



ACT
Government



COMMERCIAL IN CONFIDENCE

MINUTE

Date: 11 December 2014
To: Chairperson, Members
From: Assistant Manager, Casino, Racing and Wagering
Subject: **Casino Licensee Transfer of Ownership Suitability Report –
Aquis Canberra Pty Ltd**

Through: Chief Executive

Supported

11/12/2014

Purpose

To submit for the Board's consideration the Casino Licensee Transfer of Ownership Suitability Report on Aquis Canberra Pty Ltd.

Background

1. Aquis Canberra Pty Ltd entered into discussions with Casinos Austria International Limited (CAIL) in late 2013 to negotiate the terms of an offer to purchase CAIL's interest in Casino Canberra Limited.
2. CAIL formally wrote to the Minister for Racing and Gaming on 31 March 2014 in order to seek approval for the proposed transfer of ownership of the casino licence held by Casino Canberra Limited to Aquis Canberra Pty Ltd. The current licence issued to Casino Canberra Limited was for the term of 97 years commencing in 1992.
3. Casino Canberra Limited was initially intended to be sold as part of a joint package involving the Reef Casino in Cairns, Queensland.
4. As the proposed sale arrangement involved two jurisdictions, a Memorandum of Understanding (MOU) was developed between the Queensland Office of Liquor and Gaming Regulation (QOLGR) and the ACT Gambling and Racing Commission to undertake a joint probity investigation into the proposed licensee.

Issues

5. An extensive investigation has been conducted into the suitability of Aquis Canberra Pty Ltd. The attached report (see Attachment A) outlines the background and extent of the investigation and describes the conclusions that have been drawn and the recommendations that have been made. The report is self-explanatory and addresses the necessary legislative requirements in that it provides advice to the Minister relating to the proposed new casino owner.

39 & 43(1)



8. In relation to the casino licence fee, which is currently around \$900,000 per annum indexed, the Commission negotiated the payment of this fee for the next five years as an upfront amount. This means that a payment of around \$4.5 million would be made in early February 2015, the timing based on when the existing fee is paid up to. To implement this proposal that has been agreed by Aquis, a new licence fee Notifiable Instrument requires approval by the Minister.
9. As identified in disallowable instrument DI2014-108 relating to fees payable by the casino licensee, Casino Canberra is required to pay an ownership transfer fee of \$2,666 to the Commission.
10. To ensure appropriate flexibility and timeliness for providing the required approvals, delegation is being sought for the Chief Executive to 39 & 43(1) and any other necessary documentation and to make any reasonable decision necessary for the completion of the sale to facilitate the transfer of ownership. This, of course, is predicated on the Commission, and ultimately the Minister, agreeing to the proposed course of action to approve Aquis as suitable to operate the casino.
11. While the attached suitability report is considered final, there may be the requirement for minor amendments to be made that are not material to the fundamental conclusions and recommendations. It is therefore suggested that delegation to the Chief Executive be made to make such minor adjustments if necessary before the report is forwarded to the Minister for consideration.
12. If the proposed sale proceeds, it is expected that the Minister will issue a media release advising of the outcome of the probity investigation and announcing the proposed new casino owner.

Recommendation

13. It is recommended that the Commission:

- i) note the content and outcomes of the probity investigation report as provided at Attachment A and agree to the recommendations in the Report;


39 & 43(1)

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- iii) approve the Chief Executive to make minor non-material adjustments as necessary to the report;

- iv) agree for the Chief Executive to forward the suitability report to the Minister at an appropriate time; and

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Kim Brady

COMMERCIAL IN CONFIDENCE

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ACT Gambling and Racing Commission

**Casino Canberra
Transfer of Ownership Suitability Report
Aquis Canberra Pty Ltd**

December 2014

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43(1)

[REDACTED]

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Executive Summary

In October 2013, Casinos Austria International Limited (CAIL) as the 100% owner of Casino Canberra Limited entered into negotiations to sell Casino Canberra following an unsolicited offer from the Aquis Fung Group (AFG). The offer was part of a larger bid to purchase The Reef Hotel Casino in Cairns which was jointly owned by CAIL and Accor Casino Investments Pty Ltd (Accor). The purchase offer was conditional, amongst other things, that it completed by 31 October 2014, later extended to 28 November 2014.

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On the basis that the sale arrangement involved casinos in two jurisdictions, the ACT Gambling and Racing Commission and the Queensland Office of Liquor and Gaming Regulation (QOLGR) entered into a Memorandum of Understanding to undertake a joint probity investigation.

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The joint investigation involved the analysis of the AFG's financial history, business conduct in regards to operations, decision making, associations and affiliations including their ability to potentially support and operate a casino.

43(1)



In relation to the Reef casino sale, the deadline of 28 November 2014 remained and subsequently passed with the sale offer lapsing.

It was revealed in the investigation that the AFG and Tony Fung had financial circumstances that would comfortably allow the acquisition of Casino Canberra within existing resources and as such would result in no financial encumbrance over the Canberra casino property.

The investigation revealed no adverse information in relation to the source of funds.

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There were no adverse findings revealed in relation to the corporations, corporate structure, relevant key individuals or associates.

36(1) & 43(1)



39 & 43(1)



A number of conditions on the licence are suggested to enhance the Commission's regulatory role, particularly in terms of information requests and being kept abreast of any adverse events relating to the licensee and associated entities.

Based on the information made available to the Commission, it has concluded that there are no eligibility objections to the applicant (Aquis Canberra Pty Ltd) operating a casino in the Australian Capital Territory.

In order to further protect the Territory's interest and ensure that the Commission has sufficient additional regulatory oversight capabilities, it is recommended that the proposed casino licence conditions 39 & 40(1) be implemented as part of any approval to transfer ownership. Aquis has been extensively consulted on these documents and is in agreement with their content.

On the basis that the licence conditions 39 & 40(1) are adopted in full, the Commission advises that it has not identified any matter that would prevent the Minister from approving the transfer of the casino's ownership to Aquis Canberra Pty Ltd.

1.0 Introduction and Background

Casino Canberra is owned and operated by Casino Canberra Limited, a wholly owned subsidiary of Casinos Austria International Limited (CAIL). CAIL is also owner of The Reef Hotel Casino in Cairns jointly with Accor Casino Investments Pty Ltd through the Reef Casino Trust (RCT).

The RCT is an Australian Stock Exchange (ASX) listed entity. Reef Casino Services, an entity also jointly owned by CAIL and Accor Casino Investments Pty Ltd, is responsible for the RCT and holds all RCT assets on trust for RCT unit holders.

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A key feature of the joint sale agreement was that settlement had to occur by 31 October 2014, later extended to 28 November 2014, or the sale offer would lapse.

On 31 March 2014, CAIL wrote to the Minister for Racing and Gaming pursuant to section 12 of the *Casino Control Act 2006* (the Act) seeking approval for the proposed transfer of ownership of Casino Canberra Limited


On the basis that the proposed sale agreement involved the transfer of ownership of casinos in both the ACT and Queensland, the ACT Gambling and Racing Commission (the Commission) entered into a Memorandum of Understanding (MOU) with the Queensland Office of Liquor and Gaming Regulation (QOLGR) to undertake a joint probity investigation into the proposed purchase arrangement. Given the relative size of the transactions in each jurisdiction and the availability of resources, it was agreed that the Queensland regulator would take the lead role in conducting the probity investigation.

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On 21 November 2014, RCT announced through the ASX website that Aquis was unlikely to satisfy the requirements under the share purchase offer by the revised completion deadline

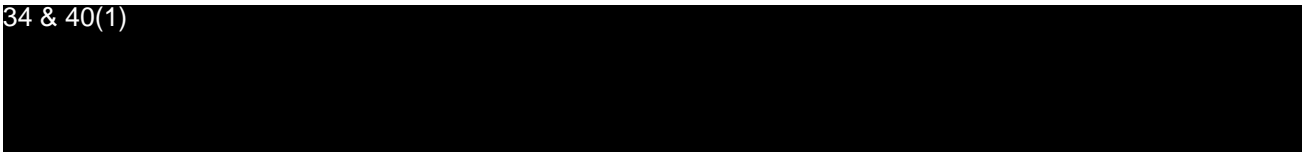
of 28 November 2014. 43(1)



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34 & 40(1)



This report outlines the results of the extensive investigations conducted into Aquis Canberra Pty Ltd (the applicant), all associated entities and eligible persons for the purposes of suitability to operate a casino in the Territory. It addresses the eligibility requirements in accordance with the provisions outlined in sections 7 and 8 of the Act. The Commission, under section 13 of the Act, can also provide any recommendations to the Minister on the proposed transfer of ownership.

The authority for the Commission to undertake the necessary suitability investigations is based on the provisions of the *Gambling and Racing Control ACT 1999* (GRC Act). Under the GRC Act the Commission is established as an independent statutory authority to regulate, control and supervise gaming and racing activities in the ACT, including that of the casino.

Under section 22 of the GRC Act, the Commission has the powers to obtain information as necessary to undertake its functions including through the conduct of interviews and from requirements to produce documents. If necessary, evidence can be obtained by the Commission through statutory declaration or under oath or affirmation as provided by section 22(3)(c) of the GRC Act.

2.0 Legislative Background

The sale proposal involves the transfer of ownership of the current casino licensee, Casino Canberra Ltd, to Aquis Canberra Pty Ltd (the applicant) pursuant to section 13 of the *Casino Control Act 2006* (the Act).

Under this section of the Act, the approval for a change of ownership by the Minister is subject to the proposed owner being an eligible person as defined in the Act and the Minister considering any recommendation made by the Commission about the sale. In this regard, the Commission has undertaken a detailed analysis of the purchaser's corporate structure, financial resources and management ability to operate a casino.

The eligibility criteria set out in sections 7 and 8 of the Act are determined separately for corporations and individuals. Within a corporation, each influential person (as defined in the Act) must be considered an eligible person by meeting the individual eligibility criteria.

Broadly, the statutory eligibility criteria for corporations is fairly basic in that it only covers significant adverse financial history, such as any winding-up orders or appointments of administrators. For individuals, the eligibility criteria covers criminal history as well as current and previous financial history.

The eligibility criteria is also applied to relevant associates and related entities connected with the applicant. The relevant legislative provisions are outlined in Attachment A.

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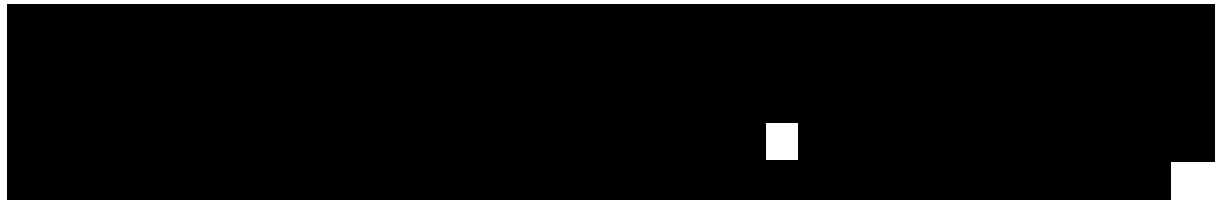
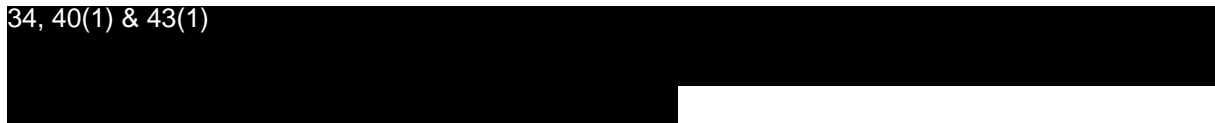
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4.0 Investigation Methodology

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The Commission has the powers to investigate by obtaining information, instruments or records or require attendance for examination to undertake its statutory functions including through the conduct of interviews as stated under section 22 of the *Gambling and Racing Control Act 1999*. However, in the conduct of this investigation it was unnecessary to exercise the Commission's powers to require production of material as all information was obtained on a voluntary basis, including voluntarily attendance at interviews.

40(1) & 43(1)

[REDACTED]

[REDACTED]

5.1 Individual Assessment

Section 7 of the Act relates to the eligibility of individuals, and accordingly each key person has been assessed against the criteria as defined under section 7.

Information provided by the independent consultants and confirmed by the Commission indicates the following influential persons:

Tony Fung, Director
Justin Fung, Director
Raymond Or, Director

Mr Tony Fung is a very experienced businessman and is currently director of 40 corporate entities.

Mr Justin Fung, Tony's son, has a law degree from the United States and is being introduced into the AFG corporate undertakings under the guidance of his father.

Mr Raymond Or is a very experienced and respected businessman and is currently director of 15 corporate entities. Some of his past directorships include Cathay Pacific Airways Ltd, HSBC Investment Bank Asia Ltd and The Hongkong and Shanghai Banking Corporation Ltd.

The influential persons identified above are the only directors for the following AFG entities as indicated at Attachment B:

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[REDACTED]

40(1), 41(1) & 43(1)

[REDACTED]

[REDACTED]

[REDACTED]

Nothing adverse on the three directors was identified from submitted individual probity forms, formal interviews, police checks, credit checks or ASIC and Dun and Bradstreet searches.

40(1), 41(1) & 43(1)

[REDACTED]

[REDACTED]

[REDACTED]

40(1), 41(1) & 43(1)

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40(1), 41(1), & 43(1)

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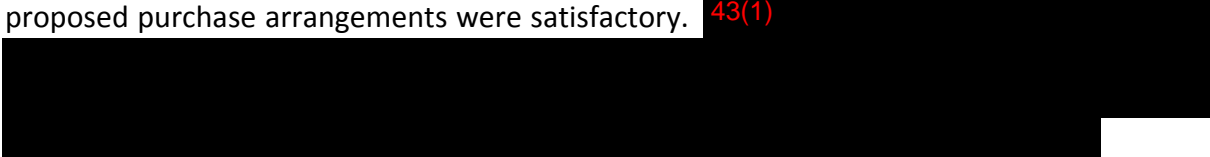
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6.0 Conclusions

Extensive enquiries under the joint investigation arrangements with QOLGR produced a large amount of financial and corporate data that was analysed by both regulatory bodies with the assistance of the specialised contractors.

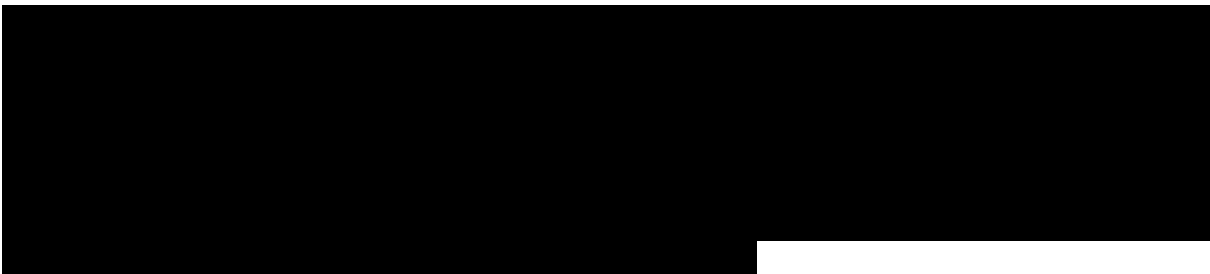
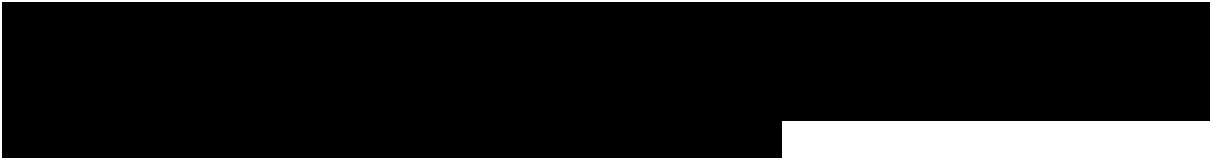
Much of the financial analysis focused on identifying the source of funds, both equity and borrowings, to ensure that sources were reputable and to ensure that the gearing of the proposed purchase arrangements were satisfactory. 43(1)



The investigation revealed no adverse information in relation to the source of funds. 4



40(1) & 43(1)



In relation to individual probity, police criminal history checks and credit checks revealed nothing adverse in relation to the directors.

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In order to provide further protection for the Territory in relation to AFG's commitment to the Canberra casino, it is proposed that amendments to the existing payment obligation for the casino licence fee (currently \$891,877 per annum indexed) will require an upfront licence fee payment covering the next 5 years, totalling around \$4.5 million.

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The Commission's probity conclusions and its recommendations that follow are provided as an integrated package that includes all terms of the proposed conditions of casino licence

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As such, the recommendations rely on the total package being either accepted or rejected as a whole.

7.0 Recommendations

A full analysis of available information relating to the corporation and all eligible persons was conducted to test Aquis Canberra Pty Ltd's eligibility to be a casino licensee.

Based on the evidence available at the time of this report, the Commission has determined that there are no disqualifying grounds whereby Aquis Canberra Pty Ltd or any of its eligible persons would be considered unsuitable.

The proposed corporate structure of the casino licensee and its associated entities is considered satisfactory along with its management structure.

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Based on the information available, the Commission considers that Aquis Canberra Pty Ltd meets the eligibility requirements in relation to sections 7 and 8 of the *Casino Control Act 2006*. The Commission advises that it has not identified any matters that would prevent the Minister from approving the change of ownership of the casino licence to Aquis Canberra Pty Ltd.

The Commission recommends that if the Minister approves the change of ownership then the attached licence conditions be simultaneously applied which would also require the Commission to enter into the attached deed.

ATTACHMENT A

Relevant Legislative Provisions

Casino Control Act 2006

Section 7 - Eligibility of individuals

Specifically, the relevant legislative provisions are as follows:

- (1) For this Act, an individual is an eligible person if –
 - (a) the individual is an adult; and
 - (b) there is not a disqualifying ground for the individual.
- (2) Each of the following is a ***disqualifying ground*** for an individual:
 - (a) the individual has been convicted, or found guilty, in the last 5 years, whether in the ACT or elsewhere, of an offence-
 - (i) involving fraud or dishonesty; or
 - (ii) against a law about gaming;
 - (b) the individual has been convicted, or found guilty, in Australia in the last 5 years of an offence punishable by imprisonment for at least 1 year;
 - (c) the individual has been convicted, or found guilty, outside Australia in the last 5 years of an offence that, if it had been committed in the ACT, would have been punishable by imprisonment for at least 1 year;
 - (d) the individual is, or at any time in the last 5 year has been, bankrupt or personally insolvent;
 - (e) at any time in the last 5 years the individual was involved in the management of a corporation when-
 - (i) the corporation become the subject of a winding-up order; or
 - (ii) a controller or administrator was appointed;
 - (f) at any time in the last 12 months the individual had-
 - (i) an application for a casino employee licence refused, on the basis that the individual provided false or misleading information, in the application; or
 - (ii) a casino employee licence cancelled under part 4.
- (3) Despite subsection (2), the Minister or Commission may decide that an individual is an eligible person if satisfied that-

- (a) the operation of the casino would not be adversely affected if the Minister or Commission decided that the individual is an eligible person; and
- (b) it is otherwise in the public interest that the individual be treated as an eligible person.

Section 8 – Eligibility of corporations

(1) For this Act, a corporation is an *eligible person* if -

- (a) each executive officer and influential person of the corporation is an eligible person; and
- (b) the corporation is not the subject of a winding-up order, and has not been the subject of a winding-up order in the last 3 years; and
- (c) a controller or administrator has not been appointed for the corporation in the last 3 years.

(2) Despite subsection (1), the Minister or the commission may decide that a corporation decided that a corporation is an eligible person if satisfied that-

- (a) the operation of the casino would not be adversely affected if the Minister or the Commission decided that the individual is an eligible person; and
- (b) it is otherwise in the public interest that the corporation be treated as an eligible person.

