

# **Australian Competition & Consumer Commission**

## **Minutes**

of the

### **PRE-DECISION CONFERENCE**

in relation to

**Application for authorisation A91335  
lodged by Narta International Pty Ltd**

held on

**15 February 2013**

The information and submissions contained in this minute are not intended to be a verbatim record of the pre-determination conference but a record of the discussions sufficient to set out the matters raised by the persons participating in the conference, as required by section 90A(8) of the *Competition and Consumer Act 2010* (Cth). A copy of this document will be placed on the ACCC's public register.

**Pre-Decision Conference:  
Applications for authorisation A91335  
lodged by Narta International Pty Ltd**

Friday, 15 February 2013

Venue: ACCC Sydney Office Tamworth meeting room, Level 20, 175 Pitt Street, Sydney

**Attendees:**

*Australian Competition and Consumer Commission*

Jill Walker, Commissioner

Michael Schaper, Commissioner

Richard Chadwick, General Manager, Adjudication Branch

Imogen Hartcher-O'Brien, Acting Director, Adjudication Branch

Jasmine Tan, Acting Assistant Director, Adjudication Branch

Tanya Hobbs, Senior Project Officer, Adjudication Branch

Tuyen Tran, Graduate Officer, Adjudication Branch

Caroline Gill, Acting Principal Lawyer

Linley Johnson, Economic Advisor

*Narta International Pty Ltd*

Kay Spencer, Managing Director

Michael Jackson, Chief Operating Officer

Peter Walker, Director (and, in a separate capacity, CEO of Radio Rentals)

Lionel Lee, Director (and, in a separate capacity, CEO of Bing Lee)

Paul Holm, legal advisor to Narta and Director, Anzarut & Holm Lawyers

*E&S Trading Co. (Discounts) Pty Ltd*

Greg Lake, General Manager

*BEKO A & NZ Pty Ltd*

Michael Goadby, Managing Director

Conference commenced: 10.30am AEDST

**Commissioner Walker** welcomed attendees, made some introductory remarks outlining the purpose of the conference and procedures to be followed at the conference, declared the pre-decision conference open, and invited Narta International Pty Ltd, the party that called the conference, to make an opening statement.<sup>1</sup>

**Ms Kay Spencer** (Managing Director, Narta International Pty Ltd (**Narta**)) raised the following matters:

- The purpose of Narta calling the conference was to raise concerns from their members about the ongoing competitiveness of their businesses and why they believed they were disadvantaged in the market without a Minimum Advertised Price (MAP).
- Applying a MAP completes a full marketing package for the supplier, and allows Narta to be competitive against other national retailers who can apply a MAP because of their business structures.
- Lack of a MAP is a consistent block in Narta's ability to access exclusive products, launches and range. It places Narta at a competitive disadvantage in the retail market.
- Clarified that a MAP would not apply to total product range, but only to a small segment of new products and exclusive products. Product launches and exclusive periods are vital to increasing customer traffic.
- Products almost never sell at the product's advertised price.

**Commissioner Walker** sought clarification as to why a MAP is required now when it has not been required previously.

**Mr Michael Jackson** (Chief Operating Officer, Narta) made the following comments:

Current market conditions have changed and retailers are now doing it tough:

- In comparison to the last decade, suppliers have been announcing losses in the present market and it has been tough for everyone. For the past 2 years suppliers have been focusing more on branding than they have in the previous 15 years.
- There has been a trend for suppliers to enter an agency model. Two years ago there was only one supplier operating under an agency model (Miele) in the market, now there are many (e.g. AG, Electrolux etc). The reason for this trend is because an agency model legally allows the supplier to have brand consistency, from brand execution to price.
- Supplier investment in research and development has led to suppliers challenging Narta's 'brand value' and total marketing presentation. This puts Narta at a disadvantage to the single banner buying groups because those groups can jointly advertise, including

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<sup>1</sup> A copy of Commissioner Walker's introductory remarks may be obtained from the ACCC's website: [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister).

in relation to price, without breaching the *Competition and Consumer Act*. A MAP will fill the one gap in Narta's retail offering.

