

26 February 2009

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FILE NO:
DOC:
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**BY EMAIL**

Mr. Richard Chadwick  
General Manager – Adjudication branch  
Australian Competition & Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601  
[adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

Dear Mr Chadwick

**Application for Authorisation of fixed odds wagering joint venture**

We act for TOTE Tasmania Pty Ltd, ACTTAB Limited and Racing and Wagering Western Australia (together, the **Applicants**).

On 16 February 2009, the Applicants entered into two agreements. The first agreement establishes a joint venture with respect to the supply of fixed odds wagering services on sports, racing and other events and the acquisition of wagering and risk management services and ancillary services from Centrebet Pty Ltd (**Centrebet**). The second agreement, entered into with Centrebet and Centrebet International Ltd (as guarantor), establishes the arrangements under which Centrebet agrees to provide those services to the Applicants.

**1. Application for authorisation**

The Applicants apply to the Commission for authorisation pursuant to sections 88(1) and 88(8) of the *Trade Practices Act 1974* (Cth) (**TPA**) to make, and give effect to, these two agreements, a provision (or provisions) of which may constitute:

- (a) an exclusionary provision within the meaning of section 4D and section 45 of the TPA; and/or
- (b) a provision having the purpose, effect or likely effect of substantially lessening competition within the meaning of section 45 of the TPA,

(the **Application**).

For reasons set out in the supporting submission to the Application, the Applicants seek urgent authorisation to make and give effect to these agreements.

**2. Application and supporting material**

We enclose the following documents:

AUST. COMPETITION  
CONSUMER COMMISS  
CANBERRA

27 FEB 2009

- (a) Form A and Form B, the prescribed application forms for authorisation of an exclusionary provision and agreements affecting competition;
- (b) a **confidential** submission, which contains commercially sensitive information and over which confidentiality is sought;
- (c) a non-confidential, redacted version of the submission for placing on the public register;
- (d) a **confidential** copy of each agreement, which contains commercially sensitive information and over which confidentiality is sought;
- (e) a non confidential summary of each agreement for placing on the public register; and
- (f) a cheque for \$9,000 payable to the Commission.

### 3. Confidentiality

The Applicants acknowledge that this application and supporting documentation will be made public and placed on the Commission's authorisation register. However, parts of the supporting submission and the agreements contain information which is commercially sensitive and confidential to the Applicants.

Accordingly, pursuant to section 89(5) of the TPA, the Applicants request that the Commission exercise its power under section 89(5A) to exclude this information from the register kept by the Commission pursuant to section 89(3). The Applicants request that the Commission treat that information as strictly confidential.

Information in respect of which restriction of publication is claimed is clearly indicated in square brackets in the relevant documents. A non confidential redacted version of the submission and a non confidential summary of the agreements are enclosed for placing on the public register. The Applicants request that the Commission place only this letter, Forms A and B and the non-confidential versions of the supporting submission and agreements on the public register.

Please contact Geoff Carter if you have any queries in relation to this application or require any further information.

Yours faithfully

**MINTER ELLISON**



Geoff Carter  
Partner

Contact: Geoff Carter Direct phone: +61 3 8608 2090 Direct fax: +61 3 8608 1096  
Email: geoff.carter@minterellison.com  
Partner responsible: Geoff Carter Direct phone: +61 3 8608 2090  
Our reference: GRC 30-6010876

enclosures

**Form A**

Commonwealth of Australia

*Trade Practices Act 1974 - sub-section 88(1)*

**EXCLUSIONARY PROVISIONS:  
APPLICATION FOR AUTHORISATION**

**To the Australian Competition and Consumer Commission:**

**Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that sub-section:**

- **to make a contract or agreement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act; and**
- **to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.**

**1. Applicant**

**(a) Name of Applicant:**

This application is made by the following parties:

- TOTE Tasmania Pty Ltd (**Tote Tasmania**) (ACN 095 972 106)
- ACTTAB Limited (**ACTTAB**) (ACN 071 257 504); and
- Racing and Wagering Western Australia (**RWWA**) (ABN 21 347 055 603),

(together, the **Applicants**).

This application is to be read and determined together with the application in Form B in respect of agreements affecting competition (together, the **Application**).

**(b) Description of business carried on by applicant:**

TOTE Tasmania is an Australian state owned company incorporated in 2000 by the Tasmanian Government pursuant to the *TOTE Tasmania Act 2000* (Tas). TOTE Tasmania provides a variety of totalisator and fixed odds wagering products in relation to racing and other sporting events to customers. Further information on TOTE Tasmania is available from its websites [www.totetasmania.com](http://www.totetasmania.com) (its corporate site) and [www.thetote.com.au](http://www.thetote.com.au).

RWWA is a Western Australian government authority which provides a variety of totalisator and fixed odds wagering products in relation to racing and other sporting events to customers. Further information on RWWA is available from its website at [www.rwwa.com.au](http://www.rwwa.com.au).

ACTTAB is an ACT-owned corporation which provides a variety of totalisator and fixed odds wagering products in relation to racing and other sporting events to

customers. Further information on ACTTAB is available from its website at [www.acttab.com.au](http://www.acttab.com.au).

**(c) Address in Australia for service of documents on the applicant:**

Minter Ellison  
525 Collins Street  
MELBOURNE VIC 3000

Attention: Geoff Carter  
Direct: 03 8608 2168  
Fax: 03 8608 1096  
[geoff.carter@minterellison.com](mailto:geoff.carter@minterellison.com)

**2. Contract, arrangement or understanding**

**(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:**

The Applicants seek authorisation to make and give effect to:

- the agreement entered into between the Applicants on 16 February 2009 relating to the formation of a joint venture with respect to the supply of fixed odds wagering services on sports, racing and other events and the appointment of Centrebet Pty Ltd (**Centrebet**) (ACN 106 487 736) to provide wagering and risk management services and ancillary services to the Applicants (**JV Agreement**); and  
  
the agreement entered into between the Applicants, Centrebet and Centrebet International Ltd (**Centrebet International**) (ACN 066 441 067) (as guarantor) on 16 February 2009 under which Centrebet agrees to provide the wagering and risk management services and ancillary services to the Applicants (**Management Services Agreement**),

together, the **Agreements**.

Confidential copies of the Agreements are attached. Non confidential summaries of the Agreements are also attached.

**(b) Description of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions:**

Pursuant to the Agreements described in 2(a), the Applicants may make and give effect to a provision which may be an exclusionary provision.

This includes by making and giving effect to clause 5.3 of the JV Agreement. Under this clause, the Applicants agree to use reasonable endeavours to conduct all of their respective current and future fixed odds wagering business using the joint venture (other than in certain circumstances).

The Applicants seek authorisation in respect of all provisions of the Agreements.

**(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:**

Fixed odds wagering (also known as fixed odds 'betting')

- (d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:**

The term for which authorisation of the Agreements is being sought is the period of the Joint Venture or the term of the Management Services Agreement, whichever is longer.

The grounds supporting this period of authorisation are set out in the attached Submission.

### **3. Parties to the proposed arrangement**

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:**

Centrebet and Centrebet International  
110-116 Bourke Road  
Alexandria NSW 2015

Centrebet is a wholly owned subsidiary of Centrebet International, a publicly listed company involved in online wagering and gaming company. Centrebet is licensed in the Northern Territory to offer fixed odds wagering on sports, racing and other events to customers in Australia and overseas.

Address for service of documents on Centrebet and Centrebet International is:

110-116 Bourke Road  
Alexandria NSW 2015  
Facsimile: (02) 9310 5969  
Attention: Con Kafataris, Managing Director

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:**

Not applicable.

### **4. Public benefit claims**

- (a) Arguments in support of application for authorisation:**

The arguments in support of authorisation are set out in the attached Submission.

- (b) Facts and evidence relied upon in support of these claims:**

The facts and evidence in support of these claims are set out in the attached Submission.

## 5. Market definition

**Provide a description of the market(s) in which the goods or services described at 2(c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):**

The markets in which the services described in 2(c) are supplied are set out in the attached Submission.

## 6. Public detriments

- (a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2(c) and the prices of goods or services in other affected markets:**

Details of the detriments to the public resulting or likely to result from the authorisation are set out in the attached Submission.

- (b) Facts and evidence relevant to these detriments:**

The facts and evidence relevant to these detriments are set out in the attached Submission.

## 7. Contracts, arrangements or understandings in similar terms

- (a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:**

- (b) Is this application to be so expressed?**

No.

- (c) If so, the following information is to be furnished:**

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:**

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known - names, addresses and descriptions of business carried on by those other parties:**

Not applicable.

- (iii) **Where the parties to the similar term contract(s) are not known - description of the class of business carried on by those possible parties:**

Not applicable.

**8. Joint ventures**

- (a) **Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?**

Yes.

- (b) **If so, are any other applications being made simultaneously with this application in relation to that joint venture?**

Please see response to 1(a).

- (c) **If so, by whom or on whose behalf are those other applications being made?**

Please see response to 1(a).

**9. Further information**

- (a) **Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:**

Geoff Carter  
Minter Ellison  
525 Collins Street  
MELBOURNE VIC 3000  
Direct: 03 8608 2090  
Fax: 03 8608 1096  
[geoff.carter@minterellison.com](mailto:geoff.carter@minterellison.com)

Dated **26 February 2009**

Signed by/on behalf of the applicant



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(Signature)

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**Geoffrey Robert Carter**

(Full name)

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**Minter Ellison Lawyers**

(Organisation)

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**Partner**

(Position in organisation)

## DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing - provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing - provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
  7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
  8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.
  9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in

which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

**Form B**

Commonwealth of Australia

*Trade Practices Act 1974 - sub-section 88(1)*

**AGREEMENTS AFFECTING COMPETITION:  
APPLICATION FOR AUTHORISATION**

**To the Australian Competition and Consumer Commission:**

**Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that sub-section:**

- **to make a contract or agreement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act;**
- **to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.**

**1. Applicant**

**(a) Name of applicant:**

This application is made by the following parties:

- TOTE Tasmania Pty Ltd (**Tote Tasmania**) (ACN 095 972 106)
- ACTTAB Limited (**ACTTAB**) (ACN 071 257 504); and
- Racing and Wagering Western Australia (**RWWA**) (ABN 21 347 055 603),

(together, the **Applicants**).

This application is to be read and determined together with the application in Form A in respect of exclusionary provisions (together, the **Application**).

**(b) Short description of business carried on by applicant:**

TOTE Tasmania is an Australian state owned company incorporated in 2000 by the Tasmanian Government pursuant to the *TOTE Tasmania Act 2000* (Tas). TOTE Tasmania provides a variety of totalisator and fixed odds wagering products in relation to racing and other sporting events to customers. Further information on TOTE Tasmania is available from its websites [www.totetasmania.com](http://www.totetasmania.com) (its corporate site) and [www.thetote.com.au](http://www.thetote.com.au).

RWWA is a Western Australian government authority which provides a variety of totalisator and fixed odds wagering products in relation to racing and other sporting events to customers. Further information on RWWA is available from its website at [www.rwwa.com.au](http://www.rwwa.com.au).

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ACTTAB is an ACT-owned corporation which provides a variety of totalisator and fixed odds wagering products in relation to racing and other sporting events to customers. Further information on ACTTAB is available from its website at [www.acttab.com.au](http://www.acttab.com.au).

**(c) Address in Australia for service of documents on the applicant:**

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525 Collins Street  
MELBOURNE VIC 3000

Attention: Geoff Carter  
Direct: 03 8608 2090  
Fax: 03 8608 1096  
[geoff.carter@minterellison.com](mailto:geoff.carter@minterellison.com)

**2. Contract, arrangement or understanding**

**(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:**

The Applicants seek authorisation to make and give effect to:

- the agreement entered into between the Applicants on 16 February 2009 relating to the formation of a joint venture with respect to the supply of fixed odds wagering services on sports, racing and other events (**JV Agreement**). Under the JV Agreement, the Applicants agree to engage Centrebet Pty Ltd (**Centrebet**) (ACN 106 487 736) to provide wagering and risk management services and ancillary services to the Applicants; and
- the agreement entered into between the Applicants, Centrebet and Centrebet International Ltd (**Centrebet International**) (ACN 066 441 067) (as guarantor) on 16 February 2009 under which Centrebet agrees to provide these wagering and risk management services and ancillary services to the Applicants (**Management Services Agreement**),

together, the **Agreements**.

Confidential copies of the Agreements are attached. Non confidential summaries of the Agreements are also attached.

**(b) Description of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition:**

Pursuant to the Agreements described in 2(a), the Applicants may make and give effect to a provision which may have the purpose or likely of substantially lessening competition within the meaning of section 45 (including by reason of section 45A).

This includes by making and giving effect to clauses 8.2, 8.3(c) and 8.4 of the Management Services Agreement. Under these clauses, the Applicants and Centrebet agree to establish a joint 'management committee' to oversee the provision of the services by Centrebet and permit that committee to agree risk

thresholds and target margin parameters to be used by Centrebet in providing the services.

