

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY

15 FEB 2007

Freehills

Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

15 February 2007
Matter 81170566

FILE No:
DOC:
MARS/PRISM:

Dear Mr Gregson

**Sky Channel Pty Limited, Tabcorp Holdings Limited and
ThoroughVision Pty Limited
Applications for Authorisation: Agreement Affecting Competition and
Exclusive Dealing**

We act for Sky Channel Pty Limited and Tabcorp Holdings Limited, and Clayton Utz acts for ThoroughVision Pty Limited.

We enclose the following documents in relation to the applications for authorisation by our respective clients in relation to the Memorandum of Understanding dated 1 February 2007:

- Form B Agreements Affecting Competition: Application for Authorisation;
- Form E Exclusive Dealing: Application for Authorisation;
- Confidential Submission;
- A cheque for \$9,000 payable to the Commission.

Freehills and Clayton Utz request that the Commission treat the enclosed submission, including the copy of the Memorandum of Understanding at Annexure A, as confidential. We shall provide the Commission with a request for confidentiality in relation to parts of the submission and the Memorandum of Understanding together with a proposed redacted copy of the submission for the Commission's public register.

We ask that all correspondence by the Commission be directed to both Freehills, attention Michael Gray, acting for Tabcorp Holdings Limited and Sky Channel Pty Limited, and to Clayton Utz, attention Joanne Daniels, acting for ThoroughVision Pty Limited.

Yours sincerely



Michael Gray
Partner
Freehills

+61 2 9225 5286
0414 642 068
michael.gray@freehills.com

Form B

Commonwealth of Australia
Trade Practices Act 1974 - Sub-section 88(1)

AGREEMENTS AFFECTING COMPETITION: APPLICATION FOR AUTHORISATION

A91031

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that subsection:

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

1. (a) **Name of Applicants:**

The Applicants are as follows:

- (i) ThroughVision Pty Limited ("TVN");
- (ii) Tabcorp Holdings Limited ("Tabcorp");
- (iii) Sky Channel Pty Ltd ("Sky"),

(collectively, "the Parties").

This Application is to be read and determined together with the Application in Form E in respect of Exclusive Dealing ("Related Application").

(b) **Short description of business carried on by applicants:**

A short description of the business carried on by each of the applicants is as follows:

- (i) TVN is a sports rights management company that specialises in thoroughbred racing. TVN currently manages the thoroughbred horse racing rights for racing in Victoria and metropolitan Sydney.
- (ii) Tabcorp is an entertainment company, specialising in wagering and gaming.
- (iii) Sky is in the business of sports broadcasting, specialising in thoroughbred, harness and greyhound racing.

Further details of the applicants are provided in Section 3 of the submission made in support of this Application and the Related Application ("Submission").

(c) **Address in Australia for service of documents on the applicants:**

Joanne Daniels Clayton Utz Lawyers Level 18 333 Collins Street, Melbourne, Victoria 3000.	Michael Gray Freehills Lawyers MLC Centre 19 Martin Place Sydney, NSW, 2000
---	---

2. (a) **Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:**

Authorisation is sought for schedules 1 to 7 of the Memorandum of Understanding ("MOU") dated 1 February 2007 and any arrangements made under clause 2.3 of the MOU which are consistent with the MOU.

Further detail of the MOU is provided at Section 4 of the Submission.

(b) **Description of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition:**

Details of the provisions of the MOU which might affect competition are provided in Section 4 of the Submission.

(c) **Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:**

The broadcasting rights for thoroughbred racing. See Section 4 of the Submission for further details.

(d) **The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:**

The arrangements will be operational until 31 December 2012.

3. (a) **Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:**

This Application and the Related Application is made on behalf of TVN, Tabcorp and Sky.

(b) **Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:**

Not applicable.

4. (a) **Arguments in support of authorisation:**

The authorisation will allow for the realisation of significant public benefits and will have either minimal or no effect on competition. Further detail is provided at Sections 10 and 11 of the Submission.

(b) **Facts and evidence relied upon in support of these claims:**

The facts and contentions relied on by the applicants in support of these grounds are set out in the Submission, particularly sections 10 and 11.

