



# Determination

Application for minor variation of authorisation AA1000423  
lodged by  
Racing and Wagering Western Australia  
in respect of  
amendments to the scope of the authorised management services  
agreement  
Authorisation number: AA1000423

Date: 11 June 2021

Commissioners:

Keogh

Rickard

Brakey

Ridgeway

## Summary

The ACCC has decided to vary authorisation AA1000423 granted to Racing and Wagering Western Australia (RWVA) to allow two changes to its management services agreement (MSA) pursuant to which BetEasy provides fixed odds management services to RWVA.

The proposed variations are: (i) to include Sportsbet as a party to the MSA, which will enable it to perform some or all of BetEasy's obligations; and (ii) allow BetEasy and/or Sportsbet to provide support to assist RWVA's transition to providing its own fixed odds management services.

The first variation follows the global merger of BetEasy and Sportsbet's two parent companies, TSG and Flutter. The second variation enables transitional assistance to be provided by BetEasy and/or Sportsbet prior to termination of the MSA.

The ACCC considers that the proposed variations are minor and will not alter the net public benefit assessment in the original application for authorisation.

Authorisation AA1000423, as varied, will remain in effect until 30 December 2028.

### 1. The application for minor variation

- 1.1. On 7 April 2021, Racing and Wagering Western Australia (RWVA) applied for a minor variation of authorisation AA1000423, granted by the ACCC on 31 August 2018 until 30 December 2028. Authorisation AA1000423 relates to the management services agreement (MSA) between RWVA and BetEasy, whereby BetEasy provides risk management services relating to fixed odds betting to RWVA.
- 1.2. The proposed variations amend the MSA in two ways. Firstly, a proposed variation is to include Sportsbet as a party to the MSA. BetEasy's operations are being integrated into Sportsbet following the global merger of their parent companies in 2020. As a result, Sportsbet intends to become a party to, and perform some or all of, BetEasy's obligations under the MSA with RWVA.
- 1.3. Secondly, the MSA will be varied to allow Sportsbet and/or BetEasy to provide transitional assistance to RWVA prior to the termination of the MSA. The current MSA only allows for transitional assistance to be provided after the termination or expiry of the MSA. RWVA intends (over the short to medium term) to transition to providing fixed odds management services itself, rather than through third parties under the MSA. RWVA submits the amendment will facilitate an orderly transition to RWVA providing its own fixed odds management services.
- 1.4. This application for a minor variation was made under subsection 91A of the *Competition and Consumer Act 2010* (the **Act**).
- 1.5. The ACCC may grant authorisation which provides businesses with protection from legal action under the competition provisions in Part IV of the Act for arrangements that may otherwise risk breaching those provisions in Part IV, but are not harmful to competition and/or are likely to result in overall public benefits.

## 2. Background

### Previous RWWA authorisations

- 2.1. Since 2009, RWWA has offered fixed odds wagering products with the assistance of fixed odds management services provided by large competitors. This support has been provided through a management services agreement, which the ACCC has authorised several times.
- 2.2. Most recently, on 31 August 2018, the ACCC granted authorisation AA1000423 until 20 December 2028 in respect of the MSA. The authorisation allowed RWWA and TSG Wagering (**TSGW**) to enter into a MSA for the fixed odds risk management services provided by TSGW to RWWA.
- 2.3. On 8 April 2020 the authorisation was varied to allow for MSA responsibilities to be novated from TSGW to TSGW's parent company, BetEasy, along with some other minor amendments.

### Parties

- 2.4. RWWA is a body corporate that was established under the *Racing and Wagering Western Australia Act 2003 (WA)*. 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. RWWA's totalisator services are provided under the trading names WA TAB and TABtouch. RWWA is the principal source of funding for the racing industry in Western Australia. After various prescribed deductions, the *Racing and Wagering Western Australia Act 2003 (WA)* requires RWWA to distribute all of its profits to the racing industry.
- 2.5. Sportsbet is part of the merged TSG/Flutter group and is a corporate bookmaker in Australia, offering wagering services to Australian consumers.
- 2.6. BetEasy is part of the merged TSG/Flutter group and holds a licence to conduct the business of a sports bookmaker issued by the Northern Territory Government. BetEasy holds 100% of the issued share capital in TSGW.

## 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 Act.
- 3.2. The ACCC invited submissions from a range of potentially interested parties, including major competitors, relevant industry associations, and state and federal government stakeholders. The ACCC did not receive any submissions on the application.

## 4. ACCC assessment

- 4.1. Under section 91A of the Act, 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.

4.3. Section 91A(7) enables the ACCC to consider two or more variations at the same as if they were a single minor variation if the Commission is satisfied that the combined effect of those variations, if all were granted, would not involve a material change in the effect of the authorization.

### The proposed variations are minor

4.4. The ACCC is satisfied that the proposed variations are minor and will not involve a material change in the effect of the authorisation that was originally granted. The ACCC considers that the proposed variations are administrative in nature and do not materially change the effect of the conduct originally authorised.

### No reduction in the net public benefit of the arrangements

4.5. In its 2018 determination, the ACCC concluded that the provisions in the MSA 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, and
- increased range of wagering products.

4.6. The ACCC considers that the proposed variations will not impact the likelihood of these public benefits arising. One variation changes the entity providing some or all of the services to RWWA under the MSA, but this entity is in the same corporate group as BetEasy. Moreover, the current MSA already contemplated the provision of transitional assistance after the expiry or termination of the MSA. The other variation enables this assistance to also be provided upon RWWA's request prior to expiry or termination to facilitate an orderly transition to RWWA providing the relevant services in-house. This variation alters the timing, but not the nature, of already authorised conduct.

4.7. In its 2018 determination, the ACCC considered that the arrangements were likely to result in little, if any, public detriment, since the MSA facilitated the outsourcing of certain services by RWWA. The main area of possible detriment was the coordination between RWWA and its management services provider over fixed odds wagering products. However, the ACCC found that other corporate bookmakers would continue to impose a significant level of constraint, and that RWWA and its management services provider had different business models and cost structures. The ACCC considered that RWWA and its management services provider were unlikely to be able to set a common price for fixed odds wagering services in a way that would benefit both parties.

4.8. The ACCC considers that the proposed variations do not change its previous conclusion that any public detriments are unlikely.

- 4.9. Overall, the ACCC is satisfied that the proposed variations do not change the balance of public benefits and detriments resulting from the authorisation.

## 5. Determination

- 5.1. The ACCC is satisfied that the variations are minor as defined by section 87ZP of the Act.
- 5.2. The ACCC is also satisfied that the public benefit test under section 91(4)(b) of the Act 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 authorisation AA1000423 outweighs any detriment to the public caused by the authorisation.
- 5.3. Pursuant to section 91A(3) of the Act, the ACCC makes this determination varying authorisation AA1000423.
- 5.4. This determination is made on 11 June 2021. If no application for a review of the determination is made with the Australian Competition Tribunal, the determination will come into force on 3 July 2021.