

File 8097
Your Ref: A30243



13 April 2006

General Manager
Adjudication
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Sir/Madam

**APPLICATION FOR AUTHORISATION FOR COLLECTIVE
BARGAINING - ASSOCIATION OF AUSTRALIAN BOOKMAKING
COMPANIES – REF: A30243**

Thank you for providing TOTE Tasmania with the opportunity to make a submission in relation to the abovementioned application by the Association of Australian Bookmaking Companies (AABC).

TOTE Tasmania opposes the grant of an authorisation and interim authorisation to the AABC to collectively negotiate with certain controlling bodies in relation to the publication of race field data and to participate in the resolution of disputes between its members and those bodies.

1. Granting the authorisation would not result in any public benefit.
2. The effect of granting the authorisation would be to lessen competition in the wagering sector.

Public Benefit

The AABC must show that the benefit to the public of an authorisation of the relevant conduct outweighs any detriment. The benefit should be to the public generally in terms of economic efficiency and progress. This must outweigh the detriment in terms of a reduction of quality, consumer choice or maintenance of prices.

It is difficult to see how, in all the circumstances, the authorisation would result, or be likely to result, in such a benefit to the public that the proposed conduct should be allowed to take place. The corporate bookmakers which form the AABC are generally significant and profitable businesses which ought to be capable of competing effectively with each other and with other types of wagering businesses in the Australian wagering market. They also should be able to deal with regulatory bodies or owners of property rights to gain access to such property. Accordingly, they are in a strong position to negotiate on their own behalf with authorities in relation to the publication of race field data.

Granting these companies authorisation to engage in anti-competitive conduct would defeat the objectives of the *Trade Practices Act 1974* and would disadvantage other wagering businesses such as totalisator operators, who wish to obtain approval to publish race field data. It would also pose difficulties for controlling bodies which must make administrative decisions to grant or refuse permission to publish race field data. By the very nature of their powers, they would not be able to give blanket decisions covering all applicants who form the bargaining group. Each application would need to be determined on its own merits having regard to its particular circumstances. In this regard, each member of the AABC would have quite different business arrangements, internal processes and characteristics which would influence a decision maker.

The activities of the AABC could easily undermine this process and expose the decisions of a relevant controlling body to challenge on the basis of the rules of a breach of the rules of procedural fairness.

The position of the AABC can be compared with Australian TABs. Currently, six companies conduct totalisator betting in Australia, Tabcorp Holdings Ltd (which controls TAB Ltd), Unitab Ltd (which controls SA TAB and NT TAB), Racing and Wagering Western Australia, ACTTAB and TOTE Tasmania Pty Ltd. Given the commercial activities of these companies and their collective dominance in the totalisator betting market, it would be inconceivable that they would be permitted to form a group similar to the AABC to negotiate with bodies to gain an advantage for their businesses. This is effectively what the AABC is now seeking to do.

Public Benefits Submitted by AABC

The AABC has suggested that an authorisation will result in efficiency gains through a single point of contact. It is difficult to see how a decision maker in undertaking its statutory powers could legitimately deal with the AABC as a group. These powers must be exercised to consider matters which are relevant to each individual bookmaker. If, say Racing Victoria Ltd (RVL) were to make a decision which adopted a blanket approach, such an approach would be susceptible to challenge by an aggrieved person, including any unsuccessful applicant bookmaker.

The AABC has suggested that an authorisation will promote a sound working relationship with State and Territory controlling bodies and sports organisations. This is a valid objective of any industry representative group. The AABC would be at liberty to deal with these bodies in a manner which did not amount to anti competitive arrangements or understandings. However, the objective of the AABC in making this application is to influence decisions of controlling bodies in order to gain a market advantage for its members. Given their dominance in their sector, there can be no public benefit in this conduct .

The AABC has suggested that improving its bargaining power is a public benefit. It is difficult to see how this can amount to a public benefit given the dominance of the members in the corporate bookmaking sector of the wagering market. It is also difficult to reconcile the AABC's intention to bargain with bodies with statutory powers to make decisions in relation to the publication of race filed data.

The participation by the AABC in disputes between controlling bodies and its members assumes the controlling bodies would take issue with the ability of the AABC's members generally to meet the conditions required to obtain permission to publish race field data rather than their ability as individual businesses. Provided the AABC only discusses issues of concern affecting its industry sector, its conduct would be acceptable. However, it has already stated that it seeks to improve bargaining power. This can only be intended to secure a market advantage over other market participants, including totalisators and other gambling operators.

Competition

The nature of the conduct in respect of which authorisation is sought means a lessening of competition is likely between the members of the AABC. In order to enable the AABC to adequately represent the interests of all its members in their applications to publish race field data, it will require, and its members will necessarily share, sensitive information relating to their businesses. By way of illustration, the criteria which RVL will consider to determine applications to publish its data are extensive and go to the core of applicants' businesses. It is difficult to see how such information sharing can occur without the risk of collusion, even if the members of the AABC do not intend to engage in such conduct. The nature of the activity will lead to an unacceptable risk of collusion.

