



Australian  
Competition &  
Consumer  
Commission

# Draft Notice

in respect of a notification lodged by

**Harness Racing Victoria**

**Date: 6 September 2007**

**Notification no. N93059**

**Public Register no. C2007/1477**

**Commissioners:**

**Samuel  
Sylvan  
King  
Martin  
Smith  
Willett**

## 1. Introduction

- 1.1. The Australian Competition and Consumer Commission (the ACCC) is the independent Australian government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in greater choice for consumers in price, quality and service.
- 1.2. Section 47 of the Act in certain circumstances prohibits conduct known as exclusive dealing. Generally speaking, exclusive dealing involves one business trading with another person, imposing restrictions on that person's freedom to choose with whom, or in what, it deals.
- 1.3. Sub-sections 47(6) and 47(7) of the Act specifically prohibit conduct known as 'third line forcing' which involves the supply of goods or services on condition that the customer also acquires goods or services from a third party. Third line forcing conduct is a per se provision, meaning that it amounts to a contravention of the Act regardless of its effect on competition.
- 1.4. Businesses may obtain protection in relation to conduct that might be at risk of breaching the exclusive dealing provisions of the Act by lodging a 'notification' with the ACCC. Once lodged, immunity for the notified conduct commences automatically, or in the case of third-line forcing, after 14 days.
- 1.5. The ACCC may revoke a third line forcing notification if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct. Revoking a notification removes the immunity conferred by the lodging of the notification.
- 1.6. Prior to issuing a notice to revoke a notification, the ACCC must issue a draft notice setting out its reasons for proposing to revoke the notification. This document is a draft notice in respect of notification N93059 lodged by Harness Racing Victoria.
- 1.7. Once a draft notice is released, the applicant or any interested party may request that the ACCC hold a conference. A conference provides all parties with the opportunity to put oral submissions to the ACCC in response to the draft notice. The ACCC will also invite the applicant and interested parties to lodge written submissions commenting on the draft notice.
- 1.8. The ACCC then reconsiders the notification taking into account the comments made at the conference (if one is requested) and any further submissions received. The ACCC may issue a final notice revoking the third line forcing notification where it is satisfied that the public benefits from the conduct do not outweigh the public detriments.

## Conduct

- 1.9. Notification N93059 was lodged by Harness Racing Victoria (HRV) on 11 July 2007 in relation to conduct that may be in breach of sections 47(6) and 47(7) of the Act.
- 1.10. HRV is proposing to enter into a Race Field Approval Agreement (agreement) with a number of specified bookmakers who wish to use race field information for Victorian harness racing and to accept bets on Victorian harness racing.
- 1.11. The bookmakers HRV is proposing to enter into agreements with are Centrebet Racing Pty Ltd, CentreRacing, International All Sports Limited, Sportingbet Australia Pty Ltd, Sportsbet Pty Ltd and Sports Acumen Pty Ltd.
- 1.12. Under the agreement HRV will supply race field data to the specified bookmakers, who will pay HRV a fee for the use of the race field data. The fee payable is calculated as being 1% of the total amount wagered with the bookmaker on Victorian harness racing. The fee is payable on a monthly basis.
- 1.13. Under the notification HRV will offer a rebate on the fee otherwise payable by the nominated bookmakers in respect of a particular month, in relation to any layoffs or bet-backs placed by these bookmakers in that month with the Victorian TAB (Tabcorp) on harness races within Australia. HRV will also require the nominated bookmakers to hold an interstate or international wagering or bookmaking licence.
- 1.14. The rebate proposed to be offered by HRV is 1% of the value of all such bet backs or layoffs placed with the Victorian TAB in a calendar month, capped at the amount of fee otherwise payable by the bookmaker in that month for use of race fields information.
- 1.15. The nominated bookmakers are not obliged to place bet-backs or layoffs with the Victorian TAB, but only those that are placed with the Victorian TAB will be used in calculating the rebate.
- 1.16. States and territories require wagering service providers, including totalisators, bookmakers and betting exchanges, to be licensed to conduct wagering activities. The ACCC has no concerns with the second element of the conduct notified by HRV.
- 1.17. Below is a chronology of significant dates in this matter.

