

**Submission to the
Australian Competition
and Consumer
Commission:**

**Summary of the 2009
SuperTAB Agreement
between Tabcorp
Manager Pty Ltd and
Racing and Wagering
Western Australia**

2009 Agreement Summary

1 Introduction

On 16 March 2009, Tabcorp Manager Pty Ltd (**Tabcorp**) and Racing and Wagering Western Australia (**RWWA**) (together referred to as the **Parties**) entered into an agreement governing RWWA's participation in the SuperTAB Pool (**2009 Agreement**).

Under the terms of the 2009 Agreement, Tabcorp agrees to provide pooling services to RWWA in return for a fee (**Processing Fee**).

The following is a summary of the 2009 Agreement.¹ The summary does not contain information confidential to the Parties and may be used by the Australian Competition and Consumer Commission (**Commission**) in undertaking market enquiries.

2 Conditions precedent

2.1 Conditions

The 2009 Agreement is subject to five conditions precedent:

- (a) final authorisation being granted and coming into force;
- (b) RWWA obtaining all Race Fields Approvals;
- (c) Tabcorp obtaining all Required Participation Approvals;
- (d) RWWA obtaining all Regulatory Approvals; and
- (e) ensuring the tax exemption under the *Gambling Regulation Act 2003 (Vic)* (**GRA**) is current and applicable.

Tabcorp may terminate the 2009 Agreement immediately by notice in writing to RWWA if the above conditions are not satisfied by 30 September 2009;

2.2 Authorisation

The condition precedent relating to authorisation provides that:

- in the absence of interim authorisation being granted, the 2009 Agreement does not come into force unless and until final authorisation is granted and comes into force;
- the granting of interim authorisation will bring the 2009 Agreement into force (subject to other conditions precedent being satisfied).

If final authorisation has not come into force by 30 September 2009, Tabcorp may terminate the 2009 Agreement immediately by notice in writing to RWWA.

If interim authorisation is granted but is withdrawn or revoked and/or final authorisation has not come into force by 30 September 2009, either party may terminate the 2009 Agreement by notice in writing to the other party.

¹ General boilerplate clauses have not been included.

2.3 Race Fields Approvals

The condition precedent relating to Race Field Approval provides that the 2009 Agreement will not come into force unless and until all Race Fields Approvals have been obtained by RWWA.

'Race Fields Approvals' means the racing industry and Regulatory Approvals required by RWWA for it to use, publish and make available Race Fields Information in the course of its business and to conduct betting operations in a State or Territory.

2.4 Required Participation Approvals

The condition precedent relating to Required Participation Approvals provides that the 2009 Agreement will not come into force unless and until all Required Participation Approvals have been obtained in a form that is acceptable to Tabcorp.

'Required Participation Approvals' means the approvals or consents which Tabcorp must obtain from the racing industry or regulatory authorities for RWWA to participate in the SuperTAB Pool. Currently, these are the approvals from VicRacing Pty Ltd and consents from the Victorian Commission for Gambling Regulation.

2.5 Regulatory Approvals

The condition precedent relating to Regulatory Approvals provides that the 2009 Agreement will not come into force unless and until RWWA has obtained all Regulatory Approvals that it requires in connection with the 2009 Agreement.

"Regulatory Approvals" means consents, approvals, authorisations, licences, permits, instruments or other acts made or given by a government agency or Minister.

3 Term

The 2009 Agreement will commence on the Effective Date, being the date that the last condition precedent to be satisfied is satisfied, and continue until 14 August 2012, unless terminated earlier (**Term**).

4 Investment Requirement

Tabcorp provides pooling services to RWWA on the condition that RWWA transmits to Tabcorp for inclusion in the SuperTAB Pool all Investments on the specified bet types received by RWWA on Tabcorp Events.²

'Tabcorp Events' are defined as events on which Tabcorp conducts totalisator betting from time to time in the ordinary course of its business.

'Investments' means the bet types set out below.

The bet types are: Win/Place, Trifecta, Quaddie and First Four.

