

Our ref: PH:14/290
Your ref:

27 November 2014

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

By Email: adjudication@accc.gov.au

Dear Dr Chadwick

MPA MPA Magazine Distribution Code

I act for the Association of Magazine Publishers of Australia Inc. (MPA).

The MPA applies for authorisation pursuant to section 88 of the Competition and Consumer Act 2010 (Cth) in relation to the undertaking of a Pilot to test and refine proposed changes to magazine distribution arrangements.

I enclose:

- Application Form A;
- Annexures A, B and C to the Form A; and
- a payment report showing an EFT to the ACCC Administration Receipts Account for the filing fee of \$7,500.

Level 7, 46 Market Street Sydney 2000
PO Box 66 QVB Sydney NSW 1230

telephone 02 9261 2704
facsimile 02 9261 2558

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Holm', with a small flourish at the end.

Paul Holm
Director

Direct Line: 02 9261 2702
Email: Paul.Holm@ahlaw.com.au

Encl.

Form A

Commonwealth of Australia

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

EXCLUSIONARY PROVISIONS AND ASSOCIATED 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 and 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 and 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, where a provision of the proposed contract, arrangement or understanding would be, or might 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 where the provision is, or may be, an exclusionary provision 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)

A91472

The Association of Magazine Publishers of Australia Inc. (MPA).

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

The MPA represents major Australian publishers of consumer, cover-priced and nationally distributed magazines. The MPA's charter is to:

- Maintain a strong, influential industry voice that promotes the vitality and innovation of the magazine industry, to the advertising and marketing communities, the press and the public.
- To enhance the perception of magazines as a communication channel, one that enjoys personal and powerful connections with audiences, providing a highly effective environment for advertisers.
- Provides thought leadership as a catalyst for industry growth.
- Promotes the value and benefits of magazine content, audiences and advertising across all platforms.

Its members are:

- Bauer Media Pty Ltd
- News Corporation Limited (NewsLifeMedia, formerly News Magazines)
- Pacific Magazines Pty Ltd

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

c/o Paul Holm,
Andrews & Holm lawyers
Level 7, 46 Market Street
Sydney NSW 2000

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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)

The MPA, its members and Gordon & Gotch intend enter into a contract, arrangement or understanding under which they will agree to implement various limitations upon the distribution of magazines to approximately 20 selected newsagents for a period of 3-6 months. This will be conducted as part of a pilot program to test and refine proposed changes to the current magazine distribution model (Pilot). A more detailed description of the Pilot is at **Attachment A** to this form.

The MPA requested its members identify suitable newsagency participants for participation in the Pilot. The MPA has reviewed this list and identified a number of potential Pilot Participants. The MPA intends to approach the stores in this list to request that they participate in the Pilot, with the objective of securing 20 suitable newsagencies.

Details of the proposed limitations to be introduced for magazine distribution to these 20 participating newsagents for the duration of the Pilot are at **Annexure B** to this form.

The longer term aim of the Pilot is to assist in the promulgation and implementation of a Distribution Code of Conduct (Code). The Code will have as one of its objectives optimising the supply of magazines to newsagencies generally and, ultimately, increasing the sustainable return on investment for newsagents, publishers and distributors.

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- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:
(Refer to direction 4)

Relevantly Bauer Media Pty Ltd (through its magazine distribution division Network Services) and Gordon & Gotch would be agreeing to both uniformly apply the proposed limitations at Annexure B to the distribution of magazines to Pilot participant newsagents. The MPA and its members would be parties to this arrangement

As part of the Pilot both Network Services and Gordon & Gotch will be agreeing to:

1. refuse to supply, or limit or restrict, magazine distribution services supplied to publishers with respect to participating newsagents, except in accordance with the Pilot terms (possible exclusionary provision);
2. prevent, restrict or limit the supply of magazines to participating newsagents in accordance with the Pilot terms (possible exclusionary provision);
3. restrict their outputs in the supply chain in accordance with the Pilot terms (possible cartel provision).

