



Australian
Competition &
Consumer
Commission

Determination

Application for authorisation

lodged by

Queensland Newsagents Federation

in respect of

collective bargaining with Tatts Group
(including Golden Casket Corporation)

Date: 11 July 2013

Authorisation number: A91353

Commissioners: Rickard
Schaper
Cifuentes
Court
Dimasi

Summary

The ACCC has decided to grant authorisation to Queensland Newsagents Federation and its members (QNF) for five years to collectively bargain over certain terms and conditions of agency agreements with Tatts Group. The ACCC has excluded collective bargaining over some types of terms and conditions from the scope of the authorisation.

The ACCC notes that authorisation of the Collective Bargaining conduct will give Queensland lottery agents who are newsagents a choice of bargaining group because the ACCC has previously granted authorisation to the Lottery Agents Queensland (LAQ) to represent all Queensland lottery agents. The ACCC considers that this is likely to lead to a better and more diverse offering of bargaining services to all lottery agents and better representation of the interests of lottery agents who choose not to join LAQ.

The ACCC acknowledges the concerns raised by Tatts Group about the authorisation of a second collective bargaining group. However, the ACCC is satisfied that on balance, the Collective Bargaining conduct (with bargaining over certain types of terms and conditions excluded) is likely to result in a public benefit which outweighs the likely public detriment.

The ACCC grants authorisation until 2 August 2018.

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The application for authorisation

1. On 4 February 2013, Queensland Newsagents Federation (QNF) lodged an application for authorisation (A91353) with the ACCC. QNF also requested interim authorisation to enable it to engage in the proposed conduct while the ACCC is considering the substantive application. QNF applied for authorisation for five years on behalf of itself, its current members and any future members (the Applicants) to collectively negotiate through QNF with Tatts Group (including Golden Casket) over:
 - commission fees;
 - handling fees;
 - agency application fees;
 - support services levies;
 - freight charges;
 - product ordering fees;
 - equipment hire costs;
 - retail image design and agency subsidy and insurances;
 - changes to the agent's manual;
 - the impact on current lottery agents when new agencies are proposed by Tatts Group; and
 - other issues that may arise from time to time that are currently unforeseen(the Collective Bargaining conduct).
2. The ACCC notes that this application is substantially the same as the authorisation application A91313 previously lodged by QNF in June 2012 and withdrawn in August 2012.
3. The ACCC can authorise anti-competitive conduct, such as the Collective Bargaining conduct, if it is satisfied that the likely public benefits of the conduct will outweigh the likely public detriments.¹ Further details regarding the authorisation application may be found on the ACCC's Public Register on its website.²
4. The ACCC granted interim authorisation for the Collective Bargaining conduct on 28 February 2013, with collective bargaining in relation to certain terms and conditions excluded.
5. On 29 May 2013, the ACCC issued a draft determination³ proposing to grant authorisation to QNF and its members to engage in the Collective Bargaining conduct, with collective bargaining in relation to certain terms and conditions excluded, for five years. A conference was not requested in relation to the draft determination.

¹ The ACCC's Guide to Authorisation (available from the ACCC website) has more details regarding the ACCC's authorisation process and the relevant tests are summarised at Attachment A.

² <http://transition.accc.gov.au/content/index.phtml/itemId/1101220/fromItemId/278039>.

