

**NOTICE OF LODGMENT**  
**AUSTRALIAN COMPETITION TRIBUNAL**

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL on 13/3/2017 9.00am AEDST and has been accepted for lodgment under the Practice Direction dated 23 September 2016. Filing details follow and important additional information about these are set out below.

**Lodgment and Details**

Document Lodged:       Application – Form S

File Number:            ACT 1 of 2017

File Title:              Application by Tabcorp Holdings Limited under section 95AU of the  
*Competition and Consumer Act 2010* for an authorisation under subsection  
95AT (1) to acquire shares in the capital of a body corporate or to acquire  
assets of another person

Registry:                NEW SOUTH WALES – AUSTRALIAN COMPETITION TRIBUNAL

Dated: 13/3/2017 9.00am AEDST



Registrar

**Important Information**

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Tribunal. Under the Tribunal's Practice Direction the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4:30 pm local time at that Registry) or otherwise the next working day for that Registry.



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# 'Form S'

## Application to the Australian Competition Tribunal for Merger Authorisation

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13 March 2017

**The document contains confidential information which is indicated as follows:**

**[Confidential to Tabcorp] [.....]**  
**[Confidential to Tatts] [.....]**  
**[HIGHLY Confidential to Tabcorp] [.....]**  
**[HIGHLY Confidential to Tatts] [.....]**  
**[HIGHLY Confidential to Tabcorp and Tatts] [.....]**

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**Form S**

Commonwealth of Australia

*Competition and Consumer Act 2010* – section 95AU

To the Australian Competition Tribunal

Application is hereby made under section 95AU of the *Competition and Consumer Act 2010* for an authorisation under subsection 95AT (1) to acquire shares in the capital of a body corporate or to acquire assets of another person.

## Overview

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In addition to the information disclosed in this application, Tabcorp Holdings Limited (**Tabcorp**) relies upon the evidence contained in the following statements filed in support of this application:

Statements of Tabcorp company witnesses

- David Attenborough (**Attenborough**) dated 8 March 2017 and Exhibit DA-1 and Highly Confidential Exhibit DA-2
- Douglas John Freeman (**Freeman**) dated 8 March 2017 and Exhibit DF-1, Confidential Exhibit DF-2 and Highly Confidential Exhibit DF-3
- Damien Johnston (**Johnston**) dated 6 March 2017 and Confidential Exhibit DJ-1
- Fiona Mead (**Mead**) dated 7 March 2017 and Exhibit FMM-1
- Adam John Rytenskild (**Rytenskild**) dated 8 March 2017 and Exhibit AR-1 and Confidential Exhibit AR-2 and Highly Confidential Exhibit AR-3

Statements of expert witnesses

- Flavio Menezes (**Menezes**) dated 9 March 2017 and Exhibit FXM-1 and Confidential Exhibit FXM-2
- Chris Pleatsikis (**Pleatsikas**) dated 8 March 2017 and Exhibit CP-1 and Confidential Exhibit CP-2
- Ric Simes (**Simes**) dated 9 March 2017
- Patrick Smith (**Smith**) dated 9 March 2017 and Exhibit PS-1 and Confidential Exhibit PS-2

Statements of Tatts company witnesses

- Robert Michael Sean Cooke (**Cooke**) dated 9 March 2017 and Exhibit RC-1, Confidential Exhibit RC-2 and Highly Confidential Exhibit RC-3.
- Frank Makryllos (**Makryllos**) dated 9 March 2017 and Exhibit FM-1 and Confidential Exhibit FM-2
- Susan Lynn van der Merwe (**Merwe**) dated 8 March 2017 and Exhibit SM-1, Confidential Exhibit SM-2 and Highly Confidential Exhibit SM-3.
- Anne Tucker (**Tucker**) dated 9 March 2017 and Exhibit AT-1, Confidential Exhibit AT-2 and Highly Confidential Exhibit AT-3

Statements of industry witnesses



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- Gregory Aldam, Darwin Greyhounds Association (**Aldam**) dated 21 February 2017 and Annexure GA-1
- Richard Burt, Racing and Wagering Western Australia (**Burt**) dated 7 March 2017 and Annexures RB-1 – RB-2
- Matthew Corby, Greyhound Racing South Australia (**Corby**) dated 22 February 2017 and Exhibit MC-1
- Brett Dixon, Darwin Turf Club (**Dixon**) dated 9 February 2017 and Exhibit BD-1
- John Dumesny, Harness Racing NSW (**Dumesny**) dated 22 February 2017 and Annexures JD-1 – JD-10
- Dr Eliot Forbes, Racing Queensland (**Forbes**) dated 8 March 2017 and Annexures EF-1 – EF-3
- Luke Gatehouse, Brisbane Greyhound Racing Club (**Gatehouse**) dated 16 February 2017 and Annexures LG-1 – LG-5
- Michael Grant, Western Australia Racing Representative Group (**Grant**) dated 15 February 2017 and Annexures MG-1 – MG-11
- Ray Gunston, racing industry consultant (**Gunston**) dated 24 February 2017 and Annexure RG-1
- Andrew Charles Harding, Asian Racing Federation (**Harding**) dated 23 February 2017 and Annexures AH-1 – AH-6
- Paul Innes, Australian Jockeys' Association (**Innes**) dated 3 March 2017 and Annexure PI-1
- David Jewell, Wyong Race Club (**Jewell**) dated 21 February 2017 and Annexures DJ-1 – DJ-3
- John Lewis, Harness Racing SA (**Lewis**) dated 6 March 2017
- Vaughan Lynch, Tasracing Pty Ltd (**Lynch**) dated 24 February 2017 and Exhibit VL-1
- Andrew Frederick Nicholl, Australian Trainers' Association (**Nicholl**) dated 22 February 2017 and Annexures AN-1 – AN-6
- Andrew Raymond O'Toole, Thoroughbred Racing Northern Territory (**O'Toole**) dated 17 February 2017 and Annexures AO-1 – AO-4
- Damian Raedler, Albion Park Harness Racing Club (**Raedler**) dated 18 February 2017 and Annexures DR-1 – DR-3
- Brenton James Scott, NSW Greyhound Breeders, Owners & Trainers Association (**Scott**) dated 25 February 2017 and Annexures BS-1 – BS-4
- Peter Stubbs, Canberra Racing Club (**Stubbs**) dated 22 February 2017 and Annexure PS-1
- Peter V'landys, Racing NSW (**V'landys**) dated 9 March 2017 and Annexures PVL-1 – PVL-2
- James (Jim) Watters, Thoroughbred Racing SA (**Watters**) dated 28 February 2017 and Exhibit JW-1
- Genny Weston, Canberra Harness Racing Club (**Weston**) dated 22 February 2017 and Annexure GW-1
- Emeritus Professor John Vincent Yovich AM, Perth Racing (**Yovich**) dated 22 February 2017 and Annexures JY-1 – JY-7



## 1 The Applicant (the Acquirer)

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**(a) Name and registered office (where applicable) of the Applicant including the ACN (where applicable) and place of incorporation (where applicable)**

- 1.1 Company Name: Tabcorp Holdings Limited  
ACN: 063 780 709  
Registered Office: 5 Bowen Crescent, Melbourne, VIC 3004  
Place of incorporation: Victoria.<sup>1</sup>

**(b) Describe the business or businesses carried on by the Applicant including the products and services the Applicant supplies (See Direction 3 of this Form)**

- 1.2 Tabcorp is a public company limited by shares and listed on the Australian Securities Exchange (**ASX**).<sup>2</sup>
- 1.3 Tabcorp conducts business as a supplier of gambling and entertainment products and services. It is one of the few integrated gambling and entertainment companies in the world.<sup>3</sup>
- 1.4 Tabcorp's operations comprises three main business divisions: (1) wagering and media; (2) gaming services; and (3) Keno.<sup>4</sup>
- 1.5 For the financial year ending 30 June 2016 (**FY16**), Tabcorp's total reported revenue and EBIT for each of the divisions referred to were:
- for wagering and media: \$1,873 million and \$252.2 million respectively;
  - for gaming services: \$107.2 million and \$41 million respectively; and
  - for Keno: \$208.5 million and \$50.7 million respectively.<sup>5</sup>
- 1.6 Approximately 70% of the revenue generated by Tabcorp's businesses (\$1.5 billion in FY16) is returned to its partners – governments, the racing industry, retail venues and the community.<sup>6</sup>
- 1.7 A copy of Tabcorp's annual report for FY16 is at Tab 2 of FMM-1.

### **Wagering**

- 1.8 Tabcorp's Australian wagering operations include:
- off-course totalisator and fixed odds wagering on racing, sports and other events in TAB agencies and licensed venues (hotels, pubs and clubs, live sites and stadiums) in Victoria, New South Wales and the Australian Capital Territory, and by telephone, mobile apps and the internet nationwide;
  - on-course totalisator and fixed odds wagering in Victoria, New South Wales and the Australian Capital Territory;

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<sup>1</sup> Mead [8].

<sup>2</sup> Mead [9].

<sup>3</sup> Attenborough [10].

<sup>4</sup> Attenborough [13].

<sup>5</sup> Attenborough [24].

<sup>6</sup> Attenborough [25].



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- tote derivative and fixed odds betting on racing, sports and other events nationwide through Luxbet, its wholly-owned Northern Territory-licensed bookmaker; and
- Trackside, a computer-simulated racing product in Victoria, New South Wales and the Australian Capital Territory.<sup>7</sup>

1.9 Tabcorp's overseas wagering operations include:

- an agreement between Sky Racing World, LLC and eBet Technologies which provides wagering services pursuant to an advance deposit wagering licence in Oregon, United States;
- a joint venture with South Africa's Phumelela Gold International to operate Premier Gateway International Limited (**PGI**) which is based in the Isle of Man and provides wagering and wagering interface systems;
- the operation of Sun Bets, an online wagering and gaming business in the United Kingdom and Ireland under an agreement with News UK;
- pooling with international wagering operators;
- the distribution of racing vision and data in North America through its wholly-owned United States subsidiary Sky Racing World; and
- a partnership with United States-based Unikrn to provide wagering services for eSports gaming tournaments; and
- Trackside, which is licensed to a number of overseas jurisdictions including the United States, Denmark, Sri Lanka and Croatia.<sup>8</sup>

#### Racing media

1.10 Tabcorp operates three Sky Racing television channels, which broadcast thoroughbred, harness and greyhound racing and other sports to audiences in TAB outlets, hotels, clubs, other licensed venues, and into homes to pay TV subscribers. Sky Racing digitally transmits to more than 5,000 outlets across Australia and telecasts more than 100,000 races per year. Sky also produces international racing television channels that are broadcast into 54 countries around the world via satellite, cable, mobile and the internet.<sup>9</sup>

1.11 Sky Channel Pty Ltd (**Sky Channel**), a wholly owned subsidiary of Tabcorp, acquires television broadcasting rights from racing clubs around Australia and internationally and then:

- broadcasts racing vision through Sky Racing television channels; and
- distributes racing vision internationally through third party television channels and wagering operators.<sup>10</sup>

1.12 The three channels operated by Sky Channel are Sky Racing1, Sky Racing2 and Sky Thoroughbred Central.<sup>11</sup> Sky Racing1 and Sky Racing2 are the core wagering channels and, combined, they provide vision of essentially all races on which Tabcorp offers wagers.<sup>12</sup>

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<sup>7</sup> Attenborough [14].

<sup>8</sup> Attenborough [17], Freeman [92].

<sup>9</sup> Attenborough [18]; Freeman [205].

<sup>10</sup> Freeman [206].

<sup>11</sup> Freeman [207].

<sup>12</sup> Freeman [208].



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- 1.13 Tabcorp also owns and operates Sky Sports Radio, which broadcasts into New South Wales and the Australian Capital Territory. Sky Sports Radio is also available nationally online. Sky Sports Radio broadcasts a range of sporting and racing shows, which contain commentary and analysis, as well as live racing commentary.<sup>13</sup>

### Trackside

- 1.14 Trackside is a simulated racing game. Wagering by Trackside is offered by Tabcorp through licensed retail venues (hotels, clubs and TAB agencies) in Victoria, New South Wales and the Australian Capital Territory,<sup>14</sup> and is licensed to a number of overseas jurisdictions.<sup>15</sup> Tabcorp does not supply Trackside in Queensland but it does supply a Racing Keno game in that State which is similar to Trackside.<sup>16</sup>

### Gaming systems and services

- 1.15 Gaming relates to betting on electronic gaming machines (**EGMs**), often known as 'poker machines'.<sup>17</sup>
- 1.16 EGMs are typically located in pubs, clubs and hotels, as well as casinos. In Western Australia, EGMs are only located in the Crown Casino in Burswood.<sup>18</sup>
- 1.17 Neither of the merger parties manufactures EGMs nor operates licensed venues. However, both of the merger parties supply licensed venue operators with gaming systems and related services. These products assist the venue operator to manage and enhance the operation of EGMs within the venue, and to comply with regulatory requirements such as monitoring and reporting. These products are described in more detail in section 4 below.
- 1.18 Tabcorp's gaming services division supplies gaming systems and related services as follows:
- Tabcorp Gaming Services (**TGS**) re-supplies gaming systems developed by third parties, and supplies EGM-related services including financing, EGM repair and maintenance services and EGM consultancy services such as training and advice regarding venue refurbishment, financing, marketing and regulatory compliance;<sup>19</sup>
  - **Intecq** supplies its own 'Metropolis' brand gaming system and various EGM-related services;<sup>20</sup> and
  - **Odyssey Gaming**, a licensed monitoring operator (**LMO**) in Queensland, supplies EGM monitoring services. Odyssey Gaming is held through Intecq.<sup>21</sup>

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<sup>13</sup> Freeman [225] and [226].

<sup>14</sup> Freeman [91(d)].

<sup>15</sup> Freeman [92(g)].

<sup>16</sup> Rytenskiid [23].

<sup>17</sup> Rytenskiid [116], Makryllos [10].

<sup>18</sup> Makryllos [13].

<sup>19</sup> Rytenskiid [122] and [135].

<sup>20</sup> Rytenskiid [150] and [151].

<sup>21</sup> Rytenskiid [230].



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**Keno**

- 1.19 In the standard form offered by Tabcorp, Keno is a game of chance in which 20 numbers are randomly drawn (generally electronically) out of numbers 1 to 80. Keno games are typically run every three to four minutes.<sup>22</sup>
- 1.20 Before the draw of numbers, a player:
- decides how many numbers they want to 'play' (20 numbers are drawn during a Keno game, but players do not have to play 20 numbers on their ticket);
  - selects their numbers and marks them on a ticket, or has their numbers randomly allocated; and
  - decides the amount of money they wish to spend per game, and how many games they want to play with the same set of numbers.<sup>23</sup>
- 1.21 A player wins if the numbers drawn match the numbers the player has selected on their ticket.<sup>24</sup>
- 1.22 Tabcorp distributes Keno products in licensed venues (such as pubs, clubs and casinos) in Victoria, New South Wales, the Australian Capital Territory and Queensland and in TAB agencies in Victoria, Queensland and the Australian Capital Territory.<sup>25</sup> Tabcorp's ACT licence also provides for online distribution.<sup>26</sup>

**Tabcorp's ownership structure and shares**

- 1.23 Tabcorp is the ultimate parent company of the Tabcorp Group. As at 1 March 2017 Tabcorp has on issue:
- (1) Ordinary Shares: 835,267,014 fully paid ordinary shares which are listed on the ASX under the code TAH;
  - (2) Subordinated Notes: 2,500,000 subordinated notes which are unsecured, subordinated, cumulative debt securities listed on the ASX under the code TAHHB. Holders of the notes are entitled to receive quarterly interest payments (subject to deferral) and \$100 cash per note upon redemption; and
  - (3) Performance Rights: 3,879,208 Performance Rights issued to Tabcorp's senior employees pursuant to long-term incentive arrangements.<sup>27</sup>
- All Ordinary Shares issued by Tabcorp carry one vote per share. Subordinated Notes and Performance Rights do not carry any right to vote.<sup>28</sup>
- 1.24 Tabcorp's Constitution, together with an agreement entered into with the State of Queensland, contain restrictions prohibiting an individual from having a voting power of more than 10%. Tabcorp may refuse to register any transfer of shares which would contravene these shareholding restrictions or require divestiture of the shares that cause an individual to exceed the shareholding restrictions.<sup>29</sup>

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<sup>22</sup> Rytenschild [19], [46].

<sup>23</sup> Rytenschild [19].

<sup>24</sup> Rytenschild [20].

<sup>25</sup> Attenborough [20, Rytenschild [72].

<sup>26</sup> Rytenschild [14].

<sup>27</sup> Mead [9].

<sup>28</sup> Mead [10].

<sup>29</sup> Mead [11].



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1.25 Tabcorp shareholders with a greater than 5% shareholding as at 1 March 2017 are as follows:<sup>30</sup>

Investor name	Number of ordinary shares	% of issued capital
HSBC Custody Nominees (Australia) Limited	215,661,577	25.82
J P Morgan Nominees Australia Limited	184,563,349	22.10
National Nominees Limited	77,205,044	9.24

(c) **Provide details of all related bodies corporate of the Applicant including the ACN (See Direction 4 of this Form)**

1.26 The related bodies corporate of Tabcorp are as follows:<sup>31</sup>

**100% owned Australian subsidiaries in a deed of cross guarantee with Tabcorp Holdings Limited**

- Tabcorp Assets Pty Ltd (ACN 064 303 920)
- Luxbet Pty Ltd (ACN 092 104 786)
- Tabcorp Participant Pty Ltd (ACN 064 304 105)
- Tabcorp ACT Pty Ltd (ACN 167 957 002)
- Tabcorp Wagering (Vic) Pty Ltd (ACN 134 587 107)
- Tabcorp Wagering Participant (Vic) Pty Ltd (ACN 154 418 489)
- Tabcorp Wagering Assets (Vic) Pty Ltd (ACN 154 419 226)
- Tabcorp Investments No.4 Pty Ltd (ACN 108 197 084)
- Tab Limited (ACN 081 765 308)
- Sky Channel Pty Ltd (ACN 009 136 010)
- 2KY Broadcasters Pty Ltd (ACN 000 820 057)
- Tabcorp Services Pty Ltd (ACN 065 600 446)
- Tabcorp Training Pty Ltd (ACN 164 783 199)
- Tabcorp International Pty Ltd (ACN 006 574 652)
- Tabcorp International No.4 Pty Ltd (ACN 146 788 614)

**100% owned Australian subsidiaries**

- Tabcorp Manager Pty Ltd (ACN 064 304 016)
- Tabcorp Wagering Manager (Vic) Pty Ltd (ACN 154 419 342)

<sup>30</sup> Mead [13].

<sup>31</sup> Mead [14].



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- Tabcorp Investments Pty Ltd (ACN 085 513 300)
- Tabcorp Investments No.2 Pty Ltd (ACN 105 341 375)
- Tabcorp Investments No.5 Pty Ltd (ACN 105 341 366)
- Tabcorp Investments No.6 Pty Ltd (ACN 140 778 472)
- Tabcorp Investments No.9 Pty Ltd (ACN 602 941 506)
- Tabcorp Investments No.10 Pty Ltd (ACN 609 414 673)
- Tabcorp Employee Share Administration Pty Ltd (ACN 064 458 224)
- Showboat Australia Pty Ltd (ACN 061 299 625)
- Tabcorp Wagering Holdings Pty Ltd (ACN 138 672 581)
- OneTab Holdings Pty Ltd (ACN 156 560 539)
- OneTab Australia Pty Ltd (ACN 154 156 859)
- COPL Pty Ltd (ACN 604 570 023)
- Tabcorp International No.5 Pty Ltd (ACN 114 560 075)
- Tabcorp International No.6 Pty Ltd (ACN 163 559 108)
- Sky Channel Marketing Pty Ltd (ACN 000 092 277)
- Sky Australia International Racing Pty Ltd (ACN 058 310 231)
- Tabcorp Gaming Holdings Pty Ltd (ACN 136 582 806)
- Keno (Qld) Pty Ltd (ACN 071 366 446)
- Tabcorp Gaming Solutions Pty Ltd (ACN 138 853 675)
- Tabcorp Gaming Solutions (NSW) Pty Ltd (ACN 141 733 575)
- Tabcorp Gaming Solutions (Qld) Pty Ltd (ACN 136 582 851)
- Tabcorp Gaming Solutions (ACT) Pty Ltd (ACN 605 478 902)
- TAHAL Pty Ltd (ACN 000 005 916)
- Keno (NSW) Pty Ltd (ACN 003 992 327)
- Club Gaming Systems (Holdings) Pty Ltd (ACN 051 404 007)
- Advento Pty Ltd (ACN 600 150 230)
- Bounty Pty Ltd (ACN 096 276 292)
- Bounty Systems Pty Ltd (ACN 090 692 489)
- Clubline Systems Pty Ltd (ACN 090 524 039)
- eBET Gaming Systems Pty Ltd (ACN 086 218 831)
- eBET Services Pty Ltd (ACN 132 670 485)
- eBET Systems Pty Ltd (ACN 088 033 121)
- Industry Data Online Pty Ltd (ACN 098 768 202)
- Inov8 Mobile Pty Ltd (ACN 051 065 117)
- Intecq Ltd (ACN 056 210 774)
- Maxi Gaming Pty Ltd (ACN 075 457 626)
- Odyssey Gaming Ltd (ACN 074 735 452)



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- Odyssey Gaming Services Pty Ltd (ACN 061 363 139)

**50% owned Australian subsidiaries**

- Gaming Solutions Pty Ltd (ACN 125 503 853)

**International subsidiaries**

- Premier Gateway Services Limited (Isle of Man Company Number 006135V)
- Tabcorp Europe Limited (Isle of Man Company Number 011529V)
- Luxbet Europe Limited (Isle of Man Company Number 009507V)
- Luxbet Europe Services Limited (Isle of Man Company Number 009504V)
- Tabcorp UK Limited (United Kingdom Company Number 09815995)
- Tabcorp Canada Limited (Canada Company Number 833749-7)
- Sky Racing World Holdco, LLC (United States (Delaware) Company Number 5337595)
- Sky Racing World, LLC (United States (Delaware) Company Number 5337600)
- Sky Racing World GP (United States (Delaware) General Partnership Number 5337590)
- Tabusa, LLC (United States (Delaware) Company Number 5972705)
- eBET Inc (United States (California) Company Number C2176003)

**50% owned international subsidiaries**

- Tabcorp Europe Holdings Limited (Isle of Man Company Number 006134V)
- Premier Gateway International Limited (Isle of Man Company Number 006136V)

**(d) Address in Australia for service of documents on the Applicant**

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**(e) Name and address of any person for whose benefit or on whose behalf the shares or assets to be acquired will be held**

Tabcorp Holdings Limited

5 Bowen Crescent

Melbourne VIC 3004.

## 2 The Target

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**(a) In the case of a body corporate whose shares or assets are to be acquired:**

**(i) Name of the body corporate including the ACN where applicable**

Tatts Group Limited ACN 108 686 040 (Tatts)

**(ii) Place of incorporation of the body corporate**

Victoria

**(iii) Registered office of the body corporate**

87 Ipswich Road, Woolloongabba, Queensland, 4102

**(iv) Describe the business or businesses carried on by the body corporate including the products and services the Target supplies (See Direction 5 of this Form)**

2.1 Tatts is an Australian provider of lotteries, wagering and gaming products and services.<sup>32</sup> Tatts Group Limited is a public company limited by shares which is listed on the ASX.<sup>33</sup>

2.2 Tatts has three operating segments: (1) lotteries; (2) wagering; and (3) gaming services.<sup>34</sup> The Lotteries division is Tatts main business and includes selling lotteries products in all states and territories of Australia except Western Australia.<sup>35</sup>

2.3 During the financial year ended 30 June 2016, Tatts' reported revenue was \$2,928 million, its EBITDA was \$495 million and its EBIT was \$420 million.<sup>36</sup> By division, its revenues were:

- \$2,139 million in lotteries;
- \$610 million in wagering;
- \$211 million in gaming services.

2.4 A copy of Tatts' annual report for FY16 is at Tab 1 of the Exhibit AT-1.

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<sup>32</sup> Cooke [14]-[16].

<sup>33</sup> Cooke [19].

<sup>34</sup> Cooke [16].

<sup>35</sup> Cooke [16] and [20].

<sup>36</sup> Cooke [16].



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### Lotteries

- 2.5 Tatts currently operates all public lotteries in each State and Territory except Western Australia (which has a government owned and operated lottery). Tatts either has the exclusive right or is the sole operator authorised to provide lotteries in those jurisdictions.<sup>37</sup>
- 2.6 Lotteries are a chance-based activity in which a distinct set of numbers is randomly drawn from a larger set of numbers. A player with a combination of those numbers, chosen by the player or automatically, wins the prize.<sup>38</sup>

### Wagering

- 2.7 Tatts' wagering operations include:
- on-course and off-course totalisator and fixed odds wagering in Queensland, South Australia, Tasmania and the Northern Territory,<sup>39</sup> and
  - totalisator and fixed odds wagering over the telephone and internet nationwide.<sup>40</sup>

### Gaming services

- 2.8 Tatts' gaming services business comprises two separate business units – Maxgaming and Bytecraft.<sup>41</sup>
- 2.9 Maxgaming is Tatts' gaming venue services unit. Its core business is the provision of government-mandated electronic monitoring systems to EGM venues in New South Wales, Queensland and the Northern Territory. Maxgaming also provides other gaming systems and related services to its contracted venues.<sup>42</sup>
- 2.10 Bytecraft is Tatts' provider of maintenance, technology and logistics support. Bytecraft provides repair and maintenance services to gaming venues in all States and Territories of Australia (except the Australian Capital Territory and Tasmania). In particular, it provides on-site maintenance, workshop repair, warehousing and distribution and help-desk services.<sup>43</sup>

### Media

- 2.11 In addition to its lotteries, wagering and gaming businesses, Tatts owns and operates RadioTAB, a radio station that offers a range of sports and racing coverage and is broadcast into Queensland, South Australia, the Northern Territory and Tasmania. RadioTAB is also available nationally online.<sup>44</sup>

### Keno

- 2.12 Tatts operates a Keno business in South Australia where Keno games are sold alongside draw lottery and instant scratch games not only in licensed venues but (uniquely in South Australia) in retail stores such as newsagencies, convenience stores, supermarkets and

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<sup>37</sup> Merwe [32].

<sup>38</sup> Merwe [14] and [15].

<sup>39</sup> Cooke [20].

<sup>40</sup> Cooke [20].

<sup>41</sup> Makryllos [56].

<sup>42</sup> Makryllos [57].

<sup>43</sup> Makryllos [60].

<sup>44</sup> Cooke [18].



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chemists.<sup>45</sup> Since 2015, Tatts has had an authorisation under its lotteries licence in Victoria to offer a Keno game with one draw per day, but has not sought to activate that authorisation to launch or market any Keno product.<sup>46</sup>

**(v) Number and type of shares or description of assets to be acquired**

2.13 The proposed acquisition involves a scheme of arrangement to be made under section 411 of the Corporations Act 2001 (Cth) pursuant to which all of the issued ordinary shares in Tatts as at the relevant record date (and all rights and entitlements attaching to those shares) will be transferred to Tabcorp. Further detail is set out in section 3 of this Form S below.

**(b) In the case of a body corporate whose shares are to be acquired, provide details of:**

**(i) the issued capital of the body corporate**

2.14 As at 8 March 2017, Tatts has 1,468,519,481 ordinary shares on issue.<sup>47</sup>

**(ii) the holders of such issued capital**

2.15 As at 1 March 2017, the shareholders with a greater than 5% shareholding in Tatts were as follows:

Shareholders	Number of ordinary shares	Percentage shareholding
HSBC Custody Nominees (Australia) Limited	239,309,387	16.30%
JP Morgan Nominees Australia Limited	197,460,299	13.45%
Warbont Nominees Pty Limited	119,414,626	8.13%
Citicorp Nominees Pty Limited	111,398,197	7.59%

**(c) Provide details of all related bodies corporate of the body corporate whose shares or assets are to be acquired by the Applicant (See Direction 4 of this Form)**

2.16 The related bodies corporate of Tatts are as follows:<sup>48</sup>

- Ubet Qld Limited (ACN 085 691 738)
- Ubet Enterprises Pty Ltd (ACN 601 073 901)

<sup>45</sup> Merwe [68] and [70(a)].

<sup>46</sup> Merwe [111], [134] to [137].

<sup>47</sup> Tucker [11].

<sup>48</sup> Tatts Annual Report FY2016, 140-141.



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- Ubet NT Pty Ltd (ACN 092 655 831)
- Ubet Radio Pty Ltd (ACN 010 033 806)
- Ubet SA Pty Ltd (ACN 097 719 107)
- TAB Queensland Pty Ltd (ACN 075 721 569)
- Ubet Tas Pty Ltd (ACN 095 972 106)
- Agility Interactive Pty Ltd (ACN 108 523 824)
- Tasradio Pty Ltd (ACN 009 477 098)
- Maxgaming Holdings Pty Ltd (ACN 079 909 541)
- Maxgaming NSW Pty Ltd (ACN 078 250 423)
- Maxgaming Qld Pty Ltd (ACN 078 963 050)
- Maxgaming Vic Pty Ltd (ACN 136 889 560)
- Bytecraft Systems Pty Ltd (ACN 007 136 361)
- Bytecraft Systems (NSW) Pty Ltd (ACN 002 595 128)
- Bytecraft Systems (NZ) Limited (New Zealand Company Number 1198813)
- EGM Tech Pty Ltd (ACN 104 855 790)
- Reaffin Pty Ltd (ACN 100 540 510)
- Tattersall's Holdings Pty Ltd (ACN 081 925 706)
- Tatts Online Pty Ltd (ACN 149 493 694)
- Tattersall's Sweeps Pty Ltd (ACN 081 925 662)
- Tattersall's Gaming Pty Ltd (ACN 081 925 680)
- Tattersall's Club Keno Pty Ltd (ACN 081 925 617)
- tatts.com Pty Ltd (ACN 060 353 317)
- New South Wales Lotteries Corporation Pty Limited (ACN 142 890 195)
- Tatts Employment Co (NSW) Pty Ltd (ACN 078 412 432)
- George Adams Pty Ltd (ACN 060 353 326)
- Tattersall's Australia Pty Ltd (ACN 078 250 432)
- Tatts NT Lotteries Pty Ltd (ACN 146 244 984)
- Golden Casket Lottery Corporation Limited (ACN 078 785 449)
- Tattersall's Investments (South Africa) (Pty) Limited (South Africa Enterprise Number 1997/007484/07)
- Wintech Investments Pty Ltd (ACN 050 236 407)
- Tattersall's Gaming Systems (NSW) Pty Ltd (ACN 078 250 414)
- Tatts Lotteries SA Pty Ltd (ACN 146 245 007)
- Thelott Enterprises Pty Ltd (ACN 602 928 085)
- Tatts Employment Share Plan Pty Ltd (ACN 146 244 993)
- Tatts Tech Pty Ltd (ACN 133 789 241)
- 50-50 Software Pty Ltd (ACN 161 845 085)





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- Talarius Holdings Limited (United Kingdom Company Number 09771587)
  - European Gaming (Finance) Limited (United Kingdom Company Number 05996010)
  - George Adams Holdings Limited (United Kingdom Company Number 02823640)
  - European Gaming Limited (United Kingdom Company Number 05984506)
- (d) **In the case of a person (other than a body corporate) whose assets are to be acquired**
- (i) **Name and address of the person**  
Not applicable.
- (ii) **Describe the business or businesses carried on by the person including the products and services the person supplies**  
Not applicable.
- (iii) **Describe the assets to be acquired**  
Not applicable.

### 3 The acquisition

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- (a) **Outline the nature and details of the contract, arrangement, understanding or proposal for the acquisition and, if applicable, the public offer document, and provide a copy of any relevant contract, document or public offer document. (See Direction 6 of this Form)**
- 3.1 Tabcorp proposes to acquire the issued share capital of Tatts by means of a scheme of arrangement made under section 411 of the *Corporations Act 2001* (Cth). A Merger Implementation Deed was entered into between Tabcorp and Tatts on 18 October 2016 and the proposed scheme is set out as attachment 1 to that deed.
- 3.2 Pursuant to the Merger Implementation Deed and proposed scheme of arrangement, Tabcorp will acquire all of the shares held by Tatts Shareholders as at the Scheme Record Date (**Scheme Shareholders**). The Scheme Record Date is defined as 5.00pm on the fifth Business Day after the Effective Date (or such other date as Tabcorp and Tatts agree in writing). The Effective Date is defined as the date on which the Scheme becomes effective.
- 3.3 The Scheme is conditional on, among other things:
- competition approval;<sup>49</sup>
  - the scheme being approved by the Supreme Court of Victoria (or such other court of competent jurisdiction agreed between the parties) in accordance with section 411(4)(b) of the *Corporations Act 2001* (Cth);<sup>50</sup>
  - various State and Territory regulatory approvals; and
  - approval by Tatts shareholders.<sup>51</sup>

<sup>49</sup> Merger Implementation Deed, clause 3.1(a)(1).

<sup>50</sup> Merger Implementation Deed clause 3.1(c).



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- 3.4 If competition approval has not been satisfied or waived by 30 September 2017, the end date for the scheme may be extended to 31 December 2017.
- 3.5 The consideration to be provided by Tabcorp to each Scheme Shareholder for the transfer of each Tatts share comprises:
- cash consideration of \$0.425 (subject to adjustment in accordance with clause 6.3 of the Merger Implementation Deed); and
  - scrip consideration comprising an allotment of 0.80 new Tabcorp shares.
- 3.6 A copy of the Merger Implementation Deed is at tab 2 of **DA-1**.
- (b) Provide details of the commercial rationale for the acquisition and copies of all documents that were prepared specifically for the purpose of evaluating the proposed acquisition with respect to the market(s) affected and the nature of those effects**
- 3.7 The proposed transaction combines the complementary businesses of Tabcorp and Tatts. Tabcorp's history is in wagering. Tatts' main business is in lotteries. The merged entity will have diversified wagering, media, lotteries, Keno and gaming operations. A combined Tabcorp and Tatts entity (the **merged entity**) would operate in four key areas: wagering and media, lotteries, Keno and gaming services.<sup>52</sup>
- 3.8 Tabcorp considers that the merged entity will be well positioned to:
- deliver substantial synergies of approximately **[Confidential to Tabcorp]** per annum;<sup>53</sup>
  - provide benefits to a range of stakeholders through the direct pass through of a significant proportion of these synergies to the State racing industries, retail venues, sporting bodies and the Federal and State governments;<sup>54</sup> Tabcorp expects the merged entity expects to pay these stakeholders an additional **[Confidential to Tabcorp]** per annum;<sup>55</sup>
  - maintain the viability of the racing industry across Australia through a greater return of a share of wagering revenues to the racing industry; the racing industry's share of the synergies will be at least **[Confidential to Tabcorp]** per annum;<sup>56</sup>
  - enhance the customer experience through business growth and improvements, including greater investment in existing businesses and the introduction and development of new products;
  - enhance competition for the supply of wagering products and services by enabling the merged entity to more effectively compete against corporate bookmakers;
  - create a path to national pooling through the removal of a commercial barrier to the merging of Tabcorp's and Tatts' pari-mutuel pools; and

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<sup>51</sup> Merger Implementation Deed clause 3.1(b).

<sup>52</sup> Attenborough [45]-[47].

<sup>53</sup> Johnston [22].

<sup>54</sup> Johnston [15]-[17].

<sup>55</sup> Johnston [24].

<sup>56</sup> Johnston [24]; Simes [145].



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- improve the productive efficiency of the broader Australian economy as a result of factors such as the synergies, the substitution of domestic products for imported products and likely increases in tourism.<sup>57</sup>

3.9 Papers and discussion materials prepared for presentation to and considered by the Tabcorp board for the purpose of evaluating the proposed acquisition on 14 September 2016<sup>58</sup> and 23 September 2016 have been filed as part of this application.<sup>59</sup>

**(c) Indicate whether the acquisition involves proposed ancillary arrangements and describe the proposed arrangements**

3.10 The proposed acquisition does not involve ancillary arrangements.

## 4 Background information

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**(a) Describe the industry sector(s) to which the acquisition relates (See Direction 7 of this Form)**

4.1 The proposed acquisition relates to the gambling entertainment industry. Set out below is an overview of the following industries which are associated with the proposed acquisition:

- wagering, racing and racing media;
- gaming services;
- lotteries; and
- Keno.

4.2 **Annexure A**, which forms part of this application, comprises an Industry Background and Application Overview as an aide to assist the Tribunal in understanding the material industry facts relevant to the application and the basis for the application for authorisation.

### 1 Wagering, racing and racing media

4.3 Wagering (or betting) involves staking money on the outcome of a contest or other uncertain event.<sup>60</sup> Wagering customers in Australia can place bets on racing (thoroughbred, harness and greyhound) and sporting events, as well as non-sporting events such as the results of the Academy Awards or other entertainment.<sup>61</sup> Wagering is a skill-based activity, involving some knowledge and study of the 'form' of the various participants or contestants.<sup>62</sup>

4.4 Wagering is closely interrelated with the broader racing industry which supplies the racing industry products upon which a large proportion of wagering is conducted. Spectators consume racing industry products and services, including wagering and racing vision, in conjunction with each other. Patrons (or 'punters') enjoy the ability to place a wager or bet

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<sup>57</sup> Simes [105] – [108].

<sup>58</sup> Attenborough [39].

<sup>59</sup> Attenborough [39].

<sup>60</sup> Freeman [10].

<sup>61</sup> Freeman [64].

<sup>62</sup> Freeman [10].



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on the outcome of a race, and to view that race, either in person 'on-course', or via racing vision at a location 'off-course'.<sup>63</sup>

4.5 Both Tabcorp and Tatts carry on business in the wagering industry.

**Types of wagering products**

4.6 The wagering products available to customers in Australia can be divided into the following four types:

- totalisator wagering (a form of pari-mutuel wagering);
- tote derivative betting (a derivative of totalisator wagering);
- fixed odds wagering; and
- betting through a betting exchange.<sup>64</sup>

4.7 **Totalisator wagering** is a pari-mutuel system of wagering in which:

- the operator pools all wagers ('turnover') on a particular event (for example a horse race) that have the same bet type (for example, a win bet, quinella or trifecta);
- the operator then deducts from the pool a set percentage as its commission (or 'take-out'); and
- the remainder of the pool is distributed to winning customers as dividends in accordance with the outcome of the bets.<sup>65</sup>

Legislation in each State and Territory prescribes a maximum commission or take-out rate for the totalisator operators licensed in those jurisdictions (**State TABs**). Details of the regulatory regime are set out further below and the maximum take-out rates are set out in **Annexure A**. The merger parties' historical actual take-out rates are set out in **Annexure B, Part 1.1** and **Annexure C, Part 1.1**.

4.8 **Tote derivative** wagering refers to wagering where the odds are set by reference to the final totalisator dividend paid by one or more State TABs for the corresponding event, and is offered by corporate bookmakers. This allows a corporate bookmaker to, in effect, offer the same or better odds and betting products as State TABs without running its own pool.<sup>66</sup>

4.9 **Fixed odds** wagering occurs when the customer's bet is placed and accepted at the odds on offer by a wagering operator (typically referred to as a bookmaker) at the time of the bet. The odds accepted by the customer on that bet are fixed at the time and do not change, generally regardless of developments or betting patterns after the bet is placed (unless there is a scratching in which case there may be a reduction of the odds in accordance with the relevant betting rules).<sup>67</sup> The odds offered are a function of the wagering operator's assessment of the probability of the relevant outcomes and its market percentage.<sup>68</sup>

4.10 **Betting exchanges** match a customer's bet with a directly opposing bet (or bets). A customer who places a 'back bet' is betting on a certain outcome to occur (for example,

<sup>63</sup> Dumesny [15], Gatehouse [40], Stubbs [71] and [72].

<sup>64</sup> Freeman [35].

<sup>65</sup> Freeman [37].

<sup>66</sup> Freeman [45] and [46].

<sup>67</sup> Freeman [53].

<sup>68</sup> Freeman [54]. For an explanation of 'market percentage' (sometimes referred to as 'Bookmaker percentage') see, for example, <https://www.punters.com.au/faq/what-are-the-market-percentages>.



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that a particular horse will win the race). A customer who places a 'lay bet' is betting on an outcome to not occur (for example, that a particular horse will not win the race). Bets are only placed when they are matched and the betting exchange operator charges a commission which is generally a percentage of the net winnings.<sup>69</sup> In other words, there needs to be both a back bet and a lay bet, at agreed odds and bet size.<sup>70</sup>

### Types of wagering suppliers

#### *State TABs (or totalisator operators)*

- 4.11 The term '**totalisator**' may refer to:
- a method of wagering (as described above); or
  - the wagering operator that provides totalisator / pari-mutuel wagering services to customers.<sup>71</sup>
- 4.12 The terms 'TAB' or 'tote' may also be used to refer to the totalisator operators, or State TABs, which are the State and Territory licensed wagering operators that provide totalisator or pari-mutuel wagering within a given State or Territory.
- 4.13 The current State TABs in Australia are Tabcorp, Tatts and the WA TAB (operated by Racing and Wagering Western Australia (**RWWA**)).<sup>72</sup> RWWA is a publicly owned body corporate with a statutory entitlement to conduct off-course totalisator wagering in Western Australia.<sup>73</sup>
- 4.14 The term 'TAB' comes from 'Totalisator Agency Board'. Historically, the Totalisator Agency Boards were State-owned entities responsible for the operation of totalisators in each State and Territory in Australia.<sup>74</sup> While totalisator operators such as Tabcorp were initially restricted to providing totalisator wagering services on racing, all totalisator operators in Australia now also provide fixed odds wagering services on racing, sporting and novelty events and entertainment.<sup>75</sup>
- 4.15 In providing totalisator wagering products, a State TAB can pool with another State TAB. Pooling refers to arrangements between two or more totalisator operators whereby they combine their respective pools in order to provide a single, larger pool in which the customers of each participating totalisator operator can participate. This is typically referred to as 'pooling' or 'co-mingling'. Pooling arrangements generally involve one totalisator operator with a larger pool (the 'host') offering 'pooling services' to one or more other totalisator operators (typically those with smaller pools) ('guest participants').<sup>76</sup>
- 4.16 There are currently eight off-course State TABs in Australia and three combined totalisator pools<sup>77</sup> being:

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<sup>69</sup> Freeman [63].

<sup>70</sup> Freeman [62].

<sup>71</sup> Freeman [24].

<sup>72</sup> Freeman [24].

<sup>73</sup> Statement of Richard Burt signed 7 March 2017 (**Burt**) [8].

<sup>74</sup> Freeman [12].

<sup>75</sup> Freeman [26].

<sup>76</sup> Freeman [141].

<sup>77</sup> On 13 December 2016, the Global Tote Limited (**GTL**), a subsidiary of ASX-listed corporate bookmaker TopBetta Holdings Ltd, applied to the ACCC for authorisation of certain conduct relating to the proposed supply to Australian and international businesses of the opportunity to participate in GTL's global pool in relation to Australian and overseas racing and sporting events. To the best of Tabcorp's knowledge, GTL's pooling proposal has not been approved by the ACCC, nor implemented in Australia, at the date of this application: Freeman [292] and [293].



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- SuperTAB, a combination of the Victorian, ACT and WA pools. The SuperTAB co-mingles with certain international pools;
- NSWTAB, a combination of the NSW pool with certain international pools; and
- UBET, a pool of all betting under Tatts' licences in Queensland, South Australia, Tasmania and the Northern Territory.<sup>78</sup>

4.17 Further details regarding the nature of and participants in these existing pool arrangements are set out in Annexure A.

#### *Bookmakers*

4.18 **Bookmakers** conduct fixed odds betting on racing and other sports and events, and may also offer tote derivative products. Bookmakers are divided into two categories:

- on course traditional bookmakers; and
- corporate bookmakers, principally licensed in the Northern Territory.<sup>79</sup>

4.19 **On-course traditional bookmakers** are generally sole traders or small family businesses. Traditional bookmakers are permitted to operate face-to-face as well as over the phone and internet, while 'on-course' at a racing venue. Traditional bookmakers offer fixed odds products and tend to provide simpler products such as 'win' and 'place' bets. The number of registered traditional bookmakers operating in Australia has declined. For example in 1954, the number of traditional bookmakers in Victoria peaked at 1500 and is currently estimated to be approximately 169.<sup>80</sup>

4.20 **Corporate bookmakers** are incorporated bookmakers that offer wagering services online and by telephone. The vast majority of those currently operating in Australia are licensed in the Northern Territory due the favourable licensing conditions and regulatory environment in that jurisdiction. No corporate bookmaker is currently licensed to accept bets in cash in retail venues anywhere in Australia. However, corporate bookmakers may and do accept bets from customers who are in State TAB retail venues or elsewhere via the internet and by telephone.<sup>81</sup>

#### *Betting exchanges*

4.21 A betting exchange allows customers to wager directly against each other at fixed odds. The betting exchange operator takes a commission on each trade. Betfair (whose Australian business is owned by Crown Resorts Ltd) is the only licensed betting exchange currently operating in Australia. It is licensed in the Northern Territory (following a move from Tasmania in 2016).<sup>82</sup>

#### **Wagering distribution channels**

4.22 Wagering suppliers may distribute wagering products through various channels:

- **On-course:** 'on-course' refers to betting facilities located at a racing venue where a customer places a bet in person. State TABs and traditional bookmakers operate cash-based betting on-course. In Victoria, a corporate bookmaker can apply to conduct betting on-course, as a 'registered bookmaker', although generally on-course bookmakers in most Australian jurisdictions are limited to individuals.

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<sup>78</sup> Freeman [143].

<sup>79</sup> Freeman [27].

<sup>80</sup> Freeman [27(b)].

<sup>81</sup> Freeman [27(a)].

<sup>82</sup> Freeman [28].



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- **Retail:** retail wagering involves bets placed by customers in authorised off-course retail venues outside a racing venue.
- **Online:** online bets are placed by customers through the wagering operator's website or mobile application (apps). State TABs, corporate bookmakers and traditional bookmakers and Betfair all operate online.
- **Telephone:** bets are placed by customers over the telephone. State TABs, corporate bookmakers and traditional bookmakers all operate call centres that allow customers to place bets over the telephone.<sup>83</sup>

4.23 As a consequence of the legislative structure that underpins the state-based wagering licence system, State TABs are currently the sole providers of wagering in a retail environment. This means that they are the only entities licensed (in their respective states and territories) to accept cash bets in off-course retail venues. Retail venues include dedicated retail shopfronts (such as TAB agencies) and licensed premises (such as hotels, pubs, clubs, live sites, stadiums and newsagencies) with operator assisted and self-service terminals.<sup>84</sup>

4.24 Table 4.1 below summarises the types of wagering suppliers in Australia, the wagering products each supplier is permitted to supply (and does in fact supply),<sup>85</sup> and the channels by which those products are supplied.<sup>86</sup>

**Table 4.1: Products and channels provided by wagering suppliers in Australia**

Wagering supplier	Products supplied	Channels
State TABs	Totalisator products	On-course (cash and account)
	Fixed odds products	Retail (cash and account)
	Trackside (Tabcorp)	Online (account)
		Telephone (account)
Traditional bookmakers	Fixed odds products	On-course (cash)
		Online (account)
		Telephone (account)
Corporate bookmakers	Fixed odds products	Online (account)
	Tote derivative products	Telephone (account)
Betfair	Fixed odds products	Online (account)
	Betting exchange products	Telephone (account)

<sup>83</sup> Freeman [29].

<sup>84</sup> Freeman [25].

<sup>85</sup> For example, in Victoria, Tabcorp is permitted to supply a Betting Exchange and to offer tote derivative products under the Victorian Wagering and Betting Licence but does not supply those products.

<sup>86</sup> Freeman [31].



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**Wagering events**

- 4.25 Wagering customers in Australia can place bets on racing, sports and other events:
- **Racing:** includes the three codes of racing in the 'racing industry' - thoroughbred racing (horses), harness racing (horses), and greyhound racing (dogs).
  - **Sports:** includes other sports events that do not fall within racing.
  - **Other events:** include novelty events such as wagering on the result of the Academy Awards or other entertainment.<sup>87</sup>
- 4.26 The wagering events that may be offered are restricted by the terms of the relevant wagering operator's licensing conditions.<sup>88</sup>

**Regulation of wagering in Australia**

- 4.27 Each State and Territory in Australia has its own regulatory regime for wagering operators licensed to operate within its jurisdiction. These regimes regulate:
- who may offer wagering services within the State or Territory, and the circumstances in which those services can be supplied;
  - the maximum commission that totalisator operators can charge punters who place totalisator bets;
  - the taxes that totalisator operators and bookmakers must pay on wagering and gambling services;
  - the products that can be offered by wagering operators; and
  - the advertising of wagering services and products.<sup>89</sup>
- 4.28 The majority of the corporate bookmakers currently operating in Australia are licensed in the Northern Territory due to the favourable licensing conditions and regulatory environment in that jurisdiction.<sup>90</sup> The process of obtaining a sports bookmakers licence under the Northern Territory regime is not onerous or expensive, with a current annual corporate licence fee of \$23,000.<sup>91</sup> The sports bookmakers licences that may be issued in the Northern Territory are non-exclusive.<sup>92</sup>
- 4.29 In relation to totalisator operators, each State or Territory government except for Western Australia has privatised its TAB.<sup>93</sup> The possible terms on which WA TAB might be privatised are currently unknown.<sup>94</sup>
- 4.30 Across Australia, most of the key licences last for decades. For example, the New South Wales and Queensland licences expire in 2097 and 2098 respectively.<sup>95</sup>
- 4.31 A summary of the totalisator licences currently in place is set out in the table below.<sup>96</sup>

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<sup>87</sup> Freeman [64].

<sup>88</sup> Freeman [66], Cooke [149].

<sup>89</sup> Freeman [93].

<sup>90</sup> Freeman [27(a)].

<sup>91</sup> Freeman [134].

<sup>92</sup> Freeman [133].

<sup>93</sup> Freeman [14].

<sup>94</sup> Cooke [182].

<sup>95</sup> Freeman [44].

<sup>96</sup> Freeman [44].





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**Table 4.2: Totalisator operators by State and Territory**

State / Territory	Off-course State TABs	Parent company of TABs	Licence expiry
New South Wales	TAB Limited	Tabcorp	2097 (exclusive until 2033)
Victoria	Tabcorp Wagering (Vic) Pty Ltd as the State TAB which has entered into a joint venture with Victorian Racing (Tabcorp Wagering Manager (Vic) Pty Ltd manages the joint venture operations and the SuperTAB pool)	Tabcorp	2024 (exclusive for term)
Australian Capital Territory	Tabcorp ACT Pty Ltd	Tabcorp	2064 (exclusive for term)
Western Australia	RWWA	Government authority	N/A (exclusive)
Queensland	UBET Qld Ltd	Tatts	2098 (exclusive until 2044)
South Australia	UBET SA Pty Ltd	Tatts	2100 (exclusive until 2017)
Tasmania	UBET Tas Pty Ltd	Tatts	2062 (option to renew to 2111 and exclusive until 2027)
Northern Territory	UBET NT Pty Ltd	Tatts	2035 (exclusive for term)

4.32 From time to time, opportunities arise for firms to bid for wagering licences or State-owned wagering businesses. If the merger proceeds, the number of potential bidders for such licences will be reduced by one. Tabcorp does not consider that this potential reduction is likely to result in any public detriment.<sup>97</sup>

<sup>97</sup> Cooke [177] – [219], Pleatsikas [section V.2.1], Menezes.



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- 4.33 For both totalisator and corporate bookmaker licences, each State and Territory provides for the payment of certain State or Territory taxes by wagering operators.<sup>98</sup>
- 4.34 At a general level, wagering operators in each State and Territory are required to pay tax based upon the operator's turnover or revenue.<sup>99</sup> However, in the Northern Territory annual tax on fixed odds gross profit is capped at a maximum of \$575,000, regardless of turnover, and Northern Territory wagering taxes are not payable in relation to non-racing wagering.<sup>100</sup> This low, capped tax rate gives high-turnover corporate bookmakers licensed in the Northern Territory a material advantage over wagering operators licensed in other states.<sup>101</sup>
- 4.35 Further detail on the regulation of wagering operators, including details of the relevant State and Territory based regimes and the specific commissions and taxes applicable to wagering operators, is set out in Annexure A.

**The racing industry**

- 4.36 The racing industry is closely related to the wagering market.
- 4.37 Australia has one of the largest and most successful racing industries in the world in terms of the volume of racing events, value of prize money and scale and breadth of race animal ownership and breeding.<sup>102</sup> Racing is part of the 'public conversation' in Australia, with racing events and personalities regularly featuring in the Australian general media.<sup>103</sup>
- 4.38 The Australian racing industry is organised on State and Territory lines and, as set out above, comprises the three codes of thoroughbred, harness and greyhound racing (with the exception of the Northern Territory, which does not have harness racing).<sup>104</sup>
- 4.39 There are approximately 405 thoroughbred racing clubs, 116 harness racing clubs, and 67 greyhound racing clubs in Australia. The racing clubs, all of which are non-profit organisations but which may be metropolitan or country clubs, provide racing 'products' by organising and conducting race meetings.<sup>105</sup>
- 4.40 The Australian racing industry makes a sizable overall economic and social contribution to the Australian community providing not only entertainment and generating revenue through race events, but also creating employment and economic activity through associated investment in local infrastructure. The high volume of racing events conducted across Australia sustains the employment of a significant number of people in full-time roles as well as part-time, casual and contractor roles in metropolitan, provincial and country areas who are directly and indirectly involved in delivering the racing product to patrons and punters both on and off-course.<sup>106</sup>
- 4.41 The business of wagering operators is centred upon the quality of the racing product provided by the racing industry – the better the product offered by the racing industry, the

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<sup>98</sup> Freeman [244].

<sup>99</sup> Freeman [247].

<sup>100</sup> Merwe [66].

<sup>101</sup> Freeman [304].

<sup>102</sup> Harding [11].

<sup>103</sup> Harding [11].

<sup>104</sup> Freeman [78].

<sup>105</sup> Freeman [78(a)], Dumesny [26].

<sup>106</sup> Grant [26], Nicholl [19], Yovich [33], Jewell [46], Corby [28], Dumesny [31], Lynch [17].



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more this drives wagering.<sup>107</sup> Similarly, the public engages more with the racing industry where there is greater innovation and development in wagering options.<sup>108</sup>

4.42 Further information on the racing industry is set out below in section 18 and in **Annexure A**.

**Funding of the racing industry**

*Industry funding arrangements*

- 4.43 State TABs in particular (and, to a much lesser extent, corporate bookmakers) provide a significant proportion of the racing industry's funding through paying various fees to different stakeholders including:
- racing industry funding obligations (primarily contributed by State TABs through product fees and State TAB racing payments under their licence obligations and racing industry agreements); and
  - race field fees (contributed by both State TABs, corporate bookmakers and Betfair).<sup>109</sup>
- 4.44 The extent of the State TABs' financial contribution primarily arises from the terms of the State and Territory wagering licences and racing industry funding agreements with the racing industries in those jurisdictions. In FY16, Tabcorp and Tatts together paid approximately \$1 billion to the racing industry which was a combination of approximately \$787 million contributed by Tabcorp and approximately \$200 million contributed by Tatts.<sup>110</sup>
- 4.45 Both Tabcorp and Tatts (or their subsidiaries) are party to various racing industry funding agreements under which they are required, among other things, to organise, conduct and promote wagering, as well as make payments to Government and industry bodies and distribute the money derived from that wagering. Through these arrangements, Tabcorp and Tatts make significant economic contributions to the racing industry in the States and Territories for which they hold totalisator licences. These arrangements include:
- In Victoria, an agreement between Tabcorp Wagering (Vic) Pty Ltd, Tabcorp Wagering (Participant) Pty Ltd, Tabcorp Wagering Assets (Vic) Pty Ltd, Tabcorp Wagering Manager (Vic) Pty Ltd, and Vic Racing Pty Ltd (an entity comprising Racing Victoria Limited, Greyhound Racing Victoria and Harness Racing Victoria) and Racing Products Victoria Pty Ltd and others (**JVA**).<sup>111</sup> Under these arrangements, the Victorian Racing Industry received the sum of \$331.2 million from Tabcorp in FY16;<sup>112</sup>
  - In New South Wales, an agreement between TAB Limited and Racingcorp Pty Ltd, Greyhound Racing New South Wales, Harness Racing New South Wales, and Racing New South Wales.<sup>113</sup> In total, the New South Wales Racing Industry received the sum of 290.8 million from Tabcorp in FY16;<sup>114</sup> and

<sup>107</sup> Freeman [79] – [82], Gunston [25], Yovich [19], Jewell [58].

<sup>108</sup> Nicholl [57] and [58], Yovich [19].

<sup>109</sup> Freeman [83] and [228], Dumesny [57], Gunston [29], Jewell [98], Nicholl [42] and [43], Scott [24], Yovich [19] and [63(a)].

<sup>110</sup> Freeman [85].

<sup>111</sup> Freeman [109].

<sup>112</sup> Freeman [227] and [231].

<sup>113</sup> Freeman [121].

<sup>114</sup> Freeman [227] and [233].



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- In the ACT, an arrangement between Tabcorp and the ACT racing industry under which **[HIGHLY Confidential to Tabcorp]** [REDACTED]

4.46 Tatts is also party to a number of racing industry agreements in Queensland, South Australia and the Northern Territory pursuant to which funding obligations exist.<sup>116</sup>

### *Race fields information*

4.47 State and Territory legislation also requires wagering operators (including TABs and corporate bookmakers) to pay fees for the use and publication of racing information (referred to as 'race fields' legislation). For example, under section 32A of the *Betting and Racing Act 1998* (NSW), the use of NSW race field information includes publishing any race field information, communicating any race field information to a person, acknowledging or confirming any race field information communicated to that person or making a written or electronic record (such as a betting ticket, statement of account or notice) that contains or refers to any race field information).<sup>117</sup> The fees payable vary across jurisdictions and codes, and are calculated by reference to turnover, gross revenue, or a hybrid of both.<sup>118</sup>

4.48 Payments made under race fields legislation are smaller in comparison with the industry funding payments made by Tabcorp described above. Accordingly, corporate bookmakers' financial contribution to the racing industry is small (as a proportion of their revenue) compared with the significant contributions made by Tabcorp.<sup>119</sup>

### **Other funding**

#### *Fees payable to sporting bodies*

4.49 Under the *Gambling Regulation Act 2003* (Vic) and *Betting and Racing Act 1998* (NSW), wagering operators must obtain the agreement of certain sports controlling bodies and pay fees under those agreements. Wagering operators pay sporting body fees to promote fair information and revenue sharing between them and sports controlling bodies.<sup>120</sup>

#### *Wagering support services*

4.50 Tabcorp provides subsidised wagering support services for customers, such as racing vision, audio, form (statistical information about the race participants) and other data through a range of distribution channels including retail and media outlets.<sup>121</sup> For example:

- Tabcorp contributes to the funding of newspaper form guides in major daily newspapers in Victoria and New South Wales (accessible throughout Australia);
- Tabcorp pays contributions to subsidise the cost of providing Sky Racing's Pay TV racing vision service into households, which allows Sky Racing to be included in the base tier subscription account for Foxtel customers;

<sup>115</sup> Freeman [234].

<sup>116</sup> Cooke [61], [65], [67] to [70], [74], [81] to [82].

<sup>117</sup> Freeman [235].

<sup>118</sup> Freeman [236].

<sup>119</sup> Freeman [236].

<sup>120</sup> Freeman [238], Cooke [61] and [63] to [64].

<sup>121</sup> Freeman [199].



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- Tabcorp provides tips and ratings for racing events through tab.com.au, Daily Form Service (**DFS**) Form and SkyRacing Form to provide customers with the ratings of a runner's potential performance.<sup>122</sup>

- 4.51 Tabcorp provides these services to promote racing as a whole. It also ensures information that is intended to enhance the racing experience for customers is accessible and thereby drives wagering turnover and increasing industry funding.<sup>123</sup>
- 4.52 Corporate bookmakers are, to some extent, able to 'free ride' on Tabcorp's wagering support services to obtain the benefits without having to fund or subsidise any of these services. This is because these services are available to all punters whether or not they bet with Tabcorp.<sup>124</sup>

#### Racing media

- 4.53 Racing media involves the acquisition and distribution of racing content, either through radio or vision. Racing media is closely related to the wagering industry and is a major factor in facilitating participation in racing and wagering off-course.<sup>125</sup> Racing media content (including racing vision) is typically acquired from the racing clubs who are the holders of these media rights.<sup>126</sup> Racing media can be distributed in wagering venues and other locations, both through traditional broadcast methods (radio and television) and, in more recent times, through digital distribution (online).<sup>127</sup>
- 4.54 Access to racing information and coverage is important to patrons who consume wagering services on racing industry products. A large part of attracting wagering customers depends on the provision of accurate and timely access to racing coverage. Punters typically want to follow live coverage of events on which they have placed a bet and therefore usually consume racing media and information services in conjunction with wagering services.<sup>128</sup> The acquisition and distribution of racing vision is also important to wagering operators, to drive wagering activity, as well as to racing bodies, in order to promote wagering on their racing product from which they derive revenue.<sup>129</sup>
- 4.55 Tabcorp's media business includes the operation of the three Sky Racing television channels, which are broadcast throughout Australia as well as the broadcasting of racing commentary on Sky Sports radio in New South Wales and the Australian Capital Territory.<sup>130</sup> The three Sky Racing channels broadcast thoroughbred, harness and greyhound racing and other sports to audiences in TAB outlets, hotels, clubs, other licensed venues, and into homes to pay TV subscribers.<sup>131</sup>
- 4.56 Tatts operates RadioTAB, which is broadcast in Queensland, South Australia, the Northern Territory and Tasmania.<sup>132</sup> Radio TAB is also available online.<sup>133</sup>

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<sup>122</sup> Freeman [199].

<sup>123</sup> Freeman [200].

<sup>124</sup> Freeman [201].

<sup>125</sup> Freeman [203], Harding [34] – [35].

<sup>126</sup> Freeman [212], Harding [34] – [35].

<sup>127</sup> Freeman [202].

<sup>128</sup> Gatehouse [43], Raedler [56].

<sup>129</sup> Freeman [203] and [204], Harding [34]-[35], Raedler [56].

<sup>130</sup> Attenborough [18], Freeman [202].

<sup>131</sup> Freeman [205].

<sup>132</sup> Cooke [18], Aldam [34].

<sup>133</sup> Cooke [18], Aldam [34].



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4.57 Racing.com, which is operated as a joint venture between Seven West Media and Racing Victoria, is also a supplier of racing vision. Racing.com broadcasts Victorian thoroughbred racing events which can be viewed online (on its website and apps) or on free-to-air digital television and on Foxtel.<sup>134</sup>

4.58 Further information on racing media is set out in **Annexure A**.

**Recent industry trends in wagering**

4.59 The last decade has seen significant changes occurring in the Australian wagering industry and the competitive wagering landscape. The wagering market is continuing to experience significant structural changes in both products and channels as a result of:

- **channel convergence and substitution from retail to digital:** over the past 5 years digital wagering (online via website or apps) has increased from 30% to 51% of industry turnover,<sup>135</sup> and retail facilities have declined between FY06 and FY15 from accounting for 54% of industry turnover to just 33%;<sup>136</sup>
- **a shift from totalisator to fixed odds betting:** over the past ten years, fixed-odds racing and sports wagering has grown from 26% to 63% of industry turnover;<sup>137</sup> and
- **substitution away from racing to sports:** over the past ten years, sports betting has increased from 11% of total national wagering to 21%, with current growth rates for sports betting at 14% per year, compared with overall wagering growth on racing of 4% (for thoroughbred, greyhound and harness racing).<sup>138</sup>

4.60 Channel convergence is occurring at pace in key global markets including Australia with all forms of wagering experiencing a rapid uptake of mobile based online betting. This is as a result of a number of factors including improvements in convenience and speed of placing bets online, the use of apps to place bets increasing in line with the popularity of smart phones since the first generation of smart phone was introduced in 2007, the fact that customers are becoming more comfortable with the electronic transfer of funds and large scale advertising campaigns by corporate bookmakers (enabled following the High Court's decision in *Betfair Pty Ltd v Western Australia* (2008) 234 CLR 418).<sup>139</sup>

4.61 This channel convergence, and the growth in digital wagering, has seen corresponding substantial growth in the number of large corporate bookmakers and fixed odd betting. As set out above, corporate bookmakers are typically licensed in the Northern Territory by the Northern Territory Racing Commission (for tax and regulation purposes) where bookmaker licences are non-exclusive (that is, there is no statutory limit to the number of bookmaker licences that may be issued). Corporate bookmakers conduct their operations across Australia, by telephone and online, with online sales constituting the bulk of their business.<sup>140</sup>

4.62 Recently, a number of independent Australian corporate bookmakers (such as Sportsbet, Tom Waterhouse, Sportingbet and Betstar) have been acquired by large, well-capitalised and well-established international wagering companies (such as Paddy Power, William Hill and Ladbrokes) as part of an aggressive targeting of the Australian market.<sup>141</sup>

<sup>134</sup> Freeman [219], Harding [36], Gunston [46].

