

1 July 2011

Dr Richard Chadwick
The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Dr Chadwick

Submission regarding collective bargaining notification lodged by the Newsagents Association of New South Wales and the Australian Capital Territory

We refer to your email dated 24 June 2011 requesting NSW Lotteries Corporation Pty Limited (**NSW Lotteries**) to provide any comments it may have on the collective bargaining notification lodged by the Newsagents Association of New South Wales and the Australian Capital Territory (**NANA**) on 22 June 2011 (**Notification**) by 1 July 2011.

We have considered the Notification and understand that NANA is seeking to collectively bargain on behalf of its members with NSW Lotteries in relation to the terms and conditions of agency agreements and distribution services provided by NANA members. NSW Lotteries has no objection to the fundamental concept of collectively bargaining with the members of NANA and has collective bargaining arrangements and authorisations in place in respect of other jurisdictions.

However, the Form GA lodged by NANA on behalf of its member includes the notification of conduct of the kind referred to in subparagraph 45(2)(a)(i) and/or 45(2)(b)(i) of the *Competition and Consumer Act 2010 (Cth) (CCA)*, which are the prohibitions on exclusionary conduct. In light of this, NSW Lotteries strongly objects to the Notification on the basis that the public benefits do not outweigh the anti-competitive detriments which may arise through collective boycotting.

NSW Lotteries also has a number of comments and corrections in respect of certain factual information and conclusions contained in the Notification and its attached submission.

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1. Exclusionary Conduct

The Notification states as follows:

"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 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."

Therefore, the Notification extends to authorising NANA members to engage in exclusionary conduct. NSW Lotteries is strongly of the view that the NANA members should not be authorised by the Notification to engage in exclusionary conduct or any conduct under section 44ZZRD(3)(a) which is exclusionary in nature.

The Australian Competition and Consumer Commission (ACCC) has, in respect of the authorisation of collective bargaining arrangements for lottery products, in Victoria, stated that the anti-competitive effect of collective bargaining is likely to be limited where there is no boycott activity. There are serious anti-competitive detriments which flow from exclusionary provisions and boycotting activity.

We understand that the party who lodged the Notification has been in contact with your office to advise that it is not NANA's intention to cover this type of exclusionary conduct and will be formalising a variation to the Notification shortly. Subject to confirmation that this is the case, NSW Lotteries requests that the ACCC:

- (a) provide NSW Lotteries with an extension, to lodge a more detailed submission on the inclusion in the Notification of the ability of NANA members to engage in exclusionary conduct (if this is considered necessary); and/or
- (b) issue a draft objection notice in accordance with section 93A of the CCA to allow NSW Lotteries a full opportunity to call a conference and make submissions on the anti-competitive detriment which will flow from the inclusion of exclusionary conduct in the Notification. Naturally this may not be necessary if NANA lodge an appropriate variation.

2. Scope of the conduct to be authorised

NSW Lotteries has no objections to the matters listed in the submission attached to the Notification which NANA wishes to conduct negotiations in relation to, on behalf of

its members (see page 2 of the submission). With reference to the last matter listed in the attached submission, NSW Lotteries notes that it does not have an agent's manual or anything to this effect at this time.

The scope of the Notification should be limited to those matters listed on page 2 of the submission which is attached to the Notification. We believe any further extension beyond those matters would require a further notification.

3. Dispute Resolution

The Notification states that NANA intends to develop a dispute resolution regime over time. The Notification also states that that some form of dispute resolution is provided for in current contracts in relation to disputes between NSW Lotteries and individual agents which would form the "starting point" for the development of this regime.

In their current form, the agency agreements do not contain any dispute resolution provisions. In part this is because there are specific regulatory requirements in respect of mandatory consultation between NSW Lotteries and NANA, and, between NSW Lotteries and individual agents, some of which require the agents' consent. In our view, it is not necessary for the Notification to extend beyond those requirements. NSW Lotteries always acts in good faith when negotiating with its agents and will continue to do so.

4. Market Definition

The Notification, in section 4 in respect of market definition, states "See Attachment". NSW Lotteries is unable to find any reference to market definition in the attached submission. We have assumed that the submission which is attached is the only submission received by the ACCC from NANA.

In any event, NSW Lotteries is of the view that the relevant market is for the supply of lottery products in each State and Territory. That is the supply of lottery products in New South Wales and a separate market for the supply of lottery products in the Australian Capital Territory. Each State is heavily regulated and there are very limited cross-border sales of lottery products due to restrictions on the conduct of "foreign" lotteries in a State.

5. Correction of factual information

The Notification contains some inaccurate factual information. NSW Lotteries submits that the following factual errors require clarification or correction.

5.1 Approval of Agency Agreements

The Notification states "agency agreements are standard across the industry and must be approved by the relevant NSW Regulators". This is inaccurate as Agency Agreements are not approved under the *Public Lotteries Act 1996* (NSW) by the Regulator. Agency Agreements are not controlled contracts and accordingly, do not require the Minister's approval. However, under legislation, NSW Lotteries cannot vary the terms and conditions of existing retail agency agreements without the agent's consent.

5.2 Target's company information

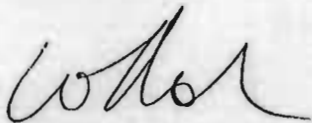
The Notification states that "NSW Lotteries was a corporation owned by the Government of New South Wales, it is currently leased to Tattersalls for 40 years". NSW Lotteries is now a wholly owned subsidiary of Tattersall's Holding Pty Ltd, a subsidiary of Tatts Group Limited. Tattersall's Holding Pty Ltd holds an exclusive licence for a term of 40 years.

5.3 The Target

In relation to the lottery products, the Notification refers to products run by or syndicated by various entities. For clarity, NSW Lotteries is the operator of all of the listed products but in some cases, joint pooling arrangements are administered by one of the lottery entities.

If you wish to discuss this submission or require any further information, please contact Rosann De Campo on (07) 3877 1041 or mobile 0418 199829.

Yours faithfully



Bill Thorburn
Chief Executive