

20 May 2020

By email: adjudication@acc.gov.au

Daniel McCracken-Hewson
General Manager, Adjudication
Merger and Authorisation Review Division
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Dear Mr. McCracken-Hewson

Application for interim and final authorisation under section 88(1) of the *Competition and Consumer Act 2010* (Cth) – National Lotteries and Newsagents Association Ltd

We act for the National Lotteries and Newsagents Association Ltd (**NLNA**).

In accordance with the submissions enclosed with this letter, the NLNA seeks authorisation from the Australian Competition and Consumer Commission (**ACCC**) under section 88(1) of the *Competition and Consumer Act 2010* (Cth) to collectively negotiate and bargain for and on behalf of its current and future members located Australia-wide (except for Western Australia) with Tabcorp Holdings Limited and its subsidiaries (**Tabcorp**) for the purposes set out in the submission.

The NLNA also requests that the ACCC grant the NLNA an interim authorisation on the following basis:

- interim authorisation is required to allow the parties to engage in the proposed conduct and for the NLNA to represent its current and future members on a collective basis when dealing with Tabcorp pending a final determination by the ACCC;
- for the reasons set out in the attached submission, the NLNA is of the view that the proposed conduct will promote competition amongst the current industry associations and the proposed conduct will not substantially lessen competition;
- granting interim authorisation to the NLNA will not permanently alter the competitive dynamics of the market or inhibit the market from returning to its pre-interim state if final authorisation is later denied;
- the NLNA has only recently launched as a national industry association and it would not have been appropriate for it to lodge an application prior to the launch. As such, a request for urgent, interim authorisation could not have been avoided;

- the NLNA may suffer harm if an interim application is denied as it will not be able to deal with Tabcorp on behalf of its current members and it will have difficulties in attracting new members;
- the NLNA does not foresee any potential harm to other parties (such as customers and/or competitors) if a request for interim authorisation is granted; and
- for the reasons set out in the NLNA's submission, the NLNA is of the view that there is a public benefit in both the authorisation and the interim authorisation being granted.

The NLNA therefore respectfully requests that the ACCC grants the NLNA an interim authorisation to allow it to represent its current and future members on a collective basis when dealing with Tabcorp pending a final determination by the ACCC. If possible, the NLNA would be grateful if the interim authorisation is granted by 8 June 2020.

The NLNA confirm that they have paid the application lodgement fee, receipt number 2697476069.

Please contact Troy Mossley ([REDACTED]) or me if you have any queries.

Yours sincerely,

[REDACTED]

Craig Sanford
Director
Sierra Legal Pty Ltd

Application for Authorisation and Urgent Interim Authorisation

National Lotteries and Newsagents Association Ltd

1 Background information

1.1 Request for Authorisation and interim authorisation

In accordance with the submissions in this application, the National Lotteries and Newsagents Association Ltd (**NLNA**) seeks authorisation from the Australian Competition and Consumer Commission (**ACCC**) under section 88(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) to collectively negotiate and bargain for and on behalf of its current and future members located Australia-wide (except for Western Australia) with Tabcorp Holdings Limited and its subsidiaries (**Tabcorp**) for the purposes set out in this application.

The NLNA also seeks an interim authorisation from the ACCC to represent its current and future members on a collective basis when dealing with Tabcorp pending a final determination by the ACCC on this application.

1.2 The NLNA

The NLNA was launched on 25 February 2020 as an Australia-wide industry body representing the newsagency and lottery industry.

The NLNA's sole shareholder is VANA Ltd trading as the Victorian Association of Newsagents (**VANA**). VANA is a proactive industry association that has been representing newsagents in Victoria since 1879. VANA has a strong history of leading industry associations and in representing and educating newsagents and lottery retailers and ensuring the newsagency and lottery retailers industries remain strong and viable. VANA seeks to ensure the growth and financial viability of these channels through industry representation, advocacy, training programs, human resource assistance, political lobbying and e-commerce advice. Further details about VANA can be found here - <https://www.vana.com.au/>

VANA currently has over 403 members, which represents 61% of the newsagents in Victoria. Each member of VANA also has automatic membership of the NLNA.

