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By email: gavin.jones@accg.gov.au

Gavin Jones
Director, Adjudication Branch
Australian Competition and Consumer Commission
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Melbourne 3000

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Dear Mr Jones

TVSN – Notification re refusal to acquire

We refer to our proposal for the voluntary production of information and documents emailed to the ACCC team on 8 September 2020. This proposal included an additional short submission in relation to the refusal to acquire notification. On our call of 3 September 2020, you asked whether the splitting out and framing of this notification was intended to broaden the scope of the conduct by suggesting that TVSN would not deal with any suppliers existing or future that dealt with another DTSCR.

As noted in the supporting submission dated 30 April 2020, TVSN filed revised and separate notifications splitting out the refusal to acquire and the acquisition on condition to more clearly delineate the narrow and limited scope of its proposed exclusive dealing conduct. The framing of the refusal to acquire notification reflects the wording used in section 47(5) of the *Competition and Consumer Act 2010* (Cth).

The notification was not intended to prevent suppliers switching from Hyundai-Openshop to TVSN or to suggest that historical supply to Hyundai-Openshop alone would prevent TVSN acquiring that supplier's products. The lack of such an intention or strategy is reflected in TVSN's communications with suppliers and the return of suppliers from Hyundai -Openshop to TVSN [**Restriction of Publication of Part Claimed**].

The refusal to acquire notification relates to TVSN having the commercial freedom, like other retailers, to decide how it spends its finite financial and other resources.

As reflected in the submissions, documents and information provided to date, TVSN does not have the ability or desire to foreclose a supplier's access to consumers. Nor does it have any ability to foreclose another DTSCR or prevent it from achieving minimum efficient scale.

There are plenty of suppliers available to Hyundai-Openshop including suppliers overseas who wish to sell in Australia.

The notified conduct does not prevent the supplier from marketing and/or selling their products via any other marketing or distribution channel, including through live or pre-recorded television formats. Nor does it prevent the supplier from:

- choosing to use another DTSCR to feature its products (with DTSCRs competing to have the supplier's products on their channel); or



- having commenced sales through TVSN, subsequently switching from TVSN to another DTSCR, upon termination of the supplier agreement.

TVSN simply wants the commercial freedom not to be forced to buy or continue to buy from a supplier, including where that supplier:

- is proposing to move to another DTSCR (as opposed to other retail platforms) and there is a risk of investments being expropriated and/or brand confusion in relation to the TVSN brand or the supplier's brand; or
- has supplied to another DTSCR and there remains a risk of brand confusion or a diminished ability for TVSN to maximise the profitability and sale of the supplier's products due to the way the product was promoted or sold on the other DTSCR.

Our submissions and the information and documents provided to date fully address and explain the lack of competitive detriment that will be caused by this notification particularly given the large number of suppliers and other platforms available for the promotion and sale of relevant consumer goods.

As previously discussed, if there is any further material you require to assess the notifications, please let us know so that it can be provided on a voluntary basis.

TVSN management will also make themselves available for a meeting to further discuss any aspects, issues or concerns if that would assist the Commission in its assessment of this matter.

Yours faithfully
Gilbert + Tobin



Luke Woodward
Partner



Rebecca Dollisson
Lawyer

