

SHOPPING CENTRE

COUNCIL OF AUSTRALIA

18 June 2014

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Dr Chadwick,

A91407 – Australian Newsagents Federation - Submission

The Shopping Centre Council of Australia would like to address two matters which arose at the Pre-Decision Conference on 6 June 2014.

The first is the ANF's admission that it has no specific matters on which it proposes to bargain collectively with SCCA members. I refer to Mr Maccino's comments recorded in the Minutes (second paragraph on page 4) that the ANF did not wish to bargain on rents but had in mind bargaining on "broader conditions in leases", such as 'permitted use' clauses. (As noted at the Conference, 'permitted use' clauses obviously can't be negotiated collectively since they depend on the particular circumstances and the specific lease provisions of every other tenant in each individual shopping centre). I refer also to Ms Nugent's comments recorded in the third paragraph on the same page and in the sixth paragraph on page 6 that "if the ANF discussions progress to the point where the parties wish to engage in collective bargaining they should be able to do so without interruptions while the ANF seeks authorisation."

We repeat our argument that that collective bargaining authorisations should not be a matter of handing organisations such as the ANF a 'blank cheque' to negotiate on matters until it finds something which it regards as being worthy of collective negotiation. We firmly reject Ms Nugent's argument cited above. The authorisation process of the *Competition and Consumer Act* should not be seen as an inconvenience. The provisions are designed to ensure that parties do not agree to arrangements that contravene the competition provisions of the Act unless the ACCC has made an assessment of whether there is a public benefit and whether that public benefit outweighs any possible public detriment. This assessment is obviously not possible with the 'blank cheque' approach requested by the ANF. The ACCC cannot make an assessment of public benefits and public detriments when it has no knowledge of which matters the ANF might 'land on' after it begins (authorised) collective negotiations.

For the same reason we reject the argument you made in closing the Conference that the ACCC "has been flexible in about the scope of the conduct authorised." If this has been the approach of the ACCC we firmly believe this is wrong and do not understand how this can be consistent with the ACCC's obligations under section 90 of the Act. This was certainly not the approach which the ACCC took in its Determination on 21 May 2014 in the application by the Victorian Association of Newsagents to authorise collective bargaining with Tattersalls and Intralot (A91399).

Second, we do not support the approach 'floated' by Commissioner Jill Walker at the Conference (fourth paragraph of page 5). We believe this would be even more of a 'blank cheque' approach than is currently proposed by the ANF. Once again we fail to understand how this approach is consistent with the ACCC's obligations under section 90 of the Act.

ABN 41 116 804 310

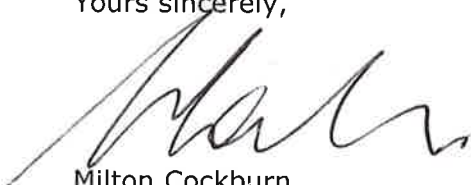
Shopping Centre Council of Australia Limited
Level 1 11 Barrack Street Sydney NSW 2000

Telephone: +612 9033 1902 ~ Facsimile: +612 9033 1976 ~ www.scca.org.au

We repeat the assurance we gave at the Conference. If the primary objective of the ANF is to "assist shopping centres in understanding changes occurring to newsagent businesses and how these changes might affect shopping centres" (Mr Maccino, second paragraph on page 4) , the SCCA would be very happy to facilitate these discussions. As we stated at the Conference, we have recently done a similar thing with the Pharmacy Guild of Australia in relation to changes to the PBS and, in particular, the impact of price disclosure on pharmacy businesses. We met with the executives of the Guild in Canberra, distributed Guild material to the SCCA Board of Directors and, with the approval of the Board, have offered our assistance to the Guild to arrange individual briefings with the heads of leasing of major SCCA members. There was no need for the Guild to lodge a collective bargaining application in order for this to occur.

In conclusion, we find no comfort in the ACCC's finding that our members "may elect not to participate in the collective bargaining by the ANF" since collective bargaining arrangements are voluntary. Our concern is that this could expose our members to public criticism of being uncooperative or obstructionist. We believe it creates a very poor precedent for the ACCC to authorise collective bargaining when so little information has been provided by the ANF on how such collective bargaining would occur and no information at all on the matters which it proposes to be the subject of bargaining.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Milton Cockburn', written in a cursive style.

Milton Cockburn
Executive Director