



Australian
Competition &
Consumer
Commission

Draft Determination

Application for Authorisation

lodged by

**Australian Hotel Association Divisions in Victoria, Western
Australia, South Australia, Tasmania and Northern Territory
(on their own behalf and on behalf of their members)**

in relation to

collective bargaining with service providers of wagering and broadcasting services

Date: 21 December 2005

Commissioners: Samuel
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Authorisation no. A90987

Public register no. C2005/1625

Summary

The Australian Competition and Consumer Commission (ACCC) proposes to grant authorisation subject to conditions for 5 years, to the Australian Hotel Association Divisions of Victoria, South Australia, Tasmania, Western Australia and the Northern Territory (the AHA Divisions) to conduct collective negotiations with service providers of broadcasting and wagering services as set out in paragraph 6.4 of this draft determination.

The application

On 30 September 2005, the AHA Divisions on behalf of their current and future members, lodged application for authorisation A90987 to conduct collective negotiations with Tabcorp Holdings Ltd, Sky Channel Pty Ltd, Racing and Wagering Western Australia, Unitab Ltd, ThoroughVision Pty Ltd, Tote Tasmania Pty Ltd and Racing Victoria Ltd.

Assessment of public benefit and anti-competitive detriment

The ACCC considers that while the proposed collective bargaining arrangements have the potential to result in some anti-competitive detriment, there are a number of mitigating features of the arrangement including:

- the current level of competition between hotels is unlikely to be significantly affected
- the arrangements are voluntary for all parties and may be accessed by future AHA members
- the arrangements do not include collective boycott activity.

The ACCC considers that the proposed collective bargaining arrangements are likely to result in some benefit to the public. In particular:

- the proposed collective bargaining arrangements will provide greater opportunity for hotels to provide input into contract terms and conditions, to achieve more efficient commercial outcomes
- hotels are likely to pass on at least some benefits of any more favourable deal negotiated with service providers as a result of collectively bargaining, in the form of improvements in the level of service provided by hotels to consumers
- the proposed collective bargaining arrangements are likely to result in some, albeit limited, transaction cost savings.

However, it is difficult to precisely determine the magnitudes of the public benefit and detriment and there is some uncertainty about whether the public benefit outweighs the public detriment. In this case, to ensure that the proposed arrangements satisfy the public benefit test the ACCC proposes to grant authorisation for five years, subject to conditions which restrict the size of the negotiating committees and restrict information sharing between the negotiating committees formed.

Interim authorisation

The ACCC proposes to grant interim authorisation subject to conditions for the AHA Divisions to commence collective negotiations with racing broadcasting service providers on the terms and conditions of the supply of broadcasting services until the date of the ACCC's

final determination comes into effect or until a decision to revoke interim authorisation is made. Interim authorisation does not extend to entering into any contracts reached as a result of collective negotiations with the racing broadcasting service providers.

In granting interim authorisation, the ACCC has placed significant weight on the voluntary nature of the proposal and the ability of racing broadcasting service providers to choose not to participate in the collective negotiations.

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1. Introduction

- 1.1 The ACCC is the Australian Government agency responsible for administering the *Trade Practices Act (1974)* (TPA). A key objective of the TPA is to prevent anti-competitive arrangements or conduct, thereby encouraging competition and efficiency in business, resulting in greater choice for consumers in price, quality and service.
- 1.2 The TPA, however, allows the ACCC to grant immunity from legal action for anti-competitive conduct in certain circumstances. One way in which parties may obtain immunity is to apply to the ACCC for what is known as an ‘authorisation’.
- 1.3 Broadly, the ACCC may ‘authorise’ businesses to engage in anticompetitive arrangements or conduct where it is satisfied that the public benefit from the arrangements or conduct outweighs any public detriment.
- 1.4 The ACCC conducts a comprehensive public consultation process before making a decision to grant or deny authorisation.
- 1.5 Upon receiving an application for authorisation, the ACCC invites interested parties to lodge submissions outlining whether they support the application or not, and their reasons for this.
- 1.6 The TPA requires that the ACCC then issue a draft determination in writing proposing either to grant the application (in whole, in part or subject to conditions) or deny the application. In preparing a draft determination, the ACCC will take into account any submissions received from interested parties.
- 1.7 Once a draft determination is released, the applicant or any interested party may request that the ACCC hold a conference. A conference is generally called by a party dissatisfied with the ACCC’s decision and provides interested parties with the opportunity to put oral submissions to the ACCC in response to a draft determination. The ACCC will also invite interested parties to lodge written submissions on the draft determination.
- 1.8 The ACCC then reconsiders the application taking into account the comments made at the conference (if one is requested) and any further submissions received and issues a written final determination. Should the public benefit outweigh the public detriment the ACCC may grant authorisation. If not, the authorisation may be denied. However, in some cases it may still be possible to grant authorisation where conditions can be imposed which sufficiently increase the public benefits and decrease the public detriment.
- 1.9 This document is a draft determination in relation to the application for authorisation A90987 lodged by Australian Hotel Association Divisions in Victoria, Western Australia, South Australia, Tasmania and the Northern Territory (AHA Divisions).

2. The application and supporting submission

2.1 On 30 September 2005, the AHA Divisions on behalf of their current and future members, lodged application for authorisation A90987. The application was made pursuant to section 88(1) of the TPA for an authorisation under that sub-section:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or may have the likely effect, of substantially lessening competition within the meaning of section 45 of the TPA and
- to give effect to a provision of a contract, arrangement or understanding where the provision has, or may have the effect of substantially lessening competition within the meaning of section 45 of the TPA.

2.2 The AHA Divisions have sought authorisation for a period of five years.

The Applicants

2.3 The AHA is an industry association with membership comprising of hotels, pubs, resorts and other accommodation establishments. The main objective of the AHA is to promote and protect the rights and interests of licensed hospitality industry businesses. It aims to be the leading hotel and hospitality industry association providing leadership in representing the interests of members and other stakeholders to the Government and community. It has Divisions located in every state and territory. The AHA Divisions stated that the Northern Territory Division has 56 members, the Victorian Division has 711 members and the South Australian Division has 522 members.

