

[REDACTED]

Submission to the Australian  
Competition and Consumer  
Commission:

Applications for Authorisation of the  
2009 SuperTAB Pooling  
Agreements between Tabcorp  
Manager Pty Ltd and each of  
ACTTAB Ltd and Racing and  
Wagering Western Australia

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30 March 2009

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### **Confidential Annexure A**

**Agreement between Tabcorp Manager Pty Ltd and ACTTAB Ltd dated 20 March 2009 (ACTTAB 2009 Agreement)**

### **Confidential Annexure B**

**Agreement between Tabcorp Manager Pty Ltd and Racing and Wagering Western Australia dated 16 March 2009 (RWWA 2009 Agreement)**

### **Confidential Annexure C**

**Agreement between Tabcorp Manager Pty Ltd and ACTTAB Ltd dated 12 October 2005 (ACTTAB 2005 Agreement)**

### **Confidential Annexure D**

**Agreement between Tabcorp Manager Pty Ltd and Racing and Wagering Western Australia dated 28 October 2005 (RWWA 2005 Agreement)**

### **Annexure E**

**Tabcorp Holdings Limited's 2007-08 Annual Report**

### **Annexure F**

**ACTTAB Ltd's 2007-08 Annual Report**

### **Annexure G**

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### **Annexure H**

**Information regarding some corporate bookmakers in Australia**

### **Annexure I**

**Legislated commission rates in each State and Territory**

### **Annexure J**

**Summary of legislative restrictions on wagering advertising in Victoria, Western Australia and the Australian Capital Territory**

**Annexure K****Tabcorp Betting Rules****Annexure L****Selection of advertisements by corporate bookmakers of their TOTE-odds product****Annexure M****Summary of current Australian pooling arrangements****Confidential Annexure N****VicRacing approval for ACTTAB dated 18 March 2009****Confidential Annexure O****VicRacing approval for RWWA dated 18 March 2009****Annexure P****Industry contacts**

## 1 Introduction and procedural matters

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### 1.1 The Applications

On 20 March 2009, Tabcorp Manager Pty Ltd (**Tabcorp**) and ACTTAB Ltd (**ACTTAB**) entered into an agreement governing ACTTAB's participation in the SuperTAB Pool (**ACTTAB 2009 Agreement**). Tabcorp entered into a similar agreement with Racing and Wagering Western Australia (**RWWA**) on 16 March 2009 (**RWWA 2009 Agreement**).

This submission is provided to the Australian Competition and Consumer Commission (**Commission**) by Tabcorp in support of Tabcorp's applications for authorisation (**Applications**):

- to give effect to the ACTTAB 2009 Agreement, including, in particular, but not limited to the following provisions of the ACTTAB 2009 Agreement: clauses 2.1, 5.1, 5.8 and 8.1;
- to give effect to the RWWA 2009 Agreement, including, in particular, to the following provisions of the RWWA 2009 Agreement: clauses 2.1, 5.1, 5.7 and 8.1.<sup>1</sup>

Copies of the ACTTAB 2009 Agreement and the RWWA 2009 Agreement (together referred to as the **2009 Agreements**) are attached to this submission as Confidential Annexure A and Confidential Annexure B, respectively.

In respect of the four provisions of particular interest to the Commission, the 2009 Agreements are relevantly the same. Three of those provisions concern potential exclusive dealing conduct by Tabcorp. The fourth provision concerns a contract between Tabcorp and each of ACTTAB and RWWA potentially in contravention of section 45 of the Trade Practices Act (**TPA**).

Tabcorp has applied for authorisation on the basis that:

- in the case of the exclusive dealing conduct, Tabcorp (and not ACTTAB or RWWA) would be engaging in the relevant conduct;
- in the case of the contracts potentially in contravention of section 45, ACTTAB and RWWA would obtain the benefit of the Commission's grants of authorisation to Tabcorp by virtue of section 88(6) of the TPA.

Tabcorp has also applied for interim authorisations to give effect to the 2009 Agreements should final authorisation not come into effect on or before **[REDACTED]**. In the absence of interim or final authorisation coming into effect by **[REDACTED]**,<sup>2</sup> Tabcorp's submission in support of its applications for interim authorisation is provided in section 10 below.

Tabcorp provides this single submission in support of its Applications for interim authorisation because the 2009 Agreements are relevantly the same. Further, any anti-competitive detriments and the public benefits resulting from Tabcorp's proposed pooling

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<sup>1</sup> Tabcorp provides this submission in support of its applications in Forms A, Forms B and Forms E in respect of the 2009 Agreements.

<sup>2</sup> **[REDACTED]**

arrangements with each of ACTTAB and RWWA are so similar as to be appropriately set out in a single submission to the Commission.

Tabcorp Manager Pty Ltd is the applicant in respect of the applications for authorisation to which this submission relates. However, in this submission references to 'Tabcorp' include references to Tabcorp Manager Pty Ltd, Tabcorp Holdings Limited and/or Tab Limited as the context requires.

## 1.2 Conditions precedent

### (a) ACTTAB 2009 Agreement

The ACTTAB 2009 Agreement is subject to four conditions precedent, including a condition precedent relating to authorisation.<sup>3</sup> It provides that:

- **[REDACTED]**

A copy of the ACTTAB 2005 Agreement is attached as Confidential Annexure C to this submission.

### (b) RWWA 2009 Agreement

The RWWA 2009 Agreement is subject to five conditions precedent, including a condition precedent relating to authorisation.<sup>4</sup> It provides that:

- **[REDACTED]**

A copy of the RWWA 2005 Agreement is attached as Confidential Annexure D to this submission.

## 1.3 Tabcorp's approach in respect of its pooling agreements

In addition to its agreements with ACTTAB and RWWA, Tabcorp has entered into separate pooling agreements with each of TOTE Tasmania Pty Ltd (**TOTE Tasmania**) (in 2007), the New Zealand Racing Board (**NZRB**) (in 2007), and Phumelela Gold Enterprises and Phumelela Gaming and Leisure Limited (which are licensed to conduct totalisator betting in South Africa) (together referred to as **Phumelela**) (in 2007).

**[REDACTED]**

In November 2007, Tabcorp applied for authorisation to give effect to its pooling agreement with TOTE Tasmania. The Commission published its determination granting authorisation to Tabcorp on 5 March 2008.

**[REDACTED]**.<sup>5</sup>

**[REDACTED]** Since March 2008, there have been a number of significant regulatory and other developments in the Australian racing and wagering industries that have dramatically affected the nature of competition in Australian wagering markets, including:

- the decision of the High Court in *Betfair v Western Australia*<sup>6</sup> (the **Betfair decision**) on 27 March 2008 cast doubt on the validity of many of the legislative restrictions applying to wagering activities;

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<sup>3</sup> See clauses 2.2, 2.4, 2.6 and 2.7 of the ACTTAB 2009 Agreement.

<sup>4</sup> See clauses 2.3 – 2.6 of the RWWA 2009 Agreement.

<sup>5</sup> Submission to the Australian Competition and Consumer Commission: Application for Authorisation of the 2007 SuperTAB Pooling Agreement between Tabcorp Manager Pty Ltd and TOTE Tasmania Pty Ltd, 6 November 2007 at section 1.3 (**TOTE Tas Submission**).

<sup>6</sup> [2008] HCA 11.

- following the Betfair decision, the repeal by New South Wales and statements by other State and Territory governments regarding their intention not to enforce and/or to repeal State advertising laws have removed a major barrier to inter-State wagering competition;
- statements made by State Governments on the repeal of advertising laws bring into doubt the continuation of other licence protections, such as retail exclusivity;
- the continued ability of corporate bookmakers to offer 'tote odds' betting, without action by State Governments, has accelerated competition between totalisators for bet back activity;<sup>7</sup>
- the entry by TOTE Tasmania into a "white labelling" arrangement with Betfair, and the prospect of other totalisators entering into similar arrangements with corporate bookmakers, is likely further to increase competition between totalisators.

These developments have increased the ability and the incentives of TABs to engage in interstate competition for punters.

In addition, the trend towards fixed odds betting at the expense of pari-mutuel wagering, and the breakdown of State based barriers to wagering, make it imperative that Tabcorp engage in pricing and other competitive activity that may otherwise be restricted under the terms of its current pooling agreements. In this regard, the 2009 Agreements are less restrictive than the current arrangements.

As a result of these changes, Tabcorp:

**[REDACTED]<sup>8</sup> [REDACTED]<sup>9</sup>**

## 2 Confidentiality

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This submission, including its annexures, contains information which is confidential to Tabcorp, and must not be disclosed to any other person, including ACTTAB and RWWA. There is also confidential information of ACTTAB and RWWA which must not be disclosed to the other of them.

In particular, the terms of the 2009 Agreements are commercially sensitive and are provided to the Commission on a strictly confidential basis.

This claim for confidentiality does not prevent the Commission from disclosing this submission, or any part of it, to the Commission's third party legal and economic advisers. However, those third party advisers are required to treat this submission on the same basis as the Commission.

A redacted, non-confidential version of this submission, and non-confidential summaries of the 2009 Agreements, have been provided to the Commission.

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<sup>7</sup> While not licensed to operate a totalisator, corporate bookmakers increasingly offer punters odds by reference to the dividend being offered by one or more totalisators (for example, the 'best of' the odds offered by the three totalisator pools or 'home tote' odds plus 5 per cent).

<sup>8</sup> **[REDACTED]**

<sup>9</sup> **[REDACTED]**

## 3 Parties

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### 3.1 Tabcorp

#### (a) Introduction

The Tabcorp Group is an Australian group of companies with interests in casinos, wagering and gaming. The ultimate parent company, Tabcorp Holdings Limited (**TAH**), is listed on the ASX. Its operations are organised into three main divisions: Casinos, Wagering, and Gaming. A copy of TAH's annual report is provided as Annexure E.

The Applications and this submission concern the Tabcorp Group's Wagering division (**Wagering Division**). The Wagering Division's operations, which are primarily conducted in Victoria and New South Wales, include:

- totalisator betting on racing and other sports in licensed agencies, hotels and clubs in Victoria and New South Wales and by telephone and the internet;
- on-course totalisators in Victoria and New South Wales;
- fixed odds betting on racing and other sports under the TAB Sportsbet brand;
- (since September 2008), the Northern Territory bookmaker Luxbet;
- national racing broadcasting through the Sky Channel television service;
- 2KY radio network, a New South Wales radio broadcasting service which specialises in race broadcasts; and
- Trackside – a virtual fixed odds racing game distributed principally in Victoria.<sup>10</sup>

The Wagering Division employs approximately 2,900 people. Its revenue and EBIT for the year ending 30 June 2008 were \$1,477.5 million and \$264.4 million, respectively.

The Wagering Division operates under separate licences in Victoria and New South Wales. In each of those States, it has separate and distinct wagering pools, and operates its wagering businesses in accordance with arrangements it has entered into with the relevant racing industry authorities in that State.

#### (b) Victorian wagering operations

TAH holds the exclusive licence under the *Gambling Regulation Act 2003 (Vic)* (**GRA**) to provide off-course totalisator wagering services in Victoria for thoroughbred, harness and greyhound racing until 14 August 2012. It does so through:

- approximately 611 retail outlets throughout Victoria; of which 91 are agencies; 511 are licensed venues comprising hotels, clubs, and kiosks<sup>11</sup>; and 9 are branches (for example, outlets in the MCG and Dockland Stadium);

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<sup>10</sup> Trackside is distributed in Victoria and in Star City Casino in New South Wales.

<sup>11</sup> Kiosks are smaller outlets, some of which are in hotels and clubs.



- 164,331 open telephone and internet accounts;<sup>12</sup> and
- a racing portal ([www.tab.com.au](http://www.tab.com.au)) which directs punters to RaceTAB (TAB NSW) or TAB Racing (TAB Victoria) ([www.tab.com.au/racing](http://www.tab.com.au/racing)) to place bets on thoroughbred, greyhound and harness racing in Australia, Hong Kong, New Zealand and the United Kingdom;
- Tab.mobi – a world leading platform for betting via mobile phones.

TAH also has a licence to conduct on-course totalisators in Victoria.

The Wagering Division's Victorian activities involve:

- operating the SuperTAB Pool and the provision of pari-mutuel (totalisator) pooling services to ACTTAB, RWWA, TOTE Tasmania, NZRB and Phumelela;<sup>13</sup>
- conducting fixed odds betting operations on behalf of all State and Territory TABs, with the current exception of Tab Limited (**National Sportsbook**). [REDACTED]

The Tabcorp Group's Victorian wagering business is conducted through a joint venture agreement between TAH, Tabcorp Participant Pty Ltd, Tabcorp Assets Pty Ltd, Tabcorp Manager Pty Ltd<sup>14</sup> and VicRacing Pty Ltd (**VicRacing**), a company established by the Victorian racing industry, dated 25 May 1994 (**Joint Venture Agreement**). Under the Joint Venture Agreement, Tabcorp is required to pay [REDACTED] of its total profit from gaming and wagering to VicRacing.

TAH is also party to a Racing Program Agreement and a Product Supply Agreement (collectively, the **Products Agreements**) under which the major Victorian racing bodies have undertaken to provide Tabcorp with certain services and information in return for a Product Fee of [REDACTED] of revenue and a Marketing Fee which effectively equates to [REDACTED] of off-course wagering revenue. This is in addition to the [REDACTED] profit share arrangement.

(c) NSW wagering operations

In 2004, TAH acquired the NSW-based company Tab Limited. Tab Limited is a wholly owned subsidiary of TAH. It holds a licence under the *Totalisator Act 1997* (NSW) to provide off-course totalisator wagering services in New South Wales for thoroughbred, harness and greyhound racing until 2097, with an exclusivity period until June 2013. Tab Limited also has a licence to conduct on-course totalisators in New South Wales and offers totalisator and fixed odds betting on sporting and other events.

Tab Limited is party to a Racing Distribution Agreement, under which it pays to the New South Wales Racing Industry a Product Fee of [REDACTED] of net wagering revenue, and a Wagering Incentive Fee of [REDACTED] of wagering profits.

(d) Other Tabcorp Group activities

The operations of the Tabcorp Group's Casino and Gaming divisions include:

- casino and hospitality operations at the Star City Casino in New South Wales and three Jupiters Casinos in Queensland;
- gaming operations in Victoria under the Tabaret brand; and

<sup>12</sup> All figures are current as at 19 March 2009.

<sup>13</sup> In 2007 Phumelela entered into an agreement to pool with Tabcorp [REDACTED]

<sup>14</sup> Tabcorp Participant Pty Ltd, Tabcorp Manager Pty Ltd and Tabcorp Assets Pty Ltd are wholly owned subsidiaries of TAH.

- Keno operations in venues across Queensland, New South Wales and Victoria (with the Victorian keno operations being operated jointly with Tattersall's under licence).

### 3.2 ACTTAB

ACTTAB was established in 1964 and operates as a Territory-owned Corporation, under the provisions of the *Betting (ACTTAB Limited) Act 1964* (ACT) and the *Territory-owned Corporations Act 1990* (ACT).

ACTTAB's functions under its constitution include:

- the provision of 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.<sup>15</sup>

ACTTAB provides a variety of totalisator and fixed odds wagering products in relation to racing and other sporting events. Its wagering distribution network comprises:

- a retail network of 52 outlets throughout the Australian Capital Territory, including 16 branches and agencies, and 36 sub-agencies located in clubs, hotels, taverns and Casino Canberra;
- facilities located at the three ACT race courses (thoroughbred, harness and greyhound), and a facility at the Canberra Stadium, which is operated during Canberra Raiders and Brumbies matches;
- over 4,000 account holders using internet and telephone services; and
- an internet site that provides racing and sporting information ([www.acttab.com.au](http://www.acttab.com.au)).

ACTTAB is currently a participant in the SuperTAB Pool.

In addition, ACTTAB is a licensed Sports Bookmaker under the provisions of the *Race and Sports Bookmaking Act 2001* (ACT) and operates Keno and Trackside by virtue of approvals under the *Lotteries Act 1964* (ACT).

A copy of ACTTAB's 2007-08 Annual Report is provided as Annexure F to this submission.

### 3.3 RWWA

RWWA was established on 1 August 2003 under the *Racing and Wagering Western Australia Act 2003* (WA).

RWWA's stated role is to 'foster the development, promote the welfare and ensure the integrity of metropolitan and country thoroughbred, harness and greyhound racing in the interests of the long-term viability of the racing industry in Western Australia'.<sup>16</sup>

RWWA provides a variety of totalisator and fixed odds wagering products in relation to racing and other sporting events. RWWA's wagering distribution network comprises:

- a retail network of 280 outlets throughout Western Australia, including 90 full-time TAB agencies supported by around 190 'pubTAB' agencies;
- an operator assisted call centre for placing bets for thoroughbreds, harness, greyhounds, Favourite Numbers, Fixed Odds Sports and Racing;

<sup>15</sup> [http://www.acttab.com.au/fs\\_what\\_is.html](http://www.acttab.com.au/fs_what_is.html).

<sup>16</sup> <http://www.rwwa.com.au/home/about-us.html>. See also *Racing and Wagering Western Australia Act 2003*, section 35.

- TABozbet – an internet betting platform that offers the full range of TAB betting products, which is Western Australia's only licensed off course betting organisation; and
- an internet site that provides racing and sporting information ([www.rwwa.com.au](http://www.rwwa.com.au)).

RWWA is currently a participant in the SuperTAB Pool.

In addition, RWWA:

- manages the distribution of Sky Channel in Western Australia;
- through Racing Radio, broadcasts all meetings covered by RWWA;
- in conjunction with national rule making authorities, makes rules for the conduct of racing in Western Australia and, in all respects, performs the role of principal club; and
- establishes policies for, and manages the provision of programs for, apprenticeship jockeys, trainee drivers and other industry training requirements.

A copy of RWWA's 2007-08 Annual Report is provided as Annexure G to this submission.

## 4 Industry background

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### 4.1 The broader gambling industry

Wagering is part of the broader gambling industry, which includes the supply of gaming and wagering products.

(a) Gaming

Gaming comprises all legal forms of gambling other than wagering – including lotteries, gaming machines, casino table games, and keno.<sup>17</sup> Gaming is a chance-based activity.

Gaming dominates Australian gambling, both in terms of turnover and customer expenditure. According to the most recent comprehensive statistical overview of gambling, compiled by the Office of Economic and Statistical Research, total turnover from gaming during the period 30 June 2005 to 30 June 2006 was \$130,862 million.<sup>18</sup> Table 1 below sets out the turnover for gaming by State for the period 30 June 2004 to 30 June 2005.

**Table 1: Total turnover from gaming by State and Territory 2004-2005<sup>19</sup>**

State	Turnover (million)
New South Wales	\$55,496.848
Victoria	\$32,659.433
Queensland	\$21,247.321

<sup>17</sup> Productivity Commission, *Australia's Gambling Industries*, Final Report, Report No 10 (26 November 1999) (**Productivity Commission Report**) p 7.

<sup>18</sup> Office of Economic and Statistical Research, Queensland Treasury, *Australian Gambling Statistics 2005-06*, (24th edition, 7 January 2008) (**Australian Gambling Statistics 24th edition**).

<sup>19</sup> Office of Economic and Statistical Research, Queensland Treasury, *Australian Gambling Statistics 2004-05*, (23rd edition, 21 August 2006) (**Australian Gambling Statistics 23rd edition**).

South Australia	\$7,809.712
Western Australia	\$2,047.324
Tasmania	\$2,249.022
Australian Capital Territory	\$2,174.378
Northern Territory	\$1,736.617

(b) Wagering

Wagering or betting involves staking something, usually money, on the outcome of a contest or any uncertain event or matter. The principal forms of wagering are wagering on racing (thoroughbred, harness and greyhound racing) and sports betting. Wagering is generally seen as a skill-based activity, involving some knowledge and study of the 'form' of various runners or contestants.

In Australia, wagering generates significantly lower turnover than gaming. According to the Office of Economic and Statistical Research, total turnover from wagering between 30 June 2005 and 30 June 2006 was \$17,704.5 million.<sup>20</sup> Table 2 sets out the total turnover for wagering by State for the period 30 June 2004 to 30 June 2005.

**Table 2: Total turnover from wagering by State and Territory 2004-2005<sup>21</sup>**

State	Turnover (million)
New South Wales	\$5,741.940
Victoria	\$4,269.677
Queensland	\$1,964.079
South Australia	\$903.411
Western Australia	\$1,421.414
Tasmania	\$307.114
Australian Capital Territory	\$439.135
Northern Territory	\$2,311.3694

## 4.2 The racing industry

The wagering industry and the racing industry are closely linked.

The racing industry comprises three codes of racing:

- thoroughbred racing (horses);
- harness racing (horses); and
- greyhound racing (dogs).

In respect of each of the three codes of racing,

- the activities in each State and Territory are governed by the relevant controlling bodies which control the regulation, functions, and commercial activities of the codes;
- the relevant national administrative body oversees the activities of the controlling bodies – the Australian Racing Board Limited (**ARB**) for

<sup>20</sup> Australian Gambling Statistics (24th edition).

