



20 January 2020

**Attention:** Mr Steven Lee

Australian Competition & Consumer Commission  
Adjudication Branch  
Canberra ACT 2601

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

Dear Mr Lee

**Submissions re: N1000509 – TVSN Channel Pty Ltd - submission**

We refer to the ACCC's consultation letter dated 10 December 2019 regarding the TVSN Channel Pty Ltd (**TVSN**) exclusive dealing notification. Nine thanks the ACCC for the opportunity to make a submission on TVSN's Proposed Conduct (the same meaning and definition of Proposed Conduct is adopted from the ACCC letter dated 10 December 2019).

Nine has reviewed the TVSN exclusive dealing notification dated 30 October 2019 (**Notification**) and has serious concerns about the scope, purpose, public detriment, and likely negative effect on competition that the Proposed Conduct would have on the industry and Nine's business operations.

#### **1. Competitors of TVSN affected by Proposed Conduct**

Nine notes that the Notification states at paragraph 5:

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](http://openshop.com.au)) will need to prepare its own channel content, source and train its own presenters and develop its own sources of supply.

Nine does not consider this an accurate representation of the parties that would be affected by the proposed conduct. The definition of Competitor Shopping Channel described in paragraph 3.1 of the Notification states that apart from "another television shopping channel" any other "direct selling medium involving video footage or live streaming in the presentation and promotion of goods, which utilise the presentation and / or demonstration of goods as an integral part of the marketing and sales process..."

This definition captures the types of advertisements called infomercials and / or advertorials which Nine shows on its main channel and multichannels throughout the day, including but not limited to infomercial / advertorial segments broadcast during a Nine program called Today Extra.

I am instructed that this definition would capture the types of advertorial / infomercial advertisements that are aired on the following free to air broadcast channels:

- Nine (including Today Extra)
- 9GEM
- WIN Gold
- Spree TV
- Open Shop

[www.nineentertainment.com.au](http://www.nineentertainment.com.au)

PO Box 27, Willoughby NSW 2068 P +61 2 9906 9999 F +61 2 9282 8828 ABN 60 122 203 892

- Aspire TV
- Channel 7 (including the Morning Show and Daily Edition)
- 7TWO
- 7Mate
- Channel 10 (Studio Ten)
- 10 Bold
- 10 Peach

The impact of the Proposed Conduct would in Nine's view affect most of the free to air broadcasters both in metro and in regional areas, and would not just be limited to the Open Shop channel.

Further, advertisers would also be directly affected by the Proposed Conduct. Advertisers would be limited to advertising their products on TVSN which could adversely impact their business – arguably their product would be seen by a smaller and more limited audience and their sales could decline. Nine notes that advertisers would be best placed to make submissions on how the Proposed Conduct would impact their businesses.

## **2. Likely lessening of competition**

We are instructed that each of the free to air broadcasters (identified in paragraph 1 above) compete for the same categories of advertisers as those identified in paragraph 6 of the Notification.

Nine is concerned that if the Proposed Conduct were allowed, the likely effect on free to air broadcasters would be to substantially lessen competition within the industry. Not only could Nine (and other broadcasters) be prevented from trading with its current database of clients, Nine (and other broadcasters) would be prevented from procuring new clients (if those clients were in the listed categories identified in paragraph 6 of the Notification).

This would have a direct impact on the significant revenue that Nine currently receives by broadcasting advertisements in the format identified in paragraph 3.1 of the Notification.

It could also conversely drive up prices for consumers since the Proposed Conduct does not allow the normal type of market competition that traditionally keeps prices down for consumers.

As noted in paragraph 1 above, advertisers would also be negatively affected by the reduction in competition.

Further, if the Proposed Conduct were allowed, it may also result in the lessening of competition in the event that Nine should wish to have its own direct shopping channel in the future. The impact of this could be that Nine would be limited in respect of the amount of existing clients or potential future clients it could rely on to supply products and advertising revenue.

## **3. Likely public detriment**

Currently Nine's Today Extra (the main program in which infomercials and advertorials are broadcast) reaches an audience size of 136,048 per day (2019 yearly per day average) across Australia nationally and in regional areas. The broad reach of Today Extra, combined with the presentation and demonstration of the goods by highly trained professionals who also provide detailed information about the advertised goods, provides considerable benefit to the public who are in the market for those goods.

The current competition that exists between free to air broadcasters means that goods are advertised and priced competitively and reach a broad and widespread viewer base nationally. The current market ensures that consumers in regional areas are not disadvantaged. Nine is concerned that if the Proposed Conduct were allowed, it would substantially lessen regional consumers' access to such products. It could also conversely increase the prices of the direct marketing products available to regional consumers. I am instructed that anecdotally a significant proportion of sales



from informercials / advertorials aired on Today Extra come from regional areas. Nine is concerned that if the Proposed Conduct were to be allowed, it may reduce the variety of products that regional consumers have access to.

Nine submits that for the reasons above, the Proposed Conduct would likely result in public detriment.

#### **4. Impact on Broadcast industry**

Free to air broadcasters rely on advertising revenue to fund important programming and information, free of charge, to the Australian public. Advertising revenue allows broadcasters to bring news, public service announcements, and culturally significant events such as sports and Australian drama, to the Australian public for free.

If the Proposed Conduct were allowed, it is likely that Nine's revenue received in respect of advertorials/informercials would be substantially lessened. This in turn could impact the quality or range of programs it broadcasts to the Australian public.

For the reasons set out above, Nine opposes the Proposed Conduct as outlined in TVSN's Notification.

Please do not hesitate to contact me if you would like any further information or would like to discuss this matter.

Yours sincerely



**Penelope Hobart  
Executive Counsel**

Direct:



Email:

