

W.A.T.A.B. Agents' Association Incorporated
PO Box 347
WEST PERTH WA 6872

Mr Richard Chadwick
Executive General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Sir,

AGREEMENTS AFFECTING COMPETITION: Application For Authorisation

I attach an application on behalf of the W.A.T.A.B. Agents' Association Incorporated, seeking authorisation pursuant to Section 88(1) of the Competition and Consumer Act 2010 for certain collective bargaining arrangements, together with a submission in support of that application.

The Association is seeking to access your streamlined approval process for small business.

The Association is, in addition, seeking an interim authorisation to enable discussion with Racing and Wagering Western Australia ("RWVA") to commence prior to the Commission's determination as our members, in their desire to be able to make future plans regarding their businesses, are understandably keen for the negotiations with RWVA to begin as soon as possible.

I bring to your attention the fact that the ACCC has previously granted approval to the Association in 2005 an Authorisation to collectively negotiate a new contract with RWVA in the past on behalf of all current and future members of the Association. This application seeks to obtain approval to do exactly the same process as was carried out in 2005 and 2006.

RWVA and the Association are both ready to proceed with the negotiation.

The \$7,500 fee has already been paid in July 2014.

Please contact me if you would like any additional information.

Yours sincerely,

A handwritten signature in cursive script that reads "Tim Barnes".

Tim Barnes

President

W.A.T.A.B. Agents' Association Incorporated

14th July 2014

Form B

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of Applicant:

A91463 W.A.T.A.B. Agents' Association Incorporated ("Association") on its own behalf and on behalf of its members.

(b) Short description of business carried on by applicant:

The Association was incorporated on the 10th October 1963 and is registered under The Associations Incorporation Act 1987 of Western Australia and was formed for the purpose of serving as a non-industrial organization, promoting the interests of its members and liaising with Racing and Wagering Western Australia ("RWWA") which is a body corporate constituted by Section 4 of the Racing and Wagering Western Australia Act 2003 ("the Act") which has assumed the responsibilities of the Totalisator Agency Board pursuant to the Racing and Gaming Amendment and Repeal Act 2003. The members of the Association are agents appointed by RWWA pursuant to the Act to carry out certain services and functions in connection with the conduct of a TAB totalisator agency.

- (c) Address in Australia for service of documents on the applicant:

W.A.T.A.B Agents' Association Incorporated, PO Box 347, WEST PERTH WA 6872.

2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

Arrangements between present and future members of the Association to collectively negotiate with Racing and Wagering Western Australia (RWWA), trading as the TAB, (or any entity which holds the license to conduct off-course totalisator operations for the purpose of Section 4 of the Racing and Wagering Western Australia Act 2003), through the Association, the terms and conditions of the provision of services by Members to RWWA including the appointment, extension or renewal of a contract or arrangement for the provision of those services, and to participate, through the Association, in negotiating resolutions to future issues that involve more than one agent and RWWA or any successor entity which holds the license to conduct off-course totalisator activities in Western Australia.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:

Please refer to the submission in support of the Application attached.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Please refer to the submission in support of the Application attached.

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

The term sought for authorisation is the maximum term of 10 years. It is anticipated the negotiation of any new contract will be the primary basis for seeking authorisation, however, any new agents entering the business subsequent to a new contract being in place may still require the Association to act on their behalf in relation to any new contract. If the term granted was for a lesser period than the maximum, then new agents joining the Association after such time would need to negotiate with RWWA individually and they may not have the skills or knowledge to do so in a competent manner.

3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

The parties to the arrangement will be:

Racing and Wagering Western Australia, 14 Hasler Road, Osborne Park WA 6017 and those persons who are members of the Association from time to time. The names of the members of the Association as at the 30th June 2014 are set out in Schedule A. Please note that all full time TAB agents (that the Association represents are currently members of the Association. We have 100% membership.

See Schedule A attached.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

Present and future members of the Association. Refer to Schedule A attached..

4. Public benefit claims

- (a) Arguments in support of authorisation:

Please refer to the submission in support attached to this application.

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

Please refer to the submission in support attached to this application.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) 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):

Please refer to the submission in support attached to this application.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

Please refer to the submission in support attached to this application.

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

Please refer to the submission in support attached to this application.

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed? No.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Not applicable.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)? No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

9. Further information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Timothy David Barnes


President

W.A.T.A.B. Agents' Association Incorporated

PO Box 347, West Perth WA 6872.