<sup>21</sup> Australian Gambling Statistics (23rd edition).

thoroughbred racing, the Australian Harness Racing Council for harness racing, and Greyhounds Australasia for greyhound racing; and

- the relevant controlling bodies and the national administrative bodies assist in the governance of the various racing clubs, which conduct race events in each code.

There are approximately 339 thoroughbred racing clubs,<sup>22</sup> 119 harness racing clubs,<sup>23</sup> and 79 greyhound racing clubs<sup>24</sup> in Australia. The racing clubs, all of which are non-profit organisations, provide racing 'product' by organising and conducting race meetings.

It is estimated that the racing and sports betting industry will generate gross annual turnover of \$22,674 million in 2008-09, representing real revenue growth of 2.2 per cent.<sup>25</sup>

The racing industry alone makes a significant contribution to the Australian economy. For example:

- the economic value of the racing industry in Victoria in the 2004/2005 financial year was \$2.1 billion, with direct spending of \$1.8 billion into the economy,<sup>26</sup>
- the direct industry value added by the wagering and racing industries in Western Australia in the 2003/2004 financial year was \$124 million, which represented approximately 0.5 per cent of Western Australia's Gross State Product.<sup>27</sup>

### 4.3 Interrelationship between the racing and wagering industries

The racing and wagering industries are closely interrelated, both economically and legally. The predominance of wagering on racing events, and the historical development of the racing and wagering industries, has resulted in a mutually dependent relationship between the racing industry and wagering operators in which:

- the racing industry supplies the product (that is, holds race meetings and stages the races) on which wagering operators conduct betting; and
- the totalisators provide a significant proportion of the funding for the racing industry.

This differs from wagering on other sporting events, because other sporting events are generally funded through ticket sales, sponsorship and media rights, and receive minimal funding or product fees from wagering operators who conduct betting on the events.

Tabcorp, ACTTAB and RWWA each make significant economic contributions to the racing industries in their respective States. For example:

- In respect of its Victorian business, Tabcorp is required to pay **[REDACTED]** of its total profit from gaming and wagering to VicRacing, a product fee of **[REDACTED]** of Tabcorp's net wagering revenue to VicRacing, and a marketing fee which equates to **[REDACTED]** of off-course wagering revenue to VicRacing.

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<sup>22</sup> *Australian Racing Fact Book – A Guide to the Racing Industry in Australia*, Australian Racing Board, 2007/08, p 10 (**Australian Racing Fact Book 07-08**)

<sup>23</sup> Clubs and Tracks, Australian Harness Racing (available at <http://www.harness.org.au>)

<sup>24</sup> Australasian Racing Statistics, Greyhounds Australasia (available at <http://www.galtd.org.au/GreyhoundsAustralasia/>)

<sup>25</sup> IBISWorld Industry Report, *Horse and Sports Betting in Australia: P9329* (20 January 2009), p 10.

<sup>26</sup> *Size and Scope of the Victorian Racing Industry* (March 2006) (available at [http://www.parliament.vic.gov.au/rrc/inquiries/rcf/pdf/subs/008\\_20080828\\_racingvictoria.pdf](http://www.parliament.vic.gov.au/rrc/inquiries/rcf/pdf/subs/008_20080828_racingvictoria.pdf)).

<sup>27</sup> *Size and Scope of the Western Australian Racing Industry* (July 2004) (available at <http://www.rwwa.com.au/home/sizeandscopereport.pdf>).

- Since its establishment, ACTTAB has paid over \$115 million in distributions to the ACT racing industry.<sup>28</sup>
- In the 2007/2008 financial year, RWWA distributed \$107.4 million in funding to the Western Australian racing industry in the form of stakes, capital grants, subsidies and participant payments, an increase of 12.7 per cent on the funding provided in the previous year.<sup>29</sup>

These contributions are largely a result of the historical development of the racing and wagering industries in Australia. In each State and Territory, the licensed off-course totalisator was originally established by the relevant State or Territory Government as a statutory authority, and referred to as the Totalisator Agency Board (**TAB**). State and Territory Governments used the money they obtained through their TAB's wagering operations to fund the racing industry in their jurisdiction. Starting in the mid-1990s, State and Territory Governments have corporatised and/or privatised their off-course wagering operators, and this process has included a transfer of responsibility for funding the racing industry from Government to the relevant TAB.

#### 4.4 Types of wagering

(a) Introduction

Wagering in Australia traditionally has been divided into pari-mutuel (totalisator) and fixed-odds wagering (known as 'bookmaking'). Recently, other forms of wagering have been introduced – Tote-odds bookmaker betting (a derivative of pari-mutuel wagering schemes) and betting exchanges.

(b) Pari-mutuel wagering

Pari-mutuel (or totalisator) wagering is the main form of wagering in Australia, accounting for approximately 73 per cent of wagering turnover in the year ended 30 June 2005.<sup>30</sup>

In pari-mutuel wagering, the final odds are not calculated until after the close of betting on the relevant event. All the bets are consolidated or 'pooled' into a totalisator pool. The totalisator operator deducts from the totalisator pool a predetermined percentage of the totalisator pool (referred to as the 'commission rate' or 'take out rate') as the operator's commission. The remainder of the totalisator pool is referred to as the 'dividend pool' and is available for distribution to the winning customers who placed bets on the totalisator.

Therefore, pari-mutuel wagering involves customers betting against each other, rather than against the operator of the totalisator. The pool is divided by the number of units of the successful outcome(s) to arrive at a 'dividend' – the basis upon which the dividend pool is divided pro rata amongst the holders of winning tickets. To calculate the dividend per unit of investment for each selection, the number of units of investment on that selection is divided into the total dividend pool on that selection. Therefore, the odds received on a totalisator can vary after a bet is placed according to other bets placed on the totalisator conducted on that event until the event commences and betting closes.

The revenue of a totalisator operator on an event is a percentage of the turnover wagered on the event, with the amount of the totalisator operator's

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<sup>28</sup> [www.acttab.com.au](http://www.acttab.com.au)

<sup>29</sup> Racing and Wagering Western Australia, Annual Report 2008 (**RWWA Annual Report 2008**) see Annexure G.

<sup>30</sup> Extract from the Office of Economic and Statistical Research, Queensland Treasury, *Australian Gambling Statistics 2004-05* (23rd edition, 21 August 2006) (based on 'TABs' (69.2%) and 'on-course Totes' (3.5%) turnover) in IBIS World Industry Report on Gambling Services (8 June 2007) (**IBIS Report June 2007**) p 6.

revenue being a function of the totalisator pool (that is, the turnover) and the commission rate.

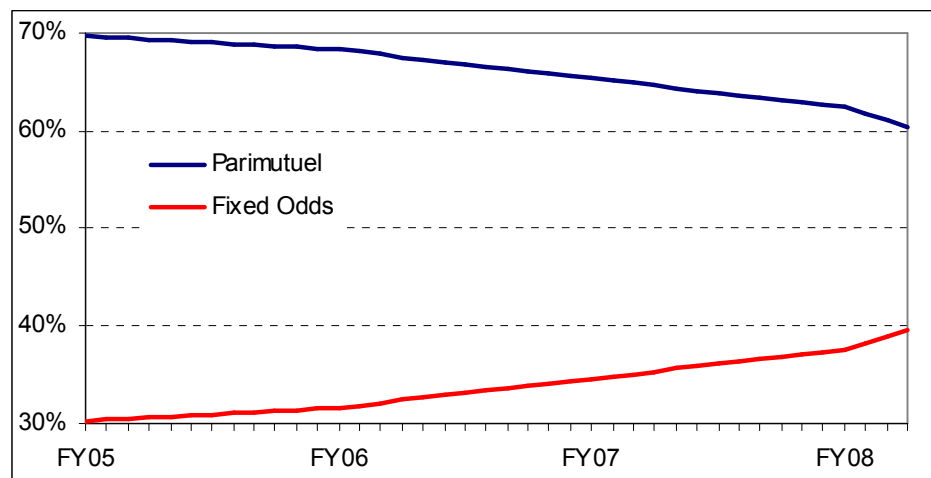
The relevant legislation in each State and Territory regulates the totalisator operator's commission rate – for example, as a maximum rate per bet type or a maximum overall rate across all bet types over the course of a year. Although in the past operators normally deducted the legislated maximum commission rate, [REDACTED]

(c) Fixed odds wagering

In fixed odds wagering the customer is informed of the odds at the time the bet is placed and the odds accepted by the customer on that bet do not change regardless of developments or betting patterns after the bet was placed. In fixed odds wagering, the operator's revenue depends on the outcome of the event, the management of the book of bets, and the extent to which the risk is bet-back or laid off (that is, bets are placed with another wagering operator so as to spread the risk of the loss).

In recent years, fixed odds wagering products have enjoyed an increasing share of the Australian wagering market at the expense of pari-mutuel wagering products. This changing market share by product is illustrated in Figure 1 below.

**Figure 1: Australian wagering market share by product**



(d) Betting exchanges

A betting exchange is a means by which parties stake money on opposing outcomes of a future event. That is, a betting exchange effectively allows people to wager directly against each other on fixed odds bets, instead of betting against a totalisator or bookmaker.

Exchanges are structured to facilitate customers betting that a particular outcome will, or will not, occur. Punters can bet that an outcome will happen ('back' it), or bet against a selection or outcome ('lay' it). Bets are matched between people with opposing views. Bets that cannot be matched are not placed.

The betting exchange operator is merely an intermediary and takes no risk in relation to the outcome of the event – the risk is carried entirely by the customers themselves. Betting exchange operators derive an income by charging a commission on a customer's net winnings in a market.

Betfair is the only betting exchange currently licensed to operate in any Australian State or Territory.<sup>31</sup> Betfair is licensed to operate in Tasmania.

## 4.5 Suppliers of wagering services

### (a) Totalisators

The term 'totalisator' has a number of meanings. For example, it is defined in section 1.3 of the GRA to mean:

*'[A] scheme of pari-mutuel betting, whether conducted by means of an instrument or contrivance known as a totalisator or otherwise.'*<sup>32</sup>

Under this definition, it means a method of wagering or the equipment (hardware and/or software) used to conduct the method of wagering. It may also refer to the pool of bets of a specific type (eg 'win' bets) on a specific event (eg a particular race).

However, in this submission, 'totalisator' generally refers to those State and Territory licensed wagering operators providing pari-mutuel (totalisator) wagering in each State and Territory.

Totalisators are classified as either on-course totalisators or off-course totalisators. An on-course totalisator is a totalisator operation in which bets on the totalisator can be placed only by people physically present at a racecourse, whereas an off-course totalisator may accept bets from people not physically present at the racecourse. The large majority of totalisator turnover in Australia is off-course.

In each State and Territory, there is one operator licensed or otherwise authorised to conduct off-course totalisator wagering. Table 3 below sets out the off-course totalisator operators in each State and Territory and their current status. This submission will refer to these operators as TABs.

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<sup>31</sup> A Cameron, *Correct Weight? A review of wagering and the future sustainability of the NSW racing industry*, A report for the NSW Minister for Gaming and Racing, (28 November 2008) (**Cameron Report November 2008**) p 68. A description of Betfair's Australian operations is provided at section 4.5(c) below.

<sup>32</sup> GRA, section 1.3.



**Table 3 – Off-course totalisator operators (TABs)**

State	Status of off-course totalisator operators
New South Wales	Tab Limited – a wholly owned subsidiary of Tabcorp
Victoria	TAH – a listed public company
Queensland	UNiTAB <sup>33</sup> – a listed public company
Western Australia	RWWA – a government authority
South Australia	SATAB Pty Ltd – a wholly owned subsidiary of UNiTAB
Tasmania	TOTE Tasmania – a government owned company
Australian Capital Territory	ACTTAB – a Territory-owned Corporation
Northern Territory	NTTAB Pty Ltd – a wholly owned subsidiary of UNiTAB

While TABs were originally confined to the provision of pari-mutuel wagering products, in recent years legislative amendments have allowed the totalisators to expand their operations to provide fixed odds wagering. Consequently, in each State and Territory, TABs currently provide (among other things):

- pari-mutuel wagering on racing both off-course and on-course; and
- pari-mutuel and fixed-odds wagering on other sporting events.

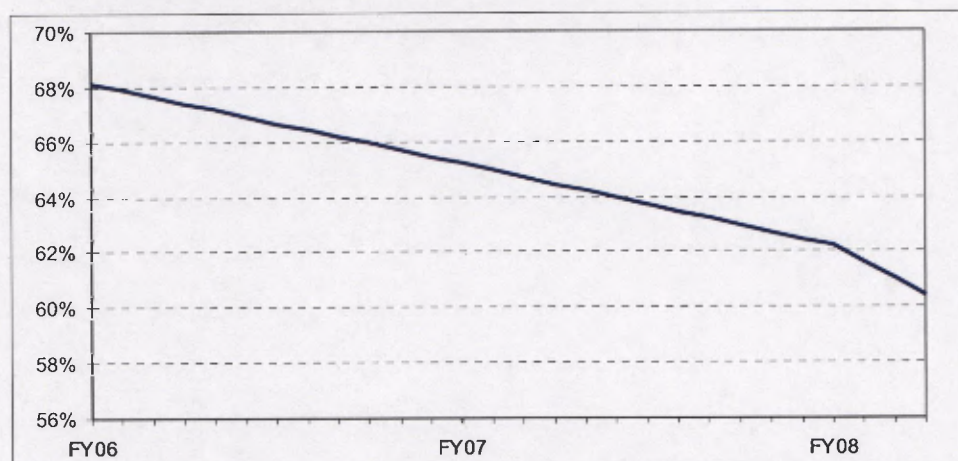
TABs distribute wagering services via a variety of distribution channels, including:

- on-course totalisator operations;
- agency premises;
- licensed premises (hotels and registered clubs);
- telephone;
- the internet; and
- electronic betting terminals.

In addition to authorising an off-course wagering operator, all States and Territories allow racing clubs, and in some cases commercial operators, to conduct on-course totalisators on racing events at their racecourses. In practice, most racing clubs operate their on-course wagering operations through the off-course totalisator in the relevant State or Territory.

Totalisators (effectively the TABs) have traditionally enjoyed a significant share of the Australian wagering market. However, their market share has been decreasing in recent years, as illustrated by Figure 2 below.

<sup>33</sup> On 12 October 2006, UNiTAB became part of Tattersall's Limited as a result of a merger of both companies.

**Figure 2: Totalisator % of total Australian wagering market**


(b) Bookmakers

Bookmakers conduct fixed odds betting on racing and other sports and derivative pari-mutuel wagering schemes (eg tote odds bookmaker betting). Bookmakers can generally be divided into two categories: traditional bookmakers and corporate bookmakers.

Bookmakers are regulated to some extent by the various State and Territory racing bodies. In each State and Territory, there is no statutory limit to the number of bookmaker licences issued.

(1) Traditional on-course bookmakers

The traditional bookmaker (or 'stand up' bookmaker) is a natural person operating as a sole trader or family company. Generally, traditional bookmakers are located on-course, although they may also offer telephone betting. Traditional bookmakers generally offer fixed odds wagering only.

A customer who wagers with a traditional bookmaker at a racetrack can wager any amount above a set minimum and receive the odds offered by the bookmaker at the time of making the wager.<sup>34</sup> Those odds stand irrespective of whether the bookmaker alters the odds at a later time.<sup>35</sup>

In order profitably to offer fixed odds, the bookmaker must 'frame a market'. This refers to the process by which a traditional bookmaker generates the odds that he or she will offer on the different outcomes in a particular event. After framing a market, a bookmaker will seek to 'balance' his or her book so that a profit is made no matter what the outcome of the event on which the bookmaker accepts bets. This may involve the bookmaker placing 'bet backs' with another wagering operator in order to minimise his or her risk.

Traditional bookmakers' share of wagering turnover has declined over recent decades.

<sup>34</sup> Bookmakers operating from virtually all racecourses throughout Australia are subject to 'minimum wager obligations' imposed by the racing industry. This normally involves a State controlling body or race club setting a minimum amount which a bookmaker must, on demand, set a punter to win at a price displayed: Betting Task Force Report, p ix.

<sup>35</sup> The alternations to odds are calculated to reflect weight of betting on different race competitors. Australian Gaming Council, *Fact Sheet- Wagering in Australia*, AGC FS 04/07 (June 2007) (**Wagering Fact Sheet**); available at [http://www.austgamingcouncil.org.au/images/pdf/Fact\\_Sheets/agc\\_fs4wageringinaus.pdf](http://www.austgamingcouncil.org.au/images/pdf/Fact_Sheets/agc_fs4wageringinaus.pdf).

The number of registered bookmakers operating in Australia has also declined from 900 in 1989-1990 to an estimated 651 in 2007-2008.<sup>36</sup> This decline in numbers reflects a move away from small traditional bookmaking operations located on-course to a reduced number of large corporate bookmakers, which distribute their product via the internet and telephone.

(2) Corporate bookmakers

The advent of electronic wagering has seen the growth of large corporate bookmakers, most of whom are licensed in the Northern Territory or, to a lesser extent, the ACT. These corporate bookmakers have enjoyed significant growth in recent years, largely as a result of their offering of 'tote odds' wagering products.

Tabcorp estimates that approximately 66 per cent of bookmaker turnover in Australia is from Northern Territory based corporate bookmakers, and that Northern Territory bookmakers now handle approximately 17 per cent of wagering turnover in Australia.

Corporate bookmakers currently do not have either off-course or on-course retail outlets, and generally distribute their products via telephone or the internet, with internet sales constituting the bulk of their business. Tabcorp understands that several corporate bookmakers are proposing to enter into agreements with clubs and pubs regarding the installation of 'betting kiosks' in these venues which would provide potential punters with links to the corporate bookmaker's website.

In recent years, the rate of growth of corporate bookmakers has been significantly higher than that of the TABs. A 2007 IBIS Report estimates that, while between the years 2003-2004 and 2004-2005 there was an increase in gross wagering receipts by TABs of five percent, there was a 20 percent increase in gross wagering receipts by corporate bookmakers.<sup>37</sup> In the case of the corporate bookmakers, this increase was due to the increasing popularity of on-line betting accounts and the offering by corporate bookmakers of 'tote odds' wagering products.

Table 4 below sets out Tabcorp's estimates of turnover and market shares in the Australian wagering market between 2005 and 2008. It illustrates the increasing turnover and market share of bookmakers, particularly those licensed in the Northern Territory, as compared to the generally decreasing market shares of the TABs.

Figure 3 similarly illustrates the increasing turnover of Northern Territory bookmakers.

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<sup>36</sup> IBIS Report June 2007, p 6; Wagering Fact Sheet; *Australian Racing Fact Book 07-08*

<sup>37</sup> IBIS Report, June 2007, p 6.

**Table 4: Market shares in the Australian wagering market<sup>38</sup>**

[REDACTED]

**Figure 3: Racing turnover trends by year**

[REDACTED]

Most, if not all, corporate bookmakers offer 'tote-odds' products. While not licensed to operate a totalisator, these operators offer punters odds by reference to the dividend being offered by one or more totalisators (for example, the 'best of' the odds offered by the three totalisator pools or 'home tote' odds plus 5 per cent). The offering of tote-odds by bookmakers was authorised by Racing Victoria Ltd in August 2006, and corporate bookmakers licensed in the Northern Territory have since significantly expanded their tote odds offering and marketing into Victoria and New South Wales.

Corporate bookmakers have significant competitive advantages over totalisators:

- Although they have the same reliance on the racing industry as the totalisators, corporate bookmakers are not subject to the same level of regulation. Most corporate bookmakers (some of which are international operators) are licensed in the Northern Territory to take advantage of minimal regulation and taxation, but offer wagering on racing and other events conducted throughout Australia (via the internet and telephone) to residents in all States and Territories.

Despite the recent introduction in some States (and the proposed introduction in other States) of Race Fields Legislation, corporate bookmakers' financial contribution to the racing industry remains minimal as compared to the significant contribution made by the TABs.<sup>39</sup> Further, corporate bookmakers do not contribute to the same extent as the totalisators to the provision of racing information services to the public (which are largely funded by the TABs). For example, in financial year 2007-2008 Tabcorp contributed in excess of [REDACTED] to information services, including radio stations, the newspaper form guides and Sky Channel vision in TAB agencies and on home pay TV channels.

Because the nature of racing events makes it difficult to exclude parties from using the primary product of the event (i.e. the outcome or result of a race) it is possible for corporate bookmakers to free ride on the racing industry, taking bets on races without contributing to the cost of running them.<sup>40</sup> The Report of the Cross-Border Betting

<sup>38</sup> Australian Wagering Market includes parimutuel, fixed odds and betting exchange sales on racing and sports events. All data sourced from internal Tabcorp reports and Australian Racing Fact Books 2005-2008. All items in blue are estimates only based on general intelligence gathered by Tabcorp.

<sup>39</sup> Under the Race Fields Legislation, interstate and overseas corporate bookmakers (and other wagering operators) are required to obtain approval for the publishing of race field data and make an economic contribution to the racing industry of various States. See section 2.5.16A of the GRA; Part 4 Division 3 of the Racing Administration Act 1998 (NSW); section 62E of the *Authorised Betting Operations Act 2000* (SA); Chapter 3 part 6 of the *Racing Act 2002* (QLD); Section 27D of the *Betting Control Act 1954* (WA); the *Racing Regulation Amendment (Race Fields) Act 2008* (TAS), which has not yet commenced, will amend the *Racing Regulation Act 2004* (TAS).

