



Determination

Application for minor variation of authorisation AA1000515
lodged by
National Lotteries and Newsagents Association Ltd
in respect of
collectively bargaining with The Lottery Corporation Limited on
behalf of its members

28 March 2024

Commissioners: Keogh
Lowe
Carver

Summary

The ACCC has decided to vary authorisation AA1000515 granted to the National Lotteries and Newsagents Association Ltd which enables it to collectively bargain with Tabcorp Holdings Limited on behalf of its current and future members.

The minor variation sought is to replace 'Tabcorp' references in the authorised conduct with 'The Lottery Corporation Limited' to reflect the demerger of Tabcorp's Keno and lotteries businesses into the Lottery Corporation Limited, which is now a separate ASX-listed entity.

The ACCC considers that the proposed variation is minor and unlikely to result in a reduction in the extent to which the benefit to the public from authorisation AA1000515 outweighs any detriment to the public.

Authorisation AA1000515 as varied will remain in effect until 9 October 2025, the expiry date of the original authorisation.

1. The application for minor variation

- 1.1. On 19 January 2024, the National Lotteries and Newsagents Association Ltd (**National Lotteries and Newsagents Association**) applied for a minor variation to authorisation AA1000515 granted by the Australian Competition and Consumer Commission (the **ACCC**).
- 1.2. The ACCC granted authorisation AA1000515 on 17 September 2020 until 9 October 2025. The authorisation enables the National Lotteries and Newsagents Association to represent its current and future members in discussions and collective bargaining negotiations with Tabcorp Holdings Limited (**Tabcorp**) in those Australian States and Territories in which Tabcorp operates. The collective bargaining conduct relates to the terms and conditions applicable to the arrangements between Tabcorp and the National Lotteries and Newsagents Association's members including:
 - commissions paid by Tabcorp to Lottery Retailers¹
 - handling Lottery Retailer application fees
 - service and freight charges
 - point of sale equipment hire costs
 - the ability of Lottery Retailers to participate in online sales undertaken by Tabcorp
 - retail image and subsidies (with respect to Tabcorp imagery in retail stores)
 - support service levels and training
 - sales incentive schemes, marketing and promotion
 - product sales restrictions in the area dedicated to the sale of lottery products

¹ In its application for authorisation, the National Lotteries and Newsagents Association defines 'Lottery Retailers' as 'Any person who subscribes as a member of the National Lotteries and Newsagents Association (which may be any Australian newsagent, lottery retailer/agent, Tabcorp lotto kiosk, and/or any general & gifting stores that sell newspapers or has a licence with Tabcorp (including pharmacies)), collectively, **Lottery Retailers**.'

- retail insurances, and
 - alterations to retailer procedures manuals
- (the **Authorised Conduct**).²

- 1.3. The National Lotteries and Newsagents Association is seeking a variation to the authorisation to amend any references in the Authorised Conduct that refer to Tabcorp to instead refer to 'The Lottery Corporation Limited' (the **Proposed Conduct Change**).
- 1.4. This application for minor variation was made under Section 91A of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
- 1.5. The National Lotteries and Newsagents Association submits that it is seeking the minor variation due to Tabcorp demerging its lotteries and Keno business from its wagering, media and gaming services businesses, thereby creating 2 separate independent ASX-listed companies.

2. Background

- 2.1. The National Lotteries and Newsagents Association is an Australia-wide industry body representing the newsagency and lottery industry, with 1,261 members nationally.
- 2.2. The Lottery Corporation Limited (the **Lottery Corporation**) is the largest provider of lotteries and Keno products and services in Australia, and is the official Government-licensed operator of lottery products in all States and Territories of Australia except Western Australia.
- 2.3. In 2022, Tabcorp demerged its lotteries and Keno businesses from its wagering and gaming services businesses, following a strategic review in 2021. The rationale for the demerger, in part, was to create 2 businesses that could focus more closely on their respective core operations, as per Tabcorp's ASX announcement and communication to its shareholders in relation to the merger.³ Tabcorp's shareholders approved the demerger (undertaken by a scheme of arrangement) at a general meeting and scheme meeting on 12 May 2022, and the Supreme Court of New South Wales approved the scheme of arrangement on 20 May 2022. The effect of the demerger was that the Lottery Corporation took over the operation of Tabcorp's lotteries and Keno businesses, while Tabcorp continued to operate its wagering and media, and gaming services businesses.
- 2.4. The National Lotteries and Newsagents Association submits that as it was authorised to collectively bargain with Tabcorp's lotteries and Keno businesses, following the demerger, the appropriate entity to collectively bargain with, for and on behalf of its current and future members in relation to the Authorised Conduct is now the Lottery Corporation.

