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Taiwan  
Thailand  
Vietnam

10 July 2007

Express Post

Mr Scott Gregson  
General Manager, Adjudication Branch  
Australian Competition & Consumer Commission  
PO Box 1199  
Dickson ACT 2602

Our Ref: 2598858

Dear Sir

### **Harness Racing Victoria - exclusive dealing notification**

We enclose on behalf of our client, Harness Racing Victoria:

1. a Form G notification of exclusive dealing; and
2. an accompanying submission in support of the application.

A cheque payable to the Australia Competition & Consumer Commission for \$100, being the filing fee, is also enclosed.

Yours faithfully



**Richard Lewis**

Partner

Deacons

Contact: Andrew Bell

Direct line: +61 (0)3 8686 6274

Email: andrew.bell@deacons.com.au

N93059

FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA  
*Trade Practices Act 1974 – Subsection 93(1)*

**EXCLUSIVE DEALING:  
NOTIFICATION**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in subsection 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8) (a), (b), or (c) or 9(a), (b), (c) or (d), of that Act in which the person giving notice engages or proposes to engage.

1. (a) Name of person giving notice:

**Harness Racing Victoria (HRV).**

(b) Short description of business carried on by that person:

**HRV is a body corporate, created under the *Racing Act 1958 (Vic)* (Racing Act). HRV is vested under the Racing Act with the responsibility of controlling, regulating and promoting harness racing in Victoria. See Annexure "A" for a further description of HRV.**

(c) Address in Australia for service of documents on that person:

**Richard Lewis  
Partner  
Deacons  
RACV Tower  
Level 15, 485 Bourke Street  
Melbourne VIC 3000**

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

**See Annexure "A".**

(b) Description of the conduct or proposed conduct:

**See Annexure "A".**

3. (a) Class or classes of persons to which the conduct relates:

**Bookmakers providing, or seeking to provide, wagering services in relation to wagering on harness racing in Victoria.**

(b) Number of those persons:

- 
- (i) At present time: 6
- (ii) Estimated within the next year: 6

(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:

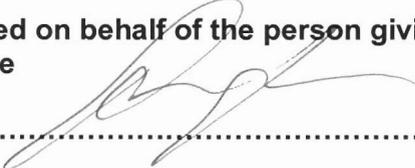
- |  |   |
|--|---|
| (1) Centrebet Racing Pty Ltd<br>PO Box 1462<br>Alice Springs NT 0871   | (2) CentreRacing<br>PO Box 4006<br>Alice Springs NT 0871  |
| (3) International All Sports Limited<br>GPO Box 3325<br>Darwin NT 0801 | (4) Sportingbet Australia Pty Ltd<br>Fannie Bay Racecourse<br>Dick Ward Drive<br>Fannie Bay NT 0820 |
| (5) Sportsbet Pty Ltd<br>PO Box 3207<br>Darwin NT 0801                 | (6) Sports Acumen Pty Ltd<br>PO Box 928<br>Dickson ACT 2602.  |

4. Name and address of person authorised by the person giving this Notice to provide additional information in relation to this Notice:

**Richard Lewis  
Partner  
Deacons  
RACV Tower  
485 Bourke Street  
Melbourne VIC 3000**

Dated 10/7/07

Signed on behalf of the person giving this notice

  
.....  
**(Signature)**

**(Name)**  
.....  
RICHARD LEWIS

**(Name)**

.....  
PARTNER - DEACONS

**(Title)**

## ANNEXURE "A"

### 1. Description of the goods or services in relation to the supply or acquisition of which this notice relates:

Harness Racing Victoria (**HRV**) is a body corporate pursuant to s.39 of the *Racing Act 1958* (Vic) (**Racing Act**). HRV is vested under the Racing Act with the responsibility of controlling, regulating and promoting harness racing in Victoria. As part of fulfilling its responsibilities, HRV creates, develops and produces "Race Fields" for Victorian harness racing.

The Race Fields produced by HRV contain the information that identifies the horses taking part in (or which have been scratched or withdrawn from, as the case may be) a harness race in Victoria. Race Fields produced by HRV typically contain the following information: the number of horses racing; the type of race; the race distance; names of owners, trainers and breeders; a horse's barrier draw; details of previous performance; the age and sex of a horse; and TAB betting options available.

Section 2.5.16A of the *Gambling Regulation Act 2003* (Vic) (**Gaming Regulation Act**) prohibits a wagering service provider from publishing or otherwise making available in Victoria or elsewhere, a Race Field for Victorian harness racing in the course of its business without the prior approval of HRV.

To obtain HRV approval to publish harness racing race field data and to accept bets on Victorian harness racing, there is a threshold requirement that a bookmaker must meet the "Integrity Standards" set by HRV, as amended from time to time. The Integrity Standards require, among other matters, that the bookmaker be a holder of an interstate or international wagering or bookmaking licence.

### 2. Description of the conduct or proposed conduct:

#### 2.1 Background

In addition to HRV, Racing Victoria Limited (**RVL**) and Greyhound Racing Victoria (**GRV**) are the other controlling bodies recognised by the Victorian government for racing. RVL and GRV control, regulate and promote thoroughbred racing and greyhound racing, respectively.