<sup>40</sup> Betting Task Force Report, p 186.

Task Force (which was made up of Ministers from each State and Territory), dated 1 November 2002 (**Betting Task Force Report**), states:

*'[C]orporate bookmakers are acting as free riders, generating very substantial turnover and net income from racing but making no financial contribution. Corporate bookmakers run books on racing but unlike TABs and on-course bookmakers pay no fee for the product they are using.'*<sup>41</sup>

- Bookmakers also enjoy lower overhead costs, because they do not have to maintain the same retail distribution infrastructure as the TABs, and have significant tax advantages.

Annexure H provides information on some of the large corporate bookmakers operating in Australia.

(c) Betting exchanges

As set out above at section 4.4(d), a betting exchange is a means by which parties stake money on opposing outcomes of a future event.

Currently, Betfair is the only betting exchange licensed in any Australian State or Territory. It is licensed in Tasmania. However, the Victorian Government has announced that its awarding of a wagering and betting licence post-2012 will include a betting exchange licence.

Betfair distributes its products via the internet and by telephone betting, and does not have a retail presence. Betfair has various wagering operations outside Australia. It is a registered bookmaker in the United Kingdom, where it operates an online betting exchange. Betfair also operates under licenses in Austria and Malta and is seeking licences within the European Union, in South Africa, and elsewhere.

Betfair processes more than five million transactions a day and has more than 2,000,000 registered users.<sup>42</sup> Betfair's global revenues for the financial year ending 30 April 2008 were £240 million, an increase of 29 per cent on the previous year.<sup>43</sup>

(d) Racing clubs

Licensed racing clubs may operate on-course totalisators by applying to the relevant body in each State or Territory for an on-course wagering permit.

Commonly, on-course totalisators are conducted by the TAB licensed in the relevant State or Territory.

## 4.6 Regulation of the wagering industry

(a) Introduction

The regulation of wagering in Australia is primarily State and Territory based.<sup>44</sup>

<sup>41</sup> Betting Task Force Report, p iii.

<sup>42</sup> <http://www.betfaircorporate.com/>.

<sup>43</sup> *Betfair Annual Review 2008*, 3 (<http://corporate.betfair.com/annual-review-2008.pdf>).

<sup>44</sup> All forms of wagering are specifically excluded from the scope of the *Interactive Gambling Act 2001* (Cth), which is limited to the regulation of internet gaming services.

(b) State and Territory legislation

The wagering industry, and particularly the operations of the off-course totalisator licensee (i.e. TAB), is highly regulated in each State and Territory.

(1) Regulation of TABs

Legislation specifies the conditions under which an off-course totalisator licence may be granted, including the period of time for which it is granted, and requires the licensee to comply with a large number of conditions, obligations and restrictions, such as:

- the payment of taxes and other fees to the State or Territory Government;
- compliance with legislated maximum or specified commission or take out rates (see Annexure I);
- entry into arrangements with the relevant racing industry bodies under which the TAB provides economic contributions to the racing industry and obtains approvals to conduct wagering activities; and
- the requirements for the conduct of the TAB.

Tabcorp is licensed until 2012 to conduct off-course pari-mutuel wagering in Victoria under the GRA.<sup>45</sup> Among other things, the GRA provides:

- The licence is an exclusive,<sup>46</sup> non-transferable<sup>47</sup> licence for 18 years, or a longer term determined by the Governor in Council.<sup>48</sup> The licence is subject to the conditions set out in the licence.<sup>49</sup>
- An application for a licence must include an outline of the arrangements proposed to be entered into by the applicant with VicRacing Pty Ltd and Racing Products Victoria Pty Ltd.<sup>50</sup>
- The Victorian Commission for Gambling Regulation (**VCGR**) must approve totalisator equipment, or any change to totalisator equipment, before it is used in connection with a totalisator or approved betting competition.<sup>51</sup> (Totalisator equipment is any instrument, computer hardware or software or any other equipment used in connection with a totalisator).
- The licensee must make and comply with betting rules.<sup>52</sup> Among other things, the betting rules must specify the maximum commission rate that may be deducted as commission out of the total amount invested in each

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<sup>45</sup> The Commission is aware that the licence renewal process has already commenced in Victoria.

<sup>46</sup> Section 4.3.3.

<sup>47</sup> Section 4.3.4.

<sup>48</sup> Section 4.3.9.

<sup>49</sup> Section 4.3.9.

<sup>50</sup> Section 4.3.5(3)(d).

<sup>51</sup> Section 4.2.3.

<sup>52</sup> Chapter 4, Part 2, Division 2.

totalisator to which the rules relate.<sup>53</sup> The maximum commission rate specified in the betting rules cannot exceed 25 per cent of the total amount invested in the relevant totalisator.<sup>54</sup> The Treasurer must approve the betting rule regarding the maximum commission rate before it has effect.<sup>55</sup>

- The licensee must pay various taxes, fees and charges (including for the grant of the licence).<sup>56</sup> Tabcorp is required to pay a wagering tax of 19.11 per cent of its wagering revenue to the Victorian Government.

ACTTAB is authorised under the *Betting (ACTTAB Limited) Act 1964* (ACT) to conduct or provide totalisator betting services under a licence. Among other things, this Act provides:

- The licence is exclusive<sup>57</sup> and non-transferable<sup>58</sup> for a period of 20 years.<sup>59</sup>
- ACTTAB may make rules providing for terms upon which it accepts totalisator bets.<sup>60</sup>
- These rules specify totalisator maximum commission deductions for pari-mutuel racing.<sup>61</sup>

RWWA is authorised under the *Racing and Wagering Western Australia Act 2003* (WA) to carry on the business of operating an off-course totalisator wagering service on races and certain sporting and other events. Among other things, this Act provides:

- RWWA may include a wager received from a wagering club in a totalisator pool operated by it, and it may further transmit a wager received from a racing club to a totalisator pool operated under a combined totalisator pool scheme;<sup>62</sup>
- RWWA may participate in a combined totalisator pool scheme with any other approved person in WA, and when doing so, may adopt and operate under any relevant rules or make other relevant arrangements at the discretion of the board of directors of RWWA.<sup>63</sup>

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<sup>53</sup> Section 4.2.5(2A).

<sup>54</sup> Section 4.2.5(2B).

<sup>55</sup> Section 4.2.5(2C). Sections 4.2.5(2A), 4.2.5(2B) and Rules 4.2.5(2C) were added to the GRA by amending legislation in 2007. The maximum commission rates which currently apply are set out in transitional provisions of the GRA (Schedule 7, Part 16) until such time as betting rules specifying maximum commission rates are made and take effect. They are: Place (14.25 per cent); Win (14.50 per cent); Duet (14.50 per cent); Quinella (14.75 per cent); Exacta (16.50 per cent); Double (17.00 per cent); Quaddie (20.00 per cent); Trifecta (20.00 per cent); First 4 (22.50 per cent); and Mystery 6 (25.00 per cent). In accordance with section 4.2.5(2A) of the GRA. The commission rates set out in the Tabcorp Betting Rules are the same as those set out in Schedule 7 of the GRA, except that an additional bet type, an 'International Pooled Bet', has been introduced. The commission rate applying to an International Pooled Bet will be the lesser of 25 per cent or the maximum commission applying in the pooling jurisdiction. The Treasurer's consent to the new commission rates has been obtained (dated 17 October 2007).

<sup>56</sup> Section 4.3.8.

<sup>57</sup> Section 6

<sup>58</sup> Section 7

<sup>59</sup> Section 5

<sup>60</sup> Section 55

<sup>61</sup> *Betting (ACTTAB Limited) Rules of Betting Determination 2008 (No 1) (Disallowable instrument DI2008-52)*, Appendix A

<sup>62</sup> Section 58(2)

<sup>63</sup> Section 59

- RWWA is required to deduct from any bet (other than a fixed odds bet) a commission amount as prescribed or otherwise determined by RWWA.<sup>64</sup>

(2) Race Fields Legislation

States have recently introduced, or are in the process of introducing, legislation under which wagering operators are required to pay fees for the use and publication of racing information or race fields (collectively referred to as **Race Fields Legislation**).<sup>65</sup> The fees payable by TABs (and other wagering operators) under Race Fields Legislation vary from State to State, and are calculated by reference to turnover or gross revenue. A number of wagering operators have or are likely to commence legal proceedings in one or more States to challenge the legality of Race Fields Legislation, and particularly the precise nature of the regimes to be introduced under the legislation.

(3) Advertising of wagering

There is legislation in many States and Territories restricting advertising by wagering providers not licensed in that jurisdiction.<sup>66</sup> Since the *Betfair decision*, however, a number of State Governments have repealed or amended the relevant legislative provisions in their respective States, or announced that they would not be enforced pending their repeal or amendment.

The current position for each of the States and Territories is as follows:

- **Victoria:** The restriction on advertising in Victoria prohibits interstate and international wagering providers from advertising their services in Victoria. The restriction applies to traditional print and broadcast media. Whether the restriction extends to advertising on the internet or other on-line communications systems is not settled as the Victorian Government, and State governments generally, have not been pro-active in addressing internet advertising where the host is not located in the relevant State. On 10 October 2008, the Victorian Government indicated that it would not be pursuing prosecutions of interstate bookmakers in relation to contraventions of the legislative provisions prohibiting them from advertising in Victoria, pending the formal repeal of those provisions.
- **Western Australia:** The general position under current legislation is that only bookmakers licensed in Western Australia and RWWA are able to advertise in WA. The *WA Racing Industry Responsible Wagering Code of Practice* sets out voluntary responsible advertising practices, including a prohibition on offering inducements.

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<sup>64</sup> *Betting Control Act 1954* (WA), s 17E(1)(a). Reg 17 of the *Betting Control Regulations 1978* (WA) prescribes commissions for relevant bets.

<sup>65</sup> Sections 2.5.19A-2.5.19E of the GRA; Part 4 Division 3 of the *Racing Administration Act 1998* (NSW); section 62E of the *Authorised Betting Operations Act 2000* (SA); Chapter 3 part 6 of the *Racing Act 2002* (QLD); section 27D of the *Betting Control Act 1954* (WA); the *Racing Regulation Amendment (Race Fields) Act 2008* (TAS), which has not yet commenced, will amend the *Racing Regulation Act 2004* (TAS).

<sup>66</sup> However, it is not unlawful for punters residing in one State or Territory to bet with a wagering operator licensed in another State or Territory.



However, on 18 November 2008, the Western Australian Department of Racing Gaming and Liquor announced proposed legislative amendments to remove the restrictions on advertising and, in particular, to allow betting operators licensed in an Australia jurisdiction to advertise in Western Australia (subject to consumer protection restrictions that will apply to all wagering operators). The Department also indicated that it would not pursue prosecution against any betting operator licensed in another Australian jurisdiction who advertises in Western Australia, while Western Australian race fields legislation was being progressed.

- **Australian Capital Territory:** In general, only licensed Australian Capital Territory operators can advertise in the Australian Capital Territory, subject to certain restrictions. However, interstate bookmakers are permitted to advertise interactive gambling if they are authorised to conduct interactive gambling under the corresponding law of the participating jurisdiction in which the provider is licensed. The responsible advertising requirements are set out in a mandatory Code and apply to licensed Australian Capital Territory race and sports bookmakers, interactive gambling licensees and ACTTAB. They include a prohibition on inducement advertising.
- **New South Wales:** Previously only operators licensed in New South Wales could advertise in New South Wales. However, following legislative amendments in December 2008, it is now lawful for wagering operators licensed in other States and Territories to advertise in New South Wales, provided that they comply with New South Wales responsible advertising requirements. It is an offence to advertise inducements with respect to fixed odds wagering, and the provision of credit as an inducement to bet is prohibited with respect to totalisator betting.
- **Queensland:** In general, only licensed Queensland operators can advertise in Queensland. In January 2009, the Queensland Treasurer announced that the Government would not be pursuing prosecutions for breaches of advertising offences pending formal repeal or amendment of advertising restrictions.
- **South Australia:** Following amendments to South Australian legislation which came into force on 1 March 2009, interstate betting operators are able to advertise in South Australia, provided that they comply with the applicable advertising code of practice.
- **Tasmania:** Operators who hold a Tasmanian gaming licence, including interstate operators who are licensed in Tasmania, are permitted to advertise in Tasmania. There are no publicly known plans to introduce changes to regulation of advertising.
- **Northern Territory:** In general, only Northern Territory operators can advertise in the Northern Territory. There are no publicly known plans to introduce changes to regulation of advertising.

Annexure J provides a summary of the relevant legislation on wagering advertising for each State and Territory.

(c) Regulation of bookmakers

Each bookmaker must be registered, generally by the relevant State bookmakers association, and is required to meet certain financial and other criteria. The bookmaker's licence specifies the racing code and location (metropolitan or country) in which they may operate. A bookmaker turnover tax has been abolished or replaced by a fixed fee in most States. Bookmakers are not allowed to operate outside a racecourse but they are allowed to accept bets by phone and the internet. Under State Race Fields legislation, bookmakers must pay a fee for the use and publication of racing information or race fields.<sup>67</sup>

## 5 The conduct

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### 5.1 The 2009 Agreements

Tabcorp and ACTTAB have entered into the ACTTAB 2009 Agreement and Tabcorp and RWWA have entered into the RWWA 2009 Agreement. Under the terms of the 2009 Agreements, Tabcorp agrees to provide pooling services to each of ACTTAB and RWWA in return for a fee (**Pooling Fee**).

The Applications principally concern four aspects of the 2009 Agreements:

- Tabcorp provides pooling services to each of ACTTAB and RWWA on the condition that each of ACTTAB and RWWA does not re-supply those pooling services to any other totalisator (**Pooling Restriction**).<sup>68</sup>
- Tabcorp provides pooling services to each of ACTTAB and RWWA on the condition that each of ACTTAB and RWWA transmits to Tabcorp for inclusion in the SuperTAB Pool all investments on the specified bet types received by each of ACTTAB and RWWA on nominated Tabcorp races (**Investment Requirement**).<sup>69</sup>
- Tabcorp provides pooling services to each of ACTTAB and RWWA on the condition that each of ACTTAB and RWWA acquires Race Fields Approvals from a number of racing bodies (**Race Fields Approvals Requirement**).<sup>70</sup> and
- Each of ACTTAB and RWWA agrees to comply with the Rules Relating to Betting Transactions in Victoria (**Tabcorp Betting Rules**) in respect of all pooled bets (**Tabcorp Betting Rules Requirement**). The Tabcorp Betting Rules specify the applicable commission rates to be charged by the totalisator on particular pari-mutuel bet types (**Commission Rates Provision**).<sup>71</sup> In addition, the Tabcorp Betting Rules contain restrictions on the persons to whom and the circumstances in which the totalisator can provide services to punters.

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<sup>67</sup> Sections 2.5.19A-2.5.19E of the GRA; Part 4 Division 3 of the Racing Administration Act 1998 (NSW); section 62E of the *Authorised Betting Operations Act 2000* (SA); Chapter 3 part 6 of the *Racing Act 2002* (QLD); section 27D of the *Betting Control Act 1954* (WA); the *Racing Regulation Amendment (Race Fields) Act 2008* (TAS), which has not yet commenced, will amend the *Racing Regulation Act 2004* (TAS).

<sup>68</sup> RWWA 2009 Agreement, clause 8.1; ACTTAB 2009 Agreement, clause 8.1.

<sup>69</sup> RWWA 2009 Agreement, clause 5.1; ACTTAB 2009 Agreement, clause 5.1.

<sup>70</sup> RWWA 2009 Agreement, clauses 2.1(b), 1.1 (Definitions) and Part II of Schedule C; ACTTAB 2009 Agreement, clauses 2.1(b), 1.1 (Definitions) and Part II of Schedule C.

<sup>71</sup> RWWA 2009 Agreement, clause 5.7(b) and ACTTAB 2009 Agreement clause 5.8(b), which provide that RWWA and ACTTAB respectively must comply with the Tabcorp Betting Rules. See also the Tabcorp Betting Rules, which are attached as Annexure K.

## 5.2 Pooling

### (a) Introduction to pooling

'Pooling' occurs only in the context of pari-mutuel wagering. As set out at section 4.4(b) above, in pari-mutuel wagering, the bets are consolidated or 'pooled' into a totalisator pool.

Pooling (or 'co-mingling') refers to arrangements between two or more totalisators whereby the totalisators combine their respective pools in order to provide a single, larger pool into which the customers of each participating totalisator can wager.

Pooling arrangements generally involve a totalisator having a large pool (the 'host') offering 'pooling services' to one or more other totalisators which each have a smaller pool (the 'guest participants'). In practice, the provision of pooling services means the provision by the host of the right to participate in the larger pool in return for a fee. However, there is no reason why two or more smaller or equal sized totalisators could not combine their pools to form a larger pool.

### (b) Rationale for pooling

Smaller totalisators seek to enter into pooling arrangements with other totalisators in order to have access to a larger totalisator pool. A number of benefits flow from access to a large totalisator pool:

#### (1) For consumers of pari-mutuel wagering product

##### *Stability*

The larger the totalisator pool, the greater its stability – that is, larger bets will have less effect on the final odds (i.e. dividends), which benefits both consumers placing larger bets, and consumers placing smaller bets whose dividends could be affected by the larger bets. In contrast, a large bet placed with a small totalisator (without access to a large pool) could substantially distort the calculation of odds for the relevant race and, in turn, affect potential winnings of all punters who have wagered on that race.

The tables below illustrate that even a modest bet can have a substantial impact on smaller pools. Table 5 shows the change in dividend resulting from a \$500 bet placed in pools varying in size from \$5,000 to \$30,000. Even in a pool of \$30,000, the placing of a \$500 bet will reduce a pre-bet dividend of \$20.00 to a post-bet dividend of \$14.60. Table 6 shows the reduction from the pre-bet dividend in percentage terms. Table 7 shows the percentage reduction in the winnings received by the consumer as a result. Calculations are based on a commission rate of 14.5 per cent.

**Table 5 – Post-bet dividend paid (\$)**

Pre-bet dividend (\$)	Post-bet dividend by pool size				
	\$5,000	\$10,000	\$15,000	\$20,000	\$30,000
4.00	2.90	3.40	3.50	3.60	3.70
10.00	5.00	6.60	7.40	7.90	8.50
20.00	6.50	9.60	11.60	12.90	14.60

**Table 6 – Percentage reduction in dividend (%)**

Pre-bet dividend (\$)	Post-bet dividend by pool size				
	\$5,000	\$10,000	\$15,000	\$20,000	\$30,000
4.00	27.5	15.0	12.5	10.0	7.5
10.00	50.0	34.0	26.0	21.0	15.0
20.00	67.5	52.0	42.0	35.5	27.0

**Table 7 – Percentage reduction in winnings (%)**

Pre-bet dividend (\$)	Post-bet dividend by pool size				
	\$5,000	\$10,000	\$15,000	\$20,000	\$30,000
4.00	36.7	20.0	16.7	13.3	10.0
10.00	55.6	37.8	28.9	23.3	16.7
20.00	71.1	54.7	44.2	37.4	28.4

#### *Size of dividend*

A larger pool means that there is potentially more money available to distribute to winning punters. This increased liquidity enables customers to bet larger amounts on all contestants without significantly impacting the dividends paid.

Economic studies have found that the appeal of gambling is dependent on the price or expected value of a bet (i.e. the size of the dividend), and the maximum potential price.

#### (2) For totalisators

##### *Ability to attract more punters, and particularly high value punters*

Totalisator wagering, and pooling, is a market making activity. As with other market making businesses (for example, a stock exchange), a key feature of the attractiveness of the service is the number of people using the service. A larger totalisator pool is important to the attractiveness to the consumer of a totalisator operation because the larger the pool, the greater its stability. In a small pool, even moderate bets can affect the dividends.

In this regard, an economic report prepared by NECG on behalf of Tab Limited and Sky Channel Pty Ltd (**Sky**) in respect of the AHA (NSW) Application for Authorisation dated 23 October 2002 found that 'wagering, particularly in the form of a totalisator, requires a critical mass of wagers to be viable. If the pool is too small, one wager can

significantly alter the odds (i.e. dividends) for all participants in the totalisator'.<sup>72</sup>

Therefore, having access to a large pool assists a totalisator to attract punters, particularly high value punters, who are much more likely than recreational punters to place large bets. The size of the totalisator pool is an important factor considered by high value punters when choosing where to place a bet, and therefore pooling arrangements will assist totalisators to compete more effectively with other large totalisator pools.

*Access to new products (including international pooling)*

A guest participant entering into a pooling arrangement with a host totalisator potentially will gain access to new pari-mutuel wagering products, including internationally pooled bets, through participation in the pool. In this regard, pooling arrangements can create synergies for participating totalisators because international pooling arrangements can be organised by the host totalisator for the benefit of all participating totalisators. For example, RWWA and ACTTAB obtain access to pooling arrangements negotiated by Tabcorp with NZRB and Phumelela through their participation in the SuperTAB Pool.

Further, the larger a totalisator pool, the more attractive it will be to international totalisators seeking to pool with Australian totalisators. Therefore, pooling can assist the host to attract and negotiate international pooling arrangements.