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

Magazine distribution services.

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

The applicants propose to commence the Pilot by not later than April 2015 and for it to be completed by October 2015. In order to accommodate this timing and any changes in the schedule, the authorisation is sought for a period of 12 months from the date it is granted.

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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:

Bauer Media Pty Ltd – Magazine publisher and printed media distributor (Network Services).

54-58 Park St
 Sydney NSW 2000
 T: (02) 9282 8000

NewsLifeMedia (News Corporation Limited) –Magazine publisher.

Level 1, 2 Holt St
Surry Hills, 2010 NSW
T +61 2 9288 3000

Pacific Magazines Pty Ltd - Magazine publisher.

8 Central Avenue
Eveleigh NSW 2015
Tel: (02) 9394 2000
ABN: 160 97410 896; and

Gordon & Gotch Australia Pty Ltd – Printed media distributor.

26 Rodborough Road
Frenchs Forest NSW 2086

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- (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.....
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4. Public benefit claims

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

The MPA is seeking to reform the current magazine distribution model in order to optimise the supply of magazines to newsagents and to assist newsagents to more efficiently manage the magazine category. A necessary precursor to any such industry wide reform of magazine distribution is a Pilot of proposed changes directed at refining those changes and also measuring their effect.

The Pilot will also be a ‘proof of concept’ that will assist in getting necessary stakeholder support for an industry wide Code of Conduct which, if this is subsequently agreed, is proposed to apply generally across the Australian magazine publication and distribution industries.

The MPA’s reasoning for the need for a collective solution to be devised to achieve these objectives is provided at **Annexure C** to this form.

The MPA submits that the proposed Code of Conduct will result in an improvement in the commercial viability of newsagencies, by reducing their business costs while increasing magazine sales. It will also assist the consumer by helping to ensure that the magazines that they are seeking are being offered for sale at their local newsagent.

Arresting the current decline in the newsagency channel will assist magazine publishers by maintaining or increasing sales through this sales channel and therefore assist with maintaining the viability of hard copy magazine publication.

The MPA submits that the public benefits of the proposed Code of Conduct can only be realised if the Pilot is first conducted. Therefore the public benefits of any Code of Conduct apply equally to the Pilot.

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

The Australian Newsagents Federation (ANF) and individual newsagents have reported over supply of magazines for many years, including in complaints to the ACCC. This oversupply is understood to cause newsagents to incur:

- additional labour costs in managing category, including arranging returns;
- freight costs for returns;
- cash flow issues, due to being charged up front for titles and not reimbursed until returns are processed.

Optimising supply as proposed will avoid these additional costs at the newsagency level and assist to improve newsagencies commercial viability.

In order to limit the cash flow issues associated with the 'sale or return' model many newsagents are engaging in indiscriminate early returns, sometimes without even offering the product for sale. Optimising supply and addressing cash flow issues will enable newsagents to implement more effective marketing and sales techniques for the magazine category.

Newsagents becoming more engaged in the magazine category will result in better category management and improved access to titles for consumers.

More efficient distribution (where supply more closely matches demand) will improve the effectiveness of the supply chain, the retail experience for consumers and improve magazine sales.

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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)

The distribution of magazines to newsagencies in Australia.

Network Services and Gordon & Gotch are the 2 largest providers of these services in Australia, however a number of other smaller distributors operate in this market. This includes Integrated Publication Solutions (IPS) a wholly owned subsidiary of Fairfax Media Ltd. The Pilot will however be limited to Network Services and Gordon & Gotch.

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6. Public detriments

- (a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, 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)

The Pilot will be limited in scope and time and will not result in any detriment to the public.

However, if the Pilot results in the adoption of a national Code of Conduct, the proposed changes will reduce the number of magazines distributed to more closely match actual demand. If this occurs distributor revenue is likely to decline. This reduction is likely to be recouped from publishers in subsequent negotiated increases in distribution charges. Ultimately, if these increased distribution costs are not covered by increased magazine sales, publishers may seek to recover this cost in the cover price of the magazine. In this regard we note that any Code of Conduct will not be implemented without itself being first authorised by the ACCC.

