

**TAB AGENTS ASSOCIATION OF NSW**

18-19 / 103 MAJORS BAY ROAD, CONCORD NSW 2137

TELEPHONE (02) 9736-2177, FACSIMILE (02) 9736-2479

**FACSIMILE COVER SHEET**

**TO : The General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission**

**Facsimile : 6243 1211**

**SENDER: Allan Laird - Secretary**

**This facsimile contains 5 pages including this cover page**

**COMMENTS:**



## TAB AGENTS' ASSOCIATION OF N.S.W.

16 September 2002

Address all mail to  
The Secretary  
P.O. BOX 466  
CONCORD  
N.S.W. 2137

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

02 6243 1211

Your Ref: C2002/1080

Dear Sir

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

#### **Introduction**

The TAB Agents' Association of New South Wales ("**Agents' Association**") is a registered union of employers under the *Industrial Relations Act 1996* (NSW). It welcomes the opportunity to make a submission on the application made by the Australian Hotels Association's (NSW) ("**AHA**") for authorisation of collective contractual negotiations on behalf of its members and of primary boycott activity.

The Agents' Association considers itself well placed to make this submission given that its members face issues which are, in many respects, similar to those of the AHA. As the Commission is aware, TAB Limited ("**TAB**") has, pursuant to clause 14 of the *Totalizator Act 1997* (NSW), been granted an exclusive licence to conduct an off-course totalizator in New South Wales. Under the terms of this licence, TAB appoints agents to conduct betting agencies on its behalf. The terms and conditions upon which the agents operate are set out in 'Agency Deeds', which are entered into by each agent and TAB. The Agents' Association has as its members almost all (approximately 98%) of the persons who are appointed by TAB to operate those betting agencies.

For the reasons set on in this Submission, the Association supports AHA's application for authorisation. The members of the Agents' Association face similar issues to those of AHA Members in their dealings with TAB and believe that the ability to collectively negotiate would in their own case:

- provide increased efficiency in the appointment and renewal of agents and in making any variations to existing arrangements;
- not have any adverse impact on the terms and conditions on which the Agents' Association members themselves provide services to customers;
- not have any adverse effect on competition in any relevant market.

From the information available to the Agents' Association, these and other benefits would seem to flow equally to the AHA.

The General Manager  
Australian Competition and Consumer Commission

16 September 2002

### Public Benefits Arising from Collective Negotiations

The principal public benefits which the AHA identifies as arising from the authorisation of the conduct are:

- (a) ensuring the continued viability of small business operations;
- (b) assisting the efficiency and competitiveness of small business;
- (c) the provision of countervailing/bargaining power to small businesses in their dealings with large suppliers;
- (d) promoting industry cost savings, potentially resulting in contained or lower prices at all levels in the supply chain;
- (e) the supply of better information to suppliers to permit more informed choices in their dealings with small business; and
- (f) equity in the market.

In our opinion, these benefits are likely to arise and are discussed in more detail below.

#### *Countervailing power*

Whilst a shift in bargaining power, will not of itself constitute a public benefit, the consequences of such a shift may well do so. In the present case, the contrast in bargaining positions is extreme. This is evident both from examining the respective positions of the parties but also from the way in which it appears that the TAB exerts its strong bargaining position.

The AHA submits that the current disproportionate power balance between TAB and AHA Members has resulted in the current circumstances where AHA Members are not able to negotiate effectively with TAB, resulting in AHA Members being disempowered, to the point where they fear the TAB. AHA Members remain "*commercially dependent upon continued supply by TAB/SKY CHANNEL of totalisator and racing broadcast services*" and have "*no choice but to continue to take TAB/SKY CHANNEL services largely in order to attract customers*", even though some are making losses on providing the services.

The AHA's submission in support of the application for authorisation describes a "*take it or leave it attitude to contracts*", the use of standard form contracts, a "*refusal to negotiate*" and the unilateral imposition of conditions. Each of these is consistent with the current experience of members of the Agents' Association in negotiating with TAB. In our view the ability to collectively negotiate and the ability to effect a boycott would:

- (a) enable the scope for genuine negotiations between TAB and AHA Members which would facilitate:
  - (i) greater efficiencies in the conduct of the businesses of the AHA;
  - (ii) greater scope for innovation in the delivery of products to customers of AHA Members and customers of TAB;
- (b) facilitate individual members, who elect not to participate in the collective negotiations, to themselves conduct meaningful negotiations with the TAB in a way which is not currently realistic given the take it or leave it approach which the TAB currently adopts;
- (c) enable individual AHA Members to gain access to information that ordinarily may not have been available to that member had the AHA Member conducted

The General Manager  
Australian Competition and Consumer Commission

16 September 2002

negotiations on an individual basis. This issue is further discussed in the section below entitled "Promotion of the viability and efficiency of small business".

- (d) reduce the scope for TAB to "force" AHA Members to enter into contracts which the members have had no scope to negotiate and the terms of which may be considered unconscionable. As noted in the AHA's submission, TAB adopts the practice of a "take it or leave it" approach, and refuses to negotiate standard form contracts.

#### ***Promotion of the viability and efficiency of small business***

The AHA has submitted that conducting negotiations jointly will enable AHA Members to gain access to information, including general market information regarding income trends and operating expenditures, which that member would ordinarily not be in a position to obtain. Having access to such information will assist AHA Members, in particular small businesses, in making more informed and better business decisions and in better assessing their long term survival.

As submitted by the AHA, AHA Members would also obtain the benefits of jointly obtaining financial, accounting and legal advice. This is an issue which the Agents' Association also experiences. The costs of any individual obtaining that information can often be prohibitive so that there is significant information asymmetry between the TAB and the individual agent. Given the economies involved, the AHA will be in a better position to obtain this financial, accounting and legal advice in relation to conducting negotiations with TAB. Obtaining this information will enable more efficient negotiations to be conducted which are likely to lead to a more efficient outcome. It will also result in lower transaction costs for individual AHA Members, potentially resulting in lower costs to end consumers.

#### ***Supplier efficiency***

The AHA has submitted that collective negotiations will benefit TAB as well as the individual AHA Members. It is clear that collective negotiations result in savings on transaction costs. The Agents' Association considers that savings in relation to time and labour costs alone, resulting from dealing with one body as opposed to individual AHA Members, would be significant.

#### **No substantial lessening of competition**

The Association is of the opinion that allowing AHA to collectively negotiate on behalf of AHA Members, and further allowing AHA Members to collectively determine to refuse to deal with TAB if those negotiations break down, will not result in any substantially lessening of competition.

The principal concern about collective negotiation is usually that it has the potential to lead to higher prices for customers. Given the issues involved in the present application that is inherently unlikely. Rather, there is the potential for the costs of the operations of individual AHA Members' operations to be reduced by having agreements with the TAB which provide a level of fees calculated on a basis directly referable to the services which are being provided by the TAB rather than the current literage basis. There is, in addition, scope for enhanced efficiencies which would enable better terms and conditions (both price and non-price) to be offered by AHA Members to their customers.

The Association also notes in this regard that individual AHA Members are not required to participate in the collective negotiations, but may choose to negotiate individually with TAB so that no concerns associated with compulsion arise.

To the extent that there could be said to be any anti-competitive effect, it would be very small and the public benefits arising from the conduct described in AHA's submission and noted above would clearly outweigh it.

The General Manager  
Australian Competition and Consumer Commission

16 September 2002

The Agents' Association would be happy to provide any further information to the Commission.

Yours sincerely



Allan Laird  
Secretary