



**Tabcorp Wagering Manager (Vic) Pty Ltd –
application for authorisation A91344 – A91346
Interim authorisation decision
28 November 2012**

Decision

The Australian Competition and Consumer Commission (the ACCC) has granted interim authorisation in respect of the application for authorisation lodged by Tabcorp Wagering Manager (Vic) Pty Ltd (Tabcorp) on 5 November 2012.

Interim authorisation is granted to enable Tabcorp to give effect to the agreement between itself and ACTTAB Limited (ACTTAB) dated 2 November 2012 (Book Management Agreement). The Book Management Agreement governs the provision of fixed odds wagering and risk management services by Tabcorp to ACTTAB in return for a management fee.

Under the Book Management Agreement, ACTTAB must transmit all qualifying bets to Tabcorp for inclusion in a Tabcorp book. ACTTAB is also bound to appoint Tabcorp as its exclusive provider of services provided for in the Book Management Agreement. Authorisation has been sought because the Book Management Agreement may contravene the competition provisions of the *Competition and Consumer Act 2010* (the Act), as it is, amongst other things, an agreement between potential competitors.

Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

The application for authorisation

Tabcorp seeks authorisation to give effect to the Book Management Agreement, which governs the provision of fixed odds wagering and risk management services by Tabcorp to ACTTAB.

ACTTAB's existing fixed odds arrangements with Centrebet which were authorised by the ACCC on 9 September 2009 are due to expire on 28 November 2012. While the arrangements with Centrebet were authorised through to 28 May 2014, ACTTAB has reached an alternative agreement with Tabcorp (the Book Management Agreement). Tabcorp has sought interim authorisation to enable the parties to give effect to the Book Management Agreement from 29 November 2012.

Tabcorp has sought authorisation to be granted for a period of five years from the Commencement Date of the Agreement. The initial term of the Book Management Agreement is three years, with the agreement providing for automatic renewal for successive 12 month periods unless either party provides written notice to terminate.

The authorisation process

Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the Act. Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

Section 91 of the Act allows the ACCC to grant interim authorisation without making a decision on the merits of the application.

Tabcorp requested interim authorisation on the basis that:

- If interim authorisation is not granted on or before 28 November 2012 it is unlikely that ACTTAB will be able to continue to offer fixed odds wagering for the period between 29 November 2012 and the date the final authorisation comes into force. Tabcorp submits that the granting of interim authorisation would effectively maintain the status quo whereby ACTTAB would continue to provide fixed odds wagering in accordance with an agreement with a third party.
- Tabcorp submits that the changes from implementing the Book Management Agreement can easily be reversed should final authorisation not be granted.
- Tabcorp submits that the Book Management Agreement would result in similar public benefits and detriments to those assessed by the ACCC in its consideration of the agreements between Centrebet and TOTE Tasmania, ACTTAB and RWWA in September 2009. On this basis, Tabcorp submits that there 'is a strong prima facie case for authorisation'.

Consultation

Upon receipt of the application for authorisation, the ACCC invited submissions from interested parties in order to consider the request for interim authorisation. The ACCC did not receive any public submissions in relation to the request for interim authorisation.

Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

In granting interim authorisation, the ACCC had regard to the following issues:

- Interim authorisation would enable ACTTAB to continue to provide fixed odds wagering services to its customers through a third party, similar to the status quo. The ACCC considers that ACTTAB would be unlikely to offer fixed odds wagering services in the absence of interim authorisation, at least in the short term. This could be disruptive to ACTTAB and its customers.
- The ACCC considers that granting interim authorisation would not permanently alter the competitive dynamics of the market or inhibit the market from returning to its pre-interim state if final authorisation is later denied.
- While the ACCC has not reached a definitive view on the balance of detriments and benefits arising from the Book Management Agreement, the arrangements appear similar to those previously considered to result in a net public benefit such as the 2009 authorisation of the agreement between ACTTAB (and others) and Centrebet.
- Interested parties did not raise any objections with the ACCC.

Reconsideration of interim authorisation

The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.