

Form G

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

1. Applicant

(a) Name of person giving notice:

(Refer to direction 2)

N96687 Tatts NT Lotteries Pty Ltd (ACN 146 244 984) (**Tatts NT**); and

N96688 Tatts Lotteries SA Pty Ltd (ACN 146 245 007) (**SA Lotteries**) (together, the **Applicants**)

Tatts NT and SA Lotteries are subsidiaries of Tattersall's Holdings Pty Ltd (ACN 081 925 706) which is a subsidiary of Tatts Group Limited (ACN 108 686 040) (**Tatts Group**).

(b) Short description of business carried on by that person:

(Refer to direction 3)

The Applicants each provide leisure and entertainment products and services in the lotteries sector of the Australian gambling industry.

(c) Address in Australia for service of documents on that person:

C/o Jo Daniels
Partner
Allens
Level 37, 101 Collins Street
MELBOURNE VIC 3000

2. Notified arrangement

(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

Provision of shop fitting services to agents or prospective agents of Tatts NT and SA Lotteries.

(b) Description of the conduct or proposed conduct:

The conduct involves the Applicant requiring existing or prospective agents to only use the services of fit-out providers included in a list of approved suppliers specified by the Applicants. The Applicants may, at their discretion, include suppliers on the relevant approved list if the suppliers can establish that they meet certain criteria, including criteria relating to financial prudence and the ability to comply with the fit-out quality requirements required by the Applicants.

Each Applicant will maintain a separate approved supplier list relevant to its State but some suppliers may be on more than one list.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

(a) Class or classes of persons to which the conduct relates:

(Refer to direction 5)

Agents of Tatts NT and SA Lotteries.

(b) Number of those persons:

(i) At present time:

(A) Tatts NT – approximately 21 agents; and

(B) SA Lotteries – approximately 586 agents.

(ii) Estimated within the next year:

(Refer to direction 6)

(A) Tatts NT – approximately 25 agents; and

(B) SA Lotteries – approximately 601 agents.

(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Not applicable.

4. Public benefit claims

(a) Arguments in support of notification:

(Refer to direction 7)

The public benefits that will result from the notified conduct include:

- greater consistency of quality (the Applicants will only include suppliers on each of their lists who are competent and provide fit-outs which are of a high standard;
- timely completion of shop fit-outs;
- promoting uniformity amongst agencies to ensure that the Applicants' agencies are easily recognisable to customers (maintaining a similar fit in the agencies is essential to achieving this); and
- providing a better quality of service to agents undertaking a shop fit-out.

(b) Facts and evidence relied upon in support of these claims:

The view of the Applicants is based on the number of complaints Tatts Group Limited (Tatts Group) has received in the past from agents that experienced difficulties with the services provided by shop fitters who have not been recommended by Tatts Group.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services;

any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 8) and/or the market for supply of wine.

The provision of shop fitting services to retail outlets in Australia.

6. Public detriments

- (a) **Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:**

(Refer to direction 9)

The Applicants believe that the notified conduct will have no material effects on the public or on competition in the relevant market.

- (b) **Facts and evidence relevant to these detriments:**

This is because the number of shop fit-outs expected to be installed for Tatts NT and SA Lotteries outlets is a very small fraction of the number of shop fit-outs which would occur throughout Australia. In addition, the part of the shop fit-outs which relates to Tatts NT and SA Lotteries, comprises only a small part of the overall retail store fit-out.

7. Further information

- (a) **Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:**

C/o Jo Daniels
Partner
Allens
Level 37, 101 Collins Street
MELBOURNE VIC 3000

Dated 28/3/2013

Signed by/on behalf of the applicants

Signature.....

Full Name..... JO DANIELS

Organisation..... ALLENS

Position..... PARTNER



DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.
2. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
3. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
4. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
5. If particulars of a condition or of a reason of the type referred to in section 47 of the Competition and Consumer Act 2010 have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
6. Describe the business or consumers likely to be affected by the conduct.
7. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
8. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
9. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
10. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

Annexure to Form G

Supporting Submission

1. Background

- 1.1 Tatts NT Lotteries Pty Ltd (**Tatts NT**) and Tatts Lotteries SA Pty Ltd (**SA Lotteries**) (together, the **Applicants**) are Australian companies each providing leisure and entertainment products and services in the lotteries sector of the Australian gambling industry.
- 1.2 Tatts NT and SA Lotteries are subsidiaries of Tattersall's Holdings Pty Ltd which is a subsidiary of Tatts Group. The Applicants have a network of agents which consists of Tatts agencies in the Northern Territory and South Australia. The Applicants grant agents the right to operate retail outlets under "Tatts" brands and make use of their systems.

