

ANZARUT & HOLM LAWYERS

Our ref: PH:13/003
Your ref: C2012/840

14 March 2013

Ms Imogen Hartcher-O'Brien
Director
Adjudication Branch
Australian Competition & Consumer Commission
Canberra ACT 2601

By Email: Imogen.Hartcher-O'Brien@accc.gov.au

Dear Imogen

Narta International Pty Ltd Authorisation Application A91335

I refer to our teleconference of 5 March 2013 and subsequent e-mail from your Jasmine Tan. The following is my client's response to the matters raised:

MAP

- 1.1. I have sought further instructions from my client and can confirm that the MAP is intended to be a 'minimum' advertising price only. That is, members will have discretion to advertise a price at or above any MAP set by Narta. This means that the proposed amendments to clause 5.8 of the Member Code of Conduct as notified in the Form B lodged should 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 not advertise at any price less than ~~to use only the~~ any 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'

- 1.1. Please also note that we have deleted the reference to 'premium' electrical goods in an acknowledgment of the Commission's concerns regards the potential scope of the conduct. Narta's focus is upon being able to negotiate access to exclusive model ranges, new products on release, and to maintain exclusivity for BEKO branded product.
- 1.2. Narta intends that the MAP is a genuine floor advertising price. It will not be linked to manufacturer's RRP and will be set based upon current market conditions. Obviously it must be an attractive price to consumers in order to be effective in promoting members' businesses and maximise sales volume. It will also need to be adjusted from time to time to reflect changes in market conditions. It may also vary from region to region, once again to reflect local market considerations. It will therefore not be a static or fixed amount and will be set to meet competition in the relevant market, or a sub-market.

Interaction between bricks and mortar retailing and online retailing

- 2.1. Please find **attached** a further comparison of advertising prices ('off-line' and 'on-line') provided by CMS for each month of 2012 for the top ten products by that month as identified by GfK. You will note that, while this varies month to month, the 'off-line' advertised price is commonly the lower price. We submit that this adds further weight to our submission of 1 March 2013 that the Draft Determination is in error when it states:
 - a) the on-line advertising price, which is often lower than the bricks and mortar advertising price, may be used as a Reference Price for sales at bricks and mortar retailers.' (Para. 80).
- 2.2. We also refer to the Draft Determination's statement at paragraph 75(c)) that the MAP will '...disadvantage online Narta retailers who do not discount from advertising prices [...] and reduce the competitive constraint that they impose on other Narta retailers.' Please note that there are no Narta members who are purely online. Narta members can be divided into two categories:
 - Those that operate on-line under the same trading name as their bricks and mortar stores (e.g. David Jones, Bing Lee, JB HiFi,); and
 - Those that trade under a distinct name, but still operate as part of a brick and mortar business (e.g. Appliances On-line/Big Brown Box owned by Winnings, 'Price Pirate' and 'Cheapbargains.com.au' owned by Betta Electrical; 'The Electrical Discounter' owned by BuyRite and 'Savvyappliances.com.au', owned by Seconds World.
- 2.3. In the case of the Narta members that operate under the same trading name both 'on' and 'off' line, it should also be noted that their on-line and off-line advertising prices usually the same. JB HiFi's website is an example of this, where the store web-site gives the option of going to the 'on-line store' to purchase the promoted products. A member having a separate trading name for their on-line offering obviously gives them the capacity to have distinct pricing, but it does not follow that those prices are necessarily lower than their 'bricks and mortar' advertising of the same product.
- 2.4. Narta member's online businesses are operated to complement the member's total business and do not play the role that is postulated in the Draft Determination. This is recognised in the attached article where the CEO the Winnings CTO states: 'We want the online and offline experience to merge.' Narta therefore repeats its prior submission that on-line selling of electrical goods is not a distinct and primary generator of competitive tension in this market.
- 2.5. The Commission should also note that many major suppliers include in their trading terms a condition that the customer must have a 'brick and mortar' presence in the market. This means that any 'pure' on-line sellers of electrical goods are commonly offering parallel imported product, no name or home brand product, or only have a limited range. 'Kogan.com.au' is an example of such an on-line retailer, where the products offered are commonly branded 'Kogan'.