<b>DATE</b>	<b>ACTION</b>
11 July 2007	HRV lodges notification N93059 with the ACCC.
8 August 2007	Closing date for submissions from interested parties.
23 August 2007	Submission received from HRV in response to interested party submissions.
6 September 2007	Draft notice issued.

## 2. Background

### The racing industry<sup>1</sup>

- 2.1. The Victorian racing industry is comprised of three racing codes each with a separate controlling body:
  - Racing Victoria Limited (thoroughbred racing)
  - Greyhound Racing Victoria
  - Harness Racing Victoria
- 2.2. HRV is a body corporate established under the *Racing Act 1958 (Vic)* with responsibility to control, regulate and promote harness racing in Victoria. Racing Victoria and Greyhound Racing Victoria each promote thoroughbred and greyhound racing respectively.
- 2.3. The race controlling bodies (through the companies VicRacing Pty Ltd and Racing Products Pty Ltd) are in a joint venture with Tabcorp in which they receive a distribution of income from Tabcorp's wagering revenue. Tabcorp's support of the racing industry in Victoria is a condition of its wagering licence issued by the Victorian government.
- 2.4. The distributions made under the joint venture to Racing Victoria, Greyhound Racing Victoria and HRV are based on a mixture of fixed and variable formulae. Table 2.1 provides an approximation of the distributions to the racing industry as a result of the joint venture.<sup>2</sup>
- 2.5. HRV submits that thoroughbred racing is the dominant form of racing nationally. HRV submits that approximately 70% of total wagering on racing in Australia is placed on thoroughbred racing. HRV estimates that the share of Victorian harness racing through the Victorian TAB as a proportion of the entire market for wagering on racing to be approximately 1.5%.

---

<sup>1</sup> Information in this section is largely based on information provided in HRV's supporting submission provided on 11 July 2007.

<sup>2</sup> HRV's submission provided on 11 July 2007, page 2.

**Table 2.1 – Distribution to the racing industry from the joint venture with Tabcorp<sup>3</sup>**

	RVL	HRV	GRV
JV fixed share component	73.0%	18.0%	9.0%
Wagering market share in 1994	78.3%	12.9%	8.7%
Wagering market share as at 30 June 2005 ("FY 05")	69.9%	15.1%	15.3%
Movement in Market Share	↓ 8.4%	↑ 2.2%	↑ 6.6%
Differential of JV fixed share over/under market share at FY05	↑ 3.1%	↑ 2.9%	↓ 6.3%
Total revenue distributed to each code under the JV for FY05	\$196.2 m	\$45.9m	\$32.2m
Overall % share of revenue distributed under the JV for FY05	71.6%	16.7%	11.7%

(Source: RVL, HRV, GRV and Tabcorp)

### Legislative background

- 2.6. The notification lodged by HRV relates to the way it proposes to use its statutory position given to it under the *Gambling Regulation Act 2003 (Vic)* (Gambling Regulation Act).
- 2.7. Until recently, wagering service providers such as bookmakers and betting exchanges paid little or no product fee for the right to conduct wagering on Victorian races. In 2005, the Victorian Government passed the *Racing and Gambling Acts (Amendment) Act 2005* to require bookmakers and other wagering service providers to contribute to the funding of the racing industry in Victoria.
- 2.8. The Gambling Regulation Act now prohibits a wagering service provider from publishing or otherwise making available in Victoria or elsewhere, race field data without the approval of the appropriate controlling body such as Racing Victoria, Greyhound Racing Victoria or HRV.<sup>4</sup> This effectively allows racing control bodies to extract fees from wagering providers to use the race field data.
- 2.9. The requirement to obtain approval from HRV to publish harness race fields applies only to wagering service providers not licensed in Victoria.<sup>5</sup> That is, Tabcorp as the holder of the exclusive off-course totalisator licence and approved Victorian bookmakers are not required to seek approval from HRV by virtue of the legislation.

