



Australian Competition & Consumer Commission

PO Box 1199
Dickson ACT 2602
470 Northbourne Ave
Dickson ACT 2602
Australia

Ph (02) 6243 1111
Fax (02) 6243 1199

Our Ref: C2002/1080
Contact Officer: Amanda Dadd
Contact Phone: 02 6243 1391

4 September 2002

Mr Hank Spier
Director
Spier Consulting
92 Jervois Street
DEAKIN ACT 2600

Dear Mr Spier

**Application for Authorisation lodged by the Australian Hotels Association (NSW)
(A90837)**

I write regarding the above application for authorisation for collective negotiation and primary boycott activity lodged by the Australian Hotels Association (NSW) ("AHA NSW") on 17 July 2002. I also refer to the meeting between Australian Competition and Consumer Commission ("Commission") staff and the AHA NSW on 31 July 2002.

On 30 August the Commission received a letter from Freehills, the solicitors acting for TAB Limited and Sky Channel, in response to an invitation from the Commission to provide a submission addressing the likely public benefits and effects on competition of the AHA NSW's proposed conduct. A copy of this letter is attached.

The letter outlines a number of concerns that TAB Limited and Sky Channel have in relation to the AHA NSW application. In summary, the letter raises the following matters.

1. "The application does not properly identify the parties to the proposed contract, arrangement or understanding.
2. The application does not identify the contract, arrangement or understanding requiring authorisation, the relevant provision(s) therein that may substantially lessen competition, nor the relevant provision(s) therein that may constitute an "exclusionary provision". The application does not indicate whether authorisation is sought in respect of future AHA members, the process by which collective negotiations will occur, nor the procedure for an AHA member to "opt out" of that process.



3. The lack of detail in the application is such that it is very difficult to make an assessment as to the public benefits and the effects on competition of the relevant provision(s) in the proposed contract, arrangement or understanding.
4. The incorrect use of Form B in respect of collective boycott activity, and the apparent failure to properly complete portions of Form B which are relevant to the application for collective bargaining.”

Response Sought by the Commission

The Commission understands from your application and submission and from the meeting of 31 July that the authorisations sought by the AHA NSW can be summarised in the following terms.

1. Collective Bargaining

The AHA NSW seeks authorisation to conduct collective contract negotiations on behalf of any group of AHA NSW members (a collective bargaining group) with TAB Limited and Sky Channel in relation to the provision of wagering and/or racing broadcast services. Such contractual negotiations will potentially encompass all aspects of the supply arrangements, including price.

2. Primary Boycott

The AHA NSW seeks authorisation for a collective bargaining group represented by the AHA NSW to collectively withdraw services to TAB Limited and Sky Channel, should contractual negotiations break down and not recommence within 7 days.

In respect of both applications, the Commission understands the following matters to apply.

The application (as clarified in the meeting of 31 July meeting) names and refers to present and future AHA NSW members as parties or proposed parties to the proposed arrangements.

Pursuant to subsection 88(13) of the Act, the authorisation application applies to any collective bargaining group of AHA NSW members, present or future, represented by the AHA NSW that wishes to engage in the proposed conduct.

AHA NSW member participation in both collective negotiation and primary boycott activity is voluntary. AHA NSW members retain the right to negotiate and enter into individual contracts with TAB Limited.

The Commission understands that more than one collective bargaining group may form pursuant to the applications for authorisation. However, the Commission understands that the exact composition of each potential collective bargaining group is not presently known to the AHA NSW. In these circumstances, pursuant to subsection 88(14) of the Act, if an authorisation is granted in respect of the proposed arrangements where the names of the future parties are not known at the time the application is made, any authorisation will be deemed to be subject to the condition that the AHA NSW will, upon request by the Commission, provide the names of all members who are parties to any contract.

Please confirm that the Commission's understanding in relation to the above features of the applications is correct.

Lodgement of Forms

In light of the claims as to the incorrect use of Form B in your client's application, you may consider that, in the interests of certainty, Forms A and B are appropriately completely and re-lodged.

Additional Information

The Commission would appreciate any additional information that the AHA NSW can provide in relation to the procedure by which proposed collective negotiations will occur and the procedure by which AHA NSW members may "opt out" of the process.

Please also provide the Commission with a list of current AHA NSW members.

I understand that the AHA NSW is in the process of compiling additional information requested by the Commission in its letter of 6 August. In responding to the matters raised by the Commission and by TAB Limited and Sky Channel, please do not hesitate to provide the Commission with any other relevant information.

In order to assist the Commission in considering the AHA NSW authorisation application, I would be grateful if you could provide the Commission with a response to the matters raised in this letter as soon as possible and in any event by Friday 13 September 2002.

If you would like to discuss any aspect of this matter, please do not hesitate to contact Ms Amanda Dadd on 02 6243 1391.

A copy of this letter has been placed on the public register.

Yours sincerely



Tim Grimwade
General Manager
Adjudication Branch