

30 November 2007

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Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Mr Gregson

**Tabcorp Manager Pty Ltd - Applications for Authorisation A91065, A91066 and A91067
TOTE Tasmania Pty Ltd ('TOTE Tasmania') Submission**

We refer to the above application for authorisation made by Tabcorp Manager Pty Ltd. We enclose the following:

- a confidential submission and confidential annexure; and
- a non-confidential, redacted public version of the submission.

Pursuant to section 89(5) of the *Trade Practices Act 1974*, TOTE Tasmania requests that the redacted particulars in the confidential version of the submission attached be excluded from the public register by reason that the information contained therein is commercially or strategically confidential and sensitive to TOTE Tasmania or, in certain cases, is the subject of contractual obligations of confidentiality to other persons.

Please contact Geoff Carter on (03) 8608 2168 if you require any further information in relation to TOTE Tasmania's submission.

Yours faithfully

MINTER ELLISON



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[RESTRICTION OF PART OF PUBLICATION CLAIMED]

Re Application for
Authorisation of the 2007
SuperTAB Pooling agreement
between Tabcorp Manager
Pty Ltd and TOTE Tasmania
Pty Ltd

Submission by TOTE
Tasmania Pty Ltd

PUBLIC VERSION

30 November 2007

TOTE Tasmania

Application for Authorisation - Supporting Submission

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1. Executive Summary

This submission is made by TOTE Tasmania Pty Ltd (**Tote Tasmania**) in support of the application for authorisation by Tabcorp Manager Pty Ltd (**Tabcorp**) in relation to an agreement dated 23 October 2007 between Tabcorp and TOTE Tasmania governing TOTE Tasmania's participation in the SuperTAB pool (**2007 Agreement**).

The relevant conduct under the 2007 Agreement that is the subject of Tabcorp's application can broadly be summarised as follows:

- (a) a restriction on TOTE Tasmania re-supplying Tabcorp's pooling services to any other totalisator;
- (b) a requirement that TOTE Tasmania transmits all investments on the specified bet types on nominated Tabcorp races to Tabcorp for inclusion in the SuperTAB pool;
- (c) a requirement for TOTE Tasmania to acquire race fields approvals from various bodies; and
- (d) a requirement for TOTE Tasmania to comply with the Tabcorp Betting Rules, which includes the applicable commission rates to be charged by a totalisator on particular bet types.

In considering this application, the Australian Competition and Consumer Commission (**Commission**) must undertake a net public benefit assessment, comparing the anti-competitive detriment (if any) and the public benefits that will result from the conduct.

TOTE Tasmania submits that the conduct for which authorisation is sought will result in significant public benefits in the following recognised categories:

Tasmanian Consumers

The 2007 Agreement will give TOTE Tasmania customers access to more stable and liquid pari-mutuel betting products offered through the existing retail distribution network in Tasmania. Without the 2007 Agreement, a reduction in choice of wagering products available to Tasmanian consumers would mean **[RESTRICTION OF PART OF PUBLICATION CLAIMED]**

Tasmanian Racing Industry

Any benefit that will be derived from the 2007 Agreement by TOTE Tasmania will flow through as benefits to the Tasmanian racing industry. TOTE Tasmania makes significant financial contributions to the industry each year, and is critical to the viability of the industry which represents an important sporting and cultural community in Tasmania.

Tasmanian Economy and Government

TOTE Tasmania also makes an important contribution to the Tasmanian economy in terms of output, employment and the contribution of dividends and taxes.

Victorian Racing Industry and Economy

The Victorian racing industry is also expected to benefit from the arrangements under the 2007 Agreement. VicRacing receives a percentage of the service fee that TOTE Tasmania pays to Tabcorp under the 2007 Agreement and this financial support for the Victorian racing industry has flow on effects for the Victorian economy and employment.

Racing and Wagering Industry Generally

Having a viable and competitive TOTE Tasmania will provide an enhanced competitive environment between other totalisators and corporate bookmakers relative to the counterfactual scenario, **[RESTRICTION OF PART OF PUBLICATION CLAIMED]**

[REDACTED]. The arrangements under the 2007 Agreement mean that non-Tasmanian consumers will benefit by having access to an alternative provider of pari-mutuel wagering services. The 2007 Agreement will support the production of more racing content in Tasmania, which will benefit totalisators and bookmakers operating in all Australian states and territories, providing mutual benefits for the racing industries, economies and Governments of those other states and territories.

In contrast, TOTE Tasmania considers that there is likely to be little (if any) public detriment arising from the relevant conduct under the 2007 Agreement. On this basis, TOTE Tasmania submits that the conduct under the 2007 Agreement should be authorised.

2. Introduction

On 23 October 2007, Tabcorp and TOTE Tasmania entered into an agreement governing TOTE Tasmania's participation in the SuperTAB pool (**2007 Agreement**).

