



Australian
Competition &
Consumer
Commission

Draft Determination and interim authorisation

Application for authorisation lodged by

Association of Magazine Publishers of Australia Inc

to

conduct a pilot program designed
to address an oversupply of
magazines to newsagents

Date: 12 March 2015

Authorisation number: A91472

Commissioners: Sims
Rickard
Schaper
Court
Featherston
Walker

Summary

The ACCC proposes to grant authorisation for one year to the Association of Magazine Publishers of Australia (MPA) to enable a pilot program to test the effectiveness of a proposed approach to address an industry wide problem of oversupply of magazines to newsagents.

The ACCC will seek submissions in relation to this draft determination before making its final decision.

To enable the pilot programme to commence in April 2015, as proposed by the MPA, the ACCC grants interim authorisation commencing 1 April 2015. The ACCC may reconsider interim authorisation when making its final determination.

The application for authorisation

1. On 27 November 2014 the Association of Magazine Publishers of Australia Inc (the **MPA**) applied for authorisation. The MPA is seeking authorisation for one year to conduct a pilot program designed to address a problem of oversupply of magazines to newsagents (the **pilot**).
2. For the term of the pilot, members of the MPA and magazine distributors - Network Services and Gordon & Gotch - will agree to uniformly apply certain limitations on the distribution of magazines to pilot participant newsagents. The proposed limitations are set out in full at **Annexure A**. In summary, the participating distributors and publishers agree to:
 - cease distributing a title if the magazine title has experienced consecutive nil sales by the particular pilot participant for a period of time
 - limit the number of copies of each magazine title to a certain percentage above the number of the title generally sold by the pilot participant
 - in most cases not require pilot participants to provide returns of full copies of unsold magazines, but instead accept front covers, headers etc. as evidence of unsold copies
 - adhere to certain restrictions on the redistribution of issues which have previously been distributed and returned by newsagents, to the distribution of new magazine titles, and to split deliveries of magazine issues during the period the issue is on sale
 - impose a cap on the period for which distributors can require pilot participants to display magazine issues for sale, except in circumstances where the newsagent is compensated by delayed billing and/or extra sales margins.

(the Proposed Conduct)
3. Approximately 20 newsagents, representing a national cross-section of all store types and all regions, will participate in the pilot for a period of 3-6 months commencing in April 2015.

4. The aim of the pilot program is to test the arrangements prior to the development and implementation of a national Distribution Code of Conduct intended to optimise the supply of magazines to newsagencies. The MPA advises that the results of the pilot will be used to refine the arrangements and measure their effect prior to implementing them as part of an industry wide reform of magazine distribution which will take the form of a Code of Conduct to apply generally across the Australian magazine publication and distribution sectors. The MPA advises it also intends the pilot to prove the concept of the changes to the industry to assist in getting stakeholder support for the wider industry reforms.

Background

5. The MPA represents the three largest Australian publishers of consumer, cover-priced and nationally distributed magazines. Its members are Bauer Media Pty Ltd, News Corporation Limited and Pacific Magazines Pty Ltd. The MPA members represent approximately 63% of magazine sales by revenue and 7% by number of titles.
6. Network Services (the distribution division of Bauer Media Pty Ltd) and Gordon & Gotch Australia Pty Ltd (**Gordon & Gotch**) are the two largest magazine distributors in Australia, distributing 170 million and 190 million copies of magazines respectively through retail outlets and direct subscriptions. Other distributors include Integrated Publications Solutions, a wholly owned subsidiary of Fairfax Media Ltd, which is not involved in the arrangements at the pilot stage.
7. The pilot will test proposed distribution arrangements intended to address inefficiencies in the supply of magazines to newsagencies by reducing the number of magazines distributed to more closely match actual demand.
8. The MPA advises that the marginal cost for a publisher of printing additional copies of a magazine is low relative to the cover price. As a result, the ACCC understands publishers have an incentive to distribute to newsagents many more copies of an issue than are likely to be sold, so as to avoid losing sales in case of a sudden increase in demand for a particular title and to increase their visibility and shelf space exposure to consumers. In addition, the relatively low cost of distributing magazines means there is an incentive for a publisher to redistribute unsold copies of magazines which have been returned by newsagents.
9. As a result of the publishers' incentives described above, contracts between domestic publishers and distributors generally result in distributors being paid according to the number of copies distributed to newsagents rather than the number of copies sold. Therefore distributors have a commercial incentive to act for as many publishers as possible and to fully distribute (and to some extent redistribute) all magazines that are supplied by those publishers.
10. The ACCC is aware that newsagents have reported problems caused by the oversupply of magazines for at least the past 10 years. The ACCC understands that each distributor in Australia distributes certain bestselling 'masthead' magazines which newsagents need to stock, as well as a considerably larger number of less popular titles, and that newsagents are supplied with mastheads on condition that they also stock and display less popular titles. Newsagents generally incur the costs related to any oversupply of magazines in the form of labour costs, freight costs for returns, and cash flow issues due to being charged up front for most titles and not reimbursed until returns are processed.