*For the host – the ability to charge a service fee*

The host totalisator usually charges a fee for the provision of pooling services to smaller totalisators.

(c) Pooling arrangements in Australia

Australia has more totalisator pools than many overseas countries which have much larger populations and higher total wagering turnover. For example, Japan has only one totalisator pool, and its total turnover is approximately A\$45 billion per annum – almost four times the size of all Australian totalisator pools combined. Further, the United Kingdom, France, Hong Kong, South Korea, Ireland, Singapore and South Africa each have only one totalisator pool. The United States is the only country to have a large number of pools, with multiple pool operators, but in relation to each individual racing event there is generally only one pool operated by the host race club, with other operators pooling into the host pool.

The existence of multiple pools in Australia is simply a reflection of history, in particular, the fact that State and Territory Governments each established their own totalisator. As a result, Australian totalisator operators often seek to combine their pool with other operators. Accordingly, while there are eight off-course totalisator operators in Australia, there are three totalisator pools.

Current pooling arrangements involving TABs include:

- Tabcorp is the host of the SuperTAB Pool. Current guest participants in the SuperTAB Pool are RWWA, ACTTAB, TOTE Tasmania, NZRB and Phumelela (see the bullet point below). While Tabcorp has been seeking to pool with Tab Limited for some time, regulatory barriers (including the need to obtain the approval of the New South Wales

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<sup>72</sup> Network Economics Consulting Group Pty Limited (NECG), *AHA (NSW) Application for Authorisation A90837- Economic Report prepared on behalf of Tab Limited and Sky Channel Pty Ltd* (23 October 2002) (NECG Report) p 9.

Government) currently prevent Tab Limited's participation in the SuperTAB Pool. **[REDACTED]**

- In 2007 Tabcorp entered into a pooling arrangement with Phumelela (which holds a licence to operate a totalisator in South Africa). Under the terms of the pooling agreement between Tabcorp and Phumelela, Tabcorp agrees to accept certain bet types on certain Australian races for inclusion in the SuperTAB Pool.
- Tab Limited does not participate in any pooling arrangements with other Australian or offshore totalisators. However, even without any such pooling arrangements, Tab Limited's totalisator pool generated **[REDACTED]** in turnover in the 2008 financial year.
- TOTE Tasmania entered into a pooling arrangement with Singapore Racing in 2007.
- UNiTAB operates its own pool. Current participants in the UNiTAB Pool are UNiTAB's subsidiaries SATAB Pty Ltd and NTTAB Pty Ltd.

A description of the current national pooling arrangements for each of the TABs is set out in Annexure M to this submission.

(d) The SuperTAB Pool

(1) Structure of the SuperTAB Pool

As outlined above, Tabcorp is the operator and host of the SuperTAB Pool. Current guest participants in the SuperTAB Pool are ACTTAB, RWWA, TOTE Tasmania, NZRB and Phumelela.

Tabcorp as host has entered into a separate pooling agreement with each of the guest participants. There is no contractual relationship between the guest participants.

Under each of the pooling agreements:

- the smaller Australian totalisators, NZRB and Phumelela agree to participate in the SuperTAB Pool; and
- Tabcorp agrees to provide these totalisators with pooling services and accepts investments of certain bet types for inclusion in the SuperTAB Pool in return for a pooling or processing fee.

**[REDACTED]** the agreements require the guest participants to pool into the SuperTAB Pool all their pari-mutuel wagers on specified bet types on nominated events.<sup>73</sup>

In practice, the SuperTAB pooling arrangement is operated on a 'gross pool basis', which works as follows:

- Each of the participating TABs conducts its own pari-mutuel wagering business in the course of which it supplies SuperTAB wagering products to punters (i.e. it accepts bets from its customers).
- The funds collected in respect of SuperTAB products are then pooled by each TAB.
- The pools of each participating TAB are then notionally co-mingled in the SuperTAB Pool. In practice, the SuperTAB

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<sup>73</sup> See, for example, RWWA 2009 Agreement, clause 5.1 and ACTTAB 2009 Agreement clause 5.1.

Pool is divided into separate pools for each particular bet type on each nominated event.

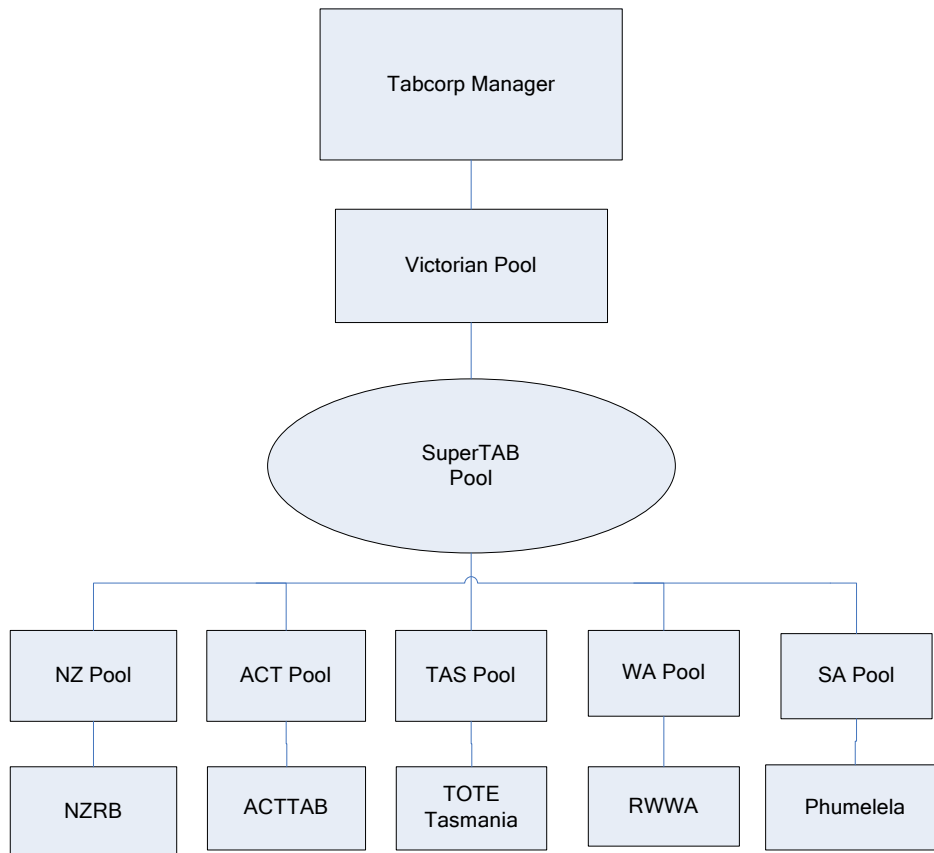
- The commission rate is notionally deducted from the SuperTAB Pool and credited to the SuperTAB Pool participants (in proportion to the total wagers placed with that participant).
- Tabcorp operates the SuperTAB Pool and calculates the respective odds and determines the amount available to pay dividends to winning punters.
- Each SuperTAB Pool participant pays dividends to successful punters who have made an investment with that participant.
- Cash settlements are made between Tabcorp and one or more of the guest participants. A cash settlement is necessary in circumstances where the amount required to be paid by a participant to punters in the form of dividends does not equal the amount invested by punters with that participant. Cash settlements take place four weekly in arrears.
- Tabcorp invoices each guest participant for the amount of the processing fee.<sup>74</sup>

Figure 4 below describes the SuperTAB pooling process.

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<sup>74</sup> RWWA's Processing Fee under the RWWA 2009 Agreement is set out in Part II of Schedule A. ACTTAB's Processing Fee under the ACTTAB 2009 Agreement is set out in Part II of Schedule A.

**Figure 4: SuperTAB pooling process**



There is a complex web of relationships between the multiple stakeholders in the SuperTAB Pool, including:

- Tabcorp, as the host;
- the guest participants (ACTTAB, RWWA, TOTE Tasmania, NZRB and Phumelela);
- State racing industry bodies; and
- State Governments.

In particular, under the Joint Venture Agreement, Tabcorp has agreed that it will not provide access to its pool to any other totalisator (guest participant) conducting wagering activities outside Victoria unless that guest participant's participation in the SuperTAB Pool has been 'approved' by VicRacing.<sup>75</sup> In practice, VicRacing imposes conditions on a totalisator's participation in the SuperTAB Pool as a condition of providing its approval.<sup>76</sup> VicRacing has approved each of RWWA and ACTTAB's participation in the SuperTAB Pool pursuant to the terms of the 2009 Agreements (see Confidential Annexure O and Confidential Annexure N).

The multiple stakeholders and the complex relationships between them, mean that it would not be feasible to structure the pooling arrangements as a joint venture between the relevant participants. In this regard, the recent application by Tote Tasmania, RWWA and ACTTAB for authorisation of a proposed joint

<sup>75</sup> [REDACTED]

<sup>76</sup> [REDACTED]



venture arrangement between them in relation to the supply of fixed odds betting is not a relevant analogy. As distinct from the joint venture arrangement proposed in that case, the operation of the SuperTAB Pool involves multiple parties (including overseas wagering operators) pooling on different bet types. Further, the regulatory controls applying in respect of the operation of a totalisator is significantly greater than those applying to fixed odds betting operations.

(2) Rationale for participation in the SuperTAB Pool

Table 8 below sets out Tabcorp's estimates of the turnover of the Australian participants in the SuperTAB Pool and each participant's share of the national TAB pari-mutuel wagering market.

**Table 8 – Australian SuperTAB participants' turnover and share of the national TAB pari-mutuel wagering market on racing for 2007–2008 financial year<sup>77</sup>**

**[REDACTED]** <sup>78</sup>

*Tabcorp rationale*

**[REDACTED]**

*RWWA and ACTTAB rationale*

Tabcorp considers that, as smaller totalisators, RWWA and ACTTAB achieve significant benefits through their participation in the SuperTAB Pool. These benefits are the same as those that apply generally to having a larger totalisator pool (see section 5.2(b) above).

In addition, pooling provides cost savings to Tabcorp, RWWA and ACTTAB through the consolidation of wagering operations, related information technology, and corporate administration.

Tabcorp understands that each of RWWA and ACTTAB will make a submission outlining its rationale for entering into the relevant 2009 Agreement.

### 5.3 The relevant provisions

(a) Introduction

Four provisions of the 2009 Agreements will be of particular interest to the Commission. However, Tabcorp applies for authorisation to give effect to the 2009 Agreements generally.

(b) Pooling Restriction

Clause 8.1 of 2009 Agreements prevents each of RWWA and ACTTAB from transmitting to Tabcorp for inclusion in the SuperTAB Pool any bets from any other totalisator (**Pooling Restriction**).

Clause 8.1 of the RWWA 2009 Agreement states:

*'RWWA must not:*

*(a) transmit to Tabcorp for inclusion in the Tabcorp Pool any bets from any other wagering operator or totalisator licensed in or operating in or from any domestic or international jurisdiction (including any such totalisator operated by or on behalf of RWWA); or*

<sup>77</sup> All data has been sourced from internal Tabcorp reports and Australian Racing Fact Books 2005-2008.

<sup>78</sup> NZRB and Phumelela do not form part of the national TAB pari-mutuel wagering market and therefore their market share figures are not included.

*(b) pool or combine such bets with Investments received by RWWA in relation to the Tabcorp Events where those bets will form part of the Tabcorp Pool,*

*Without the prior written consent of Tabcorp.'*

Clause 8.1 of the ACTTAB 2009 Agreement is the same as Clause 8.1 of the RWWA 2009 Agreement except for the words 'referred to in clause 8.1(a)' which appear after the words 'pool or combine such bets' in clause 8.1(b).

The Pooling Restriction is designed to prevent either RWWA or ACTTAB being used as a vehicle to allow other wagering operators to pool with Tabcorp indirectly without the consent (and potentially the knowledge of) Tabcorp or VicRacing Pty Ltd.

RWWA and ACTTAB can participate in other pooling arrangements (subject to the Investment Requirement set out at 5.3(c) below) but not as a method of re-supplying Tabcorp's services.

### **Application of the TPA**

This conduct can be characterised as a form of exclusive dealing under section 47(2) of the TPA. That is, Tabcorp supplies pooling services to each of RWWA and ACTTAB on the condition that each of RWWA and ACTTAB does not re-supply those pooling services to any other totalisator. Such conduct will contravene the TPA only if it has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market.

Tabcorp submits that the conduct has neither the purpose nor the likely effect of substantially lessening competition in any market. The rationale for the conduct is to ensure that Tabcorp knows the participants in the SuperTAB Pool and can set the conditions of their participation. Tabcorp must be in a position to set the conditions of participation in the SuperTAB Pool to ensure the integrity of the pool, comply with anti-money laundering legislation, and fulfil its obligations to VicRacing Pty Ltd under the Joint Venture Agreement (see section 5.2(d)(1) above).

Further, the conduct would have minimal if any anti-competitive effect because RWWA and ACTTAB remain free to pool with other totalisators in respect of wagering products that do not form part of the SuperTAB Pool.

It would not be appropriate to consider the conduct under section 45 of the TPA because of section 45(6) of the TPA.

In any case, Tabcorp is not relevantly competitive with RWWA or ACTTAB (i.e. in relation to the supply of pooling services by large totalisators to small totalisators). As recognised by the Commission in the UNiTAB Public Competition Assessment (**PCA**), Tabcorp and UNiTAB are the only providers of host pooling services in Australia.<sup>79</sup> As smaller totalisators, RWWA and ACTTAB are not able effectively to act as host in a pooling arrangement with other small totalisators and have given no indication that they intend or are likely to do so. That said, and as noted above, it is open to two or more smaller totalisators to join together to form a larger pool. Whether such an arrangement would involve a supply of pooling services, or more likely a joint venture, does not need to be resolved in this submission.

### (c) Investment Requirement

Clause 5.1 of the 2009 Agreements provides that each of RWWA and ACTTAB will transmit to Tabcorp for inclusion in the SuperTAB Pool all investments of specified bet types on nominated Tabcorp races (**Investment Requirement**).

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<sup>79</sup> ACCC, *Public Competition Assessment- Proposed acquisition of UNiTAB Limited by Tabcorp Holdings Limited* (16 November 2006) (**UNiTAB PCA**), para 23.

Clause 5.1 of the RWWA 2009 Agreement states:

*'... RWWA will transmit, and Tabcorp will accept and include in the Tabcorp Pool, all Investments received by RWWA on the Tabcorp Events.'*

'Investments' are defined as the bet types set out in Part I of Schedule A.

**[REDACTED]**

Clause 5.1 of the ACTTAB 2009 Agreement is the same.

These provisions effectively prevent RWWA and ACTTAB acquiring pooling services from totalisators other than Tabcorp in respect of bet types and events covered by Tabcorp for the term of the 2009 Agreements. It also prevents RWWA and ACTTAB splitting their wagers between the SuperTAB Pool and another pool. However, RWWA and ACTTAB remain free to acquire pooling services from totalisators other than Tabcorp in respect of:

- bet types not specified in the applicable 2009 Agreement; and
- all bet types on non-Tabcorp Events.

The Investment Requirement is the outcome of a commercial negotiation between Tabcorp and each of RWWA and ACTTAB.

From Tabcorp's point of view, this provision has been included in the 2009 Agreements for the following reasons:

- The Processing Fee payable to Tabcorp under the 2009 Agreements is calculated as a percentage of the amount co-mingled by each of RWWA and ACTTAB in the SuperTAB Pool. **[REDACTED]**
- Entering into the 2009 Agreements increases the size of the SuperTAB Pool. This enables the SuperTAB Pool to compete more effectively with other totalisator pools both to attract high value punters and to enter into international pooling arrangements.

**Application of the TPA**

This conduct is a form of exclusive dealing under section 47(2) of the TPA. That is, Tabcorp supplies pooling services to each of RWWA and ACTTAB on the condition that each of RWWA and ACTTAB does not acquire certain pooling services (i.e. pooling services in respect of certain bet types on Tabcorp Events) from any other provider of pooling services (including competitors of Tabcorp). This conduct will contravene the TPA only if it has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market.

Tabcorp submits that the conduct has neither the purpose nor the likely effect of substantially lessening competition in any market. As set out above, from Tabcorp's point of view, the rationale for the conduct is to ensure that Tabcorp achieves the commercial benefits underlying its decision to enter into the 2009 Agreements – that is, a sufficiently large Processing Fee and enhanced SuperTAB Pool size.

(d) Race Fields Approvals Requirement

Clause 2.1 of RWWA 2009 Agreement sets out the conditions that must be satisfied before the Agreement comes into force. Subsection (b) states that 'all Race Fields Approvals have been obtained by RWWA'. Race Fields Approvals are defined as:

*'the racing industry and regulatory approvals required by RWWA for it to use, publish or make available Race Fields Information in the course of its business and to conduct betting operations in a State or Territory (including, without*

*limitation, approvals from the bodies listed in Part II of Schedule C).*

Part II of Schedule C lists the following controlling bodies: RVL, GRV, and HRV, Racing NSW, Harness Racing NSW, Greyhound Racing NSW, Queensland Racing Limited, Queensland Harness Racing Limited, Queensland Greyhound Racing Limited, Thoroughbred Racing SA Pty Ltd, Harness Racing SA Limited, Greyhound Racing SA Limited, Racing SA Pty Ltd.

Clause 2.1(b) of ACTTAB 2009 Agreement is the same. Part II of Schedule C in the ACTTAB 2009 Agreement is also the same except for the deletion of Racing SA Pty Ltd and the addition of Racing and Wagering Western Australia.

### **Race Fields Legislation**

As discussed above at section 4.6(b)(2), various States have introduced, or are in the process of introducing, legislation requiring wagering operators to pay fees for the use and publication of racing information or race fields.<sup>80</sup> New South Wales, Victoria, Western Australia and Queensland and South Australia currently have such legislation in operation. In Tasmania the Race Fields Legislation is not yet operative.

The Race Fields Legislation operating or proposed in each State is essentially the same as that in section 2.5.19B of the GRA, which states:

*'A wagering service provider must not, in Victoria or elsewhere, publish, use or otherwise make available a race field in the course of business unless:*

- (a) the wagering service provider has obtained the publication and use approval of the appropriate controlling body; and*
- (b) the wagering service provider complies with the conditions (if any) to which the approval is subject.'*

'Appropriate controlling body' is defined as:

- in the case of horse racing, Racing Victoria Ltd;
- in the case of harness racing, Harness Racing Victoria; or
- in the case of greyhound racing, Greyhound Racing Victoria.<sup>81</sup>

'Race field' is defined as:

*'any information that identifies, or is capable of identifying, the names or numbers of the horses or greyhounds-*

- (a) nominated for, or which will otherwise take part in, an intended horse race, harness race or greyhound race to be conducted in Victoria; or*
- (b) that have been scratched or withdrawn from an intended horse race, harness race or greyhound race to be conducted.'*

The legislation applying or proposed in each State nominates a different 'controlling body' from whom a wagering service provider wishing to publish or use race field information must obtain approval.

### **Application of the TPA**

<sup>80</sup> Sections 2.5.19A-2.5.19E of the GRA; Part 4 Division 3 of the Racing Administration Act 1998 (NSW); section 62E of the *Authorised Betting Operations Act 2000* (SA); Chapter 3 part 6 of the Racing Act 2002 (QLD); section 27D of the Betting Control Act 1954 (WA); the Racing Regulation Amendment (Race Fields) Act 2008 (TAS), which has not yet commenced, will amend the Racing Regulation Act 2004 (TAS).

<sup>81</sup> Section 2.5.19A.

This provision could be characterised as a form of third line forcing under section 47(6) of the TPA – that is, the supply of pooling services by Tabcorp on condition that each of RWWA and ACTTAB acquire Race Fields Approvals from various controlling bodies. Third line forcing is prohibited by the TPA.

As a preliminary matter, it is not clear that when each of the controlling bodies gives a 'Race Fields Approval' the relevant body supplies services for the purposes of the TPA. If giving a Race Field Approval is not supplying services, then section 47(6) has no application to clause 2.1(b) of each of the 2009 Agreements. Be that as it may, Tabcorp none the less applies for authorisation in respect of clause 2.1(b) of each of the 2009 Agreements.

The Commission may grant an authorisation of third line forcing conduct provided it is satisfied in all the circumstances that the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed conduct should be allowed to take place.

Tabcorp submits that the proposed conduct would result in no anti-competitive detriment. RWWA and ACTTAB are required by legislation to obtain Race Fields Approvals should they wish to publish State race fields data in relation to Victorian, New South Wales, Queensland, South Australian or Western Australian racing<sup>82</sup> (whether or not through its participation in the SuperTAB Pool). Therefore, clause 2.1(b) imposes no additional obligation.

Given the legislative requirement to obtain Race Fields Approvals, RWWA and ACTTAB could not participate in the SuperTAB Pool absent the proposed conduct. Therefore, the conduct has substantial public benefits (see section 8 below, which sets out the public benefits resulting from RWWA and ACTTAB's participation in the SuperTAB Pool).

(e) Tabcorp Betting Rules Requirement

Clause 5.7 of the RWWA 2009 Agreement and clause 5.8 of the ACTTAB 2009 Agreement require RWWA and ACTTAB, respectively, to comply with the Tabcorp Betting Rules in respect of all pooled bets (**Tabcorp Betting Rules Requirement**). A copy of the Tabcorp Betting Rules is attached as Annexure K to this submission.