- These changes have affected the way that Narta and its members have been doing business with suppliers. The concept of a MAP began with Narta's conversation with suppliers, as a MAP would provide the solution to total brand marketing and consistency.

MAP delivers total brand marketing and a consistent brand message:

- Suppliers want Narta to give them *total* brand marketing, that is, the inclusion of components such as in-store product training, investment in the product (e.g. floor space, displays) etc., as well as, price consistency for brand positioning. As consumers are researching products in greater detail than before, suppliers consider it to be important that consumers are not confused about price in relation to a particular product's brand positioning.
- Although suppliers are reluctant to talk about pricing for legal reasons, it was clear in Narta's discussions that total marketing strategy included price for brand positioning. Suppliers enquired about Narta's authorisation application and indicated that the outcome was important for a consistent brand message.
- Prior to the ACCC's draft determination, Narta management followed up with suppliers to negotiate in relation to a number of exclusive product launches, premium product access and product range. After the ACCC released its preliminary draft determination to oppose a MAP by Narta, suppliers understood the decision to be a 'no' and this changed what suppliers would offer to Narta. It resulted in Narta losing the opportunity to obtain exclusive deals for models that it had previously been negotiating on.

In response, **Commissioner Walker**:

- asked how suppliers decisions not to give Narta members access to exclusive products is related to the of a lack of a MAP
- noted that each of Narta's members has their own advertising, with each retail group having a different look and feel. and asked whether this might explain suppliers' decisions, rather than the lack of MAP.

In response, **Michael Jackson** made the following comments:

- Narta believes that as a consequence of the ACCC's draft determination, suppliers have withdrawn opportunities for exclusive arrangements and product launches from Narta (examples cited). The reason is not just because of a MAP alone, but a MAP is the only element remaining for total execution of the brand. The outcome is that suppliers are favouring single banner buying groups (such as The Good Guys, Harvey Norman etc.), Narta's major retail competitors, because they can offer total branding execution through their 'one banner' advantage, and thus deliver a consistent brand message on price.
- The inability of Narta to similarly offer suppliers a MAP (which is the only missing piece of Narta's total brand execution) causes disadvantage to Narta as a competitor in the retail market.
- Narta provided a copy of a letter from one of Narta's advertising agencies who had heard of the draft determination and wished to highlight the importance of a MAP in total brand positioning.

Lack of a MAP therefore causes competitive detriment to Narta members and consequently consumers will be disadvantaged:

- Suppliers seek retailers who can offer total branding execution, including a MAP, which single banner buying groups can provide.
- The lack of MAP means that Narta are unable to access the same range of products or exclusive product launches from suppliers in comparison to their competitors in the market.
- It is increasingly the case that consumers are researching products and product range. If consumers consistently find that Narta retailers lack availability, exclusivity and choice of products, this can drive long term loss of 'foot traffic', causing detriment to Narta members, in particular the viability and survival of Narta's smaller retailers (Retravision example cited).
- Unlike national buying groups that have one banner (Harvey Norman or the Good Guys) who cover one market segment, Narta covers many market segments over a large geographical area. Ultimately, there will be a shrinking of brands and less retail choice for consumers.

**Commissioner Schaper** made the following comments:

- While it may be that consumer negotiation over price occurs, consumers do not always realise that prices are negotiable.

