



HERBERT  
SMITH  
FREEHILLS

Dr Richard Chadwick  
General Manager, Adjudication Branch  
Australian Competition & Consumer Commission  
23 Marcus Clarke Street  
CANBERRA ACT 2601  
richard.chadwick@acc.gov.au

12 September 2014  
Matter 82224312  
By Hand

Dear Dr Chadwick

### **Tabcorp – application for authorisation of agreements with HKJC**

We act for Tabcorp Wagering Manager (Vic) Pty Limited (**Tabcorp Wagering Manager**), TAB Limited (**TAB**), and Tabcorp Europe Limited (**Tabcorp Europe**) (together, **Tabcorp**).

As discussed with you, Tabcorp is applying to the Australian Competition and Consumer Commission (**ACCC**) for authorisation and interim authorisation to make and give effect to pooling agreements with HKJC Horse Race Betting Limited (**HKJC**). The agreements govern Tabcorp Wagering Manager's and TAB's participation in HKJC's pools and, in the case of the agreement with Tabcorp Europe, the participation of Premier Gateway International Limited (Tabcorp's joint venture) in HKJC's pools.

We enclose the following documents:

- Forms A and B for each of Tabcorp Wagering Manager, TAB, and Tabcorp Europe;
- a confidential submission and annexures (including confidential copies of the agreements with HKJC);
- a non-confidential, redacted version of the submission; and
- a cheque for \$15,000 payable to the ACCC.

We attach a separate letter outlining Tabcorp's claims for confidentiality in respect of certain sections of the submission and some annexures.

Please contact me on (02) 9322 4378 if you require any further information.

Yours sincerely

**Patrick Gay**  
Partner  
Herbert Smith Freehills

+61 2 9322 4378  
+61 407 400 530  
patrick.gay@hsf.com

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Doc 30877007

## Form A

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsections 88 (1A) and (1)*

### **EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

## 1. Applicant

### (a) Name of Applicant:

A91454

Tabcorp Wagering Manager (Vic) Pty Ltd (**Tabcorp Wagering Manager**)  
(ABN 84 154 419 342)  
5 Bowen Crescent, Melbourne VIC 3004

This application relates to Tabcorp Wagering Manager's agreement with HKJC Horse Race Betting Limited (**HKJC**).

This application is to be read and determined together with:

- Tabcorp Wagering Manager's application in Form B (together, **Tabcorp Wagering Manager's Application**);
- TAB Limited's (**TAB**) applications in Forms A and B; and
- Tabcorp Europe Limited's (**Tabcorp Europe**) applications in Forms A and B, (collectively, the **Application**).

A copy of the submission made in support of the Application is attached (**Submission**).

### (b) Description of business carried on by applicant:

Tabcorp Holdings Limited (**Tabcorp Holdings**) operates through its subsidiaries and controlled entities, including Tabcorp Wagering Manager, TAB, and Tabcorp Europe, and is a wagering, gaming and entertainment business whose operations are organised into four main business units including Wagering, Media and International, Gaming, and Keno.

Tabcorp Wagering (Vic) Pty Ltd is licensed to provide wagering services in Victoria. The provision of wagering services provided pursuant to that licence is undertaken by Tabcorp Wagering Manager which is authorised as a wagering operator to provide wagering services pursuant to section 4.3A.15(1)(a) of the *Gambling Regulation Act 2003* (Vic).

### (c) Address in Australia for service of documents on the applicant:

Herbert Smith Freehills  
ANZ Tower, 161 Castlereagh Street, Sydney NSW 2000  
Attention: Patrick Gay  
Telephone: (02) 9225 5000  
Direct: (02) 9322 4378  
Facsimile: (02) 9322 4000  
Email: [patrick.gay@hsf.com](mailto:patrick.gay@hsf.com)

## 2. Contract, arrangement or understanding

(a) **Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:**

Tabcorp Wagering Manager seeks authorisation to make and give effect to an agreement between Tabcorp Wagering Manager and HKJC (**Tabcorp Wagering Manager Agreement**). The Tabcorp Wagering Manager Agreement governs Tabcorp Wagering Manager's participation in the pool operated by HKJC.

A confidential copy of the Tabcorp Wagering Manager Agreement is attached to the Submission (**Confidential Annexure A**).

(b) **Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:**

1. Provisions of the Tabcorp Wagering Manager Agreement under which Tabcorp Wagering Manager must comply with HKJC's Betting Rules and associated operational requirements (**Betting Rules Requirement**).
2. Provisions of the Tabcorp Wagering Manager Agreement under which Tabcorp Wagering Manager must not accept bets from customers who are located in Hong Kong (**Geographic Restriction**).
3. Provisions of the Tabcorp Wagering Manager Agreement under which Tabcorp Wagering Manager must not offer bet types other than those approved by HKJC (**Betting Restriction**).

These provisions are discussed in more detail in the Submission.

Tabcorp Wagering Manager applies for authorisation in respect of all provisions of the Tabcorp Wagering Manager Agreement.

(c) **Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:**

Pari-mutuel pooling services.

Pari-mutuel wagering on racing.

(d) **The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:**

Seven years.

The grounds supporting this period of authorisation are set out in the Submission.

### **3. Parties to the proposed arrangement**

**(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:**

HKJC Horse Race Betting Limited  
1 Sports Road, Happy Valley, Hong Kong

HKJC is a wholly-owned subsidiary of The Hong Kong Jockey Club (the **Club**) and is incorporated in Hong Kong. It is currently the sole licence holder to provide horse race betting services in Hong Kong.

**(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:**

1. Tabcorp Wagering Manager (see 1(a) and (b) above)
2. HKJC (see 3(a) above)
3. The Hong Kong Jockey Club, 1 Sports Road, Happy Valley, Hong Kong

The Club is a Hong Kong company with liability limited by guarantee. The Club owns and manages horse racing tracks in Hong Kong and operates horse racing events, and through its subsidiaries, engages in horse race betting, football betting, and lottery operations in Hong Kong.

The Club operates on a 'not-for-profit' basis. Its net earnings after payment of prize money, racing dividends, taxes, operating costs and investments to enhance Hong Kong's racing and betting facilities, are donated to charitable and community projects.

### **4. Public benefit claims**

**(a) Arguments in support of application for authorisation:**

The arguments in support of authorisation are set out in the Submission.

**(b) Facts and evidence relied upon in support of these claims:**

The facts and evidence relied upon in support of these claims are set out in the Submission.

**5. Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (c) 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):**

The markets in which the services described in 2(c) are supplied are set out in the Submission.

**6. Public detriments**

- (a) **Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:**

Details of the detriments to the public resulting or likely to result from the Tabcorp Wagering Manager Agreement are set out in the Submission.

- (b) **Facts and evidence relevant to these detriments:**

The facts and evidence relevant to these detriments are set out in the Submission.

**7. Contracts, arrangements or understandings in similar terms**

- (a) **This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:**

- (b) **Is this application to be so expressed?**

Yes.

- (c) **If so, the following information is to be furnished:**

- (i) **description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:**

Tabcorp Wagering Manager's Application is expressed to be made in relation to potential future contracts that will be in similar terms to the Tabcorp Wagering Manager Agreement.

- (ii) **Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:**

1. Related bodies corporate of Tabcorp Wagering Manager.
2. HKJC (see 3(a) above).

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

N/A

**8. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

N/A

- (c) If so, by whom or on whose behalf are those other applications being made?

N/A

**9. Further information**

- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

Herbert Smith Freehills

ANZ Tower, 161 Castlereagh Street, Sydney NSW 2000

Attention: Patrick Gay

Telephone: (02) 9225 5000

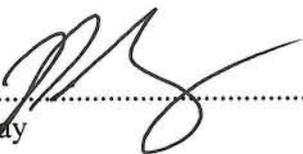
Direct: (02) 9322 4378

Facsimile: (02) 9322 4000

Email: [patrick.gay@hsf.com](mailto:patrick.gay@hsf.com)

Dated..... Sept 12 2019 .....

Signed on behalf of the applicant

.....  
  
Patrick Gay  
Partner  
Herbert Smith Freehills

## **Form B**

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsections 88 (1A) and (1)*

### **AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

## 1. Applicant

### (a) Name of Applicant:

A91455

Tabcorp Wagering Manager (Vic) Pty Ltd (**Tabcorp Wagering Manager**)  
(ABN 84 154 419 342)  
5 Bowen Crescent, Melbourne VIC 3004

This application relates to Tabcorp Wagering Manager's agreement with HKJC Horse Race Betting Limited (**HKJC**).

This application is to be read and determined together with:

- Tabcorp Wagering Manager's application in Form A (together, **Tabcorp Wagering Manager's Application**);
- TAB Limited's (**TAB**) applications in Forms A and B; and
- Tabcorp Europe Limited's (**Tabcorp Europe**) applications in Forms A and B,  
(collectively, the **Application**).

A copy of the submission made in support of the Application is attached (**Submission**).

### (b) Short description of business carried on by applicant:

Tabcorp Holdings Limited (**Tabcorp Holdings**) operates through its subsidiaries and controlled entities, including Tabcorp Wagering Manager, TAB, and Tabcorp Europe, and is a wagering, gaming and entertainment business whose operations are organised into four main business units including Wagering, Media and International, Gaming, and Keno.

Tabcorp Wagering (Vic) Pty Ltd is licensed to provide wagering services in Victoria. The provision of wagering services provided pursuant to that licence is undertaken by Tabcorp Wagering Manager which is authorised as a wagering operator to provide wagering services pursuant to section 4.3A.15(1)(a) of the *Gambling Regulation Act 2003* (Vic).

### (c) Address in Australia for service of documents on the applicant:

Herbert Smith Freehills  
ANZ Tower, 161 Castlereagh Street, Sydney NSW 2000  
Attention: Patrick Gay  
Telephone: (02) 9225 5000  
Direct: (02) 9322 4378  
Facsimile: (02) 9322 4000  
Email: [patrick.gay@hsf.com](mailto:patrick.gay@hsf.com)

## 2. Contract, arrangement or understanding

(a) **Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:**

Tabcorp Wagering Manager seeks authorisation to make and give effect to an agreement between Tabcorp Wagering Manager and HKJC (**Tabcorp Wagering Manager Agreement**). The Tabcorp Wagering Manager Agreement governs Tabcorp Wagering Manager's participation in the pool operated by HKJC.

A confidential copy of the Tabcorp Wagering Manager Agreement is attached to the Submission (**Confidential Annexure A**).

(b) **Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:**

1. Provisions of the Tabcorp Wagering Manager Agreement under which Tabcorp Wagering Manager must comply with HKJC's Betting Rules and associated operational requirements (**Betting Rules Requirement**).
2. Provisions of the Tabcorp Wagering Manager Agreement which contain a regime for the payment of rebates by Tabcorp Wagering Manager (**Rebate Provision**).
3. Provisions of the Tabcorp Wagering Manager Agreement under which Tabcorp Wagering Manager must not accept bets from customers who are located in Hong Kong (**Geographic Restriction**).
4. Provisions of the Tabcorp Wagering Manager Agreement under which Tabcorp Wagering Manager must not offer bet types other than those approved by HKJC (**Betting Restriction**).

These provisions are discussed in more detail in the Submission.

Tabcorp Wagering Manager applies for authorisation in respect of all provisions of the Tabcorp Wagering Manager Agreement.

(c) **Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:**

Pari-mutuel pooling services.

Pari-mutuel wagering on racing.

(d) **The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:**

Seven years.

The grounds supporting this period of authorisation are set out in the Submission.

### **3. Parties to the proposed arrangement**

**(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:**

HKJC Horse Race Betting Limited  
1 Sports Road, Happy Valley, Hong Kong

HKJC is a wholly-owned subsidiary of The Hong Kong Jockey Club (the **Club**) and is incorporated in Hong Kong. It is currently the sole licence holder to provide horse race betting services in Hong Kong.

**(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:**

1. Tabcorp Wagering Manager (see 1(a) and (b) above)
2. HKJC (see 3(a) above)
3. The Hong Kong Jockey Club, 1 Sports Road, Happy Valley, Hong Kong

The Club is a Hong Kong company with liability limited by guarantee. The Club owns and manages horse racing tracks in Hong Kong and operates horse racing events, and through its subsidiaries, engages in horse race betting, football betting, and lottery operations in Hong Kong.

The Club operates on a 'not-for-profit' basis. Its net earnings after payment of prize money, racing dividends, taxes, operating costs and investments to enhance Hong Kong's racing and betting facilities, are donated to charitable and community projects.

### **4. Public benefit claims**

**(a) Arguments in support of authorisation:**

The arguments in support of authorisation are set out in the Submission.

**(b) Facts and evidence relied upon in support of these claims:**

The facts and evidence relied upon in support of these claims are set out in the Submission.

### **5. Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (c) 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):**

The markets in which the services described in 2(c) are supplied are set out in the Submission.

**6. Public detriments**

- (a) **Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:**

Details of the detriments to the public resulting or likely to result from the Tabcorp Wagering Manager Agreement are set out in the Submission.

- (b) **Facts and evidence relevant to these detriments:**

The facts and evidence relevant to these detriments are set out in the Submission.

**7. Contract, arrangements or understandings in similar terms**

**This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.**

- (a) **Is this application to be so expressed?**

Yes.

- (b) **If so, the following information is to be furnished:**

- (i) **description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:**

Tabcorp Wagering Manager's Application is expressed to be made in relation to potential future contracts that will be in similar terms to the Tabcorp Wagering Manager Agreement.

- (ii) **Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:**

1. Related bodies corporate of Tabcorp Wagering Manager.
2. HKJC (see 3(a) above).

- (iii) **Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:**

N/A

**8. Joint Ventures**

- (a) **Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?**

No.

- (b) **If so, are any other applications being made simultaneously with this application in relation to that joint venture?**

N/A

(c) **If so, by whom or on whose behalf are those other applications being made?**

N/A

**9. Further information**

(a) **Name and address of person authorised by the applicant to provide additional information in relation to this application:**

Herbert Smith Freehills

ANZ Tower, 161 Castlereagh Street, Sydney NSW 2000

Attention: Patrick Gay

Telephone: (02) 9225 5000

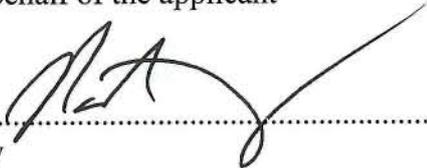
Direct: (02) 9322 4378

Facsimile: (02) 9322 4000

Email: [patrick.gay@hsf.com](mailto:patrick.gay@hsf.com)

Dated.....*12 Sept. 2014*.....

Signed on behalf of the applicant

.....

Patrick Gay

Partner

Herbert Smith Freehills

## Form A

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsections 88 (1A) and (1)*

### **EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

## 1. Applicant

A91456

### (a) Name of Applicant:

TAB Limited (**TAB**)  
(ABN 17 081 765 308)  
495 Harris Street, Ultimo NSW 2007

This application relates to TAB's agreement with HKJC Horse Race Betting Limited (**HKJC**).

This application is to be read and determined together with:

- TAB's application in Form B;
- Tabcorp Wagering Manager (Vic) Pty Ltd's (**Tabcorp Wagering Manager**) applications in Forms A and B; and
- Tabcorp Europe Limited's (**Tabcorp Europe**) applications in Forms A and B, (collectively, the **Application**).

A copy of the submission made in support of the Application is attached (**Submission**).

### (b) Description of business carried on by applicant:

Tabcorp Holdings Limited (**Tabcorp Holdings**) operates through its subsidiaries and controlled entities, including Tabcorp Wagering Manager, TAB, and Tabcorp Europe, and is a wagering, gaming and entertainment business whose operations are organised into four main business units including Wagering, Media and International, Gaming, and Keno.

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.

### (c) Address in Australia for service of documents on the applicant:

Herbert Smith Freehills  
ANZ Tower, 161 Castlereagh Street, Sydney NSW 2000  
Attention: Patrick Gay  
Telephone: (02) 9225 5000  
Direct: (02) 9322 4378  
Facsimile: (02) 9322 4000  
Email: [patrick.gay@hsf.com](mailto:patrick.gay@hsf.com)

## 2. Contract, arrangement or understanding

### (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

TAB seeks authorisation to make and give effect to an agreement between TAB and HKJC (**TAB Agreement**). The TAB Agreement governs TAB's participation in the pool operated by HKJC.

A confidential copy of the TAB Agreement is attached to the Submission (**Confidential Annexure B**).

**(b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:**

1. Provisions of the TAB Agreement under which TAB must comply with HKJC's Betting Rules and associated operational requirements (**Betting Rules Requirement**).
2. Provisions of the TAB Agreement under which TAB must not accept bets from customers who are located in Hong Kong (**Geographic Restriction**).
3. Provisions of the TAB Agreement under which TAB must not offer bet types other than those approved by HKJC (**Betting Restriction**).

These provisions are discussed in more detail in the Submission.

TAB applies for authorisation in respect of all provisions of the TAB Agreement.

**(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:**

Pari-mutuel pooling services.

Pari-mutuel wagering on racing.

**(d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:**

Seven years.

The grounds supporting this period of authorisation are set out in the Submission.

**3. Parties to the proposed arrangement**

**(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:**

HKJC Horse Race Betting Limited  
1 Sports Road, Happy Valley, Hong Kong

HKJC is a wholly-owned subsidiary of The Hong Kong Jockey Club (the **Club**) and is incorporated in Hong Kong. It is currently the sole licence holder to provide horse race betting services in Hong Kong.

**(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:**

1. TAB (see 1(a) and (b) above)
2. HKJC (see 3(a) above)

3. The Hong Kong Jockey Club, 1 Sports Road, Happy Valley, Hong Kong

The Club is a Hong Kong company with liability limited by guarantee. The Club owns and manages horse racing tracks in Hong Kong and operates horse racing events, and through its subsidiaries, engages in horse race betting, football betting, and lottery operations in Hong Kong.

The Club operates on a 'not-for-profit' basis. Its net earnings after payment of prize money, racing dividends, taxes, operating costs and investments to enhance Hong Kong's racing and betting facilities, are donated to charitable and community projects.

4. **Public benefit claims**

(a) **Arguments in support of application for authorisation:**

The arguments in support of authorisation are set out in the Submission.

(b) **Facts and evidence relied upon in support of these claims:**

The facts and evidence relied upon in support of these claims are set out in the Submission.

5. **Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (c) 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):**

The markets in which the services described in 2(c) are supplied are set out in the Submission.

6. **Public detriments**

(a) **Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:**

Details of the detriments to the public resulting or likely to result from the TAB Agreement are set out in the Submission.

(b) **Facts and evidence relevant to these detriments:**

The facts and evidence relevant to these detriments are set out in the Submission.

**7. Contracts, arrangements or understandings in similar terms**

(a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:

(b) Is this application to be so expressed?

No.

(c) If so, the following information is to be furnished:

(i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

N/A

(ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

N/A

(iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

N/A

**8. Joint Ventures**

(a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

N/A

(c) If so, by whom or on whose behalf are those other applications being made?

N/A

**9. Further information**

(a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

Herbert Smith Freehills

ANZ Tower, 161 Castlereagh Street, Sydney NSW 2000

Attention: Patrick Gay

Telephone: (02) 9225 5000

Direct: (02) 9322 4378

Facsimile: (02) 9322 4000

Email: [patrick.gay@hsf.com](mailto:patrick.gay@hsf.com)

Dated..... *12 Sept 2014* .....

Signed on behalf of the applicant



.....  
Patrick Gay  
Partner  
Herbert Smith Freehills

## Form B

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsections 88 (1A) and (1)*

### **AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

## 1. Applicant

A91457

### (a) Name of Applicant:

TAB Limited (**TAB**)  
(ABN 17 081 765 308)  
495 Harris Street, Ultimo NSW 2007

This application relates to TAB's agreement with HKJC Horse Race Betting Limited (**HKJC**).

This application is to be read and determined together with:

- TAB's application in Form A;
- Tabcorp Wagering Manager (Vic) Pty Ltd's (**Tabcorp Wagering Manager**) applications in Forms A and B; and
- Tabcorp Europe Limited's (**Tabcorp Europe**) applications in Forms A and B,

(collectively, the **Application**).

A copy of the submission made in support of the Application is attached (**Submission**).

### (b) Short description of business carried on by applicant:

Tabcorp Holdings Limited (**Tabcorp Holdings**) operates through its subsidiaries and controlled entities, including Tabcorp Wagering Manager, TAB, and Tabcorp Europe, and is a wagering, gaming and entertainment business whose operations are organised into four main business units including Wagering, Media and International, Gaming, and Keno.

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.

### (c) Address in Australia for service of documents on the applicant:

Herbert Smith Freehills  
ANZ Tower, 161 Castlereagh Street, Sydney NSW 2000  
Attention: Patrick Gay  
Telephone: (02) 9225 5000  
Direct: (02) 9322 4378  
Facsimile: (02) 9322 4000  
Email: [patrick.gay@hsf.com](mailto:patrick.gay@hsf.com)

## 2. Contract, arrangement or understanding

### (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

TAB seeks authorisation to make and give effect to an agreement between TAB and HKJC (**TAB Agreement**). The TAB Agreement governs TAB's participation in the pool operated by HKJC.

A confidential copy of the TAB Agreement is attached to the Submission (**Confidential Annexure B**).

### (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:

1. Provisions of the TAB Agreement under which TAB must comply with HKJC's Betting Rules and associated operational requirements (**Betting Rules Requirement**).
2. Provisions of the TAB Agreement which contain a regime for the payment of rebates by TAB (**Rebate Provision**).
3. Provisions of the TAB Agreement under which TAB must not accept bets from customers who are located in Hong Kong (**Geographic Restriction**).
4. Provisions of the TAB Agreement under which TAB must not offer bet types other than those approved by HKJC (**Betting Restriction**).

These provisions are discussed in more detail in the Submission.

TAB applies for authorisation in respect of all provisions of the TAB Agreement.

### (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Pari-mutuel pooling services.

Pari-mutuel wagering on racing.

### (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Seven years.

The grounds supporting this period of authorisation are set out in the Submission.

### **3. Parties to the proposed arrangement**

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:**

HKJC Horse Race Betting Limited  
1 Sports Road, Happy Valley, Hong Kong

HKJC is a wholly-owned subsidiary of The Hong Kong Jockey Club (the **Club**) and is incorporated in Hong Kong. It is currently the sole licence holder to provide horse race betting services in Hong Kong.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:**

1. TAB (see 1(a) and (b) above)
2. HKJC (see 3(a) above)
3. The Hong Kong Jockey Club, 1 Sports Road, Happy Valley, Hong Kong

The Club is a Hong Kong company with liability limited by guarantee. The Club owns and manages horse racing tracks in Hong Kong and operates horse racing events, and through its subsidiaries, engages in horse race betting, football betting, and lottery operations in Hong Kong.

The Club operates on a 'not-for-profit' basis. Its net earnings after payment of prize money, racing dividends, taxes, operating costs and investments to enhance Hong Kong's racing and betting facilities, are donated to charitable and community projects.

### **4. Public benefit claims**

- (a) Arguments in support of authorisation:**

The arguments in support of authorisation are set out in the Submission.

- (b) Facts and evidence relied upon in support of these claims:**

The facts and evidence relied upon in support of these claims are set out in the Submission.

### **5. Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (c) 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):**

The markets in which the services described in 2(c) are supplied are set out in the Submission.

**6. Public detriments**

- (a) **Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:**

Details of the detriments to the public resulting or likely to result from the TAB Agreement are set out in the Submission.

- (b) **Facts and evidence relevant to these detriments:**

The facts and evidence relevant to these detriments are set out in the Submission.

**7. Contract, arrangements or understandings in similar terms**

**This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.**

- (a) **Is this application to be so expressed?**

No.

- (b) **If so, the following information is to be furnished:**

- (i) **description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:**

N/A

- (ii) **Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:**

N/A

- (iii) **Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:**

N/A

**8. Joint Ventures**

- (a) **Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?**

No.

- (b) **If so, are any other applications being made simultaneously with this application in relation to that joint venture?**

N/A

(c) If so, by whom or on whose behalf are those other applications being made?

N/A

9. Further information

(a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Herbert Smith Freehills

ANZ Tower, 161 Castlereagh Street, Sydney NSW 2000

Attention: Patrick Gay

Telephone: (02) 9225 5000

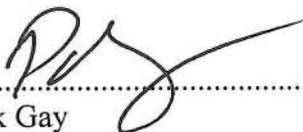
Direct: (02) 9322 4378

Facsimile: (02) 9322 4000

Email: [patrick.gay@hsf.com](mailto:patrick.gay@hsf.com)

Dated.....12 Sept 2014.....

Signed on behalf of the applicant

  
.....  
Patrick Gay  
Partner  
Herbert Smith Freehills

## Form A

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsections 88 (1A) and (1)*

### **EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

## 1. Applicant

A91458

### (a) Name of Applicant:

Tabcorp Europe Limited (**Tabcorp Europe**)  
PO Box 227, Clinch's House, Lord Street, Douglas, Isle of Man, IM99 1RZ

This application relates to Tabcorp Europe's agreement with Premier Gateway International Ltd (**PGI**) and HKJC Horse Race Betting Limited (**HKJC**).

This application is to be read and determined together with:

- Tabcorp Europe's application in Form B;
- TAB Limited's (**TAB**) applications in Forms A and B; and
- Tabcorp Wagering Manager (Vic) Pty Ltd's (**Tabcorp Wagering Manager**) applications in Forms A and B,

(collectively, the **Application**).

A copy of the submission made in support of the Application is attached (**Submission**).

### (b) Description of business carried on by applicant:

Tabcorp Holdings Limited (**Tabcorp Holdings**) operates through its subsidiaries and controlled entities, including Tabcorp Wagering Manager, TAB, and Tabcorp Europe, and is a wagering, gaming and entertainment business whose operations are organised into four main business units including Wagering, Media and International, Gaming, and Keno.

Tabcorp Europe is incorporated in the Isle of Man. Further information about Tabcorp Europe is provided in the Submission.

### (c) Address in Australia for service of documents on the applicant:

Herbert Smith Freehills  
ANZ Tower, 161 Castlereagh Street, Sydney NSW 2000  
Attention: Patrick Gay  
Telephone: (02) 9225 5000  
Direct: (02) 9322 4378  
Facsimile: (02) 9322 4000  
Email: [patrick.gay@hsf.com](mailto:patrick.gay@hsf.com)

## 2. Contract, arrangement or understanding

### (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

Tabcorp Europe seeks authorisation to make and give effect to an agreement between Tabcorp Europe, PGI and HKJC (**PGI Agreement**). The PGI Agreement governs PGI's participation in the pool operated by HKJC.

A confidential copy of the PGI Agreement is attached to the Submission (**Confidential Annexure C**).

**(b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:**

1. Provisions of the PGI Agreement under which PGI must comply with HKJC's Betting Rules and associated operational requirements (**Betting Rules Requirement**).
2. Provisions of the PGI Agreement under which PGI must not accept bets from customers who are located in Hong Kong (**Geographic Restriction**).
3. Provisions of the PGI Agreement under which PGI must not offer bet types other than those approved by HKJC (**Betting Restriction**).

These provisions are discussed in more detail in the Submission.

Tabcorp Europe applies for authorisation in respect of all provisions of the PGI Agreement.

**(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:**

Pari-mutuel pooling services.

Pari-mutuel wagering on racing.

**(d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:**

Seven years.

The grounds supporting this period of authorisation are set out in the Submission.

**3. Parties to the proposed arrangement**

**(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:**

1. Premier Gateway International Ltd  
(registered number 006136V)  
Clinch's House, Lord Street, Douglas, Isle of Man, IM 99 1RZ

PGI is incorporated in the Isle of Man. It is jointly owned by Tabcorp and Phumulela Gold Enterprises (the enterprise licensed to provide totalisator services in South Africa). PGI is licensed in the Isle of Man by the Isle of Man Gambling Supervision Committee. It provides totalisator services and interface services to other overseas wagering operators.

2. HKJC Horse Race Betting Limited  
1 Sports Road, Happy Valley, Hong Kong

HKJC is a wholly-owned subsidiary of The Hong Kong Jockey Club (the **Club**) and is incorporated in Hong Kong. It is currently the sole licence holder to provide horse race betting services in Hong Kong.

**(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:**

1. Tabcorp Europe (see 1(a) and (b) above)
2. PGI (see 3(a) above)
3. HKJC (see 3(a) above)
4. The Hong Kong Jockey Club, 1 Sports Road, Happy Valley, Hong Kong

The Club is a Hong Kong company with liability limited by guarantee. The Club owns and manages horse racing tracks in Hong Kong and operates horse racing events, and through its subsidiaries, engages in horse race betting, football betting and lottery operations in Hong Kong.

The Club operates on a 'not-for-profit' basis. Its net earnings after payment of prize money, racing dividends, taxes, operating costs and investments to enhance Hong Kong's racing and betting facilities, are donated to charitable and community projects.

**4. Public benefit claims**

**(a) Arguments in support of application for authorisation:**

The arguments in support of authorisation are set out in the Submission.

**(b) Facts and evidence relied upon in support of these claims:**

The facts and evidence relied upon in support of these claims are set out in the Submission.

**5. Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (c) 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):**

The markets in which the services described in 2(c) are supplied are set out in the Submission.

## 6. Public detriments

- (a) **Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:**

Details of the detriments to the public resulting or likely to result from the PGI Agreement are set out in the Submission.

- (b) **Facts and evidence relevant to these detriments:**

The facts and evidence relevant to these detriments are set out in the Submission.

## 7. Contracts, arrangements or understandings in similar terms

- (a) **This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:**

- (b) **Is this application to be so expressed?**

No.

- (c) **If so, the following information is to be furnished:**

- (i) **description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:**

N/A

- (ii) **Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:**

N/A

- (iii) **Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:**

N/A

## 8. Joint Ventures

- (a) **Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?**

No.

- (b) **If so, are any other applications being made simultaneously with this application in relation to that joint venture?**

N/A

(c) If so, by whom or on whose behalf are those other applications being made?

N/A

9. Further information

(a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

Herbert Smith Freehills

ANZ Tower, 161 Castlereagh Street, Sydney NSW 2000

Attention: Patrick Gay

Telephone: (02) 9225 5000

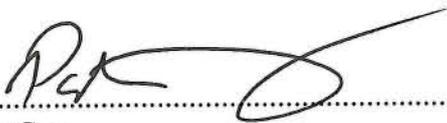
Direct: (02) 9322 4378

Facsimile: (02) 9322 4000

Email: [patrick.gay@hsf.com](mailto:patrick.gay@hsf.com)

Dated.....12 Sept 2014.....

Signed on behalf of the applicant

  
.....

Patrick Gay

Partner

Herbert Smith Freehills

## Form B

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsections 88 (1A) and (1)*

### **AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

## 1. Applicant

A91459

### (a) Name of Applicant:

Tabcorp Europe Limited (**Tabcorp Europe**)  
PO Box 227, Clinch's House, Lord Street, Douglas, Isle of Man, IM99 1RZ

This application relates to Tabcorp Europe's agreement with Premier Gateway International Ltd (**PGI**) and HKJC Horse Race Betting Limited (**HKJC**).

This application is to be read and determined together with:

- Tabcorp Europe's application in Form A;
- TAB Limited's (**TAB**) applications in Forms A and B; and
- Tabcorp Wagering Manager (Vic) Pty Ltd's (**Tabcorp Wagering Manager**) applications in Forms A and B,

(collectively, the **Application**).

A copy of the submission made in support of the Application is attached (**Submission**).

### (b) Short description of business carried on by applicant:

Tabcorp Holdings Limited (**Tabcorp Holdings**) operates through its subsidiaries and controlled entities, including Tabcorp Wagering Manager, TAB, and Tabcorp Europe, and is a wagering, gaming and entertainment business whose operations are organised into four main business units including Wagering, Media and International, Gaming, and Keno.

Tabcorp Europe is incorporated in the Isle of Man. Further information about Tabcorp Europe is provided in the Submission.

### (c) Address in Australia for service of documents on the applicant:

Herbert Smith Freehills  
ANZ Tower, 161 Castlereagh Street, Sydney NSW 2000  
Attention: Patrick Gay  
Telephone: (02) 9225 5000  
Direct: (02) 9322 4378  
Facsimile: (02) 9322 4000  
Email: [patrick.gay@hsf.com](mailto:patrick.gay@hsf.com)

## 2. Contract, arrangement or understanding

(a) **Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:**

Tabcorp Europe seeks authorisation to make and give effect to an agreement between Tabcorp Europe, PGI and HKJC (**PGI Agreement**). The PGI Agreement governs PGI's participation in the pool operated by HKJC.

A confidential copy of the PGI Agreement is attached to the Submission (**Confidential Annexure C**).

(b) **Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:**

1. Provisions of the PGI Agreement under which PGI must comply with HKJC's Betting Rules and associated operational requirements (**Betting Rules Requirement**).
2. Provisions of the PGI Agreement which contain a regime for the payment of rebates by PGI (**Rebate Provision**).
3. Provisions of the PGI Agreement under which PGI must not accept bets from customers who are located in Hong Kong (**Geographic Restriction**).
4. Provisions of the PGI Agreement under which PGI must not offer bet types other than those approved by HKJC (**Betting Restriction**).

These provisions are discussed in more detail in the Submission.

Tabcorp Europe applies for authorisation in respect of all provisions of the PGI Agreement.

(c) **Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:**

Pari-mutuel pooling services.

Pari-mutuel wagering on racing.

(d) **The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:**

Seven years.

The grounds supporting this period of authorisation are set out in the Submission.

### **3. Parties to the proposed arrangement**

#### **(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:**

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PGI is incorporated in the Isle of Man. It is jointly owned by Tabcorp and Phumulela Gold Enterprises (the enterprise licensed to provide totalisator services in South Africa). PGI is licensed in the Isle of Man by the Isle of Man Gambling Supervision Committee. It provides totalisator services and interface services to other overseas wagering operators.

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1 Sports Road, Happy Valley, Hong Kong

HKJC is a wholly-owned subsidiary of The Hong Kong Jockey Club (the **Club**) and is incorporated in Hong Kong. It is currently the sole licence holder to provide horse race betting services in Hong Kong.

#### **(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:**

1. Tabcorp Europe (see 1(a) and (b) above)
2. PGI (see 3(a) above)
3. HKJC (see 3(a) above)
4. The Hong Kong Jockey Club, 1 Sports Road, Happy Valley, Hong Kong

The Club is a Hong Kong company with liability limited by guarantee. The Club owns and manages horse racing tracks in Hong Kong and operates horse racing events, and through its subsidiaries, engages in horse race betting, football betting and lottery operations in Hong Kong.

The Club operates on a 'not-for-profit' basis. Its net earnings after payment of prize money, racing dividends, taxes, operating costs and investments to enhance Hong Kong's racing and betting facilities, are donated to charitable and community projects.

### **4. Public benefit claims**

#### **(a) Arguments in support of authorisation:**

The arguments in support of authorisation are set out in the Submission.

**(b) Facts and evidence relied upon in support of these claims:**

The facts and evidence relied upon in support of these claims are set out in the Submission.

**5. Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (c) 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):**

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**(a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:**

Details of the detriments to the public resulting or likely to result from the PGI Agreement are set out in the Submission.

**(b) Facts and evidence relevant to these detriments:**

The facts and evidence relevant to these detriments are set out in the Submission.

**7. Contract, arrangements or understandings in similar terms**

**This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.**

**(a) Is this application to be so expressed?**

No.

**(b) If so, the following information is to be furnished:**

**(i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:**

N/A

**(ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:**

N/A

- (iii) **Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:**

N/A

**8. Joint Ventures**

- (a) **Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?**

No.

- (b) **If so, are any other applications being made simultaneously with this application in relation to that joint venture?**

N/A

- (c) **If so, by whom or on whose behalf are those other applications being made?**

N/A

**9. Further information**

- (a) **Name and address of person authorised by the applicant to provide additional information in relation to this application:**

Herbert Smith Freehills

ANZ Tower, 161 Castlereagh Street, Sydney NSW 2000

Attention: Patrick Gay

Telephone: (02) 9225 5000

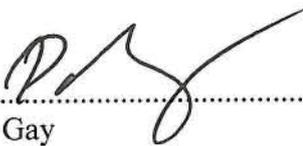
Direct: (02) 9322 4378

Facsimile: (02) 9322 4000

Email: [patrick.gay@hsf.com](mailto:patrick.gay@hsf.com)

Dated.....12 Sept. 2014.....

Signed on behalf of the applicant

  
.....  
Patrick Gay

Partner

Herbert Smith Freehills

## Submission to the Australian Competition and Consumer Commission

Application for authorisation of the pooling agreements between HKJC Horse Race Betting Limited and each of Tabcorp Wagering Manager (Vic) Pty Ltd, TAB Limited, and Tabcorp Europe Limited

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**Restriction of Publication of Part Claimed**

12 September 2014

**[Restriction of Publication of Part Claimed]**

**[Restriction of Publication of Part Claimed]**

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**Confidential Annexure E**  
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## 1 Introduction and Conditions Precedent

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### 1.1 The Application

Each of Tabcorp Wagering Manager (Vic) Pty Ltd (**Tabcorp Wagering Manager**) and TAB Limited (**TAB**) intends to enter into an agreement with HKJC Horse Race Betting Limited (**HKJC**), a subsidiary of The Hong Kong Jockey Club (**the Club**), governing their participation in pools on Hong Kong racing operated by HKJC (the **Tabcorp Wagering Manager Agreement** and the **TAB Agreement**, respectively). The Tabcorp Wagering Manager Agreement and the TAB Agreement are on similar terms.

Copies of the Tabcorp Wagering Manager Agreement and the TAB Agreement are attached to this submission as Confidential Annexures A and B respectively.

In addition, Tabcorp Europe Limited (**Tabcorp Europe**) and Premier Gateway International Limited (**PGI**) are proposing to enter into an agreement with HKJC on similar terms (**PGI Agreement**). Tabcorp Europe is a party to the PGI Agreement [**Restriction of Publication of Part Claimed**]. However, as discussed below, out of an abundance of caution, Tabcorp Europe is seeking authorisation of the PGI Agreement. A copy of the PGI Agreement is attached to this submission as Confidential Annexure C.

In this submission, the Tabcorp Wagering Manager Agreement, the TAB Agreement, and the PGI Agreement are collectively called the **Agreements**.

The Agreements will allow Tabcorp Wagering Manager, TAB and PGI to participate in pools operated by HKJC, where Tabcorp Wagering Manager, TAB and PGI are 'guests', and HKJC is the 'host'.

The Agreements do not concern HKJC pooling into Tabcorp and/or TAB pools. Tabcorp and TAB consider that the Agreements, whereby they will guest into HKJC pools, will create an opportunity to negotiate pooling arrangements whereby HKJC will guest into Tabcorp and/or TAB pools.

This submission is provided to the Australian Competition and Consumer Commission (**ACCC**) in support of the applications for authorisation under section 88 of the *Competition and Consumer Act 2010* (Cth) (**CCA**) to make and give effect to the Tabcorp Wagering Manager Agreement, the TAB Agreement, and the PGI Agreement.

In addition, as the ACCC is aware, Tabcorp recently entered into an agreement to acquire ACTTAB Limited's assets, including its licence to conduct totalisator wagering in the ACT. The ACCC is currently reviewing that acquisition, and is expected to make a decision on 2 October 2014. If that acquisition proceeds, Tabcorp is expected to seek to enter into an agreement with HKJC to allow bets placed with its ACT-licensed entity to be pooled into Hong Kong. In those circumstances, Tabcorp Wagering Manager is also applying for authorisation to make and give effect to potential future arrangements between a Tabcorp entity and HKJC on substantially similar terms to the Tabcorp Wagering Manager Agreement.

For the sake of simplicity, this submission refers to 'Tabcorp' as the applicant. References to 'Tabcorp' include references to Tabcorp Wagering Manager, TAB, Tabcorp Europe and PGI, as well as Tabcorp Wagering (Vic) Pty Ltd and/or Tabcorp Holdings Limited, as the context requires.

Tabcorp applies for authorisation for the benefit of all parties.

### 1.2 Interim authorisation

Tabcorp has also applied for interim authorisation to make and give effect to the Tabcorp Wagering Manager Agreement, the TAB Agreement, and the PGI Agreement.

Tabcorp would appreciate receiving interim authorisation by 29 September 2014. This date corresponds to the beginning of the Australian Spring Racing Carnival. **[Restriction of Publication of Part Claimed]**.

Tabcorp appreciates that its request for interim authorisation does not give the ACCC a great deal of time to consider the Agreements. However, in respect of the relevant provisions, the Agreements are (with one minor exception discussed below) consistent with the international pooling arrangements the ACCC is currently considering, and which it is proposing to authorise.<sup>1</sup>

### 1.3 Conditions Precedent

The Agreements are subject to a condition precedent relating to authorisation.<sup>2</sup>

The Agreements provide that:

- the parties will prepare and submit applications for ACCC Final Authorisation;
- at the same time as submitting the applications for ACCC Final Authorisation, the parties will prepare and submit applications for ACCC Interim Authorisation;
- if the ACCC grants Interim Authorisation the Agreements will come in to force, subject to other conditions precedent being satisfied; and
- if the ACCC grants Interim Authorisation but it is subsequently withdrawn, suspended, revoked or otherwise ceases to be effective, and the ACCC does not ultimately grant Final Authorisation, either party may terminate the Agreements immediately by notice in writing to the other party.

### 1.4 Tabcorp's approach in respect of pooling agreements

#### (a) Tabcorp Wagering Manager Agreement and TAB Agreement

As the ACCC is aware, Tabcorp's domestic pooling arrangements with Racing and Wagering Western Australia (**RWWA**) and ACTTAB Limited (**ACTTAB**) are the subject of an ACCC authorisation decision (granted 10 December 2012).

As the ACCC is also aware, Tabcorp has already applied for authorisation of its pooling arrangements with various international wagering operators. While that application is currently before the ACCC, and the ACCC has released a draft determination proposing to authorise the international pooling arrangements, an application has been made specifically in relation to the arrangements described herein because:

- Tabcorp is seeking interim authorisation of the Agreements prior to the start of the Australian Spring Racing Carnival; and
- as discussed in detail below, the Agreements contain one additional provision which is not included in the other international pooling arrangements and for which Tabcorp is seeking authorisation.

Tabcorp considers that Tabcorp and international wagering operators, including HKJC, are not relevantly competitive in respect of the supply of wagering services. In this regard, Tabcorp notes that it is licensed to provide wagering services in Australia – but it is not licensed to offer wagering services in Hong Kong and cannot advertise in Hong Kong. Indeed, under the laws of Hong Kong, Tabcorp is prohibited from accepting, negotiating or settling bets from or with wagering customers located in Hong Kong.<sup>3</sup>

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<sup>1</sup> Draft Determination A91419-A91424.

<sup>2</sup> See, for example, Clauses 2.1, 2.2 and Schedule 11 of the Tabcorp Wagering Manager Agreement.

<sup>3</sup> See section 7 of Gambling Ordinance 148.

HKJC, which is licensed to offer wagering services in Hong Kong, is not licensed to offer wagering services in Australia and, as a result, cannot advertise in Australia.

Nevertheless, Tabcorp recognises that:

- international pooling arrangements may create circumstances where wagering customers (principally high net worth premium customers) seek to access pools from various jurisdictions. In relation to these customers, it might be asserted that there is some scope for competition between Tabcorp and overseas wagering operators, including HKJC; and
- developments are occurring in relevant markets, including the potential for industry deregulation, which could result in competition between Tabcorp and HKJC in the future.

Therefore, Tabcorp considers it appropriate to seek authorisation of the Agreements.

(b) **PGI Agreement**

The PGI Agreement relates to pooling involving two overseas wagering operators – PGI and HKJC – neither of which is licensed to provide wagering services in Australia.

As noted below, PGI is not a related body corporate of Tabcorp. However, Tabcorp has, out of an abundance of caution, decided to apply for authorisation in respect of the PGI Agreement because:

- Tabcorp Europe is a party to the PGI Agreement **[Restriction of Publication of Part Claimed]**;
- Tabcorp Europe is a wholly-owned subsidiary of Tabcorp Holdings Limited (**Tabcorp Holdings**), a company incorporated in Australia; and
- there is some uncertainty as to whether an agreement which will have no effect in Australia is, nevertheless, subject to the relevant provisions of the CCA where one of the parties to that agreement is an Australian company (or a related body corporate of an Australian company).

## 1.5 Confidentiality

This submission, including its annexures, contains information which is confidential to the parties, and must not be disclosed to any other person.

In particular, the terms of the Agreements are commercially sensitive and are provided to the ACCC on a strictly confidential basis.

This claim for confidentiality does not prevent the ACCC from disclosing this submission, or any part of it, to the ACCC's third party legal and economic advisers. However, those third party advisers are required to treat this submission on the same basis as the ACCC.

A redacted, non-confidential version of this submission has been provided to the ACCC.

## 2 Parties

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### 2.1 Tabcorp

Tabcorp Holdings operates through its subsidiaries and controlled entities, including Tabcorp Wagering Manager and TAB. Tabcorp Holdings is a wagering, gaming and entertainment business 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 licenses and approvals in Victoria, New South Wales, and the Northern Territory.

(a) **Tabcorp Wagering Manager**

Tabcorp Wagering (Vic) Pty Ltd is licensed to provide wagering services in Victoria. The provision of wagering services provided pursuant to that licence is undertaken by Tabcorp Wagering Manager, which is authorised as a wagering operator to provide wagering services pursuant to section 4.3A.15(1)(a) of the *Gambling Regulation Act 2003* (Vic).

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

- stand-alone TAB agencies and company-operated mobile betting vans and other locations in Victoria;
- licensed venues in Victoria (i.e. PubTABs and ClubTABs); and
- accounts (accessible via telephone and internet).

(b) **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 Wagering Manager in Victoria.

(c) **PGI**

PGI is a 50/50 joint venture between Phumelela, the manager of the South African totalisator and horse racing industry, and Tabcorp.

PGI is licensed in the Isle of Man by the Isle of Man Gambling Supervision Commission as a wagering operator. It acts as both an intermediary hub and a wagering operator in its own right.

(d) **Tabcorp Europe**

Tabcorp Europe is a company incorporated in the Isle of Man **[Restriction of Publication of Part Claimed]**. As noted above, it is a wholly-owned subsidiary of Tabcorp Holdings.

## 2.2 The Hong Kong Jockey Club

The Club is a Hong Kong company with liability limited by guarantee. The Club owns and manages horse racing tracks in Hong Kong and operates horse racing events, and through its subsidiaries, engages in horse race betting, football betting, and lottery operations in Hong Kong.

The Club operates on a 'not-for-profit' basis. Its net earnings after payment of prize money, racing dividends, taxes, operating costs and investments to enhance Hong Kong's racing and betting facilities, are donated to charitable and community projects.

HKJC is a wholly-owned subsidiary of the Club and is incorporated in Hong Kong. It is currently the sole licence holder to provide horse race betting services in Hong Kong.

## 2.3 Prior relationship between the parties

Tabcorp currently offers wagering on Hong Kong racing. It does this through the operation of its own domestic, stand-alone 'B' pools. Other wagering operators – RWWA, ACTTAB and New Zealand Racing Board (**NZRB**) – all participate in these pools.

Tabcorp has a prior agreement with HKJC to obtain racing vision and racing information to support these pools.

As noted below, Tabcorp's 'B' pools are significantly smaller than the main pools operated by HKJC. Their limited size, and consequential lack of liquidity, limits their attraction to punters.

## 3 Background

### 3.1 Pooling

#### (a) Introduction

Wagering in Australia has traditionally been divided into pari-mutuel (totalisator) and fixed-odds wagering (known as 'bookmaking'). Recently, other forms of wagering have been introduced – tote odds bookmaker betting (a derivative of pari-mutuel wagering schemes) and betting exchanges.

#### (b) Pari-mutuel wagering

In pari-mutuel wagering, all the bets are consolidated or 'pooled' into a totalisator pool, and the final odds are not calculated until after the close of betting on the relevant event.

The totalisator operator deducts from the totalisator pool a predetermined percentage of the totalisator pool (referred to as the 'commission rate' or 'take out rate') as the operator's commission. The remainder of the totalisator pool is referred to as the 'dividend pool' and is available for distribution to winning customers.

In each Australian State and Territory, there is one operator licensed or otherwise authorised to conduct off-course totalisator wagering. Table 1 below sets out the off-course totalisator operators in each State and Territory, and their current status.

**Table 1 – Off-course totalisator operators**

State	Status of off-course totalisator operator
New South Wales	TAB – a wholly-owned subsidiary of Tabcorp Holdings (a listed public company)
Victoria	Tabcorp Wagering (Vic) Pty Ltd – a wholly-owned subsidiary of Tabcorp Holdings  The provision of wagering services provided pursuant to Tabcorp Wagering (Vic) Pty Ltd's license is undertaken by Tabcorp Wagering Manager, which is authorised as a wagering operator to provide wagering services pursuant to section 4.3A.15(1)(a) of the <i>Gambling Regulation Act 2003 (Vic)</i>
Queensland	Tatts Group Limited <sup>4</sup> – a listed public company, which operates the TattsBet pool
Western Australia	RWWA – a government authority that holds the licence to operate a totalisator in WA. RWWA is also responsible for administering the racing industry within WA
South Australia	SATAB Pty Ltd – a wholly-owned subsidiary of Tatts Group Limited
Tasmania	TOTE Tasmania – a wholly-owned subsidiary of Tatts Group Limited

<sup>4</sup> On 12 October 2006, UNITAB became part of Tattersall's Limited as a result of a merger of both companies.

Australian Capital Territory	ACTTAB – a Territory-owned corporation
Northern Territory	NTTAB Pty Ltd – a wholly-owned subsidiary of Tatts Group Limited

(c) **Pooling**

‘Pooling’ (or ‘co-mingling’) occurs only in the context of pari-mutuel wagering. As set out above, in pari-mutuel wagering, the bets are consolidated into a totalisator pool.

Pooling refers to arrangements between two or more totalisators whereby the totalisators combine their respective pools in order to provide a single, larger pool into which the customers of each participating totalisator can wager.

Pooling arrangements generally involve a totalisator with a large pool (the ‘host’) offering ‘pooling services’ to one or more other totalisators which each have a smaller pool (the ‘guest participants’). In practice, the provision of pooling services means the provision by the host of the right to participate in the larger pool in return for a fee.

(d) **Rationale for pooling**

Totalisators seek to enter into pooling arrangements with other totalisators in order to have access to a larger totalisator pool. Access to a larger pool provides an opportunity for the guest totalisator to expand and enhance its offering to customers.

Totalisators seek to enter into hosting arrangements to improve liquidity in their existing pools and to earn additional revenue through the fees associated with acting as a host.

Table 2 below compares pool sizes on Hong Kong racing. As shown, the size of the HKJC pools dwarf the size of the Tabcorp ‘B’ pools.

**Table 2 – Comparison of pool sizes on Hong Kong races**  
**[Restriction of Publication of Part Claimed]**  
**[Restriction of Publication of Part Claimed]**

A number of benefits flow from access to a large totalisator pool:

*For consumers of pari-mutuel wagering products*

- **Stability:**

The larger the totalisator pool, the greater its stability – that is, larger bets will have less effect on the indicative and final dividends. This benefits both consumers placing larger bets and consumers placing smaller bets whose dividends could be affected by the larger bets.

A large bet placed with a small totalisator (without access to a large pool) could substantially affect the approximate dividends displayed for each runner, as well as affecting the final dividends in the relevant race and, in turn, affecting potential winnings of all punters who have wagered on that race.

The tables below illustrate that even a modest bet can have a substantial impact on smaller pools:

- Table 3 shows the change in dividend resulting from a \$500 bet placed in pools varying in size from \$5,000 to \$30,000. Even in a pool of \$30,000, the placing of a \$500 bet will reduce a pre-bet dividend of \$20.00 to a post-bet dividend of \$14.60.
- Table 4 shows the reduction from the pre-bet dividend in percentage terms.
- Table 5 shows the percentage reduction in the winnings received by the consumer as a result.

**Table 3 – Post-bet dividend paid (\$)**

Pre-bet dividend (\$)	Post-bet dividend by pool size				
	\$5,000	\$10,000	\$15,000	\$20,000	\$30,000
4.00	2.90	3.40	3.50	3.60	3.70
10.00	5.00	6.60	7.40	7.90	8.50
20.00	6.50	9.60	11.60	12.90	14.60

Note: All calculations, for this and the following tables, are based on a commission rate of 14.5%.

**Table 4 – Percentage reduction in dividend**

Pre-bet dividend (\$)	Post-bet percentage reduction in dividend by pool size				
	\$5,000	\$10,000	\$15,000	\$20,000	\$30,000
4.00	27.5	15.0	12.5	10.0	7.5
10.00	50.0	34.0	26.0	21.0	15.0
20.00	67.5	52.0	42.0	35.5	27.0

**Table 5 – Percentage reduction in winnings**

Pre-bet dividend (\$)	Post-bet dividend by pool size				
	\$5,000	\$10,000	\$15,000	\$20,000	\$30,000
4.00	36.7	20.0	16.7	13.3	10.0
10.00	55.6	37.8	28.9	23.3	16.7
20.00	71.1	54.7	44.2	37.4	28.4

When the ACCC considered Tabcorp's pooling arrangements with RWWA and ACTTAB in 2009 and 2012,<sup>5</sup> it accepted that a larger pool provides more stability with less fluctuations in dividends than might occur in a smaller totalisator pool. The ACCC also accepted this in its draft determination regarding Tabcorp's international pooling arrangements.<sup>6</sup>

- Size of dividend:  
A larger pool means that there is potentially more money available to distribute to winning punters.
- Access to additional or enhanced pari-mutuel wagering pools:  
Pooling allows smaller totalisators (like RWWA and ACTTAB) to offer international pari-mutuel wagering pools to punters who may not otherwise have access to those pools.  
For example, Tabcorp's domestic pooling arrangements together with the Agreements will provide RWWA and ACTTAB customers with access to Hong Kong pools. NZRB customers will also have access to Hong Kong pools.

<sup>5</sup> See, for example, Determination A91323 – A91328, paragraphs 89, 90 and 107.

<sup>6</sup> Draft Determination A91419-A91424, paragraph 78.

Before they are able to transmit bets (through Tabcorp) to Hong Kong pools, each of RWWA and ACTTAB will need to enter into separate agreements directly with HKJC to obtain the necessary rights and inputs. Assuming that such agreements are made, RWWA and ACTTAB will have the right to transmit bets through Tabcorp pursuant to the SuperTAB Agreements authorised by the ACCC.

#### *For totalisators*

- Ability to attract more punters:

Totalisator wagering, and pooling, is a 'market-making' activity (i.e. the effect of the totalisator and pooling is to create the market by which consumers will place bets). As with other market-making businesses (for example, a stock exchange), a key feature of the attractiveness of the service is the number of people using the service. A larger totalisator pool may attract more customers because the larger the pool, the greater its stability. In a small pool, even moderate bets can affect the dividends.

Having access to a large pool assists a totalisator to attract punters, including high value punters, who are much more likely than recreational punters to place large bets. The size of the totalisator pool is an important factor considered by high value punters when choosing where to place a bet, and therefore pooling arrangements will assist totalisators to compete more effectively with other wagering operators.

- Access to new or improved products:

Pooling agreements facilitate the exchange of wagering data and racing vision. In combination with pooling, this enables guest totalisators to offer consumers access to races and/or wagering pools that they could not otherwise offer.

- Fee for service:

The host totalisator usually charges a fee for the provision of pooling services to other totalisators. This provides an additional revenue stream to stakeholders, including the racing industry.

- Reciprocal pooling:

Pooling arrangements with international totalisators frequently involve reciprocal co-mingling which allows a totalisator to offer a broader range of products to its customers. While the Agreements do not involve a reciprocal relationship, Tabcorp considers that a successful 'guesting' arrangement with HKJC will increase the prospect of negotiating a hosting arrangement with HKJC in the near future.

#### *For racing industry participants*

- Increased revenue for the racing industry:

As discussed in detail in Section 3.2 below, international pooling arrangements generate additional revenue for the racing industry in a number of ways, including through pooling fees and increased wagering.

### **3.2 Interrelationship between the racing and wagering industries**

The wagering industry, and particularly the operations of the off-course totalisator licensee (e.g. Tabcorp), is highly regulated in each Australian State and Territory.

Legislation specifies the conditions under which an off-course totalisator licence may be granted, including the period of time for which it is granted. It also requires the licensee to comply with a large number of conditions, obligations and restrictions, such as:

- the payment of taxes and other fees to the State or Territory Government;
- compliance with legislated maximum or specified commission rates;
- entry into arrangements with the relevant racing industry bodies under which the totalisator provides economic contributions to the racing industry and obtains approvals to conduct wagering activities; and
- the requirements for the conduct of the totalisator.

(a) **Racing bodies**

In Victoria, Tabcorp's arrangements with the Victorian racing industry are governed by a Joint Venture Agreement (**JVA**).

In New South Wales, TAB has entered into a Racing Distribution Agreement (**RDA**) which governs aspects of its relationship with the NSW racing industry.

Under the terms of the JVA (in Victoria) and the RDA (in New South Wales), Tabcorp is the principal funder of the racing industry. Tabcorp's principal source of revenue is bets placed directly with it. Consequently, bets placed directly with Tabcorp form the basis for the vast majority of the distributions to the racing industry.

Where international pooling arrangements involve Tabcorp acting as the host, they result in additional revenue to the racing industry through:

- profits derived from pooling/co-mingling fees; and
- revenues received through the provision of racing vision by Sky Channel to international wagering operators. Pursuant to agreements with Sky Channel, racing clubs receive a portion of international revenues obtained by Sky Channel.

Where international pooling arrangements involve Tabcorp acting as a guest, additional revenue will flow to the racing industry as the development of a new or improved wagering product will result in increased wagering.

**[Restriction of Publication of Part Claimed]**

## 4 The conduct

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### 4.1 The Agreements

While Tabcorp is seeking authorisation of the entire Agreements, the following provisions of the Agreements may be of most interest to the ACCC:

- 1 when accepting bets, Tabcorp must comply with HKJC's Betting Rules and associated operational requirements (**Betting Rules Requirement**). The Betting Rules, among other things, permit HKJC to specify the applicable commission rates to be charged on particular pari-mutuel bet types. The Betting Rules Requirement means that Tabcorp must comply with those commission rates;
- 2 Tabcorp must not offer or give any incentives, discounts, rebates, bonuses or credits in respect of bets pooled with HKJC, **[Restriction of Publication of Part Claimed]** (**Rebate Restriction**);
- 3 Tabcorp must not accept bets from customers who are located in Hong Kong (**Geographic Restriction**); and

- 4 Tabcorp must not offer any bet types other than those approved by HKJC (**Betting Restriction**).

Apart from the Betting Restriction referred to in point 4 above, each of these provisions has been considered by the ACCC in the context of Tabcorp's applications for authorisation of its international pooling arrangements. On 27 August 2014, the ACCC released a draft determination proposing to authorise those arrangements.<sup>7</sup>

## 4.2 Examples of relevant provisions of the Agreements

Examples of the provisions described in Section 4.1 above are described and discussed in further detail below.

### (a) Betting Rules Requirement

The Agreements contain provisions requiring Tabcorp to comply with HKJC's Betting Rules and associated operational requirements.

#### **[Restriction of Publication of Part Claimed]**

The Company's Betting Rules are the 'Horse Race Betting Rules' (referred to as 'HKJC's Betting Rules' or 'the Betting Rules' in this submission). A copy of the Betting Rules is provided at Annexure D to this submission.

#### **[Restriction of Publication of Part Claimed]**

The TAB Agreement and the PGI Agreement contain equivalent provisions.

The Betting Rules permit HKJC to specify the applicable commission rates to be charged on particular pari-mutuel bet types (**Commission Rates Provision**).

In addition, there are some associated operational requirements with which Tabcorp must comply. For example, **[Restriction of Publication of Part Claimed]**

Again, the TAB Agreement and the PGI Agreement contain equivalent provisions.

This is consistent with legislative prohibitions which prevent minors from gambling. However, if Tabcorp were considered to be an actual or likely competitor of HKJC, then it would be arguable that such restrictions raise issues under Part IV Div 1, and sections 45(2) and 4D, of the CCA. This submission does not set out these restrictions in detail or discuss them further because it is Tabcorp's view that they will not be of concern to the ACCC.

#### *Application of the CCA*

There is some risk that the Commission Rates Provision might be construed as having the purpose or effect of fixing, controlling or maintaining the price of pari-mutuel wagering products that are offered by Tabcorp and HKJC to their respective customers.

Such arrangements could potentially contravene sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK of the CCA, if Tabcorp and HKJC were considered to be relevantly competitive.

#### *Rationale*

The Commission Rates Provision is central to HKJC's operation of its pools. It is an international norm to follow the betting rules of the host.

The pools operate according to gross pool pricing, not net pool pricing. Bets made by punters through pool participants are co-mingled in the relevant pool. The commission rate is then removed from the top of the pools and the winning dividends are calculated. Consequently, in respect of a pooled bet, a winning punter who bets directly into the

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<sup>7</sup> Draft Determination A91419-A91424.

Hong Kong pool will receive the same dividend as a winning punter who bets into that pool through Tabcorp.

Currently, HKJC as the host does not accept different commission rates charged by different participants in the calculation of dividends into the Hong Kong pool. A move to net pool pricing would require substantial hardware and software development.

**(b) Rebate Restriction**

The Agreements contain a restriction on the provision of incentives, discounts, rebates, bonuses and credits in respect of bets transmitted to HKJC.

**[Restriction of Publication of Part Claimed]**

The TAB Agreement and the PGI Agreement contain equivalent provisions.

*Application of the CCA*

There is a risk that these arrangements might be construed as having the purpose or effect of fixing, controlling or maintaining the price of pari-mutuel wagering products that are offered by Tabcorp and HKJC to their respective customers.

Such arrangements could potentially contravene sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK of the CCA, if Tabcorp and HKJC were considered to be relevantly competitive.

*Rationale*

These provisions have been inserted into the Agreements at the instruction of and for the benefit of HKJC, to ensure that Tabcorp does not offer rebates on Hong Kong racing which might encourage wagers to be placed via Tabcorp rather than directly through HKJC. In other words, the restriction seeks to limit the possibility of 'leakage' to Tabcorp of bets which would otherwise be placed directly into HKJC pools. In addition, and when considered in conjunction with the Geographic Restriction (discussed below), these provisions reduce the possibility that punters in Hong Kong will bet with Tabcorp in contravention of Hong Kong law.

Tabcorp notes that this restriction only applies to bets which Tabcorp transmits to HKJC under the Agreements. There is no attempt, or ability, to limit any rebates offered in respect of other bets. **[Restriction of Publication of Part Claimed]**.

**(c) Geographic Restriction**

The Agreements contain a restriction on Tabcorp's ability to accept bets from persons resident / located in Hong Kong.

**[Restriction of Publication of Part Claimed]**

The TAB Agreement and the PGI Agreement contain equivalent provisions.

*Application of the CCA*

If Tabcorp was considered to be a competitor or likely competitor of HKJC, it is arguable that these restrictions may fall within sections 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK, 45(2)(a)(i) and 45(2)(b)(i) of the CCA.

The restrictions may also fall within sections 45(2)(a)(ii) and 45(2)(b)(ii) of the CCA. However, the provisions do not have the purpose, or likely effect, of substantially lessening competition in any market in Australia.

*Rationale*

Under the laws of Hong Kong, Tabcorp is prohibited from accepting, negotiating or settling bets from or with wagering customers in Hong Kong.

In this respect, the Geographic Restriction merely seeks to ensure Tabcorp's compliance with Hong Kong law.

(d) **Betting Restriction**

The Agreements contain a restriction regarding the types of bets that Tabcorp may offer on the races conducted by HKJC.

**[Restriction of Publication of Part Claimed]**

The TAB Agreement and the PGI Agreement contain equivalent provisions.<sup>8</sup>

*Application of the CCA*

If Tabcorp was considered to be a competitor or likely competitor of HKJC, it is arguable that the Betting Restriction may fall within sections 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK, 45(2)(a)(i) and 45(2)(b)(i) of the CCA.

The restriction may also fall within sections 45(2)(a)(ii) and 45(2)(b)(ii) of the CCA. However, the provisions do not have the purpose, or likely effect, of substantially lessening competition in any market in Australia.

*Rationale*

Under the Agreements, HKJC is granting to Tabcorp the right to use its racing vision for the purposes of taking bets on those races in Australia and pooling those bets with HKJC. In that context, HKJC is seeking to limit Tabcorp's use of HKJC's racing vision so that Tabcorp only offers bets which HKJC approves of and which may be pooled into HKJC's pools. In that sense, the restriction is effectively a condition of the grant of the license to use HKJC's racing vision and is designed to ensure that HKJC receives the full economic benefit associated with licensing that vision.

Tabcorp notes that the Agreements do not restrict Tabcorp from accepting pari-mutuel bet types that Tabcorp is unable to co-mingle with HKJC that otherwise fall under stand-alone agreements (for example, accepting bets on the bet type known as the 'quaddie'). **[Restriction of Publication of Part Claimed]** Tabcorp notes that it does not currently offer fixed odds wagering on Hong Kong racing.

## 5 Relevant markets

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### 5.1 The market for the supply of wagering services

Tabcorp submits that, for the purposes of the applications:

- The relevant market is at least the national market for the supply of wagering on racing, including products offered by totalisators, bookmakers and betting exchanges.
- It is arguable that the relevant product market is broader and includes:
  - wagering on other sports or events; and
  - other forms of gambling.

Regardless of the market definition adopted by the ACCC, the Agreements will result in significant public benefit and no anti-competitive detriment.

In considering Tabcorp's application for authorisation of its pooling arrangements with RWWA and ACTTAB in 2012, the ACCC did not consider it necessary to determine the

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<sup>8</sup> This restriction is also contained in the 'written instructions' issued by HKJC, which Tabcorp must comply with under the Agreements (see, for example, Clause 3.1(d)(iv)(4) of the Tabcorp Wagering Manager Agreement). Copies of the current written instructions for the Tabcorp Wagering Manager Agreement and the TAB Agreement are included at Confidential Annexure E. The written instructions for the PGI Agreement are equivalent in all material respects.

precise areas of competition. However, the ACCC acknowledged, referring to its prior 2009 decision, that:

markets for traditional wagering products are, to a degree, converging with an increased number of consumers now considering pari-mutuel and fixed odd wagering to be in competition with each other.<sup>9</sup>

Further, in considering the public detriment, the ACCC accepted:

The presence of betting exchanges and corporate bookmakers using both phone and internet-based account services has grown over recent years [and they] are likely to act as a constraint on the level of detriment resulting from the 2012 Agreements.<sup>10</sup>

Similarly, in its draft determination regarding Tabcorp's applications for authorisation of its international pooling arrangements, the ACCC did not consider it necessary to comprehensively define the areas of competition, but noted:

- its previous statements that the markets for pari-mutuel and fixed odds wagering are continuing to converge;<sup>11</sup>
- the High Court's decision in *Befair v Western Australia*,<sup>12</sup> in which the Court recognised a national market for the provision of wagering services on racing and sports by means of telephone and internet;<sup>13</sup> and
- that there has been an increase in the demand for telephone and online wagering services which suggests that national or jurisdictional boundaries are breaking down.<sup>14</sup>

## 6 The Factual and Counterfactual

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### 6.1 Introduction

Pooling with HKJC will improve Tabcorp's service offering.

While Tabcorp currently operates domestic, stand-alone 'B' pools on Hong Kong racing, pooling with HKJC will allow Tabcorp to provide access to HKJC's exponentially deeper and more liquid pools.

### 6.2 The future with and without the conduct

#### (a) The future with the Agreements

The Agreements will allow Tabcorp to participate in the HKJC pools. They are also likely to result in ACTTAB and RWWA participating in the HKJC pools through the authorised SuperTAB Agreements.

In addition, the Agreements will likely increase the chances of Tabcorp being able to negotiate a co-mingling agreement with HKJC where Tabcorp acts as 'host'.

#### (b) The future without the Agreements

Absent the Agreements, Tabcorp will be unable to participate in the HKJC pools.

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<sup>9</sup> Determination A91323 – A91328, paragraph 71.

<sup>10</sup> Determination A91323 – A91328, paragraph 138.

<sup>11</sup> Draft Determination A91419-A91424, paragraph 58.

<sup>12</sup> (2008) 234 CLR 418.

<sup>13</sup> Draft Determination A91419-A91424, at paragraph 59.

<sup>14</sup> Draft Determination A91419-A91424, at paragraph 60.

The Rebate Restriction, the Geographic Restriction, and the Betting Restriction have all been included in the Agreements at the insistence of, and for the benefit of, HKJC, for the various reasons set out in Section 4 above. Without these provisions, HKJC would not enter the Agreements, and without the Agreements, Tabcorp would not be able to participate in HKJC's pools.

It should be noted that the Club (and HKJC) intend on moving to a situation whereby any wagering operator that the Club (and HKJC) licenses to use its signals and wagering information will be required to co-mingle into HKJC pools. Without the Agreements, the Australian public and the Australian racing industry would be deprived of the benefits associated with pooling. In addition, there is a possibility that Tabcorp would not be able to offer 'B' pool wagering to its customers in Australia on Hong Kong racing. As a result, not authorising the Agreements could mean that there is no Tabcorp wagering on Hong Kong racing whatsoever.

## 7 Public benefits

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The Agreements would result in substantial public benefits, including:

### 7.1 An enhanced wagering product for customers

The larger the pool, the more stable the dividends paid by the pool because large bets do not have the same volatile effects as they do in smaller pools.

As set out in Table 2 above, turnover in Tabcorp's domestic, stand-alone 'B' pools on Hong Kong racing is significantly lower than turnover in the HKJC pools.

Tabcorp's participation in the HKJC pools will provide Australian punters with access to a better product – a larger, more stable and more liquid totalisator pool into which to wager.

In its 2012 determination regarding Tabcorp's pooling agreements with RWWA and ACTTAB, the ACCC accepted that those pooling agreements would be likely to result in a public benefit by improving the stability of the totalisator pools offered by RWWA and ACTTAB. Referring to its previous 2009 determination, the ACCC stated:

89. In its consideration of the 2009 Authorisation, the ACCC accepted that having access to a larger totalisator pool was likely to assist RWWA and ACTTAB to compete more effectively by providing access to a more stable pool which would have less fluctuations in the odds for a race than might have occurred in a smaller totalisator pool. The ACCC understood that this was particularly important in seeking to attract high value punters who place importance on the stability of the pool.

90. The ACCC considers that the 2012 Agreements are likely to allow RWWA and ACTTAB to offer a more stable totalisator pool than if they were to operate on their own.

Similarly, in its draft determination regarding Tabcorp's applications for authorisation of its international pooling arrangements, the ACCC accepted that:

... the international pooling arrangements will enable Tabcorp to offer more stable pools to punters betting on ... International races. To the extent that increased liquidity leads to greater confidence in the stability of totalisator pools, the ACCC accepts that this gives rise to a public benefit.<sup>15</sup>

This analysis applies equally in the case of Tabcorp's participation in the HKJC pools – the Agreements improve Tabcorp's offering in circumstances where it faces ongoing competition from corporate bookmakers and other wagering operators.

Subject to RWWA and ACTTAB entering into agreements directly with HKJC to obtain the necessary rights and inputs, Tabcorp will transmit bets placed by RWWA and

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<sup>15</sup> Draft Determination A91419-A91424, at paragraph 78.

ACTTAB into the HKJC pools. Accordingly, the benefits of the Agreements will also flow to customers of RWWA and ACTTAB, and improve the competitive offering of RWWA and ACTTAB.

## 7.2 Benefits to the racing industry through increased revenue

As discussed above, the racing industries in Victoria and New South Wales have revenue and/or profit sharing arrangements with Tabcorp. These arrangements provide the vast majority of industry funding in Victoria and New South Wales, and to the Australian racing industry more broadly. It is estimated that Tabcorp funding accounts for 65% of total Australian racing industry funding.

In Victoria, Tabcorp is currently required to pay 50% of the joint venture's profit from wagering to VicRacing, in addition to other amounts. In New South Wales, TAB is currently required to pay 25% of earnings from racing to RacingCorp, in addition to other amounts such as product and sponsorship fees.

Tabcorp considers that the Agreements will stimulate demand among Australian punters. Increased wagering through Tabcorp will, by necessity, result in increased distributions to the racing industry. An increase in funding for the racing industry was accepted by the ACCC as a public benefit in its 2009 and 2012 determinations regarding domestic pooling.<sup>16</sup> It was also accepted by the ACCC in its draft determination regarding Tabcorp's international pooling arrangements.<sup>17</sup>

## 7.3 Access to other bet types

In addition to improving the quality of Tabcorp's existing offering, the Agreements contemplate the introduction of new bet types into Australia.

The 'Triple Trio' is a bet type where customers must correctly select the first three horses in three races in a row. This bet type is not currently offered by Tabcorp, but is a popular bet type in Hong Kong. The pre-existence of this bet type means that there is a pre-existing liquid pool which will allow it to be offered in Australia.

The 'Triple Trio' is considered to be one of the 'premier bet types' in Hong Kong and it often returns dividends which equate to over AUD \$**[Restriction of Publication of Part Claimed]**. As of 15 June 2014, the Triple Trio payout is estimated to reach HKD \$**[Restriction of Publication of Part Claimed]** – the highest dividend for the current Hong Kong racing season for a single winning unit of HKD \$**[Restriction of Publication of Part Claimed]**.

Without the Agreements, Tabcorp would be unlikely to:

- develop the technology for the Triple Trio; or
- offer the Triple Trio as a bet type on the Hong Kong races (as the pool sizes within Australia simply would not compare to Hong Kong's pool sizes in relation to the bet type) and it would not be an attractive option for customers.

While Tabcorp will need to develop technology infrastructure, as well as obtain certain regulatory approvals, prior to introducing this bet type, it is confident that, barring unforeseen developments, **[Restriction of Publication of Part Claimed]**.

Offering a new bet type is output expanding and should be considered to be a public benefit by the ACCC.

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<sup>16</sup> Determination A91323 – A91328, paragraph 107.

<sup>17</sup> Draft Determination A91419-A91424, at paragraphs 71 to 76 and 120.