³ Subsection 90A(1) requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

Background

Industry

6. Lotteries in Queensland are regulated by the Queensland Office of Liquor, Gaming and Racing (Queensland Gaming). Tatts Group (through its subsidiary Golden Casket) is the only organisation currently licensed to run lotteries in Queensland as it holds an exclusive licence until 2016.
7. Lottery agents in Queensland (including lottery agents who are newsagents) who are members of Lottery Agents Queensland (LAQ) are currently collectively represented by LAQ in negotiations with Tatts Group. LAQ was most recently granted authorisation by the ACCC to collectively negotiate with Tatts Group in 2008 for five years.⁴ The lottery agent agreement that results from negotiations with LAQ is applied as a standard across Queensland to all lottery agents, including to lottery agents who are newsagents and lottery agents who are not LAQ members. The lottery agent agreement must be approved by Queensland Gaming.
8. Queensland Gaming regulates many aspects of the standard lottery agent agreement under the *Lotteries Act 1997* (QLD) and *Lotteries Regulation 2007* (QLD), including:
 - (a) the types of locations and businesses in which lotteries may be sold;
 - (b) the allowed method and grounds for termination or suspension of a lottery agent agreement; and
 - (c) the procedures and standards for conducting the lottery and distributing prizes.
9. QNF is a Queensland trade association which represents newsagents. It currently has around 500 members who comprise about 65% of newsagents in Queensland. Many of its members are also lottery agents and some of those are also members of LAQ. QNF wishes to negotiate on behalf of these members the terms and conditions of lottery agent agreements with Tatts Group (including its subsidiaries).⁵
10. There is a significant overlap in actual and potential membership between LAQ and QNF. However, the ACCC considers that standalone lottery agents may have different operational practices and needs compared to newsagents. For example, the number of staff, the size of the premises and the space available for lottery advertising.

Submissions received by the ACCC

Prior to the draft determination

11. In summary, in support of its application QNF submitted that:
 - (a) Tatts Group has a reputation for not negotiating and the only way that negotiations on behalf of newsagents are likely to arise is if they are collective;
 - (b) there is a clear disparity in bargaining power between Tatts Group and individual QNF members which requires collective negotiation in order for it to be addressed;
 - (c) important issues relevant to newsagents who distribute lottery products but choose not to join LAQ may not necessarily be addressed by LAQ in collective negotiations with

⁴ See A91101 granted on 19 November 2008.

⁵ Application A91353, Attachment A, p.14.

Tatts Group. QNF submits this disadvantage has been exploited to the detriment of QNF members; and

(d) by providing QNF members with a way to collectively bargain with Tatts Group in relation to issues relevant to them, the Collective Bargaining conduct is likely to lead to greater efficiencies.

12. The ACCC tests the claims made by an applicant in support of an application for authorisation through an open and transparent public consultation process.
13. The ACCC received submissions from two interested parties in relation to QNF's request for interim authorisation. One submission is confidential and the other is from Tatts Group. Both parties referred back to, or relied upon, the content of their submissions previously made in relation to application for authorisation A91313 which was subsequently withdrawn by QNF in August 2012.
14. Tatts Group submits that the proposed Collective Bargaining conduct by QNF will not result in any public benefit and may, in fact, be detrimental due to higher transaction costs. Tatts Group submits that this is because existing agents may have an incentive to deter new entry into the market if they are involved in negotiations regarding new agencies. Accordingly, Tatts Group requests that the ACCC deny authorisation.

Following the draft determination

15. The ACCC received a further public submission in response to the draft determination from QNF, particularly directed towards the exclusions from the scope of the authorisation proposed in the draft determination. QNF submitted that:
 - (a) the issue of whether or not there is to be a new agency granted by Tatts should be an issue where QNF can represent its members; and
 - (b) it should be able to represent its members in relation to unexpected issues that arise from time to time and seeking a variation to the authorisation is not appropriate for a rapid response.
16. The views of QNF and interested parties are outlined in the ACCC's evaluation chapter of this determination. Copies of public submissions may be obtained from the ACCC's website www.accc.gov.au/authorisationsregister.

ACCC evaluation

Information considered by the ACCC

17. In its evaluation of A91353 the ACCC has taken into account:
 - (a) the issues raised in submissions in response to the current authorisation application, authorisation application A91313 and QNF's responses;⁶
 - (b) QNF's further submission provided in response to the draft determination;
 - (c) information available to the ACCC from consideration of previous matters;⁷

⁶ Please see the ACCC's Public Register for more details, including a list of parties consulted.

⁷ Australian Newsagents' Federation Limited – Authorisation – A91349; Lottery Agents' Association of Tasmania Inc – Authorisation A91309; Newsagents Association of NSW and ACT – Authorisation – A91269; Lottery Agents Association of Victoria Inc – Authorisation – A91126; Lottery Agents Queensland Ltd – Revocation and Substitution - A91101.