Section 9 – Meaning of influential person

(1) In this Act:

Influential person, for a corporation –

(a) means any of the following:

- (i) an executive officer of the corporation;
- (ii) a related corporation;
- (iii) an executive officer of a related corporation;
- (iv) an influential owner of the corporation; and

(b) includes a person who, though not mentioned in paragraph (a), can exercise as much influence over the conduct of the corporation as someone mentioned in that paragraph.

(2) In this section:

Influential owner, of a corporation, means a person who, whether directly or through intermediary corporate ownership or nominees –

- (a) can control at least 5 % of the votes at an annual general meeting of the corporation;
or
- (b) can control the appointment of a director of the corporation.

related corporation means a related body corporate under the Corporations Act.

Section 10 – Meaning of owner

(1) In this Act:

‘owner’, of the casino, means a person who, alone or jointly with others, is the lessee of land where the casino, or part of the casino, is located.

(2) A reference to the owner of the casino is a reference to all such people.

Section 12 – Application for approval for change of ownership

An owner of the casino may apply in writing to the Minister for approval to sell or otherwise dispose of the owner’s interest in the lease of the casino, or part of the interest, to someone else.

Section 13 – Approval of proposed owner


(1) On application under section 12, the Minister must approve, or refuse to approve, the sale or other disposal of an owner’s interest in the lease of the casino, or part of the interest, to the proposed owner.

(2) In deciding whether to approve the sale or other disposal, the Minister must consider any recommendation made by the Commission about the sale or disposal.

(3) The Minister must not approve the sale or other disposal unless satisfied that –

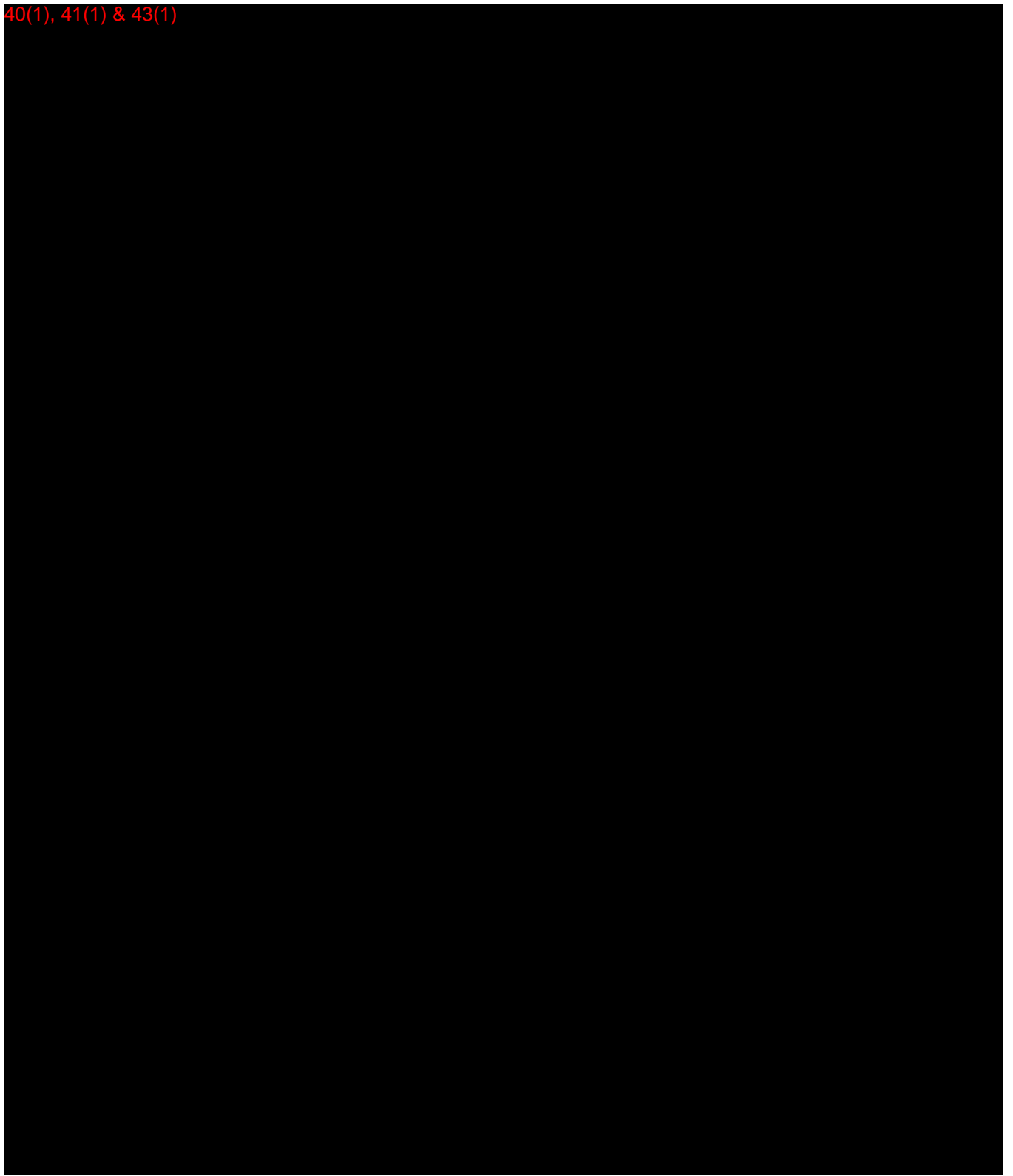
- (a) the proposed owner is an eligible person; and
- (b) if the change of ownership would require a control agreement to be in force under section 19, on transfer of ownership, the proposed owner will become a party to a control agreement.

43(1)(c)




ATTACHMENT C

40(1), 41(1) & 43(1)



40(1), 41(1)& 43(1)



