Submission in support of application for authorisation by TAB Agents' Association of NSW

1. This submission is made in support of the application for authorisation with which it is lodged. The application is made pursuant to section 88(1) of the Trade Practices Act 1974 (Act) and the Competition Code of New South Wales. Section 88(1) empowers the Commission to grant authorisation:

   (a) 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

   (b) to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of the Act.

Executive summary

2. The Association seeks authorisation on behalf of its members, for an agreement between its members, for it to collectively bargain with Tabcorp:

   (a) in relation to the terms and conditions of the provision of services by members to Tabcorp; and

   (b) in relation to the resolution of disputes between more than one of its members and Tabcorp.

3. Authorisation is necessary so that the Association can collectively bargain with Tabcorp in relation to matters of common concern to individual members. As small business operators without extensive commercial or negotiating experience, authorisation for a further period would reduce the potential for Tabcorp to use its superior bargaining position to engage in unconscionable conduct, or otherwise take advantage of individual agents. In particular, authorisation is necessary so that the Association can collectively bargain on behalf of

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1 Authorisation A90885 is an authorisation permitting the Association to collectively negotiate with TAB Limited. While each agency agreement continues to be entered into between an individual agent and TAB Limited, since Tabcorp acquired TAB Limited in 2004, in practice the Association has been collectively negotiating on behalf of individual agents with Tabcorp. Provision for the Association to collectively negotiate with Tabcorp was requested by the Association by letter dated 6 April 2004 and noted by the Commission in its Final Determination for Authorisation A90885 at paragraphs 2.7, 2.8 and 2.9.
members whose agency is not renewed by Tabcorp, or terminated, as part of Tabcorp's ongoing rationalisation of the industry.

4. Authorising the Association to collectively negotiate on behalf of its members for a further term will provide agents with greater competitive parity in their negotiations with Tabcorp and greater input into standard form contract terms and conditions, resulting in public benefits:

(a) It will provide a greater opportunity for agents, through the Association, to have input into contract terms and conditions to achieve more efficient commercial outcomes (e.g. by addressing common contractual problems in a streamlined and more efficient manner)\(^2\);

(b) It will enable agents to pass on at least some of the benefits of any more favourable deal negotiated by the Association in the form of further improvements in service levels provided by agents to consumers.

5. The public benefits associated with the proposed arrangements are likely to outweigh any anti-competitive detriment such that there is a net public benefit from the proposed arrangements which favours the grant of authorisation.

6. The proposed arrangements will not:

(a) affect the price of wagering services provided to the public given that prices are already regulated by government legislation;

(b) reduce competition between agents on service levels as they will not restrict agents' ability to compete on service levels to any greater extent than the current standard form contract which is used between Tabcorp and agents, and amended from time to time:

(c) detrimentally affect competition between agents and potential agents to acquire contracts from Tabcorp or between agents and hotels and clubs for the supply of wagering services from Tabcorp.

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\(^2\) This was recently recognised as a public benefit in the Commission's decision to uphold the collective bargaining notification lodged by Clubs NSW in December 2008. That collective bargaining notification was for Clubs NSW to negotiate, on behalf of 332 of its 1400 members, with TabCorp Holdings Limited and Sky Channel Pty Ltd, in relation to the terms and conditions of the supply of wagering and racing broadcast services, including fees. See Notification CB00057/CB00058.
The Commission issued its determination in relation to Authorisation A90885 on 28 April 2004 for a period of 5 years. It came into force on 19 May 2004 and is due to expire on 19 May 2009.

This application seeks authorisation for the Association, on its own behalf on behalf of members, to engage in collective bargaining conduct that is essentially the same as that currently authorised by Authorisation A90885.

Authorisation is sought for a further period of 5 years to enable the Association to effectively negotiate new agency arrangements when the existing arrangements expire on 30 December 2011. It is also sought so that the Association can participate in the process for resolving disputes between members and Tabcorp under the Current Agency Agreement.

The conduct for which authorisation is sought is:

(a) the negotiation by the Association, on behalf of its members, of the terms and conditions of the contract or arrangement pursuant to which members of the Association are:

(i) appointed as agents of Tabcorp (for the purposes of section 12 of the Totalizator Act) including the negotiation of any extension or renewal of such a contract or arrangement;

(ii) appointed as agent for outlets additional to those in respect of which the agent’s primary appointment has been made including the negotiation of any extensions or renewals of those contracts or arrangements;

(b) the conduct of the Association in participating in the process for resolving disputes under the Current Agency Agreement in relation to disputes between Tabcorp and more than one agent.

Pursuant to section 88(10) and 88(13) of the Act, the parties to the proposed agreements would be present and future members of the Association.

Any Association members that do not wish to participate in collective bargaining undertaken on their behalf by the Association will be free to opt out and to attempt to enter into individual
agreements with Tabcorp should they wish to do so. No member will be required to enter into any contract or arrangement negotiated by the Association on behalf of members. This is the case under Authorisation A90885.

**Single bargaining group**

13. If authorisation is granted for a further period, collective negotiations will be conducted by the Association on behalf of a single bargaining group (namely all members of the Association who do not choose to opt out), and the terms and conditions negotiated would apply equally to:

(a) those individuals seeking appointment as a TAB agent;

(b) those agents seeking renewal of their existing contractual arrangements, irrespective of when those arrangements expire; and

(c) those agents seeking appointment as agents of additional agencies and the renewal of those additional contractual arrangements.

**TAB Agents' Association of NSW**

14. The TAB Agents' Association of NSW (Association) is a registered union of employers under the *Industrial Relations Act 1996* (NSW). The Association currently has as its members 169 agents who have been appointed by Tabcorp as its agents for the purposes of the *Totalizator Act 1997* (NSW) (*Totalizator Act*). This figure represents approximately 98% of all TAB agents.³

15. The Association was formed to serve as a non-industrial organisation, promoting the interests of its members and liaising with Tabcorp. Relevantly, the objects of the Association, as set out in its Constitution, include:

(a) "to promote, protect and conserve the interests, welfare and well-being of Association Members and secure to Association Members all the advantages of unity of action and to safeguard the interests of Association Members in any lawful manner" (Rule 4(a)); and

(b) "to bring to the attention of Tabcorp any matters submitted by Members to the Association provided such matters have been presented in accordance with this

³ Presently, a total of three TAB agents, or approximately 1.7%, are not members of the Association.
Constitution and these Rules and have been approved by the Executive Committee in office at that time" (Rule 4(d)).

