

From: [Vic Cherikoff](#)
To: [Adjudication](#) [REDACTED]
Subject: RE: ACCC consulting on TVSN exclusive dealing notifications [SEC=OFFICIAL] [ACCC-ACCCANDAER.FID2536460]
Date: Friday, 14 August 2020 3:11:16 PM

Dear Steven,

The following is my submission on the above matter and I approve the use of my comments in the public domain.

Having read the new notifications by TVSN alluding to their exclusivity arrangements, I state the following:

Kalari Crush was offered to TVSN on an exclusive basis by my partnership, Kakadu International Pty Ltd. The product was supplied to TVSN and marketed by myself on-air for 13 years.

For most of this time, we were able to grow revenues for TVSN and approached \$2m before [REDACTED] [REDACTED] was employed. [REDACTED] management directives reduced the following year's sales to 1/10th of this and made the product unprofitable for us.

Persisting with the poor management, I and Ross Standfast from Magazine Offers and our brand representative to TVSN, were able to recover this market but only to around 1/3 of its previous level.

TVSN maintained their verbal desire for exclusivity of our brand but lower management acknowledged the volumes necessitated our need to also sell direct through an on-line store. However, TVSN did insist that our selling price remain higher than what they offered their customers.

TVSN were also committed to driving our price ever-downwards, so much so that combined with the low volumes, profitability was so low that it was a barely viable business. This was then made even more difficult by extended payment terms.

In an attempt to expand sales with TVSN, Ross and I pitched a superior nutritional blend called LLIFE which was made and marketed by my own company, Australian Functional Ingredients Pty Ltd but TVSN did not want to stock this product. In due course, we then offered LIFE to Australian Shopping Network who now trade as OpenShop.

Once TVSN discovered my promotions of my own product on a competing channel, they ended their 13 year interest in Kalari Crush in a move which was clearly restrictive trade practices.

The point of this submission is that exclusivity must be mirrored by a value proposition for suppliers. TVSN may offer a platform for sales promotions but unless suppliers are assured that set key performance indicators are part of any exclusivity deal, then the past unconscionable behaviour of TVSN executives is more than likely to prejudice suppliers into untenable, unprofitable and costly loss positions. Should TVSN continue to operate, they may play off their historic values as a sales portal and be free to play one supplier against others expecting to make reasonable sales should they be accepted by TVSN. The net result without any projected KPIs

offered by TVSN would be a devastating line up of ripped off companies and continuing restraint of their trade.

The notifications are all in TVSN's favour with no obligations as to the total number of annual selling opportunities ie events and shows per month; replays; allotted presenters and producers; extra promotional openings; and appropriate time slots; payment terms and other logistics issues. These would be essential to assure suppliers that their exclusive agreement may translate to a profitable endeavour. It appears that TVSN is only concerned about its inability to compete in an open market against OpenShop and in filling their channel with a variety of brands with any risk (exclusively) worn by their suppliers.

Kindest regards,



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