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30 October 2019

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commercial + international

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission

By email [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

Dear ACCC,

### **TVSN Channel Pty Ltd – Notification of exclusive dealing**

Pursuant to section 93(1) of the *Competition and Consumer Act 2010* (Cth) (the Act), we enclose a Notification of Exclusive Dealing (Notification) on behalf of TVSN Channel Pty Ltd (TVSN) in respect of its proposed arrangements with suppliers.

The amount of \$2,500 for lodgement fees has been paid by electronic transfer.

Please do not hesitate to contact the writer, should you have any queries or wish to discuss.

Yours sincerely



**Shaun Creighton**  
Partner Director



## NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

### Notifying party

1. The following details of the notifying party are given:

1.1 Name: TVSN Channel Pty Ltd (TVSN)

Address (registered office):

431 Warringah Road

Frenchs Forest NSW 2086

Telephone number: 132310

ACN: 111 806 958

1.2 Contact person's name: Shaun Creighton

Telephone number: [REDACTED]

Email address: [REDACTED]

1.3 Description of business activities

TVSN is an Australian television shopping network. It is owned by Direct Group Pty Limited which is an Australian-based home shopping company.

TVSN has a number of related entities (The Innovations Group) including Innovations Direct Pty Ltd (home shopping), Damart (apparel), Entertainment Masters (music and movie packages), Expo Channel (a leading Australian TV direct Marketing medium via digital free to air, satellite and cable), Gaiam (lifestyle company), Homecare (household and every day items), Innovations (catalogue, showroom and internet sales of a wide range of consumer products) and the Fox Collection (needlework and craft catalogue).

1.4 Email address for service of documents in Australia.

[REDACTED]

## Details of the notified conduct

### 2. Indicate whether the notified conduct is for:

#### 2.1 exclusive dealing (s. 47 of the *Competition and Consumer Act 2010* (Cth) (the Act));

Notice is hereby given, in accordance with subsection 93(1) of the *Competition and Consumer Act 2010*, of particulars of the conduct or proposed conduct of a kind referred to in subsections 47(3) or (4) of that Act in which the person giving notice engages or proposes to engage.

#### 2.2 resale price maintenance (s. 48)

No.

#### 2.3 collective bargaining (s.93AB). If the notified conduct is for collective bargaining, whether the notified conduct includes a collective boycott.

No.

### 3. Provide details of the notified conduct including:

#### 3.1 a description of the notified conduct

TVSN proposes to engage suppliers on the condition that if the supplier, distributor or manufacturer wish to market, promote and sell specific products via TVSN, then that supplier, distributor or manufacturer must not market, promote or sell products on another television shopping channel or direct selling medium involving video footage or live streaming in the presentation and promotion of goods, and which utilise the presentation and / or demonstration of goods as an integral part of the marketing and sales process (Competitor Shopping Channels).

#### 3.2 any relevant documents detailing the terms of the notified conduct

No.

#### 3.3 the rationale for the notified conduct

TVSN provides a consumer entertainment and retail service with the TVSN television broadcast at the heart of the TVSN business. The TVSN television broadcast features live presentations, demonstrations and special offers, hosted by TVSN presenters and auditioned brand representatives (from suppliers or manufacturers).

Of particular benefit to Australian suppliers and consumers is TVSN's ability to feature brand-owners or representatives as guest presenters during TVSN broadcasts and an ability to provide trained television shopping presenters, who obtain on the job training. This on the job training includes training from TVSN on television sales training techniques and by nature, provides access to TVSN know how, confidential information and sales / operational processes.

TVSN takes great care in selecting suppliers and manufacturers to provide products to be promoted and sold on TVSN channels. As part of the promotion and sales process,

TVSN works closely with suppliers, distributors and manufacturers to represent the brand story in addition to the brand construct and / or ingredients as part of a robust quality assurance process.

TVSN trained presenters and auditioned guests with on the job training are a key and important point of difference when comparing the TVSN sales process (including know how relating to sales targets in the broadcasted sales process) with that of other retail outlets. This point of difference needs to be retained for consumer benefit and for TVSN's competitive advantage based on utilisation of TVSN proprietary tools.

Each TVSN program segment runs for up to an hour and is hosted by a trained TVSN presenter and suitable auditioned product ambassadors. TVSN trains its presenters and ambassadors to create and perform live in an entertaining and informative product information show that follows the TVSN format and adheres to TVSN's strict standards of quality and accuracy. All shows must comply with Australian and New Zealand consumer law. The TVSN website supports the live broadcast, as consumers can easily identify and order the products being showcased on the TVSN website. TVSN presenters and ambassadors develop an in-depth knowledge of the product line that they are presenting before the show.

TVSN has a loyal audience, which enjoys the entertainment and close affiliation associated with a carefully selected product range. TVSN is concerned to protect the quality of its broadcast, customer relationships and integrity of quality service.