ATTACHMENT D

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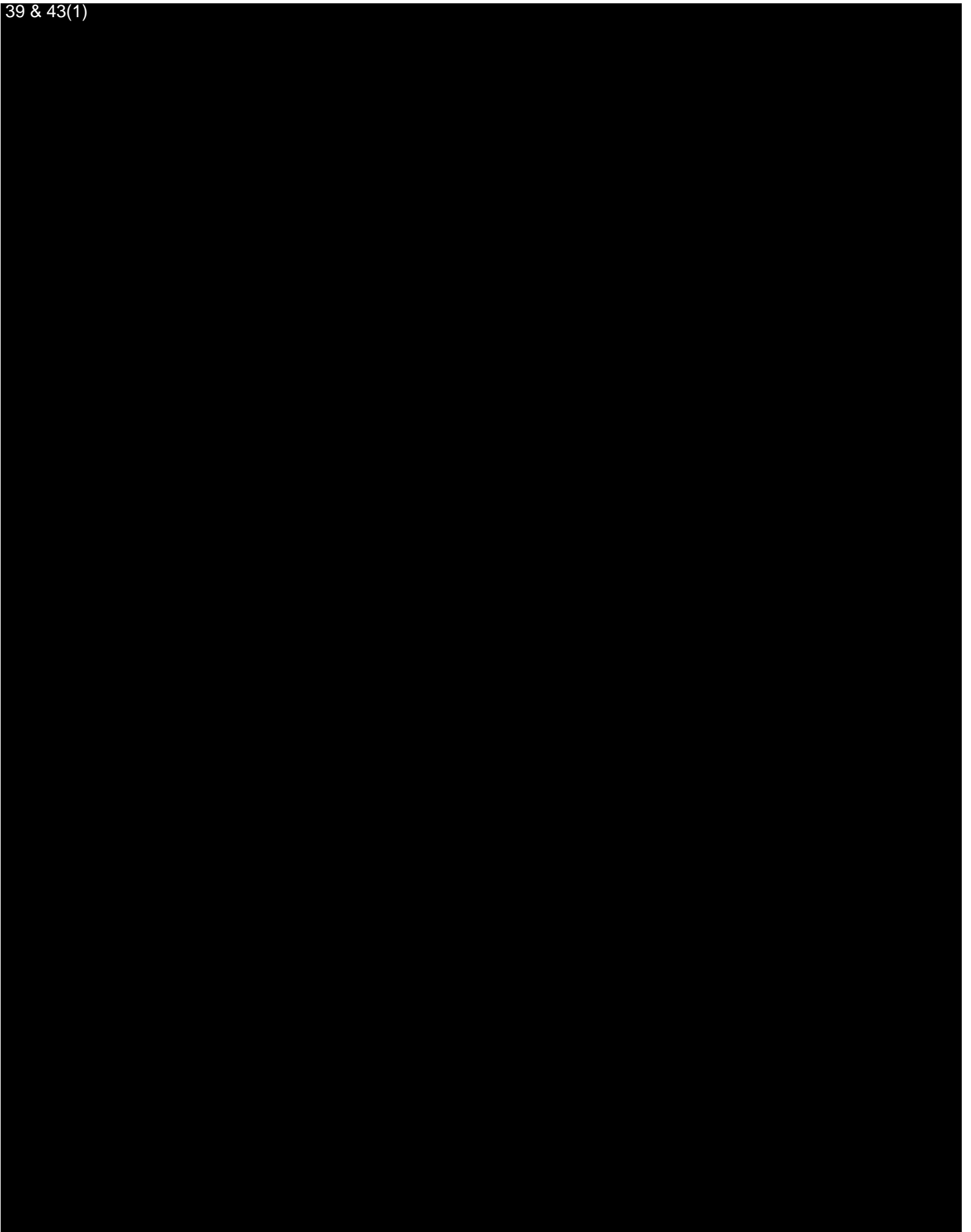
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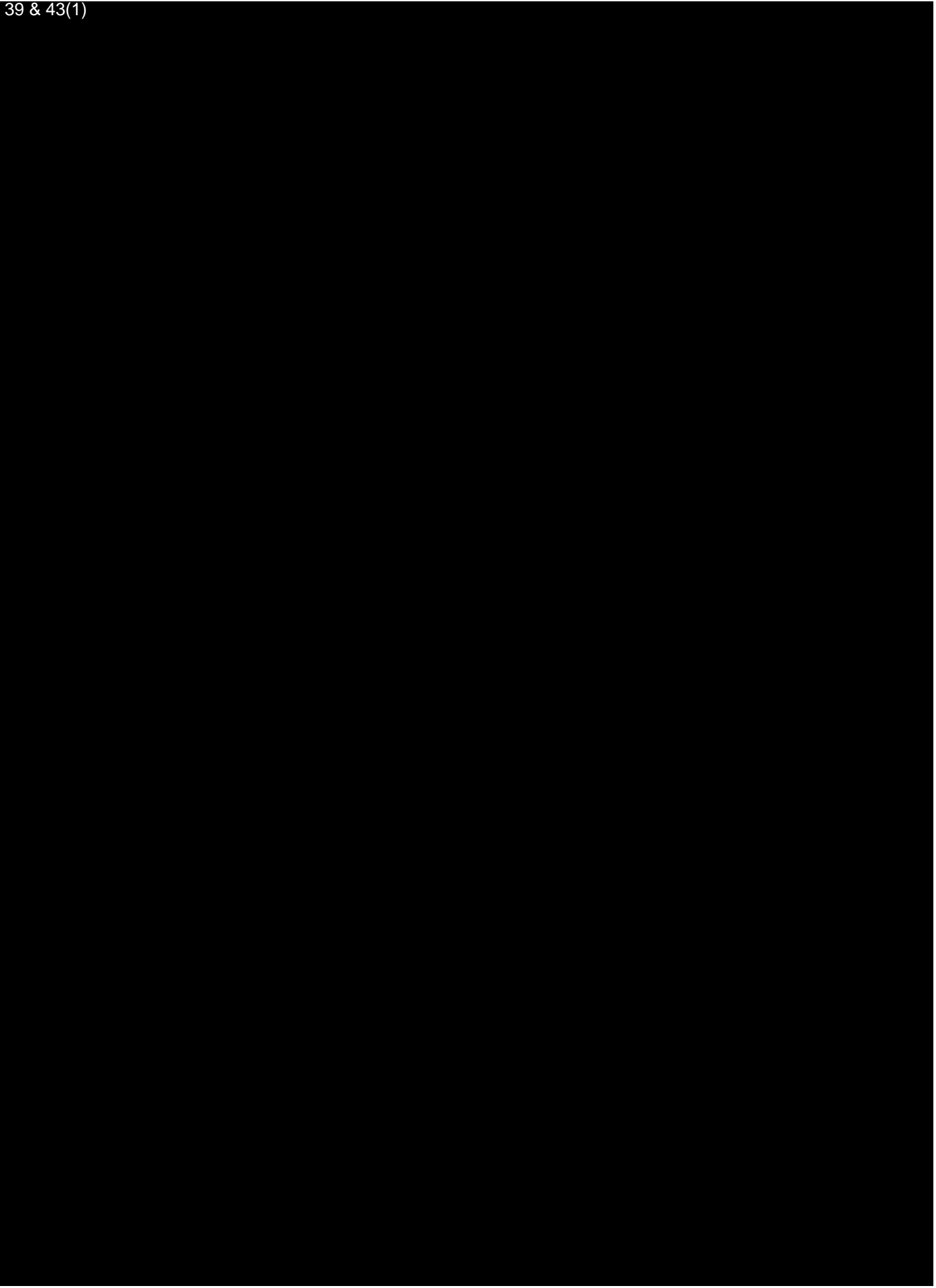
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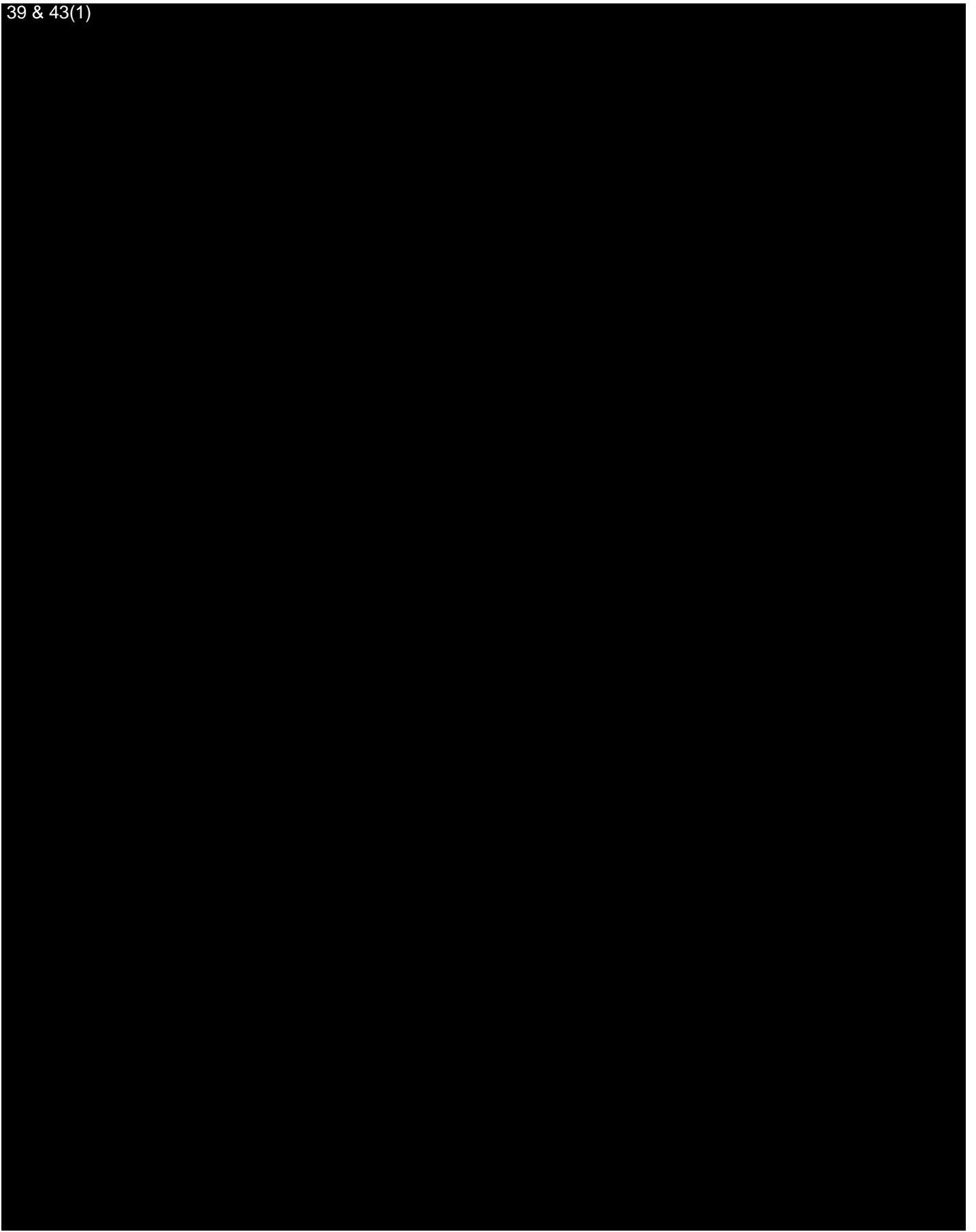
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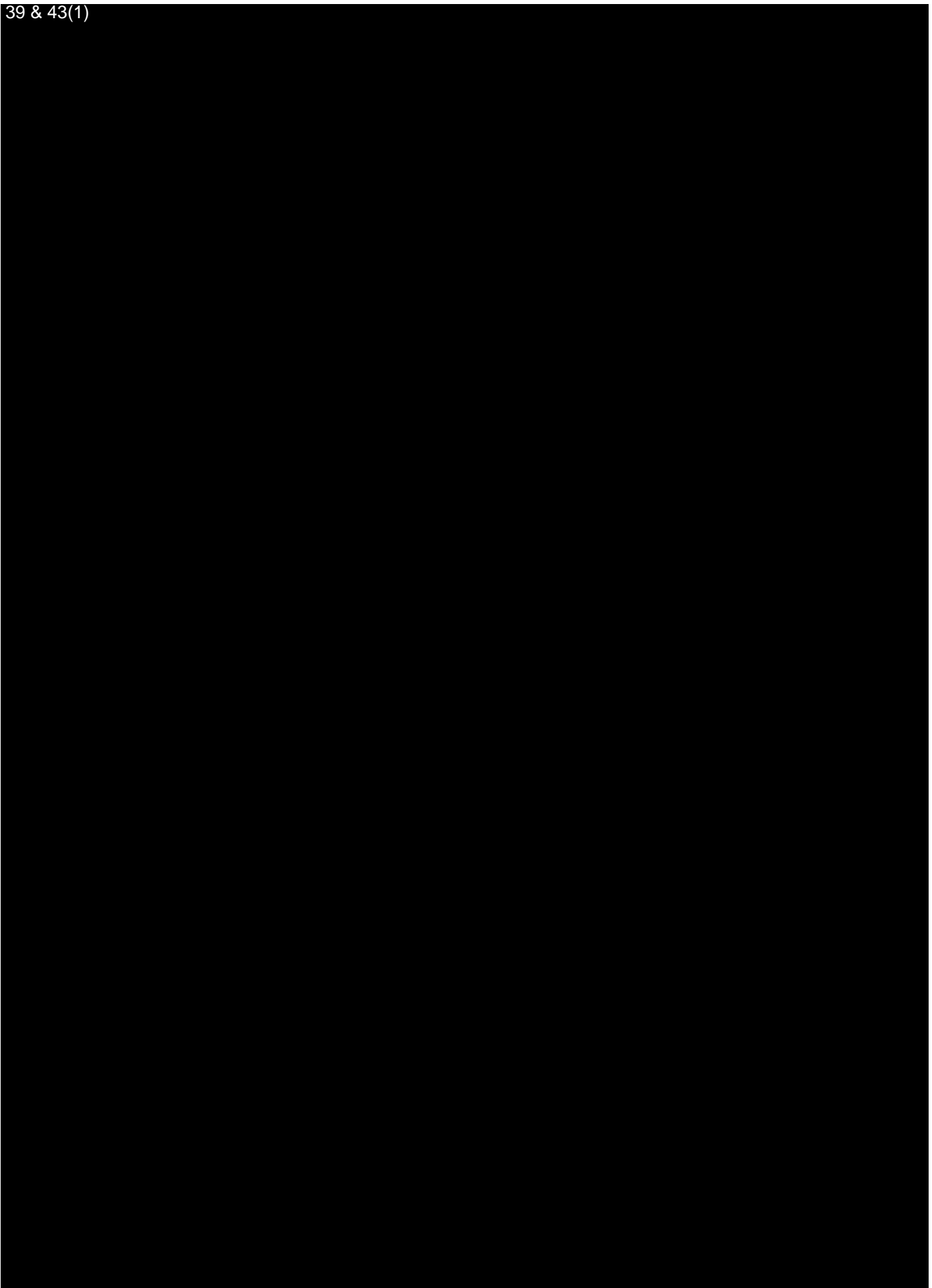
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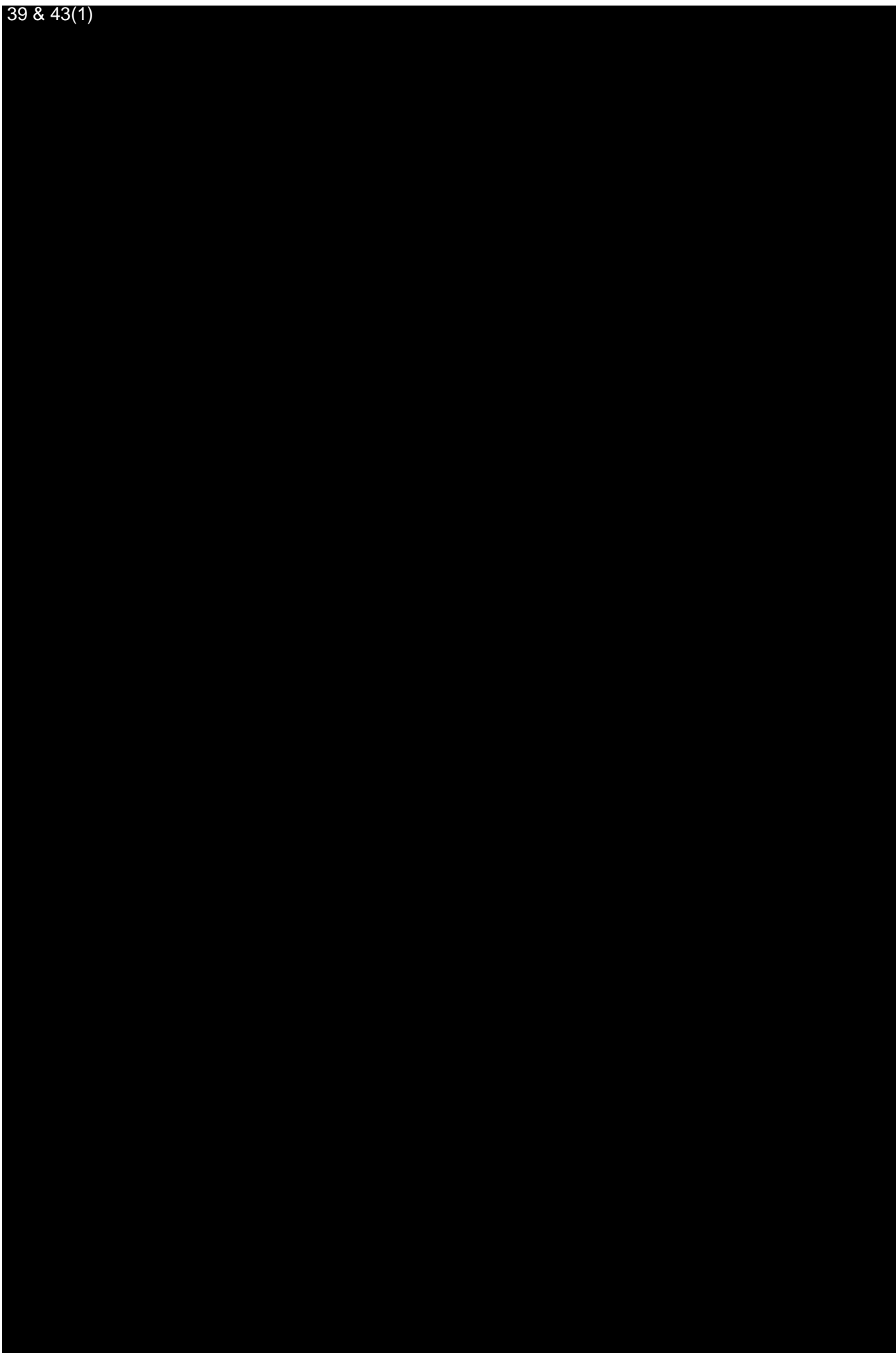
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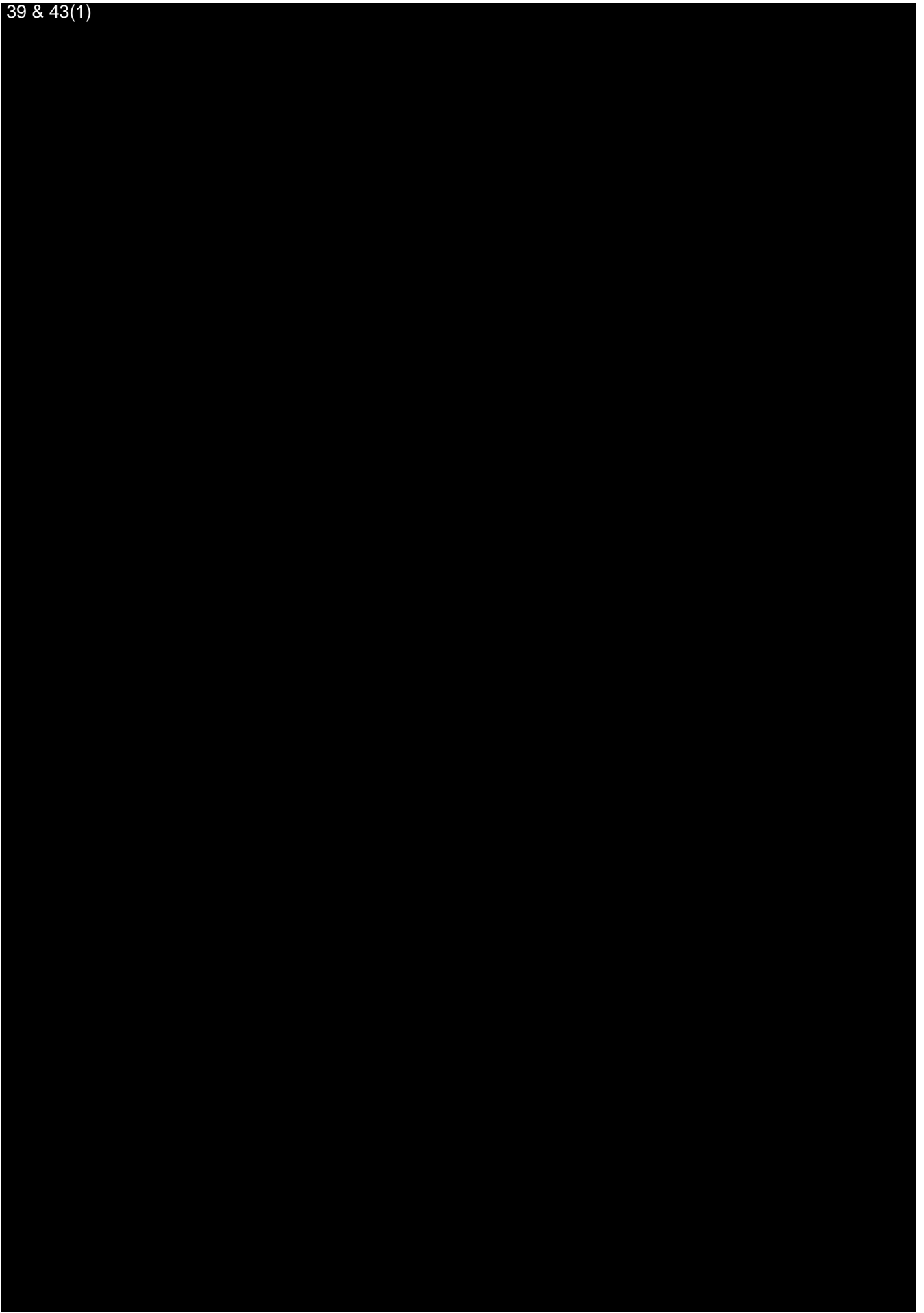
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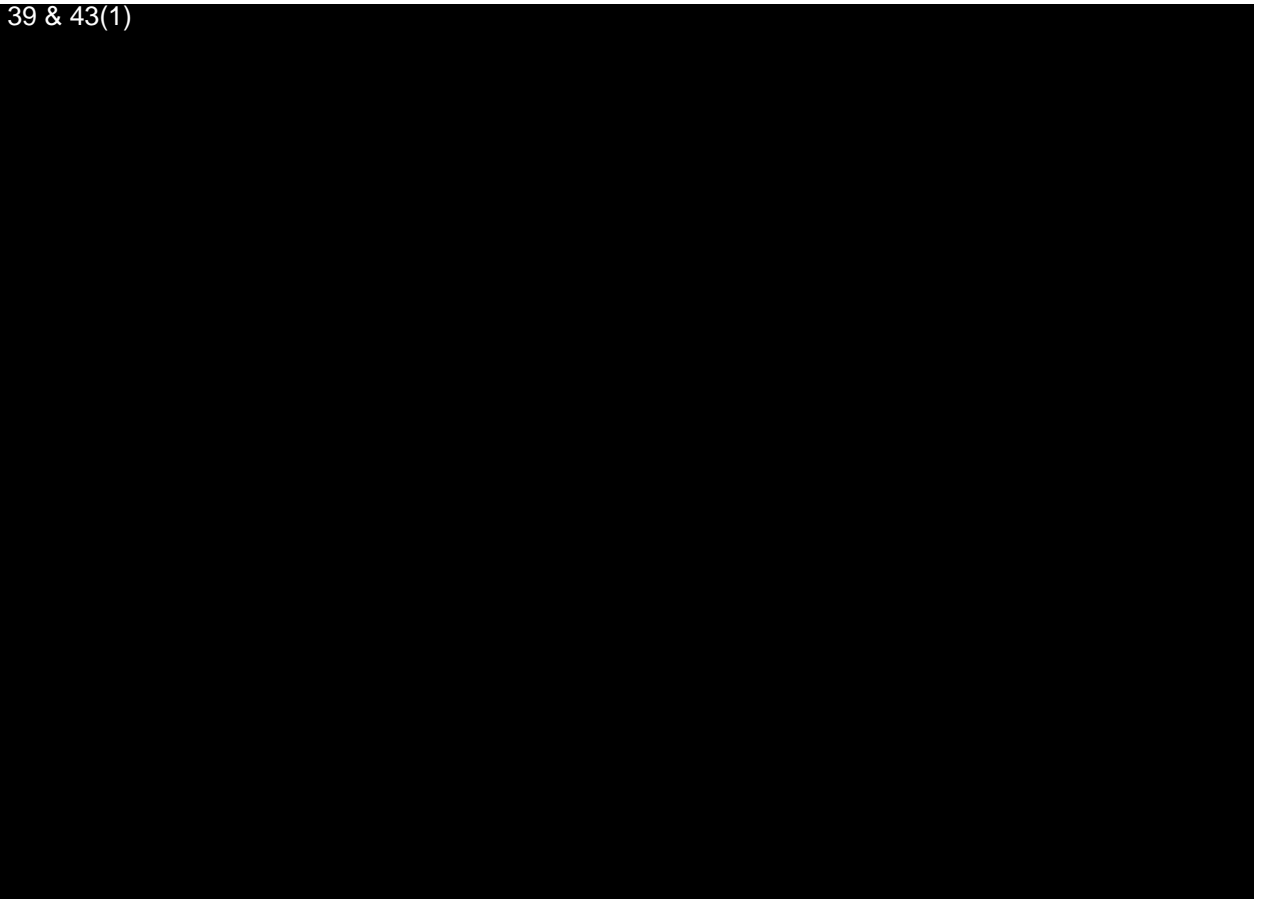
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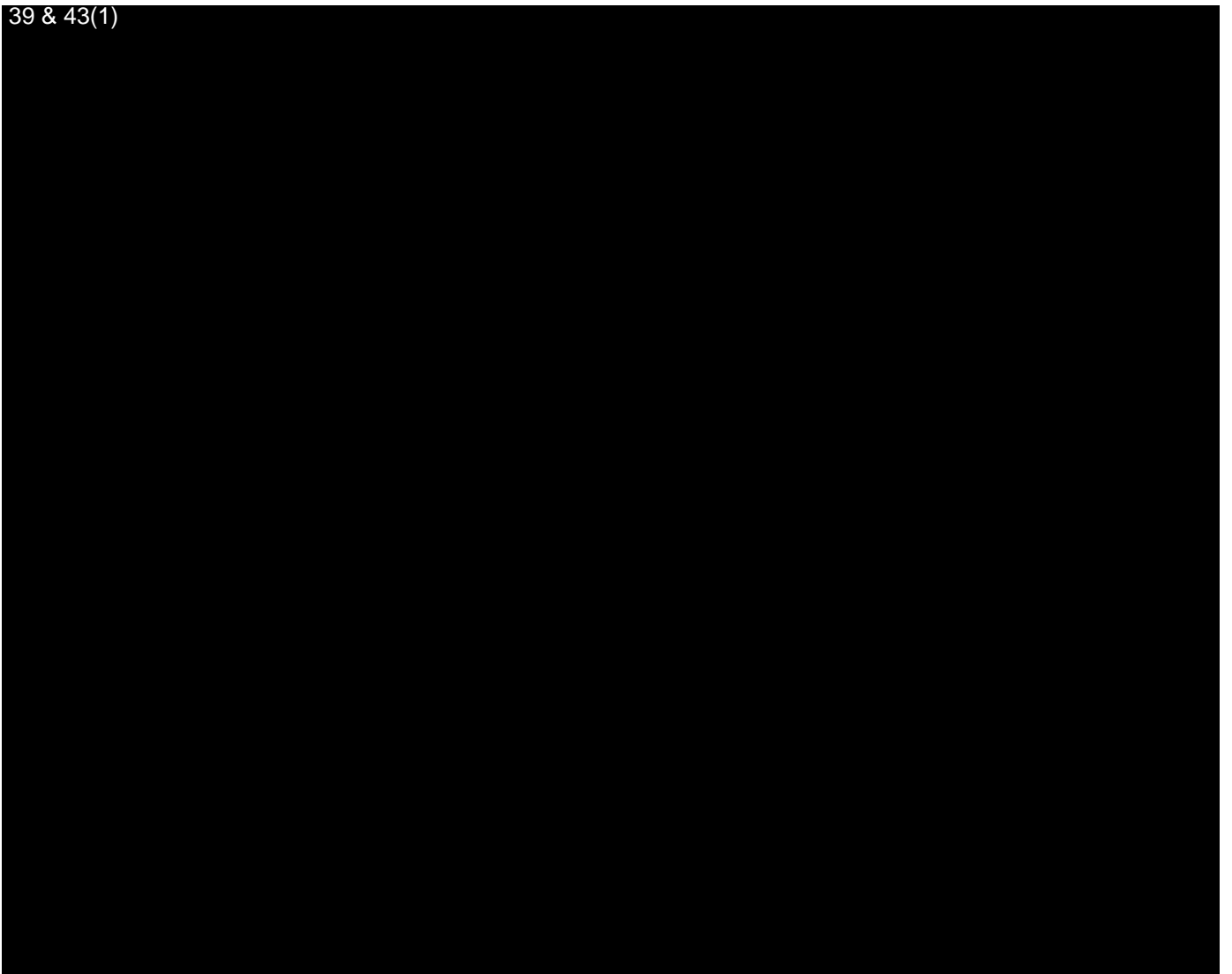
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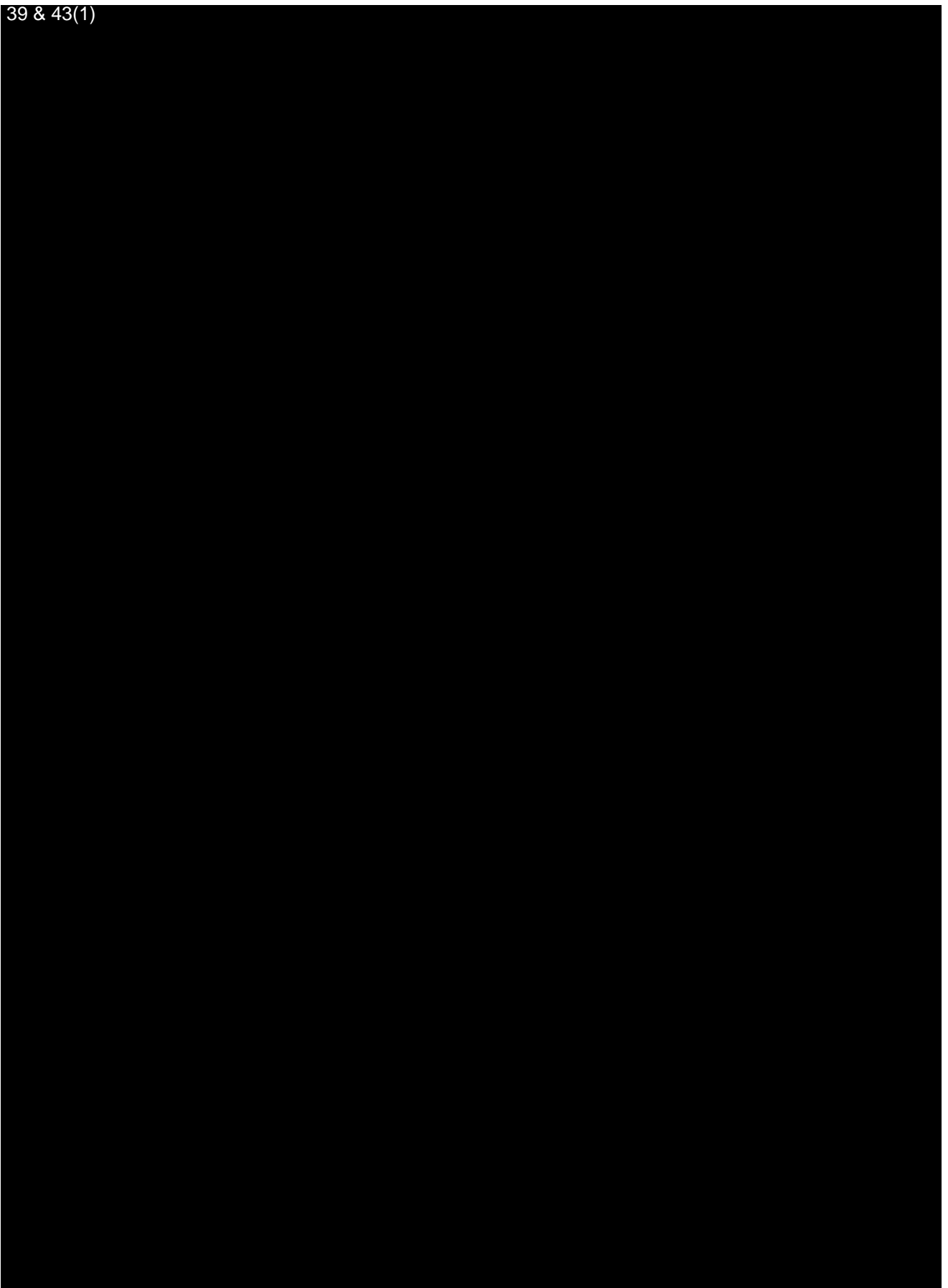
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**MINUTES OF THE
ACT GAMBLING AND RACING COMMISSION
TUESDAY 16 DECEMBER 2014**

Attendees: **John Haskins, Chairperson**
 Rebecca Vassarotti, Member
 Greg Jones, Chief Executive

Staff and others in attendance during the course of the meeting:

- Vicki Hagen (Secretariat)