On-line negotiation

- 3.1. As noted Narta disagrees with the Commission's statement in the Draft Determination that 'Selling prices offered through on-line retailers are rarely negotiated'. Its reasons for disputing this finding are:
 - a) The conclusion fails to recognise that on-line and bricks and mortar may be 2 faces of the same retailer. Where the on-line business and brick & mortar businesses operate under the same trading name the on-line advertised price of goods offered will usually be identical and may be complemented by an online version of the retailer's 'bricks and mortar' current catalogue. To a great extent the on-line presence of such retailers is a feeder to their bricks and mortar outlets and some retailers may even expressly state "Come in-store for the best price' (Winnings appliances quoted in **attached** article).
 - b) Negotiation is not a process that is limited face to face or verbal conferring on price. Negotiation is a two way communication and may or may not end in a sale (agreement).
 - c) A retailer makes an initial offer to sell a product by advertising that product, regardless of the media. A person wished to purchase that product can respond to that offer in a number of ways, all of which can be seem as constituting or concluding a 'negotiation'. These responses can include:
 - i) clicking to basket' and buying at the advertised price;
 - ii) visiting a bricks and mortar store to negotiate a lower price in person;
 - iii) ringing the (usually toll free) number that is prominently displayed on most on-line retailers websites and negotiating a lower price "Call us now – we are here!" (Appliances On-Line); "Questions? Ring us" (Price Pirate) 'Speak to our friendly service team today' (Cheapbargains.com.au), 'Need Help? Call 1300...' (Savvy appliances.com.au);
 - iv) e-mail or use on-line blogs to seek a lower price. 'Live Chat Online' (Bing Lee); 'Chat now' (Harvey Norman); 'The Good Blog' (The Good Guys).
- 3.2. A retailer can also initiate further contact, or an improved price offer. An example of this includes the various special or 'Hot deal' offers that are common to on-line retailers websites, but also includes specific discount offers such as 'Save 2% Now – Learn How' (Price Pirate), which has a link that gives a promotional discount code to apply if paying by bank transfer, or "Like us on Facebook for 'fan' discounts' (Appliances On-line).
- 3.3. A retailer may use various approaches to seek that the customer provides contact details to enable it to make more targeted offers. "Like Us on Facebook' (Appliances Online); 'Join our mailing list to access our secret treasure' (Price Pirate); 'Join the Kogan community for exclusive access to even more deals, specials and competitions by Liking us on Facebook and Following us'; Subscribe & Save (to our Newsletter) (Savvyappliances.com.au). Most such online sites now have a 'get connected' offer which is linked to various types of social media.
- 3.4. In addition some on-line retailers have web tools that detect when a customer does not complete a purchase and can respond with an improved price or discount offer at a later date. [See attached article ' Winnings CTO Talks Online Cannibalization & why 'Conversations' are vital']

- 3.5. In our submission this activity all forms part of the 'negotiation' of price for a promoted product and, as noted previously, does result in a level of discounting even of a 'pure' on-line sales transaction.

Narta Membership Criteria

- 4.1. Clause 8 of the confidential Narta *Code of Conduct* provided to the Commission contains the current requirements for Narta membership. Substantially these relate to the prospective members having the financial credentials to meet the member obligations outlined in the Code and to meet supplier's credit expectations.
- 4.2. As discussed, Narta has recently arranged for former Retravision members businesses to join an existing member buying group, specifically the BSR Group (Betta Electrical). This was in order to provide the benefits of Narta's competitive supply terms to businesses that otherwise did not meet the financial thresholds for Narta membership.

Yours sincerely



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Director

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Encl

APPLIANCES / KITCHEN

Winning The Retail War

By Oonagh Reidy | Tuesday | 05/03/2013

Who says bricks and mortar is dead?

Retailer Winnings Appliances is winning the retail war, it appears, as it recently opened a new showroom in Brisbane's Indooroopilly - the former Ron Handley Retravisision store.

As Winnings opened the Brisbane CBD store last month we caught up with CEO David Crane who says the new shop achieved "impressive sales and high levels of traffic."

Sitting just outside of the Brisbane CBD, Indooroopilly is Winnings' second Queensland showroom, stocking more than 50 appliance brands including Westinghouse, SMEG, Miele, Electrolux and Fisher & Paykel, as well as exclusive names such as Sub-Zero and Wolf.

Winnings' new showroom has boosted the retailer's trading significantly.

"The Indooroopilly showroom is located in a prime location, which we believe will complement our Fortitude Valley showroom boosting our presence in the Queensland market" Crane told CN.

It recently held a 'Grand Opening sale,' chopping 25% off appliances, which Crane said generated impressive sales and high levels of footfall.

Winnings has said its strategy is for consumers to "go offline and buy online" - that is browse online and come into its strategically located showrooms (a total of nine in NSW and Qld).

And by luring online customers into showrooms with the "come in-store for the best price" offer on Winnings Appliances site, and free delivery on items purchased on Appliance Online, the retail giant, which also owns Brown Box and and Handy Crew, appears to have all corners (and consumers) covered.

However, when asked if any new showrooms were planned, Crane said: "there are no immediate plans to expand, however we are always looking for the right opportunities."

Read: Winnings CTO Talks Online Cannibalization

The appliance giant also hopes its new Qld showroom will be a "beacon" for clients building or renovating kitchens.

