

Australian Competition & Consumer Commission

PRE-DECISION CONFERENCE

Minutes

**Authorisation A91472
lodged by the Association of Magazine Publishers of Australia Inc**

23 April 2015

The information and submissions contained in this minute are not intended to be a verbatim record of the pre-decision conference but a summary of the matters raised. A copy of this document will be placed on the ACCC's public register.
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**Pre-Decision Conference: Authorisation A91472 lodged by the
Association of Magazine Publishers of Australia**

23 April 2015
ACCC office
Level 20, 175 Pitt Street, Sydney

Video link ups to ACCC offices in: Melbourne, Adelaide, Canberra, Brisbane
and Darwin.

Attendees:

Australian Competition and Consumer Commission
Dr Jill Walker, Commissioner
Dr Richard Chadwick, General Manager, Adjudication
David Hatfield, Director, Adjudication
Jana Kacir, Senior Lawyer, Mergers and Adjudication Law Unit
Hannah Ransom, Senior Project Officer, Adjudication

Interested Parties

Sydney

Mary Ann Azer, Director, Magazine Publishers of Australia
Paul Holm, Director, Andrews and Holm Lawyers
Eugene Varriccho, Circulation Director, Bauer Media
Brett Willis, General Manager Retail Sales and Circulation, NewsLifeMedia
Adrian Goss, In-house Legal, Bauer Media
Tony Edwards, Network Services
Mychelle Vanderburg, Pacific Magazines
David Hogan, CEO, Gordon and Gotch
Mark Fletcher, Director, newsXpress Pty Ltd / Tower Systems
Andrew Packham, Chief Executive Officer, Newsagents Association of NSW &
ACT Ltd
Judith Coe, General Manager, Member Services, Newsagents Association of
NSW & ACT Ltd
Alf Maccioni, Chief Executive Officer, Australian Newsagents' Federation
Mark Darton, Circulation Director, Universal Magazines
Graeme Young, Blaxland News
Tim Young, Blaxland News

Melbourne

Gerard Munday, Chairman, Victorian Association for Newsagents
Sel Ozyurek, General Manager, Victorian Association for Newsagents
Bernard Zimmerman, Support Director, POS Solutions

Canberra

Hank Spier, consultant, Australian Newsagents' Federation
Narelle Dixon, newsXpress Belconnen

Adelaide

Mark Richardson, newsXpress Tanunda and Blake's Crossing
Bill Wareham, Tea Tree Plaza News Plus
John Fitzpatrick, Portside Newsagency

Darwin

Jason Barling, newsXpress Palmerston

Brisbane

Brett Nagel, newsXpress Wynnum

Conference commenced: 12:00pm

Introduction

Commissioner Dr Jill Walker welcomed attendees, made some introductory remarks outlining the purpose of the conference, declared the pre-decision conference open and invited Mark Fletcher, who called the conference on behalf of newsXpress Pty Ltd, to make an opening statement.

Opening Statements

Mark Fletcher, Director, newsXpress Pty Ltd and Tower Systems, spoke to his written submission of 23 April 2015 (which is available from the ACCC's public register) including concerns that:

- the distribution rules proposed under the pilot will make newsagents worse off by removing their ability to early return (currently their only method of controlling supply)
- newsagencies are supplied magazines on less advantageous conditions when compared to supermarkets, who have a much greater level of control over titles. The proposed rules would not address this competitive disadvantage faced by newsagents
- distributors should be making use of data they currently receive through the point of sale (POS) systems to more effectively set supply levels
- the supply levels set by the minimum sales efficiencies proposed for the pilot are too low and will continue to result in significant oversupply of magazines.

Dr Walker asked Mary Ann Azer, on behalf of the applicant, the Magazine Publishers of Australia (MPA), if she wished to address the conference.

Mary Ann Azer (Director, MPA) stated that the MPA's intent in running the pilot was to find a way to fix the problem with magazine oversupply in newsagents and was looking for a way to do this which benefitted all participants in the supply chain. The MPA had engaged with the Australian Newsagents' Federation (ANF) prior to applying for authorisation to seek their support for the arrangements. The MPA wanted to learn from the pilot so that they can develop an industry Code of Conduct to ensure more efficient supply of magazines which will benefit newsagents.

Eugene Varricchio (Circulation Director, Bauer Media/Network Services) said any new supply model will need to remove costs from the supply chain, not merely shift them to elsewhere in the supply chain. The concept needs to be proved to newsagents and publishers and needs to benefit newsagents as well as distributors and publishers.

