

**CLUBS AUSTRALIA**  
**COLLECTIVE BARGAINING AUTHORISATION APPLICATION**  
**SCIENTIFIC GAMES AUSTRALIA GROUP SUBMISSION**

We refer to the Application for collective bargaining authorisation application filed by Clubs Australia Incorporated on 27 May 2019 (**the Application**) and the ACCC's invitation for submissions from the interested parties in respect of the Application.

Scientific Games Australia Pty Ltd is identified in the Application as a Target in two categories: (1) the providers of electronic gaming machines and related services and (2) provider of gaming systems.

We note that SG Gaming ANZ Pty Ltd is the operating company in Australia, for the sales of the electronic gaming machines and gaming systems products.

However we make this submission on behalf of all the Scientific Games Australian Group of Companies, which include all Scientific Games related companies in Australia (**SGA**).

**EXECUTIVE SUMMARY**

SGA opposes the Application in so far as it applies to SGA, the providers of electronic gaming machines and related services and the providers of gaming systems.

Clubs represent at least 51% of the Australian market for the supply of EGMs. As a collective, clubs would have a dominant degree of market power, which would have the effect, or would be likely to have the effect, of substantially lessening competition in the market for the supply of EGMs in Australia. There will be no public benefit arising out of any collective bargaining by Clubs Australia with the providers of the electronic gaming machines. The proposed conduct could, however, destabilise the industry and lead to uncompetitive outcomes.

It would not be commercially possible to offer any "national wide" products and services offerings and/or the "national wide" price, due to the wide variety of the regulatory, technical and commercial issues, which exists in each State and Territory. As such, any national terms and price negotiations by Clubs Australia, would be futile.

Any negotiations of "data related terms", beyond what is required by law, would not be accepted, as SGA has no commercial interest in or use for the clubs patrons' or players' personal information.

SGA should be removed from the list of Targets in the Clubs Australia Application.

## BACKGROUND

SGA sells electronic gaming machines, electronic table systems, games, gaming equipment and gaming systems to gaming venue operators across Australia.

The gaming venues throughout Australia are comprised of clubs, hotels and casinos.

## SUBMISSION

SGA believes that some of the assertions made in the Application are incorrect and that, if the proposed conduct is authorised, it would lead to the substantial lessening of competition in the market for the supply of EGMs in Australia.

### 1 MARKET INFORMATION

In Section 4.1 of the Application, Clubs Australia submits:

*"Providers of electronic gaming machines and related services*

- In aggregate, clubs comprise a major purchaser of EGMs. However, clubs are unlikely to comprise a majority of purchasers. EGM providers also supply their products to hotels, casinos and overseas markets"*

SGA submits that the assertion that "clubs are unlikely to comprise the majority of purchasers" is entirely incorrect. In fact, clubs are a clear majority of the purchaser of EGMs in Australia.

The numbers of EGMs in gaming venues in Australia are represented in the below table:

State	Total EGMs	Clubs EGMs	Hotel EGMs	Casino EGMs
NSW	93,165	69,014	22,651	1,500**
Qld	41,865	22,705	19,160	3,796
Victoria	27,372**	13,686**	13,686**	2,628**
SA	13,113			995
ACT	3,866	3,816	50	
Tasmania	3,530			1,185
NT	1,734**			
WA	1,750			1,750
<b>Total</b>	<b>186,395</b>	<b>95,535</b>	<b>41,865</b>	<b>11,854</b>
		<b>95,535</b>	<b>53,719</b>	
<b>Total Market Share</b>		<b>51%</b>		

The above table shows that clubs represent **at least 51% of the Australian market for the supply of EGMs.**

As a collective, clubs would have a dominant degree of market power, which would have the effect, or would be likely to have the effect, of substantially lessening competition in the market for the supply of EGMs in Australia.

Regarding the overseas markets for the supply of EGMs, these are distinctly separate markets for the purposes of the Australian based EGM manufacturers and suppliers. EGM products supplied overseas are significantly different to the products supplied in Australia, due to the differences in regulation and customer gaming preferences, as well as the manufacturing and delivery arrangements and the international industry and customer base. Overall, the sale of EGMs to the overseas markets cannot be considered relevant supplies for the purposes of analysing the Australian EGMs supply market.

