



Public Competition Assessment

8 August 2007

Tattersall's Limited – acquisition of Golden Casket Lottery Corporation

Introduction

1. On 20 July 2007 the Australian Competition and Consumer Commission (**ACCC**) decided not to intervene in the acquisition of Golden Casket Lottery Corporation (**Golden Casket**) by Tattersall's Limited (**Tattersall's**) (**proposed acquisition**), subject to section 87B undertakings accepted by the ACCC. The ACCC was of the view that the acquisition, in conjunction with the undertakings, would be unlikely to have the effect of substantially lessening competition in the market for the monitoring and maintenance of electronic gaming machines (**EGMs**) in Queensland, and the market for the supply of monitoring software in Queensland, in contravention of section 50 of the *Trade Practices Act 1974* (**the Act**).
2. The ACCC also concluded that the acquisition was unlikely to have the effect of substantially lessening competition in the market for the operation of lotteries in Queensland, or the market for the acquisition of future public lotteries licences in Australia.
3. The ACCC formed its view on the basis of information provided by the merger parties and arising from its market inquiries. This Public Competition Assessment outlines the basis on which the ACCC has reached its decision on the proposed acquisition, subject to confidentiality considerations.

Public Competition Assessment

4. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:
 - a merger is rejected;
 - a merger is subject to enforceable undertakings;
 - the merger parties seek such disclosure; or

- a merger is not opposed but raises important issues that the ACCC considers should be made public.
5. This Public Competition Assessment has been issued because the ACCC accepted a court enforceable undertaking in relation to the acquisition of Golden Casket by Tattersall's.
 6. By issuing Public Competition Assessments, the ACCC aims to provide the market with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues. It also alerts the market to the circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change, because of developments.
 7. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.
 8. Many of the ACCC's decisions will involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources. While the ACCC aims to provide an appropriately detailed explanation of the basis for the ACCC decision, where this is not possible, maintaining confidentiality will be the ACCC's paramount concern, and accordingly a Public Competition Assessment may not definitively explain all issues and the ACCC's analysis of such issues.

The acquirer: Tattersall's Limited

9. Tattersall's is a publicly listed company that provides lottery, gaming and wagering services throughout Australia. It holds exclusive licences to operate and market both state and national public lotteries in Victoria, Tasmania and the Northern Territory and operates one of the two public lotteries in the ACT.
10. In the electronic gaming machine (EGM) industry, Tattersall's provides monitoring and maintenance services to venues that operate EGMs in New South Wales, Queensland and the Northern Territory. A wholly-owned Tattersall's subsidiary, Maxgaming, also develops software for use in EGMs.

The target: Golden Casket Lottery Corporation

11. Golden Casket is predominantly a lotteries company and has the exclusive licence to operate public lotteries in Queensland, where it operates and markets state and national lotteries such as Gold Lotto, Powerball, Soccer Pools and Casket. It also sells instant lottery products such as "scratch-its" via its network of ticket agents.

12. Golden Casket also owns Bounty Limited (**Bounty**), a group of companies that develop software for use in the EGMs both in Queensland and in other states. Specifically, Bounty develops player loyalty, jackpot, information management and monitoring software. Bounty also provides technical support to users of its software. Bounty's monitoring software, "Sentinel", is currently used by Odyssey Gaming (**Odyssey**) to monitor EGMs in Queensland and by Progressive Gaming to monitor EGMs in Tasmania.

The transaction

13. The acquisition involved Tattersall's acquiring all the shares in Golden Casket by a share transfer.

Areas of overlap

Electronic gaming machines

14. Tattersall's and Golden Casket both have interests in the development of software for use in EGMs. In particular, they are the only two suppliers of monitoring software to the two companies that monitor and maintain EGMs in Queensland.
15. Tattersall's subsidiary, Maxgaming, develops monitoring software for its own use, while its competitor, Odyssey Gaming, uses software under a licence from a subsidiary of Golden Casket, Bounty.

Lotteries

16. Both Tattersall's and Golden Casket operate public lotteries in Australia; however they do not directly compete on a day to day basis as they do not operate lotteries in the same states and territories. They are, however, potential competitors for the acquisition of future state and territory lotteries licences, as and when they come up for tender.

Timing

17. The following table outlines the timeline of key events in the ACCC's assessment of this matter:

Date	Event
14 th May 2007	ACCC commenced review under the Merger Review Process Guidelines.
29 th May 2007	Closing date for submissions from interested parties.
27 th June 2007	ACCC and Tattersall's enter into undertaking discussions. ACCC timeline suspended.
20 th July 2007	87B undertaking accepted by ACCC. ACCC decided that it would not intervene pursuant to section 50 of the Act.

Market inquiries

18. The ACCC conducted market inquiries with a range of industry participants, including competitors, potential competitors, customers, software developers and other interested parties.

Relevant markets

19. The ACCC considered that the relevant markets for the assessment of this matter were:

- the market for the monitoring and maintenance of EGMs in Queensland;
- the market for the supply of QCOM compliant monitoring software;
- the market for the operation of public lotteries in Queensland; and
- the market for the acquisition of future public lotteries licences in Australia.

Monitoring and maintenance market

Product dimension

20. In Queensland, as in most states with EGMs, it is a requirement for venues that have EGMs to have these machines 'monitored' by a licensed body. Monitoring involves the collection of information pertaining to the operation of EGMs including the integrity and probity of gaming operations for the purpose of ensuring that venues are complying with the laws concerning the operation of EGMs.

21. In general, monitoring licences require LMOs to:

- track and authorise the location and movement of all EGMs;

- ensure venues use approved EGMs only;
 - ensure the correct functioning and maintenance of the machines;
 - calculate and advise venues of taxes payable by written advice;
 - meter payouts to players to ensure the minimum return to players;
 - provide a terminal to the Queensland Office of Gaming Regulation (**QOGR**) with unlimited access to gaming machine databases; and
 - maintain an audit file which records all “raw” data received from sites.
22. A typical monitoring system consists of network cabling, a ‘site controller’ terminal, remote terminals and related software.
23. Only holders of a monitoring licence are able to monitor and maintain EGMs in Queensland. These companies are known as Licensed Monitoring Operators (**LMOs**). Monitoring licences are issued by the Queensland Gaming Commission (**QGC**).
24. In order to obtain a licence, and be a viable competitor in Queensland, LMOs must have access to the necessary hardware, software and technical expertise. Queensland is the only state in Australia where there is no statutory limit to the number of LMO licences that can be issued.
25. Before being granted a licence to operate in Queensland, an LMO must pay a prescribed fee and satisfy probity requirements. It must also have its software and hardware tested and approved by the QGC and must only use software that is compliant with the ‘QCOM’ protocol. The QCOM protocol is a mandatory set of requirements and specifications that monitoring software must comply with before it can be used in Queensland.
26. In Queensland, LMOs are also the only entities that are legally allowed to perform certain maintenance tasks on EGMs.
27. Therefore, the ACCC considered that a relevant product market was for monitoring and maintenance of EGMs.

Geographic dimension

28. Currently, there are only two active LMOs in Queensland: Maxgaming and Odyssey.
29. The ACCC examined the possibility that LMOs in other states may form part of the relevant market. Market inquiries revealed, however, that LMOs operating in other states were not likely to be able to supply services quickly in response to any exercise of market power by the merged entity. For example, market inquiries revealed that many LMOs use software that is not QCOM compliant and the expense and time required to modify this software would be significant.

30. Further, in the Northern Territory and Tasmania, where QCOM software is used, the licensed monitors are UniTab (a Tattersall's subsidiary) and Progressive Gaming (which uses Bounty's "Sentinel" program), which the ACCC considered would be highly unlikely to provide a competitive constraint on the merged entity.
31. The ACCC therefore considered that the geographic dimension of the market was likely to be Queensland.

