

Record of Pre-determination Conference

in relation to the application for authorisation A90853

lodged by

Golden Casket Agents' Association

Venue: The Australian Competition and Consumer Commission

Level 3

500 Queen Street

Brisbane

Date: 6 June 2003

RECORD OF PRE-DETERMINATION CONFERENCE

in relation to the application for authorisation A90853 lodged by the Golden Casket Agents' Association

Jennifer McNeill, a Commissioner with the Australian Competition and Consumer Commission, (the Commission) chaired the conference.

The conference was held at the Commission's office in Brisbane on 6 June 2003. The conference began at approximately 1.30pm and concluded at approximately 2.30pm on 6 June 2003.

A list of persons who attended the conference is at Attachment A.

Commissioner McNeill opened the conference held in relation to the application for authorisation A90853 and welcomed participants.

Commissioner McNeill outlined that the conference was requested by the Golden Casket Agents' Association (the Association) pursuant to section 90A of the *Trade Practices Act 1974* (the Act).

Commissioner McNeill informed participants that the Commission will take the views expressed at the conference and written submissions into account in making its final determination on the application. Only the full Commission can make a final determination on the application.

Commissioner McNeill then invited the Association to address the conference. In light of the Association being the only participant speaking at the conference, Commissioner McNeill also invited the Association's legal representative to address the conference.

The main issues raised at the conference by the Association are outlined below.

Golden Casket Agents' Association (the Association)

The Golden Casket Agents' Association (the Association) began by saying that it would be lodging a written submission with the Commission. The Association would be broadly outlining the issues raised within its written submission at the conference.

The Association stated that it is committed to the authorisation process. In this regard, the Association referred to the challenges faced by small businesses in conducting negotiations with large suppliers. It highlighted that the Lotteries Act specifies that casket agents must be small businesses. The Association expressed the view that the ability for casket agents to negotiate with the Golden Casket Lottery Corporation (the Corporation) is limited.

Role of Queensland Office of Gaming Regulation

The Association submitted that the Queensland Office of Gaming Regulation (QOGR) is not a watchdog of the commercial arrangements between casket agents and the Corporation. Rather, its function is to regulate the conduct of lotteries in Queensland.

With regard to industry negotiations, the Association submitted that the QOGR has an expectation that there will be negotiations between casket agents and the Corporation. In particular, the standard Agents Agreement provides that the Corporation will consult agents on relevant issues.

The Association also pointed to the QOGR's submission to the Commission prior to the draft determination that there would be some benefits arising from the Association conducting negotiations on behalf of agents.

Agents Manual

The Association submitted that the Agents Manual, prepared by the Corporation, is referred to as the casket agent's 'bible'. The manual covers a wide range of issues which have a significant impact upon the cost structures of an agent's business including the agency appointment process and retail image policy. The QOGR does not approve the Agents Manual.

The Association submitted that while it can negotiate on behalf of members on a number of issues contained in the Agents Manual without authorisation, it is prevented under the Act from conducting collective negotiations on the various fees and charges of the Corporation.

In this regard, the Association submitted that if it was not authorised by the Commission to negotiate on behalf of its members, the Agents Manual would need to be amended to enable the Corporation to negotiate fees and charges with individual agents. Significant costs would accrue and efficiencies would be lost by the Corporation from having to negotiate separately. The Association added that individual agents had no experience in negotiating individually.

The Corporation's retail executives

The Association submitted there is no scope for the Corporation's retail executives to engage in negotiations with individual agents regarding the Agents Manual or Agents Agreement. For example, one retail executive is responsible for approximately 125 agents.

In addition, the Association explained that the traditional role of the retail executives has eroded over time. In the past, they visited agents to provide information in relation to pricing and other statistics. However, much of this information is now available from the Corporation's website. Visits are now mainly to perform maintenance checks on equipment.

Commission rates

The Association submitted that seeking an increase in commission rates for agents is not the sole purpose for applying for authorisation. Rather, the aim of the Association's application is to obtain a more equitable position for its members through collective negotiations.

The Association outlined that since 1998 the Corporation's profit has increased by 26 per cent. Over the same period, the Corporation's sales have increased by 7 per cent, while the commission rates for agents have increased by 5 per cent.