11. As most newsagencies are small businesses, the ACCC understands that the problems of oversupply can create complexities in managing magazines as a product category, which may lead to inefficiencies in the marketing and sales of magazines by newsagents. For example, given the large volume of unwanted magazines newsagents are supplied, the space available and the cost of displaying and repacking copies a newsagent may simply opt to return some magazines without offering them for sale. This may include titles for which there is, or would be, a demand in their area and may result in newsagencies being unable to supply consumers with the range of titles they are seeking.
12. The ACCC understands that the sale of hardcopy magazines through the newsagency distribution channel has been in decline for a number of years. The MPA submits that this is due in part to the increasing disengagement of newsagents with the magazine category, who have instead favoured other product categories.
13. The MPA submits that a wider program of reform, which includes education and training for newsagents to improve category management and to increase the interest of newsagents in the magazine category, is needed. This will improve the efficiency of newsagents' management of magazines with the ultimate aim of increasing sales of magazines through newsagents. However, based on discussions with the ANF, the MPA considers that newsagents will not engage in education or training processes until they see that the oversupply issue is being addressed by distributors and publishers.

Relevant previous authorisations

14. The ACCC has authorised various arrangements permitting collective negotiations by newsagency associations, on behalf of their members, with magazine publishers and distributors.
15. For example, the Australian Newsagency Federation Ltd (ANF) has been authorised since 2004 to negotiate with magazine publishers and distributors.¹ The authorisations have enabled collective negotiations over variable commissions and/or supply terms for shelf life, supply allocations, carrying of non-core product, subscription delivery, returns policy, terms of supply and rights of termination.
16. In addition, in July 2014 the Victorian Association for Newsagents was granted authorisation (A91426) for a period of 10 years to allow it to negotiate on behalf of its members with publishers and distributors of magazines.

Consultation

17. The ACCC invited submissions from 15 interested parties, including newsagents' industry associations, publishers, distributors, and relevant government bodies, seeking comment on the application for authorisation. Two submissions were received in response.
18. The ANF strongly supports the application, and hopes it will deliver benefits in the form of cost savings for all parties in the publication and distribution chain, by managing problems caused by the current oversupply of magazines. The ANF

¹ See A90804, A91134 and A91407. Note A90804 (April 2004) included the QNF; and A91407 (August 2014) did not include negotiations with magazine publishers.

requested the ACCC consider granting interim authorisation to the arrangements to allow the pilot to commence in April 2015 as proposed by the MPA.

19. The Small Business Development Corporation of Western Australia (**SBDC**) submits that the arrangements have the potential to create fairer relationships within the magazine distribution chain.
20. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

ACCC assessment

21. The ACCC's assessment of the Proposed Conduct is in accordance with the relevant net public benefit tests² contained in the *Competition and Consumer Act 2010* (the **CCA**).
22. In its assessment of the application the ACCC has taken into account:
 - the application and submissions received from the applicant and interested parties;³
 - other relevant information available to the ACCC, including information from consideration of previous matters;⁴
 - the relevant areas of competition likely to be affected by the Proposed Conduct, particularly competition in the publication, distribution and retail of magazines in Australia;
 - the one year authorisation period requested; and
 - the scope of the Proposed Conduct, being a 3 - 6 month pilot program involving magazine distribution arrangements to 20 newsagents.

