



Draft Determination and Interim Authorisation

Application for revocation of AA1000405
and the substitution of AA1000423

lodged by

Racing and Wagering Western Australia

in respect of

an agreement for the provision
of risk management services

Date: 19 July 2018

Authorisation number: AA1000423

Commissioners: Keogh
Rickard
Court
Featherston

Summary

The ACCC proposes to grant authorisation to give effect to an amended management services agreement which allows risk management services relating to fixed odds bets to be provided to Racing and Wagering Western Australia until 30 December 2028.

The amended management services agreement contemplates similar conduct to that which was authorised by the ACCC in April 2018 (authorisation AA1000405) but has a longer term and provides for the company providing the services to transition from TSG Australia Wagering Pty Ltd to CrownBet Pty Ltd.

Allowing the proposed conduct is likely to result in efficiencies and make Racing and Wagering Western Australia a more effective competitor against larger wagering providers, such as Tabcorp and Sportsbet.

The ACCC also grants interim authorisation for the amended management services agreement to be given effect.

The ACCC will seek submissions in relation to this draft determination before making its final decision.

1. The application for authorisation

- 1.1. On 24 May 2018, Racing and Wagering Western Australia (**RWWA**) lodged an application with the Australian Competition and Consumer Commission (the **ACCC**) for authorisation AA1000405 to be revoked and substituted with authorisation AA1000423 (**re-authorisation**).
- 1.2. TSG Australia Wagering Pty Ltd (**TSGW**) currently provides management services to RWWA in relation to fixed odds betting under an agreement which commenced on 30 October 2012 (the **2012 Agreement**).
- 1.3. RWWA has advised that CrownBet Pty Ltd (**CrownBet**) intends to take over TSGW's role and an **Amendment Agreement** and **Deed of Novation**, each dated 11 May 2018, have been entered into to facilitate the transition and extend the term of the 2012 Agreement to 30 December 2028.
- 1.4. RWWA are seeking re-authorisation to give effect to the 2012 Agreement as amended by the Amendment Agreement and Deed of Novation (the **Amended 2012 Agreement**).
- 1.5. Re-authorisation is necessary as the changes being made to the 2012 Agreement were not contemplated by authorisation AA1000405. The changes also extend the agreement's term beyond the current period of authorisation (which expires on 28 November 2024).

2. Background

- 2.1. The Applicant, 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.

- 2.2. 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'.¹
- 2.3. On 23 April 2018 CrownBet announced that it had acquired the Australian operations of William Hill. The entity that was known as 'William Hill Australia Wagering Pty Ltd' at the time that authorisation AA1000405 was granted became a wholly owned subsidiary of CrownBet and changed its name to TSGW.
- 2.4. At the time that CrownBet acquired William Hill's Australian operations, each of the groups held an estimated 5% share of the Australian wagering market. The takeover made CrownBet the third-largest operator in Australian wagering, behind Tabcorp and Sportsbet (owned by Paddy Power).²
- 2.5. RWWA and CrownBet compete with each other and with other bookmakers to provide wagering services to punters.

3. The Conduct

- 3.1. RWWA seeks authorisation for itself and on behalf of TSGW and CrownBet to give effect to all the provisions of the Amended 2012 Agreement, which consists of the 2012 Agreement as amended by the Amendment Agreement and the Deed of Novation between RWWA, TSGW and CrownBet dated 11 May 2018 (**Conduct**). Authorisation is sought until 30 December 2028.
- 3.2. The amendments incorporated in the Amended 2012 Agreement do not alter the services required or conduct of the parties under the 2012 Agreement. The Amended 2012 Agreement reflects that CrownBet will provide the services detailed in the 2012 Agreement to RWWA when it is in a position to do so.
- 3.3. RWWA has applied for re-authorisation because the 2012 Agreement may contain 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.³
- 3.4. The Conduct includes:
 - a. 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).
 - b. RWWA and CrownBet agree to establish a joint management committee to oversee the provision of fixed odds management services by TSGW.
 - c. CrownBet 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 are used by TSGW when it establishes and maintains fixed odds books for RWWA.