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

The logistics and economics of the changes to the distribution model are to be tested by the Pilot and this will allow greater detail to be provided in the context of any further authorisation application for a resulting Distribution Code of Conduct.

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7. Contracts, arrangements or understandings in similar terms

- (a) 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:

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

No.

- (c) 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)

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- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:
(Refer to direction 10)

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- (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:

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

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

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9. Further information

(a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

Paul Holm

Andrews & Holm Lawyers

PO Box 66 QVB

Sydney NSW 1230

.....
Dated 27 November 2004

Signed ~~by~~ on behalf of the applicant

.....
(Signature)

PAUL RUTHERFORD HOLM.
(Full Name)

Andrews & Holm Lawyers.
(Organisation)

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 their 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 authorisation is sought.
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, exclusionary provisions. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions.

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 application for authorisation.
 8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide 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.
10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and 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.

Annexure A

Description of Pilot Program

The Pilot program will require a group of 20 newsagents across Australia. Newsagents will be a national cross section, so as to include all store types, in all regions. These variables sought for the Pilot group include:

- Rationality; metro, country.
- Store turnover; small and large.
- Merchandiser frequency, if at all.
- POS systems used.
- Magazine pocket count.
- Use of technology e.g. XchangeIT (newsagent electronic data interchange (EDI)).
- Agent classification; full service, retail only. (Distribution Agents are not included in the Pilot.)

Objectives

The Pilot program will test the proposed changes to the magazine distribution model and seek to develop and implement a clear business plan for the newsagent magazine category that delivers an increased and sustainable return on investment for newsagents, publishers and distributors.

Key objectives in the development and implementation of the business plan are:

Category profitability

- Determining the most cost-effective process of delivering, selling and returning magazines for newsagents, publishers and distributors and quantifying the financial implications of changing the current model.
- Identify and develop simple processes to reduce magazine cost and provide improvements to time management and productivity.
- Validate the business success measures of the proposed Code of Conduct (Distribution limitations).

Category relevancy

- Implementation of category management guidelines that demonstrate clearly how magazine layout, retail layout and category adjacencies can deliver better newsagency return on investment (sales and profit).
- Demonstrating the potential return on investment obtained by magazine category management and the key significance of magazines as a customer sales driver.

Channel relevancy

- Identify the core skills a newsagent requires to manage the magazine category effectively.
- Identify the level of newsagency support (merchandising and communication) required to sustain plan.
- Provide key learnings and simplify educational content to develop effective newsagent business building toolkit.

The outcome of achieving these objectives will be the building of an improved and more sustainable newsagency channel for the future.

The key measures of success for each key objective area are as follows -

Category profitability - improved magazine business returns through distribution model changes

- Increased sales and profit of magazine category for newsagents, publishers and distributors
- Improved cash flow for newsagents
- Improved magazine category management
- Improved newsagent magazine category performance relative to other retail channels

Category relevancy - improved customer attractiveness

- Increased sales and profit of magazine category for newsagents, publishers and distributors
- Primary sales position at front of store in high foot traffic area
- Significantly improved perception of magazine category contribution to newsagent business
- Maintenance of successful category performance post-pilot

Channel relevancy - improved customer attractiveness

- Improved magazine category presentation
- Customer defined magazine ranging
- Improved foot traffic through magazine category area
- Increased magazine impulse sales

Key measures

Key measures for the pilot are as follows:

