

10 January 2008

A91065 – A91067

Submission to the Australian
Competition and Consumer
Commission in response to a
submission made by
Tasmanian Racing Club, Inc
dated 20 December 2007

10 January 2008

1 Introduction

We refer to the submission made by Tasmanian Racing Club, Inc (**Tasmanian Racing Club**) dated 20 December 2008 (**TRC Submission**) in support of the application by Tabcorp Manager Pty Ltd (**Tabcorp**) for authorisation of the 2007 SuperTAB Pooling Agreement between Tabcorp and TOTE Tasmania dated 6 November 2007 (**Tabcorp Submission**).

This submission provides Tabcorp's comments on the TRC Submission.

2 Tasmanian Racing Club submission

2.1 ThoroughVision Broadcast availability in Tasmania

On page 3 Tasmanian Racing Club asserts that it is 'the Tasmanian Racing Club's experience and understanding that ThoroughVision broadcasts have only minimal availability in Tasmania, both inside and outside of TOTE Tasmania outlets.'

It is Tabcorp's understanding that there are no restrictions on the availability of ThoroughVision broadcasts in Tasmania. It may be that Tasmania Racing Club's experience is based on limited take up of the availability of ThoroughVision broadcasts by TOTE Tasmania, hotels, clubs and other venues.

2.2 Commissions payable to TOTE Tasmania

On pages 4 and 5 the Tasmanian Racing Club states that it is its understanding that the 2007 Agreement does not reduce the commissions ordinarily payable to TOTE Tasmania under section 57F of the *Racing Regulation Act 2004* (Tas).

The 2007 Agreement has no bearing on and has no effect whatsoever on the commissions payable to TOTE Tasmania under the relevant legislation. We note that the relevant legislation is the *Racing (Totalisator Betting) Act 1952* (Tas), not the Act referred to in the TRC Submission.

2.3 Pooling restriction

The TRC Submission states on page 6 that 'clause 8.1 of the 2007 Agreement has the potential to inhibit the wagering services which TOTE Tasmania, potentially unable to pool or combine betting transactions it may wish to, will offer to punters'.

This misconceives the nature and effect of clause 8.1 of the 2007 Agreement. As Tabcorp explained in the Tabcorp Submission, the pooling restriction is designed to prevent TOTE Tasmania being used as a vehicle to allow other wagering operators to pool with Tabcorp indirectly without Tabcorp's consent and potentially without its knowledge. This is important to Tabcorp's operation of the SuperTAB pool because it ensures that Tabcorp knows the participants in the pool and can set the conditions of their participation.

Clause 8.1 does not inhibit the wagering services which TOTE Tasmania will offer to punters, and nor does it inhibit the wagering services which other totalisators may offer to punters.

2.4 Competition

The TRC Submission asserts on page 7 that the submission made by Tabcorp that Tabcorp and Tote Tasmania are not actual or likely competitors is unsustainable.

Tabcorp did not submit that it and TOTE Tasmania are not actual or likely competitors. Tabcorp's position in relation to the relationship between Tabcorp and TOTE Tasmania is set out in detail in its original submission in section 6.3(b).

2.5 Gross pool pricing

On page 8 the TRC Submission submits that Tabcorp should be required to address the relevant public benefit and detriment in respect of gross pool pricing as compared to net pool pricing.

Section 5.3(e)(2) of the Tabcorp Submission sets out the rationale for gross pool pricing in detail. As was explained in the Tabcorp Submission, gross pool pricing is essential to Tabcorp's operation of the SuperTAB pool.

2.6 Tabcorp Betting Rules

The TRC Submission refers on page 8 to 'the restriction on publication of the Tabcorp Betting Rules'.

There is no restriction on publication of the Tabcorp Betting Rules and these are freely available in Tabcorp's agencies and on the Internet. The Tabcorp Betting Rules were also provided with Tabcorp's Submission and we note they are available on the Commission's website at:

<http://www.accc.gov.au/content/trimFile.phtml?trimFileName=D07+105137.pdf&trimFileTitle=D07+105137.pdf&trimFileFromVersionId=806974>

2.7 Continuation of 1998 Agreement

On page 9 the TRC Submission submits that 'the counterfactual scenario ... is that the 1998 Agreement between TOTE Tasmania and Tabcorp Manager will continue.'

This is not correct. As explained in the Tabcorp Submission, if the 2007 Agreement does not come into effect, TOTE Tasmania has a range of options set out in section 7.4 of the Tabcorp Submission. These options do not include continuation of the 1998 Agreement.

2.8 Nomination of Tabcorp events

On page 10 the TRC Submission urges that Tabcorp should be requested by the Commission to reveal what Tasmanian racing events it has nominated as Tabcorp events for the purposes of clause 5.1 of the agreement.

There is no secrecy or confidentiality in relation to the Tasmanian racing events nominated as Tabcorp events. These events are self-evident by the fact that TOTE Tasmania offers wagers pooled in the SuperTAB pool in respect of the events.

2.9 Sky Channel undertaking

The TRC Submission urges the Commission to impose as a condition of authorisation an undertaking by Sky Channel Pty Limited that it maintain current levels of broadcast coverage of Tasmanian racing product.

As the Commission noted in its final determination of the applications for authorisation lodged by Sky Channel, Tabcorp and ThoroughVisioN in 2007, 'the coverage and the timeslots Sky gives to the racing events it shows on Sky Channel is commercial decision for Sky' (para 6.178). Tabcorp submits that the ACCC was correct in this analysis.

Furthermore, the coverage and scheduling by Sky Channel is wholly extraneous to the 2007 Agreement and the condition requested by Tasmanian Racing Club would be completely inappropriate.

2.10 TOTE Tasmania undertaking

Finally, the TRC Submission urges the ACCC to impose as a condition of authorisation that TOTE Tasmania give undertakings in relation to the race meetings on which it operates the totalisator and in relation to the staging of Tasmania's primary weekly racing events.

While this is a matter for TOTE Tasmania, again it is extraneous to the authorisation of the 2007 Agreement and a condition in the terms contemplated by Tasmania Racing Club would be wholly inappropriate.

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