



Draft Determination

Application for revocation of A91342 & A91343 and
the substitution of authorisation AA1000405

lodged by

Racing and Wagering Western Australia

in respect of

an agreement with
William Hill Australia Wagering Pty Ltd
to provide fixed odds wagering
and risk management services

Date: 15 March 2018

Authorisation number: AA1000405

Commissioners:
Rickard
Schaper
Court
Featherston

Summary

The ACCC proposes to reauthorise Racing and Wagering Western Australia (RWWA) to continue existing arrangements that enable William Hill Australia Wagering Pty Ltd (WHA) to provide fixed odds management services to RWWA pursuant to an agreement made in 2012. This agreement is due to expire on 28 November 2024.

The ACCC invites submissions in response to this draft determination before making its final decision.

RWWA is seeking re-authorisation to enable it to continue to give effect to an agreement made in 2012 for the provision of fixed odds management services by WHA, a large corporate bookmaker and direct competitor to RWWA. The agreement extends until 28 November 2024, but the ACCC's current authorisation of the agreement ends on 9 May 2018.

RWWA offers fixed odds wagering on sports, racing and other events through a number of retail outlets, online and through mobile betting services under trading names including "tabtouch" and "ozbet". It is also the exclusive provider of totalisator services in WA, trading as "TAB". Without the 2012 Agreement, and the services provided by WHA, RWWA would face higher costs in providing fixed odds wagers (at least in the short to medium term), which in turn would likely lead to it offering a reduced range of fixed odds wagers.

ACCC authorisation for RWWA to receive management services from a large competitor was first granted in 2009 (with management services provided by Centrebet). Since that time a number of acquisitions have occurred in the industry that have resulted in changes to the identity of the provider of management services to RWWA, leading to RWWA's current agreement with WHA (which is recently reported to be considering selling its business to CrownBet). These developments have been accompanied by a series of authorisations granted by the ACCC.

At the time of granting authorisation of the 2012 Agreement, the ACCC noted that the relevant areas of competition are dynamic and are likely to continue to evolve. Therefore, the ACCC decided to grant authorisation for five years, as opposed to the 12 years requested by RWWA.

Based on the information before it, the ACCC proposes to grant re-authorisation to enable RWWA and WHA to give effect to the remainder of the 2012 Agreement until it expires on 28 November 2024.

The ACCC considers that the 2012 Agreement is likely to continue to generate public benefits in the form of improved efficiency in the provision of wagering services by RWWA, which, in turn, is likely to result in increased competition and a broader range of wagering products that are available to consumers.

The ACCC has considered whether the continuation of the 2012 Agreement will reduce competition in the provision of wagering services to the public or the supply of wagering and risk management services necessary to provide fixed odds wagering services to the public. The ACCC's preliminary view is that continuation of the 2012 Agreement is not likely to result in any significant public detriments as RWWA retains ultimate control over the odds that it offers and competition in wagering remains. The Western Australian Book Makers Association Inc has raised concerns about marketing with Perth Racing, which are set out in this determination. However, the ACCC considers that these concerns do not appear to arise from the operation of the 2012 Agreement which is the subject of the authorisation.

The ACCC will invite further submissions in response to this Draft Determination for consideration before issuing its Final Determination.

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Abbreviations and Defined Terms

2012 Agreement	An agreement dated 30 October 2012, under which William Hill Australia Wagering Pty Ltd agrees to provide Management Services to RWWA in respect of fixed odds books.
ACCC	Australian Competition and Consumer Commission
The Act	The <i>Competition and Consumer Act 2010 (Cth)</i>
bookmaker	An individual who is licensed to provide fixed odds wagering services in a certain jurisdiction. A bookmaker accepts and pays off bets on the outcome of an event at agreed upon odds.
corporate bookmaker	A large business that operates on a 24/7 basis to receive bets over the phone and internet at agreed odds and pays off winnings.
Centrebet	Centrebet Pty Ltd, the former supplier of fixed odds management services to RWWA
fixed odds wagering	The dividend is fixed at the odds displayed when the bet (wager) is placed. Bets placed may affect the odds offered to the next punter.
Management Services	The services listed in paragraph 6 of this Draft Determination.
Minister	The WA Minister for Tourism; Racing and Gaming; Small Business; Defence Issues; Citizenship and Multicultural Issues.
pari-mutuel wagering	A type of wagering where the odds are calculated after the close of betting on the relevant event. All bets are consolidated into a totalisator pool. The winning tickets divide the total amount bet in proportion to their wagers less a percentage taken out for management, taxes, etc.
Previous Agreement	An agreement that joint venture parties, RWWA, TOTE Tasmania Pty Ltd and ACTTAB Limited, had made with Centrebet and Centrebet International Ltd (as guarantor) for the acquisition of fixed odds management services. The ACCC authorised that agreement on 9 September 2009.
punter	A person who places a bet or wager; a bettor

