

# Form FC

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsection 91C (1)*

## **APPLICATION FOR REVOCATION OF A NON-MERGER AUTHORISATION AND SUBSTITUTION OF A NEW AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91C (1) of the *Competition and Consumer Act 2010* for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### **1. Applicant**

- (a) Name of applicant:  
*(Refer to direction 2)*

A91425

**Lottery Agents Association of Victoria Inc ABN 24 820 132 374 trading  
as the Lottery Retailers Association**

- (b) Description of business carried on by applicant:  
*(Refer to direction 3)*

**Please see attached submissions**

.....

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

**Wheelers Hill Business Centre, Unit G06 202 Jells Road, Wheelers Hill  
VIC 3150**

### **2. Revocation of authorisation**

- (a) Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:

**Please see attached submissions**

.....

- (b) Provide details of the basis upon which revocation is sought:

**Please see attached submissions**

.....

**3. Substitution of authorisation**

- (a) Provide a description of the contract, arrangement, understanding or conduct whether proposed or actual, for which substitution of authorisation is sought:  
*(Refer to direction 4)*

**Please see attached submissions**

.....

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

**Please see attached submissions**

.....

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

**Ten (10) years. Please see attached submissions**

.....

**4. Parties to the contract, arrangement or understanding (whether proposed or actual), or relevant conduct, for which substitution of authorisation is sought**

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct:

**Please see attached submissions**

.....

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:  
*(Refer to direction 5)*

**Please see attached submissions**

.....

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

**Please see attached submissions**

.....

**5. Public benefit claims**

- (a) Arguments in support of application for substitution of authorisation:

**Please see attached submissions**

.....  
*(See Direction 6 of this Form)*

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

**Please see attached submissions**

.....

**6. Market definition**

Provide a description of the market(s) in which the goods or services described at 3 (b) 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 see attached submissions**

.....  
*(See Direction 7 of this Form)*

**7. Public detriments**

- (a) Detriments to the public resulting or likely to result from the substitute authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets:

**Please see attached submissions**

.....  
*(See Direction 8 of this Form)*

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

**Please see attached submissions**

.....

**8. Contracts, arrangements or understandings in similar terms**

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

- (a) Is this application to be so expressed?

**Please see attached submissions**

.....

- (b) If so, the following information is to be furnished:
- (i) description of any variations between the contract, arrangement or understanding for which substitute authorisation has been sought and those contracts, arrangements or understandings that are stated to be in similar terms:

**Please see attached submissions**

.....  
*(See Direction 9 of this Form)*

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

**Please see attached submissions**

.....  
*(See Direction 5 of this Form)*

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

**Please see attached submissions**

.....

**9. 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?

**N/A**.....  
 .....

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

**N/A**.....  
 .....

**10. Further information**

- (a) Name, postal address and telephone contact details of the person authorised by the parties seeking revocation of authorisation and substitution of a replacement authorisation to provide additional information in relation to this application:

Sharyn Cole, President, 13 Essex Road Mount Waverley VIC 3149. Tel: (03) 9809 5744 Fax: (03) 9809 5677 Email: [info@laav.org.au](mailto:info@laav.org.au)

Dated.....8 May 2014 .....

Signed by/on behalf of the applicant

*Sharyn Cole*

.....  
(Signature)

**Sharyn Cole**.....  
(Full Name)

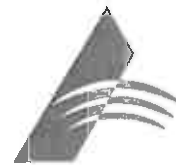
**Lottery Agents Association of Victoria Inc.**.....  
(Organisation)

**President**.....  
(Position in Organisation)

## DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which substitute authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which substitute authorisation is sought.
  - (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and
  - (c) If substitute authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.
5. Where substitute authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
6. Provide details of those public benefits claimed to result or to be likely to result from the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, including quantification of those benefits where possible.
7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for substitute authorisation.
8. Provide details of the detriments to the public, including those resulting from the lessening of competition, which may result from the contract, arrangement or understanding (whether proposed or actual). Provide quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

Our Ref: C2014/5  
Contact Officer: Tanya Hobbs  
Contact Phone: 02 6 243 1029



**Australian  
Competition &  
Consumer  
Commission**

5 May 2014

Ms Ann-Maree Ventura  
Principal Adviser – Legal and Taxation  
Avenue Solutions Legal and Business Pty Ltd

GPO Box 3131  
Canberra ACT 2601  
23 Marcus Clarke Street  
Canberra ACT 2601  
tel: (02) 6243 1111  
fax: (02) 6243 1199  
www.accc.gov.au

By email: [info@avenuesolutions.com.au](mailto:info@avenuesolutions.com.au)

Dear Ms Ventura

### **Fee waiver request**

I refer to your letter of 30 April 2014 to the Australian Competition and Consumer Commission (ACCC) in respect of the proposed application for re-authorisation by Lottery Agents Association of Victoria Inc (LAAV). In your letter you have requested that the ACCC grant a fee waiver in respect of the proposed arrangements.

In particular, you have requested that the fee to be paid in relation to the application for authorisation to be lodged by applicant be waived in whole.

In support of your request, among other things, you submitted that the fee would impose an unduly onerous burden on LAAV given that it is a small not-for profit organisation under considerable financial pressure due to various changes in its operating environment.

Having regard to the above, as a person authorised to assess fee waiver requests for and on behalf of the ACCC, I wish to advise that the application fee to be paid by LAAV has been waived in whole. No application fee will apply with respect to the application for authorisation to be lodged by LAAV.

This decision will remain in force for a period of three months. The three month period will expire on 5 August 2014.