Tabcorp Holdings Limited (Tabcorp)

16. In 2004 Tabcorp completed the takeover of all the shares in TAB Limited, the New South Wales based wagering and gaming company, which was listed on the Australian Stock Exchange. As a wholly-owned subsidiary of Tabcorp, the TAB brand is now owned and operated by Tabcorp.

17. Tabcorp is Australia's largest wagering organisation. It holds a Sports Betting Licence and an Off-Course Totalizator Licence pursuant to sections 13 and 14 of the Totalizator Act. It provides a variety of wagering services through a network of TAB branded agencies. This network includes 2,573 off-course totalizators (including pubs and clubs) and 267 on course totalizators located throughout NSW and Victoria. In NSW, there are 238 off-course totalizators.

18. TAB agencies form only part of Tabcorp's overall wagering distribution network. This network also comprises internet betting via RaceTAB and SportsTAB and telephone betting via PhoneTAB. Tabcorp has also recently purchased a Northern Territory racing and sports wagering licence to enable it to provide telephone and internet wagering services (branded Luxbet).

19. Tabcorp provides pari-mutuel and fixed odds wagering on Australian and international horse, harness and greyhound racing and a variety of sports. It is available on a large variety of sports, including AFL, American Football, Basketball, Boxing, Cricket, Cycling, Golf, Ice Hockey, Motorsport, Rugby League, Rugby Union, Soccer and Tennis.

20. Under sections 12(4) and 12 (5) of the Totalizator Act, Tabcorp, as licensee, may under a contract or other arrangement, engage a person as an agent to conduct a totalizator on behalf of it, or exercise its functions in connection with the conduct of a totalizator. Tabcorp is also authorised to engage, under a contract or other arrangement, persons to perform services in connection with the conduct of a totalizator.

21. Pursuant to these provisions, Tabcorp has appointed agents to conduct its operations. TAB agents are appointed under contractual arrangements between Tabcorp and the individual agents.

22. For some time, Tabcorp has had a policy of allowing agents to run more than one site and has been rationalising the number of TAB agencies. This is ongoing. Increasingly, Tabcorp's
industry rationalisation policy and changing consumer preferences in favour of other wagering
distribution services such the internet have led to a decrease in the number of TAB agencies. By way of example, the number of TAB agencies has been decreasing steadily over the past 15 years, and has further decreased since September 2003:

(a) 14 to 15 years ago, there were 540 agencies run by 540 agents;
(b) 8 to 9 years ago, there were 391 agencies run by approximately 370 agents;
(c) 4 to 5 years ago there were 323 agencies run by approximately 263 agents;
(d) as at 27 February 2009 there are 238 agencies run by approximately 173 agents.

23. The Association anticipates that the total number of TAB agencies will decrease to around 200 in 5 years time, with the number of PubTABs and ClubTABs expected to decrease at a similar rate in that time.

24. While industry rationalisation has resulted in some agents operating more than one agency, those agents who operate multiple agencies are not able to negotiate more effectively with Tabcorp than those who operate a single agency. Like agents operating a single agency, agents who operate more than one agency rely on Tabcorp's appointment, and renewal, of them as agents. As a result, agents operating more than one agency are in the same bargaining position as agents who operate a single agency. By virtue of their operation of more than one agency, they may even be considered to be in a worse bargaining position, as they would stand to lose more if Tabcorp decided not to renew their agency arrangements. None of the agents are of a sufficient scale for there to be a mutuality of dependence so as to balance negotiating power.

25. During the period of Authorisation A90885, the Association has been able to successfully collectively negotiate on behalf of members who did not wish to continue as agents, or were discontinued / not renewed as agents by Tabcorp. Two examples are provided below:

(a) **Ex-gratia payment.** In November 2007, a dispute arose on behalf of around 20 members who had accepted an ex-gratia payment to voluntarily exit the agency network operated by Tabcorp.

The terms of Tabcorp's offer were exactly the same as those offered in the preceding 2 years. However, on this occasion, Tabcorp claimed that the ex-gratia payment was inclusive of GST (rather than exclusive of GST as per previous payment). After negotiations by the Association on behalf of the affected members, Tabcorp agreed to amend the offer to be exclusive of GST.
Performance based non-renewal of certain agents. In May 2008, around 25 TAB agents were requested by Tabcorp to attend a meeting at which they were informed that Tabcorp did not intend to invite them to enter into a new agency agreement when the 2005 Agency Agreement expired on 30 June 2008 (later extended to 31 August 2008). This was because of alleged poor performance by those agents.

The Association collectively negotiated on behalf of those agents and Tabcorp agreed to an ex gratia payment to the agents concerned.

Contractual arrangements between Tabcorp and Agents

26. At the time of the application for Authorisation A90885, three contractual agreements were on foot between Tabcorp and agents. These were the Standard Fixed Term Deed, Standard Two-Year Roll Over Deed and the "New" Agency Agreement (see Authorisation A90885, pages 3 to 5). These contractual agreements no longer apply.

27. In September 2005, about 6 months after authorisation A90885 was granted, these contractual agreements were consolidated into a single agreement, the 2005 Agency Agreement. The terms of this Agreement were reached by agreement between the Association and Tabcorp. On the recommendation of the Association, all members of the Association signed the Agreement.

28. This brought to an end a disagreement which had existed between TAB agents and Tabcorp regarding the "New" Agency Agreement which Tabcorp, in May 2002, had unconditionally put to agents to sign to replace the Standard Fixed Term Deed and the Standard Two-Year Rollover Deed; and which resulted in the successful application for Authorisation A90885 (see Authorisation A90885, pages 3 to 5).

29. Today only one contractual agreement is used between Tabcorp and agents. This is the Agreement to Appoint Agent to Provide Wagering Services in New South Wales (Current Agency Agreement). It commenced on 1 September 2008 and is due to expire on 31 December 2011.

30. The Current Agency Agreement was collectively negotiated between the Association and Tabcorp in accordance with Authorisation A90885. Negotiations were extensive. They occurred between March and August 2008. The Association recommended the Agreement to all agents in July 2008. A copy of the Current Agency Agreement is annexed at Appendix 1.
31. While the Current Agency Agreement is standard in form, individual agents are under no compulsion to accept the Current Agency Agreement as the basis of their agency with Tabcorp and may opt out of the Agreement if they wish to do so.

32. Under Authorisation A90885, no individual agent elected to opt out of either the 2005 Agency Agreement or the Current Agency Agreement to separately negotiate an agency agreement with Tabcorp. While the option of opting out is available to all agents, the prospect of an individual agent negotiating any meaningful changes to the terms of their agency with Tabcorp, due to Tabcorp's superior bargaining position, is low.

