

Gilbert Jewel

From: Sophie Rigby [Sophie.Rigby@freehills.com]
Sent: Friday, 2 May 2003 10:05 AM
To: adjudication@accg.gov.au
Cc: lvance@tablimited.com.au; BReichel@skychannel.com.au; j.walker@necg.com.au; Michael Gray
Subject: Authorisation application (A90837)

Dear Mr Grimwade

Authorisation application (A90837) lodged by the Australian Hotels Association (NSW)

We refer to your letter dated 10 April 2003 advising that a pre-decision conference will be held in relation to the above application.

We attach a copy of a joint written submission by TAB Limited and SKY Channel Pty Limited in response to the draft determination on application A90837, which we intend to raise at the conference and wish to form part of the conference record.

Yours faithfully

Michael Gray/Sophie Rigby

Sophie Rigby
Solicitor
Freehills

Direct 61 2 9225 5184
Telephone 61 2 9225 5000
Facsimile 61 2 9322 4000
<http://www.freehills.com>

FREEHILLS

This email is confidential. If you are not the intended recipient you must not disclose or use the information contained in it. If you have received this email in error please notify us immediately by return email and delete the document.

Freehills is not responsible for any changes made to a document other than those made by Freehills or for the effect of the changes on the document's meaning.

Liability is limited by the Solicitors' Limitation of Liability Scheme approved under the Professional Standards Act 1994 (NSW)

2/05/2003

**Submission in response to
application for authorisation
A90837 by Australian Hotels
Association (NSW)**

**Tab Limited
and
SKY Channel Pty Limited**

Draft: 23 April 2003

Table of contents

<i>Clause</i>		<i>Page</i>
1	Introduction	1
	1.1 Overview of submission	1
2	Characterisation of conduct	1
3	Efficiency effects	2

1 Introduction

This is a joint submission by Tab Limited and SKY Channel Pty Limited (**SKY**) responding to the draft determination dated 26 March 2003 in respect of application A90837 by Australian Hotels Association (**AHA**) (**Draft Determination**).

The joint submission addresses certain of the factual statements and the findings of the Commission in its Draft Determination. A failure specifically to address in this document statements or findings by the Commission is not to be taken as acceptance or acknowledgement of them by Tab Limited or SKY.

1.1 Overview of submission

This joint submission is structured as follows:

- Brief review of the characterisation of the relevant conduct.
- An economic review of the efficiency analysis of the proposed conduct.

2 Characterisation of conduct

The Commission's Draft Determination notes in footnote 1 on page 7 that the relationship between Tab Limited and hotels can be characterized as either a supply of distribution services by hotels to Tab Limited or as a supply of wagering services by Tab Limited to hotels. The footnote states that it is not necessary to form a view on the appropriate characterization of the relationship for the purposes of the determination, but the report then proceeds to characterize it entirely in terms of the supply of wagering services by Tab Limited to hotels. In our view, the relationship should be correctly characterized as a supply of services in both directions. This is significant to ensure an appreciation of all of the detriments associated with the proposed conduct.

3 Efficiency effects

While the Commission summarizes the NECG Report at Annexure A, the main body of the Draft Determination fails to take into account the points made in the NECG Report regarding the efficiency consequences of a future with the proposed conduct as compared to the status quo or the future without the proposed conduct. Rather, it seems to assume that the status quo, in which Tab Limited and SKY are assumed to have market power, involves the standard allocative inefficiency losses associated with increased prices and reduced output and that consequently the creation of countervailing power would likely promote greater allocative efficiency (see paras. 11.50-11.56). At paragraph 11.57, the Commission specifically states that it has received no submissions which address whether this effect would occur in this particular set of market circumstances. In fact, the NECG Report goes directly to these issues by tracing through the efficiency consequences of the status quo and the likely implications of the proposed conduct. Importantly, the conclusions to be drawn from that analysis are that (a) the status quo does not involve substantial allocative efficiency losses because Tab Limited is price regulated and SKY is able to price discriminate and maximize utilization; and (b) the proposed conduct would have efficiency detriments rather than benefits. In other words, the creation of countervailing power on behalf of hotels in this set of market circumstances actually has a detrimental effect on efficiency.

The efficiency detriments flowing from the proposed conduct are threefold:

- (a) if price discrimination is replaced by a flat price structure, there will be reduced consumption of wagering and SKY as marginal hotels cannot pay the flat price for SKY and Tab Limited no longer finds it viable to operate PubTABs in marginal hotels, resulting in losses to allocative efficiency;
- (b) over the longer term there will likely be inefficient substitution by Tab Limited away from hotels as a means of distributing its wagering services;
and

- (c) there will be a reduction in funding to the racing industry and hence a reduction in output of this public good on which wagers are placed and reduced consumption of wagering.

In relation to the last effect, it is important to recognize that hotels can still benefit from higher commissions on a reduced volume of wagering, whereas Tab Limited, being price regulated, has no such incentive to raise prices and reduce output in order to maximize monopoly profits. The potential exercise of any market power which may exist with significant adverse consequences for allocative efficiency, arises not by reason of conduct of Tab Limited in the future without the proposed conduct, but by reason of conduct of the AHA in the future with the proposed conduct.