¹ RWWA application for re-authorisation at paragraph 2.5.

² The Australian Financial Review. Crown's \$150m stake in CrownBet sold to Canada's The Stars Group. 28 February 2018. < <https://www.afr.com/business/gambling/crowns-150m-stake-in-crownbet-sold-to-canadas-the-stars-group-20180226-h0wo92>>

³ 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.

- e. CrownBet performs the final calculations that determine the odds that RWWA offers on its fixed odds wagering products.
- 3.5. The services that CrownBet will provide under the Amended 2012 Agreement include:
- a. Establishing and managing fixed odds books (covering the same range of events and bet types offered by CrownBet to its own customers) on behalf of RWWA.
 - b. Accepting and processing the above fixed odd investments on behalf of RWWA, in accordance with risk thresholds and target margin parameters provided to CrownBet by RWWA.
 - c. Providing wagering and risk management services in respect of each book utilising CrownBet'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).
 - d. Conducting related activities, including undertaking research and managing event selling and fixed returns (including by 'laying off' wagers in accordance with the risk parameters).
 - e. A range of implementation services, sports betting technology and ancillary services in relation to the books.

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

- 3.6. The Amended 2012 Agreement will not limit the fixed odds that CrownBet can offer in respect of its own books.
- 3.7. RWWA submits that it will independently provide the risk threshold and target margin parameters to CrownBet. CrownBet will use and apply 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.
- 3.8. RWWA submits that the Conduct that will be involved in the Amended 2012 Agreement is the same as the conduct under the 2012 Agreement as it stood when authorisation AA1000405 was granted.

4. Consultation

- 4.1. The ACCC invited submissions from 60 potentially interested parties including major competitors, peak bodies, industry associations and relevant government agencies. No interested party submissions were received.

5. ACCC assessment

Relevant areas of competition

- 5.1. To assess the effect of the Proposed Conduct, the ACCC may identify the relevant areas of competition likely to be impacted.

- 5.2. The ACCC considers that the areas of competition which it applied in Authorisation Determination AA1000405 remain relevant to its assessment of Conduct, namely:
 - a. the supply of wagering and risk management services necessary to provide fixed odds wagering services to the public; and
 - b. the provision of wagering services to the public.
- 5.3. 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 and Paddy Power/Sportsbet, but notes that it is not aware of these businesses supplying their internal wagering and risk management services to external parties.
- 5.4. In the provision of wagering services to the public, RWWA competes with bookmakers to provide wagering services to punters. RWWA's competitors include CrownBet, Tabcorp, Sportsbet (wholly owned by Paddy Power), Bet365, Unibet, Ladbrokes and other bookmakers.

Future with and without

- 5.5. 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.
- 5.6. RWWA submits that authorising the Conduct will maintain the status quo, allowing the current arrangements to continue until the expiry of the Amended 2012 Agreement. This will allow RWWA to continue to supply fixed odds wagering products to its customers and to continue as a more effective competitor to the other suppliers of fixed odds wagering products in the Australian market.
- 5.7. RWWA submits that if authorisation is not granted, TSGW would be required to provide the Management Services to RWWA under the 2012 Agreement, which is likely to lead to the termination of the 2012 Agreement. In response, RWWA could seek to receive equivalent management services from an alternate supplier (which it does not consider likely) or could establish the systems and employ personnel necessary to provide its own management service (which may be applied to racing bets, but are unlikely to apply to fixed odds wagering products for other sporting events).
- 5.8. RWWA submits that the cost of establishing its own Management Services is a significant consideration for it, particularly in light of its possible privatisation.
- 5.9. 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. Such an arrangement would, like the current arrangement, have the potential to breach the Act unless an authorisation was in place.
- 5.10. 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 Amended 2012 Agreement.
- 5.11. 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, and accordingly it would be a weaker competitor.