Both the NLNA and VANA are led by Chief Executive Officer, Brendan Tohill.

Given VANA's strong history, the expertise of VANA's management team, and the growth of VANA and the successes it has achieved for its members, Mr. Tohill and his management team have recognised the need for additional, high quality, affordable representation for newsagents and lottery retailers Australia-wide, which has led to the establishment and incorporation of the NLNA.

VANA is currently authorised by the ACCC (Authorisation number: A91399) to collectively bargain with Tattersall's Sweeps Pty Ltd, Intralot Australia Pty Ltd and any other public lottery providers in Victoria. It is proposed by the NLNA and VANA that eventually the NLNA will supersede VANA and the assets of, services provided by, and members of, VANA will be rolled into the NLNA in the next 12 – 24 months.¹ At this stage, VANA is proposing to maintain its ACCC authorisation until such time as the NLNA completely supersedes VANA, and when this occurs, VANA is happy to enter into discussions with the ACCC in the future about revocation of its authorisation, if required.

1.3 Purpose and objectives of the NLNA

The NLNA's key role is to represent its members Australia-wide and, where appropriate, to act on behalf of its members on a collective basis. In addition, the purpose and objectives of the NLNA are as set out in section 2.1(a)(iii) in this application.

All Australian newsagents, Tabcorp lotto kiosks, and general & gifting stores that sell newspapers or have a licence with Tabcorp (including pharmacies) can apply for membership to the NLNA.

¹ It was originally expected that this transfer may occur sooner, however the current Covid-19 pandemic has temporarily postponed these plans.

1.4 Tabcorp

Tabcorp is Australia's leading diversified gambling entertainment industry association, employing more than 5,000 people. Tabcorp is listed on the ASX and is the largest provider of lotteries, Keno, wagering and gaming products and services in Australia.

Tabcorp is also the official Government licensed operator of lottery products in all States and Territories of Australia (except for Western Australia).

Tabcorp provides its lottery products under its subsidiary Thelott Enterprises Pty Ltd (the **Lott**), which encompasses all its jurisdictional lottery brands (including Tatts Lottery in Victoria, Tasmania and the Northern Territory, Golden Casket in Queensland, NSW Lotteries in New South Wales and the Australia Capital Territory, and SA Lotteries in South Australia) under the single entity.

Tabcorp's/the Lott's game brands include Set for Life, Powerball, Oz Lotto, TattsLotto, Saturday Lotto, Gold Lotto, X Lotto, Monday and Wednesday Lotto, Lucky Lotteries, The Pools, Lotto Strike, Super 66, and Instant Scratch-Its.

Tabcorp's lotteries products can be purchased in over 3,700 retail outlets Australia-wide (except for Western Australia)².

2 Parties to the proposed conduct

2.1 Applicant's details

(a) Provide details of the applicants for authorisation, including:

(i) name, address (registered office), telephone number and ACN:

Name:	National Lotteries and Newsagents Association Ltd (a company limited by guarantee)
ACN:	639 041 919
Address (registered office):	Suite 4, 202 Ferntree Gully Road, Clayton VIC 3168
Telephone Number:	(██████████)

(ii) contact person's name, position, telephone number and email address:

Name:	Brendan Tohill
Position:	CEO
Telephone Number:	██████████
Address:	Suite 4, 202 Ferntree Gully Road, Clayton VIC 3168
Email:	██████████

(iii) a description of business activities

The NLNA is a national industry association representing newsagents and lottery retailers across Australia. For further information about the NLNA, its executive team, board and members please visit the NLNA's website - <https://www.nlna.com.au/>.

