



AUSTRALIAN  
COMPETITION  
& CONSUMER  
COMMISSION

# Statement of Reasons

in respect of a notification lodged by  
Victorian Off-Course Agents Association Inc.

in respect of  
collective bargaining with Tabcorp Wagering  
(Vic) Pty Ltd

Date: 27 September 2018

Notification number: CB10000457

Commissioners:  
Sims  
Keogh  
Featherston

## Summary

The ACCC has decided not to object to the notification lodged by the **Victorian Off-Course Agents Association Inc. (VOCAA)** to enable VOCAA to negotiate the terms of a new Distribution Services Agreement with Tabcorp on behalf of its current and future TAB Agent members.

VOCAA currently has 70 members that supply betting services to the public as agents of Tabcorp. Participation in collective bargaining is voluntary for both the TAB Agents and Tabcorp.

The ACCC has allowed similar collective bargaining arrangements involving VOCAA, its agent members and Tabcorp since 2012.

The ACCC has decided to allow the immunity provided by the notification to remain in force for 10 years until 2 September 2028, unless it is withdrawn or revoked.

The ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the likely benefit to the public from the notified conduct will not outweigh the likely detriment to the public from the conduct.

## The notification

1. On 3 September 2018, the Victorian Off-Course Agents Association Inc. (**VOCAA**) lodged a collective bargaining notification<sup>1</sup> to enable VOCAA to negotiate the terms of a new Distribution Services Agreements (**Tabcorp Agreement**) with Tabcorp Wagering (Vic) Pty Ltd (**Tabcorp**) on behalf of its current and future TAB agency members (**Notified Conduct**).
2. TAB agencies have been appointed by the target, Tabcorp, to act as agents in respect of the provision of off-course wagering services to the public (excluding at licensed premises) on behalf of Tabcorp. VOCAA anticipates that each TAB agent will enter into a separate agreement with Tabcorp following the collective negotiations.
3. VOCAA submits that the proposed arrangements are voluntary for both TAB agents and Tabcorp and do not involve any boycott activity by the agents.
4. This is the third collective bargaining notification received from VOCAA for similar arrangements.<sup>2</sup> VOCAA has previously had immunity under similar collective bargaining notifications lodged with the ACCC in 2012 and 2015.

## Background

5. VOCAA currently represents 70 agents who operate 91 stand-alone off-course TAB agencies at various locations throughout Victoria (excluding licensed premises) to

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<sup>1</sup> Businesses can obtain protection from legal action under the *Competition and Consumer Act 2010 (CCA)* for collective bargaining including associated collective boycotts by lodging a collective bargaining notification with the ACCC. Protection for collective bargaining (which does not involve a collective boycott) will generally commence 14 days after the collective bargaining notification is lodged.

<sup>2</sup> See collective bargaining notifications – CB00280 in 2012 and CB00288 in 2015.

supply a betting service to the public as agents of Tabcorp (**Wagering Services**). Stand-alone off-course TAB agencies are different from Tabcorp wagering operations which are located in licensed venues (i.e. PubTABs or ClubTABs).

6. The TAB agents enable customers to bet at TAB premises, watch major sporting activities, including, but not limited to horse racing, harness racing and greyhound racing events, open accounts to enable customers to bet on their own devices and to deposit and withdraw funds from betting accounts managed by Tabcorp.
7. The current Tabcorp Agreement expires on 30 June 2019 (or as otherwise agreed between Tabcorp and VOCAA). VOCAA proposes to commence negotiating the terms of a new agreement with Tabcorp on behalf of the TAB agents in late 2018 or early 2019.
8. Under the existing Agreement between Tabcorp and the TAB Agency members, Tabcorp has obligations to the agents, including payment of agency fees and commissions and the supply of business premises, fit out, equipment and facilities, training, promotional material, manuals, information and assistance, licences and public liability insurance.
9. The principal responsibilities of the agents under the Agreement include operating the agency in accordance with the terms and conditions of the Agreement, promotion and development of the supply of Wagering Services, providing an efficient betting service to the public and employing trained personnel to provide Wagering Services on major racing days such as Melbourne Cup Day.

## Consultation

10. The ACCC invited submissions from a range of interested parties including Tabcorp.
11. Tabcorp advised that while it does not consider it has market power in respect of its negotiations with TAB agents, provided there is no collective boycott activity, it does not object to the notification.
12. No other submissions were received.
13. A copy of VOCAA's notification and relevant public documents are available from the [ACCC's public register](#).

## ACCC's assessment

14. The ACCC has considered the Notified Conduct in accordance with section 93AC of the *Competition and Consumer Act 2010* (**CCA**).
15. In doing so, the ACCC has taken into account:
  - The likely future with and without the Notified Conduct. In particular, the ACCC considers that, absent the Notified Conduct, each member of the VOCAA is likely to negotiate the terms of their agreement with Tabcorp for the supply of Wagering Services on an individual basis.
  - The relevant areas of competition likely to be affected by the Notified Conduct. The ACCC considers that the primary areas of competition include the:

- supply of Wagering Services to consumers – that is, competition between agents, hotels and clubs, and internet and telephone betting services in the provision of such services to consumers and
- distribution of Wagering Services for Tabcorp in Victoria.

