

Blanch, Belinda

From: Ann-Maree
Sent: Thursday, 5 June 2014 4:55 PM
To: Hobbs, Tanya; Jones, Gavin
Cc: Gary Carter; info@laav.org.au; Adam Dimac
Subject: FW: A91425 - LAAV [DLM=For-Official-Use-Only]
Attachments: Letter to ACCC 05 06 2014.pdf

Dear Tanya and Gavin

In response to the submission from Tatts Group, please see our letter attached.

With regards to Tanya's query below, we confirm that the LAAV is seeking authorisation to negotiate the impact on its members of Tatts engaging in "on-line" and "convenience and other distribution channel activities" and, if the opportunity arises, to engage in on-line sales or initiatives to support Tatts On-line sales in return for additional commissions (which are currently prohibited by the Franchise Agreement). The LAAV is also seeking authorisation to negotiate to pursue the ability for retailers to provide commensurate on-line product and service offers and the same preferential contract arrangements offered to the convenience channels.

Once you have had the opportunity to review the letter, Gary Carter from the LAAV will call Gavin to discuss the LAAV's position in more detail.

Yours sincerely,

Ann-Maree Ventura

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From: Hobbs, Tanya
Sent: Monday, 2 June 2014 5:20 PM
To:
Cc: Jones, Gavin
Subject: A91425 - LAAV [DLM=For-Official-Use-Only]

Dear Ms Ventura,

Please see attached the submission from Tatts Group in relation to the application for authorisation by LAAV.

As discussed, in addition to any response LAAV wishes to make to any issues raised in the submission we would also appreciate further clarification in relation to clause 3.1 of LAAV's application for revocation and substitution of its authorisation. That is, LAAV has sought authorisation in order to conduct negotiations in relation to (in part) "online sales" and "convenience and other distribution channels". Does this mean that

LAAV members are seeking authorisation to negotiate the terms and conditions on which LAAV members can make online sales or sell through convenience and other distribution channels? Or, alternatively, does this mean that LAAV members are seeking authorisation to negotiate the impact on them or the terms and conditions on which Victorian lottery licence holders (including Tatts Group and Intralot) can sell lottery products through non-LAAV members in online, convenience and other distribution channels?

I would appreciate it if you could provide any response to this email and the attached submission by **COB next Monday 9 June 2014**. If you have any queries in relation to this email, please do not hesitate to contact me on (02) 6243 1029.

Yours sincerely

Tanya Hobbs

Tanya Hobbs

Assistant Director | Adjudication

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Dr Richard Chadwick
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Australian Competition and Consumer Commission
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By email: adjudication@accc.gov.au

Our Ref: AM: 14035

Your Ref:

5 June 2014

Dear Dr Chadwick

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

We refer to the interested party consultation in relation to the abovementioned application for revocation and substitution (**LAAV Application**) and to the email sent by Tanya Hobbs on 2 June 2014 forwarding the submission received from Tattersall's Sweeps Pty Ltd (**Tatts**) dated 30 May 2014 in relation to same.

The concerns raised by Tatts in their submission are considered below.

1. The inclusion of “on-line sales” and “convenience and other distribution channels”

The Tatts position

Tatts submits that authorisation should not be given to collectively negotiate in respect of “on-line sales” or “convenience and other distribution channels” on either an interim or final basis.

Tatts is concerned by the inclusion of “on-line sales” and “convenience and other distribution channels” in the LAAV Application. Tatts have expressed the view that they do not see any public benefit in collectively bargaining with the LAAV in respect of Tatts’ approach to its other distribution channels. They also note that 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.

Tatts see no public benefits in discussing alternative distribution channels with the LAAV. They state that:

- 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 any comments of LAAV on the alternative distribution channels will improve those other 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.

LAAV response

The LAAV considers that negotiations over “on-line sales” and “convenience and other distribution channels” is consistent with the intent of the proposed collective bargaining arrangements as these are issues where there is likely to be a commonality of shared interest between members of the bargaining group.

In this regard, we stress that these are the two most important issues facing and raised by LAAV members and there are clear expectations from LAAV members that the LAAV discuss and negotiate with Tatts and the Government on these issues.

We note that the LAAV has already discussed and unsuccessfully attempted to negotiate with Tatts on these areas over a number of years and occasions. By Tatts seeking to have these issues excluded, their current unwillingness and reluctance to discuss or negotiate on these issues is reinforced.

On-line sales

By way of background, currently Tatts conducts on-line sales exclusively and in direct competition to its own retail network. Tatts do not permit retailers to sell lotto products on-line and this is enforced via their Franchise Agreement. Tatts also prohibit retailers from participating or supporting Tatts on-line sales activity in any way, and there is no opportunity to earn additional commission. Retailers are unfairly required by Tatts to promote Tatts on-line sales in-store (via all point of sale, etcetera) when they are in effect, in direct competition with Tatts.

The LAAV has in the past presented proposals to Tatts demonstrating that if the retailers were able to participate in and support the on-line channel, sales and services could be improved resulting in a public benefit

The LAAV would like to negotiate with Tatts and also discuss these issues with Government and try to affect changes that allow retailers to either sell products on-line via their websites or to support Tatts activity in return for additional commission. If successful in achieving either outcome, the LAAV would as part of this process, propose negotiating on the terms and conditions these on-line sales could be conducted. Either of these outcomes would deliver a benefit to Tatts, the retailers and customers and result in a public benefit. Satisfactory outcomes on this issue will also markedly improve the retailer's relationship with Tatts.

