



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2007/2110
Contact Officer: Monica Bourke
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21 November 2007

Mr Michael Gray
Partner
Freehills
MLC Centre
19 Martin Place
Sydney NSW 2000

CC Lisa Emanuel
Lawyer

Dear Mr Gray

**Tabcorp Manager Pty Ltd applications for authorisation [A91065-A91067]
- request for interim authorisation**

The Australian Competition and Consumer Commission (the ACCC) has decided to deny interim authorisation in relation to the applications for authorisation lodged by Tabcorp Manager Pty Ltd (Tabcorp) on 6 November 2007. Tabcorp sought interim authorisation to make and give effect to the 2007 Pooling Agreement (2007 Agreement) between Tabcorp and TOTE Tasmania Pty Ltd (TOTE Tasmania) governing TOTE Tasmania's participation in the SuperTAB pool.

Interim authorisation, pursuant to section 91(2)(d) of the *Trade Practices Act 1974* (the Act), protects the arrangements for which authorisation is sought from legal action under the relevant provisions of the Act while the ACCC considers and evaluates the merits of the application. The decision on interim authorisation in no way binds the ACCC in its consideration of the merits of the substantive applications.

In denying interim authorisation, the ACCC notes that TOTE Tasmania has been participating in the SuperTAB pool since 1998, and Tabcorp has advised that should interim authorisation not be granted the parties will continue to operate under the current pooling agreement entered into in 1998.

While the ACCC notes TOTE Tasmania's submission supporting urgent interim authorisation so as to capture claimed savings arising from the 2007 Agreement, the ACCC considers that the parties have not identified whether the savings to TOTE Tasmania under the 2007 Agreement are as a result of increased efficiencies, or simply transfers from others.

Given TOTE Tasmania's ability to continue to participate in the SuperTAB pool, the ACCC considers that the parties did not demonstrate an argument of urgency.

Next steps

For your information, the next step in the process is for the ACCC to release a draft determination which will take account of any submissions from Tabcorp and interested parties and will indicate the ACCC's preliminary views on the merits of the application. The ACCC will give both Tabcorp and interested parties the opportunity to provide a further submission on the draft determination before the ACCC issues its final decision.

The ACCC may review its decision on interim authorisation at any time. In this regard the ACCC will reconsider this decision at the time of issuing its draft determination. As noted, the ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted by the ACCC.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Monica Bourke on (02) 6243 1351.

Yours sincerely



Joanne Palisi
Director
Adjudication Branch