

AUSTRALIAN COMPETITION & CONSUMER COMMISSION MEETING RECORD

OFFICE: Canberra
TIME: 4.00pm
DATE: 31 July 2002

SUBJECT: Authorisation A90837 lodged by the Australian Hotels Association (NSW)

ATTENDEES: Hank Spier (Spier Consulting)
John Thorpe (President, AHA(NSW))
Bevan Douglas (Senior Vice President, AHA(NSW))
Jennifer McNeill (Commissioner, ACCC)
Tim Grimwade (General Manager, Adjudication, ACCC)
Peter McDonald (Director, Adjudication, ACCC)
Amanda Add (Senior Project Officer, Adjudication, ACCC)

The main points raised during the meeting are outlined below.

- The ACCC confirmed with the AHA(NSW) that it is applying for authorisation on behalf of AHA(NSW) members (current and future) and that the AHA(NSW) would not be conducting negotiations on behalf of non-members. Mr Spier confirmed that a vote had been taken by AHA(NSW) Board Members regarding the application for authorisation, and said that he would provide the ACCC with a copy of the minutes of the relevant meeting.
- The AHA(NSW) confirmed that, while a number of different contracts may be negotiated pursuant to the authorisation (with different terms such as fee schedules or contract length, for example), the conduct to be covered would be the same in all circumstances, that is, negotiation of contracts between AHA(NSW) members and TAB Ltd for the supply of wagering and racing broadcast services.
- The AHA(NSW) noted that interested parties that the ACCC may wish to consult include:
 - the AHA in other jurisdictions;
 - TAB agents;
 - registered clubs;
 - a selection of AHA(NSW) members;
 - the NSW Department of Gaming and Racing; and
 - Foxtel.
- The AHA(NSW) conveyed the following points to the ACCC by way of background to the application:

- TAB Ltd has an exclusive licence to provide wagering services in NSW.
- TAB Ltd also owns Sky Channel, the sole provider of televised racing broadcasts in NSW.
- In the view of many AHA(NSW) members, the current commercial arrangements were not working well.
- There has been a long history of animosity between AHA members (not confined to NSW) and the TAB relating to contractual negotiations.
- TAB outlets are in the form of TAB storefront operations, PubTAB and ClubTAB.
- When the TAB was government owned, it limited the number of TAB outlets in particular regions. For example, if there were 4 pubs in a main street, ordinarily only one of them would have a TAB outlet.
- Since becoming a public company this has changed. Anyone can now apply for a TAB outlet and now almost every pub has a PubTAB.
- However, the terms and conditions of the contracts (including the fee schedules) for PubTAB haven't changed significantly since becoming a public company, even though there has been a huge increase in the number of TAB outlets.
- The AHA(NSW) estimates that a hotel now requires a turnover of around \$18000 to breakeven on PubTAB.
- Foxtel have a flat rate which they charge hotels for broadcast services that include three sports channels. They do not, however, offer racing broadcasts that are controlled by Sky Channel to hotels.
- If you want to have a PubTAB, you must have Sky Channel – the services come bundled. The Sky Channel contracts that are currently being offered are for 5 years. PubTAB and Sky Channel are on the same contract, however, there is a different schedule of fees for each service. AHA(NSW) members generally do not think it is fair to base the fees for Sky Channel on the total literage of their hotels.
- Takings from PubTAB have decreased, while Sky Channel fees have increased because they are based on literage.
- Sky Channel dictates the terms of contracts and does not enter into negotiations with AHA(NSW) members. Sky Channel has threatened the AHA(NSW) that they would “take them on” under the TPA should they attempt to collectively negotiate terms and conditions of contracts.
- In order to be competitive, hotels have to provide patrons with access to racing broadcast and wagering services, but costs and contract terms often make it unprofitable. Hotels feel that they have no options as they are dealing with a monopoly supplier.

- The AHA(NSW) stated that the ability to collectively negotiate may have the benefit of being able to secure different packages for rural and city members, reflecting their different commercial circumstances.
- The AHA(NSW) noted that negotiation is likely to be on both pricing issues, which the AHA(NSW) currently sees as unfair, and the terms of the contract, including terms that require hotels to provide all on costs including labour and facilities.
- A minority of hotels in NSW are not members of the AHA(NSW) (membership is approximately 84%). Of non-members, these are most likely to be small, family operations. Non-members may, however, have PubTAB and Sky Channel.
- Hoteliers object to releasing details of their literage to TAB Ltd to calculate Sky Channel fees. The AHA(NSW) pointed out that the TAB Ltd is in the process of buying hotels and also oversees gaming machine operations in hotels. In their view, this gives the TAB Ltd unfair access to commercial information which they may use to gain competitive advantage in the hotel industry.
- The AHA(NSW) stated that any cuts in the cost supplying racing broadcast services in their hotels are to some extent likely to be passed on to the consumer in the form of lower liquor prices. To some extent, the hotels will also retain cost savings.
- The AHA(NSW) noted that some of their members (for example, hotels that are owned by Fosters) may not wish to be involved in any collective negotiations.
- The AHA(NSW) confirmed that only suppliers of PubTAB would be affected by the negotiations. Mr Spier said that he would try to supply the ACCC with a breakdown of the number of PubTAB, ClubTAB and TAB storefront outlets in NSW.
- The ACCC asked whether there had been any claims of unconscionable conduct brought against TAB Ltd or Sky Channel. The AHA(NSW) said that, to date, there had not been but that many members believed that the existing contracts and the way in which negotiations occurred were very unfair.
- Mr Spier said that if possible he would supply the ACCC with some examples evidencing unfair contract negotiations and the effect this has on hotels.
- The AHA(NSW) stated that having a PubTAB does not necessarily increase liquor sales. The AHA(NSW) believes that it is unfair to base fees on total literage, which often reflects the success of their other operations (bistro operations or gaming machines, for example).
- Mr Grimwade said that it would assist the ACCC if the AHA(NSW) could provide it with details relating to the type of information hotels were likely to exchange amongst themselves and with TAB Ltd as part of the collective negotiations, along with further details of how this is likely to result in benefits to the public.

- Mr Grimwade also requested further details of types of transaction costs that presently exist in relation to contract negotiations and how collective negotiation would be likely to reduce transaction costs and redistribute the benefits to the public.
- The AHA(NSW) stated that the benefits to the public likely to result from collective negotiation arrangements include increased or continued access to services in rural areas. Mr Spier said that he would attempt to provide further evidence of this benefit to the Commission.
- The AHA(NSW) confirmed that the proposed boycott conduct would be voluntary in the sense that they could probably not force members to not deal with TAB Ltd. The AHA(NSW) noted that, in reality, a boycott was unlikely because it would probably have an adverse affect on patronage in hotels. However, even if all hotels did take part in the boycott, consumers would still have access to wagering and broadcast services (through ClubTAB in registered clubs and TAB storefront outlets).
- The AHA(NSW) stated that the public benefits of the conduct are likely to be significantly weakened if there is no possibility of a boycott for the hotels to fall back on.

The meeting concluded at 6.15pm.