

16 January 2008

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BY EMAIL: monica.bourke@accg.gov.au

Ms Monica Bourke
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Ms Bourke

**Tabcorp - Applications for Authorisation A91065, A91066 and A91067
TOTE Tasmania response to Tasmanian Racing Club submission**

1. We refer to the submission by Tasmanian Racing Club Inc (**the Tasmanian Racing Club**) in relation to the above application for authorisation made by Tabcorp Manager Pty Ltd (**Tabcorp**). We act for TOTE Tasmania Pty Ltd (**TOTE Tasmania**) and have been instructed to provide you with the following response to the Tasmanian Racing Club's submission.
2. In addition to some factual inaccuracies in the Tasmanian Racing Club's submission (set out below), TOTE Tasmania submits that the main issues raised by the Tasmanian Racing Club are not relevant to the Commission's consideration of Tabcorp's application for interim or final authorisation.

Availability of ThoroughVision in Tasmania

3. The Tasmanian Racing Club contends that 'ThoroughVision broadcasts have only minimal availability in Tasmania'.¹ TOTE Tasmania notes that ThoroughVision is available in some of TOTE Tasmania's 120 retail outlets in Tasmania and that ThoroughVision is also available as an option on Austar pay by subscription television across Tasmania.

Lack of Public Benefit

4. The Tasmanian Racing Club states that it is 'concerned with the lack of public benefit (as distinct from corporate gain) promoted by the Application'.² As noted in TOTE Tasmania's submission (see section 10.3), it is a statutory requirement³ for TOTE Tasmania to set aside an amount, not exceeding 25% of its net earnings for that financial year, for the benefit of the Tasmanian racing industry. Accordingly, any 'corporate gain' is clearly shared with the Tasmanian Racing Industry.

¹ Page 3 of the Tasmanian Racing Club submission

² Page 4 of the Tasmanian Racing Club submission

³ Section 11(1)(b) of TOTE Tasmania (Racing Regulation) Act 2004

5. The Tasmanian Racing Club further states that it understands that the Agreement 'does not reduce the commissions ordinarily payable to TOTE Tasmania'.⁴ TOTE Tasmania notes that it is not remunerated via commissions paid by Tabcorp.

Pooling Restriction

6. The Tasmanian Racing Club contends that 'clause 8.1 of the Agreement has the potential... to inhibit the wagering services which TOTE Tasmania ... will offer to punters'.⁵ Tabcorp's submission to the Commission clearly explained that the clause was designed to prevent TOTE Tasmania from being used as a vehicle for other wagering operators to indirectly pool with Tabcorp. Accordingly, TOTE Tasmania does not have any objection to this clause – it has little, if any, practical commercial significance and does not inhibit the wagering services which TOTE Tasmania will offer to punters.

Gross Pool Pricing vs Net Pool Pricing

7. The Tasmanian Racing Club states that Tabcorp did not address why Gross Pool Pricing, as compared to Net Pool Pricing, is a matter of public interest.⁶ TOTE Tasmania notes that section 5.3(e)(2) of the Tabcorp submission sets out in detail the justification for Gross Pool Pricing.

Tabcorp Betting Rules

8. The Tasmanian Racing Club notes in its submission that it was unable to consider the Tabcorp Betting Rules as it had not been provided with a copy.⁷ The Tabcorp Betting Rules are statutory rules that are publicly available.

The 1998 Agreement

9. The Tasmanian Racing Club states that 'as set out in the Application, the counterfactual scenario... is that the 1998 Agreement... will continue'.⁸ TOTE Tasmania submits that this is not correct. If the 2007 Agreement is not authorised by the Commission, at the expiry of the 1998 Agreement, the immediate commercial consequence will be that the 1998 Agreement will expire and TOTE Tasmania will not have access to a pool with sufficient liquidity, resulting in significant financial consequences for TOTE Tasmania. The counterfactual scenarios are discussed in detail at paragraph 8.3 of TOTE Tasmania's submission.

Tabcorp Events

10. The Tasmanian Racing Club submits that Tabcorp should be requested to reveal the Tasmanian racing events it has nominated as 'Tabcorp Events' and (if the Tasmanian Racing Club continues to have concerns) that Tabcorp be required to nominate at least the same number of Tasmanian racing events as those currently pooled pursuant to the 1998 Agreement.⁹ The Tasmanian racing events which are Tabcorp Events will be widely known as they are the events on which TOTE Tasmania offers wagers pooled in the SuperTAB pool. Conversely, those Tasmanian racing events which are not Tabcorp Events are publicised in the local media.

⁴ Page 4-5 of the Tasmanian Racing Club submission

⁵ Page 6 of the Tasmanian Racing Club submission

⁶ Page 7-8 of the Tasmanian Racing Club submission

⁷ Page 8 of the Tasmanian Racing Club submission

⁸ Page 9 of the Tasmanian Racing Club submission

⁹ Page 10 of the Tasmanian Racing Club submission

11. In any event, TOTE Tasmania submits that the racing events that are nominated as 'Tabcorp Events' under the 2007 Agreement is a matter for commercial negotiation between Tabcorp and TOTE Tasmania and is not relevant to the Commission's consideration of whether clause 5.1 of the 2007 Agreement constitutes a form of exclusive dealing by Tabcorp.

Sky Channel

12. The Tasmanian Racing Club argues that the Commission should require Sky Channel Pty Ltd to undertake to maintain its current levels of broadcast coverage of Tasmanian racing product.¹⁰ TOTE Tasmanian submits that this is a commercial matter for Tabcorp and is unrelated to the consideration by the Commission of the 2007 agreement.
13. Further, the broadcast coverage of racing and the pooling of wagers are entirely separate issues. There is a separate contract between TOTE Tasmania and Sky Channel that covers the broadcast and transmission of Tasmanian racing and to put any conditions around that matter as part of the Commission's consideration of the 2007 Agreement would not be appropriate.

TOTE Tasmania

14. The Tasmanian Racing Club argues that the Commission should require TOTE Tasmania to provide undertakings in relation to continued wagering on Tasmanian events and the days on which Tasmanian events are held.¹¹ TOTE Tasmania notes that it has legislative authority to program all racing events in Tasmania and that it exercises this authority to ensure that returns to TOTE Tasmania and the Tasmanian Racing Industry are maximised. It would not be appropriate for the Commission to impose a condition in an agreement which attempts to fetter this statutory authority and TOTE Tasmania considers that this matter is unrelated to the Commission's consideration of the 2007 Agreement.

Please contact Geoff Carter on (03) 8608 2168 if you require any further information.

Yours faithfully

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¹⁰ Page 10 of the Tasmanian Racing Club submission

¹¹ Page 10 of the Tasmanian Racing Club submission