<sup>135</sup> Freeman [248].

<sup>136</sup> Freeman [254(b)], see also Cooke [133(h)], [134(a)], [135(a)], [136(a)] and [137(a)].

<sup>137</sup> Freeman [248], see also Cooke [133(b)], [133(i)], [134(c)], [135(c)] and [139]-[141].

<sup>138</sup> Freeman [270], see also Cooke [133(c)-(f)], [134(b)], [135(b)], [136(c)-(d)], 138.

<sup>139</sup> Freeman [248] and [253].

<sup>140</sup> Freeman [136] and [266].

<sup>141</sup> Freeman [280].





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- 4.63 The business model of Northern Territory corporate bookmakers is different from the businesses carried on by Tabcorp and Tatts and provides corporate bookmakers with a number of competitive advantages. For example:
- a relatively modest licence fee is payable on an annual basis for a non-exclusive licence, and the Northern Territory has capped the total wagering tax that it charges corporate bookmakers at \$575,000 in FY16;
  - corporate bookmakers licensed in the Northern Territory are permitted to take bets on a wider range of betting events compared with the merger parties;
  - unlike most gambling providers in Australia, corporate bookmakers are permitted to offer credit betting to customers, whereas Tabcorp's TAB businesses and Tatts are prohibited from doing so (credit betting refers to the practice of allowing customers to place wagers on credit, without the use of cash or credit cards, and settle the account at a later date); and
  - corporate bookmakers make only limited payments to the racing industry.<sup>142</sup>
- 4.64 Corporate bookmakers, who have doubled their turnover in the last five years, now command more than \$12 billion in national turnover (representing approximately 40% of the total wagering market).<sup>143</sup>
- 4.65 CrownBet has recently announced a 10-year agreement with ClubsNSW which provides (amongst other things) for CrownBet to facilitate online betting in over 1,000 clubs across New South Wales via an app for mobile phones and tablets. The proposal would also seek to expand CrownBet's loyalty scheme by allowing club patrons to redeem points earned on bets for offers at specific club venues, and see the installation of CrownBet terminals displaying racing and sports information and betting odds in participating venues.<sup>144</sup> Tabcorp is concerned that the CrownBet arrangements contravene the terms of Tabcorp's existing New South Wales exclusive retail licence and the legislative regime which supports that licence. It is considering its position in that regard.<sup>145</sup>
- 4.66 Further detail about the wagering industry, its participants and current trends is set out in section 7 below and in Annexure A.
- 2 Gaming systems and services**
- 4.67 Gaming relates to gambling via electronic gaming machines (EGMs).<sup>146</sup>
- 4.68 The Australian gaming industry includes various activities including:
- manufacture and development of EGMs and the various games played on them; and
  - the operation of EGMs at licensed venues (pubs, clubs and casinos) where patrons have the opportunity to play.
- 4.69 Neither of the merger parties participates in either of these activities and they have no relevance to the Tribunal's assessment of the proposed acquisition.
- 4.70 The Australian gaming industry also comprises the supply of the following services to licensed venues:

<sup>142</sup> Freeman [283], Cooke [58],[ 84] to [145(b)].

<sup>143</sup> Freeman [22].

<sup>144</sup> Freeman [262].

<sup>145</sup> Attenborough [119].

<sup>146</sup> Rytenskiid [116].



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- **gaming systems and related services:** which includes the supply of in-venue gaming system technology designed to assist the licensed venue operator to manage and enhance their EGM operation and to meet compliance obligations under their licence.<sup>147</sup> Related services may include assistance with financing, training, venue design and product advice, marketing and loyalty programs, compliance checking and adherence and other advice relating to the operation of a licensed venue.<sup>148</sup> More broadly, 'related services' may also include preventative and remedial repair and maintenance of EGMs or gaming systems (discussed further below);
- **monitoring services:** which includes monitoring EGMs to ensure that they are operating to legislated compliance standards, as well as for taxation and research purposes,<sup>149</sup> and
- **field services:** which includes preventative and remedial repair and maintenance.<sup>150</sup> Tabcorp generally regards 'field services' as referring only to repair and maintenance of EGMs, whilst Tatts uses the term to refer to repair and maintenance of EGMs and/or gaming systems.

4.71 The gaming systems and related services that are supplied by the merger parties are sometimes collectively referred to as 'in venue gaming systems and services', 'loyalty' or 'promotional and/or management systems and services'. These terms reflect the fact that the technology and services referred to are designed to assist the venue operator to manage, enhance and promote its gaming business. The terminology that has been adopted for the purposes of this Form S is 'gaming systems and related services'.

4.72 Gaming on EGMs is the most popular form of gambling in Australia with FY15 turnover of approximately \$136 billion and revenue of \$11.6 billion representing approximately 51% of total gambling expenditure in Australia.<sup>151</sup> Total expenditure by Australian consumers on EGMs rose by 4.9% from FY14 to FY15.<sup>152</sup>

4.73 EGMs are located in every State and mainland Territory of Australia. They are typically located in hotels, clubs and casinos, with the exception of Western Australia where EGMs are only allowed in Crown Perth Casino. The number of EGMs in Australia is capped in each State and Territory, with the exception of Western Australia where the cap was lifted in 2015.<sup>153</sup> There are approximately 186,000 EGMs in Australia of which approximately:

- 50% are in New South Wales;
- 23% are in Queensland;
- 14% are in Victoria;
- 6.5% are in South Australia;
- 2.5% are in the Australian Capital Territory;
- 2% are in Tasmania; and
- 1% is in each of Western Australia and the Northern Territory.<sup>154</sup>

<sup>147</sup> Rytenskild [130].

<sup>148</sup> Rytenskild [133].

<sup>149</sup> Rytenskild [124(d)].

<sup>150</sup> Rytenskild [124(e)].

<sup>151</sup> Rytenskild [116].

<sup>152</sup> Australian Gambling Statistics 1989-90 to 2014-15 (32<sup>nd</sup> edition), Summary Table F, page 6.

<sup>153</sup> Rytenskild [117].

<sup>154</sup> Makryllos [9].





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**Regulation of gaming industry**

- 4.74 The gaming industry is highly regulated under State and Territory legislation. Participants (including EGM manufacturers, operators and service providers) are generally required to hold an appropriate licence or approval to operate.<sup>155</sup> Relevant aspects of the regulatory regime applicable to the supply of gaming systems and related services in Victoria, New South Wales and Queensland are described below. These three States are the only geographic areas in which Tabcorp and Tatts overlap in relation to the gaming products and services described.
- 4.75 Regulation is mostly undertaken under the auspices of State or Territory governments including as follows:
- In Victoria, the gaming industry is regulated by the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**) under the *Gambling Regulation Act 2003* (Vic). The number of EGMs is currently capped at 30,000 of which a cap of 27,372 applies to clubs and hotels and a cap of 2,628 applies to the Crown casino in Melbourne.<sup>156</sup>
  - In New South Wales, gaming is regulated by Liquor and Gaming NSW pursuant to the *Gaming Machines Act 2001* (NSW) and the *Gaming Machines Regulation 2010* (NSW). The number of machines is currently capped at 99,000 and hotel venues are limited to not more than 30 EGMs.<sup>157</sup> The transfer of EGM entitlements and permits is also regulated.
  - In Queensland, gaming is regulated by the Office of Liquor and Gambling Regulation (**OGLR**) under the *Gaming Machine Act 1991* (Qld). Since 2011, the number of EGMs has been capped at 24,705 in clubs and 19,500 in hotels.<sup>158</sup> The re-allocation and transfer of EGM licences is also regulated.
- 4.76 Despite the high level of regulation, the ability to obtain a licence or approval to operate is not onerous or expensive, with the possible exception of Queensland which requires a more significant one-off licence fee but where the licence is typically granted for a 10-year period<sup>159</sup> and excepting also any fees that might be paid in relation to exclusive licences or rights (such as Maxgaming's exclusive monitoring rights in New South Wales).

**Victoria**

- 4.77 In Victoria, an entity wishing to supply EGMs or gaming systems must be listed on the Roll of Manufacturers, Suppliers and Testers, which is kept by the VCGLR.<sup>160</sup> This process requires collation and testing of information relating to the applicant and its officers and associates to satisfy probity, financial and other criteria.<sup>161</sup>
- 4.78 In Victoria, the VCGLR does not license providers of 'ancillary services' or venue management services. Accordingly, the following kinds of gaming services can be supplied without a licence:
- facilitating the purchase of EGMs e.g. through provision of finance;
  - player loyalty schemes; and

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<sup>155</sup> Rytenskiid [118], [120].

<sup>156</sup> Makryllos [8].

<sup>157</sup> Makryllos [8].

<sup>158</sup> Makryllos [8].

<sup>159</sup> Rytenskiid [128], Makryllos [109].

<sup>160</sup> Pursuant to Part 4 of the *Gaming Regulation Act 2003* (Vic), Rytenskiid [128].

<sup>161</sup> Rytenskiid [128].



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- marketing advice and venue promotions, venue design and staff training.<sup>162</sup>

*New South Wales*

- 4.79 In New South Wales, gaming services can be provided under an EGM dealer's licence, issued by the Independent Liquor and Gaming Authority (**ILGA**).<sup>163</sup> This licence allows the holder to:
- manufacture and assemble EGMs in or on the premises specified in the licence;
  - sell and negotiate the sale of approved EGMs (whether or not manufactured or assembled by the licensee); and
  - service, repair and maintain approved EGMs in or on the premises specified in the licence.<sup>164</sup>
- 4.80 Alternatively, services may be provided pursuant to an EGM seller's licence which allows the holder:
- (as an employee of the holder of a dealer's licence or seller's licence) to negotiate on behalf of the employer the sale of approved EGMs; and
  - to sell, as principal or agent, approved EGMs.<sup>165</sup>

*Queensland*

- 4.81 In Queensland there are various types of supplier licences including licences for licensed monitoring operators (LMOs), major dealers (manufacturers), secondary dealers and licensed testing facility operators.<sup>166</sup> To provide any services directly connected with EGMs, the provider must either be a LMO or partner with one. An LMO is permitted to:
- install, operate and modify a gaming related system and electronic monitoring system operating on licensed premises;
  - cause a gaming related system to be installed or operated;
  - obtain and be in possession of EGMs, linked jackpot equipment and restricted components;
  - sell or supply, on written order with the commissioner's written approval, EGMs to a LMO, an approved financier, a licensee or a gaming trainer;
  - sell or supply, on written order, gaming machines, linked jackpot equipment or restricted components to a person in another State or Territory or a country where possession of the EGMs, linked jackpot equipment or restricted components by that person is lawful; and
  - manufacture linked jackpot equipment.<sup>167</sup>
- 4.82 Licensed major dealers (manufacturers) are authorised to manufacture, sell and supply gaming machines, but not to cause a gaming related EGM or system to be installed or operated.<sup>168</sup>

**Types of gaming systems and services**

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<sup>162</sup> Rytenskiid [121].

<sup>163</sup> Under Part 7 of the *Gaming Machines Act 2001* (NSW).

<sup>164</sup> Rytenskiid [128(b)].

<sup>165</sup> <https://www.liquorandgaming.justice.nsw.gov.au/Pages/gaming/gaming-licences/gaming-related-licences.aspx>.

<sup>166</sup> *Gaming Machine Act 1991* (Qld), s112.

<sup>167</sup> Rytenskiid [128].

<sup>168</sup> Rytenskiid [128].

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*Gaming systems*

- 4.83 As described above, the supply of gaming systems refers to the supply of gaming technology to the operators of licensed venues. This technology comprises software and hardware which are designed to assist licensed venues to manage and enhance the operation of their EGMs, and to meet compliance obligations under licences.<sup>169</sup>
- 4.84 Gaming systems track, report on and allow for financial reconciliation of EGM activity. In addition, they often include:
- software which facilitates player loyalty programs and venue loyalty programs by producing and reading venue membership cards for players, and tracking and reporting on player activity facilitated by membership cards;
  - software allowing venues to market to and communicate with customers; and
  - voluntary pre-commitment (**VPC**) solutions, which are mandatory in Victoria and can also be provided separately from a gaming system or loyalty program in other States.<sup>170</sup>
- 4.85 Gaming systems typically comprise a core offering and a number of optional extras which may include:
- business intelligence software, which facilitates reporting and analysis of EGM activity, often as benchmarked against other venues;
  - cashless gaming solutions, including:
    - Ticket In Ticket Out (**TITO**) systems, which allow patrons, once they have finished playing a particular EGM, to print a ticket at the EGM and either use that ticket at another EGM or redeem it for cash at a venue cashier or cash redemption terminal; and
    - card-based gaming systems – a plastic card or token (which may also be a loyalty card) which is linked to an account. When the card is inserted into an EGM an amount is transferred from the account to the credit meter;
  - player kiosks, at which players may check their loyalty status; and
  - jackpot systems (either manufacturer-based jackpots unique to a particular manufacturer's EGMs, or generic jackpot systems that can link EGMs made by different manufacturers).<sup>171</sup>
- 4.86 In addition to (or independently from) the purchase of gaming systems, licensed EGM venue operators may purchase related services such as:
- financing for EGMs, EGM systems, or venue refurbishment or fit-out;
  - training on customer experience and venue regulatory compliance;
  - advice and assistance regarding venue design, refurbishment or fit-out;
  - advice on product selection and other components of venue operation; and
  - advice on marketing and loyalty activities, using the loyalty system to provide awards and other benefits for customers.<sup>172</sup>

*Field services*

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<sup>169</sup> Rytenskild [130].

<sup>170</sup> Rytenskild [130].

<sup>171</sup> Rytenskild [130].

<sup>172</sup> Rytenskild [133].



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4.87 As outlined above, Tabcorp uses the term 'field services' to describe preventative and remedial repair and maintenance of EGMs. By contrast, Tatts uses the term to include the repair and maintenance of gaming systems. Field services may be supplied as part of a package of 'related services' or they may be supplied by specialist entities as a standalone product. The different models applicable to the merger parties are described below.

*Monitoring services*

4.88 By regulation in every State and Territory except for the ACT,<sup>173</sup> every EGM must be monitored for integrity and taxation purposes. This service is supplied by a monitoring services provider (referred to as a 'monitor' in most States and in Queensland as a licensed monitoring operator or LMO).<sup>174</sup> EGMs operating in clubs and hotels are required to be connected to a central monitoring system (**CMS**) which is usually provided by the monitor/LMO.<sup>175</sup> The CMS gathers statistical data on each EGM in order to collate security and financial reports. The data collected is submitted to the relevant State or Territory gambling authority for regulatory and taxation purposes.<sup>176</sup>

4.89 In general, monitoring licences require monitors/LMOs to:

- track and authorise the location and movement of all EGMs;
- ensure venues use approved EGMs only;
- ensure the correct functioning of EGMs;
- calculate taxes payable by venues;
- account for payouts to players to ensure the minimum return to players;
- provide a terminal to the office of the regulator with unlimited access to EGM databases; and
- maintain an audit file which records all 'raw' data received from gaming venues.<sup>177</sup>

4.90 In Queensland, maintenance services or modifications for EGMs must be provided by an LMO, or a service provider on behalf of an LMO.<sup>178</sup> However, gaming and promotional management systems can be supplied and repaired or maintained by parties other than an LMO.

4.91 In Victoria, a monitor is not permitted to provide gaming and promotional management systems (other than VPC systems) or testing services.<sup>179</sup>

**Suppliers of gaming systems and services**

4.92 There are many suppliers of gaming systems and services across Victoria, New South Wales and Queensland and there is significant variation in the business models adopted by them.

*Tabcorp*

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<sup>173</sup> In the ACT, there is currently no centralised monitoring system. The ACT Gambling and Racing Commission is responsible for monitoring EGMs. In Western Australia, there are no EGMs outside casinos. The Crown Casino in Burswood self-monitors all of its EGMs and reports to the Gaming and Wagering Commission.

<sup>174</sup> Rytenskild [221], [228].

<sup>175</sup> Rytenskild [233].

<sup>176</sup> Rytenskild [226], Makryllos [16].

<sup>177</sup> Rytenskild [222].

<sup>178</sup> *Gaming Machine Act 1991* (Qld), Parts 4 and 5, Rytenskild [225].

<sup>179</sup> Rytenskild [225], [226] and [231].



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- 4.93 Tabcorp Gaming Solutions (**TGS**) provides a 'full service' offering to EGM venues in Victoria and New South Wales. TGS' full service includes certain gaming systems and related services as described below.<sup>180</sup> It does not include monitoring services, which are provided in Victoria exclusively by Intralot Gaming Services Pty Ltd (an entity unrelated to either of the merger parties)<sup>181</sup> and in New South Wales exclusively by Maxgaming NSW Pty Ltd (owned by Tatts).<sup>182</sup>
- 4.94 TGS does not manufacture its own gaming systems but re-supplies systems developed and manufactured by third parties as follows:
- in Victoria, TGS supplies a gaming system called 'IGT Advantage Club', under an agreement which is continuing but in respect of which TGS' exclusivity in relation to distribution of the product ended in February 2017. IGT Advantage Club is manufactured by global gaming company IGT which has a strong presence in Australia. IGT Advantage Club has a variety of functions, including financial reporting and reconciliation, player tracking and management, player loyalty programs, and voluntary pre-commitment;<sup>183</sup> and
  - in New South Wales, TGS supplies gaming systems manufactured by IGT, Intecq and Aristocrat.<sup>184</sup>
- 4.95 Gaming systems typically comprise a core offering and a number of 'optional extras'. Venues may choose to acquire one or more of the optional systems available, in addition to the core system supplied by TGS.<sup>185</sup>
- 4.96 In Victoria:
- core (or 'non-optional') components are supplied pursuant to a Gaming Services Agreement. At a high level, these include systems for financial reporting and reconciliation regarding EGM activity and performance;
  - VPC technology is mandatory and, accordingly, also forms part of the core offering;
  - in addition to these core components, venues can elect to receive systems and services which facilitate loyalty and membership programs and promotions management (under a Loyalty Program Agreement); and
  - Tabcorp also has a licence to use Tableau software. Venues can sub-licence this software from Tabcorp (at no cost) in order to access analytics regarding their gaming machine data.<sup>186</sup>
- 4.97 In NSW:
- similarly, core (or 'non-optional') components are supplied pursuant to a Gaming Services Agreement. At a high level, these include systems for financial reporting and reconciliation regarding EGM activity and performance;
  - in addition to these core components, venues can elect to receive systems and services which facilitate loyalty and membership programs and promotions management (under a Loyalty Program Agreement);

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<sup>180</sup> Rytenskiid [134].

<sup>181</sup> Rytenskiid [228], [233].

<sup>182</sup> Rytenskiid [228], Makryllos [25].

<sup>183</sup> Rytenskiid [137], [138], [186].

<sup>184</sup> Rytenskiid [142].

<sup>185</sup> Rytenskiid [140] and [141].

<sup>186</sup> Rytenskiid [137], [139], [140], [141] and [156].



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- Tabcorp has a licence to use Tableau software. Venues can sub-licence this software from Tabcorp (at no cost) in order to access analytics regarding their EGM data; and
  - venues may also elect to receive TITO hardware and software (supplied under a TITO Agreement). Tabcorp notes that, while this is optional for NSW venues, most venues' EGMs have this functionality.<sup>187</sup>
- 4.98 In addition to the supply of these gaming systems, TGS's full service offering includes the following related services:
- **EGM financing:** TGS offers finance to licensed venues, which involves re-supplying EGMs to venues for a daily fee. This generally involves TGS purchasing a venue's existing EGMs in the first instance, re-supplying the machines to the venue for a daily fee, and switching the machines and/or games on the machines out for new ones over time. Generally, around 20% to 25% of the EGMs in the venue are replaced each year, pursuant to the agreement with the venue. TGS may also provide funding in respect of capital expenditure on the venue's gaming business or in some instances, provide loans.
  - **EGM field services:** TGS arranges for servicing, repair and maintenance of the EGMs that TGS supplies to a venue. TGS only provides field services as part of its 'full service' offering and not as a standalone product.
  - **consultancy services:** TGS supplies other services and advice to venues, such as training and advice with respect to venue refurbishment, financing, marketing, and regulatory compliance.<sup>188</sup>
- 4.99 Intecq Limited (Intecq) operates gaming systems and related services businesses in Victoria and New South Wales (eBet) and a monitoring and related services business in Queensland (Odyssey). Intecq, which has been owned by Tabcorp since December 2016, owns and supplies the Metropolis gaming system, the core functions of which include:
- gaming data management, including financial reporting and reconciliation;
  - cashier functionality (e.g. to cash out winnings); and
  - loyalty program management.<sup>189</sup>
- 4.100 Intecq also provides a number of other related services that are facilitated by, or work in conjunction with, Metropolis. These services are optional (other than voluntary pre-commitment (**VPC**) technology, which is mandatory in Victoria) and include:
- Card IT: a card-based gaming solution which facilitates the movement of monies on and off an EGM through an issued card;
  - a ticket-based gaming solution (TITO): which facilitates the movement of monies on and off an EGM through bar-coded tickets;
  - 'Engage': which allows venues to send digital graphics directly to customers at the EGM. This may be used for marketing and promotional communications.;
  - 'Wager Exchange': which allows customers to earn non-cash redeemable bonus points which can be converted to gaming credits;

<sup>187</sup> Rytenskiid [139], [143], [144] and [156], Makryllos [24].

<sup>188</sup> Rytenskiid [135].

<sup>189</sup> Rytenskiid [147], [149], [151].





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- ‘Astute’ business intelligence services: which uses detailed data analytics to provide venues with reports (including graphical representations) regarding a range of issues including machine use, financial performance, membership, loyalty and promotions;
  - VPC technology (which is mandatory in Victoria); and
  - hardware: including the provision of player kiosks, computers and other hardware in conjunction with the systems and software described above.<sup>190</sup>
- 4.101 Through its eBET business in Victoria and New South Wales, Intecq provides maintenance and support of its own Metropolis system but not repair and maintenance of third party systems or EGMs.<sup>191</sup>
- 4.102 Through its Odyssey Gaming business, Intecq is an LMO in Queensland. It delivers systems and services (including an approved monitoring system called Sentinel) to approximately 20% of the EGMs in Queensland and field services, as that jurisdiction requires such services to be provided by an LMO. Odyssey has its own field services staff and also engages independent third party contractors.<sup>192</sup>
- 4.103 The ACCC has expressed a preliminary view that the proposed merger is likely to substantially lessen competition in Queensland for the supply of EGM monitoring and repair and maintenance services.<sup>193</sup> Should the Tribunal have the same concerns, Tabcorp is offering, as a condition of authorisation, an undertaking pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) to divest the Odyssey business.<sup>194</sup> A proposed undertaking is at Annexure E.

*Tatts*

- 4.104 Tatts’ gaming business unit, which operates under the brand ‘MAX’, comprises Maxgaming and Bytecraft.<sup>195</sup>
- 4.105 **Maxgaming** operates in Queensland, New South Wales, Victoria and the Northern Territory. Its core business is the supply of monitoring services for EGMs in Queensland, the Northern Territory and New South Wales (discussed below), but it also supplies gaming systems and related services.<sup>196</sup>
- 4.106 Maxgaming’s gaming systems and related services include:
- the ‘Wildcat’ system, which has financial reporting and reconciliation functions;
  - the ‘Cougar’ system, which has player tracking and player loyalty functions (Maxgaming currently provides loyalty programs to 350 venues in Australia);
  - cashless gaming solutions, including a TITO product ‘my ticket’, and a plastic card solution which has pre-commitment functionality (Queensland only);
  - the ‘MAXReports’ business intelligence program;
  - kiosks and cashier redemption equipment; and

<sup>190</sup> Rytenskiid [151], [164].

<sup>191</sup> Rytenskiid [153] and [154].

<sup>192</sup> Rytenskiid [153] and [154], [230] and [231], [270] and [271].

<sup>193</sup> ACCC, *Statement of Issues Tabcorp Holdings and Tatts Group – proposed merger*, 9 March 2017, [6].

<sup>194</sup> Rytenskiid [[289] to [298].

<sup>195</sup> Makryllos [55].

<sup>196</sup> <http://www.maxgaming.com.au/about.html#aboutus>, Cooke [17], Makryllos [57].





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- a 'State Wide Jackpot Service' in both Queensland and in New South Wales (under an exclusive licence (NSW only)).<sup>197</sup>
- 4.107 Maxgaming also provides monitoring services in the following jurisdictions:
- **Queensland:** Maxgaming monitors approximately 80% (approximately 34,000) of the EGMs in both licensed clubs and hotels;
  - **New South Wales:** Maxgaming is the exclusive supplier of monitoring services in New South Wales. Its current licence extends until 2017, but it has been granted a further exclusive licence until 2032; and
  - **Northern Territory:** Maxgaming holds a non-exclusive licence to provide monitoring services in the Northern Territory. Maxgaming is currently the only active LMO in the Northern Territory.<sup>198</sup>
- 4.108 In August 2016, Tatts announced that it was in discussion with Intralot SA (**Intralot**) in relation to a potential acquisition of Intralot's Australian and New Zealand businesses. Those businesses include Intralot Gaming Services Pty Ltd which has a 15 year exclusive licence to provide monitoring and pre-commitment services for all hotel and club EGMs in Victoria. This licence expires in 2027.<sup>199</sup> Tatts' discussions with Intralot have continued and, as at the date of this Form S, no binding agreement has been reached.<sup>200</sup>
- 4.109 **Bytecraft** specialises in the supply of EGM repair and maintenance services to venues in all States and Territories except for Tasmania and the Australian Capital Territory. In particular, it provides on-site maintenance, workshop repair, warehousing and distribution and help-desk services.<sup>201</sup>

*Other suppliers*

- 4.110 There are a number of other suppliers of gaming systems and services. These entities comprise specialist domestic businesses as well as large international gaming services companies including the following:
- Aristocrat Leisure Limited (**Aristocrat**);
  - Bally Technologies ANZ Pty Ltd (**Bally**), a subsidiary of Scientific Games Corporation (**SGS**);
  - Global Gaming Industries (**Global Gaming**);
  - IGT;
  - Konami Holdings Corporation (**Konami**);
  - Progressive Venue Services (**PVS**); and
  - Utopia Gaming Systems (**Utopia**), a wholly-owned subsidiary of The Banktech Group (**Banktech**).<sup>202</sup>
- 4.111 Further detail about these suppliers is set out in section 7 below.

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<sup>197</sup> Makryllos [57].

<sup>198</sup> Rytenskiid [232], Makryllos [24], [32], [35].

<sup>199</sup> Makryllos [39], [69].

<sup>200</sup> Cooke at [17].

<sup>201</sup> <http://www.bytecraft.com.au/index.html>, Makryllos [60].

<sup>202</sup> Rytenskiid [167] to [187], Makryllos [53].



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**3 Lotteries**

- 4.112 Lotteries are a chance-based activity in which a distinct set of numbers is randomly drawn from a larger set of numbers. A player with a combination of those numbers, chosen by the player or automatically, wins a prize.<sup>203</sup>
- 4.113 Since the cessation of its Victorian gaming business in August 2012, Tatts' lotteries operations have comprised its largest business unit.<sup>204</sup> Tabcorp does not carry on any lottery business.<sup>205</sup>
- 4.114 There are three categories of lottery games.<sup>206</sup>
- **Numbers games** (such as Lotto, 'Set for Life' and Pools) in which a player attempts to pick winning numbers that will be randomly drawn from a set of larger numbers (or, in the case of Pools, determined by the outcome of soccer games). The prize pool is split into divisions with division 1 offering the highest prize pool. The total prize pool is a percentage of ticket sales, and both this and the amount allocated to each division prescribed by legislation or game rules. The time gap between draws is generally a week or, in the case of Tatts' Set for Life game, a day.
  - **Instant lottery products** (sometimes known as 'scratch-its') in which a player scratches a purchased ticket to reveal symbols for a chance to win a pre-determined prize. The prize pool is a set percentage of the total value of the tickets printed for each game and the number and value of prizes varies per game.
  - **Draw lottery products** where a certain number of tickets are available for purchase and the draw occurs when they are all sold. Each ticket has a unique number and there are multiple, pre-determined prize levels.
- 4.115 Lottery operators are licensed at the State and Territory level. Tatts currently operates all public lotteries in each State and Territory except Western Australia where public lotteries are conducted by Lotterywest, an entity owned by the Western Australian government<sup>207</sup>
- 4.116 Tatts' lotteries licences are either exclusive pursuant to the terms of the licence (as is the case in Victoria, New South Wales and South Australia) or non-exclusive but Tatts is currently the sole licence holder within those jurisdictions (as is the case in Queensland, Tasmania, the Australian Capital Territory and the Northern Territory).<sup>208</sup> There are exceptions to Tatts' exclusivity which vary from State to State, including carve-outs for charitable lotteries and lotteries conducted by third parties which offer prizes below a certain monetary threshold.<sup>209</sup>
- 4.117 Lottery products are typically distributed through retail outlets such as newsagents and convenience stores. In addition, lottery tickets (excluding 'instant' lotteries) can be purchased online.<sup>210</sup>
- 4.118 Each State and Territory imposes a legislated minimum percentage of the entry fee which must be distributed back to players as prizes. A table setting out the minimum return to

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<sup>203</sup> Merwe [14] and [15].

<sup>204</sup> Merwe [22].

<sup>205</sup> Rytenschild [92].

<sup>206</sup> Merwe [15].

<sup>207</sup> Merwe [23] and [32].

<sup>208</sup> Merwe [32].

<sup>209</sup> Merwe [38].

<sup>210</sup> Merwe [17].



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player percentages in each jurisdiction in which Tatts operates, as well as the actual return to player percentages offered by Tatts in FY16, is in Annexure C.<sup>211</sup>

- 4.119 Whilst Tatts is the only lotteries licence holder, there is a range of other suppliers who resell Tatts' lottery products in Australia and also sell other lottery products. For example, Jumbo is an online lottery business listed on the ASX. Its flagship platform is OZLotteries.com, which sells official lottery tickets online, through its website and mobile app. Jumbo sells Tatts' lottery products through OZLotteries.com. It offers the majority of Tatts' lottery products (except Set for Life), as well as charity lotteries and German state lotteries products.<sup>212</sup>
- 4.120 In addition, lottery betting has recently evolved as a derivative lottery product. It involves a customer betting on the outcome of a lottery, instead of buying a ticket for an official lottery draw. These derivative lottery products are sometimes described as 'synthetic' lotteries.<sup>213</sup>
- 4.121 Lottoland holds a Northern Territory sports bookmaker licence to operate as a lottery betting operator and commenced its Northern Territory business in January 2016, offering customers an opportunity to bet on both Australian lotteries and on international lotteries.<sup>214</sup> Synthetic lottery operators do not pay the relevant State-based lottery licence fees, nor the lotteries taxes which are paid by Tatts and Lotterywest.<sup>215</sup>

**4 Keno**

- 4.122 Keno is a game of pure chance. In its standard form, 20 numbers are randomly drawn (generally electronically) out of numbers 1 to 80. Before the draw, a player:
- decides how many numbers they want to 'play' (20 numbers are drawn during a Keno game, but players do not have to play 20 numbers on their ticket);
  - selects their numbers and marks them on a ticket, or has their numbers randomly allocated; and
  - decides the amount of money they wish to spend per game, and how many games they want to play with the same set of numbers.<sup>216</sup>
- 4.123 A player wins if the numbers drawn match the numbers the player has selected on their ticket. The amount a player wins is determined by fixed rules and depends on several factors, including how many numbers the player has selected, how many of those numbers match the numbers drawn, and how much the player spent on the game. Publicised pay tables set out the prizes available for each product.<sup>217</sup>
- 4.124 In each relevant market in which Tabcorp supplies its Keno product, legislation prescribes a minimum percentage of Keno customer turnover that must be returned to players in the form of winnings. The precise 'return to player' or RTP percentage is a calculation based on statistical probability and approved by the relevant regulator. The RTPs applicable to Tabcorp's different Keno products are set out in **Annexure B, Part 1.2**.<sup>218</sup> In South Australia, legislation prescribes that the legislated minimum Return to Player Percentage

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<sup>211</sup> Merwe [28(h)].

<sup>212</sup> Merwe [50] and [53].

<sup>213</sup> Merwe 55], [56(a)] and [57].

<sup>214</sup> Merwe [55], [56(a)] and [75(a)].

<sup>215</sup> Merwe [76].

<sup>216</sup> Rytenskiid [19].

<sup>217</sup> Rytenskiid [20].

<sup>218</sup> Rytenskiid [31] and [32].



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for Keno games is 60%. In FY16, Tatts' Return to Player Percentage was **[HIGHLY confidential to Tatts]** [REDACTED].<sup>219</sup>

4.125 Internationally, Keno is widely played via EGMs and online.<sup>220</sup> However, in Australia the game is most often played by consumers as they enjoy a meal or a drink at a pub or club.<sup>221</sup> Tabcorp distributes its Keno products in pubs, clubs and TABs in Victoria, New South Wales, Queensland and the ACT.<sup>222</sup> The jackpot in Tabcorp's Keno games is pooled across these four jurisdictions.<sup>223</sup> Tabcorp is the only provider of Keno in retail outlets in Queensland, New South Wales, Victoria and the ACT, while Tatts is the only provider in retail outlets in South Australia.<sup>224</sup>

4.126 Several features of Tabcorp's offering of the game reflect the fact that it is designed to be played socially – for example, games are run approximately every three minutes, with relatively low prize money (current maximum is \$1 million plus jackpot in every State except New South Wales where the maximum is \$5 million plus jackpot), and the draws are shown on screens throughout the venue.<sup>225</sup> To play, players can either mark their selected numbers on a paper ticket (available in the venue) and take it to the venue operator, or use a self-service machine located within the venue.<sup>226</sup> In New South Wales only, Tabcorp has recently obtained regulatory approval to enable play via a player's phone or other mobile device as long as the player is within a licensed venue. (The app that enables this play is automatically disabled as soon as the device is taken outside the venue). The digital offer has now been introduced in a number of pilot venues in New South Wales.<sup>227</sup>

4.127 In South Australia only, Tatts' Keno games are sold alongside draw lottery and instant scratch games not only in licensed venues but in retail stores such as newsagencies, convenience stores, supermarkets and chemists.<sup>228</sup>

4.128 Tabcorp's ACT licence provides for online distribution of Keno. **[Confidential to Tabcorp]** [REDACTED] It is accessible in the ACT, Western Australia, South Australia, the Northern Territory and Tasmania. Tabcorp's online Keno offering currently represents approximately **[Confidential to Tabcorp]** [REDACTED] of Tabcorp's total Keno turnover.<sup>229</sup>

4.129 South Australian residents are able to create a Keno ACT account and purchase tickets to the Keno ACT games online. **[Confidential to Tabcorp]** [REDACTED]

<sup>219</sup> Merwe [115].

<sup>220</sup> Rytenskiid [42].

<sup>221</sup> Rytenskiid [45].

<sup>222</sup> Rytenskiid [72].

<sup>223</sup> Rytenskiid [54].

<sup>224</sup> Rytenskiid [78].

<sup>225</sup> Rytenskiid [47], [104].

<sup>226</sup> Rytenskiid [45].

<sup>227</sup> Rytenskiid [57] to [59].

<sup>228</sup> Merwe [68].

<sup>229</sup> Rytenskiid [81], [84].

<sup>230</sup> Rytenskiid [85].



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4.130 Table 4.3 below summarises the suppliers of Keno products in Australia and the current licensing arrangements.<sup>231</sup>

**Table 4.3: Keno suppliers in Australia**

State	Licensee	Expiry
ACT	Tabcorp	2064
NSW	Tabcorp / ClubKeno Holdings Pty (joint licensees)	2050
Northern Territory	Skycity and Lasseters	2031
Queensland	Tabcorp	2047
South Australia	Tatts (SA Lotteries)	Tatts has exclusive management rights of SA Lotteries until 2052
Tasmania	Federal Group	2023
Victoria <sup>232</sup>	Tabcorp	2022
Western Australia	Crown Perth	Operates in casino only

4.131 Tabcorp’s Victorian Keno licence expires in 2022. At this stage, there has been no indication from the Victorian government as to the process it may employ in relation to the next licence.<sup>233</sup> The Tasmanian Keno licence expires in 2023. There has been no statement from the Tasmanian government, other than a statement from the Tasmanian Treasurer proposing that a Joint Select Committee of both houses be formed to consider the structure of the gaming sector in Tasmania post-2023.<sup>234</sup>

4.132 Should the proposed merger proceed, Tabcorp does not consider that any public detriment is likely to result in relation to Keno or lotteries licences.<sup>235</sup>

<sup>231</sup> Rytenskiid [63].

<sup>232</sup> Note that Since 2015, Tatts has had an authorisation under its lotteries licence in Victoria to offer a Keno game with one draw per day, but has not sought to activate that authorisation to launch or market any Keno product merve [111], [134] to [137].

<sup>233</sup> Rytenskiid [88].

<sup>234</sup> Premier of Tasmania, *Ministerial statement on gaming* (17 March 2016) <[http://www.premier.tas.gov.au/releases/ministerial\\_statement\\_on\\_gaming?](http://www.premier.tas.gov.au/releases/ministerial_statement_on_gaming?)>.

<sup>235</sup> Pleatsikas [Section V.2.1], Menezes.



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**(b) Describe the area(s) of overlap in the operations of the Applicant and Target and any related bodies corporate (the merger parties) (See Direction 8 of this Form)**

**1 Wagering**

4.133 Tabcorp and Tatts have largely complementary wagering businesses, with no overlap in retail operations. They are the exclusive providers of wagering services in off-course retail venues (i.e. pubs and clubs and stand-alone agencies) in the respective States and Territories in which they operate.<sup>236</sup>

4.134 There is limited overlap between the merger parties in relation to online, phone and mobile wagering. This is because **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] wagering customers who wager through these channels choose to place bets with the party that is the local retail licensee in the State or Territory of the customer's domicile.<sup>237</sup> Specifically:

- approximately **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] of online and phone totalisator bets by customers in Victoria, New South Wales and the ACT are placed into Tabcorp tote pools<sup>238</sup> and approximately **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] of online and by phone totalisator bets customers in Queensland, South Australia, Tasmania and the Northern Territory are placed into the Tatts tote pool,<sup>239</sup> and
- of the fixed odds wagering placed with the merger parties, approximately **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] of the wagering turnover bet by customers in Victoria, New South Wales and the ACT is placed with Tabcorp and approximately **[HIGHLY Confidential to Tabcorp and Tatts]** [REDACTED] of the wagering turnover bet by customers in Queensland, South Australia, Tasmania and the Northern Territory is placed with Tatts.<sup>240</sup>

4.135 There is no overlap between Tabcorp and Tatts in relation to racing vision as Tatts does not acquire rights to license racing vision or supply racing vision; and there is no service or geographic area overlap between the merger parties in relation to radio broadcasts (other than online).<sup>241</sup> Further information regarding racing media is at section 18 below.

**2 Gaming systems and services**

4.136 Tabcorp does not carry on any gaming business in the Australian Capital Territory, the Northern Territory, South Australia or Western Australia and Tatts does not carry on any gaming business in Tasmania. Accordingly there is no overlap between the merger parties' gaming operations in those States and Territories.

4.137 There is limited overlap between the merger parties in relation to the supply to licensed venues of gaming systems and related services in each of Victoria, New South Wales and Queensland.

4.138 There is overlap between the merger parties in relation to the supply to licensed venues of field services in each of Victoria, New South Wales and Queensland.

4.139 In relation to monitoring services, there is no overlap between the merger parties in relation to the supply to licensed venues of monitoring services in New South Wales (in respect of which Tatts' business Maxgaming is the exclusive supplier) or in Victoria

<sup>236</sup> Attenborough [49], Cooke [105] to [106].

<sup>237</sup> Freeman [183], Smith [10.2], [212], [251].

<sup>238</sup> Smith [161].

<sup>239</sup> Smith [161].

<sup>240</sup> Smith [175].

<sup>241</sup> Freeman [225].



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(where neither of the merger parties provides monitoring services). However, there is overlap between the merger parties in relation to the supply of monitoring services in Queensland.

4.140 As outlined above, Tabcorp is offering to divest the Odyssey business if the Tribunal is concerned about this overlap and the proposed merger proceeds.

**3 Lotteries**

4.141 There is no overlap between the merger parties as Tabcorp does not provide lottery products in any State or Territory.<sup>242</sup>

**4 Keno**

4.142 There is no overlap between the merger parties' retail Keno operations. Tabcorp is the only provider of Keno in retail outlets in Queensland, New South Wales, Victoria and the ACT, while Tatts is the only provider in retail outlets in South Australia. The parties' retail businesses therefore do not overlap.<sup>243</sup>

4.143 Tabcorp's ACT licence allows it to distribute Keno products online. The only possible overlap between Tabcorp and Tatts which arises from this is in South Australia, where residents can access Tabcorp's online product. **[Confidential to Tabcorp]**

[Redacted]

. As such, any overlap is very limited.

4.144 **[Confidential to Tabcorp]** [Redacted]

**(c) Provide details of any acquisitions made by the merger parties and any other acquisitions made in the industry sector(s) during the past five years**

**Acquisitions by merger parties**

4.145 In 2011, Tatts agreed to purchase from the Tasmanian government the assets of Tote Tasmania and the Tasmanian gaming licence. The Tasmanian gaming licence was granted for an initial 50 years, renewable for a further 49 years. The acquisition of Tote Tasmania conferred the exclusive right to conduct retail wagering in Tasmania for a period of 15 years. The acquisition was completed in 2012.<sup>246</sup>

4.146 In August 2012, Tabcorp acquired NCSS Maintenance Services Pty Limited, an Australian field services business.<sup>247</sup>

4.147 In November 2013, the ACT government announced its intention to sell ACT TAB which conducts totalisator and fixed odds wagering, as well as Trackside and Keno, in the ACT. Following a competitive bidding process, Tabcorp was chosen as the successful bidder in 2014.<sup>248</sup>

<sup>242</sup>Rytenskild [92].

<sup>243</sup> Rytenskild [78].

<sup>244</sup> Rytenskild [85].

<sup>245</sup> Rytenskild [85].

<sup>246</sup> Tatts Group, *Tote Tasmania* (1 December 2011) <<http://www.asx.com.au/asx/statistics/displayAnnouncement.do?display=pdf&idsId=01248768>>.

<sup>247</sup> Mead [15].

<sup>248</sup> Mead [15].



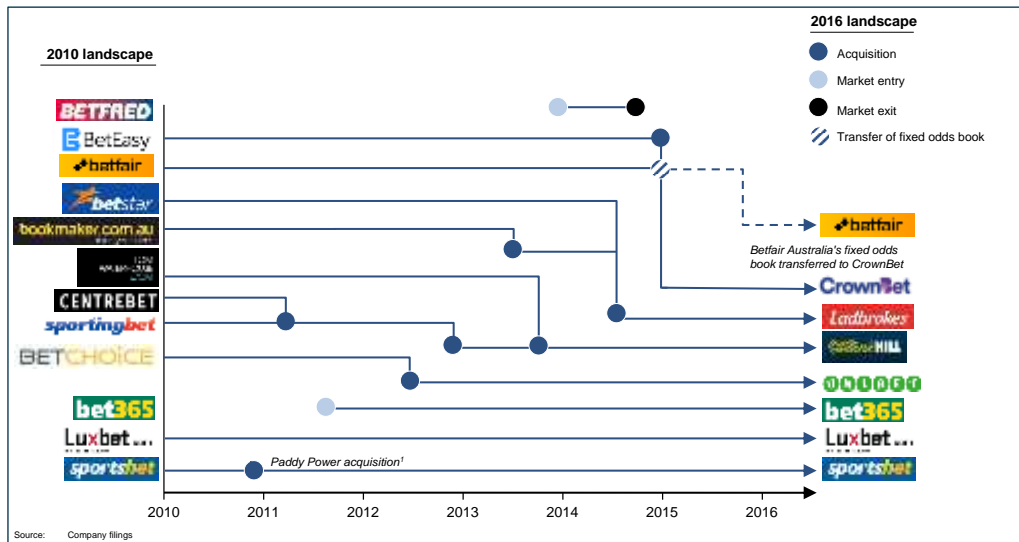
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- 4.148 In May 2015, Tabcorp acquired all the shares in OneTab Australia Pty Ltd and OneTab Holdings Pty Ltd. OneTab’s business comprised the operation of a mobile app relating to bar tab services.<sup>249</sup>
- 4.149 Tabcorp acquired Intecq Limited (**Intecq**) in December 2016. Intecq (which previously operated under the name eBet Limited) is a gaming technology and services company. Intecq operates two business divisions – eBet Gaming Services (which supplies gaming systems and related services in NSW, Victoria and Tasmania) and Odyssey Gaming (which is a LMO providing EGM monitoring services and gaming systems and related services in Queensland).<sup>250</sup>

**Acquisitions by other industry participants**

**1 Wagering**

- 4.150 Recently, there has been a consolidation of corporate bookmakers in Australia with a number of independent Australian corporate bookmakers being acquired by large, well-capitalised and well-established international wagering companies (including Sportsbet by Paddy Power; Sportingbet, Centrebet and tomwaterhouse.com by William Hill and Betstar by Ladbrokes). The Australian wagering market has been and continues to be aggressively targeted by global companies.<sup>251</sup>
- 4.151 The figure below summarises the entry and consolidation of corporate bookmakers in Australia since 2010.<sup>252</sup>



- 4.152 A summary of these acquisitions is as follows:
- In 2010 Paddy Power, an Irish listed betting company, acquired Australian corporate bookmaker SportsBet.<sup>253</sup>
  - In 2011 Sportingbet, a UK corporate bookmaker, acquired Australian corporate bookmaker Centrebet.<sup>254</sup>

<sup>249</sup> Mead [15].

<sup>250</sup> Rytenschild [147], [149].

<sup>251</sup> Freeman [280].

<sup>252</sup> Freeman [307].

<sup>253</sup> Freeman [20(a)].



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- In 2012 Unibet, a Swedish corporate bookmaker, acquired Betchoice, one of the leading independent corporate bookmakers offering racing and sports betting products in Australia.<sup>255</sup>
- William Hill, a British corporate bookmaker, acquired Australian corporate bookmaking brands Centrebet in 2011 and Tom Waterhouse in 2013.<sup>256</sup>
- Ladbrokes, a British corporate bookmaker, acquired Australian bookmaking brands Bookmaker.com.au in 2013, and Betstar in 2014.<sup>257</sup>
- In 2014 Crown Resorts, an Australian casino and resorts business, entered a joint venture with the corporate bookmaker BetEzy which gave Crown Resorts control of BetEzy's wagering operation, which it renamed CrownBet. CrownBet also acquired the whole of the betting exchange company Betfair, absorbing its fixed odds book into CrownBet's operations. Betfair Australia continues to operate as a standalone betting exchange, licensed in the Northern Territory.<sup>258</sup>

4.153 Further information in relation to these corporate bookmakers is at section 7 below.

### 2 Gaming systems and services

4.154 There have also been acquisitions in the gaming systems and services industry:

- Global Gaming Industries (an Australian provider of gaming systems and services) was acquired by The Banktech Group in June 2016;<sup>259</sup> and
- eBet acquired IDOL (Astute) (a provider of gaming business intelligence products in Victoria, New South Wales and Queensland) in March 2014 and Flexinet Gaming Systems (a provider of gaming systems in New South Wales) in July 2014. As described above, eBet (now known as Intecq) was acquired by Tabcorp in December 2016.<sup>260</sup>

### (d) Provide details of any existing vertical or horizontal relationships between the merger parties and related bodies corporate

#### 1 Wagering

4.155 There are contractual arrangements between the merger parties in relation to the supply by Tabcorp (through SkyRacing) of racing vision in States or Territories where Tatts conducts its retail wagering business. In summary:

- SkyRacing supplies its commercial service directly to licensed venues (pubs, clubs and TAB agencies) in Queensland, South Australia and the Northern Territory; and
- SkyRacing sub-licenses to Tatts the right for UBET to distribute the SkyRacing service to licensed venues in Tasmania and to agencies in Queensland, South Australia, the Northern Territory and Tasmania.<sup>261</sup> For standalone agencies or branches (i.e. not Pub TABs or Club TABs), Tatts contracts directly with Sky

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<sup>254</sup> Freeman [20(b)].

<sup>255</sup> Freeman [313(e)].

<sup>256</sup> Freeman [20(b)].

<sup>257</sup> Freeman [313(h)].

<sup>258</sup> Freeman [21] and [313(g)].

<sup>259</sup> Rytenskild [184] to [185].

<sup>260</sup> Rytenskild [262].

<sup>261</sup> Freeman [209].



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Channel Pty Ltd, a subsidiary of Tabcorp, to make racing vision available in those agencies.<sup>262</sup>

- 4.156 The merger parties are parties to an agreement for the distribution of Tabcorp's Keno products through Tatts' retail wagering outlets in Queensland. The agreement extends to 31 July 2017. If the merger proceeds, the agreement is likely to be terminated as the merged entity will now be in a position to supply Keno directly through the outlets referred to.<sup>263</sup>

**(e) Describe any other cooperative agreements to which any of the merger parties is a party (See Direction 9 of this Form)**

**1 Wagering**

- 4.157 The cooperative arrangements relating to Tabcorp's wagering business are described in the table at **Annexure B, Part 2.1**.

- 4.158 The cooperative agreements relating to Tatts' wagering business are described at **Annexure C, Part 2.1**.

**2 Keno and gaming systems and services (Tabcorp)**

- 4.159 Tabcorp is party to the following sponsorship agreements pursuant to which Tabcorp provides financial support to the counterparties, who agree to promote Tabcorp's products. Tabcorp expects these agreements to continue in accordance with their ordinary commercial terms following the merger.
- Sponsorship agreement with Community Clubs Association of Victoria. The terms of the agreement are currently being renegotiated for a further three-year term.
  - Marquee Partnership Agreement with Australian Hotels Association Victoria. The agreement is expressed to continue until the termination or expiry of Tabcorp's Victorian wagering and betting licence unless terminated earlier by the parties.
  - Anzac House Agreement with the Returned Services League of Australia (Victorian Branch) Inc. The term of this agreement is ten years.
  - Exclusive naming right sponsor agreement with Australasian Hospitality & Gaming Expo Pty Ltd. This agreement runs to August 2019.
  - A Keno Growth Bonus Agreement with Clubs Queensland. This agreement is re-negotiated each year.
  - ACT clubs silver agreement with Clubs ACT. This agreement expires in June 2018.
  - An agreement with Australian Hotels Association (NSW) in relation to the promotion of Keno and other products through incentives and commissions. This agreement expires in June 2022 in relation to all Keno products.
  - An agreement with ALH Group in relation to the distribution of Keno. The agreement will be substantially completed in FY17 except as to certain terms regarding price increases which extend to 1 July 2018.

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<sup>262</sup> Cooke [40].

<sup>263</sup> Rytenskiid [286] and [Table B of Tab 6 of AR-2].



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- An agreement with Spirit Hotels Group in relation to the distribution of Keno products in Spirit Hotels venues. The agreement will be substantially completed in FY17 but may be reviewed and re-negotiated in FY18.<sup>264</sup>
- 4.160 Tabcorp is party to a number of pooling agreements and related accession deeds which provide for the pooling of Keno jackpots in Victoria, New South Wales, Queensland and the Australian Capital Territory. There is no fixed term for these agreements which continue unless terminated according to their terms.<sup>265</sup>
- 4.161 Tabcorp is party to an agreement with ClubKeno Holdings Pty Ltd in relation to the day-to-day operation and management of Keno in New South Wales. The agreement extends to the term of Tabcorp's New South Wales Keno licence although its terms are currently being re-negotiated.<sup>266</sup>
- 4.162 Further detail regarding the arrangements listed at 4.159 to 4.161 above is set out in **Annexure B, Parts 2.2, 2.3(a) and 2.3(b)**.
- 4.163 Tabcorp's Keno product is distributed in Victoria, New South Wales, Queensland and the Australian Capital Territory through licensed venues which incur a daily connection fee (DCF). Tabcorp currently has distribution agreements in place with the peak bodies and venues in each of the jurisdictions referred to.<sup>267</sup> Tabcorp has a standard form agreement in relation to each jurisdiction. Details regarding the volumes (no. of venues, number of machines and annual DCF payments) associated with a range of distributors in each of the jurisdictions referred to are set out in **Annexure B, Part 2.3(c)**.<sup>268</sup>
- 4.164 Tabcorp has cooperative arrangements under which it supplies Keno equipment and software to parties who hold exclusive licences to operate a Keno business in the Northern Territory, Tasmania and at the Burswood casino in Perth. Details of the relevant agreements are set out in **Annexure B, Part 2.3(d)**.<sup>269</sup>
- 3 Lotteries, Keno and gaming (Tatts)**
- 4.165 There are no relevant cooperative agreements in relation to Tatts' gaming services business. Tatts is unable to provide any information in relation to lotteries or keno without the consent of third parties which has not been sought or obtained.

## 5 Market definition

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**Describe the market(s) (product, functional, geographic and time) relevant to the assessment of the acquisition's effect on competition – this includes markets for the supply of goods or services and markets for the acquisition of goods or services (the relevant market(s)) (See *Direction 10 of this Form*)**

### Overview of the relevant markets

- 5.1 The following markets are relevant to the assessment of the acquisition's effect on competition:

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<sup>264</sup> Rytenskild [286].

<sup>265</sup> Rytenskild [286].

<sup>266</sup> Rytenskild [65].

<sup>267</sup> Rytenskild [72].

<sup>268</sup> Rytenskild [73] and [74].

<sup>269</sup> Rytenskild [71].



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- a national market for the supply of wagering products;<sup>270</sup>
- State- and Territory-based markets for the supply of gaming systems and services to licensed gaming venues;<sup>271</sup>
- a national market for the supply of lottery products;<sup>272</sup> and
- State- and Territory-based markets for the supply of Keno products.<sup>273</sup>

**1 Wagering**

- 5.2 There is a national market in Australia for the supply to consumers of wagering on horse races and other sporting events.<sup>274</sup>
- 5.3 The product dimension of the wagering market comprises the wagering products of totalisator, fixed odds and tote derivative odds betting as well as wagering through a betting exchange.<sup>275</sup>
- 5.4 On the demand-side, the wagering products of totalisator, fixed odds and tote derivative odds all require the possession and processing of information which is relevant to winning wagers in the long run, and so share a key demand-side characteristic.<sup>276</sup> By comparison, there are fundamental differences in the demand side characteristics of wagering products (on the one hand) and lottery and Keno products (on the other hand) which distinguish lottery and Keno products from wagering. Wagering products enable users to apply some degree of skill in order to inform the wager. Although there is an element of chance in the activity, winning wagers is not entirely random over the long run. By contrast, lottery and Keno outcomes are entirely matters of chance.<sup>277</sup>
- 5.5 On the supply-side, operators that offer wagering products tend to offer all wagering classes, types and event products, with the exception of totalisator wagering products where the relevant State licensing regimes do not permit more than one retail totalisator operator in each jurisdiction. However, all three totalisator operators in Australia – Tabcorp, Tatts and RWWA – offer other types of wagering products in addition to totalisator wagering products. Moreover, corporate bookmakers, although they do not offer totalisator wagering products, offer other classes, types and events wagering products, including derivative tote products, and tend to hedge derivative tote products by participating in totalisator wagering.<sup>278</sup> This suggests strong supply-side substitutability between the various wagering products. The capability to offer one class or event or type of wagering product appears to enhance the ability to offer others. This is supported by the fact that many of the supply-side resources, such as expertise and telecommunications/internet infrastructure, are the same as between the different products.<sup>279</sup>
- 5.6 There is, however, no similar level of economies of scope in offering lottery and Keno products in addition to wagering products. For example, State lottery products are distributed in different venues from wagering products (i.e. lottery products are generally

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<sup>270</sup> Pleatsikas [96] to [106].

<sup>271</sup> Pleatsikas [116] to [120].

<sup>272</sup> Pleatsikas [107] to [110].

<sup>273</sup> Pleatsikas [111] to [115].

<sup>274</sup> Pleatsikas [96] to [106], and see also *Betfair Pty Ltd v Racing NSW* (2012) 249 CLR 217 at 282.

<sup>275</sup> Pleatsikas [96].

<sup>276</sup> Pleatsikas [99].

<sup>277</sup> Pleatsikas [97]-[98].

<sup>278</sup> Pleatsikas [100].

<sup>279</sup> Pleatsikas [101].



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purchased in newsagents and convenience stores, versus race tracks and specialised wagering outlets, although both can be purchased online). Keno products are largely purchased in pubs and clubs, as well as TABs. Wagering products also require a certain level of specialist supplier expertise, whereas, as pure chance based games, lottery and Keno do not. The lottery and Keno products are much more focused on maximising distribution channels and, by and large, target a different class of end customer. These facts also suggests a lack of close substitutability, and place lottery and Keno products in separate product markets from wagering.<sup>280</sup> The relevant markets for lottery and Keno are dealt with further below.

- 5.7 A relevant product market which includes close substitution between totalisator, fixed odds and tote derivative odds betting is also supported by a range of other facts which evidence close competition between these forms of wagering, including:
- the fact that the totalisator operators Tabcorp and Tatts have responded with new products to compete with corporate bookmakers who themselves do not provide totalisator wagering products;
  - the recent decline (in real terms) of totalisator wagering revenues at the same time as the volume for wagering revenues for fixed odds and other wagering products offered by corporate bookmakers have significantly increased; and
  - the actions taken by totalisators to establish corporate bookmaking capabilities (i.e. the launch of Luxbet by Tabcorp).<sup>281</sup>
- 5.8 Data of key industry trends also supports this product market indicating competition between totalisator products and tote derivative products, shifts from racing wagering to sports wagering, shifts from retail venue wagering to online wagering, shifts towards wagering with corporate bookmakers, and shifts from totalisator wagering to fixed odds wagering.<sup>282</sup>
- 5.9 It is possible that the wagering market could be divided into an international wagering market for large punters and a national wagering market for all other punters. There is a sound economic basis to support the view that there would be no significant impact on competition on any of the possible market formulations.<sup>283</sup>
- 5.10 The geographic extent of the wagering product market is national. Whilst State licensing for totalisator and other wagering products encompasses fixed State-based wagering totalisator products as well as an in-State retail footprint, it also encompasses products supplied nationwide over the telephone and internet. Additionally, licensing by other regimes, including the Northern Territory, also enables corporate bookmakers to supply wagering products online via telephone and the internet to customers across Australia. These nationwide product offerings are close substitutes for totalisator and State-specific wagering products. Moreover, the pooling of totalisator wagering across several States also supports the view that the wagering product market is at least interstate and likely nationwide.<sup>284</sup>
- 5.11 The relevant functional level of the wagering product market is the supply of wagering products to end customers. This is the functional market in which Tabcorp and Tatts compete with corporate bookmakers that supply similar products.<sup>285</sup>

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<sup>280</sup> Pleatsikas [107].

<sup>281</sup> Pleatsikas [102].

<sup>282</sup> Pleatsikas [103].

<sup>283</sup> Pleatsikas [126] and [160].

<sup>284</sup> Pleatsikas [104].

<sup>285</sup> Pleatsikas [105].





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5.12 Within the context of the national wagering product market, there are a number of other activities which may be relevant to the assessment of the proposed acquisition's effect on competition and which are addressed at various sections of this Form S. Pooling across State TABs, and potential bidding processes for totalisator and other licences, are referred to in section 4 above and in Annexure A. The acquisition and distribution of racing media rights is addressed in section 18 below.

**2 Gaming systems and services**

5.13 It is likely that there are State- and Territory-based markets for the supply of gaming systems and services to licensed gaming venues.<sup>286</sup>

5.14 In relation to product dimension, and subject to consideration of State- and Territory-based licensing requirements, supply-side substitutability and economies of scope in provision of the various gaming systems and services, including field services and monitoring services, provide some support for the conclusion that there is a single product market for non-manufacturing 'ancillary' gaming services, which would include the supply of gaming systems and related services, field services and monitoring.<sup>287</sup> However, given the variation in services provided, and the different bundling of those services from State to State, reflective of separate and non-uniform licensing regimes, the precise scope of these product markets may even vary from State to State.<sup>288</sup>

5.15 The overlap and variation between the services offered by different suppliers is driven in part by regulatory factors (e.g. Victoria has segregated monitoring and other services, whilst monitors in Queensland are responsible for the provision of field services) and by the different capabilities and business models of suppliers as well as the demands of licensed venues.

5.16 In order to assess the competition effects of the proposed merger, it is relevant to consider the merger parties' areas of product overlap and potential offerings of competitors that may be considered as substitutes. For these reasons, Tabcorp considers that, within the broader product market in which gaming systems and services are provided, it is relevant to consider the following activities:

- gaming systems and related services;
- monitoring services; and
- field services.

5.17 In relation to the geographic dimension, as described in section 4 above, the gaming industry in Australia is regulated by State and Territory governments and different licensing or registration regimes apply in each jurisdiction in which suppliers operate. The regulatory regimes are not uniform, and offerings permitted (or mandated) in some jurisdictions are censured in others. For example:

- under Queensland legislation, maintenance services or modifications for EGMs or gaming systems must be provided by an LMO, or a licensed service provider on behalf of an LMO;<sup>289</sup>
- under Victorian legislation, a monitor may not be permitted to provide other gaming services within the State;<sup>290</sup>

<sup>286</sup> Pleatsikas [116] to [120].

<sup>287</sup> Pleatsikas [116].

<sup>288</sup> Pleatsikas [117].

<sup>289</sup> *Gaming Machine Act 1991* (Qld), Parts 4 and 5, Rytenskild [255].

<sup>290</sup> Rytenskild [233].





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- the ACT does not mandate monitoring through a central monitoring system,<sup>291</sup> and
- VPC systems are mandatory in Victoria but not in other States or Territories.<sup>292</sup>

5.18 For these reasons, Tabcorp considers that the relevant geographic markets for the supply of gaming systems and services to licensed venues are State- or Territory-based, with the relevant functional market being the provision of the relevant gaming systems and services to the operators of licensed gaming venues.<sup>293</sup>

5.19 As the overlap between the merger parties is limited to gaming activities in Victoria, New South Wales and Queensland, the responses in the remainder of this Form S are directed towards those specific geographic markets.

5.20 In relation to the time dimension, there is no industry norm. The different factors that affect switching are addressed in section 10 below.

### 3 Lotteries

5.21 There is a national market for the supply of lottery products to end users (consumers).<sup>294</sup>

5.22 Lottery products are licensed by the individual State and Territories. As set out above, Tatts is the only non-government entity in Australia that is licensed to conduct public lotteries (excluding charity-run lotteries and lotteries that offer prize money below a certain threshold).<sup>295</sup> However, there are other providers who also supply derivative or 'synthetic' lottery products under the Northern Territory bookmakers licensing regime which licenses 'lottery betting'.<sup>296</sup> These suppliers allow customers to bet on the outcome of a lottery (such as Lottoland) or on the outcome of other, equally random outcomes, like the decimal point of the temperature in each Australian capital at noon (such as Weather Lottery).<sup>297</sup> Whilst the extent of actual substitution currently taking place between traditional lottery products and synthetic lottery products is unclear, both products have the same key demand side characteristic of chance.