RWWA	Racing and Wagering Western Australia
SHL	Sportingbet Holdings Limited
Sportingbet	Sportingbet Australia Pty Ltd, the former supplier of fixed odds management services to RWWA.
totalisator	The totalisator agency board (TAB) licensed to provide pari-mutuel wagering for a given state or territory.
WABA	WA Bookmakers Association Inc.
wagering	Betting something (usually money) on the outcome of an uncertain event.
WHA	William Hill Australia Wagering Pty Ltd, a wholly owned subsidiary of William Hill plc.

The application for authorisation

1. On 9 November 2017 Racing & Wagering Western Australia (**RWWA**) lodged with the Australian Competition and Consumer Commission (**ACCC**) an application for the revocation of authorisations¹ A91342 and A91343 and their substitution with authorisation AA1000405 (**re-authorisation**). RWWA is seeking re-authorisation of an agreement intended to run until 28 November 2024 under which WHA provides management services to RWWA in relation to fixed odds betting.
2. Re-authorisation has been sought to continue to give effect to the remaining term of that agreement (until 28 November 2024) as authorisations (A91342 and A91343) were granted for five years and are due to expire on 9 May 2018.

The Conduct

3. RWWA is seeking authorisation to give effect to each provision of the 2012 Agreement for the remainder of its term, that is, until 28 November 2024 (the **Conduct**).
4. RWWA has applied for authorisation because the 2012 Agreement may be a cartel provision within the meaning of Division 1 of Part IV of the Act and could constitute a contract arrangement or understanding which may substantially lessen competition within the meaning of section 45 of the Act.¹
5. The Conduct under the 2012 Agreement includes:
 - to the extent that it is permitted to do so by any applicable laws, regulations and Regulatory Approvals, RWWA agrees to offer all of the events and bet types from which it is able to accept bets from third parties (either directly or indirectly)
 - RWWA and WHA agree to establish a joint management committee to oversee the provision of fixed odds management services by WHA
 - WHA provides RWWA with risk management information, which may influence the odds fixed for RWWA's books
 - RWWA provides risk thresholds and target margin parameters which are used by WHA when it establishes and maintains the fixed odds books for RWWA
 - WHA performs the final calculations that determine the odds that RWWA offers on its fixed odds wagering products.
6. The services that WHA provides include:
 - establishing and managing fixed odds books (covering the same range of events and bet types offered by WHA to its own customers) on behalf of RWWA

¹ On 6 November 2017, a number of amendments to the CCA came into effect, including changes to the cartel provisions (and the numbering) in Division 1 of Part IV of the CCA.

- accepting and processing the above fixed odd investments on behalf of RWWA, in accordance with risk thresholds and target margin parameters provided to WHA by RWWA
- providing wagering and risk management services in respect of each book utilising WHA's functionality for such services (including bookmaking management, authorisation controls, implementation of risk parameters, calculation of fixed odds in respect of particular events and bet types (in accordance with the specified risk and target margin parameters), racing and sports wagering expertise and real time systems-based trading alerts)
- conducting related activities, including undertaking research and managing event selling and fixed returns (including by 'laying off' wagers in accordance with the risk parameters)
- a range of implementation services, sports betting technology and ancillary services in relation to the books

(collectively, the **Management Services**).

7. The 2012 Agreement does not limit the fixed odds that WHA can offer in respect of its own books.
8. RWWA submits that it independently provides the risk threshold and target margin parameters to WHA. WHA uses and applies the risk threshold and target margin parameters to its risk management system applying to RWWA. RWWA is free to provide whatever risk threshold and target margin parameters it wishes, even if the use of these in the calculation of the fixed odds may result in RWWA achieving a reduced margin or even a loss on any particular book.
9. RWWA submits that the Conduct involved in the 2012 Agreement as it now stands is almost precisely the same conduct that was involved in the Previous Agreement, entered into with Centrebet. Despite the amendments made to, and the novation of, the 2012 Agreement since it received Authorisations A91342 and A91343, the Conduct in relation to which RWWA seeks re-authorisation has not changed.