Measure	Source of data	Outline	Success indicators
Sales	Distributor reporting system/ Retailer POS	By Implementing each rule outlined in the distribution	Either an increase in sales across the newsagent channel or reversing the

		limitations document, one of the main objectives is to increase unit sales within each newsagent in turn improving the desirability of the magazine category for retailers	current trends of a declining market and maintain current sales volumes
Sales efficiency	Distributor Enterprise Resource Planning (ERP) system	The % difference between copies distributed and copies returned under the sale or return model	Ensuring minimum sell through rates to ensure retailers have enough stock to sell based on previous sales history and also provides enough additional copies for incremental sales opportunities. Improved retailer cash flow management through the reduction in initial outlay and returns
Consecutive nil sale	Distributor ERP/Retailer POS	Where the entire initial distribution is returned	Distributors utilise additional data sources to reduce the instances of nil sale to determine that a product is not suitable to an outlet and ensure no further distribution of that product
Full copy returns	Distributor ERP	Where a publisher requires any unsold copies of a magazine to be returned to the distributor	Diminishing publisher requests for full copy returns and where requests are made it is at minimal cost to the retailer. Improvement to this will involve geographically tailored solutions
Early returns	Distributor ERP	Where a retailer returns copies of a magazine prior to the recall date (recall determined by the publisher)	For product to be displayed on shelf and available for sale for the full length of the sale period. This can be measured by flagging returns that occur prior to the recall date
Redistributions	Distributor ERP/Retailer POS	Where a publisher sends a product into stores that have received the product in the	Redistributed stock does not mislead consumers or inhibit the sale of current product or encumber negative cash

		past	flow implications within the category for the retailer
New title launches	Distributor ERP/Retailer scan	A title which is brand new to the market. E.g. issue 1	Agents are aware of new product and display appropriately at launch; EDI is used to determine initial allocations until sales pattern is established; agents have ability to pre-opt out of specific sub-categories e.g. part works, calendars, adult titles
Delayed Billing	Distributor ERP	Where a product is distributed but not charged for within that billing month	Product over an extended shelf life (e.g. 12 weeks) OR over a high value (e.g. \$30) is automatically delay billed and the newsagent is clearly informed
Maximum shelf life	Distributor ERP/Retailer POS	Where a product recall is set to an agreed maximum length	Product life span set to a level that does not inhibit its sale or encumber negative cash flow implications within the category for the retailer
Split deliveries	Distributor ERP/Retailer scan data	Where a product is distributed over more than one delivery	A second or subsequent delivery only being made if stock has depleted to a point where additional stock is required. Basing the subsequent distribution on initial sales for the issue will allow higher sales efficiencies and minimise sell outs

Key requirements

Prior to the launch of the pilot there are a number of key elements that will need to be reviewed and addressed:

ITEM	ACTION
Current sales efficiencies/range review	<ul style="list-style-type: none">• Store sales data, correlated against distributor data, to be reviewed to set an optimal magazine range baseline along with the appropriate allocation levels
Magazine relay	<ul style="list-style-type: none">• Stores to have the magazine category relayed to current MPA guidelines
Point of sale	<ul style="list-style-type: none">• Stores to be provided with existing MPA Category Header cards
Merchandiser training	<ul style="list-style-type: none">• Where services available, merchandisers to have relevant activation tasks for these outlets
Call centre	<ul style="list-style-type: none">• Distributor call centres to be briefed to ensure Pilot customers can activate items within Code of Conduct as required
Store training	<ul style="list-style-type: none">• Newsagents to be trained on parameters of the proposed Code of Conduct
Processes and procedures	<ul style="list-style-type: none">• Manuals to be developed for trial for newsagents, merchandisers and distributor call centre operators
Agent sign up	<ul style="list-style-type: none">• Develop most effective information and sign up process e.g. a one on one meeting direct with store or group sessions where possible

Annexure B

Limitations on the distribution of magazines to be trialled during the Pilot.

Part 1 – Definitions

The following words have the following meanings:

Closed means, in relation to an Issue, the final date at which a Distributor accepts returns by a Retailer of copies of that Issue, as determined by the Distributor.

Distributor means a person engaged in the business of distribution of Titles.

Early Returns means the return by a Retailer of a copy of an Issue to a Distributor, in the case of:

- a) a weekly, fortnightly or monthly Title, during the On-sale Period; and
- b) any other Title, within 30 days from the On-sale Date.

