



Hunt & Hunt

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16 October 2002

Mr Tim Grimwade
Director
Adjudication Unit
Australian Competition & Consumer Commission
PO Box 119
DICKSON ACT 2602

FILE No:
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MARS/PRISM:

EXPRESS POST

Dear Sir


Golden Casket Agents' Association Ltd ABN 70 990 670 286

We act for Golden Casket Agents' Association Ltd.

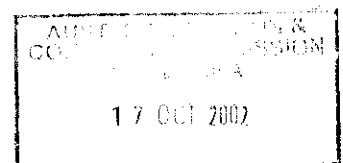
We attach an application on behalf of our client for authorisation for arrangements affecting competition, together with our further letter of today's date containing submissions in support of that application, and our client's cheque in the sum of \$7,500.

Should you require further information, please contact Bronwyn Fursey.

Yours faithfully
HUNT & HUNT


Dan Connolly
Partner
Author: Bronwyn Fursey

BNF2297832 217758v1



ABN 95 591 906 639

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Form B

Commonwealth of Australia
Trade Practices Act 1974 --- Sub-section 88(1)
**AGREEMENTS AFFECTING COMPETITION:
APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that sub-section

- to make a contact or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- (Strike out whichever is not applicable).

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of Applicant:

Golden Casket Agents' Association Ltd.

(See Direction 2 on back of this Form)

(b) Short description of business carried on by applicant:

Industry Association, representing casket agents in Queensland.

(c) Address in Australia for service of documents on the applicant:

C/- Hunt & Hunt Lawyers, Level 22, Central Plaza Two, 66 Eagle Street, Brisbane, Qld, 4000.

2. (a) Brief description of contract, arrangement or understanding and, where already made, its date:

and arrangements
Conduct of negotiations on behalf of members in relation to terms and conditions of agency agreements with Golden Casket Lottery Corporation Ltd. Further details are provided in the attached submission.

(b) Names and addresses of other parties or proposed parties to contract, arrangement or understanding:

(See Direction 4 on back of this Form)

3. Name and addresses (where known) of parties and other persons on whose behalf application is made:

- 4. (a) Grounds for grant of authorisation: **See attached submission.**
- (b) Facts and contentions relied upon in support of those grounds: **See attached submission.**

(See Notice 1 on back of this Form)

- 5. This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed? **No.**
- (b) If so, the following information is to be furnished:.....
 - (i) the names of the parties to each other contract, arrangement or understanding:...
 - (ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application:.....

(See Direction 5 and Notice 2 on back of this Form)

- 6. (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*): **No.**
- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture:.....
- (c) If so, by whom or on whose behalf are those other applications being made:.....

- 7. Name and address of person authorised by the applicant to provide additional information in relation to this application: **Hunt & Hunt Lawyers, Level 22, Central Plaza Two, 66 Eagle Street, Brisbane, Qld, 4000.**

Dated: 15 October 2002

Signed by/on behalf of the applicant



.....
(Signature)

ANTHONY OWEN LIBKE

.....
(Full Name)

SECRETARY

.....
(Description)



Hunt & Hunt

LAWYERS

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16 October 2002

Mr Tim Grimwade
Director
Adjudication Unit
Australian Competition & Consumer Commission
PO Box 119
DICKSON ACT 2602

Dear Sir

Golden Casket Agents' Association Ltd ABN 70 990 670 286

We act for Golden Casket Agents' Association Ltd ("the Association").

In accordance with the attached application, the Association seeks authorisation to conduct negotiations on behalf of its members, with Golden Casket Lottery Corporation Limited ("the Corporation"). Authorisation is sought to conduct negotiations in relation to the terms and conditions of agency agreements and arrangements with the Corporation, including commissions paid to casket agents, handling fees, agency application fees, support service levies, freight charges, product ordering fees, equipment hire costs (in relation to terminals and validators), retail image design and agency subsidy and insurances, and changes to the Agents' Manual.

The Association seeks authorisation to negotiate in relation to matters currently not included in agency contracts and matters currently unforeseen.

Authorisation is sought for a period of five years.