This submission is made by TOTE Tasmania Pty Ltd in relation to the application for authorisation by Tabcorp pursuant to sections 88(1) and 88(8) of the *Trade Practices Act 1974* (Cth) (**TPA**) to make the 2007 Agreement and give effect to certain provisions of the 2007 Agreement (**Application**).

3. Confidentiality

Confidential parts of this submission have been redacted by TOTE Tasmania. The Commission will be provided with a confidential version of this submission that includes these redacted parts.

4. Background

4.1 Industry

The background to the industry is set out in section 4 of Tabcorp's submission in support of its Application dated 6 November 2007 (**Tabcorp Submission**). As TOTE Tasmania considers that the description of the industry set out in section 4 is broadly accurate and sufficient for present purposes, TOTE Tasmania does not intend to provide further detailed background information in this submission. TOTE Tasmania would be pleased to provide any further specific information about the industry that the Commission may request.

4.2 TOTE Tasmania

As described in section 3.2 of the Tabcorp Submission, TOTE Tasmania is a state-owned company established by the Tasmanian Government to provide wagering services and administrative and financial support for the Tasmanian Racing Industry (**TRI**).

The objectives of TOTE Tasmania, as set out in section 7 of the *TOTE Tasmania Act 2000* (Tas), include:

- (a) the promotion the development of an efficient and effective racing and breeding industry; and
- (b) the promotion of the Tasmanian racing within the State and nationally, encouraging wagering on Tasmanian racing and to attract sponsorship income.

TOTE Tasmania is responsible for the non-probity functions of the TRI, including the planning, administering, marketing and development of thoroughbred, harness and greyhound racing within Tasmania and nationally. TOTE Tasmania is central to developing and maintaining a vibrant and successful racing industry in Tasmania. The TRI includes breeders, owners, trainers, race clubs and bookmakers as well as TOTE Tasmania itself.

In addition to direct funding, TOTE Tasmania provides a number of functions including:

- (a) payment of stakes to winners and place getters of races;
- (b) providing legal, administrative, human resource support to racing clubs and other industry bodies;
- (c) arranging and heavily subsidising the cost of insurances to race clubs and other racing bodies;

- (d) payment of riding fees to jockeys and drivers;
- (e) the maintenance and preparation of all major racing facilities in Tasmania including three racing centres and three training centres;
- (f) overseeing the financial arrangements of each of the three codes of racing;
- (g) setting race dates;
- (h) managing all audio visual rights on behalf of the TRI, including the production of vision and audio for SKY Channel and racing radio throughout Australia;
- (i) enhancing the safety and welfare of racing industry participants; and
- (j) promoting racing and breeding, including obtaining sponsorships for race clubs – TOTE Tasmania secures most significant sponsorship arrangements on behalf of the industry.

5. Conduct

5.1 Relevant provisions of the 2007 Agreement

Tabcorp has described the relevant conduct under the 2007 Agreement that is the subject of the Application in the following terms:

- (a) Tabcorp provides pooling services to TOTE Tasmania on the condition that TOTE Tasmania does not re-supply those pooling services to any other totalisator (**Pooling Restriction**);¹
- (b) Tabcorp provides pooling services to TOTE Tasmania on the condition that TOTE Tasmania transmits to Tabcorp for inclusion in the SuperTAB pool all investments on the specified bet types received by TOTE Tasmania on nominated Tabcorp races (**Investment Requirement**);²
- (c) Tabcorp provides pooling services to TOTE Tasmania on the condition that TOTE Tasmania acquires Race Fields Approvals from Racing Victoria Limited (**RVL**), Greyhound Racing Victoria (**GRV**) and Harness Racing Victoria (**HRV**) (**Race Fields Approvals Requirement**);³ and
- (d) TOTE Tasmania agrees to comply with the Tabcorp Betting Rules in respect of all pooled bets (**Tabcorp Betting Rules Requirement**). The Tabcorp Betting Rules specify the applicable commission rates to be charged by the totalisator on particular bet types (**Commission Rates Provision**).⁴

6. TOTE Tasmania's commercial rationale for pooling

6.1 Introduction

TOTE Tasmania's business is much smaller than the corresponding wagering businesses operated by the two largest totalisator groups in Australia, namely Tabcorp and UNiTAB. As noted in the Tabcorp Submission, TOTE Tasmania's turnover and share of the national TAB pari-mutuel

¹ 2007 Agreement, clause 8.1.

² 2007 Agreement, clause 5.1.

³ 2007 Agreement, clauses 2.1(b), 1.1 (Definitions) and Part II of Schedule C.