Background

The Applicant and Relevant parties

10. RWWA is a body corporate established under the *Racing and Wagering Western Australia Act 2003 (WA)*. It is the controlling statutory authority for thoroughbred, harness and greyhound racing in Western Australia and holds the exclusive totalisator license for WA. RWWA is licensed to offer on-course and off-course totalisator betting services and also offers fixed odds wagering on sports, racing and other events in Western Australia.
11. RWWA's totalisator services are provided under the trading name "TAB". It also runs an operator assisted call centre for placing bets, provides online betting through ozbet.com.au, tabozbet.com.au, tabtouch.com.au and playeronline.com.au; and offers mobile device betting through 'Tabtouch'.²

² RWWA application for re-authorisation at paragraphs 3.1 – 3.4.

12. WHA is a wholly owned subsidiary of William Hill plc, which is one of the world's largest corporate bookmakers. William Hill plc conducts wagering services online, from physical locations and over the phone in relation to a wide range of sporting events and entertainment.
13. WHA's net revenue in the 2016 financial year was \$295 million and William Hill plc's revenue in this period was £1.603 billion.
14. RWWA and WHA compete with each other and bookmakers to provide wagering services to punters.

History of Acquisitions and Management Services

15. In 2009, RWWA (and others in a joint venture) entered into an agreement, under which RWWA received fixed odds management services from Centrebet Pty Ltd (the Previous Agreement). The Previous Agreement was authorised by the ACCC on 9 September 2009.
16. Centrebet Pty Ltd was acquired by Sportingbet, with completion of the transaction occurring on 31 August 2011.
17. RWWA replaced the Previous Agreement with a substantively similar agreement titled "Management Services Agreement" between RWWA, Sportingbet and Sportingbet Holdings (SHL), dated 30 October 2012 (**the 2012 Agreement**) which was intended to operate until 28 November 2024. Under the 2012 Agreement, Sportingbet provided management services to RWWA in respect of fixed odds books with SHL acting as guarantor. The ACCC authorised the 2012 Agreement on 17 April 2013 for a period of five years, expiring on 9 May 2018.³
18. In 2013 WHA acquired the business of Sportingbet (including Centrebet) and tomwaterhouse.com.
19. Amendments have been made to the 2012 Agreement (which is commercially sensitive, but has been provided to the ACCC) and the agreement novated so that from 15 September 2015, WHA took on the role of Sportingbet under the 2012 Agreement.
20. RWWA has applied for re-authorisation in order to give effect to the remainder of the 2012 Agreement (as it now stands), under which WHA agrees to provide Management Services to RWWA in respect of fixed odds books.
21. The ACCC considers that wagering markets are continuing to evolve, both in terms of the active providers and the products offered.

³ The 2012 Agreement is dated 30 October 2012, and the last party to sign the 2012 Agreement (SHL) did so on 2 November 2012. The ACCC further notes that RWWA applied for authorisation to make and give effect to the 2012 Agreement on 2 November 2012. The application for authorisation was lodged within 14 days of the 2012 Agreement being made, in accordance with section 45(9) of the Act.

Consultation

22. The ACCC invited submissions from 63 potentially interested parties including major competitors, relevant industry associations or peak bodies, state government and relevant regulatory bodies.⁴

23. The ACCC received two submissions from interested parties:

- WABA, a bookmakers association whose members compete with RWWA, provided a submission opposing RWWA's application for re-authorisation.
- WABA provided comments on the manner of RWWA's operation and intended role in the industry, its views as to the proper characterisation of the relevant areas of competition and an appraisal of RWWA's effectiveness in the market.
- The Minister representing WA's racing industry, supporting RWWA's application.
- The Minister submitted that the 2012 Agreement has allowed RWWA to compete effectively against larger fixed odds wagering operators and provide a greater level of support to the WA racing industry than would otherwise have been possible

24. These submissions, any further public submissions received by the ACCC as this matter progresses and further information in relation to the application for re-authorisation may be obtained from the ACCC's website:

<https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register>.

ACCC assessment

25. The ACCC's assessment of the Conduct is in accordance with the relevant test⁵ contained in the *Competition and Consumer Act 2010 (Cth)* (the **Act**). In this case, the ACCC must not re-authorise the conduct unless it is satisfied in all the circumstances that the conduct would be likely to result in a benefit to the public and that benefit would outweigh the detriment to the public that would be likely to result from the conduct.⁶

26. In its assessment of RWWA's application, the ACCC has taken into account:

- the applications and supporting submission received from RWWA
- the submissions received from WABA and the Minister

⁴ A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

⁵ Subsection 90(7): 91C(7).