- (d) the likely future without the Collective Bargaining conduct.⁸ In particular, the ACCC considers that, absent authorisation, newsagents that are not members of LAQ will continue to be individually offered and sign standard form contracts with Tatts Group that have been negotiated with LAQ.⁹ The ACCC notes that this conclusion differs from its consideration of LAQ's application for authorisation A91101. In that case the alternative to authorisation was no collective bargaining group to represent lottery agents to Tatts Group;
- (e) the relevant areas of competition likely to be affected by the proposed conduct, particularly competition to provide lottery distribution services within Queensland to Tatts Group and competition to supply lottery products to Queensland consumers;¹⁰
- (f) the five year authorisation period requested;
- (g) that no collective boycott activity is proposed and participation in the Collective Bargaining conduct is voluntary; and
- (h) the existence of LAQ as an alternative bargaining group with some overlap in membership and potential membership with QNF.

Public benefit

18. QNF submits that authorisation of the Collective Bargaining conduct will provide QNF members with a choice of bargaining group. QNF further submits that the benefits recognised by the ACCC in its authorisation A91101 of LAQ's collective bargaining arrangements apply equally in relation to the proposed Collective Bargaining conduct and cites the ACCC's findings in that authorisation to support its submission on public benefits.

Improved input into the development of contracts, operational manuals and materials

19. QNF submits that the Collective Bargaining conduct will provide its members who are not also members of LAQ with an opportunity to increase their input into the development of the agency agreement and related documents.
20. Tatts Group submits that QNF members are already represented through LAQ in negotiations with Tatts Group. This is because all QNF members who are lottery agents can become members of LAQ and many QNF members and QNF directors are also members and/or directors of LAQ. LAQ has the potential to represent all Queensland lottery agents, including newsagents and non-newsagents. Therefore, Tatts Group submits that newsagents are not disadvantaged by QNF being unable to bargain directly with Tatts Group on their behalf.
21. In addition, Tatts Group submits that it strongly refutes QNF's statement that it has a reputation of not negotiating. Tatts Group notes that it has a long standing reputation for being consultative and receptive to feedback from lottery agents, including QNF members, by:
- (a) consultation with LAQ on a range of issues, in accordance with LAQ's authorisation;
 - (b) wide consultation on other matters with LAQ and with individual agents; and

⁸ For more discussion see paragraphs 5.38-5.40 of the ACCC's Authorisation Guide.

⁹ Consistent with Application A91353 (Attachment A, pp. 16, 17) and A91269 Newsagents Association of NSW and ACT Final Determination [4.20-4.24].

¹⁰ Consistent with application A91353 (Attachment A, pp 15-17) and A91269 Newsagents Association of NSW and ACT Final Determination [4.3-4.16].

(c) seeking feedback from lottery agents through several avenues, including via the call centre and through its retail territory managers.

22. A further interested party submission expressed the concern that authorisation of the Collective Bargaining conduct could allow Tatts Group to play the two bargaining groups off against each other, leading to less potential input by all lottery agents into the standard form agreement.
23. QNF submitted in response to the concerns expressed by the interested parties, that authorisation of its Collective Bargaining conduct will give QNF members a choice of collective bargaining group. In particular, QNF notes that it proposes to seek to negotiate particular aspects of the standard lottery agent agreement that LAQ has not bargained over. In addition, QNF proposes to represent its members in dealings with Tatts Group on an ongoing basis, rather than just during the negotiations period as LAQ currently does. Accordingly, QNF considers that it is well placed to raise and negotiate collective issues of interpretation and application specific to newsagents that arise during the life of the standard agreement.
24. The ACCC, in its consideration of LAQ's application for authorisation, accepted that a public benefit was likely to result from improved input into the development of contracts, operational manuals and materials for the lottery agents. Individual lottery agents often have very little input into such arrangements because of their weak bargaining position. Collective negotiations may increase the input that lottery agents have into such arrangements and therefore create greater opportunities for the negotiating parties to identify and achieve business efficiencies.¹¹
25. The ACCC notes that, given Tatts Group's opposition to a second collective bargaining group and the voluntary nature of the proposed Collective Bargaining conduct, Tatts Group may refuse to negotiate with QNF. However, it is likely that Tatts Group would seek to negotiate with QNF if such negotiation would result in more efficient contracts. The ACCC considers that the Collective Bargaining conduct by QNF would provide an alternative method for newsagents to have their interests represented to Tatts Group and reflected in the standard lottery agent agreement. In particular, the ACCC notes that there may be newsagents who do not wish to join LAQ and newsagents may not necessarily have identical interests to other lottery agents.
26. Given the voluntary nature of the collective negotiations by both LAQ and QNF, and the significant overlap in potential members, the ACCC does not accept that either collective bargaining group has an incentive to allow itself to be used strategically against the other. Rather, the ACCC considers that competition between the bargaining groups for membership is likely to lead to better representation of lottery agents in collective negotiations, further increasing agents' input into terms and conditions.
27. The ACCC considers that the Collective Bargaining conduct is likely to lead to public benefits in the forms of more efficient terms and conditions.