Future with and without

23. To assist in its assessment of the Proposed Conduct against the authorisation tests, the ACCC compares the likely future with the conduct for which authorisation is sought and the likely future without the conduct the subject of the authorisation. The ACCC compares the public benefits and detriment likely to arise in the future where the conduct occurs against the future in which the conduct does not occur.
24. The MPA submits that, without the conduct for which authorisation is sought, distributors and publishers are unlikely to implement the pilot to test changes to the distribution arrangements which are currently resulting in an oversupply of magazines to newsagencies. This is because, although the changes are intended ultimately to increase sales of magazines, any single distributor who unilaterally elected to restrict the number of copies distributed to newsagencies would risk losing publishers to competing distributors who did not restrict distribution.

² Subsections 90(5A), 90(5B) and 90(8) of the CCA.

³ Please see the ACCC's Public Register for more details, including a list of parties consulted.

⁴ See in particular A90804, A91134 and A91407.

25. Further, the MPA submits that, without the pilot, there is very little chance of achieving industry wide reform to address the oversupply problem. The MPA hopes the pilot will assist in refining the changes to distribution arrangements, and to prove the concept to relevant stakeholders to ensure support from distributors and publishers for a Code of Conduct, and from newsagents for a program of education and training to improve category management.
26. Based on the information before it the ACCC accepts that, given long-standing issues within the magazine distribution sector for newsagents and the continuing incentives of publishers and distributors, in the absence of the pilot a continuation of the current situation (status quo) is the most likely outcome for the short to medium term.

Public benefits

27. The MPA submits that the pilot will result in benefits through its eventual usefulness in developing and implementing a Code of Conduct to apply restrictions on distribution of magazines to newsagencies throughout the industry. The Code of Conduct is intended to optimise the supply of magazines to newsagents and address associated cash flow issues, which the MPA submits will:
 - reduce costs at the newsagency level and improve the commercial viability of newsagencies
 - assist consumers by helping to ensure the magazines they are seeking are being offered for sale at their local newsagent
 - increase the willingness of newsagents to engage in training and education in marketing and category management, which will further improve the efficiency of the sale of magazines through newsagencies.
28. The ACCC notes the current incentives of magazine publishers and distributors to oversupply magazines to newsagents, the inability of newsagents to refuse to accept unwanted magazines, and the consequent inefficiencies. The ACCC considers these factors are unlikely to change without industry wide agreement to restrict oversupply to newsagents. Such an agreement may lower costs for publishers, distributors and newsagents, and benefit consumers by ensuring the magazines available for sale at their local newsagent are better suited to demand in the area.
29. The ACCC considers that the pilot, and the use of the information and data obtained from the results of the pilot, is likely to result in a benefit to the public by providing the MPA and its members, as well as other industry participants including newsagents and magazine distributors, with information regarding the impact of the proposed distribution restrictions on the operation of newsagencies.
30. In particular, the ACCC considers that the pilot will provide some evidence as to whether the proposed restrictions on the distribution of magazines to newsagents, if implemented industry-wide through a Code of Conduct, will result in efficiencies in the magazine supply chain, and, if so, the extent of the efficiency gains. The ACCC would expect to see results from the pilot provided in support of the claimed public benefits in any future application for authorisation sought in relation to a Code of Conduct, in particular those which help to establish the

contribution of the arrangements to addressing the oversupply problem. Information which may help to establish this includes:

- any resulting cost savings for newsagents, distributors or publishers
- the quantity and number of titles of magazines sold and returned both before and during the pilot
- feedback from pilot participants on the effectiveness of the arrangements in addressing oversupply issues.

31. In addition, the ACCC considers that the pilot may result in further public benefits to the extent that it facilitates other reforms within the magazine distribution supply chain, such as training in improved management of the magazine category by newsagents, by improving stakeholder support of further reforms.

