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Tuesday, 13 March 2007

Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Via email: adjudication@acc.gov.au

Dear Mr Gregson

**Sky Channel Pty Ltd, Tabcorp Holdings Limited and ThoroughVision Pty Ltd
Application for authorisation A91031 and A91302
Submission by Racing Victoria Limited**

We refer to your letter dated 20 February 2007 seeking submissions from interested parties in relation to the application for authorisation lodged by Sky Channel Pty Ltd (**Sky**), Tabcorp Holdings Limited (**Tabcorp**) and ThoroughVision Pty Ltd (**TVN**) in relation to the Memorandum of Understanding (**MOU**) setting out the proposed content sharing arrangements for thoroughbred racing coverage (**Application**).

Racing Victoria Limited

This submission is made by Racing Victoria Limited (**RVL**) in its capacity as the controlling body of Victorian thoroughbred racing as recognised under the *Racing Act 1958 (Vic)*.

RVL's object is to develop, encourage and manage the conduct of Victorian thoroughbred racing in a manner which relevantly:

- promotes effectiveness and efficiency in the management of the business performance of the thoroughbred racing industry; and
- promotes the provision of economic benefits to the State and to participants and stakeholders in thoroughbred racing and to communities in which thoroughbred racing operates.

The economic and social contribution of the industry

RVL and the Victorian racing clubs are non-profit sporting organisations. Their activities in promoting and staging thoroughbred racing significantly contributes to the economic and social well being of their local communities and to the State of Victoria.

As non-profit sporting organisations, their incomes are applied to the development and promotion of racing through the provision of racecourse infrastructure and the payment of prizemoney which supports the livelihood of industry participants such as jockeys, trainers and

stablehands as well as driving the racehorse ownership and breeding investment cycle. In addition, RVL also applies its income to investments in participant safety, welfare, education and research.

The economic and social benefits of Victorian thoroughbred racing have been evaluated by an independent study undertaken by IER and Monash University's Centre of Policy Studies in 2006.

A copy of the *Size and Scope of the Victorian Racing Industry* can be downloaded from the RVL website at http://www.racingvictoria.net.au/media/VRISizeAndScope_FINAL_Mar15.pdf.

The study identified that the thoroughbred racing code generates:

- \$1.6 billion per annum of economic value (real gross value added);
- 80,200 jobs and participation roles comprising 46,900 jobs (full-time, part-time and casual jobs directly employed within racing plus a further 16,300 indirectly employed by support industries) and 33,300 volunteer workers and hobby participants (including a racehorse ownership base of 28,000) – with four in every five of these participants residing in regional Victoria;
- \$365 million of Federal and State tax revenue (\$195 million Federal and \$170 million State);
- 1.6 million racegoers;
- 700 million overseas viewers;
- 160,000 international and interstate tourists; and
- 71 racing clubs supported by 51,600 members.

Beyond direct economic value, racing is also widely regarded as an important social and cultural institution which helps build and connect communities – particularly throughout rural and regional Victoria.

Public benefits

RVL supports the Application and submits that public benefits will arise under the MOU in relation to the following matters:

- The so-called 'split vision' dispute, which has had substantial negative consequences for the Victorian thoroughbred racing industry, will be resolved for the term of the MOU.
- Sky will have the ability to provide 'wall to wall' racing from a single source that wagers outlet service providers and punters demand in order to stimulate and facilitate wagering.
- TVN will have the ability to pursue the development of a premium thoroughbred racing channel designed to promote and expand interest in thoroughbred racing.
- The wider availability of Sky's 'wall to wall' service to wagering outlet service providers and TVN's channel to both commercial and domestic premises will provide customers with greater choice and will promote both wagering revenues and interest in racing.
- As wagering revenues derived by Tabcorp's joint venture with the Victorian racing industry are the principal source of funding for the Victorian thoroughbred racing industry, an increase in these revenues is a significant public benefit to the industry and to Victoria.

- The end to expensive litigation, which has embroiled the parties to the Application and other industry participants (including RVL), will provide a stable environment for the delivery of the benefits proposed in the Application.
- The two specialist channels, one focussed on punters and one focussed on thoroughbred enthusiasts, will offer choice to customers under arrangements which provide for the efficient production of the services through the use of shared facilities.

Observations

Industry income

The principal source of funding for the Victorian Racing Industry (**VRI**) (including the thoroughbred, harness and greyhound codes) is through the VRI's interest in wagering and gaming revenue generated in the unincorporated Joint Venture that is managed by Tabcorp.

Overall, Tabcorp paid a total of around \$279m to the VRI in 2005/06 which was applied by the VRI to meet prizemoney commitments and operating expenses. In that financial year, \$198m was received by the thoroughbred code from Tabcorp and \$141m was paid as returns to owners, trainers and jockeys.

The negative consequences of the 'split vision' dispute

Generally, punters want to watch the race on which they have had a bet. We note that Tabcorp estimates that turnover on racing can be increased by approximately 40-60% if races are broadcast to wagering outlets and domestic premises.