A copy of this letter should accompany the application for authorisation to be lodged by LAAV. The cover letter to the application should mention that a letter from the ACCC regarding a fee waiver is enclosed with the application. The application together with this letter will be placed on the public register at that time.

If the application for authorisation is lodged by LAAV after 5 August 2014, a full application fee of \$2500 will apply, unless a subsequent request for a fee waiver is made and ultimately approved by the ACCC.

Should you have any queries in relation to this matter, please do not hesitate to contact Tanya Hobbs on 02 6243 1029.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Richard Chadwick', written over a horizontal line.

Dr Richard Chadwick  
General Manager  
Adjudication Branch

Avenue Solutions Legal and Business Pty Ltd ABN 99 147 943 977  
Trading as Avenue Solutions

**Contact:**

Suite 15  
456 St Kilda Road  
MELBOURNE VIC 3004

T: (03) 9092 9891  
F: (03) 9092 9890  
E: [info@avenuesolutions.com.au](mailto:info@avenuesolutions.com.au)

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

Our Ref: AM: 14035

Your Ref:

8 May 2014

Dear Dr Chadwick

**RE: Lottery Agents Association of Victoria Inc ABN 24 820 132 374 trading as Lottery Retailers Association - Authorisation A91126  
Application for revocation of non-merger authorisation and substitution of a new authorisation**

We act for the Lottery Agents Association of Victoria Inc ABN 24 820 132 374 trading as the Lottery Retailers Association (the **Applicant**).

**1 Background**

We refer to your letter dated 25 October 2013 in which you advise on behalf of the Australian Competition and Consumer Commission (ACCC) that the authorisation granted to the Applicant on 3 June 2009 (Authorisation A91126) in respect of negotiation of the terms and conditions of retailer agreements and arrangements with Tattersall's Sweeps Pty Ltd and Intralot Australia Pty Ltd is due to expire on 25 June 2014 (**Letter**).

Accordingly, we advise that as the Applicant considers that there is an ongoing need for authorisation after this date, attached is an application for authorisation under section 91C(1) of the *Competition and Consumer Act 2010 (Cth)* (the **Act**).

**2 The Application**

The Applicant hereby **applies** for a revocation of the existing authorisation and substitution with a new authorisation (the **Application**) and in support, attaches the following documents:

- Completed Application Form FC;
- Submissions in Support of the Application; and
- Copy of letter dated 5 May 2014 received from the ACCC granting a fee waiver.

**3 Interim Authorisation**

*Liability limited by a scheme approved under Professional Standards Legislation.  
Legal practitioners employed by Avenue Solutions Legal and Business Pty Ltd ABN 99 147 943 977 are members of the scheme.*



We note in the Letter that the revocation and substitution process can take a number of months to complete and that in practice, there is a general expectation that parties will lodge an application for revocation and substitution at least six months before their current authorisation expires.

Given that the Applicant has been unable to furnish the ACCC with this information until now, we ask that the ACCC grant the Applicant an Interim Authorisation allowing the Applicant to engage in conduct before the ACCC has been able to fully assess whether the conduct satisfies the authorisation test.

In this regard, we advise that due to circumstances beyond the Applicant's control including the need to sever their management arrangements with Forte Management (being the company previously responsible for management of the Lottery Agents Associations activities), the Applicant was unable to furnish the ACCC with a completed Application until now. The management arrangement with Forte Management was in place for 18 years, and it took considerable time to transition operations back to the Applicant. In the transition, there were some delays in the development of the Applicant's in-house administrative functions and some confusion over what activities had been competed, including the preparation of this Application.

Further the Applicant requests that the ACCC consider the following:

- It is in the interests of the welfare of Australians that the Applicant continue to operate under an Interim Authorisation, as set out in the object of the Act;
- There will be an adverse effect on the market if an Interim Authorisation was not granted; and
- It was not possible for the Applicant to lodge the Application any sooner due to the transition from Forte Management as mentioned above. The Applicant's committee was of the belief that these matters had been dealt with and it wasn't until the Applicant took effective control of its own administrative functions that this oversight was discovered.

Should you have any further queries, please do not hesitate to contact us.

Yours faithfully



**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](mailto:annmaree@avenuesolutions.com.au)  
**Avenue Solutions**

## SUBMISSIONS IN SUPPORT OF APPLICATION FOR AUTHORISATION

In accordance with the attached Form FC - Application for Revocation of a Non-Merger Authorisation and Substitution of a New Authorisation, the Lottery Agents Association of Victoria Inc ABN 24 820 132 374 trading as the Lottery Retailers Association (the **Applicant**) seeks to apply to the Australian Competition and Consumer Commission (ACCC) for a revocation of the existing authorisation and substitution with a new authorisation to conduct negotiations on behalf of its members with Tattersall's Sweeps Pty Ltd (**Tatts**) and Intralot Australia Pty Ltd (**Intralot**).

Authorisation is sought for a period of 10 years.

### 1. THE APPLICANT

#### 1.1 Name of Applicant

The Applicant is an organisation incorporated under the *Associations Incorporation Reform Act 2012* (Vic). The Applicant was first incorporated on 15 May 1984.

The business name "Lottery Retailers Association" was registered with ASIC on 24 March 2014. The Lottery Agents Association of Victoria Inc is the business name holder.

