



RACING AND WAGERING WESTERN AUSTRALIA

7 August 2007

By email: adjudication@accc.gov.au

Attention: Ms D Staltari

Mr S Gregson
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Mr Gregson

Exclusive dealing notification by Harness Racing Victoria – N93059

Thank you for your facsimile transmission of 25 July 2007.

Racing and Wagering WA (**RWWA**) objects to the conduct notified in the subject notification.

RWWA understands:

1. that under legislation in Victoria, Harness Racing Victoria (**HRV**) will charge bookmakers who use HRV race fields a fee of 1% of the total turnover wagered with that bookmaker on Victorian Harness Racing;
2. that under the proposed agreement, HRV will rebate some of that fee if the bookmaker lays off/bet backs through Victorian TAB (owned and operated by Tabcorp). The fee is calculated as 1% of the value of the lay offs/bet backs on harness racing placed through Victorian TAB; and
3. that the rebate will apply to all bets on harness racing throughout Australia laid off/bet back through Victorian TAB. Thus the rebate will apply even where the bookmaker is not using HRV Race Fields and is using race fields published by, for example, RWWA.

HRV alleges that the public benefit resulting from the proposed conduct is constituted by unspecified benefits to Victorian harness racing, by requiring bookmakers seeking to participate must be licensed and by benefits to bookmakers.

The public

RWWA submits that neither the Victorian harness racing industry on its own or considered together with 6 bookmakers¹ is a sufficiently large class to be considered "the public" for the purposes of assessing public benefit and public detriment.

Public benefit

RWWA understands that the test to be applied is whether the likely benefit to the public from the conduct will outweigh the likely detriment to the public from the conduct.

As noted above, the application does not specify the benefit to Victorian harness racing from the proposed conduct.

It should be noted that bookmakers must already hold a licence in the jurisdictions in which they operate.

Public detriment

HRV contends that the only detriment from the proposed conduct is to other wagering service providers that a bookmaker might otherwise use to place bet backs or lay-offs.

While that is so, a detriment to other wagering service providers such as RWWA will have a wider public detriment for the reasons explained below.

RWWA is a statutory authority established under the *Racing and Wagering Western Australia Act 2003 (RWWA Act)*. One of its functions is to:

'foster the development, promote the welfare and ensure the integrity of metropolitan and country thoroughbred racing, harness racing and greyhound racing, in the interests of the long term viability of the racing industry in Western Australia.'²

RWWA is the major source of funding for the racing industry generally (including harness racing) in Western Australia. RWWA uses the revenue it retains from its operations to benefit the racing industry in Western Australia. RWWA does not distribute moneys derived from thoroughbred racing only to the thoroughbred racing industry. The moneys collected from all wagers are pooled and distributed according to a model that takes account of the needs and position of each of the thoroughbred, harness and greyhound racing industries in Western Australia.

In 2004 RWWA conducted a wide ranging economic review into the State's racing industry.³ The review showed that the industry employed more than 2300 full time jobs and contributed \$275m a year of the Western Australian Gross Domestic State Product.

For every \$100 bet through the WA TAB (including on harness racing), RWWA receives \$7.73 which is used to directly benefit the racing industry (including thoroughbred, harness racing and greyhound racing) in Western Australia.

¹ Paragraph 3(b) of Form G dated 10 July 2007

² Section 35(1)(b) of the RWWA Act

³ The Allen Consulting Group Review 2004

Amount Wagered	\$100.00
Less return to wagering customers	\$83.26
Taxes to WA government	\$3.50
Operating Expenses	\$5.51
Total available for distribution	\$7.73

The table also shows that \$3.50 of every \$100 is paid the State Government of Western Australia. Those moneys are paid into Consolidated Revenue for the general purposes of the Government.

At present, some bookmakers who accept bets on race meetings throughout Australia choose to lay off those bets using various State based TAB's throughout Australia. In some cases, those bookmakers choose to use RWWA because its internet based system of betting is easier to use than other wagering service providers. If the conduct the subject of the notification were allowed to stand, HRV would no doubt be hoping to entice all bookmakers to use to the services of Tabcorp to lay off bets accepted by bookmakers not only on all harness races in Victoria but all harness races throughout Australia.

If bookmakers choose to use the services of Tabcorp to obtain the rebate from HRV the racing industry in Western Australia (and other states for which RWWA cannot speak) would be affected because of a decrease in the moneys available from RWWA. A decrease in RWWA's turnover would also directly affect the amount of the revenue RWWA pays by way of taxes to the Western Australian State Government and available to distribute to industry participants.

I would be happy to expand on any matter in this letter if you wish

Yours sincerely



Ray Bennett
CHIEF EXECUTIVE OFFICER