



**Australian
Competition &
Consumer
Commission**

Our Ref: C2005/270
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23 May 2005

Mr Ray Bennett
Chief Executive Officer
Racing & Wagering Western Australia
14 Hasler Road
OSBORNE PARK WA 6017

Dear Mr Bennett

**Re: WA TAB Agents' Association's application for authorisation A90952
- draft determination**

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination in respect of the application for authorisation lodged by WA TAB Agents' Association Inc. on 1st February 2005.

The Association is seeking authorisation to allow it to collectively negotiate on behalf of its members, in relation to the terms and conditions of the provisions of services by members to Racing and Wagering Western Australia (RWWA).

The Association is also seeking authorisation for an agreement between its members under which it would act on behalf of members where a dispute arises between those members and RWWA.

Summary of ACCC considerations

Having considered the application and submissions from WA TAB Agents' Association and interested parties, the ACCC proposes to grant authorisation until 30 June 2011.

The ACCC considers that the anti-competitive effects generated by the proposed collective bargaining arrangements are likely to be small. In particular:



- the ACCC does not consider that the proposed arrangements will affect the price of wagering services provided to the public given that the prices are already regulated by government legislation; and
- the proposed arrangements do not impose any additional restrictions on a TAB agent's ability to compete on service levels, rather, as noted below, the arrangements are likely to improve the capacity of TAB agents to improve the service levels currently offered.

The ACCC considers that the proposed arrangements are likely to result in benefits to the public. In particular:

- the ACCC considers that the proposed collective bargaining arrangements will provide a greater opportunity for TAB agents, through the Association, to achieve more efficient commercial outcomes by having greater input into contracts;
- the ACCC also considers that TAB agents are likely to pass on, at least some, benefits of any more favourable deal negotiated with RWWA as a result of bargaining collectively, in the form of improvements in the level of service provided by TAB agents to consumers; and
- to the extent that the proposed arrangements allow for the development of an effective dispute resolution process, in a consultative and inclusive manner, the ACCC considers that they are likely to generate some public benefits.

Therefore, after considering all the information before it, the ACCC is of the view that the public benefits flowing from the proposed arrangements are likely to outweigh the anti-competitive detriments and the ACCC proposes to grant authorisation.

Next steps

Once the ACCC issues a draft determination, the Applicant or any interested party who may be dissatisfied with the ACCC's draft determination may request that the ACCC convene a 'pre-decision conference'. A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Under the *Trade Practices Act 1974*, the ACCC must set a date within 14 days of which any pre-decision conference must be requested. Accordingly, if you wish the ACCC to hold a pre-decision conference in relation to the draft determination, you must notify the ACCC in writing by **cob 10 June 2005**. Conferences are conducted informally, without the participation of legal or other professional advisers.

Alternatively, you are also invited to make a written submission in response to the ACCC's draft determination. Written submissions should be lodged by **cob 10 June 2005** at the following address:

The General Manager
 Adjudication Branch
 Australian Competition & Consumer Commission
 PO Box 1199
 DICKSON ACT 2602

Submissions can also be lodged by e-mail to adjudication@acc.gov.au or by facsimile on 02 6243 1211.

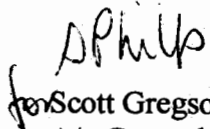
Any submission you make will be placed on the ACCC's Public Register. You may request that information you provide in a submission to the ACCC be treated as confidential and not placed on the Public Register. Information excluded from the Public Register for reasons of confidentiality will still be considered by the ACCC when reaching its decision. Guidelines for seeking confidentiality are attached for your information.

The ACCC will consider any submissions it receives, including any oral submissions made should a pre-determination conference be called, and will then release a final determination in relation to these applications.

A copy of the draft determination is available on the ACCC's website at www.accc.gov.au.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter or would like a copy of the draft determination sent to you, please do not hesitate to contact Siobhán O'Gara on (08) 9325 0608.

Yours sincerely



for Scott Gregson
A/g General Manager
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the Commission assesses applications for authorisation or notification is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the Commission to maintain a public register in respect of authorisation and notification applications.

Applicants and interested parties can request that a submission, or part of a submission, be excluded from the public register.

The Commission is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or process;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

However, even if a document does not meet these technical requirements, the Commission may still grant confidentiality where, in the Commission's view, it is desirable to do so.

The Commission also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The Commission expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the Commission:

- (a) where the request is that a whole document be excluded, the words "**Restriction of Publication Claimed**" should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words "**Restriction of Publication of Part Claimed**" should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

Applicants, as a matter of course, should remove headers claiming "confidential communication" from all Emails and otherwise, unless they have a particular piece of information that they justify to the Commission deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

If the Commission denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the Commission will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the Commission will return the original material and destroy all associated copies. The Commission will not consider this material when reaching its decision.

If the Commission does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the Commission pursuant to its powers generally under the *Trade Practices Act*.