The Association requests interim authorisation for negotiation of the commissions to be paid to agents in relation to the introduction of internet Gold Lotto in Queensland. The introduction of internet Lotto may have a significant impact on the business of casket agents. It is currently proposed that the Corporation will pay a form of commission to casket agents, by way of compensation for that impact. The Association expects that Internet Lotto will be introduced in Queensland by 31 December 2002.

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Background

The Association

The Association is a public company, the members of which are Casket agents, the majority of whom are newsagents.

The Association was formed in 1952. Its objects include:

- To encourage, protect and promote Casket agency business
- To promote the interests of Casket agents
- To promote the consideration and discussion of matters affecting the sale of Golden Casket products.
- To present the general views of Casket agents to the Corporation and government agencies and direct liaison with the Government and Opposition members and other industry groups.

The Association is governed by a representative Council.

The Association currently has 802 members. Approximately ninety per cent of members are newsagents. The remainder are mixed businesses including tobacconists, gift shops, general stores (in country areas) and petrol stations.

A report compiled by Access Economics Pty Ltd in October 2001 for the Association notes the following breakdown of members by status and geographic area.

Geographic Area	Category				
	A	B	C	D/E	Total
Brisbane CBD	3	10	29	0	42
Brisbane Suburbs	60	103	114	18	295
Gold Coast	24	30	18	3	75
Provincial Cities	28	66	59	17	170
Large Towns	11	22	16	4	53
Medium Towns	7	31	10	0	48
Small Towns	4	33	38	5	56
Localities	0	7	33	16	56
Total	137	302	317	63	819

Access Economics utilised geographic area classifications based on the Australian Bureau of Statistics definition of urban areas at the 1996 Census and advice from the Department of Planning and Local Government, as follows:

- Brisbane Suburbs includes all metropolitan areas of Brisbane City (except the CBD), Logan City, south to Beenleigh, west to Ipswich and north to Caboolture. A separate category is provided for the Brisbane CBD.
- The Gold Coast includes all the Gold Coast city excluding the northern Beenleigh areas.
- The Provincial Cities are urban areas with populations of over 25,000 and include Townsville, Cairns, Caloundra, Noosa, Bundaberg, Mackay, Rockhampton, Hervey Bay and Toowoomba.
- Large Towns are urban areas with populations of 10,000 to 25,000 and include Buderim, Maryborough, and Mt Isa.
- Medium Towns are urban areas with populations of 5,000 to 9,999 and include areas such as Roma, Charleville, Yeppoon, Bowen, Ayr and Mareeba.
- Small Towns have populations of between 1,000 and 4,999 and include for example towns such as Chinchilla, Miles, Cooroy, Weipa and Mossman.
- Localities are urban areas with populations less than 1,000, including for example Texas, Clifton, Mitchell and Julia Creek.

The categories listed in the table are agent categories used by the Corporation, as follows:

Sales category	Average weekly sales
A (On-line)	\$20,001 plus
B (On-line)	\$10,000 - \$20,000
C (On-line)	Less than \$10,000
D (Dial up facility)	Instant Scratch-Its only
E (Off line)	Instant Scratch-Its only

On-line agents are agents with an on-line gaming terminal (which is used to process Gold Lotto, Powerball, Oz Lotto, Super 66, The Pools and Casket entries) and an Instant Scratch-Its validation unit which checks Instant Scratch-Its' barcodes for prizes. Category D agents sell only Instant Scratch-Its products and have a validator. Category E agents do not have a validator.

Applications for agencies are assessed based on criteria including the ability to generate new sales. To retain agency, agents must maintain a minimum weekly sales volume. The Corporation conducts annual reviews of sales performance.

The Association has a long history of negotiation on matters affecting members (which are not matters requiring authorisation) including:

- Introduction of on-line technology
- Upgraded technology introduced in 1999 for replacement lotto terminals and new instant validators
- Retail image design
- Internet gambling

The Corporation regularly seeks feedback from the Association on its proposed initiatives.

