



16th March, 1999

Gaming Inquiry Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Sir/Madam,

Please find enclosed a copy of letter forwarded to Professor Allan Fels,
in relation to unfair trade practices.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Alexander Finch", with a large, stylized flourish extending to the right.

Alexander Finch
Proprietor



RE. : We request the Commissions' urgent assistance!

Dear Professor Alan Fels,

The Central Coast now has over 40 clubs, nine of which are among the largest in NSW. At least three of these clubs - Central Coast Leagues, Ettalong Memorial and Mingara Recreation - are planning multi-million dollar motels (combined value 150 million dollars!). These clubs are now taking advantage of their gambling monopoly to compete in markets normally not associated with clubs. Their continued exemption from the Trade Practices Act is now no longer in the public interest. If governments allow this massive expansion by clubs to continue (their current turnover is 20 billion dollars a year), most industries in NSW will be controlled by clubs in 20 years. This will leave us with a Russian style, quasi government-owned economy and the general managers will be the lords of the land. That's not good for any society and we are just asking for a fair go.

Clubs have three huge advantages over their competitors -

1. exclusive licences to provide the very popular service of gambling;
2. huge profits generated by this service and
3. no free market pressures to guarantee genuine competition.

These licences and huge profits from gambling give the clubs immense market power.

Do these clubs really have substantial market power? Due to the popularity of gambling, clubs can attract many more customers than their competitors. They also have a tax advantage. Clubs and club gaming licences cannot be traded on the free market in the way casino licences or other licences can. This means that there are no real economic pressures on managers to perform to any market standards. No real pressures on the board to answer to share holders who are looking for maximum profits and performance when competing with other corporations. The managers of these clubs continue to argue that they are competing fairly and offering important, beneficial services that free enterprise does not. **We have to ask ourselves - are these benefits that clubs offer, worth sacrificing the principles of fair trade for?** What are we going to tell the world - that we have free trade in Australia unless you are competing with a club?

Clubs argue that their competition is fair yet they resist any attempt to change their gaming monopoly, tax advantages or their freedom of any take over risks. They are happy to trade "fairly", as long as it is on their terms. And because there is no accountability, they can mix fact with fiction. Management at Ettalong's club says the club will not be involved with their \$92M strata title resort - they are "only supplying air space". Yet their prospectus states that the club is the vendor, the developer, the management and the operator. That gives them pretty much total control of the resort.

Forrester's Conference & Function Centre • Starlite Ballroom • Bentleys Restaurant

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They have already spent \$3M on putting this highly risky development idea together, and their pre-opening budget is another \$1.2M. The club will use their existing infrastructure for operations. The prospectus' 'statement of risk factors' includes the risk that if the operator (the club) terminates the operating agreement (which it can do at any time) - "then we may not be able to negotiate a similar operating agreement with another operator. Any new operating agreement may not be on as favourable terms as the current agreement and this may affect your future returns and therefore the value of your resort apartment. **In particular, it is unlikely that another operator will agree to fix operating costs** from time to time". The operating costs are fixed and include promoting. This means the investors get an advantage, because the deal is that the "non-profit" club will use it's resources to operate the "profit making" resort. Even with all these unfair advantages I believe if this development goes ahead, a lot of people will lose their savings. The clubs' chief executive officer and general manager Mr Peter Hale, the man who put this whole proposal together, stated at a recent Motel Association meeting that usually only the third owner of a motel makes money. Does his club intend to be the third owner?

To prove unfair trade practices under the Trade Practices Act one must demonstrate that a corporation is **taking advantage of substantial market power**. When a company doesn't perform it gets taken over. That is free market pressure at work. If a takeover is not possible the company goes under, unless it has limitless funds to continue trading and that would be crazy. This is the case with clubs. True market power is determined by how corporations are constrained by the conduct of competitors, or potential competitors. The profits from the gambling licences give the clubs a substantial degree of freedom, independent of competitors, in setting prices for meals, drinks, accommodation, entertainment, weddings, conferences, functions and in particular there are no great constraints on financial performance. In fact club **members don't want clubs to make profits in services outside of gambling** - because then they would have to pay more for those services. The profits will be made at the gaming devices, not in their motels or restaurants.

More importantly, however, the clubs are free of market pressures in the way they invest their huge profits. Did the members of Central Coast Leagues Club worry when management took Gosford Council to the Supreme Court? No. Did the members do anything when management lost the case and millions of dollars? No.

