

Blanch, Belinda

From: Tan, Jasmine
Sent: Tuesday, 7 August 2012 9:15 AM
To: [REDACTED]
Cc: 'general@pointonpartners.com.au'; Hartcher-O'Brien, Imogen
Subject: Request for response to concerns raised by Sky about HRA notification [SEC=UNCLASSIFIED]
Attachments: [Untitled].pdf

Dear Andrew,

I refer to the notification sought to be lodged with the Australian Competition and Consumer Commission (ACCC) on 25 July 2012 by Harness Racing Australia Inc. (HRA) for proposed collective bargaining conduct with Sky Channel Pty Ltd (Sky).

As you are aware, before making a decision on whether to take further action in respect of a notification for collective bargaining, the ACCC consults the target of the proposed conduct (in this case, the target is Sky), with the option to also consult with other interested parties as necessary.

As discussed on Friday, as part of the ACCC's consultation process, Sky has raised some concerns about the notification, which it has set out in detail in the attached submission. Broadly, these concerns relate to the validity of the notification and the claimed benefits of the proposed conduct.

Request for response

The ACCC seeks HRA's response to the concerns raised in Sky's submission. In particular, we request clarification from HRA regarding each notifying applicant's expectations of being able to enter into a contract with Sky within the next three years.

I note that the ACCC cannot give legal advice – it is ultimately for HRA to seek its own legal advice and make its own decision on how best to proceed. However, there is a question as to whether the scope of the current Form GA lodged with the ACCC on 25 July would, if validly lodged, provide statutory protection to HRA and the other notifying parties for conduct that may otherwise breach s44ZZRD. The kind of conduct set out in the notice that may be relevant to that provision includes the supply of the broadcasting services, negotiation of the geographic limits of any licence and negotiation of the licence fee(s). Given the conduct described in the notification, it is important for your client to carefully consider whether it needs to also give the ACCC notice in relation to s44ZZRD.

With regard to Sky's concerns about the validity of the notification you may wish to have regard to the following possible options:

1. Withdrawing the notification and lodging a revised version of the notification that seeks to notify conduct under sections 45 and 44ZZRD of the *Competition and Consumer Act 2010* (CCA) – in this case, HRA would be required to pay a new lodgement fee of \$1,000 and the 14 day period before protection for the notified conduct comes into effect would begin from the new lodgement date
2. Lodging a related notification of HRA's intention to engage in conduct of the kind referred to in section 44ZZRD of the CCA by close of business, Wednesday 8 August (14 days after the notification was lodged) – in which case, HRA would potentially be covered for conduct of the kind referred to in sections 45 and 44ZZRD of the CCA and no lodgement fee would be necessary
3. Lodging a notification of HRA's intention to engage in conduct of the kind referred to in section 44ZZRD of the CCA after Wednesday 8 August – in this case, HRA would potentially be covered for conduct of the kind referred to in sections 45 and 44ZZRD of the CCA but would be required to pay a lodgement fee of \$1000

4. Taking no action regarding lodgement of further notifications – in this case, HRA would potentially be covered for conduct of the kind referred to in section 45 of the CCA but is unlikely to be covered for conduct of the kind referred to in section 44ZZRD.

Whichever option HRA chooses, the ACCC will proceed to assess the notification on the basis of the information before it and will inform HRA in due course of its decision on (i) whether the notification is valid and (ii), if the notification is valid, whether the ACCC will take further action in respect of the notification.

To assist the ACCC to assess HRA's notification on a timely basis, the ACCC invites HRA to respond to Sky's concerns by **2:00pm, Wednesday 8 August, 2012**. Submissions, including oral submissions, will be placed on the ACCC's public register subject to any request you make for material to be excluded from the register.

Please do not hesitate to contact me if you would like to discuss this matter further.

Kind regards,
Jasmine

Jasmine Tan

Senior Project Officer | Adjudication

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