Full Copy Returns means:

- a) the process by which a Retailer returns an entire copy of an Issue to the Distributor; or
- b) the entire copy of any such returned Issue,

as the context requires.

Issue means an issue of a Title.

Launch Issue means the first issue of a New Title.

Mastheads means headers, the front cover or the barcode of a copy of an Issue that have been excised from the copy of the Issue.

New Title means any Title that has not previously been distributed to Retailers.

On-sale Date means, in respect of an Issue, the date, determined by the relevant Distributor, on which the Issue is first made available for sale to consumers by Retailers.

On-sale Period means, in respect of an Issue, the period commencing on On-sale Date and ending on the Recall Date.

Partwork means a Title released as a series of collectable and related Issues over a finite period of time.

Recall Date means, in respect of an Issue, the date, determined by the relevant Distributor, on which the Issue is required to be withdrawn from sale to consumers by Retailers.

Redistribute means the distribution to Retailers of an Issue that has previously distributed and recalled (using refurbished Full Copy Returns or mint copies of the Issue).

Retailer means a newsagency, supermarket, convenience store or other retailer to which Titles are delivered by a Distributor as a regular distribution channel.

Sales Efficiency means the total number of copies of an Issue sold by Retailers expressed as a percentage of the total number of copies of the Issue distributed to Retailers [averaged over, in the case of:

- a) a weekly Title, four consecutive Issues;
- b) a fortnightly or monthly Title, three consecutive Issues; and
- c) any other Title, two consecutive Issues.]

Split Deliveries means the distribution of an Issue by more than one delivery of copies of the Issue to Retailers during the On-sale Period.

Title means a magazine or similar periodical and, for the avoidance of doubt, excludes books.

Part 2 – Distribution Rules

1. *Minimum Sales Efficiency*

A Distributor will ensure that no Title has a Sales Efficiency of less than the minimum Sales Efficiency set out in the table below.

Distribution quantity per Issue	Minimum Sales Efficiency
>..30,000 copies	55%
20,000 copies – 30,000 copies	50%
10,000 copies – 20,000 copies	45%
1,000 copies - 10,000 copies	35%
< 1,000 copies	25%

2. *Consecutive Nil Sales*

A Distributor will cease to distribute a Title to a Retailer for a minimum of 12 months if the Title has experienced consecutive nil sales at that Retailer for, in the case of:

- a) a weekly Title, six consecutive Issues;
- b) a fortnightly or monthly Title, four consecutive Issues; and
- c) any other Titles, two consecutive Issues.

3. *Returns*

A Distributor will not require Retailers to provide Full Copy Returns, except in relation to Partworks.

A Distributor may require that Retailers provide, at the Retailers' expense, Mastheads as evidence of unsold copies of an Issue and may require that Retailers:

- a) package such Mastheads separately from any permitted Full Copy Returns; and
- b) clearly mark packages containing Mastheads or Full Copy Returns as 'Mastheads' or 'Full Copy Returns', as applicable.

4. *Early Returns*

A Distributor will not be required to accept Early Returns from Retailers, except where such Early Return is made by a Retailer to correct an error in allocations quantity.

5. *Redistributions – Packs & singles*

A Distributor will not Redistribute an Issue on more than once occasion.

If a Distributor Redistributes an Issue, the Distributor will ensure that:

- a) the prior distribution of the Issue has Closed;
- b) at the date of the Redistribution, less than 12 months has elapsed since the Recall Date applicable to the first distribution of the Issue;
- c) the number of copies of the Issue provided to a Retailer is less than the number of copies provided to that Retailer as part of the first distribution of the Issue (unless the first distribution of the Issue was a sell-out at that Retailer); and
- d) the On-sale Period for the Redistributed copies of the Issue is no more than three months.