The proposed collective bargaining arrangements

2.4 The AHA Divisions have applied for authorisation to conduct collective negotiations with the following service providers of wagering and/or broadcasting services:

AHA Division	Service Provider
Victoria	Tabcorp Holdings Ltd, Sky Channel Pty Ltd, Racing Victoria Ltd, ThoroughVision Pty Ltd
Western Australia	Racing and Wagering Western Australia, ThoroughVision Pty Ltd, Sky Channel Pty Ltd
South Australia	Unitab Ltd, Sky Channel Pty Ltd, ThoroughVision Pty Ltd
Tasmania	Tote Tasmania Pty Ltd, Sky Channel Pty Ltd, ThoroughVision Pty Ltd
Northern Territory	Unitab Ltd, Sky Channel Pty Ltd, ThoroughVision Pty Ltd

2.5 The AHA Divisions submit that collective negotiations will:

- encompass the terms and conditions, including fees, for the provision of wagering and racing broadcasting services
- include a dispute resolution process for any disputes which may arise between individual members and the service providers
- be conducted by committees elected by the members of each state/territory Division of the AHA.

On the basis of the information provided by the AHA Divisions the ACCC understands that the negotiating committees are likely to comprise representatives of different types of hotels (possibly one country hotel, one large metropolitan hotel and one small metropolitan hotel) and representatives from the relevant AHA Division. Alternatively, all members of each AHA Division will constitute individual negotiating committees.

The AHA Divisions' supporting submission

2.6 The AHA Divisions submit that the anti-competitive detriment of the proposed arrangement is limited by the following:

- AHA members will not be forced to participate in the proposed arrangement
- AHA members will be informed of their obligations under the TPA
- collective bargaining groups will only be comprised of those hotels which will acquire the particular service from the specified service provider
- the collective bargaining arrangement does not involve collective boycott conduct
- AHA members can choose to individually negotiate with the service providers
- any attempt by totalisators to recoup lost revenue will be limited because retail prices and returns are regulated by Government.

2.7 The AHA Divisions submit that the proposed collective bargaining arrangement would result in a range of public benefits including improving quality standards, providing countervailing/bargaining power, increased input into contracts, introduction of a dispute resolution process, savings in transaction costs, continued viability of small business, promotion of equitable dealings in the market and the provision of expert advice.

Interim authorisation

2.8 As part of their application, the AHA Divisions requested that the ACCC grant interim authorisation to the proposed collective bargaining arrangement to allow them to begin collective negotiations with service providers. The AHA Divisions also sought interim authorisation to give effect to any agreements reached as a consequence of the collective negotiations. The ACCC decided not to grant interim

authorisation to this request on 2 November 2005.

Amended request for interim authorisation

- 2.9 On 11 November 2005, the ACCC received an amended request for interim authorisation from the AHA Divisions. The AHA Divisions are seeking interim authorisation to commence collective negotiations with service providers of racing broadcasting services. The AHA Divisions have submitted that should interim authorisation be granted, no new contracts reflecting any outcomes achieved through collective negotiations would be entered into until after the ACCC issues a final determination granting authorisation.

3. Industry background and submissions

Wagering and gaming

- 3.1 Gambling activities are categorised as either gaming or wagering.
- 3.2 Gaming refers to gambling activities where random chance determines the outcome. The principal forms of gaming in Australia are gaming/poker machines, casinos, lotteries, lotto and keno.
- 3.3 Wagering involves betting on the outcome of live events, primarily racing (thoroughbred, harness and greyhound racing) and sporting events. Wagering is divided into totalisator wagering and fixed-odds wagering.

Totalisator wagering: a system of betting on races in which the winning bettors share the total amount bet, minus a percentage for the operators of the system. Totalisators are the main form of wagering in Australia and the majority of totalisator wagering turnover is ‘off-course’ betting (bets placed by customers who are not present at the racecourse). There is one operator in each state and territory authorised to conduct off-course wagering. These operators are authorised to conduct totalisator wagering, although in many states legislation has recently allowed them to expand into fixed-odds wagering.

Fixed-odds wagering: also known as ‘bookmaking’ is a system of betting on races in which the bookmaker or the totalisator sets the prices or “odds” of the event.

- 3.4 More than 70% of the racing industry’s total revenue is derived from wagering revenue.¹ The distribution channels for wagering on racing include:
 - on course bookmakers
 - on course totalisator
 - TAB stand alone outlets
 - TAB in hotels and clubs (PubTab or ClubTab)
 - telephone betting
 - telephone to internet
 - standalone internet.

Broadcasting services

- 3.5 Traditionally, all thoroughbred horse racing in Australia along with all harness and greyhound racing has been broadcast exclusively by Sky Channel Pty Ltd (Sky Channel).²

¹ *Changes in Wagering Within the Racing Industry*, Final Report, May 2005, p. 40, Commissioned by the Victorian Gambling Research Panel, prepared by South Australian Centre for Economic Studies, Swinburne Institute for Social Research and University of Western Sydney.

- 3.6 However, on 4 May 2005 Sky Channel lost its media rights to Australia Jockey Club, Sydney Turf Club and Victorian metropolitan and country race meetings to ThoroughVision Pty Ltd (TVN).³
- 3.7 TVN is a new racing broadcaster which is owned by the Australian Jockey Club who has a 25% ownership holding, the Sydney Turf Club who owns 25% and various thoroughbred horse racing clubs in Victoria who combined own 50%.
- 3.8 The AHA Divisions stated that while they are not aware of the full details that led to the current position, it appears that Sky Channel and the relevant racing clubs were unable to agree on terms and conditions in relation to the provision of thoroughbred races provided by these clubs.

The service providers and current arrangements

Tabcorp Holdings Ltd (Tabcorp)

- 3.9 Tabcorp holds the exclusive off-course totalisator licence for Victoria. At 3 November 2005, Tabcorp had a total of 587 wagering outlets in Victoria (97 agencies, 382 licensed venues (328 PubTabs, 31 ClubTabs, 23 MiniTabs) and 108 kiosks).
- 3.10 Tabcorp advised that it uses identical standard form agreements for all PubTab and ClubTab outlets. Under the agreements PubTab and ClubTab operators receive a commission and daily fixed fee based on turnover and the standard of the fit-out of the outlet. Tabcorp submitted that the use of standard form agreements is important as it lowers transaction costs and assists in compliance with regulations. Current agreements were entered into in 2003 and expire in 2008. The standard contract can be terminated by either party on thirty days notice.

Sky Channel

- 3.11 Sky Channel is a satellite television broadcaster that telecasts race meetings and other sporting events throughout Australia and internationally. Sky Channel broadcasts to commercial premises, being primarily hotels, clubs and TAB commercial agencies. In most cases, the commercial premises also offer wagering services. Sky Channel's service is available in 2723 hotels, 1037 clubs and 811 Tab agencies across Australia.
- 3.12 Sky Channel uses a standard form contract for hotels and clubs across Australia except for Tasmania and Western Australia. In these states, Sky Channel has granted Tote Tasmania Pty Ltd and WA Tab exclusive licences to distribute the Sky Channel service.
- 3.13 Sky Channel charges hotels and clubs for the Sky Channel service on the basis of annual bulk beer litrage and for those outlets with Tab facilities, wagering turnover.

