

# *Spier Consulting – Legal*

**4 Waller Cres, Campbell, ACT, Australia 2612  
02 62812030- 0419 239 755  
spierconsulting@netspeed.com.au**

## **QNF APPLICATION FOR AUTHORISATION A91353 – COLLECTIVE BARGAINING WITH GOLDEN CASKET LOTTERIES**

### **QNF COMMENTS ON INTERESTED PARTY SUBMISSIONS.**

- **Submission by Tatts (Golden Casket) dated 20 February 2013.**

The Applicant notes the comments by Tatts, they say they are the same as those made in relation to the previous QNF application. In that regard the Applicant refers to its previous comments on the previous Interested Party submissions – Copy attached.

The Applicant is aware of the Tatts position in relation to the “Price on Entry” issue. The Applicant notes the ACCC draft decision in the case of the ANF application for authorisation for collective bargaining with Tatts in SA, and what is said about “Price on Entry”. The QNF is of the view that all “Price on Entry” issues should be covered by any collective bargaining authorisation and in particular the issue of commissions to be paid by Tatts to its agents.

QNF strongly submit that collective bargaining should extend to all of “Price on Entry” ‘issues.

GC have a rule not to allow another outlet unless it can be shown that there will be “incremental sales.” QNF should be able to get involved in this assessment, with GC, on behalf of existing franchisees.

After all collective bargaining is a voluntary process in relation to the target but the authorization should not limit the scope where the parties agree.

- **Submission by Corrs Chambers Westgarth on behalf of LAQ.Dated 21 February 2013, attaching a submission dated 15 June 2012.**

The Applicant refers to its previous comments on the Submission dated 15 June 2012.

In addition the Applicant submits the following.

The thrust of the LAQ submission appears to be that there should not be competition in collective bargaining with the same target. LAQ wants monopolies both upstream and downstream. The ACCC has always been at pain to avoid such monopolistic situations.

LAQ appears to miss that point. Collective bargaining is about joinder of otherwise small players, it is not about the creation of customers monopolies.

A comment is made about GC forum shopping being a possible negative result of both QNF and LAQ being authorised. Forum shopping is also a facet of competition.

The Applicant also points out that GC may not deal with groups who are not authorised. This point was made at a recent meeting between GC and lottery agent associations.

The position currently is that QNF is at risk under the CCA if it acts on behalf of its lottery agent members. LAQ wants to cement that position. LAQ should welcome some backup in its dealings with GC.

It is interesting to note that generally GC supports collective bargaining applications in the various States, yet not in Queensland. Does that mean that GC prefers a monopoly collective bargaining situation? Surely a competitive situation is better as it fosters competition both in dealings with GC and for members between the associations.

### **Some response to specific comments in the Corrs submission,**

#### Members (Membership list was submitted to ACCC and granted confidentiality)

QNF currently has 474 direct financial members plus those who are members and own multiple outlets. Not that the issue of membership numbers is all that relevant.

	<b>LAQ</b>	<b>QNF</b>
Membership	354	474
Percentage of total lottery agents in Qld.	32%	43%
Percentage of members who are newsagents	67%	100%
Number of newsagents who are members of both LAQ & QNF	144	
Number of newsagents who are members of LAQ but not QNF	93	
Number of newsagents who are members of QNF but not LAQ		330

#### Number of bargaining groups.

Corrs submissions states “ *we note that in no other jurisdiction in Australia is there more than one association which has been granted an authorisation to collectively bargain with the lottery operator. The following associations have an authorisation in the jurisdictions listed below to collectively bargain with the applicable lottery operator:*

<i>Queensland</i>	<i>Lottery Agents Queensland</i>	<i>A91101</i>
<i>New South Wales</i>	<i>Newsagents Association of NSW and ACT</i>	<i>A91269</i>
<i>Victoria</i>	<i>Lottery Agents Association of Victoria Inc</i>	<i>A91126</i>
<i>Tasmania</i>	<i>Lottery Agents’ Association of Tasmania Inc</i>	<i>A91309</i>

(Now need to add to this list the Interim authorization granted to QNF on 28 February 2013, A91353)

Does this mean that according to LAQ each State can only have one collective bargaining group? The ACCC is expected to pick winners as to who might be authorised?

If there were to be more than one association with authorisation that would allow greater coverage. ACCC has often insisted that State Associations break into regional bargaining groups. ACCC sees that there can be more than one bargaining group per State.

*Corrs submissions also stated “We note that the negotiations between LAQ and Golden Casket referred to in paragraph 14 of the LAQ’s previous submission have now been finalised, and are waiting for regulatory approval. We maintain our concerns set out in paragraph 16 of the previous submission that Golden Casket would welcome the opportunity in the negotiation process to see two entities authorised to negotiate with it so that it could test which entity is more supportive (or at least less resistant) of changes through the regulatory process”*

QNF would submit that two entities negotiating with GC is a positive, it ensure negotiating competition and also ensure that more lottery agents are represented in the process. There have in the past been critical differences of opinion between QNF and LAQ over issues involving the GC franchise contracts. Furthermore LAQ only represents its members in contract negotiations, not in any issues that arise post those negotiations concerning the operation of the franchise contracts.

