

Our ref: ADP:SM:11/3380

20 July 2012

ACCC
Adjudication Branch
General Manager
Dr Richard Chadwick
GPO Box 3131
CANBERRA ACT 2601

FILE No:
DOC:
MARS/PRISM:

By Registered Mail

Dear Sir,

Re: Notification of Collective Bargaining – Harness Racing Australia Inc

We refer to the above matter and advise that we act on behalf of Harness Racing Australia Inc.

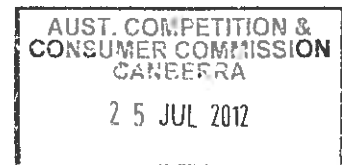
We enclose the following documents for filing:

1. Form GA – Notification of Collective Bargaining; and
2. Cheque for the sum of \$1,000 for the filing fee.

If you have any queries, or require any additional information then please contact Tony Pointon or Andrew Cox of our office on (03) 9614 7707.

Yours faithfully,
Pointon Partners







Form GA

Commonwealth of Australia

Competition and Consumer Act 2010 — section 93AB

NOTIFICATION OF COLLECTIVE BARGAINING

This form is to be completed by applicants proposing to engage in collective bargaining arrangements.

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

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

Protection provided by the notification extends only to the collective bargaining arrangements described in the form.

To the Australian Competition and Consumer Commission:

Notice is hereby given under section 93AB of the *Competition and Consumer Act 2010* of intention:

- to make, or to propose to make, a contract containing a provision of the kind referred to in paragraph 45 (2) (a) of that Act.
- to give effect to a provision of a contract where the provision is of the kind referred to in paragraph 45 (2) (b) of that Act.

(Strike out if not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

Section A – general information

1. Applicant

- (a) Name of the applicant:
(refer to Direction 1)

CB00206

Harness Racing Australia Inc (A 00324) of Level 1, 400 Epsom Road, Flemington in the State of Victoria ("HRA").

- (b) Description of business carried on by the applicant:
(refer to Direction 2)

HRA is an incorporated association in the Australian Capital Territory currently under the Associations Incorporation Ordinance Act 1991. HRA was first

incorporated under preceding legislation as the Australian Trotting Council Inc. on 23 December 1974 and changed its name on 14 January 2008.

The objects of HRA are to promote the harness racing industry and to assist its various members to more effectively carry out their powers and obligations under their respective constitutions and incorporating statutes.

- (c) Is the representative of the applicant lodging the notice a trade union, an officer of a trade union or a person acting on the direction of a trade union?
(refer to Direction 3)

No.

- (d) Address in Australia for service of documents on the applicant:

Pointon Partners, Level 2, 640 Bourke Street, Melbourne Victoria 3000

Attention: Tony Pointon, Andrew Cox

2. Lodged on behalf of

- (a) Provide names and addresses of all persons on whose behalf the notification is lodged and who propose to participate in the collective bargaining arrangements:

(refer to Direction 4)

1. **HARNESS RACING AUSTRALIA INC (A 00324) of Level 1, 400 Epsom Road, Flemington in the State of Victoria.**
2. **NEW SOUTH WALES HARNESS RACING CLUB (ACN 000 002 666) of Racecourse Avenue, Menangle Park in the State of New South Wales.**
3. **RACING AND WAGERING WESTERN AUSTRALIA (118369190) of 14 Hasler Road, Osborne Park in the State of Western Australia.**
4. **HARNESS RACING SA LTD (ACN 094 559 930) of 1 Globe Derby Drive, Globe Derby Park in the State of South Australia.**
5. **TASRACING PTY LTD (ACN 137 188 286) of 6 Goodwood Road, Glenorchy in the State of Tasmania.**
6. **HARNESS RACING NEW SOUTH WALES (ABN 16 962 976 373) of 22 Meredith Street, Bankstown in the State of New South Wales.**

7. HARNESS RACING VICTORIA (VIC 1296571E) of 400 Epsom Road, Moonee Ponds in the State of Victoria.

("the participants")

- (b) Provide proof of the consent of each of the persons listed at 2 (a) above agreeing to the lodgement of the notification on their behalf:
(refer to Direction 5)

Letters of consent attached as Annexure 1.

- (c) Provide the following information relating to a notification:
- (i) Does this notification relate to a notification previously lodged with the Australian Competition and Consumer Commission and for which a concessional fee is claimed?
No.
 - (ii) details of the first-mentioned notification, including but not limited to:
 - (A) the name of the applicant; and
 - (B) the date the notification was said to be lodged; and
 - (C) if known or applicable — the registration number allocated to that collective bargaining notification.

Not Applicable.

Section B – collective bargaining arrangements

3. Proposed collective bargaining arrangements

- (a) Provide: the name and address of the target; the name, position and telephone contact details of an appropriate contact at the target; and a description of the business carried on by the target:
(refer to direction 6)

Invalid

~~1. Tabcorp Holdings Limited (ACN 063 780 709)~~

**~~5 Bowen Crescent
Melbourne VIC 3004~~**

**~~Postal Address:
GPO Box 1943
Melbourne VIC 3001~~**

**~~Phone: 03 9868 2100
Facsimile: 03 9868 2300~~**

2. Sky Channel Pty Ltd (ACN 009 136 010)
trading as Sky Racing
79 Frenchs Forest Rd.
Frenchs Forest NSW 2086

Phone: 02 9452 8400
Facsimile: 02 9452 2222

Tabcorp Holdings Limited is the ultimate holding company of Sky Channel Pty Ltd, which carries on a business of supplying racing broadcasting services under the registered business name "Sky Racing".

- (b) Provide a description of the goods or services which the participants of the collective bargaining arrangements (listed at 2 (a) above) propose to supply to or acquire from the target:

The participants propose to supply harness racing vision and associated audio ("harness racing content") in which they have copyright to the target and grant a licence to broadcast such content.

- (c) Do the participants of the proposed collective bargaining arrangements (see 2 (a) above) reasonably expect to make one or more contracts with the target about the supply to or acquisition from the target of one or more of the goods or services (listed at 3 (b) above)?
(refer to direction 7)

Yes.

- (d) In relation to (c) above, provide details of the basis upon which that expectation is held including details of past contracts with the target:

Each of the participants, save HRA, has entered into past and current contracts to supply harness racing vision and associated audio and a licence to broadcast same to the target. HRA has been appointed as an agent in relation to the negotiation of future contracts.

