
From: Jonathan Chew
Sent: Monday, 17 February 2014 10:24 AM
To: Ransom, Hannah
Cc: Hatfield, David
Subject: Further Clubs Australia submission

Dear Hannah

Further to the ATM Industry Reference Group's submission of 16 January 2014, and the issues raised at the video conference of 7 February 2014, Clubs Australia would like to make a final submission to the ACCC.

Clubs Australia does not accept the claim by the ATM Industry Reference Group (AIRG) that should our application for collective bargaining be granted by the ACCC, that a significant distortion in the market would result. We note that there is little substantive evidence presented by the AIRG, and most of its submission is based on assertions without basis.

We note that while the AIRG speaks of more than 30 companies operating in the Australian ATM market, about half of which services licensed clubs, the AIRG itself has only three members: Banktech, CashCard and DC Payments, which by themselves represent 95 per cent of the ATM market for clubs. Clubs Australia also notes that based on the interim authorisation granted by the ACCC, other ATM providers have already expressed interest and a willingness to enter into discussions to bargain with Clubs Australia.

Below follow responses to specific assertions by AIRG and interested parties:

"Clubs are a significant purchaser of ATM goods and services."/ "Should the application be granted, Australia's ATM market would be significantly distorted." – AIRG

There are 29,500 ATMs located across Australia. Using the AIRG's own figures, approximately 13% of all ATMs are located in licensed clubs across Australia. Clubs make up a segment of a market that includes numerous other purchasers of non-bank ATM goods and services, such as: pubs, casinos, cafes, restaurants, nightclubs, shopping centres, newsagents, service stations, supermarkets and convenience stores, all use "independent" ATM services. In the event that a Clubs Australia buying group is established, it would be voluntary for clubs to take part in it, and members will continue to compete with thousands of other businesses for the acquisition of relevant goods and services. This nullifies the risk of anti-competitive detriment.

"If approved is confirmed, the collective bargaining authorisation would see the development of a virtual monopoly buying group because Clubs Australia is seeking to replace up to 6,500 clubs and become the sole negotiator." - AIRG

Clubs Australia represents 6,500 member clubs across Australia, however only a small proportion of our members would ever be interested in joining a buying group for ATM services. This is because:

- Only approximately 50% of our member clubs use ATM services. Included in our 6,500 membership base are a large number of "limited" club licences that exist in South Australia, Western Australia and Queensland. A majority of these premises are not fully-fledged venues, but rather operate with restricted trading hours (such as weekends) and are staffed by volunteers. Accordingly, they do not have the capacity to host ATM services.
- Legislative constraints in Victoria and Tasmania prevent clubs with gaming facilities from installing ATMs on their premises.

- The industry is not a homogeneous consumer group with uniform ATM requirements. For example, some state governments apply daily customer withdrawal limits that do not exist elsewhere in Australia. A 2011 study carried out by KPMG characterised the industry as “highly fragmented” and “independently managed which leads to high levels of diversity within the sector.”

It is extremely unlikely that large venues with more than 100,000 members that generate revenues in excess of \$60 million would seek to join a buying group that has been developed by Clubs Australia to support smaller venues that are often run by part time staff or volunteers, producing revenues of less than \$200,000.

It is therefore impossible to establish an ATM buying group that consists of 6,500 member clubs.

“Clubs Australia has publicly stated that it has strong ties to its membership base, therefore if an application is approved, thousands of clubs are likely to join a bargaining group.” - AIRG

The statement that emphasises our ties to our membership base is unremarkable; it is natural for an industry association to enjoy a healthy relationship with its members.

The suggestion that clubs would automatically join a buying group simply because Clubs Australia has created one is erroneous.

Local clubs are independently run and each venue is managed by its own board of directors that are responsible for making decisions for each venue. They would be free to choose for themselves what is in the best interests of the club.

A buying group established by Clubs Australia would appeal to small venues that are not in possession of the necessary expertise to effectively negotiate contracts with service providers.

