

PIER CONSULTING

REGULATORY STRATEGIES & SOLUTIONS

4 Waller Cres. Campbell ACT 2612

Dr Richard Chadwick
General Manager, Adjudication
ACCC
GPO Box 3131
Canberra City ACT 2601

20 June 2011

Dear Dr Chadwick,

Collective bargaining notification by the Newsagents Association of NSW and the ACT.

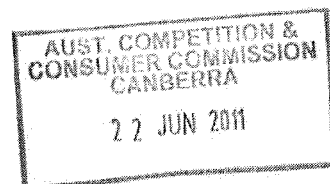
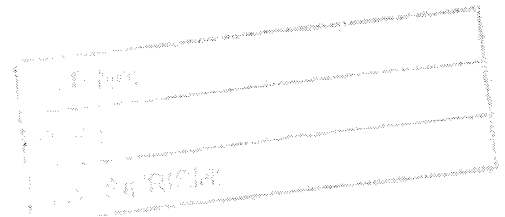
I represent the Newsagents Association of NSW and the ACT. (NANA)

Attached is a Notification by NANA for collective bargaining with NSW Lotteries.

I will email the Group list to you separately.

A \$1000 lodgement fee is also attached.

Yours truly,



Form GA

Commonwealth of Australia

Competition and Consumer Act 2010 — section 93AB

NOTIFICATION OF COLLECTIVE BARGAINING

This form is to be completed by applicants proposing to engage in collective bargaining arrangements.

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission 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.

Protection provided by the notification extends only to the collective bargaining arrangements described in the form.

To the Australian Competition and Consumer Commission:

Notice is hereby given under section 93AB of the *Competition and Consumer Act 2010* of intention:

- to make, or to propose to make, a contract containing a provision of the kind referred to in subsection 44ZZRD (2) or paragraph 44ZZRD (3) (a) or (b) of that Act.
- to give effect to a provision of a contract where the provision is of the kind referred to in subsection 44ZZRD (2) or paragraph 44ZZRD (3) (a) or (b) of that Act.
- to make, or to propose to make, a contract containing a provision of the kind referred to in paragraph 45 (2) (a) of that Act.
- to give effect to a provision of a contract where the provision is of the kind referred to in paragraph 45 (2) (b) of that Act.
(Strike out if not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

Section A – general information

1. Applicant

- (a) Name of the applicant:
(refer to Direction 1)

NEWSAGENTS ASSOCIATION OF NSW AND THE ACT (NANA).....

.....
...

- (b) Description of business carried on by the applicant:
(refer to Direction 2)

.TRADE ASSOCIATION FOR NEWSAGENTS IN NSW AND THE
ACT.....
.....

- (c) Is the representative of the applicant lodging the notice a trade union, an
officer of a trade union or a person acting on the direction of a trade union?
(refer to Direction 3)

....NO.....
.....
.....

- (d) Address in Australia for service of documents on the applicant:

.4 WALLER CRES ,CAMPBELL, ACT
2612.....
.....

2. Lodged on behalf of

- (a) Provide names and addresses of all persons on whose behalf the notification
is lodged and who propose to participate in the collective bargaining
arrangements:
(refer to Direction 4)

SEE ATTACHMENT

B.....
.....

- (b) Provide proof of the consent of each of the persons listed at 2 (a) above
agreeing to the lodgement of the notification on their behalf:
(refer to Direction 5)

.In accordance with the NANA rules the NANA board has the consent of its members
to seek collective bargaining authorisations and notifications, this followed on from
past
authorisations.....
.....
.....

- (c) Provide the following information relating to a notification:

- (i) Does this notification relate to a notification previously lodged with the
Australian Competition and Consumer Commission and for which a
concessional fee is claimed?

.....No.....
.....
.....

- (ii) details of the first-mentioned notification, including but not limited to:

- (A) the name of the applicant; and
- (B) the date the notification was said to be lodged; and
- (C) if known or applicable — the registration number allocated to that collective bargaining notification.

.....

Section B – collective bargaining arrangements

3. Proposed collective bargaining arrangements

- (a) Provide: the name and address of the target; the name, position and telephone contact details of an appropriate contact at the target; and a description of the business carried on by the target:
(refer to direction 6)

Mark Bowen | Sales Manager | NSW Lotteries

2 Figtree Drive Sydney Olympic Park NSW 2127 Australia

t 02 9752 5776 | f 02 9752 5515

.....