⁴ 2007 Agreement, clause 5.6(b).

wagering market on racing in 2004-05 was approximately \$287 million or 2.39% compared to Tabcorp turnover in excess of \$3 billion or 27%.⁵

An inherent characteristic of pari-mutuel wagering is that punters effectively bet against all other punters on the relevant race, rather than against a specific counterparty offering fixed odds. The dividend and odds available on a particular contingency therefore vary to some degree each time a wager is made, as the size of the pool and the relative amount of money bet on each contingency for a particular event changes until the totalisator is closed on that event.

This characteristic of pari-mutuel betting is well understood by most, if not all, regular users of totalisator betting products. For higher value punters, it is of particular importance as even a single large bet can substantially affect the odds for a particular contingency. The Tabcorp Submission provides some mathematical examples of this phenomenon.⁶

A primary commercial imperative for any totalisator is therefore to be in a position to be able to offer a pool of wagers of sufficient size to enable stable prices across all races and bet types. This is a pre-requisite to being able to offer an attractive pari-mutuel betting product.

6.2 Benefits of pooling generally

TOTE Tasmania, and other smaller totalisators, have insufficient turnover to generate stable prices across all races and bet types.

A primary commercial rationale for TOTE Tasmania in entering into a pooling agreement is therefore to obtain access to a larger pool on terms and conditions that enable it to consistently offer the benefits of a larger pool to its customers. The secondary commercial rationale is to use that enhanced product offering to build a successful and profitable business capable of meeting its statutory objective and maintaining an adequate level of funding to the TRI.

[RESTRICTION OF PART OF PUBLICATION CLAIMED]

[REDACTED]

Specific commercial benefits to TOTE Tasmania

As noted in TOTE Tasmania's supporting submission in relation to Tabcorp's application for interim authorisation (**Interim Authorisation Submission**), TOTE Tasmania has been acquiring pooling services from Tabcorp since at least 1991. Tabcorp and TOTE Tasmania currently have an agreement on foot, pursuant to which Tabcorp has provided pooling services to TOTE Tasmania since 22 September 1998 (the **1998 Agreement**). [RESTRICTION OF PART OF

PUBLICATION CLAIMED] [REDACTED]

[RESTRICTION OF PART OF PUBLICATION CLAIMED] [REDACTED]

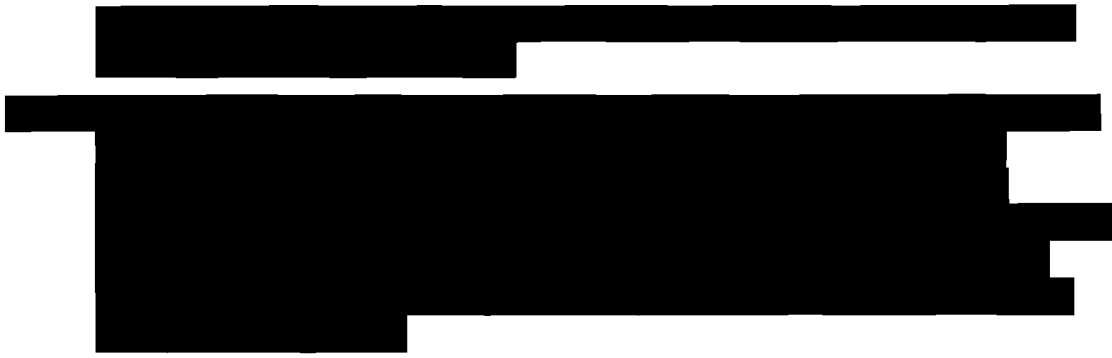
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⁵ Table 7 of the Tabcorp Submission.

⁶ See section 5.2(b) of the Tabcorp Submission.



7. Market definition

7.1 Tabcorp approach to market definition

In the Tabcorp Submission, Tabcorp does not advocate a particular market definition in respect of any of the markets relevant to the Application. Rather, Tabcorp submits that:

- (a) there are a number of arguable markets that may be relevant to the Commission's consideration of the Application; and
- (b) in respect of each of these markets, the 2007 Agreement would result in significant public benefits and minimal competitive detriments, such that the statutory tests for authorisation are satisfied.

7.2 TOTE Tasmania's views on market definition

TOTE Tasmania similarly considers that it is not necessary to form a definitive view on market definition in order to assess the public benefits of the 2007 Agreement.

Rather, it is sufficient to discuss the net public benefits arising from the Application in the context of:

- (a) a racing and wagering market - in TOTE Tasmania's view, there is no necessity to reach a concluded view on the geographic scope of such markets within Australia, provided it is recognised that there are a range of contestable customers in Australia for whom totalisators and bookmakers (especially corporate bookmakers) offer wagering products; and
- (b) a national market for the supply of pooling services by larger totalisators to smaller totalisators.⁸

8. Factual and counterfactual

8.1 Introduction

In undertaking any net public benefit assessment, the Commission administers a forward looking test comparing both the anti-competitive detriment (if any) and public benefits in the 'factual' scenario (ie a future in which it is assumed the relevant conduct is authorised) versus the 'counterfactual(s)' (ie a future(s) in which it is assumed that the relevant conduct is not authorised).