² The 2009 Agreement does not prevent RWWA pooling:

- bet types not specified in the 2009 Agreement; and
- Investments received on non-Tabcorp races,

with third party betting operators.

In the event Tabcorp implements an additional bet type, RWWA may request Tabcorp's consent to transmit Investments in relation to such bet types to Tabcorp for inclusion in the SuperTAB Pool.

5 Rules and Directions

RWWA must comply with:

- all Applicable Laws; and
- the Tabcorp Betting Rules.

These provisions govern the acceptance of Investments for inclusion in the SuperTAB Pool and the calculation of dividends.

6 Integrity protocols

Tabcorp and RWWA must make details of betting transactions available to the following bodies and persons to investigate suspicious betting activity, to enforce the respective rules of racing for each racing code, and to investigate and enforce the respective betting rules for each State, Territory and other jurisdictions participating in the SuperTAB Pool:

- controlling bodies and stewards of a racing code in a State, Territory or other jurisdiction participating in the SuperTAB Pool in respect of whose races wagers have been made; and
- officers of any statutory authority whose function is to regulate wagering in the participating State, Territory or other jurisdiction participating in the SuperTAB Pool.

7 Copyright and protection of intellectual property

Tabcorp grants RWWA the non-exclusive right to use the Wagering Data provided to RWWA by Tabcorp solely for the purposes of promoting and accepting Investments on the Tabcorp Events and operating its betting engine via its website.

'Wagering Data' means totalisator odds and dividends for an event where the SuperTAB Pool operates and excludes Race Fields Information.

RWWA must at least use reasonable efforts to prevent unauthorised parties from gaining access to, reproducing or disassembling the Wagering Data in any manner.

Retail Operators, and any other third parties for whom Tabcorp has relevantly licensed, may use the Wagering Data for the purpose of carrying on RWWA's business.

'Retail Operators' means legal agents of RWWA who operate retail wagering outlets under the RWWA brand on behalf of RWWA in Western Australia.

Retail Operators' use of the Wagering Data will be subject to the terms and conditions set out in a Schedule to the 2009 Agreement.

If Tabcorp approves third parties to use the Wagering Data, Tabcorp may determine the terms and conditions of such use in its discretion.

RWWA agrees to use the SuperTAB Names for the sole purpose of promoting and accepting Investments on the Tabcorp Events.³

8 Pooling Restriction

RWWA must not

- transmit to Tabcorp for inclusion in the SuperTAB pool any bets from any other wagering operator or totalisator (domestic or international); or
- pool or combine betting transactions conducted by ACTTAB with any other wagering operator or totalisator (domestic or international) where those bets will form part of the SuperTAB Pool,

without the prior written consent of Tabcorp.

9 Cash settlement and accounting procedures

The reconciliation and settlement of all accounts relating to the placement of Investments, the payment of dividends, the payment of commissions and other adjustments shall be governed by procedures agreed between the parties from time to time.

10 Unclaimed dividends

RWWA is entitled to retain all unclaimed dividends and dividend calculation fractions payable in respect of Investments transmitted by it to Tabcorp for inclusion in the SuperTAB Pool.

11 Fees

Tabcorp is entitled to a Processing Fee for the supply of pooling services.

12 Maintenance of approvals

At all times RWWA must comply with all applicable Required Participation Approvals and Race Field Approvals.

13 Wagering tax

In the event that Investments transmitted by RWWA to Tabcorp pursuant to the 2009 Agreement cease to be exempt from Wagering Tax under the GRA, RWWA must:

³ SuperTAB Names are defined as SUPERTAB, SUPER TAB, S_TAB, and S'TAB.

- if it wishes to continue the pooling of Investments, reimburse Tabcorp for the payment of such tax on Investments; or
- terminate the 2009 Agreement without liability to Tabcorp.

14 Assurance

Both Tabcorp and RWWA must use their best endeavours to maintain in force all licences and approvals necessary for the purpose of the 2009 Agreement. The parties are to ensure their respective probity, integrity and reputation and that of the other party is not adversely affected in such a way that would jeopardise such licences and approvals or the probity, integrity and reputation of the other party.