If a Distributor Redistributes an Issue, the Distributor will use reasonable endeavours to ensure that:

- a) the Issue does contain cover offers that have expired; and
- b) if the Issue is bagged and no current Issue is included (e.g. a “Value Pack” of two old Issues), this is clearly communicated to consumers on the packaging.

6. *New Titles*

For each launch of a New Title, a Distributor will ensure that:

- a) each Retailer receives notification of the launch prior to the On-sale Date for the Launch Issue; and
- b) the number of copies of the Launch Issue distributed to each Retailer is determined reasonably having regard to the total print run of the Launch Issue and the average sales of 1 or more equivalent Titles (provided that a Distributor may distribute at least 2 copies of the Launch Issue to each Retailer).

For Issues of a New Title subsequent to the Launch Issue, a Distributor will, to the extent such data is available, use EDI sales data to determine the appropriate number of copies of those Issues to be distributed to each Retailer until a regular sales pattern for the New Title is established.

7. *Maximum shelf life*

A Distributor will ensure that the On-sale Period for an Issue does not exceed twelve weeks unless at least two of the following are applied to the Issue:

- a) Delayed billing, being a process whereby the distributor invoices the newsagent one month after the initial on sale date if the on sale period for that Issue exceeds 12 weeks. Invoicing would then be delayed a further month for each additional month the Issue is on sale;

- b) Retailers are offered an extra sales margin for sales of the Issue on top of the standard sales margin normally paid by that Distributor to Retailers; and
- c) Split Deliveries.

8. *Split Deliveries*

A Distributor may utilise Split Deliveries for an Issue.

If a Distributor utilises Split Deliveries, the Distributor will ensure that:

- a) to the extent such data is available, the Distributor uses EDI sales data to determine the appropriate number of copies of the Issue to be delivered to each Retailer for the second or subsequent deliveries; and
- b) based on the rate of sales, if a Retailer has sufficient copies of the Issue available for sale to consumers, then a second or subsequent delivery should does not occur.

Annexure C

MPA Submission as to why the proposed collective activity is necessary to achieve the claimed public benefits.

The MPA submits that the inefficiencies that exist in the current magazine distribution model cannot be addressed without collective action. The barriers to these changes occurring as a result of unilateral action are a function of the market structure and the market characteristics as described below:

Market Participants/Structure

Publishers

1. There are approximately 500 publishers supplying product into the Australian market, with the majority of these being overseas publishers. There are low barriers to entry to this market and it is not difficult to set up publication of a magazine, provided only that you have sufficient capital to fund the printing and distribution.
2. Relevantly, the marginal cost for a publisher of printing additional copies of a magazine is low. There is therefore little incentive to publish fewer copies in a print run than those that might conceivably be sold. Further, there is also an economic incentive for a publisher to redistribute returned product. For example if a title can be printed for 40c and then distributed across the newsagency channel for a cost of 30c per copy, returned and repackaged (as necessary) for another 25c and then redistributed to the same channel for another 30c, then a cover price of \$3 would give scope for a publisher to profit from such a redistribution.
3. The MPA represents the 3 largest Australian publishers. The MPA members represent approximately 63% of magazine sales revenue and 7% of number of titles. MPA members have an estimated average sales efficiency of 67%, while all other publishers have an estimated sales efficiency of 41% (percentage of magazines distributed, versus those sold).
4. Domestic publishers have contracts with distributors that require the distributor to distribute all product supplied and pays them an agreed fee for each copy distributed. Overseas publishers commonly have contracts with distributors that require distribution of all products supplied and pay based upon number of copies sold and an agreed percentage of the cover price.

Distributors

5. Distributors have the ability to recommend to a publisher the number of magazines to be distributed, but little ability to enforce such a recommendation. In addition, as they are remunerated by the number of copies distributed (or redistributed), they have a commercial incentive to act for as many publishers as they can and to fully distribute (and to some extent redistribute) all product as supplied by those publishers.