Item 1: Apologies

Alice Tay, Member

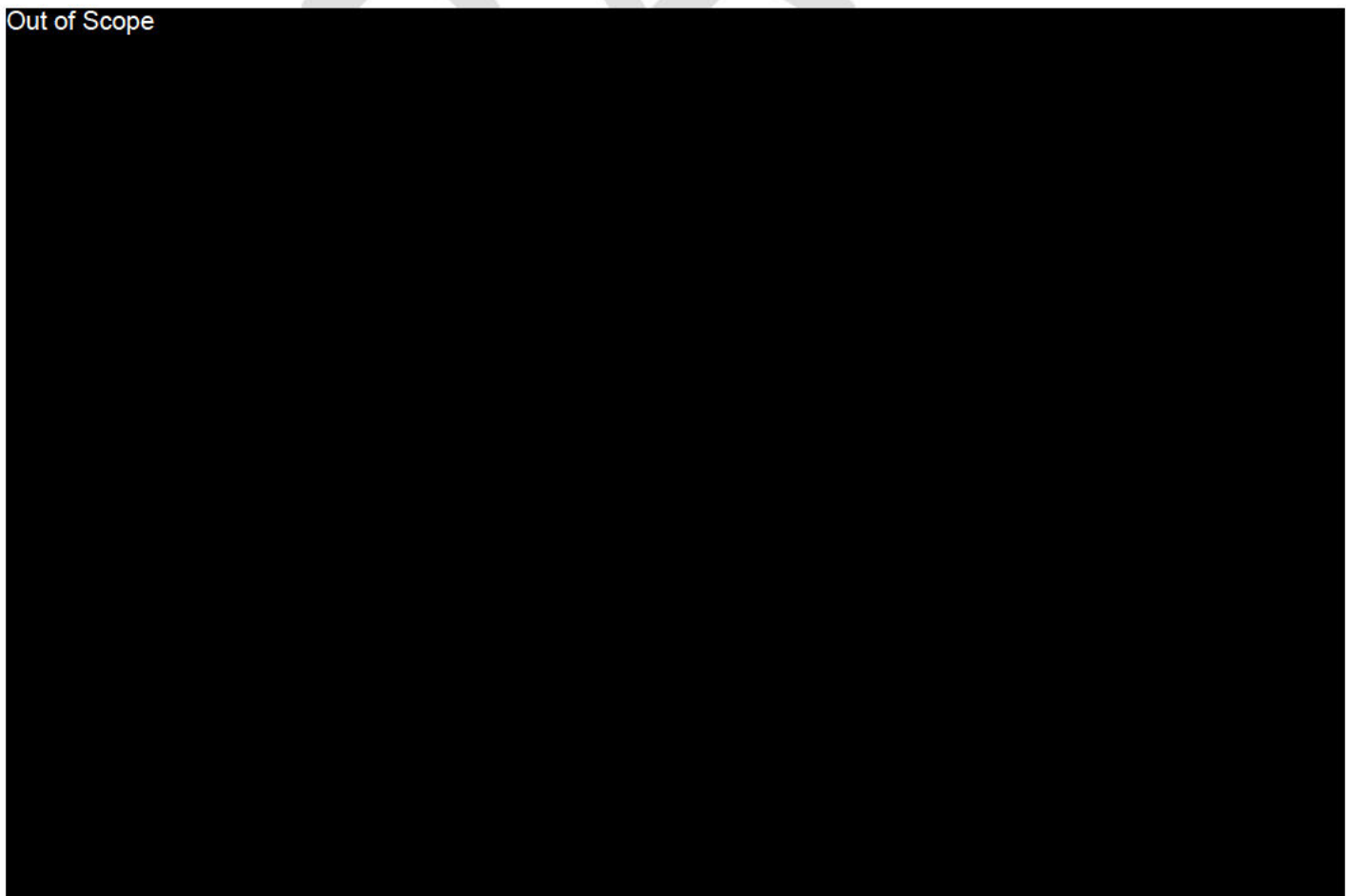
Item 2: Conflict of Interest and Manager's Declaration

There were no conflicts of interest declared by members in relation to agenda items. The Executive and Manager Declaration by management staff was tabled and noted.

Item 3 - Minutes of previous meeting – 18 November 2014

The minutes of the meeting held on 18 November 2014 were accepted as a true and accurate record.

Out of Scope



Item 6: Casino Canberra – Transfer of Ownership Suitability Report

Members noted a briefing paper prepared by Ms Kim Brady, Assistant Manager Compliance and Investigations, submitting for the Board's consideration the Casino Licensee Transfer of Ownership Suitability Report on Aquis Canberra Pty Ltd.

Aquis Canberra Pty Ltd entered into discussions with Casinos Austria International Limited (CAIL) in late 2013 to negotiate the terms of an offer to purchase CAIL's interest in Casino Canberra Limited. CAIL formally wrote to the Minister for Racing and Gaming on 31 March 2014 in order to seek approval for the proposed transfer of ownership of the casino licence held by Casino Canberra Limited to Aquis Canberra Pty Ltd. The current licence issued to Casino Canberra Limited was for the term of 97 years commencing in 1992.

An extensive investigation has been conducted into the suitability of Aquis Canberra Pty Ltd. The Suitability Report outlines the background and extent of the investigation and describes the conclusions that have been drawn and the recommendations that have been made. The report addresses the necessary legislative requirements in that it provides advice to the Minister relating to the proposed new casino owner.

39 & 43(1)

In relation to the casino licence fee, which is currently around \$900,000 per annum indexed, the Commission negotiated the payment of this fee for the next five years as an upfront amount. This means that a payment of around \$4.5 million would be made in early February 2015, the timing based on when the existing fee is paid up to. To implement this proposal that has been agreed by Aquis, a new licence fee Notifiable Instrument requires approval by the Minister.

After general discussion members agreed to the following resolutions:

i) noted the content and outcomes of the probity investigation report and agreed to the recommendations in the report;

39 & 43(1)

iii) approved the Chief Executive to make minor non-material adjustments as necessary to the report;

iv) agreed for the Chief Executive to forward the suitability report to the Minister at an appropriate time; and

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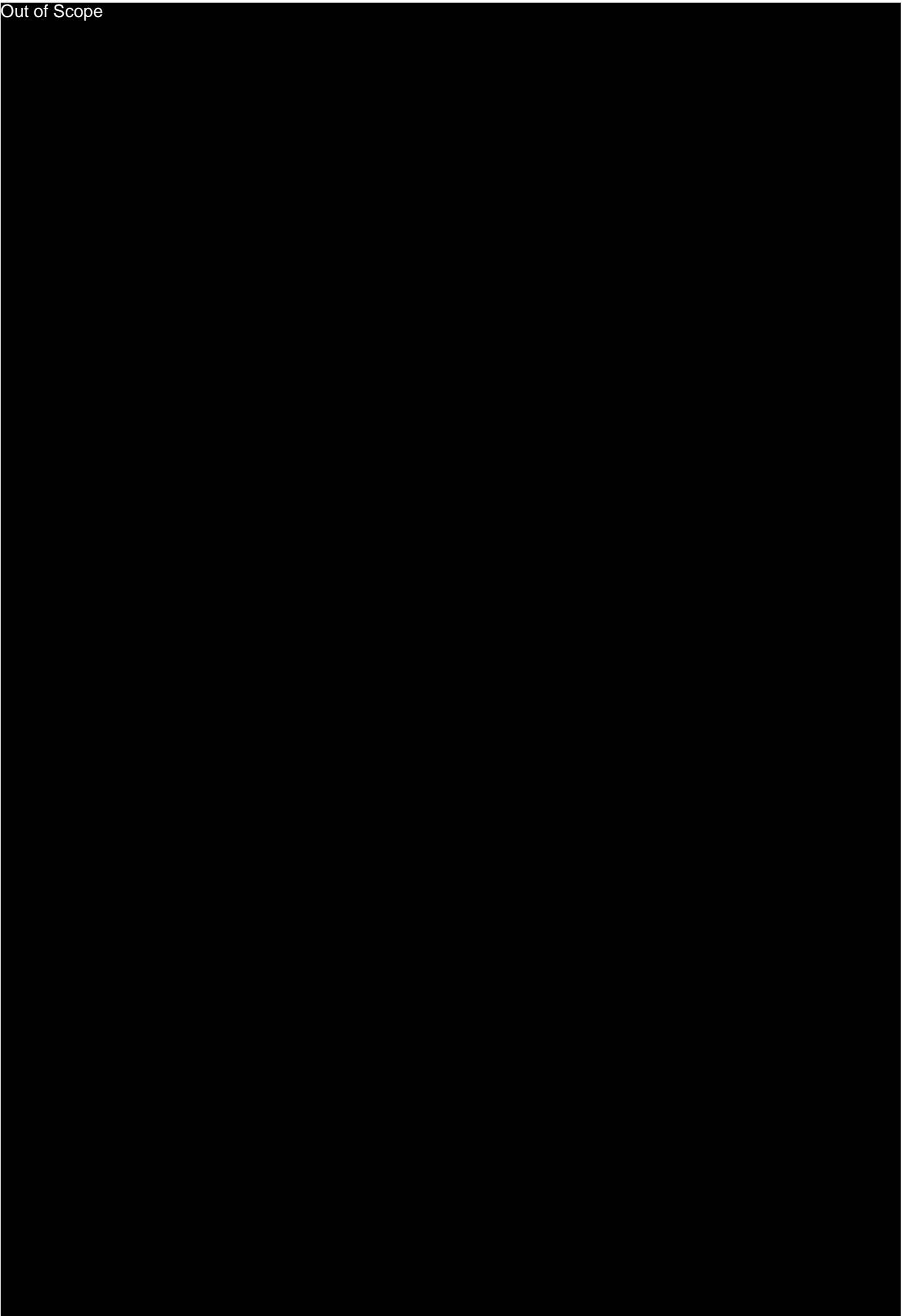
Ms Tay was an apology at the meeting, however she indicated her agreed to the recommendations contained in the brief to the Board via email to the Chief Executive on 15 December 2014. The Board acknowledged the contribution made by the Mr Jones and Ms Brady and the sale of casino will be a great outcome for the Territory.

Settlement is due to take place in Brisbane on 23 December 2014.

Action Item: Mr Jones to arrange for the suitability report to be considered by the Minister along with all associated sale documentation.

Out of Scope

Out of Scope



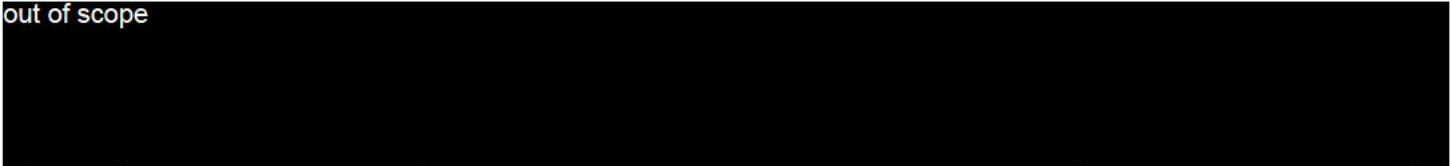


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ACT GAMBLING & RACING COMMISSION

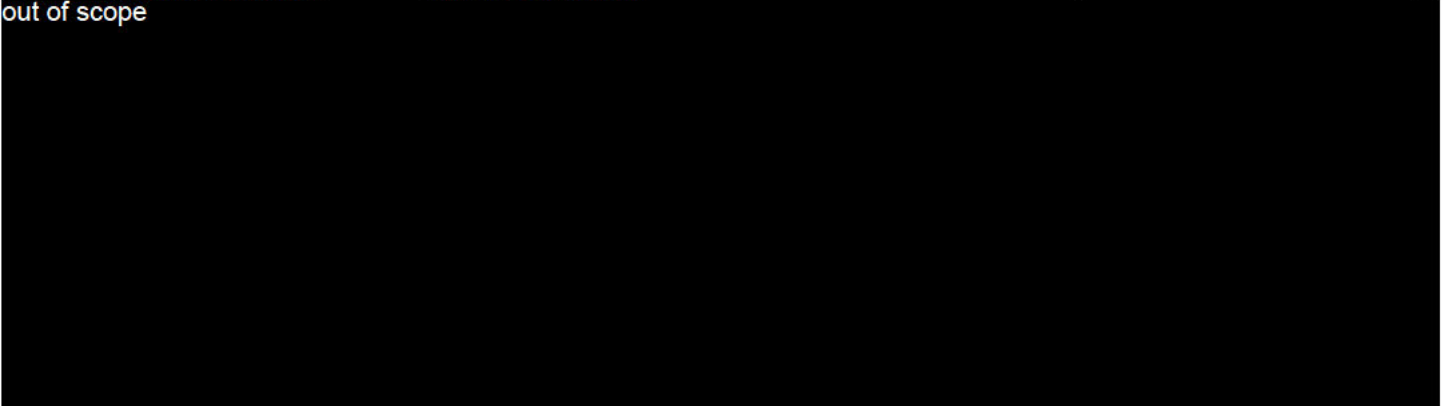
**BUSINESS ARISING FROM MINUTES OF 16 DECEMBER 2014
ACTION ITEMS**

out of scope



6.	Casino Canberra – Transfer of Ownership Suitability Report	Mr Jones to arrange for the suitability report to be considered by the Minister along with all other relevant sale documentation.	
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**EXTRACT OF MINUTES OF THE
ACT GAMBLING AND RACING COMMISSION
TUESDAY 16 DECEMBER 2014**

Attendees: **John Haskins, Chairperson**
 Rebecca Vassarotti, Member
 Greg Jones, Chief Executive

Staff and others in attendance during the course of the meeting:

- Vicki Hagen (Secretariat)

Item 1: Apologies

Alice Tay, Member

Item 6: Casino Canberra – Transfer of Ownership Suitability Report

After general discussion members agreed to the following resolutions:

- i) noted the content and outcomes of the probity investigation report and agreed to the recommendations in the report;

39 &43(1)

- iii) approved the Chief Executive to make minor non-material adjustments as necessary to the report;

- iv) agreed for the Chief Executive to forward the suitability report to the Minister at an appropriate time; and

39 &43(1)

Ms Tay was an apology at the meeting, however she indicated her agreed to the recommendations contained in the brief to the Board via email to the Chief Executive on 15 December 2014.

Certified Extract

Greg Jones
Chief Executive Officer
18 December 2014

**ACT**
Government**GAMBLING
AND
RACING
COMMISSION**

Date	16 December 2014	File No:
To	Minister for Racing and Gaming	
	• Copy to Director-General, Economic Development	
From	Chief Executive, ACT Gambling and Racing Commission	
Subject	Casino Canberra Transfer of Ownership Suitability Report – Aquis Canberra Pty Ltd	

Critical date and reason

19 December 2014, to enable the proposed transfer of ownership for Casino Canberra pursuant to section 13 of the *Casino Control Act 2006* (the Act) scheduled to be completed on 23 December 2014.

Purpose

To submit for your consideration the Casino Canberra Transfer of Ownership Suitability Report on Aquis Canberra Pty Ltd as prepared by the Gambling and Racing Commission (the Commission) and to seek your agreement to the transfer of ownership, proposed new licence conditions and associated documents required for sale settlement.

Background

1. Aquis Canberra Pty Ltd entered into discussions with Casinos Austria International Limited (CAIL) in late 2013 to negotiate the terms of an offer to purchase CAIL's interest in Casino Canberra Limited.
2. CAIL formally wrote to you on 31 March 2014 in order to seek approval for the proposed transfer of the casino licence held by Casino Canberra Limited to Aquis Canberra Pty Ltd. The current licence issued to Casino Canberra Limited was for the term of 97 years commencing in 1992 which coincided with the opening of the casino at its current location.
3. Casino Canberra Limited was initially intended to be sold as part of a joint package involving the Reef Casino in Cairns, Queensland.

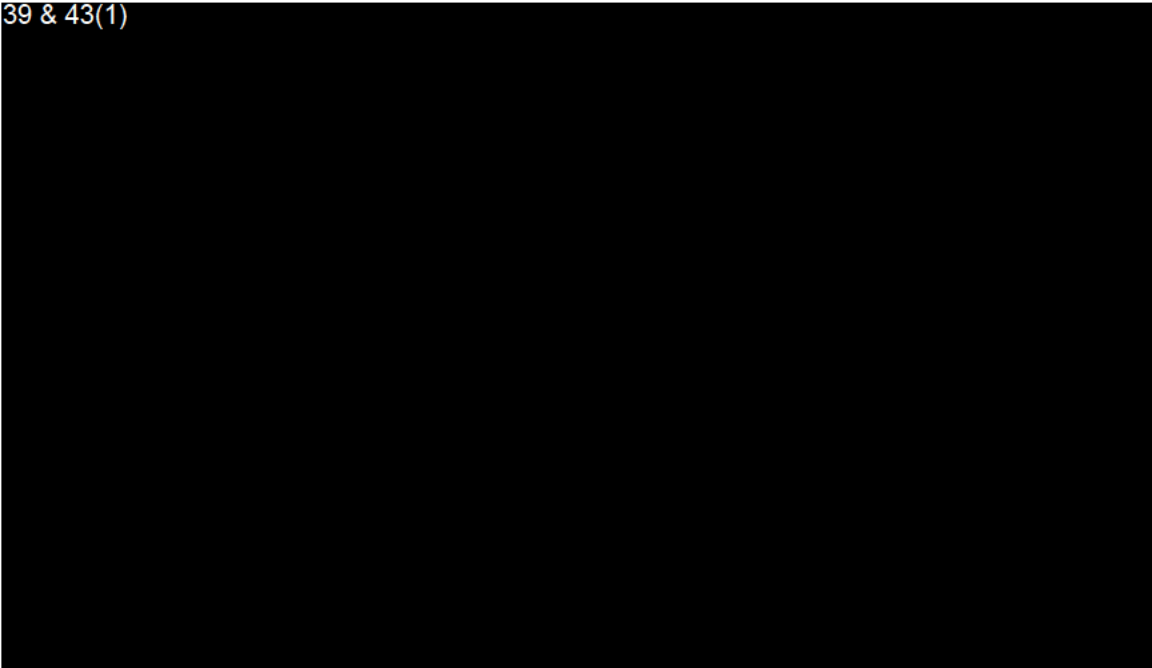
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4. As the proposed sale arrangement involved two jurisdictions, a Memorandum of Understanding (MOU) was developed between the Queensland Office of Liquor and Gaming Regulation (QOLGR) and the ACT Gambling and Racing Commission to undertake a joint probity investigation into the proposed licensee.

