



31 May 2012

Via email

Tanya Hobbs
Senior Project Officer, Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601
Email: tanya.hobbs@accg.gov.au

Dear Ms Hobbs

Lottery Agents Association of Tasmania Application for Authorisation

We refer to your email dated 24 May 2012 inviting Tatts Group Limited (**Tatts Group**) to provide comments on the Australian Competition and Consumer Commission's (**ACCC**) draft determination and the interim authorisation granted to the Lottery Agents Association of Tasmania (**LAAT**) to collectively bargain with Tatts Group and Intralot.

We note that the draft determination and grant of interim authorisation relate to lottery products which are supplied by separate subsidiaries within Tatts Group: Tattersall's Sweeps Proprietary Limited (which is the lottery licensee in Victoria and operating under a Foreign Games Permit in Tasmania) and Golden Casket Lottery Corporation Limited (which provides instant lottery products under a Foreign Games Permit in Tasmania). Accordingly, this submission incorporates the comments of both of these entities.

We have reviewed the draft determination and interim authorisation and understand that the ACCC proposes to grant authorisation to the LAAT and its members to collectively bargain over certain terms and conditions with Tatts Group and Intralot.

We also understand that the interim authorisation that has been granted will enable LAAT and its members to engage in collective bargaining conduct prior to the ACCC completing its assessment of the application.

As we have expressed previously, Tatts Group does not object to the LAAT collectively bargaining on behalf of its members. However, Tatts Group does believe that the scope of the proposed conduct should be narrower than currently expressed.

Proposal to exclude new outlet related fees and matters determined by legislation

We understand that the ACCC proposes to exclude new outlet related fees and matters currently determined by legislation. Tatts Group supports this proposal on



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the basis that any public benefit (if any) resulting from the collective negotiation of new outlet related fees will not outweigh the public detriment caused.

This argument also extends to fees paid by a new entrant into the market where they have acquired an existing outlet (change of ownership fee which is set out below). There is no public benefit in existing agents influencing the fees applicable to new agents entering into the market whether they are completely new or whether they are acquiring the business from an existing outlet. Although these matters are set out in the terms and conditions of the Franchise Agreement, that Agreement is not entered into until after the agent is appointed.

It is important to note that Establishment fees and Franchise fees (which include change of ownership fees) are not included in any of the other Authorisations granted by the ACCC to Agents Associations in other jurisdictions. The only fee that is included under those Authorisations is the Agency Application Fees which are \$500.

Fees

In particular, the ACCC has requested further information regarding new outlet related fees and fees which are paid by existing outlets. The ACCC has also requested comments regarding the relative benefits and detriments of the collective negotiation of each of these fees. This information is set out below.

The following fees are paid by new outlets:

1. Application assessment fee

The application assessment fee is currently \$500 which covers the administration costs associated with the assessment of a proposed new site and/or new franchisee.

2. Establishment fee

The establishment fee is currently \$25,000 which is payable by new Tatts Sweeps outlets and is required for establishment costs and the continued development of the franchise system.

3. Franchise fee

The franchise fee is 1.5% of the value of subscriptions sold at the outlet at the end of the first year (there is also a franchise fee which is payable at the end of the second and third year which is equivalent to 1% of the value of subscriptions sold). This fee is set by the franchisor and set out in the Franchise Disclosure Document in advance of an agent entering into a Franchise Agreement.

4. Communication lines connection fee

This fee is currently approximately \$119 per hour for installation of the communication lines at the commencement of the franchise operations.

5. Training fees

The training fees applicable for new franchisees are currently \$200 per person for the Tatts classroom training (1 week) and \$750 per person for training (1 week) at the



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ETO (Endorsed Training Outlet) If the outlet has a manager, then a nominee manager training fee of \$285 per person (3 day program) is also applicable.

The following fees are payable for a new entrant into the market where they have acquired an existing outlet:

1. Application assessment fee

The application assessment fee which is currently \$500 applies to both an application for a new site as well as an application in respect of the purchase of an existing site.

2. Franchise Fee (change of ownership fee)

The franchise fee is 1.5% of the value of subscriptions sold by the previous franchisee at the Outlet during the 12 month period prior to the Commencement Date (of new owner) with a minimum fee of \$2,000 and a maximum fee of \$35,000 which will be applied for the development of the lottery network. This fee is set by the franchisor and set out in the Franchise Disclosure Document in advance of an agent entering into a Franchise Agreement.