Mr Varricchio said data gathering for pilot participants has begun, including looking at the range of magazines and supply level, in order to determine what range is right for each store. The MPA is in discussion with each individual store participating in the pilot to work these things out. The MPA intends to engage an analytics firm to look at the data to help measure the benefits throughout the supply chain.

Mr Varricchio said some oversupply of magazines was necessary because magazine sales via retail outlets are volatile due to changes in consumer behaviour and the content of particular issues of a title. Determining appropriate supply levels to meet demand given this volatility is complex.

Mr Varricchio said supermarkets do control the range of magazines they stock but do not control supply levels. Mr Varricchio said it was open to groups of newsagents to approach distributors to discuss similar commercial arrangements should they wish to.

Mr Varricchio said newsagents participating in the pilot will have control over the range of magazines they stock.

Paul Holm (Director, Andrews and Holm Lawyers representing the MPA) noted that any industry wide Code of Conduct would require a separate authorisation application to be lodged with the ACCC and separate consideration. The current authorisation application involves a pilot for the purpose of gathering empirical evidence to assist in the development of a Code of Conduct.

Dr Walker opened the conference for discussion and invited additional questions or comments in relation to the issues raised.

Tim Young (Blaxland Newsagency) said his newsagency is consistently oversupplied magazines and early returns are crucial to his management of the problem. Newsagents do not have trust in distributors. Mr Young supports

newsagents paying for magazines according to the scanned data of actual sales.

Mark Darton (Circulation Director, Universal Magazines) said the distribution rules were likely to impact significantly on his business, an independent publisher of magazines, but he had not had opportunity to comment on the development of the distribution rules in the pilot. Mr Darton said Universal produced a number of magazines for which redistribution was an entirely appropriate distribution strategy but the proposed code contains a number of restrictions on redistribution. Mr Darton said Universal was very concerned that the MPA has not consulted with Universal to allow it the opportunity to put its concerns about the pilot given the impact these restrictions could have on his business.

Mr Varricchio responded to concerns about the loss of early returns, saying early returns would not be required if a balance can be achieved where supply more closely matches demand. It's the aim of the pilot to work out how to do this. The MPA was interested in removing costs from the supply chain not just moving costs. Mr Varricchio said there were a number of reasons why newsagents returned magazines early, such as cashflow management, not just oversupply.

Mr Varricchio said the MPA is proposing in the pilot to allow early returns after 30 days.

Mr Varricchio noted any of the rules in the pilot can be adjusted prior to the finalisation of any general Code of Conduct.

Gerard Munday (Chairman, Victorian Association for Newsagents) said newsagents do not trust distributors regarding supply levels because distributors have a proven record of not getting it right. Mr Munday said distributors need to allow early returns until they can prove to newsagents that they can get supply levels right. Mr Munday said it may then be possible for newsagents to support the removal of early returns.

Bernard Zimmerman (Support Director, POS Solutions) said the pockets each newsagent has available for display of magazines is limited, and the current and proposed models do not take these space limitations into account. Mr Zimmerman said POS software providers had not been contacted by the MPA even though they had access to data which could be used for the pilot. Mr Zimmerman said he expected distributors to hold the data obtained through the trial and not release it for scrutiny. Mr Zimmerman said he challenged the argument that it was not in the interests of magazine distributors to oversupply since magazine distributors get a fee for distribution, and also have limited warehouse space themselves, so therefore have an incentive to distribute as many magazines as possible. Mr Zimmerman said the proposed category management system is designed for advertisers, not for retailers, and he considers it will not be useful for newsagents. Mr Zimmerman said each newsagency store is different and distributors aren't aware of these differences.

Narelle Dixon (newsXpress Belconnen) said her newsagency is a pilot participant and had agreed to participate because the publishers were making an effort towards change. Ms Dixon said she agreed to participate on the basis that she would be able to control the titles and stock.

Ms Dixon said that when she received new magazine stocks she could see on her POS system how many copies of previous issues of the title she had sold. Ms Dixon said, in relation to titles outside the top 200, she would generally put out a couple of copies of a title so long as she could see there had been more than one sale of the title over the last 6 months or so. In relation to titles in the top 200, she would generally restock at 20% above what her previous sales had been for the title.

Ms Dixon said she agreed early returns are important to newsagents.

John Fitzpatrick (Portside Newsagency) said he is a distribution-only newsagency, which means he does not control any of the retail space dedicated to magazines. The retail space is controlled by the subagents he supplies. Mr Fitzpatrick asked the MPA why distribution newsagencies had been excluded from participating in the pilot.