5.23 As set out above, lottery products are games of pure chance, and are distinguishable from wagering, which requires an element of skill. Whilst Keno is also a game of chance, it is also distinguishable from lottery products by their different distribution channels and the frequency of the games (a few minutes for Keno as compared with weekly for many lottery products), as well as the differing sizes of the price pools (usually being usually much lower for Keno).<sup>298</sup>

5.24 Tabcorp's Trackside product is not substitutable for and does not compete with Tatts' public lottery offerings. As described above, Trackside is a game that is played only in licensed venues. Although it is a game of chance, it is designed as an interactive game to appeal to customers who are interested in racing. The prizes offered by Trackside are significantly smaller than those offered by Tatts' lotteries. Trackside is licensed as a wagering product in Victoria and New South Wales (and as a lottery product in the Australian Capital Territory).

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<sup>291</sup> Rytenschild [228]

<sup>292</sup> Rytenschild [130].

<sup>293</sup> Pleatsikas [119].

<sup>294</sup> Pleatsikas [109] and [110].

<sup>295</sup> Merwe [32] and [38].

<sup>296</sup> Merwe [55] and [57].

<sup>297</sup> Merwe [56].

<sup>298</sup> Pleatsikas [107].



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- 5.25 These facts combined suggest a product dimension of lottery products which may or not include synthetic lottery products which, for the purpose of assessing the competitive impact of the proposed acquisition in respect of the market for lottery products, is of little consequence.
- 5.26 Whilst the State-based licensing regime might be consistent with a State-based geographic market (given that the specific details of the lottery and the prize money available to winners can differ from State to State), there are a number of other facts that are suggestive of a national approach to lotteries.
- 5.27 Although Tatts' lotteries business relies predominantly on retail distribution, customers who register for an account with the relevant Tatts subsidiary also have an opportunity to purchase tickets online.<sup>299</sup> Further, a number of lottery products operate on a national basis through lottery blocs, in which each bloc member sells entries into the relevant lottery draw and contributes an agreed percentage of revenue received to the combined prize for the relevant draw.<sup>300</sup> This national pooling of prize money is also suggestive of a national product market.
- 5.28 In addition, suppliers of synthetic lottery products offer online betting on the outcome of various national and international lotteries, as well as broader events such as the weather lottery. To the extent these products provide an alternative to traditional lottery products (which seems likely, if not now then sometime in the near future, given the trend towards online betting), this would also support a broader geographic market.
- 5.29 Notwithstanding the separate State and Territory based licensing regimes, the above features, and the evident economies of scale in the provision of lottery products, are consistent with the view that there is a national market for the supply of lottery products, with the relevant functional market being the supply of lottery products to end users.<sup>301</sup>

**4 Keno**

- 5.30 There are State- and Territory-based markets for the supply of Keno to end users.<sup>302</sup>
- 5.31 As set out above, Keno is a game of chance, not a close substitute for wagering products. Keno is distinguishable from lottery products for the reasons set out above, as well as the fact that Tatts offers Keno products in South Australia only (and there in a form that is unique in Australia) which suggests that economies of scope between Keno and lottery products are not significant and is consistent with the view that these products are not close substitutes in terms of supply-side substitutability.<sup>303</sup>
- 5.32 In terms of the geographic dimension of the market, Keno products are licensed and offered to end consumers on a State-by-State basis. Whilst Tabcorp's ACT licence also authorises it to offer Keno products online throughout Australia, **[Confidential to Tabcorp]** [REDACTED] This suggests State- and Territory-based markets.
- 5.33 For similar reasons to those set out above in relation to lottery products, Trackside is not substitutable for and does not compete with Tabcorp and Tatt's Keno offering. In any event, given the small size of Tatts' Keno business, and the fact that Trackside is already owned by Tabcorp, whether or not the two products are substitutes is unlikely to be of

<sup>299</sup> Merwe [45].

<sup>300</sup> Merwe [39].

<sup>301</sup> Pleatsikas [110].

<sup>302</sup> Pleatsikas [110].

<sup>303</sup> Pleatsikas [113].

<sup>304</sup> Pleatsikas [115]; Rytenskild [81], [83].



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any consequence to the competition assessment of this market for the purposes of the proposed acquisition.

- 5.34 For these reasons, the Keno product is not a close substitute for any of the wagering, lotteries or Trackside products referred to, and the largely retail nature of Keno product distribution pursuant to exclusive State licence arrangements suggests State- and Territory-based markets, where the relevant functional market is the supply of Keno products to end consumer.<sup>305</sup>

## 6 Suppliers

- (a) Describe the inputs into the production of goods or services by each of the merger parties in the relevant market(s) and indicate the value of those inputs as a proportion of total production. Where alternative inputs are available, provide a list of substitutes

### 1 Wagering

- 6.1 The inputs (both internal and external) into the production of Tabcorp’s wagering products in Australia and the value of those inputs as a proportion of total production in FY16 are described in table 6.1 below. Further detail is provided in **Annexure B, Part 3**. The values set out in **Annexure B, Part 3.1** reflect Tabcorp’s wagering operations and wagering’s allocated share of central costs. The table and annexure have been prepared on a consistent basis with Tabcorp’s reported financial statements and accounting policies, therefore includes only Tabcorp’s share of joint venture arrangements, to which Tabcorp is party.<sup>306</sup>

**Table 6.1 - Tabcorp wagering inputs – [Confidential to Tabcorp]**

Tabcorp wagering – input description	Proportion of total
Racing industry fees (including sports body fees, racing industry product fees, racing program/marketing fees and wagering incentive fees)	
Government wagering taxes, levies and GST	
Distribution (venue commission)	
Race fields information	
Advertising and promotions (including sponsorships and bonus bets)	
Employees (including salaries, on-costs, allowances/FBT, bonuses and training)	
Wagering licences (amortisation expense)	
Racing information services (including Sky vision, odds information and newspaper form guides)	
Computer/IT and technology support	
General corporate overheads (including insurance, legal,	

<sup>305</sup> Pleatsikas [116].

<sup>306</sup> Johnston [135].



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travel and entertainment)	
Property (including retail leases and repair and maintenance cost associated with call centre owned by Tabcorp)	
Wagering system (amortisation expense)	
Communications (including phone, raceday broadcasting line charges)	
Retail network support and maintenance	
Venue operation (including betting tickets, cash pick-up and delivery)	
<b>Total</b>	

6.2 The third party inputs in the production of Tatts' wagering products in Australia and the value of those inputs as a proportion of total production are described in table 6.2 below. Further detail is provided in Annexure C.<sup>307</sup>

**Table 6.2 – Tatts' wagering inputs – [Confidential to Tatts]**

<b>Tatts wagering – input description</b>	<b>Proportion of total</b>
Racing industry fees (including racing industry product fees for Queensland, South Australia and NT and sports body fees)	
Agency services to host retail wagering outlet in retail outlet, hotel, pub or licensed club	
Race fields information (domestic and international)	
Wagering licence fees and State taxes	
Supply of Sky Channel vision	
Advertising and production services, and advertising space to display racing information (e.g. form guides) in newspapers	
Property (including lease costs associated with retail venues)	
Communications services	
Other venue operating expenses (including betting tickets)	

6.3 The information regarding inputs set out in the tables above and in **Annexure B** and **Annexure C** has been derived from the merged parties' respective financial records and should be read together with the comments below.

6.4 **Racing program:** As described in section 4 above, wagering on racing requires there to be a program of racing events. Other events can also be the subject of wagering, and

<sup>307</sup> Tucker [16] and [17].



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details regarding the substitutability of sporting events are also provided in section 4. Both of the merger parties contribute financially to the Australian racing program through the payment of racing industry fees pursuant to a series of agreements with racing industry bodies.<sup>308</sup> These payments are not required to be made by corporate bookmakers who carry on business pursuant to a Northern Territory licence.

- 6.5 **Race field fees and sporting body fees:** Each State and Territory (or its racing industry) charges wagering operators (the merger parties and corporate bookmakers) fees for the use of race fields information.<sup>309</sup> Operators that wish to offer wagering in relation to certain other sporting events must pay fees to the relevant sporting body.<sup>310</sup> Both of the merger parties pay race field fees and sporting body fees, as do corporate bookmakers.<sup>311</sup> There is no substitute for these supplies if the wagering operator wishes to offer wagering in relation to racing and sporting events.
- 6.6 **Distribution costs:** A wagering operator who carries on a retail wagering business requires a retail distribution network and/or agency arrangements with retail distributors. Each of the merger parties supplies wagering products via agencies and licensed venues (in respect of which property (leasing) expenses and **commission** are paid). The merger parties also incur expenses relating to the **operation of retail venues** such as the production and printing of betting tickets.<sup>312</sup> There is no substitution for these products and services in respect of a retail wagering business. However, the conduct of a wagering business via digital or phone channels does not require these inputs.
- 6.7 **Wagering licence:** The conduct of a wagering business in each Australian State and Territory requires a licence issued by the authority of a relevant government. In relation to Tabcorp, the value indicated in the table and **Annexure B, Part 3.1** represents an amortisation expense for FY16 in respect of its Victorian, New South Wales and ACT licences, on the basis that the capital cost of the licence is amortised over its term, and an annual fee of \$23,000 payable in respect of the Northern Territory licence held by Luxbet. The figure in the Tatts table above represents Tatts' actual spend on licence fees and wagering taxes in FY16 (including any fees that represent part of the capital cost of the licence but are paid by instalment rather than at the beginning of the licence's term).
- 6.8 **Advertising, marketing and promotions:** Each of the merger parties engages in advertising, marketing and promotional activities. These activities involve the supply of professional services (consulting and production services), promotions (including bonus bets), advertising campaigns and sponsorships.<sup>313</sup> Both parties also contribute to the preparation and publication of form guides (including placement in print media) in order to facilitate wagering by customers.<sup>314</sup> The extent and form of advertising, marketing and promotions undertaken by wagering operators may vary and services are provided by multiple suppliers including major television and print media companies.
- 6.9 **Betting software:** Wagering operations may require betting software to assist (amongst other things) in the processing of betting information including odds, and the handling and analysis of customer and betting data. Wagering operators may also subscribe to **odds information services**. The kind and extent of software and odds information required will

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<sup>308</sup> Freeman [229] – [234]; Cooke [65].

<sup>309</sup> Freeman [235].

<sup>310</sup> Freeman [238].

<sup>311</sup> Freeman [228], [284(d)]; Cooke [63] – [64].

<sup>312</sup> Freeman [240]; Cooke [25].

<sup>313</sup> Freeman [316]. Cooke [153(g)(i)].

<sup>314</sup> Freeman [87].



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vary depending on the kind and scale of the wagering operator’s business (e.g. whether it includes a retail or totalisator business or pooling).<sup>315</sup>

- 6.10 **Communication and IT:** Both retail wagering operations and digital or phone wagering operations require access to communications services (telephone and data) and computer technology. There is no substitute for these services but they are widely available from commercial suppliers (e.g. Telstra).
- 6.11 **Sky Channel:** The retail wagering operations carried on by both merger parties involve the supply of racing media services by Tabcorp and under sub-licence by Tatts to retail outlets. Sky Channel provides vision coverage of all races in relation to which Tabcorp and Tatts offer wagering.<sup>316</sup> There are other suppliers of racing vision (e.g. Racing.com and Channel 7’s free-to-air services) whose coverage is not as comprehensive.<sup>317</sup>
- 6.12 **Employees and general corporate overheads:** The merger parties employ staff and incur various general corporate overheads (relating to insurance, legal services, head office property expenses and other matters) in their wagering operations. These cost are substantially generic in nature and might be supplied by a range of alternative providers.

**2 Gaming systems and services**

- 6.13 The inputs in the supply of Tabcorp’s gaming systems and services and the value of those inputs as a proportion of total production are described in tables 6.3 to 6.5 below.<sup>318</sup> Tabcorp’s subsidiaries TGS and Intecq operate different business models, and Intecq’s Queensland business (which includes monitoring) is different from its Victorian and New South Wales businesses. For these reasons, separate tables are provided in relation to each. Further detail is provided in **Annexure B, Part 3.2**.

**Table 6.3 - Tabcorp (TGS) gaming inputs – [Confidential to Tabcorp]**

TGS – input description	Proportion of total	
Capital cost of EGMs and systems supplied and infrastructure (depreciation and amortisation expense)	100%	
Advertising and promotion (cost of media, related production costs and sponsorships)		
Field services (including external technical agent network engaged to service regional venues, and freight, logistics and warehousing)		
Employees (including salaries, wages and on-costs)		
Share of corporate overheads and miscellaneous costs		
Technical services		
System licence and monitor fees		
Property costs		
<b>Total</b>		<b>100%</b>

**Table 6.4 - Tabcorp (Intecq/Odyssey) gaming inputs – [Confidential to Tabcorp]**

<sup>315</sup> Freeman [330]; Cooke [34].

<sup>316</sup> Freeman [205] – [207].

<sup>317</sup> Freeman [219].

<sup>318</sup> Rytenskiid [287].



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<b>Intecq (Odyssey – Queensland) – input description</b>	<b>Proportion of total</b>
Employees (including on-costs)	
Recurring licence fees relating to use of Metropolis, Sentinel and other systems	
Support services (including contracted labour costs charged on a call basis)	
In-venue gaming and monitoring systems hardware in the field and leasehold improvements (included on basis of depreciation cost)	
Travel and accommodation (including motor vehicle expenses)	
Hardware (including computer equipment, cash redemption terminals, kiosks and printers)	
Miscellaneous cost of sales (including freight and provision for stock obsolescence)	
Rent and on-costs	
Web reporting and monitoring licences (for which fees are charged by Astute and eBet)	
Corporate head office (including bank charges, insurance, legal fees, printing, postage and stationery)	
Advertising, marketing, promotions and trade shows	
Monitoring licence fee (amortisation expense)	
Telephone services	
Computers, third party software (including applications, anti-virus software and other systems, testing) and other IT expenses	
<b>Total</b>	<b>100%</b>

**Table 6.5 - Tabcorp (Intecq/eBet) gaming inputs – [Confidential to Tabcorp]**

<b>Intecq (eBet Victoria and Queensland) – input description</b>	<b>Proportion of total</b>
Employees (including on-costs)	
eBet hardware (including Engage, IGMI, TIKIT+, GMI and Compass systems)	
Hardware (including computer equipment, cash redemption terminals, kiosks and point-of-sale)	
Support services (including contracted maintenance labour costs charged on a call basis)	
Depreciation and amortisation (in-venue systems hardware in the field, normal leasehold improvements)	
Corporate head office (including bank charges,	





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insurance, legal fees, printing, postage and stationery)	
Rent and on-costs	
Travel and accommodation (including motor vehicle expenses)	
Third party software (including anti-virus, database)	
Installation (Intecq staff and third party installers)	
Miscellaneous cost of sales (including freight and provision for stock obsolescence)	
Advertising, marketing and promotions (including trade shows)	
Telephone services	
Computers/IT	
Licence fees and permits	
Recurring licence fees (including Breakaway)	
Training (training systems users, including travel and accommodation costs)	
Systems compliance testing	
eBet software (including Sentinel)	
Miscellaneous (EGM spare parts, EGM compliance and testing, equipment hire, subscriptions and journals)	
<b>Total</b>	<b>100%</b>

6.14 The inputs in the supply of Tatts' gaming systems and services and the value of those inputs as a proportion of total production are described in table 6.6 below. Further detail is provided in **Annexure C**.

**Table 6.6 – Tatts gaming systems and services inputs – [Confidential to Tatts]**

<b>Tatts gaming systems and services – input description</b>	<b>Proportion of total</b>
Communications services (telephone etc)	
General expenses (e.g. travel, entertainment, training, motor vehicles, trade-marks, consultants, storage, office expenses, insurance etc)	
Participation fee plus cash redemption terminals on-supplied by Tatts to individual venues	
Property related services (rent, electricity, repairs, cleaning)	
Marketing & promotional services	
Loyalty programs on-supplied by Tatts to individual	



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venues	
Maxi Gold software	
Licence of IP related to specific wide area jackpots	
EZYBREAK software licence	

- 6.15 **Licence:** Many aspects of the gaming systems and services business in the relevant markets require a relevant licence. The cost of a relevant licence may involve an application fee and/or an annual fee for maintaining the licence. These fees (set out in section 13 below) are relatively modest and generally account for less than 1% of the total value of inputs.<sup>319</sup>
- 6.16 **EGMs:** TGS' 'full service offering' involves the supply of EGMs to licensed venues which TGS finances. Prices range between \$18,000 and \$28,000 depending on the machine and may be purchased from a range of suppliers including Ainsworth, Aristocrat, Bally, IGT and Konami.<sup>320</sup> The value of this input set out in **Annexure B, Part 3.2** reflects TGS' depreciation expense for FY16 in relation to EGMs rather than an acquisition cost. A supplier whose business model does not involve the supply of EGMs does not need to purchase EGMs.
- 6.17 **Systems:** TGS' full service offering requires it to pay licence fees relating to the use of the intellectual property in the third party systems it supplies. Intecq/Odyssey similarly pays a licence fee in relation to the supply of certain systems. A supplier which does not manufacture its own system needs to purchase systems from a third party and a number of alternative systems suppliers exist including IGT, Konami and others referred to in section 7 below. The value of this input set out in **Annexure B, Part 3.2** is reflected in both the licence fee and in the depreciation expense.
- 6.18 **Advertising, marketing and promotions:** Each of the merger parties engages in advertising, marketing and promotional activities. These activities involve the supply of professional services (consulting and production services), promotions (including trade shows) and sponsorships. The extent and form of advertising, marketing and promotions undertaken by wagering operators may vary and there are various suppliers.
- 6.19 **Technical and field services:** Both of the merger parties rely on technical support and field services (field technicians who provide repair and maintenance services) from within their respective corporate groups. A number of alternative suppliers of these services compete against the merger parties including those identified in section 7 below. The provision of field services also entails travel and accommodation costs which are also generic and for which multiple suppliers exist.
- 6.20 **Property and head office:** Both merger parties incur costs relating to premises and various corporate head office items (such as insurance, legal services and other services). These items are generic in nature and alternative suppliers are available.

**3 Lotteries**

- 6.21 The third party inputs in the production of Tatts' lottery products and the value of those inputs as a proportion of total production are described in table 6.7 below. Further detail is provided in **Annexure C**.<sup>321</sup>
- 6.22 Tatts' lotteries business unit oversees the operation of both Tatts' lotteries products and Keno products and, in some instances, Tatts' expenditure on input/s in FY2016 was

<sup>319</sup> Rytenskild [128], [217].

<sup>320</sup> Rytenskild [287].

<sup>321</sup> Merwe [28(a)].



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incurred in respect of both products. In those instances, Tatts has estimated its expenditure (as between lotteries products and Keno products) by reference to the proportion of overall revenue of Tatts' lotteries business unit in FY16 which was attributable to Tatts' Keno products, being **[HIGHLY confidential to Tatts]** (Estimate).<sup>322</sup>

**Table 6.7 – Tatts lotteries inputs – [HIGHLY confidential to Tatts]**

Tatts lotteries – input description	Proportion of total
Lottery licences and State/Territory taxes (Victoria, New South Wales, Queensland, South Australia, Tasmania, ACT and Northern Territory)	
Distribution (being hosting of products in newsagencies, convenience stores, supermarkets, chemist and other venues that host Tatts' lottery products)	
Advertising, media and production services	
Telecommunications services	
Instant tickets	
Market research	
Freight	
Prize cheque banking services	
Terminal consumables (including thermal rolls, coupons, player card forms)	
Draw/Bloc Administration	

6.23 In relation to these supplies:

- The conduct of Tatts' lotteries business required a relevant licence in each of the jurisdictions referred to.
- The retail distribution of Tatts' lottery products requires a retail distribution network, which may comprise newsagencies, convenience stores, supermarkets, chemists and small businesses.
- Other inputs such as advertising, telecommunications, freight and banking services are generic and available from multiple commercial suppliers.

**4 Keno**

6.24 The inputs in the supply of Tabcorp's Keno products and the value of those inputs as a proportion of total production are described in table 6.8 below.<sup>323</sup> Further detail is provided in **Annexure B, Part 3.3**.

**Table 6.8 – Tabcorp Keno inputs – [HIGHLY Confidential to Tabcorp]**

Tabcorp Keno – input description	Proportion of total
Capital assets including in-venue infrastructure, terminals, signage, cabling and processors, and	

<sup>322</sup> Merwe [30].

<sup>323</sup> Rytenskiid, [76].



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software development (included as depreciation expense)	
Employees (including salaries, wages and on-costs)	
Support, maintenance and other technical services (value on basis of transfer pricing)	
Advertising and promotions (cost of media and related production costs)	
Share of corporate overheads and other miscellaneous costs	
Field services	
Licence (amortisation of upfront fee or annuity over term of licence)	
Communications	
Venue operation	
Property (including lease costs)	
<b>Total</b>	

6.25 Many of the inputs relating to the merger parties' Keno businesses are generic in nature and can be sourced from multiple suppliers (e.g. advertising). The following items are not generic and have no ready substitutes:

6.26 **Licence:** The merger parties' Keno businesses are conducted pursuant to licences which are exclusive in relation to the State or Territory in respect of which they are issued and for which no substitute exists. Tabcorp amortises the cost of its Keno licences over the term of the licence. In FY16 the amortisation expense associated with its Keno licences was \$5.2 million.<sup>324</sup>

6.27 **Retail assets, infrastructure and software development:** Tabcorp's Keno offering requires investment in certain assets including software development relating to the playing and enhancement of the Keno game. There is no substitute for assets of this kind. The value of these inputs set out in **Annexure B** reflects their depreciation and amortisation expense.

6.28 The third party inputs in the supply of Tatts' Keno products and the value of those inputs (calculated on the basis of the Estimate referred to above) as a proportion of total production are described in table 6.9 below. Further detail is provided in **Annexure C**.<sup>325</sup>

**Table 6.9 – Tatts Keno inputs – [HIGHLY confidential to Tatts]**

Tatts Keno – input description	Proportion of total
Retail distribution network (being hosting of Tatts' Keno products in newsagencies, convenience stores, supermarkets, chemists, pubs and clubs and other venues that host Tatts' Keno products)	

<sup>324</sup> Rytenskiold [76].

<sup>325</sup> Merwe [29(a)].



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Advertising, media and production services	
Telecommunications services	
Terminal consumables (thermal rolls, coupons, player card forms)	
Market research	
Freight	
Prize cheques	
Draw/Bloc Administration	

- (b) **Provide the names and contact details of a representative selection of suppliers of inputs to each of the merger parties in the relevant market(s) (See Direction 11 of this Form)**
- (c) **Describe any purchasing arrangements in place with each of the suppliers identified above and outline whether it is expected or anticipated that these arrangements will continue or be varied in any way post-acquisition**

6.29 Details regarding a representative selection of suppliers are set out below and in **Annexure B** and **Annexure C**. The merger parties have not sought or obtained the consent of the suppliers identified to the disclosure of personal contact details or the commercial terms of their contracts.

**1 Wagering**

6.30 The names and contact details of a representative selection of suppliers to each of the merger parties and the purchasing arrangements in place with them are set out in relation to the parties' wagering businesses in **Annexure B, Part 4.1**<sup>326</sup> and **Annexure C** (Tatts suppliers)<sup>327</sup>.

**2 Gaming systems and services**

6.31 The names and contact details of a representative selection of suppliers to each of the merger parties and the purchasing arrangements in place with them are set out in relation to the parties' gaming systems and services businesses in **Annexure B, Part 4.2**<sup>328</sup> and **Annexure C**<sup>329</sup>. In relation to Tabcorp, there is substantial commonality of suppliers to TGS and Intecq respectively in each of the relevant markets and accordingly only one table is provided in relation to each of those entities.

**3 Lotteries**

6.32 The names and contact details of a representative selection of suppliers and certain purchasing arrangements in place with them are set out in relation to Tatts' lotteries business in **Annexure C**.<sup>330</sup>

<sup>326</sup> Freeman [347].

<sup>327</sup> Cooke [25].

<sup>328</sup> Rytenskiid [287].

<sup>329</sup> Makryllos [128].

<sup>330</sup> Merwe [28(b)].



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**4 Keno**

- 6.33 The names and contact details of a representative selection of suppliers to each of the merger parties and certain details of the purchasing arrangements in place with them are set out in relation to the parties' Keno businesses in **Annexure B, Part 4.2**<sup>331</sup> and **Annexure C**<sup>332</sup>.
- 6.34 There is substantial commonality of suppliers (excluding distribution agents) in each of the relevant markets in which Tabcorp operates. The table in **Annexure B, Part 2.3(a)** includes a representative sample of these suppliers.
- 6.35 As described in section 4 above, Tabcorp distributes its Keno product in Victoria, New South Wales, Queensland and the Australian Capital Territory pursuant to agreements with licensed venues. Details regarding a representative sample of distributors are set out in **Annexure B, Part 2.3(b)**.<sup>333</sup>

**Continuation of supplier arrangements**

- 6.36 Tabcorp has identified areas where the increased efficiency of the combined business following the proposed merger would be likely achieve a cost saving (for example, procurement efficiencies through combined and more efficient procurement practice).<sup>334</sup> The areas identified include wagering, technology, corporate, procurement and property and field services.<sup>335</sup> Tabcorp has not sought to identify where a specific cost saving would be made, both in terms of:
- whether the duplication would be removed from the Tabcorp business or the Tatts business; and
  - therefore, in what location the cost saving would likely accrue.<sup>336</sup>
- 6.37 Subject to further work to identify specific cost savings in the areas described, Tabcorp expects the supplier arrangements described in **Annexure B, Part 2.3** and **Annexure C** to continue post-merger in accordance with their terms and in the ordinary course of business.

## 7 Competitors

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- (a) Provide details of alternative suppliers of products now, or shortly to be, competitive with, or otherwise substitutable for, goods or services produced by each of the merger parties in the relevant market(s)**

**1 Wagering**

- 7.1 As described in section 4 above, there are three totalisator operators in the Australian wagering market (Tabcorp, Tatts and RWWA) and a number of corporate bookmakers which supply wagering products to end users (consumers).

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<sup>331</sup> Rytenskild [76].

<sup>332</sup> Merwe [29(b)].

<sup>333</sup> Details of the standard form agreement in each of the relevant States are described in Rytenskild [73]. Details regarding the representative sample are set out in Rytenskild [374].

<sup>334</sup> Johnston [26].

<sup>335</sup> Johnston [24].

<sup>336</sup> Johnston [27].



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- 7.2 Recently, there has been a consolidation of the merger parties' corporate bookmaker competitors with a number of independent Australian corporate bookmakers being acquired by large, well-capitalised and well-established international wagering companies, as described at 4(c) above. The consolidation of operators, while reducing the total number of competitors, has increased the strength of the sector as customers benefit from the corporate bookmakers' international know-how and larger balance sheets.<sup>337</sup>
- 7.3 The merger parties' main competitors currently operating in Australia are as follows.
- 7.4 **Paddy Power/Sportsbet:** Sportsbet is a wholly owned subsidiary of Paddy Power, an Irish listed betting company. Paddy Power has an estimated enterprise value of A\$13.4 billion following its recent merger with Betfair. The Australian market contributed approximately 44% of Paddy Power's operating profit for FY15.<sup>338</sup>
- 7.5 Sportsbet is the largest corporate bookmaker currently operating in Australia. Tabcorp estimates that it accounts for approximately 20% of online wagering. Sportsbet has more than doubled its marketing spend from FY13 to FY15 with the highest share of above the line media spend and known sponsorship.<sup>339</sup>
- 7.6 **Bet365:** Bet365 is a privately-held UK-based gambling company and is one of the world's biggest online gambling groups. Bet365 obtained its Australian bookmaking licence in February 2011 in the Northern Territory and began taking bets in 2012. Bet365 offers fixed odds betting on thoroughbred, harness and greyhound racing and sporting events, and live streaming of over 50,000 events to computers and mobile devices. Tabcorp estimates that it accounts for approximately 13% of online wagering.<sup>340</sup>
- 7.7 **William Hill:** William Hill entered the Australian market in 2013 when it acquired Sportingbet (which had acquired Centrebet two years prior) and Australian bookmaker tomwaterhouse.com. William Hill is the third largest betting operator in Australia by net revenue. William Hill's Australian operating profit for FY2015 was A\$26 million.<sup>341</sup>
- 7.8 Tabcorp estimates that William Hill accounts for approximately 12% of online wagering in Australia, with reported year on year digital turnover growth to March 2016 of 8%. William Hill also operates WA TAB's fixed odds book under an agreement with RWWA.<sup>342</sup>
- 7.9 **Crown (Crownbet):** CrownBet is an online wagering company, majority-owned by Australian publicly listed company Crown Resorts. Crown Resorts also has other Australian gambling interests including the Crown Casino in Perth. CrownBet is one of Australia's fastest growing bookmakers and is the exclusive wagering partner of the AFL for the next five years and premium wagering partner of Racing.com. Tabcorp estimates that CrownBet currently accounts for approximately 5% of online wagering in Australia.<sup>343</sup>
- 7.10 **Unibet:** Unibet is a Swedish company currently operating online with around 14 million registered customers worldwide. Unibet has licences in France, Belgium, Denmark, Italy, Australia and the United Kingdom. Unibet acquired Betchoice in 2012, one of the leading independent corporate bookmakers offering racing and sports betting products in Australia.<sup>344</sup>

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<sup>337</sup> Freeman [307].

<sup>338</sup> Freeman [313(a)].

<sup>339</sup> Freeman [313(a)].

<sup>340</sup> Freeman [313(b)].

<sup>341</sup> Freeman [313(c)].

<sup>342</sup> Freeman [313(c)].

<sup>343</sup> Freeman [313(d)].

<sup>344</sup> Freeman [313(e)].





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- 7.11 **Ladbrokes:** Ladbrokes is a British-based betting and gaming company. Ladbrokes has considerable retail experience and expertise, with 69.2% of its UK operation in retail. The Group has a presence in the UK, Ireland, Belgium, Spain as well as in Australia.<sup>345</sup>
- 7.12 In 2013, Ladbrokes acquired Bookmaker Pty Ltd and in April 2014 it acquired Australian online bookmaking business Betstar.<sup>346</sup>
- 7.13 Tabcorp estimates that Ladbrokes accounts for approximately 12% of online wagering in Australia, with reported year on year digital turnover growth to March 2016 of 52%.<sup>347</sup>
- 7.14 **Betfair:** Betfair was founded in the United Kingdom as an online bookmaker in May 1999, and is the pioneer of the 'betting exchange' concept. Betfair Australia launched in Australia in 2005 through a joint venture between Betfair and Crown. CrownBet subsequently acquired the whole company in 2014 and absorbed Betfair's fixed odds book into CrownBet's operations. Betfair Australia continues to operate as a standalone pure play exchange, licensed in the Northern Territory. Although Betfair is currently much more popular in the United Kingdom than Australia, it has the potential to also become a significant competitive threat in the wagering market in Australia.<sup>348</sup>

**2 Gaming systems and services**

- 7.15 As described in section 4 above, there are a number of competitors who supply gaming systems and services in each of Victoria, New South Wales and Queensland, either as part of a bundled product or as individual services. Details of these competitors are set out below and in **Annexure A**.
- 7.16 **Aristocrat** is a global gaming company based in Australia and listed on the ASX. Its core business is the manufacture and supply of EGMs. Aristocrat also supplies gaming systems and related services to venues in Australia.<sup>349</sup>
- 7.17 The Aristocrat system is called 'System 7000',<sup>350</sup> which is comparable with Intecq's Metropolis system. Its functions include financial reporting and reconciliation, player tracking and management, player loyalty programs, and voluntary pre-commitment. Aristocrat also provides a TITO cashless gaming solution for use with its System 7000 system.
- 7.18 **Bally** is a subsidiary of Scientific Games Corporation (**SGS**), a global gaming company based in America. Like Aristocrat, the core business of Bally is the manufacture and supply of EGMs. Bally's systems are comparable with Intecq's Metropolis system, with functions including financial reporting and reconciliation, player tracking and management, player loyalty programs, and voluntary pre-commitment.<sup>351</sup>
- 7.19 Bally also provides gaming systems and related services to venues in Australia. Bally is the exclusive provider to ALH Group and supplies a suite of applications at more than 270 venues throughout the country including in New South Wales, Victoria and Queensland. In 2014, SGS was appointed to provide the central monitoring system in South Australia pursuant to a 10-year contract with the Independent Gaming Corporation Limited of South Australia.<sup>352</sup>

<sup>345</sup> Freeman [313(f)].

<sup>346</sup> Freeman [313(f)].

<sup>347</sup> Freeman [313(f)].

<sup>348</sup> Freeman [313(g)].

<sup>349</sup> Rytenskiid [173], [174], Makryllos [53].

<sup>350</sup> See <http://info.au.aristocratgaming.com/systems>

<sup>351</sup> See: <https://www.ballytech.com/systems>

<sup>352</sup> Rytenskiid [175] to [177], Makryllos [53].



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- 7.20 **Konami** is a global entertainment company headquartered in Japan, and is listed on the Tokyo and London Stock Exchanges.<sup>353</sup>
- 7.21 Konami provides gaming systems and related services in Australia. The Konami system is called 'Synkros'. It is comparable with Intecq's Metropolis system, with functions including financial reporting and reconciliation, player tracking and management, player loyalty programs, and voluntary pre-commitment.<sup>354</sup>
- 7.22 Konami also advertises an 'Electronic Point Redemption' product, which allows players to convert bonus points into non-cashable credits for play on machines, similar to Intecq's 'Wager Exchange' product.<sup>355</sup>
- 7.23 **PVS** provides a 'full service' offering including loyalty programs, marketing and design services, jackpot services, EGM purchase and supply, venue support, service and maintenance and compliance services. PVS has recently partnered with Konami to supply Konami's Synkros management and customer loyalty program system in Victoria.<sup>356</sup> Currently, PVS manages and supports approximately 900 EGMs in Victoria. PVS has recently obtained a licence to operate as an LMO in Queensland.<sup>357</sup>
- 7.24 **Utopia** is an LMO licensed in Queensland. It is a wholly-owned subsidiary of Banktech which provides ATM, EFTPOS and other payment systems to the banking and hospitality industries (including gaming venues) in Australia and Asia.<sup>358</sup> Utopia has recently acquired a licence to operate as an LMO in Queensland.<sup>359</sup>
- 7.25 In June 2016, Banktech acquired **Global Gaming** which is an Australian provider of gaming systems and related services. Global Gaming supplies gaming systems in New South Wales including 'Central Credit Unit' and 'Global Eye', which have functions including financial reporting and reconciliation. Its 'Max@tag' system has player tracking and management, player loyalty programs, and voluntary pre-commitment functions, operating through a scannable plastic tag (rather than a traditional membership / loyalty card). Global Gaming also provides player kiosks, TITO systems, as well as a simpler 'Ticket Out' cashless payment system.<sup>360</sup>
- 7.26 **IGT** is a global full service gaming company with a strong presence in Australia and New Zealand. It is a supplier of EGMs, gaming systems as well as EGM maintenance and support services. IGT is the manufacturer of the IGT Advantage Club gaming software which TGS currently resupplies. This system has a variety of functions including gaming management and reporting, player and venue loyalty programs, promotions for loyalty members, club membership management services, marketing and user communication services and pre-commitment services (in Victoria).<sup>361</sup>
- 7.27 There is a large number of other gaming service providers which do not supply gaming systems, including Mercury Group, Frontier Hospitality, Momentum Gaming, Specialist

<sup>353</sup> See: <https://www.konami.com/corporate/en/business/casino.html>, Rytenskild [178] to [181], Makryllos [53].

<sup>354</sup> See: <https://www.gaming.konami.com/systems/Home.aspx>

<sup>355</sup> See: <https://www.gaming.konami.com/systems/Slots/ElectronicPointRedemption.aspx>

<sup>356</sup> See: <https://www.gaming.konami.com/systems/News/TabId/129/ArtMID/1306/ArticleID/122/Progressive-Venue-Services-PVS-Selects-KONAMI%E2%80%99s-SYNKROS-Player-Loyalty-and-Marketing-Solutions.aspx?AspxAutoDetectCookieSupport=1>

<sup>357</sup> Rytenskild [182] to [183], [254], [256].

<sup>358</sup> Rytenskild [184] to [185].

<sup>359</sup> Rytenskild [254], [256].

<sup>360</sup> Makryllos [53].

<sup>361</sup> Rytenskild [186] to [187].



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Gaming Services and Token Solutions. These companies all provide their services exclusively in Victoria.<sup>362</sup>

7.28 Details of the specific areas in relation to which these suppliers compete with the merger parties are set out below.

*Gaming systems*

7.29 As mentioned above, TGS does not produce its own proprietary gaming system but re-supplies to other parties' gaming products to licensed venues. Intecq supplies its own proprietary 'Metropolis' system and Maxgaming's offering includes a loyalty system, TITO technology and linked jackpots.<sup>363</sup>

7.30 Aristocrat, Global Gaming, IGT, Konami and SGS/Bally each supply gaming systems in Australia.<sup>364</sup> Whilst IGT, Bally and Konami do not currently supply business intelligence products in Australia, they do provide these products overseas. A list of the suppliers currently on the Roll of Manufacturers, Suppliers and Testers in Victoria is at Tab 25 of AR-1.<sup>365</sup>

7.31 Table 7.1 below identifies the providers of gaming systems which:

- supply to venues proprietary systems developed and manufactured by third parties;
- supply their own proprietary systems to third parties for re-sale to licensed venues; and/or
- supply their own systems directly to venues.

7.32 In cases where a provider re-sells third party systems to venues, it has not also been marked as supplying directly to venues.

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<sup>362</sup> Rytenskild [188] to [189].

<sup>363</sup> Rytenskild [135], [150], Makryllos [56].

<sup>364</sup> Rytenskild [167].

<sup>365</sup> Rytenskild [128].



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State	System provider	Sells third party system to venue	Supplies own system for re-sale to venue	Supplies own system directly to venue
NSW	TGS (re-sells IGT, Intecq and Aristocrat systems)	✓	x	x
	eBET (Intecq)	x	✓	✓
	Maxgaming (loyalty and reporting system only)	x	x	✓
	Aristocrat	x	✓	✓
	Bally (supplies to ALH venues)	x	x	✓
	IGT	x	✓	✓
	Konami	x	x	✓
	Global Gaming (Banktech)	x	x	✓
VIC	TGS (exclusive re-seller of IGT system until Feb17)	✓	x	x
	(eBET) Intecq	x	x	✓
	Maxgaming (loyalty solution only)	x	x	✓
	Bally (supplies to ALH venues)	x	x	✓
	IGT	x	✓	x
	PVS (re-sells Konami systems)	✓	x	x
QLD	Konami	x	✓	✓
	Odyssey (Intecq)	x	x	✓
	Maxgaming	x	x	✓
	Bally (supplies to ALH venues)	x	x	✓
	PVS (re-sells Konami systems)	✓	x	x
	Utopia (Banktech / Global Gaming)	x	x	✓
	IGT	x	x	✓
Konami	x	✓	✓	

**Table 7.1 – Providers of gaming and promotional management systems in Victoria, NSW and Queensland.**<sup>366</sup>

7.33 Like TGS, Progressive Venue Services (PVS) offers a package of systems and related services including loyalty support, marketing and design services, EGM purchase and supply, venue support and other services.<sup>367</sup> SGS Star Games, Mercury, Momentum, Frontier and Token also provide gaming services in Victoria.<sup>368</sup>

*Field services*

7.34 In relation to repair and maintenance of EGMs, Aristocrat Technologies, Bull Club Services, Central West Technology, Club Gaming Services, Consolidated Poker Machines, Fourtech Gaming, HTE and Associates, Hi Tech Gaming, IGT, Illawarra Gaming, Independent Gaming, J&A Machines, JG&LJ Wood, Lakes Gaming, Mid Coast Gaming, Northwest Gaming, NSW Poker Machines, P&N Club Sales & Service, Prestige Gaming, Reel Gaming Services, Riverina Gaming, Southern Gaming, Supreme Poker Machines, United Subcontracting and United Technology Services all provide field services in New South Wales.

7.35 Amtek, Aristocrat and Bytecraft all provide EGM repair and maintenance services in Victoria.<sup>369</sup>

<sup>366</sup> Rytenskiid [167].

<sup>367</sup> Rytenskiid [182].

<sup>368</sup> Rytenskiid [188].

<sup>369</sup> Rytenskiid [274].



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*Monitoring*

- 7.36 As described above, Maxgaming as the exclusive licensee currently has no competitor in relation to the supply of monitoring services in New South Wales and neither of the merger parties provides monitoring services in Victoria.<sup>370</sup>
- 7.37 Intecq and Maxgaming are currently the only two active suppliers of monitoring services in Queensland. This position will change following the proposed merger as a result of the proposed divestiture of Odyssey, referred to in section 4 above.
- 7.38 Two other entities – PVS and Utopia – have recently acquired monitoring licences and will constrain the merged firm post-transaction. Each of these entities also supplies gaming and promotional management systems outside Queensland.<sup>371</sup>
- 7.39 There is no limit to the number of LMO licences that the Queensland government can issue; as a result, there could be further entry into the Queensland monitoring services market by companies who meet the criteria set out in the *Gaming Machine Act*.<sup>372</sup>
- 7.40 Each of the four currently licensed LMOs represents a different offering to the market, based on capability. In combination, PVS and Konami provide a broader service offering, Utopia has the ATM terminal infrastructure, Intecq has its own gaming system and Maxgaming offers a choice of gaming systems.<sup>373</sup>
- 7.41 In addition, Tabcorp considers that other providers of gaming systems and services may seek to acquire a monitoring licence in Queensland. As described in paragraph 4.73 above, venue operators and machine manufacturers operating in Queensland cannot be an LMO (although gaming system providers can). Tabcorp considers that the following current participants in the general gaming industry (which do not operate in Queensland as venue operators or EGM manufacturers) have the know-how and the technology, or alternately have the know-how and could acquire or licence the required technology, to operate as an LMO:<sup>374</sup>
- Crown Casino Group;
  - Sky City Casino Group;
  - Network Gaming (Federal Group);
  - Independent Gaming Pty Ltd;
  - eCash Gaming Pty Ltd;
  - Wymac Gaming Solutions;
  - International Companies;
  - Win Systems International (Spain);
  - Novomatic (Austria) (Although this entity may be precluded based on its majority shareholding in AGT Ainsworth Game Technologies); and
  - DR Gaming Technologies (Europe).<sup>375</sup>

<sup>370</sup> Makryllos [82], Rytenskild [232] to [233].

<sup>371</sup> Rytenskild [256], [258] and [259].

<sup>372</sup> Rytenskild [263].

<sup>373</sup> Rytenskild [206].

<sup>374</sup> This list is based on those organisations that would not offend the Gaming Legislation and or Regulations by becoming an LMO.

<sup>375</sup> Rytenskild [264].



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7.42 Further, EGM suppliers such as Aruze Gaming, Konami Gaming or Bally Gaming could elect to cease selling EGMs (as sellers cannot be LMOs) and then enter the LMO market in Queensland.<sup>376</sup>

**3 Lotteries**

7.43 As described in section 4 above, there are a number of other resellers of Tatt's lottery products which either currently have, or could have, the capability to provide lottery products themselves. In addition, there are synthetic lottery operators who currently provide derivative lottery products under a Northern Territory lottery betting licence. These various other supplies include the following.

7.44 **Jumbo Interactive** is an online lottery business listed on the ASX. Its flagship platform is OZLotteries.com, which re-sells official lottery tickets online, through its website and mobile app.<sup>377</sup> Jumbo Interactive re-sells Tatts' lottery products (except Set for Life) and accounts for approximately [HIGHLY confidential to Tatts] ████████ of Tatts' digital lottery sales in Australia (which were [HIGHLY confidential to Tatts] ████████ of total sales in FY2016).<sup>378</sup>

7.45 In addition to Tatts' products, Jumbo Interactive also sells tickets to Australian charity-based lotteries and German state lotteries. During the 2016 financial year, the [www.ozlotteries.com.au](http://www.ozlotteries.com.au) website had over 2 million online accounts and 375,988 active accounts (being online customers who had spent money on lottery products in the preceding 12 month period).<sup>379</sup>

7.46 **Net Lotto** is an online lottery business which operates as a reseller of Australian lotto games. Net Lotto re-sells various Tatts' lottery products.<sup>380</sup>

7.47 **Lottoland** holds a Northern Territory sports bookmaker licence to operate as a lottery betting operator. Lottoland enables customers to bet on the outcome of a lottery instead of buying a ticket in the underlying official draw. Currently, Lottoland offers Australian residents (excluding South Australian residents) the opportunity to bet upon the outcome of various lotteries including: Euro Millions and Euro Jackpot; American Powerball and Mega Millions; the UK Lotto; the Irish Lotto; the Swedish Lotto; and Oz Lotto and Powerball and Australian Saturday, Monday and Wednesday Lotto.<sup>381</sup>

7.48 Lottoland also enables customers to bet on the outcome of KeNow and German Keno.<sup>382</sup>

7.49 **Plus Connect (NT) Pty Ltd**, holds a Northern Territory sports bookmaker licence to operate as a lottery betting operator and operates the Weather Lottery business. The Weather Lottery involves the customer selecting seven numbers, which numbers need to match the decimal point of the temperature in each Australian capital city at noon on the day of the lottery in order to win a prize. There is a draw of the lottery every weekday. The top prize for all 7 numbers selected in the correct order is \$1 million.<sup>383</sup>

**4 Keno**

7.50 As described in section 4 above, Keno is supplied on an exclusive basis in each of the States or Territories in which the merger parties conduct Keno except that Tabcorp's

<sup>376</sup> Rytenskiold [265].

<sup>377</sup> Merwe [53].

<sup>378</sup> Merwe [53].

<sup>379</sup> Merwe [53].

<sup>380</sup> Merwe [50].

<sup>381</sup> Merwe [75].

<sup>382</sup> Rytenskiold [103].

<sup>383</sup> Merwe [56] and [75].



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online Keno offering is available in South Australia. Accordingly there are no competitors with the merger parties in relation to the supply of Keno products to end users in Victoria, New South Wales, the Australian Capital Territory, Queensland or South Australia.

- (b) If the suppliers identified above do not produce goods or services which are substantially the same as those goods or services produced by the merger parties in the relevant market(s), explain why it is considered that these goods or services are viable alternatives**

7.51 Not applicable.

## 8 Customers

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- (a) Provide the names and contact details of a representative selection of the customers of each of the Applicant and the Target in the relevant market(s) (See Direction 12 of this Form)**
- (b) Describe the distribution channels available to the merger parties in supplying goods and services to customers and identify the relevant distribution channels in respect of each of the customers identified above**
- (c) Describe the existing supply arrangements that the merger parties have in place with the customers identified above and whether it is expected or anticipated that these arrangements will continue or be varied in any way post-acquisition (See Direction 13 of this Form)**

### 1 Wagering

#### Tabcorp

- 8.1 Tabcorp's wagering customers include individual and corporate account customers (who hold betting accounts with Tabcorp) and individual non-account customers (who do not hold accounts).<sup>384</sup>
- 8.2 Information of the kind sought by questions 8(a), (b) and (c) and directions 12 and 13 is not applicable to individual consumers and Tabcorp is unable to provide representative data regarding these customers. In addition, personal information held by Tabcorp in relation to individual wagering customers who hold accounts with Tabcorp is subject to protection under the Australian Privacy Principles set out in Schedule 1 to the *Privacy Act 1988* (Cth). Tabcorp has not sought or obtained the consent of any individual customers to disclose their personal information in this application.
- 8.3 The following information relates to Tabcorp's supply of wagering products to its customers:
- Non-account customers wager in person at Tabcorp retail outlets which may be off-course (TABs, pubs and clubs), on-course or self-service terminals within outlets. Account customers may wager via (a) Tabcorp's website TAB.com.au; (b) the TAB app for iPhone, iPad or Android devices; or (c) telephone via Tabcorp's call centres.<sup>385</sup> Confidential details of the channels in fact utilised by Tabcorp's account customers over the past two years are set out in Figure 35 of Freeman at [257].

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<sup>384</sup> Freeman [177].

<sup>385</sup> Freeman [103], [119], [129] and [177].



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- The terms of supply to non-account customers are regulated by applicable rules in the State in which the wager is placed, namely:
  - (a) the *Victorian Totalisator Betting Rules* approved by the Victorian Treasurer pursuant to the *Gambling Regulation Act 2003* (Vic);
  - (b) the *TAB Sportsbet (Vic) Betting Rules*;
  - (c) the New South Wales *Totalisator Betting Rules* approved by the relevant minister pursuant to the *Totalizator Act 1997* (NSW);
  - (d) the *TAB Limited Declared Events Betting Rules* (NSW);
  - (e) the *TAB Limited Fixed Price Racing Betting Rules* (NSW);
  - (f) the Australian Capital Territory *Totalisator Betting Rules*; and
  - (g) the Australian Capital Territory *Sports Bookmaking Rules*.<sup>386</sup>

The terms of supply to account customers are governed by the above rules as well as by:

- (h) the Website Terms of Use (in relation to online wagering);
  - (i) the TAB Account Terms and Conditions applicable to Victorian, New South Wales and ACT TAB account holders;
  - (j) the TAB Bonus Bet General Terms and Conditions; and
  - (k) the TAB Cash Out Terms and Conditions.<sup>387</sup>
- There is no fixed term applicable to accounts and no exclusivity applicable to either account or non-account customers, who are free to wager through other or multiple wagering service providers, or to close their account or cease wagering through Tabcorp, at any time.<sup>388</sup>
  - Tabcorp expects these arrangements to continue following the proposed merger.<sup>389</sup>
  - The applicable Rules and Tabcorp's standard terms and conditions do not include rebates or discounts. However, from time to time Tabcorp may offer rebates or discounts as promotion. **[HIGHLY Confidential to Tabcorp]**

8.4 The terms and conditions relating to Tabcorp's supply of Trackside to customers are as follows:

- Purchase by customers in Victoria is governed by the *Rules Relating to Trackside Betting Transactions in Victoria* published pursuant to the *Gambling Regulation Act 2003* (Vic);
- Purchase by customers in New South Wales is governed by the *Rules of Betting – TAB Limited Trackside Betting Rules* approved by the relevant minister in accordance with the provisions of the *Totalizator Act 1997* (NSW); and

<sup>386</sup> Freeman [115] - [116], [123] - [124] and [132].

<sup>387</sup> Freeman [178]. Copies of these are at TAB.com.au, *Conditions of Use* (21 December 2016) <[http://tab.custhelp.com/app/answers/detail/a\\_id/129](http://tab.custhelp.com/app/answers/detail/a_id/129)>

<sup>388</sup> Freeman [179].

<sup>389</sup> Freeman [180].



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- Purchase by customers in the ACT is governed by the *Rules Relating to Trackage Betting Transactions in the Australian Capital Territory* and approved by the relevant minister pursuant to the *Lotteries Act 1964* (ACT).<sup>390</sup>

**Tatts**

- 8.5 Tatts' wagering customers include individual account customers (who hold betting accounts with Tatts) and individual non-account customers (who do not hold accounts).
- 8.6 Information of the kind sought by questions 8(a), (b) and (c) and directions 12 and 13 is not applicable to individual consumers and Tatts is unable to provide representative data regarding these customers. However, the following information relates to Tatts' supply to its wagering customers:<sup>391</sup>
- Non-account customers wager in person at Tatts retail outlets which may be off-course (TAB/UBET retail outlets, pubs and clubs), on-course or on self-service terminals. Account customers may wager via:
    - (a) Tatts websites Tatts.com or UBET.com;
    - (b) the UBET app for iPhone, iPad or Android devices; or
    - (c) telephone via Tatts call centres. Details of the distribution channels in fact utilised by Tatts' customers are at Tab 6 of Highly Confidential Exhibit RC-3 and Tab 13 of Exhibit-RC-1 (with confidential information redacted).<sup>392</sup>
  - The terms of supply to non-account customers are regulated by applicable rules in the State or Territory in which the wager is placed namely:
    - (a) the *Wagering Rule 2010* published by the OLGR in Queensland;
    - (b) the *South Australian Betting Operations Rules and On-Course Betting Operations Rules 2014* approved by the Liquor and Gambling Commissioner of South Australia;
    - (c) the *Totalisator Licensing and Regulation (Wagering) Rules* made under the *Totalisator Licensing and Regulation Act* (NT); and
    - (d) the *Tasmanian Betting Rules 2016*.
  - The terms of supply to account customers are also governed by:
    - (e) the UBET Account Terms and Conditions;<sup>393</sup> and
    - (f) the UBET + Terms and Conditions<sup>394</sup> (which set out the terms and conditions applicable to Tatts' UBET + loyalty program).
  - There is no fixed term applicable to accounts and no exclusivity applicable to either account or non-account customers, who are free to wager through other or multiple wagering service providers, or to close their account or cease wagering through Tatts, at any time.
  - The terms and conditions referred to are subject to change in the ordinary course of business.

<sup>390</sup> Freeman [175].

<sup>391</sup> Tucker [18].

<sup>392</sup> Cooke [28].

<sup>393</sup> UBET, Terms And Conditions <<https://ubet.com/terms-and-conditions>>.

<sup>394</sup> UBET, UBET+, <<https://ubet.com/ubetplus>> (sign-up required).



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- The applicable Rules and Tatts' standard terms and conditions do not include rebates or discounts. However, from time to time Tatts offers rebates or discounts as an incentive to become a UBET customer or to place more wagers through UBET e.g. by offering a first bet bonus to eligible new customers.<sup>395</sup> Tatts also has a loyalty/reward program UBET+, details of which are provided in response to question 17(a) below.

### 2 Gaming systems and services

8.7 In Victoria, TGS supplies gaming systems and services pursuant to:

- A standard form Gaming Services Agreement;
- A standard form Loyalty Program Agreement with Voluntary Pre-Commitment; and
- A licence to use Tableau software.

Copies of these standard form agreements are at Tabs 10.1, 10.2 and 10.6 of AR-1.<sup>396</sup>

8.8 In New South Wales, TGS supplies gaming systems and services pursuant to:

- A standard form Gaming Services Agreement;
- A standard form Loyalty Program Agreement; and
- A TITO Agreement.

Copies of these standard form agreements are at Tabs 11.1, 11.2, 11.4 of AR-1.<sup>397</sup>

8.9 Information in response to questions 8(a), (b) and (c) and directions 12 and 13 in relation to a representative sample of Tabcorp's gaming systems and services customers is set out in **Annexure B, Part 6**.<sup>398</sup> Tabcorp expects these contracts to continue after the merger in accordance with their terms. Tabcorp has not sought or obtained the consent of the customers named to the disclosure of personal contact details or commercial terms of the contracts.

8.10 Information in response to questions 8(a), (b) and (c) and directions 12 and 13 in relation to a representative sample of Tatts' gaming and/or monitoring services customers is set out in **Annexure C**. Tatts expects these contracts to continue after the merger in accordance with their terms. Tatts has not sought or obtained the consent of the customers identified to the disclosure of personal contact details or commercial terms of the contracts.

### 3 Lotteries

8.11 Information of the kind sought by questions 8(a), (b) and (c) and directions 12 and 13 is not applicable to individual consumers and Tatts is unable to provide representative data in relation to these customers.

8.12 Customers can purchase Tatts' lotteries products through the following channels.<sup>399</sup>

- **In-store:** Tatts' lottery products are sold in retail stores such as newsagencies, convenience stores, petrol stations and chemists.
- **Tatts' digital channels:** Tatts operates an online website [www.thelott.com](http://www.thelott.com) and a mobile app through which its products can be purchased.

<sup>395</sup> Cooke [153(c)].

<sup>396</sup> Rytenskiid [156].

<sup>397</sup> Rytenskiid [156].

<sup>398</sup> Rytenskiid [285].

<sup>399</sup> Merwe [23], [45] and [50].



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- **Digital re-sellers:** Tatts has authorised digital re-seller agreements with a number of companies who offer some of Tatts' lottery products online. These re-sellers including Jumbo Interactive Pty Ltd (which operates [www.ozlotteries.com](http://www.ozlotteries.com)) and Net Lotto Pty Ltd (which operates [www.netlotto.com.au](http://www.netlotto.com.au)).
- 8.13 Tatts' lotteries business is primarily retail-based. In FY16, approximately 86.5% of sales took place via retail channels. Tatts' digital channels (which include an online website and a mobile app) accounted for approximately 13.5% of sales.<sup>400</sup>
- 8.14 Customers who purchase Tatts' lottery products via Tatts' digital channels must register and be accepted for an account with Tatts online, and an account with the relevant Tatts subsidiary which operates lotteries in the customer's State or Territory.<sup>401</sup>
- 8.15 The terms and conditions relating to Tatts' accounts are published on Tatts' website.<sup>402</sup> In addition, rules relating to various individual products are published pursuant to relevant legislation as follows:
- *Rules of Authorised Lotteries* (Victoria and Tasmania) relating to Tattslotto, Super 66, Monday and Wednesday Lotto, Oz Lotto, Powerball, The Pools, Draw Lotteries (Lucky Lotteries), Instant Scratch-Its and Set for Life;<sup>403</sup>
  - *Rules of Authorised Lotteries* (NT) relating to Tattslotto, Super 66, Monday and Wednesday Lotto, Oz Lotto, Powerball, The Pools, Draw Lotteries (Lucky Lotteries) and Set for Life;<sup>404</sup>
  - *Lotteries Rule 2010* (Qld) relating to Monday and Wednesday Gold Lotto, Saturday Gold Lotto, Powerball, Pools, Super 66, Oz Lotto, Instant Scratch-Its, Lucky Lotteries, promotional lotteries and Set for Life;<sup>405</sup>
  - Rules made under *Public Lotteries Act 1996* (NSW) relating to Lotto, Oz Lotto, Powerball, Set for Life, Instant Lotteries and Promotional Instant Lotteries, Lucky Lotteries and Lotto Strike;<sup>406</sup> and
  - Lotteries (Keno) Rules, Lotteries (General) Rules and Rules relating to X Lotto, Oz Lotto, Powerball, Set for Life, The Pools, Super 66, and Instant Scratch-Its made pursuant to the *State Lotteries Act 1966* (SA).<sup>407</sup>
- 8.16 The opening of an account with Tatts does not impose any obligation upon the customer to purchase Tatts' lottery products. Rather, these accounts facilitate the purchase of Tatts' lottery products through digital channels if and when the customer chooses to do so. The customer can instruct Tatts to close his/her accounts at any time. Tatts may also suspend and/or terminate a customer's account for inactivity. For example, in New South Wales, NSW Lotteries may suspend a customer's account for inactivity if the customer has not accessed the account for 12 months and close the Product Account if it remains inactive for 24 months.<sup>408</sup>

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<sup>400</sup> Merwe [23].

<sup>401</sup> Merwe [45].

<sup>402</sup> Merwe [45].

<sup>403</sup> Merwe [27(d)].

<sup>404</sup> Merwe [27(e)].

<sup>405</sup> Merwe [27(b)].

<sup>406</sup> Merwe [27(a)].

<sup>407</sup> Merwe [27(c)].

<sup>408</sup> Merwe [46].



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- 8.17 Both retail and digital customers of Tatts' lottery products can choose to register for membership in the relevant loyalty or membership program for Tatts' lottery products. These membership programs are as follows:
- in Queensland: the Winners Circle Card;
  - in NSW and the ACT: the Players Card;
  - in Victoria and Tasmania: the Tatts Card;
  - in the Northern Territory: the Tatts Card; and
  - in South Australia: the Easiplay Card.<sup>409</sup>
- 8.18 Membership of these loyalty and membership programs is contingent upon the payment of an activation fee and annual administration fee. The customer's participation in the membership and loyalty programs is ongoing until such time as the customer chooses to cancel their membership, not to renew their membership or fails to pay the requisite fees. Membership in these programs does not oblige the customer to purchase Tatts' lottery products.<sup>410</sup>
- 4 Keno**
- 8.19 Information of the kind sought by questions 8(a), (b) and (c) and directions 12 and 13 is not applicable to individual consumers and Tabcorp and Tatts are unable to provide representative data or details of supply to individual customers of their Keno products.
- 8.20 As described above, substantially all of the merger parties' customers purchase Keno products in licensed venues, with **[Confidential to Tabcorp]** [REDACTED] Tabcorp customers purchasing its online Keno product.
- 8.21 The terms and conditions relating to the purchase of Keno products in the relevant markets are described below:<sup>411</sup>
- Purchase of Keno products in Victoria is governed by the *Keno Rules (Victoria)*, approved by the VCGLR pursuant to the *Gambling Regulation Act 2003 (Vic)*;
  - Purchase of Keno products in New South Wales is governed by the *Keno Rules* approved by the relevant minister pursuant to the *Public Lotteries Act 1996 (NSW)*;
  - Purchase of Keno products in Queensland is governed by the *Keno Rule 2010* prepared by the OLGR pursuant to the *Keno Act 1996 (Qld)*;
  - Purchase of Keno products in the ACT is governed by the *Keno Rules* approved by the ACT Gambling and Racing Commission pursuant to the *Lotteries Act 1964 (ACT)* and the *Pool Betting Act 1964 (ACT)*;
  - Purchase of Keno products in South Australia is governed by the *Lotteries (Keno) Rules* (to be read in conjunction with the *Lotteries (General) Rules*) made pursuant to the *State Lotteries Act 1966 (SA)*; and
  - The purchase of Tabcorp's Keno product via Tabcorp's website, iPhone or iPad app (or any other device) is governed by Tabcorp's ACT Keno Gambling Account Terms and Conditions.<sup>412</sup>

<sup>409</sup> Merwe [47].

<sup>410</sup> Merwe [48].

<sup>411</sup> Rytenskiid [82], [161].

<sup>412</sup> TAB.com.au, *ACT Keno Gambling Account Terms and Conditions* (10 August 2016) <[http://tab.custhelp.com/app/answers/detail/a\\_id/492](http://tab.custhelp.com/app/answers/detail/a_id/492)>



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- 8.22 In Victoria, the Keno Rules are augmented by Keno Technical Standards which set out a set of technical standards and guidelines that must be met for the implementation of a Keno system in Victoria in order to ensure its operation in accordance with the Keno Rules and the fair conduct of the operation. Tabcorp is also party to a Responsible Gambling Code of Conduct in relation to its supply of Keno products in Victoria. There is no Keno specific code in New South Wales or the ACT. In Queensland, a Keno Responsible Gambling Resource Manual provides the industry with a step-by-step guide to implementing the Queensland Responsible Gambling Code of Practice.<sup>413</sup>
- 8.23 Amongst other things, the legislation and rules referred to above prescribe a minimum percentage of Keno customer turnover that must be returned to players in the form of winnings. The precise 'return to player' or RTP percentage is a calculation based on statistical probability and approved by the relevant regulator. The RTPs applicable to Tabcorp's different Keno products are set out in **Annexure B, Part 1.2**.<sup>414</sup>
- 8.24 Customers can only purchase Tatts' Keno products in person in South Australia through the following avenues:<sup>415</sup>
- hotels and licensed clubs, including Adelaide Casino;
  - retail outlets, including newsagencies, convenience stores, chemists, Australia Post outlets and lottery kiosks; and
  - UBET SA outlets, which are agents licensed to offer wagering with Tatts' UBET.
- 8.25 Customers purchase the merger parties' Keno products in a one-off transaction, and there is no obligation upon the customer to continue to purchase Keno products over time.<sup>416</sup>
- 8.26 Tatts' customers can also choose to become members of Tatts' Easisplay Card membership program which allows customers to save 'favourite numbers' to be played in a game of Keno. Membership of this program is contingent upon the payment of an activation fee and annual administration fee. The customer's participation in the membership program is ongoing until such time as the customer chooses to cancel their membership, not to renew their membership or fails to pay the requisite fees. Membership does not oblige the customer to purchase Tatts' Keno products.<sup>417</sup>

**Continuation of customer arrangements**

- 8.27 Tabcorp has not undertaken detailed integration planning in relation to the merged entity.<sup>418</sup> Ahead of such planning, Tabcorp expects the customer arrangements described in **Annexure B** and **Annexure C** to continue post-merger in accordance with their terms and in the ordinary course of business.