In Las Vegas any motel without gambling did not survive. Proof of a total lack of constraint imposed by market forces on the clubs' trading and investments can be found in their own admission that no finance or hotel group was interested in their proposed club developments on a commercial basis. The clubs admit that their resort proposals have been made possible only by gaming franchises. The market says no to these developments, no competitor considers them commercially competitive, yet the clubs go ahead regardless. That's market power.

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Many of the existing motels and hotels on the Central Coast are for sale and have been sold at well below replacement cost, due to existing market pressures. For example the 5-star Holiday Inn Terrigal sold at a 50% discount. This would suggest to a sensible, potential competitor that any major new motel development would be economic suicide. In a depressed market you buy the bargains, you don't add to the surplus. This is precisely why no investment group was interested in the club motel proposals. It would be the 80's bubble revisited. For the clubs to go ahead with their developments despite these market conditions, shows a considerable lack of constraint as a competitor in the market.

A club could finance a law firm to go into competition with existing law firms. The three million dollar a year profit of the Mingara or Ettalong Club could employ fine lawyers. They could then offer their members much reduced rates to represent them, thus taking business away from existing firms. The existing firms could not access that share of the market through a take over of the club nor could they compete with the clubs' subsidised rates. The club has effectively captured part of the market and that market is happy with the cheap rates. If more and more clubs do this - no competitors will be left, only club firms. This is already happening in our industry - who will be next?

If, in making these investments, the clubs were seen to be **taking advantage** of their substantial market power, that would be in contravention of the Trade Practices Act. Under The Trade Practices Act "the taking advantage" must be for the purpose of eliminating or preventing a person from engaging in competitive conduct in that or any other market. How can I "engage in competitive conduct" with a club?

Competitive conduct requires the option of a take over. That is the principle of a free market. If clubs want to become investors, they would have to be privatised. If clubs want to become competitors in the accommodation business and make that a substantial part of their market, they would have to allow motels to compete in the gaming industry, as only then would competitive conduct be possible. They cannot be seen to be preventing a person from engaging in competitive conduct with them, in respect of their monopoly. This monopoly in fact being their gaming licences and tax advantages which give them their freedom from market pressures to perform to market expectations.

If the clubs attempt to hinder the state government in putting an end to this unfair trade, they would be seen as trying to hinder free competition in order to take advantage of their market power. They would in effect be trying to protect the monopoly that is the very source of their market power, and maintain their advantage over competitors. **These clubs must immediately be stopped from investing their high profits to compete with existing traders as this contravenes the Trade Practices Act!**

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To give clubs gambling licences must be economically the most stupid decision any government in the world has ever made. The clubs have been operating for many years in contravention of the Trade Practices Act to the detriment of many businesses. They have enjoyed more than a fair run and their expansions prove it. We now urgently require the help of The Trade Practices Commission in these matters. I am sending a copy of this letter to the Productivity Commission and to the Minister for Gaming and Racing Mr Richard Face to request immediate assistance and cooperation to **stop any further investments by clubs competing with existing businesses**. Are they clubs now or investment conglomerates? If the government can't see that this is out of control, then it is already to late!

Club gambling in NSW has created this problem. Venues on the Central Coast have been losing hundreds of weddings and christmas parties a year to clubs - and clubs are not even licensed to supply liquor at these functions (See section 23(1)(a)(b) - Registered Clubs Act). Nothing is done about it, yet hundreds of restaurants are taken to court by police every year for - "stand and consume" - for God's sake! And therein lies the final misuse of power - their hugh political clout.

Contrary to much publicity, clubs donate less than 1% of their profits to charity. To argue that clubs are only serving their members makes no difference. A corporation cannot defend a monopoly by having a group of people form a club, who then in fact benefit from the monopoly. If this outrageous monopoly is allowed to continue, just one more day, we might as well forget about the Trade Practices Act. We might as well forget about "the spur to better perform" and "advance Australia fair". That all means nothing if you allow this to continue any longer.

In the mean time people from all levels of government are supporting these club developments to create jobs and to win votes. Jobs and votes come before the law and common sense it would seem. Yet for every job created by a club at least one is lost in free enterprise. Current occupancies of 3, 4 and 5 star motels on the Central Coast are only 57% even after many years of intense advertising. Building more motels by taking advantage of market power is not going to solve the unemployment problem. It will however, make life very difficult for people like us who have put 13 years of our lives into building up a business **free of gambling** - and all for nothing. This is a matter of extreme urgency. As of now there is no incentive to advance competitively with the onslaught of the club resorts immanent. And no industry is safe.

Yours faithfully,

Alexander Finch
Proprietor.