

Contact:

Dr Richard Chadwick
General Manager, Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601
By email: adjudication@accc.gov.au

Our Ref: AM: 14035

Your Ref:

21 July 2014

Dear Dr Chadwick

RE: Lottery Agents Association of Victoria Inc ABN 24 820 132 374 trading as Lottery Retailers Association – application for revocation of Authorisation A91126 and substitution of new authorisation 91425

We refer to the above matter and the meeting held between various representatives of the Australian Competition and Consumer Commission (ACCC) and Gary Carter and Sharyn Cole of the Lottery Agents Association of Victoria Inc ABN 24 820 132 374 trading as Lottery Retailers Association (LAAV) on 10 July 2014 (**Meeting**).

At the conclusion of the Meeting, the ACCC invited the LAAV to provide further details of the points raised. The ACCC requested that these further details be provided by 31 July 2014.

We have therefore been instructed to prepare the following information for consideration by the ACCC pending its final determination in relation to the above revocation and substitution of authorisation application (**Application**).

1. Excluded conduct

As discussed at the Meeting, the LAAV has concerns in relation to the impact on its members regarding the conduct not proposed to be authorised by the final determination set out at paragraphs 41 and 42 of the draft determination.

Conduct not proposed to be authorised includes:

*41. The ACCC **does not propose to** authorise LAAV to collectively bargain in relation to the terms and conditions of agreements and arrangements to which its members are not a party and would not be a party if negotiations were successful. This exclusion includes negotiating about the impact on LAAV members of agreements between lottery providers and non LAAV members.*

42. The ACCC **also proposes to exclude** from the scope of the authorisation collective bargaining in relation to:

- (a) *the impact on current lottery agents when new agencies are proposed;*
- (b) *the terms and conditions for new outlets; and*
- (c) *fees which are paid only in relation to new outlets;*

except for the terms and conditions (including fees) on which members of LAAV can become lottery agents of another person or entity in connection with the grant of a Victorian lottery licence to a person or entity other than Tatts Group or Intralot.

Relevantly, this exclusion is explained at paragraph 26:

26. Accordingly, the ACCC proposes to limit the scope of the collective bargaining arrangements to LAAV collectively bargaining in relation to the terms and conditions on which lottery distribution services will be supplied by LAAV members. This would not preclude LAAV from collectively negotiating with Tatts Group about the terms and conditions of agreements for online distribution or distribution of lottery products through the convenience route. **However, such negotiations would be restricted to LAAV negotiating about the terms and conditions of agreements for its members to distribute lottery products through these distribution channels. LAAV would not be authorised to negotiate about the terms of conditions on which these distribution services are provided by non LAAV members or the impact on LAAV members of agreements between lottery providers and non LAAV members.** [emphasis added]

The LAAV notes that the purpose of making the Application was to enable the LAAV to continue to collectively bargain on behalf of its members with Tattersall's Sweeps Pty Ltd (**Tatts**), Intralot Australia Pty Ltd (**Intralot**) and any future holders of Victorian licences in much the same way as has been happening under the existing authorisation.

In that regard, whilst the Application specifically listed online sales and convenience and other distribution channels as conduct over which the LAAV seeks authorisation, the LAAV have historically considered such issues to be implicitly included in their authorisation. In fact, those issues have been the subject of past discussions with Tatts and Intralot who have participated in such discussions on a voluntary basis, despite the subject matter of those issues concerning distribution services being provided by non LAAV members.

To now have such conduct specifically excluded results in newly imposed restrictions over issues which LAAV members have specifically instructed the LAAV to address, which they have indeed been addressing.

In order to assist with the ACCC's understanding of how important it is to the LAAV to continue to be authorised to negotiate in relation to online and convenience channels, notwithstanding that its members are not entitled to participate in such activities, set out below is some additional background information regarding these channels concluded by the key areas in the draft determination that the LAAV would like to see reviewed and amended.

