



**Australian  
Competition &  
Consumer  
Commission**

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28 March 2013

Mr P Gay  
Partner  
Herbert Smith Freehills

**By email:** [patrick.gay@hsf.com](mailto:patrick.gay@hsf.com)

Dear Mr Gay

### **Third line forcing notification N96146-8 lodged by Tabcorp Wagering Pty Ltd and Ors**

I refer to the above third line forcing notification lodged with the Australian Competition and Consumer Commission (the ACCC) on 14 September 2012. The notification has been placed on the ACCC's public register.

Tabcorp proposes to offer 'Tabcorp Venue Goods and Services' at a discounted price (or with a rebate or credit) on condition that the person (e.g. pub, club, commercial venue and/or individual) has acquired or agreed to acquire a membership from a 'Nominated Membership Organisation'.

Legal protection conferred by the notification commenced on 28 September 2012.

#### *Summary of ACCC assessment*

Having considered the notification and submissions from Tabcorp and interested parties, the ACCC does not intend to take further action in this matter at this stage. On the basis of the evidence currently available, the ACCC is not satisfied that the likely detriment to the public from the notified conduct would outweigh the likely benefit to the public from the conduct.

In reaching this position, the ACCC considered that the notified arrangements would generate public benefits by reducing the cost of relevant Tabcorp venue goods and services to eligible venues, which would be likely to be reflected, at least to some extent, in the price and quality of goods and services offered by licensed venues.

Furthermore, the ACCC considers that where Tabcorp provides specific funding or benefits which facilitate the upgrading of facilities at licensed venues, then this may also result in benefits for the wagering public.

The conduct may also result in reduced transaction costs, as it is likely to be more efficient for Tabcorp to enter into these arrangements with nominated membership organisations than with individual venues. The conduct may also result in the promotion of competition in the supply of goods and services to eligible venues and

the supply of membership services to clubs as the conduct may encourage other suppliers or membership clubs to provide similar additional value added services.

The ACCC has carefully considered whether the notified conduct is likely to cause public detriments by hindering competition in relation to the supply of relevant goods or services to licensed venues, as submitted by Giddy-Up, or the supply of membership services to clubs, as submitted by Clubs Victoria.

The ACCC notes that Tabcorp has submitted that its electronic tipping service, 'The Oracle', which competes with Giddy-Up's product, is not provided to members of Nominated Membership Organisations at a discount. Tabcorp also submits that there are no Tabcorp Venue Goods and Services that are made available only to members of Nominated Membership Organisations and that it is prepared to negotiate individual arrangements with particular venues irrespective of whether they are members of a Nominated Membership Organisation. Furthermore, other suppliers of products are free to respond to the Tabcorp offer with competing offers of their own.

In relation to the impact of the notified conduct on membership organisations, the ACCC notes that the benefits available through Tabcorp are only one of the factors on which membership organisations compete to attract members. In addition, Tabcorp has publicly stated that it would consider opportunities to work with any membership organisation, including Clubs Victoria, provided any arrangement entered into was of commercial value to Tabcorp.

For these reasons, the ACCC does not consider that the notified conduct is likely to result in any significant public detriment. However, if the way in which Tabcorp implements this conduct were to vary in a way that did result in greater public detriments (for example, by amending the list of Nominated Membership Organisations or by changing the types and value of the discounts and benefits provided to those organisations), the ACCC will reconsider whether to take further action in respect of the notification.

As with any notification, please note that the ACCC may act to remove the legal protection provided by the notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

A copy of 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.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Richard Chadwick', with a long horizontal stroke extending to the right.

Dr Richard Chadwick  
General Manager  
Adjudication Branch