In relation to wagering, the key Victorian wagering licence is held by Tabcorp Holdings Limited (**Tabcorp**). The three racing bodies (through the companies VicRacing Pty Ltd and Racing Products Victoria Pty Ltd) are in an unincorporated joint venture with Tabcorp in which the racing bodies receive an income stream. Tabcorp's support of the Victorian racing industry is a requirement of its wagering licence imposed by the Victoria government.<sup>1</sup>

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<sup>1</sup> Victorian Department of Justice – Office of Gaming and Racing: *Racing Industry Consultancy*, Ernst & Young, 3 August 2006 (**Racing Industry Consultancy**), at 4.1. Downloaded from: <http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/Gambling+and+Racing/Research+and+Statistics/JUSTICE+-+Review+of+Victorian+Racing+Industry+%28PDF%29>.

The joint venture between Tabcorp and the Victorian racing industry bodies is an important source of revenue for the Victorian racing industry, including HRV. The distributions under the joint venture made to RVL, HRV and GRV are based on a mixture of fixed and variable (ie market share) formulae.<sup>2</sup> The *Racing Industry Consultancy* report commissioned by the Victoria government estimates that distributions to the racing industry as a result of the joint venture are as follows<sup>3</sup>:

	<b>RVL</b>	<b>HRV</b>	<b>GRV</b>
<b>JV fixed share component</b>	73.0%	18.0%	9.0%
<b>Wagering market share in 1994</b>	78.3%	12.9%	8.7%
<b>Wagering market share as at 30 June 2005 ("FY05")</b>	69.9%	15.1%	15.3%
<b>Movement in market share</b>	-8.4%	+2.2%	+6.6%
<b>Differential of JV fixed share over/under market share at FY05</b>	+3.1%	+2.9%	-6.3%
<b>Total Revenue distributed to each code under the JV for FY05</b>	\$196.2 m	\$45.9 m	\$32.2 m
<b>Overall % share of revenue distributed under the JV for FY05</b>	71.6%	16.7%	11.7%

It can be seen from the above table that while thoroughbred racing has experienced slight erosion in market share from 1994 to 2005, it is still the dominant form of racing (based on wagering activity) in Victoria and HRV submits that such dominance is unlikely to change.

Thoroughbred racing is also the dominant form of racing nationally. Approximately 70% of total wagering on racing in Australia is placed on thoroughbred racing.<sup>4</sup> HRV estimates that the share of the Victorian harness racing industry through the Victorian Tote as a proportion of the entire market for wagering on racing in Australia is approximately 1.5%.

## 2.2 Proposed Conduct

HRV is proposing to enter into a Race Field Approval Agreement with a number of bookmakers who wish to use Race Field information for Victorian harness racing and to accept bets on Victorian harness racing. The key terms of the Race Field Approval Agreement will include:

- (1) the requirement that the bookmaker meets the integrity standards required by

<sup>2</sup> Racing Industry Consultancy, section 4.6.

<sup>3</sup> Reproduced from the Racing Industry Consultancy, section 4.6.

<sup>4</sup> See *Re Association of Australian Booking Making Companies*, Determination of the Australian Competition & Consumer Commission number A30243, dated 19 July 2006 (**AABC Determination**), paragraph 2.7 citing the Australian Racing Fact Book 2004 – 2005.

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HRV, including the requirement to hold an interstate or international wagering or bookmaking licence;

- (2) a grant of approval by HRV for the bookmaker to publish Race Field information on the bookmaker's website and in internal office materials, to enable the bookmaker to accept bets in relation to Victorian harness racing;
- (3) HRV will supply Race Field information to the bookmaker;
- (4) a fee will be payable by the bookmaker to HRV in respect of its use of the Race Fields, calculated as being 1% of the total amount (exclusive of GST) wagered with the bookmaker on Victorian harness racing (**Fee**). The Fee is payable on a monthly basis;
- (5) confidentiality;
- (6) auditing process; and
- (7) dispute resolution procedures.

A further term of the Race Field Approval Agreement is that HRV will offer a rebate on the Fee otherwise payable by the bookmaker in respect of a particular month (**Rebate**), in relation to any "layoffs" or "bet-backs" placed by the bookmaker in that month with the Victorian TAB (also known as the Victorian Tote) on harness races within Australia. A layoff or bet-back is a bet placed by the bookmaker to spread the risk of its loss on a harness race. The Race Field Approval Agreement will not oblige the bookmaker to place bet-backs or layoffs but, in order to receive the benefit of that Rebate in relation to bet-backs or layoffs placed in a particular calendar month, a bookmaker will be required to place those bets with the Victorian TAB.

The Rebate proposed to be offered will be 1% of the value of all such bet-backs or layoffs placed with the Victorian TAB in a particular calendar month, capped at the amount of the Fee otherwise payable by the bookmaker in that month.

The entity that operates the Victorian TAB is not a company related to HRV. HRV is proposing to offer Rebates to bookmakers on the condition that they use the services of the Victorian TAB for bet-backs and layoffs (and the corollary conduct of not offering Rebates to bookmakers without such a condition being present). This conduct may be exclusive dealing within the meaning of section 47(6) or (7) of the *Trade Practices Act 1974 (TPA)* and HRV is accordingly notifying the ACCC of this conduct.