**Mr Lionel Lee** (Director, Narta, and CEO, Bing Lee) raised the following matters:

- Noted that all advertised prices are negotiable and that they were not asking for a fixed price. He drew attention to the problems he had with a supplier. Prior to Narta asking for authorisation of a MAP, conversations about an exclusive range from that supplier were occurring. After the ACCC draft determination was made, the supplier has instead favoured those retailers under a national banner, offering their exclusives to national retailers (such as Harvey Norman), causing smaller independent retailers to be disadvantaged.
- In relation to a MAP, Bing Lee's catch-cry is that 'everything is negotiable'. Negotiation is how the business was built. The MAP would only be a starting guide on a limited range of products and would not disadvantage the consumer; it would only advantage national franchise retailers who can offer a MAP. Smaller independent retailers are doing it tough, having less choice for consumers as suppliers pull out.
- Suppliers are taking an agency model approach (e.g. the Apple model) and seeking to have retailers follow set margins.
- Mr Lee then asked what the ACCC's biggest concern was in relation to having a MAP on a product.

In response, **Commissioner Walker** noted:

- As set out in the draft determination, one of the major issues for the ACCC is how the MAP will affect actual selling prices.

In response, **Paul Holm** (legal advisor to Narta and Director, Anzarut & Holm Lawyers) made the following comment (after Commissioner Walker exercised her discretion to allow him to be heard):

- The problem is that Narta will no longer have access to potential MAP products but these products will still go to Narta's competitors who can set consistent prices for those products. The consumer will then be in the same position anyway.

**Mr Peter Walker** (Director, Narta, and CEO, Radio Rentals) made the following comments:

- Explained that a MAP was about achieving a level playing field with other retailers. The current market is tight with suppliers driving the market.
- From a suppliers' point of view, it is easier to supply to Harvey Norman who can provide advertising under a single banner. To make more money suppliers are bringing in fewer products and supply to national single banner groups (Harvey Norman or the Good Guys). Narta members now have less product offerings.
- Retailers have to give suppliers comfort that they will provide an overall marketing package to keep up brand positioning. MAP is part of the whole package and acts as a perception point for value.

**Mr Greg Lake** (General Manager, E&S Trading Co. (Discounts) Pty Ltd) supported Narta's opening statement and noted:

- That there is almost no relationship between MAP to sell price as the retail industry is ferociously competitive, consumers almost always negotiate. The use of a MAP would be a mechanism to attract suppliers.

In response, **Commissioner Walker** asked what determines the level of retailer discounting when negotiating with a particular customer.

- In relation to negotiation of sale price with a customer, what determines the level of retailer discounting?

In response, **Greg Lake** made the following comments:

- The end factor of sale price is determined by competition, what the consumer is prepared to pay, how the consumers negotiate and the retailer's position in relation to a sale. Consumers have the ability to negotiate price in store and online.
- Lack of a MAP causes suppliers to favour single banner buying groups. The application of a MAP achieves a level playing field with single banner buying groups.

**Mr Michael Goadby** (Managing Director BEKO A & NZ Pty Ltd) raised the following matters:

- Explained that suppliers do not talk about price because of legal issues.
- In difficult economic conditions with products that have very small margins, suppliers must find avenues that are competitive but profitable.
- Marketing is key to being competitive. There are 2 options available, 1) agency or 2) a national retailer that can offer a MAP.

- Agency allows a supplier to position their product with no influence from a dealer. A national retailer offering a MAP ensures brand positioning and is cheaper for a supplier.

**Paul Holm** raised the following matters:

- Stated that it is recognised that the ACCC has an issue with suppliers who would not talk about price. However price is important and is monitored throughout the whole supply chain. The reality is that suppliers would like to dictate MAP and Selling price and the only reason that they will not volunteer that statement is because it is illegal. It is a part of competition and the way that a product is positioned with a retailer is critical.

**Commissioner Walker** provided the following information in closing the conference:

- parties may provide further submissions by 22 February on the issues raised, or any other issues, for consideration by the ACCC. Parties can seek an extension of time for these submissions if necessary;
- the ACCC has taken into account all submissions received to date, and will continue to do so;
- Commissioner Walker outlined the statutory process in relation to the ACCC making a final determination following the pre-determination conference.
- Commissioner Walker noted that ACCC staff will prepare a summary of the day's proceedings for the public register.

Commissioner Walker then closed the conference.

Conference closed: 12.11pm AEDST