### Bet-backs and layoffs<sup>6</sup>

- 2.10. A bookmaker will 'frame a market' for a particular race by offering odds for different horses in the race and taking wagers based on those odds with the intention

<sup>3</sup> HRV's submission provided on 11 July 2007, page 2.

<sup>4</sup> Section 2.5.16A Gambling Regulation Act 2003.

<sup>5</sup> Betfair submission dated 8 August 2007, page 4.

<sup>6</sup> Information in this section was sourced from Betfair's submission dated 8 August 2007, pages 8 – 9.

of reaching a position where the net outcome of all bets placed will be in the bookmaker's favour regardless of the outcome of the event.

- 2.11. In order to reach this position, the sum of the percentage value of the odds offered by the bookmaker for all possible outcomes must be in excess of 100%. The sum of these probabilities is referred to as the book percentage. Any excess over 100% represents the profit to the bookmaker as a proportion of the total amount bet, in the event of a balanced book. A balanced book will occur if bets are evenly distributed across each selection in proportion to the odds offered.
- 2.12. In the case of an imbalanced book, there may be a risk to the bookmaker that he or she will have to pay out more in winnings than what was staked by all punters. An imbalanced book may arise, for example, if there is a clear favourite and a bookmaker is unable to encourage sufficient betting on other selections in the event.
- 2.13. If a bookmaker does not have a balanced book, they may make a bet-back with another bookmaker, totalisator or betting exchange, in order to spread the risk that they may lose money on the race.
- 2.14. The price or odds at which a bet-back is placed is important to spread the risk.

### **3. Statutory test**

- 3.1 Section 93 of the Act provides that a corporation that engages or proposes to engaged in conduct of a kind referred to in subsection 47 (6) and (7) may give to the ACCC notice, as prescribed, setting out particulars of the conduct or proposed conduct.
- 3.2 Under section 93(3A), if a corporation has notified the ACCC of conduct or proposed conduct of the type described in subsection 47(6) or 47(7) and the ACCC is satisfied that the likely benefit to the public from the conduct or proposed conduct will not outweigh the likely detriment to the public from the conduct or proposed conduct, the ACCC may, through the process described in paragraphs 1.5 - 1.8 of this draft notice, give the corporation a written notice stating that the ACCC is so satisfied.

### **4. Submissions received by the ACCC**

- 4.1. HRV provided a supporting submission with the notification, outlining the public benefits it believes flow from the notified conduct. HRV submits that the public benefits of the proposed conduct strongly outweigh any detriments that may arise.
- 4.2. The ACCC sought submissions from a range of parties including corporate bookmakers, Betfair and other non-Tabcorp totalisators.
- 4.3. In response to the notification, the ACCC received submissions from Racing and Wagering Western Australia (RWWA), Betfair Pty Ltd (Betfair) and the Australian Internet Bookmakers Association (AIBA). Generally, these interested parties raised concerns with the conduct notified by HRV.

- 4.4. Copies of all submissions received by the ACCC are available from the ACCC website ([www.accc.gov.au](http://www.accc.gov.au)) by following the 'Public Registers' and Authorisations Public Registers' links.

## **5. ACCC Assessment**

- 5.1. In examining the benefits and detriments flowing from the notified conduct, the ACCC has considered all of the information provided by HRV and interested parties.