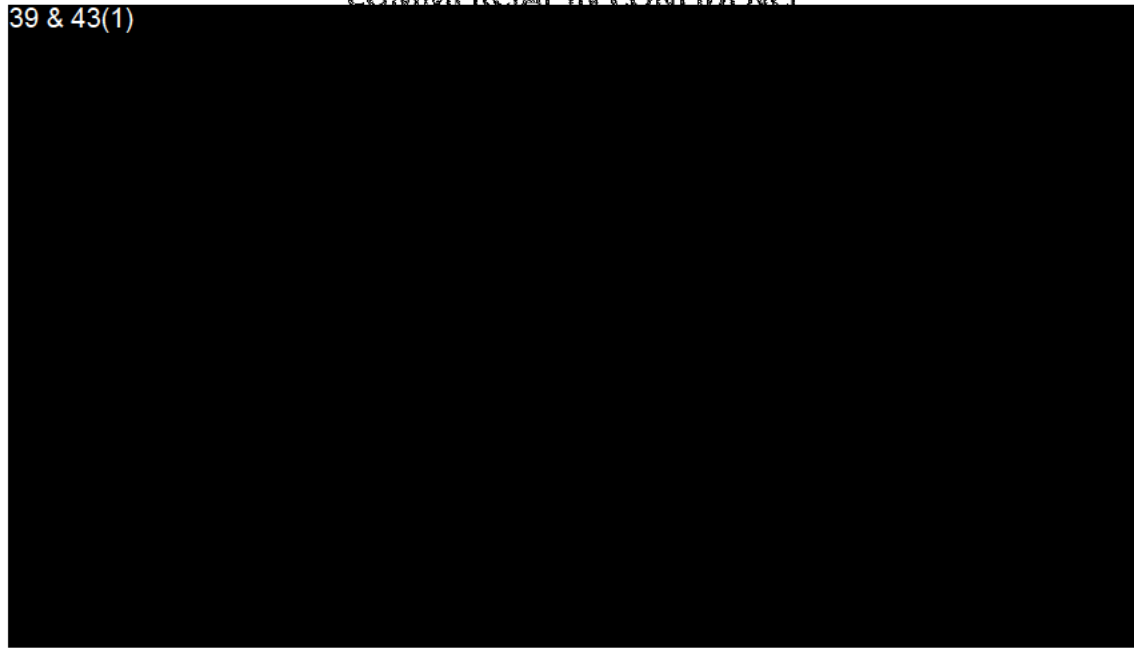
Issues

5. An application to transfer the ownership of Casino Canberra Ltd from CAIL to Aquis Canberra Pty Ltd was made in accordance with section 12 of the Act. In deciding whether to approve the proposed transfer, the Minister must consider any recommendations made by the Commission in relation to the proposed transfer pursuant to section 13 of the Act.
6. In relation to the statutory eligibility criteria, the Commission has undertaken an extensive investigation based on the requirements of sections 7 to 11 and 13 of the Act.
7. The results of the Commission's investigation carried out jointly with QOLGR are outlined in the Transfer of Ownership Suitability Report included at Attachment A.
8. The report is self-explanatory and advises that there is no impediment to you agreeing to the change of ownership of the casino licence to Aquis Canberra Pty Ltd. Should your approval be granted, draft letters to CAIL and Aquis Canberra Pty Ltd have been prepared advising them of your decision to approve the transfer of ownership - Attachments B and C refers.

39 & 43(1)



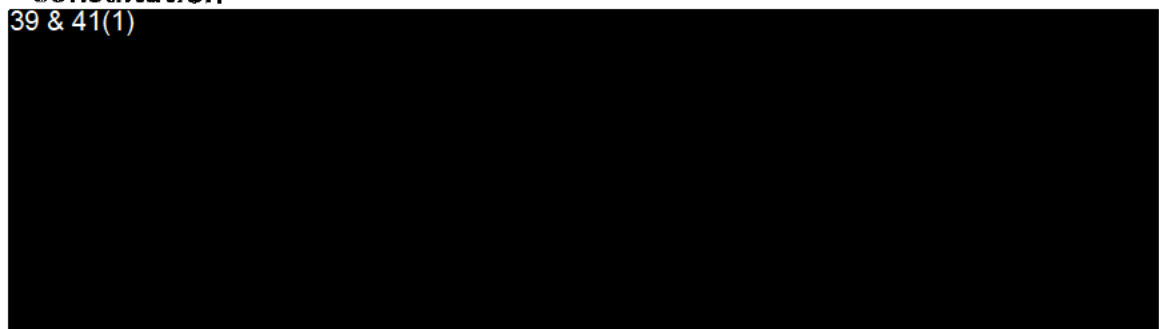
39 & 43(1)



13. The casino licence fee is currently around \$900,000 per annum indexed. As part of the negotiations with Aquis Canberra Pty Ltd, the Commission has obtained agreement to the payment of this fee for the next five years as an upfront payment to the Territory, subject to your approval. This means that a payment of around \$4.5 million would be made in early February 2015, the timing based on when the existing fee is paid up to. To implement this proposal, a new licence fee determination which is a Notifiable Instrument is included at Attachment G for your approval and signature. The draft letter to Casino Canberra at Attachment F includes advice about the change in licence fee and encloses a copy of the determination for their information.
14. In relation to the above information and documentation, if necessary I can attend your office and provide you or your Chief of Staff a verbal outline of the contents of the suitability report, this brief or walk you through the various documents that are attached.

Consultation

39 & 41(1)



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Financial

16. There have been no substantial financial implications associated with the preparation of the Casino Canberra Transfer of Ownership Suitability Report; however the impact of a successful completion of the proposed sale of the casino is likely to be significantly positive for the Territory.

Risks/ Sensitivities

17. The Commission has undertaken an extensive investigation jointly with QOLGR to ensure that Aquis Canberra Pty Ltd meets the eligibility requirements under the Act.

Media

18. Significant media interest is expected to be generated by the proposed change of ownership.
19. A draft media release has been prepared at Attachment H for your consideration.

Recommendations

I recommend that you:

- note the content and outcomes of the Commission's suitability investigation as provided at Attachment A, titled Casino Canberra Transfer of Ownership Suitability Report – Aquis Canberra Pty Ltd;

AGREED/NOT AGREED/PLEASE DISCUSS

- agree to the recommendations in the Report to approve the proposed transfer of ownership of the casino licence from CAIL to Aquis Canberra Pty Ltd ^{39 & 39 & 43(1)}

39 & 43(1)

AGREED/NOT AGREED/PLEASE DISCUSS

39 & 43(1)

AGREED/NOT AGREED/PLEASE DISCUSS

COMMERCIAL IN CONFIDENCE

COMMERCIAL IN CONFIDENCE

- agree to the Notifiable Instrument determining a new casino licence fee by signing the Instrument at Attachment G; and

AGREED/NOT AGREED/PLEASE DISCUSS

- agree to issue a media release as suggested at Attachment H once the casino sale has been completed on 23 December 2014.

AGREED/NOT AGREED/PLEASE DISCUSS



Greg Jones
Chief Executive

Action Officer: Kim Brady
Phone: 70340



Joy Burch MLA 17/12/14
AGREED/NOT AGREED/NOTED/PLEASE DISCUSS

COMMERCIAL IN CONFIDENCE



ACT
Government



GAMBLING
AND
RACING
COMMISSION

ACT Gambling and Racing Commission

Casino Canberra Transfer of Ownership Suitability Report Aquis Canberra Pty Ltd

December 2014

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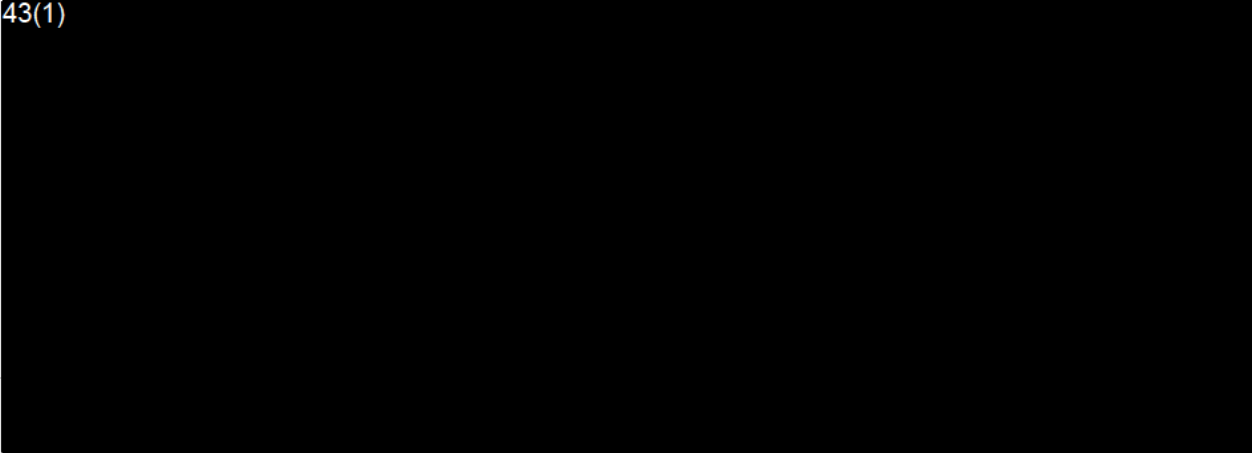
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43(1)



Executive Summary

In October 2013, Casinos Austria International Limited (CAIL) as the 100% owner of Casino Canberra Limited entered into negotiations to sell Casino Canberra following an unsolicited offer from the Aquis Fung Group (AFG). The offer was part of a larger bid to purchase The Reef Hotel Casino in Cairns which was jointly owned by CAIL and Accor Casino Investments Pty Ltd (Accor). The purchase offer was conditional, amongst other things, that it completed by 31 October 2014, later extended to 28 November 2014.

43(1)



On the basis that the sale arrangement involved casinos in two jurisdictions, the ACT Gambling and Racing Commission and the Queensland Office of Liquor and Gaming Regulation (QOLGR) entered into a Memorandum of Understanding to undertake a joint probity investigation.

43(1)



The joint investigation involved the analysis of the AFG's financial history, business conduct in regards to operations, decision making, associations and affiliations including their ability to potentially support and operate a casino.

43(1)



In relation to the Reef casino sale, the deadline of 28 November 2014 remained and subsequently passed with the sale offer lapsing.

It was revealed in the investigation that the AFG and Tony Fung had financial circumstances that would comfortably allow the acquisition of Casino Canberra within existing resources and as such would result in no financial encumbrance over the Canberra casino property.


The investigation revealed no adverse information in relation to the source of funds. 43(1)




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There were no adverse findings revealed in relation to the corporations, corporate structure, relevant key individuals or associates.

36(1) & 43(1)



39 & 43(1)



A number of conditions on the licence are suggested to enhance the Commission's regulatory role, particularly in terms of information requests and being kept abreast of any adverse events relating to the licensee and associated entities.

Based on the information made available to the Commission, it has concluded that there are no eligibility objections to the applicant (Aquis Canberra Pty Ltd) operating a casino in the Australian Capital Territory.

In order to further protect the Territory's interest and ensure that the Commission has sufficient additional regulatory oversight capabilities, it is recommended that the proposed casino licence conditions 39 & 43(1) be implemented as part of any approval to transfer ownership. Aquis has been extensively consulted on these documents and is in agreement with their content.

On the basis that the licence conditions 39 & 43(1) are adopted in full, the Commission advises that it has not identified any matter that would prevent the Minister from approving the transfer of the casino's ownership to Aquis Canberra Pty Ltd.

1.0 Introduction and Background

Casino Canberra is owned and operated by Casino Canberra Limited, a wholly owned subsidiary of Casinos Austria International Limited (CAIL). CAIL is also owner of The Reef Hotel Casino in Cairns jointly with Accor Casino Investments Pty Ltd through the Reef Casino Trust (RCT).

The RCT is an Australian Stock Exchange (ASX) listed entity. Reef Casino Services, an entity also jointly owned by CAIL and Accor Casino Investments Pty Ltd, is responsible for the RCT and holds all RCT assets on trust for RCT unit holders.

43(1)

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A key feature of the joint sale agreement was that settlement had to occur by 31 October 2014, later extended to 28 November 2014, or the sale offer would lapse.

On 31 March 2014, CAIL wrote to the Minister for Racing and Gaming pursuant to section 12 of the *Casino Control Act 2006* (the Act) seeking approval for the proposed transfer of ownership of Casino Canberra Limited

On the basis that the proposed sale agreement involved the transfer of ownership of casinos in both the ACT and Queensland, the ACT Gambling and Racing Commission (the Commission) entered into a Memorandum of Understanding (MOU) with the Queensland Office of Liquor and Gaming Regulation (QOLGR) to undertake a joint probity investigation into the proposed purchase arrangement. Given the relative size of the transactions in each jurisdiction and the availability of resources, it was agreed that the Queensland regulator would take the lead role in conducting the probity investigation.

34

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On 21 November 2014, RCT announced through the ASX website that Aquis was unlikely to satisfy the requirements under the share purchase offer by the revised completion deadline

of 28 November 2014. 43(1)

43(1)

43(1)

34 & 40(1)

This report outlines the results of the extensive investigations conducted into Aquis Canberra Pty Ltd (the applicant), all associated entities and eligible persons for the purposes of suitability to operate a casino in the Territory. It addresses the eligibility requirements in accordance with the provisions outlined in sections 7 and 8 of the Act. The Commission, under section 13 of the Act, can also provide any recommendations to the Minister on the proposed transfer of ownership.

The authority for the Commission to undertake the necessary suitability investigations is based on the provisions of the *Gambling and Racing Control ACT 1999* (GRC Act). Under the GRC Act the Commission is established as an independent statutory authority to regulate, control and supervise gaming and racing activities in the ACT, including that of the casino.

Under section 22 of the GRC Act, the Commission has the powers to obtain information as necessary to undertake its functions including through the conduct of interviews and from requirements to produce documents. If necessary, evidence can be obtained by the Commission through statutory declaration or under oath or affirmation as provided by section 22(3)(c) of the GRC Act.

2.0 Legislative Background

The sale proposal involves the transfer of ownership of the current casino licensee, Casino Canberra Ltd, to Aquis Canberra Pty Ltd (the applicant) pursuant to section 13 of the *Casino Control Act 2006* (the Act).

Under this section of the Act, the approval for a change of ownership by the Minister is subject to the proposed owner being an eligible person as defined in the Act and the Minister considering any recommendation made by the Commission about the sale. In this regard, the Commission has undertaken a detailed analysis of the purchaser's corporate structure, financial resources and management ability to operate a casino.

The eligibility criteria set out in sections 7 and 8 of the Act are determined separately for corporations and individuals. Within a corporation, each influential person (as defined in the Act) must be considered an eligible person by meeting the individual eligibility criteria.

Broadly, the statutory eligibility criteria for corporations is fairly basic in that it only covers significant adverse financial history, such as any winding-up orders or appointments of administrators. For individuals, the eligibility criteria covers criminal history as well as current and previous financial history.

The eligibility criteria is also applied to relevant associates and related entities connected with the applicant. The relevant legislative provisions are outlined in Attachment A.

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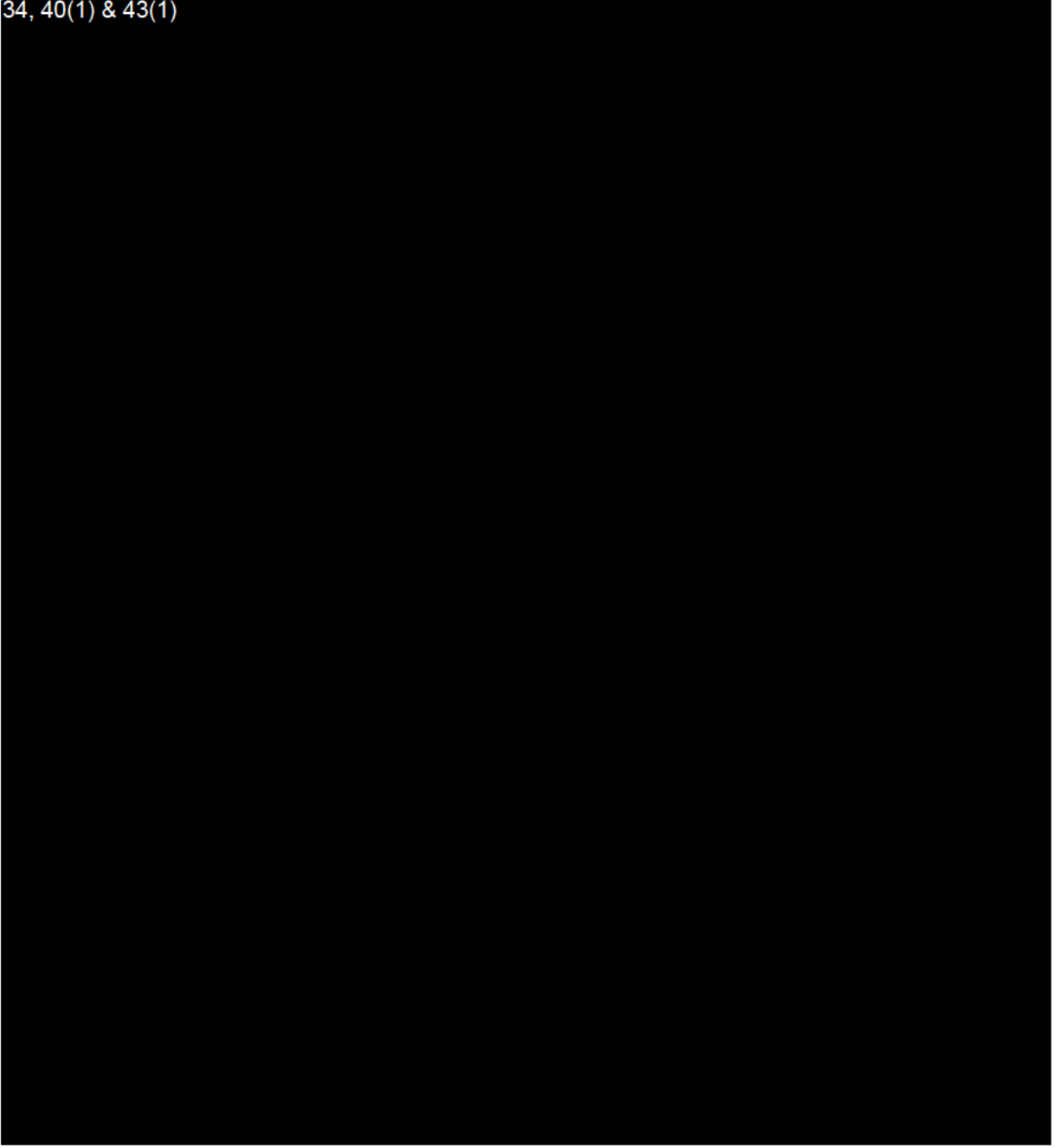
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43(1)




4.0 Investigation Methodology

34, 40(1) & 43(1)



The Commission has the powers to investigate by obtaining information, instruments or records or require attendance for examination to undertake its statutory functions including through the conduct of interviews as stated under section 22 of the *Gambling and Racing Control Act 1999*. However, in the conduct of this investigation it was unnecessary to exercise the Commission's powers to require production of material as all information was obtained on a voluntary basis, including voluntarily attendance at interviews.

40(1) & 43(1)



5.1 Individual Assessment

Section 7 of the Act relates to the eligibility of individuals, and accordingly each key person has been assessed against the criteria as defined under section 7.

Information provided by the independent consultants and confirmed by the Commission indicates the following influential persons:

Tony Fung, Director
Justin Fung, Director
Raymond Or, Director

Mr Tony Fung is a very experienced businessman and is currently director of 39 corporate entities.

Mr Justin Fung, Tony's son, has a law degree from the United States and is being introduced into the AFG corporate undertakings under the guidance of his father.

Mr Raymond Or is a very experienced and respected businessman and is currently director of 15 corporate entities. Some of his past directorships include Cathay Pacific Airways Ltd, HSBC Investment Bank Asia Ltd and The Hongkong and Shanghai Banking Corporation Ltd.