Dated 14th July 2014.

Signed by/on behalf of the applicant


.....

(Signature)

Timothy David Barnes.

(Full Name)

President of W.A.T.A.B Agents' Association Incorporated.

(Position in Organisation)

Submission in Support of Authorisation

by W.A.T.A.B. Agents' Association Incorporated

1. This submission is made in support of the application for authorisation pursuant to section 88(1) of the Competition and Consumer Act 2010 ('Act') with which it is lodged. Section 88(1) provides for authorisation:
 - a) To make a contract or arrangement, or arrive at an understanding a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act; and
 - b) To give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of the Act.

W.A, T.A.B. Agents' Association Incorporated

2. The W.A.T.A.B. Agents' Association Incorporated ("Association") is a "Not for Profit" Association incorporated on the 10th October 1963 and registered under "The Associations Incorporation Act 1987" in Western Australia.
3. Association membership is based on Agencies rather than individuals. The purpose of the membership structure is to ensure that Agencies owned by a multiple of entities do not have disproportionate rights. The Association has as its members 83 out of 91 Service Level 1 agencies. The remaining 8 SL1 agencies are Racing and Wagering Western Australia ("RWVA") owned or Managed agencies and not in private ownership. In summary, we have 100% membership from all privately owned agencies. Agencies are owned as either sole traders, partnerships, trusts or corporations. Each has been appointed by RWVA as its agent for the purposes of the Racing and Wagering Western Australia Act 2003.
4. A SL1 agency is commonly known as a full time agency in which the TAB business is the sole provision of services. (In contrast an SL2 agency is commonly known as a Pub Tab where alcohol sales and entertainment are additional or primary avenues of business in conjunction with the provision of TAB services. The only other retail offering is SL3 outlets which are generally small lawn bowling clubs and similar that only have self-service terminals located within their precinct. The Association has no connection to SL2 or SL3 agencies.
5. The members of the Association are agents appointed by RWVA to carry out certain services and functions in connection with the conduct of a TAB Totalisator agency set out in the Act and the operating rules of RWVA.

Relevantly, the objects of the Association, as set out in its Constitution, include:

- a) "to protect, guard, foster and promote the interests of its members",
- b) "to facilitate in co-operation with RWVA the administration of the Racing and Wagering Western Australia Act 2003 in a manner equally satisfactory to the Western Australian Government, the public and the members".

Racing and Wagering Western Australia

6. In 1961 the Totalisator Agency Board of Western Australia commenced, (a statutory authority constituted under the Totalisator Agency Board Betting Act 1960), to conduct off-course totalisator wagering in Western Australia. In 2001, the Western Australian Government instituted the “Western Australian Racing Industry Review”.
7. On the 1st August 2003, Racing and Wagering Western Australia (“RWVA”) a body corporate constituted by Section 4 of the Racing and Wagering Western Australia Act 2003 (“the Act”) assumed the responsibilities of the Totalisator Board pursuant to the Racing and Gaming Amendment and Repeal Act 2003.
8. Racing and Wagering Western Australia conducts:
 - a) Totalisator wagering on Australian and International racing,
 - b) Fixed odds wagering on a range of sporting events including AFL, rugby league, rugby union, golf, tennis, soccer, cricket, motor racing, boxing, basketball, NFL, and
 - c) Fixed odds wagering on racing events.
9. TAB agents are appointed by RWVA under contractual arrangements under section 30 (2) (f) of Division 2, Part 3 of the Racing and Wagering Western Australia Act 2003. TAB agents operate 91 full time service agencies in Western Australia. RWVA has also appointed 107 SL2 (Pubtabs) and 132 SL3 (Sporting Clubs).
10. In addition to the full time outlets, Pubtabs and Other sporting outlets, RWVA also operates an electronic channel consisting of internet, telephone and interactive TV services.