Ms Azer responded that the MPA had chosen not to include distribution-only newsagents in the pilot because it was already complicated given the number of metrics involved. Ms Azer said the pilot can be expanded at a later time and further trials could be run to include distribution newsagents.

Mr Fitzpatrick said the problem is that sub-agents will choose not to stock magazines at all if they cannot return unwanted stock. A distribution newsagency then has to receive returned magazines back from the subagent and provide credits for them. Removing the ability to early return would make the business of distribution-only newsagents unviable. Mr Fitzpatrick said he was concerned that there would not be a separate set of rules developed for retail and distribution newsagencies.

Bill Wareham (Tea Tree Plaza News Plus) said newsagents need to control the level of debt for their business. Early returns are their only mechanism to do this in relation to the magazine category. Newsagents have no control over the range of magazines they stock, whereas supermarkets do; this is therefore not a level playing field. Mr Wareham said the stated aim of reducing the number of magazine copies distributed by 11 million amounts to only a 3% reduction in distribution.

Mark Richardson (newsXpress Tanunda and Blake's Crossing) said a letter from the ANF to its members about the pilot asserted that less than 10% of newsagents make any attempt to control their supply of magazines. Mr Richardson said many newsagents had tried repeatedly to have some control over the supply but this had had no effect. Mr Richardson said the distributors should look at the sales data and set supply in that way.

Mr Richardson said there are two categories of magazines in newsagents: those in the 200 top sellers, and those not in the top 200. Mr Richardson said

most of the top 200 are ACP titles controlled by Bauer. Mr Richardson said that, in relation to these titles, supply closely matched demand and in fact sometimes these magazines are undersupplied. Mr Richardson asked why supply could not be set in the same way for titles not in the top 200. Mr Richardson said distributors should not be afraid of allowing early returns if the oversupply issue is corrected.

Jason Barling (newsXpress Palmerston) said he owned a newsagency but also had experience working in analytics and finance roles. Mr Barling said it was possible to produce accurate sales data for individual stores, and asked why the MPA haven't provided this data up front before running the pilot, to assist transparency. Mr Barling said newsagents need control and currently early returns are the only thing newsagents have if supply goes wrong. Mr Barling said the cashflow effects on his newsagency of upfront payment for magazines can be significant. Distributors do not have a trackrecord for newsagents to be able to trust them. Mr Barling said he believed the ACCC should protect small business from these kinds of arrangements, and that the MPA needed to work in collaboration with newsagents.

Brett Nagel (newsXpress Wynnum) asked who is responsible for funding the public benefit which is expected to result from the pilot, and expressed concern that it may be newsagents. Mr Nagel asked how widely consultation had been conducted in relation to the pilot as he had only heard about the application by luck, and there was no information available on the ANF website. Mr Nagel said not all newsagents are members of industry organisations.

Mr Nagel said newsagents used their POS software to determine what magazines are returned and when. Mr Nagel asked why the MPA couldn't use this same data to determine supply. Mr Nagel said it was offensive for the MPA to suggest that newsagents needed upskilling as retailers.

Mr Nagel said newsagents need early returns in order to manage their cashflow. The timing of the placement of a title in a newsagent is crucial in this regard, given billing cycles. Newsagents need the ability to early return to manage the possibility that a large amount of magazine stock is delivered in the last 8 days of the billing cycle.

Mr Nagel asked what data was being used by the MPA in the pilot. Mr Nagel said he believed newsagents should not be funding an experimental process and was concerned the pilot should be run in such a way that newsagents did not carry the financial risk of the pilot.

Dr Walker invited the MPA to respond to the concerns raised.

Mr Varricchio said an analysis had been undertaken for each store participating in the pilot. This was being discussed with newsagents and debated to establish what the range of titles would be in each store.

Mr Varricchio said, while newsagents would have the final say on the range of titles, the supply levels would be set by the distributors because this is a complicated process and distributors are best placed to do this. Mr Varricchio

said the MPA wanted to learn through the pilot and that the pilot would not subject any pilot participant to any financial risk. Any issues which arise can be discussed throughout the operation of the pilot. Mr Varricchio said the MPA wanted newsagents to be happy with the arrangements and didn't want to increase their costs.

Ms Azer said the MPA was also conducting research into how customers shop the magazine category in newsagents. Ms Azer said the MPA would use data in collaboration with the pilot stores, including POS data and data from distributors.