² With the exception of certain major metropolitan races and meetings, such as during the spring racing carnival, which are also broadcast on free to air television.

³ Sky Channel press release of 4 May 2005, http://www.skychannel.com.au/mediarelease/sky_statement.php

Different scales apply depending on whether or not the hotel or club has wagering facilities.

- 3.14 Shortly after losing the media rights to Australian Jockey Club, Sydney Turf Club and Victorian metropolitan and country race meetings to TVN, on 10 May 2005 Sky Channel announced an 18% discount in its fees to pubs and clubs.⁴ It stated that the discount took into account the following factors:
- its loss of Australian Jockey Club, Sydney Turf Club and Victorian thoroughbred meetings
 - its addition of Hong Kong and New Zealand racing content
 - a 50% increase in racing coverage offered by Sky Channel since 1998 and overall customer satisfaction with its coverage
 - its retention of 90% of thoroughbred, harness and greyhound racing.

TVN

- 3.15 TVN broadcasts to pub, clubs and TAB agencies in NSW, Victoria, ACT and Tasmania. TVN estimates that it currently provides racing broadcasting services to 2300 hotels in Australia. Approximately 940 of these 2300 hotels have entered into an agreement with TVN for the provision of the TVN Channel. TVN has recently begun charging these hotels for broadcasting services.
- 3.16 The NSW Division of the AHA has been appointed as a sales agent for the TVN Channel in all states, with the exception of Western Australia and Tasmania. The AHA Divisions advised that contracts between AHA members and TVN are standard form.
- 3.17 TVN's pricing policy for the provision of broadcasting services of thoroughbred races conducted in Victoria, Sydney and Darwin was announced on 22 September 2005 and is designed to ensure that no venue will pay a combined TVN/Sky Channel rate fee exceeding 100% of the amount previously charged by Sky Channel as at 1 September 2004.⁵ TVN expects that it will charge pubs and clubs a fee equivalent to 18% of their Sky Channel rate as of 1 September 2004.

Unitab Ltd (Unitab)

- 3.18 Unitab and its wholly owned subsidiaries, NT TAB Pty Ltd and SA TAB Pty Ltd, hold licences in Queensland, Northern Territory and South Australia to operate wagering and fixed odds betting on racing and sports events.

⁴ Sky Channel announces 18% discount on pub/club fees and extra premium races, Tabcorp media release 10 May 2005, http://www.tabcorp.com.au/news_mediarel_detail.aspx?view=159.

⁵ TVN announces pricing policy, 22 September 2005, <http://www.aapracingsports.com.au/cms/cmspopnews.asp?NID=70932>

- 3.19 The AHA Divisions advise that hotels enter into a standard agreement with Unitab. Hotels receive a commission from Unitab based on turnover (2% for the lowest level of turnover and up to 3% for the highest level of turnover).

Tote Tasmania Pty Ltd (Tote)

- 3.20 Tote is established under the *TOTE Tasmania Act 2000*. Its principal activities are totalisator and fixed odd wagering and the administration of thoroughbred, harness and greyhound racing.
- 3.21 Tote advise that its agreements with clients vary and depend on the nature of the service being provided and whether the client is a sole trader, partnership or corporation. Tote currently provides Sky Channel broadcasting service, wagering and TVN broadcasting service. Tote noted that it currently supplies the TVN broadcasting service at no charge to its clients (i.e. Tote absorbs the cost of providing this service). Tote noted that its ability to negotiate the terms of its acquisition of broadcasting services from Sky Channel is limited and it is currently party to a long term agreement with Sky Channel.

Racing Victoria Ltd (Racing Victoria)

- 3.22 Racing Victoria is the principal racing authority governing thoroughbred racing in Victoria. Racing Victoria is not a licensee or owner of broadcasting rights for Victorian thoroughbred races and is not a holder of a wagering licence. It does not have any agreements in place with hotels in Victoria.

Racing and Wagering Western Australian (RWWA)

- 3.23 RWWA is established under the *Racing and Wagering Western Australian Act 2003*. It is the controlling authority for thoroughbred, harness and greyhound racing in Western Australia and also has responsibility for the conduct of off-course TAB wagering.
- 3.24 RWWA has existing contracts in place for all broadcasting and wagering services supplied within Western Australia. These are ongoing contracts which are terminable on six months notice.

Submissions from interested parties

- 3.25 The ACCC sought submissions from a wide range of interested parties. The main points of these are summarised below. Complete copies of all publicly available submissions are available on the ACCC's public register and its website.
- 3.26 The ACCC received seven submissions generally in support of the AHA Divisions application from TVN, Racing Victoria, Victoria Racing Club, Moonee Valley Racing Club, Melbourne Racing Club, RWWA and Clubs NSW.
- 3.27 The ACCC received four submissions generally not in support of the AHA Divisions application from Tabcorp (including Sky Channel), Unitab, Tote and Clubs SA.

Issues raised

- 3.28 Unitab noted that the terms and conditions on which wagering services are provided are not broadly the same within each state/territory, as submitted by the AHA Divisions. Therefore, Unitab considers that there is little benefit to the AHA Divisions in collectively negotiating the terms of trading with wagering service providers across the different jurisdictions.
- 3.29 Tote stated that the AHA represents only 40% of Tote's licensed operators. By authorising the AHA to collectively negotiate on behalf of these operators, the remaining 60% of operators will be disadvantaged, as well as operators of retail outlets which are not hotel based. It also noted that the terms and conditions on which wagering services are provided are not broadly the same in each state and territory. It submitted that there are different regulatory frameworks and structural differences. Tote considered that for these reasons there is no benefit in the AHA Divisions negotiating across jurisdictions. Tote noted that it is currently negotiating with TVN for the provision of ongoing race broadcasting services. Tote stated that if authorisation was granted to allow the AHA Divisions to collectively negotiate with TVN, it would provide the AHA Divisions with an unfair advantage over Tote, in the same way as it would in respect of Sky Channel's broadcasting service.
- 3.30 Racing Victoria noted that while it is listed as a service provider in the AHA Divisions application, it does not currently provide wagering or broadcasting services. Victoria, Moonee Valley and Melbourne Racing Clubs noted that they own broadcasting rights relating to race meetings conducted by them which are licensed to TVN. Racing Victoria, Monee Valley, Victoria and Melbourne Racing Clubs noted that they would not support an application by the AHA Divisions to engage in collective boycott activity should negotiations with the service providers break down.
- 3.31 RWWA supported the application on the basis of its understanding of the process to be followed during any dealings between it and AHA Division of Western Australia.
- 3.32 Clubs NSW supported the application subject to the ACCC imposing a condition requiring the AHA Divisions to make public any terms and conditions (including price) negotiated through the collective bargaining arrangement.

