

Gilbert Jewel

From: Sophie Rigby [Sophie.Rigby@freehills.com]
Sent: Thursday, 22 May 2003 11:33 AM
To: adjudication@accg.gov.au
Cc: lvance@tablimited.com.au; breichel@tablimited.com.au; jmadsen@skychannel.com.au; j.walker@necg.com.au; Michael Gray
Subject: Authorisation application (A90837) by AHA (NSW)

Dear Mr Grimwade

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

We refer to the pre-decision conference of 5 May 2003 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 submissions made at the conference.

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>

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22/05/2003

**Application for authorisation A90837
by Australian Hotels Association
(NSW)**

**Submission in response to pre-
decision conference**

TAB Limited

and

SKY Channel Pty Limited

Date: 22 May 2003

Freehills

MLC Centre Martin Place Sydney New South Wales 2000 Australia
Telephone 61 2 9225 5000 Facsimile 61 2 9322 4000
www.freehills.com DX 361 Sydney

SYDNEY MELBOURNE PERTH BRISBANE HANOI HO CHI MINH CITY SINGAPORE
Correspondent Offices JAKARTA KUALA LUMPUR

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1 Introduction

This is a joint submission by Tab Limited and SKY Channel Pty Limited (**SKY**) responding to submissions made at the pre-decision conference on 5 May 2003 (**the Conference**) in relation to the draft determination in relation to the application for authorisation by the Australian Hotels Association (NSW) (**AHA**) on behalf of its members (A90837).

The AHA did not raise any new evidence or arguments at the Conference to address the anti-competitive detriment or public benefit associated with their application. Given that there is no indication that the proposed conduct will be modified to take away the harmful effects that the Commission identified in its draft determination on 26 March 2003, Tab Limited and SKY submit that the application for authorisation should be denied.

2 Minutes of pre-decision conference

Tab Limited and SKY have reviewed the minutes of the pre-decision conference prepared by the Commission and make the following comments.

2.1 Hotels do not “subsidise” their TAB operations

Some members of the AHA suggested that hotels subsidise their TAB and SKY services from other operations in the hotel.¹

This is factually incorrect. TAB and SKY facilities draw patrons to the hotels, and so benefit the rest of the hotels' business. Indeed, the AHA members acknowledge that their customers go to the hotels for entertainment and are attracted to hotels which provide TAB and SKY services.²

Mr Shields and Mr Grant each noted that their profitability decreased when additional PubTAB outlets opened.³ This is clearly because customers have a preference for hotels which offer TAB services and the presence of those services contributes to profitability across a hotel's operations and benefits the rest of its business.

All hoteliers are free to remove their TAB and SKY facilities at any time if they feel that the services are not worth having and do not contribute to the profitability of their entire operation.

2.2 SP bookmaking

Mr Kerr of the AHA noted that an increase in SP betting has been discussed as a possibility in the Hunter region if the AHA application is not granted authorisation.⁴ It is not clear what is to be inferred from this comment. On the most favourable interpretation, it appears to be a suggestion that, absent

¹ Commission minutes of Conference, page 7 per Ms Humphreys; page 8 per Mr Douglas.

² Commission minutes of Conference, page 8 per Mr Douglas; page 11 per Mr Elliott.

³ Commission minutes of Conference, page 6 per Mr Shields; page 7 per Mr Grant.

⁴ Commission minutes of Conference, page 8.

authorisation, AHA would be faced with the emergence of (or an increase in) illegal bookmaking activities conducted on their premises.

Even on this most favourable interpretation, no evidence has been provided to show either that the outcome is likely or that it would be a result of the inability of members of the AHA to engage in the conduct for which authorisation is sought.

It would, in any case, be irrational for Tab Limited to reduce commissions and/or for SKY to increase fees to a point where PubTABS are forced to close and wagering is moved away from Tab Limited's business.

2.3 Hotels are not all "small businesses"

It is incorrect to state, as the President of the AHA, Mr Thorpe, did, that "AHA NSW members are small businesses in both relative and absolute terms."⁵ While some AHA NSW members are indeed small businesses, many others are highly profitable big businesses with large complexes and operations turning over well in excess of \$3.5 million.⁶ ALH, for example, is a division of one of Australia's largest, vertically integrated, listed public companies (Fosters Group Limited).

The AHA represents a range of different businesses with a range of different interests and the conflicting submissions made at the Conference⁷ highlights the dangers in the proposal to collectively bargain. Each hotel can best represent its own interests in one-on-one negotiations with Tab Limited and SKY.

2.4 Submissions by Tab Limited and SKY

The record of the Conference states that Tab Limited and SKY would not make a submission to the Commission during the Conference.⁸ Tab Limited and SKY did not make an oral submission to the Commission, but note that a written submission was provided on 2 May 2003 as part of the Conference record.

3 Conclusion

The AHA's submissions at the Conference have not altered the fact that the proposed conduct results in significant anti-competitive detriment and negative public benefit, through the creation of the various inefficiencies detailed in the NECG report. The Commission's conclusion in its draft determination dated 26 March 2003 should therefore be upheld in its final determination.

Tab Limited and SKY reserve the right to respond to any further submissions by the AHA or other parties.

⁵ Commission minutes of Conference, page 4.

⁶ Martin Kelly, "Pubs with pokies are sure bets", *The Australian*, 15 May 2003, "Property" section, page 12.

⁷ For example, submissions in relation to the number of TAB licences issued by Tab Limited by Mr Shields (at page 6) and Mr Grant (page 8), and by Mr Elliott (page 11). Page references are to the Commission minutes of Conference.

⁸ Commission minutes of Conference, page 9.