

14 February 2020

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Our ref MJL:MSF:225070.01607

Dear Ms Hobbs

Racing and Wagering Western Australia – Application for minor variation of authorisation of fixed odds management services agreement

We act for Racing and Wagering Western Australia (**RWWA**).

RWWA seeks a minor variation of its fixed odds wagering management services agreement (as amended and novated) (**Application**) the subject of existing authorisation AA1000423 under section 91A(1) of the *Competition and Consumer Act 2010* (Cth) (**Act**).

Further to our discussions with the ACCC, we **enclose** the following documents:

- (a) confidential and public versions of the Application and submissions; and
- (b) a declaration by RWWA as the applicant.

Confidentiality

Parts of the confidential Application and submissions and the supporting documents contain information which is commercially sensitive and confidential to RWWA, and others.

Accordingly, pursuant to section 89(5) of the Act, RWWA requests that the Commission exercise its power under section 89(5A) to exclude this information from the register kept by the Commission pursuant to section 89(3). RWWA requests that the Commission treat the confidential Application, submissions and supporting documents as strictly confidential because the confidential version contains:

- (a) personal confidential information; and
- (b) information which is commercially sensitive, relates to the business commercial or financial affairs of parties involved, which is not otherwise publically available and which is treated as confidential in the sense that it is not voluntarily disclosed to third parties.

Information in respect of which restriction of publication is claimed is clearly indicated by square brackets with the words **[CONFIDENTIAL INFORMATION DELETED]** in the non-confidential public version of the submission. RWVA requests that the Commission place only this letter and the public version of the Application and submission on the public register.

Please contact Michael Ferguson if you have any queries in relation to the Application or require any further information.

Yours faithfully



Squire Patton Boggs (AU)

Enclosures

RACING AND WAGERING WESTERN AUSTRALIA

Management Services Agreement between Racing and
Wagering Western Australia and TSG Australia Wagering Pty
Ltd

Application for minor variation of Authorisation AA1000423

PUBLIC VERSION

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Reference MSF:225070.01607

Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code (Cth)*.



Signature of authorised person

Senior Legal and Insurance Officer

Office held

Bruce Johnston

Name of authorised person

This 14th day of February 2020

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

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GLOSSARY

2018 Agreement means the Management Services Agreement as amended to and including 11 May 2018.

ACCC means the Australian Competition and Consumer Commission.

Act means the *Competition and Consumer Act 2010* (Cth).

Amended 2018 Agreement means the 2018 Agreement as amended by the Amending Agreement and the Novation Deed.

Amending Agreement means the agreement between RWWA and TSGW dated 9 December 2019.

BetEasy means BetEasy Pty Ltd ACN 162 554 707, formerly known as CrownBet Pty Ltd.

Conduct means all of the conduct under the Amended 2018 Agreement.

Management Services Agreement means the Management Services Agreement dated 30 October 2012 between RWWA and Sportingbet Australia Pty Ltd and Sportingbet Holdings Limited.

Novation Deed means the Deed of Novation dated 9 December 2019 and made between RWWA, TSGW and BetEasy.

RWWA means Racing and Wagering Western Australia.

RWWA Act means the *Racing and Wagering Western Australia Act 2003* (WA).

Services means the services provided under the Amended 2018 Agreement to facilitate RWWA's offering of its fixed odds wagering products, some of which are described in paragraph 5.30.

TSG means The Stars Group Inc.

TSGW means TSG Australia Wagering Pty Ltd ACN 106 487 736, formerly known as William Hill Australia Wagering Pty Ltd.

WHA Platform means the proprietary operating systems including Intrabet and Intrabet gateway (Breeze middleware) System through which the Services have been provided to RWWA since 2012.