⁶ As a cartel provision applies to the conduct, the alternative test under sub-section 90(7)(a) of the Act does not apply: section 90(8).

- other relevant information available to the ACCC, including information from its consideration of previous applications for authorisation of the 2012 Agreement (A91342 and A91343) and the Previous Agreement (A191123, A91124, A91158 and A91159)

Relevant areas of competition

27. RWVA submits that the areas previously considered by the ACCC remain the relevant markets for the purposes of its application.⁷ Namely:

- the supply of wagering and risk management services necessary to provide fixed odds wagering services to the public; and
- the provision of wagering services to the public.

28. However, RWVA also submits that it is not necessary to reach a concluded view on the nature of the market because whatever the final conclusion on the question of the market, the 2012 Agreement results in a net public benefit.⁸

29. The ACCC also noted in its prior determination that the dynamic nature of the wagering industry and that the evolving nature of wagering services means that the relevant areas of competition as well as the competitive landscape are likely to change over time.

30. Further, it was noted that technological development was considered to have extended the reach of wagering products, with a trend towards wagering online and on mobile devices making these products available to more customers, for longer hours and at greater convenience. It has also meant that customers are increasingly able to place wagers with operators who do not have a physical presence in their local area.

31. WABA does not consider that net public benefits arising from RWVA's Application can be considered in the context of a racing and wagering market generally and submits that the market should be examined in the terms of:

- on-course betting markets
- off-course betting markets
- internet betting markets
- the Western Australian market and
- the non-Western Australian Market.

The ACCC's View

32. In light of the continuing trend towards wagering online and on mobile devices, the ACCC considers that there is a sufficient degree of substitutability between betting services addressing particular events that punters may move between services. As such, the ACCC does not consider that the level of market segmentation proposed by WABA is appropriate.

⁷ RWVA's Application for re-authorisation at paragraph 8.3.

⁸ Ibid at paragraph 8.9.

33. The ACCC's considers that the areas of competition which it applied in Authorisation Determinations A91342 & A91343 remain relevant to its assessment of the 2012 Agreement: Namely:
- the supply of wagering and risk management services necessary to provide fixed odds wagering services to the public; and
 - the provision of wagering services to the public.
34. There are relatively few bodies capable of effectively providing RWWA with the wagering and risk management services provided by WHA under the 2012 Agreement. RWWA's submission identifies potential alternative suppliers as: Tabcorp, Paddy Power, and the other corporate bookmakers in Australia.
35. In the provision of wagering services to the public, RWWA competes with bookmakers to provide wagering services to punters. RWWA's competitors include WHA, CrownBet, Paddy Power, Tabcorp, and other bookmakers.

Future with and without

36. To assist in its assessment of the Conduct against the authorisation test, the ACCC compares the benefits and detriments likely to arise in the future with the conduct for which authorisation is sought against those in the future without the conduct the subject of the authorisation.
37. Without the 2012 Agreement, the ACCC considers that it is likely that RWWA would attempt to obtain Management Services from an alternate provider or establish internal processes to allow it to continue to offer fixed odds bets. The significant set up and implementation costs of doing so is likely to result in it offering a narrower range of bets at less competitive odds.

RWWA's Submission

38. Before entering into the Prior Agreement in 2009, RWWA offered fixed odds wagering via its participation in the national fixed odds wagering book operated by Tabcorp under the TAB 'Sportsbet' brand.
39. In the period during which the Prior Agreement operated, the management services purchased by RWWA allowed it to expand the scale and scope of the wagering services it provided, particularly in relation to fixed odds wagering on sports. The 2012 Agreement has similarly enabled RWWA to provide a wider range of fixed odds wagering products and wagers at odds that are more attractive to its customers.

Alternative Supplier

40. If the 2012 Agreement is not allowed to continue, potential providers of Management Services to RWWA (subject to being granted ACCC authorisation) would include CrownBet, Tabcorp, Paddy Power and other corporate bookmakers. However, RWWA notes that it is unlikely to be able to make suitable arrangements with an alternative supplier of Management Services. RWWA submits that it would prefer not to combine all of its wagering operations with Tabcorp and its previous attempts to establish pari-mutuel co-mingling arrangements with Tatts (now a subsidiary of Tabcorp) have been unsuccessful. In light of the likely acquisition of WHA's business by CrownBet, RWWA has advised that it is considering its options

including having CrownBet take over the performance of WHA's role under the 2012 Agreement. RWWA submits that the remaining corporate bookmakers may not be of sufficient size and scale to provide business-to-business risk management and related services to support RWWA in the supply of fixed odds wagering product.⁹