- (e) Do the participants of the collective bargaining arrangements (listed at 2 (a) above) reasonably expect that contractual payments between the target and each participant will not exceed \$3 million (or any other amount prescribed by regulation) in any 12 month period, and on what basis?
(refer to direction 8)

Yes. The existing rights payments between Sky Racing and the participants are confidential but HRA estimates that their total does not exceed \$200,000 per annum. In some cases the participants pay a fee to the target to broadcast the content. In the negotiations with Sky Racing HRA will not be seeking more than \$3 million per annum for any participant.

- (f) In relation to (e) above provide an estimation of the contractual payments expected between the target and each participant in relation to the goods and services (listed at 2 (a) above):

The contractual payments sought will be based on the fair value of the content supplied by the participants. Such value will be determined by:

- **the cost to the target of partially substitutable content (international harness racing content and other codes racing content);**
- **revenue derived by the target Sky Racing from supply of racing broadcasting services and the extent to which harness racing content contributes to such revenue;**
- **wagering revenue earned by the target Tabcorp on harness racing content broadcast by Sky Racing.**

It is estimated that the fair value of such content will not be greater than \$3 million per annum per participant.

- (g) Provide a description of the collective bargaining arrangements proposed including, but not limited to:
- (i) the process by which participants propose to undertake collective bargaining with the target; and

The participants propose to appoint HRA as their agent for the purpose of negotiating individual broadcasting agreements with the target on common terms.

- (ii) the type of terms and conditions expected to be negotiated in collective bargaining arrangements (for example: price; non-price conditions of supply such as contract periods etc); and

Terms and conditions to be negotiated will include:

- (a) the licence fee;
- (b) the term of the licence and any option to renew;
- (c) geographical limits of such licence;
- (d) the platform or media upon which licensed content may be broadcast, whether free to air, cable, internet, mobile or tablet or other present or future technology;
- (e) exclusivity of any licence and any obligation of an exclusive licensee to take action against infringers;
- (f) any option to renew the term;
- (g) broadcast requirements including minimum content to be broadcast, obligations as to accompanying material on any channel, platform or media on which content is broadcast;
- (h) scheduling of broadcasts;

(i) **provision for resolution of disputes arising between participants and the target.**

(iii) details of any dispute resolution procedure (if any) proposed between participants throughout the collective bargaining process; and

Each participant (save HRA) is a member of HRA and entitled to representation on the board of HRA. Any disputes between participants during the collective bargaining process will be resolved firstly by informal mediation of the HRA executive to facilitate agreement. If such informal mediation fails each participant is entitled to move a resolution of the Board of HRA as to any matter giving rise to the dispute between participants. If carried HRA is obliged to give effect to such resolution.

(iv) details of any dispute resolution procedure (if any) proposed between participants and the target throughout the collective bargaining process; and

Participants will be subject to any existing dispute resolution procedures under current licence agreements.

(v) details of any dispute resolution procedure (if any) proposed to deal with disputes throughout the term of contracts entered into with the target; and

It is intended that the licence agreements to be negotiated will include provision for a common dispute resolution procedure between participants and the target to be negotiated.

(vi) details of proposed commencement and duration of contracts to be negotiated with the target:

(refer to direction 9)

Licence agreements to be negotiated will commence upon termination of existing agreements or earlier as agreed between the target and participants. The term and any options will be a matter for negotiation.

(h) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to possible price agreements:

HRA intends to negotiate a licence fee reflective of the value to the targets of the broadcasting rights of harness racing content as a whole and to reduce variations of licence fees between participants.

(i) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to a possible or proposed exclusionary provision(s), including but not limited to:

(i) the nature of the proposed or possible exclusionary provision(s) (for example an agreement to withhold supply of the relevant goods or services to the target); and

(ii) the circumstances in which the collective bargaining participants would engage in the exclusionary provision(s), including but not limited to:

(A) details of the events that would trigger any such activity; and

- (B) details of the process that would be followed in undertaking any such activity; and
 - (C) details of any proposed period of notice to be given to the target prior to the commencement of such activity; and
 - (D) details of any dispute resolution procedure to be applied or offered to the target prior to the commencement of such activity:
- (refer to direction 10)*

There are no proposed exclusionary provisions or agreements to withhold supply of content to the target after entry into a licence agreement. Each participant has agreed to appoint HRA its exclusive agent for the purpose of negotiating a licence agreement.

Section C – public detriments

4. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(refer to direction 11)

The market directly affected is the acquisition of broadcasting rights for harness racing content.

Other affected markets comprise:

- the supply of racing broadcasting services; and
- the provision of racing wagering services.

The market for provision of racing wagering services is affected in that wagering is driven by broadcasting of races.

In Draft Determinations A91031 and A91032 the ACCC considered that while some substitutability may exist between demand for broadcast rights of thoroughbred racing and other racing rights, they were not perfect substitutes. The applicant agrees and submits that there is only partial substitutability between broadcasting rights for harness racing and broadcasting rights for other codes of racing.

International harness racing content is also partially substitutable for Australian harness racing content being limited by the extent that it is possible to wager on such international content.

The participants are suppliers of harness racing content in Australia, supplying approximately 90% of such content. Racing clubs in Queensland comprise the remaining 10%.

The target Sky Racing is the sole substantial acquirer of harness racing content in Australia and the sole substantial provider of harness racing broadcasting services in Australia.

Sky Racing is one of two substantial acquirers of thoroughbred racing content in Australia. The other being TVN.

The target Tabcorp is the exclusive provider of parimutual wagering services in Victoria and New South Wales. That exclusivity will continue in Victoria under a 12 year licence commencing August 2012 and will lapse in New South Wales in June 2013.

The Tabcorp Shareholder's Report for 2011 contains summarised financial information for the 4 business divisions comprising Wagering, Media and International, Gaming and Keno. The Media and International division includes Sky Racing and Sky Sports Radio and the Shareholder's Report contains the following information:

	2011 (\$m)	2010 (\$m)
Revenue	179.3	164.0
Taxes and Operator Commissions	(11.1)	(8.2)
Operating Expenses	(108.4)	(99.4)
EBITDA	59.8	56.4
Depreciation and amortisation	(7.0)	(5.0)
EBIT	52.8	51.4
EBIT/Revenue	29.5%	31.3%

5. Public detriments

- (a) What will be the likely effect of the notified conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets? In answering this question please provide facts and information to support the claims made:

The price for acquisition of harness racing content is likely to rise to reflect the fair value of the content. Presently the price is lower than the fair value because the target Sky Racing as dominant acquirer of harness racing content is able to

dictate the price for which it will acquire such content. In some cases participants pay Sky Racing to broadcast such content.