1 EXECUTIVE SUMMARY

- 1.1 In this application RWWA seeks a minor variation of Authorisation AA1000423 to allow it to give effect to the 2018 Agreement as amended and novated by the Amending Agreement and the Novation Deed.
- 1.2 Since its inception, the Management Services Agreement has been the subject of previous authorisation granted by the ACCC, namely:
- (a) Authorisation numbers A091342 and A91343 granted on 9 May 2013 for a period of 5 years;
 - (b) Authorisation AA1000405 granted by the ACCC on 27 April 2018 when Authorisations A91342 and A91343 were revoked. Authorisation was granted until 28 November 2024; and
 - (c) Authorisation AA1000423 which was granted on 31 August 2018 in substitution for Authorisation AA1000405. This Authorisation expires on 30 December 2028.
- 1.3 Since the ACCC granted Authorisation AA1000423, the State Government of Western Australia has announced the sale of the wagering business conducted by RWWA under the name WATAB, using trading names including "TABtouch". That sale process is well underway, with an expectation that the successful bidder will be identified in early 2020.
- 1.4 It is possible that the successful bidder for the WATAB will be a competitor of the counterparty to the 2018 Agreement, **[CONFIDENTIAL INFORMATION DELETED]**.
- 1.5 For this reason, and because certain conditions precedent to the coming into operation of an earlier deed of novation dated 11 May 2018 made between RWWA, TSGW and BetEasy (then CrownBet Pty Ltd) have not been met, on 9 December 2019:
- (a) RWWA and TSGW entered into the Amending Agreement which amends 2018 Agreement the subject of Authorisation AA1000423; and
 - (b) RWWA, TSGW and BetEasy entered into the Novation Deed pursuant to which the Amended 2018 Agreement will be novated to BetEasy when the conditions precedent in the Novation Deed have all been met.
- 1.6 The Amending Agreement and the Novation Deed are subject to conditions precedent, including the grant of authorisation by the ACCC.
- 1.7 Since 2009 RWWA has offered its fixed odds wagering products with the assistance of fixed odds management services provided by large competitors including Centrebet, Sportingbet and, most recently, TSGW. Each of those arrangements has been authorised by the ACCC on the basis that the public benefits that arise by reason of the conduct outweighs any public detriment from that conduct.
- 1.8 The Amending Agreement does not materially alter the Services, nor the Conduct. The changes set out in the Amending Agreement:
- (a) provide an agreed reduction of the fee payable by RWWA in January and February 2020;
 - (b) identify the obligations of TSGW pending sale of the WATAB;

- (c) impose additional obligations on TSGW relating to the development and implementation of New Products;
 - (d) alter the Service Level Requirements under the 2018 Agreement, specify the responses required by TSGW if there are outages in the provision of the Services, and provide for compensation to be paid by TSGW to RWWA in certain circumstances; and
 - (e) outline the obligations on TSGW if the WATAB is sold or not sold.
- 1.9 Importantly, RWWA maintains control over the odds that it offers on its fixed odds wagering products and TSGW offers its own, independently set odds, so competition between RWWA and TSGW will be maintained.
- 1.10 The fixed odds wagering market in Australia is highly competitive, and is characterised by large, well-resourced corporate bookmakers which are subsidiaries of or related to large international corporate bookmakers. Those corporate bookmakers are the drivers of price competition in the online and mobile wagering market and diminish any possibility that TSGW and RWWA will act together to offer less favourable odds, or a reduced product offering.
- 1.11 RWWA submits that the public benefits previously identified by the ACCC continue, and will continue, to arise from the conduct under the Amended 2018 Agreement, notwithstanding the changes to the machinery provisions effected by the Amending Agreement and the change in identity of the entity providing the services effected by the Novation Deed. The novation is to an entity in the same corporate group as TSGW.
- 1.12 Those public benefits are the improved efficiency in RWWA's provision of its fixed odds wagering products which is likely to lead to increased competition between the providers of fixed odds wagering products and a broader range of such products being offered to customers.
- 1.13 RWWA submits that little or no public detriment arises from the conduct under the Amended 2018 Agreement.
- 1.14 A confidential copy of the Amending Agreement (which attaches the 2018 Agreement) is attached as **Confidential Annexure 1** and a confidential copy of the Novation Deed is attached as **Confidential Annexure 2**.
- 1.15 RWWA seeks a minor variation to Authorisation AA1000423 of the Amended 2018 Agreement (and the Novation Deed) on the basis that in the case of conduct that potentially contravenes sections 45AD (cartel conduct) and 45 of the Act, TSGW and BetEasy will obtain the benefit of the ACCC's grant of authorisation to RWWA because of section 88(2) of the Act.

2 APPLICANT

- 2.1 The applicant, RWWA, is a body corporate established on 1 August 2003 under the RWWA Act. It is the controlling statutory authority for thoroughbred, harness and greyhound racing in Western Australia.
- 2.2 RWWA's details are:

Name:	Racing and Wagering Western Australia
ACN:	347 055 603
Address:	14 Hasler Road, Osborne Park, WA 6017
Telephone :	(08) 9445 5333

Contact:	[CONFIDENTIAL INFORMATION DELETED]
Position:	[CONFIDENTIAL INFORMATION DELETED]
Telephone:	[CONFIDENTIAL INFORMATION DELETED]
Email:	[CONFIDENTIAL INFORMATION DELETED]

2.3 RWWA's statutory functions presently include:

- (a) to carry on the business of operating an off-course totalisator wagering service;
- (b) to carry on the business of operating an on-course totalisator wagering service on behalf of racing clubs where engaged to do so; and
- (c) to carry on the business of setting, accepting and making fixed odds wagers.

