
From: Jacky Cho [REDACTED]
Sent: Monday, 7 June 2021 11:57 AM
To: Kolacz, Miriam
Cc: Jones, Gavin; Ken Hong; Tin-Lok Shea; Sandy Cho
Subject: RE: openshop [SEC=OFFICIAL] [ACCC-ACCCANDAER.FID2591893]

Dear Miriam,

We refer to your email requesting for a response to your revised question 9 below.

Please find attached a copy of openshop's letter to the ACCC dated 28 May 2021, together with a version for public access which redacts information considered to be commercially sensitive. We will be grateful if the ACCC ensures that the redacted sections are not made publicly available.

Further, we are instructed that openshop will not file any additional submissions in response to the further notification of exclusive dealing lodged by TVSN Channel Pty Ltd dated 18 March 2021 (**Further Notification**). Please note that our non-response to the Further Notification should not be taken as acceptance of TVSN's assertions, and we request that openshop's previous submissions still be taken to account in ACCC's adjudication of the Further Notification.

Should you have any questions, please contact us.

Kind regards,

Jacky Cho | Lawyer

Level 5, 32 Martin Place, Sydney NSW 2000 Australia
GPO Box 5375 Sydney NSW 2001

E [REDACTED]
T [REDACTED] | F [REDACTED]

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From: Kolacz, Miriam <miriam.kolacz@acc.gov.au>
Sent: Wednesday, 14 April 2021 11:24 AM
To: Ken Hong [REDACTED]
Cc: Tin-Lok Shea [REDACTED]; Jacky Cho [REDACTED]; Sandy Cho [REDACTED]
[REDACTED] Jones, Gavin <gavin.jones@acc.gov.au>
Subject: RE: openshop [SEC=OFFICIAL] [ACCC-ACCCANDAER.FID2591893]

OFFICIAL

Hi Ken

As just discussed, please see highlighted **below** Ashurt's previous reference to the fact that it would provide a response to our revised question 9, separately.

The revised version of question 9 is as follows:

9. Please describe openshop's experience and observations more generally about trying to source suppliers, including:
- the typical lead time from identifying a potential supplier to their product appearing on TV
 - openshop's success rate in choosing suppliers – that is, what proportion of suppliers chosen by openshop go on to have a regular slot versus those that do not
 - any instances of suppliers first appearing on openshop, then switching to TVSN
 - any instances of potential suppliers approaching openshop, rather than openshop approach them
 - the proportion of openshop suppliers:
 - within each product category
 - who have experience in other TV shopping fora (for example, infomercials, or overseas home shopping channels)
 - who were new to selling via the TV shopping medium, and
 - who are new to the retail market entirely.

I have also **attached** openshop's response to our other questions for your reference. The public version of this response is available on our public register.

Please let me know if you have any questions.

Kind regards
Miriam

Miriam Kolacz

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**As of October 2020, the ACCC's Adjudication Branch has changed its name to Competition Exemptions Branch (exemptions@acc.gov.au), but our role is the same; we assess applications for authorisation, notifications, class exemptions, certification trade marks, and export agreements.*

The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

28th May 2021

**STRICTLY PRIVATE & CONFIDENTIAL
BY EMAIL**

Miriam Kolacz
Senior Analyst
Adjudication Division
Australian Competition & Consumer Commission
Level 17 Casselden
2 Lonsdale Street, Melbourne 3000

Dear Miriam

Exclusive dealing notifications lodged by TVSN Channel Pty Ltd

We refer to the ACCC's email to H & H Lawyers dated 14 April 2021 requesting openshop to describe its experience and observations generally in trying to source suppliers, including in relation to a number of specific areas. The ACCC will recall that these matters were discussed during our meeting with you earlier this year. In this response, openshop sets out its views on these matters in written form and address the ACCC's further queries.

Openshop's responses to the ACCC's requests are set out below.

Please describe openshop's experience and observations more generally about trying to source suppliers, including in relation to items (a) – (e) below.

Understanding what makes a successful show across the television shopping format highlights the limited number of available suppliers for dedicated television shopping retailers. openshop's format is 56 minutes of detailed product descriptions including live demonstrations of all products features and benefits, to ensure that customers have all the information they need to make an informed purchase.

Two key features of successful television shopping shows are:

- (i) having effective brand guests; and
- (ii) identifying the target customer (having regard to the nature of their purchasing decision).

The brand guest is generally made available by the product supplier and is a critical part of the product package offered by the supplier. A successful brand guest must be able to elicit a positive emotional connection from customers, which usually comes from having some type of 'x factor' (eg, the guest can be enigmatic, flamboyant, polarising etc).

In relation to target customers, there are two broad categories of customers that openshop appeals to – first, the emotional purchaser, and second, the rational purchaser. openshop's experience and observations in relation to each category is described below, together with our views on suppliers that have a portfolio offering.

