



Statement of Issues

9 March 2017

Tabcorp Holdings and Tatts Group – proposed merger

Purpose

1. Tabcorp Holdings Limited (**Tabcorp**) proposes to acquire all of the shares in Tatts Group Limited (**Tatts**) by means of a scheme of arrangement (the **proposed merger**).
2. This Statement of Issues:
 - gives the Australian Competition and Consumer Commission's (ACCC's) preliminary views on competition issues arising from the proposed merger
 - identifies areas of further inquiry
 - invites interested parties to submit comments and information to assist our assessment of the issues.

Overview of ACCC's preliminary views

3. The legal test which the ACCC applies in considering the proposed merger is in section 50 of the *Competition and Consumer Act 2010*. Section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
4. The ACCC divides its preliminary views into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'.
5. For this matter, the ACCC has identified one issue of concern (for which Tabcorp has proposed a divestment) and five issues that may raise concerns.

Issue of concern: reduced competition in electronic gaming machine monitoring services and repair and maintenance services in Queensland

6. The ACCC's preliminary view is the proposed merger is likely to substantially lessen competition in Queensland for the supply of electronic gaming machine monitoring and repair and maintenance services by combining Maxgaming and Odyssey Gaming (subsidiaries of Tatts and Tabcorp respectively).

7. The ACCC has recently received a remedy proposal from Tabcorp to divest Odyssey Gaming to address this competition concern in Queensland.

Issue that may raise concerns: removal of potential supplier of totalisator pooling services

8. The ACCC's preliminary view is that the proposed merger may substantially lessen competition by removing Tatts as a potential competing supplier of totalisator pooling services.
9. The ACCC understands that Tabcorp proposes to make commitments to Racing and Wagering Western Australia (**RWWA**), the only third party domestic totalisator which has an existing pooling arrangement with Tabcorp.

Issue that may raise concerns: removal of bidder for totalisator and retail exclusivity rights

10. The proposed merger may combine the closest competitors in bidding processes for wagering licences (i.e. totalisator licences and exclusive retail wagering rights).

Issue that may raise concerns: combining Sky Racing with Tatts' retail wagering operations

11. The combination of Tabcorp's Sky Racing vision broadcasting business with the retail networks of Tatts may raise concerns by increasing the degree of market power in dealings with licensed venues and racing media rights owners.

Issue that may raise concerns: potential foreclosure of competing suppliers of electronic gaming machine systems and services in NSW and Queensland

12. The proposed merger results in increased vertical integration of the licensed monitoring function in NSW and Queensland with the merger parties' businesses, which supply electronic gaming machine systems and services. This may result in foreclosure or increased barriers to expansion for competing suppliers of electronic gaming machine services.

Issue that may raise concern: reduced in competition in the supply of electronic gaming machine repair and maintenance services in Victoria

13. The proposed merger may raise competition concerns in relation to the supply of electronic gaming machine repair and maintenance services in Victoria by removing a substantial competitor.

Issue unlikely to raise concerns: reduced competition between totalisators for premium wagering customers

14. The proposed merger appears unlikely to result in a substantial lessening of competition for the supply of pari-mutuel wagering to premium wagering customers, including rebates and other incentives offered to attract and retain these customers. Premium wagering customers tend to place bets on races with totalisators around the world.

Issue unlikely to raise concerns: bidding for exclusive licences for electronic gaming machine monitoring, Keno and lotteries

15. The proposed merger appears unlikely to remove a key or unique bidder for exclusive licences for monitoring services, Keno and lotteries.

Issue unlikely to raise concern: reduced competition for supply of Keno

16. The proposed merger appears unlikely to substantially lessen competition in relation to the supply of Keno.

Making a submission

17. The ACCC is seeking submissions from interested parties. Detailed discussion of these and other issues, along with specific questions, is contained in this Statement of Issues.
18. Interested parties should provide submissions by no later than 5pm on 24 March 2017. Responses may be emailed to mergers@acc.gov.au with the title: “*Submission re: Tabcorp – Tatts (attention Sarah Hilborn/Rebecca Burns)*”. If you would like to discuss the matter with ACCC officers over the telephone or in person, or have any questions about this Statement of Issues, please contact Sarah Hilborn on (03) 9658 6409 or Rebecca Burns on (03) 9290 1875.
19. The ACCC anticipates making a final decision on 4 May 2017. However, this timeline can change. To keep abreast of possible changes in relation to timing and to find relevant documents, interested parties should visit the Mergers Register on the ACCC's website at www.accc.gov.au/mergersregister.

Confidentiality of submissions

20. The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

About ACCC ‘Statements of Issues’

21. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC’s preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
22. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

Timeline

Date	Event
25 November 2016	ACCC commenced review
9 March 2017	ACCC publication of Statement of Issues
24 March 2017	Deadline for submissions from interested parties in response to this Statement of Issues
4 May 2017	Proposed date for ACCC final decision

The parties

The acquirer – Tabcorp

23. Tabcorp is a gambling entertainment company listed on the Australian Stock Exchange. Tabcorp operates its business under three business divisions: Wagering and Media, Gaming Services and Keno.

Wagering and Media

24. Tabcorp's Wagering and Media business comprises:
- a retail network of TAB¹ outlets and licensed venues (hotels, pubs, clubs) in Victoria, NSW and the ACT which supply racing and sports wagering products (referred to as a retail network in this Statement of Issues).
 - a national online presence and telephone betting service supplying racing and sports wagering products through the TAB and tab.com.au brands, and Luxbet, Tabcorp's wholly-owned Northern-Territory licensed bookmaker;
 - computerised racing game, 'Trackside', which features virtual thoroughbred, greyhound and harness racing in TAB agencies; and
 - Sky Racing (**Sky**) which produces three racing vision channels (Sky 1, Sky 2 and Sky Thoroughbred Central) broadcasting thoroughbred, harness and greyhound racing. Sky distributes audiovisual racing content via commercial subscription television (which is broadcast into TAB outlets) and home subscription television (via Foxtel or Optus networks). Tabcorp also operates Sky Sports Radio, which broadcasts audio racing and other sports content in NSW and the ACT.
25. In each of Victoria, NSW and the ACT, Tabcorp is licensed by the State/Territory Government to be the exclusive supplier of off-course totalisator² and retail wagering services in the state/territory.

¹ TAB (Totalisator Agency Board) commonly refers to the wagering totalisator operator in a given state/territory or a retail wagering outlet/network operated on an exclusive basis by the licensed wagering operator in a given state/territory.

Gaming Services

26. Tabcorp's gaming services division comprises:
- Tabcorp Gaming Solutions (**TGS**); and
 - Intecq, which has two business divisions, Odyssey Gaming (**Odyssey**) and eBET Gaming Systems (**eBET**).
27. TGS provides a 'full service solution' to gaming venues in NSW and Victoria, which includes:
- finance for electronic gaming machines (**EGMs**, otherwise known as 'pokies');
 - EGM repair and maintenance;
 - consulting services (e.g. training and advice on venue refurbishment and regulatory compliance); and
 - re-supply of gaming and promotional systems and related services.
28. Intecq (via its eBET business) supplies gaming and promotional management systems and related services in NSW, Victoria, Queensland and Tasmania.
29. Intecq (via its Odyssey business) is a licensed monitoring operator in Queensland, providing gaming monitoring services to gaming venues for compliance and taxation purposes.

Keno

30. Tabcorp holds a licence to operate Keno in Victoria, Queensland, the ACT and NSW.
31. Tabcorp distributes Keno products in retail outlets including pubs, clubs and TAB outlets in the above-mentioned states and territories. Tabcorp also distributes Keno products online, which can be accessed in the ACT, Western Australia, South Australia and Tasmania.

The target – Tatts

32. Tatts is a supplier of lotteries, wagering and gaming products and services and is listed on the Australian Stock Exchange. Tatts operates its business under three divisions: Lotteries, Wagering and Gaming.

Lotteries

33. Tatts is the operator of all major public lotteries, on an exclusive basis, in all Australian states and territories, with the exception of Western Australia, which is the only remaining state-owned and operated lottery.

² For an explanation of totalisators, refer to the Industry Background (Wagering and media) section below.

34. Tatts also operates a Keno product in South Australia as part of its South Australian Lotteries master agency agreement with the Lotteries Commission of South Australia. Tatts' Keno products are distributed through retail outlets including pubs, clubs, TAB outlets and newsagents in South Australia.

Wagering

35. Tatts' wagering business comprises:
- a retail network of UBET outlets and licensed venues in Queensland, South Australia, Tasmania and the Northern Territory, which supply racing and sports wagering products (referred to as a retail network in this Statement of Issues);
 - a national online presence and telephone betting service supplying racing and sports wagering products through the UBET brand; and
 - RadioTAB, which broadcasts audio racing content in Queensland, South Australia, Tasmania and the Northern Territory.
36. In each of Queensland, South Australia, Tasmania and the Northern Territory, Tatts (UBET) is licensed by the State/Territory Government to be the exclusive supplier of off-course totalisator and retail wagering services in the state/territory.