“Substantial differences exist between the profitability of different market segments... From an ATM deployment perspective, CA members would best be considered to belong to the Gaming and Wagering Market...of this market (or market segment), CA members comprise a substantial proportion of purchasers.” – Interested Party

Clubs Australia rejects this characterisation.

Of the 6,500 clubs the Association represents, 4,458 do not have electronic gaming machines.

Furthermore, clubs in WA are prohibited from operating gaming machines, and premises with gaming in Victoria and Tasmania cannot install ATMs on club premises.

For those clubs with gaming machines that can legally provide ATMs services, legislation in each state and territory prevents clubs from placing ATMs in gaming areas; machines must be located elsewhere on the premises.

A more accurate description is that a minority of Clubs Australia members in theory belong to the gaming and wagering ATM market, a segment that also includes many hotels, casinos and racecourses.

“(ATM negotiations) are an integral part of the roles performed by executives employed by individual clubs.” - AIRG

The club industry is managed by over 54,000 volunteer directors. The general managers employed by small and medium sized clubs are usually time poor. Often the same person responsible for overseeing accounts with suppliers also works at the bar, answers the telephone and completes administrative tasks. Very few clubs (if any) employ “executives” that specialise in contract negotiations. Moreover, as each ATM contract

lasts between three and seven years, often with automatic rollovers, in cannot be said that ATM negotiations are an integral part of an executive's job description.

"The AIRG... queries the robustness of the claim that club members would benefit if there were to be savings." - AIRG

Licensed and registered clubs are not-for-profit organisations that share a members led business model.

Clubs exist to serve a core purpose (such as the promotion of sport, or veterans' welfare), and to provide an affordable range of goods, services and infrastructure for members and the wider community.

Unlike other businesses, clubs cannot distribute "profits" to shareholders or owners.

A club must return excess revenue to members and the community in the form of reinvestment in club facilities to benefit members, and donations made to charities, sports teams and community groups. It is on this basis that clubs hold their gaming and liquor licences.

Constitutionally, clubs exist for their members, and a core industry function is to provide low cost goods and services; it is this level of affordability that makes clubs attractive to club members.

The suggestion that members would not benefit from savings achieved through contracting efficiencies represents an unsophisticated understanding of the club operating model and industry.

Transactional efficiencies are likely to be significant given that the AIRG admits that "contract/negotiations between ATM companies and clubs take place on a daily basis."

Moreover, the potential for public benefit to result is perhaps greater than for any other industry.

Each year, clubs make a unique \$2.3 billion social contribution to Australian society in the form of: cash and in-kind donations, the subsidisation of a broad range of community facilities, and volunteer services.

This view is in direct contrast to the AIRG's claim that "the public benefits arising from the authorisation would be minimal at the very least."

"(Collective bargaining by Club Australia) would have a marked negative impact on revenue generated by ATM companies" – AIRG / "The terms of supply for ATMs are... by and large, uncontroversial." - Interested Party

As stated in our interim authorisation request dated 6 August 2013, the purpose of a collective bargaining arrangement for ATM services is to restore balance to the negotiating process by removing clauses used in standard ATM contracts that are in our view manifestly unreasonable.

Previously, when dealing with individual clubs, ATM providers have proved unwilling to remove anti-competitive and unbalanced terms and conditions.

Examples include six year automatic rollover clauses with lengthy, 3 month notification periods for merchants, where conversely, suppliers can terminate a contract in a matter of days. Another example is the use of exclusivity clauses that limit clubs to dealing with the one supplier once a contract is signed. The automatic roll-over clauses mean that a club cannot switch suppliers for a substantial period (in some cases 6 years) unless the venue is astute enough uncover the notification period in the pages of terms and conditions that comprise a standard ATM contract.

Clubs Australia is not seeking to reduce the margins of ATM companies. Many clubs already have the ability to negotiate the revenue split that derives from the fees applied to ATM users and this aspect of the contractual arrangements has never been of concern. In any case, it would be impractical for Clubs Australia

to arrive at a generic industry metric given that venues are of different sizes with different minimum withdrawal requirements.