The stated purpose of the Tabcorp Betting Rules is:

*'[T]o make provision for the management and control of Totalizators and the conditions under which Transactions will be conducted at or through Totalizator Offices and for matters incidental to the operation of the [GRA].'*

The Tabcorp Betting Rules specify different commission rates for different types of pooled bets (**Commission Rates Provision**).<sup>83</sup> The commission rate is the price charged by a totalisator to punters for accepting bets (see section 4.4(b) above).

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<sup>82</sup> Once the Tasmanian legislation is proclaimed into force each of RWWA and ACTTAB will also be required to obtain Race Fields Approvals in order to publish Tasmanian race fields data.

<sup>83</sup> Tabcorp Betting Rules. See page 63 'Totalisator Maximum Commission Deductions and Win Rates Table'. The Totalisator Win Rates indicate the percentage amount to be returned to investors. For example, the Totalisator Win Rate for 'Win' bets is 85.5 per cent, meaning the commission or take out rate retained by Tabcorp is 14.5 per cent. The following Totalisator Win Rates must be returned to punters in respect of each bet type: Win (85.50 per cent); Place (85.75 per cent); Quinella (85.25 per cent); Duet (85.50 per cent); Exacta (83.50 per cent); Trifecta (80.00 per cent); First 4 (77.50 per cent); Daily Double (83.00 per cent); Running Double (83.00 per cent); Quaddie (80.00 per cent); BIG6 (75.00 per cent). The following commission rates are also specified: Win (14.50 per cent); Place (14.25 per cent); Quinella (14.75 per cent); Duet (14.50 per cent); Exacta (16.50 per cent); Trifecta (20.00 per cent); First 4 (22.50 per cent); Daily Double (17.00 per cent); Running Double (17 per cent); Quaddie (20 per cent); BIG6 (25 per cent); International Pooled Bet (the lesser of 25 per cent or the maximum commission applying in the pooling (host) jurisdiction). There is no difference in the applicable commission rates under the current Tabcorp Betting Rules and the transitional provisions of the GRA.

Equivalent provisions are included in the pooling agreement between Tabcorp and TOTE Tasmania, with the effect that common commission rates are deducted by Tabcorp as operator of the SuperTAB Pool on all pooled bets.

In addition, the Tabcorp Betting Rules contain a number of restrictions on the persons to whom and the circumstances in which the totalisator can supply wagering products to punters.<sup>84</sup> If Tabcorp were considered to be an actual or likely competitor of RWWA and ACTTAB, then it would be arguable that such restrictions raise issues under sections 45(2) and 4D of the TPA. This submission does not set out these restrictions in detail or discuss them further because it is Tabcorp's view that they will not be of concern to the Commission. Therefore, the remainder of this section of the submission concerns the Commission Rates Provision.

### Rationale

The Commission Rates Provision is central to Tabcorp's operation of the SuperTAB Pool for a number of reasons:

- The SuperTAB Pool operates according to gross pool pricing, not net pool pricing.

As set out above at section 5.2(d)(1), all SuperTAB bets made by punters through participating TABs are co-mingled in the SuperTAB Pool. The Common Commission Rate is then removed from the top of the SuperTAB Pool and the winning dividends are calculated. Currently, there is no technical capability for Tabcorp to take into account different commission rates charged by different participants in the calculation of dividends.

- A move to net pool pricing would require substantial software development.

The introduction of net pool pricing would be a complex, lengthy, expensive and uncertain process. It would require significant rewriting of the applicable software codes because it would require the calculation and display of different dividends offered by the different participants depending on their various commission rates. In Tabcorp's view, this could adversely affect the quality of the product offered to consumers (for example, it would require Tabcorp to display multiple dividends for equivalent bets on Sky Channel). Consequently, it is not a process that Tabcorp is likely to undertake.

[REDACTED]<sup>85</sup> [REDACTED]<sup>86</sup>

- Any move to net pool pricing would require new regulatory approvals and could impact on Tabcorp's current tax concessions.

As set out above at section 4.6(b)(1), Tabcorp is required to obtain regulatory approvals in respect of its operation of totalisator equipment. It has obtained these approvals in respect of its operation of the SuperTAB Pool.

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<sup>84</sup> For example, clause 3.2(a) of the Tabcorp Betting Rules states that 'Investments made by or on behalf of or deposits lodged by persons under the age of eighteen (18) years will not be accepted'.

<sup>85</sup> [REDACTED]

<sup>86</sup> Under the amended legislation, Tabcorp's maximum commission rate cannot exceed 25 per cent. The Treasurer must approve the betting rule regarding the maximum commission rate before it has effect. Tabcorp has received consent from the Treasurer to the maximum commission rates applying to bet types being included in the Tabcorp Betting Rules. The maximum commission rate applying to an 'International Pooled Bet', as approved by the Treasurer is 'the lesser of 25 per cent or the maximum commission applying in the pooling jurisdiction'. Provided the commission rate charged by an overseas totalisator does not exceed 25 per cent, the Tabcorp Betting Rules would permit Tabcorp to engage in gross pool pricing in respect of international pooling arrangements.

Any move to net pool pricing would require new regulatory approvals and would likely attract significant regulatory scrutiny given its effect on the calculation and display of dividends. The new system would also require independent testing in order to obtain the necessary regulatory approvals, which in itself would be a lengthy and expensive process.

Further, Tabcorp currently receives tax concessions from the Victorian Government in respect of investments it receives from SuperTAB Pool guest participants. These concessions are provided on the basis that guest participants are already paying tax in the State or Territory in which they are licensed (i.e. to avoid double taxation). Any move to net pool pricing could potentially affect these tax concessions.

### Application of the TPA

There is a risk that the arrangements between Tabcorp and each of RWWA and ACTTAB might be construed as having the purpose or effect of fixing, controlling or maintaining the price of pari-mutuel wagering products that are offered by Tabcorp, RWWA and ACTTAB to their respective customers.

Such arrangements could potentially contravene section 45(2) of the TPA if Tabcorp and any of the SuperTAB participants were relevantly competitive (i.e. in relation to the supply of SuperTAB wagering products to punters).

This submission discusses, at section 6.3(a)(1) below, the evidence suggesting that, in very recent years, there has been some competition between the TABs (including Tabcorp, RWWA and ACTTAB ) in respect of the supply of pari-mutuel wagering products and that this competition is increasing due to technological, regulatory and other developments.

In the UNiTAB PCA, the Commission states

*'despite a low level of cross border wagering, the ACCC was unable to identify significant structural impediments to competition between totalisators located in different states, specifically for large punters using phone and internet wagering services.'*<sup>87</sup>

The Commission also recognised that 'bookmakers, and in particular corporate bookmakers offering online wagering services, do compete with totalisators for punters (and that betting exchanges potentially may become more significant players in the sector)'.<sup>88</sup>

Tabcorp's position is as follows:

- At the time of entering into the RWWA 2005 Agreement with RWWA, and the ACTTAB 2005 Agreement with ACTTAB, there was little, if any, competition between the TABs for the supply of pari-mutuel wagering products to consumers. At that time, Tabcorp and each of RWWA and ACTTAB were not relevantly competitive for the purposes of section 45(2).
- There is evidence of limited competition between the TABs for the supply of pari-mutuel wagering products to consumers in very recent years. This competition is most significant in respect of high value punters **[REDACTED]** which is the fastest growing sector of the wagering market, but is also apparent to some degree in respect of recreational punters.
- **[REDACTED]**

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<sup>87</sup> UNiTAB PCA, para 45.

<sup>88</sup> UNiTAB PCA, para 47.

- Given the above, Tabcorp has applied for authorisation of the RWWA 2009 Agreement and the ACTTAB 2009 Agreement on the basis that the parties to each of the 2009 Agreements could be considered to be actual or likely competitors.

## 6 Relevant markets

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### 6.1 Approach to market definition

Tabcorp does not urge a particular market definition in respect of any of the markets relevant to the Applications. Rather, it submits that:

- there are a number of arguable markets that may be relevant to the Commission's consideration of the Applications; and
- in respect of each of these markets, the ACTTAB 2009 Agreement and the RWWA 2009 Agreement would result in significant public benefits and minimal if any competitive detriments, such that the statutory tests for authorisation are satisfied.

A purposive approach to market definition begins with the relevant conduct. As set out above, the Applications relate to:

- the supply of pooling services by Tabcorp to each of ACTTAB and RWWA; and
- the supply of pari-mutuel wagering on racing by Tabcorp, ACTTAB and RWWA to punters.

Accordingly, the product markets that are relevant to the Applications arguably include:

- the market for the supply of pooling services; and
- the market for the supply of pari-mutuel wagering on racing.

### 6.2 The market for the supply of pooling services

This is the market for the supply of pooling services by large totalisators (such as Tabcorp) to smaller totalisators (such as ACTTAB and RWWA), described by the Commission as 'the right for the smaller totalisators to combine their bets with a large totalisator for a fee'.<sup>89</sup>

Tabcorp does not agree with the Commission that there is an anti-trust market for the supply of pooling services. The following factors are relevant:

- Pooling between totalisators is highly regulated in Australia, such that totalisators do not freely compete to provide pooling services to other totalisators. For example, in order to pool with another totalisator, an Australian totalisator generally must obtain racing industry approval, State Government approval and tax exemptions, and Commission authorisation.
- In order to pool, the incentives of the host and guest totalisator must be aligned.
- Since the Commission considered the market for the supply of pooling services in the Tabcorp/UNiTAB merger PCA, the incentives to pool have changed significantly – guest totalisators can now compete aggressively with the host

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<sup>89</sup> UNiTAB PCA, para 22; Commission's Final Determination (4 July 2007) in relation to the applications for authorisation (A91031 and A91032) of a Memorandum of Understanding between Sky Channel (**Sky**), Tabcorp and ThoroughVision (**TVN**) (15 February 2007) (**MOU Authorisation Application**) (**Sky, Tabcorp and TVN Final Determination**), para 6.33.



totalisator, which means (among other things) that the host totalisator requires compensation through higher fees for the revenue its loses by providing access to its pool; the racing industry loses product fees on (non-domestic) turnover; and the relevant State government loses tax revenues.

- UNiTAB does not pool with any totalisators other than its subsidiaries. Tab Limited is not permitted to pool without necessary approvals (although Tabcorp and Tab Limited are hopeful that the New South Wales Government will change its position in the near future).

Currently, there is one totalisator licensed in each State and Territory. Therefore, if there is a market for the supply of pooling services, it is at least national in scope. In the UNiTAB PCA, the Commission concluded that 'a national market exists for the supply of pooling services'.<sup>90</sup>

### 6.3 The market for the supply of wagering products to punters

#### (a) Relevant product markets

The ACTTAB 2009 Agreement and the RWWA 2009 Agreement provide ACTTAB and RWWA, respectively, with access to the SuperTAB Pool. The SuperTAB Pool combines the wagers on racing placed with participating totalisators. By definition, those punters who purchase a SuperTAB product are engaging in pari-mutuel wagering. Therefore, the starting point for market definition purposes is a market for the supply of pari-mutuel wagering on racing. Only totalisators offer pari-mutuel wagering products because only totalisators operate a totalisator pool. In Australia, all totalisator wagering product is supplied by TABs (see section 4.5(a) above).<sup>91</sup>

In its assessment of Tabcorp's merger with TAB Limited, the Commission defined separate markets for:

- pari-mutuel betting by State totalisators on racing including thoroughbred racing, harness racing and greyhound racing;
- fixed odds betting by State totalisators and bookmakers on racing including thoroughbred racing, harness racing and greyhound racing; and
- fixed odds betting by State totalisators and bookmakers on sporting events.

While not accepting this analysis, Tabcorp will adopt this approach in respect of the Application, and therefore consider the likely effect of the Commission Rates Provision on a market for pari-mutuel wagering on racing.

However, it is arguable that the relevant product market is broader and includes:

- other types of wagering on racing, including wagering products offered by bookmakers and betting exchanges;
- wagering on other sports or events; and
- other forms of gambling.

- (1) Other types of wagering on racing, including wagering products offered by corporate bookmakers and betting exchanges

<sup>90</sup> At 6.10.

<sup>91</sup> However, some corporate bookmakers have introduced a derivative pari-mutuel wagering scheme whereby they are able to offer a 'TOTE-odds' bookmaker betting product.

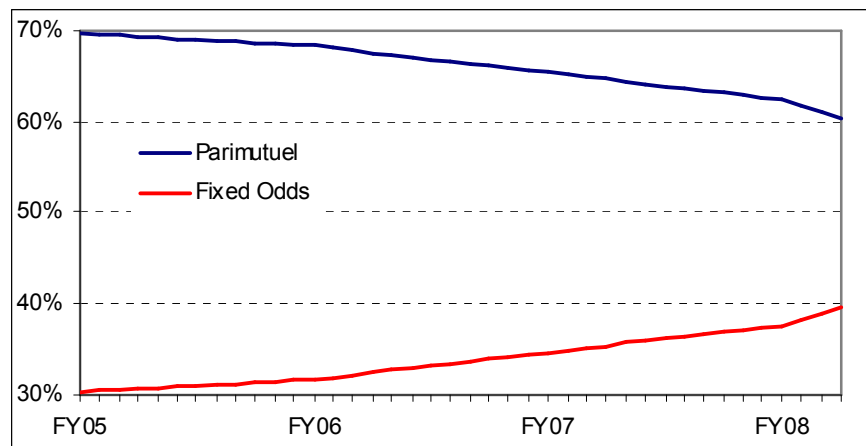
The advent of electronic wagering, by telephone and particularly the internet, and the supply by corporate bookmakers of 'tote odds' products, has seen the rapid growth of large corporate bookmakers, with significant competitive advantages over totalisators.

It is arguable that wagering products offered by corporate bookmakers are in the same product market as pari-mutuel wagering products. Corporate bookmakers offer wagering on the same racing and sporting events as the totalisators. While ostensibly offering a fixed odds product, these odds are usually determined by reference to the dividends being offered by the totalisator pools. Corporate bookmakers operate under significant tax and other advantages to the totalisators (including much lower contributions to the racing industry), with the TABs essentially funding the product on which bookmakers offer fixed odds wagering. This enables corporate bookmakers to offer more attractive odds than those available from the TABs. Telephone and internet betting give corporate bookmakers access to a broad customer base.

There is evidence of competition between the TABs and corporate bookmakers, including:

- Evidence that fixed odds wagering products are increasing their share of the Australian wagering market at the expense of pari-mutuel wagering products. Figure 2 below illustrates the shift in market shares by product for the period 2005 to 2008.

**Figure 2: Australian Wagering Market Share by Product- All Channels**



- Evidence of corporate bookmakers increasing their share of the total wagering market and a corresponding decrease in the market share of TABs (see Table 4 above at section 4.5(b)(2)).
- Evidence of corporate bookmakers directly competing with TABs by offering TAB-dividends (i.e. 'tote odds' product). This involves corporate bookmakers offering a 'fixed odds' price which is determined by reference to the dividend(s) offered by one or more totalisators rather than by the corporate bookmaker undertaking the task of 'framing the market'. Corporate bookmakers may offer their customers, for example, odds equivalent to the best of the three totalisators plus 5 per cent, or the home totalisator plus 2 per cent. Attached to this submission as Annexure L is a

selection of advertisements by corporate bookmakers of their 'TOTE-odds' product.<sup>92</sup> The breakdown of advertising restrictions following the High court's decision in the *Betfair* case has significantly increased this competitive activity.

- Operating concessions have been introduced in some States, including:
  - increased telephone betting (including on racecourses in New South Wales);
  - increased ability to offer sports betting on racecourses via the internet;
  - 24/7 internet betting on sporting and future events;
  - overseas betting (subject to approval of the overseas jurisdiction);
  - corporate bookmakers being permitted to operate at more than one race meeting at the same time; and
  - abolition of the minimum telephone bet limit.
- The Commission has previously recognised that bookmakers, particularly corporate bookmakers offering online wagering services, are likely to compete with totalisators for punters.<sup>93</sup> In the UNiTAB PCA, the Commission stated:

*'... the ACCC also recognised that bookmakers, and in particular corporate bookmakers offering online wagering services, do compete with totalisators for punters (and that betting exchanges potentially may become more significant players in the sector).'*<sup>94</sup>

The Commission restated this conclusion in its determination of Tabcorp's application for authorisation of its pooling arrangements with TOTE Tasmania in 2007 (**TOTE Tasmania Determination**).<sup>95</sup>

(2) Wagering on other sports or events

There is some evidence of demand side substitution between wagering on racing and wagering on other sports and events. For example, over the week of 25 August 2007 to 31 August 2007, during which time all Australian thoroughbred and harness race meetings were abandoned due to the outbreak of Equine Influenza in New South Wales and Queensland, Tabcorp's Victorian pari-mutuel wagering business operated at **[REDACTED]** of expected turnover levels. **[REDACTED]**.<sup>96</sup>

<sup>92</sup> Note that Tab Limited and Tabcorp Holdings Limited commenced proceedings against Sportsbet Pty Ltd in the Federal Court of Australia on 12 February 2009 claiming copyright with respect to approximate totalisator win dividends and totalisator place dividends produced prior to the commencement of a race on which Tab Limited had a totalisator pool.

<sup>93</sup> Sky, Tabcorp and TVN Final Determination, para 6.33 and UNiTAB PCA, para 47. See also Betfair's submission to the ACCC regarding the MOU Authorisation Application (20 March 2007) p 20.

<sup>94</sup> UNiTAB PCA, para 47.

<sup>95</sup> At 6.20.

<sup>96</sup> Internal Tabcorp data. There was increased coverage of greyhound racing on Sky Channel during this period.

[REDACTED].<sup>97</sup>

Further, regardless of demand side substitution, there would appear to be supply side substitution across wagering products, because wagering on races and wagering on other sports and events are supplied by the same providers (totalisators and bookmakers) using the same infrastructure and distribution facilities.

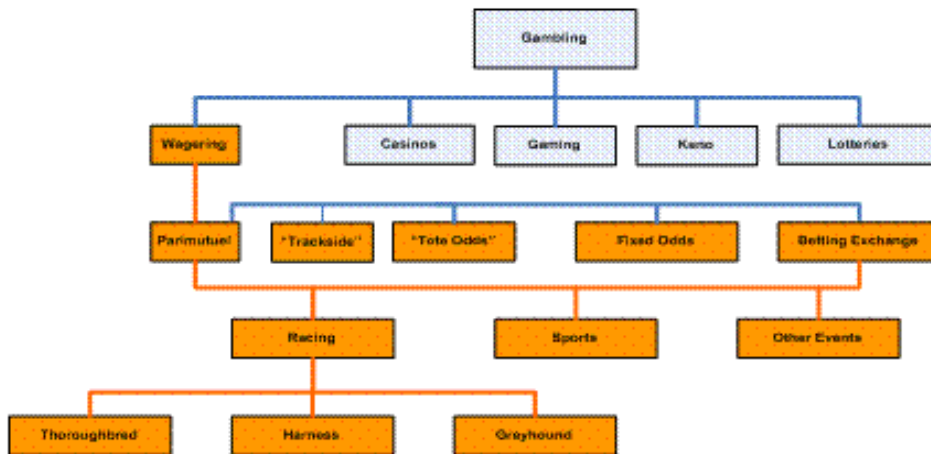
(3) Other forms of gambling

Wagering is one of a range of gambling products available to consumers, including gaming machines, casinos and lotteries. To some extent, all of these gambling opportunities compete with each other for the consumer’s discretionary dollars. The Productivity Commission in 1999 concluded that:

*‘In the past, gambling products have not been highly substitutable. For example, when gaming machines were first introduced in Australia, racing industry revenues remained unchanged. However, in recent years gambling products have converged. For example, the TAB mystery bet is similar to the luck bet on a scratch ticket or a gaming machine; casino games on the internet are the same as those in physical casinos; and keno and lotto products are similar numbers type games. Clearly, gambling products are becoming more substitutable over time.’<sup>98</sup>*

ACIL Tasman, in their analysis of the TAB systems, stated that ‘wagering on sports events is now just one part of the broader gambling market, which includes all activities that allow the lawful placement of wagers or bets on the outcome of future uncertain events.’<sup>99</sup> Figure 3 below illustrates the products that would be included in a broad gambling market.

Figure 3: National gambling market - products



Therefore, while this submission considers the competitive effect of the conduct in respect of a separate market for pari-mutuel wagering on racing, Tabcorp submits that competition and substitution exists

<sup>97</sup> [REDACTED]

<sup>98</sup> Productivity Commission Report, 2.22.

<sup>99</sup> ACIL Tasman, *Analysis of the Australian TAB systems* (28 August 2003) p 3.

beyond the boundaries of this market, within the broader gambling industry.

(4) Other issues in determining the relevant product market

Several further issues arise in relation to the relevant product market:

- Are there separate markets for each code of racing?
- Are there separate markets for different types of punters?
- Are there separate markets for different distribution channels?

*Codes of racing*

Given that pooling occurs in respect of all three codes of racing, it would not be appropriate to consider separate product markets for each code of racing (i.e. thoroughbred, harness, and greyhound). In any event, there is evidence of substitutability between the three codes (see section 6.3(a)(2) above).