The Corporation has produced an Agent's Manual covering issues such as the agency appointment process, sale of agent's business, termination of agreements and training requirements, and has agreed not to amend this manual without consultation with the Association.

The Queensland Lottery Industry

The relevant legislation prohibits the conduct of lotteries without authorisation under a lottery licence. Lottery licences are granted by the relevant Minister.

In Queensland, the Corporation has an exclusive licence to sell lottery products. Lotteries are regulated by the Queensland Office of Gaming Regulation, in accordance with the *Lotteries Act 1997 (Qld)*, and *Lotteries Rule 1998*.

The provisions of the *Lotteries Act* and *Lotteries Rule* permit the Corporation to appoint agents.

The *Lotteries Act* permits a lottery licensee to enter into *new* agency agreements only if the lottery agent owns and operates a small business that is a retail business or operates from retail shopping premises or operates a mail order business.

National products

There are some products that are supplied and administered on a national basis. To enable them to offer larger prize pools to consumers nationally, the soft gambling bodies have formed the following lotto blocks:

- The Australian Lotto Bloc, responsible for Saturday Gold Lotto;
- National Lotto Bloc, responsible for Oz Lotto;
- Powerball Bloc, responsible for Powerball; and

- Australian Soccer Pool Bloc, responsible for The Pools.

Super 66 is a game conducted in conjunction with Gold Lotto, Powerball or The Pools.

The Corporation is a member of the Australian Lotto Bloc and National Lotto Bloc.

State/Territory based products

In addition to the four products available nationally, in Queensland the Corporation supplies and administers Wednesday Gold Lotto, Instant Scratch-Its, Casket and Winners Circle (a customer loyalty program).

Agency Arrangements

The soft gambling products above are sold through casket agents.

Casket agents have no control over the price at which soft gambling products are sold. As Casket agents sell as agents in the legal sense, the retail price is fixed by the soft gambling bodies. The Golden Casket agency agreements take the form of franchise agreements, and are standard for all agents. Generally there is no negotiation and amendment of agency agreements for individual agents.

Agents which entered into agency agreements prior to 1997 have "life" agreements. The Association estimates that approximately 70% of its members have "life" agreements. Agency agreements made since 1997 (including agreements with new purchasers of "life" agencies) are for a period of five years. Purchasers of an agent's business must apply for appointment as an agent – appointment is not guaranteed with the purchase of a business. Five year agreements are reviewed prior to the date of expiration and re-appointment is not guaranteed.

Accordingly, while some agency agreements are already in place, new agreements are always being negotiated, and agreements entered into in 1997 fell due for renegotiation from July this year. Generally the Corporation uses the same standard agreements for each five year period, so that the form of agreement used during 2002 would be expected to remain in use until 2007. This is the reason authorisation is sought for a period of five years. Matters will arise for negotiation during this period, including commission rates, which are set out in the Agent's Manual (and not in the agency agreement) and therefore subject to change from time to time.

The terms of the agency agreement prohibit Casket agents from selling competitive soft gambling products.

Agents are required to comply with a Retail Image Policy determined by the Corporation. The Retail Image Policy requires exterior décor and signage and internal shopfit. Currently existing agents comply with a "1990 Retail Image". New and re-locating agents must comply with the "1997 Retail Image". The "1990 Retail Image" has an expiry date of June 2006, requiring all existing agencies to

upgrade to the "1997 Retail Image". The Corporation requires plans to be submitted to it for approval.

This is obviously a significant, and not a one-off, outlay for agents. As well as the cost of shopfit (which the Association estimates to be between \$15,000 to \$40,000), agents are responsible for any local Council fees levied for external signage.

Additional charges payable by agents are hire of gaming terminal (\$22 per week) and validator (\$13.20 per week). In addition, for agents appointed after 1 April 1997, a contribution of 0.9% (0.5% for "life" agencies) of net on-line Lotto sales (not including Casket) is payable as a support services levy. Agents are responsible for freight on prize claim returns, EFT and debit costs for the use of credit cards by purchasers of lottery products.