In addition, the Association reported that agents' commissions represent 7.6 per cent of total lottery sales. The Corporation receives \$10.4 million from casket agents for equipment hire and other charges alone. The Association submitted that these matters are currently not negotiated with the Corporation, either collectively or individually. As a consequence, casket agents have no input on these matters.

The Association also submitted that income from the sale of soft gambling products is declining. It indicated that it would be providing further industry information in its written submission to the Commission which demonstrates the erosion of the agent's position.

Rural and regional areas

The Association expressed the view that the agency network provides essential services to rural and regional areas in Queensland. For example, casket agents in small communities are often convenience stores that also provide essential banking and postal services to the community.

The Association submitted that many rural and regional communities are under stress due to, among other things, the progressive closure of small businesses in these communities. In this regard, the Association submitted that the viability of agents' businesses is under threat. Accordingly, agents need the same opportunities as other rural businesses where the Commission has previously granted authorisation for collective bargaining arrangements.

[Commissioner McNeill asked the Association how granting authorisation would improve the viability of those businesses. In particular, Commissioner McNeill encouraged the Association to provide evidence that casket agents are going out of business and information regarding the importance of the lottery business to the viability of the overall business.]

The Association indicated that it would address this point in its written submission to the Commission.]

Public benefits

[At this point, Commissioner McNeill invited the Association to provide further information in relation to each of the public benefits claimed in the draft determination.]

Increased supplier efficiency

The Association submitted that the Corporation would incur increased transaction costs if it was required to consult with individual agents. By way of example, the Association highlighted the valuable role it played during a recent contract renewal process. Following a presentation by the Corporation concerning proposed changes to agency arrangements, the Association conducted consultations with the network of casket agents regarding the proposed changes. The Association was then able to present the combined results of its consultations to the Corporation.

Assistance to efficient small business, particularly in the form of transaction cost savings

The Association submitted that without authorisation, casket agents may be required to negotiate individually with the Corporation. This would lead to increased transaction costs for individual agents.

Promotion of equitable dealings in the market place and provision of countervailing power

[Commissioner McNeill noted that the Association had previously provided no evidence of inequitable dealings to the Commission. Commissioner McNeill invited the Corporation to provide any further information on this issue.]

The Association submitted that there is a benefit to the public as a result of levelling the balance of negotiating power between casket agents and the Corporation. It submitted that markets work more efficiently if industry participants have more equal bargaining power.

The Association highlighted that agents currently have no input into key issues such as fees and commissions imposed on them by the Corporation. For example, the Association outlined that it was recently prevented from negotiating the removal of a hire charge while the Corporation resolved a technical problem connected with the introduction of new lottery equipment.

Maintenance of existing system of sale for sale of soft gambling products

The Association had no further comment in relation to this public benefit claim.

Commission rates

[Tim Grimwade asked the Association whether the Commission was correct in understanding that increases in commission rates paid to Casket agents would lead to an equivalent increase in the retail price of lottery products for consumers.]

The Association stated that it would address this issue in its written submission to the Commission. However, it reiterated that it did not seek authorisation solely to increase commissions paid to agents. Rather, the application seeks authorisation for a broader range of issues.

In addition, the Association submitted that any increase in the retail price of lottery products will not reduce consumer demand for those products. The Association added that the QOGR acts as a check on increases in prices. It also noted that in any event, an increase in the price of gambling products is less significant than an increase in price of essential commodities like bread or milk.

Other issues

[Commission representatives encouraged the Association to clarify and/or comment on a number of issues raised over the course of the conference in its written submission, including:

- *the need to amend the Agents Manual to allow individual negotiations; and*
- *the extent of competition at the retail level between the Corporation and casinos.*

Close of conference

The Association indicated that it would be in a position to lodge its written submission following receipt of the record of the conference.

Commissioner McNeill thanked conference participants for their input and closed the conference at approximately 2.30pm.

ATTACHMENT A

LIST OF PERSONS WHO ATTENDED THE CONFERENCE

Bradley Dean	Golden Casket Agents' Association
Jim Cassimatis	Golden Casket Agents' Association
Bronwyn Fursey	Hunt and Hunt Lawyers
Daniel Westall	Queensland Office of Gaming Regulation