

# AUSTRALIAN *PUNTERS'* ASSOCIATION

ABN 23 649 310 363

35 Allambie Road, Allambie Heights, NSW 2100

Phone: (02) 9905 6470 Facsimile: (02) 9401 0632

Email: [info@auspunters.com.au](mailto:info@auspunters.com.au)

March 14<sup>th</sup>, 2007

Mr. G. Samuel

Chairman

ACCC

Via email: [Monica.Bourke@acc.gov.au](mailto:Monica.Bourke@acc.gov.au)

Dear Sir

## TABCORP/TVN MEMORANDUM OF UNDERSTANDING

The Australian Punters' Association is an organisation formed to provide a representative voice for punters in Australia. We very much appreciate the opportunity to comment on the potential approval, or otherwise, of the proposed Memorandum of Understanding ("MOU") between Tabcorp and TVN. Please note that our references to Tabcorp are intended to encompass its subsidiaries.

### BACKGROUND

At the outset, we should disclose that we have previously worked closely with advisors to the Sydney metropolitan clubs in an attempt to have the split vision problem fixed for the benefit of punters, i.e. that TVN and Sky Channel co-exist. (Note there was no financial consideration involved). We should also disclose that we have a history of dispute with Tabcorp over its treatment of its punters on many matters.

Our prior disputation with Tabcorp over its "blackout" of TVN racing, and indeed its relationship with some regulatory authorities, leads us to the conclusion that its past behaviour must be taken into consideration in assessing what it is likely to do in the future, much as a horse's past record must be taken into consideration when determining the likely outcome of a race. We are therefore completely sceptical of any "trust me" type commitments given by Tabcorp.

We would also make the preliminary observation, that even to lay people such as ourselves, the documentation appears, at best, sloppy.

### Punters

On a number of occasions in the MOU it is stated either directly or indirectly that punters want "wall to wall" racing and that "thoroughbred enthusiasts" want a more "up-market" presentation. We wish to correct that. Punters, like all consumers, cannot be categorised as a homogeneous group. Certain punters (generally hobby punters) like "wall to wall" racing, certain others like a more in-depth coverage. Punters cannot be pigeon-holed, much as Tabcorp may like them to be.

At the present point in time, TVN offers Victorian, NSW and selected other-State racing. However, it appears that the “other-State” racing coverage must, for some bizarre reason, comprise an entire meeting. This appears to us to be entirely illogical. If TVN were genuinely promoting the “best of the best” then it would showcase ALL Stakes grade races run in Australia. That is, TVN should be able to cover Victorian, NSW, plus all quality races from outside those States, without having to cover the “dross”.

### **Exclusive Contracts**

As a general principle, the APA is opposed to the awarding of exclusive contracts.

### **Optus TV**

We were told at a media briefing yesterday (March 13) that TVN is shortly to be made available to Optus TV subscribers. This alleviates many of our concerns in this regard, however we suggest that the ACCC ensures that all Pay TV operators, including potential future entrants, be permitted to carry the TVN signal.

### **“Tabcorp payments”**

Let us be very clear that when Tabcorp claims to have made payments to various industry bodies and government, it is merely acting as an administrative vehicle for the transfer of a portion of punters’ money to government, race clubs etc. There should be no implication that this money comes out of Tabcorp’s potential profit. It is purely a legislative requirement in return for Tabcorp having been granted a monopoly status.

## **THE TABCORP/TVN SUBMISSION**

We respond below to various of the aspects of the submission.

3.24 We note no mention of Optus TV.

3.25 We note that this agreement is exclusive to BigPond and query why this is allowed. Access to live viewing on the internet for non-BigPond customers would be a great bonus for the frequent occasions on which Foxtel experiences its Telstra-related “outages”.

4.6-4.19 We are somewhat bemused that Sky grants TVN a non-exclusive licence, but TVN is required to grant Sky an exclusive licence. Furthermore, we are also somewhat bemused that the Sky licence to TVN includes rights potentially acquired post-15/05/2006 but the TVN licence to Sky only includes rights in their control as of that date. That would appear to us to indicate that TVN has no intention of bidding for any rights post 15/05/2006, which would, on face value, be anti-competitive. We suggest that the ACCC investigate whether any “gentleman’s agreement” exists in this regard.

## **AUSTRALIAN PUNTERS’ ASSOCIATION**

ABN 23 649 310 363

35 Allambie Road, Allambie Heights, NSW 2100

Phone: (02) 9905 6470 Facsimile: (02) 9401 0632

Email: [info@auspunters.com.au](mailto:info@auspunters.com.au)

