



Australian
Competition &
Consumer
Commission

Draft Determination and Interim Authorisation

Application for authorisation

lodged by

Tenpin Bowling Australia Ltd (TBA)
Australian Bowling Proprietors Australia
(ABPA)
Bowling Centres Australia Pty Ltd
(trading as AMF)

in respect of

arrangements requiring league bowlers to be
members of TBA in order to participate in
competitions at ABPA and AMF bowling
centres

Date: 13 April 2016

Authorisation number: A91531

Commissioners:
Sims
Rickard
Schaper
Featherston
Walker

Summary

The ACCC proposes to grant authorisation for ten years to Tenpin Bowling Australia Pty Ltd (TBA), Australian Bowling Proprietors Australia (ABPA) and AMF Bowling Centres Australia Pty Ltd (AMF) (collectively, the Applicants) to require league bowlers to be members of TBA in order to participate in competitions at ABPA and AMF bowling centres.

The ACCC grants interim authorisation until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

The ACCC proposes to grant authorisation for ten years.

Next steps: The ACCC now seeks submissions in relation to this draft determination before making its final decision.

Background

The application for authorisation

1. On 3 March 2016, Tenpin Bowling Australia Pty Ltd (**TBA**), Australian Bowling Proprietors Australia (**ABPA**) and Bowling Centres Australia Pty Ltd (**AMF**) (collectively, **the Applicants**) lodged an application for authorisation (A91531) with the ACCC.
2. The Applicants supplied a copy of the TBA Lane Registration and Certification Policy and a draft Membership Agreement between TBA, AMF and ABPA (the **Membership Agreement**).

The proposed conduct

3. The Applicants seek authorisation for conduct that may constitute exclusive dealing. In particular, the Applicants intend to require league bowlers¹ to be members of TBA in order to participate in competitions at ABPA and AMF bowling centres (**proposed conduct**).
4. The Applicants submit that the proposed conduct will not affect non-league bowlers. Social bowlers are not required to pay TBA membership fees in addition to game fees to bowl at centres operated by AMF or ABPA members. League bowlers are not prevented from competing in competitions accredited by rival bowling leagues, if such leagues were established, in addition to competitions recognised by TBA.
5. The Applicants are not seeking authorisation for the AMF and ABPA members to agree on the games fees for participation in either league competitions or socially.

¹ *League Bowler* is defined in the Membership Agreement as any person that participates in a League. League means any group of four or more teams of players or four or more individual players participating according to a pre-arranged schedule where there is a recording of results by the centre or league that includes the recording of points, averages, handicaps and/or prizes are awarded as a result of the outcome of the scores bowled.

6. The Applicants seek authorisation for up to ten years and also seek interim authorisation to allow for immediate implementation of the conduct.
7. The Applicants submit that the proposed conduct is necessary because TBA has no proprietary interest in bowling centres and limited means of obtaining revenue. Bowling competitions are run by bowling centres and not by TBA itself. The conduct allows TBA to enlist the assistance of AMF and ABPA to ensure that the maximum numbers of league bowlers that use the services of TBA are registered.
8. The current TBA Membership Policy allows league bowlers to pay TBA membership fees in a number of different ways. League bowlers may choose to pay an annual membership fee, or pay in instalments over time on a per game basis. The proposed conduct does not introduce a new fee for league bowlers, but allows the AMF and ABPA to collect the existing fee on behalf of TBA. The Applicants submit that the proposed conduct ensures that league bowlers that currently use the services of TBA pay registration to contribute towards the cost of providing those services.

The Applicants

9. TBA is the national governing body for the sport of tenpin bowling in Australia which is recognised internationally by the World Bowling Federation. It is a not for profit organisation which receives approximately 30 per cent of its funding from the Australian Sports Commission and the remainder primarily from the collection of membership fees from league bowlers.
10. The Applicants submit that TBA currently provides league bowlers with a number of member benefits, including reduced lane usage fees, comprehensive personal injury insurance, access to coaching and education programs and administrative assistance such as rule queries. Accredited bowling centres also receive services from TBA such as lane certification which allows league bowlers at that bowling centre to compete in nationally and internationally recognised competition.
11. AMF operates 41 bowling centres across Australia.
12. ABPA is an industry association that represents 65 independently owned and operated bowling centres across Australia. Its activities include supporting its members in raising the profile of tenpin bowling and increasing participation in the sport.

Submissions

13. The ACCC tests the claims made by the Applicant in support of an application for authorisation through an open and transparent public consultation process.
14. Prior to the draft determination, the ACCC sought submissions from a number of interested parties, including independent bowling centres which are not covered by the proposed conduct, government agencies including the Australian Sports Commission and individuals representing competitive bowlers.
15. One submission was received from the Australian Sports Commission, who noted that it recognises and funds TBA as the sole national sporting organisation in relation to the sport of tenpin bowling.