Therefore, if Clubs Australia collectively bargains for all of the clubs, Clubs Australia could have up to more than 51% of the market share for the acquisition of EGMs in Australia. Such extensive market share and market power would be likely to substantially lessen competition amongst the remaining buyers of EGMs.

There is no public benefit arising out of any collective bargaining by Clubs Australia with the providers of the electronic gaming machines. The price paid by a venue operator (a club) for an EGM does not determine the price of that EGM when it is provided to the public (consumers). Consumers do not pay for the use of an EGM per se. Hence, there is no direct cost saving benefit to consumers arising from any price reductions gained by clubs through any collective bargaining by the clubs.

Submission: SGA submits that such high degree of market share (51% and above) should not be allowed to be concentrated in the hands of one collective buyer (Clubs Australia) in the market for the supply of EGMs in Australia.

## 2 GAMING PRODUCTS

The regulation of gaming products and, specifically, EGMs, is State and Territory based. Each State and Territory has a different set of the regulatory regimes applying to the EGMs and governing the design, technical requirements and deployment of the EGMs.

A summary of the varying EGM development requirements for Clubs and Hotels is represented below:

<b>STATE</b>	<b>Note acceptors</b>	<b>Maximum Bet</b>	<b>Return to Player ratio</b>	<b>Win limits</b>
<b>NSW</b>	Accept \$5, \$10, \$20, \$50 and \$100 notes	\$10 per spin	85%	\$10,000, \$500,000 (Inter-venue).
<b>Qld</b>	Accept \$5, \$10, \$20, \$50 notes.	\$5 per spin	85- 92%	\$10,000, \$25,000 (Jackpot)
<b>Victoria</b>	Accept \$5, \$10, \$20 and \$50 notes	\$5 per spin	87%	None
<b>SA</b>	Banned. Machines accept coins only	\$10 per spin	87.5%	\$10,000
<b>ACT</b>	Accept \$5, \$10 and \$20 notes	\$10 per spin	87%	None
<b>Tasmania</b>	Banned in Hotels and Clubs	\$5 per spin	85%	None
<b>NT</b>	Banned in hotels and clubs.	\$5 per spin	85%	None
<b>WA</b>	Unlimited	\$225	90%	None

The deployment of EGMs also varies in each State and Territory. For example,

- in NSW, the Centralised Monitoring System (CMS) is exclusive to Maxgaming (MAX) Pty Ltd who holds an exclusive licence to operate the CMS until 30 November 2032. The size of the market and the fact that SGA is based in NSW, allows SGA to run their own fleet of installers and repairers. This often means that venues in NSW get free installation and cheaper repairs;
- in Queensland, the installation and servicing of EGMs must be done by a Licenced Monitoring Operators (**LMOs**) and they run the CMS, which adopts the QCOM protocol mandated by the QLD Office of Liquor and Gaming. The extensive regulatory compliance requirements make the installation and repair services in this jurisdiction uneconomical and SGA is forced to rely on the commercial arrangements with the LMOs for the installations and repairs;
- in Victoria, the CMS is administered by Intralot Gaming Services Pty Ltd. Again, SGA must deal with the licenced installers and repairers;
- in some jurisdictions, such as SA, the company has to rely on local agents for the sale of EGMs, as well as the installations and repairs, as the distance and the size of the market make direct operations uneconomical.

Therefore, the manufactures/suppliers of EGMs are heavily regulated and are subject to an extensive compliance in regards to their products in each State and Territory. The extent of the technical and regulatory compliance and the size and distance of the market, dictates the specific commercial arrangements which exist in each State and Territory in regards to the sale, installation and servicing of the products and to any warranty repairs and conversions.

Due to these significant compliance and commercial differences on a State by State basis, it is not going to be commercially possible to achieve a "national" approach to the supply of EGMs or to arrive at any "national EGMs offerings".