5. **Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):**

A description of the range of possible relevant markets is set out in Section 9 of the Submission made in support of this Application and the Related Application.

6. (a) **Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:**

The authorisation will have either minimal or no effect on competition. See Section 10 of the Submission.

- (b) **Facts and evidence relevant to these detriments:**

The facts and contentions relied on by the applicants relevant to these detriments are set out in Section 10 of the Submission.

7. **This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the above mentioned contract, arrangement or understanding:**

- (a) **Is this application to be so expressed?**

No

- (b) **If so, the following information is to be furnished:**

- (i) **description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:**

Not applicable.

- (ii) **Where the parties to the similar term contract(s) are known - names, addresses and descriptions of business carried on by those other parties:**

Not applicable.

- (iii) **Where the parties to the similar term contract(s) are not known - description of the class of business carried on by those possible parties:**

Not applicable.

8. (a) **Does this application deal with a matter relating to a joint venture (See section 4J) of the *Trade Practices Act 1974*?**

No

- (b) **If so, are any other applications being made simultaneously with this application in relation to that joint venture?**

Not applicable

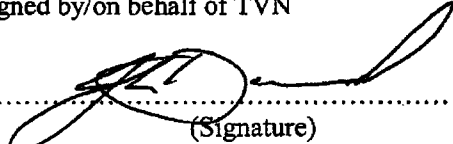
(c) If so, by whom or on whose behalf are those other applications being made?

Not applicable

7. Name and address of person authorised by the applicant to provide additional information in relation to this application.

Joanne Daniels, Partner, Clayton Utz, Level 18, 333 Collins Street, Melbourne, Vic, 3000, Ph: (03) 9286 6967.

Signed by/on behalf of TVN


.....
(Signature)

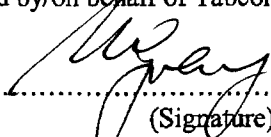
Dated15th February.....2007

.....Joanne Daniels.....
(Full name)

.....Partner, Clayton Utz.....
(Description)

Michael Gray, Partner, Freehills, MLC Centre, 19 Martin Place, Sydney, NSW, 2001,
Ph: (02) 9225 5286

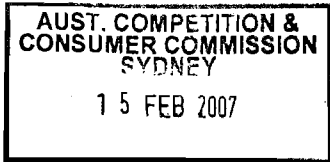
Signed by/on behalf of Tabcorp/Sky


.....
(Signature)

Dated15th February.....2007

.....MICHAEL JOHN GRAY.....
(Full name)

.....PARTNER, Freehills.....
(Description)



DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition.

In providing these details:

(a) to the extent that any of the details have been reduced to writing - provide a true copy of the writing; and

(b) to the extent that any of the details have not been reduced to writing - provide a full and correct description of the particulars that have not been reduced to writing.

5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the goods or service that is the subject matter of the authorisation.
8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the matter in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

15 FEB 2007

Form E

**Commonwealth of Australia
Trade Practices Act 1974 - Sub-section 88(1)**

**EXCLUSIVE DEALING:
APPLICATION FOR AUTHORISATION**

A91032

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(8) of the *Trade Practices Act 1974* for an authorisation under that sub-section to engage in conduct that constitutes or may constitute the practice of exclusive dealing.

1. (a) **Name of Applicants:**

The Applicants are as follows:

- (i) ThroughVision Pty Limited ("TVN");
- (ii) Tabcorp Holdings Limited ("Tabcorp");
- (iii) Sky Channel Pty Ltd ("Sky"),

(collectively, "the Parties").

This Application is to be read and determined together with the Application in Form B in respect of Agreements Affecting Competition ("Application").

(b) **Short description of business carried on by applicants:**

A short description of the business carried on by each of the applicants is as follows:

- (i) TVN is a sports rights management company that specialises in thoroughbred racing. TVN currently manages the thoroughbred horse racing rights for racing in Victoria and metropolitan Sydney.
- (ii) Tabcorp is an entertainment company, specialising in wagering and gaming.
- (iii) Sky is in the business of sports broadcasting, specialising in thoroughbred, harness and greyhound racing.