ACCC assessment

16. The ACCC's assessment of the proposed conduct is in accordance with the relevant net public benefit tests² contained in the *Competition and Consumer Act 2010* (the **CCA**).
17. In order to assess the effect of the proposed conduct and the likely public benefits and detriments, the ACCC identifies the relevant areas of competition, being the supply of tenpin bowling services, and the likely future without the proposed conduct.
18. The Applicants submit that in the likely future without the proposed conduct TBA would have to implement alternative methods of recovering the costs of providing services to competition bowlers, such as employing officers to regularly attend approximately 120 bowling centres covered by the proposed conduct and collect membership fees themselves.
19. The Applicants submit that TBA cannot set game fees in order to fund its activities because it does not have a proprietary interest in bowling centres. The ACCC also notes that a significant source of TBA's funding comes from the Australian Sports Commission. This funding is subject to regular review and cannot be guaranteed in the future.
20. As a result, the ACCC accepts that TBA may experience difficulty in continuing to provide its services to league bowlers and registered bowling centres if it is unable to efficiently and effectively recover the cost of providing those services.

Public benefits

21. The Applicants submit that the proposed conduct is likely to result in public benefits associated with the development of the sport of tenpin bowling in Australia and through the efficient collection of membership fees from competitive tenpin bowling in Australia.
22. The ACCC considers that the proposed conduct is likely to result in a public benefit by facilitating development of the sport of tenpin bowling in Australia. Compared to the likely future without, the proposed conduct provides TBA with greater certainty about the 70 per cent of its funding that comes from membership fees. The ACCC understands that one of the key objectives of TBA is to promote the sport of tenpin bowling in Australia and would expect that TBA will direct those membership fees to development activities.
23. The ACCC also considers that the proposed conduct is likely to result in a public benefit by allowing for the more efficient collection of fees from league bowlers. Again, compared to the likely future without, the proposed conduct represents a more efficient method of collecting membership fees than alternatives such as employing officers to regularly attend the 120 tenpin bowling centres involved and collect membership fees themselves.

² Subsection 90(8) of the CCA.

Public detriment

24. The ACCC considers that in some cases exclusive dealing may lessen competition and efficiency. However, the ACCC considers that the proposed conduct is likely to result in limited detriment for the following reasons:
- The annual fee that league bowlers are required to pay to compete in TBA leagues is relatively small (\$33 for adult league bowlers and \$22 for junior league bowlers). As discussed above, the ACCC understands that TBA will use the money raised to meet its objective of developing and delivering programs designed to grow participation in the sport of tenpin bowling.
 - Non-league bowlers and social bowlers are not required to become TBA members if they wish to bowl socially at AMF or ABPA centres. Social bowlers in some areas may also have the choice of bowling socially at tenpin bowling centres not covered by the proposed conduct.
 - For tenpin bowling centres, recognition by the TBA as registered bowling centre is not a mandatory requirement to provide tenpin bowling services.
 - The Applicants have not sought authorisation to allow tenpin bowling centres to agree to set game fees or agree on any prices.
25. Overall, the ACCC considers that the proposed conduct is likely to result in limited public detriment.

Balance of public benefit and detriment

26. The ACCC is satisfied that the proposed conduct is likely to result in such a benefit to the public that the proposed conduct should be allowed. Accordingly, the ACCC is satisfied that the relevant net public benefit test is met.

Length of authorisation

27. The Applicants seek authorisation for ten years and submit that the legal costs related to seeking authorisation are significant for TBA as a not for profit organisation.
28. There were no submissions from interested parties on the appropriate length of any authorisation.
29. Given the ACCC's conclusion on the balance of public benefits and public detriments, the ACCC proposes to grant authorisation for the proposed conduct for ten years.

Draft Determination

The application

30. On 3 March 2016, Tenpin Bowling Australia Pty Ltd (TBA), Australian Bowling Proprietors Australia (ABPA) and Bowling Centres Australia Pty Ltd (AMF) (the **Applicants**) lodged application for authorisation A91531 with the ACCC. Application A91531 was made using Form E, under subsection 88(8) of the CCA, for the proposed conduct.

31. The Applicants have sought authorisation to engage in conduct that may constitute exclusive dealing conduct under section 47 of the CCA. In particular, the Applicants intend to require league bowlers to be members of TBA in order to participate in competitions at ABPA and AMF bowling centres.
32. Subsection 90A (1) of the CCA requires that, before determining an application for authorisation, the ACCC shall prepare a draft determination.

The net public benefit test

33. For the reasons outlined in this draft determination, the ACCC is satisfied, pursuant to sections 90 (8) of the CCA, that in all the circumstances the proposed conduct is likely to result in such a benefit to the public that the proposed conduct should be allowed.

Conduct for which the ACCC proposes to grant authorisation

34. The ACCC proposes to grant authorisation to the Applicants for ten years to require league bowlers to be members of TBA in order to participate in competitions at ABPA and AMF bowling centres.
35. This draft determination is made on 13 April 2016.

Next steps

36. The ACCC now seeks submissions in response to this draft determination. In addition, consistent with section 90A of the CCA, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.

Interim authorisation

37. On 3 March 2016, the Applicants sought interim authorisation for the proposed conduct. The ACCC has decided to grant interim authorisation under subsection 91(2) of the Act on 13 April 2016, taking into account the following factors:
 - for the reasons identified in this draft determination, the proposed conduct appears likely to result in public benefit that would outweigh any likely public detriment;
 - there is unlikely to be harm to any party if interim authorisation is granted;
 - there is potential for harm to TBA in the form of lost ability to collect membership fees if interim authorisation is not granted;
 - granting interim authorisation is unlikely to permanently alter the competitive state of the market if the ACCC later denied final authorisation.
38. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.