Casket agents receive a commission (or handling fee, depending on the product) on sales of lottery products. The average net handling fee on sales of Gold Lotto, Oz Lotto, Powerball, Super 66 and The Pools is 7% to 8%. Commissions on other products (excluding GST) are between 8% and 10% depending upon the ticket price of the product. The Association estimates that average commission during 2000/01 was 7.6%. In 1999/00 average commission rate was 7.73%. Commission rates may be changed by the Corporation at any time.

Agents are required to sell all products (limited to all Instant Scratch-Its products in the case of Instant Scratch-Its only agencies) and cannot choose to sell only those products on which higher rates of commission and handling fees are earned.

The revenue attributable to the sale of lottery products varies from agency to agency. The Association estimates that the percentage of earnings attributable to the sale of soft gambling products varies from 30-60%, with many agencies averaging 50% of revenue from lottery products. However, it must be noted that the margin on sales of lottery products, at an average of 7.6% (which does not take account of agency expenses noted elsewhere) is significantly lower than for other products. The Association estimates margin on other product lines as follows:

- Magazines 25%
- Cards 85%
- Cigarettes 20%
- Gift lines 100% +

It is the practice of the Corporation to seek input from the Association as to the content of agency agreements.

Statutory Tests

To grant authorisation for collective bargaining with the Corporation, the Commission must be satisfied that, in all the circumstances, the proposed

arrangement will result, or be likely to result, in a benefit to the public and that the benefit would outweigh the detriment to the public arising from any lessening of competition that would result or be likely to result from the arrangements.

While collective arrangements are generally regarded as prima facie anticompetitive, this does not necessarily amount to public detriment for the purposes of the statutory test. What must be measured is the detriment to the public caused by any lessening of competition¹.

It is submitted that the proposed arrangements will give rise to no public detriment in the sense required by the statutory test, or that any detriment is limited by the nature of the arrangements proposed and the features of the relevant market.

Public detriment is limited by the following factors.

No likely effect on retail price

If collective negotiation were to result in an increase in commission to agents, an increase in retail price will not automatically follow.

The supply of soft gambling products is regulated and the availability of soft gambling products to the community is therefore to a large extent under the control of the Queensland Government. Casket agents have no control over the retail price of soft gambling products and therefore no ability to directly influence retail price.

The Corporation is under increasing pressure, in relation to the supply of the products in question, from casinos and other venues now offering electronic gambling products. This competition at the retail level will be a constraint upon the ability of the Corporation to increase retail prices. In any event, the commission and handling fees paid to agents must be a small percentage of the retail price of the products. It is submitted that there must be scope for the Corporation to absorb any increase in commission rates paid to agents.

The current application is not intended merely to result in increased commissions and handling fees to agents, but to enable negotiation on the terms and conditions of supply.

Structure of Arrangements

In the Premium Milk Supply Authorisation² the Commission recognised that anti-competitive detriment may be reduced by provision for individuals to opt out and negotiate outside collective arrangements.

Nothing in the application will seek to prevent individual agents from negotiating directly with the Corporation.

¹ *Re 7-Eleven Stores Pty Ltd* (1994) ATPR 41-357; *Re Media Council of Australia (No 2)* (1987) ATPR 40-774

² *Premium Milk Supply Pty Ltd* (2002) ATPR (Com) 50-288

Further, the Association does not seek the right to take any retaliatory action in the form of boycotts or otherwise against the Corporation.

Current Practice – no individual negotiations

As the following submissions will make clear, failure to grant the authorisation will not result in a situation where agents are able to negotiate individually in relation to the terms and conditions of supply. It is the practice of the Corporation to seek the views of the Association, rather than seek to negotiate with individual agents. Accordingly, the grant of authorisation will not lead to anticompetitive conduct but only redress the current inequitable bargaining position.

In applying the “future with and without” test, the Commission should consider that a future without the proposed arrangements is not one where agents have any significant input into their agreements through negotiation, but one where terms and conditions may be unilaterally imposed by a monopoly supplier.