- 4.36 This appears to have been pretty short-sighted in its drafting and the definition of “Category 2” race meetings should make provision for future changes to race programming. Also it should refer to “race meetings” instead of “races”, a drafting problem which also appears elsewhere e.g. 11.5
- 4.42-4.46 We could find no definition of “Commercial Channel”.
- 5.3 For the record, maximising wagering revenue also creates problems for the community, via problem gambling, so it is not a one-way street. The percentage of household disposable income devoted to gambling has increased dramatically over the past 15 years and this is not seen by the APA as of significant public benefit, more a significant benefit to shareholders in, and employees of, gaming organisations.
- 5.5 Tabcorp’s desire for “wall to wall” is not a universal punter desire, as explained above. It is instead a commercial consideration in order to maximise turnover or “churn”.
- 7.2 We note in passing that a prediction is not a fact.
- 8.6 We disagree with the definitions of “wagering” and “gaming”. Neither can be classified in a black-and-white manner, but those gambling options involving an element of skill are generally categorised as “wagering” (e.g. betting on a horse race) whereas those involving pure chance are generally categorised as “gaming” (e.g. poker machines). Many forms of gambling fall somewhere in between (e.g. blackjack).
- 8.14 We would point out that, thanks in the main to the initiatives undertaken by Betfair, a growing number of sporting events are now receiving product fees. This includes payments from Tabcorp, which previously bet on such sports without paying a cent to the sport involved (and in respect of many sports continues to do so), whilst simultaneously claiming the moral high ground on racing (ignoring the fact that it has a monopoly).
- 8.19-8.66 This section, more than anything, indicates our scepticism as to Tabcorp’s commitments. Repeatedly, it is asserted that Tabcorp has a duty to act, in effect, for the benefit of the industry. We doubt that any reasonable person could conclude that, during the split vision dispute, Tabcorp acted anything other than for the perceived benefit of Tabcorp rather than for the benefit of the industry.
- 8.20 (b) (ii) Crown Casino also operates up to 2,500 gaming machines. The State of Victoria has permitted up to 30,000 such machines, with Tabcorp and Tattersall’s each allowed up to 13,750.

## **AUSTRALIAN PUNTERS’ ASSOCIATION**

ABN 23 649 310 363

35 Allambie Road, Allambie Heights, NSW 2100

Phone: (02) 9905 6470 Facsimile: (02) 9401 0632

Email: [info@auspunters.com.au](mailto:info@auspunters.com.au)

- 8.55 We trust the Optus TV problem has now been solved, but would like the ACCC to seek written assurances that it has.
- 8.73 See our above comments re the TVN presentation. We have been given to understand by a senior TVN executive that there is something in the MOU which allows Tabcorp to determine which “extra” (i.e. non-Victorian/NSW) content is carried on TVN. Usually it is Queensland race meetings. This appears designed to maximise Tabcorp turnover rather than showcase quality racing, the supposed “raison d’etre” of TVN.
- 9.5-9.13 Appears to preclude the possibility of any new entrant to either the Pay TV market or alternatives to wagering providers other than Tabcorp.
- 9.14 Also betting exchanges (e.g. Betfair), spread-bet markets (e.g. Sports Acumen), future entrants etc.
- 9.15 Again is rather narrow in forward thinking. Quite possible that internet cafes etc. could participate within the time period contemplated.
- 10.3 See comment above re 4.6-4.19 and also 10.9, both of which indicate the TVN to Sky entitlement clearly relates only to rights owned by TVN as of 15/05/2006. Therefore the statement that “The MOU includes obligations to sub-licence for “future” domestic rights acquired by *either* of the parties...” is not borne out by the balance of the document.
- 10.10 Given (a) Tabcorp’s track record and (b) the lack of any mention of how new entrants to e.g. the Pay TV market would be treated and (c) that granting of an exclusive licence will “not result in any anti-competitive detriment”, we find this to be an absurd “leap of faith”, i.e. “trust me”.
- 10.12 If granting an “exclusive” licence is “generally provided”, it does not in any way necessarily automatically follow that it is in consumer interests that such a practice exists as standard. In fact, one would have thought the opposite.
- 10.16 Conveniently ignores that the distribution rights to Pay TV granted to Tabcorp are, in fact, exclusive.

## **AUSTRALIAN *PUNTERS*' ASSOCIATION**

ABN 23 649 310 363

**35 Allambie Road, Allambie Heights, NSW 2100**

**Phone: (02) 9905 6470 Facsimile: (02) 9401 0632**

**Email: [info@auspunters.com.au](mailto:info@auspunters.com.au)**

10.17-10.21 This is extremely difficult to swallow. An alternative would be that any third party which obtains the rights would be required to negotiate with Tabcorp on similar terms to that which Tabcorp is proposing (i.e. Tabcorp becomes the purchaser rather than the seller), with an independent expert adjudicating in the event of dispute. If Tabcorp fails to agree with that, then it is clearly being shown up as totally hypocritical and non-genuine as to the process it suggests and to its stated rationale for said process.

Once again, we appreciate the opportunity to make this submission.

Yours sincerely

**AIDRIAN ÓDOMHNAILL**  
**President**  
0411 680 408

**AUSTRALIAN *PUNTERS'* ASSOCIATION**

ABN 23 649 310 363

**35 Allambie Road, Allambie Heights, NSW 2100**

**Phone: (02) 9905 6470 Facsimile: (02) 9401 0632**

**Email: [info@auspunters.com.au](mailto:info@auspunters.com.au)**