² See ACCC Final Determination AA1000515 for further details about the Authorised Conduct.

³ See Tabcorp Holdings Limited, *For the Demerger of The Lottery Corporation – Vote in Favour*, Australian Securities Exchange, 31 March 2022, <https://announcements.asx.com.au/asxpdf/20220331/pdf/457j62v28qy906.pdf>, pp 30-31.

3. Consultation

- 3.1. For the purpose of consultation, the ACCC made an initial assessment that the application is capable of being a 'minor' variation consistent with the definition of a minor variation in the Act.⁴
- 3.2. The ACCC then invited submissions from a range of potentially interested parties including industry associations, state and territory authorities and other relevant regulatory bodies. We received one submission, from the Newsagents Association of NSW & ACT Limited, who submitted that it accepts that the variation sought by the applicant is unlikely to involve a material change in the effect of the authorisation. The submission also included concerns regarding the National Lotteries and Newsagents Association's representation about its membership.
- 3.3. The National Lotteries and Newsagents Association provided a response to the submission, noting that the submission did not identify any detrimental effects on the net public benefit of the existing authorised conduct, and the submission expressly accepts that the minor variation application sought is unlikely to involve a material change in the effect of the authorisation.

4. ACCC assessment

- 4.1. Under section 91A, the ACCC may grant an application for minor variation of an authorisation if it is satisfied that:
 - the proposed variation is minor, and
 - the variation would not be likely to reduce the extent to which the benefit to the public from the authorisation outweighs any anti-competitive detriment caused by the authorisation (the minor variation test).

The proposed variation is minor

- 4.2. The ACCC is satisfied that the proposed variation is minor. The ACCC considers that the proposed variation will not involve a material change in the effect of the authorisation that was originally granted. The ACCC considers that the replacement of the relevant party, from 'Tabcorp' to 'The Lottery Corporation Limited', that the National Lotteries and Newsagents Association collectively bargains with does not change the nature of the Authorised Conduct in a meaningful way.

No reduction in net public benefit of the arrangements

- 4.3. In its 2020 determination, the ACCC concluded that by granting authorisation that the arrangements were likely to result in a net public benefit. In particular, the ACCC considered that the arrangements would be likely to result in public benefits arising from:
 - improved input into contracts for smaller lottery retailers
 - transaction cost savings.
- 4.4. The ACCC considers that the Proposed Conduct Change will not impact the likelihood of these public benefits arising.

⁴ Section 87ZP(1) of the Act.

4.5. The ACCC considers that the Proposed Conduct Change will not impact on public detriment from reduced competition between lottery retailers, the risk of which the ACCC identified in its initial Determination as minimal, if any. On this basis, the ACCC considers that the proposed minor variation is unlikely to result in any increase in likely public detriments. For the reasons outlined, the ACCC considers that the proposed minor variation will not result in any reduction in the net public benefits of the Authorised Conduct.

5. Determination

- 5.1. The ACCC is satisfied that the variation is minor as defined by section 87ZP of the Act.
- 5.2. The ACCC is also satisfied that the public benefit test under section 91A(4)(b) of the Act is met. That is, the variation would not result, or would be likely not to result, in a reduction in the extent to which the benefit to the public of authorisation AA1000515 outweighs any detriment to the public caused by the authorisation.
- 5.3. Pursuant to section 91A(3) of the Act, the ACCC makes this determination varying authorisation AA1000515 to amend any references in the Authorised Conduct that refer to Tabcorp to instead refer to 'The Lottery Corporation Limited'.
- 5.4. This determination is made on 28 March 2024. If no application for a review of the determination is made with the Australian Competition Tribunal, the determination will come into force on 19 April 2024.