#### 1.2 Description of business carried on by the Applicant

The Applicant was first incorporated on 15 May 1984 and in accordance with its Constitution its primary objects and purposes are, among other things, to:

- Maintain an association of Lotteries Agents throughout Victoria and the Northern Territory for the benefit and advancement of the lottery industry;
- Service and represent the relative needs of Lotteries Agents in Victoria and the Northern Territory;
- Discuss and consider matters affecting the lottery sector;
- Link closely with the lottery operators, Government and regulatory authorities to:
  - Advance public knowledge and understanding of the lottery industry, and influence the practices of public authorities regulating the lottery industry and the attitude of governments towards the lottery industry; and
  - Consider and respond to legislative or other measures affecting the lottery industry.
- Promote the Applicant and promote lottery products;
- Advance the interests and membership of the Applicant on a national scale – establishing new branches (interstate offices or state chapters) or via amalgamation or affiliation with existing associations;
- Co-operate or affiliate with any body or accept affiliation of any body as might be deemed necessary to meet the Association's objects and to do all things incidental to their attainment;
- The establishment and support, or aiding in the establishment or support, of any other association formed for any of the basic objects of the Applicant; and
- Advance education in relation to lotteries franchising, retailing and the industry.

An elected Committee of eight lottery franchisee retailers govern the Applicant.

The Applicant currently has approximately 600 members. The makeup of that membership is varied with the approximate percentages of business classifications being as follows:

- Specialist lottery retailers i.e. kiosks in shopping centres 12%
- Newsagents 45%
- Post Office/News and Lottery 7%
- Sub-news outlets 20%
- Tobacconists/Supermarkets/Pharmacies/Country General stores and other retail types 16%

## **2 REVOCATION OF AUTHORISATION**

Authorisation was granted to the Applicant on 3 June 2009 (Authorisation A91126) in respect of the negotiation of the terms and conditions of retailer agreements and arrangements with Tatts and Intralot.

The Applicant's current authorisation is due to expire on 25 June 2014.

The Applicant is aware that the ACCC will not have the power to grant revocation and substitution of this application at any time after the expiry of A91126. The Applicant therefore also seeks interim authorisation to represent its members on a collective basis when dealing with Tatts and Intralot for the period of time, if any, between final determination of this Application and expiry of authorisation under A91126.

The Applicant seeks revocation and substitution of authorisation so that it may continue to act as a collective bargaining body for its members.

## **3 SUBSTITUTION OF AUTHORISATION**

The Applicant contends that the proposed authorisation will result or be likely to result in a benefit to the public, and that benefit will outweigh any detriment to the public arising from any lessening of competition that would result, or be likely to result, as a consequence of negotiations under the proposed authorisation.

### **3.1 Basis on which authorisation is sought**

Authorisation will be sought to enable the Applicant to continue to conduct negotiations in relation to the terms and conditions of retailer agreements and arrangements with Tatts, Intralot and any other lottery operators that are licenced by the Victorian Government, including commissions paid to retailers, handling fees, retailer application fees, service charges, freight charges, point of sale equipment hire costs, on-line sales, retail image and subsidies, support service levels and training, sales incentive schemes, marketing and promotion, product sales restrictions in the Tatts dedicated sale area, processes for the approval of incoming retailers, convenience and other distribution channels, retail insurances and alterations to retailer procedures manuals.

In regard to product sales restrictions the Applicant would like to be in a position to continue to negotiate with Tatts for the inclusion of competitor products i.e. Intralot in the area of the shop known as the "Tatts Dedicated Area". This area is specified in the Tattersall's Sweeps Franchise Agreement (TSFA) between each Franchisee and Tatts and Tatts Procedures Manual as the exclusive Tatts product sales area. From the Applicant's point of view this restriction inhibits the retailer's ability to maximise lottery sales from that part of the lottery outlet.

In regard to the Tatts retail image, the Applicant believes that the contractual requirements and costs associated with completing a shop-fit are onerous and highly expensive. The Applicant would propose to continue to seek low cost alternatives to the Tatts approved shop-fitters and negotiate with Tatts on the

minimum requirements for shop-fits to better reflect the income derived from the sale of lottery products across all performance categories of outlets.

In regard to the approval of incoming retailers, the Applicant notes that Tatts applies detailed criteria to the selection of new retailers. The Applicant believes that the process for approving the incoming retailers can still be improved to the benefit of both the business vendor and purchaser.

In regard to training, the Applicant notes that Tatts and Intralot do not offer any formalised training beyond the initial induction training offered to new franchisees. The Applicant would propose to continue to negotiate with Tatts and Intralot on additional training to further up-skill retailers in selling techniques, staff training, customer engagement, financial management and other key business management functions.

In regard to mandatory retail insurances it is a requirement of TLFA that its retailers hold current insurance policies covering risks associated with selling lottery products. The Applicant believes there is still some duplication with cover that is taken under normal business insurance policies. The Applicant would propose to continue negotiating a cost benefit to members while retaining the level of risk protection Tatts requires.

Tatts conducts on-line lottery sales in direct competition to the 'bricks and mortar' retail network and reported sales estimates represent 8.2% of lottery sales and shows significant year on year growth. The retail network is currently precluded by Tatts from participating in and benefiting from on-line sales. The Applicant proposes to continue to negotiate with Tatts on initiatives to enable the retail network to support and participate in on-line sales growth and financially benefit from their participation.

The Applicant also seeks authorisation to negotiate in relation to matters currently not included in retailer agreements and contracts and matters that are currently unforeseen.

### 3.2 Other relevant authorisations

The ACCC will be aware that as well as previous authorisations granted to the Applicant, similar bodies representing lottery agents/retailers in a number of other Australian states and territories have also been granted authorisation to collectively bargain with lottery licensees.

#### a) *Queensland*

In Queensland the ACCC granted authorisation, under A91397, for the Lottery Agents Queensland (LAQ) to negotiate on behalf of itself, its current members and any future members in relation to the terms and conditions of agency agreements and arrangements with Tatts Group (including Golden Casket). Authorisation was granted for 10 years until 8 May 2024.