Contractual Arrangements between RWVA and Agents

11. There are three types of contractual arrangements currently in existence between RWVA and its Agents who operate the full time outlets. The agreements are independent of each other and summarised below:
 - a) The 2006 Assignable Business License (2006 ABL) which is assignable and expires on 31 August 2016. These Agents acquired the license by paying a sum of money to the Totalisator Agency Board of Western Australia (pre 2003) or to RWVA upon establishment of RWVA in 2003; or through an “on market sale and assignment” from another agent.
 - b) A Retail Sales Marketing Agreement (known commonly as “Connect Contract”). There are 13 agencies on such a contract. These are individual agreements between RWVA and each respective agent. They have different commencement dates. They last for a 5 year term with two additional 5 year extension periods available should each respective agent so elect to continue the agreement within specific application requirements.
 - c) A three year term Bonded Agency Agreement, which RWVA is gradually phasing out and replacing with ABL agreements. There are currently 3 agencies that operate under a Bonded Agency Agreement.
12. Full service agencies now number 91 and account for approximately 44% of RWVA's total wagering turnover.
13. RWVA has advised that it views the terms and conditions contained in the 2006 ABL as the basis for the new contract. It should be noted the majority of existing agencies 68 out of 83 privately owned SL1 TAB's are currently operating under the 2006 ABL Agreement. It is that contract that the Association now seeks to negotiate.

Conduct for which authorisation is sought

14. The conduct for which authorisation is sought is:
 - a) the negotiation by the Association on behalf of its members, of the terms and conditions of the New Agreement pursuant to which members of the Association are reappointed as agents of RWWA (for the purposes of section 30 of the Racing and Wagering Act 2003) including the negotiation of any extension, variation or renewal under option terms if applicable of the New Agreement;
 - b) the conduct of the Association in participating in the process for resolving disputes referred to the Disputes Review Committee in relation to disputes between RWWA and an agent or agents:
15. Authorisation is sought for a period of 10 years. The Association submits that this time period would provide sufficient time for the Association to be involved in the negotiations for the New Agreement and a further term pursuant to the exercising of an option term, if applicable under any New Agreement.
16. No member would be required to enter into the New Agreement negotiated by the Association on behalf of its members. Individual Agents may exclude themselves from the collective negotiations, if authorised, and be entitled to negotiate a separate agreement with RWWA at any time prior to the expiry of their specific Existing Agreement or prior to entering into the New Agreement.

Test for authorisation

17. The test for authorisation is whether:
 - a) the provisions of the subject arrangements would result, or be likely to result in a benefit to the public: and
 - b) that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result from the proposed arrangements.

Market assessment

18. In the present case, it does not seem necessary for a detailed and precise market analysis to be conducted. It is sufficient to demonstrate the relevant areas of competition.

As was observed in the New South Wales case, there is a limited source of competition from sources outside of the state. The market is almost entirely confined by geography and by statute to the existing arrangements.

The relationship between RWWA and its agents is one of principal and agent which when coupled with the geographic spread of agencies and the standard TAB wagering product range limits competition amongst full-time agents to differentiation of their service levels via personal and premises presentation, enhancement of standard information and visual coverage, staffing, promotions and marketing.

The limitation of competition is further compounded by statutory and contractual obligations that eliminate variations in the price of TAB products.

19. In the provision of wagering services there is some but limited competition between full-time TAB agent's premises and other venues, such as hotels, which provide wagering services. The significant distinction is however, that full-time TAB agencies provide solely wagering services, whereas other outlets provide such services as an adjunct to the primary goods or services that they provide.

The Commission noted this limited competition in its reference in the AH determination to NECGs report, stating:

"It is less clear whether or not there exists a high degree of substitution between different means of wagering distribution (for example, clubs, hotels, agencies, telephone) - NECG, at page 13 of its Report provided with the TAB Limited/Sky Channel submission of 23 October 2002, submitted that different distribution means are part substitute part complement for TAB Limited. In this regard, NECG submitted that where the costs of distribution increase in one area {for example, hotels} TAB Limited would be likely to substitute other forms of distribution at least in the medium term. NECG also submitted that, in relation to the downstream supply to consumers, if the product is unavailable through one type of outlet, some customers will acquire it through another type of outlet, but others will simply forego consumption or find another outlet of the same type.