*Different types of punters*

Tabcorp distinguishes between professional or high value punters and casual or recreational punters.

**[REDACTED]** This would include many corporate bookmakers placing bet backs with one or more TABs,<sup>100</sup> as well as persons for whom wagering is their profession.

**[REDACTED]**

**Table 9: Rebates paid by Tabcorp in 2008 financial year**

**[REDACTED]**

Although there is evidence of increased targeting of high value punters by TABs, Tabcorp submits that the relevant conduct is most appropriately analysed within a broader market for the supply of wagering product to punters generally.

*Distribution channels*

The distribution channels used by Tabcorp and other wagering operators in Australia include:

- retail – including on-course, agencies, pubs and clubs;
- telephone – including the use by punters of call centres, and touch tone and speech recognition technology;
- the internet – including Tabcorp's wagering websites tab.com.au;
- mobile phones – via Tab.mobi; and
- interactive television.

The forms of distribution used by wagering operators have changed significantly in recent years. Radio, television, telephone and computer technology have increased the opportunity for people to wager without attending the actual event or a physical agency. Further developments such as mobile telephones, the internet, and the ease

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<sup>100</sup> **[REDACTED]**

of funds transfer also assist the expansion of new channels for wagering.<sup>101</sup>

Hotels and clubs currently account for 44 per cent of Tabcorp's wagering sales, while 23 per cent of Tabcorp's wagering sales are made through TAB agencies.<sup>102</sup>

Wagering via telephone remains important and wagering online is becoming increasingly popular. [REDACTED]<sup>103</sup>

Tabcorp considers that all forms of distribution should be included in the same market. On the demand side, an informed punter can readily shift between the various distribution channels. On the supply side, there is nothing in the nature of the wagering product itself that limits the extent to which it can be supplied through one or other distribution channel. The only limitations in this regard are in respect of the capacity of the operator's server (in respect of the internet) or call centre (in respect of telephone), technological constraints (in respect of the internet, mobile phones and interactive television), and the number and size of its retail premises (in respect of retail).

(b) Relevant geographic market

Assuming that the product market is pari-mutuel wagering on racing, a number of factors are relevant to the question of the relevant geographic dimension of the market.

*Factors suggesting State/Territory wide markets for pari-mutuel wagering*

- Each TAB has an exclusive licence to provide wagering services through physical outlets (i.e. through agencies, pubs and clubs) in its State or Territory. Apart from consumers living close to State or Territory borders, competition between physical TAB outlets is accordingly very limited and the relevant geographic market would appear to be confined to the relevant State or Territory. Similarly, bookmakers must be licensed in the relevant State or Territory to offer on-course bookmaking services.
- Further, the off-course totalisator licensed to operate in each State and Territory is required to have contractual arrangements with the industry bodies located in that State or Territory. As set out above, TAH and Tab Limited, although related bodies corporate, operate under separate licences for each State and have separate totalisator pools largely because their operations are each subject to different State regulatory schemes under which they are each required (among other things) to enter into contractual arrangements with the racing authorities in their respective States.
- The extent of cross border wagering remains somewhat limited. As demonstrated in the tables below, TAH and Tab Limited generate the large majority (approximately 95 per cent) of their wagering revenue in the States in which they are licensed – Victoria and New South Wales respectively.

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<sup>101</sup> See The Victorian Gambling Research Panel (commissioned by), South Australian Centre for Economic Studies, Swinburne Institute for Social Research and University of Western Sydney (prepared by), *Changes in Wagering Within the Racing Industry* (May 2005) p 12.

<sup>102</sup> Tabcorp internal data for 2008.

<sup>103</sup> Tabcorp internal data.

**Table 10: Tabcorp Holdings Ltd – value of ‘within’ and ‘out of State’ wagering**

[REDACTED]

**Table 11: Tab Limited – value of ‘within’ and ‘out of State’ wagering**

[REDACTED]

Tabcorp believes that cross-border wagering is limited at present because totalisator competition is a relevantly recent phenomenon. In the past, Tabcorp has not actively competed with other totalisators or been affected by or responsive to competition from other totalisators. However, as set out below and elsewhere in this submission, this situation has very recently changed significantly.

- The Commission has recognised the limited nature of interstate competition. In the UNiTAB PCA, the Commission discussed the regulatory restrictions on interstate competition in the provision of wagering products. In particular, the Commission concluded that:

*‘barriers to entry to this market are high, particularly given the need for new suppliers to obtain a pari-mutuel wagering licence from a State or Territory government (the first current licence to expire is Tabcorp’s Victorian licence in 2012).’<sup>104</sup>*

The Commission also noted that there is currently limited competition between totalisators in different States and that this is ‘largely explained by the inability of totalisators to establish retail outlets or advertise outside of their home states’.<sup>105</sup>

In December 2006, Commissioner John Martin noted that cross-border wagering remains low, despite significant increases in internet and telephone betting over recent years, which might have been expected to increase cross-border activity.<sup>106</sup>

In the TOTE Tasmania Determination, the Commission referred to the UNiTAB PCA and stated that it ‘had not been provided with information to suggest that the market definition should change for the purpose of assessing this authorisation application’.<sup>107</sup> In this regard, the Commission:

- recognised that there was limited competition between totalisators in different states, although noting that different totalisators were still able to compete with respect to the range of bet types offered and with regard to the quality of internet and phone services offered;
- noted that the level of cross border betting had remained low despite increases in recent years in the amount of phone and internet betting.<sup>108</sup>

<sup>104</sup> UNiTAB PCA, para 24.

<sup>105</sup> UNiTAB PCA, paras 30 and 31.

<sup>106</sup> Commissioner John Martin, ACCC, ‘Racing, Sports Betting and the ACCC’ (delivered at the *Racing and Sports Betting Forum*, Sydney, 12 December 2006).

<sup>107</sup> At para 6.15.

<sup>108</sup> At para 6.16-7.

*Factors suggesting a national market for pari-mutuel wagering*

- Technological developments (in particular, the rise of telephone and internet betting) have enabled wagering operators to accept wagers from punters located outside the State or Territory in which they are licensed.
- The breakdown of regulatory and other barriers to competition has resulted in increased competition between totalisators.

**[REDACTED]**

There is also growing competition between totalisators for 'bet backs' placed by bookmakers into the totalisator pools. Although Tabcorp is unable to measure the level of this activity because the wagering operators placing the bet backs do so through existing accounts or commission agents or in cash on course, it estimates this segment is

**[REDACTED]**

Some competition between TABs for all punters (including recreational punters) is evidenced by price competition between the SuperTAB Pool and the UNiTAB pool. This generally takes the form of participants in one pool running a special promotion, whereby a reduced commission rate is applied to wins over certain race days on pooled bets, and this promotion being 'matched' each day by participants in the other pool.<sup>109</sup>

There are many examples of Tabcorp seeking to attract punters by offering promotions, such as:

- Tubby Trifectas – Tubby Trifectas reduce the commission rate on winning Trifectas by 50 per cent (from 20 per cent to 10 per cent);<sup>110</sup>
- First Four Happy Hours – Happy Hours deliver 25 per cent bigger first four dividends based on reducing the commission rate on applicable winning bets from 22.5 per cent to 3.12 per cent;<sup>111</sup>
- Power Pays – give customers a 10 per cent bonus on their Win dividend, based on a commission reduction from 14.5 per cent to 5.95 per cent;<sup>112</sup>
- Golden Doubles – this is a Tabcorp promotion based on reducing the commission on applicable winning daily double bets from 17 per cent to 0 per cent;
- Fat Quaddies – this is a Tabcorp promotion based on reducing the commission on applicable winning quadrella bets from 20 per cent to 0 per cent;<sup>113</sup> and

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<sup>109</sup> For example, Tabcorp's Power Plays are promotions in which Tabcorp reduces the commission rate on winning bets. For information on Tabcorp Power Plays promotions see article 'Power Plays could be here to stay as TAB takes on corporate bookies', *Sydney Morning Herald* (Sydney), 19 February 2007 (<http://www.smh.com.au/news/horseracing/power-plays-could-be-here-to-stay-as-tab-takes-on-corporate-bookies/2007/02/18/1171733611997.html>).

<sup>110</sup> For information on Tubby Trifectas promotion see: [http://www.racingvictoria.net.au/index.php?option=com\\_content&task=view&id=2134&Itemid=250](http://www.racingvictoria.net.au/index.php?option=com_content&task=view&id=2134&Itemid=250).

<sup>111</sup> For information on First Four Happy Hours promotion see: [http://www.racingvictoria.net.au/index.php?option=com\\_content&task=view&id=2090&Itemid=250](http://www.racingvictoria.net.au/index.php?option=com_content&task=view&id=2090&Itemid=250).

<sup>112</sup> For more information on Power Pays promotion see: [http://www.racingvictoria.net.au/news/rvl/n\\_tabcorp.aspx](http://www.racingvictoria.net.au/news/rvl/n_tabcorp.aspx)

<sup>113</sup> For information on Fat Quaddies see Tabcorp media release 'SuperTAB Fat Quaddie pool on target for \$3 million' (19 October 2007) <http://www.skychannel.com.au/company/news/mediareleases/20071019-Fat%20Quaddies%20SRC%20Victoria%20Week%203%20pre.pdf>.



- Big Six introductory offer – as part of the launch of the Big Six product, Tabcorp reduced the commission for the first six weeks it offered the product from 25 per cent to 6 per cent.
- In April 2008, TOTE Tasmania announced a deal to ‘white-label’ its website with Betfair. This arrangement enables TOTE Tasmania to access, via a web site link on the Betfair website, Betfair punters throughout Australia and internationally, and is likely to broaden competition between totalisators.
- In the environment post the *Betfair* decision, with the breakdown of advertising restrictions, [REDACTED]
- Tabcorp expects that other regulatory changes – for example, the Victorian bookmaker reforms of January 2009 and the outcomes of the Cameron Review in New South Wales – will increase direct and indirect competition between totalisators. The relaxation of regulatory constraints on interstate corporate and local bookmakers’ access to the off course segment of punters is likely to lead to significant increases in ‘tote odds’ betting and corresponding increases in bet back activity by corporate bookmakers with the totalisators. The relicensing process in Victoria and the privatisation of TOTE Tasmania may also lead to increased competition between totalisators.
- The Commission recognised the potential for increased competition between TABs in the UNiTAB PCA. While recognising that cross border wagering was low, the Commission was ‘unable to identify significant structural impediments to competition between totalisators located in different states, specifically for large punters using phone and internet wagering services’.<sup>114</sup>
- More recently, in the *Betfair* decision, the High Court recognised a national market for the provision by means of the telephone and the internet of wagering services on racing and sporting events. The Court stated:

*‘The evidence shows that there is a developed market throughout Australia for the provision by means of the telephone and the internet of wagering services on racing and sporting events. Indeed, the evidence shows that such a market may be international. Within the Commonwealth the events may take place in one State, the customer may be in another and the licensed bookmaker or TAB be in a third.’<sup>115</sup>*

Based on the above, Tabcorp submits that totalisators increasingly compete and attract customers beyond their traditional State and Territory boundaries, and it cannot be assumed that the market for pari-mutuel wagering remains a State based market. Accordingly, while not urging a concluded view on this matter, this submission considers the competitive effect of the conduct in respect of a national market for pari-mutuel wagering on racing.

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<sup>114</sup> UNiTAB PCA, para 45.

<sup>115</sup> At para 114.

## 7 The Factual and Counterfactual

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### 7.1 Introduction

As discussed above at section 5.3, four provisions in each of the ACTTAB 2009 Agreement and the RWWA 2009 Agreement are likely to be of interest to the Commission.

Two provisions (the supply of pooling services on condition that ACTTAB/RWWA does not re-supply those services to any other totalisator and the requirement that ACTTAB/RWWA transmits to Tabcorp all investments of certain bet types on nominated Tabcorp races for inclusion in the SuperTAB Pool) fall within section 47(2) of the TPA and are consequently subject to a substantial lessening of competition test. As set out above, the relevant conduct would have little, if any, competitive impact in any relevant market. Therefore, the Commission should grant authorisation in respect of these provisions.

One provision (the supply of pooling services on condition that ACTTAB/RWWA acquires Race Fields Approvals) could be characterised as third line forcing conduct within section 47(6). However, Tabcorp submits that the conduct does not necessarily relate to the acquisition of services, and further does not impose any additional obligation on ACTTAB or RWWA and therefore has no anti-competitive effect. The Commission should therefore grant authorisation in respect of this provision.

Consequently, this section of the submission considers only the competitive effect of the Commission Rates Provision. [REDACTED] this section of the submission considers the future with and without the 2009 Agreements.

### 7.2 The current state of competition in the national market for pari-mutuel wagering on racing

(a) Suppliers of wagering products

The suppliers of pari-mutuel wagering on racing are:

- TABs; and
- to a limited extent, racing clubs.

Tabcorp submits that corporate bookmakers should also be considered as suppliers of wagering products in this market because of their significant use of 'tote odds' products.

(b) Products

TABs offer a variety of pari-mutuel wagering products. The bet types offered by TABs include:<sup>116</sup>

- Win – an Investment on an Event on the chance that a Selection will fill first place in that Event;

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<sup>116</sup> All definitions have been taken from the Tabcorp Betting Rules pp 8-10. See Annexure K. The following terms are defined in the Tabcorp Betting Rules: 'Betting Operator' means 'the operator of the wagering licences pursuant to the Act' (ie the GRA), and therefore is Tabcorp. 'Competitor' means 'any person, team, animal or object that is a competitor in any Event upon which the Betting Operator is accepting Investments and includes a contestant.' 'Event' means 'a race, match, game, round, fight, exercise, sport or sporting competition or any part or parts thereof or contingency nominated by the Betting Operator as being available for selection'. 'Investment' means 'an amount of money which has been paid into a Totalisator in respect of any Event at a Meeting'.+ 'Meeting' means 'the venue and date upon which any Event upon which the Betting operator is accepting Investments is conducted.' 'Selection' means 'any person, team, animal or object or score range or combination thereof nominated by the Betting Operator and available for an Investor to carry an Investment'.

- Place Bet – an Investment on an Event which requires the Selection to finish in the first three or first two places respectively. It is not available if the field is four or less;
- Quinella - an Investment on an Event on the chance that a combination of two Selections will fill first and second places (irrespective of order) in that Event;
- Duet – an Investment on an Event which requires any two Selections to finish in the first three places (irrespective of order) in that Event. It is available if the field consists of eight or more Competitors;
- Exacta – an Investment on an Event on the chance that a combination of two Selections will fill first and second places in the order specified in that Event;
- Trifecta – an Investment on an Event on the chance that a combination of three Selections will fill first, second and third places in order in that Event;
- First 4 – an Investment on an Event on the chance that a combination of four Selections will fill first, second, third and fourth places in that order in that Event;
- Daily Double – an Investment on two Events designated by the Betting Operator at the same Meeting on the chance that a combination of two Selections will fill first places in those Events;
- Running Double – an Investment on two consecutive Events at the same Meeting on the chance that a combination of two Selections will fill first and second places in those Events;
- Quaddie – an Investment on four Events at the same Meeting with no Brackets on the chance that a combination of four Selections will fill first places in those Events;
- BIG6 is an investment on 6 or more selections over 6 Events, nominated by the Betting Operator, on the chance that a combination of those 6 selections will fill first place in those Events. The order that the Events are originally scheduled shall be the order that will be used for selections in all circumstances regardless of when the Event is run.
- Flexi bet – a bet on a type of totalisator (available on a Trifecta, First 4 Quaddie or any other totalisator as otherwise determined by the Betting Operator) where the amount of the investment on each combination covered by the bet is a percentage of the unit of Investment.

The products offered by corporate bookmakers vary from bookmaker to bookmaker. Examples of the types of products offered include:

#### IASbet.com Pty. Ltd

- SuperPrice – the dividend will always exceed the dividends declared by at least two Australian TABs (where three TABs cover a relevant race) or one Australian TAB (where less than three TABs cover a relevant race). SuperPrice is available for Win, Place, Quinella, Exacta, Trifecta and Multi-betting.
- Exotics – IASbet guarantees that the payout for quinella, exacta and trifecta betting for Australian Racing will exceed at least two Australian TABs.

#### Centrebet Pty Limited

- NSW TAB Dividend (Win Bet) – guarantees a price equivalent to the official win dividend declared by the New South Wales TAB.
- VIC TAB Dividend (Win Bet) – guarantees a price equivalent to the official win dividend declared by the Victorian TAB.
- NSW TAB Dividend (Place Bet) – guarantees a price equivalent to the official place dividend declared by the New South Wales TAB with the maximum dividend equal to 1.00 plus 50 percent of the win portion of the New South Wales TAB dividend for the Win.
- VIC TAB Dividend (Place Bet) – guarantees a price equivalent to the official place dividend declared by the Victorian TAB with the maximum dividend equal to 1.00 plus 50% of the win portion of the Victorian TAB Dividend for the Win.
- SuperNSW Odds – guarantees either the fixed-odds given at the time of placing the bet or the official dividend declared by New South Wales TAB, whichever is greater. SuperNSW Odds applies to the Win portion of the bet only.
- SuperVIC Odds – guarantees either the fixed-odds given at the time of placing the bet or the official dividend declared by Victorian TAB (SuperTAB), whichever is greater. SuperVIC Odds applies to the Win portion of the bet only.

#### Betchoice Corporation Pty Ltd

- Best Tote – the win dividend will be equal to the highest win dividend paid by any of the three major Australian totes.
- Middle Tote – the win dividend will be equal to the second highest win dividend paid by an Australian totalisator.
- Tote + 5%; +10% – the dividend paid by the Victorian TAB, plus the nominated percentage bonus based on the winning portion of the bet (eg \$100 bet on Tote + 5 percent at a dividend of \$2 returns \$205)

#### (c) Distribution

Pari-mutuel wagering products are distributed by TABs through distribution channels including the following:

- TAB agencies (located on-course and off-course);
- licensed hotels and clubs;
- the internet;
- by telephone;
- by mobile phone; and
- electronic betting terminals.

#### (d) Competition between suppliers

Competition between suppliers of pari-mutuel wagering products occurs through:

- promotions (including price promotions involving a reduction in the usual commission rate charged by the relevant TAB on one or more products on particular race days);
- the provision of rebates and/or discounts for high value punters;
- superior service levels;
- the provision of other support and services to high value punters; and

- the introduction of new and innovative products.

However, there are structural barriers to competition between suppliers of pari-mutuel wagering products, including:

- the grant of exclusive off-course totalisator licences in each State and Territory;
- legislation in each State and Territory which limits the freedom of TABs to determine their commission rates (either by setting a maximum commission rate or one or more specified commission rates); and
- legislation in each State and Territory which requires the TAB licensed in that State or Territory to enter into arrangements with the relevant industry bodies under which the TAB is required, among other things, to make significant economic contributions to the industry.

### 7.3 The future with and without the conduct

(a) Introduction

If the RWWA 2009 Agreement does not come into effect (whether because of Tabcorp's failure to obtain Commission authorisation or for some other reason), RWWA will not participate in the SuperTAB Pool post **[REDACTED]**.

In contrast, the terms of the ACTTAB 2009 Agreement provide that, if the ACTTAB 2009 Agreement does not come into effect on or before the Cut Off Date due to a failure of the parties to satisfy the conditions precedent in clause 2.1, the ACTTAB 2005 Agreement will remain in full force and effect (i.e. ACTTAB will continue to participate in the SuperTAB Pool under the terms of the ACTTAB 2005 Agreement).

**[REDACTED]**

(b) The future with the 2009 Agreements

(1) Participants

The 2009 Agreements would allow RWWA and ACTTAB to continue to participate in the SuperTAB Pool.

(2) Products

RWWA and ACTTAB (and their customers) would continue to have access to the SuperTAB Pool. RWWA and ACTTAB would thereby be able to provide an improved wagering product to their customers compared to the case if they did not pool with one or more other totalisators.

(3) Distribution

The 2009 Agreements would not affect the distribution of pari-mutuel wagering on racing in Australia.

(4) Competition between suppliers

Pooling on a gross pool pricing basis may tend to facilitate the offering of standardised prices (i.e. commission rates) by Tabcorp and RWWA/ACTTAB on pooled bets. When considered in the context of Tabcorp's separate pooling agreements with TOTE Tasmania, NZRB and Phumelela, the Commission Rates Provision may tend to have

the effect of standardising the price offered by all SuperTAB Pool participants on pooled bets. To this extent, it would limit price competition between suppliers of pari-mutuel wagering.

However, the 2009 Agreements do not prevent price competition between Tabcorp and RWWA/ACTTAB in respect of pooled bets, including:

- through individual promotions (for example, by providing customers with vouchers for free on-course bets); and
- through the provision of rebates and/or discounts to high value punters.

Further, the 2009 Agreements would not affect all other aspects of competition between Tabcorp and RWWA/ACTTAB in respect of pooled bets, including:

- advertising;
- superior service levels;
- the provision of other support and services to high value punters; and
- the introduction of new and/or innovative products.