1.1 Relationship between on-line sales and lottery retailers

On-line sales of lottery products are conducted exclusively by Tatts. Sales Figures have shown a significant growth in the on-line sector of lottery sales over recent years, with this sector now representing approximately 8% of lottery sales.

As with all retail products, on-line sales are in direct competition with the traditional retail network, and most importantly, retailers are contractually precluded from participating in on-line sales of Tatts products.

Marketing of the on-line sector has also increased progressively, with the introduction of products such as Autoplay and other marketing initiatives to direct customers on-line.

Online sales of lottery products are increasing rapidly, and the exclusion of participation for retail providers should be balanced by the negotiation of appropriate amendments to the terms and conditions which govern the relationship between traditional retail providers and Tatts. The current state of affairs places retail providers at a distinct disadvantage vis-a-vis online lottery product providers. Necessarily, negotiations on this topic will need to touch on, and include, negotiating about the impact on LAAV members of agreements between lottery providers and non LAAV members.

1.2 Relationship between convenience and other distribution channels and lottery retailers

Tatts currently offer lottery products through two 'convenience channels', 7- Eleven and Coles Express (albeit on a trial basis). Coles stores are company owned and 7-Eleven are franchise stores.

Unlike its relationship with retailers, Tatts contracts directly with the head office of each entity and not with individual sites or franchisees.

These outlets are traditionally opened on mass which may have a significant impact on the traditional retail network.

In seeking to protect and advance the position of its members, such negotiations have been critical to the LAAV.

Additionally, the emergence and development of convenience channels such as Coles Express will likely reduce revenue for traditional retail providers. The terms governing the relationship between convenience channel lottery providers and Tatts will most likely not be as restricted in their nature as those terms which cover the relationship between retail lottery providers and Tatts. Consequently, convenience providers will be able to provide lottery products at a lower cost price in comparison to retail providers. Necessarily, negotiations on this topic will need to touch on, and include, negotiating about the impact on LAAV members of agreements between lottery providers and non LAAV members.

It is evident from the above, that the on-line and convenience channel network possess unique characteristics which directly impact upon the existing retail network. To restrict collective negotiations in relation to these issues in the manner proposed by in the draft determination, will result in detriment to LAAV members.

To have the ability to negotiation on these issues reflects the changing marketplace, and the general move towards online distribution and sale of products and services across most industries.

2. Issues to be addressed

As discussed at the Meeting, the following specific clauses and the issues contained therein require attention. Consequently, we reiterate as follows.

a) Clause 22

In addition to the ACCC's view expressed in clause 22, the LAAV also considers that the LAAV being authorised to collectively negotiate on behalf of members in relation to terms and conditions over the non-LAAV members engaging in on-line sales or selling through alternative distribution channels, which has a direct effect on LAAV members, results in little (if any) public detriment.

Consequently we would like the final determination to reflect this especially considering that participation in the collective bargaining is voluntary for both lottery providers and lottery agents.

b) Clause 23

We note the ACCC's concerns however, we consider that there are times where it is appropriate to collectively bargain in order to limit the extent to which alternative distribution channels provide a competitive constraint on LAAV members.

The LAAV draws to the ACCC's attention, the specific example provided at the Meeting where it is current practice for an alternative distribution channel to open without allowing the existing network to object and offer alternative solutions. This is in direct contrast to how new member outlets are subject to competitor scrutiny.

The current practice where Tatts opens a traditional outlet is that surrounding retailers are given the opportunity to make submissions and are permitted to do a number of things under the terms of their agreement with Tatts:

- the retailer may object and provide reasoning e.g. the retailer may have local information about a better location or reasons why a second outlet would not be viable (for example due to demographic changes); or
- the retailer can apply for the same site (where possible) or to relocate to this location.

We note that retailers habitually contact the LAAV for assistance in relation to new outlets.