2.4 RWWA is authorised in Western Australia to offer off-course totalisator betting which it does trading as "TAB" and to offer fixed odds wagering on sports, racing and other events.

2.5 Its wagering distribution network comprises:

- (a) a retail network of 327 outlets throughout Western Australia, including 88 full-time TAB agencies, 98 'PubTAB' agencies and 141 'self-service' agencies;
- (b) an operator assisted call centre for placing bets for thoroughbreds, harness, greyhounds, Favourite Numbers, Fixed Odds Sports and Racing;
- (c) online betting – an internet betting platform that offers the full range of TAB betting products (ozbet.com.au, tabozbet.com.au, tabtouch.com.au and playeronline.com.au);
- (d) mobile betting – a platform for betting via mobile phones (tabtouch.mobi and related tabtouch apps); and
- (e) an internet site that provides racing and sporting information (www.rwwa.com.au).

2.6 RWWA is the principal source of funding for the racing industry in Western Australia. After various prescribed deductions, the RWWA Act¹ requires RWWA to distribute all of its profits to the racing industry.

3 AUTHORISATION TO BE VARIED

3.1 RWWA seeks to vary Authorisation AA1000423 which was granted on 31 August 2018.

3.2 The other party to that Authorisation is TSGW. The reasons for the application to vary the Authorisation AA1000423 are set out below.

4 PARTIES TO THE VARIED AUTHORISATION

4.1 The other parties involved in the varied authorisation are TSGW and BetEasy. Their details are:

Name:	TSG Australia Wagering Pty Ltd
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¹ Section 106 of the RWWA Act.

ACN:	106 487 736
Address:	Level 27,120 Collins Street, Melbourne Victoria 3000
Telephone :	[CONFIDENTIAL INFORMATION DELETED]
Contact:	[CONFIDENTIAL INFORMATION DELETED]
Position:	[CONFIDENTIAL INFORMATION DELETED]
Telephone:	[CONFIDENTIAL INFORMATION DELETED]
Email:	[CONFIDENTIAL INFORMATION DELETED]

Name:	BetEasy Pty Ltd
ACN:	162 554 707
Address:	Level 27,120 Collins Street, Melbourne Victoria 3000
Telephone :	[CONFIDENTIAL INFORMATION DELETED]
Contact:	[CONFIDENTIAL INFORMATION DELETED]
Position:	[CONFIDENTIAL INFORMATION DELETED]
Telephone:	[CONFIDENTIAL INFORMATION DELETED]
Email:	[CONFIDENTIAL INFORMATION DELETED]

4.2 The ultimate holding company of both BetEasy and TSGW is TSG.

TSG, BetEasy and TSGW

TSG

4.3 TSG is incorporated in Canada and is listed on the Toronto Stock Exchange and the Nasdaq Stock Exchange.

4.4 TSG is a leading provider of technology-based products and services in the global gaming and interactive entertainment industries. Its gaming business is its primary source of revenue. It acquired a majority equity interest in what was then CrownBet Holdings Pty Ltd and its subsidiaries and affiliates in February 2018.

BetEasy

4.5 BetEasy was the successful acquirer of all of the shares in TSGW (then, William Hill Australia Holdings Pty Ltd).

4.6 BetEasy holds a licence to conduct the Business of a Sports Bookmaker issued by the Northern Territory government.

4.7 [CONFIDENTIAL INFORMATION DELETED].

TSGW

4.8 TSGW holds a licence to conduct the Business of a Sports Bookmaker issued by the Northern Territory Government on 1 September 2015. The licence expires on 30 June 2020.

4.9 [CONFIDENTIAL INFORMATION DELETED].