The Applicants seek authorisation in respect of all provisions of the Agreements.

**(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:**

Fixed odds wagering (also known as fixed odds 'betting')

**(d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:**

The term for which authorisation of the Agreements is being sought is the period of the Joint Venture or the term of the Management Services Agreement, whichever is longer.

The grounds supporting this period of authorisation are set out in the attached Submission.

**3. Parties to the proposed arrangement**

**(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:**

Centrebet and Centrebet International  
110-116 Bourke Road  
Alexandria NSW 2015

Centrebet is a wholly owned subsidiary of Centrebet International, a publicly listed company involved in online wagering and gaming company. Centrebet is licensed in the Northern Territory to offer fixed odds wagering on sports, racing and other events to customers in Australia and overseas.

Address for service of documents on Centrebet and Centrebet International is:

110-116 Bourke Road  
Alexandria NSW 2015  
Facsimile: (02) 9310 5969  
Attention: Con Kafataris, Managing Director

**(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:**

Not applicable.

**4. Public benefit claims**

**(a) Arguments in support of authorisation:**

The arguments in support of authorisation are set out in the attached Submission.

**(b) Facts and evidence relied upon in support of these claims:**

The facts and evidence in support of these claims are set out in the attached Submission.

**5. Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):**

The markets in which the services described in 2(c) are supplied are set out in the attached Submission.

**6. Public detriments**

**(a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:**

Details of the detriments to the public resulting or likely to result from the authorisation are set out in the attached Submission.

**(b) Facts and evidence relevant to these detriments:**

The facts and evidence relevant to these detriments are set out in the attached Submission.

**7. Contract, arrangements or understandings in similar terms**

**This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.**

**(a) Is this application to be so expressed?**

No.

**(b) If so, the following information is to be furnished:**

**(i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:**

Not applicable.

- (ii) **Where the parties to the similar term contract(s) are known - names, addresses and descriptions of business carried on by those other parties:**

Not applicable.

- (iii) **Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:**

Not applicable.

**8. Joint ventures**

- (a) **Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?**

Yes.

- (b) **If so, are any other applications being made simultaneously with this application in relation to that joint venture?**

Please see response to 1(a).

- (c) **If so, by whom or on whose behalf are those other applications being made?**

Please see response to 1(a).

**9. Further information**

- (a) **Name and address of person authorised by the applicant to provide additional information in relation to this application:**

Geoff Carter  
Minter Ellison  
525 Collins Street  
MELBOURNE VIC 3000  
Direct: 03 8608 2090  
Fax: 03 8608 1096  
[geoff.carter@minterellison.com](mailto:geoff.carter@minterellison.com)

Dated **26 February 2009**

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to read "Geoff Carter", is written on a light-colored rectangular background.

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(Signature)

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**Geoffrey Robert Carter**

(Full name)

---

**Minter Ellison Lawyers**

(Organisation)

---

**Partner**

(Position in organisation)

## **DIRECTIONS**

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing - provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing - provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
  7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
  8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
  9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in

which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

[RESTRICTION OF PART OF PUBLICATION CLAIMED]

# Re Application for Authorisation

Submission by TOTE  
Tasmania Pty Ltd, Racing &  
Wagering Western Australia  
and ACTTAB Ltd

PUBLIC VERSION

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26 February 2009

# Application for Authorisation - Supporting Submission

Public version

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# Executive Summary

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This submission is made by TOTE Tasmania Pty Ltd (**Tote Tasmania**), ACTTAB Limited (**ACTTAB**) and Racing and Wagering Western Australia (**RWWA**) (together, the **Applicants**) in support of their application for authorisation in relation to the following agreements:

- the agreement entered into between the Applicants on 16 February 2009 relating to the formation of a joint venture (**JV**) with respect to the supply of fixed odds wagering services on sports, racing and other events and the acquisition of wagering and risk management services and ancillary services (**Management Services**) from Centrebet Pty Ltd (**Centrebet**) (**JV Agreement**); and
- the agreement entered into between the Applicants, Centrebet and Centrebet International Ltd (**Centrebet International**) (as guarantor) on 16 February 2009 under which Centrebet agrees to provide the Management Services to the Applicants (**Management Services Agreement**),

together, the **Agreements**.

The relevant conduct under the Agreements that is the subject of the Application can broadly be summarised as follows:

- each Applicant agreeing to use reasonable endeavours to conduct all of their respective current and future fixed odds wagering using the JV, other than in relation to certain fixed odds wagering;
- the Applicants and Centrebet agreeing to establish a joint 'management committee' to oversee the provision of the Management Services by Centrebet and permit that committee to agree risk thresholds and target margin parameters to be used by Centrebet in providing those services – specifically, when establishing and maintaining the fixed odds books for the Applicants ; and
- more generally, the Agreements in their entirety so as to eliminate any residual risk that establishment of the JV or arrangements with Centrebet could be said to have the purpose or likely effect of substantially lessening competition in any relevant market.

In considering this application, the Australian Competition and Consumer Commission (**Commission**) must undertake a net public benefit assessment, comparing the anti-competitive detriment (if any) and the public benefits that will result from the conduct in the 'factual' versus the 'counterfactual'.

In the 'factual', the Agreements are authorised as sought by the Applicant. In theory, there are several possible 'counterfactual scenarios'. **[RESTRICTION OF PART OF PUBLICATION CLAIMED]** Accordingly, the Applicants submit that the primary counterfactual that should be adopted for the purposes of this submission is this 'cessation / reduction' scenario (the **Primary Counterfactual**).

The Applicants submit that the conduct for which authorisation is sought will result in significant public benefits, relative to the Primary Counterfactual, in the following recognised categories:

- **benefits for the Applicants** – the Agreements will permit each of the Applicants to supply fixed odds wagering products in a manner that appropriately manages their respective risks and costs, and enhances the prospect of achieving more consistent returns within a nominated target margin range than would be possible individually. The Agreements will result in reduced administration and transaction costs for the Applicants, fostering business efficiency;
- **benefits for punters** – the Agreements will ensure that the Applicants can continue to offer fixed odds wagering products to punters and provide the Applicants with the ability to offer punters a broader range of fixed odds wagering products (on a wider range of events and bet types) and

more attractive odds, thereby providing punters with greater choice and more competitively priced products;

- **benefits to the wagering industry generally** – the Agreements will ensure there remains an additional three suppliers in the industry from whom fixed odds wagering products can be sourced and who will provide a competitive constraint to existing suppliers, including through the offering of a broader range of fixed odds wagering products, at more competitive odds; and
- **benefits to the Tasmanian, Western Australian and ACT racing industries and economies** – the Agreements will contribute to each Applicants financial ability to carry out their respective responsibilities and functions which underpin their respective racing industries, as well as enhancing each Applicants ability to provide funding (or other distributions) to their state or territory's racing industry and otherwise contribute to their state or territory taxation revenues or economies more generally.

In contrast, the Applicants consider that there is likely to be little (if any) public detriment arising from the relevant conduct under the Agreements. On this basis, the Applicants submit that the conduct under the Agreements should be authorised.

# Submission

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## 1. Introduction

### 1.1 The Application

On 16 February 2009, TOTE Tasmania Pty Ltd (**Tote Tasmania**), ACTTAB Limited (**ACTTAB**) and Racing and Wagering Western Australia (**RWWA**) (together, the **Applicants**) entered into the following two agreements relating to the formation of the fixed odds wagering joint venture and the acquisition of wagering and risk management services and ancillary services from Centrebet Pty Ltd (**Centrebet**):

- a joint venture agreement entered into by the Applicants (**JV Agreement**); and
- a management services agreement entered into by Centrebet, Centrebet International Ltd (**CIL**) (as guarantor for Centrebet's obligations) and each of the Applicants (**Management Services Agreement**).

For the purposes of this submission, the JV Agreement and Management Services Agreement are together referred as the **Agreements**.

This submission is made by the Applicants in relation to their application for authorisation pursuant to sections 88(1) and 88(8) of the *Trade Practices Act 1974* (Cth) (**TPA**) to make and give effect to the Agreements (including clause 5.3 of the JV Agreement and clauses 8.2, 8.3(c) and 8.4 of the Management Services Agreement) (the **Application**), as set out in the attached Form A and Form B.

For reasons that are apparent in this supporting submission to the Application, the Applicants seek urgent authorisation to make and give effect to these agreements. It is imperative that the Applicants are able to make and give effect to these agreements by no later than 29 May 2009, being the date upon which the Applicants existing arrangements with respect to fixed odds wagering (as described in section 2.2) cease and give rise to the Primary Counterfactual (as described in section 7.3).

### 1.2 Conditions precedent

The Agreements are subject to a number of conditions precedent, including a condition relating to authorisation. As such, neither agreement will come into force in relevant respects unless and until interim authorisation or final authorisation (whichever occurs first) is granted and comes into force.<sup>1</sup>

## 2. Background

### 2.1 Proposed fixed odds wagering joint venture

Each of the Applicants currently offer fixed odds wagering on sports, racing and other events to customers via their participation in the national fixed odds wagering book operated by Tabcorp Holdings Ltd (**Tabcorp**) under the *TAB Sportsbet* brand. These current arrangements are due to terminate on 29 May 2009 in respect of each Applicant and are discussed in greater detail below in section 2.2.

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<sup>1</sup> See clauses 2.2 and 2.4 of each of the JV Agreement and Management Services Agreement.

The Applicants propose, pursuant to the JV Agreement, to form an unincorporated joint venture with respect to the supply of fixed odds wagering on sports, racing and other events to their respective customers from 29 May 2009 (**JV**). The terms of the JV Agreement provide for the appointment of a 'Manager' to provide wagering and risk management services (and ancillary services) to the Applicants, which services will replace the services currently provided to each Applicant by Tabcorp on an individual contractual (but common book) basis. Under the terms of the Management Services Agreement, the Applicants have appointed Centrebet as the Manager.

Each of the Applicants will hold an equal interest in any assets of the JV (ie 33.3%), with each entitled to an equal distribution of proceeds of sale upon a winding up of the JV and each required to make equal capital contributions.

The Applicants intend that the JV be established from the date the conditions precedent are satisfied and will (subject to earlier termination under the terms of the respective agreements) terminate when the parties agree in writing to do so.

The JV will involve (in general terms):

- the supply of fixed odds wagering services on sports, racing and other events by the Applicants to their respective customers, including the supply of fixed odds betting facilities to and the receipt of fixed odds wagers from those customers;
- the pooling of fixed odds wagers received by each Applicant into common 'books' to be managed by Centrebet (as Manager) in accordance with the terms of the Management Services Agreement;
- the appointment of Centrebet under the Management Services Agreement as Manager, to provide:
  - a range of wagering and risk management services, including:
    - establishing and managing fixed odds books (covering the same range of events and bet types offered by Centrebet to its own customers) on behalf of the Applicants;
    - accepting and processing the above fixed odds investments on behalf of each Applicant, in accordance with agreed risk parameters;
    - providing wagering and risk management services in respect of each book utilising Centrebet's functionality for such services (including bookmaking management, authorisation controls, implementation of risk parameters, calculation of fixed odds in respect of particular events and bet types in accordance with agreed risk and margin parameters, racing and sports wagering expertise and real time systems based trading alerts);
    - conducting related activities, including undertaking research and managing event selling and fixed returns (including by 'laying off' wagers in accordance with the risk parameters); and
  - a range of implementation services, sports betting technology and ancillary services in relation to the books;(together, the **Management Services**),
- the acquisition of the Management Services by the Applicants from Centrebet according to the terms of the Management Services Agreement;

- Centrebet supplying the Management Services to the Applicants, who will subsequently each offer the same fixed odds (as determined by Centrebet, in accordance with agreed risk and margin parameters) in relation to particular events and bet types to their respective end customers in both domestic and overseas markets;
- [RESTRICTION OF PART OF PUBLICATION CLAIMED]
- [RESTRICTION OF PART OF PUBLICATION CLAIMED]; and
- each applicant agreeing to acquire their requirements for Management Services during the term through Centrebet (except in limited circumstances).

Confidential copies of the executed Agreements are attached as **Annexure 1**. Non confidential summaries of the Agreements are also attached as **Annexure 2**.

## 2.2 Current arrangements with respect to fixed odds wagering

Each of the Applicants currently offers fixed odds wagering to their customers via their participation in the national fixed odds wagering book operated by Tabcorp under the *TAB Sportsbet* brand. UNiTAB also conducts its fixed odds wagering business via the *TAB Sportsbet* book.

Under the *TAB Sportsbet* arrangements, Tabcorp, pursuant to separate contracts with each participating party on substantially similar terms:

- appoints each participating party as Tabcorp's accredited fixed odds representative for the purpose of receiving fixed odds wagers in relation to the state or territory in which the other party is licensed or authorised to operate fixed odd wagering;
- agrees to accept into a combined book, and each participating party agrees to transmit, the fixed odds wagers received by each other party on certain events;
- agrees to manage the combined book, including the calculation of fixed odds on each event and bet type by reference to the level of wagers in the book and the degree of financial exposure of the book to a particular result/s for an event; and
- licenses each participating party to use the *TAB Sportsbet* brand.