Conclusion

32. The ACCC considered that a relevant market was the market for the monitoring and maintenance of EGMs in Queensland.

Monitoring software market

33. As noted above, participation in the monitoring and maintenance market for EGMs in Queensland requires that a participant have monitoring software that is compliant with the QCOM protocol. This software must be subsequently hardware tested and approved by the QGC and needs to be specifically configured for deployment in pubs and clubs. As noted, QCOM software differs significantly from monitoring software that operates in accordance with the protocols used in most other states and territories.
34. Currently, there are only two active suppliers of monitoring software to Queensland LMOs: Tattersall's subsidiary, Maxgaming, and Bounty Limited. Nevertheless, market inquiries revealed that there are a number of software developers in Australia that have the necessary expertise to develop monitoring software for use in Queensland. Typically these are companies that already produce other types of software for use in the industry.
35. The evidence before the ACCC, however, suggested that monitoring software differs substantially from other types of EGM software and that it would take developers of other EGM software up to two years to develop, test and gain approval for monitoring software. As such, the ACCC considered that these companies were unlikely to be able to readily switch supply to the market in the event of any exercise of market power by the merged firm.
36. Therefore, the ACCC considered that the relevant product market was the market for development of monitoring software.

Conclusion

37. The ACCC considered that a relevant market was the market for the supply of QCOM compliant monitoring software.

Queensland lotteries market

38. Golden Casket holds the exclusive licence to operate public lotteries in Queensland. There are no other operators of public lotteries in Queensland. As such, the ACCC considered that the relevant market is the operation of public lotteries in Queensland.

Market for the acquisition of public lotteries licences in Australia

39. Public lotteries involve the sale of tickets in random games of chance such as Tattslotto, Powerball, Soccer Pools and instant lotteries (scratch-its). Lotteries in all states and territories are regulated by state and territory governments.
40. In most states and territories of Australia, there is only one public lottery licence. The ACT is the exception, having two licensed public lotteries operators. These licences are usually granted either on an exclusive basis, or on a non-exclusive basis for an initial period and then on a non-exclusive basis thereafter.
41. While the state lotteries form a national bloc to pool winnings for certain games, as described above, the state lotteries do not compete against one another for the sale of lottery tickets.
42. Both Tattersall's and Golden Casket operate public lotteries in different states and territories of Australia and, although they do not directly compete against each other, the ACCC considered that they were potential competitors for the acquisition of future public lotteries licences in Australia.
43. The ACCC therefore considered that a relevant market for the purposes of this market is the market for acquiring future lotteries licences in Australia.

Competition analysis

Monitoring software and monitoring and maintenance (LMO) markets

44. The transaction resulted in Tattersall's owning the only two suppliers of monitoring software to LMOs in Queensland. This includes the company that supplies software and technical support to its only competitor in the maintenance and monitoring of Queensland EGMs, Odyssey.

Barriers to entry

45. On the basis of market inquiries, the ACCC concluded that barriers to entry into both the market for the supply of QCOM compliant monitoring software and the market for the supply of monitoring and maintenance services in Queensland were such that new entry into each of them was unlikely to constrain the merged entity. The relevant factors leading to this conclusion are outlined below.

Long lead times for new entrants into both markets

46. Market inquiries indicated that it would take a substantial amount of time to develop QCOM-compliant monitoring software. For example, a number of industry participants indicated that it would take at least 18 months to develop,

test and get approval for monitoring software and hardware. Further, market inquiries also indicated that 'rolling out' new software and hardware to venues in Queensland could also take a considerable amount of time.

47. The ACCC considered that this posed a significant barrier to entering each of the software and monitoring and maintenance markets.

Significant scale of entry required for entry into the monitoring and maintenance market

48. Market inquiries revealed that, in order to be a viable competitor in the market for the supply of monitoring and maintenance services in Queensland, a new entrant would need to achieve a market share of between 10% and 20% of Queensland EGMs. However, market inquiries also revealed that the ownership of EGMs in Queensland is highly dispersed among a large number of venues spread across the state. Therefore, in order to viably compete in the market, a new entrant would need to attract the custom of a relatively large number of venues, possibly over a large area. The ACCC considered that this could pose a significant barrier to entry to a new entrant.

Conclusion – Barriers to entry

49. In light of the evidence before it, the ACCC considered that barriers to entry into the relevant monitoring and maintenance market were high and that new entry was unlikely in the 18 months to 2 years following the acquisition.

Increase in Tattersall's incentive and ability to discriminate against Odyssey

50. In light of the significant barriers to entry in the relevant markets, the ACCC considered that the acquisition would give Tattersall's the incentive and ability to foreclose Odyssey in the monitoring and maintenance market. The ACCC considered that Tattersall's could do this by increasing the cost of Odyssey obtaining software and technical support and/or decreasing the level of quality at which these services are provided.
51. Market inquiries revealed that price competition in the market for the supply of monitoring and maintenance services in Queensland is relatively intense compared to other states and territories where EGMs are monitored. Indeed, pricing in Queensland is the lowest in any region in Australia. Owners of EGMs appear to be relatively sensitive to both the price and service levels provided to them by LMOs, and switching costs for venues also did not appear to be high.
52. As such, the ACCC considered that, if Tattersall's raised the price of Odyssey obtaining monitoring software from Bounty, Odyssey would either have to raise its prices to venues or sacrifice revenues to compete. Given the intense price competition in this market, the sensitivity of venue owners to price increases, and the low switching costs facing venues, the ACCC found that such a strategy would be likely to have serious detrimental effects on competition (insofar as it would affect the viability of the only competitor and act as a disincentive to future entry) in the monitoring and maintenance market.

53. Similarly, if Tattersall's was to cause Bounty to decrease the service upon which it provided technical support to Odyssey, the ACCC considered that this would also seriously undermine competition in the relevant monitoring and maintenance market. Market inquiries revealed that venues are sensitive to service levels, especially in relation to maintenance where timely maintenance of machine faults is critical given the strict probity requirements. Venues derive revenue from EGMs only when they are in operation and, if a competitor's ability to respond effectively and maintain EGMs is compromised, so too will its position in the market.
54. Therefore, the ACCC concluded that the acquisition was likely to substantially lessen competition in the market for the monitoring and maintenance of EGMs in Queensland.

The market for the acquisition of public lotteries licences in Australia

55. The proposed acquisition resulted in the removal of Golden Casket as an independent potential competitor for the acquisition of lotteries licences in Australia.
56. With respect to the potential for new entrants to provide competitive tension in the process for the acquisition of future lotteries licences, market inquiries revealed that the key requirements for participation in this market include probity standards and the financial and technical capability to conduct successful lottery businesses.
57. Market inquiries indicated that the merged entity would face competition from a number of potential competitors for the acquisition of lotteries licences in the future. The ACCC considered that companies with operations in other segments of the broader gambling industry, both in Australia and overseas, would be potential competitors for future lotteries licences. For example, the ACCC noted that Greek lotteries company, Intralot, was recently short-listed for the Victorian lotteries licence.
58. As such, the ACCC did not consider that the acquisition was likely to lead to a substantial lessening of competition in this market.

A note on the ACCC's assessment of Tabcorp's proposed acquisition of UniTab (2006)

59. The ACCC's assessment of the effects of the transaction in the market for the acquisition of future lotteries licences raised a similar, but distinct, issue from its 2006 consideration of Tabcorp's proposed acquisition of UniTab (**Tabcorp- UniTab matter**).
60. In its assessment of the Tabcorp- UniTab matter, the ACCC raised concerns that the proposed acquisition would remove UniTab as a significant competitor for future pari mutuel wagering licences, as they arose, in the various states and territories. In that matter, the ACCC expressed concerns that the proposed acquisition would result in the removal of Tabcorp's strongest competitor for future wagering licences in Australia. The ACCC considered that UniTab's strong position as a potential bidder for wagering licences came from its

established position as a wagering licence holder and wagering operator in three states or territories in Australia

61. In the present matter, although the acquisition removed Golden Casket as a potential acquirer of future lotteries licences, the evidence before the ACCC suggested that Golden Casket was unlikely to be a significant potential competitor for these licences. Further, unlike in the Tabcorp-UniTab matter, there appeared to be only limited scale advantages to be gained by operating lotteries in multiple states. Moreover, market inquiries indicated that Tattersall's would be likely to face competition from other potential bidders for lotteries licences in the future, were they to be offered.