5 THE PROPOSED VARIATION

- 5.1 The conduct for which minor variation is sought relates to amendments to the 2018 Agreement set out in the Amending Agreement. Those amendments are described in paragraph 1.8 above and in further detailed in paragraphs 5.12 to 5.27 below.
- 5.2 It is clear that the proposed variation the subject of this application is minor because it has no effect at all upon the Conduct authorised by Authorisation AA1000423.
- 5.3 The minor variation is sought because, since the ACCC granted Authorisation AA1000423, the State Government of Western Australia has enacted legislation permitting the sale of the wagering business conducted by RWWA under the name WATAB, using trading names including "TABtouch". That sale process is well advanced.
- 5.4 **[CONFIDENTIAL INFORMATION DELETED]**.
- 5.5 RWWA and TSGW have entered into the Amending Agreement to take account of issues encountered by the parties, which prevented satisfaction of certain conditions precedent to an earlier deed of novation. RWWA, TSGW and BetEasy have entered into the Novation Deed to reflect the fact that, when it is in a position to do so, BetEasy will supply the Services to RWWA. This situation is no different to that which existed when the ACCC granted Authorisation AA1000423.
- 5.6 **[CONFIDENTIAL INFORMATION DELETED]**.
- 5.7 **[CONFIDENTIAL INFORMATION DELETED]**.
- 5.8 **[CONFIDENTIAL INFORMATION DELETED]**.
- 5.9 **[CONFIDENTIAL INFORMATION DELETED]**.
- 5.10 **[CONFIDENTIAL INFORMATION DELETED]**.
- 5.11 RWWA submits that none of the amendments affects the public benefits that the ACCC has found arise as a result of the conduct under the 2018 Agreement and the changes do not give rise to any public detriment. The conduct under the 2018 Agreement as amended by the Amending Agreement is the same as the conduct under the unamended 2018 Agreement.

Novation Deed

- 5.12 BetEasy no longer operates the William Hill Australia Wagering Pty Limited betting license for its own wagering operations. It has maintained the licence for the sole purpose of fulfilling its obligations to RWWA under the Amended 2018 Agreement, **[CONFIDENTIAL INFORMATION DELETED]**.
- 5.13 For that reason, RWWA has agreed to novate the Amended 2018 Agreement to BetEasy under the Novation Deed which does not contain a requirement to transition RWWA to the BetEasy platform and but allows the Services to continue to operate under the WHA Platform under the BetEasy license and betting rules.
- 5.14 The condition precedent in clause 4.1(c) of the Novation Deed, relating to approval of BetEasy by the Minister, has been satisfied.

Amending Agreement

- 5.15 Following negotiations with BetEasy, the parties agreed to a number of amendments to the 2018 Agreement which are set out in the Amending Agreement. These amendments include removing the obligation to transition to the BetEasy platform and remain on the William Hill

Intrabet betting platform which will deliver short terms value and avoid additional development expenses for both parties due to the pending sale of the WA TAB, fee reductions, provision of new betting products, improved SLA's and outage compensation.

Fee Reduction

- 5.16 RWWA has renegotiated a fee reduction to the value of **[CONFIDENTIAL INFORMATION DELETED]** (payable in two instalments, January and February 2020) in recognition of the savings made by remaining on the WHA Platform.
- 5.17 If the sale of the WA TAB does not proceed BetEasy will be obliged to work with RWWA to transition to the BetEasy platform in a timely manner.

New Products

- 5.18 As part of the decision to remain on the WHA Platform, BetEasy has agreed to make available a number of additional products which will provide additional value and revenue opportunities, specifically:
 - (a) Past the Post (**PTP**) and Protest Pay dividend payments; and
 - (b) Racing Derivative products
- 5.19 These additional products would have been available if the Services had transitioned to the BetEasy Platform.
- 5.20 RWWA expects that PTP will generate an additional **[CONFIDENTIAL INFORMATION DELETED]** in turnover per annum and Racing Derivatives will generate **[CONFIDENTIAL INFORMATION DELETED]** turnover per annum (both products already delivered and operational by BetEasy in anticipation of approval of the Amending Agreement).

SLA's and Outage Compensation

- 5.21 The parties have agreed a new set of Service Level Agreements (**SLA**) in light of the decision to remain on the WHA Platform. The new SLAs are in line with RWWA's expected system performance and provides a greater understanding for both parties in terms of issue escalation and resolution obligations.
- 5.22 In addition to the existing Outage Compensation terms, a new Service Credit regime will provide additional compensation to RWWA where BetEasy fails to meet the established SLA obligations.
- 5.23 In line with the decision to that the Services will continue to be provided through the WHA Platform BetEasy has agreed to a new resourcing structure to ensure optimal performance, availability and enhancement of the platform. This includes the appointment of a project manager (key contact) and six (6) full time technical resources.

