



Australian  
Competition &  
Consumer  
Commission

# Determination

## Application for Minor Variation of Authorisations A91127-A91132 & A91162-A91165

lodged by

**Tabcorp Manager Pty Ltd**

in respect of

**an extension to the authorisation of agreements governing  
ACTTAB Limited and Racing and Wagering  
Western Australia's participation in the SuperTAB pool.**

**Date: 27 June 2012**

**Authorisation no.:** A91127-A91132  
& A91162-A91165

**Public Register no.:** C2012/512

**Commissioners:** Schaper  
Rickard  
Dimasi  
Walker  
Willett

## Summary of decision

The Australian Competition and Consumer Commission (ACCC) has decided to vary the authorisations granted to Tabcorp Manager Pty Ltd (Tabcorp) in relation to arrangements governing the participation of ACTTAB Limited (ACTTAB) and Racing and Wagering Western Australia (RWWA) in the SuperTAB pool. The effect of the minor variation is to extend the period of the authorisations by one day, until 15 August 2012.

### 1. The application for minor variation

- 1.1. On 8 June 2012, Tabcorp lodged an application for minor variation of authorisations A91127-A91132 and A91162-A91165 under section 91A of the *Competition and Consumer Act 2010* (the Act). Tabcorp also requested interim authorisation in respect of the application for minor variation. The variation sought by Tabcorp is to extend the period of the authorisations by one day, until 15 August 2012. No other variations to the authorisations are sought.
- 1.2. Authorisations A9112-A91132 and A91162-A91165 were granted by the ACCC on 9 September 2009 until 14 August 2012, as initially sought by Tabcorp. The authorisations were granted to give effect to agreements entered into between Tabcorp and each of ACTTAB and RWWA governing their participation in the SuperTAB Pool operated by Tabcorp (the 2009 agreements). Under these agreements Tabcorp provides ACTTAB and RWWA with pooling services and accepts investments of certain types of bets for inclusion in Tabcorp's SuperTAB pool in return for a pooling or processing fee.
- 1.3. The SuperTAB Pool is a pari-mutuel wagering pool. Pari-mutuel wagering is also known as 'totalisator' wagering. In pari-mutuel wagering the fixed odds are not calculated until after the close of betting. All bets are consolidated and the pari-mutuel operator deducts from the pool of bets a predetermined commission percentage (the 'take out rate'). The remainder of the pool (the dividend pool) is divided by the number of units bet on the successful outcome to arrive at the dividend per unit wagered.
- 1.4. Totalisator pooling arrangements allow totalisators to have access to larger totalisator pools, and thereby increased liquidity and more stable odds, benefiting both consumers of pari-mutuel wagering products and the totalisators.
- 1.5. In each Australian state and territory one operator is licensed to conduct off-course pari-mutuel wagering. These operators are referred to as totalisator agency boards, or more commonly, the TAB. Tabcorp Manager Pty Ltd holds the Victorian licence until 15 August 2012<sup>1</sup> and ACTTAB and RWWA hold the licences in their respective states and territories.
- 1.6. Subsequent to authorisation being granted in 2009 Tabcorp has become aware that its Victorian pari-mutuel wagering licence expires on 15 August 2012, not 14 August 2012 as previously understood.

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<sup>1</sup> On 19 July 2011 the Victorian Government announced that another Tabcorp entity, Tabcorp Wagering (Vic) Pty Ltd, had been awarded a 12 year licence to conduct, amongst other things, off-course pari-mutuel wagering in Victoria commencing 16 August 2012.

- 1.7. As a result Tabcorp and each of ACCTTAB and RWWA have entered into letter agreements extending the term of their agreements the subject of the authorisations by one day until 15 August 2012 to coincide with expiration of Tabcorp's current Victorian licence. The agreements between Tabcorp and each of ACTTAB and RWWA to extend their agreements are conditional on the ACCC granting the application to vary the authorisations.

## **2. ACCC evaluation**

- 2.1. The ACCC has assessed the application for a minor variation to authorisations A91127-A91132 and A91162-A91165 in accordance with the tests in section 91A of the Act.
- 2.2. Broadly, the ACCC may vary an authorisation if it is satisfied that:
- the proposed variation is minor and
  - the variation would not result or would not be likely to result in a reduction in the extent of the public benefit that arises from the authorisations (or a reduction in the extent to which the benefit to the public outweighs any detriment to the public).

### **Is the proposed variation minor?**

- 2.3. Section 87ZP of the Act defines a minor variation as a single variation that does not involve a material change in the effect of the authorisation.
- 2.4. The proposed variation extends the period of the authorisations by one day. Essentially it corrects an oversight in the drafting of the 2009 agreements and associated applications for authorisation.
- 2.5. The ACCC is satisfied that the proposed variation is minor and is unlikely to result in any material change to the effect of the authorisations.

### **Is there a reduction in the extent to which public benefit outweighs public detriment?**

- 2.6. In its 2009 determination the ACCC considered that the 2009 agreements would be likely to result in a public benefit by improving the stability of the totalisator pool offered by RWWA and ACTTAB. The ACCC also considered that to the extent that this increased the turnover of RWWA and ACTTAB, and thereby the funding of their respective racing industries, some benefits to the public may arise.
- 2.7. The ACCC considered that any anti-competitive detriment resulting from SuperTAB pool participants offering identical pari-mutuel odds was mitigated by:
- Legislative restrictions which prevented totalisators and corporate bookmakers from competing for wagering customers acquiring services through retail outlets.
  - Competitive pressures from non-SuperTAB totalisators and corporate bookmakers in offering online and phone wagering products.

- 2.8. On balance the ACCC considered that the public benefits of the arrangements was likely to outweigh the public detriment.
- 2.9. The application for minor variation involves no change to the arrangements the subject of the authorisations other than to extend the period for which the parties will be able to give effect to the arrangements by one day.
- 2.10. Accordingly, the ACCC considers that the proposed minor variation would not be likely to result in a reduction in the extent to which the benefit to the public of the authorisations outweighs any detriment to the public caused by the authorisations.

### **3. Determination**

- 3.1. The ACCC is satisfied that the variation is minor.
- 3.2. The ACCC is also satisfied that:
  - the public benefit test in section 91A (4) of the Act is met – that is, the variation is unlikely to result in a reduction in the extent to which the benefit to the public of the authorisations outweighs any detriment to the public caused by the authorisations.
  - the public benefit test in section 91A(5) of the Act is met – that is, the variation is unlikely to result in a reduction in benefit to the public that arose from the original authorisations.
- 3.3. Pursuant to section 91A(3) of the Act the ACCC makes this determination varying authorisations A91127-A91132 and A91162-A91165, extending the period of the authorisations by one day, until 15 August 2012.
- 3.4. This determination is made on 27 June 2012. If no application for a review of the determination is made to the Australian Competition Tribunal in accordance with section 101 of the Act, it will come into effect on 19 July 2012.

#### **Interim authorisation**

- 3.5. At the time of lodging its application Tabcorp also sort interim authorisation for the proposed minor variation. As the ACCC's determination granting the minor variation will come into effect before 15 August 2012 the ACCC does not consider it appropriate or necessary to grant interim authorisation.