Transaction cost savings

28. Tatts Group submits that the Collective Bargaining conduct by QNF is likely to lead to greater overall transaction costs and is unlikely to lead to transaction cost savings, compared to the current situation where it negotiates with LAQ and then offers this

¹¹ Consistent with application A91353 (Attachment A, pp. 16-17) and A91269 Newsagents Association of NSW and ACT Final Determination [4.38-4.49].

agreement to non-members. For example, Golden Casket may have to meet separately with QNF and LAQ and potentially negotiate more than once on the same matters.

29. QNF has not directly addressed the issue of transaction costs other than to assert that the Collective Bargaining conduct will have a net public benefit, indicating that it considers that any increase in transaction costs would be outweighed by other benefits.
30. In general, when the ACCC has previously considered the public benefits of collective bargaining by lottery agents, the ACCC has accepted that there would be transaction cost savings due to a single negotiation process rather than a series of individual negotiations. In this case the ACCC considers that collective bargaining by both QNF and LAQ with Tatts Group may lead to higher transaction costs compared to the future without the Collective Bargaining conduct. However, the ACCC considers that the parties involved in any collective bargaining have the means and the incentive to minimise transaction costs. In addition, competition between LAQ and QNF may provide incentives for each bargaining group to seek to minimise bargaining costs, leading to improved efficiencies in bargaining outcomes.
31. Finally, the ACCC notes that the collective bargaining in the case of LAQ and as proposed by QNF is voluntary for all parties. This means that the parties will only incur the higher transaction costs if benefit to all the parties involved in any collective negotiations is expected to outweigh these higher costs.
32. Accordingly, the ACCC considers that any higher transaction costs as a result of the Collective Bargaining conduct would be a consequence of negotiations which achieve more efficient contracts and would not outweigh the public benefits of such efficiencies. Therefore, although the ACCC does not consider that the Collective Bargaining conduct is likely to lead to transaction cost savings, it does not consider that any increased transaction costs are likely to constitute a net detriment.

More informed markets

33. The ACCC has previously found that collective bargaining by lottery agents may result in more informed markets.
34. Neither the QNF nor interested parties directly address the issue of whether the Collective Bargaining conduct is likely to lead to more informed markets. Tatts Group's submission that the Collective Bargaining conduct is likely to lead to confusion suggests that it considers that a more informed market is unlikely.
35. The ACCC considers that it is unclear whether authorisation of the Collective Bargaining conduct would lead to greater sharing of information amongst lottery agents (including lottery agents who are newsagents) and a more informed market. This is likely to depend upon the form that the overall collective negotiations take.
36. In the absence of further supporting evidence, the ACCC has not accepted this as a potential public benefit.

Public detriment

37. The ACCC considers that, in general, the Collective Bargaining conduct proposed by QNF is likely to result in limited public detriment since:
 - (a) Queensland Gaming will continue to regulate most aspects of the retail supply of lottery products;

- (b) participation in the Collective Bargaining conduct is voluntary for both Tatts Group and QNF members; and
- (c) no collective boycott activity is proposed.

38. The two interested party submissions have expressed concerns in relation to three main areas of potential public detriment which may arise from the Collective Bargaining conduct:

- (a) greater transaction costs;
- (b) that Tatts Group may use QNF and LAQ strategically against each other in its negotiations with lottery agents leading to less input by all lottery agents into their terms and conditions; and
- (c) the incentive for QNF to bargain to raise the barriers to entry for new lottery agents.