In addition,

- the 2009 Agreements would not affect competition between Tabcorp and RWWA/ACTTAB in respect of non-pooled bets;
- price (and other) competition would continue between SuperTAB Pool participants and other totalisators who are not participants in the SuperTAB Pool;
- price (and other) competition would continue between SuperTAB Pool participants and corporate bookmakers.

(c) The future without the 2009 Agreements

(1) Tabcorp's view on the options available to RWWA and ACTTAB absent the conduct

**[REDACTED]**<sup>117</sup>

## 8 Public benefits

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As is apparent from the factual and counterfactual analysis above, the 2009 Agreements would result in substantial public benefits, including:

(a) An enhanced wagering product for consumers

The larger the pool, the more stable the dividends paid by the pool would be because large bets would not have the same volatile effects as they do in smaller pools. This would also benefit other providers of wagering products, particularly corporate bookmakers, who rely on the totalisator product in placing bet backs.

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<sup>117</sup> In relation to RWWA the *Betting Control Act 1954* (WA), s 17(E), in relation to ACTTAB the *Betting (ACTTAB Limited) Act 1954* (ACT), s55 and the *Betting (ACTTAB Limited) Rules of Betting Determination 2008 (No 1) (Disallowable instrument DI 2008-52)*, Appendix A

RWWA's and ACTTAB's participation in the SuperTAB Pool provides those punters in Western Australia and the ACT, respectively, who do not want to wager by internet or telephone with access to a better product (i.e. a larger totalisator pool into which to wager and access to products pooled with wagering operators located outside Australia).

- (b) Benefits to the racing industry through increased participation in wagering  
Larger pools attract more customers both domestically and internationally.  
The racing industries in all States and Territories have revenue and/or profit share arrangements with the TAB licensed in that State or Territory. Therefore, increased participation in wagering will result in additional funds being provided to racing industry bodies.  
The 2009 Agreements would result in benefit to the racing industries in Western Australia and the ACT. For example, in 2007/2008, RWWA distributed \$107.4million funding to the WA racing industry in the form of stakes, capital grants, subsidies and participant payments, an increase of 12.7 per cent on the funding provided in the previous year.<sup>118</sup>

## 9 Anti-competitive detriment

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The anti-competitive detriment resulting from the 2009 Agreements would be limited to a risk of some reduction in price competition between Tabcorp and RWWA/ACTTAB. However, as set out in the counterfactual analysis above,

- (a) price competition between Tabcorp and RWWA/ACTTAB can occur under the terms of the 2009 Agreements;
- (b) the 2009 Agreements do not restrict any other aspect of competition between Tabcorp and RWWA/ACTTAB; and  
**[REDACTED]**

### 9.2 Conclusion

Based on the above analysis, Tabcorp submits that the 2009 Agreements would result in substantial public benefit and limited anti-competitive detriment.

## 10 Interim authorisation

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### 10.1 Introduction

Should final authorisation of the 2009 Agreements not come into force on or before **[REDACTED]**, Tabcorp applies for interim authorisation to give effect to, the RWWA 2009 Agreement and the ACTTAB 2009 Agreement from **[REDACTED]** until such time as final authorisation comes into force or, if final authorisation is refused, the later of expiry of the period to apply for review or, if review occurs, when the matters are dispensed

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<sup>118</sup> RWWA Annual Report 2008.

with. Tabcorp's submissions in favour of the Commission granting interim authorisation in respect of each agreement are set out below:

(a) RWWA 2009 Agreement

**[REDACTED]**

Tabcorp submits that interim authorisation should be granted for the following reasons:

**[REDACTED]**

- the changes resulting from implementation of the RWWA 2009 Agreement (if interim authorisation is granted) can easily be reversed should final authorisation not be granted;
- there is a strong prima facie case for authorisation. In particular, the Commission has examined the public detriment and public benefit resulting from the SuperTAB pooling arrangements when it considered Tabcorp's application for authorisation of its pooling agreement with TOTE Tasmania in November 2007. In granting authorisation in that matter, the Commission recognised public benefits resulting from pooling under the terms of the agreement which outweighed any public detriment that resulted. The RWWA 2009 Agreement and Tabcorp's pooling agreement with TOTE Tasmania the subject of Tabcorp's 2007 authorisation application are relevantly the same.

(b) ACTTAB 2009 Agreement

The ACTTAB 2009 Agreement and the RWWA 2009 Agreement raise relevantly the same issues. As such, Tabcorp requests that they be dealt with in parallel.

Tabcorp therefore applies for interim authorisation for the ACTTAB 2009 Agreement on and from **[REDACTED]** until Final Authorisation comes into effect or, if final authorisation is refused, the later of expiry of the period to apply for review or, if review occurs, when the matters are dispensed with.

Tabcorp seeks interim authorisation so that it can begin providing pooling services to ACTTAB on the new terms negotiated between the Parties and consistently with its arrangements with its other domestic pooling partners. If interim authorisation is not granted, the parties will continue to operate under the terms of the ACTTAB 2005 Agreement until the ACCC grants final authorisation and this authorisation comes into force (assuming that final authorisation is granted).

**[REDACTED]**, Tabcorp submits that interim authorisation should be granted in respect of the ACTTAB 2009 Agreement for the same reasons it should be granted in respect of the RWWA 2009 Agreement.

Further, given that the terms of the ACTTAB 2009 Agreement are less restrictive than those currently applying **[REDACTED]**

## 10.2 Comparison of the ACTTAB 2005 Agreement and the ACTTAB 2009 Agreement

The ACTTAB 2009 Agreement relevantly states:

- if ACCC interim authorisation is granted, the ACTTAB 2009 Agreement will come into force;



- if neither ACCC Interim Authorisation nor ACCC Final Authorisation is granted before the Cut Off Date, the 2005 Agreement will remain in full force and effect.

Therefore, when considering Tabcorp's application for interim authorisation of the ACTTAB 2009 Agreement, the Commission should compare the arrangements between the Parties under the ACTTAB 2005 Agreement with the arrangements between the Parties under the ACTTAB 2009 Agreement.<sup>119</sup>

As set out at section 5.3 above, four provisions of the ACTTAB 2009 Agreement will be of interest to the Commission in its consideration of Tabcorp's Application. Table 12 below compares the status of each of these provisions under the ACTTAB 2005 Agreement and the ACTTAB 2009 Agreement.

**Table 12 – Comparison of relevant provisions in ACTTAB 2005 Agreement and ACTTAB 2009 Agreement**

ACTTAB 2009 Agreement	ACTTAB 2005 Agreement	Comment
Pooling Restriction (clause 8.1)	[REDACTED]	[REDACTED]
Investment Requirement (clause 5.1)	[REDACTED]	[REDACTED]
Race Fields Approvals Requirement (clause 2.1(b))	[REDACTED]	[REDACTED]
Commission Rates Provision (clause 5.7 and Tabcorp Betting Rules)	[REDACTED]	[REDACTED]

[REDACTED]

Based on the above, Tabcorp submits that:

- in respect of the four provisions specifically addressed in this submission, the ACTTAB 2009 Agreement does not change the status quo in any significant respect;
- competitive activity by ACTTAB would be less restricted under the terms of the ACTTAB 2009 Agreement.

### 10.3 Effect of final authorisation being denied

Both the ACTTAB 2009 Agreement and the RWWA 2009 Agreement specifically provide for the effect of interim authorisation being granted and final authorisation later being denied. In each case, the granting of interim authorisation would not alter the competitive dynamics of the market such that it could not return to its pre-interim authorisation state if final authorisation was later denied.

- (a) RWWA 2009 Agreement  
[REDACTED]<sup>120</sup>

<sup>119</sup> This comparison is not relevant to RWWA's application for interim authorisation because Tabcorp seeks authorisation of the RWWA 2009 Agreement only from the date on which the current agreement expires.

<sup>120</sup> See clause 2 of the RWWA 2009 Agreement.

[REDACTED]

(b) ACTTAB 2009 Agreement

[REDACTED]<sup>121</sup>

#### 10.4 There is a strong prima facie case for authorisation

There is no opportunity for the Commission to form a comprehensive view on the strength of the Applications (including in light of interested party submissions) prior to granting interim authorisation. However, Tabcorp submits that, even without the benefit of interested party submissions, the case for authorisation is strong.

In particular:

- in respect of the three provisions potentially involving exclusive dealing conduct by Tabcorp, there would be minimal if any competitive detriment resulting from the proposed conduct; and
- in respect of the provision potentially involving a contravention of section 45(2),
  - in respect of the RWVA 2009 Agreement – there would be limited competitive detriment and significant public benefit resulting from the proposed conduct;
  - in respect of the ACTTAB 2009 Agreement – there would be no competitive detriment and some public benefit resulting from the proposed conduct.

In this regard, the Commission has examined the public detriment and public benefit resulting from the SuperTAB pooling arrangements when it considered Tabcorp's application for authorisation of its pooling agreement with TOTE Tasmania in November 2007. In the TOTE Tasmania Determination, the Commission concluded that:

*'[w]hile ... the four [equivalent] provisions of the 2007 Agreement [between Tabcorp and TOTE Tasmania] may result in some public detriment, the ACCC is satisfied that pooling under the terms of the 2007 Agreement also results in public benefit. In particular:*

- *enhanced wagering products supplied by totalisators, in particular those products provided by TOTE Tasmania;*
- *improved competition on service and price for pooled bets between Tabcorp and TOTE Tasmania and*
- *maintaining funding for the Tasmanian racing industry.*

*Overall, the ACCC is satisfied that the public benefits generated by pooling under the terms of the 2007 Agreement outweigh the public detriments.<sup>122</sup>*

The Commission also noted that those interested parties who lodged submissions in response to Tabcorp's application for authorisation generally supported the pooling arrangements and TOTE Tasmania's participation in the SuperTAB Pool.<sup>123</sup> Tabcorp submits that, given the significant public benefits of pooling, interested parties are likely to adopt a similar supportive position in respect of the current Application.

The agreements the subject of this application and the 2007 Agreement referred to by the Commission in its determination are relevantly the same.

Given the strong case for authorisation being granted, Tabcorp submits that the Commission should grant interim authorisation.

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<sup>121</sup> See clause 2 of the ACTTAB 2009 Agreement.

<sup>122</sup> ACCC Final Determination at para 6.140-1.

<sup>123</sup> ACCC Final Determination at para 4.3.

## Confidential Annexure A

Agreement between Tabcorp Manager Pty Ltd and ACTTAB  
Ltd dated 20 March 2009 (**ACTTAB 2009 Agreement**)

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[REDACTED]

## Confidential Annexure B

Agreement between Tabcorp Manager Pty Ltd and Racing and Wagering Western Australia dated 16 March 2009 (**RWWA 2009 Agreement**)

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[REDACTED]

## Confidential Annexure C

Agreement between Tabcorp Manager Pty Ltd and ACTTAB  
Ltd dated 12 October 2005 (**ACTTAB 2005 Agreement**)

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[REDACTED]

## Confidential Annexure D

Agreement between Tabcorp Manager Pty Ltd and Racing and Wagering Western Australia dated 28 October 2005 (**RWWA 2005 Agreement**)

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[REDACTED]

## Annexure E

### Tabcorp Holdings Limited's 2007-08 Annual Report

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See attached.

## ACTTAB Ltd's 2007-08 Annual Report

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See attached.



## Annexure G

### Racing and Wagering Western Australia's 2007-08 Annual Report

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See attached.

## Information regarding some corporate bookmakers in Australia

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Large corporate bookmakers operating in Australia include:

- SportsOdds.com/Centrebet  
SportsOdds is owned by Con and Peter Kafataris and is part of the Centrebet group, which comprises Centrebet International Limited (**Centrebet International**), SportsOdds.com and SuperOdds UK and is Australia's second largest privately owned sports betting company. The Centrebet group holds licences in the ACT, the Northern Territory, Western Australia and the United Kingdom. SportsOdds acquired Centrebet from Jupiters Ltd for \$46.55 million in October 2003.  
Centrebet International is a long-established telephone and internet bookmaking firm based in Alice Springs. Its wagering business offers fixed-odds on-line betting on a diverse range of Australian and international sporting, racing, entertainment and political events. The company's gaming business offers on-line poker and casino products, but not to Australian residents due to regulatory restrictions.  
Fifty four per cent of Centrebet's turnover is derived from customers located in Australia. Its other significant customer bases are Scandinavia (29 per cent of turnover) and Europe (11 per cent of turnover).<sup>124</sup>
- Sportsbet  
Sportsbet has operated in Australia for more than 14 years and is licensed in the Northern Territory by the Northern Territory Racing Commission (**NTRC**). Sportsbet accepts wagers on Australian and international thoroughbred, harness and greyhound racing as well as all manner of local and international sporting, political and entertainment events.
- Sportingbet.com  
Sportingbet is an international wagering operator originally based in the United Kingdom, with substantial Australian operations based in Darwin. Turnover for the Asian/Australian arm of its business totalled GBP 213.7 million in the financial year to 31 March 2003 (global turnover was GBP 1,150.3 million). During the same period, it reportedly had 37,108 customers in the Asian/Australian region, placing 820,602 bets.<sup>125</sup>  
Sportingbet's Australian operations were originally limited to a telephone business service a relatively small number of 'high rollers'. However, since 2003, it has offered online wagering to a much broader base of Australian punters.
- IASbet Limited  
International All Sports Limited (**IAS**) was established in 1996 by Mark Read (previously Darwin All Sports Pty Ltd). IAS is listed on the Australian Stock

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<sup>124</sup> [https://www.investsmart.com.au/company\\_profile/summary/default.asp?function=print&SecurityID=CIL&ExchangeID=ASX](https://www.investsmart.com.au/company_profile/summary/default.asp?function=print&SecurityID=CIL&ExchangeID=ASX)

<sup>125</sup> *Sportingbet.com Annual report* for twelve months to 31 March 2003.

Exchange, and is licensed in both the United Kingdom and Australia.<sup>126</sup> IAS owns and manages various licensed and regulated racebooks, sportsbooks, casinos and poker rooms in both the United Kingdom and Australia.<sup>127</sup>

IASbet is a wholly owned subsidiary of IAS and is licensed by the Northern Territory Government and Queensland Racing in Australia. IASbet is located in the Northern Territory and has almost 140 staff with major offices located in Darwin and Melbourne. Its focus is on race and sports wagering in Australia and overseas.

In 2007/2008, the Australian facing business of IASbet.com increased its customer base by 32 per cent, its turnover by 21.3 per cent, and its revenue by 25.3 per cent as compared with the previous year.<sup>128</sup>

IASbet has a system called *BetaDiv*, which guarantees to beat the best TAB price from each of the three totalisator pools. Typically the overlay on top of the best TAB price is between 1.5 per cent and 2.0 per cent.

- Canbet

Canbet Limited (**Canbet**) is a public company listed on the Australian Securities Exchange. Canbet is a wholly owned subsidiary of global gaming and wagering company IAS (as above).

Canbet's wholly owned subsidiary, Canbet Sports Bookmaker's Pty Ltd is licensed in the United Kingdom to accept bets via the Internet and telephone.

For the financial year to 30 June 2006, Canbet reported a 21 per cent increase in the number of bets placed with the company, and the percentage of bets taken over the Internet has increased to 95 per cent.<sup>129</sup>

- Sports Acumen

Sports Acumen Pty Ltd (**Sports Acumen**) is licensed in Canberra, ACT, and is a wholly owned subsidiary of Bet Worldwide Pty Ltd. Sports Acumen offers a comprehensive range of fixed odds and spread betting markets on the most popular events from around the world, from AFL to Rugby Union and Premier League Soccer to Spring Carnival Feature Racing.<sup>130</sup>

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<sup>126</sup> <http://www.iasbet.com/aboutus/default.aspx>.

<sup>127</sup> <http://www.canbet.com/aboutus/default.aspx>.

<sup>128</sup> IAS 2007-08 Annual Report, 1

<sup>129</sup> IAS 2005-06 Annual Report, pp 2 and 4: <http://www.iasbet-corporate.com/financials/documents/IAS-Annual-PDF-For-WEB.pdf>.

<sup>130</sup> Spread Betting is an unfixed bet type that enables the punter to predict an outcome of a match or event and back their judgement against the 'Spread' quoted by Sports Acumen. The 'Spread' is a scoring range created by Sports Acumen on a specific event or match. If you believe this spread is too high or too low you buy or sell accordingly: [https://www.sportsacumen.com/index.php?categoryid=2&p1809\\_sectionid=3&p1809\\_pageid=23](https://www.sportsacumen.com/index.php?categoryid=2&p1809_sectionid=3&p1809_pageid=23).

## Legislated commission rates in each State and Territory

State	Maximum commission rates
New South Wales	The maximum allowable commission rate which may be prescribed in rules made by the licensee is 25 per cent for each totalisator pool conducted in respect of a particular bet type.
Victoria	The maximum take-out amount which may be specified in betting rules made by the licensee is 25 per cent for each totalisator pool. <sup>131</sup>
Queensland	The maximum commission rate allowable is 25 per cent for each totalisator pool conducted in respect of a particular bet type subject to the requirement that the total overall annual maximum commission rate for the year is 16 per cent. <sup>132</sup>
South Australia	The licence of an on-course totalisator must be given on the condition that it specifies the maximum commission rate. <sup>133</sup> The precise commission rate is not available to the public.
Western Australia	<p>The commission rate for each bet type is as follows:<sup>134</sup></p> <ul style="list-style-type: none"> <li>• Where the totalisator is conducted on the system whereby all winning bets, for a win or a place, are deducted before the commission rate is deducted – <ul style="list-style-type: none"> <li>• for a losing bet for a win – 20 per cent</li> <li>• for a losing bet for a place – 25 per cent</li> </ul> </li> <li>• for all win bets that are not pooled – 14.5 per cent</li> <li>• for all place bets that are not pooled – 14.25 per cent</li> <li>• for all novelty bets as described in the wagering rules, other than a favourite numbers bet – 20 per cent</li> <li>• for bets of any other kind – 25 per cent</li> </ul> <p>RWWA may determine a lower amount than the amount prescribed in relation to bets of a specified kind and received by RWWA or an agency for inclusion on a totalisator pool operation by RWWA during a specified period.<sup>135</sup></p>
Tasmania	The commission rate for each bet type is as follows, subject to modification by regulation. <sup>136</sup>

<sup>131</sup> *Gambling Regulation Act 2003* (Vic), s 4.2.5(2B).

<sup>132</sup> *Wagering Act 1998* (Qld), s163; *Wagering Regulation 1999*(Qld), Reg 5.

<sup>133</sup> *Authorised Betting Operations Act 2000* (SA), s 36(3).

<sup>134</sup> *Betting Control Regulations 1978* (WA), reg 17C. See also *Betting Control Act 1954* (WA), s 17E.

<sup>135</sup> *Betting Control Act 1954* (WA), s 17E(2).

<sup>136</sup> *Racing (Totalizator Betting) Act 1952* (Tas), s 57M(1A).

	<ul style="list-style-type: none"> <li>• win totalisator –14.25 per cent;</li> <li>• place totalisator – 14.25 per cent;</li> <li>• daily double totalisator – 17 per cent;</li> <li>• consolation double totalisator – 17 per cent;</li> <li>• forecast totalisator – 16.5 per cent;</li> <li>• trifecta totalisator – 19 per cent;</li> <li>• quinella totalisator – 15 per cent;</li> <li>• quadrella totalisator – 19 per cent;</li> <li>• straight 6 totalisator – 17 per cent; and</li> <li>• <i>superfecta totalisator</i> – 20 per cent.</li> </ul>
Australian Capital Territory	There is no legislated maximum commission rate in the ACT. However, commission rates are consistent with other states.
Northern Territory	The maximum commission rate allowable is 25 per cent for each totalisator pool conducted in respect of a particular bet type subject to the requirement that the total overall annual maximum commission rate for the year is 16 per cent. <sup>137</sup>

<sup>137</sup> The body administering the relevant legislation may make rules in relation to the deduction of a commission rate- *Totalisator Licensing and Regulation Act 2000*, s46(2)(f) (NT); *Totalisator Rules 2000* (NT), rule 6.

## Summary of legislative restrictions on wagering advertising in Victoria, Western Australia and the Australian Capital Territory

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### VICTORIA

**Legislation** *Gambling Regulation Act 2003 (Vic) (GRA)*, as amended by the *Racing and Gambling Legislation Amendment Act 2008* which came into force on 1 January 2009.

*Interactive Gambling Act 2001 (Cth) (IGA)* – NB: the IGA does not apply to excluded wagering services, which includes betting on horse, harness, greyhound races and sporting events.

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**Codes** *Victorian Bookmaker's Code of Practice*

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**Current position** In general, only bookmakers registered in Victoria and Tabcorp are able to advertise in Victoria. However, interstate bookmakers are permitted to advertise interactive gambling if they are licensed to conduct interactive gambling under the corresponding law of the participating jurisdiction in which the provider is licensed. No declarations have yet been made that the law in any other jurisdiction, is a corresponding law.

However, on 10 October 2008, the Victorian State Government indicated that it would not be pursuing prosecutions of interstate bookmakers, pending the formal repeal of legislative provisions that prohibit interstate bookmakers from advertising in Victoria.

The Victorian Bookmakers' Association has set out voluntary responsible advertising practices for bookmakers, but there does not appear to be any prohibition on inducement advertising, whether in the Code or under the GRA.