## 9 Market concentration

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**Provide estimates of current and post-acquisition market shares for the merger parties and existing alternative suppliers or purchasers in the relevant market(s) identified above (See Direction 14 of this Form)**

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<sup>413</sup> Rytenskild [161].

<sup>414</sup> Rytenskild [32].

<sup>415</sup> Merwe [112].

<sup>416</sup> Merwe [113].

<sup>417</sup> Merwe [113].

<sup>418</sup> Johnston [117].





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**1 Wagering**

- 9.1 Tabcorp evaluates wagering market share on a turnover basis, that is, on the basis of the total amount staked by customers. Tatts also evaluates market share on a turnover basis.<sup>419</sup>
- 9.2 Market share data on the basis of sales/turnover for the merger parties and other suppliers of wagering products in the Australian wagering market for the years FY12 to FY16 is set out in **Annexure B, Part 5.1(a)**. The data in Annexure B, Part 5.1(a) has been prepared by Tabcorp and has not been independently verified by Tatts.
- 9.3 The sources of the data represented in Table 5.1(a) are as follows:
- Tabcorp: Tabcorp's internal books and records, comprising domestic wagering only and including Tabcorp's 50% share arising from its Victorian joint venture;
  - Tatts: material obtained by Tabcorp from Tatts as part of the merger due diligence process and annual reports;
  - RWWA: Racing Australia Fact Book and annual reports;
  - Paddy Power, William Hill and Ladbrokes: annual reports;
  - CrownBet: media articles and yield rate assumption;
  - Bet365: Australian Securities and Investments Commission documents reported media articles and yield rate assumption;
  - Betfair: Tabcorp's estimates;
  - Others: estimates by reference to balancing item for turnover and yield rate assumption (based on the Australian Gambling Statistics report); and
  - Total: Racing Australia Fact Books.<sup>420</sup>
- 9.4 Immediately post-merger, Tabcorp estimates that the merged entity's share of the total Australian wagering market (based on turnover) will be approximately **[Confidential to Tabcorp and Tatts]** [REDACTED]<sup>421</sup>
- 9.5 As described in section 4 above, the wagering industry has seen significant growth in online and phone sales which Tabcorp expects to continue post-merger. Tabcorp's estimates of wagering turnover conducted by telephone and digital channels are set out in **Annexure B, Part 5.1(b)**.
- 9.6 Immediately post-merger, Tabcorp estimates that the merged entity's share of the telephone and digital segment of the Australian wagering market (based on turnover) would be comparable to the merger parties' combined share of those segments, which in FY15 was approximately **[Confidential to Tabcorp]** [REDACTED]<sup>422</sup>
- 2 Gaming systems and services**
- 9.7 The merger parties both supply gaming systems and services to licensed venues in Victoria, New South Wales and Queensland as set out below. Tabcorp cannot confirm sales or revenue details regarding supply by non-merger parties as this information is not available.
- 9.8 Details are set out below of the merger parties' estimated market shares in relation to the supply to licensed venues in each of the relevant State markets of:

<sup>419</sup> Cooke [125].

<sup>420</sup> Freeman [33].

<sup>421</sup> Freeman [33].

<sup>422</sup> Freeman [261].





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- gaming systems and related services;
- monitoring services; and
- field services.

Detailed data is set out in **Annexure B, Part 5.2** and **Annexure C**.

9.9 As described above, there is some overlap between the parties' offerings, notably in relation to TGS' 'full service' offering which includes the supply of field services in relation to EGMs which receive the 'full service'.

9.10 As comprehensive and reliable data in relation to competitors is not available to Tabcorp, estimates of market share are derived on the basis of the number of EGMs in the relevant geographic market in relation to which systems or services are supplied. For example, supply of gaming systems to 100 EGMs in a State where 1,000 EGMs were licensed for operation would be estimated as representing a market share of 10%. If EGMs are serviced by multiple suppliers (e.g. supplier A provides a loyalty system and supplier B supplies field services) it is possible that the market share figure provided may be inflated. Alternatively, if a particular product is only provided to some EGMs in each State, the data may underrepresent the market share in relation to that particular product. Estimates of the total number of EGMs licensed for operation in each State, and the basis for the estimates, are set out in the tables in **Annexure B, Part 5.2** and **Annexure C**.

9.11 In circumstances where reliable data in relation to non-merger parties is not available, Tabcorp does not consider that revenue data relating only to the merger parties assist in identifying market share. However, this data has been included in **Annexure B, Part 5.2** and **Annexure C** on the basis that it assist to identify the relative contributions that the various gaming activities engaged in by the merger parties make to the merger parties' total gaming total revenues.

*Gaming systems and services*

9.12 Details of the respective market shares of the merger parties are set out in **Annexure B, Part 5.2(a)** and **Annexure C**. As set out in sections 7 above and 10 below, Tabcorp does not consider that TGS' full service offering is substitutable for or competitive with the more discrete products offered by Intecq, Bytecrafft and Maxgaming.

9.13 Immediately post-merger, Tabcorp estimates that the market share represented by merged entity in relation to the supply of gaming systems and services will be affected in each of the relevant State markets as follows:

- Victoria: expected increase from **[HIGHLY confidential to Tabcorp and Tatts]** [REDACTED]
- New South Wales: expected increase from **[HIGHLY confidential to Tabcorp and Tatts]** [REDACTED]
- Queensland: expected increase from **[HIGHLY confidential to Tabcorp and Tatts]** [REDACTED]

*Monitoring services*

9.14 Neither of the merger parties supplies monitoring services in Victoria. Maxgaming is currently the exclusive provider of monitoring services in New South Wales and will remain so immediately following the merger.<sup>423</sup>

9.15 Both of the merger parties supply monitoring services in Queensland. Immediately post-merger, Tabcorp estimates the merged entity's market share in relation to the supply of monitoring services in Queensland will be **[HIGHLY confidential to Tabcorp and Tatts]**

<sup>423</sup> Makryllos [28].



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██████████. There will be no accretion of market share in Queensland if Tabcorp divests the Odyssey business.

*Field services*

- 9.16 Immediately post-merger, Tabcorp estimates that the market share represented by the merged entity in relation to the supply of field services in each State market will be affected as follows:
- Victoria: expected increase from **[HIGHLY confidential to Tabcorp and Tatts]** ██████████
  - New South Wales: expected increase from **[HIGHLY confidential to Tabcorp and Tatts]** ██████████
  - Queensland: expected increase from **[HIGHLY confidential to Tabcorp and Tatts]** ██████████

9.17 Both of the merger parties supply field services in Victoria and New South Wales – Tabcorp as part of TGS’s ‘full service offering’<sup>424</sup> and Tatts through its specialist business unit Bytecraft. The data provided in the paragraph above and in **Annexure B** in relation to TGS accordingly reflects TGS’ bundled ‘full service’ offering and not field services alone. Tabcorp does not consider that TGS’ ‘full service offering’ is competitive with the more discrete products offered by Intecq, Bytecraft and Maxgaming because TGS only services EGMs which it has leased or financed and does not compete to service third party EGMs.<sup>425</sup>

9.18 Both of the merger parties also supply field services in Queensland, where legislation requires that such services are provided by parties that are LMOs. Accordingly, the merger parties provide field services through their respective LMO subsidiaries in Queensland – Tabcorp through Intecq’s Odyssey brand<sup>426</sup> and Tatts through its Maxgaming division with support from Bytecraft.

**3 Lotteries**

9.19 As Tatts is the exclusive or sole public lottery licence holder in Victoria, New South Wales, Queensland, South Australia, the Australian Capital Territory and the Northern Territory, there will be no increase in concentration in this market as a result of the proposed merger. The market share of the merged entity following the merger will reflect Tatts’ current market share.

9.20 Turnover data is set out in **Annexure C**.<sup>427</sup>

**4 Keno**

9.21 Tabcorp is currently the exclusive or sole provider of Keno in Victoria, New South Wales, Queensland and the Australian Capital Territory. Accordingly, its market share in each of those State markets and the Australian Capital Territory is 100% and this figure is expected to be the same immediately post-merger.<sup>428</sup>

9.22 Turnover data for Tabcorp’s Keno business for FY12 to FY16, which may be a measure of the total size of domestic market in the jurisdictions referred to, is set out in **Annexure B, Part 5.3**.<sup>429</sup>

<sup>424</sup> Rytenskild [267].

<sup>425</sup> Rytenskild [272].

<sup>426</sup> Rytenskild [269].

<sup>427</sup> Merwe [28(d)], [28(e)] and [28(f)].

<sup>428</sup> Rytenskild [63] to [68], [75].

<sup>429</sup> Rytenskild [75].



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- 9.23 Turnover data in relation to Keno in South Australia for FY12 to FY16, which may be a measure of the size of the total domestic Keno market in South Australia, is set out in **Annexure C**.<sup>430</sup> Tatts had no Keno operations in South Australia in FY12 and thus its market share for that year is 0%. Tatts acquired the right to manage Keno operations in South Australia on 11 December 2012, and its share of total market turnover was 100% from the date it took control of that business.
- 9.24 Tatts currently carries on its Keno business in South Australia pursuant to a Master Agency agreement. Accordingly, its market share in relation to retail supply in the South Australian market is 100%. Whilst Tatts' Keno business will transfer to Tabcorp as a result of the proposed merger, there will be no increase in overall market concentration.
- 9.25 Tabcorp's ACT Keno licence provides for online distribution and Tabcorp has supplied Keno products via this channel since about August 2015.<sup>431</sup> During the period from August 2015 to November 2016, Tabcorp had **[Confidential to Tabcorp]** South Australian registered accounts which produced turnover of **[Confidential to Tabcorp]**.<sup>432</sup> This represents **[Confidential to Tabcorp]** of the total turnover for retail Keno in South Australia in FY16.<sup>433</sup>

## 10 Constraints on the exercise of market power

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**Provide details of the extent to which the merger parties are likely to be constrained post-acquisition from raising prices and profit margins and/or reducing the quality of good and/or services by (See Direction 15 of this Form)**

- (i) **input suppliers;**
- (ii) **competitors in the relevant market(s);**
- (iii) **customers in the relevant market(s); and/or**
- (iv) **others.**

### 1 Wagering

- 10.1 In relation to **wagering**, the merger parties will continue to be constrained post-acquisition by:
- continued vigorous and aggressive competition from corporate bookmakers (many of which are foreign-owned) (see discussions of competitors at sections 4 and 7 above);
  - the ease of switching by customers between wagering operators (as described at section 13 below); and
  - government regulations which provide significant constraint through regulatory provisions, including prescribed maximum take-out rates in relation to totalisator wagering and control over the competitive outcomes of future licence bidding processes (see introduction of regulatory regime at section 4 above).

*Vigorous competition from corporate bookmakers*

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<sup>430</sup> Merwe [29(d)].

<sup>431</sup> Rytenskiid [68], [80].

<sup>432</sup> Rytenskiid [85].

<sup>433</sup> Rytenskiid [83].



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- 10.2 The existing and continued vigorous competition by corporate bookmakers (many of which are foreign owned and so are effectively operating as import competition into the wagering market) is the main constraint that will be placed on merged entity. The industry trends described in section 4 evidence that competition in the wagering market has been vigorous for some time.<sup>434</sup> The constraint exercised by corporate bookmakers will continue to be strengthened by these industry trends which are increasing consumer preferences for:
- fixed odds wagering over totalisator wagering;
  - sports wagering over racing wagering; and
  - wagering over digital channels rather than in retail outlets.<sup>435</sup>
- 10.3 There is no information to suggest that these industry trends will change in the near term or that the proposed merger would materially affect the direction or magnitude of these trends.<sup>436</sup> Indicative of the vigorous competition between traditional wagering products suppliers (such as Tabcorp and Tatts) and corporate (and on-course) bookmakers has been the competitive responses of Tabcorp and Tatts to this competition, including the launch by Tabcorp of its own corporate bookmaker under the Northern Territory regime (Luxbet). These competitive responses are described in more detail in section 14 below, which addresses the dynamic characteristics of the market, as well as **Annexure A**.
- 10.4 Facilitating this competition is the fact that corporate bookmakers enjoy several important competitive advantages over the merger parties' traditional wagering businesses such as lighter regulation and lower taxation for those licensed in the Northern Territory, lower contributions to the racing industry and lower overheads.<sup>437</sup>

*Ease of switching by customers*

- 10.5 All of the merger parties' customers are able to wager through other or multiple wagering service providers, or to cease wagering through the merger parties, at any time.<sup>438</sup> Customers are able to open multiple accounts with State TABs and corporate bookmakers, typically at no cost to the customer.<sup>439</sup> Corporate bookmakers offer new customers a variety of incentives to open an account and start betting with them. These range from sign-up bonus bet offers to money back or bonus bet refunds on selected events.<sup>440</sup> Customers, particularly in the younger demographic, now typically have multiple accounts with a number of wagering operators and loyalty towards a particular provider has decreased. Even in retail venues it is common for retail customers to place bets with corporate bookmaker competitors via digital devices.<sup>441</sup>
- 10.6 Customer choice is increasing and with growth in competition, customers are wagering through a number of different providers. The average number of wagering operators' brands customers used through digital wagering channels (iPhone, iPad, website and Android) has increased over the past couple of years to more than 2 per device.<sup>442</sup> Increased competition provides customers with a variety of offers and experiences and

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<sup>434</sup> Pleatsikas [144].

<sup>435</sup> Freeman [249], Cooke [Section H and Section I].

<sup>436</sup> Pleatsikas [14].

<sup>437</sup> Pleatsikas [147], Freeman [283] - [284]. .

<sup>438</sup> Freeman [315].

<sup>439</sup> Freeman [179]; Cooke [114]-[115].

<sup>440</sup> Freeman [179].

<sup>441</sup> Freeman [179].

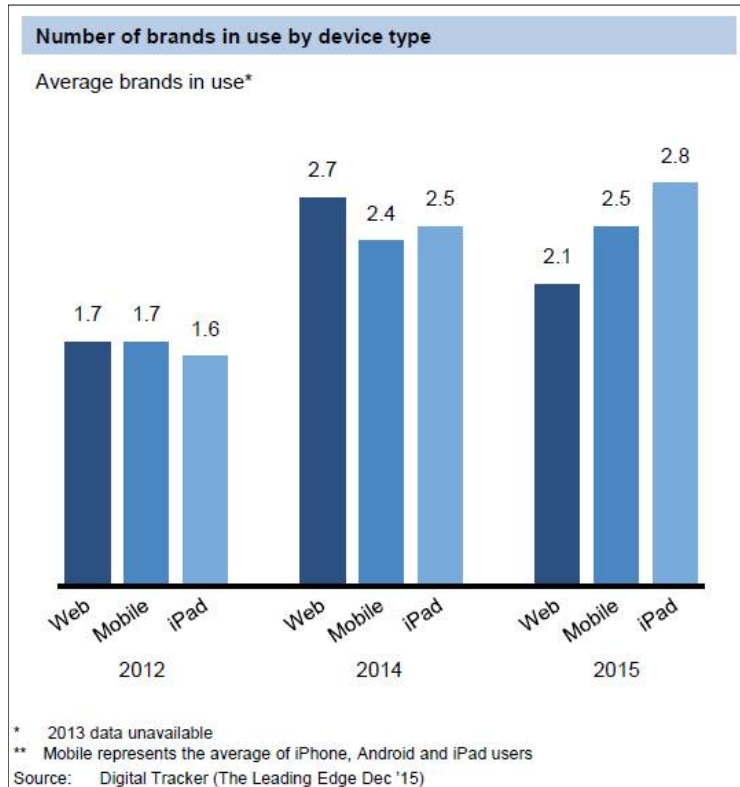
<sup>442</sup> Freeman [181].



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encourages customers to sustain a repertoire of accounts.<sup>443</sup> Table 10.1 below shows the number of wagering operator brands in use by device type (excluding use by cash customers) between 2012 and 2015. This also shows that, in 2015, customers using digital devices to place bets had an average of over 2 wagering operator brands in use.<sup>444</sup>

Table 10.1 – Estimate of number of wagering operator brands in use by device type



10.7 This significant shift among customers to establishing accounts with multiple suppliers increases competitive constraints on wagering product suppliers by increasing the ease of switching between wagering operators and reducing switching costs.

Enduring countervailing power of State and Territory governments

10.8 As set out in section 4 above and in Annexure A, the wagering products market is highly regulated, whereby many aspects of the provision of the service are subject to terms and conditions which include prescribed maximum take-out rates in relation to totalisator wagering. In respect of totalisator wagering, the States exercise significant countervailing power in that they set licensing conditions, establish selection criteria and may even choose to forego competitive bidding processes entirely.<sup>445</sup>

10.9 The countervailing power of the States, as the bodies which ultimate control the award of licensing rights, is enduring and provides a significant competitive constraint on existing licence holders (from operating outside the terms of their licences) and in relation to future licensing opportunities in which the States determine the terms and conditions upon which any licences are granted, and under which any competitive process is conducted.

<sup>443</sup> Freeman [181].

<sup>444</sup> Freeman [181].

<sup>445</sup> Pleatsikas [156].



## 2 Gaming systems and services

### *Gaming systems*

- 10.10 In relation to the supply of gaming systems, the merger parties will continue to be constrained post-acquisition by:
- competition from the alternative suppliers identified in section 4 above;
  - limited regulatory barriers in each of the relevant geographic markets to new entrants, including well-capitalised global gaming industry participants and their subsidiaries; and
  - the opportunity presented by technological advancement or legislative change for the development of new products.
- 10.11 As described above, TGS does not manufacture or supply its own proprietary system but re-supplies an IGT system (exclusively in Victoria) and re-supplies IGT, Aristocrat and Intecq systems in New South Wales. TGS' exclusivity rights in relation to the supply of IGT systems in Victoria expired in February 2017, following which TGS may continue to supply on a non-exclusive basis and IGT is free to market and supply its systems directly to licensed venues or to supply them through other third parties.<sup>446</sup>
- 10.12 In TGS' experience, customers generally do not switch between gaming systems providers unless prompted by technological advancement of the product, legislative imperative, or the depreciation of existing systems or services (historically 7-10 years) or better prices.<sup>447</sup>
- 10.13 Some customer groups have been able to take advantage of the scenarios described in order to call for competitive tenders for the supply of products. The Victorian Government's voluntary pre-commitment scheme commenced in December 2015 and required voluntary pre-commitment (**VPC**) systems to be available on all EGMs in Victoria. The need for venues to install an additional system created an opportunity for system providers to market a broader range of gaming systems to those venues. As a result, Intecq was able to enter the Victorian market in 2014, Konami and Maxgaming in 2015. Following the VPC announcement, Woolworths (the parent of Australian Leisure and Hospitality Group (ALH)) made a corporate decision to introduce VPC in all of its Australian venues regardless of whether it was required in every jurisdiction. ALH operates over 300 licensed venues across Australia. ALH called for tenders for the supply of systems including a VPC component and a number of in venue gaming systems providers participated in the tender (Aristocrat, Bally (Scientific Games), IGT, Konami, and Intecq). ALH subsequently selected Bally (Scientific Games) as its national gaming systems provider.<sup>448</sup>
- 10.14 In Intecq's experience, there is typically limited impact on the gaming venue's daily business, and no loss of trade or revenue, as the result of switching to another systems provider. This is because, for smaller venues, the switch can be conducted overnight when the venue is otherwise closed for business. Larger venues may decide to operate both the outgoing and incoming systems within their venue until the switch is complete, in order to minimise the impact on customers, trade and revenue.<sup>449</sup>
- 10.15 The specific assets that a gaming venue seeking to switch away from Intecq would need to replace include all 'in-machine' hardware associated with Intecq's Metropolis system,

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<sup>446</sup> Rytenskiid [135] to [137], [142].

<sup>447</sup> Rytenskiid [189], [208], [212].

<sup>448</sup> Rytenskiid [212].

<sup>449</sup> Rytenskiid [191] to [195].





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as well as broader 'in-venue' network infrastructure, and relevant computers and servers.<sup>450</sup>

- 10.16 The circumstances in which venues can terminate their contracts with Intecq and switch to a rival supplier differ depending on contract type and State:
- NSW and Victoria:
    - if a venue's in-venue gaming system is financed through extended payment terms, the venue needs to pay out the balance of the monies owed to Intecq;
    - in all other circumstances (e.g. where the venue has purchased the system outright (by making a one off payment)), the venue is free to switch to another systems provider at any time. However, it would need to give notice to Intecq under the Master Supply and Services Agreement. The notice period is typically 12 months.
  - In Queensland, in order to terminate a contract with Odyssey, a venue would need to establish a breach of contract by Odyssey which Odyssey is unable to remedy. If a venue terminates the contact without cause it is liable for 75% of the ongoing monthly fees due to the end of the term and must pay Odyssey's costs and reimburse any discounts or similar that were applied to the contract. The term of the contract is typically 5 years.<sup>451</sup>
- 10.17 As described in sections 4 and 7 above, there are a number of alternative providers of gaming systems in Victoria and New South Wales.

#### *Gaming systems and related services*

- 10.18 The time and cost involved in a venue switching to an alternative supplier of **gaming systems and related services** largely depends on the size of the gaming venue, and on the cost of the new system being provided by the alternative supplier (which will, in turn, depend on the system functionality).<sup>452</sup>
- 10.19 Due to the very different business models of TGS' 'full service offering' and supply contracts that offer fewer products, Tabcorp would not ordinarily expect customers to switch between the TGS offering and those alternatives. However, PVS offers a service that is comparable with TGS and other suppliers with broad capabilities (e.g. Aristocrat, Bally) may be able to do so.
- 10.20 If a gaming venue has a contract with TGS, then TGS (and not the gaming venue) will own the venue's EGMs, as well as the hardware component of the gaming and promotional management system, and will have a licence to use that system. If a gaming venue wished to end its relationship with TGS, then the venue would need to purchase or lease alternative gaming equipment and, if it wished to continue using a particular gaming system, enter into an arrangement with a relevant provider (which might be a manufacturer or a re-seller).
- 10.21 The specific assets that a gaming venue seeking to switch away from TGS would need to acquire/replace include:
- EGMs;
  - a gaming and promotional management system (if the venue wishes to continue using one), including a licence to use the system;
  - VPC technology (which is mandatory in Victoria); and

<sup>450</sup> Rytenskiid [190], [285].

<sup>451</sup> Rytenskiid [196].

<sup>452</sup> Rytenskiid [189].





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- EGM signage (if applicable).
- 10.22 In NSW, the TGS Gaming Services Agreement allows venues to purchase from TGS the gaming equipment that is already in their venue, at an agreed value.<sup>453</sup> In these circumstances, there would be minimal disruption to the venue's operations and revenue.
- 10.23 In Victoria, the TGS Gaming Services Agreement is silent on this issue, but TGS would likely consider any offer made by a venue to acquire the gaming equipment in their venue.
- 10.24 If the venue does not purchase its gaming equipment from TGS, then business continuity may be more challenging, given new equipment would need to be purchased and installed. Tabcorp notes, however, that EGM manufacturers allow venues to buy machines on extended payment terms (typically three years), which would facilitate the acquisition of new equipment.

#### *Field services*

- 10.25 As described above, TGS' customers purchase field services as part of TGS' 'full service' offering. Accordingly, switching requires consideration of the same issues as set out above.
- 10.26 In Victoria and New South Wales, a number of competitors supply field services as described in sections 4 and 7 above. In Queensland, field services must be supplied by an LMO and switching considerations applicable to these services are discussed below.

#### *Monitoring*

- 10.27 The following factors are relevant to customers' ability to switch between suppliers of **monitoring services** in Queensland and the constraints that will operate upon the merger parties post acquisition:
- In Queensland, some gaming systems and monitoring systems are not compatible. A customer's choice of monitoring service-provider may thus be driven by its preference for (or investment in) a particular gaming system.
  - Contracts for monitoring services range from month-to-month up to five years but are usually 3 or 5 years in length.<sup>454</sup> The various contracts (monitoring, service and maintenance, in-venue gaming) generally cycle together and may be renewed or put out to tender at the expiration of the relevant contract.
  - There is no limit to the number of LMOs that may be licensed in Queensland. Two entities other than the merger parties currently hold the requisite licence (PVS and Utopia) and Utopia (or its parent) also has existing infrastructure and business relationships with the hospitality industry in Queensland. An applicant for a licence is required to pay a licence application fee of \$16,540 and satisfy various probity and financial checks and criteria. Upon approval as an LMO, a licensee wishing to commence business must pay a licence of \$396,800.<sup>455</sup>
  - In relation to monitoring, the Queensland government has the power under the *Gaming Machine Act 1991* (Qld) to directly regulate the price of basic monitoring services. Pursuant to section 233 of that Act, an LMO must not charge more than the basic monitoring fee prescribed under a regulation for supplying basic monitoring services.

<sup>453</sup> In NSW, if a registered club terminates its contract with TGS without cause, it must do purchase the gaming equipment already in the venue at an agreed price. If a price cannot be agreed, the contract provides for it to be determined by independent valuation.

<sup>454</sup> Makryllos [111].

<sup>455</sup> Makryllos [108] to [110].



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- Tatts' experience is that customers in Queensland can and do switch their supplier of monitoring services and may do so for a number of reasons including better pricing, discounts or a desire to take advantage of technological developments or enhanced functionality delivered by new products or a desire to replace a legacy system upon the expiration of an existing contract<sup>456</sup>

### 3 Lotteries

10.28 The lotteries market is highly regulated with legislation in each State or Territory mandating a minimum 'return to player' in relation to most lottery products.<sup>457</sup> As the proposed acquisition would not result in any increase in concentration in the lotteries market, the merged entity will continue to be constrained to the same extent as it currently is - through the regulatory regime which governs lotteries and through the actual and potential threat of competition from resellers such as Jumbo and Netlotto and from synthetic lottery suppliers such as Lottoland and Plus Connect. Further, customers of lottery products are free to cease purchasing products, and to close their accounts, at any time.<sup>458</sup>

### 4 Keno

10.29 The Keno market is highly regulated with legislation in each State or Territory mandating a minimum 'return to player' in relation to Keno games, which will continue to constrain the merged entity. Further, customers of Keno products are free to cease purchasing products, and to close their accounts, at any time.

## 11 Imports

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### (a) Provide details of the actual and potential level of imports in the relevant market(s) and details of the importers and their suppliers (See Direction 16 of this Form)

#### 1 Wagering

11.1 As described in sections 4 and 7 above, the merger parties compete with corporate bookmakers which include the Australian operations of global bookmakers such as Sportsbet (a wholly-owned subsidiary of Irish betting company Paddy Power), William Hill, Ladbrokes, Unibet and Bet365. Tabcorp considers that, given the foreign ownership and foreign support (e.g. back office) of these suppliers, they are relevantly a form of imports into the Australian wagering market.

11.2 Tabcorp's estimates of the market share of these companies are set out in section 5 above. Tabcorp considers that the market share of these bookmakers is likely to follow the trends in Australian wagering described in section 4 above.

#### 2 Gaming systems and services

11.3 As described in sections 4 and 7 above, the merger parties compete with global gaming companies in relation to the supply of gaming systems and services, including Aristocrat, Bally, Global Gaming, IGT and Konami.

11.4 Tabcorp does not know details regarding the actual level of imports in relation to these companies.

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<sup>456</sup> Makryllos [112] to [116].

<sup>457</sup> Merwe [28(h)].

<sup>458</sup> Merwe [46].



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**3 Lotteries**

11.5 Not applicable.

**4 Keno**

11.6 Not applicable.

**(b) Describe any barriers to importation in the relevant market(s) including whether significant investment in facilities or in distribution arrangements is needed to facilitate importation**

**1 Wagering**

11.7 Most recent entrants to the Australian wagering market have been foreign corporate bookmakers which are well-resourced and have wagering experience abroad. Section 13 below describes the low barriers to entry to such imported wagering services.

**2 Gaming systems and services**

11.8 The applicable barriers to entry are described in section 13 below. Most relevantly, they include the requirement for a supplier of gaming systems and some related services to hold a relevant licence from a State or Territory gambling authority.

11.9 A number of suppliers who currently supply gaming systems to the merger parties for on-supply to licensed venues are already licensed in Australia, including Aristocrat and IGT.

**(c) Describe facilities and distribution arrangements necessary for importation in the relevant market(s), their capacity and who has ownership or control of these facilities and arrangements**

**1 Wagering**

11.10 The Northern Territory Government regulates access to the wagering services market through the issue of licences in that jurisdiction. The licences are issued on a non-exclusive basis and there is no limit restricting the maximum number of such licences. Current requirements are described in section 13 below.

11.11 Racing industry and sporting code bodies supply race field information and sports information and approvals upon application and payment of the relevant fee.<sup>459</sup> All wagering operators have access to this information from the relevant body.

11.12 Foreign corporate bookmakers require access to telecommunications platforms in order to offer their services online or by phone.<sup>460</sup> Multiple businesses offer such services in Australia and telecommunications access poses no barrier to entry to foreign bookmakers.

**2 Gaming systems and services**

11.13 The distribution of gaming systems and services requires:

- A relevant licence. Of the three States in which the merger parties both supply gaming systems and services, licences in Victoria and New South Wales are issued on a non-exclusive basis (except in relation to monitoring) upon application, satisfaction of applicable corporate and probity criteria and payment of the relevant fee. The supply of certain ancillary services does not require a licence in Victoria. The current licence requirements are described in section 4 above and section 13 below.

<sup>459</sup> Freeman [235], [238].

<sup>460</sup> Freeman [308(a)].



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- Ownership of or rights to distribute gaming systems. Many global gaming companies own and supply their own systems, as described in section 7 above.
- Distribution agreements with licensed venues. The merger parties do not operate licensed venues and agreements are open to ordinary commercial negotiation with venue operators.

**(d) Provide details of the price of imports as opposed to domestic production in the relevant market(s) and explain any divergence in these prices**

**1 Wagering**

11.14 See the response at section 17(a) below.

**2 Gaming systems and services**

11.15 Tabcorp does not know the prices charged by global gaming companies for the direct supply of their products to licensed venues in Australia, nor for their supply through other distributors.

**(e) Provide details as to the extent of constraint which would be likely to be provided by imports on domestic suppliers including the merger parties in the relevant market(s) post-acquisition**

**1 Wagering**

11.16 Post-acquisition the corporate bookmakers will continue to provide an effective competitive constraint on Australian-based wagering operators, including the merged entity: see section 10 above.

**2 Gaming systems and services**

11.17 The markets for the supply of gaming systems and related services are highly competitive in Australia, particularly in those States which account for a higher number of EGMs notably New South Wales, Queensland and Victoria. Competitors including global gaming companies are already active in those markets.<sup>461</sup>

*(See Direction 17 of this Form)*

## 12 Exports

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**(a) Provide details of the actual and potential level of exports in the relevant market(s)**

*(See Direction 18 of this Form)*

12.1 Not applicable.

**(b) Describe the export barriers faced by suppliers of inputs to the merger parties in the relevant market(s)**

12.2 Not applicable.

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<sup>461</sup> Makryllos [51].



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**(c) Provide details of the sale price of exports as opposed to domestic sales in the relevant market(s) and explain any divergence in these prices**

12.3 Not applicable.

**(d) Describe whether the suppliers of inputs to the merger parties are or would be able to export such inputs post-acquisition and, if so, describe the extent of constraint this would be likely to provide on the merger parties post-acquisition**

12.4 Not applicable.

*(See Direction 19 of this Form)*

## 13 Barriers to entry and expansion

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**(a) Provide details of any barriers to entry and expansion in the relevant market(s)  
(See Direction 20 of this Form)**

### 1 Wagering

13.1 There are low barriers to entry and expansion in the national market for the supply of wagering products to end users, as evidenced by history of entry into the market over the last decade and the number of suppliers currently in the market.

13.2 The only barrier of note in the wagering products markets is regulatory. As described in section 4, licences to offer totalisator or retail wagering in each State and Territory are currently provided on an exclusive basis. However, licences to supply online, phone and other mobile wagering are issued in the Northern Territory on a non-exclusive basis for a fee of \$23,000 per annum (and with wagering tax on turnover capped at \$575,000 per annum).<sup>462</sup> Whilst either a totalisator licence or a corporate bookmaker licence is required to enter the market, the ease with which corporate bookmakers have become licensed in the Northern Territory and have successfully competed in providing wagering services throughout Australia demonstrates that a totalisator licence is not required to compete effectively in the wagering products market.<sup>463</sup>

13.3 Bookmakers are able to obtain a sports bookmaker licence in Australia with relative ease. For example, in order to obtain a sports bookmaker licence in the Northern Territory, an applicant must undertake the following:

- obtain a police check on all directors, major shareholders and key personnel;
- prepare a deed of release and indemnity for suitability and probity purposes;
- lodge a proscribed application form (including all required supporting documentation such as a \$200,000 bank guarantee, most recent audited financial statements and a three-year business plan outlining how the granting of the licence will benefit the Northern Territory);
- comply with all Northern Territory racing rules and regulations and any conditions imposed by the Northern Territory Racing Commission; and
- pay the requisite application fee (which was \$23,000 for 2015/2016).<sup>464</sup>

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<sup>462</sup> Freeman [133], [134], [136].

<sup>463</sup> Freeman [134], [138], [311], Cooke [84 and Section I].

<sup>464</sup> Freeman [134].



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- 13.4 A corporate bookmaker offering wagering services to the Australian market will also require:
- a telecommunications service to facilitate wagering online or by telephone;
  - access to intellectual property by the payment of race fields information fees and similar fees to the racing and sporting codes upon which the bookmaker allows customers to place bets;
  - substantial investment in advertising or promotion in order to reach potential customers in the market;
  - customer risk management systems; and
  - general head office expenses including information technology and payroll.<sup>465</sup>
- 13.5 The most recent new entrants to the Australian wagering market have generally been foreign-owned corporate bookmakers, which have achieved entry and growth either organically or by acquiring smaller local operators. These bookmakers already operate substantial overseas home-country and international operations, and have access to the information technology services required to run a bookmaking business in Australia. These substantial overseas operations also reduce the scale of operation required to operate a business efficiently in Australia.<sup>466</sup>
- 13.6 The most recent of these foreign-owned corporate bookmakers to enter the Australian market is Ladbrokes. It acquired Bookmaker.com.au in 2013.<sup>467</sup> Since that acquisition, Ladbrokes has grown its share of Australian wagering market turnover from 2% to 6% in only 4 years.<sup>468</sup> In 2012 Bet365 entered the market organically – it has since grown its turnover market share from 0% to 4%.<sup>469</sup>
- 13.7 The example of Matthew Tripp, current CEO of CrownBet, shows the ease with which entrants may enter and expand operations within the wagering market. Matthew Tripp bought the Darwin-based bookmaker Sportsbet in 2005 for \$250,000, before selling the company to Irish bookmaker Paddy Power for \$338 million in 2011. Following a one year non-compete period as part of that deal, Mr Tripp and his family purchased BetEzy for less than \$10 million in 2012, which entered a joint venture with Crown Resorts to operate CrownBet in 2014.<sup>470</sup> CrownBet's share of Australian wagering market turnover grew from 2% in FY15 to 5% in FY16.<sup>471</sup>
- 13.8 Brand recognition and establishing goodwill is important to attracting and maintaining wagering customers, and as competition has increased in the Australian market corporate bookmakers have increased their advertising spend.<sup>472</sup> However Australian wagering market customers do not display significant brand loyalty, commonly using the services of multiple wagering operators: see section 10 above. Brand loyalty itself therefore does not pose a strong barrier to entry for potential new market entrants.<sup>473</sup>

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<sup>465</sup> Freeman [308].

<sup>466</sup> Freeman [307].

<sup>467</sup> Freeman [20(c)].

<sup>468</sup> Freeman [33].

<sup>469</sup> Freeman [33].

<sup>470</sup> Freeman [309].

<sup>471</sup> Freeman [33].

<sup>472</sup> Freeman [315].

<sup>473</sup> Freeman [315].



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**2 Gaming systems and services**

- 13.9 The inputs required in order to supply gaming systems and services in each of the relevant geographic markets are relatively easy to obtain and represent relatively low barriers to entry. The relative ease of entry, and the highly competitive nature of the markets, is demonstrated by the large number of suppliers of discrete gaming systems and/or services save for monitoring.
- 13.10 Suppliers of gaming systems and some services must be licensed or registered in each State and Territory in which they intend to supply products. Fees are payable in order to obtain the relevant licence or registration as follows:
- In Victoria, a one-off fee of \$2,843.30 is payable to be listed on the Roll of Manufacturers, Suppliers and Testers and the applicant also bears the cost of providing the required materials (e.g. ASIC searches) to the VCGLR.
  - In New South Wales, application for an EGM dealer's licence requires payment of a lodgement fee of \$1,000 and a fee-on-grant of \$9,000. An annual fee of \$10,000 is payable to retain the licence. The time required to obtain a licence depends on whether the applicant has previously been approved and undergone probity checks and on what further information (if any) the regulator requires and the minimum period is approximately 3-4 months. Application for an EGM seller's licence requires payment of a lodgement fee of \$100 and a fee-on-grant of \$400. An annual fee of \$500 is payable thereafter.
  - An LMO licence in Queensland requires an application fee of \$16,540 and a one-off licence fee of \$396,800. The licence is for a period of 10 years.
- 13.11 In each of Victoria, New South Wales and Queensland:
- Application for a licence requires satisfaction of probity and financial checks, and payment of the relevant fee. Details of these requirements are set out in section 4 above.
  - Particular conditions apply in relation to the issue of a monitoring licence. In Victoria, a manufacturer of gaming systems and suppliers of certain related services may not concurrently supply monitoring services. In Queensland, field services may only be supplied by a party which is also a licensed monitoring operator.
- 13.12 As described in section 4 above, suppliers in Victoria of 'ancillary services' such as loyalty programs, finance and advice on venue design and management do not need to be licensed by the VCGLR.
- 13.13 Potential suppliers of gaming systems need access to an appropriate system. As described in sections 4 and 7 above, systems suppliers include both manufacturers (who may supply their own proprietary systems directly to licensed venue operators (as does Intecq) or through third party suppliers (such as TGS)). There is a wide range in the price of such systems due to different functionality and continual product development. Indicative pricing is demonstrated in the sample supplier contracts described in section 6.
- 13.14 As described above, the market for gaming systems is technology-driven. New entrants are able to compete by developing and offering more advanced and innovative products, better user experience. As new technologies are deployed they are normally cheaper in cost to develop and manufacture and therefore attract a lower price.
- 13.15 In Victoria, there are low barriers to entry in relation to the supply of gaming systems and field services, particularly for new entrants that already provide gaming systems in other states, such as Aristocrat and Global Gaming which are already on the Roll of





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Manufacturers, Suppliers and Testers in Victoria.<sup>474</sup> Although timing is ultimately at the discretion of the regulator, the process of being listed on the Roll generally takes approximately six months, and the process of product approval takes at least another six months. Of the 35 suppliers listed on the Roll, six are global suppliers that have been on the Roll for 15 years or more. However, over half of the suppliers on the Roll (19/35) have entered the market in the past five years. As described above, suppliers of ancillary and venue management services do not require to be licensed by the VCGLR in Victoria. However, monitoring is subject to an exclusive licence.

- 13.16 A similar position obtains in New South Wales, where a large number of suppliers of field services hold relevant licences.
- 13.17 The technical skills required to supply field services are not significant. Providers of repair and maintenance services for hardware such as ATMs, EFTPOS machines, cash registers, POS terminals and ticketing machines will have the requisite skill set.
- 13.18 In Queensland, the CMS operator is not obliged to facilitate third party providers of in-venue gaming systems (even if their system is technically capable of doing so). Intecq (Odyssey's) Sentinel monitoring system only 'talks' to Intecq's eBet in-venue gaming system. Maxgaming has recently facilitated the provision of multiple third party in-venue gaming systems; the Konami system in one or two venues, Bally in all ALH venues, and IGT in one or two venues.<sup>475</sup>
- 13.19 Tabcorp understands that there is pressure from the industry to require CMS operators in Queensland to provide a choice of system suppliers.
- 13.20 EGMs operating in Australia must be compliant with the relevant communications protocol in each jurisdiction. Australia has a unique protocol for the manufacture of EGMs. This means EGMs manufactured for the Asian or American market cannot be used in Australia without modification. However, as part of the new monitoring licence in Victoria, one of the requirements is that widely recognised international protocols be adopted allowing EGMs from overseas to be compatible to the Australian domestic market. South Australia is part way through the process of adding the protocol and New South Wales is soon to do so. This may open the market up to new further entrants.

### 3 Lotteries

- 13.21 As described above, the conduct of public lotteries in Australia requires:
- A licence issued by the government of the State or Territory in which the lottery is conducted. Tatts is currently the only non-government supplier of public lottery products in each State and Territory except Western Australia and does so pursuant to exclusive licences in those jurisdictions.
  - A retail distribution network. As described above, the venues through which public lottery products may be distributed are regulated by relevant legislation.

### 4 Keno

- 13.22 As described above, the supply of Keno products requires:
- A licence issued by the government of the State or Territory in which the product is supplied. Tabcorp is currently the sole supplier of Keno through licensed venues in Victoria, New South Wales, Queensland and the ACT and Tatts holds an exclusive licence for retail distribution in South Australia.

<sup>474</sup> A list of companies on the Roll is accessible at Victorian Commission for Gambling and Liquor Regulation, *Manufacturers, suppliers and testers* <<http://www.vcglr.vic.gov.au/home/gambling/new+applicants/manufacturers+suppliers+and+testers/>>

<sup>475</sup> Rytenskiid [208].



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- A retail distribution network. The merger parties both supply Keno through arrangements with licensed venues – Tabcorp through pubs, clubs and TAB outlets and Tatts through newsagents and other small businesses. The nature and general terms of Tabcorp’s arrangements with its distributors are described in section 4(e) above.
- Access to appropriate hardware (e.g. screens, ticket machines) and software. A representative sample of suppliers of these kinds of products to Tabcorp is set out in **Annexure B, Part 6.1 Table E**. Tabcorp currently supplies Keno hardware and software to the entities that hold licences to supply Keno in the Northern Territory, Tasmania and Western Australia as set out in **Annexure B, Part 6.1 Table F**.

**(b) Provide details of any firms not currently supplying or acquiring goods or services in the Relevant Market(s) but which could enter the Relevant Market(s) quickly and provide an effective competitive constraint in the Relevant Market(s) to the merged entity**

#### **1 Wagering**

13.23 As described in sections 4 and 7 above, several foreign corporate bookmakers have entered the Australian wagering market in recent years. Although their presence already provides an effective competitive constraint in the Australian wagering market (as described in section 10 above), other large foreign bookmakers could also enter the Australian wagering market quickly and compete effectively. For example:

- Betway, a large European corporate bookmaker based in Malta; and
- 888sport, a large European corporate bookmaker based in Gibraltar.<sup>476</sup>

#### **2 Gaming systems and services**

13.24 Each of PVS and Utopia is licensed to provide monitoring services in Queensland. Having invested in the capability to acquire a licence to provide monitoring services – including satisfying probity requirements and paying a licence fee of \$396,800 – Tabcorp expects these firms to compete vigorously to acquire customers and grow market share.<sup>477</sup>

13.25 In addition, each of these firms has relevant gaming experience:

- PVS is a full service provider of gaming and promotional management systems and related services and has recently entered into an arrangement with Konami to provide the Synkros system. Tabcorp believes that it currently manages and supports more than 1,500 EGMs in Victoria.
- Utopia is owned by Banktech, which has experience in the provision of ATM, EFTPOS and other payment systems to a range of industries including hospitality. There are a number of factors which clearly indicate that Utopia has the ability and intention to supply monitoring services in Queensland:
  - through its parent company, Banktech, Utopia has customer relationships with relevant outlets operating EGMs in Queensland. It also has in-venue infrastructure, as well as technicians to service hardware and software supplied to venues;
  - Banktech also owns Global Gaming, which supplies gaming and promotional management systems and related services in New South

<sup>476</sup> Freeman [311].

<sup>477</sup> Rytenskild [258].



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Wales. This provides Utopia *'with a well-established system platform and a dedicated team that will continue to develop new products and services for the hospitality and gaming industry'*<sup>478</sup> and

- together, the system and service capabilities of Banktech, Global Gaming and Utopia mean that it could provide a very attractive offering to venues involving the supply of ATMs, EGM monitoring services, and gaming and promotional management systems and services.

13.26 Under the *Gaming Machine Act 1991* (Qld), in considering whether to grant a monitoring licence, regard must be had to the following issues:

- the applicant's business reputation;
- the applicant's current financial position and financial background;
- for the secretary and each executive officer – the person's character, and their current financial position and financial background;
- the applicant's general suitability to hold a licence;
- whether the applicant has, or has arranged, a satisfactory ownership, trust or corporate structure;
- whether the applicant has, or is able to obtain, enough financial resources to ensure the financial viability of operations conducted under the licence;
- whether the applicant has, or is able to obtain, the services of persons with appropriate business ability, knowledge or experience to enable the applicant to successfully conduct operations under the licence;
- if the involved body has a business association with another entity – the entity's character or business reputation, and the entity's current financial position and financial background; and
- any other issue prescribed under a regulation.

13.27 There is no limit to the number of LMO licences that the Queensland government can issue and, as a result, there could be further entry into Queensland monitoring services by companies who meet the criteria listed above. In this context, the parties note that there are a significant number of EGMs in Queensland (~42,000 excluding casinos).

13.28 For example, under its existing arrangements with ALH Group in Queensland, Bally provides gaming and promotional management systems to over 100 venues with 4,500 EGMs. It could easily expand its offering by obtaining a monitoring licence if there were a commercial incentive to do so.

13.29 In addition, Tabcorp is aware that a number of software and gaming companies – including Industry Games and ITT – are assessing whether to apply for an LMO licence in the near term.

13.30 Even in the absence of actual entry, the threat of entry is likely to continue to constrain the merged entity post-transaction.<sup>479</sup>

### 3 Lotteries

13.31 Tatts is the exclusive (in the case of Victoria, New South Wales and South Australia) or sole (in the case of Queensland, Tasmania, the Australian Capital Territory and the

<sup>478</sup> See Utopia Gaming Systems <<http://www.utopiagaming.com.au/#who-is-utopia>>.

<sup>479</sup> Makryllos [121].



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Northern Territory) public lottery licence holder in all States and Territories except for Western Australia.

13.32 The only two State licences currently held by Tatts which will expire prior to 2050 are Victoria in 2018 and Tasmania in 2018 and 2020.<sup>480</sup> Tabcorp expects any re-tendering of those licences to be competitive.

13.33 Whilst Northern Territory lottery betting licences are available for potential entrants which to compete with a synthetic lottery product, Tabcorp is not aware of any imminent entry.

**4 Keno**

13.34 The merger parties currently hold exclusive licences to supply Keno products in the States and Territories in which they operate, although Tatts has a Victorian licence to offer a daily Keno game which it has not sought to exercise. The only two State licences to expire prior to 2030 are Victoria in 2022 and Tasmania in 2023. Tabcorp expects any re-tendering of those licences to be competitive.

**(c) Provide details of any firms which have recently tried and failed to enter the relevant market(s), including the reasons (if known) for their failure**

**1 Wagering**

13.35 Only two significant wagering operators have discontinued their supply of wagering products in the Australian wagering market in the past 5 years:

- Betfred (in 2014)
- Sports Alive (in 2011).<sup>481</sup>

13.36 Tabcorp understands that some of the factors that may have led to Betfred ceasing their operations in Australia include the impact of restrictions on online live betting and their limited offering, which focused on sports betting. Sports Alive ceased operations when it went into administration in 2011.<sup>482</sup>

**2 Gaming systems and services**

13.37 Tabcorp is not aware of any firms which have recently tried but failed to enter any relevant market for the supply of gaming systems and services.

**3 Lotteries**

13.38 Tatts was issued with the product licences pursuant to which it conducts its lotteries business in New South Wales following a competitive bidding process in 2010.<sup>483</sup> According to the NSW Auditor-General's Report Performance review of the NSW Lotteries Sale Transaction dated November 2010, at least three bidders participated in that process.<sup>484</sup> The identity of the other participants has not been disclosed.<sup>485</sup>

13.39 Tatts was issued with the licence pursuant to which it conducts its lotteries business in Victoria following a competitive bidding process during 2005-2007. Following that process, Tatts was granted certain licences and Intralot (a company based in Greece) was granted a licence which permitted it to conduct daily Keno and Instant Scratch-Its.

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<sup>480</sup> Merwe [34], [86] and [99].

<sup>481</sup> Freeman [310].

<sup>482</sup> Freeman [310].

<sup>483</sup> Merwe [83].

<sup>484</sup> Merwe [84].

<sup>485</sup> Merwe [85].



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Intralot's licence was voluntarily surrendered back to the Government on 27 October 2014, with the rights under it subsequently granted to Tatts on 1 February 2015.<sup>486</sup>

**4 Keno**

- 13.40 Tatts was an unsuccessful participant in the bidding process for ACTTAB from the ACT government in 2014, which included a Keno licence.<sup>487</sup> In 2015 Tatts was issued with a licence in Victoria to offer scratch it products and daily Keno games in Victoria. Tatts has not sought to exercise the right to offer or operate daily Keno in Victoria.<sup>488</sup>

## 14 Dynamic characteristics

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**Provide details of the dynamic characteristics of the relevant market(s)** (See *Direction 21 of this Form*)

**1 Wagering**

- 14.1 Tabcorp considers that the wagering market in Australia is dynamic as evidenced by the overall growth, and technological change and growth in digital channels, referred to in section 4 above and **Annexure A**.
- 14.1 Trends in the Australian wagering market over the past decade evidence low barriers to entry and expansion. As described in section 4 above, the industry has seen rapid digital convergence with digital wagering (online via website or apps) increasing from 30% to 51% of industry turnover. Channel convergence is occurring at pace in key global markets including Australia with all key markets experiencing a rapid uptake of mobile based online betting.<sup>489</sup>
- 14.2 Another example of the market's dynamism is that corporate bookmakers have doubled their turnover in the last five years and now command over 50% percent of the total wagering market.<sup>490</sup> Details regarding market growth including both the merger parties and corporate bookmakers are set out in **Annexure B, Part 5.1(a)**.
- 14.3 There is also considerable diversity in the wagering product and services available to consumers. Wagering products and services available to consumers now include totalisator (pari-mutuel), tote derivative and fixed odds products, provided online, by phone, through retail locations or on-course. Customers in each State and Territory have a wide range of options when placing bets, and are not restricted to a licensed operator in their home jurisdiction. In each State and Territory, customers have the option of placing fixed odds or tote derivative bets online through corporate bookmakers licensed in the Northern Territory. They can also place online totalisator bets through any of the State TABs, including in States or Territories outside their home State or Territory.<sup>491</sup>
- 14.4 The dynamic characteristics of the market are emphasised by the responsiveness of established companies to the structural changes occurring in the market. The following considers each of the merger parties' responses to changes in the wagering market.
- 14.5 In response to the above changes, Tabcorp has developed and adopted a number of measures designed to strengthen Tabcorp's overall offerings. In particular, Tabcorp has

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<sup>486</sup> Merwe [87] to [89].

<sup>487</sup> Merwe [129].

<sup>488</sup> Merwe [89] and [90].

<sup>489</sup> Freeman [248].

<sup>490</sup> Freeman [248].

<sup>491</sup> Freeman [274].



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taken steps to strengthen its overall pari-mutuel and fixed odds offering in direct response to the increased competition from corporate bookmakers. Some of these measures include the following.<sup>492</sup>

- 14.6 **Launching Luxbet:** Tabcorp launched a corporate bookmaker subsidiary, Luxbet, in September 2008 more closely replicate the offering of with corporate bookmakers, by offering products which, at that time, Tabcorp was unable to provide. Since 2011 Tabcorp has also progressively expanded its TAB branded fixed odds business to allow it to offer fixed odds products akin to corporate bookmakers.<sup>493</sup>
- 14.7 **Investment in retail outlets:** Tabcorp has continued to invest in its retail outlets to promote retail wagering, including by improving venue design and offerings.<sup>494</sup> The total amount Tabcorp has invested in retail upgrades from FY11 – FY16 is around **[Confidential to Tabcorp]**<sup>495</sup> including approximately **[Confidential to Tabcorp]** in equipment investments for retail venues.<sup>496</sup>
- 14.8 Tabcorp’s current strategic initiatives for retail wagering include **[Confidential to Tabcorp]**
- 14.9 **International pooling:** Tabcorp has continued to expand its international pooling activities. Tabcorp is party to pooling and coverage agreements with a number of international wagering operators as described at 4(e) above. These arrangements allow for the transmission of bets by overseas customers into Tabcorp totalisator pools and the transmission of bets by Australian customers into overseas pools.<sup>498</sup>
- 14.10 **Investing in new products:** Tabcorp has introduced new totalisator wagering and fixed odds products in order to compete with corporate bookmakers, details of which are in section 2.11 of **Annexure A**.<sup>499</sup>
- 14.11 **Improved digital offering:** Tabcorp has invested significantly in its digital offering, including re-designing its website and phone apps and introducing live streaming of racing on both of these. Between FY2013 and FY2016 Tabcorp’s in-house digital team has grown in size from 3 to 95 staff, and its capital investment has grown with a compound annual growth rate of **[Confidential to Tabcorp]** over the same period.<sup>500</sup>
- 14.12 **TAB Rewards:** Tabcorp set up the TAB Rewards loyalty program for New South Wales account customers in October 2009, and has since extended it to retail customers in New South Wales, Victoria and the Australian Capital Territory.<sup>501</sup>
- 14.13 **Longitude:** In February 2016, Tabcorp entered into an agreement with Longitude, SA for use of a pari-mutuel betting system that enables Tabcorp to aggregate pools, develop new bet types more quickly and at lower cost, and to display approximate dividends on

<sup>492</sup> Freeman [319] – [320].

<sup>493</sup> Freeman [321].

<sup>494</sup> Freeman [322].

<sup>495</sup> Freeman [326].

<sup>496</sup> Freeman [323].

<sup>497</sup> Freeman [324].

<sup>498</sup> Freeman [336].

<sup>499</sup> Freeman [337].

<sup>500</sup> Freeman [340].


<sup>501</sup> Freeman [343].





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exotic bet types. Tabcorp intends to offer bets using the Longitude system from December 2017.<sup>502</sup>

- 14.14 **Bonus bets:** for example, Tabcorp has offered bonus bets and cash refunds where a customer places a win bet and their choice comes second or third.<sup>503</sup>
- 14.15 **Account-opening promotions:** An example of this is matching customer deposits with bonus bets on account opening.<sup>504</sup>
- 14.16 **Direct responses to corporate bookmakers' promotions:** Tabcorp has introduced and is currently considering direct responses to corporate bookmakers' promotions, which include:
- the introduction of the 'Fair Go' program, where unsuccessful customers are given bonus bets in circumstances where the outcome of an event changes (such as when the winning contestant is disqualified). This aims to respond to corporate bookmaker promotions such as 'Badbeat' and 'Justice Payout', where customers' bets are refunded when they lose because of a decision perceived to be 'unfair' by customers; and
  - **[HIGHLY Confidential to Tabcorp]** 
- 14.17 In direct response to the increasing competition from corporate bookmakers, Tatts has engaged in a number of "strategic initiatives" which were designed to make Tatts' wagering business competitive and recapture market share in Australia.<sup>506</sup> These initiatives are described below.<sup>507</sup>
- 14.18 **Comprehensive Rebranding:** A full rebranding to produce a unified brand (namely 'UBET') capable of working seamlessly across Tatts' retail, online and phone wagering operations.<sup>508</sup>
- 14.19 **Improvements to fixed priced offers:** Improving Tatts' fixed price sports and racing offer, given that Tatts offered "fewer markets" than corporate bookmakers and was opening those markets for betting later (i.e. closer to the event) than its competitors<sup>509</sup>.
- 14.20 **Improvements to digital offering:** Improving Tatts' website and digital offering, including developing a new-look website (UBET.com) that is **optimised** for use on various technologies including smart phones and tablets; and creating a suite of UBET apps for smartphones and tablets that allow customers to view live odds and to cash out pending bets early on certain events before the conclusion of the event.<sup>510</sup>

<sup>502</sup> Freeman [344].

<sup>503</sup> Freeman [345].

<sup>504</sup> Freeman [345(b)].

<sup>505</sup> Freeman [345(c)(ii)].

<sup>506</sup> Cooke at [153].

<sup>507</sup> Cooke [Section I].

<sup>508</sup> Cooke [153(a)].

<sup>509</sup> Cooke [153(b)].

<sup>510</sup> Cooke [153(c)].





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- 14.21 **Redesign of retail outlets:** Redesign of Tatts' retail outlets to make them more attractive to younger bettors and develop the growth of Tatts' sports betting business; younger bettors typically are attracted to sports, rather than race betting.<sup>511</sup>
- 14.22 **Improving the in-play betting offering** at Tatts' retail outlets to enable Tatts to be competitive in the market for in-play betting, the world's fastest growing gambling segment.<sup>512</sup>
- 14.23 **Seeking improvements in Queensland wagering licence terms:** Steps were taken to negotiate an extension of the Queensland wagering licence upon more favourable terms including a reduction in tax rates and the continued offset of race field fees against other fees payable by Tatts to the Queensland racing industry.<sup>513</sup>
- 14.24 **An increased focus on marketing:** The renegotiation of Queensland licensing arrangements provided Tatts with more funds for marketing. Specific marketing initiatives have included:<sup>514</sup>
- using multi-channel forms of directly communicating with customers, such as SMS messages, and 'push notifications' within the UBET app;
  - using email and social media advertising (e.g. Facebook) to target potential customers and re-target existing customers;
  - marketing the UBET brand, including by TV advertisements, the UBET app and website and revamped retail store branding;
  - entering partnerships to connect Tatts with customers that are increasingly attracted to corporate bookmakers - for example, in FY16 Tatts committed more than \$1.7 million in sponsorships, including with Melbourne City Football Club (soccer), the V8 Supercar Championship, Port Adelaide Football Club (AFL), Racing Queensland and Tas Racing. UBET also has an exclusive agreement with 'Huffington Post Australia' to promote UBET's brand when content is published in relation to Australian and US sports;
  - targeting specific events such as AFL, NRL, and State of Origin matches, on which corporate bookmakers typically advertise heavily; and
- 14.25 **Development of a wagering loyalty program, "UBET+",** that provides reward points (convertible to betting dollars) in exchange for betting activity across digital and phone channels.<sup>515</sup>
- 14.26 As at February 2017, October 2016, the UBET brand has been rolled out in 289 of Tatts' 1,401 retail outlets in Queensland, South Australia, Tasmania and the Northern Territory. By the end of FY17, Tatts plans to have rolled out the UBET brand in a further [Confidential to Tatts] outlets whilst also rolling out the UBET brand across [Confidential to Tatts] retail outlets. To date, the focus of the rebrand has been on hotels, pubs and clubs (as opposed to agencies and racetracks) and on Tatts' home state of Queensland. The UBET brand is being rolled out progressively in new outlets and by refurbishing existing outlets, and on the internet via [www.ubet.com](http://www.ubet.com) and the UBET app for Apple and Android mobile devices. Tatts also continues to offer wagering under the Tatts brand from the website [www.tatts.com](http://www.tatts.com).<sup>516</sup>

<sup>511</sup> Cooke [153(d)].

<sup>512</sup> Cooke [153(e)].

<sup>513</sup> Cooke [153(f)].

<sup>514</sup> Cooke [153(g)].

<sup>515</sup> Cooke [153(h)].

<sup>516</sup> Cooke [154].



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14.27 As described in section 4 above, CrownBet has recently announced an agreement with Clubs NSW to facilitate online betting within retail venues in New South Wales. Tabcorp considers that the CrownBet offer contravenes the terms of Tabcorp's existing exclusive retail licence and the legislative regime which supports that licence. It is considering its position in that respect.<sup>517</sup> Nevertheless, CrownBet's preparedness to attack retail exclusivity using a digital platform demonstrates not only the ongoing competitive impact of digital offerings, and the convergence of totalisator and fixed odds betting, but also that CrownBet considers there to be value in a retail network. In this respect, recent events underscore both the intensity of competition from corporate bookmakers, as well as the likelihood of CrownBet being interested in bidding for future retail opportunities.

## 2 Gaming systems and services

14.28 The market for gaming systems is technology-driven. New entrants are able to compete by developing and offering more advanced and innovative products and services, better user experience. As new technologies are deployed, they are normally cheaper in cost to develop and manufacture and are therefore able to be marketed and sold at a more competitive price.

14.29 Over the past 5 to 6 years, new entrants have entered and expanded by:

- **contracting with venue groups or large individual venues**, as Bally (Scientific Games) did with ALH Group and as Konami did with Echo Entertainment Group (now The Star Entertainment Group), the Revesby Workers' Club and St John's Park Bowling Club;
- **contracting with gaming service providers**, such as IGT's current relationship with TGS or Konami's relationship with PVS. These relationships facilitate the system providers' entry into the market, or allow them to increase their market share;
- **utilising other opportunities, such as changes to regulation**. The Victorian Government's voluntary pre-commitment scheme commenced in December 2015, which requires voluntary pre-commitment systems to be available on all EGMs in Victoria. The need for venues to install an additional system created an opportunity for system providers to market a broader range of gaming systems to those venues. As a result, Intecq was able to enter the Victorian market in 2014 and Konami and Maxgaming in 2015. Details of the growth in Intecq's business since 2014 are given in section 5 above. Following the pre-commitment announcement, Woolworths, the holding company of wholly owned subsidiary ALH, made a corporate decision to bring in pre-commitment across Australia regardless of whether it was required in every jurisdiction. ALH tendered the system project of which a number of in venue gaming systems providers participated (Aristocrat, Bally (Scientific Games), IGT, Konami, and Intecq). ALH subsequently selected Bally (Scientific Games) as its national gaming systems provider;
- **providing a unique/differentiated service offering**, for example, Tabcorp understands that, despite the higher cost of their offering, factors contributing to Bally's successful bid to provide ALH's gaming systems were their ability to service a national footprint and their broad service offering. Conversely, other groups (such as PVS) might seek the nimbleness of a smaller supplier and the ability to work with the supplier to enhance the offering over time;
- **acquiring companies with gaming system capability**, such as eBet (now Intecq) did when it acquired Bounty Limited, which provided central monitoring

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<sup>517</sup> Attenborough [119].



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solutions, and Odyssey Gaming, which had gaming systems with loyalty functionality and cashless pay solutions; and

- obtaining regulatory clearance for their technology and services.

**3 Lotteries**

14.30 Not applicable.

**4 Keno**

14.31 Not applicable.

**15 Vigorous and effective competitor**

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**Indicate whether the Target or any other participant in the relevant market(s) could be described as a vigorous and effective competitor to the Applicant or other market participants to any and to what extent, and why (See Direction 22 of this Form)**

**1 Wagering**

- 15.1 Tabcorp and Tatts have largely complementary wagering businesses, with no overlap in retail (bricks and mortar) operations, and there is limited overlap in relation to online, phone and mobile wagering.<sup>518</sup>
- 15.2 Tabcorp does not consider Tatts/UBET to be a particularly vigorous and effective competitor in the supply of fixed odds racing and sports wagering products.<sup>519</sup>
- 15.3 Tabcorp believes that Tatts/UBET's offering is of fixed odds racing and sports wagering products generally less attractive than that of Tabcorp and/or corporate bookmakers in relation to price and non-price factors, reflecting the fact that, in Tabcorp's experience, a wide range of factors bear on customer experience and engagement with wagering brands.<sup>520</sup>
- 15.4 By comparison, the corporate bookmakers are currently extremely vigorous and effective competitors for the reasons set out in sections 4, 7 and 10 above.

