



**Australian
Competition &
Consumer
Commission**

Our Ref: C2012/678
Contact Officer: Jasmine Tan
Contact Number: 02 6243 1363

GPO Box 3131
Canberra ACT 2601

23 Marcus Clarke Street
Canberra ACT 2601

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

14 November 2012

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

By email: wayne.leach@au.kwm.com; monique.nymeyer@au.kwm.com

Dear Mr Leach

Third line forcing notifications CB00206 and CB00207 lodged by Harness Racing Australia Inc

I refer to the above collective bargaining notifications lodged with the Australian Competition and Consumer Commission (the ACCC) on 25 July 2012 (notification CB00206) and 8 August 2012 (notification CB00207). I am writing to inform you of the outcome of the ACCC's assessment of the notifications.

The notified conduct

Harness Racing Australia Inc (HRA) proposes to collectively bargain on behalf of itself, New South Wales Harness Racing Club, Racing and Wagering Western Australia, Harness Racing SA, Tasracing, Harness Racing New South Wales and Harness Racing Victoria. These notifying parties propose to supply harness racing vision and associated audio to Sky Channel Pty Ltd (the target) and grant a licence to broadcast such content. Collective negotiations are proposed to include the licence fee, the term of the licence, the geographical limits of the licence, the media on which licensed content may be broadcast, the minimum content to be broadcast and the scheduling of broadcasts.

Legal protection conferred by the notifications commenced on 8 August 2012 (for notification CB00206) and 22 August 2012 (for notification CB00207).

ACCC consideration

As you may be aware, the ACCC may revoke the legal protection provided by a collective bargaining notification at any time if it considers the relevant tests in section 93AC of the *Competition and Consumer Act 2010* are satisfied. Generally, if the ACCC concludes that the benefit to the public likely to result from the proposed collective bargaining arrangement will not outweigh the likely detriment to the public, the ACCC can remove the legal protection provided by the notification.

The ACCC has assessed the collective bargaining arrangements proposed by HRA and considers that the arrangements are likely to result in public benefits in the form of: greater input into contracts for the supply of harness racing content to broadcasters; product innovation and more efficient investment in the harness racing industry; and increased competition for the acquisition of harness racing content for broadcast.

Balanced against this, the ACCC considers that the potential for the arrangements to result in anti-competitive detriment is limited by the following points:

- the current level of individual bargaining between members of the proposed collective bargaining group and the target is low
- the conduct does not restrict the ability of the notifying parties to compete in other ways
- participation in the arrangements is voluntary for each of the notifying parties and the target
- the composition and representation of the collective bargaining group is limited, and
- the collective bargaining arrangements do not include a collective boycott.

On the basis of the information available, the ACCC considers that the likely benefit to the public from the collective bargaining arrangements will outweigh the likely detriment to the public, including the likely detriment from any lessening of competition. The ACCC does not intend to take any further action in relation to the notifications at this time.

A copy of 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 Jasmine Tan on (02) 6243 1363.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Richard Chadwick', with a long horizontal stroke extending to the right.

Dr Richard Chadwick
General Manager
Adjudication Branch