20. Similar to the submission in the NSW TAB application, there is unlikely to be an anti-competitive effect arising from a high degree of commonality between the terms and conditions on which agents provide services to RWWA compared with the position which would exist without authorisation.
21. The Commission found in its determination of the AHA application that:
- a) "The Commission accepts that the current level of overt competition between hotels and clubs for the acquisition of wagering services from TAB limited ... is low", and
 - b) "Overall the Commission does believe the level of competition between hotels in their dealings with TAB Limited ... is currently low"
22. The Commission found in its determination of the TAB Agents' Association of New South Wales application at para 11.20

"While the proposed arrangements may result in a move from one set of standard terms to another they are unlikely to reduce competition between agents on the standard of service provided to the community. To the extent that standard form agreements do limit competition on service standards, such limits are already in place in the form of the current standard form agreement. To the extent that there is as TAB Limited submits, competition between agents in the manner in which they provide wagering services under the current agreement, moving from one set of standard terms to another, is unlikely, in itself, to impact significantly on such competition"

23. In addition at para 1 L21 of the TAB Agents' Association of New South Wales application the Commission notes

"That TAB agents compete with both clubs and hotels and, to a lesser extent, internet and telephone betting services, in the provision of wagering services to the public. This is likely to constrain agents ' ability to reduce service standards. To the extent that such service

standards might be reduced, consumers are free to, and presumably would, choose to avail themselves of the services of other wagering services distributors. The extent to which the proposed arrangements may actually increase service standards is discussed at paragraphs 12.19 - 12.29 of the Commission's determination"

And at para 11.22

"Consequently, the Commission considers the anti-competitive detriment generated by the proposed arrangements, with respect to both price and quality of wagering services offered to consumers, is extremely limited and very likely negligible "

24. As demonstrated above, the distinctions between the position in Western Australia and New South Wales are minimal and by analogy, the Commission should reach a similar determination for this application.

The future with or without

25. The Commission will compare the public benefit and anti-competitive detriment generated by the proposed arrangements in the future if the authorisation is granted with those if the authorisation is not granted. This requires the Commission to make a reasonable forecast about how the relevant markets will react if authorisation is not granted. This forecast is often referred to as the counterfactual.
26. Absent the proposed collective bargaining arrangements, the position likely to occur is that all agents will eventually enter into arrangements with RWWA on similar terms and conditions as found in the ABL agreement.
27. Under the proposed collective bargaining arrangements, the Association and its members are more likely to effectively influence the terms and conditions (including but not limited to remuneration to agents and the dispute resolution mechanism) within contracts between members and RWWA than they would without authorisation, resulting in a number of public benefits.

The Commission has commented in the TAB Agents' Association of New South Wales Authorisation no. A90885 at Para 10.16:

"The Commission considers that the most likely situation if the proposed arrangements are authorised is one where TAB agents, through the Association, will have greater input, or at least seek to have such input, into the terms and conditions of what are essentially standard form contracts between TAB Limited and TAB agents. While contracts between TAB Limited and TAB agents are likely to continue to be essentially standard form contracts if the Association negotiates on behalf of its members, the terms and conditions of these contracts may vary, possibly significantly, as a result of TAB agents negotiating collectively through the Association compared to the current situation where contracts are essentially offered to individual TAB agents on a take it or leave it basis."

And at Para 10.17:

"With respect to dispute resolution mechanisms, again, the Commission considers that the likely situation if the proposed arrangements are authorised is that the Association will be able to provide greater input, and assistance to TAB agents who may be involved in a dispute with TAB Limited."

28. The Association submits that there will be a direct public benefit by the granting of the application in the continuation of a viable alternative method of wagering in a setting that will offer alternatives to the public
29. Agents through their Association will be in a position to negotiate terms for the New Agreement that will provide long-term viability for the Agencies
30. Importantly, Agents through the Association will be in a position to exercise influence on the terms of the New Agreement that would not be otherwise be necessarily achieved as individual Agents.
31. Given the relative size of RWWA within the industry, individual agents may not be sufficiently skilled to ensure a fair and reasonable outcome in the settlement of disputes.
32. By analogy, given there is no real distinction between the function of Agents in New South Wales and Western Australia, the Commission should support the submission for application for collective negotiations.

Competition assessment

33. The Commission has noted in the AHA authorisation that the anti-competitive effect of collective bargaining arrangements constituted by lost efficiencies is likely to be limited where the following features are present
 - a) the current levels of competition are low (due, for instance, to the structural features of the market);
 - b) there is voluntary participation in the arrangements;
 - c) there are restrictions on the coverage, composition and representation of bargaining groups: and
 - d) there is no boycott activity.
34. In the present case, given the peculiar factors that characterise both the relationship between Association members and RWWA and Association members inter se, it is difficult to see how any anti-competitive effects would arise.
35. Given the nature of the agency appointment and the terms of the deed or agreement pursuant to which they are appointed, there is extremely limited scope, if any, for the agents to compete with one another on the basis of price or any aspect of the service offered given the extent to which RWWA controls these.
36. Further, the amount of commission that RWWA may deduct from wagering revenue is fixed by legislation.
37. Membership to the Association is voluntary. All privately owned agencies are currently members of the Association. Furthermore, no member would be required to enter into the New Agreement negotiated by the Association on behalf of its members. Members would be free to deal with RWWA directly if they so choose.
38. If RWWA adopts a uniform approach to all of its agency arrangements, then it is likely that should any members wish to cease membership to the Association and have individual discussions or negotiations with RWWA, then it is likely they too will benefit from the