Exclusivity

- 5.24 The previous May 2018 amendments to the 2018 Agreement removed the exclusivity clause in error. It was never intended by either party for this to occur and this amendment reinstates the previous agreed term.

Sale of the WATAB Business

- 5.25 The Amending Agreement includes provisions that only operate if the WATAB is sold and are intended to facilitate the continued offering of fixed odds wagering services through the WATAB.

5.26 If the WATAB is not sold RWWA retains the right to transition to the BetEasy platform.

Negative Impact to RWWA

5.27 The Amending Agreement alters RWWA's right to compensation in certain circumstances.

Conduct remains the same

5.28 Once the Amending Agreement and the Novation Deed come into effect, the conduct under the Amended 2018 Agreement is the same as the conduct under the 2018 Agreement.

5.29 That Conduct includes:

- (a) to the extent 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);
- (b) RWWA and BetEasy agree to establish a joint management committee to oversee the provision of fixed odds management services by BetEasy;
- (c) BetEasy provides RWWA with risk management information, which may influence the odds fixed for RWWA's books;
- (d) RWWA provides risk thresholds and target margin parameters which BetEasy uses when it establishes and maintains fixed odds books for RWWA; and
- (e) BetEasy performs the final calculations that determine the odds that RWWA offers on its fixed odds wagering products.

5.30 BetEasy:

- (a) establishes and maintains fixed odds books (covering the same range of events and bet types offered to its own customers) on behalf of RWWA;
- (b) accepts and processes the above fixed odds investments on behalf of RWWA, in accordance with risk thresholds and target margin parameters that RWWA provides to BetEasy;
- (c) provides wagering and risk management services in respect of each book utilising BetEasy's full 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;
- (d) conducts related activities including undertaking research and managing event selling and fixed returns (including by 'laying off' wagers in accordance with the risk parameters); and
- (e) provides a range of implementation services, sports betting technology and ancillary services in relation to the books.

5.31 BetEasy is not limited in the fixed odds it can offer in respect of its own books and RWWA will continue to independently ascertain and provide the risk management threshold and target margin parameters to BetEasy which uses those thresholds and parameters in providing fixed odds to RWWA through BetEasy's risk management system.

Rationale for variation

- 5.32 As RWWA submitted in relation to the each of the previous Authorisations, it is not able by itself to conduct efficient and profitable fixed odds wagering operations offering the same scale and scope of fixed odds wagering products as those offered under the Management Services Agreement because:
- (a) relative to the larger operators such as Tabcorp and the larger corporate bookmakers RWWA is a smaller operator in relation to fixed odds wagering;
 - (b) on its own, RWWA would lack the liquidity in its fixed odds books required to efficiently and profitably conduct and manage its own fixed odds wagering, while offering a sufficiently broad range of wagering products at attractive odds for its customers;
 - (c) RWWA does not have sufficient scale, expertise (in the form of specialist bookmakers and analysts), technology or risk management skills to:
 - (i) manage risk in its books (including 'framing' the market, balancing the book and laying off wagers); and
 - (ii) supply a full range of events and bet types, at competitive odds, particularly in relation to fixed odds wagering on sports ;and
 - (d) supplying fixed odds wagering products on its own would expose RWWA to considerable risk and inconsistent and volatile returns.
- 5.33 RWWA does not have the necessary size and scale that is necessary to independently offer a range of fixed odds products and the necessary odds to allow it to independently offer fixed odds wagering products.

Term of minor variation

- 5.34 RWWA seeks a minor variation to the authorisation of the Conduct to 30 December 2028. No extension to the term of Authorisation AA1000423 is sought.

Other stakeholders / interested parties

- 5.35 Other stakeholders in the wagering industry, or parties who may otherwise be interested in the Application, include other totalisators, corporate bookmakers, racing clubs, regulatory bodies, punters, licensed hotels/retail agencies as well as the employees of RWWA, TSGW and BetEasy. Contact details for major stakeholders are set out in Annexure 3.

6 AREAS OF COMPETITION

- 6.1 RWWA adopts the ACCC's identification of the relevant areas of competition in Authorisation AA1000423. Those are:
- (a) the supply of wagering and risk management services necessary to provide fixed odds wagering products to the public; and
 - (b) the provision of wagering products to the public.
- 6.2 RWWA submits that in the relatively short period of time that has elapsed between Authorisation AA1000423 and this application, there is no reason to suspect that the areas of competition of have changed.