Public detriments

32. The MPA submits the pilot will be limited in scope and time and therefore will not result in any detriment to the public, but notes that any Code of Conduct that is ultimately adopted is likely to result in changes to the way publishers make payments to distributors, due to the reduced number of magazines being distributed. The MPA notes this may result in adjustments within the industry as parties seek to recover their costs, and there is potential for publishers to increase the cover price of magazines should the Code of Conduct fail to result in increased sales.

33. Generally, any agreement amongst competitors is likely to lessen competition compared to a situation where each business individually makes its own decisions. The ACCC notes there is potential for significant detriment resulting from an agreement between distributors on the terms of supply to small business, particularly given the market for distribution of magazines is highly concentrated. The ACCC would be very concerned if the arrangements, if implemented on an industry-wide basis under a future Code of Conduct, were to result in an increase in the cover price of magazines, given the cost savings able to be achieved by all parties under the arrangements.

34. However, the ACCC considers any detriment in relation to this pilot is likely to be very limited given its short duration (3-6 months) and limited scope (20 newsagents). The ACCC also notes that the pilot as proposed appears to have the support of, and input from, industry participants at all levels of the supply chain, including support from the ANF.

Balance of public benefit and detriment

35. For the reasons outlined in this draft determination the ACCC considers that the Proposed Conduct is likely to result in public benefit that would outweigh any public detriment, including from any lessening of competition. Accordingly, the ACCC is satisfied that the relevant net public benefit tests are met.

Draft determination

The application

36. Application A91472 was made using a Form A, under subsections 88(1) and 88(1A) of the CCA. Authorisation is sought for the Association of Magazine Publishers of Australia Inc (MPA), its members (including Network Services) and distributor Gordon & Gotch Australia Pty Ltd to make and give effect to the Proposed Conduct to implement limitations upon the distribution of magazines to 20 newsagents for a period of up to 6 months. The limitations are set out at **Annexure A** to this draft determination.
37. Authorisation is sought as the Proposed Conduct may contain a cartel provision or may be an exclusionary provision within the meaning of section 45 of the CCA.

The net public benefit test

38. For the reasons outlined in this draft determination, the ACCC is satisfied, pursuant to sections 90(5A) and 90(5B), of the CCA, that in all the circumstances the conduct for which authorisation is sought is likely to result in a public benefit that would outweigh any likely detriment to the public constituted by any lessening of competition arising from the Proposed Conduct. Further, the ACCC is satisfied, pursuant to section 90(8), that the conduct for which authorisation is sought is likely to result in such a benefit to the public that the Proposed Conduct should be allowed to take place.

Conduct which the ACCC proposes to authorise

39. The ACCC proposes to grant authorisation A91472 to the MPA, its members (including Network Services) and Gordon & Gotch to make and give effect to the arrangements described at paragraph 36 above, for a period of one year.
40. This draft determination is made on 12 March 2015.

Interim authorisation

41. The MPA advises that it wishes to commence the proposed pilot in April 2015.
42. The ACCC may grant interim authorisation pursuant to section 91(2) of the CCA.
43. In addition to the matters already considered in this draft determination, the ACCC considers that there is benefit in granting interim authorisation to allow the applicants to meet their planned timeframes. The ACCC understands newsagents consider an April commencement would be the least disruptive, given the seasonal nature of their businesses. The ACCC considers that, given the scope of the pilot, there is a low likelihood of harm to other parties or competition from granting interim authorisation, and that the market is likely to be able to return to its pre-interim state if for some reason the ACCC ultimately does not grant authorisation.
44. Accordingly, the ACCC grants interim authorisation under subsection 91(2) of the CCA, to the conduct specified in paragraph 36 of this draft determination.

45. Interim authorisation is to commence on 1 April 2015 and will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.
46. The ACCC may reconsider its decision to grant interim authorisation should significant concerns be raised in response to this draft determination.

Next steps

47. The ACCC now seeks submissions on this draft determination. In addition, the applicant or any interested party may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the CCA.

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.