



Determination

Application for minor variation of authorisation AA1000423
lodged by
Racing and Wagering Western Australia

In anticipation of the sale by the Western Australian Government of the
wagering business conducted by Racing and Wagering Western
Australia

Authorisation number: AA1000423

Date: 8 April 2020

Commissioners:

Keogh

Rickard

Court

Ridgeway

Summary

The ACCC has decided to vary authorisation AA1000423 granted to Racing and Wagering Western Australia (RWVA) in relation to their management services agreement with TSG Wagering, and novating their management services agreement to TSG Wagering's parent company, BetEasy.

The variation is in anticipation of the sale by the Western Australian government of the wagering business conducted by RWVA. The changes seek to pause the development of the IT infrastructure used by TSG to offer fixed-odds risk management services to RWVA, with modifications to the way outages are dealt with, and a corresponding reduction in fees.

Authorisation AA1000423 will remain in effect until 30 December 2028.

1. The application for minor variation

- 1.1. On 14 February 2020, Racing and Wagering Western Australia (**RWVA**) (the **Applicant**) applied for a minor variation to authorisation AA1000423 granted by the Australian Competition and Consumer Commission (the **ACCC**)
- 1.2. The ACCC granted authorisation AA1000423 on 31 August 2018 until 30 December 2028. The authorisation allows RWVA and TSG Wagering (**TSGW**) to enter into a management services agreement (in the form attached to the authorisation) for the fixed-odds risk management services provided by TSGW to RWVA. The agreement entered into in 2018 outlines the terms for sharing information between RWVA and TSGW to provide risk management information for RWVA's fixed odds books. RWVA independently calculates and provides risk threshold and target margin parameters to TSGW which are used by TSGW in the calculation of odds. This information is shared between the parties through a platform developed by William Hill Australia (acquired by TSG Australia in 2018), which is currently maintained solely for the purpose of providing fixed-odds risk management services to RWVA.
- 1.3. On 18 September 2019, the Western Australian Government passed the *TAB (Disposal) Act 2019 (WA)* to facilitate the sale of WA TAB, RWVA's wagering business. The Western Australian Government is currently running a tender process, and intends to finalise the sale of WA TAB's business and assets, along with establishing a new licence for a private operator, by mid-2020.
- 1.4. RWVA is seeking the minor variation to accommodate changes to the 2018 management services agreement in anticipation of the sale of RWVA's wagering business. The 2018 management services agreement details plans for TSGW to develop a new platform to deliver the fixed-odds risk management services while maintaining the William Hill platform in the interim. However, RWVA submits that this transition has not taken place, and due to WA TAB's impending sale it is no longer financially viable to do so. Instead of developing the new platform, RWVA intends to continue to use the William Hill platform on an ongoing basis. The majority of the amendments seek to address issues stemming from this, including a reduction in fees paid to TSGW due to the pause in development, increased support by TSGW, altered service level requirements, and a reduction in TSGW's liability in the event of issues with the older platform. RWVA also reserves the right to request TSGW to recommence development of a new platform if the sale of WA TAB does not proceed.
- 1.5. RWVA is also seeking to novate the management services agreement between it and TSGW to instead operate with TSGW's parent company, BetEasy (the trading name of

TSG Australia). RWWA indicates that the William Hill Australia betting licence used by BetEasy as TSGW is no longer used for its own wagering operations, and is solely used to provide services to RWWA. As a result, the Novation Deed will allow the current services to continue under the William Hill Australia platform using the BetEasy licence and betting rules.

- 1.6. RWWA submits that these changes are minor as they only serve to formalise the activity that the current agreement allowed for in the interim.
- 1.7. This application for a minor variation was made under subsection 91A of the *Competition and Consumer Act 2010* (the CCA).
- 1.8. The ACCC can grant authorisation which provides businesses with legal protection for arrangements that may otherwise risk breaching the law but are not harmful to competition and/or are likely to result in overall public benefits.