⁸ As recognised by the Commission in the Tabcorp - UNiTAB Public Competition Assessment.

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8.2 Factual

The future with the 2007 Agreement is described in section 7.3 of the Tabcorp Submission. Self evidently, in a future with the 2007 Agreement TOTE Tasmania would participate in the SuperTAB pool pursuant to the terms of the 2007 Agreement [REstriction of Part of Publication Claimed]

TOTE Tasmania would have the commercial ability to offer access to the SuperTAB pool to its customers by offering to transmit investments made by its customers to Tabcorp for inclusion in the SuperTAB pool. As described elsewhere, the SuperTAB pool is much larger than an individual pool TOTE Tasmania could operate on its own. The characteristic of the wagering service offered by TOTE Tasmania to its customers would therefore be significantly enhanced in terms of the stability and liquidity of the wagering pool.

As TOTE Tasmania has pooled since 1991 with Tabcorp (since 1998 pursuant to the terms of the 1998 Agreement), the 'factual' scenario is in many respects a continuation of the status quo. However, as noted in the Interim Authorisation Submission, there are aspects in respect of which the arrangements differ.

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An additional restriction in the 2007 Agreement, is that TOTE Tasmania is prevented from resupplying Tabcorp's pooling services to any other wagering operator.¹¹ TOTE Tasmania does not regard this as having any practical commercial significance. [REstriction of Part of Publication Claimed]

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[REstriction of Part of Publication Claimed]

¹¹ Clause 8 of the 2007 Agreement.

In terms of exclusivity in relation to the supply of pooling services, the effect of the 2007 Agreement would be to extend the status quo (ie TOTE Tasmania would pool only with Tabcorp in relation to the bet types specified in the 2007 Agreement) [RESTRICTION OF PART OF PUBLICATION CLAIMED] [REDACTED]

8.3 Counterfactual

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Principal counterfactual

As discussed above, it is commercially imperative that TOTE Tasmania is able to enter into a pooling arrangement with a large totalisator.

If the Commission does not grant authorisation, this would imply that there were anti-competitive detriment arising from contraventions of the TPA that outweighed any public benefit arising from the conduct.

[RESTRICTION OF PART OF PUBLICATION CLAIMED] [REDACTED]

As noted by the Commission in the proposed UNiTAB/Tabcorp merger,¹² it would also not be commercially practical for smaller totalisators (eg. ACT, Western Australia and Tasmania) to form their own pool, as such a pool 'would be unlikely to be of sufficient size to be commercially attractive, particularly to large punters'.

Accordingly, TOTE Tasmania considers that the appropriate counterfactual is a future in which TOTE Tasmania and other TABs are unable to pool with any other totalisator.

[RESTRICTION OF PART OF PUBLICATION CLAIMED] [REDACTED]

[RESTRICTION OF PART OF PUBLICATION CLAIMED] [REDACTED]

[RESTRICTION OF PART OF PUBLICATION CLAIMED] [REDACTED]

[RESTRICTION OF PART OF PUBLICATION CLAIMED] [REDACTED]

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¹² Proposed acquisition of UNiTAB by Tabcorp (2006), Public Competition Assessment, ACCC, paragraph 25.

Alternative counterfactual

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[RESTRICTION OF PART OF PUBLICATION CLAIMED] [REDACTED]

[RESTRICTION OF PART OF PUBLICATION CLAIMED] [REDACTED]

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[RESTRICTION OF PART OF PUBLICATION CLAIMED] [REDACTED]

[RESTRICTION OF PART OF PUBLICATION CLAIMED] [REDACTED]

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[RESTRICTION OF PART OF PUBLICATION CLAIMED] [REDACTED]

9. Anti-competitive detriment

9.1 Introduction

In TOTE Tasmania's view, there is likely to be little (if any) public detriment arising from the relevant conduct under the 2007 Agreement.

It is convenient to discuss potential public detriment in relation to each relevant category of conduct for which authorisation is sought (as described in section 4.1 above).

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9.2 Pooling Restriction

This restriction prevents TOTE Tasmania from resupplying Tabcorp's pooling services to any other wagering operator. In the Tabcorp Submission, Tabcorp states that this provision is designed to prevent TOTE Tasmania being used as a vehicle to allow other wagering operators to pool with Tabcorp indirectly without Tabcorp's consent, and potentially without its knowledge. Tabcorp notes that it must be in a position to set the conditions of participation in the SuperTAB pool to ensure the integrity of the pool, comply with anti-money laundering legislation and fulfil its contractual obligations to the VicRacing Pty Ltd (**VicRacing**).

TOTE Tasmania does not have any objection to the inclusion of the pooling restriction and regards this provision as having little, if any, practical commercial significance.