Gaming

37. Tatts is a provider of gaming and promotional management systems and related services, and EGM monitoring services through its gaming segment known as MAX, which comprises, Maxgaming and Bytecraft.
- Maxgaming supplies gaming and promotional management systems and related services in Queensland, NSW and Victoria.
 - Bytecraft supplies EGM repair and maintenance to gaming venues in all states and territories in Australia.
 - Maxgaming is a licensed monitoring operator in Queensland, NSW and the Northern Territory.

Other industry participants

Racing industry

38. There are a number of bodies in Australia that represent the interests of different stakeholders within the racing industry. There are approximately 371 thoroughbred, 121 harness racing and 76 greyhound racing clubs in Australia.
39. In each state and territory, there is a principal racing authority (**PRA**) responsible for the management and administration of racing industry funding in that jurisdiction. PRAs include Racing NSW, Racing Victoria, Racing Queensland and Racing and Wagering Western Australia (**RWWA**).

Licensed gaming venues

40. Licensed gaming venues (hotels, pubs and clubs) supply a range of gambling facilities, including one or more of the following:
- retail wagering outlets (TABs) with cash and electronic betting terminals and display of Sky audio and visual racing content
 - gaming floors with EGMs
 - a computerised Keno system.

Corporate bookmakers

41. Corporate bookmakers typically have a national presence, supplying racing and sports wagering products through online and telephone channels. Corporate bookmakers are typically licensed in the Northern Territory and supply fixed odds and tote derivative³ wagering products.
42. The following are the major corporate bookmakers in Australia:
- **SportsBet:** a wholly owned subsidiary of Paddy Power Betfair, listed on the Irish Stock Exchange.
 - **William Hill:** listed on the London Stock Exchange and operates the Centrebet, Tom Waterhouse and William Hill (previously Sportingbet) brands.
 - **Ladbrokes:** listed on the London Stock Exchange and operates the Betstar, Bookmaker and Ladbrokes brands.
 - **Bet365:** privately-owned bookmaker headquartered in England.
 - **CrownBet:** a subsidiary of Crown Resorts Limited.
43. Crown Resorts Limited also own Betfair Australia, a betting exchange.⁴

Racing media broadcasters

44. **Racing.com**, a joint venture between Racing Victoria and Seven West Media, was officially launched in August 2015 and currently broadcasts Victorian thoroughbred racing content online and on free-to-air digital and subscription television.
45. Racing.com sublicenses Victorian thoroughbred racing content to CrownBet, Sportsbet, William Hill, Ladbrokes and Bet365 for use on their digital platforms.

³ A fixed odds wagering product whereby the payout odds replicate those available on the totalisators. Customers are able to bet on derivative products such as 'top tote' where they receive the best odds available across the three totalisators.

⁴ Betfair Australia is the only betting exchange currently operating in Australia. A betting exchange is an intermediary which allows parties to stake money on opposing outcomes of an event and earns revenue by charging a commission on a customer's net winning.

46. Racing.com’s rights agreement with Racing Victoria is non-exclusive, and Sky also holds rights to this content, by which it is broadcast on its subscription channels and shown throughout the retail network.

Industry background

Wagering and media

47. In Australia, wagering is largely based on thoroughbred, harness or greyhound racing or sports events (i.e. other sports events outside the racing codes mentioned, including overseas events). Minor forms of wagering also exist, such as wagering on the outcomes of elections, reality television shows or novelty events.
48. Racing has long been the traditional staple of wagering in Australia and continues to account for the majority of wagering industry turnover. However, the growth in racing wagering has slowed in recent years as sports wagering has increased in popularity.
49. Wagering occurs through various channels: retail (at TAB outlets or licensed venues), digital (online via desktop, tablet or mobile apps), over the phone and on-course at race meetings.
50. Wagering products in Australia are supplied by totalisator operators licensed by each of the state and territory governments – there are three totalisator operators in Australia: Tabcorp, Tatts (UBET) and the Western Australian Government (RWVA) – as well as bookmakers and Betfair, the only existing betting exchange.
51. In general terms, wagering products take the form of pari-mutuel wagering (exclusively provided by the totalisator operators) and fixed odds wagering (provided by both totalisator operators and corporate bookmakers).
 - **Pari-mutuel wagering** involves the ‘pooling’ of all bets by a totalisator operator – the customers odds may change up until the close of betting on the event and the final odds are not known until the completion of the relevant event. A totalisator’s revenue on any given event is ‘risk free’ and is a function of the size of the pool and the take-out rate.
 - **Fixed odds wagering** involves a bookmaker acting as the counterparty to the customer’s bet – the customer is informed of the odds they will receive at the time their bet is placed. Bookmaker revenue on fixed odds betting on any given event involves risk as the revenue on an event is dependent on the outcome of that event.

Key trends in wagering

52. Tabcorp and Tatts, which in combination, hold exclusive licences to supply totalisator and retail wagering services in all states and territories (excluding Western Australia), remain the largest providers of wagering products in Australia. The wagering products they supply include totalisator and fixed odds wagering, delivered on-course, off-course in retail outlets and online.

53. Corporate bookmakers, which provide online wagering products (fixed odds racing and sports wagering products), have grown their share of wagering turnover in recent years.
54. This appears to have occurred for a combination of reasons:
- Significant growth in overall wagering turnover, largely driven by growth in online wagering as the portability and adoption of smartphones and tablets has increased the ease and frequency of wagering.
 - Some retail wagering customers having an increased preference for online wagering.
 - Some wagering customers having an increased preference for fixed odds and tote-derivative wagering (a fixed odds product that derives its pricing by reference to the prices available in totalisator pools and may involve a stretch or bonus above the derived pari-mutuel odds).
 - Growth in wagering customers attracted by sports wagering.
55. In summary, the key trends in wagering in Australia in recent years are:
- There has been a structural shift from retail to online wagering. Totalisators are facing increasing competition from corporate bookmakers.
 - Fixed odds wagering has become increasingly popular, with reduced pari-mutuel (totalisator) wagering turnover.
 - Sports wagering turnover has increased on average 20 per cent each year (from 2009/10 to 2013/14) and is driving the bulk of wagering growth.

Racing industry funding

56. The racing industry in Australia is heavily reliant on wagering revenue as a primary source of funding, and to a lesser extent, on payments received for the supply of racing media content and rights, sponsorship and Government contributions.
57. Wagering operators, in addition to paying wagering taxes to state governments, are required to pay product/racefield fees to racing authorities for racing product information.
58. While fees are paid by both totalisators and corporate bookmakers, product fees contributed by Tabcorp and Tatts, as the exclusive suppliers of off-course totalisator and retail wagering services in the relevant state or territory, account for the significant majority of racing industry funding.
59. Funding received by the racing industry based on wagering revenue can be impacted from multiple sources, including:
- competition from sports betting
 - substitution from pari-mutuel to fixed odds products, and
 - increased competition from corporate bookmakers.

Totalisator pools and take-out rates

60. In totalisator or pari-mutuel wagering, an operator establishes ‘totalisator pools’ for individual racing events. All pari-mutuel bets accepted by the operator on the relevant event are consolidated into the totalisator pool created for that event, and the pari-mutuel operator deducts from the pool a predetermined fixed commission percentage (**take-out rate**) which is regulated through state and territory government legislation. The remainder of the pool (referred to as the ‘dividend pool’) is divided by the number of units bet on the successful outcome and is available for distribution to the winning customers.
61. Totalisator pools can be stand-alone (i.e. where only one wagering operator manages the pool) or, they can include ‘guest’ totalisator operators that have smaller pool sizes, placing bets into a ‘host’ totalisator operator’s pool that has larger pools and deeper liquidity.
62. Pooling arrangements give smaller totalisator operators access to consolidated odds in a pool with increased liquidity which provides improved stability of projected odds. Guest totalisators pay a fee to the pool host for pooling services and are subject to the terms of the pooling arrangement negotiated with the host totalisator. RWWA currently acquires from Tabcorp access to the SuperTAB pool operated by Tabcorp.

Racing media

63. The ACCC understands that there is a strong connection between wagering activity and access to racing media (particularly racing vision), with history demonstrating that wagering activity on a given race drops substantially when racing vision is restricted. Therefore, competitive effects in markets for the acquisition and supply, or broadcast of racing media, can impact on the competitive dynamics in related wagering markets.
64. As the racing industry is reliant on revenue from wagering activity for funding, racing bodies and wagering operators have a vested interest in ensuring that wagering customers have access to racing vision.

Gaming

65. All states and territories in Australia have EGMs available at licensed gaming venues (such as pubs, clubs and hotels), with the exception of Western Australia, where EGMs are only available in the casino.

Licensed monitoring operators

66. State and territory governments require EGMs to be monitored for integrity, compliance and taxation purposes. Commercial operators are licensed to provide these monitoring services in each state and territory (except the ACT and Western Australia).

67. The licensed monitoring operator collects a large amount of data necessary to carry out its monitoring functions. This includes information related to ‘metering’ and ‘events’.
- **Metering data** is transactional data associated with game play of an EGM e.g. wins, turnover and payouts.
 - **Event data** relates to certain activities of the EGM, which could give rise to potential security issues such as EGM resets.