There are various restrictions under these arrangements placed on each participating party, including that no discounts or rebates are offered to customers by the participant party in relation to the fixed odds wagering products provided.

Tabcorp has given notice to each Applicant that it intends to terminate these arrangements as of 29 May 2009. For completeness, the Applicants understand that UNiTAB's arrangements with Tabcorp relating to *TAB Sportsbet* are ongoing.

## 2.3 Commercial rationale for JV

### *Inability to individually conduct fixed odds wagering operations*

The commercial driver behind the Applicants each having entered into the *TAB Sportsbet* arrangements with Tabcorp is that they do not have the means to individually conduct efficient and profitable fixed odds wagering operations offering the same scale and scope of fixed odds

wagering products as those offered under the *TAB Sportsbet* arrangements.<sup>2</sup> This is for a number of reasons:

- the Applicants are 'smaller' operators in relation to fixed odds wagering, relative to the larger operators such as Tabcorp, UNiTAB and larger corporate bookmakers;
- the Applicants would individually lack liquidity in their individual fixed odds books sufficient to efficiently and profitably conduct and manage their own fixed odds wagering, while offering a sufficiently broad range of wagering products at attractive odds prices for their respective customers;
- the Applicants do not have sufficient scale, expertise (in the form of specialist bookmakers / analysts), technology or risk management skills to:
  - manage risk in their respective books (including 'framing' the market, balancing the book and laying off wagers); and
  - supply a full range of events and bet types, at competitive odds;
- the size of the Applicants respective states and territory has traditionally presented difficulties with access to larger numbers of punters (although this has diminished somewhat with recent growth in online and telephone betting, including from overseas clients); and
- individually supplying fixed odds wagering products exposes the Applicants to considerable risk and inconsistent and volatile returns.

In order to be able to undertake a full scale fixed odds wagering operation individually, the Applicants would need to be of bigger size and scale and have greater liquidity. Absent appropriate scale, a fixed odds book is very volatile, with even small wagers causing dramatic fluctuations in odds. Taking larger wagers therefore becomes extremely difficult, and results in a poorer competitive offering for punters.

The Applicants would also need to have sufficient expertise and technological systems to support such wagering. **[RESTRICTION OF PART OF PUBLICATION CLAIMED]** In addition to the cost issue, there is also a question of accessing appropriate expertise – the Applicants would find it difficult to each access (in their respective jurisdictions) a sufficient number of skilled bookmakers / analysts across different event types (ie racing, sports, etc) to support an individual fixed odds wagering operation.

By way of example, **[RESTRICTION OF PART OF PUBLICATION CLAIMED]**. By contrast, the party from whom the Applicants are seeking such expertise as part of the Management Services – Centrebet – has approximately 70 bookmakers / analysts to support its operations.

The Applicants would also be required to invest significantly in technology to support the fixed odds wagering operations. While there is ready access to the required technology, the cost of acquiring and appropriately developing and supporting such technology is prohibitive. By way of example, **[RESTRICTION OF PART OF PUBLICATION CLAIMED]**.

### ***Termination of TAB Sportsbet arrangements and options***

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<sup>2</sup> For broadly similar reasons, the Applicants are also members of the SuperTAB pool under which Tabcorp provides pari mutuel (totalisator) services to the applicants (and a number of other parties).

With the termination of the *TAB Sportsbet* arrangements, the Applicants existing avenue for supplying fixed odds wagering products to their customers will close with effect from 29 May 2009. Since receiving notice of the termination, each of the Applicants have examined their respective options in relation to the manner in which they supply fixed odds wagering products.

They have each determined that the formation of the JV and arrangements with Centrebet represent the best commercial outcome to enable each Applicant to supply fixed odds wagering products in a manner that appropriately manages their respective risks and costs and ensures consistent returns, while ensuring that the quality of their fixed odds offering to customers, both in terms of price and choice, is not diminished. By establishing the JV and jointly procuring the Management Services from Centrebet, the Applicants are able to 'pool' the risks of each Applicant's respective 'book' and implement jointly determined risk parameters or thresholds. This lowers overall costs and risks, thereby enhancing the prospect of achieving consistent returns within a nominated target margin range on a wider range of events and bet types than would be possible individually.

The Applicants have determined that Centrebet is best positioned as the provider of the Management Services – by reason of its size, scale, expertise, product offering and professionalism. The latter consideration is particularly important one for the Applicants, as government authorities or government owned corporations.

### 3. Background – applicants and other parties

#### 3.1 TOTE Tasmania

TOTE Tasmania is a state-owned company originally established by the Tasmanian Government to provide wagering services in Tasmania, and also to provide administrative and financial support to the Tasmanian Racing Industry (**TRI**).

Recent legislative amendments passed by the Tasmanian Parliament have had the effect of divesting from TOTE Tasmania its administrative functions with respect to the TRI, and investing those functions in the newly formed Tasmanian Racing Board (**TRB**). As such, TOTE Tasmania is now exclusively a wagering business, required to operate in accordance with commercial principles and maximise its return to shareholders. It is, however, still required by legislation to provide indirect financial support to the TRI by making certain payments to the Tasmanian Government which are passed on to the TRB.

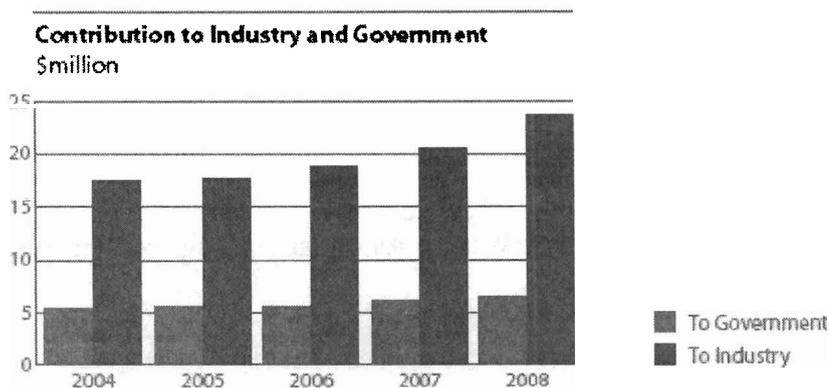
The shareholders of TOTE Tasmania are the Treasurer of Tasmania (Hon. Michael Aird, MLC) and the Minister for Emergency Management and Local Government (Hon. James Cox, MHA). The Tasmanian government has recently announced plans to sell TOTE Tasmania by way of competitive tender.

The objectives of TOTE Tasmania, as set out in section 7 of the *TOTE Tasmania Act 2000* (Tas), are to:

- (a) perform its functions and exercise its powers so as to be a successful business by
  - (i) operating in accordance with sound commercial practice as efficiently and effectively as possible; and
  - (ii) maximising the sustainable return to the State in accordance with TOTE Tasmania's business plan; and
- (b) encourage wagering on Tasmanian racing.

TOTE Tasmania is the principal funding arm of the TRI. In 2007/2008, TOTE Tasmania distributed \$23.7 million to the TRI (up from \$20.4 million in 2006/2007).

TOTE Tasmania also delivered \$6.99 million to the Federal and State Governments and the community by way of GST and income tax equivalents.<sup>3</sup> TOTE Tasmania's contribution to the TRI and to the Tasmanian government over the past 5 years is set out in the table below<sup>4</sup>:



TOTE Tasmania is authorised in Tasmania to provide a variety of totalisator and fixed odds wagering products in relation to racing, sports and other events, which it does so under the brand 'the TOTE'. TOTE Tasmania is the only provider of totalisator facilities in Tasmania. TOTE Tasmania is currently a member of the *SuperTAB* totalisator pool<sup>5</sup>, and provides fixed odds wagering products through *TAB Sportsbet*, both of which are managed by Tabcorp. TOTE Tasmania also offers 'Triwin', a fixed odds product. TOTE Tasmania also provides

TOTE Tasmania's network includes approximately 120 retail outlets located throughout Tasmania (including dedicated outlets and hotels), on course totalisator facilities at 16 race tracks across Tasmania and an internet site with online wagering services. TOTE Tasmania also provides telephone wagering services to over 12,000 registered account holders. In 2007/2008, 66 per cent of all turnover came through account wagering (online and telephone), with 34 per cent through retail outlets and on-track.<sup>6</sup> In 2007/2008, internet turnover increased by 48 per cent to a total of \$30 million.<sup>7</sup> [RESTRICTION OF PART OF PUBLICATION CLAIMED].

For the 2007/2008 financial year, TOTE Tasmania recorded a pre-tax profit of \$4.07 million and profit after income tax of \$2.865 million. These results represent a 76.2% and 62.9% increase (respectively) over those recorded for the 2006/2007 financial year.<sup>8</sup>

TOTE Tasmania's total turnover for 2007/2008 was approximately \$498 million (largely derived from off course wagering), including totalisator turnover of \$474 million and fixed odds wagering turnover of \$22.5 million. Fixed odds wagering turnover – representing 4.5% of total turnover – was a 100% increase on the 2006/2007 turnover of \$11.18 million. Within fixed odds wagering, the majority of turnover was derived from sports wagering (provided pursuant to the *TAB*

<sup>3</sup> TOTE Tasmania Annual Report for 2007/2008.

<sup>4</sup> TOTE Tasmania Annual Report for 2007/2008.

<sup>5</sup> TOTE Tasmania's participation in the SuperTAB pool was the subject of an authorisation by Tabcorp in 2007. See ACCC Determination, *applications for authorisation lodged by Tabcorp Manager Pty Ltd in respect of the 2007 Agreement governing TOTE Tasmania Pty Ltd's participation in the Super TAB pool* (dated 5 March 2008).

<sup>6</sup> TOTE Tasmania Annual Report for 2007/2008.

<sup>7</sup> TOTE Tasmania Annual Report for 2007/2008.

<sup>8</sup> TOTE Tasmania Annual Report for 2007/2008.

*Sportsbet* arrangements) totalling \$19 million. This was up 164% per cent from the previous year and accounted for approximately 4% of TOTE Tasmania's total turnover.<sup>9</sup>

A copy of TOTE Tasmania's annual report for 2007/2008 is enclosed as **Annexure 3**. Further information on TOTE Tasmania is available from its websites [www.totetasmania.com](http://www.totetasmania.com) (corporate site) and [www.thetote.com.au](http://www.thetote.com.au).

### 3.2 RWWA

RWWA is a body corporate, established in 2003 under the *Racing and Wagering Western Australia Act 2003* (WA).<sup>10</sup> RWWA was established as the controlling statutory authority for thoroughbred, harness and greyhound racing. RWWA is not a Crown agency or subject to ministerial direction, but is subject to various accountability mechanisms (including a requirement to report to Parliament).

RWWA's activities are regulated by the Western Australian Gaming and Wagering Commission.

The responsibilities of RWWA include:

- carrying on the business of operating an off course totalisator wagering service;
- carrying on the business of operating an on-course totalisator wagering service on behalf of racing clubs where engaged to do so;
- carrying on the business of setting, accepting and making fixed odds wagers;
- controlling, supervising and regulating the conduct of thoroughbred, harness and greyhound racing in WA, including the responsibility for steward and drug testing activities;
- in conjunction with national rule making authorities, making rules for the conduct of racing in WA and, in all respects, perform the role of principal club;
- registering racing clubs and racing animals and license race meetings, race venues and participants;
- fostering the development, promoting the welfare and ensuring the integrity of metropolitan and country thoroughbred, harness and greyhound racing in the interests of the long term viability of the racing industry in WA;
- undertaking and managing industry strategic planning, promotion, marketing, sponsorship and administration;
- supervising racing clubs and their affairs;
- making loans or grants to racing clubs and allied bodies (for racecourse development purposes);
- setting race dates and determine the race meetings to be held in Western Australia;
- undertaking handicapping;
- establishing policies for, and manage the provision of, programs for apprenticeship jockey, trainee driver and other industry training requirements (such as stake money levels and race conditions and programs);

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<sup>9</sup> TOTE Tasmania Annual Report for 2007/2008.

<sup>10</sup> RWWA replaced the Western Australian Turf Club, the Western Australian Trotting Association and the Eastern Australian Greyhound Racing Authority, although each remains as a racing club responsible for the conduct of racing activities at their respective venues.

- endeavouring to ensure that racing industry issues such as insurance, broadcasting of race meetings and the establishment and maintenance of training facilities are carried out in an appropriate and adequate manner; and
- liaising with government and other authorities, whether in or out of WA, with respect to, and represent the interest of, the racing industry in WA.