The negative consequences of the 'split vision' dispute with the direct flow-on impacts on the racing industry are described in the Application at paragraphs 8.60 to 8.68. In particular, RVL concurs with the impacts that related to the Victorian thoroughbred industry as follows:

- In Victoria, in 2005/06 wagering on thoroughbred racing only increased by 0.34% (Australian Racing Board Limited, *Australian Racing Fact Book: A guide to the racing industry in Australia 2005/06*, p 61) despite Tabcorp's forecast of wagering increases of around 7.4% (Paragraph 39 of the Application).
- In Victoria, in 2005/06 the wagering component of funding received by RVL was \$124m, which reflected low wagering growth compared with the previous year of \$123m.
- In Victoria, in 2005/06 country racing was most heavily impacted as country punters had no access to TVN shareholder races on Austar, which caused a 22% downturn in revenue received through the Tabcorp joint venture (*Country Racing Victoria Annual Report 2005/06*, p 24, 26).

By contrast, the end to the 'split vision' dispute has contributed to an immediate upturn in wagering and enhanced the capacity of RVL and the racing clubs to increase prizemoney levels. Wagering growth for the first half of 2006/07 is 6.8%.

Attached to this submission is RVL's media release dated 27 November 2006, '*Spring Racing Carnival Records Tumble*', which highlights attendance and wagering records achieved at last year's carnival. As a consequence, on 1 December 2006, RVL announced an additional \$4.8m of prizemoney increases to apply from early 2007.

The importance of racing coverage for stimulating wagering

Increases in wagering turnover generated by the Tabcorp Joint Venture will result in increased funding levels to the Victorian thoroughbred racing industry which makes the industry more viable. Conversely, any reduction in wagering turnover by the Tabcorp Joint Venture negatively impacts on the amount of funding available to the racing industry and its capacity to maintain prizemoney which supports the livelihood of its participants.

The funding of regional racing is particularly important because it provides significant economic benefits to regional communities in supporting regional employment and through the attraction of people from the city who spend money in the region.

The direct correlation between off-course wagering and racing coverage is explained in detail in the Application.

The 'wall to wall' vision product is an important contributor in stimulating wagering. However, a 'showcase' vision product proposed by TVN, which will be available in commercial and domestic premises, is also important for promoting interest in wagering and racing. As the experience of the 'split vision' dispute showed, it was the country areas in Victoria which saw the greatest decline in punting interest due to the unavailability of TVN shareholder races on Austar. The inconvenience of travelling distances in regional areas was a deterrent to punters who might otherwise have had available to them the split vision in their nearest town's pubtab.

There is significant public benefit under the proposed arrangements where customers and consumers have a choice of vision products on a number of distribution channels, including satellite narrowcasting to wagering outlets, Pay TV and free-to-air television (with thoroughbred feature race meetings to be broadcast on Channels 7 and 9).

The promotion and expansion of interest in thoroughbred racing

RVL and the Victorian thoroughbred industry clubs and participants strongly support the role of TVN to provide a channel which showcases thoroughbred racing. We believe that the TVN channel provides opportunities to introduce viewers to racing and to encourage greater interest and participation in the sport and at race meetings.

We accept the observations made in the Application that production efficiencies proposed in the MOU may lead to cost savings that can be utilised in program innovation on the TVN channel. The out-sourcing of the TVN channel to Sky may allow for increased range and quality across the number of products that may be offered by TVN and Sky.

The term of the MOU

Paragraphs 10.17 to 10.20 inclusive of the Application make the following statements in relation to the term of the MOU:

- 10.17 *Tabcorp currently holds an exclusive licence to conduct wagering in Victoria. That licence expires in August 2012. The MOU expires on 31 December 2012. Tabcorp's NSW wagering licence extends beyond 31 December 2012.*
- 10.18 *The commercial reason for the MOU expiring in the month of December is because Tabcorp and Sky wish to ensure that they have access to the Melbourne Spring Racing Carnival in 2012 (assuming that their licence is renewed either on an exclusive or non-exclusive basis).*
- 10.19 *The Commission Mergers Branch has previously expressed a concern that any content sharing arrangement between TVN and Sky that continues until 31 December 2012 may have the consequence of allowing Tabcorp/Sky to*

deny access to thoroughbred racing vision to any replacement or co-existing wagering licensee that may enter the market when the wagering licence is re-tendered by the Victorian State Government in August 2012.

10.20 *In order to alleviate this concern, clause 15 of the MOU provides that, within 20 days of the date on which the Government of Victoria announces the identity of any third party Victorian licensee, Sky will offer to supply Sky Channel to that licensee for the period 16 August 2012 to 31 December 2012. If Sky and that third party cannot agree on the licence fee, the matter is to be referred for decision to an independent expert.*

RVL notes the concern reportedly expressed by the ACCC in paragraph 10.19 of the Application and is in turn concerned that the arrangements proposed in the MOU may not adequately address the ACCC's concern.

