

14 SEP 2012

Australian Competition and Consumer Commission
Level 20
175 Pitt Street
Sydney NSW 2000

14 September 2012
Matter 82038756
By hand

Dear Sir/Madam

Confidential

Third Line Forcing Notification

FILE No:

DOC:

MARS/PRISM:

We act for Tabcorp Wagering (Vic) Pty Ltd (**Tabcorp Wagering**), Tabcorp Wagering Manager (Vic) Pty Ltd (**Tabcorp Wagering Manager**) and TAB Limited (**TAB**) (collectively **Tabcorp**).

We enclose:

- A notification in relation to conduct which may constitute third line forcing;
- A confidential submission in support of the notification. We request that this confidential submission not be placed upon the ACCC's public register;
- A non-confidential submission in support of the notification for placement on the public register; and
- A cheque for \$300 being the lodgement fee.

The notified conduct is the equivalent of that covered by existing notification N93545. Tabcorp is lodging a new notification to take into account a new Victorian wagering licence held by Tabcorp Wagering and a proposed agreement between Tabcorp Wagering and the Australia Hotels Association Victoria.

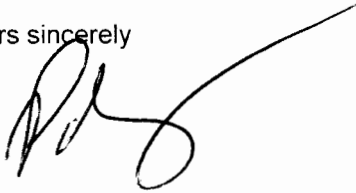
The confidential information not included in the non-confidential copy of this submission relates to information provided under the sub-heading 'example of proposed conduct'. Tabcorp claims confidentiality in respect of information not included in the non-confidential submission on the following basis:

- It discloses confidential negotiations between Tabcorp and third parties; and
- It discloses information relating to Tabcorp's commercial arrangements with third parties and/or its future intentions in relations to those arrangements.

If the Commission has any questions or wishes to discuss the notification please contact me.

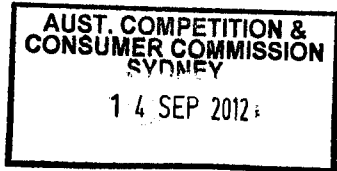
Doc 17557548.3

Yours sincerely

A handwritten signature in black ink, appearing to be 'Patrick Gay', with a long, sweeping horizontal line extending to the right.

Patrick Gay
Partner
Freehills

+61 2 9322 4378
+61 407 400 530
patrick.gay@freehills.com



Form G

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of persons giving notice:

(Refer to direction 2)

N96146
N96147
N96148

Tabcorp Wagering (Vic) Pty Ltd (**Tabcorp Wagering**);

Tabcorp Wagering Manager (Vic) Pty Ltd (**Tabcorp Wagering Manager**);

TAB Limited (**TAB**);

(together referred to as **Tabcorp**).

(b) Short description of business carried on by that person:

(Refer to direction 3)

Tabcorp Group is a wagering, gaming and entertainment group. Please refer to the submission in support of the notification for further details.

(c) Address in Australia for service of documents on that person:

C/o Patrick Gay, Partner, Freehills, Level 32, MLC Centre, Martin Place, Sydney NSW 2000

2. Notified arrangement

(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

1. Goods and services supplied by Tabcorp to licensed venues (**Tabcorp Venue Goods and Services**), which may include:

- the Sky Channel racing channels or equipment used in conjunction with wagering services;
- funds which may be used to assist in the promotion of retail standards; and
- inactive programs which apply where licensed venues experience significant growth in respect of their Tabcorp-related businesses.

2. Membership or related services provided by certain organisations or associations (**Nominated Membership Organisation**) to pubs, clubs, commercial venues and/or to individuals (**Member Services**).

Please refer to the submission in support of the notification for further details.

(b) Description of the conduct or proposed conduct:

(Refer to direction 4)

1. Tabcorp proposes to:

- (a) supply, or offer to supply, Tabcorp Venue Goods and Services;
- (b) supply, or offer to supply, Tabcorp Venue Goods and Services at a particular price; or
- (c) give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of Tabcorp Venue Goods and Services;

on the condition that the person to whom Tabcorp supplies or offers or proposes to supply Tabcorp Venue Goods or Services acquires or agree to acquire Member Services from a Nominated Membership organisation; and

2. Tabcorp proposes to:

- (a) refuse to supply Tabcorp Venue Goods and Services;
- (b) refuse to supply Tabcorp Venue Goods and Services at a particular price; or
- (c) refuse to give or allow a discount, allowance, rebate or credit in relation to the supply of Tabcorp Venue Goods and Services;

for the reason that a person has not acquired, or has not agreed to acquire, Membership Services from a Nominated Membership Organisation.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

(a) Class or classes of persons to which the conduct relates:

(Refer to direction 5)

Existing and potential members of a Nominated Membership Organisation. At present the following organisations are a Nominated Membership Organisation:

- Australian Hotels Association NSW (**AHA NSW**);
- Clubs NSW;
- Australian Hotels Association Victoria (**AHA Victoria**); and
- Community Clubs Association of Victoria Inc.

