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Dr R Chadwick
General Manager, Adjudication
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2610
By email: adjudication@accc.gov.au

Dear Dr Chadwick

Magazine Publishers of Australia application A91472

I refer to the May 28, 2015 letter from Andrews & Holm on behalf of the MPA of which we became aware yesterday.

For the record, newsXpress relies on the ACCC to decide for itself what submissions are relevant to the application from the MPA.

As the ACCC has heard from newsXpress and many individual newsagents, newsagents are keen for a review of magazine supply arrangements as the current arrangements, and the arrangements anticipated in the proposed code of conduct rules, make us less competitive than other retailers selling magazines.

The application by the MPA of itself places the issue of magazine supply in front of the ACCC. If newsagents cannot open supply arrangements for consideration now, then when? While we understand the challenge for the ACCC of this question, as someone with direct involvement in this aspect of newsagency operation since 1981 I note that right now is the best opportunity newsagents have ever had to address an anti-competitive magazine supply model.

Looking at submissions from newsagents to the ACCC on this Application, the ACCC must have questions about the magazine supply model and whether it is a model that hinders the ability of small business newsagents to be competitive with magazines.

Members of the MPA are well aware of newsagent concerns about oversupply and the differences in supply terms that make newsagents considerably less competitive than other retail channels selling magazines. We cannot understand why the MPA refuses to use data it has access to today to pursue the outcomes it has documented in its Application to the ACCC.

The MPA seeks to test new magazine supply rules developed by three magazine publishers. To our knowledge, they have not consulted the more than one hundred other publishers. They have not consulted newsagents. If the trial is to reasonably address the goals as stated by the MPA it ought to be constructed on the basis of wide consultation with all stakeholders.

In his May 28, 2015 letter, Mr Holm states:

I also reiterate that newsXpress is not representative of the majority of newsagents. As the Commission is aware, my client's application is supported by the ANF, which does represent a majority of newsagents.

At the pre-decision conference in April, the ANF claimed a membership of 2,300. The majority of these members are indirect, they are members of other associations affiliated with the ANF. VANA and NANA, for example, have their own members who become ANF members by default.

It could be instructive for the ANF to provide the ACCC with a through understanding of its membership base, so the ACCC can see how many newsagents the ANF directly represents.

However, membership of the ANF is not at real issue here. The core ANF related issue is their consultation, or lack thereof.

While it is true the ANF supports the application, there is no evidence of consultation with newsagents by the ANF. We have put this position several times to the ANF and the ANF has not offered any evidence to the contrary. We are concerned that the ANF endorsed the trial and the supply rules at the heart of the trial without consultation with newsagents, making their endorsement defective.

Had the ANF consulted with newsagents, we suspect they would not have endorsed the application. Indeed, we expect that wide consultation with newsagents would have led the ANF to seek support from the MPA, Publishers Australia, other publishers and all magazine distributors for a root and branch review of the magazine supply model with the goal of removing barriers to the competitiveness of newsagents.

The MPA claims that the magazine supply rule changes to be trialed could lead to significant public benefit. We say that the MPA, with a membership of three magazine publishers, has no basis on which to make such a claim.

In forming its views on the application, newsXpress has met with its members in a series of face to face meetings around the country, engaged in transparent discussion in a private newsXpress member only online forum and harvested magazine performance data from its members to understand the performance of magazines today.

We say with confidence that the views we have put to the ACCC are the views of the majority of our members as well as many newsagents with whom I have personally discussed this matter.

We suspect that the views put by the ANF are not the views of a majority of their members. We encourage the ACCC to test the ANF on their endorsement as the MPA relies heavily on this.

If the authorisation is granted, it effectively endorses a magazine supply model to newsagents that is significantly different to the supply model to other retailers, a supply model that denies newsagents the ability to be competitive with magazines.

The public will only benefit if newsagents are able to compete with other magazine retailers. This trial does not test rules that would, if adopted, improve the ability of newsagents to compete and thereby deliver a public benefit.

While we understand why from a legal perspective the MPA petitions the ACCC to ignore our submissions, we argue that from an ethical and social responsibility perspective our submissions are vitally important to the future health of the small business newsagent channel in Australia.

The model under which newsagents are supplied magazines compared to their competitors competitively disadvantages newsagents. The disadvantage newsagents suffer will not alter from the implementation of a Distribution Code of Conduct as promoted by the MPA and proposed to be piloted as outlined in their Application A91472.

The application by the MPA to the ACCC opens for consideration the various models of supply of magazines in Australia.

For the ACCC to make an informed decision and to consider the public benefit of any change, we submit that the ACCC needs to undertake a thorough assessment of magazine supply.

A key concern for newsagents about magazine supply arrangements is the secrecy regarding the terms for the convenience, supermarket and petrol channels compared to the terms for newsagents. This secrecy has fed a distrust among newsagents about magazine supply rules and behavior. This distrust feeds into how newsagents behave in relation to magazines.

Our view is the MPA ought to make all results public so that all stakeholders can make informed decisions about the results as they may play into magazine supply rule changes.

In the May 28 letter on behalf of the MPA, the reference on page 2 - *yet to be formulated Code of Conduct* - is confusing as the trial is a trial of a proposed code of conduct.

The May 28 letter on behalf of the MPA notes on page 2: *Please note that my instructions remain that Pilot newsagencies will have input to the range they receive, in the context of the application of the category management principles previously referenced.* We are concerned about this as it is contrary to the supply process documented in the proposed rules to be tested (2.1 of Annexure B of the MPA Application). This leaves us to question whether the trial is testing processes that could not be reasonably applied to all newsagents post-trial.

In other correspondence to the ACCC, the MPA has said that newsagents will have the ability to early return magazines. If this is the case it ought to be documented in the supply rules (2.4 of Appendix B of the MPA Application) as put to the ACCC.

Considering the various submissions by the MPA in writing and orally, we consider it appropriate the MPA review the Distribution Rules, to ensure they reflect submissions to the ACCC and to provide clarity and certainty to newsagents, magazine distributors and magazine publishers.

Finally, we are concerned about the conduct of the trial. We have been told that participating newsagents are receiving considerable assistance in-store in relating to magazines. If true, this assistance could damage the results, making them useless in considering whether to apply to the whole channel – unless, of course, all newsagents receive similar in-store assistance.

newsXpress supports trialing magazine supply changes that enable all newsagents to compete with supermarkets and other retail channels. Ideally, we would like to participate in informed and respectful consultations to this end - based on data available today that could guide supply changes to provide newsagents with fair supply and thereby to reduce early returns.

Sincerely,



Mark Fletcher
Director

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CC. Mr P Holm, Andrews & Holm
Mr A Maccioni, The Australian Newsagents' Federation