collective negotiations, which occur between the Association on behalf of its members and RWWA.

39. The Association does not seek authorisation for any collective boycott activity.
40. Given the restrictions on the operation of agencies, agents do not have any common interest in the provision of other services that may be a concern for collective activity extending beyond the scope of the conduct authorised.
41. In the Commission's conclusion on the anti-competitive effect in the TAB Agents Association of New South Wales Authorisation no. A9088 5, the Commission noted at Para 11.23:

"For the reasons outlined above, the Commission considers the anti-competitive detriment generated by the proposed arrangements to be negligible. In particular, the Commission does not consider that the proposed arrangements will affect the price of wagering services provided to the public given that the prices are already regulated by government legislation. Further, the Commission does not consider that the proposed arrangements will reduce competition between TAB agents on service levels to consumers as the proposed arrangements do not restrict TAB agents' ability to compete on service levels to any greater extent than the current standard form agreement which TAB Limited offers to its agents."

By analogy the Commission should find the same in this case.

Public benefits

42. The Association sees the following principal public benefits arising from the proposed collective bargaining arrangements:
 - (i) efficiency gains through increased productivity gains and an increase in quality of service:
 - (ii) maintenance of a sound working relationship between the Principal and its Agents
 - (iii) introduction of a comprehensive dispute resolution process providing a vehicle to deal with issues between the parties in an efficient manner without disruption to the services to the public ;
 - (iv) lower transaction costs as RWWA encourages agents or prospective agents to obtain independent legal and financial advice prior to entering into an agreement:
 - (v) benefits to Association member and flow on benefits to the community.
 - (vi) the continued viability of operating full-time TAB agencies. Which are small businesses that provide an alternative service to the public and without which the level of competition would diminish.

In assessing the TAB Agents' Association of New South Wales Authorisation no.A90885 at Para 1 2.6 the Commission stated

"The Commission recognises that there is a combination of factors which result in TAB Agents having very little bargaining power compared with TAB limited. For example. TAB limited is the monopoly supplier of the service which TAB Agents acquire that is, the right to supply wagering services to consumers. Consequently, TAB agents are compelled to either accept the terms and conditions of supply offered by TAB Limited or cease to operate as suppliers of wagering services to the public. In contrast, TAB Limited has other distribution

channels through which it sells the right to supply wagering services to the public, specifically PubTAB's as well as its own Internet and telephone betting services.

The commission notes that only approximately 383 of all wagering services to the public are supplied through TAB agents and that this figure is trending downwards. TAB agents' weak bargaining position relative to that of TAB Limited is exacerbated by the fact that wagering services to consumers is the only product TAB agent's supply. Consequently, failure to reach an agreement on satisfactory terms with TAB Limited would mean that not only would agents cease to supply wagering services to the public, they would cease to operate as businesses altogether."

And at 12.7 the Commission stated

"In addition TAB Limited is a large, well-resourced business with significant commercial and negotiating expertise in contrast TAB agents are, in general, small businesses without the resources or expertise to engage in effective negotiation with businesses with the size and negotiating experience of TAB Limited."

And at 12.14 the Commission stated

"It appears that the weight of public opinion, and in particular, the conviction of a sides of Parliament to the extent one can draw from this inference from responses to the Dawson review and from the Senate Committee report, is that provided that the degree of bargaining power conferred is not excessive. In certain circumstances enabling small businesses to negotiate more effectively with larger businesses through collective negotiation may, in itself constitute a public benefit."

At Para 12.18 the Commission stated:

"The Commission also accept that the proposed collective bargaining arrangements would provide a greater opportunity for TAB Agents, through their Association, to achieve some competitive parity in negotiations with TAB Limited and realise, what they would consider to be, more appropriate commercial outcomes, through for instance, having greater input into contracts which, in light of the above discussion the Commission considers, does generate a public benefit."