I attach for your information a copy of the criteria which RVL considers in making its decisions.

Should you have any questions in relation to this letter, please do not hesitate to call me on (03) 6233 4478.

Yours faithfully



(N A Beattie)
SOLICITOR
COMPANY SECRETARY

**GUIDELINES ON INFORMATION TO BE PROVIDED BY A
WAGERING SERVICE PROVIDER MAKING APPLICATION FOR
APPROVAL TO PUBLISH VICTORIAN THOROUGHBRED RACE FIELDS**

PROPOSED SECTION 2.5.16A OF THE GAMBLING REGULATION ACT 2003

**[This provision is in a Bill before the Victorian Parliament.
Applicants should inform themselves in relation to the progress of this Bill by
accessing the Victorian State Government's official website at
www.dms.dpc.vic.gov.au/]**

Introduction

The information provided by the applicant will be considered by Racing Victoria Limited ("RVL") in making a decision under section 2.5.16A of the Gambling Regulation Act 2003 (Vic) in relation to the publication of Victorian thoroughbred race fields by the applicant for a certain period. It is the applicant's responsibility to obtain information about the applicant's potential obligations under this section.

Applicants are requested to provide relevant information as necessary for RVL to make a decision in relation to the matters indicated in this document.

Privacy

Any personal information provided by the applicant will be subject to Australian privacy law. Such information will only be used in the approval process, or otherwise in connection with RVL's statutory and/or regulatory functions as the controlling body of thoroughbred racing in the State of Victoria.

If access to your personal information is required, or you have any questions about RVL's privacy policy, please contact:

Annabelle Mooney
Privacy Officer
Racing Victoria Limited
400 Epsom Road
FLEMINGTON VIC 3031

Telephone: 03 9258 4675
Facsimile: 03 9258 4294
Email: a.mooney@racingvictoria.net.au

Applicant's details

The applicant must provide the following details:

- Name of applicant
- Address of applicant
- Applicant's contact
- Description of applicant's business and the place(s) where the applicant conducts its gambling operations

Criteria

The applicant must demonstrate that:

- wagering services shall be provided in such a manner as to ensure that the integrity of the Victorian thoroughbred racing industry can be adequately protected by RVL in respect of the applicant's operations; and
- appropriate economic benefit will flow to the Victorian thoroughbred racing industry as a consequence of approval to publish race fields.

Relevant considerations

In demonstrating that the criteria are met, the applicant should address the following relevant matters in writing. None of these matters are conclusive in regards to the question of whether the criteria are satisfied, but they are indicia which RVL considers relevant to that question. The list of relevant matters set out is not exhaustive.

Integrity of Victorian thoroughbred racing

- whether the applicant is a holder of an interstate or international wagering or bookmaking licence;
- if so, details of the relevant jurisdiction's regulatory arrangements, including supervision by relevant authorities of the applicant's gambling operations;
- whether the applicant or its associates (in the case of a corporation, its shareholders, directors and executives) have been convicted of any criminal offence in the last 10 years, if so, provide details;
- details of the betting channels, services and products that are proposed to be offered on Victorian racing by the applicant and whether there are any integrity risks involved;
- whether the applicant currently uses or proposes to use any means for detecting suspect betting transactions,
- whether the applicant currently uses or proposes to use any means for preventing their wagering service being used for illegal, fraudulent or improper purposes;
- the level of access to all betting transactions and betting account holder information that can be provided to RVL, including the timeliness of the access and method of provision of data;
- the existence of any procedures and policies to ensure compliance with Victorian law including observance of current restrictions on betting related advertising, communications and transactions;
- adherence to applicable responsible wagering codes of practice; and
- other matters which demonstrate appropriate integrity controls or procedures for the protection of the Victorian racing industry.

Financial contributions to the Victorian thoroughbred racing industry

- the payment of fees to RVL or entities within the Victorian racing industry (including Racing Information Services Australia Pty Ltd) in connection with the use or publication of Victorian racing information; and
- other economic benefits to the Victorian racing industry or entities within the Victorian racing industry that will flow from approval to publish.

Decision making process

The applicants will be advised by RVL in writing of the outcome of their application. In some instances, before making a decision, RVL may seek further information from the applicant which may be presented in writing or in person as requested by RVL.

Applications

All applications must be signed by a person authorised to make an application and should be accompanied by a statement made by the authorised person that the information provided by the applicant is true and correct and not misleading in any particular.

Applications should be addressed to:

Mr Peter Williams
Company Secretary
Racing Victoria Limited
400 Epsom Road
FLEMINGTON VIC 3031

or via email to p.williams@racingvictoria.net.au