[RESTRICTION OF PART OF PUBLICATION CLAIMED] [REDACTED]

[REDACTED] This restriction therefore does not result in any public detriment nor prevent TOTE Tasmania from engaging in any form of competitive conduct that it would otherwise be likely to engage in.

9.3 Investment Requirement

The Investment Requirement constitutes a form of exclusive dealing engaged in by Tabcorp, in that it effectively requires TOTE Tasmania to pool all bet types specified in the 2007 Agreement with Tabcorp (and not with any other party) during the term of the 2007 Agreement.

It does not apply to bet types not covered by the 2007 Agreement. In respect of these bets, TOTE Tasmania would be free to pool with another counterparty. **[RESTRICTION OF PART OF PUBLICATION CLAIMED]** [REDACTED]

In the Tabcorp Submission, Tabcorp states that the provision has been included in the 2007 Agreement. **[RESTRICTION OF PART OF PUBLICATION CLAIMED]** [REDACTED]

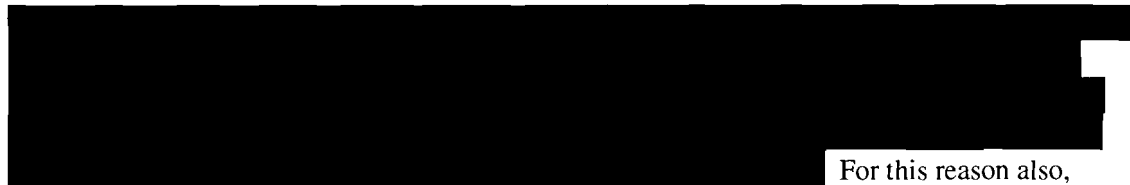
TOTE Tasmania does not have any objection to the Investment Requirement and regards it simply as part of a commercial arrangement which overall is acceptable and in the best interests of TOTE Tasmania. TOTE Tasmania is also of the view that there is little if any public detriment likely to arise from the inclusion of the Investment Requirement. This is for two reasons.

First, if there is to be any anti-competitive impact arising from the restriction, the impact will fall on other potential providers of pooling services who are prevented from contracting with TOTE Tasmania during the term of the contract. **[RESTRICTION OF PART OF PUBLICATION CLAIMED]** [REDACTED]

Secondly, [REDACTED]

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For this reason also, TOTE Tasmania submits that the Investment Requirement does not give rise to any material public detriment.

9.4 Race Fields Approvals Requirement

Tabcorp has sought authorisation for the Race Fields Approval Requirement on the basis of a risk that it may constitute third line forcing by Tabcorp.

If this conduct did constitute third line forcing, it would be TOTE Tasmania which was the 'victim' of that conduct. TOTE Tasmania makes no objection to the Race Fields Approval Requirement and notes that it is a statutory requirement for anyone who wishes to publish Victorian race fields data to obtain the relevant approvals.



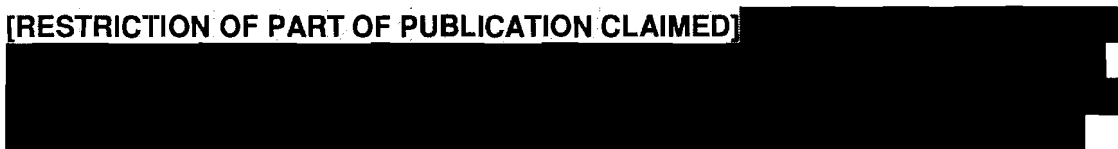
9.5 Commission Rates Provision

In the Tabcorp Submission, Tabcorp notes that clause 5.6 of the 2007 Agreement requires TOTE Tasmania to comply with the Tabcorp Betting Rules and that the Tabcorp Betting Rules specify different commission rates for different types of pooled bets.

Tabcorp also states that the SuperTAB pool operates according to 'gross pool' pricing, not net pool pricing, and that there is no technical ability for Tabcorp to calculate dividends on the basis of different commission rates applied by guest and host participants in the relevant pool. Tabcorp further states that it is not commercially feasible to introduce net pool pricing and would require new regulatory approvals.¹³

Tabcorp further states that in its view there is a risk that the arrangements between Tabcorp and TOTE Tasmania might be construed as having the purpose or effect of fixing, controlling or maintaining the price of pari-mutuel wagering products that are offered by Tabcorp and TOTE Tasmania to their respective customers.¹⁴

TOTE Tasmania does not concede that the Tabcorp Betting Rules Requirement or the Common Rates Commission set out in the 2007 Agreement constitute price fixing under section 45A/45 of the TPA. It is TOTE Tasmania's position that the pooling agreement is a service provided to it by Tabcorp for the purpose of enabling it to offer wagering products to customers characterised by the benefit of participating in a much larger and more stable wagering pool. Specifically, the 2007 Agreement permits TOTE Tasmania to use the pooling services to in turn supply pari-mutuel wagering services to its customers on the basis that such investments will be pooled by TOTE Tasmania in the SuperTAB pool.



