

Mr Richard Chadwick
General Manager, Adjudication Branch
Australian Competition & Consumer
Commission

9 March 2012
Matter 82024939
By email

adjudication@accg.gov.au

Dear Richard

FILE NO:
DOC:
MARSPERISM:

Tabcorp Group - Third Line Forcing Notification

We act for Tabcorp Holdings Limited (**Tabcorp Holdings**), Tabcorp Manager Pty Ltd (**Tabcorp Manager**), Tabcorp Wagering (Vic) Pty Ltd (**Tabcorp Wagering**), Tabcorp Wagering Manager Pty Ltd (**Tabcorp Wagering Manager**), Tab Limited (**Tab**) and Luxbet Pty Ltd (**Luxbet**) (together referred to as **Tabcorp Group**).

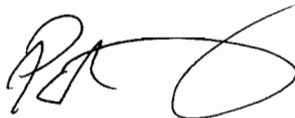
We enclose:

- A notification in relation to conduct which may constitute third line forcing. The notification relates to promotional offers involving Tabcorp Group and Sporting Venues.
- A confidential submission in support of the notification. Tabcorp Group requests that the confidential submission not be placed on the public register on the basis that it discloses commercially sensitive information.
- A non-confidential, redacted copy of the submission in support of notification, which may be placed on the public register.

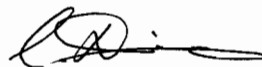
We enclose a cheque for \$600 being the lodgement fee.

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

Yours sincerely



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Doc 13992085.1



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)

N95753 Tabcorp Holdings Limited (**Tabcorp Holdings**);
N95754 Tabcorp Manager Pty Ltd (**Tabcorp Manager**);
N85755 Tabcorp Wagering (Vic) Pty Ltd (**Tabcorp Wagering**);
N85756 Tabcorp Wagering Manager (Vic) Pty Ltd (**Tabcorp Wagering Manager**);
N95757 TAB Limited (**TAB**); and
N95758 Luxbet Pty Ltd (**Luxbet**) (together referred to as **Tabcorp Group**).

(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 Group (**Tabcorp Goods and Services**), which may include:
 - wagering services;
 - services ancillary to wagering such as account or credit wagering or betting services (where permitted);
 - promotional goods and services such as prizes and sporting memorabilia; and

- opportunities to participate in competitions, lotteries or draws to win prizes.
2. Services provided by a Sporting Venue to persons who are members customers, patrons or attendees (**Patrons**) of that particular Sporting Venue (**Patron Services**).

(b) Description of the conduct or proposed conduct:

(Refer to direction 4)

1. Tabcorp Group proposes to:
- (a) supply, or offer to supply, Tabcorp Goods and Services;
 - (b) supply, or offer to supply, Tabcorp 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 Goods and Services,
- on the condition that the person to whom Tabcorp Group supplies or offers or proposes to supply Tabcorp Goods and Services (**Customer**) acquires Patron Services from a particular Sporting Venue; and
2. Tabcorp Group proposes to:
- (a) refuse to supply Tabcorp Goods and Services to a customer;
 - (b) refuse to supply Tabcorp Goods and Services at a particular price to a customer; or
 - (c) refuse to give or allow a discount, allowance, rebate or credit in relation to the supply of Tabcorp Goods and Services to a customer,
- for the reason that the customer has not acquired, or has not agreed to acquire, Patron Services from a particular Sporting Venue.

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)

Persons who are Patrons of Sporting Venues.

(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 **9 March 2012**

Signed by/on behalf of the applicant



A handwritten signature in black ink, appearing to read "Pat" followed by a stylized flourish, positioned above a horizontal dotted line.

Patrick Gay
Partner
Freehills

Submission

Tabcorp Group –
Notification of Exclusive Dealing
Submission to the ACCC

9 March 2012

1 Introduction

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

- Tabcorp Holdings Limited (**Tabcorp Holdings**);
- Tabcorp Manager Pty Ltd (**Tabcorp Manager**);
- Tabcorp Wagering (Vic) Pty Ltd (**Tabcorp Wagering**)
- Tabcorp Wagering Manager (Vic) Pty Ltd (**Tabcorp Wagering Manager**);
- TAB Limited (**TAB**); and
- Luxbet Pty Ltd (**Luxbet**) (together referred to as **Tabcorp Group**).

2 Background

2.1 Tabcorp Group

(a) Tabcorp Group

Tabcorp Group 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 as detailed below.

(b) Tabcorp Holdings Limited

Tabcorp Holdings is licensed to provide wagering services in Victoria. The provision of wagering services provided pursuant to that licence is undertaken by Tabcorp Manager (which is authorised as a wagering operator to provide wagering services pursuant to section 4.3.1 of *Gambling Regulation Act 2003 (GRA)* for the duration of Tabcorp Holdings' wagering licence.

On 15 August 2012, the current wagering licence held by Tabcorp Holdings will expire. The Victorian Government has awarded a new wagering and betting licence to Tabcorp Wagering effective 16 August 2012. Pending various legislative amendments to the GRA, it is intended that Tabcorp Wagering Manager will be authorised to provide wagering services in Victoria pursuant to the new wagering and betting licence.

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

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

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

(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 Tabcorp.

(d) **Luxbet**

Luxbet was granted a licence in September 2008 to conduct business as a racing and sports bookmaker in the Northern Territory. Luxbet offers online fixed odds betting and tote odds betting on racing, and a comprehensive suite of licensed fixed odds sporting and non-sporting event offerings. Luxbet's service is conducted through internet and telephone betting.