We also note that, in some jurisdictions, the regulator approves the commercial agreements which are used for the supply of EGMs. For example, in NSW, the Office of Gaming & Liquor approves the standard agreements which are then used to sell EGMs and the parties cannot vary the agreement without submitting it for the regulatory approval again. The process of approval is time and resources consuming and it is not clear whether the NSW Regulator could approve a national version of any agreement.

### 3 GAMING PRODUCT PRICING

EGM prices, offered to customers around Australia, reflect the regulatory, technical and commercial issues, which were set out in section 2 above.

EGM prices, offered to customers (venues), also take into account other factors such as:

- each customer's individual product footprint, including the volume of the products at the customer's premises;
- supply of related and associated products, such as conversions, systems and peripherals, which may be included into the EGM supply offers;
- arrangements for the delivery and installations of the EGMs;
- any available trade ins (ie, old EGMs buy back) that an individual customer may have at the time of the product offer; and
- any internal target of the supplier, such as, for example, a goal to increase the supplier's presence in a specific geographical areas.

When considering the above factors, it becomes apparent that no collective national price or price offering is going to be possible to be achieved. It is not going to be possible to arrive at an artificial "national price", which does not relate to a specific commercial offer or a specific customer's profile and is not based on meaningful commercial negotiations.

Submission: Clubs Australia seeks coverage to negotiate terms and prices on behalf of clubs nationally. SGA submits that it would not be commercially

possible to offer any “national wide” products and service offerings and/or any “national wide” price, due to the wide variety of the regulatory, technical and commercial issues, which exists in each State and Territory.

#### 4 DATA RELATED TERMS

In section 3.6 of the Application, Clubs Australia states:

*“As noted in section 3.2 of this submission, gaming and POS system providers both gain access to the personal information and purchasing details of club patrons.”*

SGA submits, which respect, that this is entirely incorrect. SGA neither collects nor records any personal information of any players or patrons of clubs or any other venue operator. In fact, our processes are designed to ensure that such collection or recording does not occur.

The reason for this is because SGA does not have any use for the patrons’ (players’) personal information. SGA supplies clubs with EGMs and gaming systems. EGMs do not record any personal information of players. The gaming systems enable the exchange and flow of the information similar to what is set out in section 3.2 of the Clubs Application. However, once the gaming system hardware and software are set up, the system is operated entirely by the club, independent of SGA. SGA does not process or store any data contained in or recorded by the gaming system. In fact, SGA is not able to access the system, unless the customer requests us to do so for the purpose of the repairs and maintenance. If any repairs or maintenance to the system are required, the technicians access the actual system in “live” mode and do the necessary configurations. They do not collect, download or store any information or data from the system.

SGG is a business to business enterprise, it sells its products to gaming venues: clubs, hotels and casinos. It does not sell or market its products and services to public or patrons of gaming venues. SGA products cannot be bought by an ordinary consumer, the buyers must be registered as the approved EGM operators. Hence, SGA is not commercially or otherwise interested in the patrons’ and players’ personal information and does not have any incentive to collect it.

SGA complies with the privacy laws. Where the company collects any personal information, usually in relation to credit applications by venues, the company provides appropriate collection notices and other safeguards as required by the law.

However, SGA would not be open to agreeing to any “data related terms” other than those required by the legislation, in any of the EGM sale agreements,

because SGA does not collect any patrons' personal information and has no commercial incentive to do so.

Submission: SGA submits that any negotiations of any "data related terms", beyond what is required by law, would be futile, as SGA does not collect any club patrons' or players' personal information.

## **CONCLUSION**

Overall, SGA submits that it should be removed from the list of Targets in the Clubs Australia Application.

SGA opposes the Application as it applies to SGA, the providers of electronic gaming machines and related services and to the providers of gaming systems.

We submit that the proposed conduct, if authorised, would lead to the substantive lessening of the competition in the market for the acquisition of EGMs. The proposed conduct would not result in any public benefit for the reasons explained above.

The proposed conduct could, however, destabilise the industry and lead to uncompetitive outcomes, due to the presence of a very large buyer (with more than 51% of the market share), which would distort any competition that currently exists in the market.

## **END OF SUBMISSION**

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<sup>i</sup> \* The data is sourced from the relevant State and Territory regulatory websites

\*\* these indicate the caps, not the approved EGMs.