¹³ Section 5.3(e)(2) of the Tabcorp Submission.

¹⁴ Section 5.3(e)(3) of the Tabcorp Submission.

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[RESTRICTION OF PART OF PUBLICATION CLAIMED]

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TOTE Tasmania also notes Tabcorp's argument that the degree of competitive rivalry between Tabcorp and TOTE Tasmania is not sufficient to render them relevantly competitive for the purposes of the TPA. [RESTRICTION OF PART OF PUBLICATION CLAIMED]

[REDACTED]

Notwithstanding the forgoing, even if it were concluded (which TOTE Tasmania does not concede is correct) that the Tabcorp Betting Requirement and/or the Common Rates Provision may tend to have the effect of facilitating the offering of standardised prices by SuperTAB pool participants on pooled bets, TOTE Tasmania is of the view that any resulting public detriment is not material and is outweighed by the numerous public benefits referred to below.

[RESTRICTION OF PART OF PUBLICATION CLAIMED]

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10. Public benefits

10.1 Public benefits

In contrast to the little, if any, public detriment that is likely to be associated with the relevant conduct, the public benefits which are expected to arise from the 2007 Agreement are significant.

While TOTE Tasmania has separately analysed the four separate aspects for which authorisation is sought when discussing possible public detriment, TOTE Tasmania has treated the public benefits associated with the various aspects of the 2007 Agreement as being interrelated.

Ultimately, the 2007 Agreement represents a commercial agreement that is the outcome of a mutually acceptable negotiation between TOTE Tasmania and Tabcorp and should properly be considered in its totality when assessing net public benefit.

TOTE Tasmania has also not sought to distinguish between the two main product markets relevant to the submission, namely a market for pooling services and a market for racing and wagering products. In TOTE Tasmania's view, authorisation of the 2007 Agreement would facilitate competition in the pooling services market – by allowing such services to be legally provided to smaller totalisators – in turn providing public benefits in the downstream racing and wagering markets. In TOTE Tasmania's view, the two markets are intrinsically related as are the public benefits and its serves little useful purpose to separate them for the purposes of this submission.

In TOTE Tasmania's view, the public benefits arising from authorisation of the 2007 Agreement will be substantial. TOTE Tasmania submits that these benefits can be usefully categorised into at least 5 discrete categories, each being a category of public benefit of a general type previously recognised by the Commission or the Australian Competition Tribunal:

- Benefits for Tasmanian Consumers
- Benefits for the Tasmanian Racing Industry
- Benefits for Tasmanian Economy and Government
- Benefits for the Victorian Racing Industry, Economy and Government
- Benefits for racing and wagering industry generally.

10.2 Benefits for Tasmanian consumers

Importance of pooling to TOTE Tasmania

As the Commission recognised in its consideration of the proposed UNiTAB/Tabcorp merger,¹⁵ pooling on reasonably commercial terms is critical to the economic viability of smaller totalisators such as TOTE Tasmania.

Indeed, one of the major competitive concerns the Commission had in the context of that proposed merger was the foreclosure of opportunities for totalisators such as TOTE Tasmania to acquire pooling services on reasonable commercial terms if Tabcorp acquired UNiTAB. In that context, the Commission's concern was that the lack of availability of pooling services on reasonable terms would have anti-competitive consequences. As noted above, the primary basis for a competitive offer in pari-mutuel wagering is to provide a pool of wagers sufficient to enable stable prices across all races and bet types. [RESTRICTION OF PART OF PUBLICATION CLAIMED]

[RESTRICTION OF PART OF PUBLICATION CLAIMED]

There are currently only three pools in Australia of this size, Tabcorp and TAB Ltd (also owned and controlled by Tabcorp) and UNiTAB. By contrast, TOTE Tasmania's turnover in the 2006-07 financial year was \$387 million.

Short term benefits to Tasmanian consumers

Participation in the SuperTAB pool pursuant to the terms of the 2007 Agreement will provide TOTE Tasmania with an enhanced product to offer to Tasmanian customers. [RESTRICTION OF PART OF PUBLICATION CLAIMED]

¹⁵ Proposed acquisition of UNiTAB by Tabcorp (2006), Public Competition Assessment, ACCC.