2.2 Rationale for the notified conduct

Tabcorp Group regularly makes promotional offers to the general public to stimulate demand for their wagering services. For example, Tabcorp Group periodically offers sales on certain totalisator bet types. Tabcorp Group has also provided limited bonuses to persons opening new wagering accounts as an incentive to open those accounts. For example, Luxbet has from time to time offered promotions whereby a new account customer receives a sum of betting funds credited to his or her betting account.

Tabcorp Group is interested in developing additional promotion opportunities through arrangements with various sporting venues (**Sporting Venues**). Tabcorp Group is currently proposing to enter into a promotional arrangement with ANZ Stadium. Promotional arrangements may include promotional offers, in the form of rewards programs, being made to persons who are members, customers, patrons or attendees of Sporting Venues (**Patrons**).

Promotional arrangements with Sporting Venues would allow the Tabcorp Group to more effectively promote their wagering services to the general public because:

- They can efficiently identify and communicate with Patrons of Sporting Venues through their member and customer databases; and
- Patrons of Sporting Venues may be more interested in, and therefore more likely to acquire, wagering services than the general public because of their interest in certain wagering events. For example, a member of ANZ Stadium may be more interested in wagering on sporting events held at ANZ Stadium than the general public.

3 The conduct

The notified conduct is in respect of:

- (1) Goods and services supplied by Tabcorp Group (**Tabcorp Goods and Services**), which may include:
- wagering services;
 - services ancillary to wagering services such as account or credit wagering or betting services (where permitted);

- promotional goods or services such as prizes and sporting memorabilia; and
 - opportunities to participate in competitions, lotteries or draws to win prizes.
- (2) Services provided by a Sporting Venue to persons who are Patrons of that particular Sporting Venue (**Patron Services**).

Tabcorp Group propose to:

- supply, or offer to supply, Tabcorp Goods and Services;
- supply, or offer to supply, Tabcorp Goods and Services at a particular price; or
- 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 Goods and Services,

on the condition that the person to whom Tabcorp Group supply or offer or propose to supply Tabcorp Goods and Services (**Customer**) will acquire Patron Services from a particular Sporting Venue.

Tabcorp Group further propose to:

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

for the reason that the customer has not acquired, or has not agreed to acquire, Patron Services from a particular Sporting Venue.

By way of example, the following conduct is proposed:

- TAB operates a loyalty program known as the Number 1 Club. The Number 1 Club is a rewards program open to qualifying Customers. Members of the Number 1 Club earn Reward Points when they undertake certain eligible transactions or activities. Members of the Number 1 Club can redeem Reward Points for exclusive privileges and rewards offered by TAB, for example, free bets and entry into sporting events.
- Tabcorp Group proposes to enter into an arrangement with ANZ Stadium whereby TAB, through the Number 1 Club, will provide Tabcorp Goods and Services to Number 1 Club members who acquire Patron Services from ANZ Stadium.

4 Markets

4.1 Markets

Relevant markets include:

- the market or markets for wagering services; and
- the market or markets for Patron Services.

4.2 Suppliers and acquirers

Significant suppliers of wagering services are:

- other totalisators, such as UNiTAB;
- on-course bookmakers, such as Waterhouse 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.

Suppliers of Patron Services include (without limitation) ANZ Stadium, Etihad Stadium, Melbourne Cricket Ground, Sydney Cricket Ground, Sydney Football Stadium and Acer Arena.

Patron Services are acquired by members of the general public.

5 Public benefits and detriment

5.1 Introduction

Tabcorp Group 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

(a) Competition

The notified conduct would promote competition in relevant markets by encouraging other providers of wagering services to offer similar promotional benefits.

(b) Customers

The notified conduct would provide Customers with the opportunity to obtain various rights, benefits, privileges and facilities and additional goods and services in connection with the acquisition of Patron Services and Tabcorp Goods or Services.

(c) Racing industry

The notified conduct would lead to increased awareness and increased promotion of Tabcorp Group wagering services. Revenues generated by Tabcorp Group wagering services represent a principal source of funding for the racing industry. Any increase in Tabcorp Group wagering turnover resulting from the notified conduct would benefit a wide spectrum of industry stakeholders beyond the Tabcorp Group and the ultimate shareholders.

5.3 Detriment

The notified conduct would not result in public detriment, anti-competitive or otherwise, for the following reasons:

- Patrons of Sporting Venues would be under no obligation to participate in any Tabcorp Group promotional offer.
- The gambling public would be free to acquire wagering services from Tabcorp Group without any obligation to acquire Patron Services from Sporting Venues.
- The notified conduct would have no appreciable effect on competition between wagering operators for the provision of wagering services. In particular, other wagering operators would be able to implement similar promotional offers.
- The notified conduct would have no appreciable effect on competition between Sporting Venues for the provision of Patron Services.

5.4 Responsible gambling

Tabcorp 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 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 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's wagering division has a Responsible Gambling Code of Conduct, which has been approved by the Victorian Commission for Gambling 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 to provide an enhanced wagering experience to new account customers who are also members, associates or affiliates of Sporting Venues, as distinct from encouraging or promoting irresponsible gambling behaviour. Tabcorp believes that many associates of Sporting Venues have a particular interest in wagering, racing and/or sport, and would therefore place value on having access to Tabcorp's offers and promotions. The proposed offers and promotions would be wide ranging and would not be confined to betting-related activities.

In addition to the benefits to consumers resulting from the proposed conduct, any resulting increase in the turnover of Tabcorp would result in increased funding to the NSW racing industry. Wagering operators provide substantial funding to the racing

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.

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) for authorisation had submitted to the Commission that its proposed conduct would result in an enhanced wagering product for consumers, 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.

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:

“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.)