- (b) Provide a description of the goods or services which the participants of the collective bargaining arrangements (listed at 2 (a) above) propose to supply to or acquire from the target:

. The provision of lotto and instant lotto distribution services to NSW Lotteries, and

The supply of lottery products to NSW /ACT
 consumers.....

.....
 .

- (c) Do the participants of the proposed collective bargaining arrangements (see 2 (a) above) reasonably expect to make one or more contracts with the target about the supply to or acquisition from the target of one or more of the goods or services (listed at 3 (b) above)?
(refer to direction 7)

..... Yes.....

- (d) In relation to (c) above, provide details of the basis upon which that expectation is held including details of past contracts with the target:

.The members of the group have provided the above services and products to NSW Lotteries and NSW consumers for many years and will do so for at least another 5 years. As part of the recent asset sale by the NSW State Government. to Tatts for a an exclusive period of 40 years.....
.....
.....

- (e) Do the participants of the collective bargaining arrangements (listed at 2 (a) above) reasonably expect that contractual payments between the target and each participant will not exceed \$3 million (or any other amount prescribed by regulation) in any 12 month period, and on what basis?
(refer to direction 8)

.....Yes.....
.....
.....

- (f) In relation to (e) above provide an estimation of the contractual payments expected between the target and each participant in relation to the goods and services (listed at 2 (a) above):

.The annual commission payments vary between newsagents but a maximum would be about \$100, 000, 00 annually.....
.....
...

- (g) Provide a description of the collective bargaining arrangements proposed including, but not limited to:

- (i) the process by which participants propose to undertake collective bargaining with the target; and
- (ii) the type of terms and conditions expected to be negotiated in collective bargaining arrangements (for example: price; non-price conditions of supply such as contract periods etc); and
- (iii) details of any dispute resolution procedure (if any) proposed between participants throughout the collective bargaining process; and
- (iv) details of any dispute resolution procedure (if any) proposed between participants and the target throughout the collective bargaining process; and
- (v) details of any dispute resolution procedure (if any) proposed to deal with disputes throughout the term of contracts entered into with the target; and
- (vi) details of proposed commencement and duration of contracts to be negotiated with the target:
(refer to direction 9)

.....SEE ATTACHMENT

A.....
.....

- (h) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to possible price agreements:

.....SEE ATTACHMENT

A.....
.....

- (i) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to a possible or proposed exclusionary provision(s), including but not limited to:
- (i) the nature of the proposed or possible exclusionary provision(s) (for example an agreement to withhold supply of the relevant goods or services to the target); and
- (ii) the circumstances in which the collective bargaining participants would engage in the exclusionary provision(s), including but not limited to:
- (A) details of the events that would trigger any such activity; and
- (B) details of the process that would be followed in undertaking any such activity; and
- (C) details of any proposed period of notice to be given to the target prior to the commencement of such activity; and
- (D) details of any dispute resolution procedure to be applied or offered to the target prior to the commencement of such activity:
(refer to direction 10)

.SEE ATTACHMENT

A.....
.....

Section C – public detriments

4. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) 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 11)

.....SEE ATTACHMENT

A.....
.....

5. Public detriments

- (a) What will be the likely effect of the notified conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets? In answering this question please provide facts and information to support the claims made:

.....
.....
.....

- (b) What other detriments may result from the notified conduct? In answering this question please provide facts and information to support the claims made:

.....
..SEE ATTACHMENT

A.....

Section D – public benefits

6. Public benefit claims

- (a) Provide details of the public benefits resulting or likely to result from the proposed arrangement. In answering this question please provide facts and information to support the claims made:

.....SEE ATTACHMENT

A.....

Section E - authority

7. Contact details

- (a) Name, contact telephone number and address of person authorised by the notifying parties to provide additional information in relation to this application:

..Hank Spier, Spier Consulting P/L

4 Waller Cres, Campbell ACT 2612

02 62821030

0419239755

.....

.....

.....

(refer to direction 12)

Dated.....

