

12 June 2020

Darrell Channing  
Director, Adjudication  
Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
Canberra ACT 2601

**BY EMAIL**     [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

Dear Sir,

**National Lotteries and Newsagents Association application for authorisation AA1000515 — interested party consultation**

Tabcorp Holdings Ltd (**Tabcorp**) makes this submission in relation to the Application for Authorisation lodged by the National Lotteries and Newsagents Association Ltd (**NLNA**) to collectively bargain on behalf of its current and future members with Tabcorp and its subsidiaries, lodged on 20 May 2020 (**Application**).

As you will be aware, Tabcorp is authorised to conduct lotteries in all Australian states (excluding Western Australia) through licensed subsidiaries as follows:

Victoria: Tattersall's Sweeps Pty Ltd;

New South Wales and Australian Capital Territory: New South Wales Lotteries Corporation Pty Ltd;

Queensland: Golden Casket Lottery Corporation Ltd;

Northern Territory: Tatts NT Lotteries Pty Ltd (lotteries) and Golden Casket Lottery Corporation Ltd (instant scratch-its);

South Australia: Tatts Lotteries SA Pty Ltd (as Master Agent for Lotteries Commission of South Australia); and

Tasmania: Tattersall's Sweeps Pty Ltd (lotteries) and Golden Casket Lottery Corporation Ltd (instant scratch-its),

("Tabcorp Jurisdictions").

Tabcorp is generally supportive of applications for authorisations by organisations representing lottery retailers in Tabcorp Jurisdictions.

**Scope of the Application**

The Application proposes that NLNA is permitted, on behalf of its current and future members, to collectively bargain with Tabcorp and its subsidiaries in relation to the terms and conditions applicable to the arrangements between Tabcorp and NLNA's members including:

- commissions paid by Tabcorp to lottery retailers;
- 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;

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- product sales restrictions in the Tatts Industry association dedicated sale area;
- processes for the approval of incoming retailers;
- convenience stores and other distribution channels;
- retail insurances; alterations to retailer procedures manuals; matters not currently included in retailer agreements and matters that are currently unforeseen; and
- promotion around a pillar (Tabcorp) that provides over 50% of a newsagent's income and provides enormous opportunities to on-sell general items such as gifts, magazines, greeting cards, stationery and confectionery.

Tabcorp has no objection to the proposed conduct, with the exception of the matters addressed below.

### ***Processes for the approval of incoming retailers***

As has previously been noted by the Australian Competition and Consumer Commission, existing lottery agents have the incentive to use collective negotiation of fees and terms and conditions in relation to new lottery retail outlets to raise the barriers to entry for new lottery agents<sup>1</sup>. Tabcorp is concerned that the inclusion of *processes for the approval of incoming retailers* in the authorised conduct would pose a similar risk. Tabcorp therefore requests that this be reflected in the ACCC determination by way of an express exclusion of any matters relating to the process and criteria for inviting and assessment of new lottery retail outlets and the terms and conditions applicable to those outlets.

### ***Unforeseen matters***

Tabcorp appreciates that the ACCC has previously rejected concerns raised regarding *matters not currently included in retailer agreements and matters that are currently unforeseen* falling within the scope of authorised conduct<sup>2</sup>. However, Tabcorp has continuing concerns regarding how an assessment of the public benefits and detriments can reasonably be made in respect of the matter to be the subject of the collective bargain. The ACCC has itself recognised that in some cases it will not be possible to credibly quantify public benefits and detriments and that a qualitative assessment is required.<sup>3</sup> We therefore respectfully ask the ACCC to consider the exclusion of this conduct in its determination of this Application.

### ***Promotion of on-selling opportunities***

Tabcorp notes the inclusion of the following proposed conduct in the Application:

*promotion around a pillar (Tabcorp) that provides over 50% of a newsagent's income and provides enormous opportunities to on-sell general items such as gifts, magazines, greeting cards, stationery and confectionery.*

Tabcorp has concerns regarding the inclusion of this conduct on a number of grounds as follows:

- The level of revenue that lotteries delivers to an lottery retailer's total revenue is dependent on various factors, many of which are within the control of the lottery retailer. Any representations regarding the level of revenue that might be generated by lottery retailers should be avoided. It has the potential to be misleading and retailers could act in reliance on the representation.
- The proposed conduct intended to be captured is itself unclear. *Marketing and promotion* is already captured in the list of proposed conduct (see bullet point 8). To the extent that it is intended to

<sup>1</sup> See ACCC Determination re: Application for Authorisation lodged by Victorian Association of Newsagents Limited dated 21 May 2014 (A91399).

<sup>2</sup> See ACCC Determination re: Application for revocation of authorisation A91126 and substitution with A91425 lodged by Lottery Agents Association Victoria dated 10 September 2014.

<sup>3</sup> See ACCC Determination re: Application for revocation of authorisation and substitution with a replacement lodged by Australian Newsagents Federation dated 1 August 2014 (A91407).

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capture the promotion of lottery products, then this is already provided for. Alternatively, if it is intended to reference promotional activities that may be conducted by Tabcorp as regards the benefits of becoming a lottery retailer, then Tabcorp considers that this would create another means by which existing retailers could create barriers to market entry. Tabcorp welcomes clarification in relation to this proposed conduct, but in any case considers that this conduct should be expressly excluded in the ACCC determination.

### **Convenience stores and other distribution channels**

As you will be aware, Tabcorp has previously raised concerns regarding the potential for a collective bargaining arrangement which extends into other distribution channels to lessen competition with no public benefit.<sup>4</sup> We appreciate that the ACCC has previously determined that other distribution channels can be included. However, consistent with that determination, we would ask that this determination reflects that authorisation does not extend to NLNA collectively bargaining about the terms and conditions on which lottery distribution services are supplied by non NLNA members or about any agreements to which NLNA members would not be a party (including the impact on NLNA members).

### **Additional matters for ACCC consideration**

Further to the specific concerns raised in relation to the proposed conduct in the Application, we note that the scope of the Application itself is limited to *collectively negotiating and bargaining ... with Tabcorp Holdings Limited and its subsidiaries*. Consistent with previous ACCC determinations, we suggest that it would be sensible to expand the scope to include any other holders of lottery licences in the Tabcorp Jurisdictions. For efficiency, we suggest that any other third parties with whom the NLNA intends to collectively bargain on behalf of its members should be included for consideration by the ACCC as part of this Application.

Finally, simply for clarity, we suggest that the proposed conduct listed as *product sales restrictions in the Tatts Industry association dedicated sale area* be amended to read *product sales restrictions in the area dedicated to the sale of lottery products*.

Please do not hesitate to contact us if you require any further information.

Yours sincerely,



**ANTONY MOORE**

**General Manger Lotteries Retail  
Tabcorp**

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<sup>4</sup> See Tattersall's Sweeps Pty Ltd Submission re: Application for Authorisation A91126 by Lottery Agents Association of Victoria Inc dated 30 May 2014.

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