² Tabcorp Holdings Ltd, 2019 Annual Report 2019, page 14

The purpose and objectives of the NLNA are to (amongst other things):

- (A) promote the Australian newsagency and lottery industry including the owners and employees of retail newsagents, lottery retailers, suppliers to newsagents and lottery retailers and other relevant stakeholders (collectively the **Industry**);
- (B) pool information, establish networks and share specialised skills and resources;
- (C) provide a forum for all people engaged in the Industry to discuss best practice and enhance the future of the Industry, including with respect to newsagencies and lottery retailers;
- (D) establish a national supplier network;
- (E) improve the income of newsagents and lottery retailers;
- (F) introduce initiatives to increase foot traffic for newsagents and lottery retailers across Australia;
- (G) work with government at all levels to ensure that the interests of the Industry are represented; and
- (H) any other services and activities that further the NLNA's purpose.

(iv) *email address for service of documents in Australia*

Name:	Troy Mossley, Senior Associate, Sierra Legal
Email:	[REDACTED]

2.2 Other parties

(a) *If applicable, provide details of the other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought:*

- (i) *name, address (registered office), telephone number and ACN*
- (ii) *contact person's name, telephone number and email address*
- (iii) *a description of business activities*

Other person's name:	Tabcorp Holdings Limited (and its subsidiaries)
ABN:	66 063 780 709
Address (registered office):	Level 21, Tower 2, Collins Square, 727 Collins Street, Melbourne, Victoria 3008
Contact person	Antony Moore, General Manager Lotteries Retail
Email	[REDACTED]
Telephone Number:	[REDACTED] [REDACTED]
Description of business activities	Licensee of lottery products in Australia (except for Western Australia) through its subsidiaries.
Other classes of persons:	Any person who subscribes as a member of the NLNA (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 .
Description of business activities	Operation of newsagents, Tabcorp lotto kiosks, and general & gifting stores that sell newspapers or have a licence with Tabcorp (including pharmacies).

3 The proposed conduct

3.1 Details of proposed conduct

Provide details of the proposed conduct, including:

(a) *a description of the proposed conduct and any documents that detail the terms of the proposed conduct:*

The NLNA proposes to represent its current and future members in discussions and collective bargaining negotiations with Tabcorp in those Australian States and Territories in which Tabcorp operates. The proposed collective bargaining conduct relates 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;
- 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.

(b) *the relevant provisions of the CCA which might apply to the proposed conduct.*

- making and/or giving effect to a contract, arrangement or understanding that contains a cartel provision (Division 1 of Part IV); and
- making and/or giving effect to a contract, arrangement or understanding that has the purpose, effect or likely effect of substantially lessening competition (section 45(1)(a) and (b)).

(c) *the rationale for the proposed conduct*

The underlying rationale for the proposed conduct is as follows:

- Smaller businesses (such as Lottery Retailers) face challenges when negotiating with larger businesses (such as Tabcorp) and, given the disparity in bargaining power between the respective parties, the outcomes achieved may not be efficient or optimal.

- The NLNA proposes to assist Lottery Retailers to improve their ability to negotiate balanced terms with Tabcorp.
- Many Lottery Retailers cannot endure the transaction costs required to negotiate complete or balanced terms.
- The prevalence of unfavourable or inefficient outcomes for Lottery Retailers may be augmented by opportunistic conduct, or the exercise of greater bargaining or market power by or on behalf of the larger businesses.

(d) *the term of authorisation sought and reasons for seeking this period. By default, the ACCC will assume you are seeking authorisation for five years. If a different period is being sought, please specify and explain why.*

5 years.

3.2 Supporting documents

Provide documents submitted to the applicant's board or prepared by or for the applicant's senior management for purposes of assessing or making a decision in relation to the proposed conduct and any minutes or record of the decision made:

These have not been included because no descriptive illustrative internal documents are available. However, the submissions set out in this document details the NLNA's rationale and objectives for the application.

3.3 Impacted parties

Provide the names of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant products or services) and detail how or why they might be impacted:

The NLNA submits that there will be little, if any, negative impact on any person as a result of the proposed conduct. It is the NLNA's view that the proposed conduct will benefit Tabcorp, the NLNA's members, consumers of Tabcorp's products and services and those of NLNA's members, and any non-members for the reasons set out in the 'Public Benefit' section of this submission.