There is a further term of the proposed Race Field Approval Agreement which will allow HRV to alter the Fee or the Rebate at its discretion upon giving the bookmaker 1 month's notice.

Further, in the event that the holding of an interstate or international wagering or bookmaking licence is an acquisition of services within the meaning of the TPA, then the requirement by HRV that bookmakers hold such a licence (and the corollary of HRV not dealing with bookmakers without such a licence) may also be exclusive dealing within the meaning of section 47(6) or (7) of the TPA. HRV is accordingly notifying the ACCC of this conduct.

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## 2.3 Public Benefit Test

HRV submits that the benefits of the proposed conduct strongly outweigh any detriments that may arise. While HRV will not attempt to precisely define what it believes the relevant market is, it notes that the national wagering market and the national supply of racing/sporting information are likely to be relevant markets. This definition was submitted to the ACCC by the Association of Australian Bookmaking Companies for this aspect of the industry (albeit for collective bargaining conduct) in relation to an application for authorisation.<sup>5</sup> The ACCC appeared to accept, for the purposes of the AABC determination, that those markets and other downstream markets would be relevant to consider.<sup>6</sup>

### Benefits to Victorian harness racing

The Rebate proposed to be offered by HRV to bookmakers is a direct benefit to Victorian harness racing. Under the joint venture agreement with Tabcorp, HRV estimates that it receives approximately 5.3% of revenue attributed to Victorian harness racing for bets placed through the Victorian TAB. That is, for every \$100 of bets (including bet-backs or layoffs) placed (whether or not by bookmakers) with the Victoria TAB in relation to an Australian harness race, HRV will receive approximately \$5.30. Accordingly, under the proposed Race Field Approval Agreement with bookmakers, HRV will obtain a net amount of approximately \$4.30 for each \$100 placed by those bookmakers as bet-backs or layoffs with the Victorian TAB.

As HRV is a statutory body charged with responsibility, among other matters, of promoting harness racing in Victoria, the proposed conduct will be of significant benefit to Victorian harness racing and its stakeholders.

As noted in the *Racing Industry Consultancy* report, “there is little formal structure for the [Victorian Racing Industry] as a whole. Each of the three codes [ie RVL, HRV and GRV] operates independently of, and in competition with one another.”<sup>7</sup> However, HRV submits that its competitors are not simply limited to RVL and GVL. Each of the racing codes in the Victoria racing industry competes on a national basis with interstate racing codes. There is also significant competition between racing and other sports. Also, as noted by the ACCC in the *AABC Determination*, “[w]agering is one of a range of gambling opportunities available to consumers (including lotteries, poker machines and casinos). To some extent, all of these products compete with each other.”<sup>8</sup> HRV agrees with this proposition.

As to the requirements of HRV’s Integrity Standards that bookmakers be relevantly licensed, HRV submits that the public benefit of this requirement is overwhelming and is essential to maintaining the integrity of harness racing. HRV submits that there are no meaningful detriments in respect of the licensing requirements of its Integrity Standards.

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<sup>5</sup> The AABC Determination, paragraph 6.2.

<sup>6</sup> See the AABC Determination, paragraphs 6.7 – 6.8, although it is noted that the ACCC did not adopt or comment directly on the AABC submission of market.

<sup>7</sup> Racing Industry Consultancy, section 3.1.

<sup>8</sup> The AABC Determination, paragraph 6.6.

Benefits to bookmakers

The inclusion of the Rebate in the proposed Race Fields Approval Agreement is also of direct benefit to bookmakers, as it enables them to reduce the fees that they would be otherwise required to pay to HRV. As the Race Fields Approval Agreement allows for bookmakers to obtain rebates on *all* Australian harness racing bet-backs or layoffs (not simply Victorian racing), this will provide a greater ability for those bookmakers to fully offset the Fees otherwise payable to HRV.

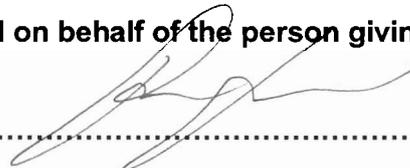
Detriment

Any detriment that might arise from the proposed conduct would relate to those wagering service providers that a bookmaker might have otherwise have used to place bet-backs or layoffs.

However, having noted the relatively small market share of the Victoria harness racing industry through the Victorian TAB (ie <1.5% of the entire market for wagering on racing in Australia), in the context of an Australia-wide market involving competition among and between codes and competition with other sports and gambling, HRV submits that its overall market share (based on wagering) is significantly more diluted. HRV submits that the benefits flowing to the Victorian harness racing industry as a result of the proposed conduct will enable the Victorian harness racing industry to better compete locally and nationally. To this extent, the pro-competitive benefits will significantly outweigh any detriments that may arise.

Dated 10/7/07

Signed on behalf of the person giving this notice



.....  
(Signature)

RICHARD LEWIS  
.....

(Full Name)

PARTNER - DEALONS  
.....

(Description)