Previous authorisation

- 3.33 On 27 June 2003, the ACCC granted authorisation for five years to Australian Hotels Association in New South Wales (AHA NSW) to collectively negotiate on behalf of member hotels with Tab Limited and Sky Channel on the supply of betting and racing broadcasting services (the AHA NSW authorisation).⁶

⁶ A copy of the ACCC's determination in relation to the AHA NSW authorisation is available on the ACCC's website at www.accc.gov.au.

4. Statutory test

- 4.1 Application A90987 was made by the AHA Divisions under sub-section 88(1) of the TPA to make and give effect to arrangements that might substantially lessen competition within the meaning of section 45 of the TPA. Application A90987 is also expressed to be made on behalf of all current and future members of the relevant AHA Divisions.
- 4.2 The relevant tests that the AHA Divisions must satisfy for authorisation to be granted are outlined in sub-sections 90(6) of the TPA. Under sub-section 90(6) of the TPA, the ACCC may grant authorisation in respect of a proposed contract, arrangement or understanding that may have the purpose or effect of substantially lessening competition if it is satisfied that:
- the contract, arrangement or understanding would be likely to result in a benefit to the public and
 - this benefit would outweigh the detriment to the public constituted by any lessening of competition that would be likely to result from the contract, arrangement or understanding.
- 4.3 In deciding whether it should grant authorisation, the ACCC must examine the anti-competitive aspects of the arrangements or conduct and the public benefits arising from the arrangements or conduct, weighing the two to determine which is greater.
- 4.4 The Tribunal has previously stated that with respect to the test under section 90(6):
- [the] fact that the only public detriment to be taken into account is lessening of competition does not mean that other detriments are not to be weighed in the balance when a judgment is being made. Something relied upon as a benefit may have a beneficial, and also a detrimental, effect on society. Such detrimental effect as it has must be considered in order to determine the extent of its beneficial effect.⁷
- 4.5 Consequently, when applying the test under section 90(6), the ACCC can take most, if not all, public detriment likely to result from the relevant conduct into account either by looking at the detriment side of the equation or when assessing the extent of benefits.
- 4.6 Public benefit is not defined by the TPA. However, the Australian Competition Tribunal (the Tribunal) has stated that the term should be given its widest possible meaning. In particular, it includes ‘anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress’.⁸
- 4.7 Similarly, public detriment is not defined in the TPA but the Tribunal has given the concept a wide ambit. It has stated that the detriment to the public includes ‘any impairment to the community generally, any harm or damage to the aims pursued by

⁷ Re Association of Consulting Engineers, Australia (1981) ATPR 40-2-2 at 42788. See also: *Media Council case* (1978) ATPR 40-058 at 17606; and *Application of Southern Cross Beverages Pty. Ltd., Cadbury Schweppes Pty. Ltd. and Amatil Ltd. for review* (1981) ATPR 40-200 at 42,763, 42766.

⁸ *Re 7-Eleven Stores; Australian Association of Convenience Stores* (1994) ATPR ¶ 41-357 at 42677. The Tribunal recently followed this approach in *Qantas Airways Limited* [2004] ACompT 9, 16 May 2005.

the society including as one of its principal elements the achievement of the goal of economic efficiency'.⁹

- 4.8 In weighing up the public benefit and anti-competitive detriment generated by proposed arrangements for which authorisation has been sought the ACCC also applies the 'future with-and-without test' established by the Tribunal. Under this test, the ACCC compares the public benefit and anti-competitive detriment generated by arrangements in the future if the authorisation is granted with those generated if the authorisation is not granted. This requires the ACCC to predict how the relevant markets will react if authorisation is not granted. This prediction is referred to as the counterfactual.
- 4.9 Section 91(1) of the TPA allows the ACCC to grant authorisation for a specific period of time. Section 91(3) allows the ACCC to grant authorisation subject to conditions.

⁹ *Re 7-Eleven Stores; Australian Association of Convenience Stores* (1994) ATPR ¶ 41-357 at 42683.

5. ACCC's assessment

- 5.1 The ACCC's evaluation is in accordance with the statutory test outlined in section 4 of this draft determination. As required by the test it is necessary for the ACCC to assess and weigh the likely public benefits and detriment arising from the proposed arrangements.

The market

- 5.2 The first step in assessing the public benefit and detriment of the arrangement for which authorisation is sought is to consider the relevant market(s) in which that conduct occurs. However, depending on the circumstances, the ACCC may not need to comprehensively define the relevant market(s) as it may be apparent that net public benefit will or will not arise regardless of the scope of the defined market(s).
- 5.3 With respect to the AHA Divisions' application, the ACCC considers that the following areas of competition may be relevant to its assessment.

The supply of hotel services to consumers – that is, competition between hotels in the provision of services.

- 5.4 The ACCC considers that hotels are likely to compete with one another (and to a lesser extent with clubs) in the provision of hospitality services to consumers in markets differentiated by geographic location. Hotels may offer a different type of product (eg. up-market, sports or casual), which may affect the closeness of competition, however, it is unlikely that different markets exist for the supply of different hotel products.

The supply of wagering services to consumers – that is, competition between hotels, Tab agents, internet and telephone betting services in the provision of services to consumers.

- 5.5 Consumers choose to acquire a wagering product via a particular distribution channel for a variety of reasons including availability, level of service and convenience. Consequently, the ACCC considers that to some extent, hotels are likely to compete with Tab agents, internet and telephone betting in the provision of wagering services to consumers.
- 5.6 While there is likely to be competition between hotels and clubs for the provision of wagering services to consumers, this primarily takes the form of non-price competition given the role of state legislation in setting pricing components such as commissions.
- 5.7 Wagering is one of a range of gambling opportunities available to consumers (including lotteries, poker machines and casinos) and to some extent, all of these gambling products compete with each other. A report by the Productivity

Commission has recognised that gambling products are becoming more substitutable.¹⁰

The supply of distribution services by hotels to a totalisator – that is, competition between hotels in the provision of wagering distribution services.

