

From: Laura Hartley <laura.hartley@addisonslawyers.com.au>
Sent: Thursday, 22 December 2016 10:38 AM
To: Macrae, Tess; Giannakos, Anna
Subject: The Global Tote Limited - Application for Interim Authorisation [ADDISONS-iManage.FID122681]

Dear Tess and Anna

We refer to our recent conversations where the Commission has queried our client's request for interim authorisation in relation to its application. Our client accepts that given the public holidays and the time of year, the Commission will not be able to meet our client's original request for interim authorisation by 14 January 2017 however our client still requests a review by the end of February 2017 at the latest.

We set out a response in support of our client's application and requests around timing. Capitalised terms used in this email have the same meaning as in the submission we lodged with the Commission on behalf of our client on 13 December 2016.

1. Introduction

Our client's GT product is a new means of making available an international pool to an Australian market. Our client's product will allow corporate bookmakers who sign an access agreement with our client to pool the bets they receive from punters in Australia into our client's totalisator. Our client's product is therefore pro-competitive in the sense that it will operate in competition with the off-course totalisators that currently exist via TAB Limited and Tatts Group Limited, in the Australian market. Our client's GT product will provide our client's customers (the corporate bookmakers) with the opportunity to pool the bets they receive into an international pool so benefit from the advantages of pooling for themselves, for the punters in Australia and for the racing industry generally. This will be of particular benefit for end user customers as it will provide an alternative to the other betting products available in Australia but at reasonably priced odds.

Despite our client's GT product being a new entrant into the market in Australia, conceptually the services our client will be providing its customers are those of host, as opposed to guest, of a pool. In the previous recent authorisations the ACCC has considered and granted, the authorisation applications have been submitted by guests and those guests have been bound by rebate restrictions, in exactly the same way as our client is seeking to impose such restrictions on its guests. The Rebate Restriction is primarily necessary to ensure the stability of the pool and therefore, its success. In our view, like the applications considered by the Commission, the public benefits from participation in pooling outweigh any anti-competitive detriment.

In our view equally, there is a strong prima facie case for authorisation for the following reasons:

- The Commission has a prior understanding of pooling and its benefits;
- The Rebate Restriction is not materially different from the rebate restrictions imposed on guests in the other authorisation applications the Commission has considered and granted;
- The Commission has previously recognised public benefits from pooling that outweigh any anti-competitive detriment.

2. Effect of final authorisation being denied

The Agreement provides that the Rebate Restriction will only come into effect if authorisation, including interim authorisation, is granted and only subject to the terms of that authorisation, including interim authorisation. Accordingly, if interim authorisation is granted and final authorisation is ultimately denied by the Commission, the granting of interim authorisation will easily be reversed.

3. Urgency and Timing

Our client has been engaged in negotiations with race fields to receive the approvals required to launch its product featuring races from various Australian racing bodies. The approvals have been received as set out below:

- Canberra Racing Club – 20 October 2016
- Racing Victoria Limited – 3 November 2016

- Greyhound Racing Victoria – 23 November 2016
- Queensland Racing – letter confirming approval received 25 November 2016
- Racing New South Wales – 30 November 2016
- Greyhound Racing New South Wales – 5 December 2016

Until our client received at least a minimum number of race field approvals, it did not have a product to launch. Once a minimum number of racing approvals were received, our client immediately began to put in place appropriate agreements with the key corporate bookmakers and to prepare the authorisation application. As you are aware, the authorisation application was lodged with the Commission on 13 December ie very soon after those racing approvals were received.

Interim authorisation is sought for the following reasons:

- to allow our client to participate in the market with its new GT product quickly;
- to increase the likelihood that maximum benefits from our client's GT product will flow at an earlier date than would otherwise be the case;
- to increase competition in the wagering market in Australia where currently, there are only 3 applicable pools – the NSW pool, the SuperTAB pool and the Tatts pool;
- so that our client can take advantage of current goodwill associated with finalisation of the Agreement so that the Rebate Restriction can become unconditional.

4. Possible Harm to Applicant

Our client is trying to launch a new product and establish a foothold in the industry. To launch its new product without the Rebate Restriction being activated in the Agreements may result in a situation where some corporate bookmakers offer rebates to punters in relation to bets placed with our client's pool. This endangers the stability of the pool and the long term viability of the GT product and may result in our client losing key customers or else not encouraging key customers to participate in our client's pool.

5. Possible Harm to Competitors

The key competitors in this space already have an authorisation for clauses similar to the Rebate Requirement as a mandatory requirement of participation in their pools. Allowing our client to include the Rebate Requirement in its Agreement with corporate bookmakers does no more than allow our client to compete on similar terms to that afforded to its competitors. We therefore submit that any harm or potential detriment to the competitors must be minimal.

Our client requests that you consider its application for interim authorisation in light of the factors above. Should you have any further questions, please contact me directly.

Kind regards
Laura

Laura Hartley | Partner
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Addisons will close from the afternoon of 23 December 2016 and re-open on 9 January 2017. We wish you a safe and enjoyable holiday season.