33. Absent authorisation, Tabcorp would offer standard form contracts to agents on a "take it or leave it" basis without any input from the Association. With authorisation, while Tabcorp still offers standard form contracts to agents, those contracts receive input from agents through the Association. As a result, there is less likelihood of agents opting out.

34. As the Agreement is standard in form, both members and non-members of the Association use the Agreement. Non-members therefore benefit from the terms and conditions collectively negotiated by the Association.

Dispute Resolution Agreement

35. In August 1996 the Association and the then Totalizator Agency Board (as it was then known before becoming Tab Limited in February 1998) signed a Dispute Resolution Agreement. The purpose of this Agreement was to put in place a process for the resolution of disputes between the Association and the Board. It was signed as part of the settlement of litigation between the Association and the Board concerning the fairness of the Fixed Term Deed and the Roll Over Deed under the Industrial Relations Act 1991 (NSW) (replaced by the Industrial Relations Act 1996 (NSW)).

36. When the application for Authorisation A90885 was made, the Association proposed that disputes would be resolved according to the Dispute Resolution Agreement rather than the "New" Agreement, which implemented a dispute resolution process not developed by an agreement between Tabcorp and the Association (see Authorisation A90885, page 6).

37. This Dispute Resolution Agreement no longer remains on foot between the Association and Tabcorp. It has been replaced by the dispute resolution process at clause 21 of the Current Agency Agreement, as agreed between the parties by collective negotiation pursuant to Authorisation A90885.
38. Prior to that, the dispute resolution process at clause 25 of the 2005 Agency Agreement prevailed (Appendix 2). Under that process, the Dispute Resolution Agreement supplemented the dispute resolution processes set out in clause 25. Specifically, under clause 25.5, the Dispute Resolution Agreement applied to certain disputes concerning the overall remuneration structure of TAB agencies. It stated:

Subject to clause 25.6, if a dispute arises about whether the overall remuneration structure of an Agency is affected by any proposal of TAB to the extent that the net position of the Agency is financially worse than it is at the date of this Agreement the provisions of Schedule 8 shall apply.

39. Clause 25.6 stated:

The parties acknowledge that the Dispute Resolution Agreement dated 13th August 1996 as set out in Schedule 9 will not be used where a variation in the overall remuneration structure for Agents is proposed by TAB that results in the net position of Agents being financially worse in response to changes to the structure and conditions under which TAB Off-Course Wagering business is conducted that are beyond TAB's control.

Disputes under the 2005 Agency Agreement

40. The Association was involved in the process of resolving two collective disputes under the 2005 Agency Agreement. Both of these disputes were resolved between the parties before formal mediation, as provided for in clause 25.4 of the 2005 Agency Agreement. These disputes related to:

(a) Ticket fee payments to agents by Tabcorp (see para 71(c) below); and

(b) the provision of compensation to agents for the costs of broadband internet in agencies (see para 71(d) below).

The process for resolving disputes under the Current Agency Agreement

41. The dispute resolution process at clause 21 of the Current Agency Agreement replaces and further simplifies the dispute resolution process at clause 25 of the 2005 Agency Agreement. It does so by streamlining aspects of the mediation process and removing the potential for recourse to be had to the Dispute Resolution Agreement.

42. Clause 21 of the Current Agency Agreement sets out the current dispute resolution process, agreed between the parties, for the resolution of disputes between Tabcorp and agents:
a party may notify the other party in writing that a dispute has arisen;

within 15 Working Days of such written notification, a senior representative from each party must meet and use all reasonable endeavours acting in good faith to resolve the dispute by joint discussions;

if the dispute is not settled within 15 Working Days, either party may refer the dispute to a panel consisting of the Agent, the President and Secretary of the Association and the General Manager Retail Distribution of Tabcorp or their respective designates. The panel will seek to facilitate an agreed resolution of the dispute between Tabcorp and Agent.

if the dispute is not settled within 30 Working Days, either party may by notice to the other party require that the dispute is submitted within 14 days to mediation administered by the ACDC, with the mediator being an independent person agreed by the parties or a mediator appointed by the President of the ACDC.

43. A party may not start court proceedings in relation to a dispute until it has exhausted the above process, unless the party seeks urgent injunctive or other urgent interlocutory relief.

44. Since its inception in September 2008, no disputes have arisen so neither party has had recourse to the dispute resolution process contained in clause 21.

Test for authorisation

45. The test for authorisation is whether:

(a) the provisions of the subject arrangements would result, or be likely to result, in a benefit to the public; and

(b) that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, from the proposed arrangements.

Market assessment

46. In its determination for Authorisation A90885, the Commission agreed with the Association that it was not necessary for a detailed and precise market analysis to be conducted in order to assess the application for authorisation, and that it was sufficient to identify the relevant areas of competition.

47. The Commission stated:
In this matter...it is not necessary to comprehensively define the relevant markets. In this respect, it is the Commission's view that its assessment will not be overly affected by the possible variations in precise market definition (Authorisation A90885, page 30).

48. In respect of this application for authorisation, it remains unnecessary to conduct a detailed and precise market definition. The two areas of competition relevant to the present application are those associated with:

(a) the supply of wagering services to consumers - that is, competition between agents, hotels and clubs and internet and telephone betting services in the provision of services to consumers. This market is either a New South Wales based market or, given the increasing use of the internet and telephone betting, it may be as broad as an Australia wide market: and

(b) the supply of distribution services to Tabcorp in New South Wales - that is, competition between TAB agents and hotels and clubs (with PubTAB and ClubTAB facilities) in relation to the supply of wagering distribution services to Tabcorp (Authorisation A90885, page 28).

Supply of wagering services to consumers

49. Given that the relationship between Tabcorp and its agents is one of principal and agent and the extremely limited nature of the variability between TAB agents, there is very little (if any) competition between agents, and their respective agencies, for the provision of wagering services to customers. As Tabcorp chooses the geographic location of agencies, there is very limited geographic overlap, and therefore competition, between agencies. While consumers may "shop around" in selecting an agent in order to meet their needs on non-price factors, such as proximity to work/home and additional services offered by an agent, this competition is limited (Authorisation A90885, page 30).

50. This reduces to some extent the level of competition between those agents not located in reasonably close geographic proximity to one another (Authorisation A90885, page 30).