Supply of wagering and risk management services

- 6.3 The services that TSGW provides to RWWA under the 2018 Agreement are necessary for any wagering operator that wishes to offer fixed odds wagering products to customers.
- 6.4 RWWA could potentially source such services from other corporate bookmakers, because each of them will have their own internal wagering and risk management services. However, so far as RWWA is aware none of them supply those services to external third parties such as RWWA.

Provision of wagering services to the public

- 6.5 The principal forms of wagering in Australia are pari-mutuel and fixed odds wagering on racing and fixed odds wagering on racing and sporting events.
- 6.6 Recent developments in Australia have continued the convergence of pari-mutuel and fixed odds wagering and the development of a national wagering market with customers choosing to bet by telephone and particularly online through smartphones and tablets.
- 6.7 Wagering on sports is also becoming increasingly popular with customers.

7 THE FUTURE WITH AND WITHOUT

- 7.1 RWWA adopts the submissions on the factual and counterfactual position it made in relation to Authorisation AA1000423.

8 PUBLIC BENEFITS

- 8.1 By the Amended 2018 Agreement RWWA outsources the Services which it could not more efficiently and cost-effectively provide itself.
- 8.2 The ACCC has accepted that:

“...the 2012 Agreement is likely to generate public benefits by improving the efficiency with which RWWA’s Management Services are provided, relative to the future without the conduct. These efficiencies are likely to come from economies of scale and transactions cost savings.”

- 8.3 The ACCC also considered that the 2018 Agreement would enable RWWA to provide a broader range of fixed odds wagering products than in the future without the conduct and would therefore preserve industry competition.
- 8.4 RWWA submits that those public benefits have been realised.

Efficiency in delivery of the Services

- 8.5 The Amended 2018 Agreement does not alter the Conduct from that which occurs under the 2018 Agreement addresses a range of commercial obstacles that RWWA faces in offering fixed odds wagering products to its customers. As noted above RWWA lacks the size and scale to independently conduct fixed odds wagering efficiently for any extended period of time.
- 8.6 Minor variation to Authorisation AA1000423 will allow RWWA to avoid the replicating the fixed costs of establishing its own internal wagering and risk management services.
- 8.7 The previous agreements have allowed RWWA to offer a larger number and broader range of fixed odds wagering products at more competitive odds because of the lower costs involved in acquiring the Services, most recently under the 2018 Agreement. The efficiencies generated by the 2018 Agreement have enabled RWWA to conduct its fixed odds wagering in

a more competitive manner than would have occurred in the absence of the 2018 Agreement, in a product offering that is increasing steadily in popularity.

- 8.8 While the benefits arising from the 2018 Agreement are not solely the cause of RWWA's competitive performance, the results achieved in its fixed odds wagering business contributed strongly to its performance. RWWA believes that it could not have achieved close to its actual results without TSGW providing the Services under the 2018 Agreement.

Broader product offering

- 8.9 By way of example, through its arrangements with TSGW in the 2018 Agreement, RWWA currently offers around **[CONFIDENTIAL INFORMATION DELETED]** annually.
- 8.10 **[CONFIDENTIAL INFORMATION DELETED]**.
- 8.11 This scenario would expose RWWA to a high degree of risk of losing market share for fixed odds wagering, and consequentially market share generally. The loss of market share will not be limited to the fixed odds betting, but will also result in loss from other wagering products as existing customers who utilise a broad range of wagering products look to alternative operators who can offer the full range of services.
- 8.12 RWWA submits that the minor variation to Authorisation AA1000423 to reflect the provisions of the Amended 2018 Agreement will result in a continuation of the public benefits that the ACCC has identified in all previous authorisations relating to the 2018 Agreement.
- 8.13 RWWA:
- (a) can continue to supply fixed odds wagering products in a manner that appropriately manages its risks and costs, which enhances the prospect of achieving more consistent returns within a nominated target margin range and reduces RWWA's administration and transaction costs fostering business efficiency;
 - (b) can continue to offer fixed odds wagering products to customers, with a broader range of fixed odds wagering products (on a wider range of events and bet types) and more attractive odds, thereby providing customers with greater choice and more competitively priced products;
 - (c) remains as an additional supplier in the industry from which fixed odds wagering products can be sourced, thus providing a further competitive constraint to existing suppliers, including through the offering of a broader range of fixed odds wagering products, at more competitive odds; and
 - (d) can continue to carry out its responsibilities and functions which underpin the Western Australian racing industry, including by allowing 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, and otherwise contribute to Western Australian taxation revenues and its economy more generally. RWWA is required to distribute all of its profits (after deducting prescribed amounts) to the racing industry.

