

FILE No:
DOC: 007 73961
MARS/PRISM:

Undertakings under Section 87B of the Trade Practices Act

Recitals

- A. On 16 April 2007 Tattersall's announced it had agreed to acquire, via its wholly owned subsidiary Tattersall's Holdings, all of the shares in Golden Casket Lottery Corporation (**GCLC**), the lottery operator in Queensland (**Proposed Acquisition**).
- B. GCLC has the following wholly owned subsidiaries: Bounty Limited, Bounty Systems Pty Ltd, Clubline Systems Pty Ltd and Infolink Systems Pty Ltd (collectively, **Bounty**). Bounty provides a range of management and monitoring software for use in the club and hotel industries in Australia and overseas. It also owns the intellectual property to a number of software programs used in the electronic gaming machine industry, including "Sentinel", "Compass" and "Clubline".
- C. At the date of the Tattersall's Undertakings, the active licensed monitoring operators in Queensland are:
- (a) Maxgaming Holdings Pty Ltd and Maxgaming Qld Pty Ltd (collectively referred to as **Maxgaming**), both being wholly owned subsidiaries of Tattersall's; and
 - (b) Odyssey Gaming Services Pty Ltd.
- "Sentinel" is licensed by Bounty to Odyssey, on a non-exclusive basis, and is used by Odyssey to monitor electronic gaming machines in Queensland.
- D. On 14 May 2007, the Commission announced it had commenced an informal review of the Proposed Acquisition. The Commission made market inquiries and considered the information provided by Tattersall's and other market participants. The Commission's inquiries were aimed at determining whether or not the Proposed Acquisition would be likely to substantially lessen competition in any substantial Australian market, in contravention of section 50 of the Act.
- E. The Commission came to the view that the relevant market for the purposes of assessing the Proposed Acquisition was the market for the monitoring and maintenance of electronic gaming machines in Queensland.
- F. After undertaking extensive market inquiries, the Commission came to the view that barriers to entry into the relevant monitoring and maintenance market were such that new entry is unlikely to provide a competitive constraint on Tattersall's behaviour in the relevant market post-acquisition. In forming this view, the Commission considered that the long lead times associated with new entry, as well as the scale of entry required, pose substantial barriers to viable entry into the market that are unlikely to be overcome in the next two years.

- G. In this context, the Commission considered that the Proposed Acquisition would increase Tattersall's incentive and ability to increase the price paid by Odyssey for monitoring software and technical support and/or decrease the level of service and technical support provided to Odyssey.
- H. The Commission therefore concluded that the Proposed Acquisition was likely to raise substantial competition concerns in the market for monitoring and maintenance of electronic gaming machines in Queensland.
- I. Tattersall's has previously denied and continues to deny that the Proposed Acquisition and, specifically, the acquisition of Bounty would, or would be likely to, substantially lessen competition in contravention of section 50 of the Act.
- J. Tattersall's without admission, offered to the Commission, pursuant to section 87B of the Act, undertakings to divest Bounty, in order to address and remedy the Commission's concerns as outlined in these Recitals (**Tattersall's Undertakings**). The Tattersall's Undertakings, *inter alia*, require Tattersall's to maintain and operate Bounty independently of and separate to the Tattersall's business in the period prior to divestiture.
- K. This Undertaking seeks to ensure that, for the duration of the Undertaking, information confidential to Bounty is not made available to Tattersall's, or any of its Related Bodies Corporate and no Tattersall's person with access to Bounty non-public information, participates in any way in discussions or consideration of issues affecting the Queensland electronic gaming machine monitoring and maintenance market.
- L. On the basis of the implementation of the terms of the Tattersall's Undertakings, the Commission did not object to the Proposed Acquisition.

1. Commencement and Duration of Undertaking

- 1.1 This Undertaking comes into effect from the Trigger Date.

Termination

- 1.2 This Undertaking will terminate on the first to occur of:
 - (a) the date on which the Commission consents to the withdrawal of the Undertaking in accordance with section 87B of the Act; or
 - (b) the first anniversary of the Divestiture Date.

2. Undertaking and acknowledgement

I undertake to the Commission that, unless otherwise permitted by this Undertaking or the Tattersall's Undertakings or as required by law:

- (a) I will not use or disclose any non-public information acquired in the course of performing my duties as a director of Bounty and will not use that information for the benefit of any person other than Bounty; and
- (b) I will not, as a director, consultant or employee of Tattersall's, or any of its Related Bodies Corporate, participate in any way in discussions or consideration of issues affecting the Queensland electronic gaming machine monitoring and maintenance market (which for the avoidance of doubt does not include discussions or consideration of issues within Tattersall's relating to the divestment process of Bounty):
 - i. while I am a director of Bounty; or
 - ii. have access to or knowledge of any of Bounty's non-public information acquired in the course of performing my duties as a director of Bounty and which is relevant to such an issue.

3. Independent Manager

I undertake to cooperate fully with the Independent Manager and to provide the Independent Manager with such information and assistance as is necessary to enable the Independent Manager to carry out his or her functions as set out in the Tattersall's Undertakings.