The market for operating lotteries in Queensland

62. As noted, Golden Casket is the sole licensed operator of public lotteries in Queensland. As such, the transaction represented a transfer of monopoly power from the Queensland Government to Tattersall's and the ACCC concluded that a substantial lessening of competition was unlikely.

Tattersall's undertaking

63. To address the ACCC's competition concerns in the market for the monitoring and maintenance of EGMs in Queensland, Tattersall's offered, and the ACCC accepted, undertakings pursuant to section 87B of the Act.

64. Tattersall's undertook to:

- divest Bounty to a purchaser approved by the ACCC within a specified timeframe;
- appoint a divestiture agent to sell Bounty if Tattersall's is unable to sell Bounty within the specified timeframe;
- ensure that the management of Bounty is kept separate from the management of Tattersall's until Bounty is divested;
- appoint an independent manager to manage Bounty until it is divested;
- facilitate each Bounty director to provide a section 87B undertaking to the ACCC that he/she would:
 - not use non-public Bounty information only for the benefit of Bounty; and
 - not participate in any Tattersall's discussions pertaining to the monitoring and maintenance of EGMs in Queensland.

65. The undertaking provided by Tattersall's and each of the Bounty directors are reproduced at **ATTACHMENT A** to this PCA.

Conclusion

66. On the basis of the above, including taking into account Tattersall's undertaking, the ACCC formed the view that the proposed acquisition was unlikely to result in a substantial lessening of competition in the market for the monitoring and maintenance of electronic gaming machines in Queensland in contravention of section 50 of the Act.

67. The ACCC also formed the view that the proposed acquisition would not be likely to result in a substantial lessening of competition in market for the operating lotteries in Queensland, nor the market for the acquisition of lotteries licences in Australia.

ATTACHMENT A – TATTERSALL'S UNDERTAKINGS

Undertakings under Section 87B of the Trade Practices Act

Recitals

On 16 April 2007 Tattersall's announced it had agreed to acquire, via its wholly owned subsidiary Tattersall's Holdings, all the shares in GCLC, the lottery operator in Queensland (**Proposed Acquisition**).

GCLC has the following wholly owned subsidiaries: Bounty Limited, Bounty Systems Pty Ltd, Clubline Systems Pty Ltd and Infolink Systems Pty Ltd (collectively, **Bounty**). Bounty provides a range of management and monitoring software for use in the club and hotel industries in Australia and overseas. It also owns the intellectual property to a number of software programs used in the electronic gaming machine industry, including "Sentinel", "Compass" and "Clubline".

At the date of these undertakings, the active licensed monitoring operators in Queensland are:

- (a) Maxgaming Holdings Pty Ltd and Maxgaming Qld Pty Ltd (collectively referred to as **Maxgaming**), both being wholly owned subsidiaries of Tattersall's; and
- (b) Odyssey Gaming Services Pty Ltd.

"Sentinel" is licensed by Bounty to Odyssey, on a non-exclusive basis, and is used by Odyssey to monitor electronic gaming machines in Queensland.

On 14 May 2007, the Commission announced it had commenced an informal review of the Proposed Acquisition.

The Commission has made market inquiries and considered the information provided by Tattersall's and other market participants. The Commission's inquiries were aimed at determining whether or not the Proposed Acquisition would be likely to substantially lessen competition in any substantial Australian market, in contravention of section 50 of the Act.

The Commission has come to the view that the relevant market for the purposes of assessing the Proposed Acquisition is the market for the monitoring and maintenance of electronic gaming machines in Queensland.

After undertaking extensive market inquiries, the Commission came to the view that barriers to entry into the relevant monitoring and maintenance market were such that new entry is unlikely to provide a competitive constraint on Tattersall's behaviour in the relevant market post-acquisition. In forming this view, the Commission considered that the long lead times associated with new entry, as well as the scale of entry required, pose substantial barriers to viable entry into the market that are unlikely to be overcome in the next two years.

In this context, the Commission considers that the Proposed Acquisition would increase Tattersall's incentive and ability to increase the price paid by Odyssey for monitoring software and technical support and/or decrease the level of service that this software and technical support is provided to Odyssey.

The Commission has therefore concluded that the Proposed Acquisition is likely to raise substantial competition concerns in the market for the monitoring and maintenance of electronic gaming machines in Queensland.

Tattersall's has previously denied and continues to deny that the Proposed Acquisition and, specifically, the acquisition of Bounty would, or would be likely to, substantially lessen competition in contravention of section 50 of the Act.

Tattersall's without admission offers to the Commission, pursuant to section 87B of the Act, the following Undertaking to divest Bounty, in order to address and remedy the Commission's concerns as outlined in these Recitals.

The object of these Undertakings is to ensure that Bounty is maintained, through independent management and subsequent divestiture, as a viable, independent and ongoing concern.

On the basis of the implementation of the terms of this Undertaking the Commission does not object to the Proposed Acquisition.

1. Commencement and Duration of Undertakings

- 1.1 Subject to paragraph 1.2, this Undertaking comes into effect on the Trigger Date.
- 1.2 In the event that the date by which the Commission accepts this Undertaking is subsequent to the Trigger Date, all paragraphs of this Undertaking come into effect when the Undertaking is accepted by the Commission and have effect as and from the Trigger Date.
- 1.3 This Undertaking will terminate on the earlier of:
 - (a) the date the Commission consents to the withdrawal of the Undertaking in accordance with section 87B of the Act; and
 - (b) the first anniversary of the Divestiture Date.

2. Preservation of Divestiture Business

Maintenance of Divestiture Business

- 2.1 Subject to paragraph 3, from the Trigger Date, Tattersall's must not sell or transfer any shares or assets of Bounty, or make any material adverse change to Bounty whatsoever.

Treatment of Divestiture Business

- 2.2 Tattersall's undertakes that it will, from the Trigger Date until the Divestiture Date:
- (a) take all steps necessary to preserve Bounty as a separate and independently viable going concern in the provision of gaming technology software and technical support;
 - (b) procure that the management, sales, service, administration and operations of Bounty is conducted separately from the management, sales, service, administration and operations of Tattersall's;
 - (c) not employ or otherwise engage or offer to employ or engage directly or indirectly, any employee or servant of Bounty;
 - (d) procure that the management of Bounty operates Bounty independently from Tattersall's operations, and particularly empower them independently to:
 - (i) acquire and pay for sufficient and timely deliveries of all goods and services required by Bounty;
 - (ii) continue to market, price and sell all goods and services in the same manner as occurred prior to the Trigger Date by Bounty; and
 - (iii) maintain all current contracts and agreements of Bounty in accordance with their terms;
 - (e) subject to paragraph 2.3, below, take all steps necessary to:
 - (i) keep the books and records of Bounty separate from those of the operations of Tattersall's; and
 - (ii) ensure that no information in relation to Bounty is directly or indirectly requested or received by Tattersall's directly or indirectly from Bounty;
 - (f) provide and maintain:

- (i) access to sufficient working capital and sources of credit for Bounty; and
- (ii) current levels of sales support, marketing and technical assistance for Bounty,

so as to ensure Bounty remains economically viable as an independent ongoing concern to continue to provide the services it was providing prior to the Trigger Date;

- (g) ensure that any agreements to be entered into between Tattersall's and Bounty are at arms length and will be subject to a veto by the Independent Manager;
- (h) without limiting the generality of paragraph 2.2(g), ensure that any agreement entered into with Bounty to license the Sentinel Software to Tattersall's or that otherwise deals with or relates to the Sentinel Software, will be on non-exclusive terms and in any event subject to approval by the Commission.