March 2013

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Dr Richard Chadwick  
General Manager  
Adjudication  
ACCC  
GPO Box 3131  
Canberra ACT 2601

6 July 2012

Dear Dr Chadwick,

Comments on interested party submissions on QN F application for authorization for collective bargaining with Golden Casket.

Golden Casket (GC) submission dated 27 June 2012.

- New agencies

GC appear to be primarily concerned about QNF collectively bargaining in relation to the appointment of new lottery agencies. GC states that this is potentially anti competitive.

QNF does not understand the GC concerns. GC own rules set some “standards” on the appointment of new agencies and it should be appropriate for trade associations representing existing agents to have some input. Also GC does not have to act on what QNF or others submit on the appointment of new agencies.

Furthermore, collective input assists in the working of a franchise network. including the issue of new outlets.

ACCC files will show a number of examples where the opening of too many outlets undermines an entire franchise network. GC is subject to the Franchise Code and hence is bound by the material disclosure rules. Knowledge of new outlets is a critical issue and should be part of collective bargaining. QNF should be allowed to collectively bargain on this issue yet it is totally up to GC to agree to such collective bargaining or not accept.

- Another negotiator

GC appears to fear another voice/view in negotiations. Competition in collective bargaining may be unusual but should not be seen as a detriment. GC says if a QNF member wants input into the process then the member can join LAQ. This appears to be inherently anti competitive, GC is saying that there is to be a monopoly collective bargaining agent.

GC is a legally sanctioned monopolist and appears to want a monopoly LAQ to deal with. To say that another body being involved leads to confusion and complexity in the bargaining process is saying that a competitive market leads to confusion and complexity, Sounds like arguments in favour of a centralised economy.

- Interim authorisation

On the issue of Interim authorisation, QNF wishes and needs to deal collectively with GC now. As it stands, the law raises a barrier to that. The public benefits that flow from collective bargaining are available now and should be supported by way on an interim authorisation.

The conduct authorised on an interim basis can easily be undone should the ACCC determine not to grant a final authorisation.

Further any interim authorisation can be limited in its scope pending the final determination.

#### LotteryAgentsofQueensland(LAQ)-dated15June2012.

- Another voice/view

QNF would expect that LAQ should welcome another party in negotiations with GC.

Another negotiator does undermine the monopoly role LAQ has at the moment and raises the situation of competing associations being involved in collective negotiations. Yet that should be seen as a positive,

Whilst more than one collective negotiating group is unusual it is not unknown. In the newsagency sector national and State newsagents associations can, and do, collectively bargain with the same target.

LAQ opposes the QNF application essentially on the basis that LAQ does the job of collectively bargaining with GC now. QNF does not disagree that LAQ does an important job in negotiating with GC. However QNF does strongly believe that there are other issues that could and should be put from time to time by QNF.

QNF sees value in not only other views being put but in competition generally between LAQ and QNF for membership as well as representative roles.

Individual agents have little power nor expertise in bargaining with GC. Some 500 individual businesses seeking to negotiate is inefficient and impossible. That does not say that there can be no multiple negotiation either by other trade associations or by more confident individual members. Collective bargaining groups are voluntary and some members may go it alone. It is also often the case that associations will break up into a number of say, regional groups for bargaining purposes, yet each is a single collective bargaining unit. In fact the ACCC will often encourage this.

To argue against multiple negotiators is simply making a case for monopolies on both sides a negotiation process.

The LAQ opposition appears to say that it is enough of a voice. QNF does in no way wish to takeover from LAQ. It submits that QNF should be able to collectively bargain for QNF members who are not members of LAQ. LAQ admits that about half of current QNF members are not members of LAQ. So 50% are effectively on the outer.

The LAQ submission comes down to "trust us, we (LAQ) will look after all, members or not". That may be the LAQ intention but that does not overcome the fact that a substantial number of Qld lottery agents have no direct input into any negotiation processes with GC nor have access to a regular collective representation process on day to day issues.

QNF has constant contact and regularly pursues issues on behalf of its members. It is QNF contention that not only is it another view /voice it is a more representative view/voice than LAQ.

The other LAQ argument is that competing negotiators can be a significant potential disadvantage to LAQ. QNF doubts this broad assertion and it appears to be an argument against competition.

LAQ states there is no public benefit in QNF collectively bargain with QC, although it does agree that there public benefit in it collectively bargaining with GC.

QNF is strongly of the view that its members are not represented in on going contract negotiations and actually kept out of that process. It is in the public interest that all agents have an avenue to have input into the process.

The regulatory lottery sale contract approval process that LAQ makes much of has an underlying assumption that there is collective negotiation with agents. 50% of agents in the view of QNF is not enough. Newsagents unlike lottery agents are subject to a wide range of competitive pressures and often lead in innovation and survival tactics and hence will have different view to lottery agents.

Yours truly,

A handwritten signature in black ink, appearing to read "Hank Spier". The signature is written in a cursive, flowing style with a large initial 'H' and a long, sweeping tail.

Hank Spier