4 Market Information and concentration

4.1 Products and services

Describe the products and/or services, and the geographic areas, supplied by the applicants. Identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer):

Tabcorp's products and services

Tabcorp is the official licensed operator of lottery products in all States of Australia apart from Western Australia.

Tabcorp provides its lottery products under its subsidiary, the Lott, which encompasses all its jurisdictional lottery brands under a single entity with those brands being:

- Tatts Lottery in Victoria, Tasmania and the Northern Territory;
- Golden Casket in Queensland;
- NSW Lotteries in New South Wales and the Australia Capital Territory; and
- SA Lotteries in South Australia.

Tabcorp/the Lott provides the following lottery products across Australia, with the particular lottery products that are available differing in each State or Territory:

- Set for Life
- Powerball
- Oz Lotto

- TattsLotto
- Saturday Lotto
- Gold Lotto
- X Lotto
- Monday and Wednesday Lotto
- Lucky Lotteries
- The Pools
- Lotto Strike
- Super 66
- Instant Scratch-Its.

The relevant lottery products that are available in each State or Territory can be purchased in over 3,700 retail outlets Australia-wide (except for Western Australia).

Tabcorp distributes lottery products via Lottery Retailers and pay Lottery Retailers a commission in return for the sale of the lottery products. Tabcorp requires each Lottery Retailer to enter into a franchise agreement with Tabcorp. Tabcorp operates as a monopoly supplier of lottery products in Australia and as such is the monopsony acquirer of lottery distribution services from Lottery Retailers.

Lottery Retailers

To a limited extent, Lottery Retailers compete with each other in the retail supply of lottery products to consumers. However, given the tight nature of regulation and supervision of lottery products by Governments in each State and Territory, there is little scope for competition on price factors or the lottery products offered by Lottery Retailers and the majority of competition between Lottery Retailers is a result of non-price factors such as location and/or service.

NLNA

The NLNA will act for and represent Lottery Retailers that are members of the NLNA in respect of any dealings with Tabcorp in the Australian jurisdictions in which Tabcorp/the Lott provides their lottery products.

4.2 Relevant industries

Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.

The relevant industry is the lottery industry which is highly regulated by each State and Territory Government.

Tabcorp is the official Government licensed operator of lottery products in all States and Territories of Australia (except for Western Australia).

Tabcorp sells its lottery products to consumers through a franchised network of Lottery Retailers (as well as directly to consumers via its online platform). Tabcorp enters into franchise agreements with each Lottery Retailer.

4.3 Overlapping products

In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available:

As Tabcorp is the exclusive licensed operator of lottery products in all States and Territories (except for Western Australia), other than lottery products sold directly by Tabcorp via its online platform, there are no overlapping products.

All lottery products sold by Lottery Retailers are subject to the franchise agreement that each Lottery Retailer enters into with Tabcorp.

While online sales are growing at around 23% for Tabcorp, lottery product sales through Lottery Retailers are also growing. While it is acknowledged that consumers are increasingly engaging online, newsagents (and Lottery Retailers generally) as small business owners are the fabric of the community and the NLNA requests that authorisation be granted by the ACCC so that it can act as a representative and voice of Lottery Retailers (continuing

the dialogue at a national-level that has been started and championed by VANA at the Victorian level) in discussions with Tabcorp as to how to continue to grow the relationship between Tabcorp and Lottery Retailers so that the public can continue to buy from their local newsagent/Lottery Retailer.

4.4 Other factors

In assessing an application for authorisation, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:

- (a) existing competitors
- (b) likely entry by new competitors
- (c) any countervailing power of customers and/or suppliers
- (d) any other relevant factors:

Competitors to the NLNA

The ACCC has previously granted authorisations to similar industry associations representing Lottery Retailers in a number of Australian States and Territories. These industry associations that have been previously authorised are now consolidated into 2 key groups:

- The Australian Newsagents Federation Ltd trading as the Australian Lotteries and Newsagents Association, that, in 2019, merged with:
 - Lottery Agents Queensland
 - Lottery Agents Association of Tasmania; and
 - Lottery Agents Association of Victoria Inc trading as Lottery Retailers Association; and
- The Newsagents Association of NSW and ACT Ltd.