Further details of the applicants are provided in Section 3 of the submission made in support of this application ("Submission").

(c) **Address in Australia for service of documents on the applicants:**

Joanne Daniels
Clayton Utz Lawyers
Level 18
333 Collins Street,
Melbourne, Victoria 3000.

Michael Gray
Freehills Lawyers
MLC Centre
19 Martin Place
Sydney, NSW, 2000

2. (a) **Description of the conduct that would or may constitute the practice of exclusive dealing:**

Authorisation is sought for clause 1 of schedule 2 and clause 1 of schedule 3 of the Memorandum of Understanding ("MOU") dated 1 February 2007 and any arrangements made under clause 2.3 of the MOU which are consistent with the MOU.

Further detail of the MOU is provided at Section 4 of the Submission.

(b) **Description of the goods and services in relation to the supply or acquisition of which this application relates:**

The broadcasting rights for thoroughbred racing. See Section 4 of the Submission for further details.

(c) **The term for which authorisation of the conduct is being sought and grounds supporting this period of authorisation:**

The arrangements will be operational until 31 December 2012.

3. (a) **Class or classes of persons to which the conduct relates:**

The classes of persons to which the conduct relates is acquirers of thoroughbred racing broadcast rights.

(b) **Number of those persons:**

(i) **At present time:**

Unknown

(ii) **Estimated within the next year:**

Unknown(c) **Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:**

Unknown

4. (a) **Arguments in support of authorisation:**

The authorisation will allow for the realisation of significant public benefits and will have either minimal or no effect on competition. Further detail is provided at Sections 10 and 11 of the Submission.

(b) **Facts and evidence relied upon in support of these claims:**

The facts and contentions relied on by the applicants in support of these grounds are set out in the Submission, particularly sections 10 and 11.

5. **Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):**

A description of the range of possible relevant markets is set out in Section 9 of the Submission.

6. (a) **Detriments to the public resulting or likely to result from the authorisation, in particular**

the likely effect of the conduct on the prices of the goods or services described at 2 (b) and the prices of goods or services in other affected markets:

The authorisation will have either minimal or no effect on competition. See Section 10 of the Submission.

(b) Facts and evidence relevant to these detriments:

The facts and contentions relied on by the applicants relevant to these detriments are set out in Section 10 of the Submission.

7. (a) Does this application deal with a matter relating to a joint venture (See section 4J of the Trade Practices Act 1974)?

No

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable


(c) If so, by whom or on whose behalf are those other applications being made?

Not applicable

8. Name and address of person authorised by the applicant to provide additional information in relation to this application.

Joanne Daniels, Partner, Clayton Utz, Level 18, 333 Collins Street, Melbourne, Vic, 3000, Ph: (03) 9286 6967.

Signed by/on behalf of TVN


.....
(Signature)

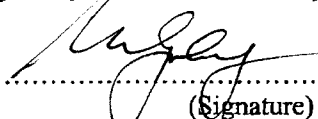
Dated 15th February.....2007

Joanne Daniels
.....
(Full name)

Partner, Clayton Utz
.....
(Description)

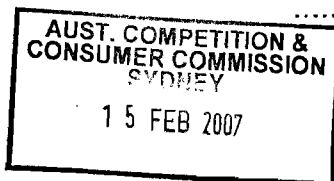
Michael Gray, Partner, Freehills, MLC Centre, 19 Martin Place, Sydney, NSW, 2001,
Ph: (02) 9225 5286

Signed by/on behalf of Tabcorp/Sky


.....
(Signature)

Dated 15th February.....2007

MICHAEL JOHN GRAY
.....
(Full name)



John Freehill

.....
(Description)

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition.

In providing these details:

(a) to the extent that any of the details have been reduced to writing - provide a true copy of the writing; and

(b) to the extent that any of the details have not been reduced to writing - provide a full and correct description of the particulars that have not been reduced to writing.

5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the goods or service that is the subject matter of the authorisation.
8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.