RWWA is the principal funding arm of the Western Australian racing industry (**WARI**) and contributes significantly to its welfare. Under its enabling legislation, RWWA is required to distribute all of its profits, other than what is retained in its reserves, to the WARI.<sup>11</sup> In 2007/2008, RWWA returned over 7% of its turnover (or \$109.4m) to the WARI. This included \$102.9 million in racing distributions, \$3.5 million in grants and \$1.27 million in industry subsidies.<sup>12</sup> RWWA is also required to distribute approximately 25% of its revenues in respect of totalisator and fixed odds wagering on sporting events (after paying dividends or winnings on the wagers and wagering tax) into a government sports account (managed by the WA Department of Sports and Recreation) for distribution to Western Australian sports.<sup>13</sup> RWWA pays approximately \$2 million into this account each year.

RWWA also contributes to the Western Australian economy through taxation. RWWA is required to pay 'betting tax' to the WA government at the following rates:

- Pari-mutuel (totalisator) sports turnover - 5.0%;
- Fixed odds wagering (sports) turnover - 0.5%; and
- Fixed odds wagering (racing) turnover - 2.0%.<sup>14</sup>

RWWA is licensed in Western Australia to undertake off-course totalisator betting which it does trading as the 'TAB' and to offer fixed odds wagering on sports, racing and other events. RWWA currently offers fixed odds wagering products through *TAB Sportsbet*, and participates in the *SuperTAB* totalisator pool. RWWA also operates the *TABozbet* internet betting platform offering *TAB* betting products.

RWWA conducts its wagering activities (including its totalisator functions and fixed odds wagering products) through a retail network of 286 licensed outlets, *PubTAB* outlets and 'self service' sites, as well as through internet and telephone distribution channels. Approximately 84.1% of business is transacted through RWWA's retail network, with the remainder through online and telephone channels.<sup>15</sup> **[RESTRICTION OF PART OF PUBLICATION CLAIMED]**

RWWA's wagering turnover for the 2007/2008 financial year was \$1.519 billion, an increase of 2.5% on the previous year.<sup>16</sup> RWWA's fixed odds wagering turnover for 2007/2008 was **[RESTRICTION OF PART OF PUBLICATION CLAIMED]**.<sup>17</sup>

A copy of RWWA's annual report for 2007/2008 is enclosed as **Annexure 4**. Further information on RWWA is available from its website at [www.rwwa.com.au](http://www.rwwa.com.au).

<sup>11</sup> See section 106 of the *Racing and Wagering Western Australia Act 2003* (WA).

<sup>12</sup> RWWA Annual Report for 2007/2008.

<sup>13</sup> See section 107 of the *Racing and Wagering Western Australia Act 2003* (WA).

<sup>14</sup> RWWA Annual Report for 2007/2008.

<sup>15</sup> RWWA Annual Report for 2007/2008.

<sup>16</sup> RWWA Annual Report for 2007/2008.

<sup>17</sup> RWWA management estimates.

### 3.3 ACTTAB

ACTTAB was established in 1964 and operates as an ACT-owned corporation under the *Betting (ACTTAB Limited) Act 1964* (ACT) and the *Territory-owned corporations Act 1990* (ACT).

The functions of ACTTAB include the provision of:

- totalisator services;
- wagering and gaming services;
- the conduct of lotteries or acting as an agent for a person conducting a lottery; and
- undertaking any other related business or activity.

Like TOTE Tasmania and RWWA, ACTTAB is a key stakeholder in the ACT racing industry (ACTRI) and contributes significant funding to the industry, as well as providing a consistent revenue stream for the ACT government. Since its establishment, ACTTAB has contributed over \$115 million in funding distributions to the ACTRI and paid tax and other contributions to the ACT government of \$114 million.<sup>18</sup> During 2007/2008, ACTTAB paid licence fees, dividends and taxes of \$8.5 million to the ACT government and \$7.4 million to the ACTRI.<sup>19</sup> ACTTAB notes that its funding to the ACTRI is derived wholly from its totalisator revenue (not fixed odds wagering revenue), while the contributions it makes to the ACT government is derived largely from its totalisator revenue [RESTRICTION OF PART OF PUBLICATION CLAIMED], with fixed odds wagering lotteries and revenue comprising the remainder.

ACTTAB is licensed to provide on course and off-course totalisator betting in the ACT, which it does through the *SuperTab* pool. ACTTAB is also a licensed sports bookmaker under the provision of the *Race and Sports Bookmaking Act 2001* (ACT) and offers fixed odds wagering on racing, sports and other events through *TAB Sportsbet*. ACTTAB also operates *Keno* and *Trackside* pursuant to approvals under the *Lotteries Act 1964* (ACT).<sup>20</sup>

There are over 50 ACTTAB retail outlets located throughout the ACT, including branches and agencies, sub-agencies (located in clubs, hotels, taverns and Casino Canberra) as well as a number of on-course outlets at ACT race courses (for thoroughbred, harness and greyhound racing). ACTTAB also offers internet and telephone betting services to account customers, [RESTRICTION OF PART OF PUBLICATION CLAIMED]. In terms of fixed odds wagering revenue by distribution channel, ACTTAB estimates that approximately [RESTRICTION OF PART OF PUBLICATION CLAIMED]. Retail account turnover increased by 20.37% (compared to 2006/2007 turnover), with internet turnover representing over 63% of total retail account sales.<sup>21</sup>

ACTTAB's wagering turnover for the 2007/2008 financial year was \$177.1 million.<sup>22</sup> Of this, racing turnover was \$164.5 million, an increase of 3.90% on turnover for 2006/2007. In 2007/2008, fixed odds wagering turnover (derived through *TAB Sportsbet* arrangements) was \$8.6 million,<sup>23</sup> representing approximately 4.8% of total turnover.

A copy of ACTTAB's annual report for 2007/2008 is enclosed as **Annexure 5**. Further information on ACTTAB is available from its website at [www.acttab.com.au](http://www.acttab.com.au)

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<sup>18</sup> ACTTAB Annual Report for 2007/2008.

<sup>19</sup> ACTTAB Annual Report for 2007/2008.

<sup>20</sup> *'Trackside'* is conducted under a licence agreement with Tabcorp and ACTTAB has an agreement with the South Australian Lotteries Commission to provide *Keno* to ACTTAB customers.

<sup>21</sup> ACTTAB Annual Report for 2007/2008.

<sup>22</sup> ACTTAB Annual Report for 2007/2008.

<sup>23</sup> ACTTAB Annual Report for 2007/2008.

### 3.4 Centrebet and CIL

Centrebet is a wholly owned subsidiary of CIL, a publicly listed company involved in online wagering and gaming. CIL was formed in 2003 as a result of the merger of Centrebet Pty Ltd and SportsOdds.

Centrebet is licensed in the Northern Territory to offer fixed odds wagering on sports, racing and other events to customers in Australia and overseas. Centrebet offers fixed odds wagering on up to 4,000 international sports and horse racing events per week using online channels. CIL also offers online poker and casino products (although not to Australian residents, due to regulatory restrictions on interactive gambling). CIL's gaming services are operated by Centrebet Gaming NV, which is licensed in the Netherlands Antilles.

A copy of CIL's annual report for 2007/2008 is enclosed as **Annexure 6**. Further information on CIL is available from its website [www.centrebet.com](http://www.centrebet.com).

### 3.5 Other stakeholders / interested parties

Other stakeholders in the wagering industry, or parties who may otherwise be interested in the Application, include other totalisators, corporate bookmakers, racing clubs, regulatory bodies, punters, licensed hotels/retail agencies as well as the employees and shareholders of the Applicants and Centrebet. Contact details for major stakeholders are set out in **Annexure 7**.

## 4. The wagering industry

The Commission has examined a number of matters in the wagering industry, including in relation to the proposed acquisition of UNiTAB Limited by Tattersalls Limited (2006), the proposed acquisition of UNiTAB Limited by Tabcorp Holdings Limited (2006) and the authorisation of the 2007 *SuperTAB* agreement between Tabcorp Holdings Limited and TOTE Tasmania. While the Applicants anticipate that the Commission therefore has a general understanding of the wagering industry, including the offering of fixed odds wagering products, an overview of the wagering, types of wagering (including fixed odds wagering) and the interaction between the wagering and racing industries is set out below. The Applicants would be pleased to provide further information on these aspects upon the Commission's further request.

### 4.1 Wagering

Wagering forms part of a broader 'gambling' industry, which also includes the supply of gaming products (such as lotteries and pokies). 'Wagering' (also commonly referred to as '**betting**') involves providing consumers (or '**punters**') with the ability to place a wager on the outcome of a particular event. The principal forms are wagering on racing and sporting events, although wagering takes place on other events such as political or entertainment events. Wagering is considered a 'skill' based activity, in contrast to gaming which is generally considered to be a 'chance' based activity.

Racing comprises the large majority of wagering turnover. Total national racing turnover for 2006/2007 was \$17.6 billion, representing 92% of all wagering turnover. Total national 'sports' turnover for the same period of \$1.6 billion, representing 8% of all wagering turnover.<sup>24</sup>

In Australia, wagering falls into two broad categories: pari mutuel (or totalisator) wagering and fixed odds (or 'book maker') wagering. Supplementing these 'traditional' types of wagering are hybrid and related forms of wagering such as betting exchanges (such as those operated by Betfair) and 'TOTE-odds' book maker wagering.

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<sup>24</sup> Centrebet presentation to investors, April 2008, available from [www.centrebet.com](http://www.centrebet.com).

### Pari mutuel (or 'totalisor') wagering

Pari mutuel (or 'totalisor') wagering is the dominant type of wagering in Australia. In pari mutuel wagering, the odds are only fixed at the point in time at which the totalisator operator stops accepting wagers for a particular event. As such, the punter is not aware of the odds until the time wagering closes on the particular event. The wagers are then consolidated into the totalisator pool. The totalisator operator deducts a set percentage (called the commission or take out rate) from the pool as its commission, and the remainder of the pool is available for distribution to punters who placed winning wagers.

### Fixed odds wagering

In 'fixed odds' wagering, the odds in respect of the wager are fixed at the time the wager is actually placed by the punter. As such, the punter is aware of the odds at the time the wager is placed and these odds will not change. Unlike pari mutuel (totalisator) wagering, the operator's revenue is not a set commission but is dependent upon a number of factors including the outcome of the particular event, the operator's management of its book and whether or not the wager is 'laid off' (ie placed) with another operator to spread risk.

### Other forms of wagering

Betting exchanges permit punters to wager directly against each other (rather than against a totalisator or book maker) by wagering (with fixed odds) on opposing outcomes of a particular event. Punters can bet for or against a particular outcome, with wagers of opposing outcomes matched. The betting exchange operator is a facilitator of this wagering and does not take on any risk with respect to the event's outcome.

'TOTE-odds' book maker wagering involves a book maker offering 'tote' (ie pari mutuel) odds on a particular event, rather than fixed odds.

## **4.2 Suppliers of wagering services**

There are two primary types of suppliers of wagering services (including fixed odds wagering): totalisators and bookmakers (both 'traditional' on course bookmakers and 'corporate' bookmakers). There are (as noted above) also suppliers of betting exchange facilities.

### 'Totalisators'

'Totalisator' generally refers to the wagering operators which are licensed to provide pari mutuel (totalisator) wagering in their respective state or territory. Totalisators are referred to as 'on course' totalisators (where the totalisator only accepts wagers placed by punters physically present at a race course) or 'off course' totalisators (where the totalisator can accept wagers from punters not physically present at a race course). The bulk of totalisator activity is 'off course'.

In each state and territory, there is currently only one wagering operator licensed or otherwise authorised to operate as an 'off course' totalisator. This licensed totalisator is referred to as the 'totalisator agency board' or more commonly, the '**TAB**'. These TABs were established by the relevant state or territory government as a statutory authority or government owned company, although governments have increasingly sought to privatise or corporatise their TAB. A list of the licensed off course totalisators or TABs in each state and territory is set out below:

State / Territory	TAB
NSW	Tab Limited, a wholly owned subsidiary of Tabcorp
Queensland	UNiTAB Limited, a listed company (which is part of Tatts Group Ltd)
Victoria	Tabcorp Holdings Limited, a listed company
South Australia	SATAB Pty Ltd, a wholly owned subsidiary of UNiTAB Limited
Tasmania	TOTE Tasmania, a government owned company
Western Australia	RWWA, a government statutory authority
ACT	ACTTAB, a government owned company
Northern Territory	NTTAB Pty Ltd, a wholly owned subsidiary of UNiTAB Limited

While these TABs provide pari mutuel (totalisator) wagering products, their operations have expanded to include fixed odds wagering on racing, sporting and other events.

Each state and territory also permits other parties (for example, racing clubs) to conduct 'on course' totalisators on racing events at race courses in that state or territory.

### Bookmakers

Bookmakers supply fixed odds wagering products on racing, sporting and other events. While they are regulated by relevant state and territory authorities (including by way of licensing), there is no legislative restriction on the number of bookmaker licences that can be issued (unlike the monopoly licensing regimes with respect to off course totalisators).