41. RWWA notes that its experience with Centrebet (under the Previous Agreement) and with Sportingbet and then WHA (under the 2012 Agreement) demonstrated that it takes a long time for a provider to work through issues associated with providing services to RWWA, which has anonymous retail customers. RWWA submits that it took approximately three years to resolve technical, commercial and risk management issues with Centrebet. It expects that it would experience similar issues and a similar time frame for resolution with an alternative provider.
42. RWWA submits that without the 2012 Agreement, it would cease to supply fixed odds wagering services for a period whilst it determined whether to establish its own limited fixed odds wagering capability.

RWWA develops its own systems

43. RWWA submits that if it were to operate a fixed odds wagering system, the quality and quantity of the fixed odds books it offered to customers would be likely to be lower than it has offered under the Previous Agreement and would be able to offer in the future with the Conduct. In this regard, RWWA submits that it is unlikely for it to provide fixed odds wagering products on non-racing sporting events in this scenario.
44. This future without the Conduct would also be likely to expose RWWA to risk of losing market share for fixed odds wagering. Because many wagerers prefer to place wagers with an operator that provides a range of wagering products, the future without is also likely to expose RWWA to risk of losing market share more generally.
45. RWWA submits that the 2012 Agreement with WHA is the best option available to enable RWWA to supply fixed odds wagering products in a manner that appropriately manages its risks and costs, ensures consistent returns, and maintains RWWA's ability to supply consistent fixed odds offering to customers.

The ACCC's View

46. While it is not clear to the ACCC that RWWA would be unable to engage an alternative provider of Management Services, the ACCC considers that these services most likely would have to be provided by a corporate bookmaker. Retaining a corporate bookmaker to provide Management Services would raise equivalent concerns to those in the current application for re-authorisation, that is, the potential to breach the Act.
47. The ACCC considers that if it were more commercially attractive for RWWA to provide its own Management Services rather than acquiring Management Services from WHA, it is likely that it would have done so. The ACCC also notes RWWA's submission that acquiring Management Services from other providers such as Tabcorp is unlikely to be commercially viable.

⁹ RWWA, Submission in support of Application for Authorisation 1000405, 8 November 2017, pages 16-17.

48. In the future without the Conduct, if RWWA were unable to acquire Management Services from another provider and instead provided these services for itself, the ACCC considers it likely that RWWA's fixed odds wagering services would be reduced in scope and RWWA would provide fixed odds wagering products at less attractive odds than under the 2012 Agreement or the Previous Agreement.
49. On this basis, the ACCC considers that, in the future without the Conduct, RWWA would be likely to cease to supply fixed odds wagering products for a period while it establishes its own fixed odds wagering capability. The ACCC accepts that, at least in the short to medium term, any fixed odds bets offered by RWWA would cover a narrower range of events.

Public benefit

50. The Act does not define what constitutes a public benefit and the ACCC adopts a broad approach. This is consistent with the Tribunal which has stated that the term should be given its widest possible meaning, and includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.¹⁰

51. The ACCC's assessment of the likely public benefits from the conduct follows.

Improved efficiency in the provision of wagering services

RWWA's submission

52. RWWA submits that the 2012 Agreement is essentially an outsourcing by RWWA of services that it could not efficiently and cost-effectively provide itself. It notes that the 2012 Agreement will continue to enable RWWA to supply fixed odds wagering products in a manner that appropriately manages its risks and costs and enhances the prospect of achieving more consistent returns within a nominated target margin range than would be possible if RWWA were to attempt to offer equivalent fixed odds wagering products on its own. RWWA also submits that the 2012 Agreement will result in reduced administration and transaction costs for RWWA, fostering business efficiency.
53. WABA's submission challenges whether, in reality, the 2012 Agreement has led RWWA to offer fixed odds wagering products at a better price and notes instances where bookmakers have provided equivalent or better odds in races.¹¹
54. RWWA responded to this point by challenging the evidence provided by WABA and noting that WABA's submission does not contest the argument that the odds offered by RWWA with the 2012 Agreement in place are more competitive than they would likely be without the support RWWA gains under that agreement.¹²

The Minister's Submission

55. The Minister considers that the 2012 Agreement has led RWWA to realise costs savings and achieve economies of scale.

¹⁰ *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cited with approval in *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677.

¹¹ WABA, Submission opposing Application for Authorisation 1000405, November 2017, pages 4 & 15.