It is important for TVSN that consumers do not watch 'rehashes' or similarly formatted shows of same branded products as that provided in TVSN on other television channels. This is so that TVSN's audience continue to find the program content exciting, entertaining, trustworthy, reliable and interesting for consumers.

The notified conduct limits the risk of Competitor Shopping Channels having access to TVSN's proprietary sales processes, dollars per minute product selection criteria, information and training techniques, and limits the risk of consumer confusion in relation to pricing, brand content, quality, service policies and consumer trust. TVSN is most concerned that consumers are not misled in relation to any of these matters.

The notified conduct will have no material impact on a supplier or manufacturer's ability to sell their products in Australia as they can utilise a wide range of other retail channels. They may still sell their products through various online retail outlets, through various retail stores stocking the supplier's products or directly from the supplier / manufacturer.

**3.4 any time period relevant to the notified conduct.**

For the period in which the individual supplier wishes to sell relevant products via TVSN.

**4. Provide documents submitted to the notifying party's board or prepared by or for the notifying party's senior management for purposes of assessing or making a decision in relation to the notified conduct and any minutes or record of the decision made.**

TVSN senior management will make a decision on the proposed condition to be added to its Supplier Agreement on the basis of the result of this notification to the ACCC.

5. Provide the names and/or a description of the persons or classes of persons who may be directly impacted by the notified conduct (including targets in collective bargaining or boycott conduct) and detail how or why they might be impacted.

Suppliers to TVSN will be obliged to ensure that the supplier's specific products that it wishes to market, promote or sell via TVSN are not also marketed, promoted and sold by any Competitor Shopping Channel.

At present there is only one other television shopping channel who may be affected by the notified conduct, being the Australian Shopping Network Pty Ltd. Australian Shopping Network (openshop.com.au) will need to prepare its own channel content, source and train its own presenters and develop its own sources of supply.

## Market information and concentration

6. Describe the products and/or services, and the geographic areas, supplied by the notifying parties. Identify all products and services in which two or more parties to the notified conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).

The market can be reasonably identified as the retail market for consumer goods in Australia.

TVSN sells a broad range of consumer goods in Australia including:

- (i) jewellery,
- (ii) fitness equipment,
- (iii) healthy foods,
- (iv) vitamins,
- (v) personal care items,
- (vi) active-wear,
- (vii) skincare,
- (viii) make-up,
- (ix) hair care,
- (x) fragrances,
- (xi) women's fashion,
- (xii) handbags,
- (xiii) women's shoes,
- (xiv) luggage,
- (xv) sunglasses,
- (xvi) manchester,
- (xvii) kitchen appliances,
- (xviii) food hampers,
- (xix) cookware,
- (xx) kitchen organisation items,
- (xxi) home décor,
- (xxii) cleaning products,
- (xxiii) collectables,
- (xxiv) toys,
- (xxv) garden items,
- (xxvi) lighting,
- (xxvii) computers,
- (xxviii) TVs,

- (xxix) cameras,
- (xxx) audio,
- (xxxii) small home appliances, and
- (xxxiii) mobile phones.

At any one time, TVSN has between 6,000 and 15,000 products available to Australian and New Zealand consumers.

The boundaries of the market are further defined by the substitution possibilities of TVSN products for other competing products. TVSN is constrained in its actions by online and traditional retail competitors, that sell products that are identical to or closely mirror TVSN's. If TVSN were to dramatically increase its prices, consumers would be likely to buy products from numerous competing suppliers in preference to the products sold by TVSN. At the same time, new suppliers of the same or similar products may enter the market. For example, one of TVSN's product lines is Alpha-H beauty. A brick-and-mortar or online retailer or beauty shops can start selling Alpha-H beauty, or other similar products at any time.

It is usual practice in other countries that product lines or brands are only promoted and distributed on a singularly owned shopping network.

7. Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains or any products or services involved, and the manufacturing process.

*The sales process*

(i) Product sourcing

TVSN conducts product sourcing and market research through a range of mechanisms, including via our overseas trade shows, distributors and directly from manufacturers and suppliers. Our buyers keep an eye on consumer trends, and search for new, unique, and/or good quality consumer products and brands. TVSN also receives new brands and products through direct approaches from suppliers. TVSN's senior personnel are engaged based on specific television shopping experience and expertise.

(ii) Quality Assurance and Testing

TVSN subjects all products to stringent testing through documented Quality Assurance processes where compliance with law, safety, strength and reliability are measured. This compliance includes compliance with what a presenter or guest is permitted to state on a live show and /or how a statement or claim may or may not be made. As part of this process, TVSN assesses manufacturer's warranty and consumer protection measures available.