Gaming and promotional management systems and related services

68. Gaming and promotional management systems and related services comprise software and hardware designed to allow gaming venues to manage and enhance the operation of their EGMs. The systems and services can include:
- software and hardware for producing and reading venue membership cards, and for tracking and reporting on player activity (e.g. food and drink purchases, gaming activity) facilitated by membership cards
 - software facilitating player loyalty programs and venue loyalty programs
 - software allowing venues to market to and communicate with customers
 - cashless gaming solutions such as ticket-in ticket out (**TITO**) and card-based gaming systems. These systems allow credit to be loaded onto tickets, cards or tokens and used in other EGMs before being cashed out at the kiosk
 - player kiosks whereby players can check their loyalty status
 - business intelligence software, which facilitates the analysis of data at the venue, and
 - in-venue / multi-venue jackpot systems.
69. Some gaming and promotional management systems and related services can be provided on a stand-alone basis, although often venues acquire a bundle of systems and services as part of an integrated solution.
70. Gaming and promotional management systems and related services gather a large amount of information including customer data and gaming data.
- **Customer data** relates to information collected about customers using a membership card in relation to their use of gaming machines and purchases of food and drink at a venue.
 - **Gaming data** is information about EGMs such as the number and type of EGMs in a particular venue or area, and the financial transactions and metrics relating to the operation of those EGMs.

Lotteries

71. Over the last decade, there has been a trend towards the privatisation of state-run lottery operations. Tatts is now the exclusive supplier of major lottery services in every Australian state and territory, except Western Australia (where lotteries continue to be operated by the state government).
72. There are a variety of lotteries products available in Australia. Some common product titles include Tattslotto, Gold Lotto, Lotto, X-Lotto and Powerball. Scratch tickets or 'scratchies' are also a commonly known form of instant lotteries.
73. Lotteries products are commonly sold through newsagents and convenience outlets. More recently, lotteries products have also been made available online and via mobile applications.

Keno

74. Keno is a game where a player wagers that their chosen or selected numbers match numbers randomly selected via a computer system or a ball-draw device.
75. Tabcorp holds the following state and territory Keno licences: Victoria, Queensland, the ACT and NSW. Tabcorp also offers Keno online in the ACT, Western Australia, South Australia and Tasmania. Tatts operates Keno in South Australia under its South Australian lotteries licence.
76. A computerised Keno game operates in certain licensed gaming venues throughout most Australian jurisdictions. Keno is also offered online in some states and territories.
77. Keno is generally linked between licensed gaming venues within a state or territory enabling the operator to offer larger jackpot prizes.

Future with and without the acquisition

78. Section 50 of the Act prohibits acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in a market. In assessing a proposed acquisition pursuant to section 50 of the Act, the ACCC considers the effects of the acquisition by comparing the likely future competitive environment post-acquisition if the acquisition proceeds (the "with" position) to the likely future competitive environment if the acquisition does not proceed (the "without" position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.
79. In December 2016, a consortium led by Macquarie Bank and comprising three other financial investors (First State Super, Morgan Stanley Infrastructure and KKR, together the Pacific Consortium) made a rival indicative proposal to acquire Tatts, which was rejected.
80. On the basis of the information currently available, the ACCC considers that the likely future without the proposed merger is the status quo, where Tatts will continue to apply a similar competitive constraint in the relevant markets.

Previous ACCC decisions

81. In 2006, Tabcorp proposed to acquire UNiTAB Limited, the exclusive operator of the off-course totalisator and retail wagering services in Queensland, South Australia and Northern Territory. The merged entity would have controlled all major totalisator pools in Australia if the acquisition proceeded.
82. After a public review, the ACCC concluded that the proposed acquisition was likely to substantially lessen competition in certain wagering-related markets. The ACCC was concerned that this proposed acquisition would have substantially reduced competition in bidding for future state-based wagering licences and would remove UNiTAB as the only alternative supplier of pooling services, which may have had significant consequences for potential new entrants seeking to obtain a state-based pari-mutuel wagering licence.
83. UNiTAB was subsequently acquired by Tatts in 2006.

Market definition

84. The key areas of overlap between Tabcorp and Tatts are:
 - **Retail wagering / totalisator operations:** Tabcorp and Tatts each operate off-course totalisators and retail wagering networks pursuant to exclusive totalisator and retail licences granted by state and territory governments. They supply pari-mutuel and fixed odds wagering products through retail outlets (TAB agencies and licensed venues) located in the states and territories in which they are licensed.
 - **Online and telephone wagering:** Tabcorp and Tatts both operate online and have telephone betting services supplying pari-mutuel and fixed odds wagering services nationally.
 - **Gaming and promotional management systems and related services:** Tabcorp and Tatts both supply gaming and promotional management systems and related services to gaming venues.
 - **EGM monitoring services:** Tabcorp and Tatts both supply EGM monitoring services in Queensland.

Wagering

85. The ACCC's preliminary view is that a national market exists for the supply of wagering products comprising both pari-mutuel and fixed odds wagering across racing and sports events in retail and online channels.
86. In reaching this preliminary review, the ACCC has had regard to dramatic changes in the wagering industry over the last 5 to 8 years, with the predominant trends occurring being an increased level of substitution between wagering on pari-mutuel to fixed odds products, racing to sports events, and retail to online channels.
87. A key consideration for the ACCC is the ease with which customers can switch between the different wagering products, events and channels. On the demand-side, consumers appear to be able to readily switch from pari-mutuel to fixed

odds wagering, and vice versa. It also appears that a significant proportion of wagering customers who have adopted portable electronic devices are shifting from wagering in retail outlets to online wagering.

88. Although there may be less demand-side substitutability between wagering on racing and wagering on other sporting events, all major wagering operators provide consumers with the option to wager on both racing and sports. Therefore on the supply-side, a broader product market appears appropriate.

89. The ACCC is continuing to consider whether:

- separate markets exist for the supply of wagering products (and rebates) to: (i) premium wagering customers; and (ii) recreational wagering customers;
- separate (upstream) markets exist for the acquisition of key inputs which may be necessary to supply totalisator and retail wagering operations, including: (i) bidding for totalisator licences and retail exclusivity rights with state and territory governments; (ii) access to racing vision; and (iii) access to pooling arrangements;

or whether there is a single wagering market that encompasses all functional levels across the supply chain for the supply of wagering products.

90. The ACCC is also considering whether the competitive effects of the merger in relation to the acquisition of key inputs (particularly for other existing or potential wagering operators) will have a material impact on downstream competition in a national market for the supply of wagering products.

The ACCC invites comments from market participants on its preliminary views of the relevant wagering-related markets. In particular, market participants may wish to comment on:

- The extent to which customers switch between wagering on racing and wagering on sports (and vice versa).
- The extent to which retail wagering customers are progressively adopting online wagering technologies.
- Whether any potential reduction in upstream competition for the acquisition of key inputs (including access to pooling arrangements or the competitiveness of bidding processes for totalisator and retail licences) is likely to have a material impact on downstream competition, and therefore customers, in a national wagering market.
- Whether separate wagering product markets exist or separate functional markets for different levels of the wagering supply chain exist.

Media

91. The ACCC's preliminary view is that the following markets may be relevant for assessing the potential competition effects of the proposed merger:
- national markets for the acquisition of racing media content and rights. There may be separate markets for each mode of delivery: (i) digital; (ii) free-to-air television; and (iii) domestic subscription television; and
 - a national market for the broadcasting of racing media content, comprising all delivery platforms including digital, free-to-air and domestic subscription television.

The ACCC invites comments from market participants on its preliminary views about the definition of the relevant racing media markets. In particular, market participants may wish to comment on:

- The commercial incentives of rights holders to bundle or unbundle racing media content for separate modes of delivery.
- The commercial incentives of wagering operators to acquire racing media rights for discrete delivery platforms.
- The commercial incentives of rights holders to supply racing media rights on an exclusive or non-exclusive basis.

Gaming

Product/service markets

92. The ACCC's preliminary view is the relevant product/service markets for assessing the competitive impacts of the proposed merger are:
- gaming and promotional management systems and related services
 - EGM repair and maintenance services
 - licensed monitoring operator services.
93. The ACCC understands the relevant Queensland legislation requires licensed monitoring operators to provide a number of services that are additional to the services directly relating to the monitoring of EGMs, for example, EGM repair and maintenance services. Therefore, the ACCC's preliminary view is the product/service market, 'licensed monitoring operator services' encompasses a broader range of services than just monitoring EGMs.

Geographic markets

94. The gaming services industry is legislated and regulated, and the relevant gaming licences issued, at a state/territory level. Therefore, the ACCC's preliminary view is the relevant geographic markets are state/territory-based.

Lotteries

95. Tabcorp and Tatts do not overlap in the supply of lotteries products in any Australian state or territory.
96. Tabcorp and Tatts may be potential bidders for future state or territory exclusive lotteries licences. The ACCC is continuing to consider whether separate (upstream) markets exist for the acquisition of key inputs necessary to supply lotteries products in a given state/territory (i.e. a market for bidding for the lottery licence) or whether there are broader markets that encompass all functional levels across the supply chain of lotteries products.

