



25 May 2007

Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
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Dear Mr Gregson

Response to ACCC's draft determination – Sky Channel Pty Ltd, Tabcorp Holdings Ltd & Thorough Vision Pty Ltd application of authorisation A91031 & A91032

I refer to your letter dated 3 May 2007 enclosing a copy of the abovementioned draft determination.

While the Queensland Harness Racing Board (**the Board**) is generally supportive of the draft determination, it is concerned that the draft erroneously concludes that the MOU *will* provide a benefit to all three codes of racing without considering the detrimental impact it may have on any other codes (ie. other than thoroughbred racing).

In particular, the Board notes the observation by the Commission in the summary to the draft determination that:

... the ACCC is satisfied that the public benefits arising from the MOU will outweigh the public detriments ...

With respect, it appears to the Board that such a statement cannot properly be made by the Commission if it has not properly considered the relevant market and the potential adverse consequences of the MOU. As such, the Board has determined to raise these issues with the Commission now so that all relevant aspects can be considered before a final determination is made by the Commission.

Market definition

As the Commission has correctly noted in paragraph 2.29 of the draft determination, the relationship between the racing industry and the totalisators is inter-dependent. The key point to note is that that is not merely the relationship between thoroughbred racing and the totalisators; rather, it is the relationship of the totalisators and all of the codes of racing that are interdependent.

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The Commission has also correctly noted (at paragraphs 2.32 and 2.33 of the draft determination) that media coverage of racing events information is essential for the operation of a wagering service and that wagering operators rely on customers having access to live coverage of races.

Likewise however, each code of racing relies upon having coverage of its races to ensure that its product is the subject of wagering and in turn that impacts (to a degree which may vary from code-to-code and state-to-state) upon the revenue received by each code.

Although the Commission has chosen to (at paragraph 6.5 of the draft determination) to adopt the approach that it is not necessary to fully define the market, it has identified the 'features' that are relevant to its assessment. In doing so, the Commission has unfortunately focussed too heavily upon the rights in relation to, and supply of, thoroughbred racing product. This error in approach then manifests itself in the erroneous assessment in paragraph 6.9 of the draft determination that:

... the relevant area of competition likely to be affected by the MOU is the acquisition of broadcasting rights from thoroughbred racing clubs.

Contrary to that narrow focus by the Commission, the MOU has the potential to impact severely upon competition between the three codes of racing as they compete for coverage of, and wagering on, their product.

Accordingly, the Board submits that the market (or at least the 'features' relevant to its assessment) should be defined as the racing industry as a whole, which comprises of thoroughbred, harness and greyhound racing.

Public benefit

QHRB supports the end of split vision, however, it does not agree with the ACCC (at 6.134) that the implementation of the MOU will necessarily have a positive effect on all codes of racing. On the contrary, there is a real risk that the MOU may result in only thoroughbred races being broadcast or alternatively less coverage for harness and/or greyhound racing.

This erroneous conclusion by the Commission seems to follow from the type of assessment noted in paragraph 6.85 of the draft determination that:

... both parties [ie Tabcorp and TVN] have an incentive to ensure that thoroughbred racing is promoted to its maximum potential.

While this may be true, it demonstrates the importance of the Commission recognising that the incentive for the parties to focus upon maximising the potential of thoroughbred racing may, given the inherent limits to coverage, result in the reduction of coverage for the other codes of racing.

This means that the Commission's assessment in paragraph 6.134 of the draft determination that funding of all three codes will be improved as a result of the MOU is fundamentally flawed insofar as it suggests that, while the position may be better than the split screen position, it will not necessarily have the long term benefits which the Commission seems to assume will follow from the MOU.

Further, at paragraph 6.154 of the draft determination, the Commission notes the submission from the harness and greyhound racing clubs regarding the potential for the MOU to affect the amount of airtime Sky gives to showing these clubs' events. However, the ACCC dismisses this concern (at 6.155) on the erroneous basis that:

... given that the aim of Sky Channel is to maximise wagering revenue, it is not in Tabcorp/Sky's interest to reduce the exposure of any racing code on its channel ...

Unfortunately, that assessment ignores the fact that maximising wagering revenue may be achieved by a focus upon thoroughbred racing rather than harness or greyhound racing. As such, the current proposal could well result in a very damaging reduction of coverage for harness and/or greyhound racing.

It appears to the Board however that the Commission is alert to the need to protect punters (and in turn the other racing codes) from a diminution of coverage of those other codes. For example, the Board is pleased to note the Commission's assessment at paragraph 6.147 of the draft determination that:

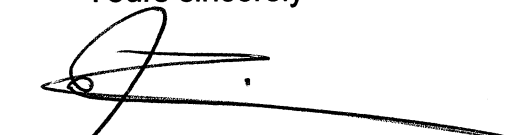
.... Sky through its channel will be able to focus on showing all codes of racing from all over Australia, with the purpose of promoting wagering, using its wall-to-wall format. This will satisfy punters who wish to wager on all three codes of racing ...

Consistent with that approach, the Board makes the following suggestions in respect of the draft determination:

- 1 it should be revised to consider the market as the racing industry, comprising of thoroughbred, harness and greyhound racing;
- 2 it should note that the MOU does not necessarily provide a public benefit to harness and greyhound racing;
- 3 it should consider the potential adverse impact on harness and greyhound racing; and
- 4 a condition should be imposed that, while the parties may of course increase the level of coverage of thoroughbred racing, the parties to the MOU must not reduce the current level and type of coverage of harness and greyhound racing.

Please do not hesitate to call me if you wish to discuss this matter.

Yours sincerely



Andrew Kelly
Chief Executive