

Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

N99642

Tabcorp Investments No.5 Pty Ltd (**Keno Victoria**)

- (b) Short description of business carried on by that person:
(Refer to direction 3)

Tabcorp Holdings Limited operates through its subsidiaries and controlled entities, Keno Victoria, and is a wagering, gaming and entertainment group. Please refer to the submission in support of the notification for further details.

- (c) Address in Australia for service of documents on that person:

c/o Patrick Gay
Herbert Smith Freehills
Level 27, 161 Castlereagh Street
Sydney NSW 2000

2. Notified arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

1. Goods and services supplied by Keno Victoria (**Keno Venue Goods and Services**), which may include:
 - a. equipment and services used in conjunction with the provision of Keno; and
 - b. funds which may be used to assist development of Keno facilities.
2. Membership or related services provided by certain organisations or associations (**Nominated Membership Organisation**) to pubs, clubs, commercial venues and/or to individuals (**Member Services**).

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

1. Keno Victoria proposes to:

- a. supply, or offer to supply, Keno Venue Goods and Services;
- b. supply, or offer to supply, Keno Venue Goods and Services at a particular price; or
- c. give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of Keno Venue Goods and Services;

on the condition that the person to whom Keno Victoria supplies or offers or proposes to supply those services acquires or agrees to acquire certain goods and services from a Nominated Membership Organisation.

2. Keno Victoria further proposes to:

- a. refuse to supply Keno Venue Goods and Services;
- b. refuse to supply Keno Venue Goods and Services at a particular price; or
- c. refuse to give or allow a discount, allowance, rebate or credit in relation to the supply of Keno Venue Goods and Services;

for the reason that a person has not acquired, or has not agreed to acquire, Membership Services from a Nominated Membership Organisation.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

- (a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

Existing and potential members of a Nominated Membership Organisation. At present the following organisation is a Nominated Membership Organisation:

- Community Clubs Victoria (CCV).

- (b) Number of those persons:

- (i) At present time:

Greater than 50.

- (ii) Estimated within the next year:
(Refer to direction 6)

Greater than 50.

- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Not applicable

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the submission in support of the notification.

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

Please refer to the submission in support of the notification.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) 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 8)

Please refer to the submission in support of the notification.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:
(Refer to direction 9)

Please refer to the submission in support of the notification.

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

Please refer to the submission in support of the notification.

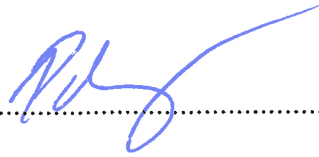
7. Further information

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

Patrick Gay
Herbert Smith Freehills
Lever 27, 161 Castlereagh Street
Sydney NSW 2000

Dated 13 April 2017

Signed by/on behalf of the applicant



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Patrick Gay
Partner
Herbert Smith Freehills



Submission

Tabcorp Investments No.5 Pty
Ltd

Notification of exclusive dealing
Submission to the ACCC

13 April 2017

1 Introduction

This submission is provided in relation to Notifications of Exclusive Dealing lodged by Tabcorp Investments No.5 Pty Ltd (**Keno Victoria**).

2 Background

2.1 Tabcorp Group

(a) Tabcorp Group

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

(b) Keno

Keno is a game of chance in which 20 numbers are randomly electronically drawn out of numbers from 1 to 80. Before the draw, a player:

- decides how many numbers they want to play;
- selects their numbers and marks them on a ticket, or has their numbers randomly allocated; and
- decides the amount of money they wish to spend per game, how many games they want to play with the same set of numbers and if they want to nominate a Keno Bonus.

A player wins if the numbers drawn match the numbers the player has selected on their ticket. The amount a player wins depends on a number of factors, including how many numbers the player selected, how many of those numbers match the numbers drawn, and how much the player spent on the game.

Keno Victoria is licensed in Victoria to distribute the Keno product through commercial venues (i.e. pubs and clubs) (**Venues**) and provides Venues with support and promotional services associated with the Keno product.

2.2 Rationale for the notified conduct

The notified conduct is designed to assist in the development of Tabcorp's Keno businesses in Victoria by developing effective working relationships with peak bodies. Peak bodies provide Tabcorp with opportunities to communicate effectively to its network of Venues, as well as providing a forum for disparate Venues to bring concerns to the attention of Tabcorp. Peak Bodies may also provide opportunities for Tabcorp to promote its products to pubs and clubs, as well as to the wider community with whom peak bodies interact.