**2 Gaming systems and services**

- 15.5 Tabcorp does not consider Tatts to be a particularly effective competitor of Tabcorp or any other supplier of gaming systems or services in any relevant market except as a supplier of monitoring services and field services in Queensland. In relation to Victoria and New South Wales:
- Tatts' specialist offerings (Maxgaming's loyalty and jackpot offerings and Bytecraft's field services) are not substitutable for the 'full service' offering supplied by TGS and do not have the capabilities of Intecq's Metropolis system;
  - Maxgaming's market share, as described in section 9 above, is not material except in relation to the supply of monitoring services in New South Wales where the parties do not compete because Maxgaming is the exclusive supplier of those services and Tabcorp does not supply them.

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<sup>518</sup> See paragraphs 4.133 and 4.134 above.

<sup>519</sup> Freeman [297].

<sup>520</sup> Freeman [297] – [301].



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**3 Lotteries**

15.6 Not applicable.

**4 Keno**

15.7 Not applicable.

**16 Vertical integration**

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(a) **Describe whether the acquisition would, or would be likely to, result in increased vertical integration between firms involved at different functional levels in the relevant market(s) (See Direction 23 of this Form)**

(b) **Describe whether the acquisition would, or would be likely to, increase the risk of limiting the supply of inputs or access to distribution such that downstream or upstream rivals face higher costs post-acquisition or full or partial foreclosure of key inputs or distribution channels**

**Monitoring services – New South Wales**

16.1 Tabcorp considers that any vertical integration of monitoring services and gaming systems and services in New South Wales will not foreclose competition.

16.2 **Monitoring services are highly regulated.** Pursuant to section 133 of the *Gaming Machines Act 2001* (NSW), venues must ensure that each EGM is connected to an authorised CMS.<sup>521</sup> Pursuant to section 133A of the Act, a technician who carries out any work on an approved EGM in a licensed venue must ensure that it is connected to an authorised CMS before it is operated for the purposes of gambling.

16.3 Pursuant to section 134(3) of the Act, the fee payable for the provision of monitoring services is determined by the Minister in consultation with the Treasurer. As of 1 December 2016, the monitoring fee is \$43.20 (plus GST) per approved EGM per month. On 1 July 2017, and then on an annual basis, the monitoring fee will be increased or decreased based on the 'Sydney CPI'. In these circumstances, there will be no ability for the merged firm to leverage its position as the exclusive monitor into related markets.<sup>522</sup>

16.4 Use of CMS data is also highly regulated.<sup>523</sup> Under section 139(1) of the *Gaming Machines Act*, all rights associated with CMS information are vested in the Crown. 'CMS information' is defined to mean 'information acquired in the course of the operation of an authorised CMS (including any mandatory ancillary CMS services) and includes data derived from that information'.<sup>524</sup> Section 136B and 139(2) impose restrictions on the use of CMS information.

16.5 **Monitoring services and third party systems and services are not connected.** In NSW, under the current EGM protocol, there is no interaction between the monitor and gaming systems providers. More specifically, a gaming system provider does not need to seek any authority from the monitor, or engage with the monitor or its equipment, in order to deliver the gaming system and services. The CMS and in-venue systems connect to

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<sup>521</sup> Rytenskild at [236].

<sup>522</sup> Rytenskild at [246].


<sup>523</sup> Rytenskild at [235].

<sup>524</sup> Rytenskild at [235].



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EGMs via different ports. Accordingly, there is no ability for the supplier of monitoring services to affect the functionality or operation of third party gaming systems.<sup>525</sup>

- 16.6 Furthermore, under section 136C of the *Gaming Machines Act*, the Minister may, by notice in writing, direct a CMS licensee to provide additional specified services in relation to the management and operation of the authorised CMS or the use of CMS infrastructure or CMS information.<sup>526</sup> In addition, there is no commercial incentive to seek to foreclose competing gaming systems providers as any attempt to interfere with the operations of a third party’s gaming system is likely to affect the relevant venue’s operations, which will ultimately affect monitoring revenues.<sup>527</sup> Consequently, even with the introduction of new protocols involving some connection between the monitor and the gaming system provider,<sup>528</sup> there will be no ability or incentive for the monitor to seek to foreclose competing gaming systems providers by preventing access to monitoring hardware.<sup>529</sup>
- 16.7 **The theory of harm is not consistent with market experience.** Maxgaming has been the exclusive monitor in NSW since around 2001. It is also a supplier of in-venue systems. Maxgaming has no ability or incentive to exploit the CMS data because of the restrictions in its licence and legislation in New South Wales. If it were able to leverage its position as the exclusive monitor, one would expect it to have done so and that, as a result, it would have a substantially larger position in relation to the supply of in-venue systems in NSW.<sup>530</sup>
- 16.8 **Commercial issues relating to use of data.** As set out above, Tabcorp considers that any concerns regarding the use of CMS data are addressed by the current regulatory structure.<sup>531</sup> In addition, use of this data is constrained by commercial considerations.
- 16.9 CMS data includes two main data sets, relating to ‘metering’ and ‘events’. Metering data is transactional data associated with an EGM, including turnover, wins, and payouts. Events data relates to certain activities of the EGM which could give rise to potential security issues, including machine malfunctions and door openings. CMS data does not include player information or associated player activity.<sup>532</sup>
- 16.10 CMS data also includes the type of EGM. This allows Maxgaming to publish (with the consent of venues) aggregated and anonymised benchmarking and business intelligence data, which venues can use to benchmark their performance against industry trends.<sup>533</sup>
- 16.11 Given its nature, raw CMS data would be of limited utility to gaming services providers (other than the monitor).<sup>534</sup>
- 16.12 **[Confidential to Tabcorp]** 

<sup>525</sup> Rytenskiid at [247].

<sup>526</sup> Rytenskiid at [249].

<sup>527</sup> Rytenskiid at [250].

<sup>528</sup> This will not be in the case in all circumstances as the new protocols will provide for direct communications with the gaming machine exclusive of monitoring hardware.

<sup>529</sup> Rytenskiid at [251].

<sup>530</sup> Rytenskiid at [252].

<sup>531</sup> Rytenskiid at [242].

<sup>532</sup> Rytenskiid at [236].

<sup>533</sup> Rytenskiid at [237].

<sup>534</sup> Rytenskiid at [238].



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[REDACTED]

- | [REDACTED]
- | [REDACTED]
- | [REDACTED]
- | [REDACTED]
- | [REDACTED]

16.13 **[Confidential to Tabcorp]** [REDACTED]

**Monitoring services - Queensland**

16.14 To the extent that any vertical integration issues arise in relation to the supply of monitoring services in Queensland, this is addressed by the proposed divestiture of Odyssey referred to in section 4 above.

**Racing media**

16.15 Vertical integration issues relating to racing media as a related market are addressed in section 18 below.

**17 Prices and profit margins**

**(a) Provide details of recent and current levels of pricing in the relevant market(s) including the use of rebates and discounts**

**1 Wagering**

17.1 In the wagering market, customers stake money on the outcome of a particular event or combination of events occurring.<sup>535</sup> A customer placing a wager through a totalisator does so by reference to the projected dividend that he or she will receive.<sup>536</sup> When placing a fixed odds wager, the customer does so by reference to a fixed dividend.<sup>537</sup> In such circumstances, as compared with other products, there is no price in the conventional sense.

<sup>535</sup> Freeman [10].

<sup>536</sup> Freeman [38].

<sup>537</sup> Freeman [53].



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17.2 [HIGHLY Confidential to Tabcorp] [REDACTED]

17.3 Tatts has a loyalty/rewards program called UBET +, the structure of which is described in **Annexure C**. Under the program:

- points are awarded based on the amount a customer spends on totalisator or fixed price odds products; and
- rewards points can be converted into 'betting dollars', which can then be used to place a bet on any totalisator or fixed price product via the UBET website, phone app or telephone.<sup>539</sup>

**2 Gaming systems and services**

17.4 There is no standard price for the 'full service' offered by TGS. Current prices and prices from recent years range from [HIGHLY Confidential to Tabcorp] [REDACTED]. As a general rule, the TGS offering is not de-bundled (that is, TGS does not offer the individual services comprised in its 'full service offering' separately). The only component where variability in pricing exists is if the venue elects to offer a gaming loyalty system [HIGHLY Confidential to Tabcorp] [REDACTED] and instances where venues obtained loan financing. If a venue has an existing loan, this typically adds between [HIGHLY Confidential to Tabcorp] [REDACTED] to the daily service fee, depending on the size of the loan and how many EGMs this charge is spread over.<sup>540</sup>

17.5 TGS generally enters into a contract with a customer for a minimum of five years, and the daily fee is charged over the term of the contract. The customer does not have an upfront cost, but TGS generally has an up-front capital contribution and investment in product and in refurbishment of the venue that is amortised over the term of the contract.

17.6 The variation in pricing exists due to:

- EGM quantities;
- contract duration;
- level of annual product investment (how many new EGMs are deployed each year);
- whether there is a loan finance component; and
- the provision of any other financial assistance toward venue renovation and improvements.

17.7 Venue groups are generally able to negotiate for a lower price as they are more valuable to Tabcorp. Tabcorp will also agree to lower prices where there is strategic value to our signing certain customers. Tabcorp has policies regarding return on invested capital, and internal rate of return measures, which put a floor on the price it is willing to offer.

17.8 Larger venue groups often conduct tenders for providers of gaming systems. For example Intecq successfully tendered to provide the gaming system for the Redcape Group, a group of 26 pubs (and associated retail liquor stores) across New South Wales

<sup>538</sup> Freeman [191].

<sup>539</sup> Cooke [155] – [156].

<sup>540</sup> Rytenskiid [157].





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and Queensland. Intecq also participated in a tender put out by the Australian Leisure and Hospitality (ALH) group but was not successful.

17.9 In relation to Intecq's offering, pricing for its monitoring service and field services in Queensland is set at **[Confidential to Tabcorp]** per EGM per month and **[Confidential to Tabcorp]** per EGM per month respectively. Pricing for Intecq's gaming systems differs depending on the number of EGMs. Indicative pricing is set out in **Annexure B, Part 7.2.**<sup>541</sup>

17.10 Maxgaming offers its customers a number of services. These services include the supply of monitoring services and gaming systems and related services. Maxgaming may offer products and services separately. However, some of Maxgaming's customers acquire more than one service from Maxgaming as a bundle.<sup>542</sup> The products and services offered by Maxgaming and/or Bytecraft vary depending on the customer's choice and infrastructure and the terms of the customer's individual contracts.<sup>543</sup>

17.11 Where Maxgaming and/or Bytecraft offers bundled service offerings, **[Confidential to Tatts]**

[REDACTED]

**3 Lotteries**

17.12 Ticket prices in relation to Tatts' Tattslotto, Oz Lotto, Powerball, The Pools, Set for Life, Monday and Wednesday Lotto and Super 66 lottery products are set out in Tatts' website.<sup>545</sup> The ticket price for participation in Lucky Lotteries is \$2.20 per number in the \$100,000 draw and \$5.50 per number in the \$200,000 draw. Instant Scratch-It tickets are available to purchase at a range of prices namely \$1.10, \$2, \$4, \$5, \$10 and \$15. Prices for those lottery products sold by Tatts online are the same price, whether they are sold online or at a retail store.

**4 Keno**

17.13 Customers of Tabcorp's Keno products purchase a ticket to participate in a game. The minimum price payable for a ticket in Tabcorp's Keno offering is \$1 for all Keno products except MegaMillions (currently offered only in New South Wales) which has a minimum ticket price of \$2.<sup>546</sup>

17.14 A sample ticket from the Victorian Keno Game Guide is set out below. In this example, the player is playing a 5-spot game (see sections A and B of ticket) and has chosen to play 3 games (section D) with a \$5 spend per game (section C). The ticket price is therefore \$15. In Bonus games, the ticket price is doubled.<sup>547</sup>

<sup>541</sup> Rytenskiid [166].

<sup>542</sup> Makryllos [61] to [62].

<sup>543</sup> Makryllos [66].

<sup>544</sup> Makryllos [63] and [65].

<sup>545</sup> Merwe [44].

<sup>546</sup> Rytenskiid [24].

<sup>547</sup> Rytenskiid [28].



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17.15 Tabcorp estimates that an average player's spend per ticket in FY16 was approximately \$11.<sup>548</sup>

17.16 The minimum ticket price for Tatts' Keno products is \$1 per game, but a player can elect to pay up to \$100 per game for some offerings.<sup>549</sup>

**(b) Provide details of supply costs of goods and services supplied by the merger parties including manufacturing, marketing and distribution costs in the relevant market(s)**

**1 Wagering**

17.17 Details of Tabcorp's supply costs in relation to its wagering business are described in section 6 above and **Annexure B, Part 3.1**; and details of Tatts' supply costs in relation to its wagering business are described in section 6 above and **Annexure C, Part 7.3**. As the relevant businesses relates to the supply of wagering products and services, 'manufacturing' costs comprise the costs associated with relevant licences, the obtaining of relevant racing product (including industry funding agreements and race fields fees) and other costs of production rather than 'manufacturing' costs in an industrial sense. Marketing costs (including advertising and promotions) and distribution cost (notably commissions paid to retail agents) are identified in section 6 and **Annexure B** and **Annexure C**.

**2 Gaming systems and services**

17.18 Tabcorp's supply costs in relation to its gaming systems and services business are set out in section 6 above and **Annexure B, Part 3.2**. As the various business models differ, supply costs for each of TGS and Intecq's two operating units (eBet and Odyssey) are separately identified.

17.19 Tatts' supply costs in relation to its gaming systems and services business are set out in section 6 above and **Annexure C**.

<sup>548</sup> Rytenskiid [27].

<sup>549</sup> Rytenskiid [25].



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**3 Lotteries**

17.20 Tatts' supply costs in relation to its lotteries business are set out in section 6 above and **Annexure C**.<sup>550</sup>

**4 Keno**

17.21 Tabcorp's supply costs in relation to its Keno business are set out in section 6 above and **Annexure B, Part 3.3**.

17.22 Tatts' supply costs in relation to its Keno business are set out in section 6 above and **Annexure C**.<sup>551</sup>

**(c) Describe the competitive constraints, if any, which would, or would be likely to, prevent the merger parties from being able to significantly and sustainably increase the prices paid by their customers, or lower the prices paid to their suppliers, post-acquisition in the relevant market(s)**

**1 Wagering**

17.23 In relation to wagering, the merged entity will continue to be constrained by those factors set out above in section 10, including in respect of both price and non-price competition.

**2 Gaming systems and services**

17.24 In relation to the supply of gaming systems and services, the merged entity will continue to be constrained by those factors set out above in section 10, including in respect of both price and non-price competition.

17.25 In addition to the constraints described in section 10, in relation to monitoring the Queensland government has power under the *Gaming Machine Act 1991* (Qld) to directly regulate the price of basic monitoring services. Pursuant to section 233 of that Act an LMO in Queensland must not charge more than the basic monitoring fee prescribed under a regulation for supplying basic monitoring services.

**3 Lotteries**

17.26 In relation to the supply of lottery products, the merged entity will continue to be constrained by those factors set out above in section 10. Notably, the lottery business is likely to continue to face challenges arising from the regulatory restrictions on the retail distribution channels available to it in respect of its lotteries products. Tatts' lottery business is subject to several agreements with various State and Territory governments which limit Tatts' ability to expand its retail network beyond retail businesses such as newsagencies, petrol stations and convenience stores. Changing market conditions mean that the challenge for Tatts is ensuring that there is a sufficient distribution channel for its lottery products, given the declining number of newsagencies and declining foot traffic through newsagencies.<sup>552</sup>

**4 Keno**

17.27 Not applicable.

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<sup>550</sup> Merwe [28(c)].

<sup>551</sup> Merwe [29(c)].

<sup>552</sup> Merwe [79].



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**(d) Describe the impact of the acquisition on the potential for coordinated conduct between remaining competitors in the relevant market(s) post-acquisition (See Direction 24 of this Form)**

17.28 The merger is not expected to alter the potential for other competitors in any of the relevant markets to engage in coordinated conduct. As outlined above:

- the Australian wagering market has been aggressively targeted by corporate bookmakers, including global wagering groups such as Paddy Power, William Hill, Ladbrokes and Bet365;
- similarly, Australian markets for the supply of gaming systems and services are highly competitive and characterised by a large number of actual and potential suppliers including global gaming groups and local specialist providers;
- totalisator wagering, retail Keno operations and public lotteries are conducted pursuant to legislation which confers an exclusive licence on the relevant licensee.

**(e) Describe the likely impact of the acquisition on the profit margins of the merger parties post-acquisition and the expected cause of any change**

17.29 Tabcorp expects that the merger will result in annual cost savings and revenue increases due to efficiencies and business improvements of approximately **[Confidential to Tabcorp]** <sup>553</sup>.

17.30 However, Tabcorp expects that more than half of these annual cost savings and revenue increases will be directly passed through to racing industries, retail venues, sporting bodies and governments in Australia. <sup>554</sup>

17.31 Taking this pass-through into account, the annual EBITDA increase for the merged entity is expected to be **[Confidential to Tabcorp]** <sup>555</sup>.

## 18 Related markets

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**(a) Describe the extent of complementarity between products supplied by the merger parties (See Direction 25 of this Form)**

### 1 Wagering

18.1 As outlined below, there are two industries related to the wagering market that are relevant to the proposed acquisition and the assessment of its impact. These are:

- (1) the Australian racing industry; and
- (2) racing media.

18.2 There is a significant degree of complementarity and interdependence between the wagering market, and the racing and racing media industries. The racing industry is significantly interlinked with the supply of wagering products as it receives the majority of its funding from wagering operators, through a range of funding mechanisms, and without the racing industry there would be no ability to wager on racing events.<sup>556</sup> Similarly, given

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<sup>553</sup> Johnston [22].

<sup>554</sup> Johnston [24].

<sup>555</sup> Johnston [22].

<sup>556</sup> Freeman [227].



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the fact that punters consume wagering products alongside racing media, racing media is also very complementary to wagering products.

**(i) The Australian racing industry**

- 18.3 Australia has one of the largest and most successful racing industries in the world in terms of the volume of racing events, value of prize money and scale and breadth of race animal ownership and breeding.<sup>557</sup> Racing is part of the 'public conversation' in Australia, with racing events and personalities regularly featuring in the Australian general media.<sup>558</sup>
- 18.4 The Australian racing industry is organised on State and Territory lines and comprises the three codes of thoroughbred, harness and greyhound racing (with the exception of the Northern Territory, which does not have harness racing).<sup>559</sup>
- 18.5 The racing industry includes all of the people who are employed in and participate in the production of racing animals and the racing product. Racing industry stakeholders include racing clubs, owners, jockeys, trainers, stewards, racing administrators and a number of service providers that provide services to the racing industry, including veterinary services, feed supply and transportation services.<sup>560</sup>
- 18.6 Racing clubs, which are all non-profit organisations, operate in metropolitan, provincial and country areas across Australia and provide racing 'products' by organising and conducting race meetings.<sup>561</sup>
- 18.7 The Australian racing industry makes a sizable overall economic and social contribution to the Australian community. For example, in 2015 -2016, the thoroughbred code alone conducted over 19,000 races and paid out a total of over \$568 million in prize money as part of total returns of more than \$627 million.<sup>562</sup> The high volume of racing events conducted across Australia sustains the employment of a significant number of people in full-time roles as well as part-time, casual and contractor roles in metropolitan, provincial and country areas who are directly and indirectly involved in delivering the racing product to patrons and punters both on and off-course.<sup>563</sup>

*Interrelationship between wagering and the racing industry*

- 18.8 Racing industry participants and spectators consume wagering and racing industry products and services in conjunction with each other because a central part of the attraction of racing for patrons (or 'punters') is the ability to place a wager or bet on the outcome of a race.<sup>564</sup>
- 18.9 The business of wagering operators is centred upon the quality of the racing product provided by the racing industry – the better the product offered by the racing industry, the more this drives wagering.<sup>565</sup> Similarly, the public engages more with the racing industry where there is greater innovation and development in wagering options.<sup>566</sup>

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<sup>557</sup> Harding [11], Forbes [23].

<sup>558</sup> Harding [11].

<sup>559</sup> Freeman [78], Grant [24], O'Toole [7].

<sup>560</sup> Freeman [78], Grant [24] and [28], Gunston [16].

<sup>561</sup> Freeman [78], Dumesny [26].

<sup>562</sup> Hardy [11].

<sup>563</sup> Grant [26], [27] Nicholl [19], Yovich [33], Jewell [46], Corby [28], Dumesny [31], Lynch [17].

<sup>564</sup> Dumesny [15], Gatehouse [19], Raedler [59].

<sup>565</sup> Freeman [197], Gunston [25], Yovich [19], Jewell [58].

<sup>566</sup> Nicholl [57] - [58], Yovich [19].



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*Racing industry funding*

- 18.10 Racing industry participants incur significant costs in delivering the racing product to patrons and punters. For example, racing clubs incur significant costs in providing the venue and racing and administration for race meetings to take place and owners and trainers incur significant costs in sourcing, maintaining and delivering quality animals for race meetings.<sup>567</sup> Racing industry participants are therefore reliant on a variety of funding sources, in particular industry funding sourced from wagering revenue, to fund their activities.<sup>568</sup>
- 18.11 The racing industry funding framework in Australia is based on the model of State-based Totalisator Agency Boards (**TABs**) providing the primary source of funding for the racing industry.<sup>569</sup> In response to significant changes in the Australian wagering market in the last 10 – 15 years with the entrance of corporate bookmakers offering fixed-odds and tote-derivative products, each Australian State and Territory has introduced 'race fields fees' legislation in order to address the lack of funding contribution by corporate bookmakers.<sup>570</sup> While the introduction of race field fees has provided racing clubs with an additional source of funding, the majority of racing industry funding still comes from the state TAB operators by virtue of funding arrangements in place with the relevant State and Territory racing bodies.<sup>571</sup>
- 18.12 Funding distributions from State TAB operators largely determine the amount of stakes prize money that is available for racing clubs to distribute to racing industry participants, which operates as a key commercial incentive and attraction for racing participants.<sup>572</sup> As a result, wagering funding provided by State TAB operators is a key component of the prize money available to racing industry participants and a critical driver of the success of the racing industry.<sup>573</sup>
- 18.13 A strong wagering industry is at the core of Australia's racing industry, as wagering revenue is an integral part of the funding model of the Australian racing industry and provides a large proportion of the funding necessary to sustain and grow racing.<sup>574</sup>

*Participation in the racing industry*

- 18.14 Participation in racing and wagering by patrons and punters can take place on-course or off course. Historically, punters could only engage with racing industry events by attending a race track on race day and by placing wagers with on-course bookmakers.<sup>575</sup>
- 18.15 Today, most participation in racing and wagering takes place off-course at retail wagering venues or by telephone or online, including via mobile applications.<sup>576</sup>
- 18.16 Access to racing information and vision is important to patrons who consume wagering services on racing industry products. Punters typically want to follow live coverage of events on which they have placed a bet and therefore usually consume racing media and

<sup>567</sup> Grant [31], Nicholl [27], Yovich [47], Jewell [77]-[86].

<sup>568</sup> Grant [37], Dixon [16]-[18], Nicholl [36] and [43], Dumesny [15], Gunston [22].

<sup>569</sup> Harding [17], Nicholl [38], Jewell [64] and [98], Dumesny [57], Gunston [29], Scott [24], Yovich [19].

<sup>570</sup> Harding [33], Grant [55], Nicholl [42], Weston [34], Dumesny [53] and [54], Jewell [96], Stubbs [50], O'Toole [42], Lynch [31].

<sup>571</sup> Dumesny [57], Gunston [29], Jewell [95]- [98], Nicholl [42] and [43], Scott [23] -[24], Yovich [19] and [63(a)].

<sup>572</sup> Grant [55].

<sup>573</sup> Grant [55].

<sup>574</sup> Harding [12], Grant [37], Gunston [25], Dumesny [15].

<sup>575</sup> Yovich [20], Raedler [32], Gatehouse [20] and [21], Jewell [59], Dumesny [16], Stubbs [71].

<sup>576</sup> Gatehouse [40], Raedler [33] and [34], Stubbs [72], Yovich [26] and [55].





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information in conjunction with wagering services.<sup>577</sup> For example, punters in a retail wagering venue or at a totalisator agency located in a pub or hotel will typically also view live broadcasts of races on which they have placed a bet on in-venue television screens which broadcast racing events.

- 18.17 This demand for live coverage of events by punters means that both the racing clubs and wagering operators have a strong incentive to ensure that punters have access to high quality and comprehensive live coverage to promote wagering activity on their race meetings and wagering products.<sup>578</sup> Incomplete or poor quality coverage of races results in lower revenues to racing clubs and wagering operators which both clubs and wagering operators are incentivised to avoid.<sup>579</sup>

**(ii) Racing media**

- 18.18 Racing media is made available to punters through the acquisition of racing content from rights holders, and distribution of that content either through radio or vision.
- 18.19 Racing content is ultimately acquired from the racing clubs who are the holders of these media rights. While racing clubs are the holders of media rights, typically racing clubs are represented by peak racing bodies in each State and Territory who acquire and aggregate the media rights held by their respective race clubs and who conduct negotiations in respect to the sale of those rights, for distribution by others.<sup>580</sup>
- 18.20 In addition to supplying on-course racing viewing and entertainment to on-course patrons, racing clubs make racing 'products' available to off-course spectators and punters by the supply of racing information and media. Racing media can be distributed in wagering venues and other locations through traditional broadcast methods and digital distribution.
- 18.21 Racing media rights are divided and sold by distribution channel – for example, the right to broadcast in retail venues, domestic broadcast rights (which include free-to-air rights and domestic pay television rights), international broadcast rights (for distribution and broadcast overseas) and digital broadcast rights (which include rights for online distribution and live-streaming rights).<sup>581</sup>
- 18.22 Tabcorp's media business includes the operation of three Sky Racing television channels, which are broadcast throughout Australia as well as the broadcasting of racing commentary on Sky Sports radio in New South Wales and the Australian Capital Territory.<sup>582</sup>
- 18.23 The three Sky Racing channels broadcast thoroughbred, harness and greyhound racing and other sports to audiences in TAB outlets, hotels, clubs, other licensed venues, and into homes to pay TV subscribers.<sup>583</sup>
- 18.24 Tatts operates RadioTAB, which is broadcast into Queensland, South Australia, the Northern Territory and Tasmania.<sup>584</sup> Tatts has not sought to compete against Tabcorp to acquire racing content.<sup>585</sup> In order to supply racing vision to its wagering customers, Tatts has taken a sub-licence from Sky.

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<sup>577</sup> Gatehouse [43], Raedler [56].

<sup>578</sup> Harding [34] and [35], Raedler [56].

<sup>579</sup> Gunston [48].

<sup>580</sup> Freeman at [212].

<sup>581</sup> Freeman at [211].

<sup>582</sup> Attenborough [18].

<sup>583</sup> Freeman at [200].

<sup>584</sup> Attenborough [58], Aldam [34], Cooke [18].

<sup>585</sup> Aldam [56(c)], Corby [57], Gunston [45], Lynch [55], Watters [35].





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- 18.25 There is no overlap between Tabcorp and Tatts' media operations.<sup>586</sup>
- 18.26 The distribution of racing vision is important to wagering operators to drive wagering activity and to racing clubs in order to promote wagering on their racing product from which they derive revenue.<sup>587</sup> Racing clubs have an interest in their racing vision product being displayed across Australia, including in both Tabcorp and Tatts retail venues, because racing clubs derive race field fee revenue from wagering activity on their races conducted outside of their State or Territory.
- 18.27 The racing clubs have demonstrated their capacity to bypass Sky Racing in relation to broadcasting rights, through the establishment of the Racing.com joint venture between Seven West Media and Racing Victoria. Racing.com was launched in 2015. Racing.com, which is operated as a joint venture between Seven West Media and Racing Victoria, is also a supplier of racing vision. Racing.com broadcasts Victorian thoroughbred racing events which can be viewed online (on its website and apps) or on free-to-air digital television and on Foxtel. Racing.com engages the services of racing media personalities to host its broadcasts, and participated in the recent bidding process for Western Australian racing broadcast rights.<sup>588</sup>
- 18.28 Sportsbet, CrownBet and Ladbrokes hold the rights to live stream all Victorian races to their account holders within Australia and Racing.com streams both within and outside Australia. William Hill holds the rights to live stream certain new South Wales races to its account holders.<sup>589</sup>
- 18.29 Seven West Media broadcasts top-level Victorian, New South Wales, Queensland, Western Australian, South Australian and international Saturday race meets on its signature free-to-air television station, Channel 7. Key meets include:
- Flemington Spring Racing Carnival (Melbourne Cup, Derby Day, Oaks Day and Stakes Day);
  - Cox Plate;
  - Caulfield Cup;
  - Royal Ascot;
  - The Championships;
  - Golden Slipper Carnival; and
  - Magic Millions Carnival.<sup>590</sup>
- 18.30 Given the increasing popularity of digital wagering and vision, current and potential alternative vision providers are principally focussed on acquiring digital and free-to-air rights. The supply of digital and free-to-air vision does not require access to a free-to-air channel, or pay television channel, nor does it require a retail network.
- 18.31 Given the fact that wagering turnover is significantly increased where racing vision is broadcast into venues, Tabcorp is strongly commercially incentivised for Sky Racing to reach agreements with media rights holders to ensure that racing vision is available in the pubs and clubs in those States in which Tabcorp holds the retail wagering licences.<sup>591</sup> This incentive will not alter with the proposed acquisition.

<sup>586</sup> Attenborough [59], Aldam [56(c)], Corby [57], Gunston [45], Lynch [55], Watters [35].

<sup>587</sup> Aldam [33] and [56(c)], Gatehouse [43], Raedler [56], Weston [27].

<sup>588</sup> Freeman [217].

<sup>589</sup> Freeman [220].

<sup>590</sup> Freeman [219].

<sup>591</sup> Freeman [201].



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18.32 Further, the strong complementarity between racing media and wagering, means that Tabcorp is also already strongly incentivised for Sky Racing to acquire media rights in those States in which Tabcorp does not currently hold the retail wagering licences, as Tabcorp customers also bet on races in those States and Sky Racing derives revenue from supplying that vision to third party totalisators and retail outlets in those non-Tabcorp States. Racing bodies are similarly incentivised to have their races shown in other States, given they derive their funding from wagering revenue.<sup>592</sup>

18.33 Again, these incentives will remain following the proposed acquisition and will be further supplemented by the fact that Tabcorp would replace Tatts as the relevant retail wagering operator in certain States, providing increased incentive to ensure racing vision is available in those States. Additionally, Tabcorp's increased reliance on media rights can only strengthen the commercial position of media rights owners in all relevant States, who will recognise the value that Tabcorp places on those rights as both a vision provider and the retail wagering operator in those States.

**2 Gaming systems and services**

18.34 There is significant commonality between the functionality offered by many gaming systems and services and they can be and are supplied to customers alone or in combination with other systems and related services. The gaming systems and services industry is technology-driven and new products, and combinations of potential offerings, regularly arise. Specific examples are given in sections 4 and 14 above and under question 18(b) below.

**(b) Describe the extent to which the products identified above are, or could be, offered to customers as a product range through bundling or tying**

*(See Direction 26 of this Form)*

**1 Wagering**

**(i) Racing media**

18.35 Attracting wagering customers depends, to a large extent, on customers having accurate and timely access to racing information and racing coverage.<sup>593</sup> As set out above, given that wagering involves betting on live events, customers often want to watch the event on which they have placed a bet.

18.36 Tabcorp licensed venues are required to subscribe to Sky Racing1 and Sky Racing2. These products have been designed to ensure that the venue has access to vision for all races on which Tabcorp is taking bets, and the vision on Sky Racing1 and Sky Racing2 is coordinated. Tabcorp considers that it is appropriate and important for the success of Tabcorp retailers to ensure that Tabcorp venues display these products. Tabcorp does not prohibit licensed venues from taking a product from an alternative vision provider.<sup>594</sup>

18.37 Like Tabcorp, Tatts requires vision in its venues. Tatts requires retail venues in its jurisdictions to have a full racing television service in venue. For standalone agencies or branches, Tatts contracts directly with Sky Channel, a subsidiary of Tabcorp, to make racing vision (e.g. SkyRacing 1, or both SkyRacing 1 and SkyRacing 2) available in those agencies. For retail outlets based in hotels, pubs and licensed clubs, the agents who host the Tatts wagering outlet in those venues are also required to have a full racing television service.<sup>595</sup>

<sup>592</sup> Freeman [202], Aldam [56(c)], Harding [34] and [35], Raedler [56].

<sup>593</sup> Freeman [203].

<sup>594</sup> Freeman at [208].

<sup>595</sup> Cooke [40].



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18.38 Accordingly, as agencies in both Tabcorp and Tatts states currently require vision in their retail venues, and acquire that vision from Tabcorp (Sky Channel), there is no reason to expect any material difference in Tatts states post-merger. Given the connection between racing vision and wagering, it is to be expected that any retail wagering operator would require its licensed venues to obtain a wall-to-wall racing vision product (i.e. Sky Racing), as it did pre-merger.

18.39 When negotiating with racing bodies, Sky Racing seeks to acquire both domestic and international rights. It considers that acquiring both sets of rights is the most commercially attractive option and, given the infrastructure needed to supply vision overseas, most media rights holders tend to agree.<sup>596</sup>

18.40 Given the facts set out above, including the strong complementarity and matching incentives of Tabcorp and Sky Racing, as well as the strong commercial position of the media rights holders, the acquisition will not increase any competition concerns as a result of the bundling of wagering services with racing media to retail outlets.

**(ii) No competitive detriment from increased vertical integration**

18.41 While racing media is not a direct input into the operation of wagering services, in that a wagering operator does not need to acquire a racing media service to provide a wagering product and vice versa, the complementary nature of wagering and racing media is noted above at 18(a) above.

18.42 Tabcorp is the owner and operator of both retail wagering operations and in venue racing media, through Sky Racing, in the key states of NSW and Victoria (and the ACT). While Tatts does not provide any racing vision, because retail wagering venues require racing vision to support their retail wagering operations in Tatts States, Sky Racing 1 is already broadcast in most if not all Tatts venues in the non-Tabcorp States.

18.43 Accordingly, whilst the transaction will result in the extension of common ownership of retail wagering and Sky Racing's operations in those States in which Tatts is the current licensed retail wagering operator, the transaction does not result in any overall structural change in respect of the acquisition and distribution of racing media content nor any change in relation to the providers of racing media in the Tatts States.

18.44 Further, the acquisition will not reduce competition for media rights. In those States where there is already integrated ownership of wagering and racing vision in NSW, Victoria and the ACT, bidding for media rights is based on exploiting the rights nationally (not just in certain States) and strong bidding rivalry currently already exists between the various distribution channels of retail venues, digital, free-to-air and domestic pay television channels. In Tatts States, where Tabcorp has not been a retail wagering operator, because of the importance across all venues of providing an integrated three code national racing channel product, Tabcorp:

- has been a strong competitor for the acquisition of retail venue racing vision rights and racing vision rights more generally;
- has strongly marketed and promoted its Sky Racing product to retail venues.

Accordingly the competitive dynamics are likely to continue in the Tatts States.

18.45 As is the case in those States in which Tabcorp currently has the exclusive retail wagering licence, if media rights holders determined to sell their rights to an alternative vision provider Tabcorp would, in the first instance, seek to acquire a sub-licence to supply the relevant racing vision on its Sky Racing channels. If that were not possible, Tabcorp would seek to acquire vision for its own agencies and, as is the case today, it

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<sup>596</sup> Freeman at [213].



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would not prevent licensed venues from acquiring vision directly from an alternative vision provider.<sup>597</sup>

**2 Gaming systems and services**

18.46 As described in section 4 above, the bundling of:

- the content or functionality of gaming systems; and
- various gaming services;

is a feature of all markets in Australia for the supply of gaming systems and services.

18.47 As described in section 4 above, **TGS** currently supplies a 'full service' offering in Victoria and New South Wales which comprises both the supply of third party gaming systems and the provision of a wide variety of services including EGM financing, advice on venue management and compliance issues and other services (excluding monitoring). Although some of the products comprised in TGS' offering could be unbundled and supplied separately, TGS' business model is premised upon supply of a comprehensive package and it does not in practice offer products separately. By contrast, Tatts' Bytecraft business is focussed on repair and maintenance which service can be purchased by customers who do not wish to purchase any broader offering.

18.48 Gaming systems typically comprise a core offering and a number of 'optional extras'. Venues may choose to acquire one or more of the optional systems and services available, in addition to the core system supplied by TGS.

18.49 In Victoria:

- core (or 'non-optional') components are supplied pursuant to a Gaming Services Agreement. At a high level, these include systems for financial reporting and reconciliation regarding EGM activity and performance;
- VPC technology is mandatory and, accordingly, also forms part of the core offering;
- in addition to these core components, venues can elect to receive systems and services which facilitate loyalty and membership programs and promotions management (under a Loyalty Program Agreement); and
- Tabcorp also has a licence to use Tableau software. Venues can sub-licence this software from Tabcorp (at no cost) in order to access analytics regarding their EGM data.

18.50 As noted above, in Victoria an LMO is not permitted to provide gaming and promotional management systems (other than VPC systems) or testing services. Maxgaming's capacity to provide systems and services in Victoria is currently constrained by the fact that it is not on the Roll of Manufacturers, Suppliers and Testers with the consequence that it is permitted to supply ancillary and venue management services but not EGMs or restricted gaming systems or services.

18.51 In NSW:

- similarly, core (or 'non-optional') components are supplied pursuant to a Gaming Services Agreement. At a high level, these include systems for financial reporting and reconciliation regarding EGM activity and performance;
- in addition to these core components, venues can elect to receive systems and services which facilitate loyalty and membership programs and promotions management (under a Loyalty Program Agreement);

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<sup>597</sup> Freeman at [222].



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- Tabcorp has a licence to use Tableau software. Venues can sub-licence this software from Tabcorp (at no cost) in order to access analytics regarding their EGM data; and
- venues may also elect to receive TITO hardware and software (supplied under a TITO Agreement). Tabcorp notes that, while this is optional for NSW venues, most venues' EGMs have this functionality.

18.52 As noted above, Metropolis is **Intecq's** core gaming system. Venues may choose to acquire Metropolis only, or to acquire Metropolis together with one or more of the optional systems and services that work together with Metropolis.

18.53 Table 18.1 below indicates which specific gaming systems or services are provided by Intecq in each of NSW, Victoria and Queensland, and whether they are core or optional components of Intecq's offering.

**Table 18.1 – Systems and services supplied by Intecq**

System / service	Offered in NSW?	Offered in VIC?	Offered in QLD?	Core, optional, or mandatory (i.e. required by legislation)?
Metropolis	Yes	Yes	Yes	• Core
Card IT / TITO	Yes	No	Yes	• Optional
Engage	Yes	Yes	No	• Optional in NSW • Mandatory in VIC (as part of VPC)
Wager Exchange	Yes	No	No	• Optional
Astute	Yes	Yes	Yes	• Optional
VPC	Yes	Yes	Yes	• Optional in NSW and QLD • Mandatory in VIC
Hardware	Yes	Yes	Yes	• Core / optional*

\* Various hardware components are necessary for the supply of Intecq's core products. Other hardware components are optional based on the particular optional functionality selected.

18.54 As described in section 4 above, Intecq does not provide financing for EGMs but does provide financial support to some venues in the form of extended payment terms for some gaming systems. The provision of such finance is at the venue operator's option.

18.55 In **Queensland**, legislation mandates that maintenance services or modifications for EGMs must be provided by an LMO, or a service provider on behalf of an LMO<sup>598</sup> and the two entities that currently supply monitoring services in Queensland thus also supply repair and maintenance services to the same venues to which they supply monitoring services. However, gaming and promotional management systems can be supplied in Queensland by a party which is not an LMO.

<sup>598</sup> *Gaming Machine Act 1991* (Qld), Parts 4 and 5.



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**(c) Describe the competitive constraints that would, or would be likely to, prevent such bundling or tying from significantly foreclosing the ability of the merged entity's competitors to compete, including foreclosure of access to distribution by the merged entity's competitors**

- 18.56 The proposed merger will not significantly foreclose the ability of the merged entity's competitors in any relevant market to compete, including foreclosure of access to distribution.
- 18.57 As described above, the merger parties' competitors in relation to wagering and lotteries operate substantially through digital channels which will continue to be available to them following the merger.
- 18.58 Some of the merger parties' competitors in relation to the supply of gaming systems and services already supply directly to licensed venues rather than via third parties such as TGS e.g. Konami and Bally. From February 2017, TGS' exclusive right to distribute IGT Advantage Club in Victoria will cease and IGT will be free to supply its product directly to venues. Accordingly the merger parties are constrained from foreclosing access to distribution of competing systems or services by their competitors.

## 19 Detriment from a lessening of competition

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**Having regard to the information provided above, and any other relevant information, describe any detriment which would or would be likely to flow from a lessening of competition as a result of the acquisition**

*Wagering services*

- 19.1 The merger will not lead to competitive detriment in relation to the supply of wagering services because:
- the parties' retail operations do not competitively overlap;
  - in online and telephone channels, where the parties do compete, they face strong competition from corporate bookmakers; and
  - the strength of the competitive constraint imposed on the merger parties is demonstrated by significant substitution:
    - between totalisator products and fixed odds and tote derivative products; and
    - from distribution through retail outlets to online and telephone betting and
  - these shifts have forced Tabcorp and Tatts to invest in new products, in their digital offerings, and in the quality and functionality of their retail outlets.
- 19.2 Corporate bookmakers compete vigorously with Tabcorp's and Tatts' retail and online operations, which has elicited competitive responses from both merger parties. In particular:
- corporate bookmakers have been the principal beneficiaries of the increasing popularity of phone and internet wagering and have substantially increased their operations (see section 4 above);
  - Tabcorp has adopted measures designed to strengthen its overall pari-mutuel and fixed odds offering in direct response to increased competition from corporate bookmakers (as described in section 4 above and in **Annexure A**); and





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- similarly, Tatts has adopted measures to strengthen its pari-mutuel and fixed odds offering in response to increased competition from corporate bookmakers (as described in section 14).
- 19.3 From time to time, there are opportunities for firms to bid for wagering licences or State owned wagering businesses. Only two bidding opportunities could emerge prior to 2035 (when the NT totalisator wagering licence expires):
- the grant of the next Victorian wagering licence in 2024; and
  - the possible privatisation of RWWA (the WA government-owned totalisator).
- 19.4 There is considerable uncertainty about both possibilities. Even if the Western Australian and Victorian governments were to run competitive processes in the foreseeable future the merger will not lead to public detriment in relation to these processes. There are several parties beyond Tabcorp and Tatts, including large and well credentialed overseas wagering operators, that would have strong interests in participating in any such process. In addition, any impact on government tender processes would not affect customers. State governments have the ability to optimise the outcomes of competitive licensing and privatisation processes.
- 19.5 Tatts does not acquire racing vision broadcasting rights or distribute racing vision and has never done so. Accordingly:
- no competitive overlap between Tabcorp and Tatts in relation to the acquisition and resupply of broadcasting racing vision is likely; and
  - there is not a real chance of any competition between the parties in the future acquisition of racing vision broadcasting rights.
- 19.6 The acquisition by Tabcorp of the rights to conduct wagering through a retail network in Tatts' States will not have any material impact on the ability of any alternative broadcaster to acquire and supply racing media content in respect of those States or elsewhere.
- 19.7 There is no geographic overlap between the radio broadcasting operations of Tabcorp and Tatts other than online.

#### *Gaming systems and services*

##### *Supply of field services in Victoria*

- 19.8 The proposed merger will not raise any material competition concerns in relation to the supply of field services in Victoria because:
- Tabcorp (TGS and Intecq) does not compete with Bytecrafft to supply EGM field services in Victoria;
  - there are a number of alternative suppliers of EGM field services in Victoria; and
  - barriers to entry and expansion to provide EGM field services are low.<sup>599</sup>
- 19.9 Intecq does not provide EGM field services in Victoria. TGS and Bytecrafft do. Looking solely at the number of EGMs serviced by TGS and Bytecrafft, the merged firm will service a significant number of those machines. However, the business models of TGS and Bytecrafft are very different. They are not close competitors for the supply of EGM field services in Victoria.
- 19.10 More specifically:
- TGS only provides EGM field services to venues that have a broader arrangement with TGS in respect of its full service offering (i.e. for the bundled supply of leased EGMs, in-venue systems, and venue management and

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<sup>599</sup> Makryllos, [73-76].





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- consultancy services). TGS does not supply EGM field services as stand-alone business, and has never sought to do so in competition with Bytecraft,<sup>600</sup> and
- by contrast, Bytecraft has a stand-alone repair and maintenance business. It provides field services in respect of third party EGMs, and in respect of other types of hardware / infrastructure but cannot compete for the EGMs leased and serviced by TGS.
- 19.11 There are a number of alternative suppliers of EGM field services in Victoria. Like Bytecraft, these entities provide EGM field services on a stand-alone basis, and will continue to constrain Bytecraft post-merger.
- 19.12 These include:
- **Aristocrat:** Aristocrat is a manufacturer and supplier of EGMs and in-venue systems. It services its own EGMs, as well as those manufactured or supplied by third parties. Aristocrat has a strong presence in NSW, including in respect of EGM field services. More recently, it has increased its presence in Victoria. Aristocrat currently supplies EGM field services to PVS. Like TGS, PVS provides a full service offering to venues, but has sub-contracted EGM repair and maintenance services to Aristocrat.
  - **Amtek:** Amtek is a Victorian-based national provider of field services, including in respect of EGMs. Its business model is very similar to Bytecraft. It is well-established in Victoria, having been listed on the Roll of Manufacturers, Suppliers and Testers since 2010. Its customers include Mercury Group member clubs. It was awarded the Mercury Group contract following a tender process in which Bytecraft also participated.
- 19.13 Until August 2012, Tabcorp and Tatts each owned and operated approximately 50% of the EGMs in Victoria. The current market position of Bytecraft and TGS in Victoria is, to a large extent, a consequence of that fact. It is not evidence of any significant barriers to entry and expansion in relation to the supply of EGM field services.
- 19.14 To provide EGM field services in Victoria, a party needs to be listed on the Roll of Manufacturers, Suppliers and Testers. This is not considered a significant regulatory hurdle, particularly for entities already within the gaming industry, and principally involves probity checks. The application fee is very small (currently \$2843.30).
- 19.15 In both New South Wales and Victoria, there are few costs for venue customers to switch repair and maintenance suppliers. This is because the majority of repair and maintenance suppliers in those States are able to service a number of different types of gaming machines, gaming and promotional management systems and venue customers using standard equipment, training and industry knowledge. There are also very few regulatory requirements or costs for repair and maintenance suppliers to operate in each of New South Wales and Victoria, other than obtaining approval to operate by the relevant State regulator. As a result, in both New South Wales and Victoria, repair and maintenance suppliers are broadly interchangeable for venue customers.<sup>601</sup> Providers of repair and maintenance services for hardware such as ATMs, EFTPOS machines, cash registers, POS terminals, and ticketing machines will have the requisite skill set.
- 19.16 The lack of barriers to entry and expansion is demonstrated by the situation in NSW. There are currently a large number of EGM repair and maintenance service providers in NSW, which range from smaller businesses to larger entities which provide EGM field services in addition to other services.

<sup>600</sup> Field services for TGS are provided by Tabcorp Field Services (**TFS**). TFS only services venues which have agreements in place with Tabcorp. In addition to providing field services for TGS, TFS also services Tabcorp wagering, Sky Racing and Keno equipment in venues which have agreements with Tabcorp.

<sup>601</sup> Makryllos [90].



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- 19.17 Like Aristocrat, EGM field services providers in NSW could easily enter Victoria if there were a commercial incentive to do so. Likely entrants into Victoria include:
- IGT, which provides field services including routine preventative maintenance and a full labour and parts program;<sup>602</sup>
  - United Technology Services (UTS). UTS is a wholly-owned subsidiary of Ainsworth Game Technology. Its core business involves gaming machine sales and service. It services over 14,500 machines in NSW and the ACT, and has over 70 service technicians employed;<sup>603</sup> and
  - NSW Poker Machines, an established field services provider which currently services approximately 3,200 EGMs.

*Supply of monitoring and field services in New South Wales*

- 19.18 The merged firm will have a minimal presence in relation to the supply of field services in New South Wales and no competition issues arise.
- 19.19 Access to data should not give rise to any competition concerns:
- monitoring data (referred to as 'CMS data' in NSW) is not owned or controlled by the monitor (i.e. Maxgaming);
  - CMS data is subject to legislative and licence restrictions regarding its use; and
  - access to CMS data would not provide any competitive advantage in respect of the supply of other gaming services. In fact, much of this data is already widely disseminated.

*Supply of monitoring and field services in Queensland*

- 19.20 PVS and Utopia are recent entrants into the market for the supply of EGM monitoring services in Queensland with significant potential for increased competition in the near future.
- 19.21 There will in any event be no change in the level of competition in the supply of these services as a result of the proposed transaction if Tabcorp divests the Odyssey business.

*Lotteries*

- 19.22 Tabcorp and Tatts do not overlap in the supply of lotteries products.
- 19.23 In relation to lotteries licences, past tender processes have shown that competition for lotteries licences is robust, with several interested parties including large and well financed international operators.

*Keno*

- 19.24 Keno products are almost exclusively supplied through retail outlets such as pubs, clubs and TABs. Tabcorp is the only licensed provider of Keno in retail outlets in Queensland, New South Wales, Victoria and the ACT, while Tatts is the only licensed provider in retail outlets in South Australia. In Victoria Tabcorp holds a full licence to supply Keno while Tatts has a limited licence to offer a daily Keno game which it has not sought to exercise. The parties' licences and retail outlets therefore do not materially overlap.

<sup>602</sup> See: <https://www.igt.com/en/products-and-services/gaming/services/field-services>.

<sup>603</sup> See: <http://www.utservices.com.au/>.



## 20 Other public detriment

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**Describe any public detriment likely to result from the proposed acquisition that has not already been described above**

- 20.1 There is no other public detriment likely to result from the proposed acquisition that has not been described above.

## 21 Public benefit claims

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**(a) Describe any public benefit in the form of increased efficiencies (for example, economies of scale or scope) which would, or would be likely to, result from the acquisition**

- 21.1 The transaction will lead to the following operational, performance and strategic improvements:

- a reduction in annual operating costs of approximately **[Confidential to Tabcorp]** per year;
- business improvements that will result in increased annual revenue by approximately **[Confidential to Tabcorp]** per year; and
- the removal of a commercial barrier to merging the pari-mutuel pools of Tabcorp and Tatts.<sup>604</sup>

- 21.2 These improvements constitute public benefits because

- more than half of the improvements will directly benefit third parties – the merged entity will pay at least an additional **[Confidential to Tabcorp]** per annum to state racing industries, retail venues, sporting bodies and the Federal and state governments;<sup>605</sup>
- the **[Confidential to Tabcorp]** of additional funding that is expected to be paid to the state racing industries each year by the merged entity<sup>606</sup> will result in the following public benefits:
  - it will help to ensure the racing industries' long term viability;
  - it will help to address the 'free rider' problems arising from racing funding imbalances between the state TABs and corporate bookmakers; and
  - it will have broader economic impacts, particularly in regional areas, as the racing industry is a significant part of, and contributor to, the Australian economy;
- the improvements will help the merged entity compete more effectively with corporate bookmakers in the Tatts States and enhance competition for the supply of wagering products and services;
- customers in the Tatts States will be supplied a broader range of products and services; and

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<sup>604</sup> Johnston [25], [64] and [127].

<sup>605</sup> Johnston [24].

<sup>606</sup> Johnston [24(a)].



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- the improvements will increase the productive efficiency of the broader Australian economy, including as a result of import substitution and increased tourism.

21.3 A further public benefit of the Proposed Transaction is that it will remove a commercial barrier to the merging of Tabcorp's and Tatts' pari-mutuel pools and create a pathway to national pooling. The merging of pools will lead to improved wagering products and services being supplied to customers. This is also expected to lead to increased revenue for the merged entity which would lead to additional funding being passed through to the state racing industries and other stakeholders.

21.4 Deloitte Access Economics (**DAE**) has used a CGE modelling technique to quantify the broader economic impact of some of the improvements. DAE estimates that the net present value of the increase in Australia's gross national income that can be expected to arise from these benefits is approximately \$1.561 billion.<sup>607</sup>

21.5 Further detail regarding public benefits is set out in Annexure A.

**(b) Describe whether the acquisition would, or would be likely to, result in a significant increase in the real value of exports**

21.6 Tabcorp does not consider that the acquisition would, or would be likely to, result in a significant increase in the real value of exports.

**(c) Describe whether the acquisition would, or would be likely to, result in significant substitution of domestic products for imported goods**

21.7 Insofar as the proposed merger may result in substitution of the merger parties' wagering products for products supplied by corporate bookmakers, details are provided in section 21(a) above.

**(d) Detail any public benefit claims relating to the international competitiveness of any Australian industry arising from the acquisition**

21.8 As set out in section 12 above, there are no exports in the relevant markets that are relevant to a competition assessment of the proposed merger.

**(e) Detail any other public benefit claims**

21.9 The public benefits are described in section 21(a) above.

## 22 The counterfactual

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**Describe the likely state of the relevant market(s) in the future if the proposed acquisition does not take place, giving reasons**

22.1 If the proposed merger does not take place, Tabcorp expects that the status quo will continue, and that Tabcorp and Tatts will continue to operate businesses independently from one another. In that scenario, the market trends described in section 4 above and in **Annexure A** (notably in relation to wagering) are likely to continue and the synergies, enhanced customer experience and strengthening of the racing industry anticipated to arise from the merger are not likely to occur.

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<sup>607</sup> Simes [145].



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- 22.2 On 14 December 2016 Tatts received an unsolicited, non-binding, indicative and conditional proposal from four financial investors (**Pacific Consortium**) to acquire 100% of Tatts for a combination of cash and scrip consideration.<sup>608</sup> On 23 December 2016 Tatts announced that it had concluded an assessment of the indicative proposal and concluded that it was not a superior proposal to the acquisition the subject of this application. Tatts' board continues to believe that this acquisition is in the best interests of Tatts' shareholders and has unanimously recommended the acquisition to its shareholders.<sup>609</sup>

## 23 Joint ventures

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- (a) Does this application for authorisation deal with a matter relating to a joint venture (see section 4J of the Act)**

23.1 No.

- (i) If so, are there any other applications for clearance or authorisation under Part VII of the Act being made simultaneously with this application in relation to the joint venture.**

23.2 Not applicable.

- (ii) If so, describe the nature of the applications and who is making those other applications.**

23.3 Not applicable.

## 24 International

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- (a) Does the acquisition involve:**

- (i) A company operating in Australia that has a foreign parent**

24.1 No.

- (ii) Australian businesses or consumers affected by conduct occurring overseas**

24.2 No, except to the extent that imports are relevant, as discussed in section 11 above.

- (iii) Foreign consumers affected by conduct occurring in Australia**

24.3 No, except to the extent that Tabcorp's business includes overseas wagering operations (as described in section 1 above) and large wagering customers who participate in a global wagering market (as described in section 5 above).

- (iv) Conduct occurring across international boundaries**

24.4 No, except to the extent that imports are relevant as discussed in section 11 above, and insofar as certain pooling arrangements described in section 4 above involve foreign operators.

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<sup>608</sup> Tatts Group, *Tatts receives indicative proposal from financial consortium to acquire 100% of Tatts Group* (14 December 2016) <<http://www.asx.com.au/asxpdf/20161214/pdf/43dq0qrxssstv9.pdf>>

<sup>609</sup> Tatts Group, *Tatts determines the Pacific Consortium's proposal is not superior to the proposed Tabcorp merger* (23 December 2016) <<http://www.asx.com.au/asxpdf/20161223/pdf/43dytyl73z8cqr.pdf>>



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- (b) **Provide details of competition authorities in jurisdictions other than Australia to which the proposed acquisition has been, or is intended to be, notified and the timing of such notifications**

24.5 Not applicable.

## 25 Period of authorisation

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**Outline the period for which authorisation is sought, detailing reasons why authorisation should be granted for the requested period**

25.1 Not applicable.

## 26 Undertaking

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**Consistent with subsection 95AV (2) of the Act, the Applicant is required, pursuant to the regulations, to give an undertaking to the Commission under section 87B of the Act that the acquisition will not be made while the application for authorisation is being considered by the Tribunal. An undertaking which is in a form that must be offered to the Commission is attached to this Form.**

26.1 See the attached undertaking provided at **Annexure D**.

## 27 Further information

---

**Name, postal address, telephone, facsimile and email contact details of person authorised by the notifying parties to provide additional information in relation to this application**

Herbert Smith Freehills  
161 Castlereagh Street  
Sydney NSW 2000

Attention: Grant Marjoribanks  
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Facsimile: +61 2 9322 4000  
Mobile telephone: +61 414 907 517

## 28 Information provided in relation to the Target

---

**Where the Target has been consulted during the preparation of information provided in response to the questions contained in this Form relating to the Target, an authorised representative of the Target must indicate here that information relating to the Target is complete and accurate.**



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Dated **13 March 2017**

Signed on behalf of the Target

---

**Michael Corrigan**, Solicitor for Tatts

**Note** If the Target is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Target, this fact must be stated.





## 29 Declaration

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The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

The undersigned are aware of the provisions of section 95AZN of the *Competition and Consumer Act 2010*.

---

**Signature of authorised person**

Solicitor for the Applicant

---

**Office held**

Grant Marjoribanks

---

**Name of authorised person**

This 13<sup>th</sup> day of March 2017

*Note* If the Applicant is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.



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# 'Form S' Annexure A

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Industry Background and Application Overview

13 March 2017

**The document contains confidential information which is indicated as follows:**

[Confidential to Tabcorp] [.....]  
[HIGHLY Confidential to Tabcorp] [.....]  
[HIGHLY Confidential to Tatts] [.....]

---

Filed on behalf of Tabcorp Holdings Limited (Applicant)

Prepared by Grant Marjoribanks

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**1 INTRODUCTION AND OVERVIEW**

**1.1 Introduction**

1. Tabcorp proposes to acquire the issued share capital of Tatts by means of a scheme of arrangement made under section 411 of the *Corporations Act 2001* (Cth) (**Proposed Transaction**).
2. This document contains background information in relation to the following industries which are associated with the Proposed Transaction:
  - (a) wagering, racing and racing media;
  - (b) gaming services;
  - (c) lotteries; and
  - (d) Keno.
3. This document also details the public benefits that are likely to result from the Proposed Transaction and addresses the potential for any public detriment arising as a result of the Proposed Transaction.
4. The Proposed Transaction involves the acquisition of Tatts by Tabcorp. The business operations of the parties are largely complementary, with Tabcorp earning the majority (approximately 86%) of its revenue from wagering operations while Tatts earns the majority (approximately 72%) of its revenue from conducting lotteries. The Proposed Transaction will result in improvements to the operations of the post-merger entity that will deliver significant public benefits to the racing industry, customers, shareholders and other stakeholders.
5. The impact of the Proposed Transaction in terms of overall public benefits (including public detriments) is appropriately considered in the context of the following markets:
  - (a) a national wagering market, and the related racing media market;
  - (b) a national market for the supply of public lotteries;
  - (c) State-based markets for the supply of Keno games;
  - (d) State-based markets for the supply of electronic gaming machine (**EGM**) gaming systems and services.





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### 1.2 Public benefits likely to arise from the Proposed Transaction

6. The transaction will lead to the following operational, performance and strategic improvements:

- (a) a reduction in annual operating costs of approximately [Confidential to Tabcorp] ██████████ per year;
- (b) business improvements that will result in increased annual revenue by approximately [Confidential to Tabcorp] ██████████ per year; and
- (c) the removal of a commercial barrier to merging the pari-mutuel pools of Tabcorp and Tatts.<sup>1</sup>

7. These improvements constitute public benefits because

- (a) more than half of the improvements will directly benefit third parties – the merged entity will pay at least an additional [Confidential to Tabcorp] ██████████ per annum to state racing industries, retail venues, sporting bodies and the Federal and state governments;
- (b) the [Confidential to Tabcorp] ██████████ of additional funding that is expected to be paid to the state racing industries each year by the merged entity will result in the following public benefits:
  - (i) it will help to ensure the racing industries' long term viability;
  - (ii) it will help to address the 'free rider' problems arising from racing funding imbalances between the state TABs and corporate bookmakers; and
  - (iii) it will have broader economic impacts, particularly in regional areas, as the racing industry is a significant part of, and contributor to, the Australian economy;
- (b) the improvements will help the merged entity compete more effectively with corporate bookmakers in the Tatts States and enhance competition for the supply of wagering products and services;
- (c) customers in the Tatts States will be supplied a broader range of products and services; and
- (d) the improvements will increase the productive efficiency of the broader Australian economy, including as a result of import substitution and increased tourism.

8. A further public benefit of the Proposed Transaction is that it will remove a commercial barrier to the merging of Tabcorp's and Tatts' pari-mutuel pools and create a pathway to national pooling. The merging of pools will lead to improved wagering products and services being supplied to

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<sup>1</sup> Johnston [25], [64] and [127].



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customers. This is also expected to lead to increased revenue for the merged entity which would lead to additional funding being passed through to the state racing industries and other stakeholders.

- 9A. Historically, the funding and development of the Australian racing industry has been tied closely to the performance and wagering revenue of State TABs. The public benefits that would potentially result from the Proposed Transaction would occur at a time when the Australian racing industry faces challenges to this traditional funding model arising because corporate bookmakers have won significant market share from State TABs over recent years. Corporate bookmakers contribute a lower proportion of their wagering turnover to the racing industry than the State TABs.
9. Deloitte Access Economics (**DAE**) has used a CGE modelling technique to quantify the broader economic impact of some of the improvements. DAE estimates that the net present value of the increase in Australia's gross national income that can be expected to arise from these benefits is approximately \$1.561 billion.<sup>2</sup>

### 1.3 No material public detriments

#### 1.3.1 Wagering and related racing industry

10. The merger will not lead to public detriment in relation to the supply of wagering services because:
- (a) the parties' retail operations do not competitively overlap;<sup>3</sup>
  - (b) in online and telephone channels, where the parties do compete, they face strong competition from corporate bookmakers,<sup>4</sup> and
  - (c) the strength of the competitive constraint imposed on the merger parties is demonstrated by significant substitution:
    - (i) between totalisator products and fixed odds and tote derivative products,<sup>5</sup> and
    - (ii) from distribution through retail outlets to online and telephone betting.<sup>6</sup>

These shifts have forced Tabcorp and Tatts to invest in new products, in their digital offerings, and in the quality and functionality of their retail outlets.<sup>7</sup>

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<sup>2</sup> Simes [145].

<sup>3</sup> Attenborough [49], Cooke [105] and [106].

<sup>4</sup> Freeman [261], Cooke [107] and [Section].

<sup>5</sup> Freeman [263]-[266].

<sup>6</sup> Freeman [252]-[254].



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11. From time to time, there are opportunities for firms to bid for wagering licences or State owned wagering businesses. Only two bidding opportunities could emerge prior to 2035 (when the Northern Territory totalisator wagering licence expires):
  - (a) the grant of the next Victorian wagering licence in 2024 or 2026;<sup>8</sup> and
  - (b) the possible privatisation of the WA TAB (the WA government-owned totalisator).<sup>9</sup>
12. There is considerable uncertainty about both possibilities. Even if the Western Australian and Victorian governments were to run competitive processes in the foreseeable future, the merger will not lead to public detriment in relation to these processes. There are several parties beyond Tabcorp and Tatts, including large and well credentialed overseas wagering operators, that might be interested in participating in any such process.<sup>10</sup> In addition, the State governments have the ability to optimise the outcomes of competitive licensing and privatisation processes.<sup>11</sup>
13. Tatts does not operate any racing television channels, and has never done so. Accordingly:
  - (a) there is no overlap between Tabcorp and Tatts in relation to broadcasting racing vision; and
  - (b) there is no competition between the parties in the acquisition of television broadcasting rights.
14. The acquisition of a retail network in Tatts States will not have any material impact on the ability of any alternative broadcaster to acquire and supply racing media content.
15. There is also no geographic overlap between the radio broadcasting operations of Tabcorp and Tatts.<sup>12</sup>

### 1.3.2 Lotteries

16. Tabcorp and Tatts do not overlap in the supply of lotteries products.
17. In relation to lotteries licences, past tender processes have shown that competition for lotteries licences is robust, with several interested parties including large and well financed international operators.