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[REDACTED]

In the short term, the 2007 Agreement therefore provides benefits to customers of TOTE Tasmania in the form of access to more stable and more liquid pari-mutuel betting products offered through an existing on and off course retail distribution network in Tasmania. TOTE Tasmania's retail network is comprised of 120 outlets, 31 of which are independent operations and 89 are run as part of hotel operations. In addition, there is a 50 seat call centre, internet operations and on course facilities at numerous venues around the State. **[RESTRICTION OF PART OF PUBLICATION CLAIMED]** [REDACTED]

The livelihoods of the operators and staff of the 31 independently operated TOTE Tasmania outlets are solely dependent on the provision of stable and liquid pari-mutual products which can be provided under the 2007 Agreement. Further, the 89 hotel operations and the associated staff of these outlets are to varying degrees dependent on the same. **[RESTRICTION OF PART OF PUBLICATION CLAIMED]** [REDACTED]

Long terms benefits to Tasmanian consumers

In the medium to long term, the 2007 Agreement provides the commercial foundation for a financially viable TOTE Tasmania to continue to operate in its present form as a stand alone Tasmanian owned and operated totalisator supporting the TRI. **[RESTRICTION OF PART OF PUBLICATION CLAIMED]** [REDACTED]

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2007 Agreement provides additional benefits

[RESTRICTION OF PART OF PUBLICATION CLAIMED] [REDACTED]

Over the term of the 2007 Agreement, TOTE Tasmania submits that this is likely to result in an overall increase in consumption of wagering products due to both the enhanced price and service offering able to be made available to consumers.

10.3 Benefits for the Tasmanian Racing Industry

The benefits that will flow from the 2007 Agreement will not be confined to consumers of wagering services, or to TOTE Tasmania itself.

Any commercial benefit that will be derived by TOTE Tasmania will flow through as public benefits to the TRI. **[RESTRICTION OF PART OF PUBLICATION CLAIMED]** [REDACTED]

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[REDACTED]

It is a statutory requirement for TOTE Tasmania to pay an annual product fee to the TRI for the conduct of race meetings (including prize money) and the administration, maintenance and improvement of horse racing and greyhound racing. This product fee must be distributed to individual racing clubs in accordance with agreements between TOTE Tasmania and the clubs.¹⁶ In addition to this, TOTE Tasmania is also required to set aside an amount each financial year (up to 25% of its net earnings for that financial year) to be used for the benefit of the racing industry.¹⁷

In 2006/07, TOTE Tasmania provided \$20,400,000 to the TRI for prize money and running costs, which represented some 68% of the expenditure of the TRI of \$30,200,000. Payments were made to 2108 owners, trainers, drivers and jockeys for the thoroughbred and harness codes and by the three greyhound clubs to 658 owners and trainers in the greyhound code. It is these distributions that enable the TRI to operate, including:

- (a) breeding and training thoroughbred and standardbred race horses and greyhounds;
- (b) establishing and maintaining training and racing tracks and facilities and supporting race clubs;
- (c) conducting race meetings and offering prize money, which increases horse numbers and participation and provision for extra races through divides;
- (d) payment of stakes to winners and place getters of races;
- (e) providing legal, financial, administrative and human resource support to racing clubs and other industry bodies;
- (f) arranging and heavily subsidising the cost of insurances to race clubs and other racing bodies;
- (g) payment of riding fees to jockeys and drivers;
- (h) the maintenance and preparation of all major racing facilities in Tasmania including three racing centres and three training centres;
- (i) overseeing the financial arrangements of each of the three codes of racing;
- (j) setting race dates;
- (k) managing all audio visual rights on behalf of the TRI, including the production of vision and audio for SKY Channel and racing radio throughout Australia;
- (l) enhancing the safety and welfare of racing industry participants; and
- (m) promoting racing and breeding, including obtaining sponsorships for race clubs – TOTE Tasmania secures most significant sponsorship arrangements on behalf of the industry.

The TRI also represents an important sporting and cultural community and provides recreational opportunities that are enjoyed by a large number of Tasmanians. In 2006/07, the TRI conducted:

- (a) 70 thoroughbred meetings;
- (b) 94 harness meetings; and

¹⁶ Section 10 of the *TOTE Tasmania (Racing Regulation) Act 2004* (Tas).

¹⁷ Section 11 of the *TOTE Tasmania (Racing Regulation) Act 2004* (Tas).

(c) 154 greyhound meeting.

In short, the financial viability of TOTE Tasmania is critical to the viability of the TRI which would either collapse or be dramatically reduced in size and scale in the absence of the financial support provided by a commercially viable TOTE Tasmania.

10.4 Benefits for Tasmanian economy and Government

Tasmanian economy

It is not only the direct financial support and economic activity within the TRI itself that constitutes a public benefit to Tasmania.

By supporting the TRI, TOTE Tasmania makes an important contribution to the Tasmanian economy more generally. Recent independent economic analysis by Economic and Market Development Advisers estimates that the TRI generates \$74,100,000 per annum in output for the Tasmanian economy from ongoing operations and another \$73,700,000 in construction output (over a 5 year period), representing 2,467 Full Time Equivalent jobs in the Tasmanian economy from ongoing operations and another 1,009 jobs from construction activities.¹⁸ [RESTRICTION OF PART OF PUBLICATION CLAIMED]

Importantly, these employment opportunities are distributed in regional and rural areas within a State that has the highest rate of unemployment in the country.¹⁹ Nearly 50% of all jobs in the TRI are in regional areas of Tasmania.