### **The relevant market**

- 5.2. Defining the markets affected by the arrangement which has been notified assists in assessing public benefits and detriment flowing from the arrangement. However, depending on the circumstances, the ACCC may not need to comprehensively define the relevant markets as it may be apparent that a net public benefit will or will not arise regardless of this definition.
- 5.3. While noting that it does not attempt to precisely define the relevant markets, HRV considers the national wagering market and the national supply of racing/sporting information are likely to be relevant.
- 5.4. The AIBA submit that the relevant markets are the national wagering market for Victorian harness racing and the wholesale betting market for bet-backs. The AIBA note that although the wholesale betting market overlaps with the national wagering market, it is a discrete market with a small number of buyers and sellers.
- 5.5. Betfair submit that whatever the relevant wagering market is, HRV's proposed conduct will have a negative impact on competition.
- 5.6. In respect of the arrangements the subject of this notification, the ACCC considers that it is not necessary to fully define the market, save for identifying the features that are likely to be relevant to its assessment.
- 5.7. In assessing the notification, the ACCC considers the provision of wagering services and the acquisition of racing data by wagering service providers as being the areas of competition relevant to its assessment.

### *Provision of wagering services*

- 5.8. Bet-backs and lay-offs are a type of wagering used by wagering service providers. Bookmakers place bet-backs with totalisators and other bookmakers in an effort to obtain the best odds for hedging their bets. Similarly, totalisators also place bet-backs with each other and with bookmakers.
- 5.9. HRV submits that bet-backs are not applicable to the business model of betting exchanges. HRV notes that in a betting exchange consumers make bets with each other and as such the betting exchange is not exposed to the risk of the bets taken, but instead takes a commission on the winning bets.

- 5.10. The ACCC has previously considered the issue of market definition in respect of wagering services in its assessment of the proposed acquisition of UNiTAB by Tabcorp in 2006. As part of that assessment the ACCC recognised that bookmakers, particularly corporate bookmakers offering online wagering services, are likely to compete with totalisators for punters.<sup>7</sup> The ACCC also noted that betting exchanges potentially may become more significant players in wagering.

*The acquisition of racing data by wagering service providers*

- 5.11. This area of competition includes the acquisition of racing data by wagering service providers from race controlling bodies in states and territories where race fields legislation has been introduced. HRV submits it competes with Racing Victoria, Greyhound Racing Victoria and with other interstate racing and sporting codes.
- 5.12. In addition to Victoria, race fields legislation has been introduced in Western Australia under the *Betting and Racing Legislation Amendment Act 2006 (WA)* and the Racing Legislation Amendment Bill 2006 (NSW) proposes to introduce race fields legislation in NSW.

**Public benefit**

- 5.13. HRV claims the provision of a rebate will be of direct benefit to:
- Victorian harness racing and
  - the bookmakers listed in the notification as it enables them to reduce fees that would otherwise be payable to HRV.
- 5.14. The ACCC's assessment of the public benefits claimed by HRV and interested parties follows.

*Benefit to Victorian harness racing*

- 5.15. HRV submit that the notified conduct will result in a direct benefit to Victorian harness racing. HRV states that under the joint venture agreement with Tabcorp, 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 Victorian TAB on an Australian harness race, HRV will receive approximately \$5.30. HRV stated that for the 2005/2006 financial year HRV received approximately \$46.6 million from the joint venture arrangement with Tabcorp.<sup>8</sup>
- 5.16. HRV notes that the principal expense of HRV is 'stakemoney', which includes prize money for Victorian harness racing. HRV notes that in 2005/06 it distributed a total

---

<sup>7</sup> Proposed acquisition of UNiTAB Limited by Tabcorp Holdings Limited, Public Competition Assessment, 16 November 2006 available at <http://www.accc.gov.au/content/trimFile.phtml?trimFileName=D06+80237.pdf&trimFileTitle=D06+80237.pdf&trimFileFromVersionId=771042>

<sup>8</sup> HRV's submission provided on 23 August 2007, page 3.

of \$31.68 million in stakemoney to owners, trainers, drivers, breeders and stud masters. HRV submits that higher prizes make Victorian harness racing as a whole more attractive and therefore more competitive with other racing and sporting codes. HRV considers that the function of HRV in providing stakemoney for the Victorian harness racing industry is a clear and direct public benefit.