The TAB agencies are the relevant suppliers of Wagering Services to consumers on behalf of Tabcorp. The TAB agencies therefore also supply distribution services to Tabcorp, which is a significant acquirer of these services in Victoria.

## **Public benefits**

16. The ACCC considers that the Notified Conduct is likely to result in the following public benefits from improved efficiencies through:
  - Increased input into contracts: The ACCC considers that collective bargaining may improve the ability for TAB agencies to have better input into contracts than they would be able to achieve on their own. While Tabcorp submits that it does not have market power in respect of its negotiations with agents, the ACCC considers that small businesses negotiating with larger businesses can be at a disadvantage due to fewer resources, access to information and less negotiating experience. Collective bargaining may allow for more effective negotiation, where the negotiating parties have a greater opportunity to identify and achieve business efficiencies that better reflect the circumstances of TAB agents and Tabcorp, for example on common issues including commissions, equipment and industry development. Collective bargaining may also enable members of VOCAA to become better informed of relevant market conditions, which is likely to improve their input into contractual negotiations with Tabcorp to achieve more efficient outcomes. VOCAA submits its members will be able to pass on at least some of the benefits of any more favourable terms it negotiates in the form of improvements to service levels provided by the agents to consumers.
  - Transaction costs savings (such as negotiation and contracting costs): The ACCC considers that collective bargaining by the TAB agents may result in savings (such as from sharing legal and expert advice, and the time taken to negotiate) from the reduced number of negotiations that would otherwise take place between Tabcorp and each of the TAB agencies on an individual basis.

## **Public detriment**

17. The ACCC considers that the Notified Conduct is likely to result in minimal, if any, public detriment from a reduction in competition between TAB agencies for the supply of Wagering Services to consumers, and the distribution of Wagering Services for Tabcorp because:
  - The bargaining group is limited to current and future members of VOCAA and does not include other providers of Tabcorp's betting services such as those provided on-course or at pubs and clubs. Accordingly, there are various alternative venues from which consumers can obtain Wagering Services and betting services and through which Tabcorp can have Wagering Services and betting services distributed.

- Participation in the Notified Conduct is voluntary for members of VOCAA and for Tabcorp. TAB agencies are free to negotiate individual supply arrangements, or variations of any collectively negotiated contracts, with Tabcorp at any time.
- The Tabcorp Agreement does not reduce competition between agents on service levels and the agreement does not restrict the ability of the parties to compete in other ways, for example, on quality or services.

### **Period for which the notification will be in force**

18. A collective bargaining notification (and therefore the protection it confers) will be in force for a period of three years from the date it is lodged unless the ACCC determines that another period is appropriate or the notification is withdrawn or revoked.
19. In this case, VOCAA has asked that the notification remain in place for at least six years because Tabcorp's wagering and betting licence in Victoria expires in six years' time (in August 2024).<sup>3</sup>
20. The ACCC considers that it is appropriate for the notification to remain in force for 10 years, that is, until 2 September 2028 for the following reasons:
  - The likely benefits of the Notified Conduct may be expected to continue for the duration of the Notified Conduct and therefore total benefits are likely to be greater with the extended notification period.
  - The extended notification period is unlikely to increase the minimal public detriment which is likely to result from the Notified Conduct.
  - No concerns have been raised with the ACCC during the six year period that VOCAA has had immunity for identical collective bargaining conduct.

### **Decision**

21. The ACCC considers that the benefit to the public that is likely to result from the Notified Conduct will outweigh the detriment to the public that is likely to result.
22. Accordingly, the ACCC does not object to the notification at this time. As with any notification, in accordance with s 93AC, the ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the public benefit does not outweigh the public detriment.
23. With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 20, in accordance with s 93AD(5), the ACCC is satisfied that:
  - a three year notification period is not appropriate in all the circumstances, and

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<sup>3</sup> *Gambling Regulation Act 2003* (Vic), Wagering and Betting Licence  
 Victorian Commission for Gambling and Liquor Regulation, *Single state wagering licensee*, See:  
<https://www.vcglr.vic.gov.au/gambling/wagering-and-sports-betting/about-wagering-and-sports-betting/single-state-wagering-licensee>

- another period is appropriate in all the circumstances, being the period ending on 2 September 2028.<sup>4</sup>
24. Accordingly, the protection provided by notification CB10000457 commenced on 17 September 2018 and will continue until 2 September 2028, unless the notification is withdrawn or revoked.
25. This Statement of Reasons serves as the written notice and written statement of reasons for giving that notice required by section 93AD(6) of the CCA.

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<sup>4</sup> As required by s 93AD(5)(b), this period will end no later than 10 years after the day that the notification was lodged.