9 PUBLIC DETRIMENT

- 9.1 RWWA submits that there is likely to be little (if any) public detriment arising from the relevant conduct under the Amended 2018 Agreement. On this basis, RWWA submits that the authorisation of the Amended 2018 Agreement should be varied.
- 9.2 The conduct under the Amended 2018 Agreement is the same conduct that the ACCC authorised in granting all previous authorisations relating to the 2018 Agreement. The ACCC

found no anti-competitive detriment arising from the relevant conduct under the 2018 Agreement. The appointment of TSGW, and BetEasy in relation to the Amended 2018 Agreement, is essentially an outsourcing by RWWA of services that it cannot efficiently and cost-effectively provide itself.

- 9.3 The ACCC has previously said that “..there is limited scope for coordination [between RWWA and TSGW/BetEasy] on products or areas other than the price of fixed odds wagering products.”
- 9.4 The only likely area in which RWWA and TSGW/BetEasy might coordinate is in respect of pricing or the fixed odds each offers.
- 9.5 This risk does not arise because RWWA independently provides the risk threshold and target margin parameters to TSGW/BetEasy which uses and applies them to its risk management system to generate fixed odds for RWWA. RWWA can provide whatever risk threshold and target margin parameters it wishes, even if the use of them in the calculation of the fixed odds may result in RWWA achieving a reduced margin or even a loss on any particular book.
[CONFIDENTIAL INFORMATION DELETED].
- 9.6 There will continue to be price differentiation between RWWA and TSGW/BetEasy because:
- (a) there are significant differences in their respective costs structures;
 - (b) TSGW/BetEasy does not have any significant retail presence and is reliant on price as a differentiating factor in its online and telephonic operations; and
 - (c) each of them offers different discounts, rebates and other incentives to customers.
- 9.7 The Amended 2018 Agreement expressly provides that:
- (a) the fixed odds provided by TSGW/BetEasy to RWWA are likely to differ from the fixed odds that TSGW/BetEasy offers to its customers;
 - (b) TSGW/BetEasy makes its own decisions about the fixed odds that it offers independently of RWWA; and
 - (c) TSGW/BetEasy is not obliged to disclose to RWWA any details about the fixed odds that TSGW/BetEasy offers to its customers.
- 9.8 Over the period of operation of the 2018 Agreement, the fixed odds offered by RWWA to its customers have differed from the fixed odds offered by TSGW to its customers on the same event. While the fixed odds offered by them on the same event have tended to converge over time, there remain differences in both the fixed odds products and the pricing of the fixed odds products offered by them.
- 9.9 Further RWWA and TSGW/BetEasy compete with each other and all other wagering operators which offer wagering services in Australia to supply fixed odds wagering products to the public. As the ACCC has noted it is the corporate bookmakers that drive price competition in fixed odds wagering products for online customers, and that deprives RWWA and TSGW/BetEasy of the opportunity and incentive to attempt to raise the prices of their fixed odds wagering products (by reducing the odds they offer). If they sought to do so, their competitors would take market share from them.

10 CONCLUSION

- 10.1 RWWA submits that a minor variation to the authorisation of the Amended 2018 Agreement will continue the public benefits that the ACCC said were likely to arise, and which have arisen, from the 2018 Agreement to date.

- 10.2 The ACCC's conclusion in the previous authorisations that the 2018 Agreement was not likely to result in any significant public detriment has been borne out and that conclusion remains valid. Minor variation to the authorisation of the Amended 2018 Agreement will ensure that those public benefits continue.

ANNEXURE 1

**CONFIDENTIAL COPY OF AMENDING
AGREEMENT**

[CONFIDENTIAL INFORMATION DELETED]

ANNEXURE 2
CONFIDENTIAL COPY OF NOVATION DEED
[CONFIDENTIAL INFORMATION DELETED]

ANNEXURE 3
MAJOR STAKEHOLDER CONTACT DETAILS

STATES AND TERRITORIES

(The information below was accessed at <http://www.racingaustralia.horse/FreeFields/Directory.aspx> on 8 November 2017)