It is in any event submitted that the proposed arrangements give rise to significant public benefits which would outweigh any anticompetitive detriment. Public benefits include:

- Promotion of equitable dealings in the market place and countervailing power to small business.
- Maintenance of existing system for sale of soft gambling products.
- Assistance to efficient small business, particularly in the form of transaction cost savings.
- Increased supplier efficiency.
- Certainty for small business representatives in their ability to negotiate.

We expand on the these submissions below.

1. No individual negotiation

(a) It is the practice of the Corporation to adopt a standard contract with all lottery agents.

(b) It is the practice of the Corporation to seek the view of the Association in relation to the content of agency agreements.

(c) In its Agent’s Information Kit, the Corporation states that it recognises the Association as the only body responsible for representing agents on Golden Casket issues. The Corporation recommends membership of the Association.

(d) Accordingly, collective negotiation by the Association will reflect the reality of the practices already adopted by the Corporation. The Association,

through its representative Council, is in a position to take account of the various regional conditions in negotiations.

- (e) This State based approach clearly demonstrates that:
- There are increased business efficiencies arising from a consistent approach;
 - That the Corporation is not disposed to negotiate individually with a large number of small businesses.

(f) As the reality is that the Corporation is not minded to enter into individual negotiations and take into account the individual circumstances of agents, collective negotiations by industry associations is the only way for the concerns of individual agents to be given consideration in the negotiation process. Collective negotiation is the only real opportunity for the concerns of individual agents to be reflected in agency agreements.

2. Maintenance of the existing system for sale of soft gambling products

- (a) There are strong public policy reasons why the viability of the existing system for sale of soft gambling products should be maintained.
- (b) Supply through casket agents is preferable to alternative sources of supply (such as internet trading) which may make soft gambling products too easily available for problem gamblers.
- (c) It is however acknowledged that this is largely a matter for State and Territory legislation.

3. Promotion of Equitable Dealings in the Market – Countervailing Power

(a) In the Dairy Farmers Authorisation³ the Commission took the view that strengthening the bargaining power of dairy farmers may increase their input into the contracts negotiated with processors, and reduce the likelihood of harsh or unfair contractual terms. The Commission appears, therefore, to accept that reduced likelihood of harsh or unfair contractual terms constitutes public benefit.

(b) In the Inghams Authorisation⁴ the Commission stated:

“A market in which participants have unequal bargaining power is likely to operate less efficiently than one in which bargaining power is equal”.

The Commission considered the increase in countervailing power a public benefit. Notwithstanding that this is not currently a market in transition as a result of deregulation, it is submitted that the fact that the market participants

³ *Australian Dairy Farmers' Federation Limited* (2002) ATPR (Com) 50-289,

⁴ *Inghams Enterprises Pty Ltd* (1997) ATPR (Com) 50-245 at 8.20

here have unequal bargaining power is equally likely to cause the market to operate less efficiently, particularly where, as discussed above, it is the practice of the more powerful supplier to seek the input of the industry body rather than to seek individual negotiations.

(c) As exclusive licensee for the sale of soft gambling products, it is clear that the Corporation has market power in Queensland. The Commission has expressed the view that the Corporation has a substantial degree of market power.

(d) Individual Casket agents are not in a position to negotiate effectively with the Corporation.

(e) Permitting collective negotiation with the soft gambling bodies has the public benefit of providing countervailing bargaining power to small business in commercial negotiations.

(f) As an example of circumstances under the current agency arrangements which might operate in a harsh or unfair manner toward agents, the current agency agreement provides that the Corporation may suspend or cancel the agency immediately on notice if the agent breaches its obligations under the agreement. On suspension the Corporation may disconnect the agent's gaming terminal and the agent must cease selling and processing lottery entries and paying prizes.

(g) Once a dispute under the agreement is notified, the parties may refer the dispute to mediation in which case both parties must continue to perform. Subject to that however, the Corporation may suspend for any breach of obligations under the agreement, including the obligations:

- (i) To act in good faith and in the interests of the Corporation;
- (ii) To comply with the Agent's Manual.

(h) The Agent's Manual may be changed by the Corporation at any time. This provision fundamentally undermines the certainty of the agent's contract and is a potential catalyst for unconscionable dealings. It gives rise to a prospect of agents being practically compelled to carry out any instruction of the Corporation irrespective of contractual terms, due to the commercial pressure exerted by the ability to suspend the agreement.