Clubs Australia rejects the characterization made at the 7 February 2014 conference by the AIRG that the non-revenue aspects of its standard contracts are uncontroversial. In fact, it is these aspects of the contracts that have initiated our concerns to seek collective bargaining.

“It must be concluded that no additional public benefit in the form of Input into Contracts would be enjoyed by granting the Proposed Conduct as it relates to the supply of ATMs, as such services are not provided by monopoly suppliers or large global companies.” – Interested Party / “There is currently intense competition in Australia’s ATM market.” - AIRG

Despite the existence of 30 ATM Deployers, the AIRG’s 3 members claim to collectively represent in excess of 95% of all independently operated ATMs in Australia. Almost all of the ATMs located in clubs are independent (i.e non-bank) ATMs.

Contrary to the above statement, AIRG members purport to have links to global companies on their respective websites:

- Customers ATM Pty: *“Now part of DC Payments global ATM provider.”*
- First Data International (Cashcard): *“Cashcard is owned by First Data Corp, a global leader in electronic payments and e-commerce solutions.”*
- The Banktech Group Pty Ltd: *“The BANKTECH Group has become the leading independent ATM deployer in Australia and we are now growing our presence in Asia with regional offices located in Bangalore, Hong Kong and Shanghai... “Today, (a wholly owned subsidiary) drives more than 10,000 ATM and POS terminals in Australia, New Zealand, Hong Kong, United Arab Emirates and India and processes US\$5+ billion in payments annually.”*

In 2009, the Reserve Bank of Australia initiated a reform of the ATM sector because it found there were problems related to competition and efficiency. Specifically, the fees and charges that applied to card holder customers were not applied in a transparent manner. The issues relating to cardholder/ ATM deployer relationships have been resolved; however Clubs Australia contends that comparable issues between merchants and ATM deployer relationships exist. Currently, most clubs must accept the terms and conditions of contracts as presented to them.

The assertion that a buying group would be detrimental to the interests of smaller ATM deployers is undermined by approaches made by non-AIRG deployers seeking participation in future buying groups established by Clubs Australia.

“Clubs have regular, sustained and significant income levels. Clubs also have vast assets... Given the income and asset base of clubs, the AIRG contents that if the authorisation is not granted, the impact on clubs will be negligible.” - AIRG

Clubs are not-for-profit, community-owned entities, and the above statement is grossly misleading because licensed clubs are highly diverse in respect of their size and viability.

A handful of the largest clubs generate significant revenues and enjoy considerable asset bases. The smallest venues operate with less than 50 members and produce revenues of less than \$20,000 per year.

In NSW where the club industry is strongest, KPMG found that 64 per cent of clubs are showing signs of financial distress. KPMG concluded: “a number of licensed clubs face uncertainty in respect of their long-term financial viability.”

For at-risk venues, the consequences of signing a detrimental contractual arrangement can include venue closure. When club venues close the community loses important infrastructure such as bowling greens and community meeting facilities. Once lost, these assets are never replaced.

Summary

For the reasons outlined above, Clubs Australia continues to believe that an authorisation is in the public interest. The central premise of the AIRG's argument – that a buying group of 6500 clubs will cause ATM deployers to collapse- has been shown to be deeply flawed.

Collective bargaining is an effective way in which small clubs can redress the imbalance in bargaining power by having greater input into contracts. Transactional costs for participating venues will be lower given that a single negotiating process is in place. Unfair or one-sided terms and conditions will be eliminated from contracts. The resultant savings will provide a benefit to club members and the wider community due to the not-for-profit, community-centric operating model of licensed clubs.

Because the collective bargaining arrangement will constitute only a percentage of Clubs Australia members – an insignificant proportion of the overall market – the aggregation of buying power will not result in anti-competitive detriment. Participation in the buying group is voluntary: many clubs are expected to continue with their own negotiations outside of this process. Similarly, ATM deployers may choose not to participate in collective negotiations.

Finally, Clubs Australia notes other features that mitigate the risk of anti-competitive detriment, which include the absence of an authorisation for boycott activity and restrictions on the coverage and composition of the bargaining group.

Yours sincerely

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