

Restriction of Publication of Part Claimed

1 August 2014

Dr Richard Chadwick
General Manager, Adjudication Branch
Australian Competition & Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

By email: richard.chadwick@acc.gov.au

Dear Richard

Tabcorp Wagering Manager (Vic) Pty Ltd & TAB Limited Applications for Authorisation A91419 – A91424

We refer to Tabcorp's call with ACCC staff on 23 July 2014 as well as Tabcorp's submission to the ACCC for authorisation of international pooling arrangements dated 7 May 2014 (**Original Submission**) and Tabcorp's supplementary submission to the ACCC dated 16 July 2014 (**Supplementary Submission**).

Additional information

In our telephone conversation on 23 July 2014, the ACCC had some follow-up questions regarding:

1. the Guesting Provision - in particular, its intended effect and the costs involved with guesting into overseas pools; and
2. the ability of other Australian totalisators to enter into pooling agreements with overseas wagering operators.

We provide additional responses to those questions below.

Prior to providing the requested additional information, Tabcorp would like to re-iterate some of the general submissions it has made in respect of the provisions at issue. In particular, and as noted during our recent call, Tabcorp considers that the relevant market in which to consider the pooling arrangements is the Australian market for the supply of wagering services. Suppliers in this market include totalisators, corporate bookmakers, betting exchanges such as Betfair and on-track bookmakers. The relevant product is wagering opportunities on a wide variety of events, rather than wagering in respect of any particular event.

As noted, there is no basis to conclude that the exclusivity provisions (or any other provision for which authorisation is sought) would result in any anti-competitive detriment in this market. This is because:

- Hosting or guesting overseas bets is not a necessary input to compete in the market.
- The provisions have no impact on corporate bookmakers. They can offer fixed odds betting on any international race, including races which are the subject of Tabcorp's guest pooling arrangements. In fact, corporate bookmakers benefit from Tabcorp's pooling arrangements as they are able to provide "tote derivative" products by reference to the dividends paid out by Tabcorp.
- The provisions have no detrimental impact on Australian punters, who continue to have a range of options available for wagering, including in



Tabcorp
Holdings Limited

5 Bowen Crescent
Melbourne
Australia 3004

GPO Box 1943
Melbourne
Australia 3001

www.tabcorp.com.au
ABN 66 063 780 709

Restriction of Publication of Part Claimed

respect of overseas races. Tabcorp considers the provisions benefit Australian punters by providing them with an option to bet into overseas hosted pools.

- Other Australian totalisators may enter into similar arrangements.
- Tabcorp continues to face significant competition from other wagering operators in the Australian wagering market.

1. Guesting Provision

As noted previously, the Guesting Provision involves the acquisition of pooling services by Tabcorp on condition that the host does not permit certain persons to co-mingle into the merged pool.

The effect of the Guesting Provision is that the overseas wagering operator cannot accept bets from other wagering operators (generally other Australian totalisators) without Tabcorp's consent. **[Restriction of Publication of Part Claimed]**

As set out in the Original Submission (see paragraph 6.2(h)) and the Supplementary Submission (see paragraph 1B), the Guesting Provision seeks to ensure that the arrangements generate a sufficient return when considering the costs and risks associated with the arrangements and provides Tabcorp with a slightly differentiated offer.

In this respect, the provisions are consistent with general commercial practice.

Following up on the ACCC's question in the telephone conversation of 23 July 2014, Tabcorp confirms that it incurs substantial investment costs in respect of both "hosting" and "guesting".

Relevantly, whether Tabcorp is hosting overseas wagering operators or guesting into pools hosted by overseas wagering operators, Tabcorp incurs costs associated with establishing and maintaining the relevant "connection".

In order to guest into an overseas wagering operator's pool, Tabcorp must ensure that its systems (i.e. computers, links and connections) can properly "communicate" with the host's systems.

In addition to establishing the connection, the guest (i.e. Tabcorp) must ensure that its system can properly apply the host system's Betting Rules. This means that before Tabcorp can establish a connection with an overseas wagering operator we must first:

- analyse the host system's Betting Rules; and
- modify our systems with the host's systems to ensure conformity in the application of the Betting Rules.

[Restriction of Publication of Part Claimed]

There have been occasions where a host has changed its Betting Rules after a connection has been established and pooling has commenced. **[Restriction of Publication of Part Claimed]**

2. The ability of other Australian totalisators to enter into pooling arrangements with overseas wagering operators

As discussed during our call, Tabcorp considers that it is open for other Australian totalisators to enter into similar arrangements with overseas wagering operators. As the ACCC is aware from its 2012 authorisation of Tabcorp's domestic pooling arrangements with RWWA and ACTTAB, if requested Tabcorp will seek consent for RWWA and ACTTAB to transmit bets to an international host through Tabcorp as a component of their participation in Tabcorp's SuperTAB pool.



Tabcorp
Holdings Limited

5 Bowen Crescent
Melbourne
Australia 3004

GPO Box 1943
Melbourne
Australia 3001

www.tabcorp.com.au
ABN 66 063 780 709

Restriction of Publication of Part Claimed

In our Supplementary Submission, Tabcorp noted that other Australian totalisators remain free to approach:

- A number of other overseas wagering operators with whom they could enter into pooling arrangements, such as those in the United States or France; or
- Tabcorp's existing or proposed pooling partners at the expiry of the relevant agreements **[Restriction of Publication of Part Claimed]**.

In respect of potential hosting arrangements, during our call the ACCC questioned whether an overseas party seeking to guest into another Australian totalisator would be able to secure Australian racing vision.

As the ACCC is aware, Sky Channel (a wholly owned subsidiary of Tabcorp) has rights to market vision of Australian racing overseas. **[Restriction of Publication of Part Claimed]**

Vision and pooling are separate concepts

Having a pooling arrangement with Tabcorp's large and liquid pool increases the attractiveness of accepting wagers on Australian racing for many overseas wagering operators. That said, a number of overseas wagering operators do offer at least some wagering on Australian racing in the absence of a pooling arrangement. To support that wagering Sky Channel provides vision separately from pooling **[Restriction of Publication of Part Claimed]**.

[Restriction of Publication of Part Claimed]

Please do not hesitate to contact me should you require any further information.

Yours sincerely,

Daniel Lovecek
Senior Legal Counsel



Tabcorp
Holdings Limited

5 Bowen Crescent
Melbourne
Australia 3004

GPO Box 1943
Melbourne
Australia 3001

www.tabcorp.com.au
ABN 66 063 780 709