(i) The agreement provides that the Corporation will consult with the Association to explain the intended changes and discuss the Association's views. Without the power to actively negotiate the changes, this carries little weight and leaves agents in a position of uncertainty, where the Corporation may act subjectively if it sees fit.

(j) As noted above, it is the practice of the Corporation to present a standard form agency contract. The Association is unaware of any case where

an individual agent has successfully sought amendment to a standard agency contract.

(k) The figures quoted above demonstrate that Casket agents are to a significant extent commercially dependent upon continued supply by the Corporation with the sale of soft gambling products accounting for significant proportions of their revenues.

(l) Providing Casket agents with the certainty that they will have the opportunity to have negotiations conducted by the Association will (both in reality and in the view of the small business operators concerned) “level the playing field” by, to some extent, balancing the market power of the Corporation.

4. Small Business Efficiency/Viability

(a) In the Premium Milk Supply Authorisation, the Commission stated:

“Savings on transaction costs are an outcome generally associated with collective negotiations. Collective arrangements may reduce the number and cost of agreements that need to be negotiated.”⁵

(b) In the Dairy Farmers Authorisation, the Commission stated:

“Such negotiations may increase the amount of information available to both sides of the negotiation process, allowing them to make more informed choices about the business arrangements that they enter into.”⁶

(c) The Commission said further:

“The Commission considers that collective bargaining will allow participating farmers to seek legal and other advice with regard to the specific contracts negotiated with dairy processing companies collectively. This will minimise the costs that these farms would incur with regard to receiving such advice if they obtained advice individually. The fact that ADFFF could obtain legal advice on aspects of supply contracts that are common to all of its members, without authorisation, does not detract from the Commission’s finding in this regard.”⁷

(d) It is submitted that all of these identified public benefits apply equally here.

(e) Casket agents are, by definition, small businesses. The survey results discussed above indicate the importance of the services provided by Association members and their economic contribution to the Queensland economy.

⁵ *Premium Milk Supply Pty Ltd* (supra) at 7.45

⁶ *Australian Dairy Farmers’ Federation Ltd* (supra) at 8.128

⁷ *Australian Dairy Farmers’ Federation Ltd* (supra) at 8.132

(f) Facilitating the conduct of joint negotiations on commission rates and other issues will assist in small business efficiency by increasing the availability to Casket agents of information, including information about income trends and operating expenses, which will give them an improved understanding of the effect of wider trends upon their businesses, and improve their ability to make better business decisions.

(g) To conduct negotiations individually, Casket agents may be required to obtain financial and accounting advice to formulate the necessary submissions about income and operating expenses, and legal advice to assist in conducting negotiations. Obtaining this advice separately will lead to increased transaction costs for individual small businesses, which is likely to be beyond the capacity of many.

(h) In undertaking collective bargaining, the Association would be in a position to obtain legal, accounting and financial advice with regard to contractual provisions and other matters including commission rates, which would minimise costs to individual agents.

(i) This process also would assist individual agents in identifying areas where efficiencies and cost savings could be obtained.

(j) An important public benefit to flow from the authorisation applied for is the opportunity to increase efficient small business. Approximately 400, out of a total of approximately 1000 casket agents operate in rural and regional areas, and the public benefit of promoting efficiency of small business in those areas is clear. Approximately 80% of these country agents are members of the Association.

(k) As a State body, with a representative Council including representatives of regional agents, the Association has the benefit of State-based information. This ensures that the special interests of small businesses operating in regional areas are taken into account.

(l) Casket agents play an important role in the Queensland economy.

(m) In preparation for the report mentioned earlier, Access Economics conducted a survey in association with the Association, to determine the economic contribution made by Casket agents to the Queensland economy. A summary of the survey methodology is attached at Appendix 1.

(n) The survey resulted in 207 responses. That number represents 25% of Association members, and an estimate 19% of all agents. There was a higher response rate by larger agencies – 39% of Category A members responding and 29% of combined Category A and B members. For Category D and E the response rate was 16%.