Signed by/on behalf of the applicant

.....
(Signature)

...Hank Spier.....
(Full Name)

..Spier Consulting P? L.....
(Organisation)

..Principal.....
(Position in Organisation)

DIRECTIONS

1. Where 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 application and the application is to be signed by a person authorised by the corporation to do so.
2. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which notification is given.
3. A collective bargaining notification can not be lodged by a trade union or a trade union representative.
4. Where the applicant will be a participant in the collective bargaining arrangements (rather than a representative of participants) the name of the applicant must also be included. Where those persons are corporations, list the corporation's name and address.
5. The applicant, in lodging a notification on behalf of others, must obtain their consent to do so and provide proof of that consent.
6. Where the target is a corporation, provide the corporate name.
7. The collective bargaining notification process is only available to parties that reasonably expect to make one or more contracts with the target about the supply or acquisition of goods or services the subject of the notification.
8. The value of the contract to be collectively negotiated between the target and each participant is not to exceed \$3 million (or such other amount as is prescribed by the regulations) per participant in any twelve month period.
9. To the extent that the collective bargaining arrangements have been reduced to writing, provide a true copy of the arrangement. To the extent that the collective bargaining arrangements have not been reduced to writing, provide a full and correct description of the key terms that have not been reduced to writing.
10. In simple terms an exclusionary provision exists where the proposed contract, arrangement or understanding is made by businesses (at least two of whom are competitors) for the purpose of preventing, restricting or limiting the supply of services to particular persons or classes of persons by all or any of the parties to the contract, arrangement or understanding.

In the context of collective bargaining, an exclusionary provision(s) may include contracts, arrangements or understandings (whether currently in existence or to be made or arrived at during the term of the notification) between collective bargaining participants to limit or restrict their dealings with the target including contracts arrangements or understandings to:

- (a) withhold the supply of goods or services from the target; or
- (b) refuse or decline to acquire the goods or services of the target;

whether such conduct was absolute, limited or subject to certain terms or conditions. This is sometimes referred to as a collective boycott.

11. 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.

12. The notification must be signed by a person authorised by the applicant to do so.

ATTACHMENT A



SUBMISSION IN RELATION TO NOTIFICATION BY NANA FOR
COLLECTIVE BARGAINING WITH NSW LOTTERIES

The Principle.

"A single negotiation process through collective bargaining may offer a more efficient and informed bargaining process, relative to a situation where multiple negotiation processes are necessary"

ACCC "AMA Collective Bargaining decision", December 2008.

The Notification

The Notification seeks ACCC "approval" for the NSW and ACT Newsagents Association to collectively bargain on behalf of its members with NSW Lotteries in relation to the distribution services that NANA members provide to NSW Lotteries and to NSW/ACT consumers.

The Notification also seeks 'approval' that NANA represents its members in any such collective bargaining.

Relevant authorisations.

The ACCC has previously authorised NANA to collectively bargain with newspaper publishers and magazine distributors. A91117

Further the ACCC has authorised and re authorised Queensland lottery agents (LAQ) to collectively bargain with Golden Casket. A91101

This Notification draws from the above mentioned authorisation decisions by way of relevant principles previously adopted by the ACCC.

Purpose of the Notification

NANA members are all newsagents and many are agents for NSW Lotteries

The purpose of newsagents association seeking protection for collective negotiation is to give the newsagents more input and cost effectiveness into the competitive process between buyers and suppliers so that the outcome in terms of commission rates, supply terms and conditions will, more closely, approximate the outcome one could expect under competitive conditions (equally matched buyers and suppliers).

Under the non collective bargaining arrangements the targets of any collective bargaining sought to be protected present individual newsagents with standard form contracts that are weighted in favour of the target.

NANA wishes to conduct negotiations on behalf of its members in relation to the terms and conditions of agency agreements and arrangements with NSW Lotteries, including,

- Commission fees
- Handling fees
- Agency application fees
- Support services levies
- Freight charges
- Product ordering fees
- Equipment hire costs
- Retail image design and agency subsidy and insurances, and
- Changes to the agents manual

The agency agreements are standard across the industry and must be approved by the relevant NSW Regulators.

At the moment NANA is not able to collectively negotiate in relation to such agreements and feel at a competitive disadvantage.

The above list of terms and conditions is not exclusive and other issue may arise from time to time that are currently unforeseen.

A critical issue for NANA seeking collective bargaining now after many years of its members dealing with NSW Lotteries is that Lotteries is no longer owned by the NSW

Government and collective bargaining is now an appropriate way of dealing with Lotteries. Prior to now NANA would have dealt with the relevant NSW Ministers on issues such as terms and conditions.

