



**Australian  
Competition &  
Consumer  
Commission**

GPO Box 520  
Melbourne Vic 3001

Level 35, The Tower  
360 Elizabeth Street  
Melbourne Vic 3000

tel: (03) 9290 1800  
fax: (03) 9663 3699

[www.accc.gov.au](http://www.accc.gov.au)

Our Ref: CB00156  
Contact Officer: Clare McGinness  
Contact Phone: 03 9290 6909

12 October 2011

Ms Nerissa Kilvert  
Office of the Liquor and Gambling Commissioner South Australia  
GPO Box 2169  
Adelaide 5001

Sent via email: [kilvert.nerissa@agd.sa.gov.au](mailto:kilvert.nerissa@agd.sa.gov.au)

Dear Ms Kilvert

**Collective Bargaining Notification CB00156 lodged by the Australian Newsagents'  
Federation Ltd - request for submission**

On 6 October 2011, the Australian Competition and Consumer Commission (the ACCC) received a collective bargaining notification from the Australian Newsagents' Federation Ltd (the ANF). The ANF proposes to collectively bargain on behalf of 112 of its South Australian newsagent members with SA Lotteries in relation to the terms and conditions of their lottery distribution agent agreements, including:

- commissions paid to agents
- agency application fees and other fees payable to SA Lotteries
- terms of supply and rights of termination under the agent agreement, and
- alternations and amendments to matters contained with the Agent Guide.

A copy of the collective bargaining notification and the ANF's supporting submission is available from the ACCC's website: [www.accc.gov.au/collectivebargainingnotifications](http://www.accc.gov.au/collectivebargainingnotifications).

The purpose of this letter is to invite the Office of the Liquor and Gambling Commissioner South Australia's comments as a party who may be interested in these arrangements.

**Collective bargaining notification process**

The ACCC is the Australian Government agency responsible for administering the *Competition and Consumer Act 2010* (the Act). The broad objective of the Act is to benefit all Australians by promoting competition and to ensure consumers are treated fairly.

The competition provisions of the Act prohibit certain forms of anti-competitive agreements or conduct including agreements which typically occur during collective bargaining.

Collective bargaining refers to an arrangement where one or more competitors in an industry come together to negotiate terms and conditions (including price) with a supplier or a customer.

While the Act prohibits certain forms of anti-competitive conduct, it does recognise that conduct which may otherwise breach the Act may, in some circumstances, be of benefit to the public. The Act accordingly allows businesses that are considering engaging in anti-competitive arrangements to seek immunity from legal action. One way businesses may obtain immunity to engage in collective bargaining conduct that may be at risk of breaching the Act is to lodge a notification with the ACCC.

Once a notification has been validly lodged with the ACCC, immunity from legal action in respect of the notified conduct commences 14 days after the notification was lodged, unless the ACCC issues a draft objection notice proposing to prevent the immunity coming into effect.

The ACCC may proceed to remove the immunity provided by a collective bargaining notification where it is satisfied that the likely benefit to the public from the proposed conduct will not outweigh the likely detriment to the public from the proposed conduct.

### **Collective bargaining notification lodged by the ANF**

The ANF submits that the proposed collective bargaining arrangements will provide a mechanism for lottery agents to provide greater input into their contracts and allow each party to achieve greater commercial efficiency by altering the bargaining power between the parties. The ANF also considers the arrangements will result in some transaction cost savings, particularly for individual distribution agents.

The ANF considers that the arrangements will not result in any identifiable public detriment, because:

- the level of negotiations would be low if newsagents were to enter into individual contracts with SA Lotteries
- participation in the collective bargaining will be voluntary, both for SA Lotteries and the participating newsagents
- the ANF seeks to represent 112 newsagents, which account for 20% of the current 551 SA Lotteries distribution agents. The ANF submits that although this is a significant size, the group's collective bargaining power will be constrained by the considerable countervailing power of SA Lotteries
- the arrangements to not involve any collective boycott activity
- there is limited competition between the newsagents in the retail of lottery products.

The immunity from legal action provided by the notification will commence on 20 October 2011, provided the ACCC does not issue a draft objection notice proposing to prevent the immunity coming into effect.

### **Request for submissions**

To assist the ACCC in its consideration of the notification it would be helpful to obtain your comments on the likely public benefits and the likely effect on competition, or any other public detriment, from the proposed arrangements.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the ACCC may request that information included in the submission be excluded from the public register in certain circumstances. Submissions which are excluded from the public register may still be taken into account by the ACCC in conducting its assessment of the notified arrangements. Guidelines for seeking exclusion from the public register are attached for your information.

If you wish to lodge a submission, please address your submission to:

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

Submissions can also be lodged by email to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au) or by facsimile on 02 6243 1211.

Please ensure that your submission is lodged with the ACCC by **COB Wednesday 19 October 2011**.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Clare McGinness on 03 9290 6909.

Yours sincerely



Marie Dalins  
Director  
Adjudication Branch