The ACCC also granted authorisation to Queensland Newsagents Federation and its members (QNF), under A91353, to collectively bargain over certain terms and conditions of agency agreements with Tatts Group. However, the ACCC excluded collective bargaining over some types of terms and conditions from the scope of the authorisation. Authorisation was granted for 5 years until 2 August 2018.

#### b) *Tasmania*

In Tasmania the ACCC granted authorisation, under A91309, to the Lottery Agents' Association of Tasmania and its current and future members to collectively bargain with Tatts Group and Intralot until 17 August 2017. Authorisation was granted for 5 years.

#### c) *New South Wales and ACT*

On 6 October 2011, the ACCC granted authorisation to the Newsagents Association of NSW and ACT Ltd (NANA) to collectively bargain on behalf of its members, in relation to the terms and conditions of agency agreements with NSW Lotteries. Authorisation was granted for five years.

In its final determination under A91269 the ACCC stated:

*"The Commission considers that the collective bargaining arrangements are likely to result in public benefits by reducing transaction costs associated with negotiating agency distribution agreements. The arrangements are also likely to provide NANA members with a greater opportunity to have effective input into the terms and conditions of their distribution contracts. This improved input provides a mechanism through which NANA members may be able to negotiate more efficient outcomes compared to a situation where they negotiate individually and/or sign standard form contracts.*

*As a result, NANA members and NSW Lotteries may achieve greater efficiencies in their business, for example, by addressing common contractual problems in a more streamlined and effective manner. Further, collective negotiations have the potential to reduce information asymmetries that exist between NANA members and NSW Lotteries, which also enhances the potential for efficient outcomes to be achieved.*

*The Commission considers that there is likely to be minimal public detriment as a result of the collective bargaining arrangements as the current level of negotiation between individual NANA members who are lottery agents and NSW Lotteries is low, participation in the collective bargaining arrangements is voluntary for both NANA members and NSW Lotteries, and the arrangements do not include collective boycott activity.*

*On balance, the Commission considers the public benefits that are likely to result from the conduct will outweigh any public detriments. Accordingly, the Commission grants authorisation for five years."<sup>1</sup>*

The Applicant submits that the abovementioned applications, including those previously approved by the ACCC, rely on substantially the same grounds for authorisation as contained in the present Application.

The Applicant further submits that the findings of the ACCC in the above applications regarding public benefit, public detriment, market factors and the 'counterfactual' are similarly applicable to this application.

#### **4 PARTIES TO THE CONTRACT, ARRANGEMENT OR UNDERSTANDING**

The following information, along with section 1.2 above, is designed to provide the ACCC with an understanding of the parties involved and their contractual relationships and arrangements. In this regard, given the strong foundation that exists between the parties and regulatory involvement, the Applicant expects that all Tatts retailers and all Intralot retailers will benefit from collective negotiations.

The Applicant submits that as the lottery industry is tightly controlled by the *Gambling Regulation Act 2003 (Vic)*, with strict supervision by the Victorian Commission for Gambling Regulation and the Department of Justice, the parties have a level of external protection.

Further, Tatts and Intralot retailers are all constrained by common franchise agreements or retail contracts and even the reduced lottery offer from 7-Eleven and Coles Express stores is subject to an overarching agreement between Tatts and 7-Eleven / Coles Head Office applying comparable restrictions to those contained in the TLFA (discussed in more detail below).

The lottery industry features uniform products, prices and procedures and all improvements flow to all retailers.

Non-members of the Applicant will not be prejudiced, as the benefits of any collective bargaining will flow to them due to Tatts and Intralot's desire for consistency in the arrangements with their retailers.

The Applicant also contends that the Victorian Government will benefit from productive collective bargaining, which leads to improved sales and therefore increased duty receipts.

The benefits of collective bargaining also flow to future Applicant members.

#### 4.1 Lottery retailers

The main lottery retailers involved in this Application are set out below.

##### *Tatts*

Applicant members effectively provide a product distribution service to Tatts via TLFA. Tatts franchisees are selected on various criteria including management ability; financial commitment; retail experience; integrity and perceived ability to drive the sale of Tatts products. Applications are assessed against the main criteria; the ability to generate incremental sales. There are minimum weekly sales volume targets, which are expected to be generated by outlets, and there are continual reviews of sales performance. Franchisees receive a commission for the sale of Tatts lottery products at a flat rate of 9.3% plus GST less Tatts fees and charges. Franchise terms vary from one year to five years. All TLFAs are reviewed prior to the date of expiry and renewal is not guaranteed.

The TLFA which Tatts franchisees are subject to conforms to the Franchise Code of Conduct (**Franchise Code**). The Applicant submits that there has historically been little or no amendment of the TLFA resulting from negotiations between individual franchisees, or potential franchisees acting alone, and Tatts. The Applicant further submits that, notwithstanding the intervention of a collective bargaining body such as the Applicant, the likelihood of balanced and progressive negotiations regarding the TLFA is low.

Prior to the issue of updated TLFA's and following the granting of the Category 1 Licence to Tatts (see 6.2 below), the Applicant represented its members in discussions with Tatts over the content of the new Tatts Franchise Agreements. As a result, a number of changes were made to the benefit of the Applicant's members and Tatts. There are a range of negotiations which the Applicant has been involved in since the last authorisation was granted including but not limited to the following:

- The achievement of the flat rate commission increase to 9.3% in 2012.
- A review and reduction to the fees and charges levied by Tatts on franchisees.
- Working with Tatts on initiatives to drive the cost of shop-fits down. This has resulted in a new design being released by Tatts which should see the cost reduced by approximately 15% to 20%.
- In conjunction with Tatts, developing new in-store merchandising and theming including the new promotional and customer service concepts e.g. the theatre of the sale. These concepts have now been successfully rolled out to the entire network.
- Making ongoing representations to Tatts and Intralot for new game concepts. A new game for Intralot has been approved and we believe that a new game for Tatts is presently before the VCGLR for approval.