By analogy the Commission should find the same in this case.

The dispute resolution process

43. As noted earlier, the Association is a registered Association of employers whose membership consists of individuals who run agencies as agents of RWWA. In achieving its objectives as stated in its Constitution referred to earlier, the Association does have the need to concern itself with industrial issues arising between RWWA and its agents.
44. In the TAB Agents' Association of New South Wales Authorisation no.A90885 at Para 12.54 the Commission found:

"However, the Commission does consider having the Association participate in the process of resolving disputes on behalf of its members is likely, for reasons analogous to those discussed

above in relation to the Commission's assessment of the public benefits of improving bargaining power of TAB agents, to result in greater competitive parity in the process for resolving disputes between TAB Agents and TAB Limited and greater input by TAB agents into both, the development of any alternative dispute resolution process, and in to the terms and conditions on which any actual dispute between TAB Limited and TAB agents is resolved. The Commission considers that this constitutes a public benefit."

By analogy the Commission should find the same in this case.

Benefits to Association members and flow on to the community

45. As is evidenced in the excerpt of the Association's Constitution noted above, the Association's principal role for existing is to deal with RWWA on behalf of its members. If collective negotiations are not authorised, the effect may be that the Association's continued need for existence would be in jeopardy. Membership numbers could decline resulting in increased membership fees payable by those who remain members. In such case, many of the benefits provided by the Association to members (discussed below) could be lost resulting in flow on effects to the general community itself.
46. If the Association ceases to exist, various benefits the Association has provided to its members may cease. Examples of these benefits include:
 - (i) negotiating group insurance discounts
 - (ii) register for casual employees
 - (iii) representation on remuneration reviews
 - (iv) contract interpretation and advice
 - (v) allocated committee persons for liaison purposes
 - (vi) obtaining discounts for agents on television rentals for their agencies
47. If these benefits are lost an agent's costs will increase as it would be more expensive for agents to obtain these services individually.
48. Any increase in an agent's costs from the above reasons, or if RWWA alters downwards commission rates payable to agents or alters operational instructions to agencies such that an agency's cost structure is affected negatively, the only option an agent has to counter such increased operational costs is to cut the only cost they can conceivably cut. Namely labour costs. Agencies provide a public benefit in that they provide employment opportunities for the local community. Agents will be forced to cut staff, the resulting effect being that agents will themselves be forced to work longer hours.

In assessing the TAB Agents' Association of New South Wales authorisation No. A90885 the Commission stated at Para 12.69

"For the reasons outlined above, the Commission considers that the proposed arrangements will result in some public benefit. In particular, the Commission considers that in these circumstances, providing TAB Agents with some competitive parity in negotiations with TAB Limited and the opportunity for greater input into contract terms and conditions will result in some public benefit

By analogy the Commission should find the same in this case. The Association further argues that there is a significant public benefit in maintaining a viable alternative wagering services

for a range of clients including those who do not wish to use PubTAB's or whose participation is either small (in dollar terms! or on special occasions.

Conclusion

49. The Association submits that in the present case it has demonstrated that:

- a) there is currently a barrier to the Association's input into contractual terms and conditions offered by RWWA to agents;
- b) collective bargaining arrangements would remove some of those barriers;
- c) the resulting input into contractual terms and conditions could lead to increased efficiencies and public benefits. Accordingly, there are significant public benefits which flow from the proposed collective bargaining arrangements;
- d) these public benefits would be as a result of.
 - (i) efficiency gains through increased productivity gains and an increase in quality of service;
 - (ii) improved working relationship between agents and RWWA;
 - (iii) the introduction of an effective dispute resolution mechanism;
 - (iv) lower transaction costs;
 - (v) benefits to Association members and the community;
 - (vi) the continued viability of small business.
- e) there is likely to be minimal if any, anti-competitive detriment. There is minimal, if any, competition between agents, and their respective agencies, for the provision of wagering services to customers. Whilst there is scope for differentiation between services offered by Agents there is no price competition between agents.

In respect of competition between agents for appointment as agents, there is no anti-competitive effect arising from collective negotiations compared to the position without authorisation; and

- f) the public benefits associated with the proposed arrangements are likely to outweigh any anti-competitive detriment associated with the arrangements.

Tim Barnes

President

W.A.T.A.B. Agents' Association Incorporated

14 July 2014