It is unlikely that the price of supply of racing broadcasting services will be affected because:

- The cost of acquisition of harness racing content is currently a negligible component of the total cost of provision of racing broadcasting services ;
- The cost of acquisition of harness racing content is artificially low compared to the cost of acquisition of partially substitutable racing content, in particular thoroughbred racing content.

In this regard the Applicant notes that:

- The cost of acquisition of thoroughbred exclusive rights negotiated between Queensland Racing and Sky Racing is reportedly estimated at \$150million over 10 years (see Appendix 1);
- The cost of acquisition of thoroughbred exclusive rights for New South Wales and Victoria by TVN is reportedly estimated at between \$300 and \$400 million a year over 15 years. (See Appendix 2).

Accordingly it is more likely that the current market distortion comprising disproportionate payment for partially substitutable content will be reduced as the price for acquisition for harness racing content rises. It is more rational for any increase in the price of acquisition of harness racing content will be balanced by a reduction in the price paid for partially substitutable racing content.

It is unlikely that the price for provision of racing wagering services will be affected. The dominant factor affecting such pricing is wagering revenue. The participants intend to increase such turnover by enabling the grant of separate licences to broadcast harness racing content by free to air, cable television or other existing media and new media (internet, mobile phone, tablet and future technologies).

Further, increased fees will provide more prizemoney which will mean:

- more races or extra racemeetings producing more content for broadcast; or
- increased prizemoney for existing races attracting more starters per race.

Both of the above which make wagering more attractive and profitable while returning greater returns to participants.

- (b) What other detriments may result from the notified conduct? In answering this question please provide facts and information to support the claims made:

Collective bargaining has the potential to reduce competition between participants in the market for acquisition of broadcasting rights for harness racing content.

The applicant submits that the proposed conduct will not result in any actual reduction of competition because:

- (i) The existing level of competition between participants in the relevant market is negligible or non-existent. The terms for acquisition of broadcasting rights from the participants are dictated by the dominant acquirer Sky Racing, the second target, and are not capable of substantial negotiation by the participants. Such terms commonly include confidentiality provisions precluding disclosure between the participants of the terms of such licences. In the absence of information as to the licence fees paid by the second target, or in some cases payments made to the second target, it is not possible for the participants to compete as to price.

Harness racing events vary in popularity. The most popular events are the heats and finals of the Inter Dominion Championships (Pacing) which will be held in Sydney for the next three (3) years based on a winning tender submission determined by an Event Committee consisting of representatives from HRA and Harness Racing New Zealand.

The next most popular events are metropolitan harness racing meetings followed by rural and regional harness racing meetings.

The scheduling of racing meetings is arranged by the participants in a co-operative way to ensure that as many meetings as possible are able to be broadcast. The broadcasting of a meeting has a very substantial effect on wagering turnover of a meeting. Product fees and commissions wagering turnover are distributed between racing industry controlling bodies in proportion to the wagering turnover associated with each code (thoroughbred, harness racing and greyhound). Accordingly it is in the interest of the participants to maximise total wagering turnover from harness racing events by ensuring broadcasting coverage for as many events as possible.

- (ii) The proposed conduct will seek to expand the potential market for broadcast of harness racing events by enabling negotiation of licences limited to particular media. Currently the second target exclusively acquires "all rights" thereby limiting supply of licences to new media including internet streaming, mobile phones, tablets or other future technologies. By negotiating for the grant of licences limited to use on particular media platforms the participants intend to enable a broader market for the acquisition of harness racing content thereby increasing the level of competition in the relevant market.

Section D – public benefits

6. Public benefit claims

Provide details of the public benefits resulting or likely to result from the proposed arrangement. In answering this question please provide facts and information to support the claims made:

The applicant submits that the following public benefits are likely to result from the proposed collective bargaining:

- (a) A general increase in the price for supply of broadcasting rights for harness racing content so as to approach the fair value of such rights, combined with a reduction in the current inequality between prices paid for more popular harness racing content and prices paid (if any) for harness racing content from regional and rural Australia, will foster development of the harness racing industry and the Standardbred breeding industry generally by:

- enabling increased incentives to participate (prize money); and
- enabling more frequent regional introductory level races, which are not as popular as higher level races and are either currently not broadcast or for which a fee must be paid to enable broadcasting.

An increase in the number and frequency of introductory level races and increased incentives to participate by way of prize money will lower the threshold for entry into such industries resulting in broader participation.

A high proportion, approximately eighty percent (80%), of harness racing trainers and drivers live in regional areas of Australia. Sixty five percent (65%) of breeders live in regional areas and sixty (60%) of breeders have land for the purpose of pursuing breeding activities.

- (b) Negotiation of licences limited by media rather than on an "all rights" basis will broaden the market for acquisition of harness racing content and have the potential to increase competition between acquirers of such content for different media.
- (c) Negotiation of licences limited geographically rather than on an "all rights" basis will broaden the market for acquisition of harness racing content and have the potential to increase competition between acquirers of such content.

Section E - authority

7. Contact details

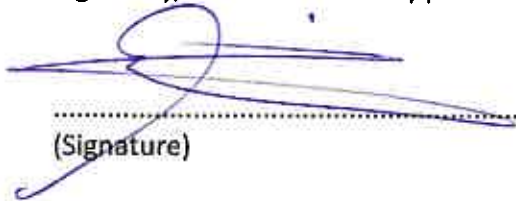
- (a) Name, contact telephone number and address of person authorised by the notifying parties to provide additional information in relation to this application:
(refer to direction 12)

Andrew Kelly
C-/ Harness Racing Australia
Level 1
400 Racing Victoria Office
Epsom Road
FLEMINGTON VIC 3031

Telephone: (03) 9867 8033

Dated..... 11 July 2012

Signed by/on behalf of the applicant


.....
(Signature)

