

22 June 2020

By email: darrell.channing@acc.gov.au

Mr Darrell Channing
Director Adjudication
Australian Competition & Consumer Commission
PO Box 3131.
CANBERRA ACT 2601
Via email to:

With a copy to Andrew Mahoney via email: andrew.mahony@acc.gov.au

Dear Mr Channing,

Response to submissions in respect of the National Lotteries and Newsagents Association's application for authorisation (AA1000515)

Thank you for the opportunity to respond to the submissions received by the ACCC in response to our application for authorisation. As Chair of the National Lotteries and Newsagents Association (**NLNA**), I submit these comments on behalf of the NLNA in response to the submissions you have received.

I have extensive experience and expertise in the newsagency industry, having been an owner and operator of newsagencies for more than 30 years. I have also held various senior management and director positions in national manufacturing and retail organisations.

The newsagent and lottery retailer industry we support is significantly under-represented, over 2,000 newsagents in Australia have zero representation in Australia and it is the NLNA's intention to:

- build on the successful foundation developed by the Victorian Association of Newsagents (VANA Ltd), which has operated consistently in accordance within the expectations of the ACCC under a restricted Victorian jurisdiction authorisation; and
- improve the prospects for newsagencies and lottery retailers across Australia (and not just in Victoria) to generate increased levels of revenue and profitability.

The NLNA's current application for authorisation is a logical growth step for an organisation that has a demonstrated track record of helping newsagents and lottery retailers to not only survive in the face of tough competition, but also to thrive and grow their businesses. We intend to do this without having to

draw on government assistance, by working closely with newsagents, lottery retailers and other industry participants to innovate, improve and professionally challenge the status quo.

With respect to the submissions you have received from Tabcorp, ALNA, NANA and NewsXpress, the NLNA would like to make the following comments:

Submission by Tabcorp

The NLNA acknowledges and welcomes Tabcorp's support for our application.

We are encouraged by initial discussions we have had with Tabcorp regarding the engagement model that the NLNA is promoting to newsagents and lottery retailers in the small business sector - businesses that are struggling under mounting retail competition and an ever-increasing regulatory burden.

Further, the NLNA has no objections to the comments and suggestions noted by Tabcorp in its submission.

Submissions by ALNA, NANA and NewsXpress

The NLNA does not propose to respond in detail to all of the comments you have received from our competitors, and will leave it to the ACCC to assess the merits (or otherwise) of those submissions with respect to the public benefit and public detriment (if any) of our application. However, we make the following points:

1. Clarification of the relationship between the NLNA and VANA Ltd

Given the comment from NANA in paragraph 2.1.7 of their submission, we would like to clarify the terminology in paragraph 2 of section 1.2 of our application. Strictly speaking, the correct term that should have been used is 'member' as opposed to 'shareholder', given that 'member' is the term used in the *Corporations Act 2001* (Cth) and the NLNA Constitution. That is, the sentence should read, "the NLNA's sole member is VANA Ltd".

2. 'Members' of the NLNA

One of the key objections raised by ALNA and NANA was that, in the NLNA's application, we have incorrectly said that the NLNA has multiple members.

Our use of the term 'member' in the application for authorisation was not intended to be a reference to how that term is defined in the *Corporations Act 2001* (Cth) or how it is used in the NLNA's Constitution (other than the clarification referred to in item 1 above). Rather, it was being used in a more general sense – that is, "a person,... or thing that is part of a group"¹.

As such, in our application these 'members' are simply owners and operators of newsagencies and lottery retailers that have paid a fee to the NLNA in return for certain services, including representation in collective bargaining with Tabcorp if the authorisation is granted.

3. Purpose of our authorisation application

¹ <https://dictionary.cambridge.org/dictionary/english/member> accessed 19 June 2020

Our application for ACCC authorisation is solely concerned with the ability for the NLNA and the newsagents and lottery retailers it represents to engage in certain conduct in relation to certain dealings with Tabcorp that would otherwise be prohibited under the *Competition and Consumer Act 2010* (Cth) (CCA).

On the other hand, the submissions from ALNA, NANA and NewsXpress seem to focus largely on a broad range of irrelevant issues, such as the NLNA's Constitution, the use of terms such as members vs subscribers, the model of the NLNA, and the manner in which newsagents and lottery retailers deal with the NLNA.

Importantly, in raising these issues, ALNA, NANA and NewsXpress do not seek to establish any real form of public detriment that would arise if the ACCC were to grant the authorisation. Their focus instead seems to be on criticising the legitimate business activities of an active competitor in their market (being the NLNA). Again, this is irrelevant to determining whether the public benefit of granting authorisation outweighs the public detriment.

4. **NLNA employees**

In the submission from NewsXpress, assertions were made that the NLNA employs or engages "commission only" sale people to sell products. This assertion is false.

Public benefits vs public detriment

For the reasons described in section 5 of our application for authorisation, the NLNA considers that, if granted, the authorisation to collectively bargain with Tabcorp for and on behalf of newsagents and lottery retailers is likely to lead to benefits for newsagents and lottery retailers, Tabcorp, Australian consumers and the public as a whole, including:

- allowing newsagents and lottery retailers to redress imbalances in bargaining power with Tabcorp (as they are otherwise likely to lack the capability to achieve complete and balanced contracts without effective representation), to produce more efficient commercial outcomes by providing newsagents and lottery retailers with greater input into the terms and conditions of contracts with Tabcorp;
- allowing newsagents and lottery retailers to become better informed of relevant market information, which is likely to improve their input into contractual negotiations with Tabcorp to achieve more efficient and balanced contracts;
- giving the NLNA the ability to represent newsagents and lottery retailers in discussions with Tabcorp at a national level, rather than representation occurring on a State or Territory basis; and
- improving customer service which would lead to improved customer shopping experience and promotion of newsagencies and lottery retailers.

The NLNA considers that, for the reasons set out in section 6 of our application for authorisation, collectively bargaining with Tabcorp for and on behalf of newsagents and lottery retailers is likely to result in limited public detriment.

On balance, the NLNA considers that collective bargaining by the NLNA for and on behalf of newsagents and lottery retailers with Tabcorp is likely to result in a public benefit that would outweigh any detriment to the public constituted by any lessening of competition arising from the conduct.

No other submissions

We further consider that the matters raised by the submissions you have received, and the absence of submissions from other parties you have invited to the consultation process, do not present a legitimate basis upon which the authorisation of the proposed conduct should be denied.

We look forward to your draft determination, and if there is any clarification or further information that you need, please do not hesitate to let me know.

Yours sincerely,



Chris Pecora
Chair
National Lotteries and Newsagents Association

Copy to: Andrew Mahoney (andrew.mahony@acc.gov.au)