We also consider that it is in the interests of the public benefit for a Franchisor not to directly compete with its retail channel without offering them the opportunity to participate in some way and earn additional revenue. In this regard, on-line sales are in direct competition to the traditional retail network. One example is the new marketing initiatives from Tatts such as Autoplay.

Autoplay is an on-line service that Tatts are now marketing directly to Tatts Card members, which comprise of customers that retailers have previously signed onto Tatts Cards. If customer's sign up to the auto play on-line service, they no longer need to visit a retail outlet as their entries are automatically played on their behalf every week for 52 weeks. This will have huge consequences for retailers as they do not have a commensurate service available to sell to customers, creating an uneven playing field. As a result of this direct marketing initiative by Tatts, retailers will not have the motivation to actively promote and sell more Tatts Card memberships which will not benefit Tatts, the retailer or the customer, resulting in a public detriment.

In this regard, we refer to the ACCC's Authorisation Guidelines 2013. These state that the promotion of competition is not an end in itself, rather competitive markets are generally viewed as the best way to

enhance the welfare of Australians through ensuring that the goods and services that consumers want are developed and supplied at the lowest possible cost. Allowing retail outlets to have the opportunity to sell products on-line via their websites or to support Tatts activity in return for additional commission is in the spirit of promoting a competitive market. The LAAV believes that not doing so, damages, or is likely to damage competition, especially having regard to examples such as Autoplay described above.

Further in addition, the LAAV does not believe that engaging in negotiations with Tatts in these areas will result in any public detriment. There will be no impairment to the community generally, no harm or damage to the aims pursued by society including the achievement of the goal of economic efficiency, rather economic efficiency will be enhanced.

The LAAV considers that limiting the scope of the proposed bargaining arrangements to exclude these matters raised by Tatts would also unduly restrict the terms of negotiation with future licence holders and result in impracticalities and a potential reduction of efficiencies and other public benefits arising from the collecting bargaining conduct.

Convenience channels

In regard to convenience channels, Tatts has embarked on a new strategy to open convenience outlets on mass, for example 7-Eleven and more recently Coles Express.

Coles Express is under trial in 7 outlets and Tatts are likely to expand it quickly across the 169 Coles Express outlets (125 in the Melbourne Metro area) once the trial concludes June 2014.

Tatts applies separate and preferential contractual arrangements to this channel which competes directly with the traditional retail channel. These distribution strategies are implemented without allowing the existing network to comment on these outlet openings or preferential arrangements. For example, the convenience outlets do not have to complete a shop-fit (circa \$30k) as required by the traditional retail channel. They are also not required to go through the same outlet and retailer selection requirements (for example interviews and induction training) as the traditional network. In addition, they do not have to meet minimum sales performance criteria imposed on traditional outlets.

The LAAV proposes to negotiate with Tatts in regard to where Tatts places these outlets, the impact on LAAV member outlets and to negotiate over the terms and conditions of the current Franchise Agreements to ensure traditional outlets have requirements that are no less favourable and provide an equal opportunity to compete.

If current retailers were afforded the same preferential treatment, the retailers would become more profitable. Furthermore, the current retail outlets would experience lower costs and it would deliver greater efficiencies when entering the network leading to increased profits and by implication, a public benefit.

Summary

We note that the authorisation received by LAAV is not binding on Tatts and Tatts may choose not to negotiate on any specific issues or all issues raised by the LAAV. It should make no difference to Tatts whether these items are listed or not for as indicated above, the LAAV has been engaged in discussions with Tatts regarding the on-line market for some time now, albeit unsuccessfully.

As these issues are the two biggest issues affecting members, the LAAV maintains its submission that they be specifically listed in the authorisation to demonstrate the LAAV's commitment to enhancing the public benefit and the huge significance and importance these issues are regarded by its members.

The LAAV also confirms that in accordance with the LAAV Application, it does not intend to participate in any boycott activity.

2. Unforeseen matters

The Tatts position

Tatts submits that it is not appropriate to express any authorisation in terms of "matters currently not included in retailer agreements and contracts and matters that are currently unforeseen".

LAAV response

We consider that including these issues in the scope of the authorisation provides parties with the flexibility to address new and unforeseen issues in their commercial agreements and provides certainty that all aspects of the commercial relationship between the parties, as it may evolve over the life of the authorisation, can be addressed through collective negotiation. Further, as discussed above, the voluntary nature of the arrangements means that any of the parties will remain free to limit negotiations to only those matters it considers are appropriately addressed through collective bargaining.

In this regard, a significant issue for the LAAV and its members is that the Tatts Licence to operate lotteries in Victoria is due to be renewed in 2018, which is the conclusion of their 10 year licence granted in 2008.

The LAAV seeking authorisation to negotiate on unforeseen matters is important as we will not know what the outcome of the licence process will be and at this stage it is impossible to foresee the outcome or the issues that may arise.

We also wish to highlight that the ACCC granted authorisation to the LAAV to negotiate on matters currently unforeseen in Authorisation A91126.

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

Yours faithfully



Ann-Maree Ventura

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