2. Background

- 2.1. RWWA is a body corporate established under the *Racing and Wagering Western Australia Act 2003* (WA) (the **RWWA Act**). It has two main functions; it is the controlling statutory authority for thoroughbred, harness, and greyhound racing in Western Australia; and it holds the exclusive totalisator licence for Western Australia. RWWA is licenced to offer on-course and off-course totalisator betting services and also offers fixed odds wagering on sports, racing, and other events in Western Australia.
- 2.2. RWWA's totalisator services are provided under the trading names WA TAB and TABtouch. It runs a retail network of 327 outlets across Western Australia, It also runs an operator assisted call centre for placing bets, provides online betting through tabtouch.com.au, and offers mobile device betting through the TABtouch app.
- 2.3. Due to WA TAB's smaller size in comparison to larger Australian competitors, particularly in the areas of online and telephone wagering, RWWA maintains an agreement with TSG for fixed-odds risk management services.
- 2.4. TSGW is a subsidiary of BetEasy, which is estimated to be the third largest gambling operator in Australia.¹ TSGW and its preceding companies (including William Hill, Sportingbet, and Centrebet) have offered fixed-odds risk management services to RWWA since 2009.²
- 2.5. RWWA and BetEasy compete with each other and with other bookmakers to provide wagering services to punters.

3. Consultation

- 3.1. For the purpose of consultation, the ACCC made an initial assessment that the application is capable of being a 'minor' variation consistent with the definition of a minor variation in the CCA.³

¹ 4 December 2019 'Fundamentally changed': Matt Tripp takes parting shot in BetEasy exit Sydney Morning Herald <<https://www.smh.com.au/business/companies/matt-tripp-exits-beteasy-in-250-million-payday-20191203-p53gil.html>>

² 1.7 RWWA Public application.

³ *Competition and Consumer Act 2010* (Cth) s 87ZP.

3.2. The ACCC then invited submissions from a range of potentially interested parties including major competitors, relevant industry associations and state and federal government stakeholders. No submissions were received.

4. ACCC assessment

4.1. Under section 91A of the CCA, the ACCC may grant an application for minor variation of an authorisation if it is satisfied that:

- the proposed variation is minor, and
- the variation would not be likely to reduce the extent to which the benefit to the public from the authorisation outweighs any anti-competitive detriment caused by the authorisation (the minor variation test)

4.2. Section 87ZP includes the following definition:

minor variation, in relation to an authorisation, is a single variation that does not involve a material change in the effect of the authorisation.

The proposed variation is minor

4.3. The ACCC is satisfied that the proposed variation is minor. The ACCC considers that the proposed variation will not involve a material change in the effect of the authorisation that was originally granted. The ACCC considers that the proposed variation is administrative in nature and does not materially change the nature or effect of the conduct originally authorised.

No reduction in the net public benefit of the arrangements

4.4. In its 2018 determination, the ACCC concluded that the arrangements were likely to result in a net public benefit. In particular, the ACCC considered that the arrangements would be likely to result in public benefits arising from:

- Improved efficiency in the provision of wagering services
- Increased competition in the wagering industry
- Increased range of wagering products

4.5. The ACCC considers that the proposed variation will not impact on the likelihood of these public benefits.

4.6. In its 2018 determination, the ACCC considered that the arrangements were likely to result in little, if any, public detriment, since the agreement essentially facilitates an outsourcing by RWWA of services that it cannot efficiently and cost-effectively provide itself. The ACCC considered that the main areas of possible detriment would be coordination between RWWA and TSG over fixed odds wagering products, and a possible overall reduction of competition in wagering. However, at the time, the ACCC noted that corporate bookmakers (rather than totalisators like RWWA) drive price competition in fixed odds wagering, and as such would act as a competitive restraint to this potential conduct. Coordination between RWWA and TSG over fixed odds wagering products was unlikely, since both companies have different cost structures they are unlikely to be able to set a common price for fixed odds wagering in a way that benefits both parties.

- 4.7. The ACCC considers that the proposed variation will not impact the detriments already considered by the ACCC.
- 4.8. Overall, the ACCC is of the view that the proposed variation would not be likely to reduce the extent to which the benefit to the public from the authorisation outweighs any anti-competitive detriment caused by the authorisation.

5. Determination

- 5.1. The ACCC is satisfied that the variation is minor as defined by section 87ZP of the CCA.
- 5.2. The ACCC is also satisfied that the public benefit test under section 91A(4)(b) of the CCA is met. That is, the variation would not result, or would not be likely to result, in a reduction in the extent to which the benefit to the public of the authorisation AA1000423 outweighs any detriment to the public caused by the authorisation.
- 5.3. Pursuant to section 91A(3) of the CCA, the ACCC makes this determination varying Authorisation AA1000423.
- 5.4. This determination is made on 8 April 2020. If no application for a review of the determination is made with the Australian Competition Tribunal, the determination will come into force on 29 April 2020.