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**Proposed position** On 10 October 2008, the Victorian State Government announced its intention to repeal legislative provisions which prohibit bookmakers from other states advertising in Victoria. It does not appear that a Bill has been drafted yet to effect these proposed changes.

State racing Ministers have resolved to create a national standard for bookmaker and totalisator advertising which would include prohibiting free bets. (see Dan Silkstone 'Inducements to be banned from bet ads' *Age (Sport, p6)* 6/12/08); Vic Media Release 'Racing ministers to move on advertising standards and commission agents' 5/12/08)

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## WESTERN AUSTRALIA

**Legislation** *Gaming and Wagering Commission Act 1987 (WA) (GWCA)*  
*Betting Control Act 1954 (WA) (BCA)*  
*Betting Control Regulations 1978 (WA) (BCR)*  
*Interactive Gambling Act 2001 (Cth) (IGA)* – NB: the IGA does not apply to excluded wagering services, which includes betting on horse, harness, greyhound races and sporting events.

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**Codes** *WA Racing Industry Responsible Wagering Code of Practice* – applies to both on and off course wagering operators in WA.

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**Current position** In general, bookmakers licensed in WA and WA TAB are able to advertise in WA. However, on 18 November 2008, the WA Department of Racing Gaming and Liquor indicated that it would not pursue prosecution against any betting operator licensed in another Australian jurisdiction who advertises in WA, while WA race fields legislation is being progressed.

The *WA Racing Industry Responsible Wagering Code of Practice* sets out voluntary responsible advertising practices, including a prohibition on offering inducements.

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**Proposed position** On 18 November 2008, the WA Department of Racing Gaming and Liquor indicated that amendments to the *Gaming and Wagering Commission Act 1987 (WA)* would be made to remove the restrictions on advertising. In particular, s 43A will be amended to extend the authorisation to advertise in WA to betting operators licensed in an Australian jurisdiction. However, all advertising will have to comply with prescribed guidelines with respect to consumer protection measures. Advertising that is considered not to be in the public interest will be prohibited by regulation.

However, at the Australasian Racing Ministers' Conference held in December 2008, State racing ministers resolved to create a national standard for bookmaker and TAB advertising which would include prohibiting free bets. (see Dan Silkstone 'Inducements to be banned from bet ads' *Age (Sport, p6)* 6/12/08); Vic Media Release 'Racing ministers to move on advertising standards and commission agents' 5/12/08)

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## ACT

**Legislation** *Games, Wagers and Betting Houses Act 1901 (ACT) (GWBH)*  
*Interactive Gambling Act 1998 (ACT) (IGA)*  
*Pool Betting Act 1964 (ACT) (PBA)*  
*Unlawful Games Act 1984 (ACT) (UGA)*  
*Gambling and Racing Control (Code of Practice) Regulation 2002 (ACT) (GRC(CP)R)*  
*Interactive Gambling Act 2001 (Cth) (IGA)* – NB: the IGA does not apply to excluded wagering services, which includes betting on horse, harness,

greyhound races and sporting events.

<p><b>Codes</b></p>	<p><i>Gambling and Racing Control (Code of Practice) Regulation 2002 (GRC(CP)R)</i></p> <p>NB: The Gambling and Racing Commission is required to develop a code of practice for each gambling provider in the ACT. However, a single code of practice (formally called the <i>Gambling and Racing Control (Code of Practice) Regulation 2002</i>) has been developed that covers all providers, on the basis that there is significant common ground between licensed or authorised gambling providers.</p>
<p><b>Current position</b></p>	<p>In general, only licensed ACT operators can advertise in the ACT, subject to certain restrictions.</p> <p>However, interstate bookmakers are permitted to advertise interactive gambling if they are authorised to conduct interactive gambling under the corresponding law of the participating jurisdiction in which the provider is licensed. No declarations have yet been made that the law in any other jurisdiction, is a corresponding law.</p> <p>The responsible advertising requirements are set out in a mandatory Code and apply to licensed ACT race and sports bookmakers, interactive gambling licensees and ACTTAB. It includes a prohibition on inducement advertising.</p>
<p><b>Proposed position</b></p>	<p>No known plans to introduce changes.</p> <p>However, at the Australasian Racing Ministers' Conference held in December 2008, State racing ministers resolved to create a national standard for bookmaker and TAB advertising which would include prohibiting free bets. (see Dan Silkstone 'Inducements to be banned from bet ads' <i>Age (Sport, p6)</i> 6/12/08); Vic Media Release 'Racing ministers to move on advertising standards and commission agents' 5/12/08)</p>
<p><b>NSW</b></p>	
<p><b>Legislation</b></p>	<p><i>Racing Administration Act 1998 (NSW) (Racing Administration Act)</i> as amended by <i>Racing Administration Amendment Act 2008 (NSW)</i> which commenced on 3 December 2008.</p> <p><i>Racing Administration Regulation 2005 (NSW) (Racing Administration Regulation)</i></p> <p><i>Totalizator Act 1997 (NSW) (Totalizator Act)</i></p> <p><i>Totalizator Regulation 2005 (NSW) (Totalizator Regulation)</i></p> <p><i>Gaming Machines Act 2001 (Gaming Machines Act)</i></p>
<p><b>Previous position</b></p>	<p>Prior to the amendments to the Racing Administration Act, it was an offence for a wagering operator licensed in any jurisdiction other than</p>



NSW to publish betting information or advertisements in NSW. Only wagering operators licensed in NSW could publish betting information or advertisements in NSW.

However, there was a period of time in 2008 prior to the amendments when the Government ceased to pursue prosecutions for advertising offences.

**Current position    Wagering and betting**

Licensed wagering operators (whether licensed in NSW or interstate) are able to advertise in NSW, provided they comply with the NSW responsible advertising requirements.

The NSW responsible advertising requirements are set out in the Racing Administration Regulation (for gambling-related advertising) and the Totalizator Regulation (for totalisator advertising). It is an offence to advertise inducements (including credit) under the RAR, but there is no direct prohibition on inducement advertising under the Totalizator Regulation. However, s 81 of the Totalizator Act provides that credit betting is unlawful.

**Gaming**

The Gaming Machines Act prohibits the advertising of gaming machines (s 43). As Trackside is an approved multi-terminal gaming machine under the Gaming Machines Act, it is treated as a gaming machine and is subject to this advertising restriction.

**QUEENSLAND**

**Legislation**

*Racing Act 2002* (Qld) (**Racing Act**) – the relevant restriction is on advertising an ‘illegal betting place’, which does not appear to apply to the advertising of online or telephone wagering as ‘place’ is limited in scope and does not cover the operation of the business.

*Wagering Act 1998* (Qld) (**Wagering Act**) – sets out advertising standards

*The Criminal Code Act 1899* (Qld) (**Criminal Code Act**)

*Interactive Gambling (Player Protection) Act 1998* (Qld) (**Interactive Gambling (PP) Act**)

*Gaming Machine Act 1991* (Qld) (**Gaming Machine Act**)

**Codes**

*Queensland Responsible Gambling Code of Practice* – as supplemented by the *Queensland Responsible Gambling Advertising and Promotions Guideline* and *Guidelines for Player Loyalty Programs*.

**Current position    Wagering and betting**

Only bookmakers licensed in Queensland and UNiTAB are permitted to advertise in Queensland.

However, in early January 2009, the Queensland Treasurer Andrew Fraser announced that the Government would not be pursuing prosecutions for breaches of advertising provisions under the Interactive Gambling (PP) Act if an interstate operator advertises in Queensland pending formal repeal or amendments to that Act. While the restriction on advertising an 'unlawful game' in the Criminal Code Act may potentially cover a licensed interstate bookmaker, such advertising has been occurring for some time by a number of operators without prosecution. In any case, the restriction would be unlikely to survive a challenge under s 92 of the Constitution in view of the *Befair* decision.

The Wagering Act sets out mandatory advertising standards for UNiTAB or a UNiTAB subsidiary eg that the advertisements must be based on fact, must not be indecent or offensive and must not be misleading or deceptive. The voluntary *Queensland Responsible Gambling Code of Practice* also sets out responsible advertising practices, including a prohibition on irresponsible trading practices that, according to the *Queensland Responsible Gambling Advertising and Promotions Guideline*, include offering inappropriate inducements such as free credit and promotions that are conditional on a person gambling.

### Gaming

The Criminal Code Act makes it an offence to promote an unlawful game (ss 230A, 234). However, as a matter of statutory construction, it is arguable that the Queensland Parliament can only have intended to regulate the promotion of unlawful games played within the boundaries of Queensland. Although Trakside is not available or approved for operation in Queensland, there may still be a risk that the prohibition will apply to the promotion of Trakside in Queensland.

The Gaming Machines Act requires the advertising of gaming to not be indecent, false, deceptive or misleading (s 229). Trakside arguably falls within the definition of a gaming machine and if so, would be subject to this requirement.

## SOUTH AUSTRALIA

**Legislation**      *Lottery and Gaming Act 1936 (SA) (Lottery and Gaming Act)*  
*Authorised Betting Operations Act 2000 (SA) (Authorised Betting Operations Act)* – as amended by the *Statutes Amendment (Betting Operations) Bill 2008 (SA)* which commenced on 1 March 2009

**Codes**            Advertising (Authorised Interstate Betting Operators) Code of Practice (**Interstate Betting Operators Code**)  
Advertising (Bookmakers) Code of Practice (**Bookmakers Code**)  
Advertising (Licensed Racing Clubs) Code of Practice (**Licensed Racing Clubs Code**)  
Advertising (SA TAB) Code of Practice (**SA TAB Code**)

**Current position    Wagering and betting**

SA TAB, licensed SA bookmakers and authorised interstate betting operators are able to advertise in SA but must comply with applicable Commonwealth and State laws and advertising industry codes of practice. The advertising codes are substantially the same across all three types of operators.

There is no specific prohibition on inducement advertising under the codes, but inducement advertising may be contrary to the general principle prescribed by the codes of advertising in a manner that is socially responsible.

**Gaming**

The Lottery and Gaming Act arguably prohibits advertising the availability of Trackside in South Australia because Trackside arguably falls within the definition of 'lottery' in s 4 (s 8 LGA).

**TASMANIA**

**Legislation**                    *Racing Regulation Act 2004 (Tas) (Racing Regulation Act)*  
*Gaming Control Act 1993 (Tas) (Gaming Control Act)*

**Code**                            *Tasmanian Gambling Industry Group Advertising Code of Conduct (Advertising Code of Conduct)*  
*Tasmanian Gambling Industry Group Code of Advertising Ethics (Code of Advertising Ethics)*

**Current position    Wagering and betting**

Only bookmakers licensed in Tasmania and Tote Tas are permitted to advertise in Tasmania.

The Advertising Code of Conduct applies to all outlets of Tote Tas, and sets out responsible gambling requirements, including a prohibition on gambling advertising or inducements that challenge or dare patrons to play any game.

While the Tasmanian Government has not made any announcement that it will not pursue prosecutions for breaches by interstate operators of advertising restrictions, it is unlikely that these restrictions will survive a challenge under s 92 of the Constitution in view of the *Betfair* decision.

**Gaming**

The Gaming Control Act must not advertise or in any other way directly or indirectly promote to the public the use of computers for the purposes of wagering on simulated games (s 76ZZA). However, as Trackside does not involve the use of a telecommunications device, it does not fall within the definition of a simulated game in s 3 of the Gaming Control Act and is not subject to the prohibition in s 76ZZA.

However, there is a separate prohibition in the Gaming Control Act on advertising and promoting gaming unless the person is the holder of a gaming licence or permit under Part 4A of the Gaming Control Act (s 112R). The operator of Trackside in Tasmania is Tote Tasmania. Tote Tasmania is exempt from the requirement under Part 4A by virtue of s 76B(4)(c), and could therefore advertise Trackside. However, the prohibition under s 112R would apply to Tabcorp were it to advertise Trackside in Tasmania, unless Tabcorp obtained an appropriate licence or permit.

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**Proposed position** No known plans to introduce amendments.

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## NORTHERN TERRITORY

**Legislation** *Totalisator Licensing and Regulation Act 2000* (NT) (**Totalisator Licensing and Regulation Act**)  
*Racing and Betting Act 1983* (NT) (**Racing and Betting Act**)  
*Unlawful Betting Act 1989* (NT) (**Unlawful Betting Act**)  
*Totalisator Licensing and Regulation Regulations 2000* (NT) (**Totalisator Licensing and Regulation Regulations**) – do not create any advertising offences, but set out various things that the Northern Territory Licensing Commission can do to promote responsible wagering.  
*Racing and Betting Regulations 1984* (NT) (**Racing and Betting Regulations**)  
*Gaming Control Act 1993* (NT) (**Gaming Control Act**)

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**Codes** *Northern Territory Code of Practice for Responsible Gambling*  
*Northern Territory Responsible Gambling Manual*

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**Current position** **Wagering and betting**

Only bookmakers licensed or registered in NT and NT TAB can advertise. The Racing and Betting Regulations provide that licensed bookmakers may only advertise through an approved advertisement. 'Approved' is defined in the Racing and Betting Act as meaning approved by the Northern Territory Licensing Commission.

While the Northern Territory Government has not made any announcement that it will not pursue prosecutions for breaches by interstate operators of advertising restrictions, it is unlikely that these restrictions will survive a challenge under s 92 of the Constitution in view of the *Betfair* decision.

The Code sets out voluntary responsible advertising requirements. While there is no specific prohibition under the Code for inducement

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advertising, such advertising may be considered contrary to the  
general principle in the Code of advertising in an 'honest and  
responsible' manner.

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**Proposed position** No known plans to introduce changes.

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## Tabcorp Betting Rules

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See attached.

Selection of advertisements by corporate bookmakers of their  
TOTE-odds product

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See attached.

## Summary of current Australian pooling arrangements

	NSW	Vic	QLD	WA	SA	Tas	ACT	NT
<b>Status of off-course wagering operator</b>	Tab Limited ( <b>TAB Limited</b> ) – a listed public company	Tabcorp Holdings Limited ( <b>TAH</b> ) – a listed public company	TAB Queensland Limited ( <b>UNiTAB</b> ) – a listed public company	Racing and Wagering Western Australia ( <b>RWWA</b> ) – State-owned company	South Australia TAB ( <b>SA TAB</b> ) – a wholly owned subsidiary of UNiTAB	TOTE Tasmania Pty Ltd ( <b>TOTE Tasmania</b> ) – a State-owned company	ACTTAB Limited ( <b>ACTTAB</b> ) – a Territory-owned Corporation	Northern territory TAB ( <b>NT TAB</b> ) – a wholly owned subsidiary of UNiTAB
<b>Year privatised</b>	1998	1994	1999	n/a	2002	n/a (The Tasmanian Government has recently announced plans to sell TOTE Tasmania by way of a competitive tender.)	n/a	2000
<b>Off-course licence</b>	Licence granted until 2097, with exclusivity until 2013	Exclusive totalisator licence until 2012	Licence granted until 2098, with exclusivity until 2014	Exclusive totalisator entity	Exclusive licence to 2016	Exclusive totalisator entity	Exclusive totalisator entity	Exclusive licence until 2015 (Racing only)
<b>Pooling – racing</b>	Nil in relation to racing	Operates SuperTAB pool – pools with ACT, WA and Tas	Operates UNiTAB pool (including SA and NT)	Pools with Tabcorp	Pools with UNiTAB	Pools with Tabcorp	Pools with Tabcorp	Pools with UNiTAB



<b>Pooling – other</b>	Allows pooling with UNiTAB for rugby league	Operates national Sportsbook pool for sports betting	Pools with Tab Limited for NRL Sports betting managed by Tabcorp	Sports betting managed by Tabcorp	Sports betting managed by Tabcorp	Sports betting managed by Tabcorp	Sports betting managed by Tabcorp	Sports betting managed by Tabcorp
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## Confidential Annexure N

VicRacing approval for ACTTAB dated 18 March 2009

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[REDACTED]

## Confidential Annexure O

VicRacing approval for RWWA dated 18 March 2009

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[REDACTED]

## Annexure P

## Industry contacts

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The following table lists some of the parties that may be interested in commenting on the Application for authorisation of the 2009 SuperTAB Pooling Agreements between Tabcorp and each of ACTTAB and RWWA.

Name	General enquiries	Postal address
<b>Totalisators, betting exchanges and corporate bookmakers</b>		
ACT TAB Limited	Phone: (02) 6245 6211 Fax: (02) 6245 6242 <a href="mailto:customerservice@acttab.com.au">customerservice@acttab.com.au</a>	Suite 1, Level 1, The Marketplace Hibberson Street Gungahlin ACT 2912
Racing & Wagering Western Australia (RWWA)	Phone: (08) 9445 5333 Fax: (08) 9244 5914 <a href="mailto:info@rwwa.com.au">info@rwwa.com.au</a>	14 Hasler Rd Osborne Park WA 6017
Befair Pty Limited	Phone: 1800 644 738	Dowsing Point Tasmania 7010
Sportsbet Pty Ltd	Phone: 1800 990 907	GPO Box 3207 Darwin NT 0801
Centrebet	Phone: (02) 9206 8888 Fax: (02) 9310 5252 <a href="mailto:centrebet@centrebet.com">centrebet@centrebet.com</a>	Administration 110 – 116 Bourke St Alexandria NSW 2015
IASbet	Phone: 133 773	PO Box 3325 Darwin NT 0801
Sports Acumen	Phone: 1300 656 540	PO Box 928 Dickson ACT 2602
<b>Racing clubs</b>		
Canberra Racing Club Inc.	Phone: (02) 6241 3888 Fax: (02) 6241 5697 <a href="mailto:canberraracing@thoroughbredpark.com.au">canberraracing@thoroughbredpark.com.au</a>	PO Box 275 Mitchell, ACT 2911
The Western Australian Turf Club Trading as Perth Racing	Phone: (08) 9277 0777 Fax: (08) 9277 7722 <a href="mailto:perthracing@perthracing.org.au">perthracing@perthracing.org.au</a>	PO Box 222 Belmont WA 6984
Clubs Victoria	Phone: (03) 9349 2909 Fax: (03) 9349 4915 <a href="mailto:admin@clubsvic.org">admin@clubsvic.org</a>	PO Box 363 Carlton South Vic 3053
<b>State / Territory industry bodies</b>		
Racing Victoria Limited	Phone: (03) 9258 4258 Fax: (03) 9258 4743	Racing Victoria Centre 400 Epsom Road Flemington VIC 3031
Harness Racing Victoria	Phone: (03) 8378 0200 Fax: (03) 9372 6104	PO Box 184 Moonee Ponds Vic 3039

	John Anderson (Chief Executive): <a href="mailto:info@hrv.org.au">info@hrv.org.au</a>	
Thoroughbred Breeders Association Victorian Inc	Phone: (03) 9258 4233 Fax: (03) 9258 4318  <a href="mailto:tbv@racingvictoria.net.au">tbv@racingvictoria.net.au</a>	Ground Floor - Racing Victoria Limited Centre 400 Epsom Rd Flemington Vic 3031
Victorian Bookmakers Association	Phone: (03) 9376 1933 Fax: (03) 9376 7933  John Clancy (Executive Officer): <a href="mailto:j.clancy@vicbookmakers.com.au">j.clancy@vicbookmakers.com.au</a>  <a href="mailto:enquiries@vicbookmakers.com.au">enquiries@vicbookmakers.com.au</a>	Racing Victoria Centre 400 Epsom Road Flemington Vic 3031
A.C.T. Bookmakers Association	Phone: (02) 6288 8255 Fax: (02) 6287 2018	PO Box 474 Wooden ACT 2606
WA Bookmakers Association Inc	Phone: (08) 9361 2022 Fax: (08) 9361 2929  <a href="mailto:waba@bigpond.net.au">waba@bigpond.net.au</a>	Po Box 671 Victoria Park WA 6979
Gaming and Wagering Commission of Western Australia	Phone: 1800 634 541 Main Fax: (08) 9325 1041  <a href="mailto:rql@rql.wa.gov.au">rql@rql.wa.gov.au</a>	P.O. Box 6119 East Perth WA 6892
<b>National racing bodies</b>		
Australian Racing Board Ltd	Phone: (02) 9551 7700 Fax: (02) 9551 7708  Andrew Harding(Chief Executive): <a href="mailto:aharding@australian-racing.net.au">aharding@australian-racing.net.au</a>	Australian Racing Board Level 7, 51 Druitt Street Sydney, NSW, 2000 Australia
Australian Harness Racing Council	Phone: (03) 9867 8033 Fax: (03) 9866 8356  <a href="mailto:hrc@harness.org.au">hrc@harness.org.au</a>	Level 7, 390 St Kilda Road, Melbourne Vic 3004
Australian Punters Association	Phone: (02) 0411 680 408 (Aidrian O'Domhnaill) Fax: (02) 9401 0632  <a href="mailto:info@auspunters.com.au">info@auspunters.com.au</a>	25 Allambie Road Allambie Heights NSW 2100
Australian Bookmakers Association	Phone: (02) 9267 7605 Fax: (02)9267 4147  <a href="mailto:bookies@citytatts.com.au">bookies@citytatts.com.au</a>	ABA Pty Ltd Level 2, 198 Pitt St Sydney NSW 2000