- 5.8 The ACCC notes that there are essentially two areas of competition in the market for the supply of distribution services to totalisators. Firstly, competition for appointment to supply distribution services to the totalisator within a state / territory and secondly, competition between appointed suppliers in the actual provision of the distribution services.
- 5.9 The ACCC notes that competition to be appointed as a supplier of distribution services is dependent upon a totalisator deciding to establish a new distribution service. If this decision is made, it has the potential to create some rivalry between suppliers of distribution services, such as hotels, clubs and Tab agents, as they compete for the totalisator's business.
- 5.10 This issue of competition between appointed suppliers in the actual provision of distribution services is discussed in paragraphs 5.5 – 5.7 above. The ACCC notes that from the service suppliers' perspective, providing wagering services to consumers and supplying distribution services to a totalisator are two sides of a single transaction. In competing to supply wagering services to consumers, suppliers – hotels, clubs or Tab agents – are in effect competing for the turnover based commission paid by totalisators in respect of distributing wagering services on their behalf.

The acquisition of pay television services by commercial operators – that is, competition between hotels in the acquisition of pay television services.

- 5.11 Sky Channel and TVN provide pay TV services to commercial operators including hotels and clubs. However, Sky Channel and TVN broadcast different content. Sky Channel currently has broadcasting rights for thoroughbred racing in country NSW, South Australia, Western Australia, Tasmania, Queensland and the Australian Capital Territory. TVN currently has the broadcasting rights for thoroughbred racing in Victoria, Darwin and metropolitan Sydney.
- 5.12 The ACCC notes that in order to televise an Australia-wide suite of thoroughbred races, commercial operators such as hotels and clubs must enter into agreements with both Sky Channel and TVN. The services provided by Sky Channel and TVN appear to be complementary.
- 5.13 Wagering on sporting events other than racing comprises a small proportion of wagering turnover. In light of this, the ACCC considers that there is unlikely to be a high degree of substitutability between the provision of general sporting coverage and the provision of racing broadcast coverage to commercial premises.

¹⁰ Productivity Commission (1999), *Australia's Gambling Industries: Inquiry Report*.

The future with and without test (the counterfactual)

- 5.14 The ACCC uses the ‘future with-and-without test’ established by the Australian Competition Tribunal to identify and measure the public benefit and anti-competitive detriment generated by the arrangements for which authorisation is sought.¹¹
- 5.15 Under this test, the ACCC compares the public benefit and anti-competitive detriment generated by the arrangements in the future if the authorisation is granted, with those generated if the authorisation is not granted. This requires the ACCC to make a reasonable forecast about how the relevant markets will react if authorisation is not granted. This forecast is often referred to as the counterfactual.

The future situation without the proposed arrangements

- 5.16 The AHA Divisions submit that without authorisation, the position in the future would be the current situation in that its members will enter into largely standard form contracts with the various service providers. Tabcorp support this view.
- 5.17 The ACCC notes that the arrangement for which authorisation is sought is at risk of breaching the TPA. Given this risk, the ACCC considers it unlikely that collective negotiations would take place in the absence of authorisation.
- 5.18 The ACCC accepts that the most likely situation without the proposed arrangements is the current situation, namely, the continuation of standard form contracts offered by service providers with limited input from the AHA Divisions and/or hoteliers on terms and conditions from time to time.

Effect on competition

The anti-competitive detriment

- 5.19 In assessing the potential detriment of the proposed collective bargaining arrangements, the ACCC proposes to consider the following three possible anti-competitive effects which are likely to occur in the primary areas of competition:
- reduced economic efficiencies
 - increased potential for collective activity beyond that authorised
 - effect on competitors outside the collective bargaining arrangement.

Reduced economic efficiencies

- 5.20 In its past consideration of collective bargaining arrangements, the ACCC has accepted that where collective bargaining results in an increased price being paid to the bargaining group, or reduced competition on other terms of supply, this could constitute an anti-competitive detriment. There is also capacity for any such increases to be passed on in the form of higher prices, less choice, or lower quality of products offered to consumers.

¹¹ See, for example, *Re Australasian Performing Rights Association* (1999) ATPR ¶41-701

- 5.21 The ACCC has previously identified that the anti-competitive effect of collective bargaining arrangements constituted by lost efficiencies are likely to be more limited where the following four features are present:
- the current level of competition, between members of the bargaining group, with respect to those terms on which they are seeking to negotiate, is low
 - participation in the collective bargaining arrangements is voluntary
 - there are restrictions on the coverage and composition of the bargaining group
 - there is no boycott activity.
- 5.22 With respect to these four features as they relate to the AHA Division's collective bargaining arrangements, the ACCC notes the following:

Competition between hotels absent the authorisation

- 5.23 Information provided to the ACCC indicates that there is currently a low level of competition between hotels for the acquisition of wagering and broadcasting services from the various service providers. While there is some suggestion that consultation occurs with AHA Divisions in some states, it appears that in general hotels are currently offered a largely standard form contract from the relevant service provider, under which the capacity for individual hotels to vary the terms of the agreement is limited.

Voluntary participation in the collective bargaining arrangements

- 5.24 The ACCC notes that the proposed collective bargaining arrangements are voluntary. AHA members may opt out of the collective bargaining process at any time and negotiate individually with the relevant service provider. The service providers may also choose not to participate in collective negotiations with the AHA Divisions.
- 5.25 The ACCC also notes that the application for authorisation is expressed so as to apply to any future AHA members, providing new hoteliers with the opportunity to participate in the collective bargaining arrangement should they choose.

Size/composition of bargaining groups

- 5.26 The ACCC considers that where the size of bargaining groups is restricted, any anti-competitive effect is likely to be smaller having regard to the smaller area of trade directly affected and having regard to the competition provided by those suppliers outside the group.
- 5.27 The AHA Divisions submit that collective negotiations will be conducted by committees elected by the members of each state/territory Division of the AHA.
- 5.28 On the basis of the information provided by the AHA Divisions the ACCC understands that the negotiating committees will take the following forms:

- a negotiating committee may comprise representatives of different types of hotels (possibly one country hotel, one large metropolitan hotel and one small metropolitan hotel) and representatives from the relevant AHA Division or
 - all members of an AHA Division may constitute a negotiating committee.
- 5.29 The ACCC notes that limited information has been provided concerning the number of AHA members as a proportion of all industry participants in each state or territory. The extent of industry coverage of the proposed arrangements is likely to be of some concern to the ACCC and the ACCC expects the AHA Divisions to provide information on this issue before it issues a final determination.
- 5.30 Further, the ACCC is concerned that potential exists for the AHA Divisions in each state/territory to share information obtained through the collective negotiation process, which may result in industry wide prices and conditions for wagering and broadcasting services. Having said this, the ACCC notes that the AHA Divisions have submitted that they would not share information between any bargaining groups in other states or territories, including the outcome of any collective negotiations.
- 5.31 The ACCC considers that significant anti-competitive detriment could flow from an industry wide collective bargaining arrangement as it has the potential to result in substantial distortion of the market for wagering and broadcasting services and consequent inefficiencies.