51. The limited nature of competition between agencies is compounded because:

(a) statutory and contractual arrangements preclude price competition between TAB agents; and

(b) the terms of the agency arrangements between TAB agents and Tabcorp allow very little scope for differentiation between services offered.
In the supply of wagering services to consumers, there is only limited competition between TAB agencies and other venues, such as pubs and clubs, which also provide wagering services. This is because these other outlets and venues provide wagering services as an adjunct to the primary goods and services they provide. The competition which does exist relates exclusively to service levels. Due to legislative restrictions, there is no competition on price:

_The Commission considers it important to note that regardless of how broadly or narrowly the market is defined there can be no price competition between TAB agents, and clubs and hotels with ClubTAB and PubTAB facilities (Authorisation A90885, page 30)_

While all forms of distribution (i.e. TAB agents, hotels and clubs, and possibly internet and telephone betting) are substitutable to some extent, and resources may be reallocated between the various sources of distribution, the precise degree of substitutability between the different means of wagering (i.e. between TAB agents, clubs and hotels, and internet and telephone betting) cannot be stated conclusively. However, for some time it has been recognised that gambling products have converged over time and are becoming more substitutable due to the uptake of the internet.\(^4\)

The only other potential area of competition is such competition as exists between agents for appointment as agents by Tabcorp, whether in respect of an initial agency or additional agencies.

In this respect, no anti-competitive effect is likely to arise from a high degree of commonality between the standard terms and conditions on which TAB agents provide services to Tabcorp compared with the position which would exist without authorisation. If the present application for authorisation were refused, there would be a risk that Tabcorp would revert to its previous "take it or leave it" approach, where it offered standard contracts to agents without any input from them or the Association (see Authorisation A90885, page 42). This would have a negative impact on the standard terms and conditions of appointment of TAB agents, as Tabcorp would be able to use its superior bargaining position to more easily reject the position of an individual TAB agent seeking to negotiate changes to the standard terms and conditions of their appointment. It would not, however, change any competitive dynamics between agents.

_Supply of distribution services to Tabcorp_

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56. There are two areas of competition in the market for the supply of distribution services:

(a) "competition for appointment to supply distribution services to Tabcorp"; and

(b) "competition between appointed suppliers in the actual provision of distribution services" (Authorisation A90885, page 30).

57. The level of competition between TAB agents and hotels and clubs for appointment as agents of Tabcorp is low. The level of competition between TAB agents, hotels and clubs in the provision of distribution services to Tabcorp is also low.

58. In respect of competition to be appointed as a supplier of distribution services, TAB agents compete amongst themselves and other potential agents. Existing and potential agents then compete for the right to operate that agency. While there may be some, limited, scope for competition between TAB agents and other suppliers of distribution services in relation to the location of an agency, Tabcorp (rather than an individual TAB agent) ultimately decides when and where it will establish an agency. This decision is affected by the presence of, and efficiency of, other agencies and PubTAB and ClubTAB facilities in the area. This reflects the fundamental fact that the agents are precisely that - agents of Tabcorp.

59. In respect of competition between appointed suppliers in the actual provision of distribution services to Tabcorp, these suppliers (agents) compete for the turnover based commission paid by Tabcorp in respect of distributing wagering services on its behalf.

The future with and without test

60. The Commission applies the future with and without test established by the Tribunal to identify and weigh the public benefit and public detriment generated by arrangements for which authorisation has been sought.\(^5\)

61. Under this test, the Commission compares the public benefits and anti-competitive detriment generated by the proposed arrangements in the future if the authorisation is granted with those if the authorisation is not granted. This requires the Commission to make a reasonable forecast about how the relevant markets will react if authorisation is not granted. This prediction is often referred to as the counterfactual.

Future without collective bargaining
62. In the absence of authorisation, the Association will not be able to effectively influence the terms and conditions (including but not limited to the remuneration due to agents by way of commission on fees for new products offered by Tabcorp and the resolution of actual disputes) of contracts between members and Tabcorp. It is vital that the Association has the ability to collectively negotiate on behalf of its members in relation to these matters in the future.

63. The utility of a common representative to specifically negotiate contracts which may have an anti-competitive purpose or effect was recognised by the Commission in its decision on Authorisation A90885 (Authorisation A90885, page 32):

The Commission considers that, up to a certain point in the negotiation process, the Association contributing to the relationship between its members and TAB Limited does not necessarily give rise to concerns about possible contraventions of the Act. Indeed, an industry association such as the TAB Agents' Association can represent and assist its members in matters such as ensuring its members have access to appropriate legal / financial services, or even making representations to major suppliers in relation to issues of concern to members, without the need for authorisation.

The Commission considers that the most likely situation without the proposed arrangements is the current situation, namely, the continued offering of largely standard form contracts by TAB Limited to TAB agents, with limited input from the Association on terms and conditions from time to time. Specifically, the situation in the short term is likely to be that TAB agents will enter arrangements with TAB Limited on the terms and conditions of the current New Agreement with limited scope for individual agents to request variations to the new terms of the Agreement. (Authorisation A90885, page 33)

64. If authorisation is not granted for a further period, it is likely that TAB agents will have no choice but to enter future arrangements with Tabcorp on the terms and conditions put forward by Tabcorp without any input. This is particularly the case in an environment where further rationalisation is forecast.

65. As the Current Agency Agreement expires on 31 December 2011, this would mean that TAB agents would be unable to effectively negotiate, through the Association, any changes to the

Current Agency Agreement which are required (e.g., in relation to the remuneration due to agents by way of commission on fees for new products like "Trackside"\textsuperscript{6}, and the cost of introducing that new product in TAB agencies).

66. In other words, without authorisation, it is likely that standard form contracts will be offered to individual TAB agents on a take it or leave it basis without any, or only limited (as described in paragraph 63 above), input from the Association (see Authorisation A90885, page 34).

67. Without authorisation, there is also a risk that more disputes may be litigated or, if they are resolved, that they will be resolved in favour of Tabcorp to the detriment of individual agents who are unable to effectively negotiate with Tabcorp due to the inequality of bargaining power which exists between the parties. Now that Tabcorp owns Tab Limited and Tabcorp is a much larger entity than Tab Limited, this inequality of bargaining power is perhaps even more pronounced today than it was five years ago. Consequently, there would be even less prospect of an individual agent being able to successfully negotiate with Tabcorp today than was the case with Tab Limited five years ago.

\textit{Future with collective bargaining}

68. Given that the conduct for which authorisation is sought is the same as the conduct for which Authorisation A90885 was granted, the likely future with collective bargaining under a new authorisation is likely to be very closely resemble that which prevailed under Authorisation A90885.