2.3 From the Trigger Date and until the Divestiture Date:

- (a) Tattersall's is entitled to receive and use:
 - (i) all publicly available information regarding Bounty and information in the possession of Tattersall's as at the Trigger Date;
 - (ii) all information necessary to enable Tattersall's to comply with its legal and reporting obligations including taxation, accounting and ASX continuous and periodical disclosure obligations; and
 - (iii) such commercial and financial information compiled by Bounty in respect of Bounty as is reasonably necessary to enable the directors of Tattersall's to fulfil their duties as directors;
- (b) Tattersall's is entitled to receive and use all information necessary to enable Tattersall's to effect the divestiture of Bounty, subject to approval by the Independent Manager appointed pursuant to paragraphs 2.10 - 2.15.

2.4 Tattersall's must, within 6 Business Days of the Trigger Date, notify the Commission of any changes to Bounty that Tattersall's intends to make to ensure the separation of Bounty required by paragraph 2.

2.5 Prior to the divestment of Bounty, Tattersall's will, unless otherwise required by law, exclude any person who is a director, employee or consultant of

Bounty from any discussion or vote at a meeting of the Board of Tattersall's, where that discussion or vote relates in any way to the Queensland electronic gaming machine monitoring and maintenance market.

- 2.6 Prior to the divestment of Bounty, Tattersall's will, unless otherwise required by law or permitted by this Undertaking, ensure that any person who is a director, employee or consultant of Bounty, will not use or disclose information acquired in the course of performing duties for Bounty, for the benefit of Tattersall's.
- 2.7 Tattersall's will request that each new and existing director on the board of Bounty as at, and from, the date of the ACCC accepting this Undertaking until the Divestiture Date, offers to the Commission an undertaking in the form located in Schedule 2 of this Undertaking.
- 2.8 In the event that a director of Bounty has not offered to the Commission an undertaking in the form in Schedule 2 of the Undertaking within 5 Business Days of the ACCC accepting this Undertaking, or, for directors of Bounty appointed after the date on which the Commission accepts the Undertakings, within 5 Business Days of being appointed as a Bounty Director, Tattersall's will, to the extent permissible by law, terminate the appointment of that director.

Proposed Independent Manager

- 2.9 Within 6 Business Days of the Trigger Date, Tattersall's must notify the Commission, in writing, of the identity of the proposed Independent Manager to oversee the operation of Bounty at Tattersall's's cost, together with such information as the Commission requires to assess whether the Commission will object to the appointment of the proposed Independent Manager, including a copy of the proposed terms of engagement of the Independent Manager.

Appointment of Independent Manager

- 2.10 If within 10 Business Days of receipt by the Commission of the information referred to in paragraph 2.9, or such further period as is required by the Commission and notified to Tattersall's in writing prior to the expiration of the 10 Business Day period, the Commission does not object to the proposed Independent Manager, Tattersall's must appoint the proposed Independent Manager within 5 Business Days of being notified that the Commission does not so object, in accordance with the minimum terms of engagement approved by the Commission which shall include the terms set out in paragraph 2.11. Tattersall's will promptly forward to the Commission a copy of the executed terms of engagement.
- 2.11 The terms of Tattersall's engagement of the Independent Manager will provide for the following obligations:

- A. the Independent Manager will operate Bounty in the ordinary course of business and must not make any material change to the attributes of Bounty, including but not limited to the development, maintenance, marketing and licensing of its gaming technology systems and software;
- B. the Independent Manager will operate Bounty in a manner which is financially and operationally separate from Tattersall's;
- C. the Independent Manager will keep the books and records of Bounty separate from those of Tattersall's;
- D. the Independent Manager will implement specific measures to maintain the confidentiality of any competitively sensitive information of Bounty, and Tattersall's will not request access to such information;
- E. the Independent Manager will use best endeavours to renew or replace licensing contracts on expiry on commercial terms no less favourable to Bounty and enter into new, commercially favourable contracts where possible;
- F. the Independent Manager will maintain current staffing and staffing levels and ensure that Bounty has access to a sufficient number of management personnel and staff to operate as a viable going concern;
- G. Every 30 calendar days from the date of appointment, the Independent Manager must provide a written report each month to the Commission in relation to the operation of Bounty, this Undertaking and each of the Director Undertakings. The Independent Manager must carry out the Commission's directions in relation to matters arising from the report;
- H. the Independent Manager must review and report to the Commission regarding any changes made to Bounty made by Tattersall's to ensure separation of Bounty required by paragraph 2, and make any recommendation s/he considers appropriate, including, if necessary, steps to reverse such changes made by Tattersall's;
- I. the Commission can request information from the Independent Manager directly at any time and the Independent Manager will provide the information so requested. The Independent Manager can report and respond to the Commission directly in response to any such request made, or as otherwise required by the Commission; and
- J. Tattersall's will indemnify the Independent Manager for any expenses, loss, claim or damage arising from the performance by the Independent Manager of functions required to be performed by the Independent Manager by this Undertaking.

Alternative Independent Manager

- 2.12 The Commission may object to the appointment of the Independent Manager identified by Tattersall's if the Commission considers in its absolute discretion the Independent Manager is not independent of Tattersall's or does not have relevant experience or skills to act as the Independent Manager, or that the terms of engagement will not enable appropriate hold separate arrangements.

Tattersall's undertakes not to challenge any Commission objection to the proposed Independent Manager.

- 2.13 If within 10 Business Days of receipt by the Commission of the information referred to in paragraph 2.9, or such further period as is required by the Commission and notified to Tattersall's in writing prior to the expiration of the 10 Business Day period, the Commission objects to the proposed Independent Manager, Tattersall's must, within 5 Business Days of the Commission nominating an alternative Independent Manager, appoint an Independent Manager nominated by the Commission on terms (including price) agreed by the Commission and to be paid by Tattersall's. The alternative Independent Manager nominated by the Commission must have the relevant experience or skills to act as the Independent Manager.

Resignation of the Independent Manager

- 2.14 In the event that the Independent Manager resigns or otherwise stops acting as the Independent Manager before the Final Divestiture Date, Tattersall's must within 5 Business Days of the Commission nominating an alternative Independent Manager, appoint an Independent Manager nominated by the Commission on terms (including price) agreed by the Commission and to be paid by Tattersall's. The alternative Independent Manager nominated by the Commission must have the relevant experience or skills to act as the Independent Manager.

Termination of Independent Manager

- 2.15 The Commission must approve any proposal by, and alternatively may direct, Tattersall's to terminate the Independent Manager if the Independent Manager acts inconsistently with the provisions of this Undertaking or the terms of its appointment, and specifically with this paragraph 2. On termination, Tattersall's must within 5 Business Days of the Commission nominating an alternative Independent Manager, appoint an Independent Manager nominated by the Commission on terms (including price) agreed by the Commission and to be paid by Tattersall's. The alternative Independent Manager nominated by the Commission must have the relevant experience or skills to act as the Independent Manager.

