



**Australian
Competition &
Consumer
Commission**

Our Ref: 57181
Contact Officer: Anna Giannakos
Contact Number: (03) 9290 6920

GPO Box 3131
Canberra ACT 2601

16 April 2015

23 Marcus Clarke Street
Canberra ACT 2601

Rose Owen
General Counsel
News Ltd

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

By email: rose.owen@news.com.au

Dear Ms Owen

Third line forcing notification N98207 - N98212 lodged by News Ltd & Ors

I refer to the above third line forcing notifications lodged with the Australian Competition and Consumer Commission (the ACCC) on 10 April 2015. The notifications have been placed on the ACCC's public register.

News Ltd, News Digital Media Pty Limited, Nationwide News Pty Limited, The Herald & Weekly Times Pty Limited, Advertiser Newspapers Pty Ltd, and Queensland Newspapers Pty Ltd (together, the News Entities) will offer to supply discounted news and information (digital and/or print format) subscriptions to persons on condition that they have a relevant relationship with a specific third party promotional partner of any of the News Entities, being either:

- (i) a member of a loyalty program operated by a promotional partner of the News Entities, or
- (ii) a customer of a promotional partner of the News Entities (whether by attending an event of the promotional partner or otherwise).

The notification process

The competition provisions of the *Competition and Consumer Act 2010* (the Act) prohibit certain forms of anti-competitive conduct or arrangements. Subsections 47(6) and (7) of the Act prohibit exclusive dealing of the type known as third line forcing. Third line forcing occurs where a corporation supplies goods or services on condition the customer acquires other goods or services from another business or refuses to supply because the customer will not agree to that condition. Third line forcing conduct is a *per se* prohibition, meaning that it amounts to a contravention of the Act regardless of its effect on competition.

Businesses wishing to engage in third line forcing conduct can 'notify' the ACCC of the conduct. Notification provides immunity from legal action by the ACCC and any other party for potential breaches of the exclusive dealing provisions of the Act where the conduct is in the public interest.

Under the notification process, immunity from third line forcing conduct is obtained automatically 14 days after the date of lodgement, and continues unless the ACCC issues a notice revoking the immunity.

For third line forcing notifications, the ACCC may issue a notice revoking the immunity only if it is satisfied that the likely benefit to the public from the notified conduct would not outweigh the likely detriment to the public resulting from the conduct. Provided it is so satisfied, the ACCC may act to remove the immunity afforded by a notification at any stage.

Summary of ACCC considerations

Having considered notifications N98207 – N98212, the ACCC does not intend to take further action in this matter at this stage as it does not consider that the statutory test for revocation of the notification has been met. This is because the ACCC is not satisfied, in this instance, that the likely detriment to the public resulting from the conduct would outweigh the likely benefit to the public from the conduct.

In reaching this position, the ACCC had regard to the following:

- There are no obligations on the customers of the News Entities to acquire the goods and services of the promotional partners of the News Entities.
- There are no obligations on the customers of the promotional partners of the News Entities to acquire the goods and services of the News Entities.

However, the ACCC may reassess the notifications at any time on the basis of new information and may decide to revoke the notifications if it is satisfied that the likely benefit to the public from the relevant conduct will not outweigh the likely detriment to the public from the conduct.

This assessment has been made on the basis that the News Entities will disclose all relevant terms and conditions to prospective customers.

A copy of this letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Anna Giannakos on (03) 9290 6920 or by email to adjudication@accc.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Richard Chadwick', with a long horizontal line extending to the right.

Dr Richard Chadwick
General Manager
Adjudication