39. The concerns at (a) and (b) have been addressed above, while consideration of (c) follows.

Collective bargaining over the terms and conditions of new entry

The draft determination

40. The Tatts Group's submission notes that QNF wishes to conduct negotiations on behalf of members in relation to the impact on current lottery agents when new agencies are being proposed by Tatts Group. In the draft determination, the ACCC noted that such negotiations also have the potential to affect the terms and conditions applied to new outlets. Tatts Group submitted that authorisation of this conduct would lead to substantial public detriment and may provide an avenue for existing lottery agents to use their influence to deter new entry by opposing the establishment of new agencies.

41. In its draft determination, the ACCC noted the concerns raised by Tatts Group that existing lottery agents (including those who are newsagents) have the incentive to use collective negotiation of fees and terms and conditions in relation to new outlets to raise the barriers to entry for new lottery agents. For example, the ACCC considered that the level of new agent fees is likely to influence decisions made by potential market participants as to whether to enter the market (including opening new outlets). Further, any new lottery outlets are likely to have some competitive impact upon existing outlets, particularly those located in close geographic proximity to the entrant. Therefore, the ACCC had concerns that the interests of the more numerous existing lottery agents may be given greater weight and priority compared with the interests of potential new lottery agents in any collective negotiation of guidelines or particular decisions to open new agencies.

42. Once a lottery agent commences operations, any fees it incurred which apply only to new outlets, or costs incurred relating to terms and conditions which hinder new entry, constitute sunk costs. Therefore, from this point, any owner of a lottery agency has the incentive to try and deter further new entry. Further, the ACCC considered that there are unlikely to be efficiencies available from collective bargaining over the terms and conditions of new outlets given the small proportion of QNF's members and potential members who are likely to be considering new entry at any particular time. Therefore, the ACCC considered that many of the benefits from collective negotiation (which depend upon commonality of shared interests) would not arise. Any increase in barriers to entry would constitute a potentially significant competitive detriment.

43. Given the concerns raised in relation to the collective negotiation of new outlet related fees, terms and conditions and the lack of clear benefits likely to arise from authorisation of this aspect of the conduct, the ACCC proposed to exclude negotiation in relation to these terms from the scope of the authorised Collective Bargaining conduct.

QNF's response to the draft determination

44. Following the draft determination, QNF submitted that it should be able to represent its members in relation to whether or not Tatts Group should grant new agencies. QNF submitted that the test of new agencies under Tatts Group's rules is essentially that a new agency will generate new business. QNF submitted that this question is of interest to QNF members seeking a new agency and QNF members which are existing agents located near a proposed new agency. Therefore, QNF submits that it should be able to negotiate on behalf of either. In particular, QNF wishes to bargain with Tatts to set guidelines for the creation of new agencies and get involved with the question of whether a new agent is likely to generate new business.

ACCC evaluation

45. The ACCC acknowledges that the question of whether a new agency is likely to create new business and its likely impact on existing lottery agents in the area is of interest to both new and existing agents, who may be QNF members. However, the ACCC considers that QNF has not provided evidence to overcome the ACCC's concerns expressed in its draft determination regarding this issue.

46. In particular, the ACCC considers that existing agents have an incentive to bargain for guidelines which would only allow new agencies if those new agencies are likely to have a very low or no level of impact on existing businesses. While the Tatts Group may have, as submitted by QNF, a policy that it will grant a new agency only where it will generate new business, the ACCC is not satisfied that there are wider public benefits in enabling QNF to hold Tatts Group to such a policy.

47. In relation to the involvement of QNF in particular cases, the ACCC considers that existing agents are likely to have a strong incentive to resist the opening of a new agency nearby if that agency is likely to impact their businesses. Although QNF submits that the impact of a new agency is a question of fact, the ACCC considers that it is likely to bargain for an interpretation of the facts that suits its existing lottery agent members.

