a  
801-809 Pennant Hills Road  
Phone: (02) 9872 2877  
website: [www.binglee.com.au](http://www.binglee.com.au)

Created:

Bill To:  
MR RUSSELL ZIMMERMAN  
[REDACTED]  
[REDACTED]  
Phone: [REDACTED]

Deliver To:

[REDACTED]  
[REDACTED]

Qty	Wty	Model	Unit\$	Total\$	Code	Description
1		DPU7360GX	1500.00+	1500.00	SP CC	BEKO 7KG SENSOR HEAT PUMP LCD
Undelivered:				1500.00	(Delivery/Pickup on 170612 from CC )	

NUMBER:215213                      TOTAL:                      .00                      .00                      GST included

PROMOTIONS:

NOTES:

[REDACTED] HOME TEL

## TENDER:

Docket total: 1500.00  
Balance Owing: 1500.00  
TO COLLECT 1500.00

You were served by [REDACTED] (B09)

### Terms of Sale

1. This sale is subject to Bing Lee's Terms of Sale.
2. Please choose goods carefully as returns are subject to Bing Lee's Returns Policy.
3. Special Orders are subject to a 20% deposit and cancellation charges.
4. Information collected about Customers will be kept in accordance with Bing Lee's Privacy Policy.
5. Please retain your original Bing Lee receipt as proof of purchase for claims for return under warranty or guarantee.
6. Copies of Bing Lee's Terms of Sale, Returns Policy and Privacy Policy are available from Bing Lee upon request, are on display in Bing Lee stores and on it's website at [www.binglee.com.au](http://www.binglee.com.au).

### Delivery

Customers wishing to change delivery details must notify the store from which the goods were purchased at least one (1) business day before the scheduled delivery date. Customers must ensure that they are present to accept delivery of goods at the nominated delivery address on the scheduled delivery date. If the customer is not present, an additional delivery charge will be applied if the product needs to be redelivered. To minimise disruption, Bing Lee's contract carriers will contact the Customer on the morning of delivery with an approximate delivery time. The contract carrier, at their sole discretion and only if notified prior will remove the old product being replaced from the customer's property only if they are confident that it can be done in a safe manner with due care and diligence.

Bing Lee Electrics Pty. Limited ABN 61 000 733 488