- 5.17. HRV submit that the basis for applying a rebate on *all Australian harness racing* is to maximise the benefits to the Victorian harness racing industry.
- 5.18. Betfair submit that the proposed conduct will reduce the revenue available to racing codes in other parts of Australia. For example, Betfair notes that under the *Gaming Control Act 1993 (Tas)* it is required to contribute to funding of the Australian racing industry through tax and product levy payments made in Tasmania. Betfair has also entered into sponsorship agreements with race clubs. Betfair submit that any reduction in betting with other wagering providers is likely to effect the level of funding they provide to the racing industry in their state or territory.
- 5.19. RWWA notes that as the licensed totalisator in Western Australia, it is a major source of funding for the racing industry in Western Australia. Currently, some bookmakers who accept bets on race meetings throughout Australia choose to place bet-backs with state based TAB's throughout Australia. For example, RWWA notes that bookmakers choose to use RWWA because its internet based system of betting is easier to use than other wagering service providers.
- 5.20. RWWA submits that if bookmakers choose to use the services of the Victorian TAB to obtain the rebate from HRV, the racing industry in WA would be detrimentally affected because of a decrease in the revenue available from RWWA.
- 5.21. HRV submits that it cannot estimate the impact the rebate will have on harness racing clubs throughout Australia, but notes the impact will depend on a number of factors, including the existing funding arrangements of those clubs (which may or may not include a relationship between those clubs and wagering service providers) and the factors which influence a bookmaker's decision when to bet-back and where that bet-back should be placed.
- 5.22. In each state or territory there is one operator licensed to conduct off-course pari-mutuel wagering and a condition of these exclusive licences is that a proportion of wagering turnover is returned to the local racing industry. The ACCC also notes that other wagering providers such as Betfair and bookmakers contribute funding to the racing industry in each state and territory.
- 5.23. The ACCC accepts that the notified conduct will benefit the harness racing industry in Victoria as the pool of revenue from which HRV will receive its share of funding is increased through the joint venture arrangement with Tabcorp if the nominated bookmakers are encouraged to place their bet-backs through the Victorian TAB.
- 5.24. However, the ACCC considers that this benefit is at the expense of funding which may have been received by racing industries in other states and territories, if

bookmakers had placed their bet-backs and layoffs with other wagering service providers.

- 5.25. As a result, the ACCC does not accept that increased funding to HRV and harness racing in Victoria is a public benefit where it is at the expense of funding to racing bodies in other jurisdictions.

*Benefit to bookmakers*

- 5.26. HRV advised that it nominated the six particular bookmakers as part of the notified conduct because they have sought approval from HRV to publish race fields for Victorian harness racing.
- 5.27. HRV submit the rebate is of direct benefit to the nominated bookmakers as it enables them to reduce fees that would otherwise be payable to HRV for the use of race field data.
- 5.28. HRV notes that the rebate recognises the benefits that will flow to the Victorian harness racing from the nominated bookmakers placing their bet-backs with the Victorian TAB.
- 5.29. The AIBA submits that the fee to be charged to the six bookmakers listed in the notification is excessive. The AIBA submits that HRV should take into account the taxes and fees already paid by these bookmakers in their respective jurisdictions. The AIBA also expressed concern that other wagering providers who seek approval from HRV may not be required to pay a fee for access to HRV's race field data. In particular, the AIBA is concerned that HRV may be targeting the six bookmakers listed in the notification as the biggest and most successful bookmakers and may not charge any fee to the approximately 600 other smaller bookmakers.
- 5.30. Betfair submit that there may be a benefit to the six bookmakers from the provision of a rebate on fees which would be otherwise payable to HRV. However, Betfair submit there is no public benefit arising from the conduct of refusing a rebate unless bookmakers use the services of the Victorian TAB for their bet-backs.
- 5.31. The ACCC accepts that provision of a rebate may enable the nominated bookmakers to reduce their fees otherwise payable to HRV. The ACCC notes the concerns of the AIBA that the size of the fee to which the rebate will be applied is high to begin with. However, the ACCC notes that the Gambling Regulations Act gives HRV a statutory power to determine the terms and conditions, and to whom, it wants to grant approval to use Victorian harness race field data.
- 5.32. While accepting that there may be a reduction in fees for the nominated bookmakers, it is simply an offset of the fees charged by HRV and is a straight offset of funds returned to the Victorian harness racing industry.