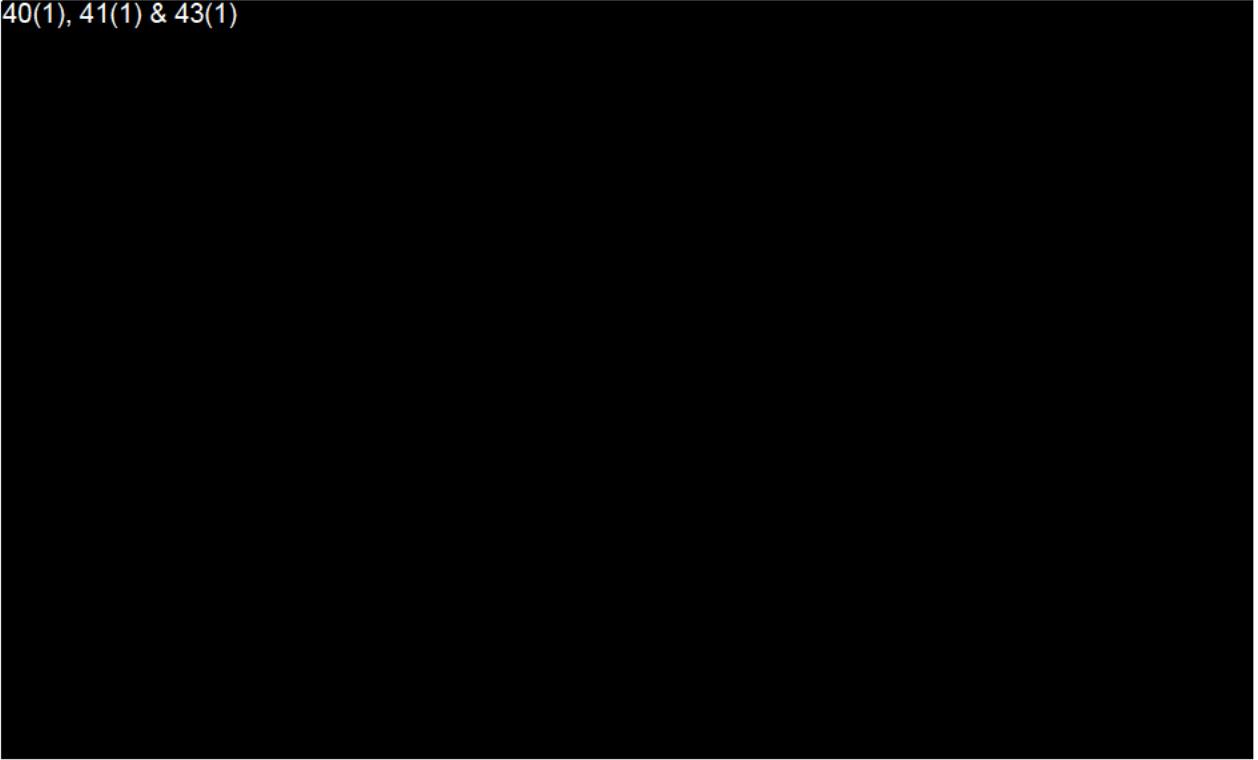
The influential persons identified above are the only directors for the following AFG entities as indicated at Attachment B:

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40(1), 41(1) & 43(1)

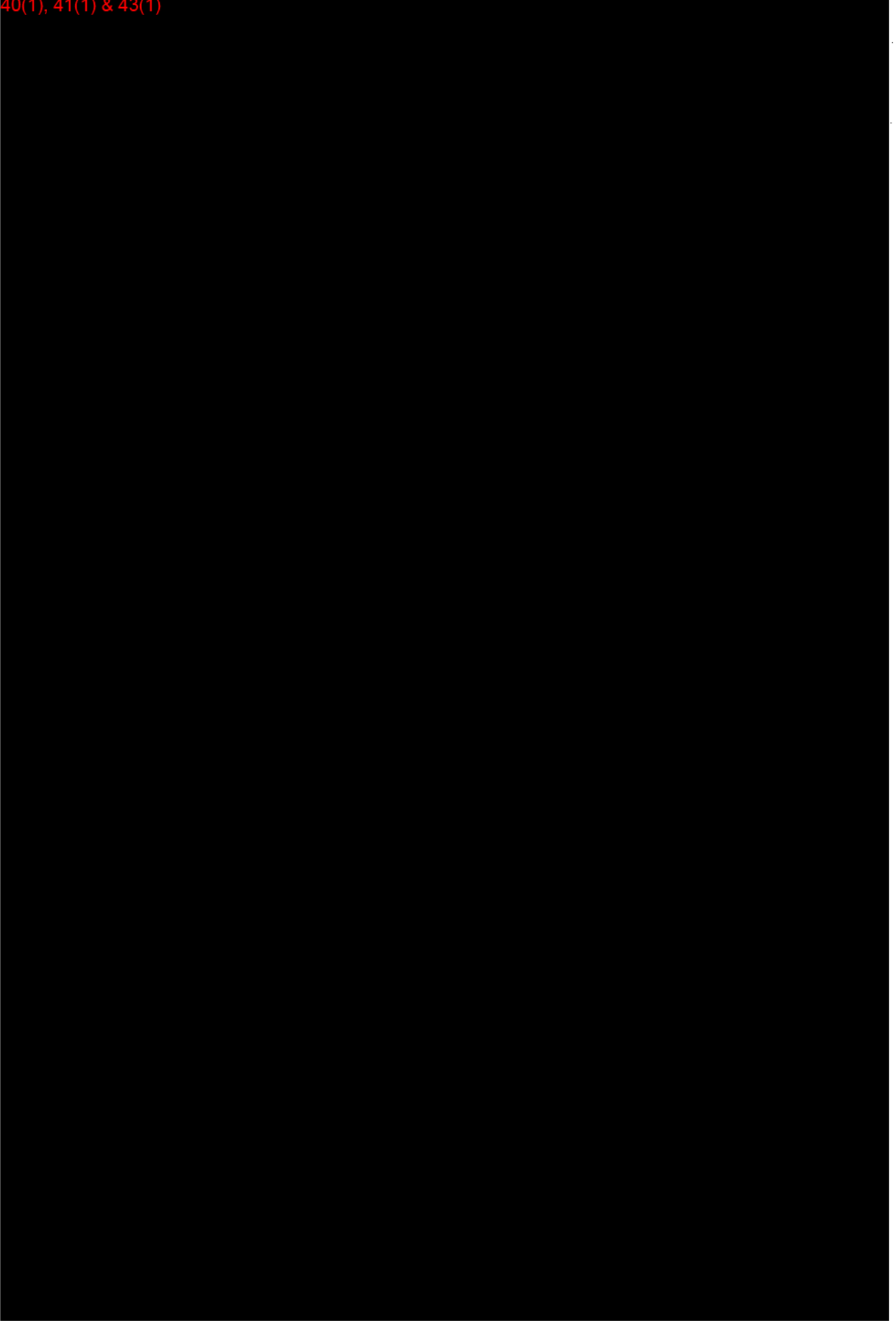


Nothing adverse on the three directors was identified from submitted individual probity forms, formal interviews, police checks, credit checks or ASIC and Dun and Bradstreet searches.

40(1), 41(1) & 43(1)

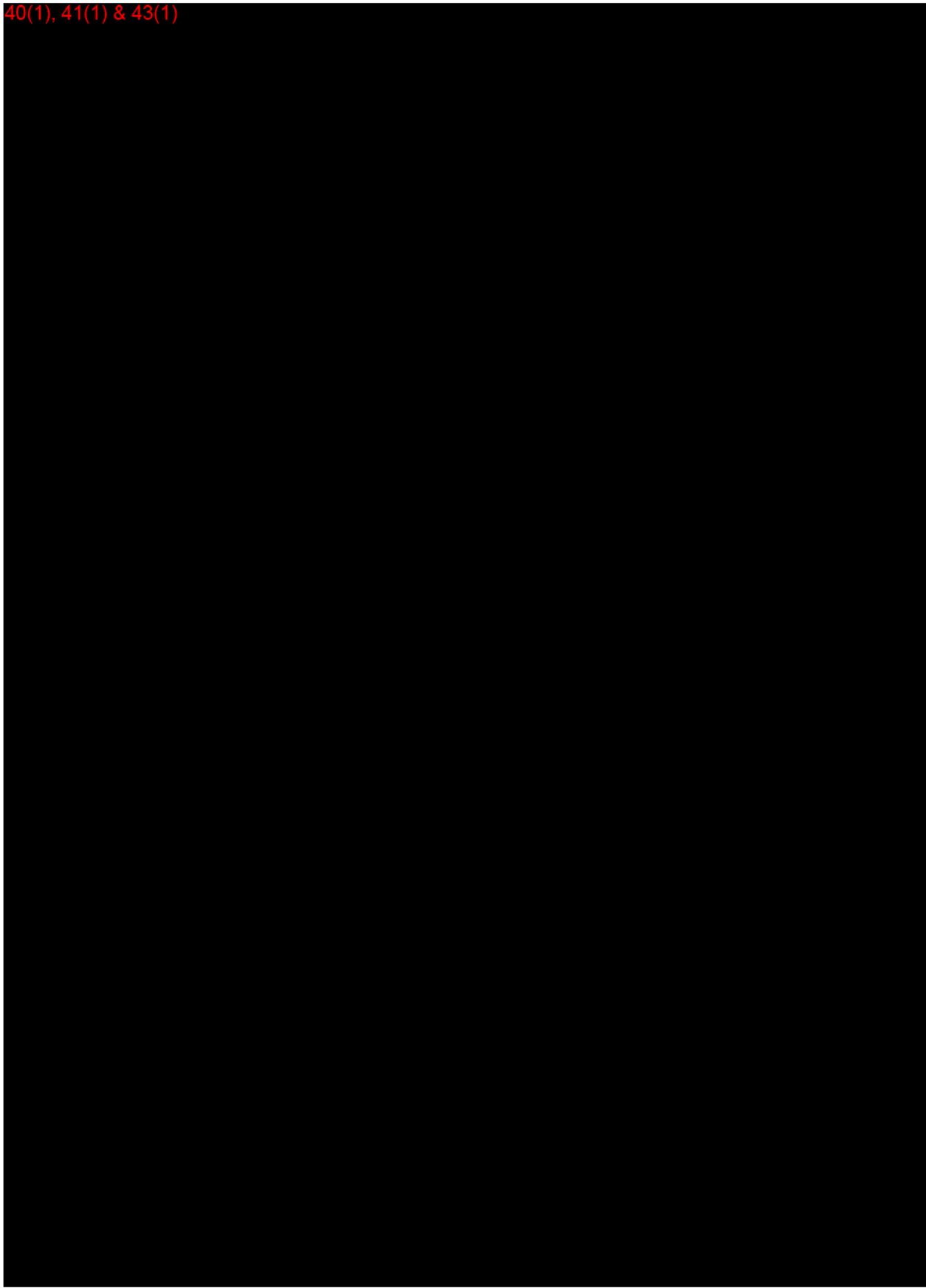


40(1), 41(1) & 43(1)



CONFIDENTIAL

40(1), 41(1) & 43(1)



6.0 Conclusions

Extensive enquiries under the joint investigation arrangements with QOLGR produced a large amount of financial and corporate data that was analysed by both regulatory bodies with the assistance of the specialised contractors.

Much of the financial analysis focused on identifying the source of funds, both equity and borrowings, to ensure that sources were reputable and to ensure that the gearing of the proposed purchase arrangements were satisfactory. 43(1)

43(1)

The investigation revealed no adverse information in relation to the source of funds. 43(1)

43(1)

40(1) & 43(1)


In relation to individual probity, police criminal history checks and credit checks revealed nothing adverse in relation to the directors.

41(1) & 43(1)



In order to provide further protection for the Territory in relation to AFG's commitment to the Canberra casino, it is proposed that amendments to the existing payment obligation for the casino licence fee (currently \$891,877 per annum indexed) will require an upfront licence fee payment covering the next 5 years, totalling around \$4.5 million.

40(1) & 43(1)



The Commission's probity conclusions and its recommendations that follow are provided as an integrated package that includes all terms of the proposed conditions of casino licence
39 & 43(1)

As such, the recommendations rely on the total package being either accepted or rejected as a whole.

7.0 Recommendations

A full analysis of available information relating to the corporation and all eligible persons was conducted to test Aquis Canberra Pty Ltd's eligibility to be a casino licensee.

Based on the evidence available at the time of this report, the Commission has determined that there are no disqualifying grounds whereby Aquis Canberra Pty Ltd or any of its eligible persons would be considered unsuitable.

The proposed corporate structure of the casino licensee and its associated entities is considered satisfactory along with its management structure.

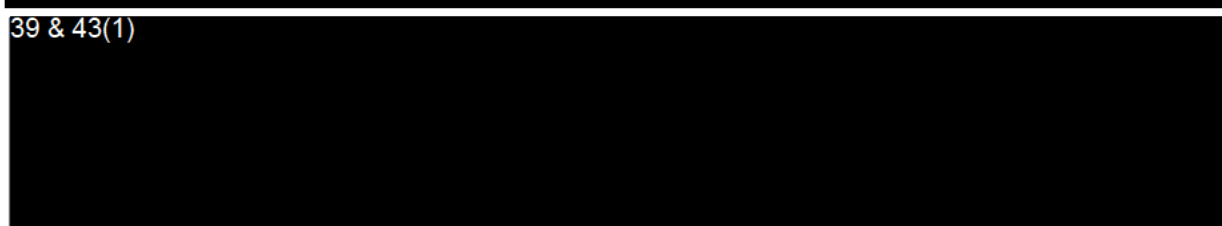
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39 & 43(1)

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Based on the information available, the Commission considers that Aquis Canberra Pty Ltd meets the eligibility requirements in relation to sections 7 and 8 of the *Casino Control Act 2006*. The Commission advises that it has not identified any matters that would prevent the Minister from approving the change of ownership of the casino licence to Aquis Canberra Pty Ltd.

The Commission recommends that if the Minister approves the change of ownership then the attached licence conditions be simultaneously applied which would also require the Commission to enter into the attached deed.

ATTACHMENT A

Relevant Legislative Provisions
Casino Control Act 2006

Section 7 - Eligibility of individuals

Specifically, the relevant legislative provisions are as follows:

- (1) For this Act, an individual is an eligible person if –
 - (a) the individual is an adult; and
 - (b) there is not a disqualifying ground for the individual.
- (2) Each of the following is a ***disqualifying ground*** for an individual:
 - (a) the individual has been convicted, or found guilty, in the last 5 years, whether in the ACT or elsewhere, of an offence-
 - (i) involving fraud or dishonesty; or
 - (ii) against a law about gaming;
 - (b) the individual has been convicted, or found guilty, in Australia in the last 5 years of an offence punishable by imprisonment for at least 1 year;
 - (c) the individual has been convicted, or found guilty, outside Australia in the last 5 years of an offence that, if it had been committed in the ACT, would have been punishable by imprisonment for at least 1 year;
 - (d) the individual is, or at any time in the last 5 year has been, bankrupt or personally insolvent;
 - (e) at any time in the last 5 years the individual was involved in the management of a corporation when-
 - (i) the corporation become the subject of a winding-up order; or
 - (ii) a controller or administrator was appointed;
 - (f) at any time in the last 12 months the individual had-
 - (i) an application for a casino employee licence refused, on the basis that the individual provided false or misleading information, in the application; or
 - (ii) a casino employee licence cancelled under part 4.
- (3) Despite subsection (2), the Minister or Commission may decide that an individual is an eligible person if satisfied that-

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- (a) the operation of the casino would not be adversely affected if the Minister or Commission decided that the individual is an eligible person; and
- (b) it is otherwise in the public interest that the individual be treated as an eligible person.

Section 8 – Eligibility of corporations

(1) For this Act, a corporation is an *eligible person* if -

- (a) each executive officer and influential person of the corporation is an eligible person; and
- (b) the corporation is not the subject of a winding-up order, and has not been the subject of a winding-up order in the last 3 years; and
- (c) a controller or administrator has not been appointed for the corporation in the last 3 years.

(2) Despite subsection (1), the Minister or the commission may decide that a corporation decided that a corporation is an eligible person if satisfied that-

- (a) the operation of the casino would not be adversely affected if the Minister or the Commission decided that the individual is an eligible person; and
- (b) it is otherwise in the public interest that the corporation be treated as an eligible person.

Section 9 – Meaning of influential person

(1) In this Act:

Influential person, for a corporation –

(a) means any of the following:

- (i) an executive officer of the corporation;
- (ii) a related corporation;
- (iii) an executive officer of a related corporation;
- (iv) an influential owner of the corporation; and

(b) includes a person who, through not mentioned in paragraph (a), can exercise as much influence over the conduct of the corporation as someone mentioned in that paragraph.

(2) In this section:

Influential owner, of a corporation, means a person who, whether directly or through intermediary corporate ownership or nominees –

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- (a) can control at least 5 % of the votes at an annual general meeting of the corporation;
or
- (b) can control the appointment of a director of the corporation.

related corporation means a related body corporate under the Corporations Act.

Section 10 – Meaning of owner

(1) In this Act:

‘owner’, of the casino, means a person who, alone or jointly with others, is the lessee of land where the casino, or part of the casino, is located.

(2) A reference to the owner of the casino is a reference to all such people.

Section 12 – Application for approval for change of ownership

An owner of the casino may apply in writing to the Minister for approval to sell or otherwise dispose of the owner’s interest in the lease of the casino, or part of the interest, to someone else.

Section 13 – Approval of proposed owner

(1) On application under section 12, the Minister must approve, or refuse to approve, the sale or other disposal of an owner’s interest in the lease of the casino, or part of the interest, to the proposed owner.

(2) In deciding whether to approve the sale or other disposal, the Minister must consider any recommendation made by the Commission about the sale or disposal.

(3) The Minister must not approve the sale or other disposal unless satisfied that –

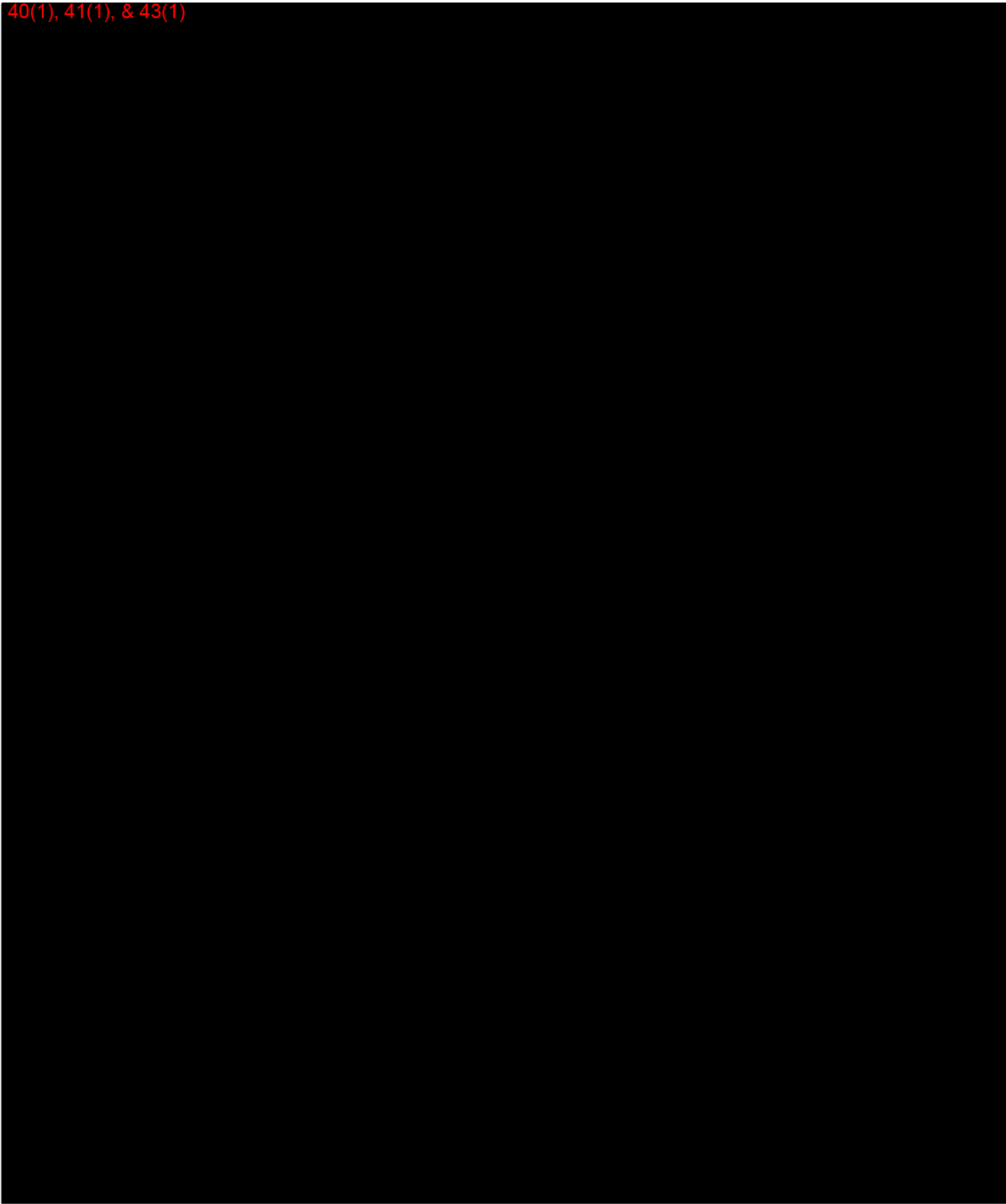
- (a) the proposed owner is an eligible person; and
- (b) if the change of ownership would require a control agreement to be in force under section 19, on transfer of ownership, the proposed owner will become a party to a control agreement.

