

[RESTRICTION OF PART OF PUBLICATION CLAIMED]

14 December 2007

A91065 – A91067

Submission to the Australian
Competition and Consumer
Commission in response to a
submission made by TOTE
Tasmania Pty Ltd dated 28
November 2007

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1 Introduction

We refer to the submission made by TOTE Tasmania Pty Ltd (**TOTE Tasmania**) dated 28 November 2007 (**TOTE Tasmania Submission**) in support of Tabcorp Manager Pty Ltd's (**Tabcorp**) application for authorisation of the 2007 SuperTAB Pooling Agreement between Tabcorp and TOTE Tasmania dated 6 November 2007 (**Tabcorp Submission**).

This submission provides Tabcorp's comments on the TOTE Tasmania Submission. In particular, it addresses:

- the claim by TOTE Tasmania that, in the counterfactual, it would be unable to pool with any totalisator other than Tabcorp; and
- the statement that VicRacing receives a percentage of the Processing Fee that TOTE Tasmania pays to Tabcorp under the SuperTAB Pooling Agreement between Tabcorp and TOTE Tasmania dated 23 October 2007 (**2007 Agreement**).

In summary, Tabcorp submits that TOTE Tasmania would have a number of options available to it if it did not pool with Tabcorp (for example, pooling with UNiTAB and/or other Australian and international totalisators). Tabcorp also seeks to clarify its industry funding arrangements with VicRacing.

2 Confidentiality

This submission contains information which is confidential to Tabcorp, and must not be disclosed to any other person, including TOTE Tasmania.

This claim for confidentiality does not prevent the Commission from disclosing this submission, or any part of it, to the Commission's third party legal or economic advisers. However, those third party advisers are required to treat this submission on the same basis as the Commission.

A redacted, non-confidential version of this submission has been provided to the Commission.

3 Pooling

The TOTE Tasmania submission states, at paragraph 8.3, that 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'.

Tabcorp submits that this claim is incorrect. As discussed in section 7.4 of the Tabcorp Submission, absent the 2007 Agreement, Tabcorp considers the options available to TOTE Tasmania would include:

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4 Vic Racing share of the processing fee

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One of the public benefit arguments advanced in the TOTE Tasmania Submission is that 'the Victorian racing industry can also be expected to benefit from the arrangements as it receives a percentage of the service fee that TOTE Tasmania pays to Tabcorp under the 2007 Agreement'.¹ This statement is not accurate.

As outlined in section 3.1(b) of the Tabcorp Submission, the Tabcorp Group's Victorian wagering business is conducted through a joint venture agreement between Tabcorp Holdings Pty Limited, Tabcorp Participant Pty Ltd, Tabcorp Assets Pty Ltd, Tabcorp and VicRacing Pty Ltd dated 25 May 1994 (**Joint Venture Agreement**). Under the terms of the Joint Venture Agreement, Tabcorp is required to pay [RESTRICTION OF PART OF PUBLICATION CLAIMED] of its total profit from gaming and wagering to VicRacing.

Tabcorp is the host and operator of the SuperTAB Pool. Tabcorp, as host, has entered into separate pooling agreements with each of the guest participants (including TOTE Tasmania, RWWA, ACTTAB, NZRB and Phumelela). Under these agreements, Tabcorp has the ability to charge a Processing Fee (which is generally calculated as a percentage of the amount placed in the SuperTAB Pool by the guest participant). The agreements do not make provision for part of this Processing Fee to be paid to VicRacing. In this regard, the Processing Fee is not directly related to any amount payable to VicRacing by Tabcorp. However, as Tabcorp is required to pay [RESTRICTION OF PART OF PUBLICATION CLAIMED] of its total profit from gaming and wagering to VicRacing, the Processing Fee will contribute to Tabcorp's profit from gaming and wagering, and thereby indirectly to the amount payable by Tabcorp to VicRacing.

As outlined in section 8(b) of the Tabcorp Submission, the racing industries in all States and Territories have revenue and/or profit sharing arrangements with the TAB licensed in that State or Territory. Therefore, increased participation in wagering will result in additional funds being provided to racing industry bodies.

¹ TOTE Tasmania Submission at paragraph 10.5