Conclusion

48. The ACCC considers that QNF has not provided sufficient evidence to support its submissions in relation to collective bargaining over terms and conditions of new entry. The ACCC considers that to the extent that existing agents are successful in limiting new entry of lottery agencies and thereby competition among lottery agents, this is likely to be anti-competitive and constitutes a likely public detriment.

Collective bargaining in relation to 'other issue[s that] may arise...'

The draft determination

49. In the draft determination, the ACCC noted QNF's statement that its listed heads of bargaining were not exclusive and that it proposed to collectively negotiate 'other issues [that] may arise from time to time that are currently unforeseen.' The ACCC noted that this head of bargaining was undefined and would result in an undesirably broad and uncertain scope for the collective negotiations. Accordingly, the ACCC also proposed to exclude from the authorisation collective negotiation over other issues that may arise from time to time that are currently unforeseen.

QNF's response to the draft determination

50. In response to the draft determination, QNF submitted that unexpected issues do arise from time to time and that it considers that seeking a variation to the authorisation is not

appropriate for a rapid response. QNF requested that the ACCC consider some alternative formulation to provide for this eventuality. QNF suggested that the authorisation be granted to also cover new issues that are notified to the ACCC and Tatts Group, with collective bargaining permitted in relation to the new issue if neither objects. Should the ACCC or Tatts Group object, QNF would then apply for a minor variation or new authorisation.

ACCC evaluation

51. As noted in the draft determination, the ACCC considers that it is unable to grant a broad authorisation which would allow open ended collective bargaining, as it is unable to assess the likely public benefits or detriments of such conduct. QNF has not given any indication of any potential limitation on the subject matter which might fall within this head of bargaining.
52. The ACCC considers that the specific heads of bargaining for which QNF has sought authorisation are likely to relate to most issues which might arise in bargaining between the parties. However, it is conceivable that unexpected issues may arise which cannot be linked to one of the specific heads of bargaining applied for by QNF and in relation to which QNF cannot represent its members without breaching the Act.
53. In order to gain statutory protection for collective negotiations in relation to such an issue, QNF would need to seek a minor variation under section 91A of the Act or a revocation and substitution of the authorisation if the effect of the proposed variation was not minor.¹² The Act requires a broad consultation process in relation to authorisation variations and the ACCC acknowledges this may delay QNF's ability to represent its members on an issue which may require a variation to the authorisation. However, this consultation is required in order to identify the likely public benefits and detriments and resolve any issues associated with the variation. The ACCC considers that the specific formulation proposed by QNF (at paragraph 0) would not adequately fulfil the Act's requirement of broad consultation in relation to variations to authorisations.
54. In any event, the ACCC considers that any alternative formulation which did allow for adequately broad consultation in compliance with the Act would essentially replicate the existing variation processes in the Act and thus not lead to any time savings for QNF.

Conclusion

55. The ACCC considers that it is unable to grant authorisation to collective bargaining in relation to unforeseen matters which may arise from time to time due to the breadth of issues which may fall within this head of bargaining and which therefore give rise to an open ended level of potential public detriment. The ACCC also considers that the adoption of a mechanism to deal with currently unforeseen issues outside the existing variation processes in the Act is unlikely to result in any public benefit.

Balance of public benefit and detriment

56. The ACCC considers that the Collective Bargaining conduct will provide Queensland lottery agents, who are newsagents, a choice of which bargaining group can potentially represent them in negotiations with Tatts Group. The ACCC considers that public benefits are likely to arise from better representation of the interests of lottery agents, including newsagents which are lottery agents, leading to better input into contracts. This is likely to

¹² Minor variations are defined under section 87ZP and section 91A (7) of the Act to be one or more variations that do not, in combination, involve a material change in the effect of the authorisation.

be facilitated by competition between the LAQ and QNF to attract and represent members and better representation of newsagents.