It is of the LAAV's opinion, that these alternative distribution channels receive preferential treatment from Tatts. They aren't subject to individual franchisee selection processes (interviews and training), outlet selection criteria that allows surrounding retailers to comment/make a submission, they have limited shop-fit and signage requirements, lower entry fees, no induction training of store managers by Tatts and no minimum sales performance levels. This places traditional retailers at a competitive disadvantage.

As a consequence, this process and preferential treatment delivers sub-standard and poor performing outlets with less qualified management.

Consequently, it is inequitable to subject LAAV members to more stringent requirements when they are prohibited from having any input into how alternative distributors operate who are in direct competition to them.

The LAAV aims to collectively bargain with Tatts on the convenience and other channels to ensure they are treated equally and have an opportunity to fairly compete.

c) Clause 25

We note that whilst it is possible for owners of stores classified by Tatts Group as part of the retail channel to join and be represented by the LAAV in the future (and the LAAV would welcome them as members), there is no incentive for them to do so given their current preferential treatment.

Limiting the matters to which LAAV can negotiate by reference to the way Tatts classified distribution channels is potentially extremely limiting in relation to negotiations with other lottery providers. Consequently, we ask that the authorisation remain without exclusions (as with the previous authorisation).

Tatts can simply exercise their right not to enter into any negotiation with the LAAV in relation to certain issues. This is preferential to restricting the authorisation to deal with member issues only.

d) Clause 26

In relation to online sales, we note that LAAV members are specifically excluded from participating in on-line sales through their contractual agreements with Tatts. Consequently, there would be very limited (if any) circumstances where the LAAV is authorised to collectively bargain or negotiate in relation to on-line sales under the interim authorisation and final determination if it remained unchanged.

One significant issue in this regard is that LAAV members want the opportunity to participate in the on-line channel. The LAAV requires the freedom and flexibility of authorisation to enable them to collectively bargain and negotiate with lottery providers and the government to make this change.

We also note that lottery retailers already participate in on-line sales e.g. collection of the customers email addresses when they sell and sign customers on to a TattsCard and references to on-line on in-store posters. This participation is only one way and does not benefit the retailer.

Through collective bargaining, the LAAV will be able to present compelling arguments to Tatts demonstrating the mutual benefits of allowing retailers to share in and support the on-line sales channel or as a minimum provide a more even playing field to allow the retail network to compete more fairly.

e) Clause 28

We note that authorisation is not extended to include collective bargaining in relation to arrangements concerning the terms and conditions of new agencies being established. We also note that this concern is founded in the view that existing lottery agents may have an incentive to resist the opening of new agencies that are likely to impact their business.

As discussed earlier Tatts already invites existing retailers to comment on the establishment of new outlets and offer alternative distribution solutions e.g. a second

outlet of their own, relocation or a better location for this new outlet based on local knowledge.

The LAAV also receives calls from new outlet owners if they have trouble agreeing on the terms and conditions with Tatts or have trouble passing their selection and induction processes.

We consider that there are times where it is appropriate to collectively bargain in order to limit the extent to which alternative distribution channels provide a competitive constraint on LAAV members. It is much easier for an outlet to adjust and prepare for the opening of one outlet, than several within its trading area. Under these circumstances for example, the LAAV would argue (bargain) for a staged rollout to help the existing network prepare and adjust.

As mentioned, Tatts also allow other distribution channels to enter the network with the proper selection and training, etc. This practice risks damaging the Tatts brand if these channels are not compliant with Tatts requirements and responsible serving of gaming requirements.

Apart from wanting to negotiate to ensure all channels are treated with equality to ensure they can compete fairly, the LAAV is trying to protect network standards and the customer experience.

Please do not hesitate to contact me if you have any queries.

Yours faithfully



per Ann-Maree Ventura
JD, MTax, BBus(Acc), FTIA
Principal Adviser - Legal and Taxation
P: (03) 9092 9891
F: (03) 9092 9890
E: annmaree@avenuesolutions.com.au
Avenue Solutions