RVL believes that the public interest would best be served by conditions that promoted a level playing field between potential competitors for the Victorian wagering licence(s).

Competition for the Victorian wagering licence(s) would be facilitated if potential third party acquirers of such licence(s) were not faced with the likely situation of having to negotiate agreements for the supply of racing vision with their direct or indirect competitors in the process for the tendering of the wagering licence(s) by the Victorian State Government. This situation would not arise if the MOU expired on the same date as the expiry date of Tabcorp's current exclusive licence to conduct wagering in Victoria – being 15 August 2012.

Paragraphs 4.41 to 4.46 of the Application provide a summary of the provisions in the MOU which the applicants say will "alleviate" the ACCC's concerns. In brief, those provisions, as we understand them, provide that:

- Sky must offer to supply the 'wall to wall' service to the third party Victorian licensee (that is not Tabcorp) for the period from 16 August 2012 to 31 December 2012 on reasonable commercial terms, and failing agreement, to be determined by an independent expert; and
- Sky must not refuse to supply the 'wall to wall' service to wagering outlets within Victoria (referred to as "Commercial Operators") by reason that the Commercial Operators have entered into commercial arrangements with a third party Victorian licensee.

These provisions, which are expressly made by parties for the purposes of fostering competition in the market when the wagering licence is re-tendered by the Victorian State Government, are only enforceable, as a matter of contract, between the contracting parties. The "third party Victorian licensee", referred to in these provisions, who is supposed to be the beneficiary of these provisions, is neither known nor a party to the contract, and accordingly, without contractual rights to enforce these provisions. The Commercial Operators are in a similar position. Further, it is not clear whether TVN (unless it is the "third party Victorian licensee" or a "Commercial Operator") will have either the right or the commercial interest to enforce these provisions. Sky has not explained how these "obligations", which arise by private treaty, will operate in practice to protect competition that is in the public interest. RVL is concerned that doubts in relation to the enforceability of these provisions, which essentially relate to self-regulation of behavioural matters, may not be adequate to alleviate the ACCC's concerns.

Conclusion

RVL submits to the ACCC that:

- the term of the MOU ought to be made to be simultaneous with the expiry date of Tabcorp's current exclusive licence to conduct wagering in Victoria; or
- in the alternative, that the contractual provisions referred to in paragraphs 4.41 to 4.46 of the Application are provided as enforceable undertakings to the ACCC under section 87B of the *Trade Practices Act*, and
- otherwise the Application is recommended for approval.

Please do not hesitate to contact us should you have any queries.

Yours sincerely

A handwritten signature in grey ink, appearing to read 'Allanson', with a period at the end.

Stephen Allanson
Chief Executive Officer



MEDIA RELEASE

Monday 27 November 2006

SPRING RACING CARNIVAL RECORDS TUMBLE

Victoria's Spring Racing Carnival has again confirmed its status as Australia's largest annual event with another record breaking year in 2006.

The 50-day carnival, which commenced on 5 October and concluded 23 November, yet again produced outstanding attendance and wagering records.

Attendance increased by more than 40,000 to an all-time high of 770,442 (up 5.5%), while off-course Victorian TAB turnover on local thoroughbred meetings for the 50 days jumped \$22 million to \$285 million, an increase of 8.5% on the previous year. Total off-course turnover for the period on all thoroughbred racing rose by more than \$35 million (up 8.1%). The big crowds on-course also showed they were keen to engage in the competitive racing action, with on-course TAB turnover up by \$4.2 million (6.3%) to \$71 million.

	2005	2006	Change	%
Attendance*	730,110	770,442	40,332	+5.5%
On-course TAB Turnover	\$66,823,162	\$71,038,632	\$4,215,471	+6.3%
Off-course Local TAB Turnover	\$262,799,278	\$285,042,316	\$22,243,038	+8.5%
Off-course Total TAB Turnover	\$431,582,298	\$466,677,953	\$35,095,654	+8.1%

* Attendance figures are preliminary and subject to confirmation

Racing Victoria Limited Chief Executive Officer, Mr Stephen Allanson, hailed the Carnival a major success story for the thoroughbred racing industry.

"The 2006 Spring Racing Carnival was an extraordinary drawcard that once again proved to be a big winner with Australian racing fans and for the Victorian racing industry and economy."

"The wagering turnover growth is exceptional, which has been helped along by high quality and hotly contested racing, high standards of integrity, broad media coverage and the new betting products (flexibet and first four) introduced by Tabcorp for this year's carnival."

"The public have voted with their feet, underlining the love affair Australians have with this wonderful carnival."

"The Spring Racing Carnival has evolved into an international event that generates interest and economic activity far beyond Victoria's border. The performances of Delta Blues and Pop Rock and many others will only heighten the focus on Victoria and ensure this great carnival continues to grow as a key element of the global racing and events calendar."

ENDS