2. Description of the conduct

- 2.1 As set out in the Form G, the Applicants propose to require existing and prospective agents to only use the services of those fit-out providers that are included on an approved list specified by the Applicants.
- 2.2 The Applicants propose to include suppliers on the approved list, at their discretion, if the suppliers meet certain criteria. In general terms, the Applicants propose that the criteria will relate to the financial prudence of the suppliers and the quality of the fit-outs.

3. Market definition

- 3.1 The market is the market for the provision of shop fitting services to retail outlets in Australia.

4. Competition issues

- 4.1 We submit that the notification should be allowed to stand because the conduct in question will result in significant public benefits and will not involve any public detriments. It follows that the public benefits will significantly outweigh any public detriments.
- 4.2 The public benefits that will result from the notified conduct include:
 - (a) greater consistency of quality (Applicants will only include suppliers on the list who are competent and provide fit-outs which are of a high standard);
 - (b) timely completion of shop fit-outs;
 - (c) promoting uniformity amongst agencies to ensure that agencies are easily recognisable to customers; and
 - (d) providing a better quality of service to agents undertaking a shop fit-out.

5. Public benefits – quality control

- 5.1 The Applicants have spent a significant amount of time, effort and money in developing systems and brands which are distinctive. The Applicants invest heavily in the development of their brands and are continually investing in innovations to ensure that their brands are relevant and attractive to their customers.

- 5.2 The vast majority of the sales of lottery products in the Northern Territory and South Australia are sold through the Tatts outlets. Therefore, the shop fit-outs of the outlets are crucial to the presentation and maintenance of these brands.
- 5.3 The Applicants consider that the maintenance of the highest quality of shop fit-outs has a direct impact upon the following:
- (a) the quality and integrity of each of the brands;
 - (b) customer satisfaction levels;
 - (c) the profitability of the outlets; and
 - (d) the ability of the outlets to compete for the discretionary spend of customers.
- 5.4 It follows that the maintenance and innovation of the Applicants' brands as seen in its shop fit-outs is of paramount importance to both the Applicants and the success of the outlets.

6. Public benefits – timely completion of shop fit-outs

- 6.1 Suppliers on the approved shop fitter list will need to establish that they are able to complete quality fit-outs within a reasonable timeframe to be included on the list and to remain on the list.
- 6.2 Most of the outlets are small businesses and the increased ability of the outlets to ensure timely completion of shop fit-outs will result in less business interruption and enable the outlets to commence the sale of lottery products as soon as possible.

7. Public benefits – promoting uniformity amongst franchises

- 7.1 As outlined above, the Applicants have developed brands that are distinctive and attractive to their customers.
- 7.2 The style of the layout and the look of the outlets form part of these brands. Accordingly, it is important that each of the outlets maintains a similar fit-out. This allows customers to easily recognise the brands and distinguish the products of the Applicants from those of its competitors.
- 7.3 Requiring agents to only use shop fitters that are able to comply with the standards set by the Applicants will increase the uniformity of outlets and promote consistency within these brands.

8. Public benefits – improving the quality of fit-out services

- 8.1 As previously stated, the Applicants will only include shop fitters on its approved list if they are able to complete shop fit-outs in a timely manner and in accordance with the specifications of the Applicants.
- 8.2 The risk of being removed from the approved list, as well as the risk that other companies in the future may enforce similar restrictions on its agents, may dissuade shop fitters from providing substandard fit-outs and encourage shop fitters when completing fit-outs to comply with any standards that have been set, use quality materials and complete fit-outs in a timely manner.

9. Public detriments

- 9.1 The Applicants believe the notified conduct will have no material detrimental effects on the public or on competition in the relevant market.

9.2 In any given year, approximately 5 shop fit-outs are installed for Tatts NT outlets and approximately 50 shop fit-outs are installed for SA Lotteries outlets. This is a very small fraction of the number of shop fit-outs which would occur throughout Australia during the given year.

9.3 It is therefore submitted that there is little, if any, public detriment resulting or likely resulting from the notified conduct.

10. Conclusion

10.1 The Applicants submit that the likely benefit to the public from the notified conduct will outweigh any likely detriment to the public. Therefore, the notification should be allowed to stand.