

From: Rosann De Campo [mailto:Rosann.deCampo@tattsgroup.com]
Sent: Monday, 15 August 2011 8:09 AM
To: D'Ettorre, Gina; Dalins, Marie
Cc: Bill Thorburn; Mark Bowen
Subject: NSW Lotteries: Application for Authorisation NANA

Dear Gina and Marie

I refer to the above matter and **attach** a Submission by NSW Lotteries in relation to the Application for Authorisation lodged by NANA on 1 August 2011.

In relation to the additional information sought by Marie Dalins last week we set out the details below.

1. Number of agents in the NSW Lotteries retail network

NSW	1483
ACT	50
7/Eleven	<u>120</u>
Total	<u>1653</u>

2. Appointment of agents

NSW Lotteries does not appoint any agencies that sell only Instant Scratchies. After the application process has been completed, all agents that have been successful are appointed to sell both online products and Instant Scratchies. However, in the case of 7-Eleven stores the product offer is somewhat reduced.

There is a regulatory limit on the number of new agents that may be appointed by NSW Lotteries in the next 5 years commencing from 1 April 2010 to 31 March 2015 (agency protection period). Section 42 of the *Public Lotteries Act 1996* states that NSW Lotteries must not enter into agency agreements during the agency protection period that would increase the number of agents to more than 100 over the allowable limit, _____

3. Application for Authorisation

**EXCLUDED FROM
PUBLIC REGISTER**

The primary reason why NSW Lotteries supports the application for authorisation lodged by NANA is because it makes the negotiation process with agents more efficient. It allows NSW Lotteries to consult with the agents as a group on various commercial matters. Tatts Lotteries (which includes NSW Lotteries) has collective bargaining arrangements and authorisations in place with agents in respect of other jurisdictions and has found this to be an efficient way to conduct negotiations.

Please call me or email me if you have any questions or require any further information in relation to the above matter.

Kind regards

Rosann

Rosann De Campo : Senior Corporate Solicitor & Compliance Manager
Tatts Group
87 Ipswich Road, Woolloongabba, Queensland, 4102, Australia
Tel: 07 3877 1041 · Mob: 0418 199829 · Fax: 07 3320 1232
Email: Rosann.deCampo@tattsgroup.com;

CONFIDENTIALITY NOTE: Please consider our environment before printing this email. This email and any attachments are confidential and may be subject to copyright, legal or some other professional privilege. They are intended solely for the attention and use of the named addressee(s). They may only be copied, distributed or disclosed with the consent of the copyright owner. If you have received this email by mistake or by breach of the confidentiality clause, please notify the sender immediately by return email and delete or destroy all copies of the email. Any confidentiality, privilege or copyright is not waived or lost because this email has been sent to you by mistake.

12 August 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 Application for Authorisation A91269 lodged by the Newsagents Association of New South Wales and the Australian Capital Territory

We refer to your email dated 3 August 2011 requesting NSW Lotteries Corporation Pty Limited (**NSW Lotteries**) to provide any views it may have regarding the application for an authorisation lodged by the Newsagents Association of New South Wales and the Australian Capital Territory (**NANA**) on 1 August 2011 (**Authorisation**) by 15 August 2011. NANA has also requested that its application for authorisation be considered for interim authorisation.

We have considered the application for Authorisation 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.

We note that the application for an Authorisation is limited to negotiations relating to a contract, arrangement or understanding which may contain a cartel provision, in so far as the provision relates to the price for services described in Section 44ZZRD (2), and specifically excludes exclusionary provisions within the meaning of Section 45 and does not apply to any boycott conduct.

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, NSW Lotteries has a number of comments and corrections in respect of certain factual information and conclusions contained in the application for Authorisation and its attachments.

1. Scope of the conduct to be authorised

NSW Lotteries has no objections to the matters listed on the second page of **Attachment A** of the application for Authorisation which NANA wishes to conduct negotiations in relation to, on behalf of its members. With reference to the last matter listed in **Attachment A**, NSW Lotteries notes that the reference to “any conduct protocols issued by NSW Lotteries” is, in our opinion, too broad and needs to be limited to refer specifically to any procedures issued by NSW Lotteries that are directly relevant to the conduct of lotteries, that is, something similar to what is referred to as an Agent’s Manual in the other jurisdictions where lotteries are conducted.

Apart from that, the scope of the Authorisation should be limited to those matters listed in **Attachment A** of the application for Authorisation. We believe any further extension beyond those matters would require a further notification, should other issues arise in the future.

2. Dispute Resolution

The Authorisation states that NANA wishes to develop a dispute resolution regime over time for the parties to agree on a low cost system using an arms length negotiator. 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 Authorisation to extend beyond those requirements. NSW Lotteries always acts in good faith when negotiating with its agents and will continue to do so.

3. Market Definition

The Authorisation, at the bottom of the fourth page of **Attachment A** under the heading “The market” states that “The Applicant considers that the relevant fields of competition are those for: The provision of lotto and instant lotto distribution services to NSW Lotteries”.

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.

4. Correction of factual information

NSW Lotteries submits that the following factual errors require clarification or correction:

4.1 Target's company information

The Authorisation 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 Holdings Pty Ltd, a subsidiary of Tatts Group Limited. NSW Lotteries Corporation Pty Limited holds an exclusive operator licence for a term of 40 years.

4.2 The Target

In relation to the lottery products, the Authorisation 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