Mr Varricchio said it was possible for the MPA to use POS data but there were difficulties with doing so because of inconsistencies between the POS systems used by newsagents. The MPA was employing an analytics expert to look not just at how the pilot impacted on oversupply in newsagencies but also on the whole supply chain.

Mr Young asked how large the ranges of magazines in the pilot stores were. Mr Young said his store was so large that he relied on the distributor to get the right range of magazines due to time limitations in running his newsagency.

Mr Varracchio said the pilot included a range of large and small stores, as well as metro and regional stores.

Mr Fletcher said, in relation to inconsistencies in POS systems, that distributors such as Bauer specified the standards for the POS systems so therefore these should be comparable. Mr Fletcher said historically distributors had hidden behind the excuse of poor data to avoid fixing supply issues, but data is now available. Mr Fletcher said newsagents do not trust distributors and noted that early returns were not permitted in the arrangements described in the application, which is not consistent with what the MPA was saying at the conference.

Mr Fletcher said nothing in the proposals reduced costs for newsagents and he would like to see more consultation from the MPA. The discussion needs to be public and include all stakeholders. Mr Fletcher said the rules needed to consider the space available in each store.

Mr Fletcher said the MPA had said at the conference that pilot participants would have input into the range of magazines their store would carry, but this was also not reflected in the application.

Mr Fletcher said nothing in the proposed rules would help newsagents to be more competitive with supermarkets, but the proposals in his submission would help. He proposed that the MPA run a second pilot along the lines outlined in his submission.

Mr Fletcher said that, even though magazine sales had declined, newsagents have the same inventory costs in relation to magazines as they did 5 – 6 years ago. This would not be true of supermarkets.

Mr Fletcher asked why the MPA needed to run a pilot when they could just use the data they already had available to them. Mr Fletcher said he was sceptical of the MPA's motives.

Mr Fletcher said newsagents should have control of what stock their store carries. Newsagents are moving to other product categories in order to be profitable because they can control the level of stock and debt.

Mr Wareham said titles which fell in the tier with the proposed 25% sales efficiency in the pilot generally had a very long shelf life. Mr Wareham said the sales efficiencies should be set at 70 – 75%. The sales forecast can be more accurate than it currently is.

Mr Richardson said he needed early returns to manage his cash flow. He said distributors do not give newsagents leeway in paying their accounts and threaten to cut supply if accounts are not paid on time. Mr Richardson said the ANF does not represent the majority of newsagents and ANF members were not informed about the pilot.

Alf Maccioni (CEO, ANF) said the ANF had informed its members about the Pilot, with articles in newsagency magazines and newsletters. He said the ANF currently had around 2300 members (of a total 3500 newsagents). Mr Maccioni said the ANF supported the trial because oversupply of magazines was an issue which needed to be discussed.

Andrew Packham (CEO, Newsagents' Association of NSW & ACT) said there is a case for use of the POS data. Mr Packham said the POS data was in the mix of data which would be used. Mr Packham said in his experience as a newsagent, magazines have always been an issue and it requires discussion. It is possible the pilot will not be the answer and a hybrid model may be settled on ultimately. Mr Packham said the pilot needs to be transparent because of the trust issues newsagents have with distributors. All the data and the methodology need to be available to everyone.

Ms Azer said that a pilot was needed because reducing the numbers of magazines distributed would result in a loss of distributors' income under the current arrangements. The pilot needs to be able to prove to publishers that the arrangements will result in increased sales.

Ms Azer said the Pilot would be fully transparent. The MPA will share all data and results from the pilot. Ms Azer said she thought that running two pilots would be too difficult and expensive and the MPA needed to make this pilot work. Ms Azer said the distribution arrangements would be changed through the pilot to find what works.

Mr Holm said the distributors needed to have authorisation from the ACCC in order to share the data and agree on a plan. Mr Holm said the distributors would otherwise risk breaching the law.

Mr Fletcher said some newsagents are increasing their sales of magazines against industry trends, and asked if the MPA had considered looking at what these businesses were doing to achieve this.

Ms Azer said the MPA was open to looking at this.

Dr Walker then called for any further comments. No further comments were made. Dr Walker closed the conference by noting that the ACCC would be providing a further opportunity for parties to make written submissions in respect of its draft determination and that the ACCC would be writing to those who attended the conference to provide details of how such submissions could be made, as well as to provide participants with a record of the conference, which would also be placed on the ACCC's public register.

Conference closed: 1:50pm