



Australian Competition & Consumer Commission

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Our Ref: C2002/1080
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letter sent to
attached list
of interested
parties. 26/8/02.

26 August, 2002

«Title» «FirstName» «LastName»
«JobTitle»
«Company»
«Address1»
«City» «State» «PostalCode»

Dear «Title» «LastName»

Authorisation A90837 lodged by the Australian Hotels Association (NSW)

The Australian Competition and Consumer Commission ("the Commission") has received an application for authorisation from the Australian Hotels Association (NSW) ("AHA(NSW)") to allow it to conduct collective contractual negotiations on behalf of its members with TAB Ltd in New South Wales for PubTAB wagering services and Sky Channel racing broadcast services. The AHA(NSW) is an industry association representing the majority of hotels and taverns in New South Wales.

The application also seeks authorisation of primary boycott activity in the form of a collective decision by member hotels and taverns to withdraw services to TAB Ltd should contractual negotiations break down and not recommence within 7 days.

By way of background, the Commission is the Commonwealth agency responsible for administering the *Trade Practices Act 1974* ("the Act"). A key objective of the Act is to prevent anticompetitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.

The Act, however, recognises that the public interest may not always be met by the operation of competitive markets. Authorisation is a process whereby the Commission, in response to an application, has the power to grant immunity from court action for arrangements or conduct which might otherwise be in breach of the Act. In order to grant authorisation the Commission must be satisfied the public benefit arising from the arrangements outweighs any anticompetitive detriment.

A guide is enclosed which outlines the authorisation process under the Act.



As a potentially interested party you are invited to make a written submission to the Commission regarding the likely public benefits and effects on competition of the arrangements for which authorisation is sought. The Commission is aware that ownership of wagering facilities varies between states in Australia. If you wish to make a submission to the Commission, please provide an outline of the arrangements in your state, particularly with respect to:

- whether totalisator facilities are government owned or privatised;
- whether there are any exclusivity arrangements for the provision of wagering services; and
- details of racing broadcasting providers in your state.

A copy of the AHA(NSW) application and supporting submission is attached, and can also be viewed by following the “Adjudication” and “Authorisations” links on the Commission’s website at <http://www.accc.gov.au>.

In its submission, the AHA(NSW) has suggested that the following public benefits are likely to flow from the proposed conduct:

- ensuring the continued viability of small business operations, particularly in rural and regional areas;
- assisting the efficiency and competitiveness of small business;
- providing countervailing power to small business;
- promoting industry cost savings;
- supply of better information to suppliers; and
- equity in the market.

The AHA(NSW) has also submitted that the detriment to the public of the proposed conduct is likely to be small.

The Commission asks for submissions to be in writing so that they can be made publicly available. Submissions are placed on a public register and may also be placed on the Commission’s website. The Commission may, where appropriate, supplement written submissions with discussions with relevant parties on a mutually convenient basis.

Should you lodge a submission with the Commission you may request that information included in the submission be treated as confidential and not placed on the public register or the Commission’s website. The Commission may take confidential information into account during its assessment of an authorisation application. Guidelines for seeking confidentiality are attached for your information.

If you wish to lodge a submission, please address it to:

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

Submissions can also be lodged by email to adjudication@accc.gov.au, or by facsimile on 02 6243 1211.

If you intend to provide a submission in relation to the AHA(NSW) application for authorisation, I would be grateful if you could do so by 6 September 2002.

Should you have any queries or if you wish to discuss any aspect of this matter please contact Peter McDonald on 02 6243 1051 or Amanda Dadd on 02 6243 1391.

Yours sincerely



for Tim Grimwade
General Manager
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the Commission assesses applications for authorisation is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the Commission to maintain a public register in respect of authorisation applications.

Applicants and interested parties can request that a submission, or a part of a submission, be excluded from the public register.

The Commission is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or processes;
- (ii) the case consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

The Commission also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The Commission expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the Commission:

- (a) where the request is that a whole document be excluded, the words **“Restriction of Publication Claimed”** should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words **“Restriction of Publication of Part Claimed”** should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

However, even if a document does not meet these technical requirements, the Commission may still grant confidentiality where, in the Commission's view, it is desirable to do so.

If the Commission denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the Commission will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the Commission will return the original material and destroy all associated copies. The Commission will not consider this material when reaching its decision.

If the Commission does not receive a response within the specified period, the original material will be placed on the public register.

Interested parties
mailing list (3)

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