In addition to these 2 industry associations, and as noted above, VANA is the peak industry body representing newsagents and Lottery Retailers in Victoria. VANA's executive management team has seen a need for additional, affordable representation of Australia-wide Lottery Retailers which has led to the establishment of the NLNA.

Lottery industry

The lottery industry is tightly controlled by legislation in each State and Territory with supervision undertaken by the relevant State or Territory gambling regulator.

The lottery industry features uniform products, prices and procedures and all improvements flow to retailers. Lottery Retailers have no control over the pricing of lottery games which is determined by the relevant State and Territory governments. Lottery Retailer's overall margins have been squeezed substantially because of increased costs and fees.

Non-members of the NLNA will not be prejudiced as the benefits of any collective bargaining will flow to them due to Tabcorp's desire for consistency in the arrangements with Lottery Retailers.

Increased choice and innovation

While VANA has been representing newsagents in Victoria since 1879 (and more recently Lottery Retailers), the management team of VANA believe a new national industry association is required to provide:

- more affordable representations to Lottery Retailers Australia-wide;
- greater choice to Lottery Retailers as to its representative with Tabcorp; and
- greater competition amongst the current industry associations which in turn will lead to better services and innovation provided by the industry associations, and with the corresponding benefits flowing to Lottery Retailers (and ultimately consumers).

The NLNA also submits that the ability for the NLNA to collectively bargain with Tabcorp in addition to any other industry association will ensure that maximum benefits are received by all Lottery Retailers. Newsagents (and Lottery Retailers generally) are the fabric of the community and increased efficiencies, support, commissions and

other benefits (as outlined in paragraph 3.1(a) of this submission) can lead to increased sales by Lottery Retailers, which:

- benefits Lottery Retailers - without the sale of lottery products (or if Tabcorp heavily reduces commissions payable to Lottery Retailers), there is a risk that many Lottery Retailers may not be able to survive. Continuing to promote the relationship between Lottery Retailers and Tabcorp mean that this relationship stays strong and Lottery Retailers can continue to operate their businesses effectively so that consumers of lottery products may continue the purchase of those lottery products through retail channels (in addition to online channels);
- benefits Tabcorp – keeping Lottery Retailers engaged, vibrant and a place for people to shop will increase lottery products sales; and
- benefit the various State and Territory Governments through license fees and taxes associated with the sale of lottery products.

In addition, training and development courses provided by the NLNA to Lottery Retailers with respect to Lottery Retailers being compliant with the requirements of Tabcorp’s site surveys will assist Lottery Retailers in being in the “green zone” in respect of those surveys. This will mean that Lottery Retailers will earn more commission from Tabcorp from the sale of lottery products. These “How to Improve Your Income” training workshops will be provided either in person or zoom.

5 Public benefit

Describe the benefits to the public that are likely to result from the proposed conduct. Provide information, data, documents or other evidence relevant to the ACCC’s assessment of the public benefits:

The ACCC has previously recognised that a range of public benefits are likely to arise in relation to collective bargaining conduct with lottery providers of the type proposed by the NLNA, including improved input into contracts and transaction cost savings:³

Improved input into contracts:

The NLNA notes the following comments of the ACCC in the Final Determination for VANA with respect to the public benefits resulting from improved input into the development of contracts, operational manuals and materials for lottery agents:

“The ACCC accepts that collective bargaining is likely to result in public benefits resulting from improved input into the development of contracts, operational manuals and materials for lottery agents. Individual lottery agents often have very little input into such arrangements because of their weak bargaining position. Collective negotiations may increase the input that VANA members have into such arrangements and therefore create greater opportunities for the negotiating parties to identify and achieve business efficiencies.”⁴

Accordingly, the NLNA submits that authorising it to engage in collective bargaining conduct with Tabcorp will assist in:

- allowing small 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);
- producing more efficient commercial outcomes by providing Lottery Retailers with greater input into the terms and conditions of contracts with Tabcorp;

³ Final Determination of the ACCC in respect of Lottery Agents Queensland Ltd (Authorisation number: A91397) dated 16 April 2014, paragraph 16; Final Determination of the ACCC in respect of Australian Newsagents Federation Ltd (Authorisation number: A91349) dated 20 March 2013, paragraph 17.