69. The most likely situation if the proposed collective negotiation arrangements are authorised is one where TAB agents, through the Association, will continue to have input, or at least seek to have input, into the terms of contracts and the settlement of disputes between Tabcorp and TAB agents. While the contracts offered by Tabcorp to agents are likely to continue to be standard in form if the Association is able to negotiate on behalf of its members, it is very likely that the terms of these contracts would vary, probably significantly, if the Association was not permitted to have input into them. In particular, there is a risk that Tabcorp would revert to the position which prevailed prior to the grant Authorisation A90885, where if offered agents standard form contracts on a "take it or leave it" basis without negotiation from agents or the Association (Authorisation A90885, page 34). This previous conduct derives the best evidence of what is likely to happen in the future without authorisation.

\textsuperscript{6}"Trackside" is an animated racing game currently available in Tabcorp's Victorian TAB agencies. Tabcorp has sought, and is awaiting, NSW government approval to introduce the product in TAB agencies in NSW.
70. This is evident from the input that the Association has had into the Current Agency Agreement under Authorisation A90885, where it was able to negotiate higher base agency fees and commission rates for TAB agents.

71. During the period Authorisation A90885 has been in force, in order of the date the event occurred, the Association has been able to successfully reach agreement with Tabcorp on the following matters:

(a) **2005 Agency Agreement.** Negotiations between the Association and Tabcorp to replace the "New" Agency Agreement commenced in November 2004 (about 6 months after Authorisation A90885 came into force).

The "New Agency" Agreement had been the subject of litigation before the NSW Industrial Relations Commission (*Tab Agents Association of NSW v TAB Limited* [2003] NSWIRComm 316). This litigation was commenced by the Association and discontinued in September 2005. Shortly thereafter, the 2005 Agency Agreement was agreed between the parties and signed by all members of the Association, on the recommendation of the Association.

(b) **Retrospective payments.** In September 2005, the Association and Tabcorp also entered into an agreement that expressed the terms and conditions of additional retrospective payments to members. Within this agreement, the Association also agreed to discontinue all litigation on foot between the parties. This included the litigation referred to above and another set of proceedings in the Supreme Court of NSW. This brought to an end all litigation between the parties.

(c) **Ticket fees.** In June 2006, the Association informed Tabcorp that, based on the Association's interpretation of the 2005 Agency Agreement, Tabcorp was not paying the correct ticket fee to agents. Clause 3 of Schedule 6 to that Agreement stated that a ticket commission fee of "$0.01 per tickets processed during standard hours" was to be paid to agents on all tickets "sold and paid less scratchings and cancellations", however Tabcorp was not paying this fee on FootyTAB and fixed odds bets.

In July 2006 the Association requested that Tabcorp indicate whether it intended to pay the above ticket issue fee to agents for FootyTAB and fixed odds bets. After a period of consultation and negotiation, Tabcorp agreed to pay the ticket issue fee for these bets. It commenced doing so from 1 January 2007. Following further
negotiations retrospective payments, agreed between the parties, were made to all agents in May 2007.

(d) **Compensation for the provision of broadband internet.** In June 2007, Tabcorp agreed to pay all TAB agents $39.95 per month, on an ongoing basis, as compensation for their obligation in the Current Agency Agreement to provide broadband internet in all TAB agencies. From 1 October 2005 to June 2007, by agreement between the parties, Tabcorp paid all TAB agents compensation of $25 per month.

(e) **Ex gratia payments and closure of TAB agencies.** See paragraph 25(a) above.

**Competition assessment**

72. On past occasions, the Commission has noted that the anti-competitive effect of collective bargaining arrangements constituted by lost efficiencies is likely to be limited where the following features are present:

(a) the current levels of competition are low (due, for instance, to the structural features of the market);

(b) there is voluntary participation in the arrangements;

(c) there are restrictions on the coverage, composition and representation of bargaining groups; and

(d) there is no boycott activity.

**Commission assessment of anti-competitive effect for Authorisation A90885**

73. The anti-competitive effect of the proposed collective bargaining arrangements will be limited for the following reasons:

(a) The current level of competition between TAB agents is very low. Agents are currently offered what is effectively a standard form contract with very limited capacity for individual agents to vary the terms of the contract. Competition on the terms and conditions of the services supplied by individual TAB agents to Tabcorp is very low.

While the Current Agency Agreement was collectively negotiated between the Association on behalf of its members and Tabcorp, it would not have been possible without Authorisation A90885 and individual TAB agents would have been
compelled to accept the terms put forward by Tabcorp. A further period of authorisation is necessary so that the Association can renegotiate the Current Agency Agreement on behalf of its members before it expires on 30 December 2011 and so that the Association can assist in negotiations relating to the rationalisation of agent numbers.

(b) Participation by individual TAB agents in the proposed arrangements is voluntary. Neither Tabcorp or any individual TAB agent is required to participate in the proposed collective bargaining arrangements and, like Authorisation A90885, may opt out of those arrangements.

Members will be free to deal with Tabcorp directly if they so choose. That is, Individual TAB agents will retain the ability to seek to negotiate variations to the standard form contract with Tabcorp if they so desire.

(c) The coverage, composition and representation of the bargaining group is restricted to the number of members of the Association.

(d) No collective boycott activity is proposed and the association does not support collective boycott activity. Given the restrictions on the operation of agencies, TAB agents do not have any common interest in the provision of other services which may be a concern for collective activity extending beyond the scope of the conduct authorised.

On many previous occasions, the Commission has recognised that inability to engage in collective boycott activity significantly reduces the potential for any anti-competitive effect to arise.

74. In relation to the current areas of competition identified in para 48 above, the Commission concluded as follows in its determination of Authorisation A90885:

(a) *Supply of wagering services to consumers*

Due to legislative restrictions, there is no price competition between suppliers of wagering services to the public. As a result, assuming TAB agents were, through bargaining collectively, able to negotiate a higher price from Tabcorp than they currently receive, any such increase would not be reflected in the price paid by consumers for these services. Rather, the cost of any increase in the price paid by agents would be borne by Tabcorp (page 38). This remains the case for the proposed collective bargaining arrangements.
The proposed collective bargaining arrangements are unlikely to reduce competition between TAB agents on the standard of service provided to the community, as these limits have been in place for some time through the standard form contracts used by Tabcorp (today, in the Current Agency Agreement). Moving from one set of standard conditions to another is unlikely, in itself, to impact significantly on any competition which does exist between agents in the manner in which they provide wagering services to the public.

Further, as TAB agents compete with both clubs and hotels and, to a lesser extent internet and telephone betting services in the supply of wagering services to the public, this is likely to constrain TAB agents' ability to reduce service standards (Authorisation A90885, page 39).

Since Authorisation A90885 was granted, the level of competition between TAB agents and internet, PubTAB and ClubTAB and telephone betting services has increased rather than decreased including through the provision of free broadband internet access, the provision of large audiovisual displays and extended trading hours in all TAB agencies across NSW.