(b) Number of those persons:

(i) At present time:

Greater than 50.

(ii) Estimated within the next year:

Greater than 50.

(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Not applicable.

4. Public benefit claims

(a) Arguments in support of notification:

(Refer to direction 7)

Please refer to the submission in support of the notification.

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

Please refer to the submission in support of the notification.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) 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 8)

Please refer to the submission in support of the notification.

6. Public detriments

(a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:

(Refer to direction 9)

Please refer to the submission in support of the notification.

(b) Facts and evidence relevant to these detriments:

Please refer to the submission in support of the notification.

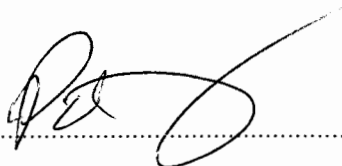
7. Further information

(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

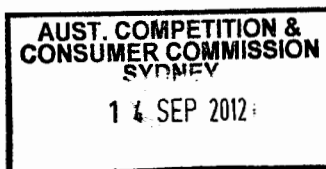
Patrick Gay, Partner, Freehills, MLC Centre, Level 32, Martin Place, Sydney 2000, +61 2 9225 4378.

Dated 14 September 2012

Signed by the applicant

A handwritten signature in black ink, appearing to be 'PG', written over a horizontal dotted line.

Patrick Gay
Partner
Freehills



Submission

Tabcorp –
Notification of Exclusive Dealing
Submission to the ACCC

14 September 2012

1 Introduction

This submission is provided in relation to a Notification of Exclusive Dealing lodged by:

- Tabcorp Wagering (Vic) Pty Ltd (**Tabcorp Wagering**);
- Tabcorp Wagering Manager (Vic) Pty Ltd (**Tabcorp Wagering Manager**); and
- TAB Limited (**TAB**) (collectively **Tabcorp**).

2 Background

2.1 Tabcorp Group

(a) Tabcorp Group

Tabcorp Group, which comprises Tabcorp Holdings Limited (**Tabcorp Holdings**) and its subsidiaries, is a wagering, gaming and entertainment group whose operations are organised into four main business units including Wagering, Media and International, Gaming and Keno.

The wagering division operates totalisator and fixed odds businesses under licences and approvals in Victoria, New South Wales and the Northern Territory.

(b) Tabcorp Wagering/Tabcorp Venue Manager

On 15 August 2012, the Victorian wagering licence held by Tabcorp Holdings Limited expired.

Prior to that date the Victorian Government awarded a new wagering licence to Tabcorp Wagering effective 16 August 2012. Tabcorp Group's current Victorian wagering operations are operated pursuant to that new licence. Tabcorp Wagering Manager is authorised to provide wagering services in Victoria pursuant to Tabcorp Wagering's licence.

Tabcorp wagering services are delivered to members of the public on-course and off-course principally through:

- stand-alone TAB agencies in Victoria;
- licensed venues in Victoria (ie PubTABs and ClubTABs); and
- telephone and internet accounts.

(c) TAB

TAB holds licences to provide on and off-course totalisator wagering services in New South Wales. TAB also offers fixed odds betting on racing, sporting and other events.

TAB provides wagering services to its customers through similar distribution channels to those in Victoria.

Tabcorp Wagering, Tabcorp Wagering Manager and TAB are wholly-owned subsidiaries of Tabcorp Holdings.

2.2 Rationale for the notified conduct

A key component of Tabcorp's business in Victoria and New South Wales is the distribution and sale of wagering products. Tabcorp's wagering products are distributed, both in Victoria and New South Wales, predominantly through standalone TAB agencies and licensed venues (namely pubs/hotels and clubs).

The notified conduct is designed to assist in the development of Tabcorp's wagering operations in Victoria and New South Wales by developing effective working relationships with peak bodies. Working with an effective peak body organisation assists Tabcorp by:

- providing it with an efficient way to coordinate activity with a large number of geographically disparate venues;
- providing opportunities for Tabcorp to promote its overall business; and
- promoting the professionalism of the pub and club industry.

The notified conduct is the equivalent of that covered by existing notification N93545. Tabcorp is lodging a new notification to take into account the new Victoria licence held by Tabcorp Wagering and a proposed 'Partnership Agreement' to be entered into between Tabcorp Wagering and the Australian Hotels Association Victoria (**AHA Vic**).