Keno

97. Tabcorp and Tatts overlap in the supply, or ability to supply, Keno products in South Australia and Victoria.
98. Tabcorp and Tatts may be potential bidders for future state or territory exclusive Keno licences. The ACCC is continuing to consider whether separate (upstream) markets exist for the acquisition of key inputs necessary to supply Keno products in a given state/territory or whether there are broader markets that encompass all functional levels across the supply chain of Keno products.

Wagering related issues

99. The proposed merger combines entities which:
 - between them, hold the exclusive right to supply totalisator and retail wagering services in each of the states and territories in Australia (except Western Australia)
 - operate two leading businesses supplying fixed odds wagering services (TAB and UBET) and a separate corporate bookmaking business (Luxbet).
100. As noted above, the ACCC's preliminary view is that a national market exists for the supply of wagering products to customers comprising both pari-mutuel and fixed odds wagering across racing and sports events in retail and online channels.
101. The ACCC has not formed a concluded view whether separate (upstream) markets exist for the acquisition of key inputs which may be necessary to supply totalisator and retail wagering operations, including: (i) bidding for totalisator licences and retail exclusivity rights with state and territory governments; (ii) access to racing vision; and (iii) access to pooling arrangements.
102. In any event, the ACCC will also be considering the impact of any reduction in the ability of other existing or potential wagering operators to acquire key inputs in the context of competitive impacts in a broader national market for the supply of wagering services.
103. As noted above, Tatts and Tabcorp hold exclusive licenses to supply totalisator and retail wagering services in different states/territories. Putting aside competition for licences, the ACCC considers that competition between Tabcorp and Tatts primarily occurs online and over the phone, in competition with several

corporate bookmakers. There is limited direct competitive overlap between the retail operations of the merger parties in separate states/territories. Data provided by the merger parties suggests that cross-border totalisator betting between those states, through online and telephone channels, is limited.

104. The ACCC's preliminary view is that the corporate bookmakers currently compete strongly with the retail, online and telephone wagering operations of the merger parties in the supply of wagering products to recreational customers.
105. Some market participants have indicated that Tatts (UBET) competes aggressively with its fixed odds pricing compared to Tabcorp and other corporate bookmakers. However, to date the majority of market participants have indicated that UBET is not a uniquely vigorous and effective competitor for the supply of fixed odds wagering.

The ACCC invites comments from market participants in relation to the following:

- The extent to which Tatts is a vigorous and effective competitor to Tabcorp and corporate bookmakers for fixed odds wagering.
- Whether corporate bookmakers will constrain the merged entity in the supply of fixed odds wagering products.
- Whether competition from corporate bookmakers for retail wagering customers will provide sufficient constraint on the merged entity such that it will invest in its retail operations to attract and retain customers?

Issue that may raise concerns: removal of potential supplier of pooling services

106. The ACCC's preliminary view is that the proposed merger may substantially lessen competition by removing the only other potential supplier of pooling services in Australia. This could result in the merged entity having increased market power in its dealings with totalisator operators (either existing operators or potential future entrants) seeking to negotiate a pooling arrangement.
107. The ACCC considers that, to the extent that the proposed merger would increase the merged entity's market power in negotiating pooling arrangements with existing or future totalisator operators, this may:
 - adversely affect the terms on which pooling arrangements are offered;
 - increase barriers to entry and deter potential bidders in future wagering licence processes; and
 - enable the merged entity to restrict the level of rebates offered by a guest totalisator to premium wagering customers.
108. Tabcorp currently provides pooling services to RWWA, pursuant to an agreement which extends out to 2024.
109. Tatts pools the totalisators which it operates in Queensland, South Australia, Tasmania and the Northern Territory. The ACCC understands that Tatts has

never provided pooling services to third parties and does not presently have the system capabilities to do so. The ACCC is continuing to investigate the required investment and Tatts' ability and commercial incentives to commence supplying pooling services to other totalisators absent the proposed merger.

Removal of Tatts as a potential provider of pooling services to RWWA

110. The WA TAB is the only totalisator in Australia not operated by either Tabcorp or Tatts. RWWA, which operates the WA TAB, is the only third party totalisator in Australia which has a pooling arrangement with Tabcorp to obtain access to Tabcorp's SuperTAB pool.
111. Market inquiries have indicated that by entering a pooling arrangement with a third party, RWWA is able to compete more effectively as a totalisator. Doing so enables RWWA to offer a more stable pool with deeper liquidity, resulting in fewer fluctuations for odds than might occur in a smaller stand-alone pool.
112. Tatts has not previously entered into pooling arrangements with third parties. However, its presence as a domestic operator of a totalisator pool may impose a level of competitive constraint on Tabcorp when Tabcorp is negotiating third party pooling arrangements.
113. Some market participants are concerned that the proposed merger will leave the WA TAB (either RWWA or a future potential owner) with no possible alternative but to enter pooling arrangements with the merged entity.
114. The ACCC is continuing to investigate the extent to which Tatts would have the ability and incentive to offer pooling services absent the proposed merger.

Increased barriers to entry

115. The ACCC is concerned that, to the extent that the proposed merger removes Tatts as a potential supplier of pooling services, this may increase barriers to entry by deterring or preventing others from bidding for wagering licences.
116. The ACCC understands that any operator of a totalisator licence (outside of NSW and Victoria) is likely to need to acquire pooling services. An inability to enter into pooling arrangements on reasonable commercial terms may materially impact on both the competitiveness and viability of such an operator and their ability to credibly bid for wagering licences.
117. This will be in circumstances where the merged entity will likely be the only supplier of pooling services in Australia and a competing bidder for any wagering licence.
118. The ACCC is continuing to investigate whether the removal of Tatts, to the extent that it is a potential supplier of pooling services, is likely to raise prevent or deter potential bidders for future wagering licences.

The ACCC invites comments from market participants on the potential for the proposed merger to reduce competition for pooling services. In particular market participants may wish to comment on the following:

- The extent to which Tatts, as a potential supplier of pooling services, currently constrains Tabcorp when supplying pooling services.
- The extent to which Tatts has the ability to supply pooling services or, if not, the incentive to obtain the capabilities to do so. For example, whether Tatts is likely to have strong commercial incentives to invest in its system capabilities such that it is able to provide pooling services to third party totalisators (i.e. is Tatts likely to implement ITSP technology, the globally-accepted protocol for inter-tote communications, to facilitate third party pooling?)
- The nature of investment required (cost and time) to implement ITSP technology.
- The likely effect of the removal of Tatts as a potential provider of pooling services, on the barriers to entry for potential bidders in future wagering licence processes.
- The extent to which Tabcorp's extension of its existing agreement in respect of the provision of pooling service to the WA TAB on similar terms would address the removal of Tatts as a potential supplier of pooling services.

Proposed commitments to RWWA

Tabcorp has proposed commitments to RWWA in relation to its ongoing provision of pooling services.

Tabcorp has agreed to continue to provide RWWA, or any acquirer of the WA TAB, with pooling services on equivalent commercial terms for up to 27 years. The supply of pooling services post 2024 is conditional on Tabcorp holding the Victorian licence after its expiry in 2024, or if Tabcorp does not hold that licence, it must hold another wagering licence with a substantial totalisator pool so that it can provide access to alternative or comparable pools.

The ACCC has recently been advised of the proposed commitments to RWWA and is continuing to consider whether such commitments are likely to effectively remedy potential competition concerns.

Issue that may raise concerns: removal of bidder for licences to supply totalisator and retail wagering services

119. The ACCC's preliminary view is that removing Tatts as a potential competitor to Tabcorp for future licences to supply totalisator and retail wagering services may lessen competition for those licences and deter others from bidding for them.
120. The ACCC has received mixed views about the ability of new entrants to credibly bid for totalisator licences and retail exclusivity rights.
121. Some market participants consider that existing barriers to entry for potential bidders are high given that Tabcorp and Tatts have a strong incumbency advantage. It has been indicated that Tabcorp and Tatts are the only two credible bidders for licences to supply totalisator and retail wagering services,

given their retail wagering and totalisator experience, expertise and sunk investment costs.

122. Market inquiries have suggested that new entrants are unlikely to be a credible alternative for future totalisator licences, and may be less likely to consider bidding for a licence if the merger proceeds, due to:
- Lack of expertise in operating retail wagering networks, and an unwillingness to support less attractive retail outlets with limited turnover as required by state and territory governments.
 - The inability to build scale in the medium-term as most licences in other states and territories will not expire for many years.
 - Uncertainty regarding the ability to secure racing vision, which is an essential input for the operation of a retail wagering outlet.
 - Uncertainty regarding the ability to obtain access to pooling arrangements (if required) on reasonable commercial terms.
123. Market inquiries have indicated that the reliance of potential bidders on the merged entity for racing vision and, if required, access to pooling arrangements, would place the merged entity in a position to deter rival bidders for future wagering licences or foreclose new entrants. The ACCC considers that access to racing vision is an essential input for operating a retail wagering outlet, and pooling arrangements may be an essential input for a standalone totalisator, such that a prospective new entrant may be deterred from bidding for a wagering licence without access to these key inputs.
124. Other market participants consider that the corporate bookmakers, overseas totalisator operators and potentially media companies are likely to have strong incentives to compete for future wagering licences, such that the proposed merger is unlikely to have a significant impact on the competitive dynamics for these licences.
125. The ACCC is also considering the ability of state and territory governments to optimise the outcomes of competitive licensing and privatisation processes which may constrain the merged entity from securing licences on terms less favourable to the government, racing industry and wagering customers. Some market participants have suggested that a state or territory government could take a strategic approach to maximise the prospect of extracting the highest bidder's valuation for any licence, for example with respect to licence exclusivity, reserve price, duration of licence, terms and regulation of payouts and fees associated with the licence. These market participants also consider that governments are sophisticated licensors with strong bargaining power, and that there have been multiple occasions where governments have negotiated directly with the incumbent licence holder rather than operating a competitive tender process.
126. The ACCC understands that the majority of totalisator and retail exclusivity rights are subject to long term licences with many years prior to expiry of their current terms, and therefore it may be difficult to predict the future competitive landscape to determine the likely impact of the proposed merger on competition for these licences. However, the ACCC considers that there is the potential for some

licences (including the potential privatisation of WA TAB and the expiry of the Victorian licence in 2024) to be contestable in the foreseeable future.