4. Further Information

4.1 At the Commission's direction, I will:

- (a) furnish information to the Commission;
- (b) produce documents to the Commission in relation to which I have custody, control or power; and/or
- (c) attend the Commission at a time and place appointed by the Commission to answer any questions the Commission (its Commissioners, its staff or its agents) may have,

in relation to my compliance with this Undertaking.

4.2 Information furnished, documents produced or information given in answer to questions may be used by the Commission for any purpose consistent with its statutory functions.

5. Acknowledgement

I acknowledge that the Commission may:

- (a) make the Undertaking available for public inspection; and
- (b) from time to time publicly refer to the Undertaking.

6. Definitions and interpretation

Definitions

In this Undertaking, unless the context indicates otherwise:

Act means the *Trade Practices Act 1974* (Cth).

Bounty means collectively Bounty Limited ACN 096 276 292, Bounty Systems Pty Limited ACN 090 692 489, Clubline Systems Pty Limited ACN 090 524 039 and Infolink Systems Pty Limited ACN 051 065 117 and includes all the businesses conducted by Bounty, being the development, marketing, supply and support of gaming technology systems for use in the hotel and club industries in Australia and overseas.

Commission means the Australian Competition and Consumer Commission.

Corporations Act means the *Corporations Act 2001* (Cth).

Divestiture Date means the date on which the Commission confirms in writing to Tattersall's that it is satisfied that the divestiture of Bounty is completed and settled by or on behalf of Tattersall's in accordance with the Tattersall's Undertakings.

GCLC means Golden Casket Lottery Corporation Ltd ACN 078 785 449.

Independent Manager means a person independent of Tattersall's appointed by Tattersall's and not objected to by the Commission to manage and operate Bounty. Without limitation, the following persons shall not be considered independent of Tattersall's:

- current employees or officers of Tattersall's;
- persons who were employees or officers of Tattersall's or GCLC in the past three years;
- shareholders who, in the opinion of the Commission, hold a material number of shares in Tattersall's;
- professional advisors of Tattersall's or GCLC, whether current or in the last three years;

- persons who have a contractual relationship with Tattersall's;
- persons who are suppliers of Tattersall's; or
- persons who are material customers of Tattersall's.

Maxgaming means Maxgaming Holdings Pty Ltd ACN 079 909 541 and Maxgaming Qld Pty Ltd ACN 078 963 050.

Odyssey means Odyssey Gaming Services Pty Ltd ACN 061 363 139, a wholly-owned subsidiary of Odyssey Gaming Limited ACN 074 735 452.

Proposed Acquisition means the proposed acquisition by Tattersall's, via Tattersall's Holdings, of all of the shares in GCLC.

Related Body Corporate has the same meaning ascribed to that term in the Corporations Act but, for the removal of doubt, excludes Bounty.

Tattersall's means Tattersall's Limited ACN 108 686 040 and all of its Related Bodies Corporate, which includes GCLC but does not include Bounty.

Tattersall's Holdings means Tattersall's Holdings Pty Ltd ACN 081 925 706.

Tattersall's Undertakings means the undertakings given by Tattersall's under section 87B of the Act and accepted by the Commission on 20 July, 2007.

Trigger Date means 29 June, 2007.

Undertaking means the undertakings made by Bruce Andrew Houston in this document.

7. Interpretation

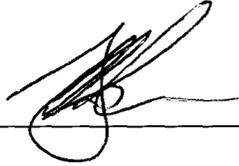
The following rules of interpretation apply to this Undertaking unless the context requires otherwise:

- headings are for convenience only and do not affect interpretation;
- the singular includes the plural and the plural includes the singular;
- where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- a reference to a person includes any corporation or non-natural person;
- a reference to a paragraph, annexure or schedule is to a paragraph of, or annexure or schedule to, this Undertaking;

- (f) a reference to any agreement or document (including the Undertaking) is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time;
- (g) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it;
- (h) a reference to conduct includes any omission and any statement or undertaking, whether or not in writing;
- (i) mentioning anything after include, includes or including, does not limit what else might be included;
- (j) a reference to ‘the Undertaking’ or ‘this Undertaking’ is a reference to all of the provisions of this document including any schedule;
- (k) a construction that would promote the purpose or object underlying the Undertaking (whether expressly stated or not) shall be preferred to a construction that would not promote that purpose or object;
- (l) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a paragraph is the ordinary meaning conveyed by the text of the paragraph, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the paragraph in question; or
 - (ii) determine the meaning of the paragraph when the ordinary meaning conveyed by the text of the paragraph, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking,
- (m) In determining whether consideration should be given to any material in accordance with paragraph (l), or in considering any weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to the:
 - (i) effect that reliance on the ordinary meaning conveyed by the text of the paragraph would have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) the need to ensure that the result of the Undertaking is to address the Commission’s competition concerns.

- (n) In performing my obligations under this Undertaking, I will do everything reasonably in my power to ensure that my performance of these obligations is done in a manner which is consistent with promoting the purpose and object of the Undertaking.

Executed by **BRUCE ANDREW HOUSTON**



in the presence of:

Penny Gran
Signature of Witness

PENELOPE SUSAN GRAM.
Name of Witness

Date: 24/7/07

Accepted by the **Australian Competition and Consumer Commission** pursuant to Section 87B of the *Trade Practices Act 1974*.



Graeme Julian Samuel
Chairman

Date: 28 July 2007