Public benefits

5.12. The ACCC has considered the following claimed public benefits of the Proposed Conduct:

- Improved efficiency in the provision of wagering services.
- Increased competition in the wagering industry.
- Other claimed benefits.

RWWA's submissions

5.13. RWWA submits that it lacks:

- The expertise and technology required to manage the risk in its books.
- Sufficient size and scale to achieve the liquidity needed to effectively manage risk.

As such, RWWA could not independently conduct fixed odds wagering for any extended period of time. The Amended 2012 Agreement addresses a range of commercial obstacles that RWWA faces in offering fixed odds wagering products to its customers.

5.14. RWWA considers the efficiencies generated by the 2012 Agreement, which would continue under the Amended 2012 Agreement, have enabled it to conduct its fixed odds wagering in a more competitive manner than would have occurred in the absence of the 2012 Agreement.

5.15. RWWA submits that the Conduct provides benefits by ensuring that RWWA can continue to offer its existing fixed odds wagering products to punters. It also submits that the Conduct 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.

5.16. RWWA submits that the Conduct 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 Conduct 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.

5.17. RWWA submits that allowing the Conduct 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.

ACCC's view

5.18. The ACCC considers that the Conduct is likely to 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 by avoiding the additional transactions costs that it may otherwise incur in establishing a risk management system that would be operated in-house or through another provider.

- 5.19. 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.
- 5.20. As the amendments proposed to the 2012 Agreement make provision for CrownBet to transition into the role of RWWA's management service provider with the assistance of the current parties, the ACCC considers that giving effect to the Amended 2012 Agreement will allow RWWA to avoid replicating the fixed costs of establishing Management Services and acquire the essential Management Services from CrownBet at a lower cost than in the future without the Conduct.
- 5.21. The ACCC considers the Conduct is also likely to enable RWWA to produce a larger number and broader range of fixed odds wagering products at more competitive odds as a result of lower production costs. Therefore, the ACCC considers it is likely that the Conduct will result in productive efficiency benefits and would enable RWWA to offer fixed odds wagering products to consumers at a better price than in the future without the Conduct.
- 5.22. The ACCC considers that allowing the Conduct 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, in turn, enhancing 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.
- 5.23. The ACCC considers that, to the extent that allowing the Conduct may benefit the Western Australian economy and racing industry, any such benefits result from the benefit of 'Improved efficiency in the provision of wagering services' and have already been considered.

Public detriments

- 5.24. The ACCC considers that the Conduct is likely to result in little if any public detriment since the Amended 2012 Agreement essentially facilitates an outsourcing by RWWA of services that it cannot efficiently and cost-effectively provide itself.
- 5.25. The ACCC considers the main areas of possible detriment that might result from the Conduct are that giving effect to the Amended 2012 Agreement might allow for coordination between RWWA and CrownBet, particularly with respect to the fixed odds that each offers, or will have the overall effect of reducing competition with respect to wagering.
- 5.26. The ACCC notes that it is the corporate bookmakers (and not the totalisators) that drive price competition in fixed odds wagering for off-course consumers.⁴ To the extent the Conduct diminishes any potential constraint RWWA and CrownBet may impose on each other, other corporate bookmakers (including those noted in paragraph 5.4) will impose a significant level of constraint from RWWA and CrownBet providing less favourable odds or reducing services.
- 5.27. The ACCC notes that RWWA and CrownBet offer different prices for their wagering products because they set their risk thresholds and target margin parameters independently. There is little/no transparency around these parameters.

⁴ 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.

5.28. 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 CrownBet 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 CrownBet 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.

Balance of public benefit and detriment

5.29. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the conduct would be likely to result in a benefit to the public and that benefit would outweigh any detriment to the public that would be likely to result from the conduct.