##### *Intralot*

In contrast to Tatts, Intralot policy is to allow their lottery products to be sold without the same level of scrutiny through interview or investigation of background sales or management ability. Intralot retailers are subject to a Retailer Licence Agreement (RLA) which is consistent across all Intralot retailers, and which is similar to the TLFA. Retailers receive commission at a flat rate of 10% plus GST, and all RLA's are for a period of five years and there is no guarantee of renewal.

Intralot retailers are contracted as opposed to being franchisees because of a provision of the Franchise Code (section 5(3)(b)(iii)) which excludes the application of the Franchise Code where sales under the franchise are likely to provide no more than 20% of the franchisee's gross turnover for goods or services of that kind for the first year of the franchise.

The Applicant submits that there has historically been little or no amendment of the RLA resulting from negotiations between individual retailers, or potential retailers acting alone, and Tatts. The Applicant further submits that, notwithstanding the intervention of a collective bargaining body such as the Applicant, the likelihood of balanced and progressive negotiations regarding the RLA is low.

#### *Others*

In Victoria there are approximately 170 7-Eleven stores which offer a reduced range of Tatts products to customers utilising the group's own point of sale equipment rather than full service Tatts Terminals.

The 7-Eleven and Coles Express franchisees do not sign a Franchise Agreement in the same terms as Tatts retailers although they are subject to many common impositions such as the price to customer, responsible gambling compliance and customer service standards. These agreements do not have the same minimum standards and requirements such as minimum outlet sales levels, store fit-outs, external signage and internal point of sales signage. This has resulted in an inequitable position between the two distribution channels. In addition, the 7-Eleven retailers are not obliged to pay out prizes in excess of \$200. The same concession does not apply to Tatts retailers.

#### **4.2 Retailer procedure manuals**

These operational guides for Tatts and Intralot retailers cover a substantial range of business matters including requirements relating to banking, insurance, corporate image, trading hours, employees, responsible gambling compliance, stock ordering and delivery, accounting, prize payments, security precautions, shop image, shop signage, uniforms, player registration and business planning.

Implementation of correct procedures and collective negotiations to improve those procedures will flow through to the customer benefit of more efficient point of sale processes and a consistent service offer to customers no matter which retailer they are dealing with.

The Applicant contends that this is a clear public benefit from collective negotiations on matters included in retailer procedures manuals.

### **5 PUBLIC BENEFIT CLAIMS**

#### **5.1 Saving transaction costs**

In the Final Determination of the Applicant's previous authorisation application, A91126, the ACCC accepted that transaction costs associated with contracting could be lowered in situations where a single negotiation process, such as collective bargaining, took place, relative to a situation where individual negotiation was necessary.

Similarly, in the Final Determination of the NANA application, the ACCC determined that collective negotiations would have the potential to reduce information asymmetry between the negotiating parties (NANA and the NSW Lotteries), thus increasing the potential for efficient outcomes to be achieved.<sup>2</sup>

In circumstances where, within a particular industry, there are two representative bodies with similar collective bargaining authorisations, the ACCC was of the opinion that although such a situation may lead to higher transactional costs, competition between the two bodies may in fact provide incentive for each body to minimise bargaining costs; thus leading to an increased efficiency in bargaining outcomes.<sup>3</sup> The ACCC did not consider that such a situation would result in a public detriment due to an increase in transaction costs.<sup>4</sup>

---

<sup>2</sup> A91269 Final Determination at 4.87

<sup>3</sup> A91353 Final Determination at 30

<sup>4</sup> Ibid 57

A consideration of a situation involving two collective bargaining bodies within a single jurisdiction is relevant to the current application, given that the ACCC has indicated that it is likely to approve the authorisation in Victoria of an application submitted by the Victorian Association of Newsagents Ltd (VANA).<sup>5</sup>

VANA has sought authorisation to collectively bargain, on behalf of itself and its members, over the terms and conditions of lottery agency agreements and arrangements with Tatts, Intralot, and any other public lottery provider who may become licensed to operate a public lottery in Victoria under the *Gambling Regulation Act 2003* (VIC).

In the Premium Milk Supply Authorisation<sup>6</sup>, the ACCC stated:

*"Savings on transaction costs are an outcome generally associated with collective negotiations. Collective arrangements may reduce the number and cost of agreements that need to be negotiated."*

In the Dairy Farmers Authorisation<sup>7</sup>, the ACCC stated:

*"Such negotiations may increase the amount of information available to both sides of the negotiation process, allowing them to make more informed choices about the business arrangements that they enter into."*

The ACCC said further:

*"The Commission considers that collective bargaining will allow participating farmers to seek legal and other advice with regard to the specific contracts negotiated with dairy processing companies collectively. This will minimise the costs that these farms would incur with regard to receiving such advice if they obtained advice individually. The fact that ADFP could obtain legal advice on aspects of supply contracts that are common to all of its members, without authorisation, does not detract from the Commission's finding in this regard."*

It is submitted that these identified public benefits apply equally here.

When new TLFA's were issued early in 2008, necessitated by changes in Lottery Licences, the Applicant obtained detailed legal advice on the new agreements and conveyed that advice to members.

