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\*\* In cooperation with  
Trench, Rossi e Watanabe  
Advogados

30 May 2014

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

Dear Dr Chadwick

**Lottery Agents Association of Victoria Inc Application for Authorisation A91126**We act for Tattersall's Sweeps Pty Ltd (**Tatts**).We refer to the Application for Authorisation lodged by the Lottery Agents Association of Victoria Inc (**LAAV**). The application is for the revocation of a previous application for authorisation granted by the Australian Competition and Consumer Commission (**ACCC**) on 3 June 2009.

As the ACCC is probably aware, Tatts Group is generally supportive of applications for authorisations by organisations representing lottery agents.

**Scope of the application**

The current application for authorisation allows LAAV, on behalf of itself and its current and future members, to collectively bargain with Tatts in respect of:

- (a) the terms and conditions of retailer agreements and arrangements with respect to lottery products and services, including:
  - commissions paid to retailers
  - retailer application fees
  - service charges
  - point of sale equipment hire costs
  - retail image
  - sales incentive schemes, and
  - alterations to retailer procedure manuals;
- (b) product sales restrictions in the Tatt's dedicated sales area;
- (c) processes for the approval of incoming retailers, and
- (d) retail insurances.

Tatts is of the view that these items are appropriate.

We note that the scope of the current application is broader and includes the following additional items:

- (a) handling fees;
- (b) freight charges;
- (c) retail image subsidies;
- (d) support service levels and training;
- (e) online sales; and
- (f) convenience and other distribution channels.

Tatts has no objection to the addition of handling fees, freight charges, retail image subsidies and support service levels and training. Indeed Tatts believes that they were probably covered in the original application under "service charges".

However, Tatts is concerned by the inclusion of "on-line sales" and "convenience and other distribution channels". In general terms, Tatts has a number of different distribution channels, being:

- (a) the agency network (which includes members of the LAAV);
- (b) online sales by itself and other online resellers; and
- (c) convenience and other distribution channels.

Each of these channels are important to Tatts and Tatts is committed to growing all three channels to market. However, Tatts does not see any public benefit in collectively bargaining with the LAAV in respect of Tatts' approach to its other distribution channels. For example, it would be of serious concern to Tatts if the members were able to engage in exclusionary conduct such as jointly refusing to provide services to Tatts if, for example, Tatts were to enter into an agreement to supply a chain of convenience stores. It is noted that in section 7.1 the LAAV indicate that the application does not extend to boycott activity and Tatts requests that this be reflected in the decision of the ACCC.

Tatts is concerned that any comments the LAAV may have in respect of other distribution channels is most likely to have, either directly or indirectly, the effect of making those other channels less competitive and not have any public benefits. For example:

- (a) Any collective bargain with LAAV about other distribution channels does not have any transaction cost savings for either LAAV or its members;
- (b) similarly, any collective bargain with LAAV does not have any supply efficiencies as comments on the other distribution channels have no improved efficiencies in the agency network channel and Tatts does not believe that any comments of LAAV on the alternative

distribution channels will improve those other channels (mostly because Tatts does not believe that LAAV has any incentive to provide comments which improve the competitiveness of those channels);

- (c) for the same reasons as outlined above, Tatts does not believe that any comments by the LAAV on the other distribution channels will enhance product offerings in any channel nor improve customer service.

Tatts is more than willing to discuss with the LAAV its own distribution channel, being the agency network channel but sees no public benefits in discussing alternative distribution channels with the LAAV.

Tatts requests that authorisation is not given to collective negotiate in respect of "online sales" or "convenience and other distribution channels" on either an interim or final basis.

#### **Unforeseen matters**

The application is expressed to include "authorisation to negotiate in respect to matters currently not included in retailer agreements and contracts and matters that are currently unforeseen".

Tatts does not believe it is appropriate to express any authorisation in these terms. It does not allow the ACCC (nor Tatts) to make an assessment of the public benefits and detriments in respect of the matter to be the subject of the collective bargain. In those circumstances Tatts believes that neither itself nor the ACCC can make a decision that the authorisation test to be applied under the *Competition and Consumer Act 2010* (Cth) can be satisfied.

Please do not hesitate to contact us if you require any further information.

Yours faithfully

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