Bookmakers can be classified into two segments: 'traditional' bookmakers and 'corporate' bookmakers.

'Traditional' bookmakers are generally natural persons operating as a sole trader or small (often family owned) company. These bookmakers (sometimes called 'rails' bookmakers) typically conduct their wagering operations 'on course' but some may offer telephone wagering services. They generally offer fixed odds wagering products, rather than other forms of wagering (such as TOTE odds). There are hundreds of licensed bookmakers in Australia. By way of example, in Tasmania, there were approximately 17 individual bookmakers registered in 2007/2008, along with 15 bookmaking operations and 17 bookmaker's agents.<sup>25</sup> In the ACT, there were 21 race bookmaker licences (and 15 agents licences) and 5 sports bookmaker licences (and 20 agents licences) as at 30 June 2008.<sup>26</sup> The WA Racing and Gambling Commission holds details of licensed bookmakers in Western Australia.

'Corporate' bookmakers on the other hand are larger corporate structures, which conduct their operations by way of online or telephone channels and offer a range of wagering products, including fixed odds and hybrid products such as TOTE odds. Corporate bookmakers are typically licensed in the Northern Territory and to a lesser extent the ACT (for tax and regulation purposes) but are able to offer wagering products to punters in all states and territories. Corporate

<sup>25</sup> See DIER Annual Report 2007/2008 at 49.

<sup>26</sup> ACT Gambling and Racing Commission Annual Report 2007/2008 at 69 - 70.

bookmakers have steadily increased their presence in the wagering market in recent years. Corporate bookmakers include companies such as:

- Centrebet (see section 2.2),
- International All Sports Limited (IAS), an ASX listed company licensed in both Australia and the UK. IAS's subsidiaries include IASbet (which provides wagering products on racing and sports events in Australia and overseas) and Canbet. The Applicants note that, in early February 2009, CIL announced it would make an off-market takeover offer for all of the issued ordinary shares in IAS;
- Sportsbet, an Australian based wagering operator licensed in the Northern Territory which provides wagering products on a range of racing, sports and other events in Australia and overseas through online and telephone channels;
- Sportingbet, an international wagering operator based in the UK and operating in Australia from the Northern Territory. Sportingbet offers both online and telephone wagering services;
- Sports Acumen, an Australian based wagering operator licensed in the ACT which provides wagering products on a range of racing, sports and other events in Australia and overseas;
- Multibet Pty Limited, an Australian based wagering company licensed in the Northern Territory which specialises in global multiple betting;
- Centre Racing, a wholly owned subsidiary of NT TAB Pty Ltd (part of UNiTAB) which is licensed in the Northern Territory to conduct wagering on racing, sports and entertainment events; and
- Luxbet, a corporate bookmaker licensed in the Northern Territory which is a brand of Tabcorp. Luxbet was established in late 2008 and offers fixed odds and tote-odds wagering on a variety of sports, racing and special events through telephone and online channels.

Some of these larger corporate bookmakers form part of the Association of Australian Bookmaking Companies (AABC).<sup>27</sup> According to the AABC, its members represent about 3% of total national wagering expenditure and approximately 8% of racing and sports wagering expenditure (in 2006).<sup>28</sup>

#### Distribution channels

Wagering products are distributed by suppliers through a number of channels, including:

- physical retail outlets (including outlets owned by wagering operators, agency outlets, and outlets in licensed premises such as pubs and electronic terminals or kiosks);
- telephone and
- internet.

#### Contribution to turnover

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<sup>27</sup> The following corporate bookmakers are members of AABC: International All Sports Limited; Sportingbet Australia Pty Ltd; Centrebet Pty Limited; Multibet Pty Limited; Sports Acumen Pty Limited and Sportsbet Pty Limited.

<sup>28</sup> See AABC's supporting submission to its application for authorisation to collectively bargain on behalf of members with state and territory racing control bodies and other organisations at 3.

The TABs (collectively) represent the majority of total national wagering turnover, which in 2006/2007 was approximately \$19.2 billion.<sup>29</sup> The TABs portion of total national 'racing' turnover for 2006/2007 was approximately \$13.35 billion, representing 77% of total national racing turnover (of \$17.6 billion).<sup>30</sup> The remaining 23% comprises both corporate book makers (18%) and on course book makers (5%). The TABs and the corporate book makers have equal portions of national 'sports' turnover (of \$1.6 billion), each with \$778 million (or 50%) in 2006/2007.<sup>31</sup>

Of the total wagering turnover, the Applicants fixed odds wagering turnover (both individually and collectively) represent a very small proportion. Fixed odds wagering turnover for each Applicant in 2007/2008 is as follows:

- TOTE Tasmania: \$22.5 million<sup>32</sup> (or 0.1% of total national wagering turnover);
- RWWA: [RESTRICTION OF PART OF PUBLICATION CLAIMED]; and
- ACTTAB: \$8.6 million<sup>33</sup> (or 0.04% of total national wagering turnover).

### 4.3 Interrelationship between wagering & racing industries

The wagering industry is closely interlinked with the racing industry.

The racing industry comprises three codes: thoroughbred, harness and greyhound racing. The industry is regulated by state and territory bodies which (among other things) oversee the governance of various non profit racing clubs that provide racing 'product' by organising and conducting race events in each of the three codes.

The majority of funding for the racing industry is provided through wagering on the races, with the remainder coming from external sources and industry participants. As recognised in the Commissions determination with respect to the 2007 SuperTAB agreement between Tabcorp and TOTE Tasmania, the racing industry and wagering operators have a mutually dependent relationship in that the racing industry supplies 'product' on which wagering operators conduct wagering and state totalisators provide a significant proportion of the funding for their state's racing industry.<sup>34</sup> As noted in the Commission's determination relating to the authorisation of the AABC to collectively bargain with state and territory racing control bodies and other organisations, more than 70% of the racing industry's total revenue is derived from wagering revenue.<sup>35</sup>

The significant contributions provided by the Applicants to their respective racing industries are set out in section 3. These include contributions in the form of funding prescribed by legislation and contributions in the form of 'product fees' paid in consideration of the racing 'product' being provided. In terms of the extent to which fixed odds wagering contributes to such funding and product fees:

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<sup>29</sup> Centrebet presentation to investors, 21 April 2008, available at [www.centrebet.com](http://www.centrebet.com).

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> TOTE Tasmania Annual Report for 2007/2008.

<sup>33</sup> ACTTAB Annual Report for 2007/2008.

<sup>34</sup> See ACCC Determination, *applications for authorisation lodged by Tabcorp Manager Pty Ltd in respect of the 2007 Agreement governing TOTE Tasmania Pty Ltd's participation in the Super TAB pool* (dated 5 March 2008) at 7.

<sup>35</sup> See ACCC Determination, *applications for authorisation lodged by Association of Australian Bookmaking Companies to collectively bargain on behalf of members with state and territory racing control bodies and other organisations* (dated 19 July 2008) at 4.

- in the case of TOTE Tasmania, revenues derived from both fixed odds and totalisator turnover contribute to TOTE Tasmania's funding towards the TRI. With fixed odds wagering turnover representing approximately 4.5% of total turnover, fixed odds wagering contributed approximately \$1.066 million of the \$23.7 million in funding TOTE Tasmania provided to the TRI in 2007/2008. TOTE Tasmania estimates that fixed odds wagering will increase to approximately [REstriction of Part of Publication Claimed];
- in the case of RWWA, as noted above, fixed odds wagering turnover represents approximately [REstriction of Part of Publication Claimed] of total turnover. RWWA estimates fixed odds wagering contributes approximately [REstriction of Part of Publication Claimed] to its funding capacity with respect to distributions to the WARI; and
- in the case of ACTTAB, as noted above, fixed odds wagering turnover represents approximately 4.8% of total turnover. Funding contributed to the ACTRI is derived from totalisator revenue, not fixed odds wagering revenue. Fixed odds wagering represents a very small proportion [REstriction of Part of Publication Claimed] of product fees paid.

For completeness, the Applicants note that while new 'race fields' fees legislation in each Australian state will provide an additional, new income stream for racing bodies from around mid 2009 - in most states and territories, this income is likely to offset by the incremental expense of the fee for the applicable wagering operator. This is because most Australian states and territories are net importers of racing product – that is residents of the (host) state or territory collectively wager more on product from other states or territories than the residents of those other states or territories collectively wager on the 'exported' product of the (host) state.

The relationship between the wagering industry and industries in which other events are conducted (such as sport events) differs, since these other events are largely funded through different means – for example, ticket sales, sponsorship and media rights – rather than by wagering operators.

There are however considerable links between the wagering and sports industries. This includes the payment of product fees to sporting associations and organisations for the provision of sports 'product' upon which wagering is conducted. The Applicants (through their existing *TAB Sportsbet* arrangements) provide funding to sporting associations and organisations (such as the AFL, NRL and the 'coalition of major professional sports' or COMPS<sup>36</sup>) in consideration for the sports 'product' being provided by the relevant association or organisation. Once the existing *TAB Sportsbet* arrangements cease, the Applicants intend to negotiate direct arrangements with these associations and organisations in respect of the payment of product fees. As noted above, RWWA contributes approximately \$2 million per annum to Western Australia sports pursuant to legislative requirements. There are also contributions to sports by way of sponsorship arrangements between wagering operators and sporting associations and organisations.

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<sup>36</sup> The Coalition of Major Professional Sports comprises Cricket Australia, the National Rugby League, Australian Rugby Union, the Football Federation of Australia, Tennis Australia and the PGA Tour of Australasia. The collective arrangements under which COMPS members have established product fee arrangements with wagering operators was the subject of an authorisation in 2006.

## 5. Trade Practices Act Issues

### 5.1 Relevant provisions and application

Subject to the conditions precedent, the Applicants have entered into the Agreements. Under the terms of these Agreements, the Applicants will form the JV with respect to the supply of fixed odds wagering services on sports, racing and other events, and will jointly procure the Management Services from Centrebet.

The Application principally concerns two aspects of the Agreements:

- under clause 5.3 of the JV Agreement, each Applicant agrees to use reasonable endeavours to conduct all of their respective current and future fixed odds wagering business using the JV, other than in relation to certain fixed odds wagering (**requirements provision**); and
- under clauses 8.2, 8.3(c) and 8.4 of the Management Services Agreement, the Applicants and Centrebet agree to establish a joint 'management committee' to oversee the provision of the Management Services by Centrebet and permit that committee to agree risk thresholds and target margin parameters to be used by Centrebet in providing those services – specifically, when establishing and maintaining the fixed odds books for each Applicant (**agreed risk provisions**).

In the case of the requirements provision, the Applicants are effectively agreeing to enter into the Management Services Agreement and to each acquire their requirements for Management Services during the term from Centrebet. These provisions are required to ensure that there is appropriate scale when pooling the risk of each Applicant's respective books – absent a collective commitment by each Applicant to acquire the services from Centrebet in respect of (substantially) all their fixed odds wagering, Centrebet's ability to frame the market and manage risk for the Applicants collectively would be diminished. The Applicants are concerned that there is a risk that the requirement that each Applicant use reasonable endeavours to conduct its fixed odds wagering using the JV (except in certain circumstances) could be characterised as an exclusionary provision, to the extent that the provision involves an agreement between parties that might be considered competitors to each acquire the Management Services from Centrebet and thereby limit their acquisition of such services from other suppliers.

In the case of the agreed risk provisions, the Applicants will agree (through the 'management committee') risk thresholds and target margin parameters to be used by Centrebet when establishing and managing the fixed odds books on behalf of each Applicant. These fixed odds will be transmitted to each Applicant, enabling them to each offer these odds on the applicable wagering products acquired by their punters. These provisions are necessary to ensure that Centrebet can manage risk in the Applicants respective books, that such risk can be (nominally) pooled and that the Applicants can lower their overall risk and costs, with a view to achieving more consistent (and less volatile) returns. The Applicants are concerned, however, that there is a risk that these provisions could be characterised as having the effect of fixing, controlling or maintaining 'price', to the extent that such provisions mean that the Applicants will (subject to any discounts, rebates or other benefit that might be offered by an individual Applicant) ultimately end up offering identical fixed odds to punters (where such 'odds' are essentially the 'price' of a wager).

Although, the Applicants consider that the conduct described would be subject to the existing joint venture defences in sections 76C and 76D of the Act, there is a degree of uncertainty about the form and scope of the new joint venture defence under the *Trade Practices (Cartel Conduct and Other Measures) Amendment Bill 2008* (Cth) recently introduced into Parliament and a lack

of judicial precedent on these defences. Given this residual risk and the likely introduction of criminal penalties with respect to cartel conduct as a result of this Bill, the Applicants seek authorisation in order to minimise any actual (or potential) risk of contravening the TPA.