Boycott activity

- 5.32 The AHA Divisions have not applied for authorisation to engage in collective boycott activity. While there are circumstances in which the ability to boycott may in itself generate a net public benefit, more generally, collective boycotts can significantly increase any anti-competitive effects of collective bargaining arrangements. Accordingly, any such conduct, should it occur, would not be protected from legal action under the TPA.

Increased potential for collective activity beyond that authorised

- 5.33 In considering collective bargaining arrangements in the past, the ACCC has noted concern that the arrangements may increase the potential for collusive anti-competitive conduct. Such increased potential arises where competitors are encouraged to meet, share information and discuss pricing. The ACCC has been concerned that in this environment, there may be an increased likelihood of anti-competitive conduct (beyond that which is authorised) occurring.
- 5.34 The ACCC notes that the likelihood of collusive activity beyond that authorised is reduced where participants are made aware of their obligations under the TPA and where the arrangements are not industry wide.
- 5.35 In respect of the AHA Divisions' application, the ACCC considers that there is no information to suggest that any conduct that may raise concerns under the TPA, other than that for which authorisation is sought, is intended to be discussed by the consenting parties to the application.

- 5.36 The ACCC notes that the AHA Divisions' have proposed that members be reminded of their obligations under the TPA each time they commence collective negotiations and it is also proposed that a trade practices compliance program be implemented. The ACCC encourages such a program to be developed and implemented and considers it will assist in ensuring that the conduct of the AHA Divisions and its members in the collective bargaining arrangement lies strictly within the terms of the authorisation.

Effect on businesses outside of arrangements

- 5.37 Tote, Clubs NSW and Clubs SA raised concerns about the effect of the proposed collective bargaining arrangements on businesses that are not party to the arrangements. Clubs NSW and Clubs SA noted that if hotels through the collective bargaining arrangement were able to obtain a better competitive position, then this may impact adversely on registered clubs by leaving them in a less competitive position.
- 5.38 Tabcorp submit that the AHA NSW authorisation has not resulted in any material advantage in the position of AHA hotel members in NSW *vis a vis* AHA members in other States in respect of the Sky Channel service fees. Tabcorp noted that reductions in the Sky Channel service fees since 2003 have been applied nationally. It noted that while, for a limited period, AHA NSW members received a promotional rebate from Tab Limited as consideration for the support and promotion of Tab Limited and Sky Channel, a similar rebate was also provided to clubs and non-AHA member hotels in NSW.
- 5.39 The ACCC notes that should service providers choose to offer different terms and conditions to businesses that are not party to the proposed collective bargaining arrangement, scope exists for these businesses to consider seeking authorisation to engage in collective negotiations with the service provider.

Role of AHA

- 5.40 TVN has appointed the AHA as its distribution agent for the provision of TVN Channel into Australian pubs and clubs. TVN's website states that 'the AHA will be responsible for promoting and selling the Channel to Australian pubs and clubs, and will be recommending its members take up the service as soon as possible'.¹² TVN confirmed in its submission that the AHA NSW Division has been appointed as sales agent for the TVN Channel, except in WA and Tasmania.
- 5.41 The ACCC requested information from the AHA Divisions regarding the AHA's role as sales agent for TVN and any impact this may have on the proposed collective negotiation arrangement. In response, the AHA Divisions state that its members are normal customers who will still have to negotiate agreements with TVN, be they individually or collectively.

¹² www.tvn.com.au, Frequently Asked Questions, 1 December 2005.

5.42 The ACCC notes that the AHA's role as sales agent for TVN has the potential to distort incentives in collective negotiations with Sky Channel (and presumably Tote and RWWA as licensed suppliers of the Sky Channel service). This has the potential to affect the outcomes and efficiencies achieved through the collective bargaining arrangements.

5.43 However, the ACCC notes that the extent to which outcomes and efficiencies achieved through the collective bargaining arrangements are affected may be limited by the following:

- The broadcasting services provided by Sky Channel and TVN are not substitutes for one another. Hotels currently require services from both service providers if they wish to televise a complete suite of Australia-wide racing. Therefore, currently the AHA Divisions are likely to have an incentive to ensure that its members are supplied broadcasting services from Sky Channel. This may change if TVN was able to obtain rights to broadcast more races, and therefore become more substitutable with services provided by Sky Channel.
- Authorisation of the proposed collective bargaining arrangements would not compel any party to participate in collective negotiations. Accordingly, if concerns were raised about how the AHA Divisions conducted collective negotiations with Sky Channel, it could choose not to participate in the collective bargaining negotiations.

Public benefits

5.44 The AHA Divisions submit that the proposed collective bargaining arrangement will result in the following public benefits:

- improving quality standards
- providing countervailing/bargaining power
- increased input into contracts
- introduction of a dispute resolution process
- savings in transaction costs
- continued viability of small business
- promotion of equitable dealings in the market
- provision of expert advice.

5.45 The ACCC's view on each of the public benefits submitted by the AHA Divisions is discussed below. 'Providing countervailing/bargaining power' and 'increased input into contracts' are considered together.

Improved quality standards

5.46 The AHA Divisions submit that they expect the collective bargaining process to result in more favourable terms of trading for their members. The AHA Divisions submit

that hotels operate in a competitive market and a significant proportion of any increase in revenue (or decrease in costs) resulting from improved trading terms will be passed onto consumers in the form of enhanced service standards and facilities.

- 5.47 Tabcorp submit that there is no information to suggest that hotels will pass on any gains obtained through collective bargaining in the form of lower prices or improved services to consumers. Tabcorp noted the recent fee reduction by Sky Channel and submitted that the AHA Divisions have not provided average price reductions or aggregate service improvements as a result of this decrease in costs.¹³
- 5.48 As noted in the discussion on markets, consumers choose to acquire a wagering product via a particular distribution channel for a variety of reasons including availability, level of service and convenience. In essence, competition between suppliers of wagering products tends to be driven by non-price factors, including service quality.
- 5.49 Given the incentive faced by providers of wagering services to increase their market share by improving non-price aspects of their business such as service quality, and given the reasonably competitive nature of the markets in which AHA members operate, it is reasonable to assume that any revenue gains to AHA members resulting from the proposed collective negotiation arrangement would, at least to some extent, be utilised by hotels to improve their competitive position *vis a vis* other providers of wagering services. The ACCC considers this outcome would constitute a public benefit.