Specific obligations relating to Bounty

- 2.16 In complying with, and without limiting, the obligations in this paragraph 2, Tattersall's must:
- (a) continue to provide access to reasonable working capital and sources of credit;
 - (b) provide and maintain reasonable levels of administrative, promotional, technical, advertising and marketing support to Bounty;

- (c) ensure that the Independent Manager is fully able to acquire and pay for sufficient and timely delivery of all goods and services (including from third parties) required by Bounty;
- (d) accept (and direct its officers, employees and agents to accept) direction from the Independent Manager as to the control, management, financing and operations of Bounty, and for Bounty to meet all of its legal, corporate, financial, accounting, taxation, audit and regulatory obligations;
- (e) provide and pay for any external expertise, assistance or advice required by the Independent Manager to perform his or her role;
- (f) continue in accordance with their terms current licensing arrangements for all software that Bounty uses and has in place with third parties as at the Trigger Date;
- (g) ensure that Bounty has, at Tattersall's cost, access to a reasonably sufficient number of management personnel and staff to operate as a viable going concern;
- (h) not procure, promote or encourage the redeployment of management or staff working at Bounty at the Trigger Date to any other business operated by Tattersall's;
- (i) take any steps directed by the Commission, following a recommendation of the Independent Manager pursuant to paragraph 2.11H, to reverse changes made by Tattersall's to Bounty, within 10 Business Days of being so directed;
- (j) not, at any time from the Trigger Date, or within one year of the completion of the sale of Bounty, use any confidential information gained through the ownership and/or management of Bounty to the detriment of any aspect of Bounty, including its goodwill, competitive standing, or commercial viability; and
- (k) direct its managers, officers, employees and agents to act in accordance with the prohibitions and duties in these Independent Manager obligations.

2.17 As soon as practicable after the Trigger Date, Tattersall's will:

- (a) direct each member of staff of Bounty not to do anything inconsistent with Tattersall's obligations in this Undertaking; and
- (b) request that its directors in conducting their role and acting in accordance with their duties take into consideration and comply, to the extent not inconsistent with their legal obligations as directors of Tattersall's, with the obligations referred to in paragraphs 2.16(d) and (k) as if those obligations applied to them.

3. Divestiture Process

Sale of Bounty

- 3.1 Tattersall's undertakes to complete the sale of Bounty to an Approved Purchaser within the Divestiture Period.

Sale Process

- 3.2 Where Tattersall's proposes to divest Bounty by way of an asset sale, Tattersall's must provide the Commission and any Proposed Purchaser with a comprehensive description of the assets, contracts, licences and other elements that make up Bounty, for its divestiture in accordance with this Undertaking.
- 3.3 Where Tattersall's proposes to divest Bounty by way of a sale of shares, Tattersall's must ensure that the divestiture of shares transfers complete control of the businesses, assets, contracts, licences and other elements that make up Bounty, for its divestiture in accordance with this Undertaking.
- 3.4 Divestiture by way of a sale of either assets or shares must comply with the following provisions for the terms on which Bounty is to be divested and the requirement that such sale can only be to an Approved Purchaser.

Divestiture terms

- 3.5 The terms on which Bounty is to be divested (and to be included in the Sale and Purchase Agreement) must include provision for:
- (a) the assignment or transfer to the purchaser or purchasers of all material assets that comprise Bounty;
 - (b) Tattersall's not to do anything, the intention or likely effect of which is to discourage any staff of Bounty from taking up employment with the purchaser, and for Tattersall's to take all reasonable steps to facilitate the transfer of those employees to the purchaser;
 - (c) Tattersall's to procure that the Independent Manager continue to operate Bounty in the ordinary course of business between the date of execution of the relevant Sale and Purchase Agreement and the relevant Divestiture Date; and
 - (d) Tattersall's must not, for a period of 1 year from the Divestiture Date, procure, promote or encourage the redeployment of management or staff working at Bounty, to any business operated by Tattersall's.

Reporting to the Commission

- 3.6 Without limiting the operation of paragraph 8, on the first Business Day of every month commencing 1 August, 2007 until the Divestiture Date, Tattersall's will provide a written report to the Commission as to the progress made in the divestiture of Bounty.
- 3.7 Tattersall's will respond in a timely manner to any queries made by the Commission about the divestiture of Bounty, and in particular, Tattersall's must, if the Commission requests, provide information to the Commission as to the attributes and extent of assets and arrangements comprising Bounty.

4. Approved Purchaser(s)

Sale only to an Approved Purchaser

- 4.1 Tattersall's must not sell, and must not authorise the Divestiture Agent to sell, Bounty to a purchaser other than an Approved Purchaser.
- 4.2 Tattersall's must not contract to sell Bounty on terms which would be inconsistent with the Divestiture Agent's role, the granting of authority to the Divestiture Agent under paragraph 5.5 or 5.6, or any other obligation in this Undertaking.
- 4.3 An Approved Purchaser is a Proposed Purchaser which:
- (a) is independent of and has no direct or indirect controlling interest in Tattersall's;
 - (b) Tattersall's or, in the event that Bounty becomes an Unsold Business, the Divestiture Agent, believes, in good faith, having made reasonable inquiries, is of good financial standing and has an intention to operate Bounty as a going concern; and
 - (c) has not been objected to by the Commission in accordance with paragraph 4.7.

Proposed Purchaser Notice

- 4.4 In respect of a Proposed Purchaser, Tattersall's must provide the Commission, for the purposes of its approval, with a Proposed Purchaser Notice on a confidential basis that:
- (a) sets out the name, address, telephone number and any other available contact details of the Proposed Purchaser(s);
 - (b) attaches a copy of the proposed Sale and Purchase Agreement;
 - (c) includes a description of the business carried on by the Proposed Purchaser(s);
 - (d) includes the names of the owners and directors of the Proposed Purchaser(s); and

- (e) includes such other information that the Commission requires to assess the independence of the Proposed Purchaser.
- 4.5 Tattersall's may notify the Commission on a confidential basis of any intended Proposed Purchaser(s) as early as possible prior to seeking approval under paragraph 4.3 and request the Commission to advise whether it is likely to raise any objection to that purchaser. The Commission will do so in a timely manner provided it receives all information required by paragraph 4.4 other than paragraph 4.4(b).
- 4.6 Tattersall's must not enter into a Sale and Purchase Agreement with a Proposed Purchaser until the Commission has confirmed in writing that it does not object to the terms of the proposed Sale and Purchase Agreement. The Commission will advise Tattersall's that it does not object, or if it does object of that fact and the reasons therefore, within 15 Business Days after receipt of the proposed Sale and Purchase Agreement. The Commission may only object to the terms of the proposed Sale and Purchase Agreement if the Commission has formed the view that the terms of the proposed Sale and Purchase Agreement hinder, limit or restrict Bounty from being operated as a viable, competitive business independent of Tattersall's.

Objection Notice

- 4.7 The Commission may, within 15 Business Days after receipt by the Commission of the Proposed Purchaser Notice, or such further period as is required by the Commission and notified to Tattersall's in writing prior to the expiration of the 15 Business Day period, provide Tattersall's with an Objection Notice. An Objection Notice can be issued by the Commission if it is of the view that the Proposed Purchaser is not an appropriate purchaser having regard to the Commission's competition concerns and must give reasons for that view.
- 4.8 If the Commission requires further time, and notifies Tattersall's of this fact, pursuant to paragraph 4.7 of these Undertakings, the Divestiture Period shall be extended by the amount of further time, measured in Business Days, that the Commission takes to either issue Tattersall's with an Objection Notice or inform Tattersall's, in writing, that it does not intend to issue an Objection Notice.
- 4.9 The Commission may only issue an Objection Notice if it is of the view that the acquisition of Bounty by the relevant Proposed Purchaser would be likely to substantially lessen competition in the Queensland electronic gaming machine monitoring and maintenance market when compared to the competitive position in this market prior to Tattersall's acquiring Bounty.
- 4.10 Tattersall's must not divest Bounty to a person named in an Objection Notice. Tattersall's undertakes not to challenge the Commission's decision to issue an Objection Notice.

Deeming of Approved Purchaser

- 4.11 Should the Commission fail to provide Tattersall's with an Objection Notice pursuant to paragraph 4.7, the Proposed Purchaser will be deemed to be an Approved Purchaser.