While the conduct described above pertains to specific sections of the Agreements, the Applications seek authorisation of the Agreements in their entirety (**JV provisions**). This is to eliminate any residual risk that establishment of the JV or arrangements with Centrebet could be said to have the purpose or likely effect of substantially lessening competition in any relevant market. The Applicants do not concede that the arrangements are likely to have an anti-competitive effect (indeed, the Applicants submit that the arrangements will in fact be pro-competitive), nor do they consider that the arrangements could be said to have the 'purpose' of substantially lessening competition. The Applicants commercial rationale for establishing the JV is set out in section 2.3.

In summary, to provide legal certainty, the Applicants have lodged an application for authorisation under sub-section 88(1) to:

- (a) make and give effect to a contract, arrangement or understanding a provision of which is, or may be, an exclusionary provision within the meaning of section 45 of the TPA (**Form A**); and
- (b) make and give effect to a contract, arrangement or understanding a provision of which would have the purpose, or would have the effect, of substantially lessening competition within the meaning of section 45 of the TPA (**Form B**).

## 5.2 Public benefit tests

The ACCC may make a determination granting authorisation where the relevant public benefit test in section 90 of the TPA is satisfied, namely:

- (a) in respect of Form A, that the provision would result or is likely to result in such a benefit to the public that the proposed contract, arrangement or understanding ought to be authorised (section 90(8)); and
- (b) in respect of Form B, that the provision would be likely to result in a benefit to the public and that benefit would outweigh the detriment to the public constituted by any lessening of competition that would be likely to result if the provision concerned was given effect to (section 90(6)).

Until recently the ACCC adopted the view of the Australian Competition Tribunal (formerly the Trade Practices Tribunal) (**Tribunal**) that, in practical application, the two tests are essentially the same.<sup>37</sup> The Tribunal has since formed the view that the two tests are not precisely the same, in particular, that the test under section 90(6) is limited to a consideration of those detriment's arising from a lessening of competition, while the test under section 90(8) is not so limited.<sup>38</sup>

The Applicants submit that, with respect to the application, the potential public detriment (if any) resulting from the conduct arises directly from a lessening of competition and, as such, the slight difference in the two tests do not affect the assessment of the Application.

## 6. Market definition

The Applicants do not consider that it is necessary to form a definitive view on market definition in order to assess the public benefits of the Agreements. Rather, it is sufficient to discuss the net

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<sup>37</sup> *Re Media Council of Australia (No 2)* (1987) ATPR 40-774; *Re 7-Eleven Stores Pty Ltd* (1994) ATPR 41-357.

<sup>38</sup> *Australian Association of Pathology Practices Incorporated* [2004] AcompT 4 (7 April 2004).

public benefits arising from the Application in the context of a racing and wagering market generally.

It is arguable that this market might be narrowed into one or more discrete markets, for example, the market for the supply of fixed odds wagering products and/or the market for the supply of risk management and related services in relation to the supply of fixed odds wagering products, or narrowed further into fixed odds wagering on race events or fixed odds wagering on sports and other events. For present purposes, the Applicants submit that such distinctions are not important – the conduct would result in a net public benefit in any event.

In the Applicants' view, it is also not necessary to reach a concluded view on the geographic scope of such market(s) within Australia, provided it is recognised that there are a range of contestable customers in Australia for whom totalisators and bookmakers (especially corporate bookmakers) offer wagering products, including fixed odds wagering products.

The Applicants note that the Commission has adopted a state-based approach to wagering markets in previous decisions.<sup>39</sup> The Applicants note that the considerable degree of interstate wagering via internet and telephone supply channels that takes place has blurred the traditional state and territory boundaries that previously existed. The degree of such interstate trade has increased significantly in recent years with the growth of corporate book makers specialising in online and telephone wagering and is likely to increase with the removal of existing advertising restrictions (in Victoria, NSW and WA) applying to interstate wagering operators.<sup>40</sup>

## 7. Factual and counterfactual

### 7.1 Introduction

In undertaking any net public benefit assessment, the Commission administers a forward looking test comparing both the anti-competitive detriment (if any) and public benefits in the '**Factual**' scenario (ie a future in which it is assumed the relevant conduct is authorised) versus the '**Counterfactual(s)**' (ie a future(s) in which it is assumed that the relevant conduct is not authorised).

The identification of the appropriate Counterfactual is therefore critical to a proper understanding of the likely competitive effects and public benefits of the relevant conduct sought to be authorised. While identification of the likely counterfactual is not necessarily a precise exercise, it cannot be a speculative exercise. The Australian Competition Tribunal has stated that the relevant inquiry is:

*'concerned with probable effects rather than with possible or speculative effects. Yet we accept the view that the probabilities with which we are concerned are commercial or economic likelihoods which may not be susceptible of formal proof.'*<sup>41</sup>

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<sup>39</sup> For example, with respect to the proposed merger of Tattersall's Limited and UNiTAB Limited, the Commission considered state based markets for fixed odds race betting and fixed odds sports betting by State totalisators and bookmakers.

<sup>40</sup> A number of States and Territories have legislation restricting advertising by wagering operators that are not licensed in that jurisdiction. (The restrictions do not prevent punters in one State or Territory from wagering in another State or Territory). In October 2008, Victoria's Minister For Racing, Rob Hulls, and NSW Minister for Racing and Gaming, Kevin Greene announced the removal of such restrictions. See <http://www.theage.com.au/news/sport/horse-racing/advertising-ban-lifted-on-bookies/2008/10/10/1223145637406.html>

<sup>41</sup> *Re Queensland Independent Wholesalers* (1995) ATPR41-438 at 40,960-961 (*Re QIW*) quoting *Re Queensland Cooperative Milling Association* (1976) ATPR ¶40-012 at and 17,243.

The starting point in identifying the relevant Counterfactual is therefore usually a continuation of the 'status quo', unless there is evidence of a real commercial or economic likelihood of an alternative future scenario that should be considered.

The appropriate Factual and Counterfactual(s) in this context are discussed below.

## 7.2 Factual

In the Factual, the Agreements are authorised as sought by the Applicants. The key features of the Factual are therefore:

- the cessation of the Applicants' current arrangements for the supply fixed odds wagering through *TAB Sportsbet*;
- the formation of the JV between the Applicants;
- the joint procurement by the Applicants of the Management Services from Centrebet (and thereby a pooling of the risks of each Applicant's respective 'book');
- the supply of the Management Services by Centrebet to each of the Applicants;
- the Management Services being administered by Centrebet to achieve a set level of return within a pre-defined 'target' revenue range (and thereby enhancing the prospect of the Applicants achieving consistent returns);
- the supply of fixed odds wagering services by the Applicants to punters, based on the fixed odds as determined by Centrebet as part of the Management Services; and
- the establishment (effectively) of a new fixed odds wagering 'competitor', able to compete with Tabcorp, UNITAB and corporate bookmakers.

## 7.3 Counterfactual

In theory, there are several possible counterfactual scenarios. These are:

- the existing *TAB Sportsbet* arrangements under which Applicants supply fixed odds wagering products are extended (**Status Quo Scenario**);
- the Applicants cease supplying fixed odds wagering services through *TAB Sportsbet* from 29 May 2009 and are able to make alternative arrangements with respect to the acquisition of risk management and related services (whether individually or collectively) from a supplier other than Centrebet, such that each Applicant is able to supply fixed odds wagering products in a manner that appropriately manages their respective risks and costs and ensures consistent returns (**Alternative Supplier Scenario**); and
- the Applicants cease supplying fixed odds wagering services through *TAB Sportsbet* from 29 May 2009 and are unable to make alternative arrangements [**RESTRICTION OF PART OF PUBLICATION CLAIMED**] (**Cessation / Reduction Scenario**).

### *Status Quo Scenario*

As noted above, Tabcorp has given notice to each Applicant that it intends to terminate the existing *TAB Sportsbet* arrangements as of 29 May 2009. It is therefore unlikely that the commercial or economic likelihood of it occurring is such that the Status Quo Scenario is a viable counterfactual for the purposes of this analysis.

### *Alternative Supplier Scenario*

The Alternative Supplier Scenario is premised upon the Applicants making alternative and adequate arrangements with respect to the acquisition of risk management and related services

(whether individually or collectively) to support their respective supply of fixed odds wagering products. The Applicants commercial rationale for entering into the arrangements with Centrebet is set out above in section 2.3.

Companies that could conceivably supply such risk management and related services on the existing range of racing and sports events in Australia and internationally other than Centrebet include Tabcorp, UNiTAB, IAS and other corporate book makers listed in section 4.2. For the reasons stated above in relation to the Status Quo Scenario, the prospect of the Applicants making alternative arrangements with Tabcorp with respect fixed odds wagering is unlikely. The prospect of the Applicants making alternative arrangements with UNiTAB is also unlikely, [RESTRICTION OF PART OF PUBLICATION CLAIMED] In the case of IAS, this company is currently the subject of an off market takeover bid by Centrebet. Should the bid proceed, IAS will be subsumed into Centrebet and would no longer be in a position to supply risk management and related services (at least independently) to the Applicants. This would leave the Applicants to source the services from smaller corporate bookmakers (such as Betcorp, Sportsbet, Sportingbet and Sports Acumen). These smaller corporate bookmakers may not be of an appropriate size and scale to provide risk management and related services to support the Applicants supply of fixed odds wagering products. The Applicants note that they would not be able to source the services from Betfair because it is a betting exchange and does not manage a book. While this Alternative Supplier Scenario may in theory arise, in the Applicant's view, again, it is questionable whether the commercial or economic likelihood of it occurring is such that it should be regarded as a viable counterfactual for the purposes of this competition law analysis.

#### ***Cessation / Reduction Scenario***

The Cessation / Reduction Scenario is (essentially) the consequence of the Status Quo Scenario and Alternative Supplier Scenario failing to eventuate. [RESTRICTION OF PART OF PUBLICATION CLAIMED]

In the Applicants' view, the primary counterfactual that should be adopted for the purposes of this submission is therefore the Cessation / Reduction Scenario (the **Primary Counterfactual**). Indeed, the likelihood of the Primary Counterfactual arising absent authorisation of the agreements means that it is imperative that the Applicants are able to make and give effect to these agreements by no later than 29 May 2009.

The likelihood of the Status Quo or Alternative Supplier Scenarios (the **Alternative Counterfactuals**) occurring is uncertain. As noted by the Tribunal in *Re QIW*, there must be more certainty than simple possibility or speculation for it to be appropriate to give weight to a possible counterfactual scenario when conducting competition law analysis. However, for completeness and in order to demonstrate that the Factual still results in a greater net public benefit than either Alternative Counterfactual, we have canvassed these in our analysis below (where relevant).

## **8. Competitive analysis**

In the Applicants' view, there is likely to be little (if any) potential anti competitive detriment arising from the relevant conduct under the Agreements. Indeed, if anything the proposed conduct is likely to be pro-competitive relative to the Primary Counterfactual.

In theory, the anti competitive detriment arising from the conduct would be:

- the Applicants limiting their acquisition of the Management Services from suppliers other than Centrebet; and

- the fact that the Applicants will ultimately end up offering identical fixed odds to punters.

However, the applicants submit that the potential for such anti competitive detriment arising as a result of the Agreements is minimal because:

- the other suppliers affected by the Applicants' limiting their acquisition of the Management Services are few. Further, the most likely provider of these services is Tabcorp, which (as noted above) is terminating its existing fixed odds arrangements with the Applicants;
- the Applicants remain free to acquire conduct fixed odds wagering outside the JV in certain specified circumstances;
- the Agreements do not restrict any aspect of competition between each of the Applicants in relation to fixed odds wagering other than to the extent necessary for the purposes of the joint venture (for example, in relation to service levels or payments of discounts, rebates or other benefits to punters);
- the Agreements do not restrict any aspect of competition between each of the Applicants in relation to any other forms of wagering including in relation to totalisator wagering, which make up the majority of the Applicants revenues;
- the relevant markets for fixed odds and other forms wagering are (and will remain) highly competitive;
- there is no restriction on consumer (ie punter) choice. Punters are under no obligation to acquire fixed odds wagering products from the Applicants and remain free to acquire such products on a range of events from their supplier of choice (including from the Applicants, other TABs or corporate bookmakers) based on the competitive odds, bet types and other terms offered by that supplier; and
- relative to the Primary Counterfactual, the Agreements ensure that the Applicants can continue to supply fixed odds wagering products (or would not need to significantly reduce the scale and scope of such products), thereby ensuring three additional suppliers remain the relevant markets – a pro competitive (or at least competitively neutral) outcome.

The Applicants also note that were the Alternative Supplier Scenario to eventuate, similar issues to those identified above would be likely to arise and necessarily be addressed by way of authorisation.