¹² RWWA, Submission in response to submissions lodged by WABA, page 2, paragraph 14

The ACCC's view

56. The ACCC considers that the 2012 Agreement is likely continue to generate public benefits by improving the efficiency with which RWWA provides fixed odds wagering services, relative to the future without the Conduct. These efficiencies are likely to come from economies of scale and scope and transactions cost savings.
57. The ACCC considers there are fixed costs associated with the supply of wagering and risk management services to operate a fixed odds wagering business. This includes the cost of systems and people with appropriate expertise. However, once these fixed costs have been incurred, the marginal cost for an operator to calculate additional odds is relatively low.
58. Because WHA has acquired Sportingbet's experience of providing the Management Services to RWWA, and RWWA has been in business with WHA since it novated the 2012 Agreement on 10 September 2015, RWWA is unlikely to incur establishment costs in continuing to receive Management Services from WHA. In contrast, if RWWA obtains Management Services from an alternate provider or develops its own system to provide them in-house, it would be likely to incur additional changeover and transitional costs.
59. By continuing to give effect to the 2012 Agreement, RWWA will be able to avoid replicating the fixed costs of establishing Management Services and acquire the essential Management Services from WHA at a lower cost than in the future without the Conduct. The ACCC considers the 2012 Agreement is also likely to enable RWWA to produce a larger number and broader range of fixed odds wagering products for the cost of its Management Services as a result of lower production costs. Therefore, the ACCC considers it is likely that the 2012 Agreement will result in productive efficiency benefits.
60. This would enable RWWA to offer fixed odds wagering products to consumers at a better price than in the future without the Conduct.
61. The ACCC notes that many punters who acquire a range of wagering products prefer the convenience of being able to acquire them all in one place. By enabling RWWA to continue to provide a broader range of fixed odds wagering services, and at better odds than in the future without the Conduct, the 2012 Agreement will provide greater competition for the provision of wagering services to punters.

Increased competition in the wagering industry

RWWA's submission

62. RWWA submits that the 2012 Agreement provides benefits by ensuring that RWWA can continue to offer its existing fixed odds wagering products to punters. It also submits that the 2012 Agreement provides RWWA with the ability to offer punters a broader range of fixed odds wagering products (on a wider range of events and bet types) and more attractive odds, therefore providing punters with greater choice and more competitively priced products.
63. RWWA submits that the 2012 Agreement provides benefits to the wagering industry generally because it ensures that RWWA remains as an additional supplier of fixed odds wagering products in the industry. It submits that allowing the 2012

Agreement to continue will provide a competitive constraint to existing suppliers, including through offering a broader range of fixed odds wagering, and at more competitive odds, than in the future without the Conduct.

The Minister's Submission

64. The Minister considers that the 2012 Agreement has allowed RWWA to effectively compete against the large fixed odds wagering operators.

The ACCC's view

65. The ACCC considers that allowing the 2012 Agreement to continue will enable RWWA to provide a broader range of fixed odds wagering products than in the future without the Conduct, providing greater choice for punters and this in turn is likely to enhance competition. Competition on a wider range of wagering products benefits the public through more favourable odds on those wagering products and a wider selection of wagering providers on each betting product.

Other claimed benefits

66. RWWA submits that allowing the 2012 Agreement to continue will benefit the Western Australian racing industry and the Western Australian economy via its compulsory financial contributions. RWWA notes that, under the RWWA Act, it is required to distribute all of its profits (after deducting prescribed amounts) to the racing industry.
67. Specifically, RWWA submits that the 2012 Agreement will contribute to RWWA's financial ability to carry out its responsibilities, and functions that underpin the Western Australian racing industry, as well as enhancing RWWA's ability to provide funding (by way of distributions, grants and subsidies) to the Western Australian racing industry and the general sporting industry in Western Australia. The 2012 Agreement will also assist RWWA to contribute to Western Australia's taxation revenues and its economy more generally.

WABA's Submission and RWWA's Response

68. WABA submits that financial year data for the period following the 2012 Agreement shows the overall trend of RWWA's contributions to the WA racing industry has been a decline in contributions from its activities.¹³
69. WABA submits that if RWWA was unable to undertake its fixed odds betting program (which is currently enabled by the 2012 Agreement), the overall effect will be an increase in the betting levies distributed by RWWA which distributions will offset decreases in the funds generated by RWWA for the WA racing industry.¹⁴
70. In response to WABA's suggestion, RWWA notes that (after making prescribed deductions) it is required to distribute all of its profit to the WA racing industry. RWWA submits that ceasing to provide fixed odds wagering services will have the effect of reducing the funds available for distribution to the WA racing industry.¹⁵

¹³ WABA, Submission opposing Application for Authorisation 1000405, November 2017, page 7

¹⁴ Ibid. Page 7.