⁴ Final Determination of the ACCC in respect of the Victoria Association of Newsagents Ltd (Authorisation Number A91399) dated 21 May 2014, at paragraph 23.

- producing more effective negotiation processes, where the negotiating parties have a greater opportunity to identify and achieve business efficiencies that better reflect the circumstances of the NLNA members and Tabcorp, for example on common issues including commissions, equipment and sales incentives and marketing and development;
- allowing members of the industry association 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; and
- reducing the likelihood of manifestly unfair contractual terms and conditions which often arise when individual newsagents engage directly with large-scale or monopoly suppliers.

While the NLNA recognises that there are other industry associations that currently have ACCC authorisation to collectively bargain with Tabcorp, the NLNA submits that it does not foresee or consider the splitting of the pool of potential members between 3 industry association as weakening the bargaining position of Lottery Retailers for the following reasons:

- it provides an opportunity for each industry association to negotiate agreements reflecting the different operational practices and needs of different types of retailers selling lottery products, and facilitate newsagent-lottery retailers who are not members of another industry association being better represented in negotiations with lottery providers;⁵
- the proposed arrangements are voluntary and, accordingly, opportunities for collective bargaining to improve input into contract terms and conditions will generally only arise if both sides are likely to benefit from collectively negotiating an outcome;
- 3 similar industry associations do not reduce the potential for the realisation of mutually beneficial outcomes between Tabcorp and Lottery Retailers;
- it promotes competition between those industry associations to ensure the respective industry associations offer the best services and prices to their members which would lead to better representation for Lottery Retailers;
- if a member decides to leave one industry association and join the NLNA, they would be doing so freely and because they consider the NLNA to be better able to supply support services to their businesses, which may include collectively bargaining with lottery providers; and
- Tabcorp will determine which industry association or associations it deals with.

Transaction cost savings:

The collective bargaining arrangement is likely to result in public benefits from transaction cost savings (including legal and expert advisor costs) for the NLNA members and Lottery Retailers generally due to a single negotiating process occurring (with respect to those NLNA members) rather than a series of individual negotiations. Sharing transaction costs will enable more of the potential benefits from the parties negotiating improved terms with each other to be maximised, thus making all parties better off. The ACCC has previously accepted that such costs savings would arise from having a single negotiating process.⁶

The NLNA recognises that there are other industry associations that have ACCC authorisation to collectively bargain with subsidiaries of Tabcorp in particular States and Territories on behalf of their members and if the NLNA application is granted there will be multiple industry associations will the ability to collectively bargain with Tabcorp.

The NLNA notes the comments of the ACCC in their Final Determination for the Lottery Agents Association of Victoria when discussing both the LAAV and VANA being authorised to act on behalf of Members in Victoria:

“The ACCC considers that collective bargaining by both LAAV and VANA with Tatts Industry association and Intralot will not necessarily lead to the same level of transaction cost savings as

⁵ Final Determination by the ACCC in respect of the Victoria Association of Newsagents Ltd (Authorisation Number A91399) dated 21 May 2014.

⁶ Final Determination of the ACCC in respect of Lottery Agents Queensland Ltd (Authorisation number: A91397) dated 16 April 2014, para 17; Final Determination of the ACCC in respect of the Newsagents Association of NSW and ACT (Authorisation number A91269) dated 6 October 2011 at paragraphs 4.30-4.37; and Final Determination of the ACCC in respect of the Lottery Agents Association of Victoria (Authorisation number: A91425) dated 10 September 2014 at paragraph 17(a).

would be the case if there was only one bargaining industry association negotiating with Tatts Industry association and Intralot. However, the ACCC considers that the parties involved in any collective bargaining have the means and the incentive to minimise transaction costs, particularly where there is a commonality of issues across the bargaining industry associations. In addition, competition between VANA and LAAV may provide incentives for each bargaining industry association to seek to minimise bargaining costs, leading to improved efficiencies in bargaining outcomes.”⁷