(b) Supply of distribution services to Tabcorp

No authorisation is sought to collectively bargain for these services. Authorisation is sought to collectively negotiate the standard terms on which the right to supply such services will be acquired by all agents.

As there is limited scope for individual TAB agents to negotiate variations on the standard form contract with Tabcorp, the only likely consequence of the proposed arrangements in this context is that TAB agents may, by negotiating collectively, be able to negotiate more favourable common, standard terms than they are currently offered (Authorisation A90885, page 37).

The Association notes that this is precisely the outcome which has resulted from the Association being authorised, pursuant to Authorisation A90885, to collectively negotiate on behalf of its members with Tabcorp in relation to the terms and conditions of the Current Agency Agreement.

75. If authorisation to engage in the proposed collective bargaining arrangements is not granted for a further 5 years, it is likely that Tabcorp will return to its previous "take it or leave it" approach. That is, that Tabcorp will offer TAB agents standard form contracts on a "take it or leave it" basis without any input from the Association, thus removing the ability for individual
TAB agents to negotiate effectively with Tabcorp. TAB agents who are not members of the Association will also not benefit from the collective negotiation of standard contract terms between the Association and Tabcorp.

**Application of the tests**

**Relevant test**

76. The ACCC may only grant authorisation where the relevant test in section 90 of the Act is satisfied.

77. There is some variation in the language of the Act, especially between the tests in section 90(6)-(7) and section 90(8).

78. The Australian Competition Tribunal (Tribunal) has found that the tests are not exactly the same. The Tribunal has stated that the tests under section 90(6) is limited to a consideration of those detriments arising from a lessening of competition but that the test under section 90(8) is not so limited.\(^7\)

79. However, the Tribunal has previously stated that regarding the test under section 90(6):

> [the] fact that the only public detriment to be taken into account is lessening of competition does not mean that other detriments are not to be weighed in the balance when a judgment is being made. Something relied upon as a benefit may have a beneficial, and also a detrimental, effect on society. Such detrimental effect as it must be considered in order to determine the extent of its beneficial effect.\(^8\)

80. Consequently, given the similarity of wording between section 90(6) and 90(7), when applying these tests the ACCC can take most, if not all, detriments likely to result from the relevant conduct into account either by looking at the detriment side of the equation or when assessing the extent of the benefits.\(^9\)

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\(^7\) *Australian Association of Pathology Practices Incorporated [2004]* A CompT 4 (7 April 2004). This view was supported in *VFF Chicken Meat Growers' Boycott Authorisation [2006]* A CompT 9 at [67].


\(^9\) *Authorisation A91071 re Australian Dental Association Inc (10 December 2008)* at para 5.10.
Definition of public benefit and public detriment

81. Public benefit is not defined in the Act. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.¹⁰

82. Public detriment is also not defined in the Act but the Tribunal has given the concept a wide ambit, including:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.¹¹

Public benefits from authorisation of the collective bargaining arrangements

83. The following public benefits are likely to arise from the proposed collective bargaining arrangements:

(a) improved bargaining power for TAB agents;
(b) reduced risk of unconscionable conduct;
(c) improved quality of service;
(d) participation of the Association under the Current Agency Agreement;
(e) efficiency gains;
(f) industrial harmony;
(g) lower transaction costs

84. In assessing the extent of a public benefit, past public benefits pursuant to a prior authorisation are relevant to the determination of likely future public benefits.¹²


¹¹ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.
Improved bargaining power

85. Authorisation A90885 has significantly improved the bargaining power of TAB agents. This is demonstrated by the fact that both the 2005 Agency Agreement and the Current Agency Agreement were reached by agreement between the parties after extensive negotiations and signed by practically all TAB agents.13

86. Without authorisation, the Association will not be able to collectively negotiate with Tabcorp on behalf of its members and the relationship between Tabcorp and individual agents will likely deteriorate.

87. Authorisation is required so that the Association is permitted to collectively negotiate on behalf of individual TAB agents in relation to the terms of the agency agreement which will replace the Current Agency Agreement when that Agreement expires on 31 December 2011. In particular, the Association requires authorisation so that it may negotiate fees and charges for innovate new products such as "Trackside" which are not addressed in the Current Agency Agreement. Without authorisation, the Association is concerned that individual TAB agents would cease to have any real input into these terms, and the terms and conditions of their appointment as agents moving forward - that is, that Tabcorp would once again offer individual TAB agents standard terms and conditions on a take it or leave it basis without proper consultation or input into those terms by TAB agents. This was the case prior to Authorisation A90885 and a substantial motivating factor for individual TAB agents to apply for authorisation to collectively bargain through the Association.

88. If authorisation for the Association to collectively negotiate on behalf of its members is not granted, the maintenance of a good working relationship between the Association, TAB agents and Tabcorp is likely to be seriously and, potentially, quickly undermined. As Tabcorp is the monopoly supplier of the service which TAB agents acquire (i.e. the right to supply wagering services to consumers), there is a real risk that TAB agents will once again be forced to either accept the terms of supply offered by Tabcorp, or else see their appointment as an Tabcorp's agent discontinued resulting in the closure of their business (Authorisation A90885, pages 41 to 42).

12 Media Council of Australia (No 2) (1987) ATPR 40-774 at 48,419; See also Re AC Hattrick Chemicals Pty Ltd (No 2) (1978) ATPR 40-057 at 17,590.

13 The 2005 Agency Agreement was signed by all agents. The Current Agency Agreement was signed by all but two agents, who both voluntarily surrendered their agency to Tabcorp.
89. Presently, the inequality of bargaining power which exists between the parties is remedied, in part, by the authorisation of the Association to collectively bargain on behalf of TAB agents (Authorisation A90885, pages 42-43). In its determination for Authorisation A90885, the Commission concluded:

   In the current circumstances, the Commission accepts that the unequal bargaining power that exists between TAB agents and Tab Limited, the extensive use of standard form contracts and the infrequency of negotiations with individual TAB agents to vary terms of standard contracts does give rise to some barriers to effective input into contractual terms and conditions (Authorisation A90885, page 43).

90. As a consequence of the "inherently weak bargaining position of TAB agents relative to that of Tabcorp" (Authorisation A90885, page 43), the only effective way for individual TAB agents to negotiate with Tabcorp is if they are represented by the Association. This remains the case today, perhaps to an even greater extent as the Association must now negotiate with Tabcorp rather than TAB Limited.