3 The conduct

The notified conduct is in respect of:

- 1 Goods and services supplied by Tabcorp to licensed venues (**Tabcorp Venue Goods and Services**), which may include:
 - the Sky Channel racing channel or equipment used in conjunction with wagering services;
 - funds which may be used to assist in the promotion of retail standards; and
 - inactive programs which apply where licensed venues experience significant growth in respect of their Tabcorp-related businesses.
- 2 Membership or related services provided by certain organisations or associations (**Nominated Membership Organisation**) to pubs, clubs, commercial venues and/or to individuals (**Member Services**).

Tabcorp proposes to:

- (a) supply, or offer to supply, Tabcorp Venue Goods and Services;
- (b) supply, or offer to supply, Tabcorp Venue Goods and Services at a particular price; or
- (c) give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of Tabcorp Venue Goods and Services;

on the condition that the person to whom Tabcorp Group supplies or offers or proposes to supply Tabcorp Venue Goods or Services acquires or agrees to acquire Member Services from a Nominated Membership organisation; and

Tabcorp proposes to:

- (a) refuse to supply Tabcorp Venue Goods and Services;
- (b) refuse to supply Tabcorp Venue Goods and Services at a particular price; or
- (c) refuse to give or allow a discount, allowance, rebate or credit in relation to the supply of Tabcorp Venue Goods and Services,

for the reason that a person has not acquired, or has not agreed to acquire, Membership Services from a Nominated Membership Organisation.

At present the following organisations are a Nominated Membership Organisation:

- Australian Hotels Association NSW (**AHA NSW**);
- Clubs NSW;
- AHA Victoria; and
- Community Clubs Association of Victoria Inc.

Example of proposed conduct

Pursuant to a proposed agreement with the AHA Vic, Tabcorp Wagering proposes to establish a development fund and a PubTAB Development Committee. The development fund will be designed to improve retail standards in AHA Vic TAB hotels. The proposed agreement also contemplates rebates to AHA Vic TAB hotels in respect of the supply of Tabcorp services to these venues.

4 Markets

4.1 Markets

Relevant markets include:

- the market or markets for wagering services; and
- the market or markets in which pubs and clubs acquire goods and services to facilitate the entertainment of customers.

4.2 Suppliers and acquirers

Significant suppliers of wagering services are:

- other totalisators, such as UNITAB;
- on-course bookmakers;
- corporate bookmakers, such as Centrebet; and
- betting exchanges, such as Betfair.

Significant acquirers of wagering services are:

- members of the general public; and
- bookmakers.

Entertainment goods and services are provided by a wide variety of entities including providers of visual equipment, Foxtel and providers of live entertainment.

5 Public benefits and detriment

5.1 Introduction

Tabcorp submits that the benefit to the public likely to result from the notified conduct would outweigh any detriment to the public likely to result from the conduct.

5.2 Benefits to the public

The notified conduct will be of benefit to the public as it will:

- reduce costs to licensed venues which might not otherwise provide equivalent services to their customers;
- encourage licensed venues to invest in their facilities which will increase amenities and levels of service provided to customers in general, and wagering customers in particular;
- lead to increased awareness and increased promotion of Tabcorp services at licensed venues. Revenues generated by Tabcorp wagering services represent a principal source of funding for the racing industry in both Victoria and New South Wales. Any increase in Tabcorp wagering turnover resulting from the notified conduct would benefit a wide spectrum of industry stakeholders beyond Tabcorp and its shareholders;
- promote competition by encouraging other suppliers of goods and services to pubs and clubs to offer similar value-added services; and
- provide additional benefits to licensed venues which elect to acquire services from a Nominated Membership Organisation.

5.3 Detriment

The notified conduct will not result in any public detriment as:

- members of a Nominated Membership Organisation are under no obligation to participate in any Tabcorp Venue Goods and Services offer;
- licensed venues will be free to acquire services from Tabcorp without any obligation to acquire Member Services from a participating Nominated Membership Organisation;
- membership in a Nominated Membership Organisation is not restricted. Accordingly, any licensed venue which wishes to participate in a notified Tabcorp offer could do so by becoming a member of a Nominated Membership Organisation;
- the notified conduct will have no appreciable impact on competition between pubs and clubs for the service of customers;
- Tabcorp, in addition to working with peak bodies, also seeks to maintain and improve direct relationships with its network. Consequently, licensed venues who are not members of any relevant peak body have opportunities to deal directly with Tabcorp in respect of all aspects of the relationship with Tabcorp (including as to possible benefits or discounts); and
- Tabcorp is also open to considering proposals from other peak bodies. In circumstances where Tabcorp considers that a relationship with such a body will deliver it with efficiency gains, promote its wagering and other services and otherwise promote Tabcorp's commercial objectives, it will consider entering into arrangements with that peak body. Such an arrangement may include a commitment to provide benefits to its membership consistent with the notified conduct.