The advice went to some 920 Tatts retailers in Victoria, Tasmania, ACT and NT and was provided by the Applicant without charge. Those retailers who chose to seek their own legal advice paid anything from \$800 to \$1,500 for such advice. The Applicant's action on behalf of members produced substantial transaction cost savings.

## 5.2 Supply efficiency

In the normal course of association representations there have been discussions from time to time with Tatts and more recently with Intralot over lottery terminal reliability issues.

In particular a number of shortcomings in the Intralot terminal software and telecommunications led to poor levels of customer service at the counter. With the direct involvement of a number of retailers the Applicant was able to demonstrate to Intralot how customer service could be improved if terminal processes were improved. The Applicant's representations have resulted in Intralot changing providers and moving to Telstra.

While such matters should be raised by the Applicant in the normal course of representing the concerns of members without authorisation there remains a risk of alleged collusion, which can be overcome by authorisation.

<sup>5</sup> A91399 Draft Determination

<sup>6</sup> A90853 – Final Determination Clause 10.29

<sup>7</sup> A90853 – Final Determination Clause 10.29



The Applicant has also been advised by Tatts that the implications of the introduction of the Cartels Conduct Bill<sup>8</sup> were such that the risk of unintentional collusive behaviour is now far greater than before. Tatts have consequently advised the Applicant that they are reluctant to engage in any negotiations on any issue unless authorisation is obtained.

### 5.3 Enhanced product offers

Authorisation of collective bargaining has made it possible for the Applicant to make ongoing representations to Tatts and Intralot for new game concepts. A new game for Intralot has been approved and we believe that a new game for Tatts is presently before the VCGLR for approval.

Authorisation of collective bargaining will assist the Applicant to make representations to Tatts to develop a “bricks and mortar” only game to provide an advantage for retailers as they try to compete with the ever increasing on-line sales.

Authorisation of collective bargaining will assist the Applicant to continue to work with Tatts and Intralot to present customers with a consistent opportunity to purchase shares in player syndicates whereby the entry price for a large purchase of games is split between the number of syndicate members.

This is a product variation, which benefits customers by giving them a share of a large number of entries they could not afford as individuals.

### 5.4 Improved Customer Service

In the normal course of Applicant representations from time to time there will be proposals to improve customer service as a means of maintaining and increasing sales.

These representations may arise in the context of sales incentive schemes, changes to shop image, changes to training provided by the lottery operators, improved point of sale information, increased product information and other means of improving customer service standards.

Authorisation to collectively bargain on these matters should lead to an improved customer shopping experience.

### 5.5 Anti-competitive behavior

The proposed collective bargaining arrangement is completely voluntary. Authorisation of such arrangement will not compel any party to participate and individual retailers are free to individually negotiate with Tatts or Intralot if they are able to do so.

The Applicant's collective bargaining arrangement would extend to 600 retailers out of approximately 1,100 retailers selling lottery products in Victoria.

Given that all Tatts and Intralot retailers operate under standard forms of the TLFA and RLA, and noting special arrangements applying to 7-Eleven and Coles Express stores, it is highly unlikely that non-participating retailers would be adversely affected by the proposed collective negotiations.

This application for authorisation does not seek the right to engage in collective boycott activity.

Given the voluntary nature of the proposed arrangements, the absence of boycott activity, the absence of individual negotiations, the existence of a competitive duopoly and the regulated nature of the industry, it is submitted that the authorised conduct will have negligible if any anti-competitive effect. This is consistent with the ACCC's determination in respect of Authorisation A90853 (Clause 9.37) (for completeness, this Authorisation has now expired).

---

<sup>8</sup> The Cartels Conduct Bill appears now to be enacted through 'Part IV--Restrictive Trade Practices' of the *Competition and Consumer Act 2010* (Cth)

This authorisation is also sought in respect of negotiations in relation to matters currently not included in the TLFA or RLA.

## 6 MARKET DEFINITION

### 6.1 Regulation

Lotteries are regulated by the Victorian Commission for Gambling Regulation in accordance with the *Gambling Regulation Act 2003* (Vic), which prohibits the conduct of lotteries unless they are pursuant to a Lottery Licence issued by the Gaming Minister.

The Victorian Commission for Gambling Regulation is required to approve the content of both the TLFA and RLA. The Minister for Gaming must approve the subscription price of a game, commission paid and the games themselves.

### 6.2 The Victorian Lottery Industry

The State Government has issued a Category 1 Public Lottery Licence to Tatts and a Category 2 Public Lottery Licence to Intralot, both of which came into effect on 1 July 2008.<sup>9</sup>

The Tatts Category 1 Licence enables Tatts to provide through its franchised retailers:

- Tattslotto;
- Oz Lotto;
- Powerball;
- Super 66;
- The Pools; and
- Monday and Wednesday Lotto.

These above lottery games are supplied and administered on a national basis, which reflects the significant prize pools on offer.

The Category 2 Licence issued to Intralot allows them to currently sell the following:

- Lucky Keno;
- Lucky 3;
- Lucky 5;
- Lucky Lines;
- Lucky Bingo Star; and
- Instant Lottery Games (Scratch Tickets).

### 6.3 The Victorian gambling market

The Market for Gambling products in Victoria covers the following types of gambling activity. A breakdown of the consolidated player losses and taxes and levies for each gambling type are shown below.

