

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PROCEEDING:	Complaint against NT TAB - (UNiTAB) pursuant to s.69 of the <i>Totalisator Licensing and Regulation Act</i>
LICENSEE:	NT TAB Pty Ltd
COMPLAINANT:	Mr Stewart Davidson
CORAM:	Mr John Withnall (Chairman) Mr Craig Spencer Ms Annette Smith
DATE OF HEARING:	04 August 2004
DATE OF DECISION:	06 October 2004
APPEARANCES: (by telephone)	Mr S Davidson Mr R Cooke for Licensee

1. The complaint against UNiTAB is in relation to bets attempted to be placed with its subsidiary NT Tab Pty Ltd, hence the jurisdiction of the Northern Territory Licensing Commission.
2. Mr Davidson bet with UNiTAB online. He would place multiple bets via "file bet mode". The essence of his complaint is that UNiTAB offered a system that could not perform in the way he was led to believe.
3. On 20 December 2003 Mr Davidson placed, or thought he had placed, 1102 "first four" bets on race 6 in Sydney, involving 49,672 combinations and an intended outlay of \$38,336.00. As it turned out, only \$37,273.00 of the bets were processed, and the winning combination was in the unaccepted \$1,063.00 worth of bets. Instead of winning \$19,000.00, Mr Davidson lost \$37,273.00. He seeks recompense.
4. The unprocessed bet placements had returned several error messages of "insufficient space", indicating a buffer overload and the inability of the UNiTAB server to cope with the data volume of a particular batch

file within Mr Davidson's total transaction. The message appears quite clearly on the printout of Mr Davidson's transaction log, but appeared on screen at the time only fleetingly in the fast flow of incoming log data.

5. From Mr Davidson's point of view, he obviously needs the system investment to have been accepted as a whole, or not at all. He claims that UNiTAB should have been able to either process the bets as a whole transaction or have the unaccepted bets automatically resubmitted. Alternatively he complains that the UNiTAB systemisation should have provided him with sufficient warning of the failures and consequential opportunity to cancel that part of his intended over-all transaction that had already been accepted.
6. Mr Cooke for UNiTAB says that Mr Davidson himself wrote the software he used to "dump" a large amount of data at once, close to race time. Mr Davidson explains that his software is used to create a single file on his hard drive of his total bet, whence he initiates UNiTAB's software to have their server read his file.
7. The NT Totalisator Rules apply the Queensland Wagering Rule. Wagering Rule 33 deals with cancellation of an internet "investment". The Wagering Rule does not refer to "bets". The issue in this regard for Mr Davidson is whether an investment is each bet in the transaction or the attempted totality of the transaction. If the latter, his investment was not completed. UNiTAB says that such a situation of uncertainty would be unworkable, as they would not be aware at any time how much more of the investment might be still to come to be complete.
8. Rule 19 was offered as being of some interpretative assistance. In dealing with the issue of a printed ticket in a physical betting transaction, Rule 19 provides that more than one investment may be recorded on the printed ticket. That is, the one ticket is not necessarily to be seen as the one investment.
9. A consideration of the legislation, the Wagering Rule and Mr Davidson's printed log leads us to the conclusion that an internet investment is each entry in relation to which there is logged a discrete cost to the investor. In Mr Davidson's case each serially numbered string was thus a separate investment.
10. UNiTAB argues in this event that if an investment has not been accepted there is nothing to cancel under Rule 33. Mr Davidson argues the inadequacy of UNiTAB's systemisation.
11. It seems to us though that Rule 33 can still be applicable. If Mr Davidson's transmission had been able to adequately alert him or prompt an automated program reaction, before the transmission closed, to the full package of investments not having been accepted, that transmission (if so programmed) would seemingly be able under

Rule 33 to conclude with a cancellation of those investments which, although accepted, had not been intended to have been accepted if all others in the transmission had not also been accepted.