5.4 Responsible gambling

Tabcorp Group is confident that the proposed conduct would not raise responsible gambling concerns. However, given the publication of the Productivity Commission's

Report on Gambling,¹ Tabcorp Group wishes to address the issue of responsible gambling in the context of this notification.

At the outset, a distinction should properly be made between activities that seek to promote the uptake of the wagering services supplied by a particular wagering operator by enhancing the customer experience, and those activities or environments that do not reflect responsible gambling practices. Gambling is a lawful activity in Australia and the vast majority of Australians who choose to gamble do so responsibly.² It is widely recognised that many thousands of Australians derive considerable enjoyment from wagering on racing and sporting events in a healthy and responsible manner. Many Australians also derive enjoyment from racing, and the racing industry in Australia is recognised to be highly dependent on wagering. Further, in every state and territory there is legislation in place which seeks to maximise responsible gambling behaviour. Therefore, it would be incorrect to conclude that any activity undertaken by a wagering operator that encourages customers and potential customers to use its services is not conducive to responsible gambling, particularly where these activities comply with applicable legislation.

Tabcorp Group is strongly committed to ensuring that people gamble responsibly. It has been recognised as a world leader in responsible gambling as voted by the Dow Jones Sustainability Index. Tabcorp Group's wagering division has a Responsible Gambling Code of Conduct, which has been approved by the Victorian Commission for Gambling and Liquor Regulation. Tabcorp operates BetCare, a voluntary self-exclusion program that enables members to exclude themselves from up to 15 TAB agencies as well as 15 participating hotels and clubs. Members of BetCare can also opt to have their Tabcorp betting account suspended.

The proposed conduct is designed by Tabcorp Group to reduce costs to AHA Vic TAB Hotels and encourage these venues to invest in their facilities to provide an enhanced wagering experience to customers who are also patrons of AHA Vic TAB Hotels, as distinct from encouraging or promoting irresponsible gambling behaviour.

In addition to the benefits to customers resulting from the proposed conduct, any resulting increase in the turnover of Tabcorp Group would result in increased funding to the NSW and Victorian racing industry. Wagering operators provide substantial funding to the racing industry in Australia. The Commission has accepted in a number of determinations that increased funding for the racing industry resulting from increased turnover of wagering operators represents a public benefit.³ In each of those cases, the applicant(s)

¹ The Inquiry Report was published in February 2010.

² The Productivity Commission's Inquiry Report on Gambling states that "[g]ambling is a common recreational pursuit and an enjoyable one for many. 70 per cent of Australians participated in some form of gambling in the last year." According to the Inquiry Report, 15 per cent of Australians gamble regularly (excluding Lotto and 'scratchies'), with roughly one in ten of this group being classified as "problem gamblers". Productivity Commission Report on Gambling, see Overview.

³ For example, in its determination of applications for authorisation lodged by TOTE Tasmania, ACTTAB Limited (ACTTAB) and Racing and Wagering Western Australia (RWWA) in relation to a proposed fixed odds wagering joint venture, the Commission stated, at 4.65:

"... the ACCC considers that the proposed arrangements will facilitate the offering of a broader and more competitive range of fixed odds wagering services by the applicants. To the extent that this increases the applicants' turnover, and thereby the funding provided by each applicant to their respective racing industries, the ACCC considers that some benefits to the public may arise." (Commission Determination of A91127, A91128, A91129, A91130, A91131, A91132, A91162, A91163, A91164, A91165 dated 6 September 2009.)

In its determination of applications for authorisation lodged by Tabcorp Manager Pty Ltd (Tabcorp Manager) in relation to its pooling agreements with ACTTAB and RWWA, the Commission stated, at 4.101:

"... the ACCC considers that the proposed arrangements will facilitate improvements in the stability of the totalisator pool offered by RWWA and ACTTAB. To the extent that this leads to an increase in the turnover of RWWA and ACTTAB, and thereby the funding provided to their respective racing industries, the ACCC considers that some benefits to the public may arise." (Commission Determination of A91123, A91124, A91158, A91159 dated 9 September 2009.)

In its determination of the applications for authorisation lodged by Tabcorp Manager in relation to its pooling agreement with TOTE Tasmania, the Commission stated, at 6.126:

for authorisation had submitted to the Commission that its proposed conduct would result in an enhanced wagering product for customers, thereby leading to increased wagering turnover and more funding for the racing industry. In its determinations, the Commission did not raise concerns regarding the effect of the proposed conduct on responsible gambling.

"Therefore the ACCC accepts that pooling under the terms of the 2007 Agreement will result in a public benefit by ensuring TOTE Tasmania is able to provide funding to the Tasmanian racing industry and fulfil its statutory objective." (Commission Determination of A91065, A91066, A91067 dated 5 March 2008.)