

FILE No:

DOC:

MARS/PRISM:

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

10 August 2007
Matter 81243812

Dear Sir or Madam

Racing and Wagering Western Australia - notification lodged under section 93 of the *Trade Practices Act 1974*

We act for Racing and Wagering Western Australia (**RWWA**) and enclose a notification with respect to proposed conduct which may raise issues under section 47 of the *Trade Practices Act 1974*. The notification concerns proposed conduct of RWWA and horse trainers in Western Australia licensed under section 42 of the *Racing and Wagering Western Australia Act 2003 (WA) (Act)*.

Please find enclosed:

- (a) a completed Form G with respect to the notification; and
- (b) a cheque for \$100, being the fee for lodgement of the notification (which only concerns potential third line forcing).

1 Background to proposed conduct

The relevant background is:

- (a) RWWA is established as a corporate body by section 4 of the Act, and is not an agent of the Crown (section 5) or a part of the public sector (section 6);
- (b) paragraph 35(1)(i) of the Act provides that one of RWWA's functions is "to endeavour to ensure that racing industry issues such as insurance ... are carried out in an appropriate and adequate manner";
- (c) horse trainers in Western Australia must be licensed by RWWA to conduct training duties in the racing industry;
- (d) subsection 42(4) of the Act provides that RWWA may issue a licence subject to such conditions as it determines;
- (e) RWWA has previously required horse trainers, as a condition of being granted a licence, to hold workers' compensation insurance for employees; and
- (f) in any event, it is a legal requirement for any employer to have workers compensation insurance.

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The conduct with which the notification is concerned is a proposed scheme to require horse trainers to enter contracts with an insurer specified by RWWA (yet to be determined) for adequate workers' compensation insurance for their employees (**Scheme**). Compliance with the Scheme would be a condition of issuing the licences.

Insurance premiums (paid to the insurer directly) would be based on a flat fee, paid at the same time as the annual licence renewal, and a rate per race start for official races and trials.

2 Benefits of the Scheme

Anticipated benefits and efficiencies likely to result from the Scheme, when compared to a situation where there is no compulsory insurance arrangement, include:

- (a) the reduction of workers' compensation insurance premiums paid by licensed horse trainers overall, through the volume discounts that RWWA will be able to negotiate with the insurer;
- (b) through the Scheme, the insurer will develop a better knowledge of the work done by horse trainers and their employees, which will result in better and more efficient outcomes when claims are made on the insurance policies; and
- (c) because of the uniform cover to be provided, assurance that all employees of licensed horse trainers will be adequately covered for workers' compensation.

The combination of reduced premiums overall, better insurance service and assurance of adequate coverage for trainers and their employees achieved by the Scheme will benefit the horse training industry. The Scheme is designed to ensure that persons working for horse trainers in Western Australia have adequate compensation insurance, in accordance with RWWA's statutory obligation.

3 Relevant Market

We submit that the market of relevance is that of insurance. On our instructions, insurers (including workers compensation insurers) compete for business on an Australia-wide basis. For that reason, we submit that the market is the market in Australia for provision of workers compensation insurance.

4 Absence of anti-competitive or other detriment

We submit that the Scheme will result in no anti-competitive or other detriment to individual horse trainers in Western Australia (indeed, the premiums that they will pay will be lower than without the Scheme) or to providers of insurance products. These insurance arrangements are an insignificant proportion of the total likely relevant insurance market: there is a huge number of alternative customers for insurers (particularly in light of the fact that workers compensation insurance is compulsory for any employer). No market in Australia will be detrimentally affected by the Scheme.

In addition, we are instructed that RWWA intends to review its arrangements from time to time so that the insurance business in question will be contestable (at periods of no more than 3 years).

Please telephone the writer on 08 9211 7614 if you require further information or wish to discuss this matter.

Freehills

Otherwise, we look forward to receiving the Commission's response in due course.

Yours sincerely



Richard Lilly
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Richard.lilly@freehills.com

Attached

1 Form G

Form G

Commonwealth of Australia

Trade Practices Act 1974 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:

(Refer to direction 2)

Racing and Wagering Western Australia. N93093

- (b) Short description of business carried on by that person:

(Refer to direction 3)

Controlling authority for the thoroughbred, harness and greyhound racing industry and associated wagering operations in Western Australia

- (c) Address in Australia for service of documents on that person:

Care of Richard Lilly, Senior Associate, Freehills, Level 36, 250 St Georges Terrace, Perth, WA, 6000.

2. Notified arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

Workers compensation insurance for employees of licensed horse trainers in Western Australia.

- (b) Description of the conduct or proposed conduct:

Make compulsory a scheme for workers compensation insurance for licensed horse trainers' employees. See covering letter for further detail.

(Refer to direction 4)

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

- (a) Class or classes of persons to which the conduct relates:

(Refer to direction 5)

Licensed horse trainers in Western Australia, workers compensation insurers.

- (b) Number of those persons:
 - (i) At present time:
There are currently 681 licensed horse trainers in Western Australia. The number of insurers is unknown.
 - (ii) Estimated within the next year:
(Refer to direction 6)
It is anticipated this number will remain constant.
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)
See Section 2 of covering letter.
- (b) Facts and evidence relied upon in support of these claims:
See Section 2 of covering letter.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) 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):
(Refer to direction 8)

The market for provision of insurance in Australia. See Section 3 of covering letter for further details.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:
(Refer to direction 9)
It is not expected that the notified conduct will involve any public detriment – see Section 4 of covering letter for further details.

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

Not applicable. See Section 4 of covering letter for further details.

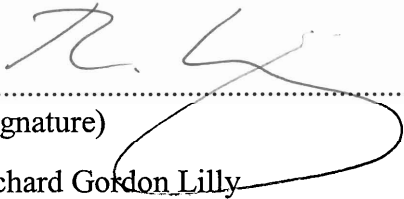
7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Richard Lilly, Senior Associate, Freehills, Level 36, 250 St Georges Terrace, Perth, WA, 6000.

Dated 10 August 2007

Signed on behalf of the applicant



.....
(Signature)

Richard Gordon Lilly
(Full Name)

Freehills
(Organisation)

Senior Associate
(Position in Organisation)

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 their notification.

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. If the notice is given 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 notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.