



RACING AND WAGERING WESTERN AUSTRALIA

30 April 2009

BY EMAIL

adjudication@accc.gov.au

Dr Richard Chadwick
General Manager, Adjudication Branch
Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Dr Chadwick

Tabcorp Manager Pty Ltd – Applications for authorisation – A91127 – A91132

We enclose the following documents:

- (a) a confidential submission by RWVA in support of authorisation; and
- (b) a non-confidential, redacted version of the submission by RWVA.

Parts of the confidential submission contain information which is commercially sensitive and confidential to RWVA. Accordingly, pursuant to section 89(5) of the *Trade Practices Act*, RWVA requests that the redacted parts of the submission (identified in red in the confidential submission) are excluded from the public register.

Please contact Glenn Miller (08) 9445 5298 or glenn.miller@rwva.com.au if you have any queries in relation to this submission or require further information.

Yours sincerely

For Richard Burt
CHIEF EXECUTIVE OFFICER



RACING AND WAGERING WESTERN AUSTRALIA

**Submissions by Racing and Wagering Western Australia
in support of authorisation**

We refer to the applications by Tabcorp Manager Pty Ltd (**Tabcorp**) for authorisation to give effect to the agreement entered into by Tabcorp and Racing and Wagering Western Australia (**RWWA**) dated 16 March 2009 (**RWWA 2009 Agreement**).

RWWA strongly supports the grant of authorisation to give effect to the RWWA 2009 Agreement. RWWA submits that there are significant public benefits which would result from giving effect to the RWWA 2009 Agreement and limited anti-competitive detriment compared to the likely future position without authorisation of the RWWA 2009 Agreement.

1. Background

- 1.1 RWWA is a statutory authority established under the *Racing and Wagering Western Australia Act 2003* (RWWA Act).
- 1.2 RWWA regulates and supervises racing in Western Australia. Its functions include to foster the development, promote the welfare and ensure the integrity of metropolitan and country thoroughbred racing, harness racing and greyhound racing, in the interests of the long term viability of the racing industry in Western Australia¹.
- 1.3 RWWA also regulates on-course wagering by bookmakers and racing club totalisators and is responsible for off-course wagering. Its wagering operations include:
 - (a) 286 licensed TAB agencies and PubTAB outlets²;
 - (b) TABozbet, Australia's first, fully functional internet betting platform offering all TAB betting products; and
 - (c) PhoneTAB, an operator assisted call centre for placing bets for (amongst other things) thoroughbred, harness and greyhound racing.
- 1.4 RWWA is the principal funding body of the Western Australian racing industry. In 2007-2008, \$107.4 million was provided to the three codes

¹ Section 35 of the RWWA Act.

² Racing and Wagering Western Australia, Annual Report 2008, p32

(thoroughbred, harness and greyhound racing) in the form of stakes, capital grants, subsidies and participant payments³.

- 1.5 A copy of RWWA's 2008 annual report was submitted to the Commission by Tabcorp with Tabcorp's applications for authorisation.
- 1.6 Tabcorp currently provides pari-mutuel pooling services to RWWA pursuant to an agreement with RWWA (**RWWA 2005 Agreement**). RWWA currently participates in the SuperTAB pool.
- 1.7 [REDACTED]

2. The conduct and RWWA's rationale for pooling

- 2.1 Section 5.1 of the Tabcorp submission lodged in support of its applications (**Tabcorp Submission**) describes the conduct the subject of the applications.
- 2.2 As a smaller totalisator RWWA seeks to pool with a larger totalisator to gain access to a larger totalisator pool and achieve a sustainable pool scale. This is a key commercial rationale for RWWA in entering into the RWWA 2009 Agreement.
- 2.3 A sustainable pool scale for a smaller totalisator enables:
 - (a) larger dividends, potentially flowing from the larger pool size, to distribute to winning punters. Dividends are a function of the size of the pool as well as the number of units bet in the pool;
 - (b) increased liquidity resulting in reduced volatility of dividends. In larger pools, larger bets (including from bookmakers betting back money) have less effect on the final odds and dividends. As a result consumers placing both larger and smaller bets have the benefit of greater stability in a larger pool compared to a smaller pool. Smaller totalisator operators have insufficient scale to generate stable prices across all races and bet types;
 - (c) potential access to new pari-mutuel wagering products such as internationally pooled bets compared to products that would potentially be offered by smaller totalisators operating stand alone pools;
 - (d) the potential for greater consumer confidence in the integrity of the pools (as a larger pool minimises the potential for manipulation by the placement of large bets) and thereby maximising returns;
 - (e) smaller totalisators to attract high value punters (who are more likely to place large bets and so increase turnover). The size of the totalisator pool is an important factor considered by high value punters when choosing where to place a bet as it impacts on the size and stability of the dividend; and