127. The ACCC is aware of recent developments involving ClubsNSW signing a digital wagering advertising partnership with CrownBet, providing clubs with the option of engaging CrownBet to provide exclusive digital wagering services for club patrons.
128. The ACCC is considering the extent to which digital wagering partnerships between corporate bookmakers and clubs and pubs, if successful (to the extent that they would be permitted under the relevant state/territory exclusive licences), may result in corporate bookmakers focussing on such opportunities to expand their exposure to wagering customers, rather than seeking to compete for retail wagering licences. The ACCC seeks feedback on the potential impact of this development on the incentives of corporate bookmakers to seek to obtain totalisator and retail exclusivity rights.
129. The ACCC is also considering the effectiveness of such digital wagering expansion as a competitive constraint on the merger parties' retail wagering operations, and whether such digital wagering opportunities are likely to be a significant aspect of overall competition in a national wagering market for the supply of wagering products comprising both retail and online channels.

The ACCC invites comments from market participants on the impact of the removal of Tatts as a future bidder for licences to supply totalisator and retail wagering services. In particular, market participants may wish to comment on the following:

- Do you consider that corporate bookmakers or any other prospective new entrants are likely to have commercial incentives to compete in future wagering licence processes?
- Do you consider the merger parties to be the only credible bidders for state-based wagering licences? If so, why?
- Do you consider that any reduction in bidding competition resulting from the proposed merger for wagering licences affects competition in the supply of wagering products to consumers? If so, how?
- Do you consider that possible digital arrangements between corporate bookmakers and clubs and venues may reduce the incentives of corporate bookmakers to participate in future bidding processes for retail wagering licences? If so, how?
- To what extent do you consider digital wagering partnerships are likely to provide a significant expansion opportunity for online wagering competitors?
- To what extent do you consider digital wagering partnership are likely to provide an effective competitive constraint to the merger parties?

Issue unlikely to raise concerns: reduced competition between totalisators for premium wagering customers

130. The ACCC understands that corporate bookmakers tend to restrict wagering by high volume, premium wagering customers as part of their risk management policies. In contrast, totalisators do not restrict large bets as the nature of pari-mutuel wagering means that such bets do not pose the same risk for them. Therefore, totalisator pools are the primary option for premium wagering customers.
131. It is common for premium wagering customers to place bets with totalisators around the world. The ACCC considers that premium wagering customers are likely to have overseas totalisators as options available to them that are not accessible to the majority of recreational wagering customers.
132. The ACCC understands that totalisators offer rebates or other incentives to premium wagering customers based on turnover and that rebates or other incentives are offered in order to achieve significant volumes from these high turnover customers. However, the ACCC understands that in offering rebates or other incentives to premium wagering customers, totalisators are conscious not to over-stimulate wagering by premium customers as this could impact payouts to other (non-premium) customers and, over time, affect the attractiveness of totalisator pools to all customers. It appears that the merger parties may not directly compete with each other at present in setting rebate offers and structures, but would have the potential to do so.
133. The ACCC's preliminary view is that the proposed merger appears unlikely to result in a substantial lessening of competition for the supply of pari-mutuel wagering to premium wagering customers, including rebates or other incentives offered to attract and retain these customers. To the extent that the proposed merger will remove Tatts as a direct competitor for premium wagering customers, it appears that the merged entity will continue to be constrained by overseas totalisators.
134. The ACCC is continuing to consider the extent to which the merger parties directly compete in the supply of rebates or other incentives to premium wagering customers.

The ACCC invites comments from market participants on the potential for the proposed merger to result in reduced competition for rebates or other incentives offered to premium wagering customers. In particular market participants may wish to comment on the following:

- Do totalisators alter rebate offers or other incentives to premium wagering customers in response to the rebate offers or other incentives of other totalisators? If so, how?
- What factors determine totalisators' decisions to increase or decrease rebate offers or other incentives to premium wagering customers?
- Is there a natural constraint on a totalisator's incentives to attract turnover from premium wagering customers to its pools? If so, does this limit direct competition between totalisators in the supply of rebates and incentives to premium wagering customers?

Media related issues

135. Tabcorp/Sky is the dominant broadcaster of racing media content through its holding of exclusive and fully bundled rights for 94% of racing media content throughout Australia.
136. The proposed merger will result in the combination of the dominant racing media broadcaster – which is currently vertically integrated in Tabcorp retail jurisdictions (Victoria, NSW and the ACT) – with the totalisator/retail wagering operator in Tatts retail jurisdictions (Queensland, South Australia, Tasmania and the Northern Territory). Following the merger, the merged entity would be vertically integrated as the dominant broadcaster of racing media content and the totalisator/retail wagering operator in nearly all states and territories.
137. As raised earlier, the ACCC understands that there is a strong connection between wagering activity and access to racing media (particularly racing vision), with history demonstrating that wagering activity on a given race drops substantially when racing vision is restricted.
138. The ACCC is continuing to investigate whether the combination of Sky with Tatts retail operations which would result from the proposed merger, would materially increase the degree of influence or any market power currently held by Tabcorp/Sky which it could leverage in its dealings with:
 - Licensed venues that supply wagering services and race vision;
 - Racing media rights holders (whether PRAs, or separate racing bodies or clubs);

and flow-on impacts which may result in related wagering markets.

Issue that may raise concerns: combining Sky Racing with Tatts retail wagering operations

Ability to leverage enhanced market power in dealings with licensed venues

139. Currently Sky Racing is vertically integrated with Tabcorp's wagering operations. After the proposed merger, it will also be vertically integrated with Tatts' wagering operations. The ACCC's preliminary view is that the merged entity may have enhanced market power in its dealings with licensed venues that supply wagering services/race vision in Tatts retail jurisdictions (Queensland, South Australia, Tasmania and Northern Territory).
140. Market inquiries indicate that Tabcorp requires venues with Tabcorp wagering facilities to subscribe to Sky and display certain Sky channels in their venue. The ACCC understands that a 'non-wagering' venue (whether it is in a Tabcorp or Tatts jurisdiction) may acquire Sky on a standalone basis, but that different fee structures apply. The base subscription rate for Sky is substantially higher for 'non-wagering' venues.
141. The ACCC understands that in the states and territories in which it operates, Tatts requires wagering venues to make available 'wall-to-wall' racing vision to facilitate wagering activity. Given the close connection between racing vision and

wagering turnover, licensed venues also appear to have a strong incentive to display racing vision. Sky is currently the only service offering ‘wall-to-wall’ racing vision. Accordingly, in practical terms, it appears that venues offering wagering products to consumers need to subscribe to Sky, irrespective of whether they are in a Tabcorp or Tatts retail jurisdiction.

142. Market inquiries have suggested that Tabcorp’s position as the supplier of Sky puts it in a strong position when dealing with venues in states and territories where it is also the supplier of retail wagering services to venues.
143. In particular, some market participants have expressed concern that, as a result of the proposed merger, the merged entity will have a direct interest in retail wagering in Queensland, Tasmania, South Australia and Northern Territory and accordingly will have the ability and incentive to choose not to provide access to Sky to venues, unless the venue is willing to acquire Tabcorp’s retail wagering services exclusively.
144. In addition, the increased vertical integration resulting from the proposed merger may reduce the ability and/or incentive of venues in Queensland, Tasmania, South Australia and Northern Territory to make arrangements with other wagering operators, such as digital or advertising partnerships (to the extent that they would be permitted to do so by state or territory laws), in order to ensure their continued access to Sky.
145. Further, some market participants have suggested that, while Tatts is reliant on access to Sky throughout the retail network, Sky also relies on Tatts to ensure that its channels are available in Tatts retail jurisdictions. They have therefore suggested that Tatts can and does currently use its position as a customer of Sky to insist on market-based pricing and fair terms of supply of Sky to its retail network of licensed venues.
146. The ACCC is continuing to consider whether the proposed merger would enable the merged entity to leverage market power held through its control of Sky to influence the behaviour of licensed venues in Queensland, Tasmania, South Australia and Northern Territory.