Further, it is worth recognising that while the Applicants might be characterised as 'competitors' with respect to the supply of fixed odds wagering products, the primary geographic areas in which (and the punters to whom) each Applicant seeks to supply wagering products are complementary, not overlapping. The Applicants are each located in a different state or territory (which do not share any geographic borders with each other) and have historically focussed their operations on serving punters physically within their own state or territory. While advances in technology have led to an increased focus on online and telephone betting, the vast majority of each Applicants business is derived from sales in their retail outlets across their respective jurisdictions. As noted above, for example, approximately [RESTRICTION OF PART OF PUBLICATION CLAIMED] of RWWA's customers reside in Western Australia, [RESTRICTION OF PART OF PUBLICATION CLAIMED] of ACTTAB's customers reside in the ACT and [RESTRICTION OF PART OF PUBLICATION CLAIMED] of TOTE Tasmania's customers reside in Tasmania.

To this end, the degree of actual 'competition' between the Applicants is therefore limited. The potential for anti competitive detriment is, therefore, similarly limited.

## Public benefits

In contrast to the little, if any, public detriment that is likely to be associated with the relevant conduct, the public benefits which are expected to arise from the Agreements are significant.

While the Applicants have sought authorisation for two separate types of conduct (as set out in the Application) under two agreements, the Applicants consider that the public benefits associated with the Agreements are interrelated. Ultimately, the Agreements together represent one commercial agreement that is the outcome of a mutually acceptable negotiation between the Applicants and Centrebet and should properly be considered in their totality when assessing net public benefit.

In the Applicants' view, the public benefits arising from authorisation of the Agreements will be substantial. The Applicants submit that these benefits can be usefully categorised into at least 4 discrete categories, each being a category of public benefit of a general type previously recognised by the Commission or the Tribunal:

- Benefits for the Applicants;
- Benefits for punters (ie customers);
- Benefits for the wagering industry generally; and
- Benefits generally for the racing industries and economies in each of Tasmania, Western Australia and the ACT.

### 9.1 Benefits for Applicants

Authorisation of the Agreements will create a number of benefits for the Applicants, relative to the Primary Counterfactual.

The purpose of the Agreements is to address a range of commercial obstacles facing the Applicants in the Primary Counterfactual, in which they would lack the ability to individually conduct their own fixed odds wagering operations (or have the ability to offer the same scale and scope of fixed odds wagering products) or to do so as efficiently or economically.

Indeed, in the Primary Counterfactual, the Applicants' economic viability with respect to fixed odds wagering would be significantly undermined, and would result in significant lost revenues.

The Applicants rationale for establishing the JV and entering into the arrangements with Centrebet is set out in detail in section 2.3. In summary, the Agreements will permit each of the Applicants to supply fixed odds wagering products in a manner that appropriately manages their respective risks and costs, and enhances the prospect of achieving more consistent returns within a nominated target margin range than would be possible individually.

This is because 'pooling' of the Applicants' risk in their respective fixed odds books results in a reduction in the volatility of their respective returns. Pooling provides a larger customer base, leading to a more liquid and diversified book, and therefore smoother margins / returns. Pooling offsets the risk associated with larger wagers because the potential effect of the wager is diluted, allowing the operator to appropriately manage the wager.

Bookmakers work into each 'book' a theoretical margin, such that if every possible outcome of the event being wagered on is sufficiently supported to produce a similar book liability, the bookmaker faces minimal risk and can earn the book margin. By way of simplified example, in a

swimming race there may be six participants with the following odds and amounts wagered on them:

Swimmer No	Odds / Price	Amount Wagered	Liability
1	5-1	\$20	\$100
2	10-1	\$10	\$100
3	2-1	\$50	\$100
4	100-1	\$1	\$100
5	5-1	\$20	\$100
6	10-1	\$10	\$100
TOTAL		\$111	\$100

No matter who wins this race the bookmaker will pay out \$100 to winning bets. However the bookmaker has collected \$111 in wagers and thus has made 11% on this book irrespective of the winner. However, with a less liquid and diversified book, the bookmaker may only take one bet on the above race – for example, a \$50 wager on swimmer 3 at odds of 2 - 1. As this is the only wager made the bookmaker can have a very good result (win \$50) but could also have a very bad result (lose \$50). This is a simplified example showing how more liquidity and diversification in a book ensures greater and more consistent returns with less risk.

Without such pooling, the Applicants small size and scale mean that their respective fixed odds books would be very volatile and even small wagers could result in dramatic fluctuations in odds. The effective of a larger wager is even more pronounced. The Applicants would therefore adopt a conservative approach to dealing with punters, offering less competitive odds and lowering wagering limits, to try to minimise the volatility of their returns. When the additional costs of expertise and technology (discussed above in section 2.3) are factored in, an individual fixed odds wagering operation does not measure up commercially against participation in a pooled arrangement.

The Agreements will provide the Applicants with the ability to offer a broader range of fixed odds wagering products (including on a wider range of events and bet types) and more attractive odds (due to the ability of the Applicants to better manage their respective risks through 'pooling'), without a lowering of wagering limits. This will enhance the Applicants' competitive product offering and enable the Applicants to attract a greater (or at least equal) number of punters, in both their 'home' jurisdictions and more widely. This factors will provide the Applicants with an improved ability to compete with [RESTRICTION OF PART OF PUBLICATION CLAIMED] the larger TABs and corporate bookmakers (both domestic and international), relative to the Primary Counterfactual (and the Alternative Counterfactuals).

The Agreements will provide the Applicants with reduced administration and transaction costs, by reason that the arrangements with Centrebet effectively involve an outsourcing of a range of functions that would otherwise need to be undertaken by the Applicants individually (including managing risk in their respective books by 'framing' the market, balancing the book and laying off bets) and in respect of which the Applicants lack the required expertise and technology to carry out efficiently and cost effectively. As noted above in section 2.3, as smaller operators, the costs of and access to sufficient and skilled expertise is prohibitive for the Applicants on an individual basis, as is the investment in necessary technology. By contrast, Centrebet already has some 70 bookmakers / analysts and advanced technology to support its operations and the provision of the Management Services. Authorisation, as such, will result in a more efficient allocation of resources and lower costs for the Applicants, as well fostering an increase in the Applicants business efficiency, and enable each Applicant to improve its competitiveness, both in Australia and internationally. The ACCC has previously recognised both these factors as public benefits.

The Agreements will also ensure that the staff of the Applicants (and any independently operated outlets or agencies) will not be negatively impacted, relative to the Primary Counterfactual where the economic viability of each Applicant is likely to be undermined.

## 9.2 Benefits for punters

The Agreements will ensure that punters will continue to be offered fixed odds wagering products by the Applicants. In the Primary Counterfactual, this may not occur or occur to a more limited extent.

As noted above, the Agreements will provide the Applicants with the ability to offer punters a broader range of fixed odds wagering products (on a wider range of events and bet types) and more attractive odds, than would be possible individually. This will provide punters with the opportunity to obtain a more competitive product offering. **[RESTRICTION OF PART OF PUBLICATION CLAIMED]** Absent authorisation of the Agreements, therefore, there would be an almost immediate reduction in the choice and quality of wagering products available to punters from the Applicants from 29 May 2009. This would particularly affect the range and quality of fixed odds wagering products available to customers using terrestrial distribution channels (such as retail outlets) in Tasmania, Western Australia and the ACT.

The Agreements will provide punters with a choice of an additional three suppliers from whom fixed odds wagering products can be sourced – a choice which would not be available (or available to a significantly lesser extent) in the Primary Counterfactual. This will ensure punters have continued access to three alternative suppliers of fixed odds wagering, in addition to the larger TABs and corporate bookmakers.

Relative to the Primary Counterfactual, the Agreements also offer the Applicants (in conjunction with Centrebet) the opportunity to develop new and innovative products and to have greater flexibility to compete on service and promotions (such as discounts, rebates or other benefits) rebates in relation to the delivery of fixed odds wagering products in punters. These benefits will flow to punters in the states and territories in which the Applicants are respectively based (that is, Tasmania, Western Australia and the ACT), as well as punters in other states and territories and overseas able to access the products through online and telephone channels.

Overall, relative to the Primary Counterfactual, authorisation of the Agreements will therefore provide punters across Australia and overseas with more choice and more competitively priced wagering products. The ACCC has previously recognised the expansion of consumer choice as a public benefit.

## 9.3 Benefits for wagering industry

The direct and indirect public benefits associated with authorising the Agreements are not confined to the Applicants or punters – they will be benefits for the wagering industry at large.

By permitting the Applicants to supply fixed odds wagering products in a manner that appropriately manages their respective risks and costs, the Agreements will result in a number of benefits for the wagering industry generally, relative to the Primary Counterfactual. These include:

- the establishment (effectively) of a new fixed odds wagering 'competitor' able to compete with Tabcorp, UNiTAB and corporate bookmakers;
- a continuation of the Applicants ability to supply fixed odds wagering products, thereby ensuring there remains additional suppliers in the industry from whom such products can be sourced and who will provide a competitive constraint to existing suppliers;

- the offering of a broader range of fixed odds wagering products, at more competitive odds;
- encouraging competitors of the Applicants' to offer similar product offerings, odds or other benefits and therefore promote greater competition in relation to wagering; and
- enhanced prospects for the Applicants revenues, thereby enhancing each Applicant's growth, financial stability and ability to continue to offer competitive wagering products to punters.

#### 9.4 Benefits for racing industries and State & Territory economies

Authorisation of the Agreements will also have benefits for the racing industries (in particularly in Tasmania, Western Australia and the ACT) as well as the broader economies in these jurisdictions.

The Agreements provide the commercial foundation for financially viable Applicants to continue to operate in their present form as State or Territory owned and operated wagering operators supporting their respective racing industries and local economies. Indeed, the financial viability of each Applicant is critical to viability of the racing industries in their respective states and territory.

As noted above, authorisation of the Agreements will enhance the prospect of the Applicants achieving more consistent returns and thereby enhance each Applicants growth and financial stability. In this respect, the Agreements will ensure that each Applicants continues to be able to carry out their respective responsibilities and functions (as described above in section 3), which underpin the racing industries in each of their respective states or territory to a considerable extent. The commercial benefits derived by the Applicants will therefore flow through (at least indirectly) as public benefits to these industries.

To the extent that revenues from fixed odds wagering directly contribute to an Applicant's funding (or other distributions or payments, such as product fees) to their state or territory's racing industries (as described above in section 4.3), the Agreements will enhance each Applicants ability to provide such funding or distributions to those industries. Similarly, to the extent that revenues generated through fixed odds wagering flow through to the Applicants' state or territory economies by way of increased dividends or taxation revenues being paid into consolidated revenue, the Agreements will benefit the public in each of Tasmania, Western Australia and the ACT in a further respect.

By supporting the racing industries in their respective states and territory (both directly and indirectly), the Applicants each make an important contribution to the economy in their state or territory more generally. By way of example:

- an independent economic analysis by Economic and Market Development Advisers estimates that the TRI generates \$74.1 million per annum in output for the Tasmanian economy from ongoing operations and another \$73.7 million in construction output (over a 5 year period), representing 2,467 'Full Time Equivalent' jobs in the Tasmanian economy from ongoing operations and another 1,009 jobs from construction activities.<sup>42</sup> A confidential copy this report is included as **Attachment 8**; and
- an independent analysis by three consultancies engaged by RWWA to conduct a comprehensive economic analysis of the WA racing industry estimated that the total value

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<sup>42</sup> Economic Impact of the Tasmanian Racing Industry, Draft Final Report May 2007, Economic and Market Development Advisers.

of production of goods and service by the racing industry in 2002/2003 was \$225.8 million (exclusive of GST and betting tax) and that the industry added value created by the racing and wagering industry was \$124 million or \$175 million (with indirect taxes are included), representing 0.15% or 0.21% of Western Australia's Gross State Product (respectively).<sup>43</sup> A copy this report is included as **Attachment 9**.

## 10. Conclusion

The Applicants submit that the conduct for which authorisation is sought will result in significant public benefits in a number of recognised categories relative to the Primary Counterfactual, including benefits to the Applicants, punters, the wagering industry, and the racing industries and economies in each of Tasmania, Western Australia and the ACT more generally. In contrast, the Applicants consider that there is likely to be little (if any) public detriment arising from the relevant conduct under the Agreements, relative to the Primary Counterfactual. On this basis, the Applicants submit that the conduct under the Agreements should be authorised pursuant to the Application.

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<sup>43</sup> Size and Scope of Western Australia Racing Industry – Economic, Social and Environmental Benefits, July 2004, prepared by the Allen Consulting Group and IER.

# Annexure 1 – [restriction of part of publication claimed]

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# Annexure 2 - summary of Agreements (non confidential)

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## 1. Introduction

TOTE Tasmania Pty Ltd (**Tote Tasmania**), ACTTAB Limited (**ACTTAB**) and Racing and Wagering Western Australia (**RWWA**) (together, the **Applicants**) have applied for authorisation in relation to the following agreements:

- (a) the agreement entered into between the Applicants on 16 February 2009 relating to the formation of a joint venture (**JV**) with respect to the supply of fixed odds wagering services on sports, racing and other events and the acquisition of wagering and risk management services and ancillary services (**Management Services**) from Centrebet Pty Ltd (**Centrebet**) (**JV Agreement**); and
- (b) the agreement entered into between the Applicants, Centrebet and Centrebet International Ltd (**Centrebet International**) (as guarantor) on 16 February 2009 under which Centrebet agrees to provide the Management Services to the Applicants (**Management Services Agreement**).