³ Racing and Wagering Western Australia, Annual Report 2008, p6

- (f) smaller totalisators to maintain funding to distribute to the racing industry, due to attracting increased customer participation both domestically and internationally.
- 2.4 While smaller operators, such as RWWA, have capabilities to operate stand alone pools, the benefits of accessing a large totalisator pool outlined above would not be available. [REDACTED]^{4 5}
- 2.5 [REDACTED].
- 2.6 As set out in the submissions in support of interim authorisation, [REDACTED].
- 2.7 [REDACTED]⁶.
- 3. Relevant markets, the factual and the counterfactual**
- 3.1 For the purpose of this submission RWWA adopts Tabcorp's delineation of the relevant markets namely:
- (a) a national market for pari-mutuel wagering on racing; and
 - (b) a national market for the supply of pooling services.
- 3.2 RWWA agrees with Tabcorp's conclusions as to the competitive impact of authorisation of the Pooling Restriction, Investment Requirement and Race Fields Approvals Requirement (adopting the definitions from the Tabcorp Submission) as described in section 7.1 of the Tabcorp Submission. That is, RWWA believes that authorisation of the Pooling Restriction, Investment Requirement and Race Fields Approvals Requirement would little or no competitive impact.
- 3.3 The future with the RWWA 2009 Agreement is described in section 7.3 of the Tabcorp Submission.
- 3.4 RWWA considers that the appropriate counterfactual is a future in which RWWA does not pool with another totalisator.
- 3.5 [REDACTED]
- 3.6 Tab Limited, a wholly owned subsidiary of Tabcorp Holdings Limited, does not currently hold regulatory approvals to provide pooling services.
- 3.7 RWWA understands that ACTTAB⁷ and Tote Tasmania⁸ have arrangements that allow them to continue to participate in the SuperTAB pool.

⁴ [REDACTED]

⁵ [REDACTED]

⁶ [REDACTED]

⁷ Tabcorp 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, 30 March 2009, p49

4. Public benefits

4.1 RWWA submits that the proposed conduct for which authorisation is sought would result in significant public benefits compared to the counterfactual, including:

- (a) benefits for consumers. The RWWA 2009 Agreement would result in the following benefits:
 - (i) providing consumers with access to pools and dividends that are larger and more stable than would occur with a smaller stand alone pool;
 - (ii) providing consumers with potential access to new pari-mutuel wagering products such as internationally pooled bets than might occur with smaller stand alone pools;
 - (iii) providing consumers with greater confidence in the integrity of the pools and the ability to maximise returns for investments made; and
 - (iv) providing consumers with continued access to the SuperTAB pool thereby enabling ongoing use of their betting strategies, systems and software betting platforms which have been developed over a long period and which acknowledge a larger pool size without disruption or inconvenience;
- (b) benefits to RWWA (and ultimately consumers and the industry) by providing RWWA access to a larger totalisator pool to enable it to compete more effectively for consumers, particularly high value punters who place importance on the benefits that flow from a larger totalisator pool;
- (c) benefits to the Western Australian racing industry. Under the Western Australian legislative framework RWWA is required to distribute funding to the three codes. Maintaining and increasing participation in wagering, by attracting domestic and international customers to a larger totalisator pool, will improve RWWA's turnover and translate into increased funding available for distribution to the Western Australian racing industry. This funding is important for the ongoing growth and development of the industry. In 2007-2008, \$107.4 million was provided to the three codes (thoroughbred, harness and greyhound racing) in the form of stakes, capital grants, subsidies and participant payments⁹; and

⁸ ACCC Determination, Applications for authorisation lodged by Tabcorp Manager Pty Ltd in respect of the 2007 Agreement governing TOTE Tasmania Pty Ltd's participation in the SuperTAB pool, 5 March 2008

⁹ Racing and Wagering Western Australia, Annual Report 2008, p6

- (d) **benefits to the Western Australian economy.** For 2007/08 RWWA estimates that the Western Australian racing industry employed in excess of 3,700 people in direct employment (FTE). [REDACTED]¹⁰

5. Anti-competitive detriment

5.1 RWWA is of the view that there is only potential limited public detriment which may result from the RWWA 2009 Agreement in the form of a risk of some reduction in price competition with Tabcorp in relation to commission rates. However, RWWA is not precluded from competing with Tabcorp on price in relation to pooled bets under the RWWA 2009 Agreement.

5.2 RWWA submits that any public detriment would be outweighed by the significant public benefits outlined above.

6. Conclusion

6.1 RWWA submits that significant public benefits would arise from giving effect to the RWWA 2009 Agreement and limited public detriment compared to the likely future position without authorisation of the RWWA 2009 Agreement.

6.2 Accordingly, RWWA submits authorisation should be granted to give effect to the RWWA 2009 Agreement.

¹⁰ [REDACTED]