12. Condition 5 of UNiTAB's internet betting conditions is not necessarily contradictory of this when it insists that a bet once transmitted and accepted cannot be changed. Our view is that Wagering Rule 33 would allow for the transmission itself ("investment... by automated device or the internet"), before ceasing, to cancel itself upon encountering any non-acceptance of any part of any batch, on the grounds of the accepted bets turning out to be "not the investment the investor intended". While each string, each batch, is certainly intended as transmitted, it is only intended to be a bet in the context of the success of the whole transmission in having all bets accepted.
13. UNiTAB emphasises the need for certainty of the investment pool, but crystallisation is surely only essential at race jump. The times we are looking at with these transmissions is seemingly measured in seconds. Mr Davidson's log shows that each batch of 100 was transmitted in under three seconds, the total transaction over in just under thirty seconds. The batch replies are equally quick.
14. Therein lies Mr Davidson's difficulty. He needs these complex multiple transactions to be fast, and employs software of his own devising to assist to that end. On the other hand, it is all too fast for him to be able to visually pick up any "insufficient space" replies before the transaction is complete and Rule 33 unavailable to him thereafter.
15. Mr Davidson complains that UNiTAB's systemisation in relation to "Netbet" multiple betting should cope with its representations in that regard.
16. However, those representations include two formal disclaimers in the Netbet Conditions of Use (the reading of which is a step on the way to opening an internet account online). Condition 7 is a disclaimer that "Netbet does not guarantee to accept all bets placed on the Netbet by you", and Condition 10 is a general disclaimer of liability for loss or damage.
17. Mr Davidson claims in effect that these disclaimers are subsumed by
 - UNiTAB's online representations as to enablement of multiple betting, and
 - telephone discussion between Mr Davidson and UNiTAB's help desk.
18. Mr Davidson says that some time prior to the event complained of he experienced the same problem, and was told during a telephone call to a UNiTAB helpdesk that the problem would be obviated by limiting the

size of his batch files to 1000 bets or less. He rewrote his software accordingly, but obviously to no avail on this new occasion. He says that he would not have adjusted his software in that way unless he had been so advised. However, he concedes that upon having similar prior problems with multiple football betting he was advised by a responding UNiTAB representative to limit batch sizes to 50, but says that because character strings are of quite different lengths for football combinations, that advice was obviously only to be taken in the context of football betting.

19. UNiTAB insists that such advice was in respect of all multiple betting, that while a bet limit of 1000 bets is “recommended”, bets placed via file bet mode are actually processed in batches of 100, so that in Mr Davidson’s case

- he would not have been told to limit batch sizes to 1000, and
- given the nature of his multi combination bets, a recommendation as to batch sizes being kept smaller than 100 bets would obviously have been meant to be applicable generally to any bet type, not just to football.

20. Significantly, in Mr Davidson’s view, UNiTAB admits that the system is currently being “overhauled” in an attempt to have its program read and resubmit failures automatically, as Mr Davidson assures us is the case with other such service providers (to whom he has now shifted his betting accounts).

21. In the meantime and in any event, argues UNiTAB, there will always be a degree of inherent risk for the multi betting systems punter. Not good enough, says Mr Davidson: because they offer a multi betting service they should have the systemisation to support it.

22. This particular matter has caused the Commission much concern. We can acknowledge weight on both sides of the argument. In the result though, we have reached the view that UNiTAB’s public disclaimers should not be as easily displaced as by way of allegations of two telephone calls from a punter for technical assistance, the detail and effect of which remains unclear to us on the evidence. We do not feel an actual persuasion as to what was actually said by whom on behalf of UNiTAB, nor consequently as to the reasonableness of Mr Davidson’s interpretations of what he heard.

23. The online representations that Mr Davidson relies on as implying a systemisation that could cope with his systems betting are no more or less prominent than the online disclaimers. In any event, it is in our view too long a bow to take UNiTAB’s promotion of the online Netbet system as an offer to accommodate online betting of any size or complexity - especially not where the size and/or complexity of the transaction is a creation of the punter’s own computer programming,

and not where the same website as the online betting setup carries the specific disclaimer that the offeror of the service does not guarantee to accept every bet.

24. The notice of the disclaimer is considered by the Commission to have been sufficiently adequate for the disclaimer to have formed part of the contractual relationship between UNiTAB and player. Mr Davidson's evidence does not persuade us of any fundamental breach of agreement that estops UNiTAB from raising the disclaimer in successful defence of its position in the matter.

25. We take Mr Davidson's point that other providers of a similar service were adequately systemised for him, but in the light of our foregoing decision as to the absence of any fundamental breach of the basic agreement between the parties this must be a matter for market forces.

John Withnall
CHAIRMAN
06 October 04