Newsagents

6. Newsagents incur costs related to any oversupply of product (number of titles or numbers of a title) including:
 - Labour costs in managing category, including arranging returns;

- freight costs for returns;
 - Cash flow issues due to being charged up front for titles and not reimbursed until returns are processed.
7. As a consequence of these time and cost requirements newsagents have become increasingly disengaged in the magazine sector. This includes their engaging in conduct such as indiscriminate early returns of magazines. This is damaging to publishers (and also ultimately to the newsagents) who are losing out on sales due to product not being properly managed at the retail level.

Proposed Solution

8. The MPA is proposing a staged solution that involves 3 parts or 'pillars': These are:

Pillar 1: *Code of Conduct* - Addressing category profitability at newsagency level by implementing agreed limitations on distribution of magazines based upon targeted minimum sales efficiency;

Pillar 2: *Channel Engagement* - a campaign of education and engagement of newsagents to revive interest in the category;

Pillar 3: *Retail Skills* – focussing on engaging and training newsagents on category management and efficient operation of the category.

9. Pillar 1 is proposed to include introducing limits upon distribution of magazines based upon:

- minimum sales efficiencies;
- Ceasing to distribute titles after an agreed number of consecutive nil sales;
- Reducing requirements for Full Copy Returns;
- Limiting early returns
- Limiting redistributions; and
- Limiting maximum shelf life term, except in circumstances where the newsagent is compensated by delayed billing and/or extra sales margins.

Need for Collective Solution

10. It is the MPA's belief, supported by the Australian Newsagency Federation input, that newsagents will not engage in the proposed Channel Engagement and Retail Skilling processes (Pillars 2&3) unless they first see that product oversupply is being effectively addressed.

11. However any single distributor who elected to limit their distribution in the manner proposed (Pillar 1) would immediately risk losing publishers to other distributors who do not impose similar restrictions on distribution. No single distributor will therefore unilaterally adopt the proposed limits on distribution, as this is likely to result in significant loss of customers (publishers) to competitors and a massive loss of revenue.

12. While the MPA members are supportive of the proposal, they only represent a small proportion of magazine titles available in Australia. Their limiting their own distribution of product (which already has the highest sales efficiency) would not address the oversupply issue as it is experienced by newsagents

13. The key to addressing the oversupply issue at the retail level is therefore for the major distributors to agree to simultaneously implement the proposed MPA Code of Conduct. The issue that then arises is that those distributors will be collectively implementing an arrangement that will substantially reduce their revenue, as current estimates of the effect of the implementation of the proposed Code of Conduct will be to remove approximately 11 million copies from the supply chain. This will require that distributors to renegotiate distribution charges with publishers.
14. Publishers are only likely to agree to any such increase in distribution charges if they can see improvements in the newsagency channel performance, both an increase of magazine sales and an arrest in the decline in the numbers of newsagencies. As noted above, these are the target outcomes of Pillars 2 and 3, which cannot be achieved until the oversupply issue has first been addressed. To an extent therefore the industry faces a 'Catch 22' situation in that each aspect of the programme will only be successfully implemented if the other aspect precedes it.
15. The current proposal is therefore to run a pilot (or proof of concept) of Pillar 1 in order to refine the proposed limitations on distribution and to demonstrate to newsagents that this can successfully control the oversupply issue. It will also be necessary to trial the Channel Engagement process (Pillar 2 & 3) in order to demonstrate to publishers (who are likely to face higher distribution charges) that improved management of the channel will result in increased sales efficiencies and will restore and maintain the viability of this sales channel.
16. The conduct that is sought to be authorised is to implement a limited Pilot of the proposed limitations on magazine distribution. This will involve Network Services and Gordon & Gotch (with the support of MPA member publishers) agreeing to limit the supply of distribution services in a manner designed to increase supply chain efficiencies and to reduce oversupply of product at newsagency level, as is outlined above.
17. Subject to the Pilot being viewed as successful by stakeholders, it is intended that the limitations on distribution that are being trialled be rolled out nationally as part of an agreed industry Code of Conduct.