Andrew Kelly
Harness Racing Australia Inc
Chief Executive

DIRECTIONS

1. Where the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
2. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which notification is given.
3. A collective bargaining notification can not be lodged by a trade union or a trade union representative.
4. Where the applicant will be a participant in the collective bargaining arrangements (rather than a representative of participants) the name of the applicant must also be included. Where those persons are corporations, list the corporation's name and address.
5. The applicant, in lodging a notification on behalf of others, must obtain their consent to do so and provide proof of that consent.
6. Where the target is a corporation, provide the corporate name.
7. The collective bargaining notification process is only available to parties that reasonably expect to make one or more contracts with the target about the supply or acquisition of goods or services the subject of the notification.
8. The value of the contract to be collectively negotiated between the target and each participant is not to exceed \$3 million (or such other amount as is prescribed by the regulations) per participant in any twelve month period.
9. To the extent that the collective bargaining arrangements have been reduced to writing, provide a true copy of the arrangement. To the extent that the collective bargaining arrangements have not been reduced to writing, provide a full and correct description of the key terms that have not been reduced to writing.
10. In simple terms an exclusionary provision exists where the proposed contract, arrangement or understanding is made by businesses (at least two of whom are competitors) for the purpose of preventing, restricting or limiting the supply of services to particular persons or classes of persons by all or any of the parties to the contract, arrangement or understanding.

In the context of collective bargaining, an exclusionary provision(s) may include contracts, arrangements or understandings (whether currently in existence or to be made or arrived at during the term of the notification) between collective bargaining participants to limit or restrict their dealings with the target including contracts arrangements or understandings to:

- (a) withhold the supply of goods or services from the target; or
- (b) refuse or decline to acquire the goods or services of the target;

whether such conduct was absolute, limited or subject to certain terms or conditions. This is sometimes referred to as a collective boycott.

11. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
12. The notification must be signed by a person authorised by the applicant to do so.

ANNEXURE 1

DEED OF AGENCY

THIS DEED is dated the 28th day of June 2012

BETWEEN **HARNESS RACING AUSTRALIA INC (A 00324)** of Level 1, 400 Epsom Road,
Flemington in the State of Victoria
('the Agent')

AND **NEW SOUTH WALES HARNESS RACING CLUB (ACN 000 002 666)** of Racecourse
Avenue, Menangle Park in the State of New South Wales
('the Member')

RECITALS

- A. The Agent is a federal body registered as an Incorporated Association under the laws of the Australian Capital Territory.
- B. The Member is a member of the Agent.
- C. The Member owns harness racing tracks and / or exercises a regulatory function with regard to harness racing.
- D. The Member has copyright in the vision of certain harness races.
- E. The Member wishes to appoint the Agent solely for the Purpose.
- F. The parties have agreed that their relationship and their respective rights and obligations shall be governed by the terms and conditions of this Deed.

AGREEMENT

1. DEFINITIONS

Unless the context otherwise requires:

'Agent' means Harness Racing Australia Inc (A 00324).

'Binding Agreement' means an agreement that is legally binding, but does not include any agreement that is legally binding as at the date of this Deed;

'Broadcasting Agreement' means an agreement regarding the broadcasting in Australia or elsewhere of harness races, including, without limitation, the following matters:

- 1.1 Any fee payable for the broadcasting of harness races in Australia or elsewhere;
- 1.2 Any relevant information related to harness races, including the venue of a race and the time of a race; and
- 1.3 Any form or medium of broadcasting, whether present or future technology, including smart televisions, websites, mobile devices and tablets.

'Member' means New South Wales Harness Racing Club (ACN 000 002 666).

'Party/Parties' means the Agent and the Member.

'Purpose' means the purpose of negotiating Broadcasting Agreement(s) on behalf of the Member regarding the broadcasting in Australia or elsewhere of harness races in which the Member has copyright or any other intellectual property right.

2. AGENCY

- 2.1 The Member irrevocably and exclusively appoints the Agent as its agent solely for the Purpose and the Agent accepts its appointment solely for the Purpose.
- 2.2 The Agent's appointment will commence on the date of this Deed and continue until the earlier of:
- (a) such time as a Binding Agreement is entered into by the Member; or
 - (b) five (5) years from the date of this Deed.
- 2.3 The Agent acknowledges and agrees that is not authorised to enter into any Binding Agreement on behalf of the Member. Any Binding Agreement will only be entered into by the Member on its own behalf.
- 2.4 The Agent shall have exclusivity in its endeavour to achieve the Purpose.

3. FURTHER ASSURANCES

The Member represents and warrants to the Agent that during the currency of this Deed, it will not enter into any negotiations or discussions with any person or persons with respect to a Broadcasting Agreement.

4. GENERAL

- 4.1 This Deed constitutes the entire deed and supersedes all prior or contemporaneous oral or written agreements.
- 4.2 This Deed may not be amended except by written agreement signed by all Parties.
- 4.3 This Deed is subject to the laws of the State of Victoria. The Parties submit to the exclusive jurisdiction of that place and the Federal Court of Australia.
- 4.4 Neither Party may assign its rights under this Deed without the prior written consent of the other Party.
- 4.5 This Deed is binding on the successors, trustees and assigns of both Parties.
- 4.6 This Deed may be signed in any number of counterparts. All counterparts will be taken to constitute one Deed. Exchange may be affected by a Party or a solicitor

delivering the original signed counterpart or a facsimile to the other Party or its solicitor.

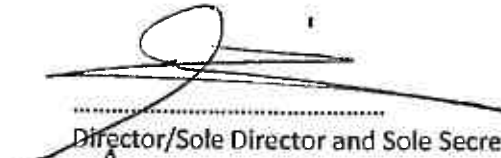
4.7 Each Party shall treat as strictly confidential and shall not disclose, the terms of this Deed (**Confidential Information**). A party may disclose Confidential Information if and only to the extent:

- (a) required by the law of any jurisdiction to which the Party is subject, provided that it has taken all practicable legal steps to prevent such disclosure, or
- (b) required by any regulatory or governmental body to which such Party is subject, or
- (c) disclosed to any of its employees, professional advisers, auditors, bankers, financiers who have a need to know that Confidential Information in connection with progressing the proposal, or
- (d) the other Parties have given prior written approval to such disclosure.