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<sup>7</sup> Discussed further below at sections 2.11 and 2.12.

<sup>8</sup> Attenborough [15(a)].

<sup>9</sup> Attenborough [73].

<sup>10</sup> Attenborough [144], Cooke [186].

<sup>11</sup> Cooke [197].

<sup>12</sup> Attenborough [225], Cooke [18].

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1.3.3 Keno

18. Keno products are almost exclusively supplied through retail outlets such as pubs, clubs and TABs. Tabcorp is the only licensed provider of Keno in retail outlets in Queensland, New South Wales, Victoria and the Australian Capital Territory, while Tatts is the only licensed provider in retail outlets in South Australia. In Victoria, Tabcorp holds a full licence to supply Keno while Tatts has a limited licence to offer a daily Keno game which it has not sought to exercise. The parties' licences and retail outlets therefore do not overlap.

1.3.4 Gaming systems and services

19. Tabcorp and Tatts overlap in two aspects of gaming services:

- (a) the supply of gaming systems and services (including the supply of gaming systems and related services, and field services) in Victoria and New South Wales; and
- (b) the supply of EGM monitoring services and field services in Queensland.

20. In relation to gaming systems and related services, there are a number of suppliers which will competitively constrain the merged entity. They include global operators Aristocrat, Konami and Bally.

21. In relation to field services in Victoria and New South Wales, the merger parties' offerings are not close substitutes and they operate significantly different business models. Tabcorp subsidiary TGS offers only a 'full service' offering in which field services are supplied as part of a bundle of services in relation to EGMs which TGS supplies (through leasing or other financing arrangements) to licensed venues. Tatts subsidiary Bytecraft specialises in the provision of repair and maintenance services and does not provide a broader offering.

22. In relation to monitoring and field services in Queensland, the merger parties are currently the only active providers, although the recent new entry by PVS and Utopia creates potential for increased competition in the near future. The ACCC has expressed a preliminary view that the proposed merger is likely to substantially lessen competition in Queensland for the supply of EGM monitoring and repair and maintenance services.<sup>13</sup> Should the Tribunal have the same concerns, Tabcorp is offering, as a condition of authorisation, an undertaking pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) to divest the Odyssey business.<sup>14</sup>

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<sup>13</sup> ACCC, *Statement of Issues Tabcorp Holdings and Tatts Group – proposed merger*, 9 March 2017, [6].

<sup>14</sup> Rytenskiid [289] – [299].



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### 2 WAGERING, RACING AND RACING MEDIA

#### 2.1 Wagering overview

23. Wagering or betting is the act of staking something, usually money, on the outcome of a contest or any uncertain event or matter.<sup>15</sup> Punters can wager on racing and sporting events, as well as other permitted events.

24. Wagering is closely interrelated with the racing industry which supplies the racing industry products upon which a large proportion of wagering is conducted. Spectators consume wagering and racing industry products and services, including racing vision, in conjunction with each other, because a central part of the attraction of racing for patrons (or “punters”) is the ability to place a wager or bet on the outcome of a race, and to view that race, either in person “on-course”, or via racing vision at a location “off-course”.

##### 2.1.1 Wagering products

25. The forms of wagering products available to customers in Australia are:

- (a) totalisator wagering (a form of pari-mutuel wagering);
- (b) fixed odds wagering;
- (c) tote derivative wagering (a derivative of totalisator wagering); and
- (d) wagering through a betting exchange.<sup>16</sup>

26. Within each form of wagering there are a number of different bet types offered by wagering suppliers. Further information on wagering products is set out below in paragraphs 71 to 90 below.

##### 2.1.2 Types of wagering suppliers

27. Broadly speaking, wagering suppliers in Australia can be divided into three types: State TABs, bookmakers and Betfair.<sup>17</sup>

28. **State TABs:** State TABs, or totalisator operators, are State or Territory licensed wagering operators that provide totalisator or ‘pari-mutuel’ wagering through the pooling of bets within a

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<sup>15</sup> Freeman [10].

<sup>16</sup> Freeman [35].

<sup>17</sup> Freeman [23].



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given State or Territory. The current State TABs in Australia are Tabcorp, Tatts and the WA TAB (operated by RWWA).<sup>18</sup>

29. State TABs must hold a licence from the relevant State or Territory to provide totalisator products. Pursuant to the legislative structure that underpins the State-based wagering licence system, State TABs are currently the sole providers of wagering in a retail environment. This means that State TABs are the only entities licensed (in their respective States and Territories) to accept cash bets in off-course retail venues. Retail venues include dedicated retail shopfronts (such as TAB or UBET agencies) and licensed premises (such as hotels, pubs, clubs, live sites, stadiums and newsagencies).<sup>19</sup>
30. While State TABs were initially restricted to providing totalisator wagering services on racing events only, all State TABs in Australia are now able to, and do, provide fixed odds wagering services on racing, sporting events and other novelty events and entertainment.<sup>20</sup>
31. Further details on the regulatory regime under which the State TABs operate is set out below in paragraphs 106 to 135.
32. **Bookmakers:** Bookmakers provide derivative pari-mutuel wagering (often referred to as 'tote derivative' or 'synthetic tote') wagering products and fixed odds wagering products.<sup>21</sup> Bookmakers in Australia include:<sup>22</sup>
  - (a) **Corporate bookmakers:** corporate bookmakers are incorporated bookmakers that offer wagering services online and by telephone. The vast majority of the corporate bookmakers currently operating in Australia are licensed in the Northern Territory due to that jurisdiction's favourable licensing conditions and regulatory environment. No corporate bookmaker is currently licenced to accept bets in cash in off-course retail venues anywhere in Australia, however corporate bookmakers do accept bets via the internet (on a mobile device) and by telephone from customers who are in State TAB retail venues or elsewhere via the internet and by telephone.<sup>23</sup>
  - (b) **On-course traditional bookmakers:** traditional bookmakers are generally sole traders or small family businesses. Traditional bookmakers are licensed and regulated by the relevant controlling body in each State or Territory in which they operate. They are

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<sup>18</sup> Freeman [24].

<sup>19</sup> Freeman [25], Cooke [37].

<sup>20</sup> Freeman [26].

<sup>21</sup> Freeman [27].

<sup>22</sup> Freeman [27].

<sup>23</sup> Freeman [27(a)].



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permitted to operate face-to-face as well as over the phone and internet, while 'on-course' at a racing venue. Traditional bookmakers offer fixed odds products and tend to provide simpler products such as 'win' and 'place' bets. The number of registered traditional bookmakers operating in Australia has declined. For example, in 1954, the number of traditional bookmakers in Victoria peaked at 1500 and is currently estimated to be approximately 169.<sup>24</sup>

33. **Betting exchange:** A betting exchange allows customers to wager directly against each other at fixed odds and takes a commission. One customer essentially acts as a bookmaker (by setting the odds for an event), with the other customer wagering using the odds set by the first customer. Any customer of a betting exchange can effectively act as an unlicensed bookmaker without being subject to the usual regulatory requirements of a licensed bookmaker. Betfair (whose Australian business is owned by Crown Resorts Ltd) operates the only licensed betting exchange currently operating in Australia.<sup>25</sup> Further information on the particular wagering suppliers operating in Australia is set out below in paragraphs 91 to 105.

#### 2.1.3 Wagering distribution channels

34. Wagering suppliers distribute wagering products to customers through various channels:
- (a) **On-course:** 'on-course' refers to betting facilities located at a racing venue where a customer places a bet in person. State TABs and traditional bookmakers operate cash-based betting on-course. In Victoria, a corporate bookmaker can apply to conduct betting on-course, as a 'registered bookmaker', although generally on-course bookmakers in most Australian jurisdictions are limited to individuals.<sup>26</sup>
  - (b) **Retail:** retail wagering involves bets placed by customers in authorised off-course retail venues outside a racing venue.<sup>27</sup>
  - (c) **Online:** bets are placed by customers online through a wagering operator's website or mobile application (**app**). State TABs, corporate bookmakers, traditional bookmakers and Betfair all operate online.<sup>28</sup>
  - (d) **Telephone:** bets are placed by customers over the telephone. State TABs, corporate bookmakers, traditional bookmakers and Betfair all operate call centres that allow customers to place bets over the telephone.<sup>29</sup>

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<sup>24</sup> Freeman [27(b)].

<sup>25</sup> Freeman [28].

<sup>26</sup> Freeman [29(a)].

<sup>27</sup> Freeman [29(b)].

<sup>28</sup> Freeman [29(c)].





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35. Set out at Table 1 below is a table which summarises the suppliers of wagering products in Australia, the wagering products each supplier is permitted to supply (and does in fact supply)<sup>30</sup> and the channels by which those products are supplied.<sup>31</sup>

**Table 1: Products and channels provided by wagering suppliers in Australia<sup>32</sup>**

Wagering supplier	Products supplied	Channels
State TABs	Totalisator products	On-course (cash and account)
	Fixed odds products	Retail (cash and account)
	Trackside (Tabcorp)	Online (account)
		Telephone (account)
Traditional bookmakers	Fixed odds products	On-course (cash)
		Online (account)
		Telephone (account)
Corporate bookmakers	Fixed odds products	Online (account)
	Tote derivative products	Telephone (account)
Betfair	Fixed odds products	Online (account)
	Betting exchange products	Telephone (account)

36. Further information on the different types of wagering products is set out below in paragraphs 71 to 90 below.

2.1.4 Wagering events

37. Wagering customers in Australia can place bets on racing, sports and other events:<sup>33</sup>

- (a) **Racing:** includes the three codes of racing in the ‘racing industry’:
  - (i) thoroughbred racing (horses);
  - (ii) harness racing (horses); and

<sup>29</sup> Freeman [29(d)].

<sup>30</sup> For example, in Victoria, Tabcorp is permitted to supply a Betting Exchange and to offer tote derivative products under the Victorian Wagering and Betting Licence but does not supply those products: Freeman [31].

<sup>31</sup> Freeman [31].

<sup>32</sup> Freeman [31].

<sup>33</sup> Freeman [64].



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- (iii) greyhound racing (dogs).
  - (b) **Sports:** includes other sports events that do not fall within racing.
  - (c) **Other events:** include novelty events such as wagering on the result of the Academy Awards or other entertainment.
38. The wagering events that may be offered are restricted by the terms of the relevant wagering operator's licensing conditions.<sup>34</sup> For example, a corporate bookmaker licensed in the Northern Territory is permitted to offer wagering on the movement of the employment rate whereas this is not a permitted wagering event in New South Wales, Victoria and the Australian Capital Territory.<sup>35</sup>
39. The majority of wagering turnover is on racing. Total racing wagering turnover in Australia for the period between 1 August 2015 to 31 July 2016 was \$20.641 billion. Total sports betting turnover for the same period was \$8.243 billion.<sup>36</sup>
- 2.1.5 Recent industry trends in wagering and the competitive landscape
40. The last decade has seen significant changes occurring in the Australian wagering industry resulting in increasing competitive pressure on all wagering operators.<sup>37</sup>
41. The wagering market has experienced significant structural changes in both products and channels resulting in increased competition from fixed-odds racing and sports wagering which has experienced growth from 26% to 63% of industry turnover in the last decade alone.<sup>38</sup> The industry has also seen rapid digital convergence over the past 5 years with digital (wagering online via website or apps) increasing from 30% to 51% of industry turnover.<sup>39</sup> Competition has increased from corporate bookmakers who have more than doubled their turnover in the last five years and now command more than \$12 billion in national turnover, representing approximately 40% of the Australian wagering market.<sup>40</sup>
42. These significant and dynamic consumer driven changes to the wagering industry have resulted in online fixed odds and sports wagering products continuing to grow as alternatives for consumers of the more traditional retail totalisator wagering racing products.

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<sup>34</sup> Freeman [65].

<sup>35</sup> Freeman [66].

<sup>36</sup> Freeman [65].

<sup>37</sup> Freeman [248].

<sup>38</sup> Freeman [248].

<sup>39</sup> Freeman [248].

<sup>40</sup> Freeman [248].



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43. The key trends in the current Australian wagering industry include:
- (a) **Channel convergence and substitution from retail to digital:** Customers have increasingly moved to digital wagering (online via websites and apps) and away from placing bets in cash at retail venues. This has been linked to the growth of corporate bookmakers, most of whom offer digital services. Customers now typically have multiple accounts and regularly wager with a number of wagering operators, and customer brand loyalty has decreased;<sup>41</sup>
  - (b) **Shift from totalisator to fixed odds betting:** totalisator wagering has declined, driven by customer substitution to fixed-odds products, both in absolute terms and as a percentage of total wagering turnover;<sup>42</sup>
  - (c) **Substitution away from racing to sports:** wagering on sports other than racing continues to capture turnover share from racing;<sup>43</sup> and
  - (d) **Significant growth of corporate bookmakers:** corporate bookmakers have continued to grow and consolidate, doubling their turnover over the past 5 years and increasing competition in the wagering market.<sup>44</sup>
44. This period of dynamic change has resulted from, in particular:
- (a) the growth and widespread use of smartphones and apps which have increased online wagering services and digital offerings;<sup>45</sup>
  - (b) the removal of historical advertising restrictions arising from the High Court's *Betfair* decision in 2008;<sup>46</sup> and
  - (c) a favourable regulatory environment for corporate bookmakers licensed in the Northern Territory.<sup>47</sup>
45. Further information on these industry trends is set out below in paragraphs 166 to 193.

## 2.2 Racing industry overview

46. The racing industry is closely related to the wagering market.

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<sup>41</sup> Freeman [249(a)], and see also Cooke [133(h)], [134(a)], [135(a)], [136(a)] and [137(a)].

<sup>42</sup> Freeman [249(b)], and see also Cooke at [133(b)], [133(i)], [134(c)], [135(c)], [137(c)] and [139] to [141].

<sup>43</sup> Freeman [249(c)], and see also Cooke [133(b)] to [133(f)], [134(b)], [135(b)], [136(b) to (d)] and [138].

<sup>44</sup> Freeman [249(d)], and see also Cooke [Section I]. 070317

<sup>45</sup> Freeman [250(a)].

<sup>46</sup> Freeman [250(b)].

<sup>47</sup> Freeman [250(c)].



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47. Australia has one of the largest and most successful racing industries in the world in terms of the volume of racing events, value of prize money and scale and breadth of race animal ownership and breeding.<sup>48</sup> Racing is part of the 'public conversation' in Australia, with racing events and personalities regularly featuring in the Australian general media.<sup>49</sup>
48. Strong and stable funding of the racing industry, in particular in the form of prize money, has been a major factor contributing to the current scale and strength of the Australian racing industry.<sup>50</sup> In contrast, countries that do not have a strong tote funding model and are characterised by large numbers of corporate bookmakers, have demonstrated poor funding levels to the racing industry and as a result there are less opportunities for people to participate in racing.<sup>51</sup> The racing industry receives a substantial proportion of its revenue from the State TABs, which contribute a greater proportion of their wagering revenue than do corporate bookmakers.<sup>52</sup>
49. The Australian racing industry is divided on State and Territory lines and, as set out above, comprises the three codes of thoroughbred, harness and greyhound racing (with the exception of the Northern Territory, which does not have harness racing).<sup>53</sup> The racing industry includes all of the people who are employed in and participate in the production of racing animals and the racing product. Racing industry stakeholders include racing clubs, owners, jockeys, trainers, stewards, racing administrators and a number of service providers that provide services to the racing industry, including veterinary services, feed supply and transportation services.<sup>54</sup>
50. Racing clubs, which are all non-profit organisations, operate in metropolitan, provincial and country areas across Australia and provide racing 'products' by organising and conducting race meetings.<sup>55</sup>
51. The Australian racing industry makes a sizable overall economic and social contribution to the Australian community, providing not only entertainment and generating revenue through race events, but also creating employment and economic activity through associated investment in local infrastructure. For example, in 2015 -2016, the thoroughbred code alone conducted over 19,000 races and paid out a total of over \$568 million in prize money as part of total returns of

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<sup>48</sup> Harding [11].

<sup>49</sup> Harding [11].

<sup>50</sup> Grant [57] – [58], Gunston [25], Harding [12],[20] and Raedler [59].

<sup>51</sup> Harding [26], Grant [58].

<sup>52</sup> Dumesny [57], Gatehouse [35], Gunston [29], Jewell [98], Nicholl [42], Raedler [72], Scott [24], Yovich [19].

<sup>53</sup> Freeman [78], Grant [24], Gunston [15] and O'Toole [7].

<sup>54</sup> Freeman [78], Grant [24] and [28] and Gunston [16].

<sup>55</sup> Freeman [78(a)], Dumesny [26].



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more than \$627 million.<sup>56</sup> The high volume of racing events conducted across Australia sustains the employment of a significant number of people in full-time roles as well as part-time, casual and contractor roles in metropolitan, provincial and country areas who are directly and indirectly involved in delivering the racing product to patrons and punters both on and off-course.<sup>57</sup>

52. The business of wagering operators is centred upon the quality of the racing product provided by the racing industry – the better the product offered by the racing industry, the more this drives wagering.<sup>58</sup> Similarly, the public engages more with the racing industry where there is greater innovation and development in wagering options.<sup>59</sup>

#### 2.2.1 Funding of the racing industry

53. Racing industry participants incur significant costs in delivering the racing product to patrons and punters. For example, racing clubs incur significant costs in providing the venue and racing and administration for race meetings to take place and owners and trainers incur significant costs in sourcing, maintaining and delivering quality animals for race meetings.<sup>60</sup> Racing industry participants are therefore reliant on a variety of funding sources, in particular industry funding sourced from wagering revenue, to fund their activities.<sup>61</sup>
54. The racing and wagering industries are therefore very interrelated, as the racing industry supplies the racing products (that is, holds race meetings and stages races) on which wagering operators offer wagering products to customers, and in return, State TABs in particular, and to a much lesser extent corporate bookmakers, provide a significant proportion of the racing industry's funding.<sup>62</sup>
55. This differs from wagering on other sporting events which are generally funded primarily through ticket sales, sponsorship and media rights. For example, the Australian Football League (AFL) derives the vast majority of its income from broadcasting. While racing provides around ten days each year that attract broad spectator interest, this is not a sufficient source of funding given more than 50,000 races are run over 363 days of the year which attract much less spectator and broadcasting interest. The racing industry therefore relies heavily on sources of funding outside media interests, broadcasting and ticket sales, and in particular, financial

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<sup>56</sup> Harding [11].

<sup>57</sup> Grant [26], Nicholl [19], Yovich [33], Jewell [46], Corby [28], Dumesny [31], Lynch [17]

<sup>58</sup> Gunston [25], Yovich [19], Jewell [58].

<sup>59</sup> Nicholl [57] - [58], Yovich [19].

<sup>60</sup> Grant [31], Nicholl [27], Yovich [47], Jewell [77]-[86].

<sup>61</sup> Grant [37], Dixon [16]-[18], Nicholl [36] and [43], Dumesny [15], Gunston [22].

<sup>62</sup> Freeman [83] and [86], Dumesny [57], Gunston [29], Jewell [98], Nicholl [42]-[43], Scott [24], Yovich [19] and [63(a)], Burt [31] -[32].



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contributions from wagering operators, in particular, the State TABs.<sup>63</sup> Under the racing industry funding framework in Australia, State TABs provide the primary source of funding for the racing industry.<sup>64</sup> In response to significant changes in the Australian wagering market in the last 10–15 years with the entrance of corporate bookmakers offering fixed-odds and tote-derivative products, each Australian State and Territory has introduced ‘race fields fees’ legislation in order to address the lack of funding contribution by corporate bookmakers.<sup>65</sup>

56. While the introduction of race field fees has provided racing clubs with an additional source of funding, the majority of racing industry funding still comes from the State TAB operators by virtue of funding arrangements in place with the relevant State/ Territory racing industry.<sup>66</sup>
57. The two largest racing industries in Australia are New South Wales and Victoria. A significant portion of their funding comes from their agreements with Tabcorp. In FY16 over 65% of Racing Victoria’s wagering revenue was derived from distributions arising from its joint venture with Tabcorp.<sup>67</sup>
58. The extent of the State TABs’ racing industry funding contributions is primarily due to the terms of the State and Territory wagering licences and the racing industry funding agreements with the racing industries in those jurisdictions. Tabcorp and Tatts together paid approximately \$1 billion to the racing industry in FY16 which was a combination of approximately \$787 million contributed by Tabcorp and approximately \$200 million contributed by Tatts.<sup>68</sup>
59. Payments made under race field arrangements are significantly smaller in comparison to the payments made by Tabcorp and Tatts under their arrangements with State-based racing industries.<sup>69</sup>
60. A strong wagering industry is at the core of Australia’s racing industry, as wagering revenue is an integral part of the funding model of the Australian racing industry and provides a large proportion of the funding necessary to sustain and grow racing.<sup>70</sup> The experience in Australia

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<sup>63</sup> Freeman [83], Grant [37], Dixon [16]-[18], Nicholl [36] and [43], Dumesny [15] and Gunston [22]

<sup>64</sup> Harding [17], Nicholl [38] and Jewell [64] [98], Dumesny [57], Gunston [29], Jewell [98], Scott [24], Yovich [19].

<sup>65</sup> Freeman [86], Harding [33], Grant [55], Nicholl [42], Weston [34], Dumesny [53]–[54], Jewell [96], Stubbs [50], O’Toole [42], Lynch [31].

<sup>66</sup> Freeman [86], Dumesny [57], Gunston [29], Jewell [95]- [98], Nicholl [42]-[43], Scott [23] -[24], Yovich [19] and [63(a)].

<sup>67</sup> Freeman [83].

<sup>68</sup> Freeman [85].

<sup>69</sup> Freeman [86], Cooke [83], Dumesny [57], Gunston [29], Jewell [97]- [98], Nicholl [42]-[43], Scott [24], Yovich [19] and [63(a)].

<sup>70</sup> Harding [12]; Grant [37], Gunston [25], Dumesny [15].



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and other countries, particularly those with tote funding models, demonstrates that the strength of the racing industry is usually built on having a strong wagering industry.<sup>71</sup>

61. Further information on the racing industry's source of funding, including the State TAB funding obligations, race field fees and sporting body fees is set out below at paragraphs 147 to 163.

#### 2.3 Racing media overview

62. Racing media involves the acquisition and distribution of racing content, either through radio or vision. As racing media is a major factor in facilitating participation in racing and wagering off-course, it is closely related to the wagering industry, and is considered to be a related market.
63. Participation in racing and wagering by patrons and punters can take place on-course or off course. Historically, punters could only engage with racing industry events by attending a race track on race day and by placing wagers with on-course bookmakers.<sup>72</sup> Today, most participation in racing and wagering takes place off-course at retail wagering venues or by telephone or online, including via mobile applications.<sup>73</sup>
64. Access to racing information and coverage is important to patrons who consume wagering services on racing industry products. Punters typically want to follow live coverage of events on which they have placed a bet and therefore usually consume racing media and information services in conjunction with wagering services.<sup>74</sup> This demand for live coverage of events by punters means that the racing clubs that host race meetings and wagering service providers have a strong incentive to ensure that punters have access to high quality and comprehensive racing media to promote wagering activity on their races and wagering products.<sup>75</sup>
65. Racing content (including racing vision) is typically acquired from the racing clubs who are the holders of these media rights.<sup>76</sup> While racing clubs are the holders of media rights, typically racing clubs are represented by peak racing bodies in each State and Territory who acquire and aggregate the media rights held by their respective race clubs and conduct negotiations in respect to the sale of those rights, for distribution by others.<sup>77</sup>
66. Racing media can be distributed in wagering venues and other locations, both through traditional broadcast methods (radio and television) and, in more recent times, through digital

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<sup>71</sup> Harding [26]; Grant [58].

<sup>72</sup> Yovich [20], Raedler [32]–[34], Gatehouse [20]–[21], Jewell [59], Dumesny [16] and Stubbs [71].

<sup>73</sup> Gatehouse [40], Stubbs [72] and Yovich [26].

<sup>74</sup> Gatehouse [43], Raedler [56].

<sup>75</sup> Freeman [203]–[204], Harding [34]–[35]; Raedler [56].

<sup>76</sup> Freeman [212], Harding [34]–[35].

<sup>77</sup> Freeman [212].





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distribution (online). Over the years there have been a variety of distribution models adopted or tested by the racing industry when licensing these rights. These include distinct online models, retail exclusivity and free-to-air television rights. Through racing media, in addition to supplying on-course racing viewing and entertainment to on-course patrons, racing clubs are able to make racing 'products' available to off-course spectators and punters by supplying racing content to racing media providers.

67. The acquisition and distribution of racing vision is important to both wagering operators, to drive wagering activity, as well as to racing clubs, in order to promote wagering on their racing product from which they derive revenue. Racing clubs have an interest in their racing vision product being displayed across Australia, including in both Tabcorp and Tatts retail venues. This is because racing clubs derive race field fee revenue from wagering activity on their races conducted outside of their State or Territory.<sup>78</sup>
68. **Tabcorp's** media business includes the operation of three Sky Racing television channels, which are broadcast throughout Australia as well as the broadcasting of racing commentary on Sky Sports radio in New South Wales and the Australian Capital Territory.<sup>79</sup> The three Sky Racing channels broadcast thoroughbred, harness and greyhound racing and other sports to audiences in TAB outlets, hotels, clubs, other licensed venues, and into homes to pay TV subscribers.<sup>80</sup> The media business produces international racing television channels that are broadcast into 54 countries around the world via satellite, cable, mobile and the internet.<sup>81</sup> Tabcorp has a wholly-owned United States subsidiary, Sky Racing World, which manages the distribution of racing vision and data in North America.<sup>82</sup>
69. **Tatts** operates RadioTAB, which is broadcast in Queensland, South Australia, the Northern Territory and Tasmania.<sup>83</sup>
70. **Racing.com**, which is operated as a joint venture between Seven West Media and Racing Victoria, launched in 2015 and is also a supplier of racing vision. Racing.com broadcasts Victorian thoroughbred racing events which can be viewed online (on its website and apps) or on free-to-air digital television and on Foxtel.<sup>84</sup>

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<sup>78</sup> Freeman [204].

<sup>79</sup> Attenborough [18]; Freeman [205], [225].

<sup>80</sup> Freeman [205].

<sup>81</sup> Freeman [205].

<sup>82</sup> Freeman [92(c)].

<sup>83</sup> Attenborough [58], Aldam [34], Cooke [18].

<sup>84</sup> Freeman [219], Harding [36], Gunston [46].



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### 2.4 Wagering products

#### 2.4.1 Totalisator wagering

71. Totalisator wagering is a pari-mutuel system of betting. In totalisator wagering:
- (a) the operator 'pools' all wagers ('turnover') on a particular event (for example, a horse race) that have the same bet type (for example, a win bet, quinella or trifecta);
  - (b) the operator then deducts from the pool a set percentage as commission (or 'take out'); and
  - (c) the remainder of the pool is distributed to customers as dividends in accordance with the outcome of the bets.<sup>85</sup>
72. The anticipated dividend from a pari-mutuel pool is typically displayed to customers as 'indicative odds' when they place their bet.<sup>86</sup> The final odds are not calculated until after the close of betting on the relevant event and will often differ from the indicative odds shown at different times in the lead up to the race.<sup>87</sup>
73. The ultimate dividend paid to customers placing bets in pari-mutuel wagering is therefore contingent on how much money is invested into the pool, the number of winning units for successful customers and the rounding of dividend amounts. The totalisator operator has no financial interest in the outcome of the event on which pari-mutuel bets are placed because its revenue is derived from a commission rather than returns from bets placed against it. State TABs do not set the dividend for each customer as the dividends reflect the customers' bets in the pool and the commission. There is no risk to State TABs from pari-mutuel bets.<sup>88</sup>
74. Legislation in each State and Territory specifies the conditions under which a totalisator licence may be granted to a State TAB. Licensees are required to comply with a large number of conditions, obligations and restrictions, which vary between the States and Territories including:
- (a) the payment of taxes and other fees to the State or Territory government;
  - (b) entry into arrangements with the relevant State or Territory racing bodies, under which the licensee provides financial contributions to the racing industry and obtains approvals to conduct wagering activities including pooling with operators outside the relevant State or Territory;

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<sup>85</sup> Freeman [37].

<sup>86</sup> Freeman [38].

<sup>87</sup> Freeman [38].

<sup>88</sup> Freeman [40].



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- (c) requirements for the conduct of the TABs; and
- (d) the approval of and compliance with betting rules (for example, rules for contingencies such as when a horse is scratched).<sup>89</sup>

75. Further details on the regulatory regime for totalisator wagering is set out below at paragraphs 128 to 132.

76. Set out below at **Table 2** a table which shows the current totalisator operators (State TABs) in each State and Territory.<sup>90</sup>

**Table 2: Totalisator operators by state and territory**

State / Territory	Off-course State TABs	Parent co. of TABs	Licence expiry
NSW	TAB Limited	Tabcorp	2097 (exclusive until 2033)
VIC	Tabcorp Wagering Manager (Vic) Pty Ltd as the State TAB which has entered into a joint venture with Victorian Racing (Tabcorp Wagering Manager (Vic) Pty Ltd manages the joint venture operations and the SuperTAB pool)	Tabcorp	2024 (exclusive for term)
ACT	Tabcorp ACT Pty Ltd	Tabcorp	2064 (exclusive for term)
WA	Racing and Wagering Western Australia	Government authority	N/A (exclusive)
QLD	UBET Qld Ltd	Tatts	2098 (exclusive until 2044)
SA	UBET SA Pty Ltd	Tatts	2100 (exclusive until 2017)
TAS	UBET Tas Pty Ltd	Tatts	2062 (option to renew to 2111 and exclusive until

<sup>89</sup> Freeman [42].

<sup>90</sup> Freeman [44].



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NT	UBET NT Pty Ltd	Tatts	2035 (exclusive for term)
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77. Further information on the pooling arrangements is set out below in paragraphs 136 to 146.

2.4.2 Tote derivative wagering

78. Although no corporate bookmaker presently offers a totalisator product in Australia, corporate bookmakers (including William Hill, Bet365, Sportsbet, CrownBet, Unibet and Ladbrokes) offer ‘tote-derivative’ or ‘tote-odds’ wagering products. In tote derivative products or ‘tote-odds’ products, the odds are set by reference to the final totalisator dividend paid by one or more State TABs. This is a way in which corporate bookmakers can offer odds equal to, or better than, those offered by State TABs.<sup>91</sup>

79. In tote-derivative wagering, the odds are set by reference to the final dividend of one or more State TABs for the corresponding event. This allows a corporate bookmaker, in effect, to offer the same or better odds and betting products as State TABs without running its own pool.<sup>92</sup>

80. Compared with the State TABs, corporate bookmakers can offer innovative variations on a tote product that a State TAB is unable to offer. Examples of tote odds wagering products include ‘best of odds’, in which the bookmaker pays the best of the odds offered by different totalisator pools, and ‘home tote odds’, in which the bookmaker pays the totalisator odds offered on the punter’s ‘home tote’ (the tote in their State or Territory) plus 5%.<sup>93</sup>

81. Tote derivative wagering is offered by all Australian corporate bookmakers. State TABs do not offer tote-derivative wagering services.<sup>94</sup>

82. Bookmakers who supply tote derivative wagering are exposed to some risk, but they can mitigate that risk by ‘betting-back’ by placing bets with other bookmakers to spread their risk. Bookmakers can ‘bet-back’ into a totalisator pool (that is, by making equivalent bets with a State TAB to reduce the extent of their exposure to particular outcomes) or by ‘laying-off’ that risk with other corporate bookmakers (that is, bets are placed with another wagering operator so as to

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<sup>91</sup> Freeman [45].

<sup>92</sup> Freeman [46].

<sup>93</sup> Freeman [47].

<sup>94</sup> Freeman [49].



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spread the risk of loss).<sup>95</sup> Tote-derivative products provide a direct alternative to pari-mutuel betting, but at a lower cost base as corporate bookmakers do not incur the State TAB operating costs, pay less tax and contribute less funding to the racing industry than State TABs.<sup>96</sup> Tote-derivative products are able to compete directly with traditional pari-mutuel betting products by offering better pricing to customers (for example, the 'tote price plus 5%') whilst maintaining higher margins due to the lower cost base.<sup>97</sup> Corporate bookmakers compete against traditional tote products by offering tote-derivative promotional offerings and engaging in advertising tote-derivative products across all states and territories.<sup>98</sup>

#### 2.4.3 Fixed odds wagering

83. In contrast to pari-mutuel wagering and tote derivative wagering, in fixed odds wagering customers are informed of the odds at the time their bets are placed. The odds accepted by the customer on the bet are fixed at the time and do not change, regardless of developments or betting patterns after the bet is placed (unless there is a scratching in which case there may be a reduction of the odds in accordance with the relevant betting rules).<sup>99</sup>
84. Customers who bet on the same outcome at different times will not necessarily receive the same odds. This is because the wagering operator effectively adjusts the odds offered over time based on the amounts wagered on each outcome. The odds offered to the market are determined by the wagering operator's targeted yield (or 'market percentage') and an assessment of the probability of the relevant outcomes. In this way, the wagering operator can calibrate the odds to maintain a balanced book with a view to ensuring a profit, regardless of the outcome of the race or event. Theoretically a market percentage of 100% will not yield any profit to the wagering operator. The lower the operator's market percentage, the more favourable the odds offered to the customer and the more risk borne by the operator.<sup>100</sup>
85. In fixed odds wagering, the operator's revenue is not a set commission but instead depends on factors including:
- (a) the outcome of the event;
  - (b) the quantity and odds of the bets accepted by the wagering operator;
  - (c) the management of the book of bets;

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<sup>95</sup> Freeman [50].

<sup>96</sup> Freeman [51] – [52].

<sup>97</sup> Freeman [52].

<sup>98</sup> Freeman [52].

<sup>99</sup> Freeman [53].

<sup>100</sup> Freeman [54].



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- (d) the extent to which the wagering operator's risk is 'bet-back' or 'laid off' (i.e. the operator places bets with another wagering operator to mitigate or spread risk); and
  - (e) the risk appetite of the wagering operator.<sup>101</sup>
86. Unlike totalisator wagering, which involves customers betting against each other, fixed odds wagering involves customers betting against the wagering operator. As a result, fixed odds wagering involves more risk for the operator compared with totalisator wagering.<sup>102</sup>
87. The suppliers of fixed odds wagering products in Australia include:
- (a) corporate bookmakers;
  - (b) State TABs;
  - (c) on-course bookmakers; and
  - (d) Betfair.<sup>103</sup>
88. State TABs which were originally confined to providing pari-mutuel betting are now allowed to provide fixed odds wagering on all racing and approved sporting or events under the State and Territories' respective regulatory regimes.<sup>104</sup> Fixed odds and tote derivative products which are offered by both corporate bookmakers and now State TABs have increased in the share of Australian wagering market both as a percentage of total wagering and in absolute terms, whilst pari-mutuel wagering which is only offered by State TABs has declined.<sup>105</sup> Further information on the decline in pari-mutuel wagering is set out below in paragraphs 171 to 175

2.4.4 Betting exchanges

89. Betting exchanges match a customer's bet with a directly opposing bet (or bets). When a customer places a 'back bet', they are betting on a certain outcome to occur (for example, that a particular horse will win the race). When a customer places a 'lay bet', they are betting on an outcome to not occur (for example, that a particular horse will not win the race). Bets are only placed when they are matched. In other words, there needs to be both a back bet and a lay bet, at agreed odds and bet size. For example, a bet placed that a certain horse will win at specified odds (a back bet) will only be accepted by a betting exchange in circumstances in which another customer (or combination of customers) has placed a bet that the horse will lose at the specified odds (a lay bet). One customer essentially acts as an unlicensed bookmaker by

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<sup>101</sup> Freeman [55].

<sup>102</sup> Freeman [56].

<sup>103</sup> Freeman [57].

<sup>104</sup> Freeman [58].

<sup>105</sup> Freeman [61].



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setting the odds for the particular event they wish to bet on. Another customer then places a bet using the odds set by the former customer.<sup>106</sup>

90. A customer can place either a back bet or a lay bet on a betting exchange. This differs from totalisators and bookmakers which only allow customers to place back bets. As with a totalisator, the corporate entity running the betting exchange takes no risk on any of the bets. The betting exchange generates revenue by taking a commission on a customer's net winnings. As mentioned above, Betfair (whose Australian business is owned by Crown Resorts Ltd in Australia) is the only licensed betting exchange currently operating in Australia.<sup>107</sup>

## 2.5 Wagering suppliers

### 2.5.1 Tabcorp

91. Tabcorp's Australian wagering business operations include:
- (a) totalisator and fixed odds wagering in racing and others sports TAB agencies and licensed venues (hotels, pubs, clubs and other venues) in Victoria, New South Wales and the Australian Capital Territory, and by telephone, apps and internet nationwide;
  - (b) on-course totalisators and fixed odds wagering in Victoria, New South Wales and the Australian Capital Territory;
  - (c) tote derivative and fixed odds betting on racing, sports and other events through its Northern Territory licensed bookmaker Luxbet; and
  - (d) Trackside, a computer simulated racing game operating in retail venues in Victoria, New South Wales and the Australian Capital Territory within Australia (and also licensed to Crown Casino in Perth).<sup>108</sup>
92. Tabcorp's overseas wagering operations include:
- (a) a partnership with US-based Unikrn to provide wagering services for eSports gaming tournaments;
  - (b) an agreement between Sky Racing World, LLC and eBet Technologies which provides wagering services pursuant to an advance deposit wagering licence in Oregon, United States;
  - (c) the distribution of racing vision and data in the Americas through its wholly owned United States subsidiary Sky Racing World, LLC;

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<sup>106</sup> Freeman [62].

<sup>107</sup> Freeman [63].

<sup>108</sup> Freeman [91].





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- (d) a joint venture with South Africa's Phumelela Gold International to operate PGI which is based in the Isle of Man and provides pari-mutuel wagering and wagering interface systems;
- (e) the operation of Sun Bets, an online fixed odds wagering and gaming business in the United Kingdom and Ireland, under an agreement with News UK;
- (f) pooling with international wagering operators (as described below in paragraphs 136 to 139);
- (g) Trackside, which is licensed to a number of overseas jurisdictions, including the United States, Denmark, Sri Lanka and Croatia.<sup>109</sup>

93. As each Australian State and Territory has its own regulatory regime for wagering operators licensed to operate within its jurisdiction, Tabcorp operates under separate wagering licences and regimes in Victoria, New South Wales, the Australian Capital Territory and the Northern Territory.<sup>110</sup> These licences govern which kinds of wagering events Tabcorp is permitted to offer wagering services for in each relevant State or Territory. Further detail on the regulatory regime that applies to wagering services is set out below in paragraphs 106 to 135.

#### 2.5.2 Tatts

94. Tatts' wagering division includes:

- (a) off-course totalisator wagering in racing and sports which Tatts supplies at retail outlets known as TAB or 'UBET' agencies, or via UBET betting terminals at hotels, pubs, clubs and stadiums in Queensland, South Australia, Tasmania and the Northern Territory;<sup>111</sup>
- (b) on-course totalisator wagering in racing in Queensland, South Australia, Tasmania and the Northern Territory;<sup>112</sup>
- (c) online and by telephone totalisator and fixed odds wagering anywhere in Australia or overseas under the UBET and Tatts brands;<sup>113</sup>
- (d) broadcasting sports and racing information on RadioTab in Queensland, South Australia, Tasmania and the Northern Territory (RadioTAB is also available nationally online).<sup>114</sup>

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<sup>109</sup> Freeman [92].

<sup>110</sup> Freeman [94].

<sup>111</sup> Cooke [37], [39] to [42], [105].

<sup>112</sup> Cooke [39], [105].

<sup>113</sup> Cooke [38], [43] to [47].

<sup>114</sup> Cooke [18].



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95. Tatts' wagering division operates under separate licences in Queensland, South Australia, Tasmania and Northern Territory.<sup>115</sup>

**2.5.3 Racing and Wagering Western Australia (RWVA)**

96. RWVA is a State government owned wagering business in Western Australia.<sup>116</sup> RWVA operates a totalisator in Western Australia, known as WA TAB, that offers bets on racing and other sporting events both at on-course racing venues and off-course retail outlets throughout Western Australia over the telephone, internet, online portal (TabTOUCH) or mobile platform (Tabtouch.mobi) for account customers.<sup>117</sup> Its totalisator pool is co-mingled in the SuperTAB totalisator pool.<sup>118</sup> RWVA also provides fixed odds wagering on racing and other sporting events throughout Australia, and this is managed by William Hill.<sup>119</sup>

97. RWVA supplies its totalisator and fixed odds wagering products through the following channels:

- (a) on-course at racing venues in Western Australia;
- (b) off-course at approximately 320 retail outlets in Western Australia (with retail outlets comprising TAB agencies, 'pubTABS' agencies and 'self-service' agencies); and
- (c) over the telephone, or the internet on an online portal (TabTOUCH), or mobile online platform (Tabtouch.mobi) for account customers.<sup>120</sup>

**2.5.4 Sportsbet**

98. Sportsbet is a wholly owned subsidiary of Paddy Power, an Irish listed betting company. Paddy Power has an estimated enterprise value of A\$13.4 billion following its recent merger with Betfair. Paddy Power's global profit for the year ended 31 December 2015 was €152.8m (approximately A\$228m). The Australian market contributed approximately 44% of Paddy Power's operating profit for FY15. Paddy Power announced in its 2016 interim results that its revenue from Australia was up 17% to £129m. Sportsbet is the largest corporate bookmaker currently operating in Australia.<sup>121</sup>

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<sup>115</sup> Cooke [58], [72] and [74].

<sup>116</sup> Freeman [14], Cooke [78] and Burt [6] – [16].

<sup>117</sup> Freeman [14].

<sup>118</sup> Freeman [143(a)] and Cooke [167].

<sup>119</sup> Freeman [58].

<sup>120</sup> Freeman [14].

<sup>121</sup> Freeman [313(a)].

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2.5.5 Bet365

99. Bet365 is a privately-held UK-based gambling company and is one of the world's biggest online gambling groups. Bet365's global profit for the year ended 27 March 2016 was approximately £448m (approx. A\$718m). Bet365 obtained its Australian bookmaking licence in February 2011 in the Northern Territory and began taking bets in 2012. Bet365 offers fixed odds betting on thoroughbred, harness and greyhound racing and sporting events. Bet365 offers live streaming of over 50,000 events to computers and mobile devices. Tabcorp estimates that it accounts for approximately 13% of online wagering.<sup>122</sup>

2.5.6 William Hill

100. William Hill has a global strategy that involves investing in regulated markets. William Hill entered the Australian market in 2013 when it acquired Sportingbet (which had acquired Centrebet two years prior) and Australian bookmaker tomwaterhouse.com. William Hill is the third largest betting operator in Australia by net revenue. William Hill's Australian operating profit for FY2015 was A\$26 million. William Hill also operates WA TAB's fixed odds book under an agreement with RWWA.<sup>123</sup>

2.5.7 Crown (Crownbet)

101. CrownBet is an online wagering company, majority-owned by Australian publicly listed company Crown Resorts. Crown Resorts also has other Australian gambling interests, such as Crown Melbourne, Crown Perth and a proposed resort in Sydney's Barangaroo, which will have a restricted gaming licence. CrownBet is one of Australia's fastest growing bookmakers and is the exclusive wagering partner of the AFL for the next five years and premium wagering partner of Racing.com. Tabcorp estimates that CrownBet currently accounts for approximately 5% of online wagering in Australia.<sup>124</sup>

2.5.8 Unibet

102. Unibet is a Swedish company currently operating online with around 14 million registered customers worldwide. Unibet has licences in France, Belgium, Denmark, Italy, Australia and the United Kingdom. Recently, Unibet has demonstrated its intention and ability to expand by acquiring online gambling businesses including Stan James Group for £19m in the United Kingdom, and the iGame Group for €59m, which is a specialist gambling operator and offers online casino, poker and sports betting. These acquisitions strengthen Unibet's position in the

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<sup>122</sup> Freeman [313(b)].

<sup>123</sup> Freeman [313(c)].

<sup>124</sup> Freeman [313(d)].



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gambling market and its commitment to build a diverse and balanced portfolio of market opportunities in regulated markets. In 2012 Unibet acquired Betchoice, one of the leading independent corporate bookmakers offering racing and sports betting products in Australia.<sup>125</sup>

#### 2.5.9 Ladbrokes

103. Ladbrokes is a British-based betting and gaming company. Ladbrokes has considerable retail experience and expertise, with 69.2% of its UK operation in retail. The Group has a presence in the UK, Ireland, Belgium, Spain as well as in Australia. In 2013, Ladbrokes acquired Bookmaker Pty Ltd and in April 2014 it acquired Australian online bookmaking business Betstar.<sup>126</sup>

104. Ladbrokes' net revenue in Australia in FY15 increased by 54% to £53.2m. Tabcorp estimates that Ladbrokes accounts for approximately 12% of online wagering in Australia, with reported year on year digital turnover growth to March 2016 of 52%.<sup>127</sup>

#### 2.5.10 Betfair

105. Betfair was founded in the United Kingdom as an online bookmaker in May 1999, and is the pioneer of the 'betting exchange' concept. Betfair Australia launched in Australia in 2005 through a joint venture between Betfair and Crown. CrownBet subsequently acquired the whole Australian company in 2014 and absorbed Betfair's fixed odds book into CrownBet's operations. Betfair Australia continues to operate as a standalone pure play exchange, licensed in the Northern Territory. Although Betfair is currently much more popular in the United Kingdom than Australia, it has the potential to also become a significant competitive threat in the wagering market in Australia.<sup>128</sup>

### 2.6 Wagering licensing

106. Each State and Territory in Australia has its own regulatory regime for wagering and gambling conducted within its jurisdiction. These regimes regulate:

- (a) who may offer wagering services within the State or Territory, and the circumstances in which those services can be supplied;
- (b) the products that can be offered by wagering operators; and
- (c) the advertising of wagering services and products<sup>129</sup>

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<sup>125</sup> Freeman [313(e)].

<sup>126</sup> Freeman [313(f)].

<sup>127</sup> Freeman [313(f)].

<sup>128</sup> Freeman [313].

<sup>129</sup> Freeman [93].



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107. To provide wagering services in Australia, wagering operators are required to be licensed, or to hold a relevant permit. Wagering operators can generally either be licensed under a sports bookmaker licence,<sup>130</sup> under a State based totalisator licence,<sup>131</sup> or under a betting exchange licence.
108. Whilst Northern Territory sports bookmaker licences are readily available, and require minimum administration and expense to obtain,<sup>132</sup> totalisator licences are subject to long-term exclusive arrangements<sup>133</sup> and are most costly. Given the relative ease of acquiring a sports bookmaker licence in the Northern Territory, and the ability to compete effectively in wagering products via online and by telephone without offering totalisator betting, as demonstrated by the successful growth in corporate bookmakers in the Australian wagering market over the previous decade, a totalisator licence is not required to participate in the wagering market in Australia.

#### 2.6.1 Sports bookmaker licences

109. The vast majority of the corporate bookmakers currently operating in Australia are licensed in the Northern Territory due to that jurisdiction's favourable licensing conditions and regulatory environment.<sup>134</sup>
110. The process of obtaining a sports bookmaker wagering licence under the Northern Territory regime is not onerous and not expensive.<sup>135</sup> The general requirements to obtain a sports bookmaker licence in the Northern Territory, which have been readily met by the various corporate bookmakers, are:
- (a) obtain a police check on all directors, major shareholders and key personnel;
  - (b) prepare a deed of release and indemnity for suitability and probity purposes;
  - (c) lodge a prescribed application form (including all required supporting documentation such as a \$200,000 bank guarantee, most recent audited financial statements and a three-year business plan outlining how the granting of the licence will benefit the Northern Territory);
  - (d) comply with all Northern Territory racing rules and regulations and any conditions imposed by the Northern Territory Racing Commission; and

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<sup>130</sup> Freeman [133].

<sup>131</sup> Freeman [25].

<sup>132</sup> Freeman [134].

<sup>133</sup> Freeman [44].

<sup>134</sup> Freeman [27(a)].

<sup>135</sup> Freeman [134].



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- (e) pay the requisite application fee (which was \$23,000 for a corporate sports bookmaker licence in 2015/2016).<sup>136</sup>

#### 2.6.2 Totalisator licences

111. As described above, totalisator operators, or State TABs, must hold a licence from the relevant State or Territory to provide totalisator products. Historically, these licences have been granted on an exclusive basis, and have entitled each of the respective State TABs to (among other things) operate as the sole retail provider of wagering products in each State.
112. State TABs were originally established by the various States and Territories as statutory body corporates to operate as State-run *off-course* totalisators.<sup>137</sup> Throughout the 1990's and 2000's, these various State-run "Totalisator Agency Boards", or "TABs", were privatised under various processes, with exclusive licences issued across the various States and Territories to private wagering operators.<sup>138</sup> This privatisation occurred as follows: Victoria in 1994, New South Wales in 1998, Queensland in 1999, Northern Territory in 2000, South Australia in 2002, Tasmania in 2012 and the Australian Capital Territory in 2014.<sup>139</sup> As referred to above, the only State TAB that has not yet been privatised is the WA TAB.<sup>140</sup>
113. With the exception of the South Australian and Tasmanian licences, both of which may become non-exclusive in 2017 and 2027 respectively, over the medium term there are only two potential processes which could emerge in respect of totalisator licences, being:
  - (a) the award of the next Victorian wagering licence in circumstances where the current licence expires in 2024 (although it may be extended by the Victorian Government until 2026); and
  - (b) the possible privatisation/sale of WA TAB by the Western Australian Government.
114. Whilst it is not yet known whether or when WA TAB would be privatised, or what process the Victorian Government might engage in for the purposes of the future Victorian wagering licence, in both respects each State Government will be in a position to determine the terms and conditions upon which any licences are granted, and under which any competitive process is conducted. Where competitive processes are conducted, given the emergence of corporate bookmakers in the previous decade and the background of those bookmakers (see above at paragraphs 98 to 104), it is likely that:

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<sup>136</sup> Freeman [134].

<sup>137</sup> Freeman [12].

<sup>138</sup> Freeman [13].

<sup>139</sup> Cooke [15], Freeman [13].

<sup>140</sup> Freeman [13]-[14].



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- (a) foreign corporations, or foreign owned domestic businesses, would be permitted to bid for the business or the licence;
- (b) some corporate bookmakers operating in Australia could leverage their significant overseas retail experience in taking over RWWA or the Victorian licence – for example, Ladbrokes, following its merger with Gala Coral, has over 4,100 betting shops in the United Kingdom, and William Hill has around 2,300 betting shops (with Ladbrokes and William Hill operating approximately 72% of all betting shops in Great Britain);<sup>141</sup>
- (c) other corporate bookmakers, including Sportsbet (Paddy Power) and CrownBet, could be interested in bidding for RWWA or the Victorian licence;<sup>142</sup> and

115. **[HIGHLY Confidential to Tabcorp]** [REDACTED]  
 [REDACTED]  
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 [REDACTED]  
 [REDACTED]  
 [REDACTED]<sup>143</sup>

2.6.3 State and Territory Licensing Regimes

116. In **New South Wales** Tabcorp has the sole available *off-course* totalisator licence under the *Totalizator Act 1997* (NSW), which permits Tabcorp to supply totalisator and other approved forms of wagering services (e.g. fixed odds betting on a range of sports and other events).<sup>144</sup> Tabcorp is exempt from the *Unlawful Gambling Act 1998* (NSW), which means it can supply *on-course* totalisator and fixed odds betting.<sup>145</sup> A number of bookmakers are licensed under the *Unlawful Gambling Act 1998* (NSW) to supply on-course bookmaking (eg fixed odds betting), and may apply for licences to accept bets over the telephone and internet.<sup>146</sup>

117. In **Victoria**, Tabcorp has the sole available ‘wagering and betting licence’ under the *Gambling Regulation Act 2003* (Vic), which permits Tabcorp to provide wagering and betting services at various locations including on racetracks, at clubs and pubs and at other locations and over the telephone and internet.<sup>147</sup> A number of bookmakers have ‘on-course wagering permits’ under

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<sup>141</sup> Freeman [314].  
<sup>142</sup> Cooke [186], [213] and [219].  
<sup>143</sup> Freeman [169] and Burt [37].  
<sup>144</sup> Freeman [117]-[118].  
<sup>145</sup> Freeman [118].  
<sup>146</sup> Freeman [118].  
<sup>147</sup> Freeman [114].





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the *Gambling Regulation Act 2003* that enable them to supply *on-course* bookmaking (e.g. fixed odds betting), but no one other than Tabcorp may offer *off-course* bookmaking.<sup>148</sup>

118. In the **Australian Capital Territory**, Tabcorp has the sole available totalisator licence under the *Totalisator Act 2014* (ACT), which permits Tabcorp to provide totalisator services at locations throughout the Australian Capital Territory and over the telephone and internet.<sup>149</sup> Tabcorp also has a licence under the *Race and Sports Bookmaking Act 2001* (ACT), which permits Tabcorp to offer fixed odds betting on racing and sporting events.<sup>150</sup> A number of bookmakers also have licences under the *Race and Sports Bookmaking Act 2001* (ACT), but a disallowable instrument made by the Australian Capital Territory Gambling and Racing Commission limits these licences to *on-course* bookmaking. Tabcorp is exempt from this, and has retail exclusivity for racing and sports bookmaking.<sup>151</sup>
119. In **Western Australia**, the Western Australian Government-owned RWWA is the sole provider of totalisator services.<sup>152</sup>
120. In **Queensland**, Tatts has the exclusive race wagering and sports wagering licences under the *Wagering Act 1998* (Qld), which permits it to offer *on-course* and *off-course* totalisator wagering and fixed odds betting on thoroughbred, harness and greyhound racing, sports and other approved events.<sup>153</sup> A number of bookmakers are licensed under the *Racing Integrity Act 2016* (Qld), which enables them to supply *on-course* bookmaking.<sup>154</sup>
121. In **South Australia**, Tatts has the only '*major betting operations licence*' under the *Authorised Betting Operations Act 2000* (SA), which permits it to offer *on-course* and *off-course* totalisator wagering and fixed odds betting on thoroughbred, harness and greyhound racing, sports and other approved events.<sup>155</sup> A number of bookmakers are also licensed under the *Authorised Betting Operations Act 2000*, which enables them to supply *on-course* bookmaking (e.g. fixed odds betting).<sup>156</sup>
122. In **Tasmania**, Tatts has an exclusive Tasmanian Gaming Licence under the *Gaming Control Act 1993* (Tas) with endorsements allowing it to supply totalisator, sports betting, and race

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<sup>148</sup> Freeman [114].

<sup>149</sup> Freeman [128].

<sup>150</sup> Freeman [128].

<sup>151</sup> Freeman [128].

<sup>152</sup> Freeman [14].

<sup>153</sup> Cooke [71] – [74].

<sup>154</sup> Cooke [71] – [74].

<sup>155</sup> Cooke [71] – [74].

<sup>156</sup> Cooke [71].



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wagering, including to customers who are physically present at approved locations. The Tasmanian Gaming Licence also includes an agent endorsement allowing Tatts to enter into arrangements with other gaming or wagering providers.<sup>157</sup> A number of bookmakers are licensed under the *Gaming Control Act 1993*, which permits them to supply *on-course* bookmaking (e.g. fixed odds betting).<sup>158</sup>

123. In **the Northern Territory**, Tatts has an exclusive licence under the *Totalisator Licensing and Regulation Act* (NT), which permits it to provide *on-course* and *off-course* totalisator services on thoroughbred, harness and greyhound racing, sports and other approved events. The licence also permits Tatts to conduct fixed price wagering on racing and sports, on an exclusive basis when such activities are conducted from certain "public places" excluding on-course venues, and otherwise on a non-exclusive basis.<sup>159</sup> Tatts has a non-exclusive sports bookmaker licence under the *Racing and Betting Act* (NT), which permits it to supply fixed odds wagering, from the premises specified on the licence.<sup>160</sup>
124. In addition, in the Northern Territory a number of bookmakers are licensed under the *Racing and Betting Act*, which enables them to supply *on-course* bookmaking and various corporate bookmakers hold non-exclusive sports bookmaker licences under the *Racing and Betting Act* (NT), which permits them to supply fixed odds wagering on racing, sporting and other approved events over the phone and via the internet.<sup>161</sup>
125. There is no restraint on corporate bookmakers licensed in the Northern Territory supplying fixed odds wagering over the phone or via the internet to customers located in other Australian States and Territories.<sup>162</sup> Since 2008, following the High Court's decision in *Betfair Pty Ltd v Western Australia* (2008) 234 CLR 418 (**Betfair Case**), corporate bookmakers have also been permitted to advertise their services there are no restrictions enforced to prevent corporate bookmakers licensed in one jurisdiction from advertising their wagering services to customers in other jurisdictions.<sup>163</sup>

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<sup>157</sup> Cooke [71 – [74].

<sup>158</sup> Cooke [71].

<sup>159</sup> Cooke [71 – [74].

<sup>160</sup> Cooke [74(d)].

<sup>161</sup> Cooke [71].

<sup>162</sup> Freeman [133].

<sup>163</sup> Freeman [18] and [253].



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126. In relation to totalisator pooling in Australia, industry and regulatory approvals must be obtained in most States and Territories prior to entry into any pooling arrangement.<sup>164</sup> Further information on pooling arrangements is set out below in paragraphs 136 to 146.

### 2.7 Commissions and taxes applying to wagering operators

127. Each State and Territory in Australia also regulates:

- (a) the maximum commission that totalisator operators may charge punters who place totalisator bets; and
- (b) the taxes that totalisator operators and bookmakers must pay on wagering and gambling services.<sup>165</sup>

#### 2.7.1 Regulation of the maximum commission to totalisators

128. The maximum commission rate is determined in each Australian State and Territory by legislation as well as regulations or rules promulgated under that legislation.<sup>166</sup> The maximum commission is expressed as a percentage of the total amount invested in a totalisator pool.

129. In Queensland, South Australia and the Northern Territory, the maximum commission rate is fixed irrespective of bet type or whether the totalisator pools with other domestic or international totalisators.<sup>167</sup>

130. In New South Wales, Victoria, Tasmania, the Australian Capital Territory and Western Australia, legislation sets statutory maximum commissions, below which the relevant rules or regulations alter the maximum commission rate based on bet type and whether the operator participates in, or hosts, an internationally-pooled bet.<sup>168</sup>

131. The maximum commission rates as fixed by each set of rules are set out in **Table 3 and Table 4** below:

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<sup>164</sup> Freeman [142].

<sup>165</sup> Freeman [93].

<sup>166</sup> Freeman [93].

<sup>167</sup> **Queensland:** *Wagering Act 1998* (Qld), s 163; *Wagering Regulation 1999* (Qld), r 5. **South Australia:** *Authorised Betting Operations Act 2000* (SA), s 41; *South Australian Betting Operations Rules and On-Course Betting Operation Rules 2014* (SA), r 5. **Northern Territory:** *Totalisator Licensing and Regulation Act* (NT), s 46; *Totalisator Licensing and Regulation (Wagering) Rules 2012* (NT), r 5.

<sup>168</sup> **New South Wales:** *Totalisator Act 1997* (NSW) s 69; *Totalisator Rules* (NSW), r 17.2. **Victoria:** *Gambling Regulation Act 2003* (Vic), s 4.6.1 & s 4.2.5(2B); *Rules relating to Betting Transactions in Victoria*, Appendix A. **Tasmania:** *Gaming Control Act 1993* (Tas), s 76ZEG; *Tasmanian Betting Rules 2016*, r 7. **Australian Capital Territory:** *Totalisator Act 2014* (ACT), s 32; *Totalisator (Commission on Totalisator Betting) Determination 2014* (ACT), r 3; *Totalisator Rules*, 23 September 2016, Appendix A. **Western Australia:** *Betting Control Act 1954* (WA), s 17E(1) & (2) and *Betting Control Regulations 1978* (WA), reg 17C (for non-pooled totalisators); *Betting Control Act 1954* (WA), s 17E(3) and *Racing and Wagering Western Australia Act 2003* (WA), s 59, and *Rules relating to Betting Transactions in Victoria*, Appendix A (which are adopted by RWWA when pooling with the Victoria totalisator) (for pooled totalisators).



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**Table 3: maximum commission rates when not hosting international pools**

Bet Type	NSW	VIC / WA / ACT	NT / SA / QLD / TAS
<b>Win Duet</b>	14.5%	14.5%	25%
<b>Place</b>	14.25%	14.25%	25%
<b>Quinella</b>	17.5%	17.5%	25%
<b>Exacta Doubles Quaddie</b>	20%	20%	25%
<b>Trifecta</b>	21%	20%	25%
<b>First 4</b>	22.5%	22.5%	25%
<b>FootyTab Big6</b>	25%	25%	25%

**Table 4: maximum commission rates when hosting international pools**

Bet Type	NSW	VIC / WA / ACT	NT / SA / QLD	TAS
<b>Win</b>	14.5%	14.5%	25%	35%
<b>Place</b>	14.25%	14.25%	25%	35%
<b>Quinella</b>	25%	17.5%	25%	35%
<b>Duet</b>	25%	14.5%	25%	35%
<b>Exacta Trifecta Quaddie Doubles</b>	25%	20%	25%	35%
<b>First 4</b>	25%	22.5%	25%	35%
<b>FootyTab Big6</b>	25%	25%	25%	35%

132. The rules and regulations set maximum commission rates as follows when each jurisdiction's totalisator guests into an international pool:



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- (a) **NSW:** 17.5% for a win, place, quinella, doubles and duet bet types and 25% for a trifecta;
- (b) **ACT:** the lesser of 25% or the host jurisdiction’s maximum commission;
- (c) **Victoria and (when pooling) Western Australia:** the lesser of 40% or the host jurisdiction’s maximum commission; and
- (d) **Tasmania:** not more than 35% (excluding the value of any refunded bets).

2.7.2 Taxation of totalisator operators and bookmakers

133. All wagering operators must pay goods and services tax of 9.09% on their wagering revenue.<sup>169</sup>

134. In **New South Wales**, the *Betting Tax Act 2001* (NSW) requires the following taxes to be paid by wagering operators:<sup>170</sup>

**Table 5: Wagering tax applicable in New South Wales**

Applicable time period	Totalisator tax	Fixed odds tax
1 July 2015 – 30 June 2016	16.2% of commission	9.2% of ‘net earnings**
1 July 2016 – 30 June 2018	13.5% of commission	7.43% of ‘net earnings**
1 July 2018 - 30 June 2019	12.17% of commission	6.6% of ‘net earnings**
1 July 2019 - 30 June 2020	10.7% of commission	5.8% of ‘net earnings**
1 July 2020 onwards	7.6% of commission	4.38% of ‘net earnings**
Ongoing (for simulated racing event N/A betting such as Trackside)		10.91% of ‘net earnings**

\*Net earnings is the difference between total bets received, and total dividends or other sums paid to customers.

135. Across the other States and Territories, the taxes required to be paid by wagering operators are as follows:

<sup>169</sup> Freeman [136](c).

<sup>170</sup> Freeman [247].

