

Spier Consulting - Legal

**4 Waller Cres, Campbell, ACT, Australia 2612
02 62812030- 0419 239 755
spierconsulting@netspeed.com.au**

Further submission to ACCC on “interested” party comments on ANF application for authorisation (A91407) for collective bargaining with suppliers.

newsXpress.

The Applicant has previously indicated that it will delete this party from the target list. There are instances where collective bargaining might be appropriate but clearly Mr Fletcher of newsXpress is not amenable to such arrangements.

Tower Systems.

As it is clear that Mr Fletcher of Tower Systems does not wish to be involved in any collective bargaining with ANF the Applicant propose that this party be deleted from the target list.

The Applicant feels that Mr Fletcher may misunderstand what the authorisation entails, it does not force collective bargaining, it simply facilitates.

The Applicant also fail to see how ANF is in competition with Tower, as Mr Fletcher claims.

Shopping Centre Council of Australia. (SCCA)

The Applicant is at a bit at a loss to respond to this one. The SCCA was not in the list of targets submitted, many of its members were.

Again, like others, the SCCA seems to miss the purpose of the authorisation.

The Applicant notes that SCCA appears to adopt a collective bargaining stance on behalf of all its members. The Applicant is not aware that the SCCA has authorisation for collective bargaining on behalf of its members.

Some SCCA members have expressed support for the authorisation. Yet there is this submission from SCCA opposing the application on behalf of all SCCA members.

The Applicant submits that those in the list should individually express a view and not the SCCA. Should individual members express some concern ANF will, off course, consider whether to delete them from the list.

Newsagents are at the mercy of landlords and assistance from the ANF will be of considerable benefit where appropriate. Increasingly newsagents are not Australian born and lack understanding all of the commercial realities. ANF can represent them in that regard. Both individually and collectively.

The following are some specific comments on the SCCA letter,

- The ANF would primarily seek to negotiate on behalf of those newsagents with landlords on an individual basis and not with the SCCA.
- Despite what SCCA says, there is homogeneity between newsagents, issues such as termination conditions, fit outs, relativity with larger retailers in relation to leasing terms and conditions.
- There is an ongoing need to educate landlords as to the newsagents need to diversify categories sold within their business to ensure retail relevance, increased margin and consequently ongoing survival in this highly competitive market. Retail leases often restrict tenants to sell only what has previously been regarded as their normal line of product and therefore limit the newsagents' ability to adapt in these changing times. This will require education and ongoing discussion between the newsagents association and landlords and acceptance of this change by shopping centre landlords will expedite general acceptance by other landlords.
- The collective bargaining process is voluntary and there will be differences between landlords and newsagents.
- It is accepted that there will be differences between large non newsagency tenants and newsagents as tenants. However it is often a mystery to newsagents as to the difference. Individually they are powerless to pursue these issues but not collectively.
- Newsagents are often frustrated with their dealings with landlords despite retail tenancy laws and collective dealings via ANF may overcome some of this.

- The SCCA is “disappointed in the generalised nature of the response by ANF in relation to terms and conditions” In the view of the ANF. the terms and conditions have to be general initially but will no doubt be refined by experience where collective bargaining occurs. The SCCA response casts doubt as to whether that will occur, The SCCA letter is almost a call to a collective boycott in relation to what is essentially a system of better communication in relation to commercial dealings, including contracts.
- The SCCA states that a large proportion of newsagents are outside shopping centres. That is probably correct but some who are currently not in a shopping centre may seek to rent premises in such a centre. Further collective bargaining at any point in time will not necessarily involve all ANF members but will involve a sufficient number to make collective bargaining of value to ANF members and often the target.
- SCCA states that the application would put ANF members at an advantageous position to non ANF members. Any newsagent can join ANF and further benefits flowing out of negotiations by ANF are likely to flow to non ANF members.
- If SCCA is of the view that some in the ‘commercial landlord’ category are not appropriate targets the ANF will consider dropping them from the list.
- The Applicants see no detriments flowing from the collective bargaining voluntary process. Landlords will still have the upper hand.
- SCCA state that they have no issue with the ANF assisting individual members on a case by case basis. That will still be the norm but there will be situations where issues involve a number of newsagents and the ANF will act on a collective basis. At the moment such action is at risk.
- ANF is particularly likely to seek collective negotiations with the large national or regional landlords. There is a fine line between acting for individual newsagents and several newsagents in a commercial sense but a major difference in a competition law context.

On behalf of the Applicant, ANF.

31 MARCH 2014