Tatts Group agrees with the ACCC that any fees payable by a new outlet should be expressly excluded from the scope of conduct and it believes that this should extend to any fees payable by a new entrant who is acquiring an existing outlet. Tatts Group believes that negotiation on such fees will not result in a public benefit.

Whilst there is a clear case for excluding fees applicable to a new outlet where there is a new entrant into the market, Tatts also believes that there is a solid case for excluding fees applicable to new entrants who are acquiring an existing outlet for the reasons set out above.

It is irrelevant whether those entrants to the market are existing or prospective members of the LAAT. The Authorisation is about the conduct that is engaged in and not whether they are members of an agency association.

Matters as currently determined by legislation (including price of entries)

Tatts Group understands that the ACCC proposes to also exclude terms regarding matters that are currently determined by legislation such as the price of entries paid by customers for lottery products.

We note that the LAAT in their submission sought to extend the term price of entries to capture other matters such as the administration and accounting of subscription monies, and the manner and terms of their remittal to the Tatts Group. These matters have nothing to do with the concept of the price of entries and relate specifically to operational matters regarding payments made by agents to Tatts Group.

Proposal not to exclude sales targets and training and equipment

Tatts Group understands that the ACCC is also proposing not to exclude sales targets and training and equipment requirements from the scope of the authorised conduct.



Sales targets

It is important to note that Sales Targets are not within the scope of any of the other Authorisations granted by the ACCC to Agents Associations in other jurisdictions.

Tatts Group believes that it is inappropriate for sales targets to be the subject of collective bargaining arrangements as sales targets are determined by a range of circumstances that are unique to each outlet such as environmental factors, performance of each outlet.

In addition to the above, Tatts Group also considers factors such as the size and location of the outlet. As all of these considerations differ from outlet to outlet, Tatts Group believes that it is inappropriate for sales targets to be negotiated on a collective basis. Tatts Group believes that the collective negotiation of sales targets will also have the potential to negatively impact on the extent of inter-agent competition for lottery sales. Tatts Group is of the view that there is no countervailing public benefit of the collective negotiation of the sales targets.

Further, we note that the sales targets for each outlet are not tied to any financial incentives for franchisees, other than their sales based commissions. The sales targets are used by Tatts Group to measure the growth of each outlet and the opportunities which may exist for growing each individual business. Whilst Tatts Group would consult with industry association on planned Incentive programs (collective or otherwise) it is not an appropriate area for collective negotiation.

Staff training and equipment

It is important to note that matters relating to staff training and equipment are not within the scope of any of the other Authorisations granted by the ACCC to Agents Associations in other jurisdictions.

Tatts Group is strongly of the view that arrangements regarding staff training and equipment should not be the subject of collective negotiation on the basis that they relate directly to issues of security, integrity and the proper conduct of the Tasmanian Lottery System. In any case, the matters raised by the LAAT such as quality, timing, content and cost effective staff training, administration, servicing, upgrades and repair of commercial equipment, relate to the service delivery standards and are matters relevant to how Tatts Group manages and operates the Franchise System and not the commercial terms and conditions of the Franchise Agreement. On these matters it is more appropriate that these are subject to individual feedback and discussion with individual agents.

In any case, Tatts Group already provides several processes through which lottery agents can provide feedback and have direct input into such matters. Tatts Group is always willing to receive such feedback and considers in-depth any issues raised by lottery agents including through the call centre, retail territory managers and the Retailer Consultative Group.

Tatts Group believes that these avenues provide agents with ample opportunity to give feedback and input in relation to sales targets and training and equipment. Accordingly, Tatts Group believes that such avenues are a more appropriate avenue for lottery agents to discuss and influence such matters individually and collective



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bargaining of these issues would provide no further public benefit beyond the existing arrangements.

Conclusion

Taking into account the matters raised by Tatts Group, will in our opinion provide a collective bargaining arrangement which should enable consultation and negotiation on key matters relating to the terms and conditions of the Franchise Agreement. Importantly, the scope of the Authorisation granted to the LAAT would then be consistent with the other Authorisations granted by the ACCC to Agents Associations in other jurisdictions. We believe that it will also establish an effective framework for collective bargaining with the representative body for agents in Tasmania.

If you wish to discuss this letter or require any further information, please contact me on (07) 3877 1115 or by email bill.thorburn@tattslotteries.com.

Yours sincerely

Bill Thorburn
Chief Executive -Tatts Lotteries