EXECUTED as a Deed:

EXECUTED by an authorised person for and on behalf of **HARNES RACING AUSTRALIA INC (A 00324)**:

)
)
)
)
)
)


.....
Director/Sole Director and Sole Secretary

Andrew Kay
.....
Name (Print)


.....
~~Director/Secretary~~ Public Officer

Cary Kaye
.....
Name (Print)

EXECUTED by **NEW SOUTH WALES HARNES RACING CLUB (ACN 000 002 666)** in accordance with section 127 of the Corporations Act.

)
)
)
)
)
)


.....
Director/Sole Director and Sole Secretary

REX HORNE
.....
Name (Print)


.....
Director/Secretary

John Duffin
.....
Name (Print)

DEED OF AGENCY

THIS DEED is dated the 15th day of May 2012

BETWEEN **HARNESS RACING AUSTRALIA INC (A 00324)** of Level 1, 400 Epsom Road,
Flemington in the State of Victoria
('the Agent')

AND **HARNESS RACING SA LTD (ACN 094 559 930)** of 1 Globe Derby Drive, Globe
Derby Park in the State of South Australia
('the Member')

RECITALS

- A. The Agent is a federal body registered as an Incorporated Association under the laws of the Australian Capital Territory.
- B. The Member is a member of the Agent.
- C. The Member owns harness racing tracks and / or exercises a regulatory function with regard to harness racing.
- D. The Member has copyright in the vision of certain harness races.
- E. The Member wishes to appoint the Agent solely for the Purpose.
- F. The parties have agreed that their relationship and their respective rights and obligations shall be governed by the terms and conditions of this Deed.

AGREEMENT

1. DEFINITIONS

Unless the context otherwise requires:

'Agent' means Harness Racing Australia Inc (A 00324).

'Binding Agreement' means an agreement that is legally binding, but does not include any agreement that is legally binding as at the date of this Deed;

'Broadcasting Agreement' means an agreement regarding the broadcasting in Australia or elsewhere of harness races, including, without limitation, the following matters:

- 1.1 Any fee payable for the broadcasting of harness races in Australia or elsewhere;
- 1.2 Any relevant information related to harness races, including the venue of a race and the time of a race; and
- 1.3 Any form or medium of broadcasting, whether present or future technology, including smart televisions, websites, mobile devices and tablets.

'Member' means Harness Racing SA Ltd (ACN 094 559 930).

'Party/Parties' means the Agent and the Member.

'Purpose' means the purpose of negotiating Broadcasting Agreement(s) on behalf of the Member regarding the broadcasting in Australia or elsewhere of harness races in which the Member has copyright or any other intellectual property right.

2. AGENCY

- 2.1 The Member irrevocably and exclusively appoints the Agent as its agent solely for the Purpose and the Agent accepts its appointment solely for the Purpose.
- 2.2 The Agent's appointment will commence on the date of this Deed and continue until the earlier of:
 - (a) such time as a Binding Agreement is entered into by the Member; or
 - (b) five (5) years from the date of this Deed.
- 2.3 The Agent acknowledges and agrees that is not authorised to enter into any Binding Agreement on behalf of the Member. Any Binding Agreement will only be entered into by the Member on its own behalf.
- 2.4 The Agent shall have exclusivity in its endeavour to achieve the Purpose.

3. FURTHER ASSURANCES

The Member represents and warrants to the Agent that during the currency of this Deed, it will not enter into any negotiations or discussions with any person or persons with respect to a Broadcasting Agreement.

4. GENERAL

- 4.1 This Deed constitutes the entire deed and supersedes all prior or contemporaneous oral or written agreements.
- 4.2 This Deed may not be amended except by written agreement signed by all Parties.
- 4.3 This Deed is subject to the laws of the State of Victoria. The Parties submit to the exclusive jurisdiction of that place and the Federal Court of Australia.
- 4.4 Neither Party may assign its rights under this Deed without the prior written consent of the other Party.
- 4.5 This Deed is binding on the successors, trustees and assigns of both Parties.
- 4.6 This Deed may be signed in any number of counterparts. All counterparts will be taken to constitute one Deed. Exchange may be affected by a Party or a solicitor

delivering the original signed counterpart or a facsimile to the other Party or its solicitor.

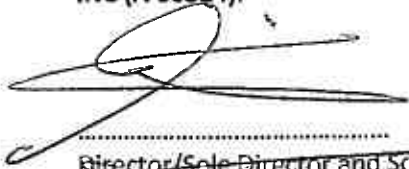
4.7 Each Party shall treat as strictly confidential and shall not disclose, the terms of this Deed (**Confidential Information**). A party may disclose Confidential Information if and only to the extent:

- (a) required by the law of any jurisdiction to which the Party is subject, provided that it has taken all practicable legal steps to prevent such disclosure, or
- (b) required by any regulatory or governmental body to which such Party is subject, or
- (c) disclosed to any of its employees, professional advisers, auditors, bankers, financiers who have a need to know that Confidential Information in connection with progressing the proposal, or
- (d) the other Parties have given prior written approval to such disclosure.

EXECUTED as a Deed:

EXECUTED by an authorised person for and on behalf of **HARNESS RACING AUSTRALIA INC (A 00324)**:

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~~Director/Sole Director and Sole Secretary~~

Andrew Kelly
Name (Print)

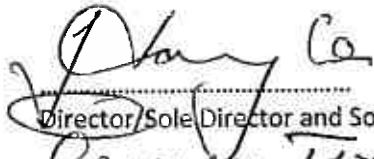


~~Director/Secretary~~ Public Officer

Cary Kaird
Name (Print)

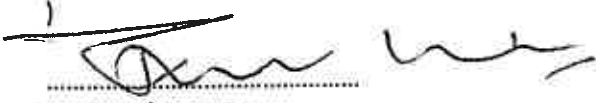
EXECUTED by **HARNESS RACING SA LTD (ACN 094 559 930)** in accordance with section 127 of the Corporations Act:

)
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)



~~Director/Sole Director and Sole Secretary~~

GRAHAM TAYLOR
Name (Print)



~~Director/Secretary~~

J.S. Lewis
Name (Print)

DEED OF AGENCY

THIS DEED is dated the 22nd day of MAY 2012

BETWEEN HARNES RACING AUSTRALIA INC (A 00324) of Level 1, 400 Epsom Road,
Flemington in the State of Victoria
(‘the Agent’)

AND HARNES RACING NEW SOUTH WALES (ABN 16 962 976 373) of 22 Meredith
Street, Bankstown in the State of New South Wales
(‘the Member’)

RECITALS

- A. The Agent is a federal body registered as an Incorporated Association under the laws of the Australian Capital Territory.
- B. The Member is a member of the Agent.
- C. The Member owns harness racing tracks and / or exercises a regulatory function with regard to harness racing.
- D. The Member has copyright in the vision of certain harness races.
- E. The Member wishes to appoint the Agent solely for the Purpose.
- F. The parties have agreed that their relationship and their respective rights and obligations shall be governed by the terms and conditions of this Deed.

