Contact Officer: Jasmine Tan
Contact Phone: (02) 6243 1363

17 August 2012

Wayne Leach
Partner
King & Wood Mallesons
Level 61, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

By email: wayne.leach@au.kwm.com

Dear Mr Leach

Collective Bargaining Notifications CB00206 and CB00207
lodged by Harness Racing Australia Inc – validity assessment

I refer to collective bargaining notifications CB00206 and CB00207 provided to the
Australian Competition and Consumer Commission (the ACCC) on 25 July 2012 and
8 August 2012 respectively by Harness Racing Australia Inc (HRA). The notifications
were submitted by HRA on its own behalf, and on behalf of six other harness racing
organisations (together, the Notifying Parties) for proposed collective bargaining
arrangements involving your client, Sky Channel Pty Ltd (Sky).

As you are aware, the ACCC is required to assess whether a purported notification
meets the validity requirements of the *Competition and Consumer Act 2010* (the Act).

The purpose of this letter is to advise you that collective bargaining notifications
CB00206 and CB00207 have been assessed by ACCC staff and are considered to be
valid.

The submission received from Sky on 6 August 2012 raised concerns that notification
CB00206 did not meet the requirements for a valid notification under section 93AB of
the Act. Sky submitted that the notification was not valid because it:

i)   was not in the form "prescribed by the regulations" as required by section
     93AB(6)(a) of the Act. Sky also noted that HRA did not give notice under
     section 44ZZRD of the Act and subsequently the notification could not protect
     HRA for the proposed conduct; and

ii) did not satisfy the requirement in section 93AB(3) of the Act that the Notifying
     Parties must each reasonably expect to make one or more contracts with Sky for

the supply of goods or services. Sky raised concerns that HRA might not reasonably expect to enter into a contract for the supply of goods to Sky. It also noted that, apart from HRA, each of the Notifying Parties have current contracts with Sky, some of which will not expire during the three-year period of protection that would be afforded by the notification.

Following discussions with the ACCC, HRA responded to these concerns by providing further written submissions on 7 August 2012 and 13 August 2012, and lodging notification CB00207 on 8 August 2012.

With regard to the concern regarding the form of the notification, the ACCC considers that this issue has been resolved by the lodgement of notification CB00207, which gives notice of the Notifying Parties' intentions to make and give effect to contracts of the kind referred to in sections 45 and 44ZZRD of the Act.

With regard to the concern as to whether the Notifying Parties' hold the required "reasonable expectation" of entering into a contract with Sky, the ACCC has assessed the information submitted in relation to this point and considers that the requirements of section 93AB(3) of the Act have been satisfied. Specifically, based on the additional information provided by the Notifying Parties, the ACCC is satisfied that the Notifying Parties (including HRA) hold a reasonable expectation of making one or more contracts with Sky.

Copies of the notifications and supporting materials have been placed on the ACCC's public register. The ACCC will now proceed to assess the notified conduct and, as part of this process, the ACCC will seek submissions from interested parties on the likely public benefits and detriments arising from the notified conduct. If your client would like to make a further submission on these issues, please ensure that it is received by the ACCC by no later than Wednesday 29 August 2012.

Should you have any queries in relation to this matter, please do not hesitate to contact Jasmine Tan on (02) 6243 1363, or by email to jasmine.tan@accc.gov.au.

Yours sincerely

Dr Richard Chadwick
General Manager
Adjudication Branch