Tabcorp recognises that pubs and clubs are a significant component of its distribution network; having an efficient and professional pub and club industry is of benefit to Tabcorp. Working with an effective peak body assists Tabcorp by:

- providing it with an efficient way to coordinate activity with a large number of geographically disparate venues;

- providing opportunities for Tabcorp to promote its overall business; and
- promoting the professionalism of the pub and club industry.

3 The conduct

The notified conduct is in respect of:

- (1) Goods and services supplied by Keno Victoria to licensed venues (**Keno Venue Goods and Services**), which may include:
 - equipment and services used in conjunction with Keno; and
 - funds which may be used to assist in the development of Keno facilities.
- (2) Membership or related services provided by certain organisations or associations (**Nominated Membership Organisation**) to pubs, clubs, commercial venues and/or to individuals (**Member Services**).

Keno Victoria proposes to:

- (a) supply, or offer to supply, Keno Venue Goods and Services;
- (b) supply, or offer to supply, Keno Venue Goods and Services at a particular price; or
- (c) give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of Keno Venue Goods and Services;

on the condition that the person to whom Keno Victoria supplies or offers or proposes to supply Keno Venue Goods or Services acquires or agrees to acquire Member Services from a Nominated Membership Organisation; and

Keno Victoria proposes to:

- (a) refuse to supply Keno Venue Goods and Services;
- (b) refuse to supply Keno Venue Goods and Services at a particular price; or
- (c) refuse to give or allow a discount, allowance, rebate or credit in relation to the supply of Keno Venue Goods and Services,

for the reason that a person has not acquired, or has not agreed to acquire, Membership Services from a Nominated Membership Organisation.

At present the following organisation are a Nominated Membership Organisation:

- Community Clubs Victoria (**CCV**).

Example of proposed conduct

Keno Victoria proposes to provide new CCV members with one months' free daily connection fee for all new Keno installations. Keno Victoria also proposes to offer additional growth payments to CCV members in circumstances where the CCV venue meets certain growth thresholds in regards to Keno operations.

4 Markets

4.1 Markets

Relevant markets include:

- the market for the provision of Keno services; and
- the market or markets in which Venues provide Keno distribution services and other goods and services (e.g. food, beverages and other forms of entertainment) to facilitate the entertainment of customers.

4.2 Suppliers and acquirers

Keno Victoria is the sole licensed distributor of Keno in Victoria.

Entertainment goods and services are provided by a wide variety of entities including providers of visual equipment, providers of electronic gaming machines, Foxtel and providers of live entertainment.

5 Public benefits and detriment

5.1 Introduction

Keno Victoria submits that the benefit to the public likely to result from the notified conduct would outweigh any detriment to the public likely to result from the conduct.

5.2 Benefits to the public

The notified conduct will be of benefit to the public as it will:

- reduce costs to venues which might not otherwise provide equivalent services to their customers;
- encourage venues to invest in their facilities which will increase amenities and levels of service provided to customers in general, and gaming customers in particular;
- lead to increased awareness and increased promotion of Keno Victoria services at licensed venues;
- promote competition by encouraging other suppliers of goods and services to pubs and clubs to offer similar value-added services;
- provide additional benefits to venues which elect to acquire services from a Nominated Membership Organisation.

5.3 Detriment

The notified conduct will not result in any public detriment as:

- Keno Victoria is the sole licensed distributor of Keno in Victoria. As a result, the conduct will not have any impact on competition or the distribution of Keno products;
- members of a Nominated Membership Organisation are under no obligation to participate in any Keno Victoria offer;

- venues will be free to acquire services from Keno Victoria without any obligation to acquire Member Services from a participating Nominated Membership Organisation;
- membership in a Nominated Membership Organisation is not restricted. Accordingly, any club which wishes to participate in a notified Keno Victoria offer could do so by becoming a member of a Nominated Membership Organisation;
- the notified conduct will have no appreciable impact on competition between venues for the service of customers;
- Keno Victoria, in addition to working with peak bodies, also seeks to maintain and improve direct relationships with its network. Consequently, venues who are not members of any Nominated Membership Organisation have opportunities to deal directly with Keno Victoria in respect of all aspects of the relationship with Keno Victoria (including as to possible benefits); and
- Keno Victoria is also open to considering proposals from other peak bodies. In circumstances where Keno Victoria considers that a relationship with such a body will deliver it with efficiency gains and otherwise promote Keno Victoria commercial objectives, it will consider entering into arrangements with that peak body. Such an arrangement may include a commitment to provide benefits to its membership consistent with the notified conduct.