Government

TOTE Tasmania has a general requirement to pay dividends to State Government. In the past few years, this requirement has been relaxed due to major racing infrastructure spending in excess of \$49 million. Apart from dividends, TOTE Tasmania pays some \$530,000 in income tax equivalents to the State Government and \$5.7 million in GST payments to the Federal Government.

10.5 Benefits for Victorian Racing Industry and economy

The direct and indirect public benefits associated with authorisation of the 2007 Agreement are not confined to the TRI. [RESTRICTION OF PART OF PUBLICATION CLAIMED]

The Victorian racing industry can also be expected to benefit from the arrangements in the following ways:

Processing Fee

VicRacing, a company established by the Victorian racing industry, receives a percentage of the service fee that TOTE Tasmania pays to Tabcorp under the 2007 Agreement.

¹⁸ Economic Impact of the Tasmanian Racing Industry, Draft Final Report June 2007, Economic and Market Development Advisers.

¹⁹ workplace.gov.au, Unemployment Rates by State and Territory, September 2007 (source: ABS Labour Force Survey)

<http://www.workplace.gov.au/lmip/LabourForceData?cid=UnemploymentByStateAndTerritory%7CLFRHome%7CNational%7CLFR%7Canon%7CLabour%20Market>

[RESTRICTION OF PART OF PUBLICATION CLAIMED]

[RESTRICTION OF PART OF PUBLICATION CLAIMED]

(c)

Tasmanian Racing Product

Authorisation of the 2007 Agreement underpins the viability of TOTE Tasmania which in turn underpins the viability of the TRI. The TRI currently conducts 318 meetings, which provide racing product on which wagers are taken in all jurisdictions including Victoria.

The supply of Tasmanian racing product is therefore mutually beneficial for Tabcorp and through it the Victorian racing industry.

Indirect benefits for the Victorian economy

TOTE Tasmania notes that financial support for the Victorian racing industry has flow on effects for the Victorian economy and employment more generally. These benefits are briefly discussed in the Tabcorp Submission.²¹ Benefits which flow to the Victorian racing industry from authorisation of the 2007 Agreement will contribute in part to these flow on economic benefits to the Victorian economy.

10.6 Benefits for racing and wagering industry generally

TOTE Tasmania submits that authorisation of the 2007 Agreement will also have material direct public benefits for non-Tasmanian consumers of wagering services.

These benefits include the following:

TOTE Tasmania will remain a viable and competitive alternative provider of wagering services via phone and internet

Having a viable and competitive TOTE Tasmania will provide an enhanced competitive environment between other totalisators and corporate bookmakers relative to the counterfactual scenario, [RESTRICTION OF PART OF PUBLICATION CLAIMED]

The mechanisms through which this is likely to occur include the following:

(a) [RESTRICTION OF PART OF PUBLICATION CLAIMED]

²¹ Section 4.2 of the Tabcorp Submission.

(b) [RESTRICTION OF PART OF PUBLICATION CLAIMED]

TOTE Tasmania notes that in the Tabcorp-UNiTAB Public Competition Assessment, the Commission expressed concerns about 'latent competition' between totalisators using phone and internet across state borders being inhibited as a result of the merger. TOTE Tasmania notes that it is precisely this type of latent competition for contestable customers that will be stimulated by authorisation of the 2007 Agreement.

Tasmanian Racing Content will benefit other totalisators, racing industries, economies and Governments

The 2007 Agreement will support the production of more racing content in Tasmania. Wagering occurs on Tasmanian racing content on totalisators and bookmakers operating in all Australian states and territories – in 2006/2007, interstate customers wagered some \$263 million on the 318 Tasmanian race meetings that were held, generating some \$39 million for the TABs in those jurisdictions, with an associated flow on to the racing industries, economies and Governments in each jurisdiction (with the actual amounts varying between jurisdictions). This promotion of Tasmanian racing nationally is in accordance with TOTE Tasmania's objectives under the *TOTE Tasmania Act 2000* (Tas) as set out above in paragraph 4.2.

It is highly unlikely that if Tasmanian racing content was not produced as a result of the financial support of TOTE Tasmania, that an equivalent amount of racing activities and products would replace it from other jurisdictions.

11. Conclusion

Authorisation will give rise to significant public benefits to Tasmanian consumers, the TRI, the Tasmanian economy and Government, the Victorian racing industry and economy and the racing and wagering industry generally.

Against this, there is likely to be little (if any) public detriment arising from the pooling arrangements under the 2007 Agreement. On this basis, TOTE Tasmania submits that the Commission should grant authorisation of the 2007 Agreement as set out in the Application.

**Schedule 1 - [RESTRICTION OF PART OF PUBLICATION
CLAIMED]**

