



13 December 2016

Our Ref: LEH:TOP002/4007

Director
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

(Copy by email: adjudication@acc.gov.au)

Dear Sir/Madam

The Global Tote Limited – Authorisation of arrangements with Approved Wagering Operators

We act for The Global Tote Limited (Company No. 1944), a company incorporated in Alderney, United Kingdom (**GTL**).

GTL is applying to the Australian Competition and Consumer Commission for authorisation and interim authorisation to enter into, and give effect to, a provision in an access agreement between GTL and third party wagering operators in Australia. Pursuant to this template access agreement, GTL will supply third party wagering operators with betting information and management services in relation to its new wholesale totalisator product known as "The Global Tote".

We enclose the following:

- (a) Forms A and B;
- (b) a confidential submission and Confidential Annexure A in respect of these applications;
- (c) a non-confidential, redacted version of the submission in respect of these applications; and
- (d) a cheque for \$9,000.00 payable to the Commission.

Please let us know if you require further information in relation to this matter.

Yours faithfully



Laura Hartley
Partner

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Direct Fax: +61 2 8916 2066
Email: laura.hartley@addisonslawyers.com.au

Encl.

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:**

(Refer to direction 2)

A91565 The Global Tote Limited (Company No. 1944) (**GTL**), a company incorporated in Alderney, United Kingdom.

This application is to be read and determined together with GTL's application in Form B in respect of an agreement affecting competition (together, the **Application**).

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

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

(Refer to direction 3)

GTL is a subsidiary of TopBetta Holdings Limited, which is a public company listed on the Australian Securities Exchange and a leading Australian provider of online wagering services and products.

GTL is the provider of a new wholesale totalisator product known as "The Global Tote" which will enable Australian and international corporate bookmakers to participate in GTL's global pool in relation to Australian and overseas races and other sporting events (**GT product**). GTL holds a Category 2 eGambling licence for the GT product through the Alderney Gambling Control Commission.

Further details of GTL's operations are provided in the Submission.

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

Addisons Lawyers
Level 12, 60 Carrington Street

Sydney NSW 2000

Attention: Laura Hartley

2. Contract, arrangement or understanding

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

(Refer to direction 4)

GTL seeks authorisation to enter into and give effect to a number of access agreements (each, an **Agreement**), each of which will be between GTL and a third party corporate bookmaker operating in Australia (**Approved Wagering Operator** or **AWO**).

Each Agreement will document the terms of the non-exclusive supply of betting information and other management services by GTL to the respective AWO, to enable the AWO to offer the GT product to that AWO's retail customers based in Australia in relation to certain Australian and overseas racing and sporting events.

Each Agreement will be in similar terms or substantially similar terms and, in particular, will contain the rebate restriction described in item 2(b) below.

A confidential copy of the template Agreement is attached to the Submission as 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:**

(Refer to direction 4)

Clause 10.3 of the Agreement, which is a restriction on the payment of rebates by the AWO counterparty to that AWO's customers in relation to bets made on the GT product without the prior consent of GTL (**Rebate Restriction**) - for more details, please see section 4.2 of the Submission.

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

Pari-mutuel pooling services through the GT product and betting information and management services - for more details, please see sections 2.1 and 4.1 of the Submission.

- (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:**

Five years - for more details, please see section 9 of 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:**

GTL proposes to enter into the Agreement with a number of third party corporate bookmakers operating in Australia- for more details, please see section 2.2 of the Submission.

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

(Refer to direction 5)

As above. GTL has applied for authorisation on behalf of itself and each AWO which enters into an Agreement with GTL containing the Rebate Restriction.

4. Public benefit claims

- (a) **Arguments in support of application for authorisation:**
(Refer to direction 6)

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):

(Refer to direction 7)

The markets in which the services described in 2(c) are supplied are set out in section 5 of 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:**
(Refer to direction 8)

Details of the detriments to the public resulting or likely to result from the Agreements 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:**

(Refer to direction 9)

Not applicable.

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

(Refer to direction 10)

Not applicable.

- (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:**

Not applicable.

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?**

Not applicable.

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

Not applicable.

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:**

Attention: Laura Hartley

Addisons Lawyers
Level 12, 60 Carrington Street
Sydney NSW 2000

Direct Line: (02) 8915 1066

Email: laura.hartley@addisonslawyers.com.au

Dated..... 13 December 2016

Signed on behalf of the applicant by:


.....
Laura Hartley
Partner
Addisons Lawyers

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:**
(Refer to direction 2)

A91566 The Global Tote Limited (Company No. 1944) (GTL), a company incorporated in Alderney, United Kingdom.

This application is to be read and determined together with GTL's application in Form A in respect of an agreement including a provision which may be an exclusionary provision and a cartel provision (together, 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:**
(Refer to direction 3)

GTL is a subsidiary of TopBeta Holdings Limited, which is a public company listed on the Australian Securities Exchange and a leading Australian provider of online wagering services and products.

GTL is the provider of a new wholesale totalisator product known as "The Global Tote" which will enable Australian and international corporate bookmakers to participate in GTL's global pool in relation to Australian and overseas races and other sporting events (**GT product**). GTL holds a Category 2 eGambling licence for the GT product through the Alderney Gambling Control Commission.

Further details of GTL's operations are provided in the Submission.

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

Addisons Lawyers
Level 12, 60 Carrington Street
Sydney NSW 2000

Attention: Laura Hartley

2. Contract, arrangement or understanding

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

(Refer to direction 4)

GTL seeks authorisation to enter into and give effect to a number of access agreements (each, an **Agreement**), each of which will be between GTL and a third party corporate bookmaker operating in Australia (**Approved Wagering Operator** or **AWO**).

Each Agreement will document the terms of the non-exclusive supply of betting information and other management services by GTL to the respective AWO, to enable the AWO to offer the GT product to that AWO's retail customers based in Australia in relation to certain Australian and overseas racing and sporting events.

Each Agreement will be in similar terms or substantially similar terms and, in particular, will contain the rebate restriction described in item 2(b) below.

A confidential copy of the template Agreement is attached to the Submission as 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:**

(Refer to direction 4)

Clause 10.3 of the Agreement, which is a restriction on the payment of rebates by the AWO counterparty to that AWO's customers in relation to bets made on the GT product without the prior consent of GTL (**Rebate Restriction**) - for more details, please see section 4.2 of the Submission.

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

Pari-mutuel pooling services through the GT product and betting information and management services - for more details, please see sections 2.1 and 4.1 of the Submission.

(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:**

Five years - for more details, please see section 9 of 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:**

GTL proposes to enter into the Agreement with a number of third party corporate bookmakers operating in Australia - for more details, please see section 2.2 of the Submission.

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

(Refer to direction 5)

As above. GTL has applied for authorisation on behalf of itself and each AWO which enters into an Agreement with GTL containing the Rebate Restriction.

4. Public benefit claims

(a) Arguments in support of authorisation:

(Refer to direction 6)

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):

(Refer to direction 7)

The markets in which the services described in 2(c) are supplied are set out in section 5 of 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:

(Refer to direction 8)

Details of the detriments to the public resulting or likely to result from the Agreements 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:

(Refer to direction 9)

Not applicable.

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

Not applicable.

- (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:**

Not applicable.

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?**

Not applicable.

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

Not applicable.

9. Further information

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

Attention: Laura Hartley

Addisons Lawyers
Level 12, 60 Carrington Street
Sydney NSW 2000

Direct Line: (02) 8915 1066

Email: laura.hartley@addisonslawyers.com.au

Dated.....13 December 2016.....

Signed on behalf of the applicant by:

.....
Laura Hartley
Partner
Addisons Lawyers

Submission to the Australian Competition and Consumer Commission

Application for authorisation of provision in the
access agreement between The Global Tote
Limited and third party wagering operators in
Australia

Restriction of Publication of Part Claimed

13 December 2016



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1. Introduction

1.1 The Application

The Global Tote Limited (**GTL**) is the provider of a new wholesale totalisator product known as "The Global Tote" which will provide Australian and international businesses with the opportunity to participate in GTL's global pool in relation to Australian and overseas racing and sporting events (**GT product**).

GTL is proposing to enter into access agreements with various third party corporate bookmakers operating in Australia (**Approved Wagering Operators or AWOs**) so as to allow such AWOs the right to offer their retail customers based in Australia the opportunity to participate in the GT product on a non-exclusive basis (the **Agreement**).

A copy of the template Agreement is attached to this submission as Confidential Annexure A.

This application for authorisation is made under section 88 of the *Competition and Consumer Act 2010 (Cth)* (**CCA**) to allow GTL to make and give effect to an essential provision of the Agreement being clause 10.3 which prevents the AWO from providing rebates to any of its customers in respect of any bets made on any product of GTL (**Rebate Restriction**). The Rebate Restriction is subject to its authorisation by the Commission.

GTL has applied for authorisation of this clause on behalf of itself and all AWOs which enter into an Agreement containing the Rebate Restriction with GTL on the basis that the Rebate Restriction:

- (a) may technically amount to a cartel provision or an exclusionary provision on the basis that GTL's sister company, TopBetta Pty Limited, may operate in competition with the AWOs; and/or
- (b) may be a provision, considered to have the purpose or effect of substantially lessening competition,

notwithstanding the fact that without this restriction the growth and full benefits of GTL's totalisator would be compromised.

1.2 Interim Authorisation

GTL is applying for interim authorisation to allow it to make and give effect to the above provision of the Agreement so that the GT product is able to be offered to the Australian public by the time of the Magic Millions race, being 14 January 2017.

1.3 Confidentiality

This submission, including its annexures, contains information which is confidential and commercially sensitive to GTL, and must only be used by the Commission for the purposes of assessing the Application. It may be disclosed where necessary to the Commission's third party legal and economic advisers for those purposes only. Such third party advisers must also treat the contents of this submission as confidential.

A redacted and non-confidential version of this submission has been provided to the Commission.

2. Parties

2.1 The Global Tote Limited

GTL (incorporated in Alderney, United Kingdom) is a subsidiary of TopBetta Holdings Limited (**TopBetta**) which is a public company listed on the Australian Securities Exchange (ASX:TBH) and a leading Australian provider of online wagering services and products.

TopBetta Pty Limited is an Australian subsidiary of TopBetta which operates as a sports bookmaker licensed in the Northern Territory, in competition with other AWOs operating in Australia.

GTL has been granted a Category 2 eGambling licence for the GT product through the Alderney Gambling Control Commission (**AGCC licence**), as was announced to the Australian Securities Exchange on 16 September 2016. This AGCC licence allows GTL to offer the GT product to corporate bookmakers operating at a retail level in Australia via GTL's custom-built technology platform.

The GT product was announced to the Australian Securities Exchange on 3 November 2016 and will be a wholesale business-to-business totalisator available to leading bookmakers from around the world and which will enable those bookmakers to access different Australian and overseas racing and sporting events and participate in one global pool in relation to such events.

GTL is in discussions with various Australian and international racing bodies across various racing codes relating to the offering of their product on the GT platform as well as with Australian and international bookmakers regarding the offering of the GT product to their customers as part of their wagering service.

As at the date of this application, GTL has been granted approval for its GT product by the following racing bodies in Australia:

- Racing Victoria in respect of Victorian thoroughbred racing;
- Canberra Racing Club in respect of ACT thoroughbred, harness and greyhound racing;
- Greyhound Racing Victoria;
- Racing New South Wales in respect of New South Wales thoroughbred racing;
- Greyhound Racing New South Wales; and
- Queensland Racing in respect of Queensland thoroughbred, harness and greyhound racing.

[Restriction of Publication of Part Claimed].

The GT product is expected to go live on 14 January 2017 with Australian thoroughbred racing fixtures being the first pooled betting products to be provided, with other Australian and international racing and sports products expected to follow in 2017.

2.2 Approved Wagering Operators

[Restriction of Publication of Part Claimed].

GTL intends to enter into agreements with various other AWOs to enable them to offer the GT product to customers of those AWOs. These AWOs will then offer the GT product as

part of their wagering products and services to customers in Australia through their existing online channels.

[Restriction of Publication of Part Claimed].

3. Background

3.1 Wagering types

As the Commission is aware from previous determinations of applications for authorisation, wagering in Australia has traditionally been divided into pari-mutuel wagering (totalisator) and fixed odds wagering (known as "bookmaking"). In recent years, other forms of wagering have been introduced such as tote odds betting (being a derivative of pari-mutuel wagering) and betting exchanges. More recently, bookmaking licences have been granted in Australia to fantasy sports operators. Betting odds offered by fixed odds bookmakers have evolved to include tote odds betting products and exotic betting products, such as betting on the outcome of lotteries and e-sports tournaments.

(a) Pari-mutuel wagering

Pari-mutuel wagering is a system where all bets of a particular type are consolidated or "pooled" into a totalisator pool. A fixed percentage of the pool (the "commission" or "take out") is removed, which includes a deduction in respect of specified taxes or other imposts and the remainder of the pool (the dividend pool) is available for distribution, with dividends calculated by sharing the remainder of the pool amongst all winning bets. Final odds are not calculated until the close of all betting on the relevant event, although current estimated odds are shown at the time the punter places a bet.

As the takeout by the operator of the totalisator is fixed, the totalisator involves a system by which punters are betting against each other rather than against the operator of the totalisator.

The revenue of a totalisator operator on an event is a percentage of the turnover wagered on an event, with the amount of the totalisator's revenue being based on the totalisator pool (turnover) and the commission rate.

(b) Fixed odds wagering

This form of wagering differs significantly from pari-mutuel wagering as the customer is informed of odds at the time the bet is placed. The odds accepted by the customer on that bet never change. The operator's revenue depends on the outcome of the event, the management of the book of bets and the extent to which the risk is bet-back or laid off.

(c) Betting exchanges

A betting exchange is a means by which parties stake money on opposing outcomes relating to a future event – that is, a betting exchange allows people to wager directly against each other on fixed odds bets instead of betting against a totalisator or bookmaker.

Exchanges are structured to facilitate customers betting that a particular outcome will or will not occur. Punters can back that an outcome will happen or bet against it. Bets are matched between people with opposing views. Bets that cannot be matched are not placed.

The betting exchange operator acts as an intermediary and takes no risk in relation to the outcome of the event. The risk is carried by the customers themselves.

3.2 Suppliers of wagering services

(a) Totalisators

The term "TAB" or "totalisator agency board" refers to Australian State and Territory licensed wagering operators who provide pari-mutuel wagering in each State and Territory to retail customers. Totalisators are split into "on course" totalisators (bets can only be placed by people physically situated at the racecourse) and "off course" totalisators (bets can be placed by people outside a racecourse, for example in a betting venue or any other location).

Whilst all States and Territories allow racing clubs to conduct on-course totalisators on racing events at their racecourses, in practice these are conducted through the off-course totalisator in the relevant State or Territory.

To date, there has only been one operator of an off-course totalisator for retail customers in each State and Territory of Australia due to the exclusivity provisions granted to each relevant licensee. See Table 1 below:

Table 1: Off-course totalisator operators (TABs)

State	Off-course totalisator operators
New South Wales	TAB Limited, a wholly owned subsidiary of Tabcorp Holdings Ltd (TAH) - operates the NSW TAB pool
Victoria	Tabcorp Wagering Manager (Vic) Pty Ltd, a wholly owned subsidiary of TAH - operates the SuperTAB pool
Queensland	UBET QLD Pty Ltd, a wholly owned subsidiary of Tatts Group Ltd; a listed public company - participates in the Tatts pool
Western Australia	Racing and Wagering Western Australia, a government authority - participates in the SuperTAB pool
South Australia	UBET SA Pty Ltd, a wholly owned subsidiary of Tatts Group Ltd - participates in the Tatts pool
Tasmania	UBET TAS Pty Ltd, a wholly owned subsidiary of Tatts Group Ltd - participates in the Tatts pool
Australian Capital Territory	Tabcorp ACT Pty Ltd, a wholly owned subsidiary of TAH - participates in the SuperTAB pool
Northern Territory	UBET NT Pty Ltd, a wholly owned subsidiary of Tatts Group Ltd - participates in the Tatts pool

These TABs originally only provided pari-mutuel wagering products but in recent years have been allowed by statutory changes to expand their operations to also provide fixed odds wagering on both racing and other sporting events for retail customers.

TABs supply wagering services via a variety of distribution channels including on-course totalisator operations, agency premises, licensed premises (hotels, registered clubs), telephone and internet.

Importantly, if the proposed merger between TAH and Tatts Group Ltd, currently before the Commission, is not objected to by the Commission, the only operator of an off-course totalisator in Australia will be TAH. Instead of 3 current pools applicable within the Australian market (being the NSW pool, the SuperTAB pool and the Tatts pool), it is the objective of TAH to operate only one pool. If the merger between TAH and Tatts Group Ltd proceeds, the GT product will allow corporate bookmakers to offer their retail customers an ability to participate in another Australian pool being the GT pool, as an alternative to the one offered by TAH.

(b) **Bookmakers**

Bookmakers conduct fixed odds betting on racing and other sporting events. This may include derivative pari-mutuel wagering products like tote odds betting products. Bookmakers are generally divided into traditional bookmakers and corporate bookmakers. They are regulated to some extent by State and Territory racing bodies but there is no legislative limit to the number of bookmaker licences issued.

In recent years, Australia has seen an increase in the number of large corporate bookmakers licensed in the Northern Territory, which distribute their product via the internet and telephone. These corporate bookmakers tend to offer fixed odds products, that include tote odds betting products and exotic betting products.

(c) **Others operators**

Betfair is a betting exchange based in Darwin and regulated by the Northern Territory Racing Commission under Northern Territory legislation.

Licensed racing clubs can also operate on-course totalisators with the necessary wagering permit but generally these are conducted through the off-course totalisator in the relevant State or Territory.

4. **Proposed conduct**

4.1 **The pool process**

The Agreement documents the terms of the supply of betting information and other management services to AWOs (including a licence to access the GT product's technology platform). Under the Agreement, an AWO is able to facilitate placing bets on the GT product by its retail customers. The GT product operates on a "gross pool basis" which works in accordance with the following process:

- Each AWO which signs an Agreement with GTL may accept bets into the GT product from its customers (punters);
- Funds of each participating AWO are then notionally commingled in the GT product pool (**GT pool**) (in practice, the GT pool is divided into separate pools for each particular bet type on each nominated event);
- The commission rate is notionally deducted from the GT pool and credited to the AWO in proportion to the total bets placed with that AWO. **[Restriction of Publication of Part Claimed]**;
- GTL calculates the odds and determines the winnings payable by the AWOs to their winning punters, with the customers of each participating AWO having the ability to receive dividends calculated on the basis of the GT pool being a large, stable and liquid totalisator pool;

- Each AWO pays winnings to punters who have made a successful bet with that AWO.

4.2 Relevant provision of the Agreement

As set out above, GTL seeks authorisation to make and give effect to clause 10.3 of the Agreement which provides the following:

"Subject to clause 24, AWO shall not provide any rebate to its customers by reference to bets made on the Global Tote Betting Product without the prior consent of Global Tote."

Clause 24 provides as follows:

- (a) *"The parties agree and acknowledge that clause 10.3 shall not come into effect until an Authorisation has been granted and shall only come into effect on and subject to any conditions applying to the Authorisation (and amended and updated from time to time).*
- (b) *The AWO agrees to provide reasonable assistance to Global Tote in applying for the Authorisation as Global Tote may require.*
- (c) *For the purposes of this "Authorisation" has the meaning given to that term in section 4 of the Competition and Consumer Act 2010 (Cth) and includes any interim authorisation."*

Clause 10.3 could be characterised as follows:

- (d) as having the purpose or effect of fixing, controlling or maintaining the price of the GT product that is offered by the AWOs to their respective customers. This could potentially contravene sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK of the CCA as the AWOs and GTL may be technically competitive in the relevant sense due to the extended meaning of the term "party" in section 44ZZRC of the CCA (where a related body corporate of a party is taken to be a party to a contract, arrangement or understanding);
- (e) an exclusionary provision as that term is defined in section 4D of the CCA as firstly, the provision is part of a contract between GTL and an AWO which may be competitive with each other by virtue of section 4D(2) of the CCA and secondly, the provision could be seen to have the purpose of restricting or limiting the supply of the GT product to AWOs on particular conditions. This could potentially contravene sections 45(2)(a)(i) and 45(2)(b)(i) of the CCA; and
- (f) having the purpose or effect of substantially lessening competition. This could potentially contravene sections 45(2)(a)(ii) and 45(2)(b)(ii) of the CCA.

GTL does not concede that clause 10.3 of the Agreement contravenes the provisions of the CCA referred to above. GTL submits that this provision does not have the purpose or effect of substantially lessening competition in any market in Australia.

Clause 10.3 has been included in the Agreement at the instruction of and for the benefit of GTL to ensure that AWOs do not offer rebates in respect of GT product wagers on racing and sporting events for which GTL is approved which might encourage wagers which are the subject of rebates to be placed via the AWOs rather than directly through TopBetta Pty Limited. In other words, the restriction seeks to limit the possibility of 'leakage' to the AWOs of bets which would otherwise be placed directly into the GT pool via TopBetta Pty Limited.

GTL notes that the Rebate Restriction only applies to bets which an AWO transmits to GTL under the Agreement. It does not apply to any rebates offered by those AWOs in relation to

other bets. Nor is the AWO in any way limited in making or accepting bets to bets that participate in the GT pool.

5. Relevant market/s

- 5.1 In previous applications submitted by third party wagering operators and assessed by the Commission, the Commission has not considered it necessary to closely define the relevant market.
- 5.2 As this Application relates to a new global product to be launched by GTL, it is difficult to know the precise scope of the relevant market. Despite this, GTL submits that, for the purposes of this Application, the relevant markets are at least:
- the national market for the wholesale supply of wagering services (including the supply of international pooling arrangement services) to approved wagering operators in Australia in relation to horse racing, sports and other events; and
 - the national market for the retail supply of wagering services to the public in Australia in relation to horse racing, sports and other events including those offered by bookmakers, betting exchanges and other State and Territory based totalisators.
- 5.3 Regardless of the market definition adopted by the Commission, the Rebate Restriction will result in significant public benefit and no anti-competitive detriment.

6. Factual and Counterfactual

6.1 Introduction

Currently, AWOs do not generally offer rebates to their retail customers so no change to the current business model of the AWOs is proposed by the Rebate Restriction.

In pari-mutuel betting, offering rebates to professional punters is an important factor in increasing the liquidity of the pool. If there is a larger pool size, punters have access to potentially larger dividends. Further, larger bets have less effect on the final odds and dividends. As a result, punters placing both larger and smaller bets have the benefit of greater stability in a larger pool compared to a smaller pool.

6.2 Future with Authorisation of the Rebate Restriction

Authorisation of the making and giving effect to the Rebate Restriction in the Agreement will result in a larger, more stable and more liquid totalisator pool as GTL will be able to manage the instability that may otherwise occur were corporate bookmakers to accept bets on the GT product from professional punters by encouraging those professional punters to bet directly into the GT pool via TopBetta Pty Limited.

6.3 Future without Authorisation of the Rebate Restriction

If the Rebate Restriction is not authorised by the Commission, GTL thinks it unlikely that AWOs will sign up Agreements with GTL and participate in the GT pool. Essentially, without the Rebate Restriction, an AWO not offering rebates (**Non-Rebate AWO**) (as opposed to an AWO offering rebates (**Rebate AWO**)) would rightly conclude that the turnover contributed by the customers of the Non-Rebate AWO is funding the rebates payable to customers of the Rebate AWOs and so will reduce the dividends payable to winning bets by customers of the Non-Rebate AWOs.

If AWOs do not participate in the GT pool because there is no Rebate Restriction, this would lead to the following:

- a threat to the commercial viability of GTL as the GT product is unlikely to be as successful as would otherwise be the case if AWOs were encouraged to participate in the GT product;
- a decrease in the range and quality of wagering services available to customers of AWOs which could have the effect of decreasing revenue or at the very least not allowing an increase in the revenue stream of AWOs;
- a decrease in potential fees to racing bodies across each State and Territory of Australia or at the very least no increase in the revenue streams of those racing bodies;
- racing bodies having visibility concerning bets made into the G7 pool, which will assist in protecting the integrity of Australian racing;
- a restriction on commercial benefits that could flow to the entire racing industry in Australia;
- a lack of expansion of choice for punters, particularly if the merger between TAH and Tatts Group Limited proceeds, as then there will only be one betting pool available for participation by Australian punters. Even if the merger between TAH and Tatts Group Limited does not proceed, the ability for punters to expand their choice and participate in a new pool operating in competition with the existing three pools operating in various States and Territories of Australia would be reduced.

7. Public benefits

GTL submits that the public benefits which are expected to arise from an Agreement incorporating the Rebate Restriction are significant. GTL submits that the Rebate Restriction is essential to ensure the business viability of the GT product in Australia and encourage AWOs to sign up to access the GT product. In turn, the public benefits that will flow from a commercially viable GT product are of a general type previously recognised by the Commission. These can be categorised as follows:

7.1 Benefits for AWOs who have access to the GT product

- (a) GTL through its GT product will make available through AWOs to their customers a competitive, new off-course betting product in Australia. This will enable AWOs who have access to the GT product to provide their retail customers with a greater amount of choice in relation to types of wagering products and services on offer. This will enhance the AWOs' product offering and will enable them to attract a greater number of customers across Australia.
- (b) As the GT pool is a different totalisator pool from those operated by the current off-course totalisators, the odds for customers will be different on each occasion, adding a valuable choice for both bookmakers and their customers.
- (c) AWOs which are smaller bookmakers will be able to offer international products to their customers through access to the GT product to which they may not otherwise have had access.
- (d) These factors will provide AWOs with an improved ability to compete with other wagering operators in Australia.

7.2 Benefits for customers of AWOs who have access to the GT product

- (a) **Access to new totalisator**

Customers will have greater choice when it comes to off-course totalisators as they will be able to bet using the GT product offered by an AWO which has access to the GT product or they can continue to go directly to the totalisator which currently operates in the relevant State or Territory of Australia.

(b) Stability of pool

The larger a totalisator pool, the more stability there is in the odds offered, and the more customers attracted locally and internationally. The stability associated with a larger pool is due to the fact that large bets do not have the same relative effect on the ultimate dividend received by punters as they do in smaller pools. This benefits all consumers whose bets contribute to the pool whether they place large or small bets.

In previous authorisation determinations by the Commission, the Commission has accepted that pooling arrangements such as that proposed in this application would be likely to result in a public benefit by improving stability of the totalisator pools being offered.

(c) Potentially larger dividends available

A larger totalisator pool may mean that more money is available to distribute to winning punters by AWOs.

(d) Access to additional wagering services and events

Customers of AWOs will be able to gain access to a greater range of higher quality wagering services and additional events (including international races, sporting and other events) through the GT product. This will provide punters through the AWOs' wagering distribution network with a greater amount of choice in relation to the bet types they can place and the events on which they can place bets.

7.3 Benefits for racing industry and economy

- (a) The focus of the GT product will in the short term be on horse racing events in various States and Territories of Australia. However, as the GT product is an international tote, the GT product will attract overseas interest with respect to these racing fixtures and events in Australia and this will lead to additional revenue flows to racing industry bodies in Australia.
- (b) There are also a number of other possible flow-on public benefits from the increased profile of Australian racing such as increased opportunities for Australian bloodstock, increased likelihood of overseas horses entering Australian races and the potential for increased tourism.
- (c) By supporting the racing industry in the States and Territories of Australia, GTL will make an important contribution to the economy in various States and Territories of Australia more generally.
- (d) Providing information to Australian racing bodies relating to GT product betting activity will provide those bodies with additional information that will assist in protecting the integrity of Australian racing.

8. Anti-competitive detriment

- 8.1 In GTL's view, there is very little scope for any anti-competitive detriment resulting from the Rebate Restriction. There may be a limited risk of a decrease in price competition between

AWOs who offer their customers access to the GT product but this is mitigated by the following factors:

- (a) there is strong competition between totalisators and corporate bookmakers with that competition increasing in recent years especially in relation to on-line wagering products and services;
- (b) the Rebate Restriction only applies in relation to bets which an AWO pools with GTL via the GT product. It has no impact on the ability of an AWO to offer rebates or other discounts to its customers in relation to other wagering products or services;
- (c) the Agreement does not contain any requirement as to exclusivity on the part of an AWO so the Agreement does not affect competition in respect of other wagering products or services offered by an AWO; and
- (d) without the international pooling arrangement provided for in the Agreement, the AWOs would be limited to providing traditional products to the customers.

9. Length of authorisation

9.1 The Agreement can be terminated on 90 days' notice under clause 19.1. All the same, GTL seeks authorisation to make and give effect to the Rebate Restriction for 5 years. If any of the Agreements are to extend beyond that 5 year period, GTL will ensure that any Rebate Restriction after that time that is entered into or given effect to will require authorisation from the Commission and will release the relevant counter-parties from performance in the event that authorisation is not secured.

10. Interim authorisation

10.1 GTL applies for interim authorisation to make and give effect to the Rebate Restriction until:

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

10.2 GTL would appreciate interim authorisation by 14 January 2017 in time for the Magic Millions race.

10.3 GTL submits that interim authorisation should be granted as there is a strong prima facie case for authorisation given the recent determinations of the Commission in relation to comparable contractual arrangements in the wagering industry in which the Commission has readily accepted that these arrangements are likely to give rise to:

- (a) a number of public benefits including increased liquidity and stability of pools, increased wagering opportunities for Australian customers and increased funding to the racing industry and economy generally; and
- (b) minimal public detriment.

10.4 In these circumstances, GTL submits that the Commission should grant interim authorisation in respect of the Rebate Restriction in the Agreement.

11. Conclusion

- 11.1 GTL submits that the conduct for which authorisation is sought will result in significant public benefits in a number of recognised categories relative to the outcome if authorisation is refused. These include benefits to GTL, the AWOs which will have access to the GT product and the racing industry and the economy across the States and Territories of Australia more generally.
- 11.2 For the reasons set out above, GTL submits that the Rebate Restriction in the Agreement should be authorised pursuant to this Application.

Confidential Annexure A

[Restriction of Publication Claimed]