The ACCC invites comments from market participants on whether the proposed merger will increase the merged entity’s incentive to use access to Sky influence the behaviour of licensed venues in Tatts retail jurisdictions (Queensland, Tasmania, South Australia and Northern Territory).

In particular, market participants may wish to comment on the following:

- the extent to which the need to access to Sky influences a licensed venue’s decisions about its retail wagering services arrangements with Tabcorp or others.
- circumstances in which Sky may not be made available to licensed venues which do not operate Tabcorp retail wagering facilities.
- whether licensed venues in Tatts retail jurisdictions are concerned about losing access to Sky should they cease providing retail wagering services or make arrangements with competing suppliers of online wagering products, and the basis for those concerns.

- the ability of licensed venues to separately acquire Tabcorp retail wagering services and Sky and any impact of the fee structure adopted for Sky on this.
- whether any licensed venues have been threatened with termination of their Sky subscription and the circumstances in which this occurred.
- the scope for Tatts to use its position as the retail wagering operator in several states and territories to support venues in their negotiations or dealings with Sky and any examples of it doing so.
- the extent to which a licensed venue would have the incentive or ability to obtain services from a supplier of media rights other than, or in addition to, Sky.

Ability to leverage enhanced market power in dealings with racing vision rights holders

147. The proposed merger may also increase the merged entity's market power in its dealings with holders of racing vision rights as a result of the combination of Sky and the retail wagering operations in Tatts retail jurisdictions (Queensland, Tasmania, South Australia and Northern Territory). The ACCC is considering whether this may lessen competition by enabling the merged entity to limit the ability of rights holders to supply racing media rights to competing broadcasters, whether exclusively or non-exclusively.
148. The ACCC has received mixed views with respect to this issue.
149. Market inquiries have highlighted the importance of racing content featuring on Sky, particularly Sky Racing 1 as the primary wagering channel. Market inquiries have indicated that, as the dominant broadcaster of racing media content, Tabcorp/Sky is able to influence the level of wagering turnover generated by a race. For example, by determining whether races will be broadcast on the primary wagering channel (Sky Racing 1) or demoting races to the secondary wagering channel (Sky Racing 2) or otherwise engaging in "blackout" conduct where the vision for a race is not broadcast on Sky.
150. Some market participants have indicated that the merged entity will have materially enhanced leverage in its dealings with rights holders as:
- the merged entity, by having the primary wagering relationship with PRAs, will be in a dominant position in its dealings with PRAs as rights holders.
 - PRAs in a formal or economic joint venture with the merged entity will be financially incentivised to maximise wagering with the merged entity and minimise revenue leakage to corporate bookmakers. This in turn may result in foreclosure of competing broadcasters of racing media rights.
 - the merged entity will gain complete control over whose broadcast signals are shown in the retail wagering outlets in those jurisdictions. It has been suggested that this would provide the merged entity with the option of limiting the ability of competing broadcasters to negotiate the supply of racing vision in Tatts wagering retail outlets. This in turn may diminish their ability to acquire media rights from racing authorities in Tatts jurisdictions due to the uncertain prospect of their ability to exploit these rights.

151. The ACCC is considering whether any ability to influence the wagering turnover generated by a race through control of Sky and leverage this in dealings with rights holders is enhanced by the proposed merger through vertical integration of the dominant broadcaster of racing media content and totalisator/retail wagering operator in Tatts retail jurisdictions.
152. Despite the above concerns, market feedback from a number of rights holders has indicated that the proposed merger will not have any material impact on the negotiations of their racing media rights.
153. The ACCC understands that, in existing Tabcorp jurisdictions, racing bodies have, in recent years, been able to either self-supply and distribute/broadcast racing media rights (such as Racing Victoria through its Racing.com joint venture) or unbundle digital racing media rights to corporate bookmakers (such as Racing NSW's arrangement with William Hill). The ACCC does acknowledge that Victoria and NSW are the largest wagering states, with some market participants suggesting that their races are considered premium. This may provide the PRAs in these states with increased bargaining power as opposed to smaller codes and jurisdictions. The ACCC is investigating whether racing bodies in former Tatts jurisdictions would be able to do the same following the proposed merger.
154. Market inquiries indicate that the focus of emerging competing suppliers has been on digital and free to air channels rather than on the supply subscription television in retail wagering venues.
155. Some market participants have expressed concerns that Sky's incentives to insist on exclusive rights deals may be enhanced with the proposed merger, further limiting access to these alternative distribution channels and foreclosing competing broadcasters. However, the ACCC notes that competing suppliers of racing media content have emerged from jurisdictions where relevant racing bodies are currently in formal or economic joint ventures with Tabcorp/Sky Racing. Accordingly, the ACCC's preliminary view is that this suggests the proposed merger may not affect the incentives of racing bodies in former Tatts jurisdictions to provide rights exclusively to Sky.
156. The ACCC is continuing to consider whether the increased vertical integration (relative to the existing market structure) would enable the merged entity to:
 - Foreclose competing suppliers of racing media content.
 - Prevent rights holders, particularly those of a smaller scale, from negotiating non-exclusive rights agreements with Sky, thereby precluding competitors from obtaining media rights.
 - Deter or prevent corporate bookmakers from effectively competing with the merged entity in the supply of wagering services through restricted access to racing media content or exclusive holding of digital rights.
157. In addition, the ACCC is continuing to investigate whether the proposed merger and increased economic dependence between the merged entity and racing bodies in Tatts retail wagering jurisdictions will have any impact on the likelihood of a racing body providing media rights to an entity other than, or in addition to, Sky.

The ACCC invites comments from market participants on the extent to which rights holders and PRAs hold or exercise countervailing / bargaining power in their negotiations with Tabcorp/Sky for media rights and how this may be impacted by the proposed merger. In particular, market participants may wish to comment on:

- why any Tabcorp/Sky influence does not currently exist in the current market environment for racing bodies in Tatts jurisdictions and their decisions relating to media rights.
- the ability of rights holders to insist on non-exclusive arrangements with Sky in the current market environment and how this may change should the proposed merger proceed.
- the extent to which PRAs are able to negotiate non-exclusive rights agreements with Sky, noting that Racing Victoria and Racing NSW (in Tabcorp states) currently have such agreements.
- the strength of Tabcorp/Sky's incentive to reach agreement with rights holders or other entities such as Racing.com to ensure racing vision is available to promote wagering on races and how this may change should the merger proceed.
- whether the ability of rights holders to reach non-exclusive rights agreements with Sky will change should the proposed merger proceed where the rights holders are in a formal or economic joint venture with the merged entity (i.e. following the merger, whether racing bodies will be financially incentivised to maximise wagering with, and provide their vision exclusively to, the merged entity).

Removal of Tatts as a competitor

158. Some market participants consider Tatts to be a legitimate bidder for broadcast/digital rights, particularly from rights holders with which it is in a joint venture relationship. Concerns have been raised that the proposed merger may remove a legitimate prospective competitor for racing media rights.
159. The ACCC understands that to date Tatts has not sought to obtain racing media rights directly, instead purchasing Sky subscriptions for its retail outlets and digital offerings. The ACCC is investigating the extent to which Tatts may be a legitimate potential competitor for racing media rights, either as an aggregator or broadcaster, and whether its removal could then significantly lessen competition.

Barriers to entry and expansion

160. The ACCC's preliminary view is that competing broadcasters of racing media rights face a number of significant barriers to entry and expansion.
161. Existing barriers appear significant as:
- Sky has entered into a large number of fully bundled, exclusive rights agreements with various racing clubs, which have the effect of inhibiting the ability of parties other than Sky to acquire those rights;

- the staggered expiry of these exclusive rights agreements hinders a potential competitor from being able to acquire sufficient rights which could be aggregated to establish a viable racing channel in competition with Sky;
- competing broadcasters face limited access to the retail distribution channel:
 - Tabcorp controls 60 per cent of the Australian retail wagering network;
 - venues obtaining Tabcorp retail wagering services are compelled to acquire Sky; and
 - the racing industry appears to have a strong desire to avoid another ‘split vision’ situation, which may deter racing bodies from providing a competing broadcaster with vision rights.
- competing broadcasters face limited access to digital/new media distribution channels due to:
 - Sky’s practice of bundling digital/new media and traditional media rights on an exclusive basis;
 - Sky’s refusal to sublicense content to corporate bookmakers.

162. A barrier to expansion faced by competing broadcasters of racing media rights is the need to ensure rights holders that their racing content will continue to be distributed into the retail channel on Sky. While competing broadcasters may be amenable to sub-licensing the acquired rights to Sky, a risk remains that Sky will refuse to distribute the content. This provides a disincentive for rights holders in licensing their traditional media rights to anyone other than Sky, even if other acquirers are willing to offer more attractive terms and exploitation of their rights.

Limited history of substantial or sustained entry

163. There has been a limited history of sustained entry to the market. A number of market participants referred to ThoroughVision’s (TVN) exit as well as Racing.com’s limited racing media rights.

164. The ACCC also notes the challenges faced by the corporate bookmakers in obtaining access to digital media rights. Sky’s market dominance and ability to negotiate fully bundled and exclusive racing media rights deals means that corporate bookmakers have struggled to obtain access to digital content in a number of jurisdictions throughout Australia.