¹⁵ RWWA, Submission in response to submissions lodged by WABA, page 2, paragraph 14.

The Minister's Submission

71. The Minister's submission suggests that the 2012 Agreement has resulted in greater financial contributions from RWWA than would have been the case without the agreement.

The ACCC's view

72. The ACCC considers that, to the extent that these benefits are likely to arise, they result from the benefit of 'Improved efficiency in the provision of wagering services' and have already been considered.

ACCC conclusion on public benefits

73. The ACCC considers continuation of the Conduct in the 2012 Agreement is likely to result in public benefits in the form of improved efficiency in the provision of RWWA's fixed odds wagering services enabling RWWA to offer a broader range of wagering products which in turn is likely to enhance competition in the provision of fixed odds bets and other wagering services.

Public detriment

74. The Act does not define what constitutes a public detriment and the ACCC adopts a broad approach. This is consistent with that taken by the Tribunal, which has defined public detriment as:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principle elements the achievement of the goal of economic efficiency.¹⁶

75. Having regard to the submissions of the applicant and interested parties the ACCC has considered the claimed public detriments of the Conduct, below:

RWWA's submission

76. RWWA submits that the 2012 Agreement will result in limited (if any) anti-competitive detriment because:
- there is likely to be price differentiation in the products offered by RWWA and WHA
 - the 2012 Agreement will not limit the bet types and events that RWWA can offer to those available from WHA
 - the provision of fixed odds and other forms of wagering will remain competitive.
77. As noted, RWWA submits that its pricing will be set separately to WHA's pricing. In particular, RWWA notes that the 2012 Agreement contains express provisions that:
- the fixed odds provided by WHA to RWWA may differ from the fixed odds that WHA offers

¹⁶ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

- WHA makes its own decisions about the fixed odds that it offers independently of RWWA
 - WHA is not obliged to disclose to RWWA any details about the fixed odds that WHA offers to its customers.
78. RWWA submits that the fixed odds offered by WHA will be determined by WHA having regard to its own risk profile and margin parameters, not those provided by RWWA.
79. RWWA is free to offer discounts, rebates and other incentives to customers and has done so in the past.¹⁷

WABA's Submission and RWWA's Response

80. WABA sets out that RWWA has established marketing agreements, including agreements that WABA alleges contain exclusivity provisions which extend to fixed odds wagering services.
81. WABA submits that RWWA's marketing conduct, combined with the wide range of wagering offerings made possible by the 2012 Agreement, has had the effect of damaging WABA members' capacity to compete at particular venues, such as Perth Racing.¹⁸
82. Specifically, WABA submits that the expansion of RWWA's wagering offering to include fixed odds has meant that WABA member bookmakers are unable to market and promote their own wagering products via Perth Racing.
83. RWWA submits that WABA's submissions in relation to RWWA's marketing conduct are irrelevant to RWWA's application for re-authorisation.

The ACCC's view

84. The main areas of potential detriment arising from RWWA's Conduct are that the 2012 Agreement will allow for coordination between RWWA and WHA, particularly with respect to the fixed odds that each offers, or will have the overall effect of reducing competition with respect to wagering.
85. The ACCC notes that it is the corporate bookmakers (and not the totalisators) that drive price competition in fixed odds wagering for online consumers.¹⁹ To the extent the Conduct diminishes any potential constraint RWWA and WHA may impose on each other, other corporate bookmakers will impose a significant level of constraint from RWWA and WHA providing less favourable odds or reducing services.

¹⁷ RWWA application for re-authorisation, paragraph 11.6

¹⁹ ACCC Determination on applications for authorisation A91123, A91124, A91158 & A91159, lodged by TOTE Tasmania Pty Ltd, ACTTAB Limited and Racing and Wagering Western Australia, 9 September 2009, page 37.