AGREEMENT

1. DEFINITIONS

Unless the context otherwise requires:

‘Agent’ means Harness Racing Australia Inc (A 00324).

‘Binding Agreement’ means an agreement that is legally binding, but does not include any agreement that is legally binding as at the date of this Deed;

‘Broadcasting Agreement’ means an agreement regarding the broadcasting in Australia or elsewhere of harness races, including, without limitation, the following matters:

- 1.1 Any fee payable for the broadcasting of harness races in Australia or elsewhere;
- 1.2 Any relevant information related to harness races, including the venue of a race and the time of a race; and
- 1.3 Any form or medium of broadcasting, whether present or future technology, including smart televisions, websites, mobile devices and tablets.

'Member' means Harness Racing New South Wales (ABN 16 962 976 373).

'Party/Parties' means the Agent and the Member.

'Purpose' means the purpose of negotiating Broadcasting Agreement(s) on behalf of the Member regarding the broadcasting in Australia or elsewhere of harness races in which the Member has copyright or any other intellectual property right.

2. AGENCY

- 2.1 The Member irrevocably and exclusively appoints the Agent as its agent solely for the Purpose and the Agent accepts its appointment solely for the Purpose.
- 2.2 The Agent's appointment will commence on the date of this Deed and continue until the earlier of:
- (a) such time as a Binding Agreement is entered into by the Member; or
 - (b) five (5) years from the date of this Deed.
- 2.3 The Agent acknowledges and agrees that is not authorised to enter into any Binding Agreement on behalf of the Member. Any Binding Agreement will only be entered into by the Member on its own behalf.
- 2.4 The Agent shall have exclusivity in its endeavour to achieve the Purpose.

3. FURTHER ASSURANCES

The Member represents and warrants to the Agent that during the currency of this Deed, it will not enter into any negotiations or discussions with any person or persons with respect to a Broadcasting Agreement.

4. GENERAL

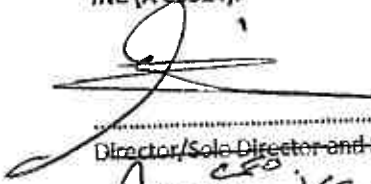
- 4.1 This Deed constitutes the entire deed and supersedes all prior or contemporaneous oral or written agreements.
- 4.2 This Deed may not be amended except by written agreement signed by all Parties.
- 4.3 This Deed is subject to the laws of the State of Victoria. The Parties submit to the exclusive jurisdiction of that place and the Federal Court of Australia.
- 4.4 Neither Party may assign its rights under this Deed without the prior written consent of the other Party.
- 4.5 This Deed is binding on the successors, trustees and assigns of both Parties.
- 4.6 This Deed may be signed in any number of counterparts. All counterparts will be taken to constitute one Deed. Exchange may be affected by a Party or a solicitor

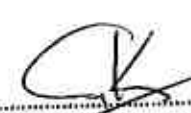
delivering the original signed counterpart or a facsimile to the other Party or its solicitor.

- 4.7 Each Party shall treat as strictly confidential and shall not disclose, the terms of this Deed (**Confidential Information**). A party may disclose Confidential Information if and only to the extent:
- (a) required by the law of any jurisdiction to which the Party is subject, provided that it has taken all practicable legal steps to prevent such disclosure, or
 - (b) required by any regulatory or governmental body to which such Party is subject, or
 - (c) disclosed to any of its employees, professional advisers, auditors, bankers, financiers who have a need to know that Confidential Information in connection with progressing the proposal, or
 - (d) the other Parties have given prior written approval to such disclosure.

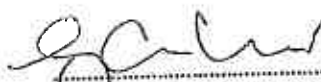
EXECUTED as a Deed:

EXECUTED by an authorised person for and
on behalf of **HARNESS RACING AUSTRALIA**
INC (A 00324):


.....
Director/Sole Director and Sole Secretary
Andrew Kelly
.....
Name (Print)

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)
)
)

.....
Director/Secretary **Public officer**
Cory Kaird
.....
Name (Print)

EXECUTED by an authorised person for and
on behalf of **HARNESS RACING NEW SOUTH**
WALES (ABN 16 962 976 373):


.....
Director/Sole Director and Sole Secretary
GRAEME CAMPBELL
.....
Name (Print)

)
)
)
)
)

.....
Director/Secretary
Sam Nati
.....
Name (Print)

DEED OF AGENCY

THIS DEED is dated the 30th day of MARCH 2012

BETWEEN **HARNESS RACING AUSTRALIA INC (A 00324)** of Level 1, 400 Epsom Road,
Flemington in the State of Victoria
('the Agent')

AND **HARNESS RACING VICTORIA (ABN 22 764 910 853)** of 400 Epsom Road,
Flemington in the State of Victoria
('the Member')

RECITALS

- A. The Agent is a federal body registered as an Incorporated Association under the laws of the Australian Capital Territory.
- B. The Member is a member of the Agent.
- C. The Member owns harness racing tracks and / or exercises a regulatory function with regard to harness racing.
- D. The Member has copyright in the vision of certain harness races.
- E. The Member wishes to appoint the Agent solely for the Purpose.
- F. The parties have agreed that their relationship and their respective rights and obligations shall be governed by the terms and conditions of this Deed.

AGREEMENT

1. DEFINITIONS

Unless the context otherwise requires:

'Agent' means Harness Racing Australia Inc (A 00324).

'Binding Agreement' means an agreement that is legally binding, but does not include any agreement that is legally binding as at the date of this Deed;

'Broadcasting Agreement' means an agreement regarding the broadcasting in Australia or elsewhere of harness races, including, without limitation, the following matters:

- 1.1 Any fee payable for the broadcasting in Australia or elsewhere of harness races;
- 1.2 Any relevant information related to harness races, including the venue of a race and the time of a race; and
- 1.3 Any form or medium of broadcasting, whether present or future technology, including smart televisions, websites, mobile devices and tablets.