Likelihood of new entry

165. The ACCC’s market inquiries suggest that new entry of sufficient scale and in a timely manner for the broadcast of racing vision into the retail distribution channel appears unlikely due to the high barriers to entry identified above.

166. Without the ability to guarantee that a racing club’s vision will be shown throughout the retail network, rights holders have little incentive to license traditional media rights to a competing broadcaster to Sky, given the direct correlation between access to vision, wagering revenue and industry funding.

167. Further, market inquiries suggest that the negative experiences of split vision have left the racing industry reluctant to return to an environment with multiple broadcasters in the retail distribution channel.
168. The challenges faced by TVN in securing inputs and supply channels for its broadcasting service and its eventual exit suggest that a business model premised on broadcasting into retail venues may not be sustainable. These points appear to be supported by Racing.com's strategy of sub-licensing content to Sky for retail distribution, rather than seeking to replicate broadcast of racing vision into retail networks.
169. Conversely, new entry by competitors seeking to obtain digital/free-to-air rights may be more likely and access to this distribution market may be an alternative to the dominance of Sky in the retail market. The ACCC notes corporate bookmakers' success in obtaining digital rights to Victorian and NSW racing vision, while recognising that the barriers to entry identified above may still have a significant impact on their success.

The ACCC invites comments from market participants on the likelihood of new entry to the market for racing media rights. In particular market participants may wish to comment on the following:

- how barriers to entry into the market for acquiring racing media rights will change or be exacerbated if the proposed merger proceeds.
- the constraints faced by other racing bodies in commencing a similar venture to that of Racing.com to exploit their own racing media rights.

Gaming related issues

Issue of concern: reduced competition in electronic gaming machine monitoring services and repair/maintenance services in Queensland

170. Tabcorp and Tatts provide EGM monitoring and repair/maintenance services in Queensland through their gaming services divisions, Odyssey and Maxgaming, respectively. Tabcorp and Tatts also supply gaming and promotional management systems and related services in Queensland.
171. Gaming venues with EGMs are required to obtain licensed monitoring operator services for compliance and taxation purposes. The licenced monitoring operator is required to provide EGM repair and maintenance services. The ACCC understands gaming venues can choose their licenced monitoring operator.
172. The ACCC's preliminary view is the proposed merger is likely to substantially lessen competition in the Queensland market for the supply of licensed monitoring operator services and EGM repair and maintenance services by removing Maxgaming and Odyssey as each other's key competitor.

173. This is in circumstances where:

- Maxgaming and Odyssey are the only two active suppliers of licensed monitoring services in Queensland and compete closely for contracts with gaming venues.
- There are significant barriers to expansion such that newly licensed monitoring operators are unlikely to constrain the merged entity within the foreseeable future.

174. The ACCC's preliminary view is the merged entity may be able to exercise market power by unilaterally increasing prices and/or decreasing service levels.

Closeness of competition between Maxgaming and Odyssey

175. The ACCC's preliminary view is Maxgaming and Odyssey are currently each other's closest competitor for the supply of licensed monitoring operator services in Queensland, and absent the proposed merger, this appears likely to be the case for the foreseeable future.

176. Market inquiries indicate:

- Maxgaming and Odyssey may participate in the same tender processes and/or negotiate contracts with the same venues.
- Maxgaming and Odyssey may supply their services at a similar price but there can be differences in service quality.
- Gaming venues have been able to use the threat to switch to either Maxgaming or Odyssey to negotiate/acquire more favourable terms and conditions in their contracts. Market participants consider gaming venues could not credibly threaten to switch suppliers post-merger and therefore venues will have no countervailing power to respond to potential price increases and/or reductions in service quality.

Barriers to entry and expansion – licenced monitoring operator services

177. The ACCC's market inquiries suggest the impending entry of Utopia Gaming Systems (**Banktech**) and Progressive Venue Solutions (**PVS**), each having recently acquired monitoring licences in Queensland, is unlikely to constrain the merged entity in the foreseeable future.

178. The ACCC considers that it is important for a licensed monitoring operator to have economies of scale to be competitive. Market participants identified there were initially eight licensed monitoring operators when the Queensland Government first privatised the supply of monitoring services (in the late 1990s), but there has since been considerable market consolidation. Market participants have suggested the reasons for this consolidation include some licensed monitoring operators had insufficient scale and the Queensland Government removed a cap on market share.

179. Market inquiries have identified the following potential barriers to expansion in the supply of licensed monitoring operator services.
- **Contract length:** contracts for the provision of licensed monitoring operator services in Queensland typically range between three to five years.
 - **Switching costs:** The ACCC understands there might be substantial costs associated with switching licensed monitoring operators due to the software/hardware/equipment that must be replaced in each EGM and at the venue.
180. The ability for the Queensland Government to issue multiple monitoring licences raises the question of whether there could be further entry into this market. The ACCC's market inquiries to date suggest that while future entry is possible, it appears that future entry may not be timely and for existing licence holders, it is uncertain as to the degree of competitive constraint they will provide in the foreseeable future, having regard to barriers to entry and expansion.
- **Reputation:** The ACCC understands a licensed monitoring operator's reputation, and the extent the monitoring system has successfully operated in Australian markets, would be an important consideration for a venue in selecting a licensed monitoring operator. While a business supplying a similar service in another Australian state or territory may have an advantage in entering the Queensland market by leveraging off their existing reputation, international providers of monitoring services would be unlikely to have that advantage (particularly given the unique features of Australian markets).
 - **Cost and time:** The ACCC understands that a significant amount of time and cost is required to acquire a monitoring licence. This includes, among other things, fees for the licence⁵ and developing a monitoring system that satisfies regulatory approvals.
181. The ACCC considers new entrants are unlikely to be in a position to supply licensed monitoring operator services in the foreseeable future in order to constrain the merged entity.

Proposed divestment remedy

Tabcorp has proposed to divest Odyssey to address any competition concerns that could arise as a result of the proposed merger within relevant Queensland markets. The ACCC invites comments from market participants on the extent to which Tabcorp's proposed divestment of Odyssey could address potential competition concerns arising through the proposed merger.

Please refer to the ACCC's market consultation letter on the proposed divestment remedy of Odyssey, which sets out the specific details of the proposed divestment and questions for comments, available on the Mergers Register on the ACCC's website at www.accc.gov.au/mergersregister (see link: Tabcorp Holdings and Tatts Group – proposed merger).

⁵ As at 1 July 2016, the fees associated with the grant and renewal of a licenced monitoring operator licence are equivalent - \$16,540 for an application, \$396,800 for the 10 year licence.

Issue that may raise concerns: potential foreclosure of competing suppliers of electronic gaming machine systems and services in NSW and Queensland

182. In NSW and Queensland, the proposed merger will result in increased vertical integration between the merger parties' businesses supplying the following services to gaming venues:
- EGM monitoring services; and
 - gaming and promotional management systems and related services.
183. The ACCC's preliminary view is the proposed merger may substantially lessen competition by foreclosing, or increasing the barriers to expansion for, competing suppliers of electronic gaming machine systems and services.
184. Market participants have also highlighted that in addition to the vertical integration that arises in the context of the merger parties' EGM operations, the merged entity will also have the retail licence for wagering and lotteries which has heightened the level of concern.
185. To the extent competition concerns relate to relevant Queensland markets, the ACCC is investigating whether these can be addressed through Tabcorp's proposed divestment of Odyssey Gaming.
186. The ACCC is continuing to investigate whether the proposed merger increases the ability or incentive for the licensed monitoring operator to favour its own related businesses that provide gaming and promotional management systems and related services (or alternatively, favour venues that acquire the merged entity's gaming and promotional management systems and related services).

The ACCC invites comments from market participants on the merged entity's ability or incentive, in providing licensed monitoring operator services, to favour its own gaming and promotional management systems and related services businesses (or venues that acquire the merged entity's gaming and promotional management systems and related services). In particular, market participants may wish to comment on:

- the circumstances in which the merged entity would have an ability or incentive to provide licensed monitoring operator services on more favourable terms and conditions.
- any regulatory, legislative, contractual restrictions, which would constrain the ability for the merged entity to provide licensed monitoring operator services on more favourable terms and conditions.
- any competitive constraints, which would constrain the ability for the merged entity to provide licensed monitoring operator services on more favourable terms and conditions.
- whether the proposed divestment of Odyssey Gaming addresses the issue in Queensland

Access to commercially sensitive data and information

187. Market inquiries have identified concerns about the volume and types of data the merged entity will be able to access, and how the use of data could harm competition. Two examples are outlined below:

- The merged entity could use commercially sensitive data to gain a competitive advantage over other suppliers of gaming and promotional management systems and services.
- The merged entity could use data to move customers onto another gambling product, which provides the merged entity with the highest margin e.g. shifting EGM customers to wagering and/or lotteries products.

Restrictions on ability to use commercially sensitive data or information

188. Tabcorp's recent acquisition of Intecq involved the combination of two providers of gaming and promotional management systems and related services in NSW and Victoria. During the ACCC's review of that transaction, the ACCC explored concerns about whether, after the acquisition, Tabcorp would be able to misuse venues' commercially sensitive data and information collected through the provision of gaming and promotional management systems and related services in a way that would damage competition. The ACCC concluded this was unlikely due to regulatory and contractual restrictions as well as the existence of competitive constraints.