5.30. The ACCC considers that the 2012 Agreement has improved 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 and that the Conduct is likely to result in these benefits continuing during the next ten years.

5.31. For the reasons outlined in this 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.

5.32. Accordingly, the ACCC proposes to grant authorisation for the Conduct.

Length of authorisation

5.33. The Act allows the ACCC to grant authorisation for a limited period of time.⁵ 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.

5.34. In this instance, RWWA seeks re-authorisation until 30 December 2028 which will allow it to see out the remainder of the amended 2012 Agreement, providing the efficiency benefits outlined.

5.35. Given the public benefits likely to result from the Conduct, the limited public detriments and the long period over which variants of the Conduct have previously been authorised by the ACCC, the ACCC proposes to grant authorisation for the remaining term of the amended 2012 Agreement, being until 30 December 2028.

6. Draft determination

The application

6.1. On 24 May 2018, RWWA lodged an application under section 91C(1) of the Act to revoke authorisation AA1000405 and substitute it with authorisation AA1000423.⁶

⁵ Section 91(1).

⁶ 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.

- 6.2. RWWA seeks authorisation for itself and on behalf of TSGW and CrownBet to give effect to all the provisions of the Amended 2012 Agreement, which consists of the 2012 Agreement as amended by the Amendment Agreement and the Deed of Novation between RWWA, TSGW and CrownBet dated 11 May 2018 (Conduct). Authorisation is sought until 30 December 2028.
- 6.3. Authorisation is sought because the Conduct may be cartel conduct within the meaning of Division 1 of Part IV of the Act, or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.
- 6.4. Subsection 90A(1) of the Act requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

The net public benefit test

- 6.5. For the reasons outlined in this draft determination, the ACCC is satisfied, pursuant to subsections 90(7) and 90(8) of the Act, that in all the circumstances the Conduct for which authorisation is sought would result or be likely to result in a benefit to the public that would outweigh any detriment to the public that would result or be likely to result from the Conduct.

Conduct which the ACCC proposes to authorise

- 6.6. The ACCC therefore proposes to revoke authorisation AA1000405 and grant authorisation AA1000423 in substitution.
- 6.7. The ACCC proposes to authorise RWWA, TSGW and CrownBet to give effect to all the provisions of the Amended 2012 Agreement, as it stands at the time of authorisation. For the avoidance of doubt, authorisation is proposed in respect of the Amended 2012 Agreement which comprises of the 2012 Agreement as amended by the Amendment Agreement and Deed of Novation between RWWA, TSGW and CrownBet dated 11 May 2018, as provided to the ACCC by RWWA at the time of its application. Any further changes to the Amended 2012 Agreement during the term of the proposed authorisation would not be covered by the proposed authorisation.
- 6.8. Authorisation AA1000423 is proposed in so far as the conduct described in paragraph 6.7 may be cartel conduct 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.
- 6.9. The ACCC proposes to grant authorisation AA1000423 until 30 December 2028.
- 6.10. This draft determination is made on 29 July 2018

Interim authorisation

- 6.11. At the time of lodging the application, RWWA advised that the re-authorisation is intended to allow RWWA to continue to receive Management Services in line with those described in the 2012 Agreement and allow a transition from TSGW to CrownBet as the Management Service provider.
- 6.12. In order to allow RWWA to continue to receive services and allow the transition pending the ACCC consideration of the application, the ACCC has decided to suspend the operation of Authorisation AA1000405 and grant interim authorisation in substitution under subsection 91(2)(f) of the Act in respect of the application for authorisation AA1000423.

6.13. Interim authorisation is granted to RWWA, TSGW and CrownBet to give effect to all the provisions of the Amended 2012 Agreement as it stands at the time interim authorisation is granted (see paragraph 6.7).

6.14. Interim authorisation comes into effect immediately and will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

7. Next steps

7.1. The ACCC now seeks submissions in response to this draft determination. In addition, consistent with section 90A of the CCA, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.