### *Facilitates competition*

- 5.33. The ACCC would be interested to explore whether HRV's proposal to offer a rebate to the nominated bookmakers may encourage other harness racing clubs (in states and territories where race fields legislation has been introduced) or other wagering service providers to respond to HRV by offering similar discounts or rebates. For example, other harness racing clubs may offer a rebate on the fee they charge wagering service providers to access their race field data. Similarly, wagering service providers (other than the Victorian TAB) may, at the prospect of losing turnover to the Victorian TAB, consider offering discounts to encourage the bookmakers to place bet-backs with them. Currently, the ACCC has no information before it to suggest that HRV's proposal may facilitate competition either between harness racing clubs or wagering service providers and is unable to form a view at this time.
- 5.34. To consider this issue further the ACCC requests further information on:
- what effect will HRV's proposal to offer a rebate to the nominated bookmakers have on other harness racing clubs and wagering service providers?
  - would other harness racing clubs consider offering a discount or rebate to wagering service providers in response to HRV's offer? Why or why not?
  - would other wagering service providers consider offering a discount or rebate to encourage the nominated bookmakers to place bet-backs with them? Why or why not?

### **Public detriments**

#### *Rebate distorts the provision of bet-backs*

- 5.35. HRV states that any detriment that might arise from the conduct would relate to those wagering service providers that a bookmaker might have otherwise have used to place bet-backs and layoffs.
- 5.36. However, HRV submit that this detriment is very small given the relatively small market share of the Victorian harness racing industry through the Victorian TAB. HRV estimates that the share of Victorian harness racing through the Victorian TAB, as a proportion of the entire market for wagering on racing, to be approximately 1.5%.
- 5.37. HRV note that under the Race Field Approval Agreement the nominated bookmakers will be able to place bet-backs with wagering service providers other than the Victorian TAB. HRV advised that if the nominated bookmakers choose to place their bet-backs with wagering service providers other than the Victorian TAB, these bet-backs will not be counted towards the rebate.

- 5.38. Betfair submit that HRV is using its statutory power under the Gambling Regulation Act to distort choices by corporate bookmakers as to who they place their bet-backs with for harness racing. Betfair submit this will have an adverse impact on competition by other wagering service providers for this business.
- 5.39. RWWA and AIBA note that the structure of the rebate allows HRV to entice bookmakers to use Tabcorp to place bet-backs not only on all harness races in Victoria but all harness races throughout Australia.
- 5.40. HRV notes that a key consideration for a bookmaker in deciding who to place a bet-back with is the odds offered by wagering service providers. HRV submits that a bookmaker making a bet-back decision will presumably select the most favourable bet-back option available. HRV notes that the value constituted by the difference in odds may substantially exceed the rebate proposed to be offered by HRV on bet-backs placed through the Victorian TAB.
- 5.41. HRV notes that bookmakers can also obtain volume rebates from totalisators and betting exchanges which may also influence a bookmaker's decision as to which wagering service provider it places a bet-back with.
- 5.42. Further, HRV note that Victorian on-course bookmakers are required to pay a levy to HRV for bets they take on harness racing and are also entitled to a rebate for bet-backs placed with the Victorian TAB on any Australian harness race.<sup>9</sup> HRV state that this arrangement has been in place since 2001.
- 5.43. The ACCC notes that the size of the rebate proposed by HRV is based on bet-backs placed by the nominated bookmakers on *all harness racing in Australia* placed with the Victorian TAB, not just Victorian harness racing. Further, under the arrangement notified by HRV, a bookmaker is able to reduce the fee payable to HRV to zero in a particular month. The ACCC also notes that HRV is the only body supplying Victorian harness race field data.
- 5.44. The ACCC considers that the ability of the bookmaker to reduce its fee payable to HRV including to zero, together with the structure of the rebate and that HRV is the only body supplying Victorian harness race field data may distort the choice of which wagering provider a bookmaker places a bet-back with for harness races. In particular, the market is distorted if bookmakers place bet-backs with the Victorian TAB rather than placing bet-backs with the wagering operator which offers the best odds. Indeed, this appears to be the intent of the offer by HRV.
- 5.45. The ACCC seeks information from HRV and interested parties on:
- whether the presence and size of the rebate will encourage bookmakers to place bet-backs with Victorian TAB at the expense of shopping around for the best odds to spread their risk?