43(1)(c)




ATTACHMENT C

40(1), 41(1), & 43(1)



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40(1), 41(1), & 43(1)



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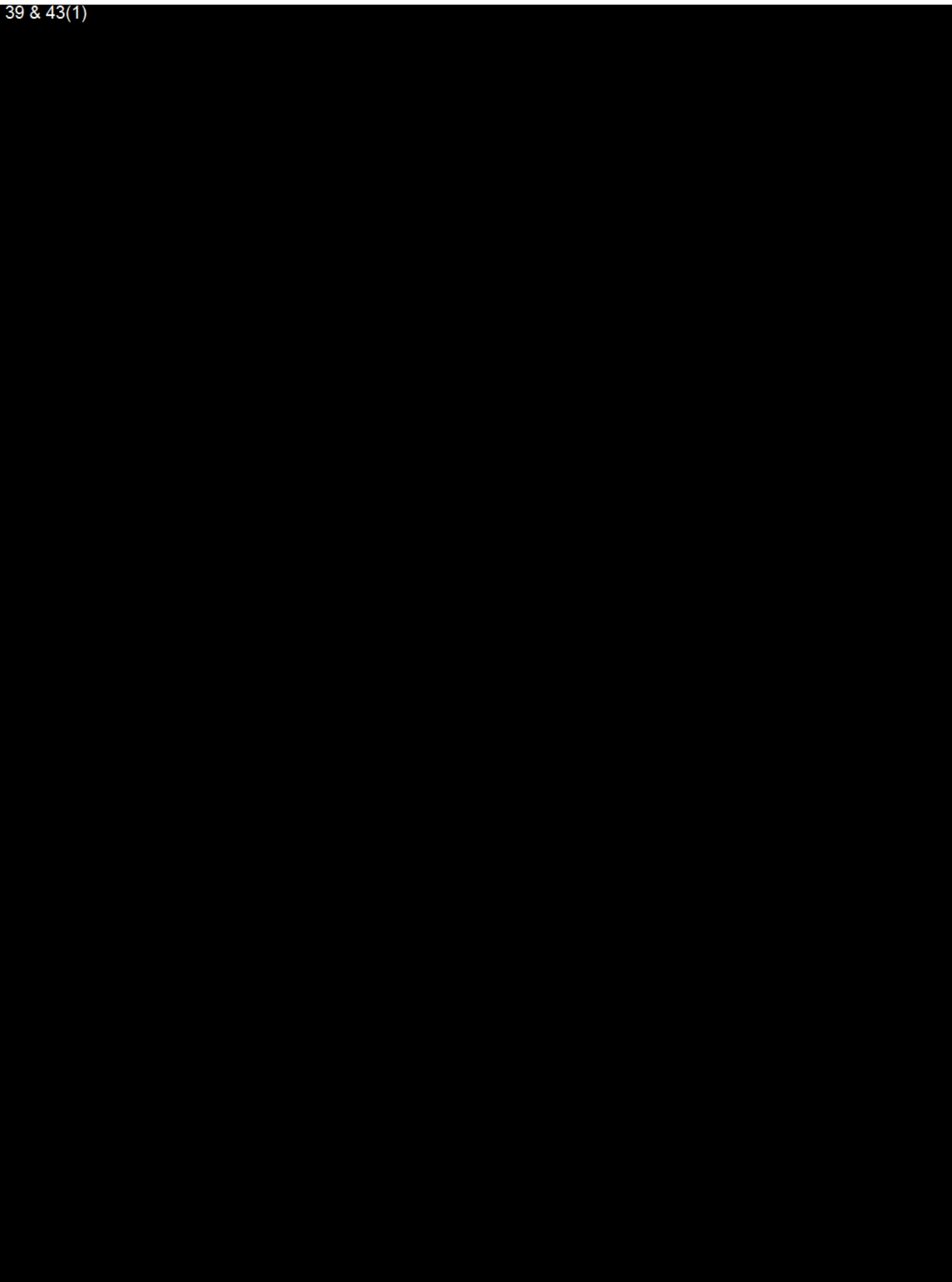
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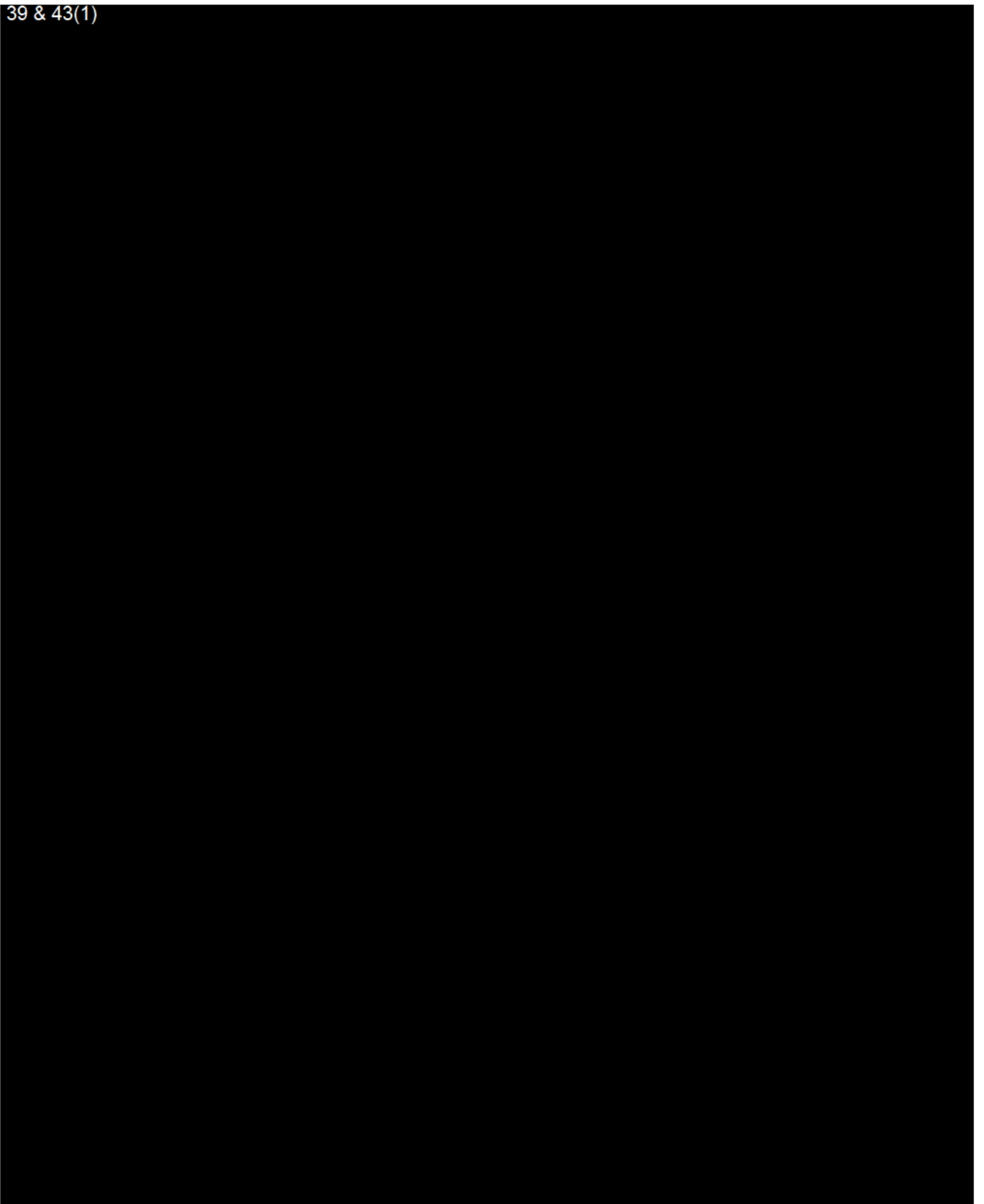
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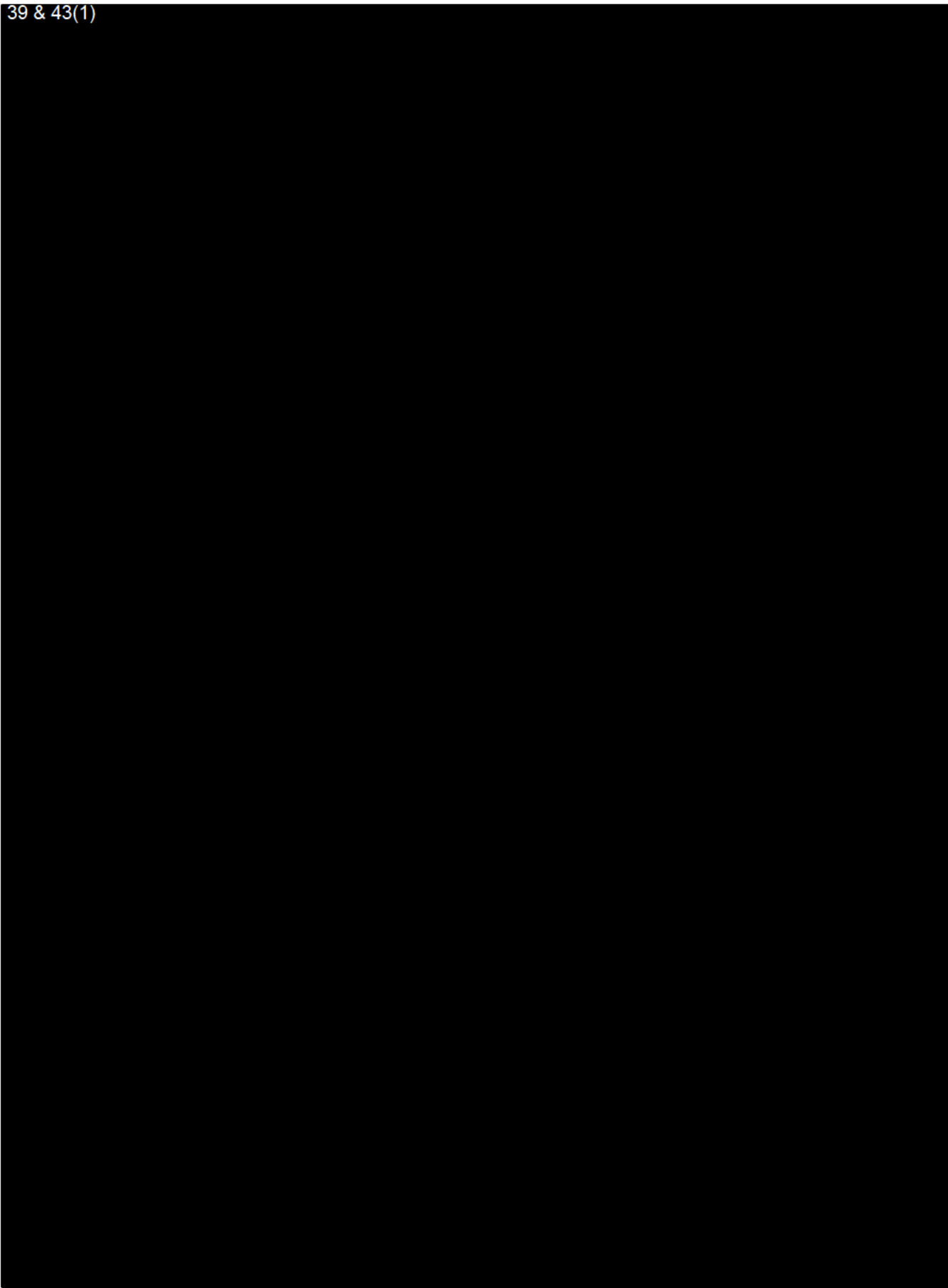
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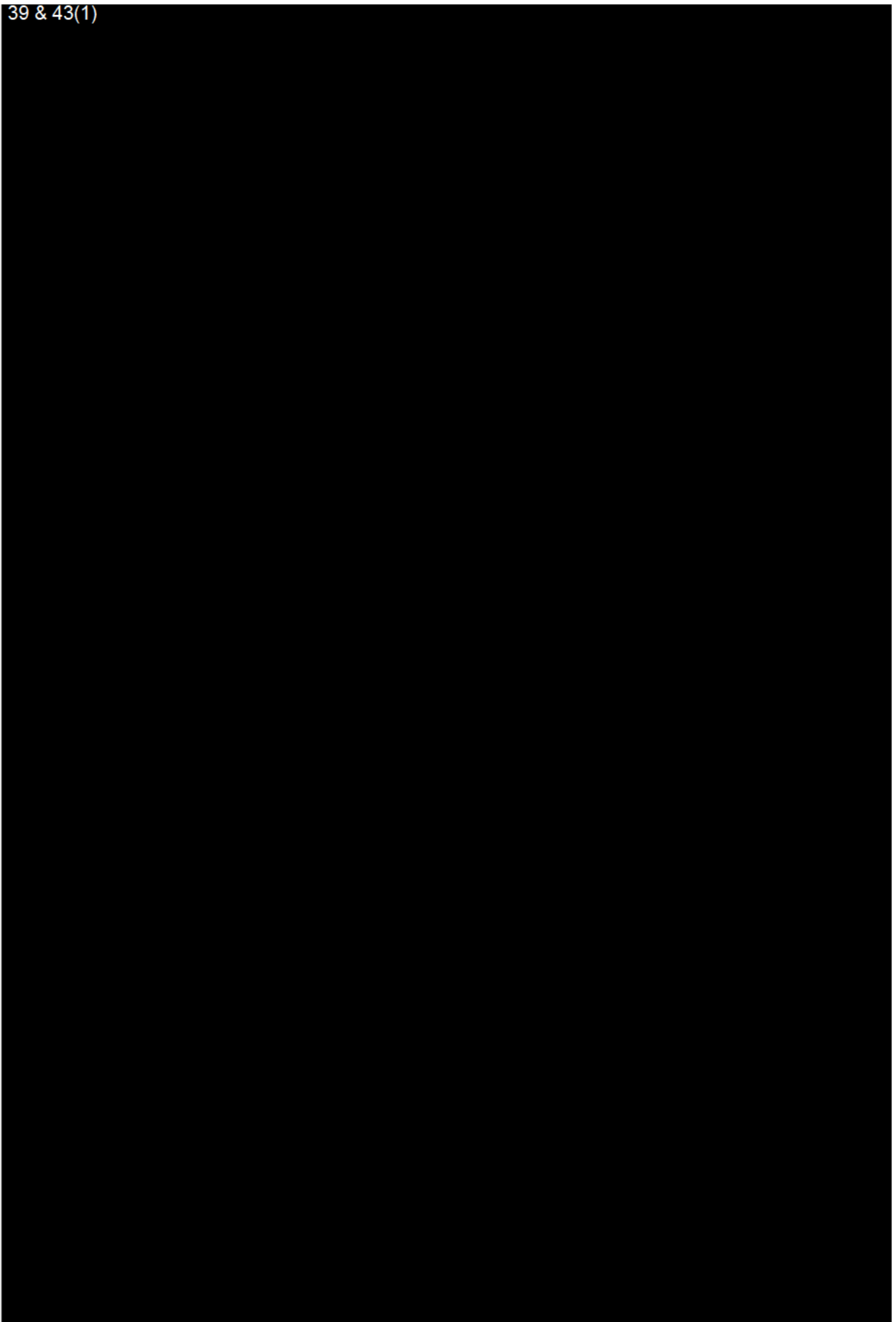
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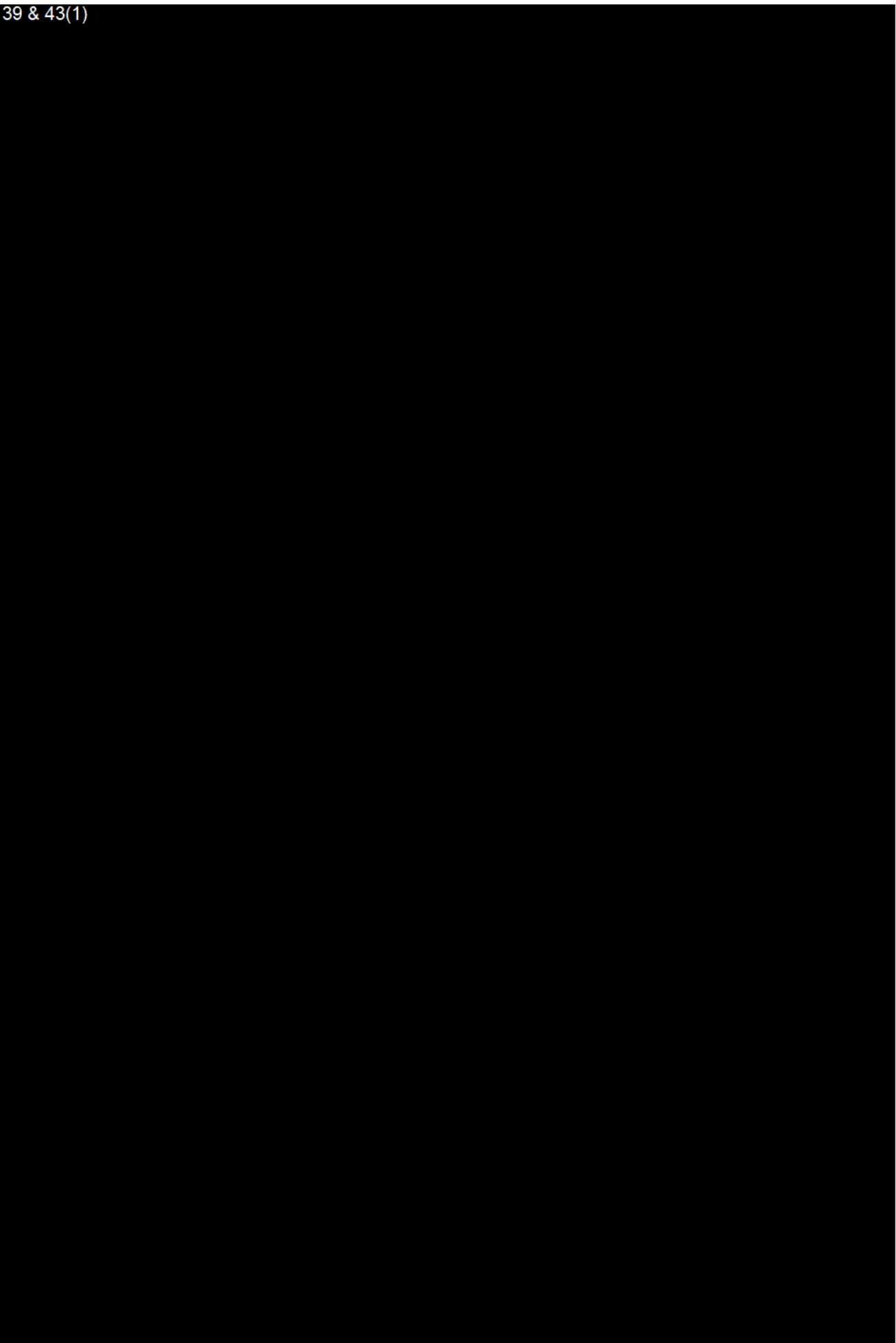
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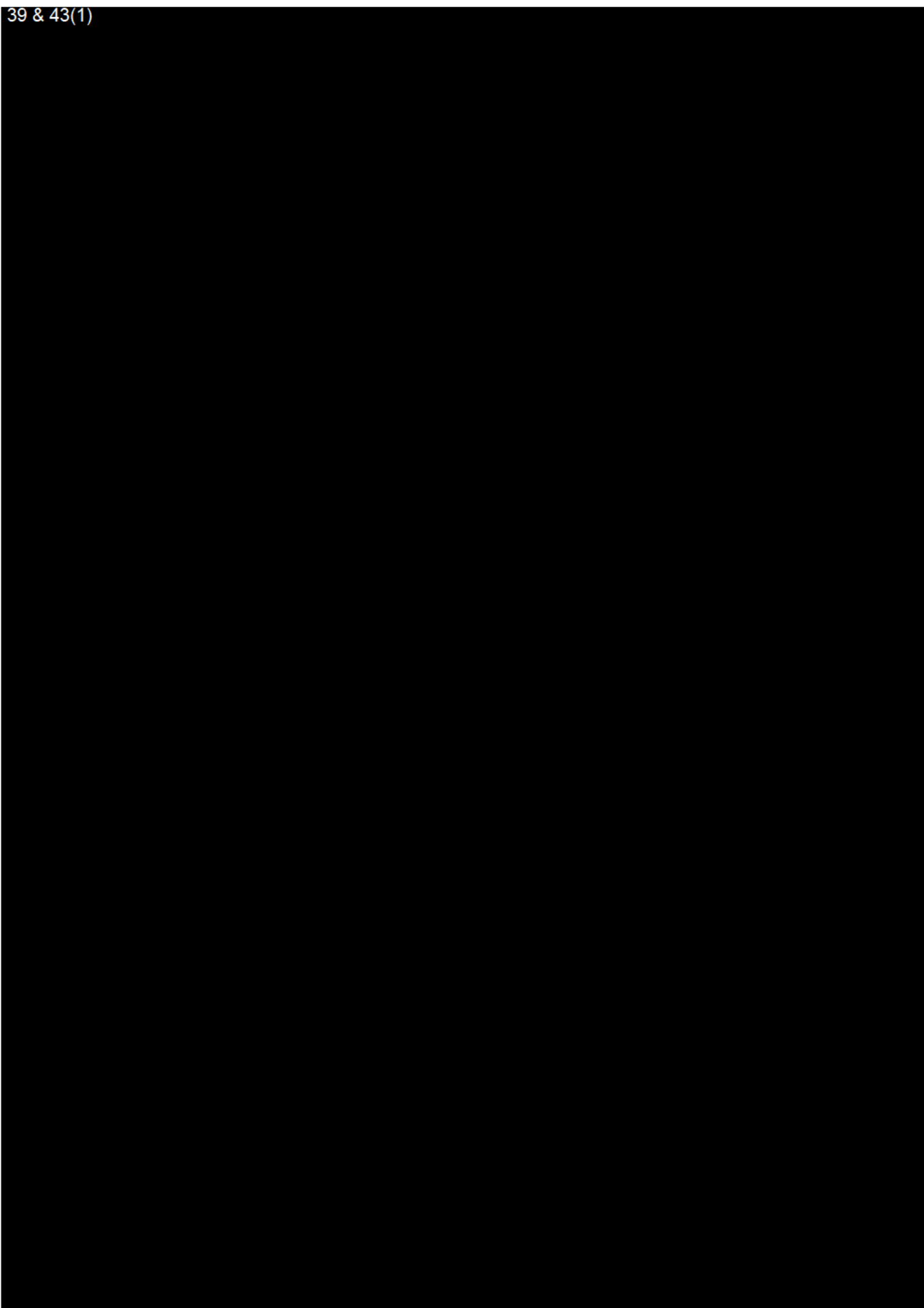
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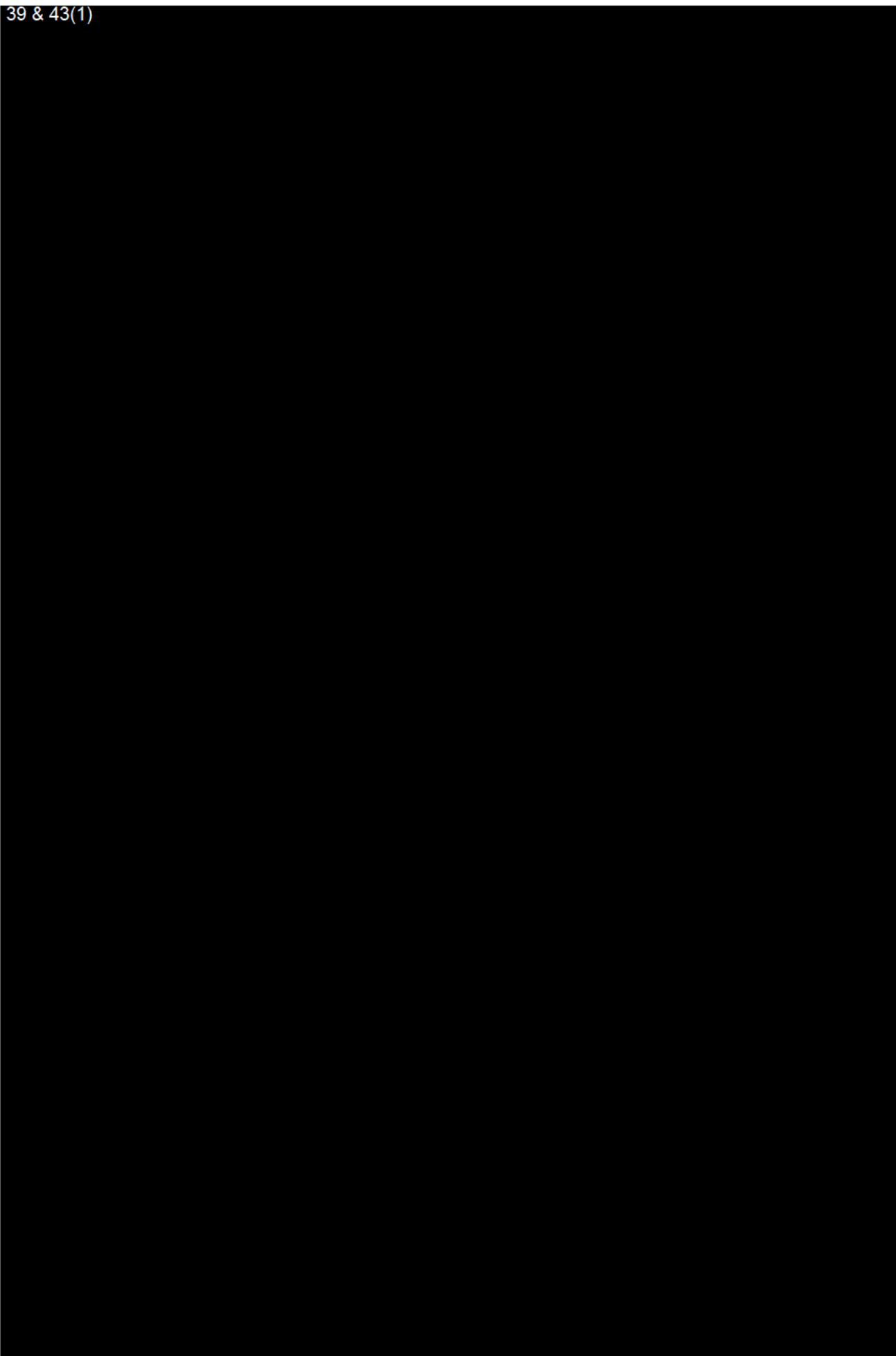
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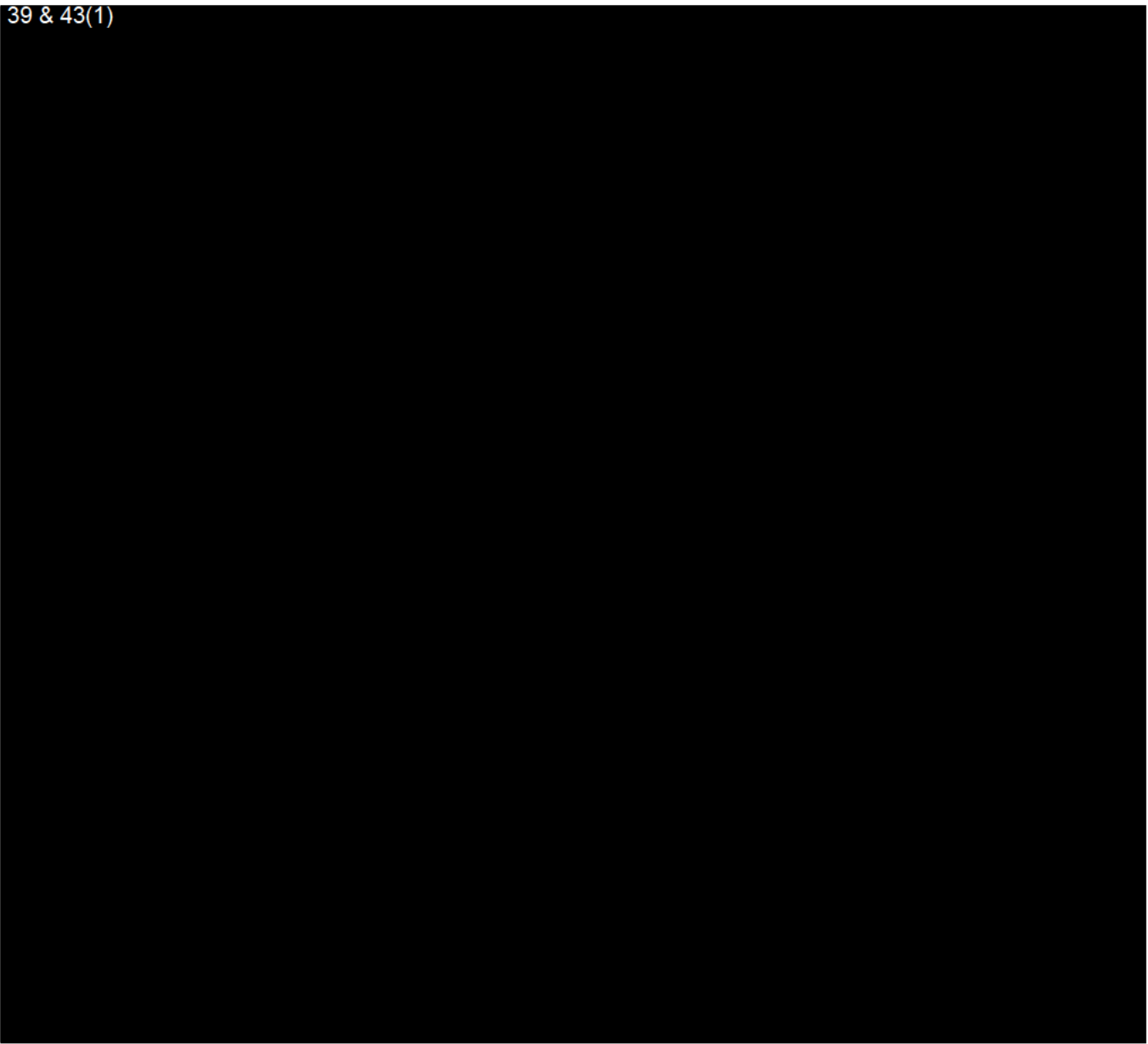
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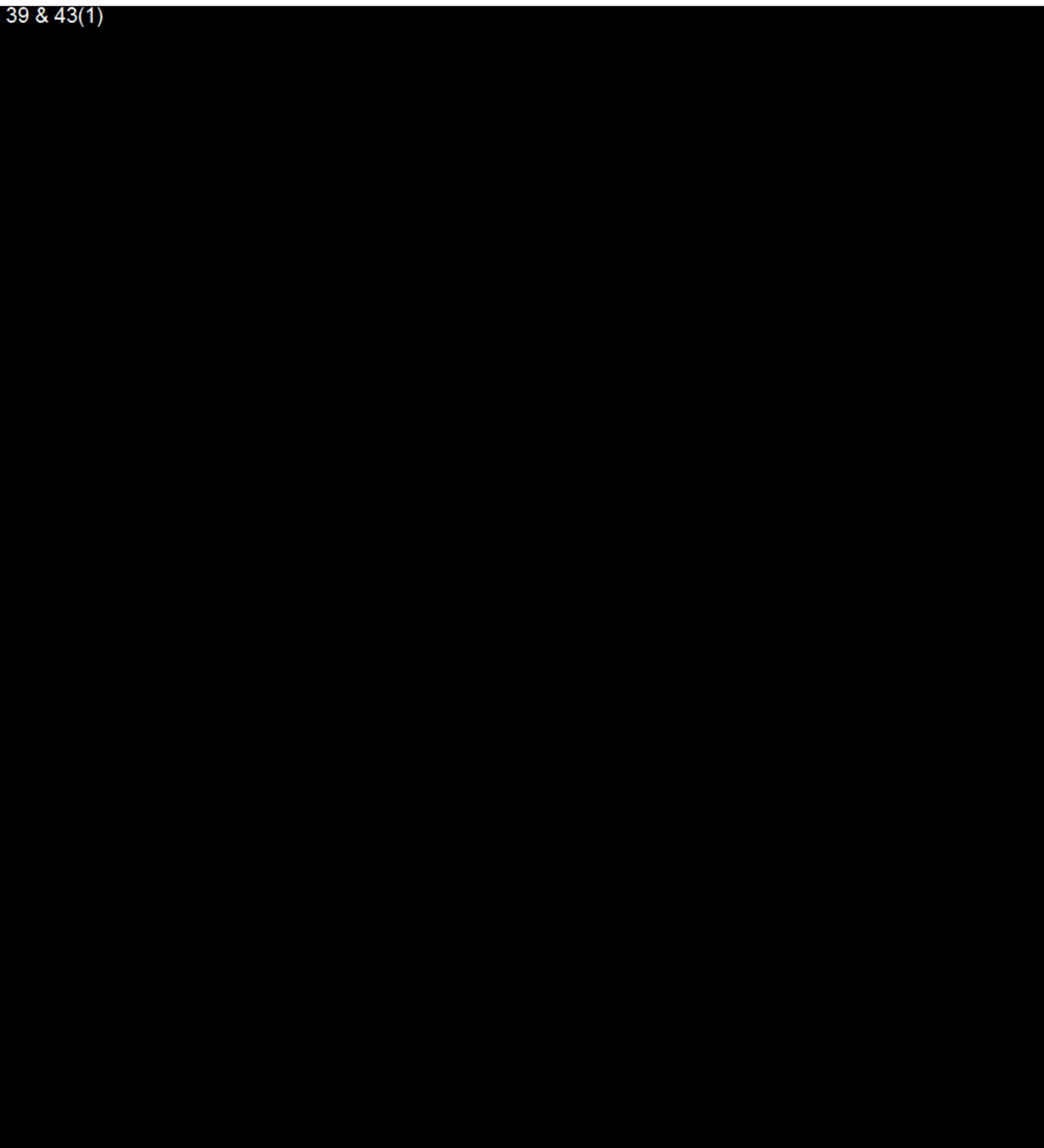
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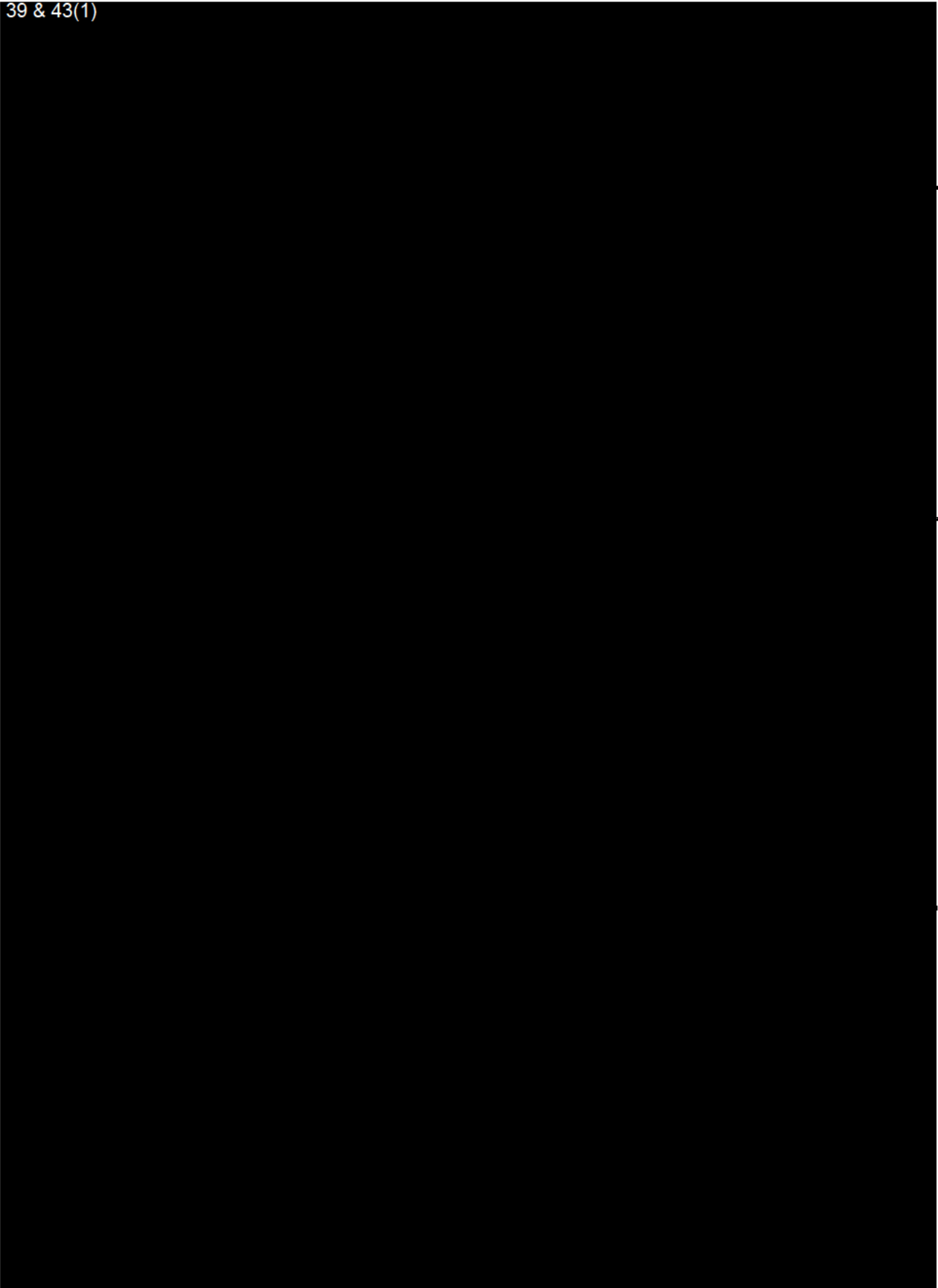
39 & 43(1)