Organisation	Website
AUSTRALIA	
Racing Australia	www.racingaustralia.horse
Australian Bookmakers Association	www.australianbookmakers.com.au/index.html
Harness Racing Australia	www.harness.org.au
Greyhounds Australasia	www.galtd.org.au
AUSTRALIAN CAPITAL TERRITORY	
<i>Principal Racing Authority</i>	
Canberra Racing Club Inc	www.thoroughbredpark.com.au
<i>Major Race Club</i>	
Canberra Racing Club Inc	www.thoroughbredpark.com.au
<i>Industry Body</i>	
A.C.T Bookmakers Association	www.australianbookmakers.com.au/index.html
<i>Government</i>	
Office for the Minister of Racing and Gaming	www.gamblingandracing.act.gov.au
Gambling and Racing Commission	www.gamblingandracing.act.gov.au
TAB	
ACT TAB Limited	www.acttab.com.au
NEW SOUTH WALES	

Principal Racing Authority	
Racing NSW	www.racingsw.com.au
Major Race Club	
Australian Turf Club	www.australianclub.com.au
Industry Body	
NSW Bookmakers Co-Operative Ltd	www.australianbookmakers.com.au/index.html
Government	
Minister for Racing	www.olgr.nsw.gov.au/the_minister.asp
Office of Liquor, Gaming and Racing	www.olgr.nsw.gov.au
TAB	
TABCORP Holdings Limited	www.tabcorp.com.au
NORTHERN TERRITORY	
Principal Racing Authority	
Thoroughbred Racing NT	www.trnt.org.au
Major Race Club	
Darwin Turf Club Inc	www.darwinturfclub.org.au
Government	
Department of Business, Gambling and Licensing Services	www.nt.gov.au
TAB	
Tattsbet Ltd (NT TAB Pty Ltd)	www.tatts.com
QUEENSLAND	
Principal Racing Authority	
Racing Queensland Ltd	www.racingqueensland.com.au

Major Race Club	
Brisbane Racing Club Ltd	www.brc.com.au
Industry Body	
Queensland Bookmakers Association	www.australianbookmakers.com.au/index.html
Government	
Office of the Minister for Sport	www.qld.gov.au
Department of Sport and Recreation	www.nprsr.qld.gov.au/about/organisation/minister.html
Office of Racing	www.nprsr.qld.gov.au
TAB	
TattsBet Ltd	www.tatts.com
SOUTH AUSTRALIA	
Principal Racing Authority	
Thoroughbred Racing S.A Limited	www.theracessa.com.au
Major Race Club	
South Australian Jockey Club	www.sajc.com.au
Industry Body	
South Australian Bookmakers League Inc	www.sabookmakers.com.au
Government	
Minister for Recreation and Sport	www.ors.sa.gov.au
Independent Gambling Authority	www.cbs.sa.gov.au/wcm/
TAB	
TattsBet Ltd (SA TAB Pty Ltd)	www.tatts.com
TASMANIA	

Principal Racing Authority	
Tas Racing Pty Ltd	www.tasracing.com.au
Major Race Club	
Tasmanian Turf Club	www.tasmanianturfclub.com
Tasmanian Racing Club	www.tasracingclub.com.au
Industry Body	
Tasmanian Bookmakers Association	www.australianbookmakers.com.au/index.html
Government	
Minister for Racing	www.tas.gov.au
Tasmanian Gaming Commission	www.gaming.tas.gov.au
Racing Services Tasmania (Office of Racing Integrity)	www.racing.tas.gov.au
TAB	
TattsBet Ltd (Tote Tasmania Pty Ltd)	
VICTORIA	
Principal Racing Authority	
Racing Victoria Limited	www.racing.com
Major Race Club	
Victoria Racing Club	www.vrc.net.au
Industry Body	
Victoria Bookmakers' Association Ltd	www.vicbookmakers.com.au
Government	
Minister for Racing	www.vic.gov.au
Office of Gaming and Racing Department of Justice	www.justice.vic.gov.au
Victorian Commission for Gambling	www.vcglr.vic.gov.au

Regulation	
TAB	
TABCORP Holdings Ltd	www.tabcorp.com.au
WESTERN AUSTRALIA	
Major Race Club	
Perth Racing	www.perthracing.com.au
Industry Body	
WA Bookmakers Association Inc.	https://wabookmakers.com/
Government	
Office of the Minister for Racing and Gaming	www.rgl.wa.gov.au
Gaming and Wagering Commission of Western Australia	www.rgl.wa.gov.au

CORPORATE BOOKMAKERS

Organisation	Website
Bet365	https://www.bet365.com.au
Ladbrokes	https://www.ladbrokes.com.au
Sportsbet	https://www.sportsbet.com.au
Unibet	https://www.unibet.com.au