---

<sup>9</sup> The levy on Victorian on-course bookmakers is provided for under section 91B of the *Racing Act 1958 (Vic)*. The levy is set at 1% of an on-course bookmaker's turnover.

- whether other wagering service providers offer rebates or discounts (including which wagering service provider and the type of rebate or discount offered) and how the presence of these rebates or discounts may affect bookmaker's decision of where to place a bet-back or layoff?

*Fluctuations in dividends*

- 5.46. Betfair note that Tabcorp offers totalisator betting on harness racing throughout Australia. Betfair submit that harness racing pools tend to be small, with the effect that the final dividends paid to punters are more likely to fluctuate if large wagers, including bet-backs are placed on particular horses. Betfair submit that if the six bookmakers are required to place their bet-backs into a single, small pool with the Victorian TAB in order to qualify for a rebate, this is likely to cause significant fluctuation in the final dividends paid to punters.
- 5.47. The AIBA submit HRV's proposed conduct would skew the wholesale market for bet-backs on harness racing towards the Victorian TAB. The AIBA submit that this change in market behaviour would be detrimental to the other market participants and would affect the depth and liquidity of betting providers.
- 5.48. There are three totalisator pools in Australia which are the:
- SuperTAB pool which is operated by Tabcorp combining bets placed through Tote Tasmania, RWWA, ACT TAB and the Victoria TAB.
  - Tab Ltd NSW pool – which is operated by Tabcorp; and
  - Unitab pool – which combines the bets received by Unitab in Queensland, Northern Territory and South Australia.
- 5.49. HRV submits that given the size of these pools it is unlikely that the provision of the rebate by HRV will result in fluctuations in final dividends. Further, HRV submits that it is not aware of any difficulties caused by the rebate it provides to Victorian on-course bookmakers who place their bet-backs with the Victorian TAB.
- 5.50. Based on the wagering turnover figures provided in the Australian Racing Fact Book 2005/06, the ACCC notes that the size of harness and greyhound wagering turnover in the SuperTAB pool is \$1 753.29 million, \$1 369.61 million for the TAB Ltd NSW pool and \$727.99 million for the Unitab pool.<sup>10</sup>
- 5.51. The ACCC considers that this issue requires further analysis, and is therefore unable to form a view at this time on whether the offer of a rebate will cause fluctuations in final dividends.
- 5.52. To consider this issue further the ACCC requests further information on:

---

<sup>10</sup> *Australian Racing Fact Book 2005/06*, Table 88. Non Thoroughbred Turnover (Harness, Greyhounds & Sports Betting) by State 2005/06, page 67.

- what is the approximate value of bet-backs placed on harness racing by the nominated bookmakers?
- what is the size of the harness racing wagering turnover for the three totalisator pools operating in Australia?
- what is the typical size of a bet-back placed by a bookmaker?
- whether bookmakers consider the size of the pool in deciding which wagering service provider to place a bet-back with?