(iii) Supplier engagement

Should TVSN decide that a brand or product line are suitable to stock, TVSN will agree on terms of supply with the manufacturer or the supplier. Often this is by way of a standard TVSN Supplier Agreement. However, for some products, TVSN licenses products directly from designs then engages manufacturers to develop and manufacture the licensed designs.

(iv) Advertising and promotion

TVSN invests significant resources in the TVSN Channel, which is broadcast in on free to air television and subscription television in Australia and New Zealand, plus is available for viewing by way of an interactive website.

The TVSN Channel features presentations, demonstrations and special offers for products, hosted by trained TVSN presenters. It is a live performance. The content must comply with consumer law, be entertaining and is a key feature of the TVSN brand.

Of particular benefit to Australian producers and consumers, is TVSN's ability to feature brand-representatives as guest presenters during TVSN broadcasts.

A TVSN Supplier may, if agreed by TVSN, provide guest presenters to promote specific products on specific shows relating to that product on TVSN Channel. Any such guest presenters must be trained in the features of that product and comply with TVSN's quality assurance processes.

All products stocked by TVSN are advertised on the TVSN website.

(v) After sales support

After sales support is essential to customer loyalty. TVSN offers a 30 day Money Back Guarantee on all purchases. TVSN also assists its customers in accessing supplier guarantees and warranties. TVSN devotes a considerable amount of resources to warehousing, packaging, postage and stock management. TVSN's packaging often includes additional information relating to specific brands to enhance the customer satisfaction.

(vi) Customer loyalty program

TVSN's after sale support is complemented by a customer loyalty program. TVSN also conducts after sales communication with customers based on rating and review feedback. TVSN takes such feedback and comments into account as part of the continual improvement of the service offering provided by TVSN to customers.

8. In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.

The retail market for consumer goods in Australia for the financial year 2018-19 is reported by the Australian Bureau of Statistics to be AUD 1,045,000 Million.<sup>1</sup> It is difficult to understand what types of consumer goods are included in this estimate. Other statistics available from the Australian Bureau of Statistics indicate that Australian spending on 'household goods' (electrical, electronic, houseware, garden supplies etc) was approximately AUD 18 000 million in 2018-19. Clothing, footwear and personal accessory retailing was estimated to be AUD 8000 million for 2018-19.

Given the wide range of products promoted and sold by TVSN, and the wide range of retailers selling these products, it is not possible to provide an estimation of market shares for various products.

<sup>1</sup> Source: Australian Bureau of Statistics, [www.tradingeconomics.com/australia/consumer-spending](http://www.tradingeconomics.com/australia/consumer-spending), accessed 6 August 2019.

To some extent, TVSN is akin to an (on-line) department store. TVSN competes with countless other retailers, television channels, including retailers selling multiple product types and ranges, plus retailers selling single product types and ranges.

In light of the large number of ways in which a consumer could purchase a product that is promoted and sold by TVSN, it is reasonable to state that TVSN does not have a large market share for any single type of product.

Furthermore, since TVSN is a multi-channel retailer of goods rather than a manufacturer, the specific type of product range varies from time to time depending on which specific types of products are sourced or provided by a Supplier.

9. In assessing a notification, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:

9.1 existing competitors

The Australian market for the categories of consumer goods that TVSN sells (see paragraph 6 above) has countless competitors.

The proposed conduct would not have an effect on existing competitors as TVSN suppliers would remain free to supply their goods for retail to any Australian consumer in all types and forms of distribution and retail channels, except any Competitor Shopping Channel.

9.2 likely entry by new competitors

The proposed conduct does not prevent any likely entry by new competitors.

9.3 any countervailing power of customers and/or suppliers

While some consumers prefer to telephone an order, the vast majority of TVSN sales are online, as TVSN does not have a bricks and mortar store. The online Australian consumer retail market is highly competitive, and highly price sensitive. Online search engines empower Australian consumers to quickly scan prices, availability and consumers rights attached to the purchase of particular goods.

9.4 any other relevant factors.

A substantial lessening of competition will usually occur if the conduct changes the structure of the market, for example, changes market share or increases barriers to entry, which are to the detriment of consumers.

TVSN maintains that it will not be in contravention of section 47 of the CCA by engaging in the conduct proposed because it does not have the purpose, effect or likely effect of substantially lessening of competition in the market in which it operates, for the following reasons:

- (a) The purpose of the proposed conduct is to:

- (1) prevent providers of Competitor Shopping Channels from “free-riding” on TVSN’s product research, training of supplier Guest Presenters, demonstration techniques and brand reputation;



- (2) prevent providers of Competitor Shopping Channels from diluting consumer interest in TVSN shows, which would occur if products featured by TVSN in one of its programs were later featured by a Competitor Shopping Channel;
  - (3) prevent TVSN suppliers from “free-loading” the benefits of exposure to TVSN marketing, quality assurance, and training in Australian Consumer Law, in order to switch their supply to a Competitor Shopping Channel, thereby undermining TVSN’s core business;
  - (4) prevent TVSN suppliers from mis-using TVSN’s proprietary TV shopping selection information sales metrics data and using such information and data in conjunction with the Competitor Shopping Channels; and
  - (5) increase brand loyalty and sales of TVSN marketed products by ensuring that the product lines that TVSN offers are only featured on the TVSN channel, not any Competitor Shopping Channels.
- (b) There are countless retailers available to consumers both in store and online in Australia. TVSN wishes to protect its investment in the quality and reliability of TVSN sold goods.