Providing countervailing/bargaining power and increased input into contracts

- 5.50 The AHA Divisions submit that the proposed collective negotiation arrangements will enable AHA members to improve their bargaining position relative to the service providers.
- 5.51 The ACCC considers that collective bargaining arrangements, such as the arrangements proposed by the AHA Divisions, can result in benefits to the public by facilitating improvements in the level of input a party has in their contractual negotiations. This improved input provides a mechanism through which the negotiating parties can identify and achieve greater efficiencies in their businesses, for example by addressing common contractual problems in a more streamlined and effective manner.
- 5.52 The ACCC considers that this improved input is a feature of increasing the bargaining power of the members of the collective (by allowing them to aggregate their influence in the negotiation); of improving the individual's access to information and resources; and of providing a mechanism through which productive contractual discussions between the collective and the counterparty can be achieved.

¹³ Sky reduced its fees by 9.75% from March to August 2004 and reduced its fees by a further 18% in May 2005. On 22 September 2005, TVN announced that it would begin to charge hotels for its service and its charge would be equivalent of the 18% reduction provided by Sky for its services.

- 5.53 In the current circumstances, the ACCC accepts that there is an imbalance in bargaining power between individual hotels and the service providers which limits the capacity of hotels to have effective input into contract terms and conditions. The ACCC notes Tabcorp's submission that there is no evidence that Sky Channel is earning monopoly rents and that Tabcorp has consistently indicated that it would consider alternative approaches to pricing.
- 5.54 The ACCC considers that the proposed arrangement would provide greater opportunity for hotels, through the AHA Divisions, to provide input into contract terms and conditions. While there may be limited scope for service providers to negotiate on price, as submitted by Tote, the ACCC considers that the proposed arrangements will provide an opportunity for hotels to have more effective input into contract terms and conditions (in addition to price) and to the extent that this leads to efficiency gains, this outcome would give rise to some public benefit.

Introduction of a dispute resolution process

- 5.55 As part of the proposed collective negotiation arrangement, the AHA Divisions propose to develop and institute the following dispute resolution process.
- Where a dispute arises the complainant will prepare a written complaint outlining the nature of the dispute, what outcome they seek to achieve and what actions are required to resolve the dispute and will deliver the written complaint to the other party.
 - On delivery of the complaint the AHA Division and the service provider must make all reasonable efforts to resolve the dispute. Within eight weeks of receiving a complaint, the party receiving the complaint must respond in writing to the complainant. Either party may refer the matter to a mediator.
 - If a dispute is referred to the mediator, the mediator must be a suitably qualified person agreed upon between the parties. The parties shall be equally liable for the costs of mediation and must pay their own costs of attending mediation.
 - All discussions which occur in the course of mediation will be in confidence and without prejudice.
 - If no agreement can be reached within eight weeks of the dispute being referred to mediation (or such longer period as the parties agree), either party may refer the dispute to the courts.
- 5.56 The ACCC considers that there are merits in developing and implementing a dispute resolution process. In general, effective dispute resolution processes are developed and implemented with the support of all relevant parties. The ACCC notes that at this stage, it does not appear that service providers have been consulted or included in developing the proposed dispute resolution process.
- 5.57 To the extent that the proposed collective bargaining arrangements allow for the development of an effective dispute resolution process, in a consultative and inclusive manner, the ACCC considers that it is likely to generate some public benefit. However, in the absence of any information relating to whether the service providers are supportive of the dispute process, the ACCC at this time is unable to conclude

whether the implementation of the dispute resolution process will generate a public benefit.

- 5.58 The ACCC also notes that authorisation would not compel service providers to participate in the dispute resolution process proposed by the AHA Divisions.

Transaction cost savings

- 5.59 Generally, there are transaction costs associated with using the market as a mechanism for trade. However, these transaction costs are likely to be lower in negotiating a collective bargaining agreement involving a single negotiating process relative to a situation where negotiation occurs with many smaller businesses. Consequently, the ACCC considers that to the extent that these transaction costs savings do arise they are likely to constitute a public benefit.
- 5.60 The AHA Divisions submit that the proposed collective bargaining arrangements are likely to result in transaction costs savings to service providers but particularly to AHA members which would have a flow on benefit to the community by way of enhanced services.
- 5.61 Tabcorp submit that transaction costs are currently minimised as a result of the use of standard form contracts. It considers that collective negotiation by the AHA Divisions will not reduce transaction costs for Tabcorp or Sky Channel as they may need to use at least two contracts (one for each bargaining group and the other for non-participants), rather than one standard contract. Tabcorp also noted that the AHA Divisions could seek legal and financial advice on behalf of their members with respect to the current standard form contracts.
- 5.62 The AHA Divisions state that although the extent of negotiation between hotels and service providers is minimal, all AHA members do expend considerable resources in considering the implications of contracts offered. The AHA Divisions note that in the case of larger AHA members this involves seeking professional advice and in the case of small members it often involves an assessment of the consequences that the contracts will have on business viability.
- 5.63 The information available to the ACCC suggests that hotels are offered largely standard form contracts with little scope for to vary terms and conditions. The ACCC notes that the AHA Divisions have not provided any information on the extent of legal and accounting costs incurred by their members when entering into standard contracts with the service providers.
- 5.64 Given the existence of largely standard form contracts, the ACCC considers that only limited transaction costs savings are likely to result from the proposed collective bargaining arrangement. To the extent that such savings do arise, the ACCC considers that competition between providers of wagering services is likely to ensure that at least some of these cost savings are passed onto consumers in the form of improved services. However, the ACCC does not consider the magnitude of such cost savings is likely to be significant.

Continued viability of small business

- 5.65 The AHA Divisions expect that collective negotiations will result in an improvement in hotels' terms of trading. The AHA Divisions considered that any improved terms of trading, and particularly cost savings, will contribute to the overall operations of hotels' business operations thus enabling their continued viability.
- 5.66 The ACCC considers that a mere financial transfer between businesses (that is a transfer of money from wagering and broadcasting service providers to hotels) is not itself a public benefit. Instead the ACCC focuses on the outcome of any transfer and particularly on improvements in efficiency. Consequently, the ACCC does not accept this as a public benefit arising from the conduct for which authorisation is sought.

Promotion of equitable dealings in the market

- 5.67 The AHA Divisions submit that the proposed collective bargaining arrangements will reduce the likelihood of contract terms and conditions that are unfair or unreasonable to hoteliers.
- 5.68 The ACCC accepts that the proposed arrangement may result in a public benefit through greater input by hotels into contract terms and conditions. The ACCC has not received any information which suggests that service providers of wagering and broadcasting services have acted in an unconscionable manner in their dealings with hotels. Consequently, the ACCC does not accept this public benefit claim.