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**Table 6: – Wagering tax applicable in States and Territories other than New South Wales**

State / Territory	Totalisator Tax	Fixed Odds Tax
VIC <sup>171</sup>	7.6% of commission	4.38% of 'net investment' <sup>A</sup> for racing and sports 10.91% of 'net investment' <sup>A</sup> for simulated racing
ACT <sup>172</sup>	\$1 million totalisator licence fee in 2014, indexed to CPI for each subsequent year	0.25% of events set out in the Schedule For fixed odds betting on events where the number of possible outcomes is 4 or less:  0.50% of bookmaker turnover where number of possible outcomes is four or less, and when turnover is less than \$15 million  0.17% of bookmaker turnover where number of possible outcomes is four or less, and when turnover is greater than \$15 million  For all other fixed odds betting: 1% of bookmaker turnover on all fixed odds betting when turnover is less than \$40 million  0.60% of bookmaker turnover on all fixed odds betting when turnover is greater than \$40 million  6.75% of the bookmaker's turnover on spread betting transactions  6.00% of the bookmaker's turnover on pari-mutuel sports betting transactions <sup>B</sup>  In relation to Trackside, Tabcorp makes a monthly payment to the Australian Capital Territory Gambling and Racing Commission of 2.5% (exclusive of GST) of the total amount paid by subscribers to the Trackside in respect of the preceding month exclusive of GST.
QLD <sup>173</sup>	14% of commission and unclaimed winnings <sup>C</sup>	10% of gross revenue
SA <sup>174</sup>	Nil <sup>D</sup>	6% of sports revenue
TAS <sup>175</sup>	A fixed annual fee of 4.7 million units, which was \$7.097 million in the financial year ended 30 June	Bookmakers taxes are fixed fees, however Tatts is exempt from any tax other than its totalisator tax

<sup>171</sup> *Gambling Regulation Act 2003* (Vic). Freeman [247].

<sup>172</sup> *Race and Sports Booking Act 2001* (ACT), *Race and Sports Bookmaking (Tax Rates) Determination 2007 (No 1)* and *Totalisator (Licence Fee) Determination 2014 (No 1)*. Freeman [247].

<sup>173</sup> *Wagering Act 1998* (QLD) and *Wagering Regulation 1999* (QLD). Cooke [79] and Tab 9 of Confidential Exhibit RC-2 [TAT.001.015.0763].

<sup>174</sup> *Authorised Betting Operations Act 2000* (SA) and *Authorised Betting Operations Regulations 2016* (SA). Tab 9 of Confidential Exhibit RC-2 [TAT.001.015.0763].

<sup>175</sup> *Gambling Control Act 1993* (TAS). Tab 9 of Confidential Exhibit RC-2 [TAT.001.015.0763].

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NT <sup>176</sup>	40% of commission for thoroughbred, harness and greyhound racing (subject to race field fee offsets)	0.33% of the monthly amount (as defined in section 106(3)(a) of the <i>Racing and Betting Act</i> ) for a registered bookmaker or country bookmaker
	20% of commission for other sports	10% of gross profit for a sports bookmaker (total capped at 500,000 revenue units which is currently \$575,000)
	10% of commission for other sports when bet placed outside Australia	

NOTES:

<sup>A</sup> Net investment is the difference between total bets received, and the total amount paid out to customers as winnings.<sup>177</sup>

<sup>B</sup> Tabcorp is entitled to claim an offset of GST paid for the respective fixed odds bets in the Australian Capital Territory which affects the rate of fixed odds tax actually paid.<sup>178</sup>

<sup>C</sup> Tatts also pays the Queensland Government a quarterly wagering authority fee, which is indexed annually by the consumer price index.<sup>179</sup>

<sup>D</sup> Tatts also pays recoverable administration costs determined by the relevant Minister and notified by the Liquor and Gambling Commissioner each financial year.

**2.8 Pooling arrangements**

136. Pooling refers to arrangements between two or more totalisator operators whereby they combine their respective pools in order to provide a single, larger pool in which the customers of each participating totalisator operator can wager. This is typically referred to as 'pooling' or 'co-mingling'. Pooling arrangements generally involve a totalisator operator with a larger pool (the 'host') offering 'pooling services' to one or more other totalisator operators with smaller pools ('guest participants').<sup>180</sup>
137. Australia has more totalisator pools than many overseas countries which have much larger populations and higher total wagering turnover. The existence of multiple pools in Australia is a reflection of history, in particular the fact that each State and Territory government established its own State TAB.

<sup>176</sup> *Racing and Betting Act* (NT) and *Totalisator Licensing and Regulation Regulations* (NT). Freeman [247], Tab 9 of Confidential Exhibit RC-2 [TAT.001.015.0763].

<sup>177</sup> Freeman [247].

<sup>178</sup> Freeman [247].

<sup>179</sup> Tab 9 of Confidential Exhibit RC-2 [TAT.001.015.0763].

<sup>180</sup> Freeman [141].





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138. Over time, Australian totalisator pools have been combined.<sup>181</sup> While there are eight off-course State TABs in Australia, there are currently three combined totalisator pools, being:<sup>182</sup>

- (a) **SuperTAB**: hosted by Tabcorp Wagering Manager through a combination of Tabcorp's Victorian and Australian Capital Territory pools and RWWA's Western Australian pool. There is an agreement governing that pooling arrangement.<sup>183</sup> RWWA is the only remaining totalisator operator in Australia which has entered into a pooling agreement with a third party operator (Tabcorp). SuperTAB also co-mingles with a number of other international pools including:<sup>184</sup>
- (i) the New Zealand Racing Board (**NZ TAB**);
  - (ii) Phumelela Gold Enterprises and Phumelela Gaming and Leisure Limited (which are licensed to conduct totalisator betting in South Africa) (together referred to as **Phumelela**);
  - (iii) Premier Gateway International Limited (**PGI**) (into which some other international operators pool);
  - (iv) Singapore Turf Club (Tabcorp 'guests' into Singapore's pools for wagering on Singapore racing);
  - (v) Hong Kong Jockey Club (Tabcorp 'guests' into Hong Kong's pools for wagering on Hong Kong racing);
  - (vi) Aktiebolaget Trav Och Galopp (**ATG**) (which is a wagering operator based in Sweden);
  - (vii) Stan James (which is a wagering operator based in the UK); and
  - (viii) German Tote (German Tote 'guests' into SuperTAB via PGI).
- (b) **UBET**: hosted by UBET Qld Ltd, a wholly-owned subsidiary of Tatts, also pools with other Tatts' subsidiaries UBET SA Pty Ltd (in South Australia), UBET NT Pty Ltd (in the Northern Territory) and UBET Tas Pty Ltd (in Tasmania).<sup>185</sup> UBET does not pool with any entities outside the Tatts group nor with any international operators;<sup>186</sup> and

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<sup>181</sup> Freeman [142].

<sup>182</sup> Freeman [143].

<sup>183</sup> Freeman [143].

<sup>184</sup> Freeman [143(a)].

<sup>185</sup> Cooke [35] and [36].

<sup>186</sup> Freeman [143(b)], Cooke [36] and [168].



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- (c) **NSWTAB**: hosted by TAB Limited in New South Wales, NSWTAB co-mingles with international participants.<sup>187</sup>
- (i) PGI (into which some other international operators pool);
  - (ii) Singapore Turf Club (Singapore Turf Club 'guests' into NSWTAB via PGI); and
  - (iii) Hong Kong Jockey Club (Tabcorp 'guests' into Hong Kong's pools for wagering on Hong Kong racing).
139. All pooling participants must use the host's betting rules. For example:
- (a) when other totalisators pool into NSWTAB or SuperTAB, the New South Wales and Victorian betting rules apply;
  - (b) when SuperTAB pools into New Zealand, the New Zealand betting rules and deduction rates apply; and
  - (c) when SuperTAB and NSWTAB pools into Hong Kong, the Hong Kong betting rules and deduction rates apply.<sup>188</sup>
140. Pooling between State TABs is highly regulated by State and Territory governments in Australia such that State TABs cannot freely compete to provide pooling services to other State TABs. In order to pool with other State TABs or an overseas totalisator operator, an Australian totalisator must generally obtain racing industry approval (under either the terms of its racing industry agreements or wagering licence), State or Territory government approval and wagering tax exemptions.<sup>189</sup>
141. Since 2009, Tabcorp has sought ACCC authorisation for all of its domestic pooling arrangements. In 2014, Tabcorp sought authorisation for its current and future international pooling agreements entered into on similar terms, including:
- (a) SuperTAB's pooling arrangements with RWWA and ACTTAB which were authorised by the ACCC on 11 December 2012;
  - (b) Tabcorp Wagering Manager, TAB Limited, Tabcorp Europe Limited and Tabcorp ACT's international pooling agreements with the Hong Kong Jockey Club which were authorised by the ACCC on 1 February 2015.<sup>190</sup>

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<sup>187</sup> Freeman [143(c)].

<sup>188</sup> Freeman [144].

<sup>189</sup> Freeman [142].

<sup>190</sup> Freeman [145].



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142. Tabcorp and relevant State-based racing industry bodies have entered into pooling arrangements with other totalisator operators as described above principally in order to increase the size of its totalisator pools, thus making the sale of bets more viable (see paragraphs 143 and 144 below). Tabcorp also benefits from obtaining pooling fees under these arrangements.<sup>191</sup>
143. A number of benefits flow from access to a large totalisator pool:
- (a) **Stability:** the larger the totalisator pool, the greater its stability – that is, larger bets will have less effect on the final dividends. This benefits both customers placing larger bets and customers placing smaller bets whose dividends could be affected by the larger bets. Larger pools give customers greater confidence that they will receive the returns that they were expecting when they placed their bets. For example, a large bet placed with a small totalisator operator (without access to a large pool) could substantially distort the calculation of dividends for the relevant race, and, in turn, affect potential winnings of all customers who wagered on that race.<sup>192</sup>
  - (b) **Larger dividends:** a larger pool means there is potentially more money available to distribute to winning customers. This increased liquidity enables customers to bet larger amounts on all contestants without significantly impacting the dividends paid.<sup>193</sup>
  - (c) **Access to additional pari-mutuel wagering products:** Pooling allows smaller State TABs such as the WA TAB or ACTTAB to offer customers pari-mutuel wagering bet types and products to which they may not otherwise have access (for example, international races).<sup>194</sup>
  - (d) **Ability to attract more customers:** A larger totalisator pool or the availability of new products are important to the attractiveness to the customer of a totalisator operation. Having access to a larger pool assists a State TAB to attract customers (especially customers who typically wager on fixed odds but may not get their bet accepted by a fixed odds operator due to the large size of that bet). The size of the totalisator pool is an important factor considered by certain customers when choosing where to place a bet. Pooling arrangements therefore assist totalisators to compete more effectively with other large totalisator pools (including international pools) and fixed odds wagering.<sup>195</sup>

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<sup>191</sup> Freeman [158].

<sup>192</sup> Freeman [159(a)].

<sup>193</sup> Freeman [159(b)].

<sup>194</sup> Freeman [159(c)].

<sup>195</sup> Freeman [159(d)].



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- (e) **Access to new products:** As mentioned above, new products need liquidity to be viable. Australian customers would not be able to access more obscure racing products without pooling which makes those products viable (for example South African thoroughbred racing). The larger a totalisator pool, the more attractive it will be to international totalisators seeking to pool with Australian State TABs. A guest participant entering into a pooling arrangement with a host totalisator operator potentially will gain access to new pari-mutuel wagering products, including internationally pooled bets, through participation in the pool.<sup>196</sup>
- (f) **Access to smaller bet types:** With the recent decline in pari-mutuel betting, some pools, particularly less popular bet types (such as duet), are becoming so small that they are too unstable to sustain a large bet. A co-mingled pool will reduce the impact of declining pool sizes.<sup>197</sup>
144. A smaller pool size makes the totalisator products less viable to attract a sufficient pool of bets and attract customer interest. This creates a downwards spiral whereby a shrinking pool is less attractive to customers looking to place bets and may mean customers also cannot bet anywhere on a particular event, which then causes the pool to shrink further.
145. There are currently a number of barriers to combining totalisator pools in Australia. The following factors are relevant:<sup>198</sup>
- (a) **Approvals and exemptions:** In order to pool with another totalisator operator, Tabcorp needs to obtain racing industry approval, approvals from various State regulatory bodies and State wagering tax exemptions. Wagering tax exemptions are required to ensure bets are not 'double taxed' by taxing both the host in one State and the guest participant in another State based on the same revenue. Regulatory approval absent industry approval is unlikely. ACCC authorisation may also be required in respect of certain pooling arrangements.<sup>199</sup>
- (b) **Disadvantages to state participants:** State and Territory governments and racing industries (in particular, New South Wales) are concerned that combined pools may lead to a loss in revenue from one State to other jurisdictions, which would impact profit shares, fees and state wagering taxes. This may occur where a customer who would ordinarily place a bet with the host participant instead places the bet with another participant (the guest), resulting in the loss of revenue to the host and a flow-on loss of

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<sup>196</sup> Freeman [159(e)]

<sup>197</sup> Freeman [159(f)].

<sup>198</sup> Freeman [164].

<sup>199</sup> Freeman [164(a)].



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racing industry contribution and relevant taxes being paid in the host participant's jurisdiction (or vice versa). This concern is accentuated where Tabcorp is not the owner of both pools. Agreements need to be negotiated between the State-based racing industry and the State TAB to provide sufficient certainty around this.<sup>200</sup>

- (c) **Betting rule alignment:** in order to pool, the systems and betting rules of the State TABs must be aligned, including in respect of payments of dividends to winning customers. This requires regulatory approval and, in some jurisdictions, it would also require Treasury consent to change take-out rates.<sup>201</sup>
- (d) **Cost:** the cost to combine pools is significant. Tabcorp estimates that every time it co-mingles with a new totalisator operator, it costs approximately **[Confidential to Tabcorp]** [REDACTED]. These costs principally reflect the costs of integrating the different software platforms of the two pools to ensure they can interoperate effectively.<sup>202</sup>

146. **[HIGHLY Confidential to Tabcorp]** [REDACTED]  
[REDACTED]  
[REDACTED]<sup>203</sup>

- (a) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- (b) [REDACTED]  
[REDACTED]  
[REDACTED]
- (i) [REDACTED]  
[REDACTED]  
[REDACTED]
- (ii) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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<sup>200</sup> Freeman [164(b)].  
<sup>201</sup> Freeman [164(c)].  
<sup>202</sup> Freeman [164(d)].  
<sup>203</sup> Freeman [169] and Burt [36].



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- [REDACTED]
- [REDACTED]
- (c) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- (d) [REDACTED]  
[REDACTED]
- (e) [REDACTED]  
[REDACTED]

**2.9 Funding of the racing industry**

147. Wagering operators pay various fees to different stakeholders including:

- (a) racing industry funding obligations (primarily contributed by State TABs through product fees and State TAB racing payments under their licence obligations and racing industry agreements);
- (b) race field fees (contributed by State TABs, corporate bookmakers and Betfair); and
- (c) sporting body fees and commissions (contributed by State TABs, corporate bookmakers and Betfair); and
- (d) agency fees and commissions (paid by State TABs).<sup>204</sup>

148. Both Tabcorp and Tatts in particular are required to make significant economic contributions to the racing industries in the States and Territories for which they hold totalisator licences.<sup>205</sup>

149. Set out below is a table which compares the racing industry contributions made by each State TAB and corporate bookmakers in FY16.<sup>206</sup>

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<sup>204</sup> Freeman [208].

<sup>205</sup> Freeman [229] and Cooke [84] to [87].

<sup>206</sup> Freeman [305] and Cooke [99(b)] and [99(c)].







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[REDACTED]

[REDACTED]<sup>208</sup>

152. Tabcorp is also a party to the following agreements with the Victorian racing industry:<sup>209</sup>

(a) a Racing Information Agreement dated 21 December 2011, under which Tabcorp provides **[HIGHLY Confidential to Tabcorp]** [REDACTED]  
[REDACTED]<sup>210</sup>,

(b) a Racing Program Agreement dated 21 December 2011, under which Tabcorp and VicRacing, as joint venturers, pay Racing Products Victoria **[HIGHLY Confidential to Tabcorp]** [REDACTED]  
[REDACTED]<sup>211</sup> and

(c) a PGI Customer Agreement FY17, under which **[HIGHLY Confidential to Tabcorp]** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>212</sup> and

(d) under the Premium Customer Agreement (Aust) FY17, **[HIGHLY Confidential to Tabcorp]** [REDACTED]  
[REDACTED]<sup>213</sup>.

153. In total, under these arrangements, the Victorian Racing Industry received the sum of \$331.2 million from Tabcorp in FY16.<sup>214</sup>

154. In New South Wales, Tabcorp subsidiary TAB Limited is party to an agreement with Racingcorp Pty Ltd, Greyhound Racing New South Wales, Harness Racing New South Wales, and Racing New South Wales dated 11 December 1997 (subject to various amending agreements),<sup>215</sup> pursuant to which the parties have certain rights and responsibilities including the payment by Tabcorp of certain fees to the racing industry. These fees include:

<sup>208</sup> Freeman [230].

<sup>209</sup> Freeman [230].

<sup>210</sup> Freeman [230(b)].

<sup>211</sup> Freeman [230(c)].

<sup>212</sup> Freeman [230(d)].

<sup>213</sup> Freeman [230(e)].

<sup>214</sup> Freeman [231].

<sup>215</sup> Freeman [121].



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- (a) a Fixed Product Fee of **[HIGHLY Confidential to Tabcorp]** [REDACTED]  
[REDACTED]. In FY16, Tabcorp paid **[HIGHLY Confidential to Tabcorp]**  
[REDACTED].<sup>216</sup>
- (b) a Product Fee of **[HIGHLY Confidential to Tabcorp]** [REDACTED]  
[REDACTED].<sup>217</sup>
- (c) a Fixed Odds Product Fee **[HIGHLY Confidential to Tabcorp]** [REDACTED]  
[REDACTED].<sup>218</sup>
- (d) a Wagering Incentive Fee of **[HIGHLY Confidential to Tabcorp]** [REDACTED]  
[REDACTED].<sup>219</sup>
- (e) a Payable Trackside Wagering Incentive Fee, which, **[HIGHLY Confidential to Tabcorp]**  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].<sup>220</sup>

155. In NSW, Tabcorp is also a party to:

- (a) a PGI Product Fee Agreement dated 22 October 2013, under which **[HIGHLY Confidential to Tabcorp]** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].<sup>221</sup>
- (b) the Sixth RDA Amending Agreement dated 22 October 2013 under which **[HIGHLY Confidential to Tabcorp]** [REDACTED]  
[REDACTED]  
[REDACTED].<sup>222</sup> and
- (c) the HRNSW Sponsorship Agreement with Harness Racing NSW (HRNSW) dated 1 September 2011 (as varied and extended by an agreement on 17 January 2017)

<sup>216</sup> Freeman [232(a)(i)].

<sup>217</sup> Freeman [232(a)(ii)].

<sup>218</sup> Freeman [232(a)(iii)].

<sup>219</sup> Freeman [232(a)(iv)].

<sup>220</sup> Freeman [232(a)(v)].

<sup>221</sup> Freeman [232(b)].

<sup>222</sup> Freeman [232(c)].



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**[HIGHLY Confidential to Tabcorp]** [REDACTED]  
[REDACTED]<sup>223</sup>

156. Tabcorp is also **[HIGHLY Confidential to Tabcorp]** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>224</sup>

157. In total, the New South Wales Racing Industry received the sum of \$290.8 million from Tabcorp’s industry agreement payments in FY16. Between 2016 to 2019, the contribution will increase as tax parity provisions apply.<sup>225</sup>

158. In the ACT, Tabcorp and its subsidiary are parties to an Industry and Community Support Deed dated 29 July 2014, which was entered into when Tabcorp acquired the ACTTAB. Pursuant to this agreement, Tabcorp: **[HIGHLY Confidential to Tabcorp]**

- (a) [REDACTED]  
[REDACTED]
- (b) [REDACTED]  
[REDACTED]<sup>226</sup>

2.9.2 Tatts racing industry funding obligations

159. Tatts has the following racing industry funding obligations:<sup>227</sup>

- (a) In Queensland, Tatts pays the following product fees to the racing industry:
  - (i) An annual fixed fee which was **[Confidential to Tatts]** [REDACTED] in FY2016;
  - (ii) A variable fee based on **[Confidential to Tatts]** [REDACTED]  
[REDACTED]. The fee was **[Confidential to Tatts]** [REDACTED] in FY2016; and

<sup>223</sup> Freeman [232(d)].

<sup>224</sup> Freeman [232(e)].

<sup>225</sup> Freeman [233].

<sup>226</sup> Freeman [234].

<sup>227</sup> Cooke [82].



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- (iii) A sports betting retail bonus of **[Confidential to Tatts]** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] This fee was approximately **[Confidential to Tatts]** [REDACTED] in FY2016;
- (b) In South Australia, Tatts pays the following amounts to the racing industry:
  - (i) A monthly product fee **[Confidential to Tatts]** [REDACTED]  
[REDACTED]  
[REDACTED] and
  - (ii) A monthly amount of **[Confidential to Tatts]** [REDACTED]  
[REDACTED]; and
- (c) In the Northern Territory, Tatts pays various amounts that are confidential under the terms of its relevant agreement with the Northern Territory.

2.9.3 Race fields fees

160. Each State and Territory has implemented race field arrangements under which all wagering operators (including totalisator operators and corporate bookmakers) must pay the State or Territory or its racing control bodies fees for use of race field information (or otherwise charge fees in respect of the operator's race betting operations in that state or territory).<sup>228</sup>

161. The conditions for the use of race field information vary between each State and Territory. For example.<sup>229</sup>

- (a) in NSW, under section 32A of the *Betting and Racing Act 1998* (NSW), the use of NSW race field information includes publishing any race field information, communicating any race field information to a person, acknowledging or confirming any race field information communicated to that person or making a written or electronic record (such as a betting ticket, statement of account or notice) that contains or refers to any race field information;
- (b) in Victoria, under section 4.2.3A of the *Gambling Regulations Act 2003* (Vic), a wagering operator must not publish, cause to be published, use or otherwise make available a race field in the course of business unless it has obtained the relevant approval and complied with the conditions of the racing industry body (which includes the payment of race field fees).

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<sup>228</sup> Freeman [235].

<sup>229</sup> Freeman [235].



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162. The race field fees payable vary across jurisdictions and codes, and are calculated by reference to turnover, gross revenue, or a hybrid of both. Payments made under race fields arrangements are smaller in comparison with the payments made by Tabcorp and Tatts under their licensing arrangements with State-based racing industries. Accordingly, corporate bookmakers' financial contributions to the racing industry through payment of race field fees are small (as a proportion of their revenue) compared with the significant contributions made by the merger parties which includes racing industry contributions in addition to race field fees.<sup>230</sup>
163. A table summarising the race fields fees that apply in each State and Territory is set out at paragraph [237] of the Statement of Doug Freeman.

## 2.10 Other industry funding

### 2.10.1 Sporting body fees

164. Under the *Gambling Regulation Act 2003 (Vic)* and *Betting and Racing Act 1998 (NSW)*, wagering operators must obtain the agreement of certain sports controlling bodies and pay fees under those agreements. Wagering operators pay sporting body fees to promote fair information and revenue sharing between them and sports controlling bodies. This is achieved by approving sporting and other non-racing events for betting purposes, enabling sporting organisations to apply to be approved as the sports controlling body for the purposes of betting on their sport and ensuring prohibitions are available for particular contingencies that may be considered inappropriate for betting purposes.<sup>231</sup>
165. A table summarising the sporting bodies fees that apply to Tabcorp is set out at paragraph 239 of the statement of Doug Freeman. A table summarising the sporting body fees that apply to Tatts is at Tab 3 of Confidential Exhibit RC-2 to the statement of Robbie Cooke.

## 2.11 Recent industry trends and the competitive landscape

166. The last decade has seen significant changes occurring in the Australian wagering industry and the competitive wagering landscape. The wagering market is continuing to experience significant structural changes in both products and channels.<sup>232</sup> The most significant of these trends are described below.

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<sup>230</sup> Freeman [236], Cooke [84] to [87].

<sup>231</sup> Freeman [238].

<sup>232</sup> Freeman [248] and Cooke at [133].



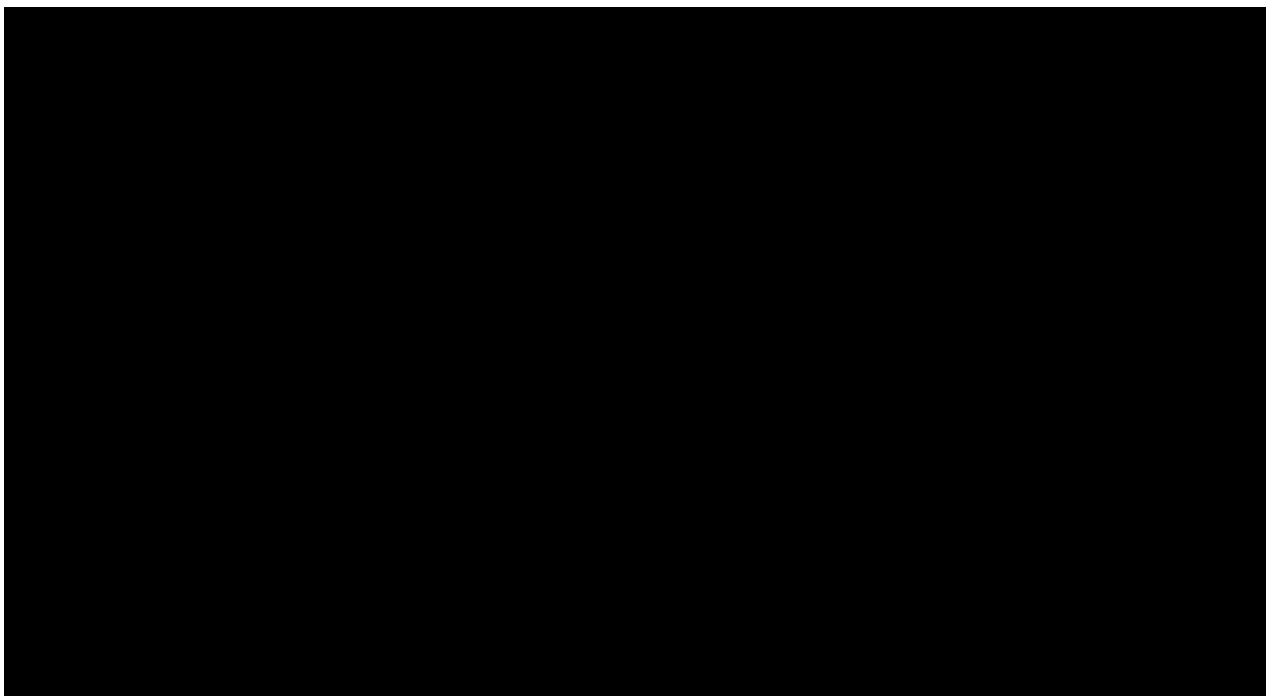
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2.11.1 Channel convergence and substitution from retail to digital

167. Over the last decade there has been a significant shift in the utilisation of online and phone wagering channels corresponding with a decline in retail wagering in the industry.<sup>233</sup> Between FY2006 and FY2016, online wagering has grown from 12% to 51% of total industry wagering turnover. Across the same time period, retail facilities have declined from accounting for 54% of wagering turnover to just 33%.<sup>234</sup>

168. Tabcorp estimates that, by 2020, retail channels will decline to account for just **[Confidential to Tabcorp]** of the industry's turnover (down from **[Confidential to Tabcorp]** in FY01), while digital channels will increase to reflect **[Confidential to Tabcorp]** of the industry's turnover (up from **[Confidential to Tabcorp]** in FY01).<sup>235</sup> Set out below in Figure 4 is Tabcorp's analysis of historical trends across the various channels.<sup>236</sup>

**Figure 4 – Estimates of wagering industry turnover by channel (2001 – 2020) [Confidential to Tabcorp]**



169. Part of the reason for this trend is the altered regulatory environment. Following the High Court's decision in the Belfair Case, the relaxation of advertising laws (or the way in which they

<sup>233</sup> Cooke [138 (h)], [139(a)], [140(a)], [141(a)] and [141(b)].

<sup>234</sup> Freeman [254].

<sup>235</sup> Freeman [255].

<sup>236</sup> Freeman [255].



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have been administered) has allowed corporate bookmakers to advertise their services nationwide.<sup>237</sup> This has resulted in significant changes in the industry – whereas State and Territory regulations previously meant that State TABs generally competed only with a small number of licensed bookmakers in each State or Territory, following the Betfair Case State TABs now compete against interstate operators, including corporate bookmakers licensed in the Northern Territory, which accept bets online and via telephone.<sup>238</sup>

170. In addition to the altered regulatory environment following the Betfair Case, channel convergence, and the substitution from retail to digital channels, has been as a result of:<sup>239</sup>

- (a) convenience and speed (including reducing the chance of missing out on placing bets close to the start of an event);
- (b) opportunity to shop around by checking various websites and apps before placing a bet;
- (c) customers becoming more comfortable with electronic money transfers and the use of credit cards online;
- (d) the use of apps to place bets increasing in line with the popularity of smart phones since the Apple iPhone was first released in 2007;
- (e) large scale national advertising campaigns, particularly by corporate bookmakers;
- (f) the attractiveness of promotional offers offered in the market; and
- (g) customers, particularly those from a younger demographic, embracing technology.

#### 2.11.2 Shift from totalisator to fixed odds betting

171. Since 2006, there has also been a trend in the decline of totalisator betting, which has been driven by customer substitution towards fixed-odds products both in absolute terms and as a percentage of total wagering turnover.<sup>240</sup> Notably:

- (a) between FY06 and the FY15, the percentage of pari-mutuel betting in the industry has fallen from approximately 70% of total turnover (representing \$12.6 billion) to approximately 35% of total turnover (representing \$10.7 billion);<sup>241</sup>
- (b) during this same period, the fixed odds racing turnover in the industry has increased from approximately 20% of total turnover (representing \$3.6 billion) to approximately 42% of total turnover (representing \$12.9 billion);<sup>242</sup> and

<sup>237</sup> Freeman [283(c)] and Cooke [110].

<sup>238</sup> Freeman [253] and Cooke [114].

<sup>239</sup> Freeman [253].

<sup>240</sup> Freeman [263].

<sup>241</sup> Freeman [263(a)].





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- (c) fixed odds sports turnover in the industry has increased from approximately \$1.8 billion (approximately 10% of total wagering turnover) in FY06 to approximately \$6.4 billion (approximately 21% of total wagering turnover) in FY15.<sup>243</sup>
172. In the past 5 years, fixed odds sports and racing wagering has grown from 41% to 63% of industry turnover and it is expected that this trend will continue.<sup>244</sup>
173. The decline in pari-mutuel wagering is primarily linked to the rise of corporate bookmakers who provide fixed odds products and tote derivative products, often with better odds than those available through a State TAB. This is evidenced by the fact that the decline in pari-mutuel betting has closely corresponded with the rise of fixed odds betting, and particularly tote derivative betting, especially since 2006.<sup>245</sup>
174. There are now a variety of fixed odds and tote derivative products on offer, many of which provide more attractive odds to customers and on average, provide better payouts to the customer. Fixed odds betting types also provide customers with greater certainty of odds. In contrast, with pari-mutuel betting types, as pool sizes decline the dividends may decrease and the pools become more susceptible to being moved significantly by individual bets which makes it less attractive to customers and decreases the liquidity of the pools.<sup>246</sup>
175. Set out below is Tabcorp's estimate of turnover by wagering product (2001-2015) which demonstrates the significant shift away from pari-mutuel wagering in Australia with significant declines as a proportion of total wagering activity over the past 15 years.

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<sup>242</sup> Freeman [263(b)].

<sup>243</sup> Freeman [263(c)].

<sup>244</sup> Freeman [265], [267].

<sup>245</sup> Freeman [266].

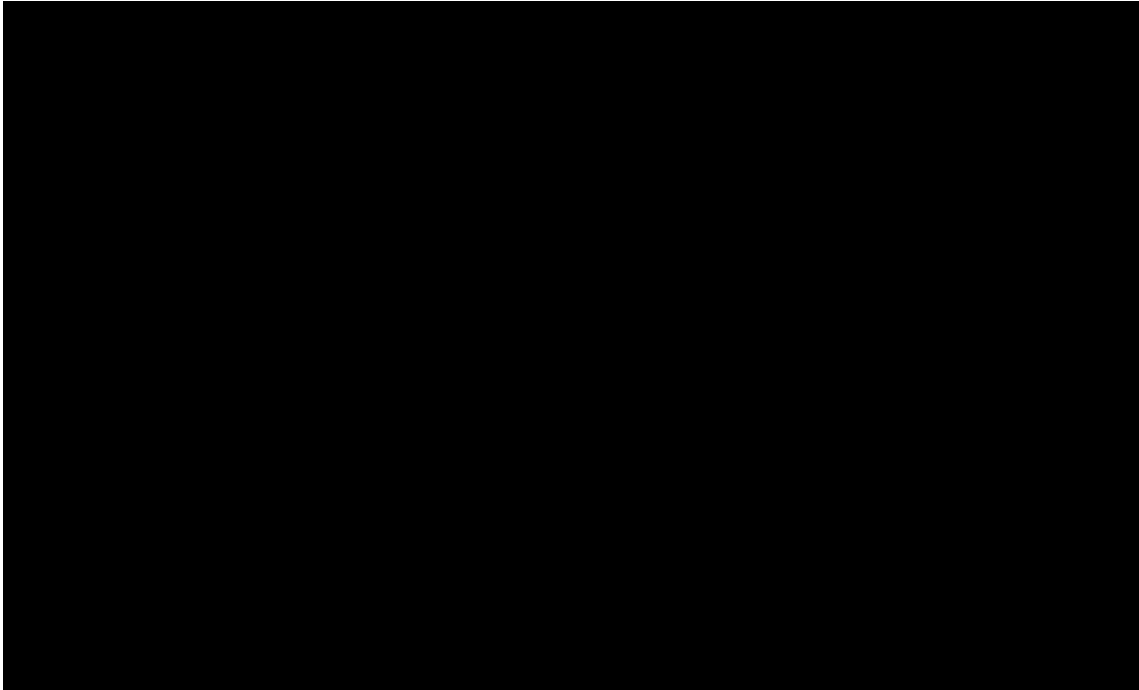
<sup>246</sup> Freeman [266].



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**Figure 5 – Tabcorp estimate of turnover of wagering product<sup>247</sup>**

**[Confidential to Tabcorp]**



2.11.3 Substitution away from racing to sports

176. In recent years, there has been an industry-wide increase in wagering on sports betting (i.e. wagering on sports other than racing) with growth at approximately 14% per year since FY06, compared with overall wagering growth on racing at 4% (for thoroughbred, greyhound and harness racing). Similarly, it is estimated that betting on sport has increased from 11% of total national wagering in FY06 to 21% in FY15.<sup>248</sup>

177. There is now considerable diversity in the wagering products and services available to customers. Wagering products and services available to customers now include totalisator (pari-mutuel), tote derivative and fixed odds products, provided online, by phone, through retail locations or on-course. Customers in each State and Territory have a wide range of options when placing bets, and are not restricted to a licensed operator in their home jurisdiction. In each State and Territory, customers have the option of placing fixed odds or tote derivative bets online through corporate bookmakers licensed in the Northern Territory. They can also place online totalisator bets in States or Territories outside their home State or Territory.<sup>249</sup>

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<sup>247</sup> Freeman [268].

<sup>248</sup> Freeman [270].

<sup>249</sup> Freeman [274].



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178. In Australia, the ease with which approval for new wagering products can be obtained varies across jurisdictions. In the Northern Territory, approval of wagering products can take as little as three days, compared to several months in other States and Territories. As a result, wagering operators licensed in the Northern Territory can offer a broader range and number of products than wagering operators licensed in other jurisdictions. This puts State-licensed operators such as Tabcorp at a significant disadvantage compared to corporate bookmakers.<sup>250</sup>

#### 2.11.4 Significant growth of corporate bookmakers

179. The advent of electronic wagering has seen the growth of large corporate bookmakers, the majority of which are licensed in the Northern Territory.<sup>251</sup>

180. In FY06, corporate bookmaker turnover was \$2.6 billion. By FY15, this increased to \$12.3 billion. Corporate bookmakers and Betfair have doubled their turnover over the past 5 years and now command more than \$12 billion in national turnover, representing approximately 40% of the wagering market.<sup>252</sup>

181. While corporate bookmakers have continued to expand as a percentage of total wagering, there has also been consolidation in global expertise in the sector over the last five years. This has included a number of independent Australian corporate bookmakers (such as Sportsbet, Tom Waterhouse, Sportingbet, Centrebet and Betstar) being acquired by large, well-capitalised and well-established international wagering companies, several of whom have significant retail operations overseas (such as Paddy Power, William Hill and Ladbrokes). These international wagering companies are foreign owned and are aggressively targeting the Australian market through substantial advertising across a range of media and use of in-app promotions. Despite consolidation of many existing corporate bookmakers, several new corporate bookmakers are commencing operations such as Bluebet which was launched in October 2015.<sup>253</sup> Figure 6 below summarises the entry and consolidation of corporate bookmakers in Australia since 2010. While reducing the total number of corporate bookmakers, this consolidation has increased the strength of the sector as customers benefit from international know-how and larger balance sheets.<sup>254</sup>

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<sup>250</sup> Freeman [275].

<sup>251</sup> Freeman [276].

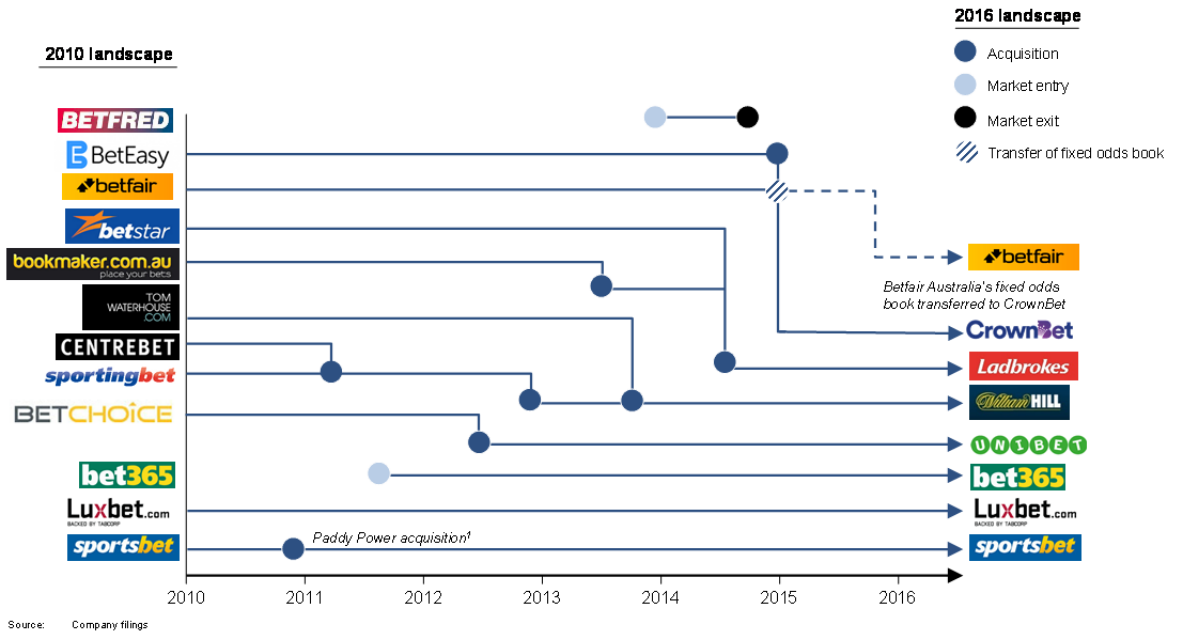
<sup>252</sup> Freeman [276].

<sup>253</sup> Freeman [280].

<sup>254</sup> Freeman [307].

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Figure 6: Consolidation of corporate bookmakers between 2015-2016



2.11.5 Competition from corporate bookmakers

182. Since 2006, the growth in and of corporate bookmakers has been facilitated by regulatory advantages, including:

- (a) lower wagering taxes: as noted above, the Northern Territory has capped the total wagering tax that it charges corporate bookmakers at \$575,000 per annum in FY16;<sup>255</sup>
- (b) limited payments to the racing industry (primarily in the form of race field fees);<sup>256</sup>
- (c) the ability to offer tote derivative products without being subject to any regulatory requirements regarding the creation and operation of the totalisator pool. Corporate bookmakers are able to offer tote derivative products by relying on the State TABs to produce totalisator dividends and without bearing the costs associated with operating a totalisator pool;<sup>257</sup>
- (d) wider range of betting events: corporate bookmakers licensed in the Northern Territory are permitted to take bets on a wider range of betting events compared with Tabcorp;<sup>258</sup>

<sup>255</sup> Freeman [283(a)(i)]

<sup>256</sup> Freeman [283(a)(ii)].

<sup>257</sup> Freeman [283(a)(iii)].

<sup>258</sup> Freeman [283(a)(iv)].



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- (e) favourable regulatory conditions in the Northern Territory whereby changes and developments are often approved more quickly and cheaply than regulators in other States and Territories;<sup>259</sup>
  - (f) credit betting: corporate bookmakers are currently permitted to offer credit accounts to customers, whereas Tabcorp's businesses<sup>260</sup> are prohibited from doing so. Credit betting refers to the practice of allowing customers to place wagers on credit (that is, without the use of cash or credit cards) and settle the account at a later date.<sup>261</sup>
183. In addition, growth in corporate bookmakers has been assisted by technological advantages such as faster internet connections, advent of smart phones (the first generation of smartphone was introduced in 2007), tablets and apps and an associated increased use of online payments.<sup>262</sup> The relaxation of advertising laws (or the way in which they have been administered) following the *Betfair* decision has also allowed online corporate bookmakers to advertise nationwide, resulting in a substantial increase in corporate bookmakers' advertising activities.<sup>263</sup> On Tabcorp's estimates, total marketing spend in the wagering industry has increased almost three-fold from approximately \$119m in FY11 to approximately \$328 million in FY15.<sup>264</sup>
184. Corporate bookmakers engage in substantial advertising in print, radio, television, online and other media (e.g. billboards), and promotions to attract/retain customers.<sup>265</sup> In particular:
- (a) Sportsbet has more than doubled its marketing spend from FY13 to FY15 with the highest share of above the line media spend and known sponsorship. Sportsbet supplements its sponsorships by focusing the majority of above the line media spend on driving awareness through TV spend (approximately \$26.7m), radio (approximately \$3.7m) and print (approximately \$2.8m).<sup>266</sup>
  - (b) Based on William Hill's marketing activities, it appears that it is investing heavily to build its brand presence in Australia. Tabcorp estimates that William Hill accounts for approximately 12% of online wagering in Australia, with reported year on year digital turnover growth to March 2016 of 8%.<sup>267</sup> William Hill had created 30% of its new accounts

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<sup>259</sup> Freeman [283(a)(v)].

<sup>260</sup> Excluding Luxbet.

<sup>261</sup> Freeman [283(a)(vi)].

<sup>262</sup> Freeman [283(b)].

<sup>263</sup> Freeman [283(c)].

<sup>264</sup> Freeman [316].

<sup>265</sup> Cooke [147].

<sup>266</sup> Freeman [313(a)].

<sup>267</sup> Freeman [313(c)].



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in FY12 from "pay per click" marketing with Google.<sup>268</sup> 10% of William Hill's new accounts were also created from organic searches, suggesting a greater investment in search engine optimisation than Tatts had made as at 2013.<sup>269</sup>

- (c) CrownBet (Crown): Tabcorp estimates that Crown spent approximately \$19.7 million on advertising between the period June 2015 and June 2016.<sup>270</sup>
- (d) Ladbrokes: Tabcorp estimates that Ladbrokes' marketing spend is approximately \$65 million per annum and that approximately \$21.2 million was spent between June 2015 and June 2016 on advertising.<sup>271</sup>
- (e) Unibet: Between June 2015 and June 2016, Tabcorp estimates that Unibet spent approximately \$1.8 million on advertising.<sup>272</sup>
- (f) Bet365: Tabcorp estimates that it accounts for approximately 13% of online wagering and between June 2015 and June 2016 spent approximately \$2.2 million on advertising.<sup>273</sup>

2.11.6 Competitive responses of Tabcorp to corporate bookmakers

185. In direct response to the increasing competition from corporate bookmakers, Tabcorp has adopted a significant number of measures designed to strengthen its overall pari-mutuel and fixed odds offering.<sup>274</sup> Outlined below are some of these measures:

- (a) **Launching Luxbet:** Tabcorp launched Luxbet in September 2008 to more closely replicate the offering of corporate bookmakers by offering products which, at that time, Tabcorp was unable to provide. However, **[Confidential to Tabcorp]** [REDACTED]  
[REDACTED]  
[REDACTED] Tabcorp has since 2011 progressively expanded its TAB branded fixed odds business to allow it to offer fixed odds products akin to corporate bookmakers.<sup>275</sup>
- (b) **Investment in retail outlets:** Tabcorp has invested in its retail outlets to promote retail wagering. Tabcorp works with venues to improve venue design and offerings with the aim

<sup>268</sup> Cooke [148(a)].

<sup>269</sup> Cooke [148(b)].

<sup>270</sup> Freeman [313(d)].

<sup>271</sup> Freeman [297(e)], [313(f)].

<sup>272</sup> Freeman [313(e)].

<sup>273</sup> Freeman [313(b)].

<sup>274</sup> Freeman [320].

<sup>275</sup> Freeman [321].



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of optimising the experience for customers and encouraging wagering through retail outlets.<sup>276</sup>

186. **Fixed odds investment:** In the last five years, Tabcorp has invested [**HIGHLY Confidential to Tabcorp**]

[REDACTED]

187. **International pooling:** Tabcorp has continued to expand its international pooling activities through guesting and hosting international pools. Tabcorp is party to pooling and coverage agreements with a number of international wagering operators. These arrangements allow for the transmission of bets by overseas customers into Tabcorp totalisator pools and the transmission of bets by Australian customers into overseas pools. Corporate bookmakers and Luxbet do not guest or host into international pools as they do not offer totalisator wagering products.<sup>278</sup>

188. **Investing in new products:** Tabcorp has introduced new totalisator wagering and fixed odds products in order to compete with corporate bookmakers. For example:

- (a) in 2008, Tabcorp launched Luxbet, and since then Tabcorp has sought and obtained approval to offer fixed odds wagering products on a range of additional events seeking to expand the range of bet types it offers to customers,<sup>279</sup>
- (b) in January 2009, Tabcorp introduced a new pari-mutuel wagering product known as the 'Big6', which awards a major dividend to customers who pick the winner in six races nominated by the TAB,<sup>280</sup>
- (c) in October 2009, Tabcorp established the TAB Rewards loyalty program for New South Wales account customers (which was extended to New South Wales retail customers in New South Wales in July 2013, to account and retail customers in Victoria in October

<sup>276</sup> Freeman [322].  
<sup>277</sup> Freeman [327] to [329].  
<sup>278</sup> Freeman [336].  
<sup>279</sup> Freeman [337(a)]  
<sup>280</sup> Freeman [337(b)]





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2013, and to account and retail customers in the Australian Capital Territory in December 2015);<sup>281</sup>

- (d) in early 2011, Tabcorp expanded the range of wagering products available in its retail outlets and online to include a full range of fixed odds wagering;<sup>282</sup>
- (e) in 2011 Tabcorp began offering guaranteed minimum totalisator pools for exotic bet types;<sup>283</sup>
- (f) in 2011 Tabcorp launched Trackside in New South Wales;<sup>284</sup>
- (g) in 2012, Tabcorp expanded its 'Flexi betting' product to include the Quinella, Exacta, Duet and Doubles bet types;<sup>285</sup>
- (h) in 2012, Tabcorp introduced 'Super Multi' betting;<sup>286</sup>
- (i) in 2015, Tabcorp launched its 'Cash Out' product, which allows customers to cash out of pending multi or single fixed odds bets before the result;<sup>287</sup>
- (j) in 2014, Tabcorp introduced the 'early Quaddie', which allows customers to place Quaddie bets on typically (but not necessarily) the first four races of the day, as well as on the last four races of the day through the existing Quaddie product;<sup>288</sup>
- (k) in 2016, Tabcorp extended its 'Cash Out' and 'Partial Cash Out' products to include the 'Quaddie Cash Out', which allows customers to cash out their Quaddie at any time – fully or partially – after the running of the first leg;<sup>289</sup> and
- (l) over the past number of years, Tabcorp has offered a range of products to attract customers to bet on the totalisator. This has included:<sup>290</sup>
  - (i) offering bonus bets and cash-back offers equal to a customer's stake (capped at a certain amount) to customers who placed a pari-mutuel bet on a race, where their horse did not win but finished second or third;
  - (ii) offering jackpots or guaranteed minimum pools;

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<sup>281</sup> Freeman [337(c)]

<sup>282</sup> Freeman [337(d)]

<sup>283</sup> Freeman [337(e)]

<sup>284</sup> Freeman [337(f)]

<sup>285</sup> Freeman [337(g)]

<sup>286</sup> Freeman [337(h)]

<sup>287</sup> Freeman [337(i)]

<sup>288</sup> Freeman [337(j)]

<sup>289</sup> Freeman [337(k)]

<sup>290</sup> Freeman [337(l)]



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- (iii) offering a range of unique experiences, including a promotion where customers could 'own a stake' in a racehorse for a day;
  - (iv) offering account customers bonus TAB Reward points for totalisator bets placed across particular race meetings (such as the Country and Provincial Championships); and
  - (v) offering account customers loyalty badges that can be earned for totalisator bets placed across consecutive race meetings (for example during the Country and Provincial Championships) that accrue for additional bonus TAB Rewards points.
189. **Improved digital offering:** Tabcorp has invested significantly in its digital offering, including re-designing its website and phone apps and introducing live streaming of racing on both of these.<sup>291</sup>
190. **Reduced market percentage:** Tabcorp has reduced its market percentage for certain sports betting products in the past number of years. By way of illustration, for head-to-head betting on 'top level' sports such as NRL and AFL, Tabcorp has reduced its market percentage from approximately **[Confidential to Tabcorp]** ██████████ in 2006 to around **[Confidential to Tabcorp]** ██████████ in 2016. Similarly, Tabcorp has reduced its market percentage for multi-betting (which is a large component of sports betting).<sup>292</sup>
191. **TAB Rewards:** Tabcorp set up the TAB Rewards loyalty program for New South Wales account customers in October 2009. It allows customers to gain points which can be redeemed for free bets or "soft rewards", as well as providing a range of other benefits. It was extended to retail customers in New South Wales in July 2013, to account and retail customers in Victoria in October 2013, and to account and retail customers in the Australian Capital Territory in December 2015.<sup>293</sup>
192. **Longitude:** In February 2016, Tabcorp entered into an agreement with Longitude, SA. Longitude has developed a pari-mutuel betting system that offers a number of advantages over traditional pari-mutuel platforms. The Longitude system enables pools to be aggregated (for example, a quinella pool could be 'merged' with an exacta pool to provide additional liquidity), for new bet types to be developed more quickly and at lower cost, and for approximate dividends to be displayed on exotic bet types which is not otherwise possible on Tabcorp's existing technology. Longitude also provides an improved customer information interface.

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<sup>291</sup> Freeman [339].

<sup>292</sup> Freeman [342].

<sup>293</sup> Freeman [343].



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Tabcorp intends to offer bets using the Longitude system from December 2017, subject to the receipt of regulatory approvals, racing industry approvals and the finalisation of information technology integration work.<sup>294</sup>

193. **Bonus bets and promotions:** Tabcorp has offered bonus bets and cash refunds where a customer places a win bet and their choice comes second or third. Promotions Tabcorp has offered include:
- (a) **Trifecta Insurance Promotion:** where the customer receives a refund (in bonus bets or account top-ups) where they have 2 correct selections out of 3 for selected races,<sup>295</sup>
  - (b) **Account-opening promotions:** for example matching customer deposits with bonus bets on account opening,<sup>296</sup>
  - (c) **Direct responses to corporate bookmakers' promotions:** Tabcorp has introduced and is currently considering direct responses to corporate bookmakers' promotions, which include, for example, the introduction of the 'Fair Go' program, where unsuccessful customers are given bonus bets in circumstances where the outcome of an event changes (such as when the winning contestant is disqualified). This aims to respond to corporate bookmaker promotions such as 'Badbeat' and 'Justice Payout', where customers' bets are refunded when they lose because of a decision perceived to be 'unfair' by customers.<sup>297</sup>

#### 2.12 Competitive response of Tatts to corporate bookmakers

194. In direct response to the increasing competition from corporate bookmakers, Tatts has engaged in a number of "strategic initiatives" which were designed to make Tatts' wagering business competitive and recapture market share in Australia. These initiatives are set out below.
- (a) **Comprehensive Rebranding:** A full rebranding to produce a unified brand (namely 'UBET') capable of working seamlessly across Tatts' retail, online and phone wagering operations.<sup>298</sup>
  - (b) **Improvements to fixed priced offers:** Improving Tatts' fixed price sports and racing offer, given that Tatts offered "fewer markets" than corporate bookmakers and was opening those markets for betting later (i.e. closer to the event ) than its competitors.<sup>299</sup>

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<sup>294</sup> Freeman [344].

<sup>295</sup> Freeman [345(a)].

<sup>296</sup> Freeman [345(b)].

<sup>297</sup> Freeman [345(c)].

<sup>298</sup> Cooke [153(a)].

<sup>299</sup> Cooke [153(b)].



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- (c) **Improvements to digital offering:** Improving Tatts' website and digital offering, including developing a new-look website (UBET.com) that is optimised for use on various technologies including smart phones and tablets; and creating a suite of UBET apps for smartphones and tablets that allow customers to view live odds and to cash out pending bets early on certain events before the conclusion of the event.<sup>300</sup>
- (d) **Redesign of retail outlets:** Redesign of Tatts' retail outlets to make them more attractive to younger bettors and develop the growth of Tatts' sports betting business; younger bettors typically are attracted to sports, rather than race betting.<sup>301</sup>
- (e) **Improving the in-play betting offering at retail outlets:** Tatts' retail outlets to enable Tatts to be competitive in the market for in-play betting, the world's fastest growing gambling segment.<sup>302</sup>
- (f) **Seeking improvements in Queensland wagering licence terms:** Steps were taken to negotiate an extension of the Queensland wagering licence upon more favourable terms including a reduction in tax rates and the continued offset of race field fees against other fees payable by Tatts to the Queensland racing industry.<sup>303</sup>
- (g) **An increased focus on marketing:** The renegotiation of Queensland licensing arrangements provided Tatts with more funds for marketing. Specific marketing initiatives have included:<sup>304</sup>
  - (i) using multi-channel forms of directly communicating with customers, such as SMS messages, and 'push notifications' within the UBET app;
  - (ii) using email and social media advertising (e.g. Facebook) to target potential customers and re-target existing customers;
  - (iii) marketing the UBET brand, including by TV advertisements, pay TV, print media, radio and billboards;
  - (iv) entering sponsorship partnerships to connect Tatts with customers that are increasingly attracted to corporate bookmakers - for example, in FY16 Tatts committed more than \$1.7 million in sponsorships, including with Melbourne City Football Club (soccer), the V8 Supercar Championship, Port Adelaide Football Club (AFL), Racing Queensland and Tas Racing. UBET also has an exclusive

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<sup>300</sup> Cooke [153(c)].

<sup>301</sup> Cooke [153(d)].

<sup>302</sup> Cooke [153(e)].

<sup>303</sup> Cooke [153(f)].

<sup>304</sup> Cooke [153(g)].



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agreement with 'Huffington Post Australia' to promote UBET's brand when content is published in relation to Australian and US sports;

- (v) targeting specific events such as AFL, NRL, and State of Origin matches, on which corporate bookmakers typically advertise heavily;
  - (vi) directly communicating with customers, such as by SMS messages and 'push notifications' within the UBET app; and
  - (vii) using email and social media advertising (e.g. Facebook) to engage with potential customers and re-engage existing customers,<sup>305</sup> and
- (h) **Development of a wagering loyalty program, "UBET+",** that provides reward points (convertible to betting dollars) in exchange for betting activity across digital and phone channels.

195. As at 1 February 2017, the UBET brand and new retail format has been rolled out in 289 of Tatts' 1,401 retail outlets in Queensland, South Australia, Tasmania and the Northern Territory.<sup>306</sup> By the end of FY17, Tatts plans to have rolled out the new UBET retail format in a further **[Confidential to Tatts]** ██████████ outlets whilst also rolling out the UBET brand across **[Confidential to Tatts]** ██████████ retail outlets.<sup>307</sup>

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<sup>305</sup> Cooke [153(h)].

<sup>306</sup> Cooke [154].

<sup>307</sup> Cooke [154].



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**3 GAMING SERVICES**

**3.1 Gaming industry overview**

197. Gaming relates to gambling via electronic gaming machines (**EGMs**), often known as ‘poker machines’.<sup>308</sup>

198. The Australian gaming industry includes:

- (a) the manufacture and development of EGMs and the various games played on them; and
- (b) the operation of EGMs at licensed venues (pubs, clubs and casinos) where patrons have the opportunity to play.

199. Neither of the merger parties participates in either of these activities and they have no relevance to the Tribunal’s assessment of the proposed acquisition.

200. The Australian gaming industry also comprises the supply of the following services to licensed venues:

- (a) **gaming systems and related services:** which includes the supply of in-venue gaming system technology designed to assist the licensed venue operator to manage and enhance their EGM operation and to meet compliance obligations under their licence.<sup>309</sup> Related services may include assistance with financing, training, venue design and product advice, marketing and loyalty programs, compliance checking and adherence and other advice relating to the operation of a licensed venue. More broadly, ‘related services’ may also include preventative and remedial repair and maintenance of EGMs or gaming systems (discussed further below);
- (b) **monitoring services:** which includes monitoring EGMs to ensure that they are operating to legislated compliance standards, as well as for taxation and research purposes; and
- (c) **field services:** which includes preventative and remedial repair and maintenance. Tabcorp generally regards ‘field services’ as referring only to repair and maintenance of EGMs, whilst Tatts uses the term to refer to repair and maintenance of EGMs and/or gaming systems.

201. The gaming systems and related services that are supplied by the merger parties are sometimes collectively referred to as ‘in venue gaming systems and services’ or ‘promotional and/or management systems and services’. These terms reflect the fact that the technology and

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<sup>308</sup> Rytenskild [116].

<sup>309</sup> Rytenskild [130].



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services referred to are designed to assist the venue operator to manage, enhance and promote its gaming business. The terminology that has been adopted for the purposes of this Form S is 'gaming systems and related services'.

202. Gaming on EGMs is the most popular form of gambling in Australia with FY15 turnover of approximately \$136 billion and revenue of \$11.6 billion representing approximately 51% of total gambling expenditure in Australia.<sup>310</sup> Total expenditure by Australian consumers on EGMs rose by 4.9% from FY14 to FY15.<sup>311</sup>
203. EGMs are located in every State and mainland Territory of Australia. They are typically located in hotels, clubs and casinos, with the exception of Western Australia where EGMs are only allowed in Crown Perth Casino. The number of EGMs in Australia is capped in each State and Territory, with the exception of Western Australia.<sup>312</sup> There are approximately 186,000 EGMs in Australia of which approximately:
- (a) 50% are in New South Wales;
  - (b) 23% are in Queensland;
  - (c) 14 % are in Victoria;
  - (d) 6.5% are in South Australia;
  - (e) 2.5% are in the Australian Capital Territory;
  - (f) 2% are in Tasmania; and
  - (g) 1% is in each of Western Australia and the Northern Territory.<sup>313</sup>

### 3.2 Regulation of the gaming industry

204. The gaming industry is highly regulated under State and Territory legislation. Participants (including EGM manufacturers, operators and service providers) are generally required to hold an appropriate licence or approval to operate. Relevant aspects of the regulatory regime applicable to the supply of gaming systems and related services in Victoria, New South Wales and Queensland are described below. These three States are the only geographic areas in which Tabcorp and Tatts overlap in relation to the gaming products and services described
205. Regulation is mostly undertaken under the auspices of State or Territory governments including as follows:

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<sup>310</sup> Rytenskild [116].

<sup>311</sup> Australian Gambling Statistics 1989-90 to 2014-15 (32<sup>nd</sup> edition), Summary Table F, page 6.

<sup>312</sup> Rytenskild [117].

<sup>313</sup> Makryllos [9].





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- (a) In Victoria, the gaming industry is regulated by the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**) under the *Gambling Regulation Act 2003* (Vic). The number of EGMs is currently capped at 30,000 of which a cap of 27,372 applies to clubs and hotels and a cap of 2,628 applies to the Crown casino in Melbourne.
- (b) In New South Wales, gaming is regulated by Liquor and Gaming NSW pursuant to the *Gaming Machines Act 2001* (NSW) and the *Gaming Machines Regulation 2010* (NSW). The number of machines is currently capped at 99,000 and hotel venues are limited to not more than 30 EGMs. The transfer of EGM entitlements and permits is also regulated.
- (c) In Queensland, gaming is regulated by the Office of Liquor and Gambling Regulation (**OGLR**) under the *Gaming Machine Act 1991* (Qld). Since 2011, the number of EGMs has been capped at 24,705 in clubs and 19,500 in hotels. The re-allocation and transfer of EGM licences is also regulated.

206. Despite the high level of regulation, the ability to obtain a licence or approval to operate is not onerous or expensive, with the possible exception of Queensland which requires a more significant one-off licence fee and licences that confer exclusivity on the holder (such as Maxgaming's exclusive rights to provide monitoring services in New South Wales).

*Victoria*

207. In Victoria, an entity wishing to supply EGMs or gaming systems must be listed on the Roll of Manufacturers, Suppliers and Testers, which is kept by the VCGLR.<sup>314</sup> This process requires collation and testing of information relating to the applicant and its officers and associates to satisfy probity, financial and other criteria.

208. In Victoria, the VCGLR does not license providers of 'ancillary services' or venue management services. Accordingly, the following kinds of gaming services can be supplied without a licence:

- (a) facilitating the purchase of EGMs e.g. through provision of finance;
- (b) player loyalty schemes; and
- (c) marketing advice and venue promotions, venue design and staff training.

*New South Wales*

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<sup>314</sup> Pursuant to Part 4 of the *Gaming Regulation Act 2003* (Vic).

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209. In New South Wales, gaming services can be provided under an EGM dealer's licence, issued by the Independent Liquor and Gaming Authority (**ILGA**).<sup>315</sup> This licence allows the holder to:
- (a) manufacture and assemble EGMs in or on the premises specified in the licence;
  - (b) sell and negotiate the sale of approved EGMs (whether or not manufactured or assembled by the licensee); and
  - (c) service, repair and maintain approved EGMs in or on the premises specified in the licence.
210. Alternatively, services may be provided pursuant to an EGM seller's licence which allows the holder:
- (a) (as an employee of the holder of a dealer's licence or seller's licence) to negotiate on behalf of the employer the sale of approved EGMs; and
  - (b) to sell, as principal or agent, approved EGMs.<sup>316</sup>

#### *Queensland*

211. In Queensland there are various types of supplier licences including licences for licensed monitoring operators (LMOs), major dealers (manufacturers), secondary dealers and licensed testing facility operators.<sup>317</sup> To provide any services directly connected with EGMs, the provider must either be a LMO or partner with one. An LMO is permitted to:
- (a) install, operate and modify a gaming related system and electronic monitoring system operating on licensed premises;
  - (b) cause a gaming related system to be installed or operated;
  - (c) obtain and be in possession of EGMs, linked jackpot equipment and restricted components;
  - (d) sell or supply, on written order with the commissioner's written approval, EGMs to a LMO, an approved financier, a licensee or a gaming trainer;
  - (e) sell or supply, on written order, gaming machines, linked jackpot equipment or restricted components to a person in another State or Territory or a country where possession of the EGMs, linked jackpot equipment or restricted components by that person is lawful; and

<sup>315</sup> Under Part 7 of the *Gaming Machines Act 2001* (NSW).

<sup>316</sup> <https://www.liquorandgaming.justice.nsw.gov.au/Pages/gaming/gaming-licences/gaming-related-licences.aspx>.

<sup>317</sup> *Gaming Machine Act 1991* (Qld), s112.



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(f) manufacture linked jackpot equipment.

212. Licensed major dealers (manufacturers) are authorised to manufacture, sell and supply gaming machines, but not to cause a gaming related EGM or system to be installed or operated.

213. Suppliers of gaming systems and some related services must be licensed or registered in each State and Territory in which they intend to supply products. Fees are payable in order to obtain the relevant licence or registration as follows:

(a) In Victoria, a one-off fee of \$2,843.30 is payable to be listed on the Roll of Manufacturers, Suppliers and Testers and the applicant also bears the cost of providing the required materials (e.g. ASIC searches) to the VCGLR.