The NLNA further notes the ACCC’s conclusion on public benefit in their Final Determination for the Lottery Agents Association of Victoria:

“Accordingly, the ACCC considers that any higher transaction costs as a result LAAV’s collective bargaining would be a consequence of negotiations that are likely to achieve efficient contracts and would not outweigh the public benefits of such efficiencies. Therefore, although the ACCC considers that the proposed arrangements may not lead to the same level of transaction cost savings as would be the case if there was only one bargaining industry association, the ACCC does not consider that any increased transaction costs are likely to constitute a net detriment.”

The NLNA submits that while, with authorisation being granted to the NLNA, there will be multiple industry associations authorised that will be collectively bargaining on behalf of Lottery Retailers, transaction cost savings will be achieved by:

- The NLNA dealing with Tabcorp and the NLNA representing its members a national level, rather than representation occurring on a State or Territory basis. The NLNA submits that this national level representation will result in cost savings for Tabcorp and the NLNA’s members.
- The NLNA has ambitious plans for growth and their expectations are that they will have 700 members by the end of 2021 and over 1,000 members by 30 June 2022. Collectively bargaining on behalf of this number of members presents a significant saving for those members.
- Tabcorp is free to choose which industry association it deals with, which will ultimately promote competition and potential cost savings for Lottery Retailers.
- Even if there are higher transaction costs, the NLNA submits that these will not be significant, and any increases will not likely constitute a net detriment.

Improved income for Lottery Retailers and improved customer experience

Lottery Retailers contribute significantly to the Australian economy and it is estimated that the newsagency industry alone is worth \$2 billion.⁸ As such, the continued viability of Lottery Retailers is important. Improving customer service and customer experience is a means of maintaining and increasing sales of lottery products which positively impacts Lotteries Retailers’ businesses and assists in maintaining their ongoing viability.

The NLNA submits that in addition to transactional costs savings and improved input into contracts, authorisation for the NLNA to collectively bargain with Tabcorp regarding proposals such as sales incentive schemes, changes to shop images, changes to training provided by Tabcorp, improved point of sale information, increased product information and other means of improving customer service and customer experience would lead to improved customer shopping experience and promote Lotteries Retailers’ businesses. For the reasons set out in paragraphs 4.4 above, these benefits will flow to Lottery Retailers, the owner operators of Lottery Retailers, Tabcorp and consumers.

⁷ Final Determination of the ACCC in respect of the Lottery Agents Association of Victoria (Authorisation number: A91425) dated 10 September 2014 at paragraph 18.

⁸ <https://www.ibisworld.com/au/industry/newsagencies/5495/>

6 Public detriment

Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments:

As the ACCC is aware, it has previously considered the public detriment resulting from collective bargaining conduct that is the same or similar to that conduct proposed by the NLNA. The ACCC has concluded in a previous application⁹ that any public detriment from collective bargaining on behalf of Lottery Retailers is likely to be limited since:

- the relevant State and Territory regulatory agencies continue to regulate most aspects of the retail supply of lottery products (including price);
- participation in an industry association's collectively bargaining is voluntary for the lottery provider (in this case Tabcorp) and the industry associations' members; and
- no collective boycott activity is proposed.

The NLNA does not consider that any detriment will arise as a result of the proposed collective bargaining arrangement, but in any event the NLNA considers that any public detriment which may arise would be of little consequence, and would be far outweighed by the public benefit resulting from the arrangement. The NLNA submits that granting it authorisation would not result in public detriment for the following reasons:

- Participation in collective bargaining is voluntary for both Tabcorp and Lottery Retailers. If the NLNA negotiates what it believes to be improved terms, every member will have the opportunity to accept, reject or negotiate different terms with Tabcorp. There would also be nothing to prevent certain Lottery Members and Tabcorp from negotiating individually with each other while the NLNA collectively negotiates with Tabcorp. Such an arrangement effectively establishes an arrangement which is entirely voluntary for member, which limits any public detriments.
- There is no proposed boycott activity.
- The level of competition between Lottery Retailers for both distribution services and the supply of lottery products to consumers is unlikely to be significantly affected.¹⁰
- Having competition between 2 or more industry associations that deal with Tabcorp would not result in public detriment for the following reasons:
 - it promotes competition between those industry associations to ensure the respective industry associations offer the best services and prices to their members which would lead to better representation for Lottery Retailers;¹¹
 - if a member decides to leave one industry association and join the NLNA, they would be doing so freely and because they consider the NLNA to be better able to supply support services to their businesses, which may include collectively bargaining with lottery providers;¹² and
 - The NLNA submits that Tabcorp having to deal with a new industry association would not result in any confusion or frustrations for Tabcorp as:
 - the key executive team of the NLNA already have established relationships with Tabcorp from their dealings at VANA;

⁹ Final Determination by the ACCC in respect of the Victoria Association of Newsagents Ltd (Authorisation Number A91399) dated 21 May 2014 at paragraph 28.

¹⁰ Final Determination of the ACCC in respect of the Newsagents Association of NSW and ACT (Authorisation number A91269) dated 6 October 2011 at paragraph 4.88.

¹¹ Final Determination by the ACCC in respect of the Victoria Association of Newsagents Ltd (Authorisation Number A91399) dated 21 May 2014 at Paragraph 46; Final Determination of the ACCC in respect of the Newsagents Association of NSW and ACT (Authorisation number A91269) dated 6 October 2011 at paragraph 4.75.

¹² The ACCC has previously noted that it did not consider members leaving one group to join another would constitute a public detriment. Final Determination by the ACCC in respect of the Victoria Association of Newsagents Ltd (Authorisation Number A91399) dated 21 May 2014 at paragraph 46

- NLNA will be dealing with Tabcorp at a national level which will streamline representation and avoid Tabcorp and its subsidiaries having to liaise with various industry associations on a State-by-State basis; and
 - should Tabcorp have concerns about dealing with multiple industry associations, they can refuse to engage in collective bargaining with any particular industry association.
- In the absence of collective bargaining, the level of competition between Lottery Retailers in negotiating with Tabcorp is likely to be low due to the use of standard form contracts by Tabcorp.

7 Balance of benefit and detriment

For the reasons described in section 5 of this submission, the NLNA considers that, if granted, the authorisation to collectively bargain with Tabcorp is likely to lead to benefits for Lottery Retailers, Tabcorp, and Australian consumers and the public as a whole.

The NLNA considers that, for the reasons set out in section 6 of this submission, collectively bargaining with Tabcorp is likely to result in limited public detriment.

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

8 Contact details of relevant market participants

Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties such as actual or potential competitors, key customers and suppliers, trade or industry associations and regulators.

Tabcorp

- **Name:** Antony Moore; **Position:** General Manager Lotteries Retail; **Contact number:** [REDACTED] **Email:** [REDACTED]
- **Name:** Stephen Urquhart; **Position:** Head of Retail Operations-Lotteries; **Contact number:** [REDACTED] or [REDACTED] **Email:** [REDACTED]
- **Name:** Adrian Eaton; **Position:** Head of Retail Industry Engagement-Lotteries; **Contact number:** [REDACTED] **Email:** [REDACTED]

Potential Competitors

- The Australian Newsagents Federation Ltd trading as the Australian Lotteries and Newsagents Association.
- The Newsagents Association of NSW and ACT Ltd.

9 Additional information

Provide any other information or documents you consider relevant to the ACCC's assessment of the application

All information relevant to the ACCC's assessment of the application has been set out above. However, if the ACCC requires further information, details or documents regarding the NLNA, please do not hesitate to contact the NLNA and its CEO, Brendan Tohill.

Declaration by Applicant

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application. The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth)



Signature of authorised person

Chief Executive Officer

Office held

Brendan Tohill

Name of authorised person

This 19th day of May 2020