



Our ref: N10000521 & N10000523
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By email

Dear Madam/Sir

Exclusive dealing notifications N10000521 and N10000523 lodged by TVSN Channel Pty Ltd – interested party consultation

The Australian Competition and Consumer Commission (the **ACCC**) is seeking comments on two exclusive dealing notifications received from TVSN Channel Pty Ltd (**TVSN**). Broadly, the notifications involve:

- TVSN acquiring products from suppliers on conditions that the supplier will not supply products under the same brand or product category to other dedicated television shopping channels for a four month exclusivity period (**N10000521**), and
- TVSN refusing to acquire products where the supplier supplies other dedicated television shopping channels (**N10000523**).

The two notifications were lodged after TVSN withdrew its previous notification [N10000509](#). Further details about the notified arrangements are set out below.

The purpose of this letter is to invite you, as a potentially interested party, to comment on the current notified arrangements. Further information about the notification process is provided in the ACCC's [Exclusive Dealing Notification Guidelines](#). If you do not wish to make a submission, no further action is required from you.

Exclusive dealing conduct and the notification process

Broadly, exclusive dealing occurs when one person trading with another restricts the other's freedom to choose with whom, in what or where they deal. Exclusive dealing arrangements breach the *Competition and Consumer Act 2010* (the **Act**) if the restriction is likely to have the purpose, effect or likely effect of substantially lessening competition. By lodging a notification with the ACCC, businesses obtain protection from legal action for exclusive dealing conduct. This protection commences immediately and remains unless or until the ACCC revokes that protection.

The ACCC can only remove the protection from legal action provided by a notification if it is satisfied that the notified conduct:

- has the purpose, effect or likely effect of substantially lessening competition, and
- in all the circumstances, will not result in any likely public benefit(s) which would outweigh any likely public detriment(s).

Details of TVSN's notified arrangements

TVSN is an Australian television shopping network that facilitates the sale of consumer products via television broadcasts containing live presentations, demonstrations and special offers.

TVSN has lodged two notifications which involve the following arrangements:

- TVSN acquiring, or offering to acquire, products from suppliers on condition that a supplier will not, without TVSN's consent, supply those products, or any other products under the same brand or in the same product category, for feature or sale by another dedicated television shopping channel retailer (**DTSCR**) for a four-month exclusivity period, and
- TVSN having the ability to refuse to acquire products from suppliers, or to terminate supplier agreements, for the reason that a supplier has supplied, proposes to supply or has not agreed not to supply, products or services to another DTSCR.

TVSN defines a DTSCR as a retailer which predominantly utilises the live presentation or live demonstration format to sell products to consumers within Australia or New Zealand on a dedicated television shopping channel (ie, one that generally operates 24 hours a day, 7 days a week). TVSN states that currently, Openshop is the only other retailer which properly fits this description and comes within the scope of the notified conduct.

A copy of each notification is **attached** to this email. Updates on these matters as they progress will be available on the ACCC's [Notifications Public Register](#).

Previous notification

TVSN previously lodged an exclusive dealing notification on 30 October 2019 (see [N10000509](#)), but withdrew that notification on 27 May 2020.

Under notification N10000509, TVSN proposed to engage suppliers of specific consumer products for sale through TVSN on the condition that those suppliers, distributors or manufacturers not market, promote or sell products on a 'Competitor Shopping Channel'.

Some interested parties were concerned that Competitor Shopping Channel as defined in that notification was unclear and could include other broadcast mediums such as breakfast and morning television programs on free to air networks that include live product demonstrations and promotions.

TVSN stated that it withdrew this notification in recognition of feedback from interested parties that reflected a need to clarify the notified conduct to avoid misinterpretation of its intended scope.

The ACCC will have regard to information and submissions received in relation to the withdrawn notification to the extent that it is relevant to the two notifications that it is currently considering.

Request for submissions

The ACCC invites you to make a submission, regarding either or both of the current notifications, on the following issues:

1. Whether TVSN's currently notified arrangements:
 - have the purpose, effect or likely effect of substantially lessening competition, and/or
 - will result in likely public benefit(s) which would outweigh any public detriment(s)
2. On what factors dedicated television shopping channels compete, and the impact of the notified conduct on the ability of other dedicated television shopping channels currently operating or that may seek to operate in Australia in the future to compete
3. The extent to which dedicated television shopping channels compete with other mediums, platforms or channels to supply advertising and/or retail opportunities to suppliers.
4. Whether there are any 'must have' suppliers, brands or products that a dedicated television shopping channel is likely to require to compete effectively.
5. The likely impact on suppliers of:
 - TVSN acquiring products from suppliers on conditions that the supplier will not supply products under the same brand or product category to other dedicated television shopping channels for a four month exclusivity period, and/or
 - TVSN refusing to acquire products where the supplier supplies other dedicated television shopping channelsincluding the extent to which, and how, the impact may differ for different types of suppliers.
6. The extent to which TVSN invests in the development, support and promotion of its supplier's products, including through commitments in terms of purchases and program or event scheduling, and the need for an exclusivity commitment to underpin such investments and commitments.
7. The likely impact of TVSN's notified conduct on prices or service quality for businesses that supply dedicated television shopping channels and for dedicated television shopping channel customers/viewers.

If you intend to provide a submission in relation to either or both notifications, please do so by **Friday, 14 August 2020**. Submissions should be emailed to adjudication@acc.gov.au with the subject "N10000521 & N10000523 – TVSN Channel Pty Ltd – submission".

Submissions will be placed on the ACCC's public register subject to any request for exclusion. Please see the ACCC's [Guidelines for excluding information from the public register](#).

Please advise if you do not wish to make a submission at this time, but would like to be informed of the progress of the assessment. If you are able to, please provide a nominated contact email address for future correspondence.

You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding the notified arrangements.

Next steps

The ACCC intends to make a decision regarding the notifications in September 2020. This will either be a decision to issue a draft notice to revoke either or both notifications, or a decision to take no further action and allow either or both the notifications to stand.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Miriam Kolacz on (03) 9658 6476 or Steven Lee on (02) 6243 1347.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'G Jones', with a long horizontal flourish extending to the right.

Gavin Jones
Director
Adjudication