Source	Consolidated (1 Jul 2011 to 30 June 2012) player loss	Consolidated (1 Jul 2011 to 30 June 2012) taxes and levies paid into the Consolidated Fund	Consolidated (1 Jul 2012 to 30 June 2013) player loss	Consolidated (1 Jul 2012 to 30 June 2013) taxes and levies paid into the Consolidated Fund
	\$m	\$m	\$m	\$m
Gaming machines (hotels and	2,681.5	886.2	2,490.5	841.0

<sup>9</sup> <http://www.vcglr.vic.gov.au/home/gambling/existing+licensees/lotteries/public+lotteries>

clubs)				
Health Benefit Levy (i)		125.7		42.33
<b>Subtotal - gaming taxes</b>	<b>2,681.5</b>	<b>1,011.9</b>	<b>2,490.5</b>	<b>841.0</b>
Melbourne Casino - (gaming, machines and table games) (ii)	1,528.0	195.3	1,536.1	201.3
Wagering - racing (totalisator), football, trackside and sportsbetting	789.2	136.5	825.1	68.2
Lotteries (Victoria only)	486.4	386.7	529.7	420.5
Club Keno/Keno (iii)	7.1	1.7	13.9	3.4
<b>Total</b>	<b>\$5,492.2</b>	<b>\$1,732.1</b>	<b>\$5,395.3</b>	<b>\$1,576.8</b>

- i. The Health Benefit Levy is payable for 2012–13 was \$84.7 million. The first instalment of \$42.33 million was received in 2012–13.
- ii. In relation to Consolidated taxes for 2012–13, Super Tax of \$25.48 million is included in the schedule of Melbourne Casino taxes above, which were paid at the end of July 2013.
- iii. Club Keno operated by the Joint Venture (Tabcorp and Tattersall's) ceased operating on 14 April 2012. Keno operated by Tabcorp commenced operating on 15 April 2012.

**Source:** The Victorian Commission for Gambling and Liquor Regulation Annual Report 2012-2013

The Applicant submits that the following areas of competition are relevant to the authorisation sought in this application:

- a) The provision of lottery and instant lottery distribution services to Tatts and Intralot

Lottery agents/retailers distribute lottery products and instant lottery products for Tatts and Intralot in return for a commission. Lottery agents/retailers compete with each other, and with prospective suppliers, in the provision of these services. However as discussed below, this competition is limited.

- b) The supply of lottery products to consumers

Lottery agents/retailers compete with each other in the retail of lottery products to consumers. Lottery agents/retailers also compete with on-line lottery services offered by Tatts. It is noted that in application A91126 at paragraphs 6.9 and 6.10 the ACCC provided authority to suggest that while gambling products were becoming more substitutable,<sup>10</sup> the ACCC did not consider it necessary to form a view on the substitutability of lottery products for other gaming products.

The Applicant notes that in A90853 at paragraph 8.8, and in the NANA authorisation,<sup>11</sup> that the ACCC did not consider it necessary to form a comprehensive or definitive view of the relevant markets. Consequently, the Applicant submits it is not necessary to conclusively define a view of the market for the purpose of this Application.

## 7. PUBLIC DETRIMENTS

### 7.1 Minimising public detriment

In the Final Determination of the Applicants previous authorisation application, A91126, the ACCC considered that the public detriment flowing from collective bargaining arrangements are likely to be minimal where:

- i. *“ the current level of negotiations between individual members of the group and the proposed counterparty(s) on the matters negotiated is low*
- ii. *participation in the collective bargaining arrangement is voluntary*

<sup>10</sup> Productivity Commission (1999), *Australia's Gambling Industries: Inquiry Report*

<sup>11</sup> A91269 Final Determination at 4.7

- iii. *there are restrictions on the coverage and composition of the bargaining group*
- iv. *there is no boycott activity.*<sup>12</sup>

Similarly in the Final Determination of Authorisation A91101 the ACCC identified that the anti-competitive effect of collective bargaining arrangements constituted by lost efficiencies is likely to be more limited where: -

- i. *"The level of negotiations between individual members of the group and the proposed counter parties absent the collective arrangement is low;*
- ii. *Participation in the collective bargaining arrangement is voluntary;*
- iii. *There are restrictions on the coverage or composition of the group; and*
- iv. *There is no boycott activity.*<sup>13</sup>

The Applicant submits that all of the conditions precedent mentioned above relating to a minimisation of public detriment flowing from collective bargaining arrangements are present in this application. Namely the applicant submits that:

- the current level of negotiations between individual lottery agents/retailers, whether members of a collective bargaining group or not, and Tatts and Intralot are minimal;
- participation in the Applicant organisation is voluntary. Authorisation of such arrangement will not compel any party to participate and individual lottery retailers/agents are free to individually negotiate with Tatts or Intralot if they are able to do so;
- while there are no formal restrictions on the number of lottery agent members that can join the Applicant organisation, the Applicant members represent only 600 (approximately) lottery retailers/agents of the 1,100 or more lottery retailers/agents in Victoria; and
- this Application for authorisation through revocation and substitution does not extend to boycott activity,

The Applicant further submits that, given that all Tatts and Intralot retailers operate under standard forms of TLFA and RLA, and noting special arrangements applying to 7-Eleven and Coles Express stores, it is highly unlikely that non-participating retailers would be adversely affected by the proposed collective negotiations.

## 7.2 Disparity in bargaining power

It is self-evident that there is a disparity in bargaining power between lottery retailers/agents, whether members of a collective bargaining body and Tatts and Intralot.

Tatts Group in financial year 2008 paid \$601m to State Governments from lottery activities, which generated revenue of \$1.05 billion from sales at over 2,000 retail outlets.<sup>14</sup> It is submitted that Tatts will therefore have the means to absorb any increase in commission or fees paid to retailers as a result of negotiations between the Applicant and Tatts.