5. Failure to divest within the Divestiture Period

Sale of Unsold Business

- 5.1 In the event that the sale of Bounty is not completed by the end of the Divestiture Period, Bounty becomes an Unsold Business.

Notification of Proposed Divestiture Agent

- 5.2 Within 5 Business Days of Bounty becoming an Unsold Business, Tattersall's must notify the Commission, in writing, of the identity of the Proposed Divestiture Agent, together with such information as the Commission requires to assess whether the Commission will object to the appointment of the Proposed Divestiture Agent.

Alternative Divestiture Agent

- 5.3 If within 10 Business Days of receipt by the Commission of the information referred to in paragraph 5.2, or in accordance with paragraph 5.10, the Commission objects to the Proposed Divestiture Agent, Tattersall's must appoint a Divestiture Agent nominated by the Commission within 10 Business Days of nomination by the Commission.
- 5.4 If agreement cannot be reached between Tattersall's and the Divestiture Agent nominated by the Commission within 5 Business Days of nomination by the Commission, Tattersall's will agree to pay such fees as are directed by the Commission.

Appointment of Divestiture Agent

- 5.5 If within 10 Business Days of receipt by the Commission of the information referred to in paragraph 5.2, or such further period as is required by the Commission and notified to Tattersall's in writing prior to the expiration of the 10 Business Day period, the Commission does not object to the Proposed Divestiture Agent, Tattersall's must appoint, within 5 Business Days of the Commission confirming that it does not object to the Proposed Divestiture Agent, the Proposed Divestiture Agent as a Divestiture Agent, in accordance with the minimum terms of appointment set out in this paragraph and forward to the Commission a copy of the executed terms of appointment.

- 5.6 The appointment of the Divestiture Agent must be on terms approved by the Commission, which should include terms to the effect that the Divestiture Agent:
- (a) is empowered by Tattersall's and required to effect the divestiture of the Unsold Business, only to an Approved Purchaser or Approved Purchasers, before the Final Divestiture Date, at the best price that is attainable within that period, but subject to an absolute and unconditional obligation to sell the Unsold Business at no minimum price;
 - (b) may charge such fees as are agreed between the Divestiture Agent and Tattersall's (but not contingent on the price to be obtained for the Unsold Business), to be paid by Tattersall's. If agreement cannot be reached between the Divestiture Agent and Tattersall's within 5 Business Days from the date of the Commission's notice that it does not object to the Proposed Divestiture Agent, Tattersall's will agree to pay such fees as are directed by the Commission;
 - (c) is the only person who may divest the Unsold Business;
 - (d) may retain any lawyer or other adviser or agent reasonably required to effect the divestiture of the Unsold Business, and the fees of that adviser or agent must be paid by Tattersall's;
 - (e) must account to Tattersall's for:
 - (i) any moneys derived from the divestiture of the Unsold Business;
 - (ii) all disbursements, fees and charges incurred by the Divestiture Agent in undertaking his/her duties; and
 - (iii) all fees of the Divestiture Agent;
 - (f) must provide a written report on the first Business Day of each month until the Divestiture Date to the Commission and Tattersall's, or answer any enquiries of either the Commission or Tattersall's, concerning:
 - (i) the efforts made to sell the Unsold Business;
 - (ii) the identity of any advisers engaged;
 - (iii) costs incurred;
 - (iv) the identity of any persons expressing interest in Bounty; or
 - (v) any other information required by the Commission or Tattersall's; and
 - (g) must use best endeavours to ensure that Tattersall's complies with its obligations as set out in this Undertaking and notify the Commission of any material failure by Tattersall's to do so.

Powers of Divestiture Agent

- 5.7 Tattersall's will grant the Divestiture Agent an irrevocable power of attorney conferring all necessary power and authority to effect the divestiture of the Unsold Business on terms considered by the Divestiture Agent in its sole discretion to be consistent with this Undertaking.

Assistance to Divestiture Agent

- 5.8 Tattersall's must provide the Divestiture Agent all relevant information available to Tattersall's in respect of the Unsold Business and reasonably assist the Divestiture Agent to effect the divestiture of the Unsold Business as quickly as possible.

Provision of information to the Commission by the Divestiture Agent

- 5.9 The Commission can request information from the Divestiture Agent directly at any time. Tattersall's undertakes to require the Divestiture Agent to report and respond to the Commission directly in response to any such request, or as otherwise required by the Commission.

Termination of Divestiture Agent

- 5.10 The Commission must approve any proposal by, and alternatively may direct, Tattersall's to terminate the Divestiture Agent if the Divestiture Agent acts inconsistently with the provisions of this Undertaking, including this paragraph 5. On termination, the Commission can appoint at its discretion an alternative Divestiture Agent, in accordance with paragraph 5.3.

6. Obligations to Procure and Notify

- 6.1 Where performance of an obligation under this Undertaking requires a Related Body Corporate of Tattersall's to take or refrain from taking some action, Tattersall's will use its best endeavours to procure that Related Body Corporate to take or refrain from taking that action as the case may be.
- 6.2 Any notice or other communication pursuant to this Undertaking must as appropriate be sent to:

The Commission
Australian Competition & Consumer Commission
Attention: General Manager: General Manager, Mergers & Asset Sales
Fax number: (02) 6243 1212

Tattersall's
Tattersall's Limited
Attention: General Counsel & Company Secretary
Fax Number: (03) 8517 7752

or in whatever manner the Commission or Tattersall's subsequently notifies each other.

7. Confidentiality and No Derogation

- 7.1 The period specified as the Divestiture Period and the Final Divestiture Period and the identity of any Proposed Approved Purchaser under paragraphs 4.4 and 4.5 of the Undertaking is, and will be, provided to the Commission on a confidential basis.
- 7.2 Tattersall's acknowledges that nothing in this Undertaking:
- (a) restricts the right of the Commission to take action under the Act in the event that divestiture of Bounty is not implemented in accordance with the Undertaking; nor
 - (b) prevents the Commission from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by Tattersall's of this Undertaking.

8. Further Information

- 8.1 Tattersall's will provide the Commission with copies of any executed agreement in connection with the sale of Bounty within 5 Business Days of it being entered into.
- 8.2 At the Commission's direction, Tattersall's will itself, and will procure that its directors, employees, agents or contractors identified by the Commission:
- (a) furnish information to the Commission;
 - (b) produce documents to the Commission within Tattersall's custody, control or power; and/or
 - (c) attend the Commission at a time and place appointed by the Commission to answer any questions the Commission (its Commissioner, staff or agents) may have,

in relation to Tattersall's compliance with this Undertaking.

- 8.3 Information furnished, documents produced or information given in answer to questions may be used by the Commission for any purpose consistent with its statutory duties.
- 8.4 Any direction made by the Commission under paragraph 8.2 will be notified to the Company Secretary of Tattersall's.

9. Acknowledgement

Tattersall's acknowledges that the Commission may:

- (a) make the Undertaking available for public inspection; and
- (b) from time to time publicly refer to the Undertaking.

10. Definitions and interpretation

10.1 Definitions

In this Undertaking, unless the context indicates otherwise:

Act means the *Trade Practices Act 1974* (Cth).

Approved Purchaser has the meaning ascribed in paragraph 4.3 of this Undertaking.

Bounty means collectively Bounty Limited ACN 096 276 292, Bounty Systems Pty Limited ACN 090 692 489, Clubline Systems Pty Limited ACN 090 524 039 and Infolink Systems Pty Limited ACN 051 065 117 and includes all the businesses conducted by Bounty, being the development, marketing, supply and support of gaming technology systems for use in the hotel and club industries in Australia and overseas.

Business Day means a day on which all banks are open for business generally in the State of Victoria but does not include any Saturday, Sunday or public holiday.

Commission means the Australian Competition and Consumer Commission.

Corporations Act means the *Corporations Act 2001* (Cth).

