



**Australian
Competition &
Consumer
Commission**

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21 December 2012

Mr Patrick Gay
Partner
Freehills
GPO Box 4227
Sydney NSW 2001

By email: Patrick.gay@freehills.com

Dear Mr Gay

Notifications N96146-N96148 lodged by Tabcorp Wagering (Vic) Pty Ltd, Tabcorp Wagering Manager (Vic) Pty Ltd and TAB Ltd

I refer to the above mentioned exclusive dealing notifications lodged by Tabcorp Wagering (Vic) Pty Ltd, Tabcorp Wagering Manager (Vic) Pty Ltd and TAB Ltd (**Tabcorp**) with the Australian Competition and Consumer Commission (the ACCC) on 14 September 2012. In Tabcorp's supporting submission it is stated that the notified conduct here is equivalent to the conduct currently covered by notification N93545 (which was lodged with the ACCC on 12 August 2008).

In considering N93545 in 2008, the ACCC made a number of requests for further information, dated 11 September 2008 and 22 October 2008. Tabcorp responded to the ACCC in writing on 3 October 2008 and 11 November 2008, over which restriction of publication was granted.

For the purposes of responding to the ACCC's request for information in the most efficient manner, where applicable, please indicate whether information provided by Tabcorp in 2008 is still correct and applicable to the current notification.

Further Request for Information

In order to assist the ACCC in its consideration of the current notification, please provide the following information:

1. Confirm that the notified conduct is limited to Victoria and NSW.
2. Provide details of the process by which Nominated Membership Organisations have been chosen, including any criteria organisations are required to satisfy to become a Nominated Membership Organisation.

3. Provide details of the process by which other organisations are invited, or able to apply, to become a Nominated Membership Organisation. Has Clubs Victoria been invited to become a nominated member organisation or has Clubs Victoria applied to become a Nominated Member Organisation?
4. If applicable, details for why Tabcorp has chosen to limit the Nominated Membership Organisations to those notified, as listed in sections 3(a) of the Exclusive Dealing Form G.
5. Provide details of the specific goods and services that are supplied, or are likely to be supplied by Tabcorp to licensed venues (e.g. the "Tabcorp Venue Goods and Services", as defined in section 2(a) of the Exclusive Dealing Form G). In relation to these services please also provide:
 - a. Details regarding the prices of these goods and services, and the specific amount of rebate or discount Tabcorp is, or envisages, providing in respect of these goods and services only to members of Nominated Membership Organisations.
 - b. Examples over the last 2 years of the discounts, rebates, allowances or credits provided in relation to Tabcorp Venue Goods and Services to each of the Australian Hotels Association (NSW); Australian Hotels Association (Vic); Clubs NSW and Community Clubs Association of Victoria Inc.
 - c. Information on the terms and conditions (including the price) upon which the Oracle tipping service has been supplied to Nominated Member Organisations since notification N93545 was lodged in 2008.
 - d. The specific Tabcorp Venue Goods and Services that are only made available to members of Nominated Membership Organisations.
6. Please provide details of any occasions since the lodgement of notification N93545 where Tabcorp has refused to supply Tabcorp Venue Goods and Services, either outright or at a particular price point or refused to give or allow a discount, allowance, rebate or credit for the reason that a Club has not agreed to acquire membership services from a Nominated Membership Organisation.
7. In relation to Tabcorp's tipping and ancillary wagering products, please provide details regarding how Tabcorp sources the relevant data for use in these products. If this data is sourced from a third party, please provide details of those arrangements.

Interested party submissions

The ACCC has received two submissions in response to the notifications lodged by Tabcorp from Clubs Victoria Inc on 10 October 2012 and Giddy-Up on 11 December 2012. Copies of these submissions are also attached. It would be helpful if you respond to the following issues raised in addition to any other matters you consider relevant:

8. Whether it is correct that Tabcorp has refused to negotiate with Clubs Victoria Inc regarding proposed promotions and the basis on which this decision was made.
9. Please also address Clubs Victoria Inc's concerns that since Tabcorp's notification N93545 was allowed to stand in 2008:

- a. Tabcorp has distorted the competition for membership services for licensed clubs due to its subsequent commercial activity, and preference for CCAV, and
 - b. Tabcorp's commercial actions have damaged the standing of licensed clubs before Fair Work Australia by the inducement and encouragement of licensed clubs to join CCAV at the expense of the registered organisation.
10. Please respond to Giddy Up's concern the notification "is designed to entrench its [Tabcorp's] monopolist market position, not create new product choice for customers, and most importantly, reducing customer choice, by way of bundling live onscreen rating and tipping services to limit competition in the downstream market."

To enable the ACCC to conduct its assessment of the notification in a timely manner, please provide the requested information by **25 January 2012**.

This letter has been placed on the ACCC's Public Register.

If you wish to discuss any aspect of this matter please do not hesitate to contact Hayley Parkes on (03) 9290 6926 or Anna Giannakos on (03) 9290 6920 or by email at anna.giannakos@accc.gov.au.

Yours sincerely



Marie Dalins
Director
Adjudication Branch