Emotional purchases

Product categories which are purchased for purely emotional reasons include those products which customer may not really need, but are tempted to buy. These categories include skincare, cosmetics, vitamins, detox teas, fashion, and jewellery.

The criteria which impact emotional purchase decisions are highly personal, for example, vanity, love, envy and pride. These purchase decisions are strongly based on impulses as well as recommendations. There is not a long-term need or an urgent circumstance which leads to purchasing the product. The customer does not look for information prior to the purchase and does not evaluate alternatives. The decision is purely based on an emotional output, for example, "this skincare cream will help me look younger".

Products that require a customer to make an emotional purchase need to have unique selling points in order to be successful on the television shopping format. Products that are widely available in retail stores throughout Australia will be unsuccessful on television shopping as a customer is not willing to wait for a product they order from television if they could buy it that same day from a local retail store.

For example, successful health and beauty brands on television shopping generally have as its unique selling points a proprietary ingredient and/or an 'x factor' guest:

Proprietary ingredient: a 'successful health and beauty product for television shopping needs a proprietary ingredient not widely available in retail stores. The television shopping format allows for 56 minutes of education about the ingredients, the features and benefits of those ingredients, and why the customers should buy the product. For example,

[REDACTED]

"X-factor" guest: as described above, an effective brand guest can make or break a brand on air and this is clearly evident in relation to health and beauty products. For example,

[REDACTED]

Whilst there are many suppliers in the health and beauty category, the proprietary ingredient and guest with 'x factor' requirements mean that there is a very small sub-set of suppliers that will prove to be successful for television shopping.

As a result of TVSN's exclusivity conduct, openshop has struggled to attract products that meet these requirements. For example:

- [REDACTED]

- [REDACTED]

Rational purchases

Rational purchases are those purchases which are mainly based on objective criteria, for example, utilities, caution, health, security & entertainment. For these products, rational factors outweigh emotional ones. Customers buy a new television because their old television has stopped working, or they want to have the most up to date hardware or software. A customer's emotional mindset towards the brand is secondary, however confidence and trust in the brand are paramount.

Rational purchases are usually accompanied by extensive research and comparisons of different products and offers. In general, rational purchases are made for products which require in-depth research, information and more extensive knowledge. Oftentimes, the products require higher expenses and a deeper level of dedication. These purchases are not based mainly on impulses and cannot be triggered as easily as emotional purchases can be.

For example, a camera is usually not purchased without comparing different models beforehand, as these are products which are used over a longer period of time, require spending a higher amount of money and need to perform well to satisfy the consumer's needs. A customer buying a camera on television shopping will typically be influenced by the following factors:

- 1) **Branding:** customers generally buy camera brands that they know or are established in the marketplace. They feel that they can trust these brands and are more comfortable in purchasing. Sales are usually higher in these brands [REDACTED]
- 2) **Pricing:** Cameras tend to be a considered purchase, so customer may look around (usually via the web) before they make a decision to buy. openshop need to be competitive in the marketplace to make the customers feel happy to buy.
- 3) **Features:** The customer will want to know what the features are of the camera before buying. openshop's presenters and the relevant guest can explain this very well in a 56 minute show.
- 4) **Story/Guest:** putting a show together with the above 3 points in mind and having a guest that can demonstrate features and explain how the product will improve the customers viewing experience, along with competitive price, will entice the customer to buy.

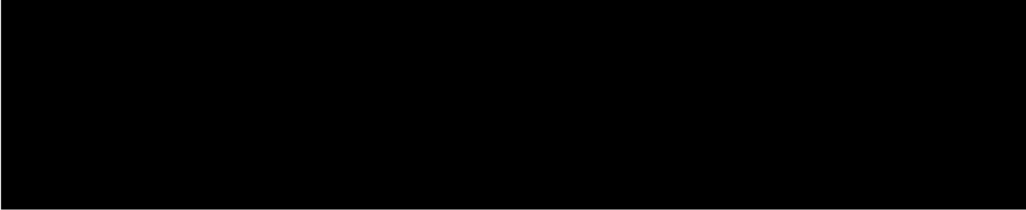
There are only a limited number of camera suppliers that meet the above criteria and are willing to supply products on television shopping. As a result of TVSN's exclusivity conduct, openshop has struggled to attract products that meet these requirements. This is because there are three specialist camera brands available in the market – namely, [REDACTED]. Of these, [REDACTED] will not work with either TVSN or openshop and [REDACTED] are both signed up to TVSN. [REDACTED] understand the TV shopping formula very well and have brand guests with extensive knowledge as well as putting together solid exclusive offers featuring points of difference in the market.