Director Undertaking means an undertaking in the form set out in Schedule 2 of this Undertaking and accepted by the Commission.

Divestiture Date means the date on which the Commission confirms in writing to Tattersall's that it is satisfied that the divestiture of Bounty is completed and settled by or on behalf of Tattersall's, under this Undertaking.

Divestiture Agent means a person appointed by Tattersall's to effect the sale of the Unsold Business, and not objected to by the Commission, pursuant to paragraph 5.5.

Divestiture Period means the period prescribed in Confidential Schedule 1.

Final Divestiture Date means, in the event that the divestment of Bounty has not been concluded within the Divestment Period, the date prescribed in Confidential Schedule 1.

GCLC means Golden Casket Lottery Corporation Ltd ACN 078 785 449.

Independent Manager means a person independent of Tattersall's appointed by Tattersall's and not objected to by the Commission to manage and operate Bounty. Without limitation, the following persons shall not be considered independent of Tattersall's:

- current employees or officers of Tattersall's;
- persons who were employees or officers of Tattersall's or GCLC in the past three years;
- shareholders who, in the opinion of the Commission, hold a material number of shares in Tattersall's;
- professional advisors of Tattersall's or GCLC, whether current or in the last three years;
- persons who have a contractual relationship with Tattersall's;
- persons who are suppliers of Tattersall's; or
- persons who are material customers of Tattersall's.

Maxgaming means Maxgaming Holdings Pty Ltd ACN 079 909 541 and Maxgaming Qld Pty Ltd ACN 078 963 050.

Objection Notice means a notice in writing prepared by the Commission which sets out its objection to a Proposed Purchaser(s) acquiring Bounty, in accordance with paragraph 4.7.

Odyssey means Odyssey Gaming Services Pty Ltd ACN 061 363 139, a wholly-owned subsidiary of Odyssey Gaming Limited ACN 074 735 452.

Proposed Acquisition means the proposed acquisition by Tattersall's, via Tattersall's Holdings, of all of the shares in GCLC.

Proposed Divestiture Agent means a person proposed by Tattersall's to be the Divestiture Agent who must be independent of Tattersall's and with the

relevant experience and possessing the necessary qualifications to act as the Divestiture Agent.

Proposed Purchaser means a proposed purchaser of Bounty.

Proposed Purchaser Notice means a confidential notice in writing to the Commission that identifies the person(s) to whom Tattersall's proposes to divest Bounty, and sets out certain other information in relation to the Proposed Purchaser including the information referred to in paragraph 4.4 of this Undertaking.

Related Body Corporate has the same meaning ascribed to that term in the Corporations Act but excludes Bounty.

Sale and Purchase Agreement means the agreement or agreements in respect of the sale and purchase of Bounty.

Sentinel Software means the Sentinel software used in the Sentinel software monitoring system owned by Bounty and licensed to, inter alia, Odyssey.

Tattersall's means Tattersall's Limited ACN 108 686 040 and all of its Related Bodies Corporate, which includes GCLC but does not include Bounty.

Tattersall's Holdings means Tattersall's Holdings Pty Ltd ACN 081 925 706.

Trigger Date means 29 June 2007.

Undertaking means the undertakings made by Tattersall's in this document.

Unsold Business means Bounty if the divestment of Bounty has not been completed by the conclusion of the Divestiture Period.

10.2. Interpretation

The following rules of interpretation apply unless the context requires otherwise.

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The singular includes the plural and conversely.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes any corporation or non-natural person.
- (e) A reference to a paragraph, annexure or schedule is to a paragraph of, or annexure or schedule to, this Undertaking.

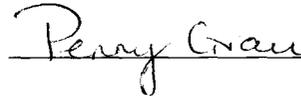
- (f) A reference to any agreement or document (including the Undertaking) is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time.
- (g) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (h) A reference to conduct includes any omission and any statement or undertaking, whether or not in writing.
- (i) Mentioning anything after include, includes or including, does not limit what else might be included.
- (j) A reference to ‘the Undertaking’ or ‘this Undertaking’ is a reference to all of the provisions of this document including any schedule.
- (k) A construction that would promote the purpose or object underlying the Undertaking (whether expressly stated or not) shall be preferred to a construction that would not promote that purpose or object.
- (l) Material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a paragraph is the ordinary meaning conveyed by the text of the paragraph, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the paragraph in question; or
 - (ii) determine the meaning of the paragraph when the ordinary meaning conveyed by the text of the paragraph, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking.
- (m) In determining whether consideration should be given to any material in accordance with paragraph (l), or in considering any weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to the:
 - (i) effect that reliance on the ordinary meaning conveyed by the text of the paragraph would have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) the need to ensure that the result of the Undertaking is to address the Commission’s competition concerns.

- (n) In performing its obligations under this Undertaking, Tattersall's will do everything reasonably in its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of the Undertaking.

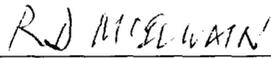
Executed by Tattersall's Limited
ACN 108 686 040 in accordance
with section 127 of the Corporations
Act by or in the presence of:



Signature of Director



Signature of ~~Director~~/Secretary



Name of Director (please print)
(please print)



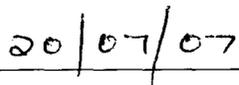
Name of ~~Director~~/Secretary

Date: 19 July 2007

Accepted by the **Australian Competition and Consumer Commission** pursuant to
Section 87B of the *Trade Practices Act 1974*.



Graeme Julian Samuel
Chairman



Date:

CONFIDENTIAL SCHEDULE 1

SCHEDULE 2

Undertakings under Section 87B of the Trade Practices Act

Recitals

- A. On 16 April 2007 Tattersall's announced it had agreed to acquire, via its wholly owned subsidiary Tattersall's Holdings, all of the shares in Golden Casket Lottery Corporation (**GCLC**), the lottery operator in Queensland (**Proposed Acquisition**).
- B. GCLC has the following wholly owned subsidiaries: Bounty Limited, Bounty Systems Pty Ltd, Clubline Systems Pty Ltd and Infolink Systems Pty Ltd (collectively, **Bounty**). Bounty provides a range of management and monitoring software for use in the club and hotel industries in Australia and overseas. It also owns the intellectual property to a number of software programs used in the electronic gaming machine industry, including "Sentinel", "Compass" and "Clubline".
- C. At the date of the Tattersall's Undertakings, the active licensed monitoring operators in Queensland are:
- (a) Maxgaming Holdings Pty Ltd and Maxgaming Qld Pty Ltd (collectively referred to as **Maxgaming**), both being wholly owned subsidiaries of Tattersall's; and
 - (b) Odyssey Gaming Services Pty Ltd.
- "Sentinel" is licensed by Bounty to Odyssey, on a non-exclusive basis, and is used by Odyssey to monitor electronic gaming machines in Queensland.
- D. On 14 May 2007, the Commission announced it had commenced an informal review of the Proposed Acquisition. The Commission made market inquiries and considered the information provided by Tattersall's and other market participants. The Commission's inquiries were aimed at determining whether or not the Proposed Acquisition would be likely to substantially lessen competition in any substantial Australian market, in contravention of section 50 of the Act.
- E. The Commission came to the view that the relevant market for the purposes of assessing the Proposed Acquisition was the market for the monitoring and maintenance of electronic gaming machines in Queensland.
- F. After undertaking extensive market inquiries, the Commission came to the view that barriers to entry into the relevant monitoring and maintenance market were such that new entry is unlikely to provide a competitive constraint on Tattersall's behaviour in the relevant market post-acquisition. In forming this view, the Commission considered that the long lead times associated with new entry, as well as the scale of entry required, pose

substantial barriers to viable entry into the market that are unlikely to be overcome in the next two years.

