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Ms Ilona Balint
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
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Dear Ilona

Association of Australian Bookmaking Companies Inc ("AABC") – Application for Authorisation

We refer to our letter of 28 April 2006.

We are instructed to respond to some of the comments made in the submissions received by the ACCC in relation to AABC's application for authorisation. We will only comment on those submissions where clarifications or corrections are needed, or where we believe further information will be helpful for the ACCC in considering the substantive application.

Turning now to the submissions:

Racing NSW

We note Racing NSW's comments that it, the NSW Government and the Controlling Authorities recognise "NSW Bookmakers Co-operative Ltd as the body representing bookmakers in this State".

The members of AABC are not members of and are not represented by NSW Bookmakers Co-operative Ltd, or the Australian Bookmakers Association. In 2004 it was decided to form a not-for-profit incorporated association (the AABC) to ensure that the interests of Australian corporate bookmakers were represented.

AABC represents the interest of Australian corporate bookmakers, who often (but not exclusively) conduct business by means of the Internet. Membership is open to any company holding a bookmaking licence or permit issued by an Australian State or Territory.

By virtue of the Internet, members of the AABC have customers throughout Australia and wish to ensure compliance with all applicable legislation and policies in all States and Territories. As indicated in the AABC's Submission, one recent development of interest to members of AABC is the Victorian race field legislation. Should the NSW Government introduce similar legislation to Victoria, members' interests will not be represented by NSW Bookmakers Co-operative Ltd, or the Australian Bookmakers Association.

The AABC seeks authorisation to allow AABC to engage in negotiations on behalf of its members with the various bodies to agree a framework. Members, Racing NSW, the NSW Government and NSW Controlling Authorities cannot be required to collectively bargain and authorisation would preclude collective boycott activity or price fixing. The AABC's Rules do not require members to

collectively bargain. All parties would be free to negotiate individually without the AABC's involvement should they so choose.

NSW Office of Liquor, Gaming and Racing

We note the Office's comments that it consults with "the NSW Bookmakers Co-operative Ltd and its national affiliate the Australian Bookmakers Association" and repeat our comments above concerning Racing NSW.

Racing Victoria Limited

We note Racing Victoria's concerns in relation to paragraphs 23(b), (c), (d) of the AABC's Submission. In response we advise that in the AABC's view, a dispute between Racing Victoria and an individual member over agreed "supervisory and regulatory functions" would be a matter for those parties. The AABC's interest would be to ensure that the member is afforded due process.

The AABC would also be interested if any dispute has general implications for its members in connection with the interpretation of any policies or agreement for the use of race field information and in such circumstances would seek negotiation of future terms in accordance with paragraph 23(a) of the AABC's Submission.

The AABC's Submission does not seek authorisation for any collective boycott activity and the AABC and its members do not intend to engage in any collective boycott arrangements in respect of the conduct set out in paragraph 23 of the AABC's Submission.

TOTE Tasmania Pty Ltd

We note TOTE Tasmania's comments that "The position of the AABC can be compared with Australian TABs". In response we make the following remarks:

- The TABs enjoy a little less than 90% of the national wagering market, with the remainder divided between corporate bookmakers, on-course bookmakers and betting exchanges.¹ These figures directly contradict TOTE Tasmania's assertion.
- In 2003-2004 (the most recent available figures), TABs (comprising TABs and on-course totalisator) held approximately 94.7% of the total Australian racing expenditure. AABC's members comprised approximately 1.7% of the total Australian racing expenditure.² These figures directly contradict TOTE Tasmania's assertion.
- The TABs have a dominant position in the national wagering market by virtue of competing both on and off course and being able to offer both totaliser betting and fixed odds betting.³ The AABC's members do not enjoy the same position.
- The TABs have a strong bargaining position when dealing with controlling bodies by virtue of their dominance in the national wagering market and their existing financial arrangements with the racing industry.⁴ The AABC's members do not enjoy the same position.

¹ paragraph 85 of the AABC's Submission

² paragraph 46 of the AABC's Submission

³ paragraphs 80-82 of the AABC's Submission

⁴ paragraph 46 of the AABC's Submission

- A recent policy issued by Racing Victoria Limited indicates that TABs will be treated more favourably than other applicants (including the AABC's members) in demonstrating economic contributions to the Victorian racing industry. The AABC's members do not enjoy the same position.
- Based on the above remarks and the AABC's Submission, it is difficult to see how "other wagering businesses such as totalisator operators" would be disadvantaged if authorisation were granted in the terms sought by the AABC.

The AABC is not seeking "blanket decisions", collective approval or any common agreement as a result of collective negotiations, but rather to negotiate the general terms (including a fee formula) within which the individual applications are to be assessed concerning any agreement between controlling bodies and members of the AABC.⁵

The AABC is not seeking "to secure a market advantage over other market participants" in the national wagering market as asserted by TOTE Tasmania. The AABC seeks to promote a more open and competitive wagering market. Authorisation as sought by the AABC would help redress the bargaining imbalance in the national wagering market as described above.⁶

Please contact Alison Meares, Partner if you have any questions or require any further information.

We would appreciate receiving notification of any further submissions received by the ACCC.

Yours sincerely



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⁵ paragraph 48 of the AABC's Submission

⁶ paragraph 86 of the AABC's Submission