57. The ACCC acknowledges that transaction costs may potentially increase as both LAQ and QNF will seek to negotiate with Tatts Group. However, it is likely that Tatts Group would only seek to negotiate with QNF if such negotiation would result in overall more efficient contracts (having regard to any transaction costs). Therefore the ACCC does not consider that public detriment is likely to arise from any increase in transaction costs.
58. The ACCC acknowledges QNF's submission following the draft determination but considers that some detriment may arise from the Collective Bargaining conduct if QNF is permitted to bargain in ways which could increase the barriers to entry by new outlets or in relation to undefined matters. The potential detriment is addressed by the confinement of collective bargaining to the specific heads listed and the exclusion of bargaining over the terms and conditions (including fees) by which new outlets may be established.
59. On balance, the ACCC considers that the Collective Bargaining conduct, limited to the specific heads of bargaining and with bargaining over new entry excluded, is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the conduct.

Determination

The application

60. On 4 February 2013, Queensland Newsagents Federation (QNF) lodged an application for authorisation (A91353) with the ACCC.
61. Application A91353 was made using Form B Schedule 1, of the Competition and Consumer Regulations 2010. The application was made under subsection 88(1) and 88(1A) of the Act. In particular, QNF seeks authorisation to make and give effect to an agreement between itself and its members, by which it will represent them in collective bargaining with Tatts Group (including Golden Casket).
62. Section 90A(1) of the Act requires that before determining an application for authorisation the ACCC shall issue a draft determination.

The net public benefit test

63. For the reasons outlined in this determination, the ACCC considers that in all the circumstances the proposed Collective Bargaining conduct, limited to the specific heads of bargaining and absent the excluded terms of negotiation regarding new entry, is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the conduct. Accordingly, the ACCC is satisfied that the tests in sections 90(5A), 90(5B), 90(6) and 90(7) of the Act are met.¹³
64. The ACCC therefore **grants** authorisation to application A91353.

¹³ See Attachment A.

Conduct for which the ACCC grants authorisation

65. The ACCC grants authorisation A91353 for five years to the Applicants to collectively negotiate with Tatts Group (including Golden Casket Corporation) over the following terms and conditions of agency agreements:
- (a) commission fees;
 - (b) handling fees;
 - (c) agency application fees;
 - (d) support services levies;
 - (e) freight charges;
 - (f) product ordering fees;
 - (g) equipment hire costs;
 - (h) retail image design and agency subsidy and insurances; and
 - (i) changes to the agent's manual.
66. Under section 88(10) of the Act, the ACCC extends the authorisation to future participants in the collective group that also distribute lottery products for Tatts Group and are members of QNF.
67. This determination is made on 11 July 2013.

Conduct not authorised

68. Due to concerns regarding the likely detriments associated with collective bargaining in relation to new entry, the ACCC excludes from the scope of its authorisation collective bargaining with Tatts Group in relation to:
- (a) the impact on current lottery agents when new agencies are proposed by Tatts Group;
 - (b) the conditions for new outlets; and
 - (c) fees which are paid only in relation to new outlets.
69. For the reasons discussed in paragraphs 49-55, the ACCC has limited the scope of authorisation to the specific heads of bargaining listed in paragraph 65. That is, the authorisation does not cover 'other issues that may arise from time to time that are currently unforeseen'.

Interim authorisation

70. At the time of lodging the application, QNF requested interim authorisation to engage in the Collective Bargaining conduct. The ACCC granted interim authorisation under subsection 91(2) of the Act on 28 February 2013 to permit QNF to engage in collective bargaining in relation to the following heads of bargaining:
- commission fees;
 - handling fees;
 - agency application fees;
 - support services levies;
 - freight charges;

- product ordering fees;
- equipment hire costs;
- retail image design and agency subsidy and insurances; and
- changes to the agent's manual.

71. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

Date authorisation comes into effect

72. This determination is made on 11 July 2013. If no application for review of the determination is made to the Australian Competition Tribunal (the Tribunal), it will come into force on 2 August 2013.

Attachment A - Summary of relevant statutory tests

Subsections 90(5A) and 90(5B) provide that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:

- the provision, in the case of subsection 90(5A) would result, or be likely to result, or in the case of subsection 90(5B) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(5A) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of subsection 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.

Subsections 90(6) and 90(7) state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:

- the provision of the proposed contract, arrangement or understanding in the case of subsection 90(6) would result, or be likely to result, or in the case of subsection 90(7) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(6) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision was given effect to, or in the case of subsection 90(7) has resulted or is likely to result from giving effect to the provision.