(b) In New South Wales, application for an EGM dealer's licence requires payment of a lodgement fee of \$1,000 and a fee-on-grant of \$9,000. An annual fee of \$10,000 is payable to retain the licence. The time required to obtain a licence depends on whether the applicant has previously been approved and undergone probity checks and on what further information (if any) the regulator requires and the minimum period is approximately 3-4 months. Application for an EGM seller's licence requires payment of a lodgement fee of \$100 and a fee-on-grant of \$400. An annual fee of \$500 is payable thereafter.

(c) An LMO licence in Queensland requires an application fee of \$16,540 and a one-off licence fee of \$396,800. The licence is for a period of 10 years.

(d) Higher fees may be payable in respect of exclusive licences.

### 3.3 Types of gaming systems and services

#### *Gaming systems*

214. The supply of gaming systems refers to the supply of gaming technology to the operators of licensed venues. This technology comprises software and hardware which are designed to assist licensed venues to manage and enhance the operation of their EGMs, and to meet compliance obligations under licences.

215. Gaming systems track, report on and allow for financial reconciliation of EGM activity. In addition, they often include:

(a) software which facilitates player loyalty programs and venue loyalty programs by producing and reading venue membership cards for players, and tracking and reporting on player activity facilitated by membership cards;

(b) software allowing venues to market to and communicate with customers; and



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- (c) voluntary pre-commitment (VPC) solutions, which are mandatory in Victoria and can also be provided separately from a gaming system or loyalty program in other States.
216. Gaming systems typically comprise a core offering and a number of optional extras which may include:
- (a) business intelligence software, which facilitates reporting and analysis of EGM activity, often as benchmarked against other venues;
  - (b) card-based gaming solutions, including:
    - (i) Ticket In Ticket Out (**TITO**) systems, which allow patrons, once they have finished playing a particular EGM, to print a ticket at the EGM and either use that ticket at another EGM or redeem it for cash at a venue cashier or cash redemption terminal; and
    - (ii) card-based gaming systems – a plastic card or token (which may also be a loyalty card) which is linked to an account. When the card is inserted into an EGM an amount is transferred from the account to the credit meter; and
  - (c) player kiosks, at which players may check their loyalty status.
217. In addition to (or independently from) the purchase of gaming systems, licensed EGM venue operators may purchase related services such as:
- (a) financing for EGMs, EGM systems, or venue refurbishment or fit-out;
  - (b) training on customer experience and venue regulatory compliance;
  - (c) advice and assistance regarding venue design, refurbishment or fit-out;
  - (d) advice on product selection and other components of venue operation; and
  - (e) advice on marketing and loyalty activities, using the loyalty system to provide awards and other benefits for customers.

*Field services*

218. As outlined above, Tabcorp uses the term 'field services' to describe preventative and remedial repair and maintenance of EGMs. By contrast, Tatts uses the term to include the repair and maintenance of gaming systems. Field services may be supplied as part of a package of 'related services' or they may be supplied by specialist entities as a standalone product. The different models applicable to the merger parties are described below.

*Monitoring services*



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219. By regulation in every State and Territory except for the ACT,<sup>318</sup> every EGM must be monitored for integrity and taxation purposes. EGMs operating in clubs and hotels are required to be connected to a central monitoring system (**CMS**) which is usually provided by the licensed monitoring operator (**LMO**). The CMS gathers statistical data on each EGM in order to collate security and financial reports. The data collected is submitted to the relevant State or Territory gambling authority for regulatory and taxation purposes.
220. In general, monitoring licences require LMOs to:
- (a) track and authorise the location and movement of all EGMs;
  - (b) ensure venues use approved EGMs only;
  - (c) ensure the correct functioning of EGMs;
  - (d) calculate taxes payable by venues;
  - (e) account for payouts to players to ensure the minimum return to players;
  - (f) provide a terminal to the office of the regulator with unlimited access to EGM databases; and
  - (g) maintain an audit file which records all 'raw' data received from gaming venues.
221. In Queensland, maintenance services or modifications for EGMs must be provided by an LMO, or a service provider on behalf of an LMO.<sup>319</sup> However, gaming and promotional management systems can be supplied by parties other than an LMO.
222. In Victoria, an LMO is not permitted to provide gaming and promotional management systems (other than VPC systems) or testing services.

#### 3.4 Suppliers of gaming systems and related services

223. There are many suppliers of gaming systems and related services across Victoria, New South Wales and Queensland and there is significant variation in the business models adopted by them.

##### 3.4.1 Tabcorp

224. Tabcorp Gaming Solutions (**TGS**) provides a 'full service' offering to EGM venues in Victoria and New South Wales. TGS' full service includes certain gaming systems and related services

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<sup>318</sup> In the ACT, there is currently no centralised monitoring system. The ACT Gambling and Racing Commission is responsible for monitoring EGMs. In Western Australia, there are no EGMs outside casinos. The Crown Casino in Burswood self-monitors all of its EGMs and reports to the Gaming and Wagering Commission.

<sup>319</sup> *Gaming Machine Act 1991* (Qld), Parts 4 and 5.



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as described below. It does not include monitoring services, which are provided in Victoria exclusively by Intralot Gaming Services Pty Ltd (an entity unrelated to either of the merger parties) and in New South Wales exclusively by Maxgaming NSW Pty Ltd (owned by Tatts).

225. TGS does not manufacture its own gaming systems but supplies (or 're-supplies') systems developed and manufactured by third parties as follows:
- (a) in Victoria, TGS supplies a gaming system called 'IGT Advantage Club', under an agreement which is continuing but in respect of which TGS' exclusivity in relation to distribution of the product ended in February 2017. IGT Advantage Club is manufactured by global gaming company IGT which has a strong presence in Australia. IGT Advantage Club has a variety of functions, including financial reporting and reconciliation, player tracking and management, player loyalty programs, and voluntary pre-commitment; and
  - (b) in New South Wales, TGS supplies gaming systems manufactured by IGT, Intecq and Aristocrat.
226. Gaming systems typically comprise a core offering and a number of 'optional extras'. Venues may choose to acquire one or more of the optional systems available, in addition to the core system supplied by TGS.
227. In Victoria:
- (a) core (or 'non-optional') components are supplied pursuant to a Gaming Services Agreement. At a high level, these include systems for financial reporting and reconciliation regarding EGM activity and performance;
  - (b) VPC technology is mandatory and, accordingly, also forms part of the core offering;
  - (c) in addition to these core components, venues can elect to receive systems and services which facilitate loyalty and membership programs and promotions management (under a Loyalty Program Agreement); and
  - (d) Tabcorp also has a licence to use Tableau software. Venues can sub-licence this software from Tabcorp (at no cost) in order to access analytics regarding their gaming machine data.
228. In NSW:
- (a) similarly, core (or 'non-optional') components are supplied pursuant to a Gaming Services Agreement. At a high level, these include systems for financial reporting and reconciliation regarding EGM activity and performance;



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- (b) in addition to these core components, venues can elect to receive systems and services which facilitate loyalty and membership programs and promotions management (under a Loyalty Program Agreement);
- (c) Tabcorp has a licence to use Tableau software. Venues can sub-licence this software from Tabcorp (at no cost) in order to access analytics regarding their EGM data; and
- (d) venues may also elect to receive TITO hardware and software (supplied under a TITO Agreement). Tabcorp notes that, while this is optional for NSW venues, most venues' EGMs have this functionality.

229. In addition to the supply of these gaming systems, TGS's full service offering includes the following related services:

- (a) EGM financing: TGS offers finance to licensed venues, which involves re-supplying EGMs to venues for a daily fee. This generally involves TGS purchasing a venue's existing EGMs in the first instance, re-supplying the machines to the venue for a daily fee, and switching the machines and/or games on the machines out for new ones over time. Generally, around 20% to 25% of the EGMs in the venue are replaced each year, pursuant to the agreement with the venue. TGS may also provide funding in respect of capital expenditure on the venue's gaming business or in some instances, provide loans.
- (b) EGM field services: TGS arranges for servicing, repair and maintenance of the EGMs that TGS supplies to a venue. TGS only provides field services as part of its 'full service' offering and not as a standalone product.
- (c) consultancy services: TGS supplies other services and advice to venues, such as training and advice with respect to venue refurbishment, financing, marketing, and regulatory compliance.

230. Intecq Limited (**Intecq**) operates gaming systems and related services businesses in Victoria and New South Wales (eBet) and a monitoring and related services business in Queensland (Odyssey). Intecq, which has been owned by Tabcorp since December 2016, owns and supplies the Metropolis gaming system, the core functions of which include:

- (a) gaming data management, including financial reporting and reconciliation;
- (b) cashier functionality (e.g. to cash out winnings);
- (c) a membership database for venues;
- (d) loyalty program management; and
- (e) promotions management.





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231. Intecq also provides a number of other related services that are facilitated by, or work in conjunction with, Metropolis. These services are optional (other than voluntary pre-commitment (VPC) technology, which is mandatory in Victoria) and include:
- (a) Card IT: a card-based gaming solution which facilitates the movement of monies on and off an EGM through an issued card;
  - (b) a ticket-based gaming solution (TITO): which facilitates the movement of monies on and off an EGM through bar-coded tickets;
  - (c) 'Engage': which allows venues to send digital graphics directly to customers at the EGM. This may be used for marketing and promotional communications. Engage is also required for the supply of VPC technology, which is mandatory in Victoria;
  - (d) 'Wager Exchange': which allows customers to earn non-cash redeemable bonus points which can be converted to gaming credits;
  - (e) 'Astute' business intelligence services: which uses detailed data analytics to provide venues with reports (including graphical representations) regarding a range of issues including machine use, financial performance, membership, loyalty and promotions;
  - (f) VPC technology (which is mandatory in Victoria); and
  - (g) hardware: including the provision of player kiosks, computers and other hardware in conjunction with the systems and software described above.
232. Through its eBET business, Intecq provides maintenance and support of its own Metropolis system but not repair and maintenance of third party systems or EGMs.
233. Through its Odyssey Gaming business, Intecq is an LMO in Queensland. It delivers systems and services (including an approved monitoring system called Sentinel) to approximately 20% of the EGMs in Queensland and field services, as that jurisdiction requires such services to be provided by an LMO. Odyssey has its own field services staff and also engages independent third party contractors.
234. Should the Tribunal have concerns about any overlap in relation to monitoring and field services in Queensland which would arise from the proposed merger, Tabcorp is offering, as a condition of authorisation, an undertaking pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) to divest the Odyssey business, which will remove this overlap.

3.4.2 Tatts

235. Tatts' gaming business unit, trading under the brand 'MAX', comprises Maxgaming and Bytecraft.



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236. **Maxgaming** operates in Queensland, New South Wales, Victoria and the Northern Territory. Its core business is the supply of monitoring services for EGMs in Queensland, the Northern Territory and New South Wales (discussed below), but it also supplies gaming systems and related services.<sup>320</sup>
237. Maxgaming's gaming systems and related services include:
- (a) the 'Wildcat' system, which has financial reporting and reconciliation functions;
  - (b) the 'Cougar' system, which has player tracking and player loyalty functions (Maxgaming currently provides loyalty programs to 350 venues in Australia);
  - (c) cashless gaming solutions, including a TITO product 'my ticket', and a plastic card solution which has pre-commitment functionality (Queensland only);
  - (d) the 'maxreports' business intelligence program;
  - (e) kiosks and cashier redemption equipment; and
  - (f) a 'State Wide Jackpot Service' in both Queensland and in New South Wales (under an exclusive licence (NSW only)).<sup>321</sup>
238. Maxgaming also provides monitoring services in the following jurisdictions:
- (a) Queensland: Maxgaming monitors approximately 80% (approximately 34,000) of the EGMs in both licensed clubs and hotels;
  - (b) New South Wales: Maxgaming is the exclusive supplier of monitoring services in New South Wales. Its current licence extends until 2017, but it has been granted a further exclusive licence until 2032; and
  - (c) Northern Territory: Maxgaming holds a non-exclusive licence to provide monitoring services in the Northern Territory. Maxgaming is currently the only active LMO in the Northern Territory.
239. In August 2016, Tatts announced that it was in discussion with Intralot SA (**Intralot**) in relation to a potential acquisition of Intralot's Australian and New Zealand businesses. Those businesses include Intralot Gaming Services Pty Ltd which has a 15 year exclusive licence to provide monitoring and pre-commitment services for all hotel and club EGMs in Victoria. This

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<sup>320</sup> <http://www.maxgaming.com.au/about.html#aboutus>, Cooke [17], Makryllos [57].

<sup>321</sup> Makryllos [57].

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licence expires in 2027. Tatts' discussions with Intralot have continued and as at early March 2017 no binding agreement has been reached.<sup>322</sup>

240. **Bytecraft** specialises in the supply of EGM repair and maintenance services to venues in all States and Territories except for Tasmania and the Australian Capital Territory. In particular, it provides on-site maintenance, workshop repair, warehousing and distribution and help-desk services.<sup>323</sup>

#### 3.4.3 Other suppliers

241. There are a number of other suppliers of gaming systems and related services. These entities comprise specialist domestic businesses as well as large international gaming services companies including the following.

242. Aristocrat Leisure Limited (**Aristocrat**) is a global gaming company based in Australia, and listed on the ASX. Its core business is the manufacture and supply of EGMs. Aristocrat also supplies in-venue gaming systems and services to venues in Australia. The Aristocrat system is called 'System 7000', which is comparable to Intecq's Metropolis system. Its functions include financial reporting and reconciliation, player tracking and management, player loyalty programs, and voluntary pre-commitment. Aristocrat also provides a TITO cashless gaming solution for use with its System 7000 system.<sup>324</sup>

243. Bally Technologies ANZ Pty Ltd (**Bally**) is a subsidiary of Scientific Games Corporation, a global gaming company based in America. Like Aristocrat, the core business of Bally is the manufacture and supply of EGMs, however, Bally provides in-venue gaming and services to venues in Australia. Bally is the exclusive provider to ALH Group, which owns and operates licensed venues across Australia. In particular, ALH has an agreement with Bally to supply Bally's suite of applications, including voluntary pre-commitment and utilising a common player card, at more than 270 venues throughout the country, including in New South Wales, Victoria, Queensland, South Australia, Tasmania, and the Northern Territory. Bally's systems are comparable to Intecq's Metropolis system, with functions including financial reporting and reconciliation, player tracking and management, player loyalty programs, and voluntary pre-commitment.<sup>325</sup>

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<sup>322</sup> Cooke [17].

<sup>323</sup> <http://www.bytecraft.com.au/index.html>.

<sup>324</sup> Rytenskiid [170]-[171].

<sup>325</sup> Rytenskiid [172]-[174].



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244. Konami Holdings Corporation (**Konami**) is a global entertainment company headquartered in Japan, and is listed on the Tokyo and London Stock Exchanges.<sup>326</sup> Konami provides in-venue gaming systems and related services in Australia.<sup>327</sup> The Konami system is called 'Synkros'. It is comparable to Intecq's Metropolis system, with functions including financial reporting and reconciliation, player tracking and management, player loyalty programs, and voluntary pre-commitment.<sup>328</sup> Konami also advertises a range of additional services, including an 'Electronic Point Redemption' product, which allows players to convert bonus points into non-cashable credits for play on machines, similar to Intecq's 'Wager Exchange' product.<sup>329</sup>
245. Progressive Venue Services (**PVS**) provides a range of gaming services, including loyalty programs, marketing and design services, jackpot services, EGM purchase and supply, venue support, service and maintenance and compliance services.<sup>330</sup> PVS has recently partnered with Konami to supply Konami's Synkros management and customer loyalty program system in Victoria. Currently, PVS manages and supports more than 1,500 EGMs in Victoria.<sup>331</sup>
246. Global Gaming Industries (**Global Gaming**) is an Australian provider of in-venue gaming systems and related services. Global Gaming supplies in-venue gaming systems in NSW.<sup>332</sup> Global Gaming was acquired by The Banktech Group (**Banktech**) in June 2016. Banktech provides ATM, EFTPOS and other payment systems to the banking and hospitality industries (including gaming venues) in Australia and Asia. It is also the parent company of Utopia Gaming Systems (**Utopia**), an LMO licensed in Queensland.<sup>333</sup>
247. IGT Global Solutions Corporation (NASDAQ: **IGT**) headquartered in the UK, is a global full service gaming company with a strong presence in Australia and New Zealand. Through its wholly owned subsidiary IGT Australia Pty Ltd, it is a supplier of EGMs, and in-venue gaming systems as well as EGM maintenance and support services.<sup>334</sup> IGT is the manufacturer of the IGT Advantage Club gaming management software, which TGS currently resupplies into selected venues in NSW & Victoria. This system has a variety of functions including gaming management and reporting, player and venue loyalty programs, promotions for loyalty

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<sup>326</sup> Rytenskild [175].

<sup>327</sup> Rytenskild [176].

<sup>328</sup> Rytenskild [176].

<sup>329</sup> Rytenskild [178].

<sup>330</sup> Rytenskild [179].

<sup>331</sup> Rytenskild [180].

<sup>332</sup> Rytenskild [181].

<sup>333</sup> Rytenskild [182].

<sup>334</sup> Rytenskild [183].



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members, club membership management services, marketing and user communication services and pre-commitment services (in Victoria).<sup>335</sup>

248. There are a number of other gaming service providers which do not also supply gaming systems, including Mercury Group, Frontier Hospitality, Momentum Gaming, PVS, SGS and Token Solutions. These companies provide their services exclusively in Victoria.

#### 3.5 Customers

249. Customers of gaming and related service providers include:<sup>336</sup>

- (a) clubs, hotels and casinos (depending on the State or Territory) which operate EGMs;
- (b) groups such as the Australian Leisure and Hospitality Group Pty Limited and Liquorland (QLD) Pty Ltd (trading as Spirit Hotels) which groups own clubs and hotels which own and operate EGMs;
- (c) State and Territory gaming regulators (for example, the VCGLR) which receive a licence fee from repair and maintenance suppliers and testers for the provision of repair and maintenance licences and testing services.

## 4 LOTTERIES

### 4.1 Lotteries overview

250. Distinct from wagering, which is skill-based and in which the collection and processing of information about the participants is a necessary factor, lotteries are a chance-based activity in which a distinct set of numbers is randomly drawn from a larger set of numbers.<sup>337</sup> A player with a combination of those numbers, chosen by the player or automatically, wins a prize.<sup>338</sup>

251. Lottery products are generally not viewed by customers as gambling but rather as a chance to win a large prize for a small outlay. They are viewed by consumers as a discretionary purchase which is more akin to a fast moving consumer goods product.<sup>339</sup> Customers are said to "play" rather than "bet on" lotteries products.<sup>340</sup> By contrast, in other forms of gambling such as wagering, Keno and gaming machines, a much smaller percentage of the general population

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<sup>335</sup> Rytenskiold [184].

<sup>336</sup> Makryllos [49].

<sup>337</sup> Pleatsikas [107].

<sup>338</sup> Merwe [14].

<sup>339</sup> Merwe [24].

<sup>340</sup> Merwe [25].



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participates, there is a much higher average spend, and customers have different core motivations for the purchase.<sup>341</sup>

252. Whilst Tatts is the sole provider of public lotteries in Australia, with the exception of Western Australia, there are a number of other providers whose products also compete with Tatts lottery products. Tabcorp does not hold any licences to conduct public lotteries and therefore does not supply public lottery products.

#### 4.2 Lotteries products

253. Lottery products are typically distributed through retail outlets such as newsagents, supermarkets, service stations and convenience stores. In addition, lottery tickets (excluding 'instant' lotteries) can be purchased online.<sup>342</sup>

254. There are three categories of lottery games:

- (a) **Numbers games:** for example, Lotto, 'The Pools' and a daily game known as 'Set for life'. In these numbers games a player attempts to pick the winning numbers that will be randomly drawn from a larger set of numbers (or in the case of Pools, determined by the outcome of soccer games). Players can choose to pick their own numbers or have their numbers randomly selected through the lottery terminal (known as a Quick Pick entry type). The prize pool is split into divisions with division 1 offering the highest prize pool. The total prize pool is a percentage of ticket sales. If multiple players win in the same division, the prize pool for that division will generally be split between those winners (with some exceptions where the prize is a fixed amount per winner up to a capped number of winners after which the prize pool is shared). The amount won is determined by the winning combination of numbers matched against the drawn numbers and according to the divisional prize structure set out in the respective game rules. There is a time gap between when players purchase tickets and when the draw determining the winning outcome occurs. The time gap between draws is generally a week, or in the case of Tatts' Set for Life game, daily.<sup>343</sup>
- (b) **Instant lottery products:** for example, 'Instant Scratch-its', where players scratch and reveal symbols for a chance to win a predetermined prize. The prize pool is set percentages of the total value of the tickets printed for each game (ticket series) and the number of prizes varies per game. The winning outcome is determined when the player

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<sup>341</sup> Merwe [63].

<sup>342</sup> Merwe [17].

<sup>343</sup> Merwe [15(a)].



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chooses to scratch the ticket which may take place instore immediately on purchase or at their leisure.<sup>344</sup>

- (c) **Draw lottery products:** for example, 'Lucky Lotteries', where a set number of tickets are available for purchase and the draw occurs when they are all sold. Each ticket has a unique number; there are multiple prize levels and the prizes at each level are predetermined.<sup>345</sup>

255. Tatts' lottery games known as Oz Lotto, Powerball, Saturday Lotto, Super 66, Monday & Wednesday Lotto, The Pools and Set for Life, are games which operate on a national basis through lottery 'blocs'. Each bloc member sells entries into the relevant lottery draw and contributes an agreed percentage of the revenue received to the combined prize pool for each draw. The operation of these lottery games through the 'bloc' arrangement creates larger prize pools which attracts an increased number of entries, with:

- (a) significantly larger jackpots than could otherwise be provided by an individual lottery operator;
- (b) additional funds being available for Superdraws and bonus draws as well other promotions; and
- (c) more funds available for distribution across the prize categories or 'divisions'.<sup>346</sup>

256. While the principal lottery operators in the relevant States and Territories are members of the lottery 'blocs', each bloc member markets and sells these national lottery games under its own branding or co-branding within each State, and also on online.<sup>347</sup>

257. Tatts, via its wholly owned subsidiaries, is currently the administrator for all 'bloc' games. As administrator, Tatts calculates the national prize pools, conducts the lottery draws, calculates prize category/division payments, provides reconciliations for settlements between the different member lottery operators, and manages prize reserve funds and game models relating to key game variables impacting game performance. The administration costs of the lottery 'blocs' are shared between the bloc members.<sup>348</sup>

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<sup>344</sup> Merwe [15(b)].

<sup>345</sup> Merwe [15(c)].

<sup>346</sup> Merwe [39].

<sup>347</sup> Merwe [40].

<sup>348</sup> Merwe [41] and [42].





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258. In addition to the above lottery products, '**lottery betting**' has recently evolved as a derivative lottery product.<sup>349</sup> It involves a customer betting on the outcome of a lottery, instead of buying a ticket for an official lottery draw. These derivative lottery products are sometimes described as 'synthetic' lotteries.<sup>350</sup>

#### 4.3 Lotteries suppliers

##### 4.3.1 Tatts

259. Tatts is currently licensed to operate all public lotteries in each State and Territory except Western Australia where public lotteries are conducted by Lotterywest, an entity owned by the Western Australian government.<sup>351</sup> Tatts also holds lottery rights in the external Australian territory of Norfolk Island, as well as the Cook Islands.<sup>352</sup>

260. Tatts distributes tickets to its lotteries primarily through retail outlets, including newsagents and small businesses, such as petrol stations and convenience stores, with 86.5% of sales for the year ended 30 June 2016 derived through the Tatts' retail channel.

261. Tatts sells lottery tickets via digital channels including an online website and a mobile app. Online channels accounted for 13.5% of sales for the same period.<sup>353</sup>

##### 4.3.2 Lotterywest

262. Lotterywest is an entity owned by the Western Australia government which operates in Western Australia.

##### 4.3.3 Jumbo

263. Jumbo is an online lottery business listed on the ASX.<sup>354</sup> Its flagship platform is OZLotteries.com, which re-sells official lottery tickets online, through its website and mobile app.<sup>355</sup>

264. Jumbo re-sells Tatts' lottery products (except Set for Life and Instant Scratch-Its) and it accounts for approximately [**HIGHLY Confidential to Tatts**] ████████ of Tatts' digital lottery sales in Australia (which were [**HIGHLY Confidential to Tatts**] ████████ of total sales in FY2016)].<sup>356</sup>

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<sup>349</sup> Merwe [55].

<sup>350</sup> Merwe [57].

<sup>351</sup> Merwe [32(a)].

<sup>352</sup> Merwe [36].

<sup>353</sup> Merwe [23].

<sup>354</sup> Rytenskild [104].

<sup>355</sup> Merwe [52] and Rytenskild [104].



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265. In addition to Tatts' products, Jumbo also sells tickets to Australian charity-based lotteries and international lotteries.<sup>357</sup> During the 2016 financial year, the [www.ozlotteries.com.au](http://www.ozlotteries.com.au) website had over 2 million online accounts and 375,988 active accounts (being online customers who had spent money on lottery products in the preceding 12 month period).<sup>358</sup>

#### 4.3.4 NetLotto

266. Net Lotto is an online lottery business which operates as a reseller of Australian lotto games. Net Lotto re-sells various Tatts' lottery products.

#### 4.3.5 Lottoland

267. Lottoland holds a Northern Territory sports bookmaker licence to operate as a lottery betting operator.<sup>359</sup> Lottery betting enables customers to bet on the outcome of a lottery instead of buying a ticket in the underlying official draw. Currently, Lottoland offers Australian residents (excluding South Australian residents) the opportunity to bet upon the outcome of various lotteries including:

- (a) Euro Millions and Euro Jackpot;
- (b) American Powerball and Mega Millions;
- (c) the UK Lotto;
- (d) the Irish Lotto;
- (e) the Swedish Lotto; and
- (f) Oz Lotto and Powerball and Australian Saturday, Monday and Wednesday Lotto.

268. Lottoland also enables customers to bet on the outcome of global lottery draws (for example US Powerball, KeNow and German Keno).<sup>360</sup>

#### 4.3.6 Plus Connect

269. Plus Connect (NT) Pty Ltd, holds a Northern Territory sports bookmaker licence to operate as a lottery betting operator. It operates the Weather Lottery which involves the customer selecting seven numbers to win, which numbers need to match the decimal point of the temperature in each Australian capital city at noon on the day of the lottery in order to win a prize. There is a

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<sup>356</sup> Merwe [53].

<sup>357</sup> Merwe [53] and Rytenskild [104].

<sup>358</sup> Merwe [53].

<sup>359</sup> Rytenskild [101].

<sup>360</sup> Rytenskild [103].



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draw of the lottery every weekday. The top prize for all 7 numbers selected in the correct order is \$1 million.<sup>361</sup>

**4.4 Lotteries licensing**

270. As set out above, each State and Territory has its own licensing regime for lotteries. These regimes regulate:

- (a) who may offer lotteries within the State or Territory, and the circumstances in which those services can be supplied; and
- (b) the taxes that lottery operators must pay on their lotteries products.

271. There are currently only two principal licensed lottery operators in Australia, being:<sup>362</sup>

- (a) **Lotterywest**, an entity owned by the Western Australia government which operates in Western Australia; and
- (b) **Tatts**, through its subsidiaries, in:
  - (i) New South Wales, Victoria and South Australia, through exclusive licences or agreements; and
  - (ii) Queensland, Tasmania, the Australian Capital Territory and the Northern Territory. These licences are not exclusive, but Tatts, through its subsidiaries, is presently the sole licence holder in those States and Territories.

272. There are exceptions to Tatts' exclusivity which vary from state to state, including carve-outs for charitable lotteries and lotteries conducted by third parties which offer prizes below a certain monetary threshold.<sup>363</sup>

273. Set out below is a table of the current licensees (or permit holders), expiry dates, exclusivity status and licenced products (excluding Western Australia which has a State owned lotteries provider):<sup>364</sup>

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<sup>361</sup> Merwe [56(b)].

<sup>362</sup> Merwe [32].

<sup>363</sup> Merwe [38].

<sup>364</sup> [TAT.001.013.2826].

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**Table 8: Current lotteries licences [HIGHLY confidential to Tatts]**

State / Territory	Licensee	Expiry date	Lottery products permitted by licence
NSW	NSW Lotteries Corporation Pty Ltd (owned by Tatts)	2050  (exclusive subject to certain exceptions, for example, charity lottery operators below a certain value)	Oz Lotto, Powerball, The Pools, Lotto, Lotto Strike, Set for Life, Lucky Lotteries, Instant Scratch-Its.
VIC	Tattersall's Sweeps Pty Ltd (owned by Tatts)	2020  (exclusive subject to certain exceptions, example, raffles and charitable purposes)	Tattslotto (Saturday Night Lotto), Instant Scratch-Its, Draw Lotteries, Set for Life, Powerball, Oz Lotto, Super 66, Monday and Wednesday Lotto.
SA	Tatts Lotteries SA Pty Ltd (owned by Tatts)	2052  (exclusive subject to certain exceptions, for example, raffles and fundraisers)	Instant Scratchies, Monday and Wednesday X Lotto, Oz Lotto, Powerball, Saturday X Lotto, Super 66, The Pools, Traditional Draw Lotteries.
QLD	Golden Casket Lottery Corporation Limited (owned by Tatts)	2072  (non-exclusive, with no licence required for certain welfare and promotional lotteries)	Monday and Wednesday Gold Lotto, Saturday Gold Lotto, Powerball, Oz Lotto, Instant Scratch-Its, Set for Life, Super 66, Promotional Lottery.
TAS	Golden Casket Lottery Corporation Limited (owned by Tatts)	2018  (non-exclusive, with no permit required for certain promotional and charitable lotteries)	Instant Scratch-its; Instant Lotteries (Scratchies).
	Tattersall's Sweeps Pty Ltd (owned by Tatts)	2018  (non-exclusive, with no permit required for certain promotional and charitable lotteries)	TattsLotto, Monday and Wednesday Lotto, Oz Lotto, Powerball, The Pools, Super 66, Lucky Lotteries, Set for Life.
ACT	NSW Lotteries Corporation Pty Ltd (owned by Tatts)	<b>[HIGHLY confidential to Tatts]</b> ██████████  (non-exclusive with no approval required for certain promotional lotteries)	Lotto, Lotto Strike, Oz Lotto, Powerball, Set for Life, Instant Lotteries, Draw Lotteries, Soccer Football Pools.
NT	Tatts NT Lotteries Pty Ltd (owned by Tatts)	2032  (non-exclusive with no permit required for certain raffles, mini-lottos and promotional	Saturday Lotto (AKA TattsLotto), Super 66, Oz Lotto, Monday and Wednesday Lotto, Powerball, The Pools, Draw Lotteries, Set for Life,



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	lotteries etc)	Soccer Football Pools.
Golden Casket Lottery Corporation Limited (owned by Tatts)	2018 (non-exclusive with no permit required for certain raffles, mini-lottos and promotional lotteries etc)	Instant Money Lottery

274. Set out in Table 9 below are the current tax rates which apply to lotteries operators in each State and Territory.<sup>365</sup>

**Table 9: Current tax rates applicable to lotteries operators**

State / Territory Tax Rate	
VIC	In respect of Soccer Football Pool, 57.52% of Player Loss in respect of supplies on which GST is payable and 68% of Player Loss for supplies on which GST is not payable.  In respect of other public lottery products, 79.4% of Player Loss or 90% of Player Loss where no GST is payable or 90% of Player Loss for supplies on which GST is not payable.
NSW	76.918% of Net Player Loss less GST
ACT	As per New South Wales Tax Rate
QLD	In respect of declared lotteries, 73.48% of monthly gross revenue less the smaller of GST and gross tax.  In respect of Instant Scratch-Its, 55% of monthly gross revenue less the smaller of GST and gross tax.  In respect of Pools, 67.6% of monthly gross revenue less the smaller of GST and gross tax.
SA	41% of Net Gambling Revenue.
WA	67.5% net revenue.
NT	Confidential. <sup>366</sup>
TAS	As per Victorian Tax Rate for all Victorian lotteries sold in Tasmania and per Queensland Tax Rate for Queensland lotteries sold in Tasmania.

<sup>365</sup> Merwe [43].

<sup>366</sup> Tatts is unable to disclose details of relevant agreements without the consent of other parties.



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275. As set out above, under the *Racing and Betting Act 1983* (NT), synthetic lottery operators can also be licensed as corporate bookmakers to accept wagers by telephone and online for lottery betting derivatives.<sup>367</sup>
276. Under the above arrangements, synthetic lottery operators do not pay State-based lottery licence fees, nor the lotteries taxes which are paid by Tatts and Lotterywest. Further, by operating from the Northern Territory under a sports bookmaker licence, the synthetic lottery operators are not subjected to Territory taxes as there is no tax payable on betting on non-racing events under the Northern Territory regulatory regime.<sup>368</sup>
277. In contrast to this, Tatts as a licensed operator incurs the financial obligation arising from conducting a fully funded and committed lottery prize pool. Further, unlike synthetic lottery operators, Tatts must, pursuant to the terms of its licence, maintain fully funded and committed prize pools at all times. Synthetic lottery operators do not need to do this, although they would incur costs of insurance to cover potential large payouts to their customers.<sup>369</sup>

#### 4.5 Bidding for lotteries licences

278. In New South Wales, Victoria and South Australia, the lotteries licences or authorisations are exclusive. In all other states and territories, whilst the licences (or permits) are non-exclusive, Tatts is currently the sole operator.
279. State and Territory governments generally either run formal competitive tendering processes for the grant of lottery licences, or conduct private sales of these rights through direct commercial negotiations. Recent examples of various licencing processes include:
- (a) **Victoria:** Across 2005-2007, a competitive bidding process was conducted in which two licences were issued: a Category 1 Public Lottery Licence granted to Tatts (which allowed Tatts to operate its major national lotteries in Victoria) and a Category 2 Public Lottery Licence issued to Intralot, a corporation based in Greece (to conduct a daily Keno game and Instant Scratch-Its). Intralot's licence was voluntarily surrendered back to the Government on 27 October 2014, with the rights under it subsequently granted to Tatts on 1 February 2015.<sup>370</sup>
  - (b) **Queensland:** In 2007, the Queensland Government engaged in direct negotiations with Tatts for the acquisition of Golden Casket, with Tatts acquiring the lottery operator licence

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<sup>367</sup> Merwe [74].

<sup>368</sup> Merwe [76].

<sup>369</sup> Merwe [76].

<sup>370</sup> Merwe [87]-[89].



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on 29 June 2007, which remained exclusive until August 2016.<sup>371</sup> Since August 2016, the Queensland lottery operator's licence granted to Golden Casket has been a non-exclusive licence. However, there have not been any other lottery product licences issued in Queensland.<sup>372</sup>

- (c) **New South Wales:** In 2009-2010, a competitive bidding process was conducted for the then State-owned NSW Lotteries corporation.<sup>373</sup> Tatts was granted these licences on 31 March 2010 following a formal tender process in which there were at least three other bidders participating in that process.<sup>374</sup>
- (d) **South Australia:** In 2012, the South Australian Government engaged in direct commercial negotiations with Tatts' South Australian subsidiary which resulted in its appointment as Master Agent for the sale of entries into all lotteries games operated by the Lotteries Commission of South Australia.<sup>375</sup> The direct negotiation was engaged in by the South Australian Government on the basis that if it did not yield an appropriate return to the State, that an open market process would be conducted.<sup>376</sup>

280. In addition to these processes, on or about 30 September 2015 the Victorian Government announced that it was undertaking a competitive bidding process for a new proposed lottery licence to commence in 2018. A decision is expected in June 2017. It is not known who was invited to participate in the bidding, or how many participants are currently engaged in that process.<sup>377</sup> As the current licence holder, Tatts is an interested party.<sup>378</sup>

281. As each licence is highly regulated, each State Government is in a position to determine the terms and conditions upon which any licences are granted, and under which process, either competitive or through direct negotiation, it deems appropriate for obtaining the highest return for the State.

282. Given the history of State and Territory engagement with market participants, it is highly likely that any future licensing processes, including the process currently on-foot in Victoria, will achieve a competitive outcome for the relevant State or Territory.

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<sup>371</sup> Merwe [96] and [98].

<sup>372</sup> Merwe [98].

<sup>373</sup> Merwe [83].

<sup>374</sup> Merwe [83]-[84].

<sup>375</sup> Merwe [93]-[94].

<sup>376</sup> Merwe [94].

<sup>377</sup> Merwe [92].

<sup>378</sup> Merwe [92].



**Confidential Restriction on Publication Claimed****5 KENO****5.1 Keno overview**

283. Keno is a game of chance.<sup>379</sup> Like lotteries, it is distinct from wagering products in that it does not require the collection and processing of information to play Keno. It is also distinct from lotteries as Keno products provide swift paybacks (games are run every few minutes) and direct Keno products can only be consumed in certain venues – casinos, clubs, hotels, TAB outlets (in certain States), and specific retail outlets (in South Australia).<sup>380</sup>
284. Providers of Keno need to be licensed.<sup>381</sup> Tabcorp is the only provider of Keno in retail outlets in Queensland,<sup>382</sup> Victoria<sup>383</sup> and the Australian Capital Territory,<sup>384</sup> while Tatts is the only provider in retail outlets in South Australia.<sup>385</sup> In New South Wales, Clubkeno Holdings Pty Ltd (a company which is not owned by Tabcorp) is a co-licensee with Keno (NSW) Pty Ltd, a company owned by Tabcorp.<sup>386</sup> Other providers supply Keno at certain retail outlets in Tasmania, Western Australia and Northern Territory. There is no retail overlap between Tabcorp and Tatts in the supply of Keno products.
285. Under its licence in the Australian Capital Territory, Tabcorp is permitted to distribute its ACT Keno product digitally (i.e. online or through apps).<sup>387</sup> This raises the potential for there to be some overlap in the provision of Keno products between Tabcorp's online sales, and Tatts' retail sales, in South Australia. Tabcorp's online sales to South Australian residents to date **[Confidential to Tabcorp]** [REDACTED].

**5.2 Keno products**

286. The standard (Classic) Keno game involves 20 numbers being randomly drawn (generally electronically) from whole numbers between and including 1 and 80. All States and Territories offer the Standard (Classic) Keno game.<sup>388</sup> Before the draw, a player:
- (a) decides how many numbers they want to 'play' (although 20 numbers are drawn during a Keno game, players do not have to, and typically do not, play 20 numbers on their ticket);

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<sup>379</sup> Rytenskild [19].

<sup>380</sup> Pleatsikas [111].

<sup>381</sup> Rytenskild [61].

<sup>382</sup> Rytenskild [66]-[67].

<sup>383</sup> Rytenskild [64].

<sup>384</sup> Rytenskild [69].

<sup>385</sup> Rytenskild [78].

<sup>386</sup> Rytenskild [65].

<sup>387</sup> Rytenskild [53].

<sup>388</sup> Rytenskild [22].



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- (b) selects their numbers and marks them on a ticket or touch terminal, or has their numbers randomly allocated; and
  - (c) decides the amount of money they wish to stake per game, and how many games they wish to play with the same set of numbers.<sup>389</sup>
287. A player wins if the numbers drawn match the numbers the player has selected on their ticket. Customers may also receive smaller prizes for matching fewer than all of their selections. The amount a player wins is determined by fixed rules and depends on several factors, including how many numbers the player has selected, how many of those numbers match the numbers drawn, and how much the player has spent on the game.<sup>390</sup>
288. Players of Keno Classic have the option to pick between 1 and 40 numbers. Players can pay for one game or multiple games in advance.<sup>391</sup>
289. Internationally, Keno is played much like any other gaming product - on EGMs, online and via apps. However, Australia has a unique Keno business, given the breadth and magnitude of its retail channel.<sup>392</sup>
290. Keno is generally played by consumers in Australia at the same time as they are socialising over a meal or a drink at a pub or club. There are screens on the wall which show products available and the accrued jackpot at any one time. To play, players can either fill out a paper ticket (which is generally found on tables throughout the venue) and take it to the venue operator or alternatively use a self-service machine.<sup>393</sup>
291. Several features of the game reflect the fact that it is designed to be played socially. Importantly it is played in-venue, with draws shown on screens while players are engaging in other activities such as eating or drinking in a group. The ease of the game means it can be played whilst engaging in other activities.<sup>394</sup>
292. Unlike lotteries which have daily or weekly draws, Keno games are typically run every 3 minutes. The social aspect of Keno is also reflected in its current 'Let's Play' slogan.<sup>395</sup>

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<sup>389</sup> Rytenskild [19].

<sup>390</sup> Rytenskild [20].

<sup>391</sup> Rytenskild [28].

<sup>392</sup> Rytenskild [42].

<sup>393</sup> Rytenskild [45].

<sup>394</sup> Rytenskild [46].

<sup>395</sup> Rytenskild [46].



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**5.3 Keno suppliers**

293. Suppliers of Keno across Australia, include:

- (a) **Tabcorp:** Tabcorp distributes Keno products in pubs, clubs and TABs in Victoria, New South Wales, Queensland and the Australian Capital Territory.<sup>396</sup> **[Confidential to Tabcorp]** [REDACTED]<sup>397</sup>
- (b) **Tatts:** Tatts distributes Keno products in South Australia.
- (c) **The Federal Group:** The Federal Group operates significant tourism, hospitality, retail, casino and gaming assets in Tasmania. Federal Group currently has the exclusive right to operate Keno in Tasmania, as well as EGMs and casino tables in that State.<sup>398</sup>

294. Table 10 below summarises the suppliers of Keno products in Australia and the current licensing arrangements.<sup>399</sup>

**Table 10: Keno licensees in Australia**

State / Territory	Licensee	Exclusive	Duration
ACT	Tabcorp	Yes	Expires 2064
NSW	Tabcorp / ClubKeno Holdings Pty Ltd (joint licensees)	Yes	2050
NT	Skycity and Lasseters	Yes	Skycity (until 2031) Lasseters (until 2031)
QLD	Tabcorp	Yes	2047
SA	Tatts (SA Lotteries)	Yes	Tatts has exclusive management rights of SA Lotteries until 2052
TAS	Federal Group	Yes	2023
VIC	Tabcorp	Yes	2022

<sup>396</sup> Rytenskiid [63].

<sup>397</sup> Rytenskiid [81].

<sup>398</sup> Rytenskiid [89(c)].

<sup>399</sup> Rytenskiid [63].





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299. Tabcorp's Victorian Keno licence expires in 2022. **[Confidential to Tabcorp]** [REDACTED]  
[REDACTED]  
[REDACTED]<sup>406</sup>
300. The Tasmanian Keno licence (held by the Federal Group) expires in 2023. At this stage, there has been no statement from the Tasmanian government as to the process it may employ in relation to the next licence, other than a statement from the Tasmanian Treasurer proposing that a Joint Select Committee of both houses be formed to consider the structure of the gaming sector in Tasmania post-2023.<sup>407</sup>
301. There are a number of other possible participants in any future opportunity for licensing of Keno products, including the most likely next bidding process, in relation to the Victorian licence. These include:
- (a) the Federal Group, mentioned above, which currently has the exclusive right to operate Keno in Tasmania, as well as EGMs and casino tables in that State, making it well placed to bid for the next Victorian Keno licence;
  - (b) gaming services companies such as IGT, which manufactures and supplies EGMs, gaming systems and services, and has established relationships with pubs and clubs. IGT currently has multiple Keno EGM products available in the United States and is also a global lottery operator;
  - (c) other participants in the broader gambling industry including Lottoland, which has recently entered Australia as the provider of online lottery betting services, may see some attraction in establishing a retail presence through the provision of Keno in retail outlets; and
  - (d) corporate bookmakers, such as Ladbrokes, which also operate online (and operate Ladbrokes Bingo, an online Bingo product in the UK), or Sportsbet which operates a retail distribution in the UK.<sup>408</sup>

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<sup>406</sup> Rytenskild [90]

<sup>407</sup> Premier of Tasmania, *Ministerial statement on gaming* (17 March 2016 [http://www.premier.tas.gov.au/releases/ministerial\\_statement\\_on\\_gaming](http://www.premier.tas.gov.au/releases/ministerial_statement_on_gaming))

<sup>408</sup> Rytenskild [89(c)].



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**6 PUBLIC BENEFITS ARISING FROM THE TRANSACTION**

**6.1 Direct benefits from the Proposed Transaction**

302. The Proposed Transaction will lead to the following operational, performance and strategic improvements:

- (a) a reduction of annual operating costs of approximately **[Confidential to Tabcorp]** million per year<sup>409</sup>;

**Table 11 – Summary of estimated annual cost savings<sup>410</sup> [Confidential to Tabcorp]**

Summary of estimated cost synergies	Year 3 value (A\$M)
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

- (b) business improvements that will result in increased annual revenue by approximately **[Confidential to Tabcorp]** million per year<sup>411</sup>;

**Table 12 – Summary of annual revenue increases from third year following completion (A\$M)**

Area of increase	Revenue increase
Improved Tatts fixed odds performance	[Redacted]
Wagering business improvements	[Redacted]

<sup>409</sup> Johnston [25].

<sup>410</sup> Johnston [25].

<sup>411</sup> Johnston [64].



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Keno business improvements	████
<b>Total</b>	████

- (c) the removal of a commercial barrier to merging the pari-mutuel pools of Tabcorp and Tatts.<sup>412</sup>

**6.2 Pass through of direct benefits to parties other than Tabcorp**

303. These benefits will be widely shared with parties other than Tabcorp. In accordance with existing agreements between Tabcorp and Tatts and racing industry bodies across Australia, approximately **[Confidential to Tabcorp]** █████ million per year of the benefits from the merger are expected to flow to the racing industry.<sup>413</sup> In addition, Tabcorp will pay approximately **[Confidential to Tabcorp]** █████ million in additional State and Federal government taxes<sup>414</sup> and contribute approximately an additional **[Confidential to Tabcorp]** █████ million to retail wagering and Keno venues and sporting bodies.<sup>415</sup> In total, approximately 55% of the total expected direct benefits from the transaction will flow directly to parties other than Tabcorp.

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<sup>412</sup> Freeman [164]-[166], Johnston [127].  
<sup>413</sup> Johnston [24(a)].  
<sup>414</sup> Johnston [24(d)-(e)].  
<sup>415</sup> Johnston [24(b)-(c)].

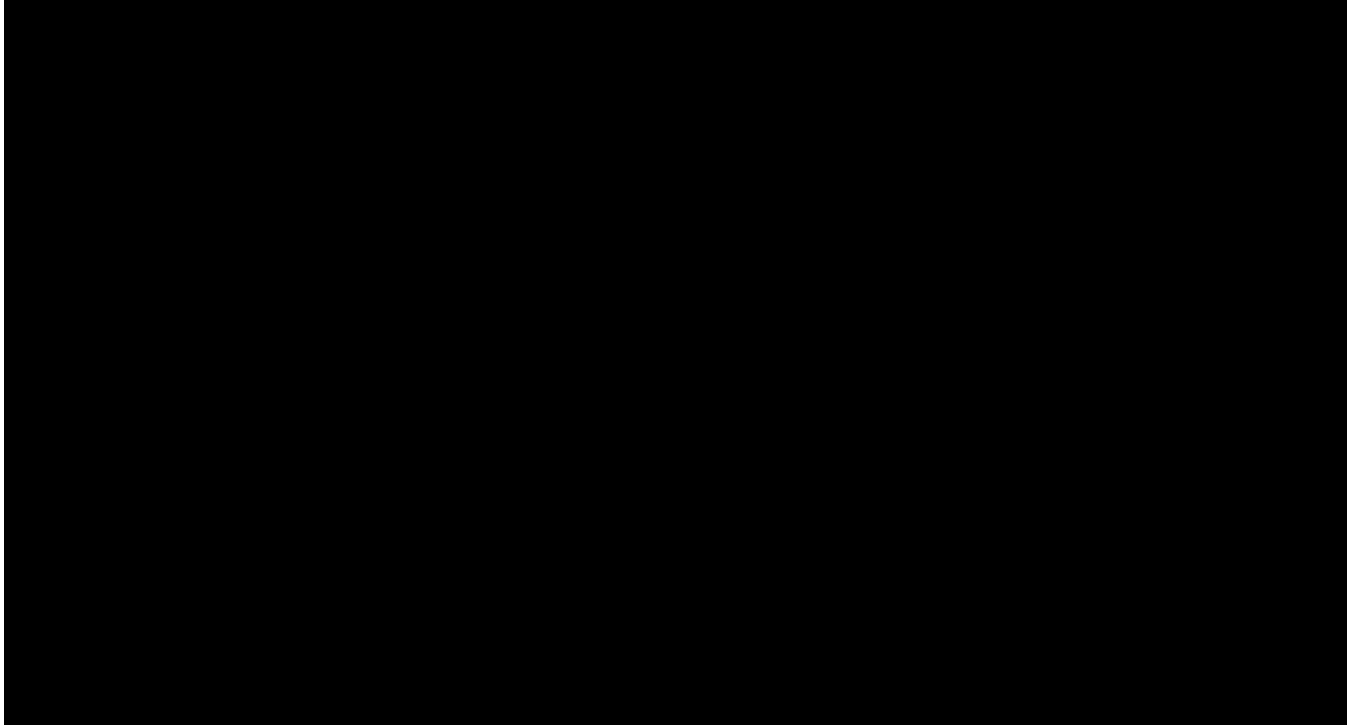




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**[Confidential to Tabcorp]**

**Table 13 – Summary of financial flows as a result of the proposed transaction**



**6.3 Broader economic impacts**

304. The benefits will also increase the productive efficiency of the broader Australian economy as a result of factors such as the substitution of domestic products for imported products and likely increases in tourism.

305. DAE has used a CGE modelling technique to estimate the increase in gross national income that can be expected to arise from some of the benefits. A summary of the results of DAE's modelling is at Table 2 of Simes.<sup>416</sup>

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<sup>416</sup> Simes [145].



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**Table 14 - Summary of results, reported in terms of impact on gross national income**

Categories	Third year value		Present value for 15 years	
	Central estimate (-0.93) (millions)	Elasticity sensitivity (-0.6) (millions)	Central estimate (-0.93) (millions)	Elasticity sensitivity (-0.6) (millions)
<i>CGE results</i>				
Cost Savings that result in efficiency improvements	\$152.0	\$147.8	\$1,279.9	\$1,241.8
A substitution of domestic products for imported goods and services	\$27.5	\$26.7	\$281.7	\$274.5
Total of CGE results	\$179.5	\$174.5	\$1,561.6	\$1,516.3

**6.4 The Proposed Transaction will help to maintain and support the long term health of the Australian racing industry in the face of challenges to its traditional funding model**

306. The racing industry makes a significant economic contribution to the Australian economy, particularly in regional areas.<sup>417</sup> Unlike other sports, which are generally funded through ticket sales, sponsorship and media rights, the racing industry is heavily reliant on funding from wagering.<sup>418</sup> The racing industry receives a substantial proportion of its revenue from the State TABs, which contribute a greater proportion of their wagering revenue than do corporate bookmakers.<sup>419</sup> Strong and stable funding from totalisator wagering and the State TABs has been a major reason for the Australian racing industry achieving its current scale and strength.<sup>420</sup>

307. The reason why corporate bookmakers make relatively lower contributions to the racing industry is because they operate using licences issued in jurisdictions where, unlike the State TABs, they are not required to enter into specific funding arrangements with the racing industry; the only contribution they are required to make to the racing industry is through race field fees

<sup>417</sup> Simes [84] to [88].

<sup>418</sup> Freeman [84].

<sup>419</sup> Freeman [84], [279]-[280], Dumesny [57], Gatehouse [35], Gunston [29], Jewell [98], Nicholl [42], Raedler [72], Scott [24], Yovich [19].

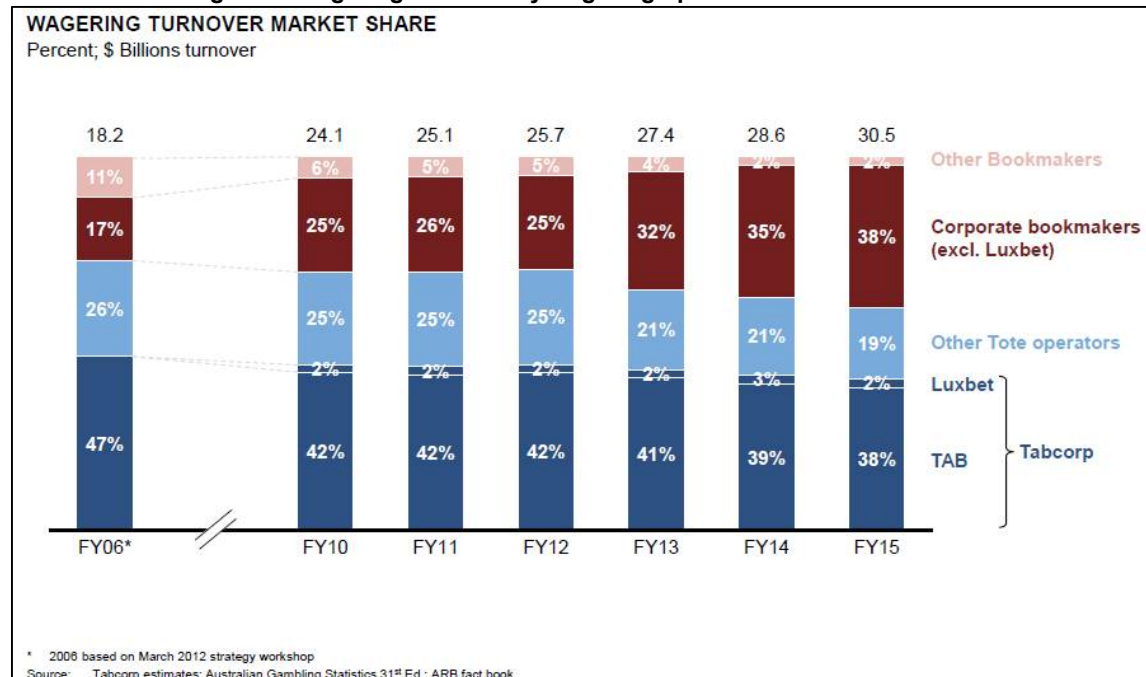
<sup>420</sup> Grant [57]-[58], Gunston [25], Harding [12], [20], Raedler [59].

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which Tabcorp estimates operate at a blended average rate of approximately 2% of turnover for events to which race field fees apply.<sup>421</sup> By contrast, Tabcorp contributes approximately **[Confidential to Tabcorp]** of its wagering turnover (inclusive of sports wagering) to the racing industry.<sup>422</sup>

308. Wagering customers have increasingly moved away from the services offered by the State TABs and towards the online, fixed odds services offered online by the corporate bookmakers in recent years.<sup>423</sup>

**Table 15 - Thoroughbred wagering turnover by wagering operator**



309. This move away from the State TABs and towards corporate bookmakers has created significant challenges for the racing industry’s funding model, due to the higher proportion share of wagering turnover that is contributed to the industry from bets placed with the State TABs compared with bets placed with corporate bookmakers.<sup>424</sup>

310. The Proposed Transaction will help to address this funding challenge. It will do this by creating a more efficient state TAB operator which is better positioned to compete against the corporate bookmakers. Tabcorp also intends to introduce new products, invest in more attractive retail venues and operate using a better recognised and more attractive brand than Tatts, all of which

<sup>421</sup> Freeman [305].

<sup>422</sup> Freeman [305].

<sup>423</sup> Freeman [249], [263].

<sup>424</sup> Dumesny [75], Jewell [98], Nicholl [42], Scott [35], Raedler [72].



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are expected to result in substantial revenue improvements to the State TABs in which Tatts is the existing operator.<sup>425</sup>

311. Tatts' estimated share of wagering expenditure in these States (relative to the corporate bookmakers) is significantly lower than Tabcorp's.<sup>426</sup> This reflects the fact that Tabcorp has been a more successful wagering operator over time than Tatts. Tabcorp considers it reasonable to expect that the Proposed Transaction will go some way towards reversing this historic position.<sup>427</sup>

**[Confidential to Tabcorp]**

**Table 16 – Estimated shares of home state wagering turnover**

Tabcorp	Tatts
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

312. The racing industry is providing a significant degree of support for this claimed public benefit in statements to the Tribunal. Racing industry representatives from a broad cross-section of the racing related industries from across Australia consider that the Proposed Transaction will better position the merged entity to compete with the corporate bookmakers and help to address the challenges to their historic funding model that have arisen as a result of the move of customers towards corporate bookmakers.<sup>428</sup>

313. The Proposed Transaction will lead to an increased level of competitiveness in the supply of wagering services. To the extent that the merged entity is successful in offering more attractive products and services at a lower cost to customers, it will be better support the racing industry as a result of pre-existing funding arrangements.

<sup>425</sup> Johnston [85].

<sup>426</sup> Johnston [101]

<sup>427</sup> Johnston [102] – [103]

<sup>428</sup> Aldam [56], Corby [52]-[53], Dixon [30]-[34], Dumesny [88], [91], Gatehouse [58]-[62], Gunston [39], Harding [40]-[43], Innes [36]-[39], Jewell [108]-[109], Lynch [59]-[60], Nicholl [57], O'Toole [48], Raedler [64]-[67], Stubbs [73], Watters [23], Yovich [80].



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**6.5 Increased funding for State TABs will help to address ‘free rider’ problems arising from funding imbalances between the State TABs and corporate bookmakers**

314. Racing has the economic characteristics of a public good, in that multiple wagering operators can use the same racing product and use of the product is hard to prevent without regulation. This has the potential to result in a ‘free rider’ problem and under funding of racing in relation to consumer demand for racing and wagering.<sup>429</sup>
315. This ‘free rider’ problem is present in Australia, to some degree, because the State TABs contribute a greater proportion of their wagering revenue to the racing industry than corporate bookmakers.<sup>430</sup> Due to the imbalance in funding between the State TABs and corporate bookmakers, the substantial increase in market share of corporate bookmakers in the past 10 years – estimated to be 16.5% in FY06 and 37.9% in FY15 – poses a challenge to the continued funding and health of the Australian racing industry.
316. The market share of the State TABs is lower in the states where Tatts holds the retail wagering licence compared with states in which Tabcorp holds the retail wagering licence. Tabcorp considers that it is reasonable to expect that the Proposed Transaction will result in Tabcorp closing some of this market share gap,<sup>431</sup> which would result in greater wagering turnover for Tabcorp relative to the corporate bookmakers and a greater proportion of wagering revenue flowing directly to the racing industry than would otherwise occur. This expected market share increase can be seen as helping to address the ‘free rider’ problem that is present in racing industry funding in Australia.<sup>432</sup>
317. The Proposed Transaction will help to address the long term challenges facing pari-mutuel pools in Australia because it will:
- (a) lead to business improvements that will make the retail offer of the post-merger entity in Tatts states more attractive to customers, driving (amongst other things) increased pari-mutuel turnover,<sup>433</sup> and
  - (b) remove a commercial barrier to national pooling<sup>434</sup> which, if implemented, would make pari-mutuel pools more attractive and increase the competitiveness of totalisator pools in the national wagering market. Larger pools are more attractive to punters because they

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<sup>429</sup> Simes [78] – [83]

<sup>430</sup> Freeman [84], [279]-[280], Cooke [84] to [87].

<sup>431</sup> Johnston [103].

<sup>432</sup> Simes [97]

<sup>433</sup> Tab 5 of confidential exhibit DJ-1 [TBP.100.001.0002].

<sup>434</sup> Johnston [127] Cooke [176], Freeman [164].



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are more stable (individual bets have less effect on final dividends), provide for larger dividends and allow for the offering of a greater range of different bet types.<sup>435</sup>

#### **6.6 Increased revenue for the racing industry will have flow on effects to a wide range of parties, including in regional areas**

318. The indirect economic contribution of the racing industry extends to other sectors of the economy.<sup>436</sup> As a result, the increases in funding for the wagering industry flowing from the proposed transaction will benefit a number of parties dependent on the racing industry, including:

- (a) Jockeys;
- (b) Trainers;
- (c) breeders; and
- (d) other service providers such as veterinary services, feed producers and hospitality service providers.

319. Additional funding for the racing industry can be expected to have a positive impact on prize money. Provision of additional prize money to ensure participation by horse owners and other participants is a critical objective of some racing bodies. Additional prize money for races will lead to larger and more attractive race fields and, in turn, can be expected to have a positive impact on wagering activity.

320. Increased prize money is also likely to lead to increases in crowd size.<sup>437</sup> To the extent that clubs are located in regional areas, higher attendance will lead to benefits from increased tourism and expenditure in regional areas; more attractive races could also lead to an increase in international tourism.<sup>438</sup>

#### **6.7 More attractive pari-mutuel pools would help address long term challenges to pari-mutuel wagering**

321. Pari-mutuel wagering has historically, and continues to be, an important source of funding for the racing industry. The totalisator was historically seen as providing an attractive base for racing industry funding for a number of reasons including because the fact that the totalisator takes its share from the pool of bets before ascertaining the payout at the end of the race means that it is indifferent to the result.<sup>439</sup> It was because of the attractive features of the

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<sup>435</sup> Freeman [158].

<sup>436</sup> Simes [91]

<sup>437</sup> Simes [101]

<sup>438</sup> Simes [105]-[109]

<sup>439</sup> Freeman [12].



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totalisator, as well as the success of the totalisator funding model in racing industries elsewhere in the world, that the TABs were established as the bodies through which legal off-course betting was established in Australia.<sup>440</sup>

322. As set out above, pari-mutuel wagering in Australia has seen significant declines as a proportion of total wagering activity over the past 15 years in Australia and these trends are expected to continue in the future.<sup>441</sup>

323. Declines in pari-mutuel turnover create challenges to the continued viability of pari-mutuel pools, because smaller pools are less attractive to customers.<sup>442</sup> Some pools are already becoming so small to the point that they are too unstable to sustain a large bet<sup>443</sup>, and in some cases totalisators have had to provide subsidies to pools to guarantee a minimum level of turnover.

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<sup>440</sup> Harding [13]-[20], Freeman [12].

<sup>441</sup> Freeman [247]-[248], Cooke [133(b)], [133(i)], [134(c)], [135(c)], [137(c)] and [139] to [141].

<sup>442</sup> Freeman [159], Cooke [169] to [174].

<sup>443</sup> Freeman [158(f)].

**ANNEXURE D to the Form S filed on behalf of Tabcorp Holdings Ltd**

This <sup>9<sup>th</sup></sup> day of March 2017

*Competition and Consumer Act 2010*

Undertaking to the Australian Competition and Consumer Commission given under section 87B

by

Tabcorp Holdings Limited (ACN 063 780 709)

- 1 This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Tabcorp Holdings Limited (ACN 063 780 709) of 5 Bowen Crescent, Melbourne, VIC 3004 on behalf of itself and its subsidiaries (together referred to as (**Tabcorp**) in this Undertaking) under section 87B of the Competition and Consumer Act 2010 (the Act).
- 2 Tabcorp has made an application for authorisation in respect of an acquisition pursuant to section 95AU of the Act.
- 3 Tabcorp hereby undertakes that it will not make the acquisition the subject of the application referred to in paragraph 2 while the application is being considered by the Australian Competition Tribunal.
- 4 This Undertaking comes into effect when:
  - a the Undertaking is executed by Tabcorp; and
  - b the Commission accepts the Undertaking so executed.
- 5 Tabcorp acknowledges that the Commission will make this Undertaking available for public inspection.

**Executed as an Undertaking**

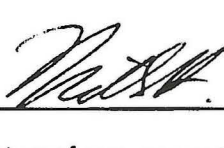
**EXECUTED BY** Tabcorp Holdings Limited ACN 063 780 709 pursuant to section 127(1) of the Corporations Act 2001 by:



Signature of director

DAVID ATKINSON

Name of director (print)



Signature of company secretary

MICHAEL SCOTT

Name of company secretary (print)

Date

Date

**ACCEPTED BY THE COMMISSION PURSUANT TO SECTION 87B OF THE ACT**

Commission Chairperson Date