'Member' means Harness Racing Victoria (ABN 22 764 910 853).

'Party/Parties' means the Agent and the Member.

'Purpose' means the purpose of negotiating Broadcasting Agreement(s) on behalf of the Member regarding the broadcasting in Australia or elsewhere of harness races in which the Member has copyright or any other intellectual property right.

2. AGENCY

- 2.1 The Member irrevocably and exclusively appoints the Agent as its agent solely for the Purpose and the Agent accepts its appointment solely for the Purpose.
- 2.2 The Agent's appointment will commence on the date of this Deed and continue until the earlier of:
 - (a) such time as a Binding Agreement is entered into by the Member; or
 - (b) five (5) years from the date of this Deed.
- 2.3 The Agent acknowledges and agrees that is not authorised to enter into any Binding Agreement on behalf of the Member. Any Binding Agreement will only be entered into by the Member on its own behalf.
- 2.4 The Agent shall have exclusivity in its endeavour to achieve the Purpose.

3. FURTHER ASSURANCES

The Member represents and warrants to the Agent that during the currency of this Deed, it will not enter into any negotiations or discussions with any person or persons with respect to a Broadcasting Agreement.

4. GENERAL

- 4.1 This Deed constitutes the entire deed and supersedes all prior or contemporaneous oral or written agreements.
- 4.2 This Deed may not be amended except by written agreement signed by all Parties.
- 4.3 This Deed is subject to the laws of the State of Victoria. The Parties submit to the exclusive jurisdiction of that place and the Federal Court of Australia.
- 4.4 Neither Party may assign its rights under this Deed without the prior written consent of the other Party.
- 4.5 This Deed is binding on the successors, trustees and assigns of both Parties.
- 4.6 This Deed may be signed in any number of counterparts. All counterparts will be taken to constitute one Deed. Exchange may be affected by a Party or a solicitor

delivering the original signed counterpart or a facsimile to the other Party or its solicitor.

4.7 Each Party shall treat as strictly confidential and shall not disclose, the terms of this Deed (**Confidential Information**). A party may disclose Confidential Information if and only to the extent:

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- (b) required by any regulatory or governmental body to which such Party is subject, or
- (c) disclosed to any of its employees, professional advisers, auditors, bankers, financiers who have a need to know that Confidential Information in connection with progressing the proposal, or
- (d) the other Parties have given prior written approval to such disclosure.

EXECUTED as a Deed:

EXECUTED by an authorised person for and on behalf of **HARNESS RACING AUSTRALIA INC (A 00324)**:

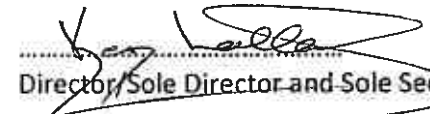
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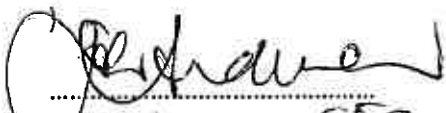

.....
Director/Sole Director and Sole Secretary
CEO.
Andrew Kay
.....
Name (Print)


.....
Director/Secretary *Public Officer*
CARY KAIRN
.....
Name (Print)

EXECUTED by an authorised person for and on behalf of **HARNESS RACING VICTORIA (ABN 22 764 910 853)**:

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.....
Director/Sole Director and Sole Secretary
KEN LATTI - CHAIRMAN
.....
Name (Print)


.....
Director/Secretary *CEO*
JOHN ANPORSO
.....
Name (Print)

AUST. COMPETITION &
CONSUMER COMMISSION
CANBERRA
25 JUL 2012

DEED OF AGENCY

THIS DEED is dated the 15th day of February 2012 ~~2011~~

BETWEEN **HARNESS RACING AUSTRALIA INC (A 00324)** of Level 1, 400 Epsom Road,
Flemington in the State of Victoria
('the Agent')

AND **TASRACING PTY LTD (ACN 137 188 286)** of 6 Goodwood Road, Glenorchy in the
State of Tasmania
('the Member')

RECITALS

- A. The Agent is a federal body registered as an Incorporated Association under the laws of the Australian Capital Territory.
- B. The Member is a member of the Agent.
- C. The Member owns harness racing tracks and / or exercises a regulatory function with regard to harness racing.
- D. The Member has copyright in the vision of certain harness races.
- E. The Member wishes to appoint the Agent solely for the Purpose.
- F. The parties have agreed that their relationship and their respective rights and obligations shall be governed by the terms and conditions of this Deed.

AGREEMENT

1. DEFINITIONS

Unless the context otherwise requires:

'Agent' means Harness Racing Australia Inc (A 00324).

'Binding Agreement' means an agreement that is legally binding, but does not include any agreement that is legally binding as at the date of this Deed;

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- 1.1 Any fee payable for the broadcasting of harness races in Australia or elsewhere;
- 1.2 Any relevant information related to harness races, including the venue of a race and the time of a race; and
- 1.3 Any form or medium of broadcasting, whether present or future technology, including smart televisions, websites, mobile devices and tablets.

'Member' means Tasracing Pty Ltd (ACN 137 188 286).

'Party/Parties' means the Agent and the Member.

'Purpose' means the purpose of negotiating Broadcasting Agreement(s) on behalf of the Member regarding the broadcasting in Australia or elsewhere of harness races in which the Member has copyright or any other intellectual property right.

2. AGENCY

- 2.1 The Member irrevocably and exclusively appoints the Agent as its agent solely for the Purpose and the Agent accepts its appointment solely for the Purpose.
- 2.2 The Agent's appointment will commence on the date of this Deed and continue until the earlier of:
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- 2.4 The Agent shall have exclusivity in its endeavour to achieve the Purpose.

3. FURTHER ASSURANCES

The Member represents and warrants to the Agent that during the currency of this Deed, it will not enter into any negotiations or discussions with any person or persons with respect to a Broadcasting Agreement.

4. GENERAL

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delivering the original signed counterpart or a facsimile to the other Party or its solicitor.

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 - (b) required by any regulatory or governmental body to which such Party is subject, or
 - (c) disclosed to any of its employees, professional advisers, auditors, bankers, financiers who have a need to know that Confidential Information in connection with progressing the proposal, or
 - (d) the other Parties have given prior written approval to such disclosure.