### **Conclusion on public benefits and detriments**

- 5.53. In order to consider the notification lodged by HRV the ACCC must weigh the public benefits and detriments likely to result from the conduct to determine which is greater.
- 5.54. Under the notification HRV will offer a rebate on the fee otherwise payable by the nominated bookmakers in respect of a particular month, in relation to any layoffs or bet-backs placed by these bookmakers in that month with the Victorian TAB (Tabcorp) on harness races within Australia.
- 5.55. The ACCC accepts that the provision of a rebate to the nominated bookmakers may reduce the fee otherwise payable to HRV by these bookmakers. This may benefit these bookmakers and to the extent that it encourages them to place their bet backs and layoffs with Tabcorp it will also benefit HRV and the Victorian harness racing industry as a result of the joint venture arrangement with Tabcorp.
- 5.56. However, the ACCC considers that the provision of the rebate by HRV may distort the choices of bookmakers in selecting a wagering provider to place a bet-back based on the best odds offered. This is particularly the case where HRV is the only body supplying Victorian harness race field data.
- 5.57. The ACCC is concerned that the structure of the rebate, simply results in a transfer of funding from racing industries in other states and territories to the Victorian harness racing industry.
- 5.58. The ACCC would be interested to explore whether HRV's proposal to offer a rebate to the nominated bookmakers may encourage other harness racing clubs (in states and territories where race fields legislation has been introduced) or other wagering providers to respond to HRV by offering similar discounts or rebates. The ACCC seeks further information from HRV and interested parties on this issue.
- 5.59. On balance, the ACCC is not satisfied, on the information currently available, that the likely benefit to the public from the notified conduct will outweigh the likely detriment to the public.

## **6. Draft notice**

- 6.1. On the basis of the information currently before it, for the reasons outlined above the ACCC is not satisfied that the likely benefit to the public from notification N93059 will outweigh the likely detriment to the public.
- 6.2. Accordingly, the ACCC gives notice under section 93A of the Act that it proposes to issue a notice under section 93(3A) of the Act in respect of notification N93059. Such a notice would remove the immunity provided by the notification 31 days after the date it is issued.

### **Next steps**

- 6.3. HRV or any interested party may request that the ACCC hold a conference in relation to the draft notice in accordance with section 93A of the Act. Should HRV or any interested party wish the ACCC to hold a conference in relation to the draft notice, they should notify the ACCC in writing by close of business **21 September 2007**.
- 6.4. In addition, the ACCC seeks further submissions from HRV and interested parties in respect of the draft notice proposing to revoke the third line forcing notification lodged by HRV. Written submissions should be provided to the ACCC by **28 September 2007**. In providing comments on the draft notice the ACCC is particularly seeking further information on:
  - what effect will HRV's proposal to offer a rebate to the nominated bookmakers have on the abilities of other harness racing clubs and wagering service providers' abilities to compete?
  - would other harness racing clubs consider offering a discount or rebate to wagering service providers in response to HRV's offer? Why or why not?
  - would other wagering service providers consider offering a discount or rebate to encourage the nominated bookmakers to place bet-backs with them? Why or why not?
  - whether the presence and size of the rebate will encourage bookmakers to place bet-backs with Victorian TAB at the expense of shopping around for the best odds to spread their risk?
  - whether other wagering service providers offer rebates or discounts (including which wagering service provider and the type of rebate or discount offered) and how the presence of these rebates or discounts may affect bookmaker's decision of where to place a bet-back or layoff?
  - what is the approximate value of bet-backs placed on harness racing by the nominated bookmakers?

- what is the size of the harness racing wagering turnover for the three totalisator pools operating in Australia?
- what is the typical size of a bet-back placed by a bookmaker?
- whether bookmakers consider the size of the pool in deciding which wagering service provider to place a bet-back with?