



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

5 November 2002

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

Dear Mr Spier

Australian Hotels Association (NSW) Application for Authorisation A90837

Further to the Commission's letter of 24 September and email of 24 October 2002 enclosing submissions received from interested parties, please find enclosed all non-confidential Annexures to the joint submission by Tab Limited ("Tab") and Sky Channel Pty Limited ("Sky") received by the Commission and a further submission from Harness Racing New South Wales for your client's information.

The Commission invites the Australian Hotels Association (NSW)'s comments on any of the issues raised in submissions from interested parties.

There are a number of claims made by Tab/Sky which go directly to the public benefit/detriment arguments raised in your client's submission. For your convenience, I outline below those which we would be most interested in having your client address:

"It is likely that a collective bargaining group or groups would consist mainly of, or be dominated by, the large groups or chains of hotels and the infra-marginal hotels. There is no analysis in the application of the effects the conduct would have on the diverse types of hotels that constitute AHA's members" (Tab/Sky submission, p.18).

"PubTAB commissions are a minor ancillary part of hotel turnover...an increase in PubTAB commissions is likely to result in fewer hotels supplying PubTAB agency services to Tab or marginal hotels supplying PubTAB agency services on less advantageous terms than at present...Sky Channel fees are a minor ancillary part of hotel overheads..." (Tab/Sky submission, p.22).



“There is no evidence that the viability of hotels, generally or in rural and regional areas, is under threat, still less that possible gains from collective negotiations with Tab Limited and Sky would have any impact on that viability” (Tab/Sky submission, p.22).

“AHA has not provided details about how authorisation would improve information sharing and transparency, or why the amount or quality of information would improve as a result of authorisation of the proposed conduct” (Tab/Sky submission, p.23).

“Tab and Sky may need to use at least two...contracts (one for each collective bargaining group and the other for non-participants) rather than one standard contract. This will result in an increase to net transaction costs, rather than a decrease as AHA claims” (Tab/Sky submission, pp.23-24).

“Freeing up small business operators to focus on increasing the competitiveness of their business...AHA does not proffer any evidence in support of this claimed benefit” (Tab/Sky submission, p.24).

“Fostering industry harmony...AHA does not proffer any evidence in support of this claimed public benefit, nor explain how such a benefit could be attained solely as a result of authorisation of price fixing and primary boycotts (Tab/Sky submission, p.24).

“AHA claims that authorisation will provide countervailing power to small business in dealing with large and powerful suppliers...AHA has provided no evidence of any likely outcomes which would benefit any party other than the benefits likely to be enjoyed by AHA member hotels” (Tab/Sky submission, p.24).

“Sky fees are only one minor component of hotel overhead costs, and PubTAB commissions are only a small part of hotel revenue...it is difficult to see how collective negotiations could promote industry cost savings...or result in contained or lower prices at all levels in the supply chain” (Tab/Sky submission p.25).

“AHA does not require an authorisation to provide the types of information and services that it can currently provide as an industry association” (Tab/Sky submission, p.25).

“Neither Tab or Sky accepts the allegation that they have dealt with AHA on a ‘one in all in’ basis. Tab and Sky do not insist on collective bargaining with AHA” (Tab/Sky submission, p.26).

“Promotion of equitable dealings in the market – countervailing power...AHA does not give any examples of unreasonable terms except in regard to demands for information that are required as part of Sky’s pricing formula” (Tab/Sky submission p.27).

“A transition to a fixed price would likely lower the cost of Sky to large hotels and increase the cost of Sky to smaller hotels” (Tab/Sky submission, p.29).

“A further public benefit would arise from the Australian Hotels Association (NSW) campaign is greater protection for the public in the area of responsible gambling...AHA has no offered any evidence in support of these claims...” (Tab/Sky submission, p.30).

You may also wish to comment on the public detriments claimed in the Tab/Sky submission and NECG report, such as:

“If [hotels] are able to better exploit the existing base of consumers for their own benefit, even at the expense of the quantity and quality of racing and wagering output, they would likely do so” (NECG report, p.18).

“...[T]here would...be a longer run negative effect on the funding of the racing industry and consequently on the production and consumption of racing and wagering” (NECG report, p.28).

“[T]he net result of...conduct would be...an increase in transaction costs” (NECG report, pp.30-31).

“[T]he proposed conduct is likely to result in net detriments including...reductions in amenity for customers” (Tab/Sky submission, p.2).

Comments on any other aspects of the TAB/Sky joint submission and submissions from other interested parties would also be welcome. I would be grateful to receive any comments from your client in relation to submissions from interested parties by 21 November 2002. If your client is unable to meet this deadline, please let me know. I would be prepared to accommodate an extension given that I agreed to such an extension for Tab/Sky.

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

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

Yours sincerely



Tim Grimwade
General Manager
Adjudication Branch