TVSN has been able to differentiate itself from many other consumer retailers by providing an entertaining consumer experience, including a demonstrable explanation of sale, together with important quality control mechanisms.

## Public benefit

10. Describe the benefits to the public that are likely to result from the notified conduct. Provide information, data, documents or other evidence relevant to the ACCC’s assessment of the public benefits.

The proposed conduct is likely to have the following public benefits:

- (1) The market for the sale of consumer products in Australia is fiercely competitive. TVSN has invested significant resources over 23 years in developing its brand and establishing a loyal customer audience. For example, TVSN:
  - (i) sources a diverse range of reputable, exciting and appealing products;
  - (ii) requires all TVSN television programs to be hosted by a highly trained TVSN Presenter or suitably trained Guest Presenter;
  - (iii) requires all TVSN television programs to be performed live (noting live shows may be repeated) and to adhere to TVSN’s strict standards of quality and accuracy (including with the TVSN quality assurance requirements);
  - (iv) prohibits TVSN Presenters from performing the broadcast unless the TVSN Presenter has developed an in-depth knowledge of the products and product line being featured;
  - (v) trains its TVSN Presenters and, where a product is featured with a supplier Guest Presenter, in essential principles of the Australian Consumer Law;
  - (vi) does not enter Supply Agreements with suppliers who are unable to comply with TVSN’s requirements for pre-delivery and after sales repair, replacement and warranty services; and
  - (vii) provides a 30 day money back guarantee for all purchases.

As a result, Australian (and New Zealand) consumers watch the TVSN channel knowing that they can:

- (viii) enjoy a live entertaining product review for reliable products;
- (ix) if they choose to purchase the product being advertised, they can do with knowledge that the product is good quality, has been tested by TVSN, and is supported by TVSN's 30 day money back guarantee;

TVSN wants to ensure that it maintains and promotes this consumer trust in the TVSN brand, and:

- (x) prevent providers of Competitor Shopping Channels from "free-riding" on TVSN's product research, proprietary TV shopping selection information sales metrics data, training of supplier Guest Presenters and brand reputation;
- (xi) prevent providers of Competitor Shopping Channels from diluting consumer interest in TVSN shows, which would occur if products featured by TVSN in one of its programs were later featured by a Competitor Shopping Channel;
- (xii) prevent suppliers from obtaining the considerable benefits of training in Australian Consumer Law and exposure to a target market on the TVSN channel so that consumers try their products, in order to switch to exposure on a Competitor Shopping Channel, undermining TVSN's core business; and
- (xiii) increase brand loyalty and sales of TVSN marketed products by ensuring that the product lines that it offers are only featured on the TVSN channel, not any Competitor Shopping Channels.

## Public detriment (including likely competitive effects)

11. Describe any detriments to the public that are likely to result from the notified conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.

TVSN maintains that it will not be in contravention of section 47 of the CCA by engaging in the conduct proposed because it does not have the purpose, effect or likely effect of substantially lessening of competition in the market. Please see paragraph 10 above, details of which we repeat here.

## Contact details of relevant market participants

12. Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties, such as actual or potential competitors, customers and suppliers, trade or industry associations and regulators.

Actual or potential competitor, customers and suppliers: These are too numerous to list.

In relation to likely interested parties / potential competitors, there is only one entity that satisfies how TVSN have defined Competitor Shopping Channels. This entity is Australian Shopping Network Pty Ltd, whose details are as follows:

Mr Sang Won Park

Company Secretary  
Australian Shopping Network Pty Ltd  
8 Central Avenue  
EVELEIGH NSW 2015  
email: [REDACTED]  
Telephone: 13 25 80

### Any other information

13. Provide any other information you consider relevant to the ACCC's assessment of the notified conduct.

There is no further information we consider to be relevant.

## Declaration by notifying party

Authorised persons of the notifying party must complete the following declaration.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



Signature of authorised person

Lawyer for Notifying Party  
Office held

SHAUN CREIGHTON

(Print) Name of authorised person

30<sup>th</sup> October 2019  
This [insert day] day of [insert month] [insert year]

*Note: If the Notifying Party is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Notifying Party, this fact must be stated.*