

Our ref: PH:14/290

Your ref:

5 May 2015

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 – Application for Authorisation A91472

Thank you for your letter of 28 April 2015 seeking clarification of some issues raised during the pre-decision conference of 23 April 2015.

Proposed Pilot Arrangements

Please note that the 'minimum sales efficiency' criteria (Annexure B to the Application) were always intended to be derived from an analysis of the data held by each of the major distributors which, prior to the interim authorisation, had not been shared.

During the Pilot, the publishers and the distributors will work closely to ensure supply will be closely aligned to demand in the stores, based on actual data. The analysis of the data will show what titles don't deliver the expected sales (range) and what quantities need to be ordered by the newsagent. This will take into account number of factors, not limited to historical sales, including:

- marketing and promotional plans,
- the news cycle,
- Subject matter of the title;
- Promotional activity that may have been undertaken (either regionally or nationally)
- Seasonal factors

Any excess supply during the trial will be reviewed on an ongoing basis. Please note that to the extent that there must be a margin for error, this will however be on the side of excess supply. This is because a newsagent having insufficient stock to meet demand is less commercially desirable for all parties than a newsagent holding some excess stock that may subsequently be returned for credit.

The Pilot newsagents will be involved in range assortment selection in the context of the above category management principles. Some will see significant reductions in both range

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and quantities. To this extent they therefore will have input on the titles they receive.

In this regard I note that all participating newsagents have agreed to participate on these terms, they have not and cannot be obliged to participate in the Pilot.

Regarding early returns, I note the ability to return after 30 days is in line with Annexure B to my client's authorisation application. In particular we refer the Commission to the definition of 'Early Returns' in Annexure B which is:

'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.'

Paragraph 4 of Annexure B then states:

'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.'

The effect of this is that, for a title other than a weekly, fortnightly or monthly title, the distributor is not required to accept returns within 30 days from the on sale date (except to correct an error), but will be thereafter. This means that Pilot newsagents are allowed to return such titles after 30 days.

Transparency of Pilot Outcomes

My client is engaging a data analytics company to analyse the results of the pilot. My client proposes to provide the ACCC with a copy of this report immediately following its being provided and agrees to this being placed on the Commission's public register. The aggregate results will also be shared with the newsagents through the Australian Newsagents Federation and will be shared individually with each store participating in the trial.

Expanded Pilot

An outcome of recent discussions with the newsagents selected to participate in the pilot is that some of them consider that they only require the reduction in stock and are not convinced of the benefit/need for the proposed retail skilling and channel engagement initiatives. Out of these discussions has come the proposal to expand the pilot by having a control group of newsagent participants who receive only the agreed limitations on distribution of magazines, based upon targeted minimum sales efficiency, and not the associated channel management and retail selling inputs.

This would then allow the MPA and industry to ascertain whether the channel engagement and retail skills aspect do the existing pilot (per Annexure C to the application) add value in addition to the proposed limitations on distribution.

I have therefore been instructed to seek an amendment to the current application such that paragraph 2(a) the reference to 'approximately 20 selected newsagents be changed to refer to 'approximately 40 selected newsagents...'. Similarly the description of the Pilot program contained at Annexure A to the Application would need to be amended to reflect the proposal to have 2 different groups of newsagents within the Pilot structure.

I seek your direction as to how this is best achieved. I note that our contention would be that this change would not increase the anti-competitive detriment, but would increase the public

benefit to the extent that it would provide better evaluative data as to the benefits of the three different aspects or 'pillars' of the proposed Code of Conduct.

Please contact me if you would like to discuss.

Yours sincerely

A handwritten signature in black ink, appearing to read "Paul Holm". The signature is fluid and cursive, with a large initial "P" and "H".

Paul Holm
Director

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