EXECUTED as a Deed:

EXECUTED by an authorised person for and
on behalf of **HARNESS RACING AUSTRALIA
INC (A 00324)**:

)
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.....
Director/Sole Director and Sole Secretary

Andrew Kay CEO.

.....
Name (Print)



.....
Director/Secretary Public officer

CARY KALLEN

.....
Name (Print)

EXECUTED by **TASRACING PTY LTD (ACN 137
188 286)** in accordance with section 127 of
the Corporations Act:

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)
)
)



.....
Director/Sole Director and Sole Secretary

Geoff Baxter

.....
Name (Print)



.....
Director/Secretary

C BROOKWELL

.....
Name (Print)

APPENDIX 1

VRC boss accuses QLD Racing of escalating SKY - TVN war

Monday, 28 June 2010 21:51

ADRIAN DUNN reports in today's **MELBOURNE HERALD SUN** that the decision by Queensland Racing to reject TVN and sign with Sky Racing has been described as a "lost opportunity".

Victoria Racing Club chief executive Dale Monteith predicted a possible return of the picture wars when the contract between TVN and Sky expires in 2012 unless Victorian and Sydney racing received its true value.

Monteith blasted Tabcorp, owner of Sky Channel, over its merger discussions with TVN.

"Tabcorp talked about a joint venture, it made a presentation to our board - it's all p--- and wind," Monteith said.

The Queensland Racing/Sky deal, estimated to be worth \$150 million over 10 years, effectively means the rights for Victorian and Sydney races, owned by TVN, would escalate dramatically.

Queensland racing is a comparative minnow when viewed alongside Victorian and Sydney racing and media observers estimate Victoria and Sydney racing could command at least double its current fee.

"Mark my words when the current MOU between TVN and Sky expires in 2012 then TVN shareholder clubs will not accept anything less than full value for their rights," Monteith said.

"And this will be considerably more than is received at present.

"Given what Sky makes each year from racing pictures, which the clubs produce and then give to Sky, the clubs are determined to see that racing receives a fair return for the commercialisation of its pictures."

Monteith described as "disappointing" and a "great dis-service" to the industry the decision by Queensland racing to align itself with Sky.

He said if it had not been for the birth of TVN, then Queensland and country NSW would have received far inferior rights fees than they currently enjoyed.

"It is a huge lost opportunity for racing in Australia to take control of its destiny and to maximise revenue from the commercialisation of our media assets," Monteith said.

"TVN was created for this very purpose. Sky, then owned by Tab Limited, made it very clear that the clubs would no longer receive right fees for their pictures. Yet obscenely Sky then, and now, continues to make tens of millions of dollars profit each year from racing pictures."

Monteith said all the indications were Queensland would sign with the industry-owned media arm.

He said the TVN offer to Queensland was "significant", which meant that Sky would have had to better it or "apply leverage in other areas" to match it.

Monteith forecast that clubs and pubs were likely to face a spike in fees to absorb some of the costs of the deal.


HAVE YOUR SAY ON THIS IN THE WEDNESDAY WHINGE by e-mailing haveyoursay@letsgohorseracing.com.au

STORY COURTESY OF ADRIAN DUNN, NEWS LTD & MELBOURNE HERALD SUN

Leukaemia Foundation®

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www.leukaemia.org.au

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APPENDIX 2

TVN ties up NSW and Vic horse racing rights for estimated \$400m pa

Specialist broadcaster TVN has been awarded the media rights for all horse racing in New South Wales and Victoria, unifying coverage in a deal worth up to an estimated \$400 million a year.

Previously TVN had rights to horse racing coverage of some Sydney Metropolitan tracks and venues throughout Victoria.

TVN chairman Harold Mitchell announced the deal on Thursday.

"Every major sporting body would recognise the strength of television rights," Mitchell said in a statement. "This morning I announce that TVN has the rights to all of the great racing in both Victoria and NSW and that is an historic moment for all of TVN."

"It means that the sport of thoroughbred racing, the industry of thoroughbred racing, is finally in charge of everything to do with its product, its business and finally its future."

Mitchell indicated the board of TVN would step aside in the near future to allow personnel from the racing industry to take over. TVN has previously covered racing across Victoria but its rights to NSW racing was limited to some metropolitan meetings.

The Sydney Morning Herald reported last month that Racing NSW had ordered provincial clubs to get behind a unified TV rights deal, effectively pushing the case for TVN.

The deal on Thursday will be seen as another victory for Peter V'landys, the CEO of Racing NSW who is considered a front runner for the vacant role as Australian Rugby League Commission CEO. V'Landys, who recently secured a \$100 million race-fields legislation windfall from corporate bookmakers, has also been named a potential TVN board member if and when it steps aside.

The Australian newspaper reported that TVN gained the rights to all regional territories in NSW, and at Randwick and Warwick Farm, to go with the rights it already holds for the remaining Sydney metropolitan tracks and Victoria. The newly-won rights are currently held by Tabcorp and shown on its racing channel, Sky Racing.

TVN and Mitchell have made several attempts over the past eight years to secure the rights for the two states on behalf of the two key bodies, Racing NSW and Racing Victoria.

The Australian reported that the deal is for 15 years and estimated it as worth between \$300m and \$400m annually to the two major racing bodies in Victoria and NSW.

TVN began broadcasting races in pubs and TABs and on home pay-TV in 2006 after a costly battle with Sky Racing over a vision-sharing agreement.

Unlike Sky Racing, which also shows harness racing and greyhounds, TVN restricts its coverage to thoroughbred horse racing in Sydney and Victoria.

Image: The Age



Tony Harper

http://sportbizinsider.com.au/news/category/media-and-technology/tvn-ties-up-nsw-and-vic-horse-racing-rights-for-estimated-400m-pa/

TVN ties up NSW and Vic horse racing rights for estimated \$400m pa

Tony Harper has been a sports media professional for more than 20 years. He has worked as reporter for national and international organisations - including AAP and The Associated Press of America - is a former sports editor of The Sun Herald newspaper and was founding editor of Inside Cricket and Football+ magazines for ACP Magazines. He is a freelance writer and media relations consultant.

More articles by [Tony Harper](#) »

<http://sportbizinsider.com.au/news/category/media-and-technology/tvn-ties-up-nsw-and-vic-horse-racing-rights-for-estimated-400m-pa/>