39 & 43(1)



39 & 43(1)



Casino Control (Licence Fee) Determination 2014 (No 1)

Notifiable Instrument NI2014-

made under the

Casino Control Act 2006, s 26 (Determination of casino licence fee).

1 Name of Instrument

This instrument is the *Casino Control (Licence Fee) Determination 2014 (No 1)*.

2 Commencement

This instrument commences the day after notification.

3 Determination

Under s 26 of the *Casino Control Act 2006*, I DETERMINE that the casino licence fee payable to the ACT Gambling and Racing Commission shall be:

- (i) the sum of four million four hundred and fifty nine thousand three hundred and eighty five dollars (\$4,459,385.00) payable on or before 7 February 2015; and
- (ii) the sum of eight hundred and ninety one thousand eight hundred and seventy seven dollars (\$891,877.00) adjusted by movements in the Consumer Price Index weighted average of Eight Capital Cities All Groups (published by the Australian Bureau of Statistics) for the preceding five year period ending on 31 December 2019 payable on or before 7 February 2020; and
- (iii) the sum payable on or before 7 February 2021 and for each subsequent 7 February of each year, will be calculated by adjusting the amount of the casino licence fee for the immediate preceding year by movements in the Consumer Price Index weighted average of Eight Capital Cities All Groups (published by the Australian Bureau of Statistics) for the period of twelve months to 31 December for that preceding year.

4 Revocation

I revoke NI2013-298 which was notified on the Legislation Register on 4 July 2013.

Joy Burch MLA
Minister for Racing and Gaming
December 2014