This annexure sets out a summary<sup>44</sup> of the relevant provisions of each of the JV Agreement and Management Services Agreement. This summary does not contain information confidential to the Applicants and may be used by the Commission in undertaking market inquiries.

## 2. JV Agreement – Key terms

### **Clause 2 – conditions precedent**

The commencement of the JV Agreement is subject to a number of conditions precedent, including interim or final authorisation for each Agreements being obtained from the ACCC.

### **Clause 3 – Joint Venture formation**

The Applicants agree to form the JV in relation to the supply of fixed odds wagering services on sports, racing and other events by the Applicants, and the appointment of Centrebet as 'manager' under the Management Services Agreement, to administer the fixed odds wagers received by each Applicant.

Each Applicant has a one-third interest in the JV, with any assets of the JV to be held by the Applicants as tenants in common. The Applicants are required to contribute to the cost of the JV in proportion to their interests in the JV, except for certain expenses that are to be borne by Applicants individually. The Applicants' respective interests in the JV may be varied from time to time by agreement, including to make allowance for any change to the number of Applicants.

### **Clause 4 – Term**

Subject to satisfaction of the conditions precedent, the JV commences on 16 February 2009 and (subject to earlier termination under the agreement), terminates on the date that the Applicants agree in writing to terminate the JV.

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<sup>44</sup> This summary does not include boilerplate and other standard clauses found in joint venture and service agreements.

### **Clause 5 – Joint Venture relationship and activities**

The JV Agreement includes standard provisions relating to the formation of a joint venture, include confirming that the relationship between the Applicants is one of joint venturers and setting out each Applicant's liability with respect to the other Applicants.

Each Applicant agrees to conduct all of its fixed odds wagering business utilising the JV (except in certain circumstances). Each Applicant otherwise has an unrestricted right to engage in and receive the full benefit of any activity outside the joint venture. The Applicants also agree that, in so far as they are competitors in relation to activities outside the joint venture, they will remain independent competitors and will each fully comply with the provisions of Australian competition law.

### **Clause 6 – Contributions**

The Agreement contains provisions governing when a call may be made on each Applicant to contribute capital required for the JV.

### **Clause 8 – Joint Venture Committee**

The JV Agreement establishes a 'Joint Venture Committee', consisting of one representative of each Applicant, which has power to give all approvals and to make all decisions and determinations required or permitted to be given or made by the Applicants under the Agreement with respect to the JV.

### **Clause 9 – Appointment of Manager**

The Applicants agree to appoint an appropriately qualified 'manager' from time to time to manage all fixed odds wagering conducted by the Applicants through the JV, on terms set out in a Management Services Agreement. The initial Manager is Centrebet.

### **Clause 13 – default**

As noted above, the JV Agreement will terminate on a date agreed by all the Applicants, unless terminated prior to that date by reason of an 'Event of Default'. The JV Agreement sets out when the agreement may be terminated and by whom, depending on the particular event of default. The effect of termination is to exclude the defaulting party from the JV, leaving the non-defaulting parties to continue with the JV (subject to appropriate amendments to adjust their interests in the JV).

### **Clause 15 – Transfers**

The JV Agreement contains provisions governing the ability of an Applicant to transfer the whole or any part of its interest in the JV or assign the JV Agreement (or a right under agreement).

## **3. Management Services Agreement – Key terms**

### **Clause 2 – conditions precedent**

The commencement of the Management Services Agreement is subject to a number of conditions precedent, including interim or final authorisation for each Agreements being obtained from the ACCC.

### **Clause 3 – Services**

Centrebet is required to provide the Applicants with a range of services, including:

- implementation services relating to the establishment of the relevant systems and technological infrastructure necessary to facilitate the provision of the wagering and risk management services;
- wagering and risk management services including:
  - establishing and managing the fixed odds common books;
  - accepting and processing fixed odds wagers on behalf of each Applicant, in accordance with agreed risk parameters; and
  - providing wagering and risk management services in respect of each book, including bookmaking management and calculation of fixed odds, and laying off wagers in accordance with the agreed risk parameters); and
- ancillary services, such as marketing, promotion, service and support, issue resolution and technical assistance.

The Applicants agree to offer to their customers all of the events and bet types made available by Centrebet (to the extent each Applicant is permitted to do so by any applicable laws, regulations and regulatory approvals).

The Applicants acknowledge that Centrebet remains free to conduct its own fixed odds wagering business for its own customers, in competition with the fixed odds wagering business to be conducted by the Applicants via the JV.

All parties acknowledge that the provision and acquisition of the services is non-exclusive.

#### **Clause 4 – Acceptance testing**

This Agreement provides for mechanisms for the acceptance testing of systems established by Centrebet to facilitate the provision of the wagering and risk management services and the consequences of failure of the systems to pass the applicable acceptance tests.

#### **Clause 5 – Financial settlements**

The Management Services Agreement contains provisions relating to the determination and settling of wagers, revenue amounts, revenue shares and settlement amounts in respect of the fixed odds books.

Centrebet receives a fee for providing the services under the Management Services Agreement.

#### **Clause 7 – Costs and expenses**

The Management Services Agreement confirms that each Applicant remains responsible for any wagering taxes, rates, duties and charges or product fees imposed or levied on it in Australia or overseas in connection with any fixed odds wagers it accepts.

#### **Clause 8 – Project management**

The Applicants and Centrebet will establish a 'Management Committee' to oversee the progress of the Services and other matters relating to the Agreement. The Management Committee will, among other things, agree the risk thresholds and target margin parameters to be used by Centrebet in providing the services.

#### **Clause 10 – Intellectual Property rights**

Centrebet provides each Applicant with a non-exclusive, royalty free, non-transferable licence to use, reproduce, communicate and disclose and, in some cases, modify and adapt particular systems, software and other materials that Centrebet will be providing to the Applicants under the

Management Services Agreement. Each Applicant grants Centrebet a non-exclusive, royalty free, non-transferable licence to use certain background intellectual property during the term of the Agreement for the purpose of performing the services.

### **Clause 20 – Security**

Centrebet International guarantees to each Applicant the due performance and observance by Centrebet of Centrebet's obligations to each Applicant under this agreement.

### **Clause 21.3 – Assignment**

The Management Services Agreement contains provisions governing parties ability to novate or assign the agreement (or any right or obligation under the agreement) to a third party.

### **Clause 13 – Term and termination**

Subject to satisfaction of conditions precedent, the Management Services Agreement commences on 16 February 2009 and (subject to earlier termination) continues until 28 November 2012, unless extended for a further period by agreement between Centrebet and one or more of the Applicants.

The Management Services Agreement also provides for the 'retirement' of an Applicant from the agreement, the 'exiting' of an Applicant from the agreement, and the termination of the agreement with respect to an Applicant or Centrebet and sets out the circumstances in which such retirement, exit or termination can occur.

# Annexure 3 - TOTE Tasmania annual report 2007 / 2008

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# Annexure 4 - RWWA annual report 2007 / 2008

# Annexure 5 - ACTTAB annual report 2007 /2008

# Annexure 6 - Centrebet International Ltd annual report 2007 / 2008

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# Annexure 7 – Stakeholder details

## Stakeholders

The following table sets out some of the stakeholders and other parties which may be interested in commenting on the Application.

Names	Website / contact details
<b>Totalisators, corporate book makers and betting exchanges</b>	
Tabcorp Holdings Limited	<a href="http://www.tabcorp.com.au/">http://www.tabcorp.com.au/</a>
UNiTAB Limited	<a href="http://www.unitab.com.au/">http://www.unitab.com.au/</a>
Centrebet	<a href="http://centrebet.com/cust">http://centrebet.com/cust</a> and <a href="http://investor.centrebet.com/">http://investor.centrebet.com/</a>
Betfair Pty Ltd	<a href="http://www.betfair.com/">http://www.betfair.com/</a>
Sportsbet Pty Ltd	<a href="https://www.sportsbet.com.au/">https://www.sportsbet.com.au/</a>
IASbet	<a href="http://www.iasbet.com/">http://www.iasbet.com/</a>
Sports Acumen	<a href="https://www.sportsacumen.com/">https://www.sportsacumen.com/</a>
Multibet	<a href="http://www.multibet.com/main.php">http://www.multibet.com/main.php</a>
Sportingbet	<a href="http://www.sportingbet.com.au/uipub/sport.aspx">http://www.sportingbet.com.au/uipub/sport.aspx</a>
CentreRacing	<a href="http://www.centreracing.com/">http://www.centreracing.com/</a>
Luxbet	<a href="https://www.luxbet.com/index.php">https://www.luxbet.com/index.php</a>
<b>Bookmaker associations</b>	
Tasmanian Bookmakers Association	Elwick Racecourse, Glenorchy, TAS 7010
NSW Bookmakers' Co-operative Limited	198 Pitt St, Sydney NSW 2000
WA Bookmakers Association (Inc)	76 Canning Highway, Victoria Park, WA 6100
Australian Bookmakers Association Pty Ltd	Level 2, 198 Pitt St, Sydney NSW, 2000
<b>State and Territory racing clubs and authorities</b>	
Tasmanian Turf Club	<a href="http://www.tasmanianturfclub.com/">http://www.tasmanianturfclub.com/</a>
Tasmania Racing Club	<a href="http://www.tasracingclub.com.au/">http://www.tasracingclub.com.au/</a>
Harness Racing Tasmania	<a href="http://www.harness.org.au/tas.cfm">http://www.harness.org.au/tas.cfm</a>
Tasmanian Racing Board	<a href="http://www.tasracing.com.au/">http://www.tasracing.com.au/</a>
Western Australian Turf Club (operating as	<a href="http://www.waturf.org.au/">http://www.waturf.org.au/</a>

Perth Racing)	
Western Australian Trotting Association	<a href="http://www.harness.org.au/wa/wata.htm">http://www.harness.org.au/wa/wata.htm</a>
Western Australian Greyhound Racing Authority	<a href="http://www.greyhoundswa.com.au/">http://www.greyhoundswa.com.au/</a>
Canberra Racing Club	<a href="http://www.thoroughbredpark.com.au/">http://www.thoroughbredpark.com.au/</a>
<b>National racing bodies</b>	
Australian Racing Board	<a href="http://www.australianracingboard.com.au/">http://www.australianracingboard.com.au/</a>
Australian Harness Racing Council	<a href="http://www.harness.org.au/">http://www.harness.org.au/</a>
Australian Greyhound Racing Association	<a href="http://www.agra.com.au/frameset.html">http://www.agra.com.au/frameset.html</a>
Australian Punters Association	<a href="http://www.auspunters.com.au/">http://www.auspunters.com.au/</a>
<b>Sporting associations</b>	
AFL	<a href="http://www.afl.com.au/">http://www.afl.com.au/</a>
NRL	<a href="http://www.nrl.com/">http://www.nrl.com/</a>
<b>State and Territory Government contacts</b>	
Tasmanian Department of Infrastructure, Energy & Resources  Tasmanian Department of Treasury Honourable Michael Aird, Minister for Racing	<a href="http://www.dier.tas.gov.au/racing">http://www.dier.tas.gov.au/racing</a>  <a href="http://www.treasury.tas.gov.au/">http://www.treasury.tas.gov.au/</a>  <a href="http://www.premier.tas.gov.au/cabinet/michael_aird">http://www.premier.tas.gov.au/cabinet/michael_aird</a>
WA Department of Racing, Gaming and Liquor  WA Department of Sports and Recreation  WA Department of Treasury Honourable Terry Waldron MLA, Minister for Sport and Recreation; Racing and Gaming	<a href="http://www.rgl.wa.gov.au/">http://www.rgl.wa.gov.au/</a>  <a href="http://www.dsr.wa.gov.au/">http://www.dsr.wa.gov.au/</a>  <a href="http://www.dier.tas.gov.au/racing">http://www.dier.tas.gov.au/racing</a>  9th Floor, Dumas House, 2 Havelock Street, West Perth WA 6005 email: <a href="mailto:Minister.Waldron@dpc.wa.gov.au">Minister.Waldron@dpc.wa.gov.au</a>
ACT Gambling & Racing Commission  ACT Department of Treasury Honourable Katy Gallagher, Treasurer	<a href="http://www.gamblingandracing.act.gov.au/TheCommission.htm">http://www.gamblingandracing.act.gov.au/TheCommission.htm</a>  <a href="http://www.treasury.act.gov.au/">http://www.treasury.act.gov.au/</a>  <a href="http://www.chiefminister.act.gov.au/section.php?v=20&amp;m=52">http://www.chiefminister.act.gov.au/section.php?v=20&amp;m=52</a>

## Annexure 8 – [restriction of part of publication claimed]

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# Annexure 9 – Size and scope of WA racing industry

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