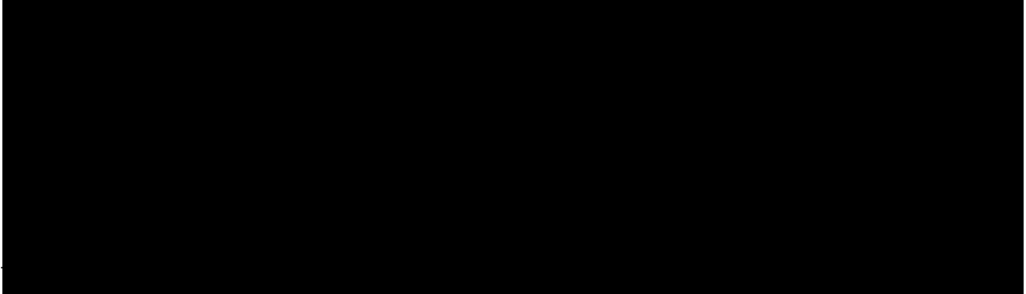
Portfolio suppliers

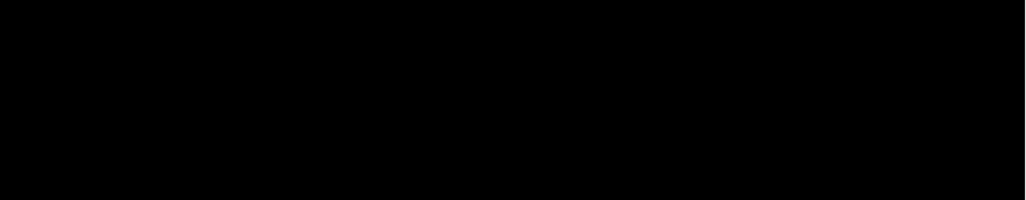
Many suppliers openshop aims to work with have multiple brands in a portfolio that would be suitable for television shopping.


TVSN's exclusivity conduct has made it very difficult for these types of suppliers to deal with openshop, including across their brands that are not being offered on TVSN. It is widely known that TVSN has ceased to deal with suppliers who have decided to work with openshop, and, as a result, suppliers will not offer us any of their brands for fear of losing their business with TVSN. For example:

1) 

2) 

3) 

4) 

5) 

(a) the typical lead time from identifying a potential supplier to their product appearing on TV

The typical lifecycle of openshop's products is described in paragraph 2.33 of openshop's submission to the ACCC.

openshop's lead times for each product are largely dependent on the time taken by suppliers to source and supply the product to openshop, which can vary considerably between products and suppliers. Generally, the lead time from identifying a potential supplier to their product appearing on the openshop channel varies from 1 month to 6 months, however, in some cases, it can take up to 18 months.

- (b) **openshop's success rate in choosing suppliers – that is, what proportion of suppliers chosen by openshop go on to have a regular slot versus those that do not**

█ of openshop's suppliers are successful and go on to have regular shows while █ of openshop's suppliers are unsuccessful and are pulled from air.

As described in paragraph 2.36 of openshop's submission, it is only after openshop has developed the brand campaign, produced the recorded and live content and aired the program (and incurred the costs associated with each of these steps) that it becomes clearer to openshop whether a product will be successful or not.

- (c) **any instances of suppliers first appearing on openshop, then switching to TVSN**

None.

- (d) **any instances of potential suppliers approaching openshop, rather than openshop approach them**

openshop will occasionally be approached by potential suppliers but it is more common for openshop's team of buyers to identify and approach potential suppliers. In openshop's experience, potential suppliers that approach openshop are often unsuitable for home shopping and are much less likely to be successful than potential suppliers identified by openshop's buyers. For example, █ initially approached openshop, however, it ultimately failed to appear on TV. There has never been an instance of a supplier approaching openshop, which went to feature on TV.

- (e) **the proportion of openshop suppliers:**

i. within each product category

Category	No. of Overall Suppliers	No. of Current Suppliers	Success Rate (%)
Total			

ii. who have experience in other TV shopping fora (for example, infomercials, or overseas home shopping channels)

Category	Total Current Supplier	Current Supplier with TV shopping experience	Current Supplier without TV shopping experience
Total			

iii. who were new to selling via the TV shopping medium, and

See the above table (e)(ii).

iv. who are new to the retail market entirely.

None.

Confidentiality

In this letter, information highlighted in red is confidential to openshop. openshop regards this information as highly confidential and commercially sensitive and requests that the information not be disclosed on the ACCC's public register and, subject to the terms set out below, the information not be disclosed to any third parties:

- (i) there is no restriction on the internal use, including future use, that the ACCC may make of the information, consistent with its statutory functions;
- (ii) the information may be disclosed to the ACCC's external advisors and consultants on condition that each advisor or consultant will be informed of the obligation to treat the information as confidential; and
- (iii) the ACCC may disclose the information to third parties (in addition to its advisors and consultants) if compelled by law or in accordance with section 155AAA of the *Competition and Consumer Act 2010* (Cth).

openshop has prepared a public version of this letter, redacting its confidential information, that the ACCC may place on its public register.

Yours faithfully\



Jason Kim

Managing Director & CEO