- G. In this context, the Commission considered that the Proposed Acquisition would increase Tattersall's incentive and ability to increase the price paid by Odyssey for monitoring software and technical support and/or decrease the level of service and technical support provided to Odyssey.
- H. The Commission therefore concluded that the Proposed Acquisition was likely to raise substantial competition concerns in the market for monitoring and maintenance of electronic gaming machines in Queensland.
- I. Tattersall's has previously denied and continues to deny that the Proposed Acquisition and, specifically, the acquisition of Bounty would, or would be likely to, substantially lessen competition in contravention of section 50 of the Act.
- J. Tattersall's without admission, offered to the Commission, pursuant to section 87B of the Act, undertakings to divest Bounty, in order to address and remedy the Commission's concerns as outlined in these Recitals (**Tattersall's Undertakings**). The Tattersall's Undertakings, *inter alia*, require Tattersall's to maintain and operate Bounty independently of and separate to the Tattersall's business in the period prior to divestiture.
- K. This Undertaking seeks to ensure that, for the duration of the Undertaking, information confidential to Bounty is not made available to Tattersall's, or any of its Related Bodies Corporate and no Tattersall's person with access to Bounty non-public information, participates in any way in discussions or consideration of issues affecting the Queensland electronic gaming machine monitoring and maintenance market.
- L. On the basis of the implementation of the terms of the Tattersall's Undertakings, the Commission did not object to the Proposed Acquisition.

1. Commencement and Duration of Undertaking

- 1.1 This Undertaking comes into effect from the Trigger Date.

Termination

- 1.2 This Undertaking will terminate on the first to occur of:
 - i. the date on which the Commission consents to the withdrawal of the Undertaking in accordance with section 87B of the Act; or
 - ii. the first anniversary of the Divestiture Date.

2. Undertaking and acknowledgement

I undertake to the Commission that, unless otherwise permitted by this Undertaking or the Tattersall's Undertakings or as required by law:

- (a) I will not use or disclose any non-public information acquired in the course of performing my duties as a director of Bounty and will not use that information for the benefit of any person other than Bounty; and
- (b) I will not, as a director, consultant or employee of Tattersall's, or any of its Related Bodies Corporate, participate in any way in discussions or consideration of issues affecting the Queensland electronic gaming machine monitoring and maintenance market (which for the avoidance of doubt does not include discussions or consideration of issues within Tattersall's relating to the divestment process of Bounty):
 - i. while I am a director of Bounty; or
 - ii. have access to or knowledge of any of Bounty's non-public information acquired in the course of performing my duties as a director of Bounty and which is relevant to such an issue.

3. Independent Manager

I undertake to cooperate fully with the Independent Manager and to provide the Independent Manager with such information and assistance as is necessary to enable the Independent Manager to carry out his or her functions as set out in the Tattersall's Undertakings.

4. Further Information

4.1 At the Commission's direction, I will:

- (a) furnish information to the Commission;
- (b) produce documents to the Commission in relation to which I have custody, control or power; and/or
- (c) attend the Commission at a time and place appointed by the Commission to answer any questions the Commission (its Commissioners, its staff or its agents) may have,

in relation to my compliance with this Undertaking.

4.2 Information furnished, documents produced or information given in answer to questions may be used by the Commission for any purpose consistent with its statutory functions.

5. Acknowledgement

I acknowledge that the Commission may:

- (a) make the Undertaking available for public inspection; and
- (b) from time to time publicly refer to the Undertaking.

6. Definitions and interpretation

Definitions

In this Undertaking, unless the context indicates otherwise:

Act means the *Trade Practices Act 1974* (Cth).

Bounty means collectively Bounty Limited ACN 096 276 292, Bounty Systems Pty Limited ACN 090 692 489, Clubline Systems Pty Limited ACN 090 524 039 and Infolink Systems Pty Limited ACN 051 065 117 and includes all the businesses conducted by Bounty, being the development, marketing, supply and support of gaming technology systems for use in the hotel and club industries in Australia and overseas.

Commission means the Australian Competition and Consumer Commission.

Corporations Act means the *Corporations Act 2001* (Cth).

Divestiture Date means the date on which the Commission confirms in writing to Tattersall's that it is satisfied that the divestiture of Bounty is completed and settled by or on behalf of Tattersall's in accordance with the Tattersall's Undertakings.

GCLC means Golden Casket Lottery Corporation Ltd ACN 078 785 449.

Independent Manager means a person independent of Tattersall's appointed by Tattersall's and not objected to by the Commission to manage and operate Bounty. Without limitation, the following persons shall not be considered independent of Tattersall's:

- current employees or officers of Tattersall's;
- persons who were employees or officers of Tattersall's or GCLC in the past three years;
- shareholders who, in the opinion of the Commission, hold a material number of shares in Tattersall's;
- professional advisors of Tattersall's or GCLC, whether current or in the last three years;

- persons who have a contractual relationship with Tattersall's;
- persons who are suppliers of Tattersall's; or
- persons who are material customers of Tattersall's.

Maxgaming means Maxgaming Holdings Pty Ltd ACN 079 909 541 and Maxgaming Qld Pty Ltd ACN 078 963 050.

Odyssey means Odyssey Gaming Services Pty Ltd ACN 061 363 139, a wholly-owned subsidiary of Odyssey Gaming Limited ACN 074 735 452.

Proposed Acquisition means the proposed acquisition by Tattersall's, via Tattersall's Holdings, of all of the shares in GCLC.

Related Body Corporate has the same meaning ascribed to that term in the Corporations Act but, for the removal of doubt, excludes Bounty.

Tattersall's means Tattersall's Limited ACN 108 686 040 and all of its Related Bodies Corporate, which includes GCLC but does not include Bounty.

Tattersall's Holdings means Tattersall's Holdings Pty Ltd ACN 081 925 706.

Tattersall's Undertakings means the undertakings given by Tattersall's under section 87B of the Act and accepted by the Commission on [DATE].

Trigger Date means 29 June, 2007.

Undertaking means the undertakings made by the [NAME] in this document.

7. Interpretation

The following rules of interpretation apply to this Undertaking unless the context requires otherwise:

- headings are for convenience only and do not affect interpretation;
- the singular includes the plural and the plural includes the singular;
- where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- a reference to a person includes any corporation or non-natural person;
- a reference to a paragraph, annexure or schedule is to a paragraph of, or annexure or schedule to, this Undertaking;

- (f) a reference to any agreement or document (including the Undertaking) is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time;
- (g) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it;
- (h) a reference to conduct includes any omission and any statement or undertaking, whether or not in writing;
- (i) mentioning anything after include, includes or including, does not limit what else might be included;
- (j) a reference to ‘the Undertaking’ or ‘this Undertaking’ is a reference to all of the provisions of this document including any schedule;
- (k) a construction that would promote the purpose or object underlying the Undertaking (whether expressly stated or not) shall be preferred to a construction that would not promote that purpose or object;
- (l) material not forming part of this Undertaking may be considered to:
 - (iii) confirm the meaning of a paragraph is the ordinary meaning conveyed by the text of the paragraph, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the paragraph in question; or
 - (iv) determine the meaning of the paragraph when the ordinary meaning conveyed by the text of the paragraph, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking,
- (m) In determining whether consideration should be given to any material in accordance with paragraph (l), or in considering any weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to the:
 - (iii) effect that reliance on the ordinary meaning conveyed by the text of the paragraph would have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (iv) the need to ensure that the result of the Undertaking is to address the Commission’s competition concerns.

- (n) In performing my obligations under this Undertaking, I will do everything reasonably in my power to ensure that my performance of these obligations is done in a manner which is consistent with promoting the purpose and object of the Undertaking.

Executed by:

[NAME]

in the presence of:

Name of Witness

Signature

Signature of Witness

Date:

Accepted by the **Australian Competition and Consumer Commission** pursuant to Section 87B of the *Trade Practices Act 1974*.

Graeme Julian Samuel
Chairman

Date: