

31 January 2017

Lyn Camilleri
Director, Adjudication
Australian Competition & Consumer Commission
By email: adjudication@accc.gov.au

Dear Ms Camilleri

A91565 & A91566 – The Global Tote Limited – submission

We refer to your letter of 22 December 2016 inviting a submission in response to The Global Tote Limited's (**Applicant**) application for authorisation to enter into and give effect to a number of agreements between the Applicant and third party corporate bookmakers operating in Australia (**Application**).

Unless otherwise provided, capitalised terms have the meaning given to them in the Application.

This letter, in particular, addresses the Applicant's request for interim authorisation. Tabcorp may make further submissions in the course of the ACCC's broader review of the Application.

Given the issues raised by the Application, Tabcorp considers that interim authorisation is not appropriate. The following factors are relevant to any assessment of interim authorisation.

- The proposed arrangements likely contravene provisions under the *Racing and Betting Act* (NT) and other similar legislation governing the conduct of wagering in other Australian states and territories as they will result in the operation of a totalisator without the appropriate licence.
- There is no prima facie case for authorisation. It is not clear how the proposed arrangements will give rise to any discernible public benefits.
- The Application is not internally consistent regarding the rationale for authorisation.
- No compelling case is made regarding urgency and the need for interim authorisation.

These issues are considered below.

1 Proposed arrangements likely contravene existing legislation

The Application describes the GT product as a pari-mutuel system which pools bets of a particular type into a totalisator pool, each a GT pool. As described in the Application, the Agreements seek to give effect to arrangements (each, an **Arrangement**) whereby the funds of a participating AWO are "commingled" in the GT pools.

As the ACCC is aware, the concept of pooling involves the co-mingling of pools operated by different totalisators. Consequently, the Arrangements would only be possible if the participating AWOs are conducting their own totalisator pools, the contents of which would then be notionally included within the GT pools.

As the Application points out, the right for wagering operators to conduct totalisator betting in each State and Territory is licensed on an exclusive basis to each of the TABs. In operating their totalisators, each of the TABs are subject to significant regulation which addresses matters such as the systems and equipment used to operate the totalisator and commission rates.

Outside of these totalisator licensing arrangements, the operation of a totalisator by an AWO is unlawful in each State and Territory.

For example, under the *Racing and Betting Act* (NT) (**Act**), which regulates the activities of a number of the AWOs with which the Applicant proposes to enter into the Agreements, it is an offence for a person (other than the Northern Territory Racing Commission) to establish or use a totalisator except in pursuance of a totalisator licence granted under the Act.¹ The Act only contemplates the grant of totalisator licences to race clubs, and not to AWOs.²

Similar restrictions on the use or conduct of totalisators by AWOs exist in each other Australian State and Territory.³

In these circumstances, Tabcorp considers that a positive interim authorisation decision would amount to sanctioning the operation of unlawful totalisators. Whilst Tabcorp accepts that the ACCC is not the relevant regulatory entity to reach a conclusive view on this issue, it considers that the possible authorisation of illegal conduct (even on an interim basis) should be of concern to the ACCC. At the very least, not granting interim authorisation would allow the ACCC to consult with relevant State regulatory authorities on this issue.

2 **Agreements will undermine the viability of the racing industry in Australia**

The Application asserts that the proposed Agreements will result in public benefits including for the Australian racing industry. Tabcorp considers that there are unlikely to be any net benefits to the racing industry and, instead, that the racing industry will potentially be harmed by the proposed Agreements.

The exclusive totalisator licensing arrangements referred to above are underpinned by industry funding arrangements which are unique to each of the TABs who are party to those arrangements. The purpose of these arrangements is to ensure the continued viability of the Australian racing industry. The ACCC has previously acknowledged that the TABs are the primary funders of the racing industry through the payment of fees and taxes.⁴

AWOs who are likely to enter into Agreements with the Applicant, on the other hand, contribute significantly less than the TABs to the funding of the Australian racing industry. While all AWOs are required to pay the racing industry race fields (or product) fees in relation to the use of race fields information for wagering purposes, even after such fees have been paid there remains a large discrepancy in the funding which the racing industry receives in respect of bets placed with non-TAB AWOs when compared to that received in respect of bets placed with the TABs.

To the extent that the proposed Arrangements result in less TAB activity, the Agreements, by necessary consequence, will also result in reduced funding for the racing industry.

Tabcorp accepts that this is also the consequence of current corporate bookmaker activity. However, corporate bookmakers are not seeking authorisation in regards to their current operations. In comparison, the Applicant is seeking authorisation in respect of new conduct proposed by way of the Agreements, and is asserting a public benefit on the basis of additional revenue flows to racing bodies.

¹ *Racing and Betting Act* (NT), section 124. The use of the totalisator conducted by Ubet NT Pty Ltd pursuant to the licence granted to it under the *Totalisator Licensing and Regulation Act* (NT) is excluded from the scope of this prohibition.

² *Racing and Betting Act* (NT), section 110.

³ See, for example, *Gambling Regulation Act 2003* (Vic), section 4.7.2; *Totalizator Act 1997* (NSW), section 9.

⁴ See A91419-A91424, *Tabcorp Wagering Manager (Vic) Pty Ltd and TAB Limited*.

Tabcorp considers that the Arrangements, if commercially successful, are likely to result in a reduction of funding to the racing industry and that this is a public detriment. A reduction in funding will have broad economic consequences for industries associated with the racing industry, including pubs and clubs who distribute totalisator products.

The ACCC should not assume that Australian racing bodies are comfortable with the conduct proposed by way of the Agreements on the basis that the Applicant has received race fields approvals from a number of Australian racing bodies. Those race fields approvals enable the Applicant to use the relevant body's race fields information for wagering purposes, but should not be seen as the relevant bodies having sanctioned the unlawful conduct of totalisator wagering by AWOs who are party to the proposed Agreements with the Applicant.

3 Rationale for restrictions is unclear

Section 6.3 of the Application asserts that the rebate restrictions are for the benefit of the AWOs and that, without these restrictions, AWOs would not sign up to the Agreements. The Application asserts that this is because AWOs would be concerned that they would, in participating in the GT pools, be funding the rebate activities of others. In its email to the ACCC of 22 December 2016, the Applicant states that the rebate restriction is necessary to ensure the stability of the pool.

As AWOs would, presumably, be earning revenue on the basis of their contribution to the pool, it is not clear to Tabcorp (as a pool operator) that AWOs would be funding third party rebates, or how the restrictions relate to pool stability.

Section 4.2 of the Application states that "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". This is a different motivation than set out elsewhere in the Application and does not suggest any public benefit. In particular, the revenues received by the racing industry in respect of a bet that is placed with Topbetta Pty Ltd will be no different to the revenues received if the same bet is placed with an alternative corporate bookmaker.

4 Given that AWOs are not currently dependent on the Applicant and existing levels of competition there is no urgent need for interim authorisation

The Applicant has not made a compelling case for interim authorisation on the basis of urgency.

Tabcorp accepts that the Applicant may, for commercial reasons, want to commence operations as soon as possible. This is not a sufficient reason to grant interim authorisation.

AWOs are not currently accessing the proposed pool and are continuing to compete and grow market share. Given that the Australian wagering market is likely characterised by high levels of competition, and putting to one side that the Arrangements will result in a contravention of relevant legislation, refusal to grant interim authorisation in respect of the Arrangements will have no impact on levels of competition.

In Tabcorp's view the introduction of the GT pool would not result in any related public benefit, even if the NSW TAB, SuperTAB and Ubet pools were combined.

In any event no national pool will be created in the period prior to a final authorisation decision.

Given the above, Tabcorp considers it would be inappropriate for the ACCC to grant interim authorisation. Tabcorp considers that the ACCC should, in the context of its broader review, carefully consider the assertions of the Applicant by reference to the issues raised in this letter and, in consultation with relevant regulators, consider the regulatory consequences of what is proposed.

Please do not hesitate to contact me if you require any additional information.

Yours sincerely



Daniel Lovecek
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