Ongoing discussions between Tabcorp and Liquor and Gaming NSW and proposed commitments to ClubsNSW

Tabcorp has advised the ACCC that it has had discussions with Liquor and Gaming NSW in regards to the application of governance principles to Tabcorp, if it becomes the owner of the NSW monitoring operator.

Tabcorp has also advised the ACCC it is currently in negotiations with ClubsNSW to establish a Memorandum of Understanding (**MoU**) between Tabcorp and ClubsNSW.

The ACCC understands the MoU may cover certain principles of independence and implement certain governance and data protection regimes in connection with Maxgaming's NSW monitoring business which Tabcorp considers complement the corporate governance principles which are being discussed with Liquor and Gaming NSW.

The ACCC is continuing to investigate the ability and incentives for the merged entity to use data it will collect as a vertically integrated monitoring operator in a way that could substantially lessen competition in related markets.

The ACCC has recently been advised of the discussions between Liquor and Gaming NSW and the potential MoU with ClubsNSW. The ACCC will continue to consider whether regulatory restrictions and potential commitments by Tabcorp to Liquor or Gaming NSW, or to ClubsNSW, are likely to effectively remedy potential competition concerns.

The ACCC invites further comments from market participants as to how the merged entity could use commercially sensitive information or data in ways that could harm competition including by providing itself with a competitive advantage. In particular, market participants may wish to comment on the following:

- specific examples of the data the merged entity will be able to access, the extent to which other providers of gaming and promotional management systems have access to this data and the way in which that data could be used such that it would harm competition.
- reasons as to why the increased vertical integration may increase the incentives for the merged entity to misuse commercially sensitive information.
- any restrictions, including any penalties – whether in legislation, licences, contracts or other – that would constrain the merged entity’s ability to misuse commercially sensitive data or information.
- any views as to whether those restrictions or penalties are sufficient.

Functionality with third-party gaming and promotional management systems and related services

189. Market participants have raised concerns the merged entity would have the ability or incentive to reduce the functionality of third-party gaming and promotional management systems and related services.
190. The ACCC understands in Queensland one example of the way in which the merger parties currently provide functionality to third-party gaming and promotional management systems is to provide a software interface on the monitoring system for third-party gaming and promotional management systems. The ACCC’s preliminary view is the merged entity could restrict functionality of third-party gaming and promotional management systems by:
- refusing to provide a software interface through which third-party systems can operate;
 - building an interface that determines the scope of services a third-party could provide; and/or
 - levying (unreasonably high) fees in return for providing the relevant software interface.
191. The ACCC understands currently in NSW interfacing between the monitoring system and a gaming and promotional management system is not possible. However, the monitoring system is currently being upgraded, which may allow for this to occur. The ACCC understands upgrades are expected to be completed by the end of 2017.

The ACCC invites comments from market participants on the ability or incentive for the merged entity, as a licensed monitoring operator in NSW and Queensland, to restrict functionality of third-party gaming and promotional management systems. In particular, market participants may wish to comment on the following:

- circumstances in which a third-party would seek an interface with the monitoring system or another gaming and promotional management system.
- in addition to offering a software interface, other examples of the way in which the merged entity's monitoring system or gaming and promotional management system would be needed to provide functionality for a third-party gaming and promotional management system.
- the existence of any competitive constraints that would limit the incentive for the merged entity to refuse to provide a third-party with the requested functionality.
- the existence of regulatory, legislative or contractual requirements (including any penalty for non-compliance) for the monitoring operator to provide an interface for a third-party gaming and promotional management system.

Issue that may raise concern: reduced competition in the supply of electronic gaming machine repair and maintenance services in Victoria

192. The proposed merger will combine Tabcorp and Tatts' 'field services' businesses which provide EGM repair and maintenance services to venues with EGMs in Victoria.
193. The proposed merger may raise competition concerns by removing a substantial competitor in the supply of EGM repair and maintenance services in Victoria.
194. The ACCC understands Tabcorp Field Services (**TFS**) through TGS and Bytecraft have different business models such that they may not compete closely in the supply of EGM repair and maintenance services in Victoria. The ACCC understands TFS does not supply EGM repair and maintenance services on a standalone basis. The services are provided as part of TGS' baseline ('core') bundle for TGS' full service solution offering. By comparison, Bytecraft supplies its EGM repair and maintenance services as a standalone service.
195. The ACCC is continuing to investigate whether the proposed merger removes a competitive constraint such that the merged entity would have an increased ability to increase prices or decrease service levels. The ACCC is also considering whether the merged entity will have substantial economies of scale such that it could increase the barriers to expansion for other providers of these services.

The ACCC invites comments from market participants on the closeness of competition between Tabcorp and Tatts in relation to the supply of EGM repair and maintenance services in Victoria. In particular, market participants may wish to comment on the following:

- the extent to which the proposed merger removes a key source of competition to either TFS or Bytecraft in the supply of EGM repair and maintenance services in Victoria.
- the extent to which a venue compares TFS' EGM repair and maintenance services to other providers of these services, when considering TGS' full service solution.

Barriers to entry and expansion

196. Market participants have generally identified two other providers of EGM repair and maintenance services in Victoria – Aristocrat and Amtek.
197. The ACCC is continuing to investigate the presence of alternative providers of EGM repair and maintenance services, and the extent to which they could effectively constrain the merged entity.
198. Market inquiries to date indicate contracts for EGM repair and maintenance services are typically one to three years in length. However, market inquiries indicate there are longer contract lengths when the EGM repair and maintenance service is provided as part of an integrated solution, such as TGS' full service solution.
199. The ACCC understands switching costs are relatively lower for EGM repair and maintenance services as compared with other gaming services in which the merger parties overlap because the change in providers does not require, for example, re-training for venue staff or a change to the hardware or software installed in the EGM.
200. The ACCC understands the main barrier to entry in the Victorian market for EGM repair and maintenance services is the requirement to be listed on the Roll of Approved Manufacturers, Suppliers and Testers before it can supply EGM repair and maintenance services to Victorian venues.

The ACCC invites comments on the competitive constraint imposed on the merged entity by existing or potential providers of EGM repair and maintenance services in Victoria. In particular, market participants may wish to comment on the following:

- the presence of other providers of EGM repair and maintenance services in Victoria.
- providers of EGM repair and maintenance services that could credibly enter the Victorian market, including existing providers in other states.
- the extent to which alternative providers of EGM repair and maintenance services or new entrants could competitively constrain the prices of the merged entity.
- examples where alternative providers of EGM repair and maintenance services have competed with TFS and/or Bytecraft for EGM repair and maintenance

contracts, such as participation in the same tenders or the use of another provider's offer to negotiate better terms with TFS and/or Bytecraft.

- the barriers to entry and expansion for new or competing suppliers of EGM repair and maintenance services in Victoria.

Licences: monitoring, lotteries, Keno

Issue unlikely to raise concerns: bidding for exclusive licences for electronic gaming machine monitoring, Keno and lotteries

201. The proposed merger appears unlikely to substantially lessen competition in bidding for exclusive licences for electronic gaming machine monitoring services, Keno and lotteries, respectively.
202. The ACCC understands, particularly in relation to licences for the provision of electronic gaming machine monitoring services and lotteries, the proposed merger does not remove a unique bidder, and that there are other potential bidders who would provide an equivalent competitive constraint.
203. Market feedback also suggests Tatts has a significant incumbency advantage in bidding for state and territory lotteries licences.
204. The ACCC notes many state and territory lotteries and Keno licences will not expire for a considerable number of years making it difficult to assess competition concerns.

Issue unlikely to raise concern: reduced in competition for the supply of Keno products

205. The proposed merger is unlikely to substantially lessen competition by removing a key competitor in relation to the supply of Keno products in South Australia and Victoria.
206. Tabcorp and Tatts currently overlap in the supply of Keno products in South Australia. Tatts supplies Keno products through a variety of channels including to gaming venues, newsagencies and TAB outlets. Tabcorp only supplies Keno online. The ACCC's preliminary view is the proposed merger does not remove Tabcorp as a close competitor to Tatts in the supply of Keno products in South Australia.
207. Tatts does not currently supply a Keno product in Victoria but it has the option to do so under its Victorian lotteries licence. Tabcorp holds the Victorian Keno licence, supplying a Keno product, which is drawn every three minutes to gaming venues and TAB outlets. The ACCC's preliminary view is the proposed merger is unlikely to remove a competitive constraint on Tabcorp because Tatts does not currently supply Keno in Victoria. Further, even if Tatts was to supply Keno, market inquiries suggest the product Tatts could offer under its lotteries licence is unlikely to be a close substitute for Tabcorp's rapid draw Keno product, which is currently supplied to gaming venues and TAB outlets.

ACCC's future steps

208. As noted above, the ACCC now seeks submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter. Submissions are to be received by the ACCC no later than 24 March 2017 and should be emailed to mergers@acc.gov.au.
209. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.
210. The ACCC intends to publicly announce its final view by 4 May 2017. However the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement to explain its final view.