It is proposed to develop a dispute resolution regime overtime and essentially NANA and the target can hopefully agree on a low costs system using an arms length mediator. Such ADR regime would apply to both issue between NANA and NSW Lotteries and disputes between NSW Lotteries and individual agents, the latter exists to some degree in current contracts and we would use that as a starting point.

The Applicant

The Applicant is well known to the ACCC and we refer to Authorisation A91117.

NANA represents some 1650 newsagents in NSW/ACT, ANF represents the same on national issues and also some newsagents are members of neither.

Newsagents who are NSW Lotteries agents receive commissions between 6-7%. The average annual commission for NANA members is \$57,000.00.

The target.

The target currently holds the exclusive licence to run lotteries in NSW. It is the monopoly provider of lottery and related service to consumer and to distributors of such services. It acquired the exclusive licence in 2010.

NSW Lotteries was a corporation owned by the Government of New South Wales, it is currently leased to Tattersalls for 40 years.

It runs games of chance through a network of agents, most of which are newsagencies.

It falls under the government portfolio of Gaming and Racing and is governed by the Public Lotteries Act 1996.

NSW Lotteries runs some of its lotteries itself and syndicates a number of others run by interstate lottery organisations. The lotteries offered are:

- Lotto

- There are three Lotto draws weekly, occurring on Monday, Wednesday and Saturday evenings.

Although the three are marketed identically by NSW Lotteries, the Saturday Lotto draw is a national lottery run by Tatts Group Limited and syndicated by NSW Lotteries. It is known elsewhere in Australia as **Tattslotto** or **Gold Lotto**. The Monday & Wednesday Lotto draws are run by NSW Lotteries and are available across Australia except Queensland.

- Lotto Strike
- Lucky Lotteries
 - The 'Lucky Lotteries' brand is used to market the \$2 Jackpot Lottery and the \$5 Jackpot Lottery, which are separate although similar games.
- Oz Lotto (run by Tattersalls and syndicated by NSW Lotteries)
- Powerball (run by Tattersalls and syndicated by NSW Lotteries)
- 6 from 38 Pools (run by South Australian Lotteries as 'The Pools'; syndicated as '6 from 38 Pools' by NSW Lotteries)

NSW Lotteries also sells various scratchcard games, under the brand 'Instant Scratchies'.

NSW Lotteries was sold in 2010 to Tatts Group Limited.

NSW Lotteries legislation

The NSW Office of Liquor, Gaming and Racing (OLGR) is accountable for the development, implementation and integrity of the overall regulatory framework across alcohol, licensed clubs, charitable fundraising and gambling activities in NSW.

Its role includes overall policy direction and advice (including advising government on legislative change) in relation to all regulated activities, early intervention, education activities and co-ordination of licensing, compliance and enforcement functions.

Detriment.

The applicant does not see any detriment in collective bargaining by NANA with NSW Lotteries.

Any anti competitive impact would be of a very low level if any. NANA members compete and will continue to compete with non newsagent lottery agents and direct sales by NSW Lotteries.

The industry is highly regulated and contracts are standard. That being the case it is important that NANA are collectively at the negotiation table otherwise some anti competitive elements could arise.

The arrangements will be voluntary and hence any detriment is unlikely.

It is highly unlikely that extension of the collective bargaining facility to NANA will have any negative impact on competition and no impact at all on consumers.

Public benefits

As with most collective bargaining some public benefits arise. They are hard to quantify but they are real.

The target has a reputation of limited negotiation and the only way that negotiations are likely to arise is if they are collective. Unless they are collective important issues might not be addressed. Nor will newsagent's issues necessarily be addressed by other NSW Lottery agents.

There is a clear disparity of bargaining power and the only way that that might be remedied with possibly mutually beneficial outcomes is by collective negotiation.

The other benefit is that any improvements in the standard form agreements should come out of input by all those involved and not just one category of agents who might have greater bargaining power than NANA members,

Conclusion

The Applicant considers that the public detriments generated by the collective bargaining arrangements are likely to be minimal having regard to the following:

- the current level of competition between NANA lottery agents is unlikely to be significantly affected
- the arrangements are voluntary for all parties, and
- the arrangements do not include collective boycott activity.

The applicant contends that the proposed collective bargaining arrangements will provide newsagents with a greater opportunity to provide input into terms and conditions of distribution arrangements with associated efficiency gains.

NANA

JUNE 2011