- (o) The response rate based on geographic region was relatively even across all areas of Queensland ranging from 36% for the Gold Coast to 19% for small towns.
- (p) The survey results provided the following proof of the importance of the economic contribution of Casket agents to the Queensland economy.
- (i) Casket agents provide a wide range of services apart from the supply of lottery products, including banking, bill paying, postage and freight services, travel and bus ticket sales, dry cleaning and health insurance services. Generally, smaller agencies provide a wider range of services than larger agencies.
 - (ii) Compared to other small businesses, the business of Casket agents have survived for longer. The core business in its present form has operated for an average of 22 years.
 - (iii) Casket agents derive a significant proportion of their total business turnover and income direct from the sale of lottery products. Ninety-eight per cent of agents said that the sale of lottery products boosted their other operations, by attracting customers.
 - (iv) Casket agents employ on average 6.5 people. Over half of those employees are part time, but the agencies provide an average of over four full-time equivalent jobs. Employees spend 42% of time on lottery related operations.
 - (v) Based on the survey responses and other data sources, Access Economics estimate that agents purchase approximately \$100 million of goods and services from mainly Queensland suppliers for use within their businesses.
- (q) Access Economics concludes that the ability of agents to continue these economic contributions depends heavily on the operations of the Corporation. The turnover of the Corporation (which must impact on agents) has suffered during recent years because of competition from casinos and other outlets offering electronic gaming. Agents surveyed reported an average increase in turnover of 4% over the previous three year period. Turnover had increased for 63% of respondents but declined for 36%. With inflation of 10% over that period, a 4% increase represents a real decline, in the view of Access Economics.

5. Supplier Efficiency

(a) It is not only Casket agents which will benefit from the increased efficiency of a collective bargaining process. The Corporation will also be assisted by the provision of industry wide information to provide guidance on realistic pricing. The fact that the Corporation has in fact sought the input of the Association is illustrative of its recognition of this principle.

(b) As it is the practice of the Corporation to seek Association input, and to offer standard contracts and fees to all agents, it is inequitable to restrict the Association from making submissions in support of the information it puts forward.

(c) Collective representation will also provide certainty for the Corporation of the removal of the need to allocate significant resources to conducting individual negotiations, particularly in regional areas. Collective negotiations will increase the amount and quality of information available to both agents and the Corporation, allowing them to make more informed choices about their business arrangements. The provision of information by the Association about operating costs of distribution will assist the Corporation to identify a sustainable price, particularly in regional areas.

6. Certainty

(a) Obviously, there are circumstances in which an industry body can consult with suppliers, and provide advice to members on contractual conditions, without the need for authorisation. However, suppliers often place the representatives of industry associations in an invidious position by seeking to “discuss” or “consult” on relevant issues, so that it is necessary for the association to make a determination on each occasion of whether those “discussions” will result in contraventions of the Act. In some cases, where negotiations on prices are sought, the answer will be clear. In cases where other terms and conditions are the subject of discussion, it will be less clear – when will “discussions” in fact become “negotiations”, and when will those negotiations be likely to give rise to a substantial lessening of competition in a relevant market? Industry representatives are not equipped to make those determinations, and should not be placed in a position of personal risk through seeking to assist their members, at the request of suppliers. It is inefficient and costly for associations to seek legal advice on each occasion.

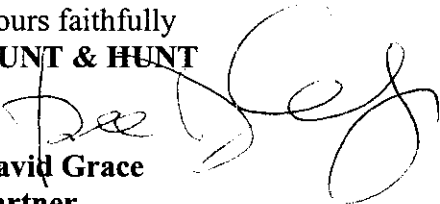
(b) Further, industry associations are potentially at risk even in the collection and collation of information to formulate guidance to members and submissions to suppliers, given that the Council members may also be competitors and therefore limited in their ability to discuss pricing issues amongst themselves.

Mr Tim Grimwade
Director
Adjudication Branch
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If you require any further information, please contact Bronwyn Furse.

Yours faithfully
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