91. If authorisation is not granted to permit this, then individual TAB agents will be deprived of the opportunity of achieving competitive parity in negotiations with Tabcorp and the weak bargaining position of TAB agents will be reinforced.

**Reduced risk of unconscionable conduct**

92. Permitting the Association to collectively negotiate has strengthened the bargaining power of the Association's members and increased their input into standard form contracts with Tabcorp. It has provided individual TAB agents with greater bargaining equality by enabling them to collectively negotiate matters of common interest, including disputes, through the Association.

93. Both the 2005 Agency Agreement and the Current Agency Agreement were reached as a result of collective negotiation between the parties. TAB agents, via the Association, were afforded the opportunity of providing input into both of these agreements. As a result of this input, the Association has been able to ensure that harsh, unfair or unconscionable terms are not included in the standard form contracts offered by Tabcorp to agents.

94. For example, in relation to the longer agency operating hours proposed by Tabcorp and set out in Schedule 2 of the Current Agency Agreement, the Association was able to ensure that these operating hours are periodically reviewed by Tabcorp so that individual agencies in particular locations are not forced to remain open at times when they do no business. The purpose of the
review is to ensure that the "Agency Trading Hours Category" attributed to each individual agency is appropriate. The first of these reviews occurred in January 2009. The second of these review is due to occur in May 2009.

95. Authorisation A90885 has also enabled the Association to negotiate appropriate payments for groups of agents whose agency was discontinued by Tabcorp for performance reasons (see para 25(b) above). Without the Association to represent their collective interests, it is unlikely that individual agents would have been able to negotiate appropriate payments on their own behalf. Given Tabcorp's plans to further reduce the number of TAB agencies in the next five years as part of its ongoing rationalisation of the industry, authorisation for a further period is needed so that agents receive appropriate payment upon discontinuance or non-renewal of their agency by Tabcorp.

**Improved quality of service**

96. Under Authorisation A90885, individual TAB agents have been able to pass on some of the benefits they have negotiated with Tabcorp as a result of bargaining collectively through the Association, in the form of improvements in the level of service provided by TAB agents to consumers. For example, collective bargaining by the Association has delivered the following improvements in service levels:

(a) all TAB agencies now provide free broadband internet access as a complement to physical betting facilities provided in TAB agencies. Without the Association's input in obtaining a monthly payment from Tabcorp for agents for providing this service, there would have been delays implementing this change to the detriment of consumers;

(b) almost all TAB agencies are now equipped with large audiovisual displays so that punters can watch live sporting or racing events at TAB agencies (Clause 5.9); and

(c) all TAB agencies are now open for longer, thereby providing consumers with a greater opportunity to bet at a TAB agency rather than over the phone or via the internet (Schedule 2).

97. As noted in paragraph 52 above, TAB agents compete, both amongst themselves and with other forms of wagering distribution, on service levels. Due to legislative restrictions, TAB

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14 Initially, Tabcorp did not plan to conduct a review of the "Agency Trading Hours Category" it attributed to individual agents. However, following consultation with the Association on behalf of members, Tabcorp agreed to periodically review the "Agency Trading Hours Category".
agents, and other wagering services providers such as hotels and clubs, do not compete on price.

98. Over the past decade or so, the percentage share of the total supply of wagering services to consumers held by TAB agencies has declined. As recognised in Authorisation A90885, this decline is the result of a combination of factors including:

(a) the increased prevalence of other forms of service providers;

(b) a reduction in the relative quality of service offered by TAB agents compared to other providers;

(c) shifts in consumer preferences in favour of other forms of wagering services (e.g. internet and telephone wagering, other forms of wagering services attracting new customers or encouraging existing customers to wager more frequently or in larger volumes).

99. As a result of the shift away from the traditional betting shop wagering experience offered by TAB agents towards the convenience of telephone and internet wagering, TAB agents have sought to compete with other wagering services providers in relation to service levels (as they are unable to compete on price). By increasing service levels, TAB agencies have sought to provide consumers with greater service quality for the same price as other forms of wagering services providers.

100. Extended trading hours combined with free broadband internet access and large audiovisual displays all represent enhancements to service levels aimed at attracting customers who might otherwise bet via telephone or the internet to bet at a TAB agency.

101. Under Authorisation A90885, the Association has been able to negotiate higher agency fees (Fixed Management Fee, Fixed Operating Fee, Equalisation Fees, New Concept Evaluation Fee) and commission rates for TAB agents. The agency fees and commission fees are now incentivised to the mutual benefit of Tabcorp and agents. This was not the case under the 2005 Agency Agreement, and was achieved as a result of input from the Association in relation to agency fees and commission rates.

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15 See Schedule 3 to Current Agency Agreement. Pursuant to Authorisation A90885, the Association has been able to negotiate a move from a progressively tiered fee structure based on turnover to a two tiered fee structure, whereby different fees are payable to agents for "exotic" and "non-exotic" bet types.
102. This has resulted in wealth transfer from Tabcorp to TAB agents and, as a result of the competitive process, from TAB agents to consumers in terms of improved service levels (see paras 96-103 above). By allocating the increased fees earned to improving service levels, a decrease in the quality adjusted price of wagering services has occurred during the period of Authorisation A90885. The Commission has recognised that this constitutes a public benefit (Authorisation A90885, page 45).

103. In its determination for Authorisation A90885, the Commission stated that "the extent to which TAB agents may be able to negotiate more favourable terms for themselves by collectively bargaining with Tabcorp is questionable" (Authorisation A90885, page 46). The negotiation of higher agency fees and commission rates would suggest otherwise. While the new fee structure is mutually beneficial for individual agents and Tabcorp, without the Association to represent them, it is highly unlikely that incentivised terms of any kind would have been negotiated.

Effective dispute resolution

104. Clause 21.1(b) provides that disputes may be referred to a panel consisting of the Agent, the President and Secretary of the Association and the General Manager Retail Distribution of Tabcorp or their respective designates. The panel's role is to seek to facilitate an agreed resolution of the dispute between Tabcorp and the Agent, or Agents, to which the dispute relates.

105. The dispute resolution process contained in clause 21 of the Current Agency Agreement was collectively negotiated and agreed between the Association, acting on behalf of its members, and Tabcorp pursuant to Authorisation A90885. The involvement of the Association in the dispute resolution contemplates the continued, ongoing involvement of the Association in the resolution of disputes between TAB agents and Tabcorp. This includes in relation to the terms of any settlement of a dispute, including where those settlement terms may raise potential issues under Part IV of the TPA. Authorisation for a further period is required so that the Association can continue to perform this role.