## 7.4 Benefits from potential reciprocal 'hosting' arrangements

The Agreements will result in Tabcorp being one of the first major totalisators in the Asia Pacific region to access the HKJC pools in the upcoming 2014/15 Hong Kong racing season.

By establishing a pooling relationship with HKJC, Tabcorp considers that there will be opportunities for it to enter into a reciprocal 'hosting' arrangement with HKJC in the near future. In this respect, the Agreements create a strong strategic pathway for the Australian racing industry.

Entering into an agreement where Tabcorp is the 'host' will be of benefit to the racing industry:

- as explained above, the racing industry would receive additional distributions from Tabcorp; and
- a pooling arrangement with HKJC would create significant interest in Australian racing within Hong Kong, which would lead to other benefits resulting from the international export of Australian racing product.

In its draft determination regarding Tabcorp's international pooling arrangements, the ACCC accepted that:

... by acting as a host in pooling arrangements, Tabcorp is likely to create public benefits by increasing exports of Australian racing and consequently increasing the international profile of the Australian racing industry. To the extent that increasing the international profile of the Australian racing industry leads to an increase in tourism in Australia, the ACCC considers that international pooling arrangements may give rise to further benefits.<sup>18</sup>

## 7.5 The PGI Agreement

Tabcorp acknowledges that, in respect of the PGI Agreement, some of the benefits discussed above may not flow directly from that Agreement. As noted previously, PGI is not licensed to provide wagering services in Australia.

Tabcorp considers, however, that **[Restriction of Publication of Part Claimed]**. In this respect, there is a direct link between, on the one hand, the benefits arising from the Tabcorp Wagering Manager Agreement and the TAB Agreement and, on the other, the PGI Agreement.

In addition, there are public benefits which are particular to the PGI Agreement

As noted above, PGI is a 50/50 joint venture between Phumelela and Tabcorp. Tabcorp Holdings, the ultimate parent company of the Tabcorp group, is an Australian company listed on the ASX.

In respect of PGI's net earnings derived from the PGI Agreement, Tabcorp will **[Restriction of Publication of Part Claimed]** promote Australian racing within Australia and overseas.<sup>19</sup>

In those circumstances, the PGI Agreement gives rise to the following public benefits:

- The PGI Agreement will enable PGI to attract new punters, including new premium punters, who wish to bet into HKJC pools. Tabcorp considers that there will be opportunities for PGI to promote wagering by those punters on Australian racing.

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<sup>18</sup> Draft Determination A91419-A91424, at paragraph 70.

<sup>19</sup> **[Restriction of Publication of Part Claimed]**.

The ACCC has previously accepted that increasing exports of Australian racing and increasing the international profile of the Australian racing industry are public benefits.<sup>20</sup> As discussed in Section 7.2 above, it has also accepted that increased distributions to the Victorian and NSW racing industries is a public benefit.

- **[Restriction of Publication of Part Claimed]**, Tabcorp may, for example, promote the Melbourne Cup in Germany. As the ACCC is aware, Tabcorp has recently entered into a pooling agreement with the German totalisator under which the German totalisator is able to guest into the SuperTAB pool.

This will lead to increased betting on Australian racing through Tabcorp. Again, the ACCC has accepted that increasing exports of Australian racing and increased distributions to the Victorian and NSW racing industries are public benefits.

- To the extent that the PGI Agreement leads to increased revenue for Tabcorp, it will also deliver benefits to Tabcorp's shareholders. The Tribunal has previously accepted that:

... cost savings achieved by a firm in the course of providing goods or services to members of the public are a public benefit which can and should be taken into account for the purposes of s 90 of the Act, where they result in pass through which reduces prices to final consumers, or in other benefits, for example, **by way of dividends to a range of shareholders or being returned to the firm for future investment.**<sup>21</sup>

## 8 Anti-competitive detriment

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Tabcorp submits that there is no anti-competitive detriment resulting from the Agreements. In particular, Tabcorp notes the following:

- Any actual or potential competition between Tabcorp and HKJC is extremely limited. HKJC is not licensed to offer wagering services in Australia – it has no Australian retail presence and cannot advertise in Australia.

The limited nature of competition between Tabcorp and overseas wagering operators was acknowledged by the ACCC in its draft determination regarding Tabcorp's international pooling arrangements. In particular, the ACCC stated:

While the pooling arrangements place a number of restrictions on pool participants, the ACCC considers that any anti-competitive detriment is likely to be limited. Legislative restrictions on providing pari-mutuel wagering services in each jurisdiction in Australia prevent overseas totalisators from marketing their services directly to Australian punters by advertising in Australia and therefore limit the level of competition between Australian and foreign totalisators.<sup>22</sup>

- The Geographic Restriction, which constrains Tabcorp's ability to accept bets from persons located in Hong Kong, is consistent with Hong Kong law. As such, Tabcorp would not allow Hong Kong residents to place bets through Tabcorp even in the absence of the provision. There is, accordingly, no distinction between the factual and the counterfactual in this respect.

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<sup>20</sup> See, for example, Draft Determination A91419-A91424, at paragraph 70.

<sup>21</sup> *Qantas Airways Limited* (2005) ATPR ¶142-065, at paragraph 189 (emphasis added).

<sup>22</sup> Draft Determination A91419-A91424, at paragraph 87. See also paragraph 123.

- The Rebate Restriction only applies in relation to bets which Tabcorp pools with HKJC. It has no impact on Tabcorp's ability to offer rebates or other discounts to its customers.
- As discussed above, the Betting Restriction is effectively a condition of the grant of the license to use HKJC's racing vision.
- The significant presence of betting exchanges and corporate bookmakers are a substantial competitive constraint on Tabcorp. This was accepted by the ACCC when it considered the RWWA/ACTTAB pooling arrangements in 2012. It was also accepted by the ACCC in its draft determination regarding Tabcorp's international pooling arrangements, where it stated that:

... the ACCC accepts that Tabcorp will continue to be constrained in its provision of wagering ... services in Australia, particularly by corporate bookmakers.<sup>23</sup>

...

... any detriments will be mitigated by the specific characteristics of the wagering industry. In particular, the significant presence of corporate bookmakers using telephone and internet-based wagering services in both Australia and overseas, are likely to act as a constraint on the level of detriment.<sup>24</sup>

The Agreements have no impact on the ability of those parties to continue to compete for customers. Tabcorp will continue to compete with the corporate bookmakers and Betfair's betting exchange.

- The PGI Agreement could not be said to give rise to any anti-competitive detriment in Australia, given that it relates to a pooling arrangement between two overseas wagering operators, neither of whom is licensed to provide wagering services in Australia.

Based on the above analysis, Tabcorp submits that the Agreements would result in substantial public benefit and no anti-competitive detriment.

## 9 Length of authorisation

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The term of the Tabcorp Wagering Manager Agreement is set out in Clause 7.2, which provides:

### **[Restriction of Publication of Part Claimed]**

The TAB Agreement and the PGI Agreement contain equivalent clauses.

Tabcorp requests authorisation to make and give effect to the Agreements until the end of the Racing Season for 2020/2021, which would finish by 31 July 2021, to cover

### **[Restriction of Publication of Part Claimed]**

Tabcorp submits that it is appropriate for the ACCC to grant authorisation until then because:

- the ACCC may re-consider its grant of authorisation at any time if there has been a material change of circumstances since the authorisation was granted;
- a seven year period of authorisation would avoid the significant time and expense involved in preparing and considering a second application for authorisation in the event the Agreements are extended; and

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<sup>23</sup> Draft Determination A91419-A91424, at paragraphs 100.

<sup>24</sup> Draft Determination A91419-A91424, at paragraph 106.

- in its draft determination regarding Tabcorp's international pooling arrangements, the ACCC indicated that it is proposing to grant authorisation to those arrangements for a period of seven years. Authorising the Agreements for the same period means that any future applications for authorisation in respect of Tabcorp's international pooling arrangements could be drafted to include Hong Kong, allowing the ACCC to consider all Tabcorp's international pooling arrangements at the same time.

## 10 Interim authorisation

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### 10.1 Introduction

Tabcorp applies for interim authorisation to make and give effect to the Agreements until:

- final authorisation comes into effect; or if refused,
- the latter of expiry of the period to apply for review; or if review occurs,
- when the matters are dispensed with.

Tabcorp would appreciate interim authorisation by 29 September 2014. This date corresponds to the beginning of the Australian Spring Racing Carnival. **[Restriction of Publication of Part Claimed]**.

Tabcorp submits that interim authorisation should be granted for the following reasons:

- the Agreements provide for termination in the event that interim authorisation is granted but final authorisation is not. If final authorisation is ultimately denied by the ACCC, the granting of interim authorisation will be reversed under the terms of the Agreements; and
- there is a strong prima facie case for authorisation.

### 10.2 Effect of final authorisation being denied

The Agreements provide that if the ACCC grants interim authorisation that is subsequently withdrawn or revoked and the ACCC does not grant final authorisation, either party may terminate the agreement immediately by notice in writing.

If final authorisation is ultimately denied by the ACCC, the granting of interim authorisation will be easily reversed.

### 10.3 There is a strong prima facie case for authorisation

Tabcorp acknowledges that its request for interim authorisation gives the ACCC little opportunity to form a comprehensive view on the strength of the application (including in light of interested party submissions).

However, Tabcorp submits that, even without the benefit of interested party submissions, the case for interim authorisation is strong:

- There is very limited potential for competition between Tabcorp and HKJC. In particular, HKJC is not licensed to provide relevant services in Australia and cannot advertise in Australia.
- The ACCC is currently considering Tabcorp's applications for authorisation of its international pooling arrangements, and has released a draft determination proposing to authorise those arrangements.<sup>25</sup> As discussed above, in its draft

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<sup>25</sup> Draft Determination A91419-A91424.

determination regarding those arrangements, the ACCC accepted that they are likely to give rise to a number of public benefits (including increased liquidity and stability of pools, increased wagering opportunities for punters, and increased funding to the racing industry), and minimal public detriments (given the limited competition between Tabcorp and overseas wagering operators, and the presence of large corporate bookmakers and Betfair).

The Agreements are (with the exception of the Betting Restriction) consistent with the international pooling arrangements the ACCC is proposing to authorise.

In these circumstances, Tabcorp submits that the ACCC should grant interim authorisation in respect of the Agreements.

## Confidential Annexure A

Tabcorp Wagering Manager Agreement

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**[Restriction of Publication of Part Claimed].**

## Confidential Annexure B

TAB Agreement

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**[Restriction of Publication of Part Claimed].**

## Confidential Annexure C

PGI Agreement

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**[Restriction of Publication of Part Claimed].**

## Annexure D

### Betting Rules

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Attached.

## Confidential Annexure E

HKJC written instructions

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**[Restriction of Publication of Part Claimed].**