Intralot Australia Pty Ltd is a subsidiary of Intralot SA a leading international supplier of gambling products. Intralot SA employs around 4,500 professionals, has a presence in over 50 countries and annual

<sup>12</sup> A91126 Final Determination at 6.53

<sup>13</sup> A91101 Final Determination at 6.15 -6.17

<sup>14</sup> Tatts Group Annual Report 2008

revenue of E\$835m<sup>15</sup>. It is submitted that Intralot will therefore have the means to absorb any increase in commission or fees paid to retailers as a result of negotiations between the Applicant and Intralot.

In the final determination of the Applicant's previous application, the ACCC determined that due to the fact that Tatts and Intralot were the only suppliers of lottery products in Victoria, their bargaining position vis-à-vis lottery retailers/agents was strong.<sup>16</sup>

The Applicant notes that there is evidence that its past activities have improved the bargaining position of lottery retailers/agents in Victoria. Principally, and among other things, the Applicant relies on the following achievements:

- The achievement of the flat rate commission increase from 9% to 9.3% in 2012. The Applicant invested significantly in developing a comprehensively researched strategy and submission to Tatts for an increase in commissions for agents in the short, medium and long term and a reduction to the fees and charges levied by Tatts. This submission dealt with initiatives to restrain the ongoing increases being experienced by retailers relating to Tatts fees and charges (e.g. terminal fees, etc.), and included mechanisms to constructively review the commissions and fees with Tatts at regular intervals in the future. This achievement has delivered significantly improved profitability for retailers.
- The LAAV has also developed and recommended new initiatives to drive the cost of shop-fits down which has resulted in a new design being released by Tatts which should see the cost reduced by approximately 15% to 20%.
- Through making ongoing representations to Tatts and Intralot for new game concepts, a new game for Intralot has been approved and we believe that a new game for Tatts is presently before the VCGLR for approval.
- The Applicant has successfully negotiated with Intralot for the establishment of endorsed training outlets which will make the changeover process to new outlet owners more efficient.
- As a result of working with retailers and making representations to Intralot for improvements to terminal software and telecommunications, Intralot is in the process of changing providers. This has resulted in improved terminal reliability, better sales performance and increased customer satisfaction.
- By working extensively with retailers and through numerous representations to Tatts and Intralot, the Applicant has achieved significant improvements to lottery terminal functionality and reliability. These representations have resulted in numerous terminal functionality enhancements and software upgrades which have significantly improved system reliability, retailer efficiencies and the customer experience. These have been welcomed by retailers.

However, the Applicant does not consider that the above achievements have so altered the bargaining positions of the respective parties as to reverse them in favour of lottery/agents retailers. It is expected that Tatts and Intralot will continue to have a relatively strong bargaining position, notwithstanding the growth of the Applicant's member base. Additionally, it is submitted that given their monopoly over the provision of lottery supplies, the bargaining strength of Tatts and Intralot will remain constant despite the pending authorisation of the VANA application.

The Applicant submits, as afore mentioned, that without authorisation, its power to negotiate on behalf of its members with Tatts and Intralot will be severely restricted.

### 7.3 Detriment to consumers

The Victorian Commission for Gambling Regulation in accordance with the *Gambling Regulation Act 2003* (Vic) strictly regulates the supply of lottery products. Accordingly, should the Applicant negotiate

<sup>15</sup> www.intralot.com

<sup>16</sup> A91126 Final Determination at 6.57

an increase in the commissions paid to lottery retailers or a reduction in fees, there will be only minimal flow-on effect to consumers. These increases are usually funded out of an increase in the game price and as such there is a fine balance in ensuring the increase will result in increased sales revenue. The game prices, commissions, fees and charges, etc. are all interdependent and any changes are carefully considered and are only implemented in very small increments.

## 8. THE COUNTER FACTUAL

Assuming the VANA authorisation is granted, the Counter Factual will be the status quo where members of the Applicant will have a disadvantage in comparison to VANA members who will be represented by an authorised collective bargaining body. This is because members of the Applicant will have no input into negotiations conducted by VANA with Tatts and Intralot, and may be forced to attempt, in likely futility, to negotiate with Tatts and Intralot individually in order to advance their respective interests.

## 9. POTENTIAL FOR COMPETITION BETWEEN THE APPLICANT AND VANA

In Queensland there are currently two separate bodies representing lottery retailers/agents:

- the LAQ which was granted authorisation by the ACCC to negotiate on behalf of itself, its current members and any future members in relation to the terms and conditions of agency agreements and arrangements with the Tatts Group (including Golden Casket). Authorisation was granted for 10 years until 8 May 2024,<sup>17</sup> and
- The QNF which was granted authorisation to collectively bargain over certain terms and conditions of agency agreements with Tatts Group. However, the ACCC excluded collective bargaining over some types of terms and conditions from the scope of the authorisation. Authorisation was granted for 5 years until 2 August 2018.<sup>18</sup>

In the final determination of the QNF application the ACCC determined the following:

*"Given the voluntary nature of the collective negotiations by both LAQ and QNF, and the significant overlap in potential members, the Commission does not accept that either collective bargaining group has an incentive to allow itself to be used strategically against the other. Rather, the Commission 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."<sup>19</sup>*

In the circumstance that the VANA application is granted, the applicant submits that the above conclusion applies equally to this application.

Yours sincerely,



Sharyn Cole  
President  
Lottery Agents Association of Victoria Inc.

---

<sup>17</sup> A91397 Final Determination

<sup>18</sup> A91353 Final Determination

<sup>19</sup> A91353 Final Determination at 26