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By Oonagh Reidy | Tuesday | 05/03/2013

Winnings is going hard on the commercial and building clients and says the Indooroopilly showroom is "currently supplying a number of projects in this area and working on securing more as the year progresses," says State manager for Commercial division David McGrath.

"We believe that there is quite a bit of positivity entering the market and we are well situated to take advantage of that."

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Exclusive: Winnings CTO Talks Online Cannibalization & Why 'Conversations' Are Vital

By Oonagh Reidy | Tuesday | 05/02/2013

As Simon Smith, Winnings' new CTO takes the reins he talks to Channel News about the webstore of the future and why instore and online is fast becoming the one.

Ex News Digital CIO Smith knows his stuff with over 20 years experience in IT and has worked for AAPT, Omnilab Media Group, and recently as the Digital Technology Consultant for Sydney Airport.

Smith started his role at Winnings just two weeks ago, and is currently creating a strategic plan for Winnings retail group, which includes Winning Appliances, Appliances Online, Big Brown Box and Handy Crew, websites and nine showrooms.

There are 30-35 personnel in Winnings' IT division.

"It's an organisation that relies on technology" he says, and its multiple e-commerce websites are updated "multiple times a day."

However, it's not all online, Winnings has a 'state-of-the-art' appliance showroom in Redfern, showing the import of bricks and mortar to the overall customer experience.

"We want the online and offline experience to merge" says Smith, and encourage customers to "go offline and buy online."

Winnings' online operation is around 8 years old, while its bricks and mortar store has been there since 1906. But technology around personalisation and communication is where it's going, says Smith.

"Amazon do it really well ...a tailored experience [online] is key. People are expecting more in relation to customer experience."

"If we have [customer] information, then we can tailor content, emails, Twitter and Facebook 'conversations' that are relevant to them. Such customer information would also allow us "get information to the customer that is time-based and context based."

"There is a lot of technology around targeting" and 'conversations' can be based on seasonality; there's new systems that can base algorithms around customers' propensity to buy, whether its Christmas, birthdays. "You can then make scenarios around that and generate emails around what customer might buy."

Also, there are other web tools like detecting when a customer fails to complete a purchase.

However, "we want to be able to track the customer without stalking them" Winnings' CTO notes, and this is possible only if you can gain consumer consent.

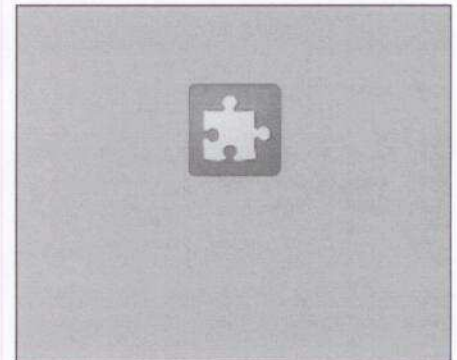
So, what will the webstore of 2018 look like?

"The sky's the limit...five years is a long time."

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Exclusive: Winnings CTO Talks Online Cannibalization & Why 'Conversations' Are Vital

By Oonagh Reidy | Tuesday | 05/02/2013

"Appliance Online does the web extremely well and is growing year on year. It's not [a case of] "us and them", says Smith or that online is taking from bricks and mortar, it's a mutual effort.

However, "there is cannibalisation of online from offline," he admits, but says "if we make the experience better and more integrated then we get results".

But there are still some things bricks and mortar stores have that digital doesn't - like exclusive in store brands. And like the webstore, the instore experience is also getting a digital makeover.

"It's also about how we get additional information in store, compared to just the info available online" and alludes to about digital instore displays.

"That's where innovation and leading edge technology comes into play" such as using 3D images of fridges and using technology like AR.

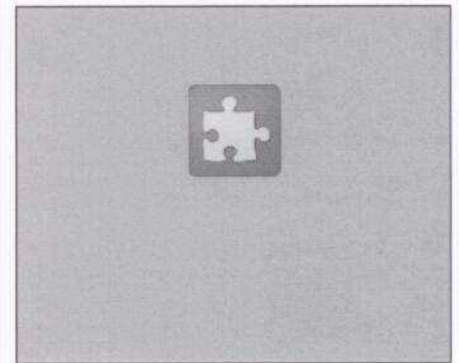
Roll on 2018, then.

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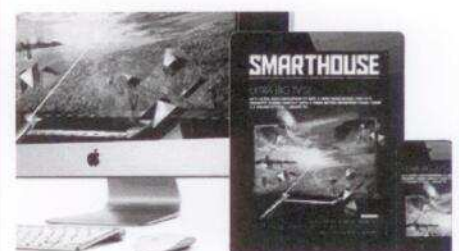
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