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21 July 2003

**Mr Tim Grimwade
The Australian Competition and Consumer Commission
270 Northbourne Avenue
Dickson ACT 2602**

Dear Mr Grimwade,

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

We refer to the ACCC's final determination dated 27 June 2003 in respect of the above application for authorisation.

Tab Limited and Sky Channel Pty Limited (SKY) do not intend to apply to the Australian Competition Tribunal for a review of the ACCC's determination.

However, Tab Limited and SKY wish to place on record that they do not agree with certain of the findings made by the ACCC in its determination. In particular, Tab Limited and SKY note the following.

1. The ACCC did not have sufficient regard to the role of hotels and clubs in supplying wagering distribution services to Tab Limited, and to the detrimental effect that collective bargaining by the AHA could have on allocative efficiency in the relevant markets. The reports by NECG and the joint submission dated 23 April 2003 prove that the status quo does not involve substantial allocative efficiency losses, because Tab Limited is price regulated and SKY is able to price discriminate and maximise utilisation.
2. SKY faces substantial competitive restraint in its business, which is the supply of entertainment services to hotels and clubs. SKY competes vigorously, in terms of both programming and price, with FOX Sports, Austar, and various other providers of entertainment (including subscription television entertainment) to hotels and clubs.
3. The ACCC considers that, "at least to a certain extent, there are likely to be inefficiencies associated with the current pricing structures adopted by Sky Channel" (para 11.25), despite a complete absence of any evidence to that effect, still less any suggestion as to what might be a more efficient pricing structure.
4. Finally, the ACCC seems reluctant to allow for the possibility of public benefit resulting from support for racing and wagering (see for example para 11.73). The racing and wagering industries are substantial employers in New South Wales and supported and regulated by the State Government, and it is simply not tenable for the ACCC to reject the possibility of public benefit in connection with these industries on vague and undefined grounds.

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**AUST. COMPETITION &
CONSUMER COMMISSION
CANBERRA**

23 JUL 2003

That said, the ACCC acknowledges in its final determination that authorisation is granted in relation to collective bargaining activity "*in which participation is voluntary*" (para 13.10). In particular, the ACCC correctly notes that "*it is a matter of choice for Tab Limited and Sky Channel as to the extent to which they participate in collective bargaining arrangements*" (para 13.11).

However, Tab Limited and SKY have always been, and will continue to be, willing to discuss any concrete proposals put forward by the AHA which will improve the efficiency of distribution of wagering services and Sky Channel, for the ultimate benefit of consumers and the wagering and racing industries.

Please contact me on (02) 9218 1323 if you would like to discuss any of the points raised in this letter.

Yours sincerely



Warren Wilson
Managing Director