106. Further, in the Association's submission, the success of the current dispute resolution process in resolving disputes which have arisen during while Authorisation A90885 has been in force, means that authorisation is warranted and should be granted (particularly if it is compared to the process which preceded it).

Operational matters
107. Under clause 4.2(p) of the Current Agency Agreement, Tabcorp must consult with the Association on matters determined by Tabcorp to have a significant operational and developmental effect on the agency network.

108. Without authorisation, the Association is concerned that it may not be able to consult with Tabcorp in relation to certain matters and that Tabcorp may use this clause against the Association, and TAB Agents, to impose harsh or unfair terms and conditions on TAB agents. Authorisation is required so that the Association may fully and freely participate in any consultations arising under this clause. It is also required so that the Association is able to adequately represent the interests of its members in relation to all matters determined to have a significant operational and developmental affect on the agency network.

Efficiency gains

109. Collective negotiation has led to contractual arrangements being included or altered based upon efficiency and productivity improvements within individual TAB agencies and Tabcorp. This has been facilitated by the consultative approach mandated by Authorisation A90885. Some examples of efficiency and productivity gains which have been implemented by the parties include:

(a) the introduction of extended trading hours, subject to periodic review by Tabcorp. These increased trading hours provided Tabcorp and agents with the opportunity of earning increased revenue and more strenuously competing with telephone and internet wagering services providers who are not constrained by trading hours;

(b) the incentivisation of agency fees and commission rates for TAB agents. The new agency fee and commission rate structure at Schedule 2 of the Current Agency Agreement is mutually beneficial for both Tabcorp and agents, as it encourages agents to increase overall turnover in order to earn increased revenue from agency fees and commission rates;

(c) requiring TAB agents to pay for "consumables" under the Current Agency Agreement (clause 5.19 and Schedule 4(q)). While this advantages Tabcorp by ensuring it is not responsible for paying for "consumables" (including wastage by over-ordering by agents), it also benefits agents as the cost of "consumables" is offset by an increased agency fee;

(d) the introduction armoured cash pick ups from agencies. This ensures greater safety for staff and the overall community. It also ensures more efficient banking of revenue by agencies;
the introduction of relocation principles and assistance for all TAB agencies which are relocated by Tabcorp (see, esp., clause 11.2(d)-(e)). Together these provisions are designed to ensure that Tabcorp retains the expertise of any agent whose agency is relocated to a new site. This is efficiency enhancing, as it means that new agents do not have to be trained.

**Industrial harmony**

110. Since the Association was permitted to engage in collective bargaining on behalf of members, all litigation between the parties has been discontinued and no further litigation has been commenced. The two collective disputes which did arise were not protracted and were resolved by consultation between Tabcorp and the Association. Recourse to mediation pursuant to clause 25 of the 2005 Agency Agreement was not required.

111. This can be contrasted with the situation before Authorisation A90885 was granted, when disputes were resolved only after litigation had already been commenced (e.g., Supreme Court of NSW proceedings 5040 of 2001 and IRC of NSW proceedings 5872 of 2002). This represents a public benefit, as it ensures that resources and valuable public funds are not spent on court costs. The involvement of the Association in the resolution of disputes also ensures that disputes are resolved more quickly and efficiently than would otherwise be the case if Tabcorp needed to resolve disputes common among multiple agents with each agent individually.

**Lower Transaction Costs**

112. In the Association's submission, lower transaction costs will result from authorisation as every agent who has a dispute which is common among more than one agent will not be required to negotiate with Tabcorp on an individual basis, or acquire separate legal advice in order to do so. If authorisation is not granted, Tabcorp will be required to negotiate with every agent individually. This is likely to make ordinary commercial negotiations and the resolution of disputes which are common among more than one agent, more costly and protracted than is presently the case.

113. Under Authorisation A90885, the Association was able to reduce transaction costs by obtaining collective legal advice on two occasions:

(a) on behalf of the 20 or so members concerning the ex-gratia payment which Tabcorp offered to them to exit the agency network;
on behalf of all agents in relation to the process of renewal of existing agencies by Tabcorp. This occurred after Tabcorp notified existing agents that it would not be renewing existing agencies as a matter of course.

114. Without Authorisation A90885, each individual agent affected would have needed to obtain separate legal advice.

115. With authorisation, ordinary commercial negotiations and the resolution of disputes affecting more than one agent will be dealt with in a more streamlined and efficient manner. Instead of engaging with Tabcorp individually, agents with common or shared concerns would negotiate with Tabcorp through the Association. This will deliver a public benefit in the form of a single negotiation process which enhances the efficiency of negotiation and dispute resolution. It will also enhance information exchange between the parties. This was recently recognised as a public benefit by the Commission:

\[
A \text{ single negotiation process through collective bargaining may offer a more efficient and informative bargaining process, relative to a situation where multiple negotiation processes are necessary.}^{16}
\]

Conclusion

116. The public benefits of authorisation outweigh the public detriments such that authorisation for a further five years ought to be granted.

117. With the present authorisation, the Association has been able to provide meaningful input into the standard form contract used by Tabcorp to appoint agents to supply wagering services. If authorisation for a further five year period is not granted, the public benefits achieved through the existing authorisation would be reversed and lost. In particular, authorisation for a further period of five years is necessary:

(a) so that the Association can collectively bargain on behalf of agents whose agency is not renewed, or terminated, by Tabcorp as part of its ongoing rationalisation of the industry;

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(b) so that the Association can participate in the process for resolving disputes which arise from time to time between more than one agent and Tabcorp;

(c) to reduce the risk of Tabcorp reverting to its previous practice of offering agents "take it or leave it" terms without any input from the Association.

118. The collective bargaining arrangements authorised by Authorisation A90885 have resulted in significant and real public benefits. If authorisation for a further five year period is granted, those public benefits can be expected to continue, as the conduct for which authorisation is sought is the same. The public benefits which have flown, and will continue to flow, from the proposed arrangements are:

(a) improved bargaining power for agents when negotiating with Tabcorp;

(b) reduced risk of unconscionable conduct by Tabcorp;

(c) improved quality of service by agencies;

(d) the maintenance of an effective dispute resolution process;

(e) efficiency and productivity gains;

(f) industrial harmony;

(g) lower transaction costs.

119. There is likely to be minimal, if any, anti-competitive detriment. There is minimal, if any, competition between agents, and their respective agencies, for the provision of wagering services to customers as there can be no price competition between agents and there is, very little, if any, scope for differentiation between services offered. In respect of competition between agents for appointment as agents, there is no anti-competitive effect arising from collective negotiations compared to the position without authorisation as it Tabcorp who chooses when and where an agency will open.