Provision of expert advice

- 5.69 The AHA Divisions submit that the negotiating committees will make expert advice available to their members. The AHA Divisions consider that the provision of such professional advice will contribute to the viability of businesses and increased efficiency of operations.
- 5.70 The ACCC notes that the AHA Divisions are currently able to provide expert advice to their members, should they choose to do so. The proposed collective bargaining arrangement does not increase this possibility. In this context, the ACCC does not accept this as a public benefit arising from the conduct for which authorisation is sought.

Balance of public benefit and public detriment

- 5.71 The ACCC considers that, overall, the proposed collective bargaining arrangements have the potential to result in some anti-competitive detriment. In particular, the ACCC is concerned about the extent of industry coverage by the proposed arrangements and the potential for the negotiating committees in each state/territory to share information obtained through the collective negotiation process.
- 5.72 The ACCC considers that while the proposed collective bargaining arrangements have the potential to result in some anti-competitive detriment, there are a number of mitigating features of the arrangement including:

- the current level of competition between hotels is unlikely to be significantly affected
- the arrangements are voluntary for all parties and may be accessed by future AHA members
- the arrangements do not include collective boycott activity.

5.73 The ACCC considers that the proposed collective bargaining arrangements are likely to result in some benefit to the public. In particular:

- the proposed collective bargaining arrangements will provide greater opportunity for hotels to provide input into contract terms and conditions, to achieve more efficient commercial outcomes
- hotels are likely to pass on at least some benefits of any more efficient contracts negotiated with service providers as a result of collectively bargaining, in the form of improvements in the level of service provided by hotels to consumers
- the proposed collective bargaining arrangements are likely to result in some limited transaction cost savings.

5.74 However, it is difficult to precisely determine the magnitudes of the public benefit and detriment and there is some uncertainty about whether the public benefit outweighs the public detriment. In cases such as this the ACCC may consider whether it is possible to grant authorisation subject to conditions aimed at reducing the anticompetitive detriment or increasing the public benefit to ensure that public benefit outweighs the anti-competitive detriment of the proposed arrangement.

5.75 In this instance the ACCC has decided to grant authorisation subject to the following conditions:

Condition C1

A negotiating committee must not comprise of members from more than one state/territory AHA Division.

Condition C2

Negotiating committees formed within each state/territory are not permitted to share information obtained through the course of engaging in collective bargaining negotiations or share information relating to the outcomes achieved through collective bargaining negotiations with other negotiating committees formed in other states/territories.

Term of authorisation

5.76 The ACCC proposes to grant authorisation to application A90987 for a period of 5 years.

6. Draft determination

The application

- 6.1 On 30 September 2005, the AHA Divisions of Victoria, South Australia, Tasmania, Western Australia and the Northern Territory (the AHA Divisions) on behalf of their current and future members, lodged application for authorisation A90987. The application was made pursuant to section 88(1) of the TPA for an authorisation under that sub-section:
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or may have the likely affect, of substantially lessening competition within the meaning of section 45 of the TPA and
 - to give effect to a provision of a contract, arrangement or understanding where the provision has, or may have the effect of substantially lessening competition within the meaning of section 45 of the TPA.
- 6.2 The AHA Divisions applied for authorisation to conduct collective negotiations with a number of service providers of wagering and/or broadcasting services. These service providers are Tabcorp Holdings Ltd, Sky Channel Pty Ltd, Racing and Wagering Western Australia, Unitab Ltd, ThoroughVision Pty Ltd, Tote Tasmania Pty Ltd and Racing Victoria Ltd. The collective negotiations will encompass the terms and conditions, including fees, for the provision of wagering and racing broadcasting services.

Statutory test

- 6.3 For the reasons outlined in this draft determination and subject to the conditions set below, the ACCC is satisfied that in all circumstances the making of and giving effect to agreements in relation to collective negotiation with the abovementioned wagering and broadcasting service providers for which authorisation is sought under subsection 88(1) of the TPA:
- would be likely to result in a benefit to the public and
 - this benefit would outweigh the detriment to the public constituted by any lessening of competition that would be likely to result from the contract, arrangement or understanding.

Draft Determination

- 6.4 The ACCC proposes to grant authorisation subject to conditions to application A90987 for 5 years, for the AHA Divisions to conduct collective negotiations on behalf of their current and future members with service providers of broadcasting and wagering services in relation to:

- The terms and conditions, including fees, for the provision of wagering and broadcasting services and
- Any necessary future amendments or adjustments to those terms and conditions

as set out in the table below:

AHA Division	Service Provider
Victoria	Tabcorp Holdings Ltd, Sky Channel Pty Ltd, Racing Victoria Ltd, ThoroughVision Pty Ltd
Western Australia	Racing and Wagering Western Australia, ThoroughVision Pty Ltd, Sky Channel Pty Ltd
South Australia	Unitab Ltd, Sky Channel Pty Ltd, ThoroughVision Pty Ltd
Tasmania	Tote Tasmania Pty Ltd, Sky Channel Pty Ltd, ThoroughVision Pty Ltd
Northern Territory	Unitab Ltd, Sky Channel Pty Ltd, ThoroughVision Pty Ltd

Conditions

6.5 It is proposed that this authorisation be subject to the following conditions:

Condition C1

A negotiating committee must not comprise of members from more than one state/territory AHA Division.

Condition C2

Negotiating committees formed within each state/territory are not permitted to share information obtained through the course of engaging in collective bargaining negotiations or to share information relating to the outcomes achieved through collective bargaining negotiations with other negotiating committees formed in other states/territories.

Interim authorisation

6.6 The ACCC proposes to grant interim authorisation subject to conditions for the AHA Divisions to commence collective negotiations with providers of racing broadcasting services on the terms and conditions of the supply of broadcasting services until the date of the ACCC's final determination comes into effect or until a decision to revoke interim authorisation is made. Interim authorisation does not extend to entering into any contracts reached as a result of collective negotiations with racing broadcasting service providers.

6.7 In granting interim authorisation, the ACCC has placed significant weight on the voluntary nature of the proposal and the ability of racing broadcasting service

providers to choose not to participate in the collective negotiations.

- 6.8 Interim authorisation is subject to the conditions outlined in paragraph 6.5 of this draft determination.

Further submissions

- 6.9 The ACCC will now seek further submissions from interested parties. In addition, the AHA Divisions or any interested party may request that the ACCC hold a pre-determination conference pursuant to section 90A of the TPA.