86. The ACCC considers that RWWA and WHA compete to supply fixed odds wagering services to the public with a number of competitors, including Tabcorp, Paddy Power, Unibet, CrownBet, Sportsbet and many other corporate bookmakers.
87. The ACCC notes that RWWA and WHA offer different prices for their wagering products because they set their risk thresholds and target margin parameters independently.
88. The ACCC considers that the Conduct provides limited scope for coordination on products or areas other than the price of fixed odds wagering products. The ACCC notes that WHA is an online and telephone fixed odds wagering product provider. In contrast, RWWA is a State totalisator with a retail presence and ability to provide fixed odds wagering services and tote-odds wagering services. The ACCC considers that RWWA and WHA have different business models and cost structures. As a result, they are unlikely to be able to set a common price for fixed odds wagering services in a way that benefits both parties.
89. WABA has expressed concern that the 2012 Agreement has conferred advantages on RWWA making it more difficult for smaller participants to compete. The ACCC understands that this issue arises with respect to on-course betting markets. However, RWWA's advantage over WABA members in this respect appears primarily attributable to its scale, legislative advantages conferred on it, and benefits from its existing relationships, rather than being a result of the 2012 Agreement.
90. In relation to WABA's comments concerning WABA's members' access to marketing, the ACCC does not consider that RWWA's marketing practices are a result of the 2012 Agreement. RWWA notes that without receiving external Management Services, it could still provide fixed odds racing wagers, albeit less efficiently; as such RWWA's marketing conduct with Perth Racing would be unlikely to change if the 2012 Agreement were not allowed to continue.
91. Overall, the 2012 Agreement improves RWWA's capacity to provide fixed odds bets and does not appear to have materially reduced competition with respect to wagering.

ACCC conclusion on public detriments

92. The ACCC considers that continuation of the 2012 Agreement is likely to result in little if any public detriment. To the extent that reduced competition between RWWA and WHA may occur, it is unlikely to result in a significant public detriment given the level of competition from other fixed odds providers.

Balance of public benefit and detriment

93. Broadly, the ACCC may must not re-authorise the conduct unless it is satisfied in all the circumstances that the conduct would be likely to result in a benefit to the public and that benefit would outweigh the detriment to the public that would be likely to result from the conduct.
94. The ACCC considers that the 2012 Agreement is likely to improve the efficiency of RWWA's provision of wagering services, resulting in a wider range of fixed odds wagering products and increasing overall competition in the wagering market.

95. For the reasons outlined in this draft determination the ACCC is satisfied that the Conduct is likely result in a public benefit that would outweigh any likely public detriment from the Conduct.

96. Accordingly, the ACCC is satisfied that the relevant test is met and proposes to re-authorise the Conduct.

Length of authorisation

97. The Act allows the ACCC to grant authorisation for a limited period of time.²⁰ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

98. In this instance, RWWA seeks re-authorisation until 28 November 2024 which will allow it to see out the remainder of the 2012 Agreement, providing the efficiency benefits outlined.

99. The ACCC proposes to grant authorisation for the remaining term of the 2012 Agreement, being until 28 November 2024.

Draft determination

The application

100. On 9 November 2017 Racing and Wagering Western Australia lodged an application under section 91C(1) of the Act to revoke authorisations A91342 and A91343 and substitute them with authorisation AA1000405 (re-authorisation).²¹

101. The Conduct for which a re-authorisation is sought involves continuation of the 2012 Agreement between RWWA and WHA, which may contain a cartel provision or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.

The net public benefit test

102. For the reasons outlined in this draft determination, the ACCC considers, pursuant to sections 90(7) and 90(8) of the Act, that in all the circumstances the Conduct is likely to result in a benefit to the public that would outweigh the detriment to the public that is likely to result from the Conduct.

103. The ACCC therefore proposes to **revoke** authorisations A91342 and A91343 and **grant** authorisation A1000405 in substitution.

²⁰ Section 91(1).

²¹ On 6 November 2017, a number of amendments to the CCA came into effect, including changes to the authorisation provisions in Division 1 of Part VII of the CCA. These applications for authorisation are assessed by the ACCC in accordance with the CCA as amended.

Conduct which the ACCC proposes to authorise

104. The ACCC proposes to re-authorise Racing and Wagering Western Australia to continue to give effect to the 2012 Agreement that it has entered into with William Hill Australia Wagering Pty Ltd.

105. The proposed re-authorisation is in respect of the 2012 Agreement as it stands at the time authorisation is granted. Any changes to the arrangement during the term of the proposed authorisation would not be covered by the proposed authorisation.

106. Re-authorisation applies to the Conduct in the 2012 Agreement in so far as it contains a cartel provision within the meaning of Division 1 of Part IV of the Act or may substantially lessen competition within the meaning of section 45 of the Act.

107. The ACCC proposes to grant authorisation AA1000405 until 28 November 2024.

108. This draft determination is made on 15 March 2018.

Next steps

109. The ACCC now seeks submissions from interested parties in response to this draft determination.